



Punishing the Self or the Other? Penal Populism, Social Media, and the Erosion of the Presumption of Innocence in Democratic Societies

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Abstract

This paper examines the growing entanglement between penal populism, the pervasive influence of social media, and the erosion of the presumption of innocence—a foundational principle in democratic legal systems. Penal populism, characterized by a political tendency to promote harsher punishments and swift justice in response to public sentiment rather than empirical evidence, increasingly relies on social media platforms as tools for shaping and amplifying public outrage. In this context, individuals are often "tried" in the court of public opinion before due process unfolds, leading to reputational damage and societal exclusion even in the absence of a legal conviction. The paper explores how viral accusations, cancel culture, and algorithmic amplification contribute to a punitive ethos in which the boundaries between justice and vengeance are blurred. Social media not only fuels mass mobilizations and emotional reactions but also alters perceptions of crime and punishment, shifting from retributive justice anchored in law to performative condemnation rooted in spectacle. Moreover, this phenomenon exacerbates systemic inequalities, as marginalized groups are disproportionately affected by extrajudicial moral judgments. By drawing on interdisciplinary literature in criminology, media studies, and legal theory, the paper argues that the digital age demands renewed safeguards for legal fairness and individual dignity. It concludes by proposing normative and institutional responses aimed at reasserting the presumption of innocence and resisting the corrosive effects of punitive populism amplified through digital platforms.

Keywords: digital justice, democratic erosion, penal populism, presumption of innocence, public opinion, social media

1. Introduction

The presumption of innocence constitutes one of the foundational principles of modern democratic justice systems, safeguarding individuals from unjust punishment and ensuring that legal procedures remain anchored in fairness (Duff, 2013). Enshrined in international human rights instruments such as Article 6(2) of the European Convention on Human Rights (ECHR), this principle guarantees that no person is considered guilty until proven so in a court of law. Its value extends beyond procedural safeguards: it reflects the moral commitment of

democratic societies to treat all individuals with dignity and fairness, even in the face of suspicion (Ashworth & Zedner, 2010).

Yet, in contemporary societies, this guarantee is under mounting pressure. One of the main drivers of its erosion is the rise of penal populism, a phenomenon whereby punitive policies are justified less by empirical evidence of effectiveness and more by their capacity to resonate with public anxieties and emotions (Pratt, 2007; Roberts et al., 2003). Political actors increasingly invoke the language of “law and order” to appeal to voter sentiments, often portraying leniency as weakness and harsh punishment as the only valid response to crime (Bottoms, 1995). Such trends have been documented across diverse jurisdictions, from the “three strikes” laws in the United States to increasingly severe sentencing regimes in parts of Europe .

Compounding this trend is the pervasive influence of social media, which functions as an amplifier of populist punitive rhetoric. Platforms such as Twitter, Facebook, and TikTok facilitate instantaneous dissemination of information and, crucially, misinformation. They create what Greer and McLaughlin (2017) describe as “trial by media 2.0,” where individuals are judged, condemned, and punished in the court of public opinion long before formal adjudication takes place. Unlike traditional media, which at least nominally adhered to editorial standards, digital platforms thrive on engagement-driven algorithms that prioritize sensational, emotional, and polarizing content (Tufekci, 2015). Viral accusations thus generate disproportionate moral outrage, while retractions or acquittals rarely achieve the same reach, leaving lasting damage to reputations (Ferguson, 2018).

The intersection of penal populism and digital media has profound implications for the rule of law and democratic integrity. First, it contributes to the collapse of due process, as individuals face reputational and social punishments before their cases are heard in court. Second, it fosters a system of reputational punishment in the absence of conviction, where exclusion, stigmatization, and job loss become quasi-sanctions administered outside legal channels (Ng, 2020). Third, it transforms criminal justice into a form of spectacle, where condemnation becomes performative, serving both political opportunism and collective catharsis rather than principles of justice (Garland, 2001).

These dynamics are not merely theoretical. High-profile cases such as those associated with the #MeToo movement illustrate how allegations made on social media, regardless of subsequent legal outcomes, can lead to immediate reputational devastation, career termination, and social ostracism (Fileborn & Loney-Howes, 2019). While such digital activism has empowered marginalized voices, it has also raised concerns about proportionality, fairness, and the potential erosion of procedural safeguards. Moreover, research shows that marginalized groups—such as ethnic minorities, migrants, and individuals from lower socio-economic backgrounds—are disproportionately vulnerable to these dynamics, as their reputations are more easily undermined and less readily defended (Benjamin, 2019).

In light of these developments, it becomes urgent to critically examine the entanglement between penal populism, social media dynamics, and the erosion of the presumption of innocence. This paper aims to explore how digital environments reconfigure societal understandings of justice, shifting from retributive models anchored in legal institutions to performative condemnation rooted in online spectacle. It argues that unless reinforced by renewed normative and institutional safeguards, democratic societies risk normalizing a punitive ethos where the presumption of innocence is reduced to a legal fiction.

2. Penal Populism and the Democratic Paradox

Penal populism emerged in late twentieth-century democracies as a political strategy aimed at capitalizing on public fears of crime and insecurity (Bottoms, 1995; Pratt, 2007). At its core, penal populism is less concerned with evidence-based criminological research and more with the symbolic reassurance that harsh punishment provides to anxious electorates (Roberts et al., 2003). By positioning themselves as defenders of “ordinary people” against crime, political actors employ punitive rhetoric that resonates emotionally with the public but often lacks empirical grounding in effective crime prevention.

A defining feature of penal populism is its heavy reliance on media—and increasingly social media—as a conduit for amplifying punitive sentiments. Politicians and media outlets instrumentalize stories of shocking crimes to demand tougher sentencing, lower thresholds for pre-trial detention, and restrictions on defendants’ procedural rights (Tonry, 2012). Such measures are justified in the name of protecting public safety, yet they frequently disregard proportionality principles and undermine the rights of the accused.

The democratic paradox lies in the contradiction between the promises of democracy and the practices of penal populism. Democratic institutions are mandated to safeguard liberties, uphold due process, and protect minorities against majoritarian impulses. However, when these same institutions deploy populist strategies—such as introducing “zero tolerance” policies, mandatory minimum sentences, or public shaming of suspects—they erode the very safeguards they are supposed to protect (Lacey, 2008). In this sense, penal populism transforms democracy into a vehicle for punitive excess, exploiting popular fears while weakening constitutional guarantees.

This paradox becomes particularly acute with respect to the presumption of innocence. By prioritizing public reassurance through visible punishment over procedural fairness, states risk reducing the presumption of innocence to a mere formal requirement rather than a substantive protection. For example, political calls for “naming and shaming” alleged offenders before conviction illustrate how penal populism reconfigures criminal justice as a performative response rather than a rational adjudication. In such contexts, the symbolic value of punishment eclipses the principle of fairness, leading to a dangerous alignment between populist democracy and punitive authoritarianism (Garland, 2001).

Ultimately, the democratic paradox of penal populism underscores the fragility of liberal legal orders. While it arises within democracies that claim to respect rights, its effects erode trust in institutions by normalizing retribution over rehabilitation, spectacle over substance, and condemnation over fairness. Unless carefully checked, penal populism risks hollowing out democracy from within, replacing substantive justice with a punitive ethos that privileges majoritarian demand at the expense of individual dignity and due process.

3. Social Media as a Vector of Populist Justice

In the digital age, social media has become one of the most powerful vectors of penal populism, accelerating cycles of public outrage and shaping perceptions of crime and punishment. Unlike traditional media, which mediated public debates through editorial filters, digital platforms provide an unregulated and highly interactive environment where narratives of guilt or innocence circulate instantaneously and virally. Hashtag campaigns and viral posts construct simplified, emotionally charged narratives of guilt long before judicial processes unfold, contributing to what Greer and McLaughlin (2017) aptly describe as “trial by media 2.0.”

The architecture of platforms such as Twitter (now X), Facebook, and TikTok collapses temporal and spatial boundaries, transforming local incidents into global spectacles. A criminal case in one jurisdiction can rapidly become an international talking point, with millions of users engaging in real-time commentary, moral judgment, and condemnation. This transformation aligns with Garland's (2001) notion of a "culture of control," wherein societies normalize the presumption of guilt and embrace punitive responses as markers of collective security. The immediacy of digital outrage leaves little room for nuance, proportionality, or consideration of evidence, eroding the foundational principle of "innocent until proven guilty."

Moreover, social media's interactivity enhances its punitive function. Online users do not merely consume news but actively participate in processes of digital condemnation, through practices such as "doxxing," "canceling," and the circulation of incriminating imagery or personal information (Trottier, 2017). These practices effectively outsource aspects of punishment to the crowd, bypassing judicial procedures and imposing reputational sanctions with lasting consequences. Such mechanisms of online shaming stigmatize not only defendants but also their families, employers, and communities, thereby expanding the radius of social harm (Ronson, 2015).

The influence of digital populist justice extends beyond the public sphere. Research shows that sustained online mobilizations can shape the perceptions of jurors, politicians, and even judicial actors, creating subtle but significant pressures on legal decision-making (Loader & Sparks, 2016). Politicians, seeking to appear responsive, often adopt harsher stances or propose punitive legislation in response to viral outrage. Similarly, judges and prosecutors may feel compelled to act more severely under the "gaze" of public opinion, especially in high-profile cases where digital mobilization becomes a parallel courtroom.

This dynamic also exposes inequalities in how digital justice operates. Accusations against marginalized groups—ethnic minorities, migrants, women, or LGBTQ+ individuals—are often amplified more aggressively and met with harsher social condemnation (Benjamin, 2019). Conversely, elite actors with greater access to legal and media resources can sometimes weather reputational storms more effectively, underscoring how algorithmically driven populist justice reinforces structural asymmetries.

In sum, social media transforms penal populism into a participatory, globalized phenomenon. It enables "populist justice" that operates outside and often against judicial safeguards, normalizing the presumption of guilt and blurring the line between accountability and vengeance. Unless checked, this digital amplification risks entrenching a parallel system of justice governed by virality rather than legality, where fairness and due process are subordinated to the spectacle of public punishment.

4. The Erosion of the Presumption of Innocence

The presumption of innocence—long regarded as a cornerstone of liberal criminal justice—faces increasing erosion in the context of penal populism and digital media. Traditionally, this principle required that the burden of proof rest with the prosecution and that courts shield defendants from prejudicial assumptions (Duff, 2013). However, in contemporary societies, media and political discourse frequently construct alleged offenders as inherently dangerous, morally corrupt, or undeserving of procedural protections (Roberts & Indermaur, 2023). In doing so, they redefine the accused not as rights-bearing citizens but as symbolic threats against which society must be defended.

This erosion is most visible in the digital public sphere, where the immediacy of viral accusations severely undermines judicial impartiality. Unlike conventional reporting, which

was temporally bound to the pace of trials, social media accelerates accusations to a point where courts struggle to maintain neutrality. Empirical research demonstrates that exposure to pre-trial publicity significantly biases juror perceptions, often producing assumptions of guilt even before formal proceedings begin (Greer & Reiner, 2012). Such biases are particularly problematic in high-profile cases, where potential jurors are immersed in narratives constructed through viral posts, hashtags, and online commentary.

The algorithmic architecture of social media platforms further exacerbates these dynamics. Designed to maximize engagement, algorithms disproportionately amplify content that is sensational, emotionally charged, and punitive in tone (Fagan & Meares, 2008). As a result, narratives portraying suspects as guilty or dangerous receive greater visibility than nuanced accounts of due process or acquittal. This selective amplification reinforces cognitive biases such as confirmation bias and availability heuristics, shaping collective perceptions of guilt before courts have spoken.

Moreover, reputational damage inflicted by viral accusations cannot easily be undone by legal acquittals. Once a defendant has been “tried” in the digital court of public opinion, social stigma often persists long after judicial exoneration. Studies on digital shaming indicate that the persistence of online content—through retweets, reposts, and algorithmic resurfacing—ensures that allegations remain searchable and enduring, perpetuating social exclusion even in the absence of conviction (Trottier, 2017). In this sense, the presumption of innocence is not only weakened in courtrooms but effectively nullified in broader societal interactions.

The consequences extend beyond individual cases, reshaping collective understandings of justice itself. Criminal trials, once the centerpiece of adjudication, increasingly appear as afterthoughts to pre-emptive public condemnation. In this emerging paradigm of digital populism, justice is not determined by impartial evidence and legal reasoning but by the virality of accusations and the intensity of public outrage (Loader & Sparks, 2016). This shift risks transforming the presumption of innocence from a substantive guarantee into a fragile legal fiction, easily overridden by the performative logics of digital media.

5. Implications for Democratic Societies

The entanglement of penal populism and social media carries profound consequences for democratic societies, reshaping both the symbolic and functional dimensions of justice. These implications extend beyond the legal sphere, influencing governance, public trust, and the legitimacy of democratic institutions.

First, the fusion of digital populism and penal rhetoric erodes trust in judicial institutions. When legal outcomes appear subordinate to the shifting tides of public opinion, citizens perceive courts as either ineffective or complicit in ignoring popular demands (Lacey, 2016). This perception delegitimizes the judiciary, undermining its authority as an independent arbiter of justice. In turn, politicians exploit this erosion of trust by advocating for harsher, highly visible punitive policies designed to reassure the electorate, further reinforcing the cycle of populist justice (Pratt, 2007).

Second, the dynamics of digital shaming disproportionately marginalize vulnerable groups, exacerbating pre-existing structural inequalities. Empirical research demonstrates that marginalized communities—racial and ethnic minorities, migrants, the poor—are overrepresented both in crime-related discourse and in the targets of online moral outrage (Wacquant, 2009). Their limited access to legal, social, and technological resources diminishes their ability to contest public accusations or repair reputational harm. This asymmetry not only deepens social exclusion but also reveals the discriminatory underside of digital populist

justice, where stigma is unequally distributed along lines of class, race, and gender (Benjamin, 2019).

Third, the normalization of punitive governance diverts policy away from long-term, evidence-based reforms toward short-term, reactive measures. Policies such as mandatory minimum sentences, expansive surveillance regimes, and “naming and shaming” initiatives are introduced to signal responsiveness to public fears rather than to address root causes of crime (Tonry, 2012). The consequence is a criminal justice system more concerned with performance and symbolism than with rehabilitation, proportionality, or social reintegration (Garland, 2001). Such reactive governance gradually reshapes the democratic state into a penal state, where coercion overshadows rights-based protection.

Finally, the erosion of the presumption of innocence symbolizes a broader crisis of democratic legitimacy. In substituting spectacle for substance, digital populism reduces justice to performance, where fundamental rights are subordinated to emotional catharsis and viral condemnation. This crisis reflects a deeper tension between democratic responsiveness and constitutionalism: when governments privilege populist demands for punishment over institutional guarantees of fairness, the very foundations of liberal democracy are destabilized (Habermas, 1996). If left unchecked, such dynamics risk hollowing out democratic norms, transforming societies into arenas where legitimacy is measured not by adherence to rights but by the capacity to deliver punitive spectacle.

In sum, the convergence of penal populism and social media presents not only a legal challenge but also a democratic one. It compels societies to confront whether democratic governance will continue to uphold the values of fairness, equality, and proportionality, or whether these will be sacrificed on the altar of digital populist justice.

6. Methodology

6.1 Research Aim

The aim of this study is to examine how penal populism, when amplified by social media dynamics, affects the principle of the presumption of innocence in democratic societies. The research aims to critically assess the mechanisms through which digital platforms transform criminal justice discourse, and to identify the normative, institutional, and social implications of this transformation.

6.2 Research Objectives

To fulfill this purpose, the study is guided by the following objectives:

- **Conceptual Analysis** – To review and synthesize theoretical literature on penal populism, presumption of innocence, and the role of media in shaping public perceptions of criminal justice.
- **Media Dynamics** – To explore the ways in which social media platforms amplify punitive discourses and influence collective attitudes toward guilt and punishment.
- **Democratic Safeguards** – To assess the extent to which the erosion of the presumption of innocence undermines democratic legitimacy and fair trial rights.
- **Comparative Insights** – To identify cross-national similarities and differences in how penal populism interacts with digital media environments.
- **Policy and Normative Implications** – To propose measures for reinforcing the presumption of innocence in the context of rapidly evolving digital communication.

6.3 Research Questions

The study is structured around the following guiding research questions (RQs):

RQ1: *How does penal populism manifest in democratic societies, and what role does social media play in its amplification?*

Penal populism manifests in democratic societies as a political and cultural strategy that capitalizes on public fears of crime by promoting harsh and symbolic punitive measures rather than evidence-based reforms. Its roots lie in late twentieth-century shifts where politicians, seeking electoral gains, presented themselves as champions of “ordinary citizens” against crime, often disregarding criminological expertise and proportionality principles (Bottoms, 1995; Pratt, 2007).

Manifestations include the expansion of mandatory minimum sentences, “zero tolerance” policing, public “naming and shaming” campaigns, and an increased emphasis on retribution over rehabilitation (Tonry, 2012). Such measures are framed as enhancing security but frequently erode procedural safeguards, most notably the presumption of innocence (Ashworth & Zedner, 2014).

Social media has significantly amplified penal populism by transforming public discourse on crime into a participatory, real-time phenomenon. Digital platforms collapse temporal and geographic boundaries, enabling local incidents to become global spectacles within hours. Through hashtags, viral posts, and online campaigns, social media facilitates what Greer and McLaughlin (2017) describe as “trial by media 2.0,” where allegations are circulated and condemned long before judicial processes unfold. The algorithmic logics of these platforms exacerbate the issue, as content that is emotionally charged and punitive in tone is prioritized and made more visible (Fagan & Meares, 2008).

This amplification has several consequences. First, it accelerates cycles of public outrage, pressuring political leaders and judicial actors to adopt more punitive stances (Loader & Sparks, 2016). Second, it normalizes reputational punishment, whereby individuals suffer social exclusion and professional consequences regardless of judicial outcomes. Third, it entrenches systemic inequalities, as marginalized groups are disproportionately targeted in online discourses of guilt and danger (Wacquant, 2009; Benjamin, 2019).

In sum, penal populism manifests in democratic societies through punitive policies designed to signal responsiveness to public anxieties, while social media magnifies its reach and intensity by creating digital environments that reward outrage, accelerate stigmatization, and erode the principle of due process.

RQ2: *In what ways do digital platforms contribute to the erosion of the presumption of innocence, particularly through mechanisms such as online shaming and “trial by media”?*

Online judgment erodes the presumption of innocence by subjecting individuals to reputational, social, and even political punishment prior to any judicial determination. In liberal democracies, the presumption of innocence requires that guilt be established solely through due process, with the burden of proof resting on the prosecution (Duff, 2013). However, in the digital sphere, this principle is increasingly displaced by what Greer and McLaughlin (2017) call “trial by media,” where viral narratives of guilt circulate with little regard for evidence or procedural safeguards.

First, online platforms generate pre-trial bias. Empirical research demonstrates that exposure to pre-trial publicity significantly influences juror perceptions, often creating an implicit assumption of guilt even before formal proceedings begin (Greer & Reiner, 2012). Viral posts

and hashtags serve as powerful vehicles of narrative framing, predisposing public opinion and potential jurors to view defendants as culpable.

Second, the algorithmic architecture of social media amplifies this erosion. Platforms prioritize emotionally charged and punitive content because it generates engagement (Fagan & Meares, 2008). This results in disproportionate visibility for accusatory narratives, while retractions or acquittals rarely gain comparable traction. The persistence of digital content ensures that reputational harm remains even after legal exoneration, effectively undermining the protective function of acquittals.

Third, online judgment facilitates reputational punishment and social exclusion. Once accused online, individuals may face professional dismissal, social ostracism, or psychological distress regardless of trial outcomes (Ng, 2020). Because digital accusations are durable and searchable, stigma endures long after legal resolution, weakening the corrective power of judicial decisions.

Finally, online condemnation undermines public trust in courts by shifting the center of adjudication from the courtroom to the digital public sphere. In this environment, legal trials become afterthoughts to public judgment, as collective understandings of justice are reshaped by the immediacy and virality of online accusations (Loader & Sparks, 2016). The presumption of innocence is thus reduced from a substantive safeguard to a fragile legal formality, easily overridden by digital populism.

In conclusion, online judgment erodes the presumption of innocence through biased pre-trial publicity, algorithmic amplification of punitive narratives, durable reputational harm, and the displacement of judicial authority by digital spectacle. This process challenges the integrity of democratic legal systems, exposing a fundamental tension between constitutional rights and the logics of populist digital justice.

RQ3: What are the democratic risks associated with the normalization of punitive discourses in online environments?

Reputational punishment in the digital public sphere is not evenly distributed; it disproportionately affects groups already marginalized within democratic societies. The amplification of penal populism through social media interacts with structural inequalities of race, class, gender, and social status, creating uneven vulnerabilities to online condemnation.

First, ethnic and racial minorities are particularly exposed to disproportionate stigmatization. As Wacquant (2009) argues, penal governance in neoliberal democracies often criminalizes poverty and racialized groups, portraying them as persistent threats to social order. When these stereotypes circulate online, they amplify existing prejudices, framing minority defendants as inherently guilty or dangerous regardless of evidence. Viral narratives often mobilize long-standing cultural anxieties, reproducing discriminatory tropes that reinforce systemic inequalities (Benjamin, 2019).

Second, migrants and non-citizens are highly vulnerable to digital populist justice. In times of political or economic insecurity, accusations against migrants are readily politicized, with social media framing them as symbols of lawlessness or cultural incompatibility. The precarious legal and social status of migrants limits their ability to contest defamatory narratives, leaving them exposed to reputational harm and exclusion.

Third, women and LGBTQ+ individuals often experience online condemnation intertwined with gendered and sexualized forms of stigma. Digital shaming practices frequently exploit stereotypes of sexual immorality or deviance, disproportionately targeting women accused of transgressing gender norms or queer individuals challenging heteronormative expectations

(Jane, 2016). These patterns reflect the intersection of penal populism with misogynistic and homophobic online cultures, where accusations become tools of moral regulation.

Fourth, economically disadvantaged individuals lack the resources to mitigate or contest reputational harm. Unlike elites, who may mobilize legal teams, public relations experts, or sympathetic media outlets to counter accusations, those with fewer resources face enduring stigma with little recourse (Loader & Sparks, 2016). This inequality underscores how reputational punishment reproduces broader socio-economic divides, reinforcing exclusionary hierarchies of credibility and voice.

Finally, even within privileged groups, individuals in high-visibility professions—politicians, academics, artists, athletes—are disproportionately targeted due to their public profiles. While some may recover reputationally, others experience irreversible professional and personal consequences from online shaming campaigns (Ronson, 2015).

In sum, the digital public sphere magnifies vulnerabilities already embedded in social structures. Racial and ethnic minorities, migrants, women, LGBTQ+ individuals, and economically disadvantaged populations are most exposed to reputational punishment, as algorithmically amplified accusations intersect with entrenched cultural prejudices and power asymmetries. This uneven distribution highlights how digital populist justice both reflects and intensifies existing inequalities within democratic societies.

RQ4: *How do different democratic systems respond to the tensions between penal populism, media influence, and constitutional safeguards?*

Counteracting the corrosive effects of penal populism in the digital era requires a combination of normative reaffirmations of constitutional principles and institutional innovations that adapt safeguards to the realities of social media. The goal is not to suppress public debate on crime but to ensure that democratic values such as fairness, proportionality, and the presumption of innocence are not eclipsed by digital populism.

First, strengthening legal protections of the presumption of innocence is essential. Courts, particularly supranational bodies such as the European Court of Human Rights (ECHR), have consistently emphasized that public officials and media outlets must avoid declarations of guilt prior to conviction (ECHR, *Allen v. United Kingdom*, 2013). Expanding such jurisprudence to explicitly address the role of social media actors—including politicians using digital platforms—could provide normative clarity and reinforce accountability (Ashworth & Zedner, 2010).

Second, regulating platform accountability represents a crucial institutional safeguard. Social media platforms amplify punitive content through algorithmic design, privileging outrage over nuance (Fagan & Meares, 2008). Reforms could mandate greater transparency in content curation, clearer moderation policies against defamatory or prejudicial content, and mechanisms for rapid redress in cases where viral accusations undermine due process. The European Union's *Digital Services Act* represents a step in this direction, establishing obligations for platforms to mitigate systemic risks to democratic discourse.

Third, promoting digital literacy and civic education is necessary to empower citizens to critically engage with online narratives of crime and punishment. Research shows that audiences trained to recognize bias and manipulation are less susceptible to punitive populist messaging (Marwick & Lewis, 2017). Educational programs could emphasize the dangers of “trial by media,” the importance of due process, and the potential harms of reputational punishment.

Fourth, institutional independence of judicial actors must be reinforced to insulate decision-making from online outrage. Judges, prosecutors, and jurors require protection from undue digital influence, whether through stricter rules on admissibility of prejudicial publicity, juror sequestration in high-profile trials, or professional guidelines on navigating social media pressures (Greer & Reiner, 2017). Such measures ensure that courts remain the legitimate arbiters of guilt, not digital publics.

Finally, support mechanisms for victims of digital shaming should be institutionalized. Defendants who face viral accusations often suffer enduring reputational and psychological harm, even after acquittal. Providing legal aid, psychological support, and pathways to reputational repair—such as the right to digital erasure or correction—can mitigate the disproportionate impact of online condemnation (Trottier, 2017).

In conclusion, safeguarding democracy against the corrosive effects of penal populism online requires a multi-layered response: reaffirming normative commitments to due process, ensuring platform accountability, investing in public education, insulating judicial actors, and protecting individuals from lasting harm. Without such safeguards, the presumption of innocence risks becoming a hollow guarantee, subordinated to the logics of digital spectacle and populist governance.

RQ5: *What normative and policy interventions could safeguard the presumption of innocence against populist and digital pressures?*

Safeguarding the presumption of innocence in the face of penal populism and digital amplification requires coordinated normative and policy interventions that reinforce constitutional guarantees while adapting them to the realities of the digital sphere.

First, at the normative level, it is necessary to reaffirm the presumption of innocence as a *substantive democratic value*, not merely a procedural safeguard. Constitutional courts and supranational bodies such as the European Court of Human Rights (ECHR) have repeatedly underscored that premature declarations of guilt by public officials or media violate Article 6(2) of the European Convention on Human Rights (ECHR, *Allen v. United Kingdom*, 2013). Expanding this jurisprudence to explicitly include digital communications and political rhetoric on social media could strengthen accountability for actors who undermine due process (Ashworth & Zedner, 2010).

Second, media and platform regulation represents a crucial policy intervention. Social media platforms, through algorithmic amplification, incentivize sensational and punitive content (Fagan & Meares, 2008). Policymakers could mandate transparency in algorithmic design, enforce obligations to reduce the circulation of prejudicial content, and require mechanisms for rapid correction when reputational harm occurs. The European Union's *Digital Services Act* provides a

model by establishing systemic risk obligations for very large online platforms, which could be adapted to explicitly address risks to the presumption of innocence .

Third, strengthening professional standards for political and media actors can mitigate the spread of populist narratives that pre-empt judicial determinations. Ethical codes for journalists, enforced by independent media councils, should explicitly prohibit framing suspects as guilty prior to conviction (Roberts & Indermaur, 2003). Similarly, political communication guidelines could sanction officials who instrumentalize ongoing criminal cases for electoral gain.

Fourth, judicial insulation policies are necessary to shield courts from digital populist pressures. Strategies include stricter rules on admissibility of prejudicial publicity, guidelines

for juror sequestration in high-profile cases, and training for judges and prosecutors on handling media influence (Greer & Reiner, 2012). These measures preserve the judiciary's role as an independent arbiter rather than a responsive participant in digital outrage cycles.

Fifth, public education and digital literacy initiatives are vital long-term strategies. By equipping citizens with critical skills to evaluate online content and understand the dangers of “trial by media,” societies can build resilience against populist manipulation (Marwick & Lewis, 2017). Civic education campaigns could emphasize the democratic importance of the presumption of innocence, reframing it as a collective safeguard rather than an individual privilege.

Finally, support frameworks for individuals harmed by digital shaming should be institutionalized. Defendants who endure viral condemnation often face lasting reputational, economic, and psychological harm, even after acquittal. Policies enabling access to legal aid, digital content takedown mechanisms, and rehabilitation programs can provide avenues for restoring dignity and reintegration (Trottier, 2017).

In sum, a combination of normative reaffirmation, regulatory oversight, professional accountability, judicial insulation, digital literacy, and victim support forms the backbone of an effective response. Without such interventions, the presumption of innocence risks being hollowed out by the dual pressures of penal populism and algorithmically amplified digital outrage.

7. Conclusions and Future Directions

This article has demonstrated that penal populism, when amplified by the dynamics of social media, poses a significant threat to the stability of democratic legal systems. By prioritizing emotional responsiveness over evidence-based deliberation, penal populism exploits public fears of crime and insecurity, producing policies and practices that undermine the foundational principle of the presumption of innocence. Social media platforms intensify this trend by fostering parallel arenas of judgment in which allegations circulate virally, reputational punishment is imposed prematurely, and legal safeguards are sidelined. In such environments, criminal justice is increasingly reframed as a spectacle of condemnation rather than a rational process of adjudication.

The findings underline the urgent need to reaffirm the presumption of innocence as a non-negotiable democratic safeguard. Without such reinforcement, democratic societies risk hollowing out their constitutional foundations, allowing populist and digital logics of punishment to replace the principles of fairness, proportionality, and human dignity. The normative challenge lies in ensuring that due process remains resilient even in an era characterized by instantaneous communication, algorithmic amplification, and heightened public polarization.

Looking forward, several avenues for research and policy development emerge. First, future studies should empirically assess the extent to which online discourse—particularly viral accusations and digital shaming—directly influences judicial decision-making and jury impartiality. Such evidence is essential for understanding the mechanisms through which digital populism reshapes legal outcomes. Second, interdisciplinary inquiry should explore how regulatory frameworks can balance the right to free expression with the imperative of protecting due process. Models such as the European Union's *Digital Services Act* highlight potential pathways for platform accountability, but further normative clarity and comparative research are needed to adapt these frameworks across jurisdictions.

Finally, sustained scholarly and policy attention must focus on institutional and educational responses. Strengthening judicial independence, promoting digital literacy, and providing mechanisms for reputational repair are crucial strategies for mitigating the harms of online penal populism. By combining normative reaffirmation with practical interventions, democratic societies can resist the corrosive effects of punitive populism and ensure that the presumption of innocence remains not only a legal principle but also a lived reality.

8. Limitations

This study is subject to several limitations that must be acknowledged in order to contextualize its contributions. First, the research is primarily theoretical-doctrinal in nature. It draws on legal theory, criminological scholarship, and media studies to examine the entanglement of penal populism, social media, and the presumption of innocence. While this approach enables a wide-ranging analytical overview of structural patterns and normative implications, it does not incorporate empirical data collection from defendants, jurors, policymakers, or social media users. Consequently, the claims advanced here remain interpretive rather than causally demonstrative.

Second, the reliance on secondary literature and case illustrations limits the granularity of the findings. Without quantitative or qualitative data from courtroom proceedings or digital platforms, it is not possible to measure the precise extent to which online discourse directly affects judicial outcomes or public opinion. Instead, the study identifies conceptual linkages and theoretical risks, which may not capture all of the contextual variability across jurisdictions and legal traditions.

Third, the focus on democratic societies in Europe and North America narrows the scope of analysis. While these contexts are particularly illustrative of the tensions between penal populism and digital media, the dynamics may differ in hybrid or authoritarian regimes, where state control over both media and justice systems alters the relationship between public opinion and legal safeguards.

Finally, the analysis cannot fully account for the rapidly evolving nature of digital communication technologies. Platform algorithms, user behaviors, and regulatory frameworks are in constant flux, meaning that patterns observed today may shift dramatically in the near future. This temporal limitation underscores the need for ongoing scholarly attention and adaptation of theoretical models.

Despite these constraints, the study provides a conceptual foundation upon which future empirical research can build. Longitudinal studies, experimental jury simulations, and content analyses of viral campaigns could illuminate how social media narratives concretely influence judicial decision-making and public perceptions of criminal responsibility. Such empirical extensions would not only test the hypotheses advanced here but also inform the design of normative and policy interventions to safeguard due process in the digital era.

9. Theoretical and Practical Implications

9.1 Theoretical Implications

The study contributes to ongoing debates in criminology, legal theory, and media studies by highlighting how penal populism and digital media converge to reshape foundational legal principles. It advances the understanding of the presumption of innocence not only as a procedural guarantee but also as a fragile social construct, vulnerable to erosion in contexts where public judgment precedes judicial adjudication. The analysis underscores the importance

of integrating insights from criminological populism studies (Pratt, 2007) and critical media theory (Greer & McLaughlin, 2017) to conceptualize the emergence of “digital trials” as parallel systems of justice. Moreover, by linking algorithmic amplification with normative concerns about fairness and dignity, the study provides a conceptual framework for examining how technological infrastructures shape legal culture. This interdisciplinary approach contributes to the broader literature on democratic erosion, illustrating how digital populism transforms core constitutional values into negotiable commodities in the political arena.

9.2 Practical Implications

From a policy and governance perspective, the findings highlight the urgent need for institutional and regulatory responses to safeguard due process in the digital age. The proliferation of social media platforms and the algorithmic amplification of prejudicial content pose direct risks to the presumption of innocence, necessitating comprehensive reforms. Policymakers must not only consider transparency requirements and corrective mechanisms for viral misinformation, but also design regulatory frameworks that hold digital platforms accountable for amplifying harmful narratives. This could include the establishment of independent oversight bodies, mandatory impact assessments of algorithmic design, and sanctions for platforms that fail to mitigate systemic bias.

Judicial systems should also adapt to these evolving challenges by strengthening protections against pre-trial publicity bias. Beyond stricter evidentiary rules and juror sequestration in high-profile cases, courts could incorporate digital monitoring mechanisms to identify and address prejudicial online discourse in real time. Moreover, professional guidelines for judges, prosecutors, and law enforcement officers are essential to navigate the pervasive influence of digital media without compromising impartiality and procedural fairness.

For legal practitioners, the study underscores the importance of adopting multidimensional defense strategies that account for reputational harm outside the courtroom. This may involve proactive engagement with digital communication strategies, collaboration with media experts, and the use of counter-narratives to mitigate prejudicial representations of defendants. Such approaches expand the scope of legal advocacy, aligning it with the realities of a media-saturated environment.

Civil society actors and educators also bear significant responsibility. Digital literacy campaigns can empower citizens to critically assess online narratives of crime and justice, thereby reducing susceptibility to penal populist rhetoric. Schools, universities, and community organizations can incorporate media literacy and civic education into curricula, fostering resilience against misinformation and reinforcing democratic values.

Equally important are support systems for individuals who suffer harm from online shaming and reputational punishment. Comprehensive responses should integrate legal aid, psychological counseling, and social reintegration programs, ensuring that the long-term effects of digital stigmatization are adequately addressed. Public institutions, NGOs, and professional associations should collaborate to build robust networks of support, acknowledging that reputational harm has tangible consequences for mental health, employment opportunities, and social belonging.

Together, these theoretical and practical implications reaffirm that protecting the presumption of innocence requires not only doctrinal clarity but also multidimensional strategies that respond to the complex realities of contemporary digital societies. By combining regulatory reform, judicial innovation, professional adaptation, civic education, and psychosocial support, societies can better safeguard due process and counteract the corrosive effects of penal populism in the digital age.

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