LEGAL PROBABILISM

MARCELLO DI BELLO – ASU

READING GUIDE – WEEK #8

Pardo and Allen 2007:

- Sec. 1 describes inference to the best explanation (IBE), in general (pp. 227-233) and applied to legal trials (pp. 233-241). Pay attention to the tasks of generating possible explanations and selecting the best explanation, and how both are comparative.

- Sec. 2 examines objections against the IBE theory of juridical proof, in particular objections that supporters of legal probabilism may level. Skip subjection A (pp. 243-245). How do the authors respond to the objection by Friedman/Nance on p. 249? And why do they disagree with Tversky and Kahneman on p. 259?

- Sec. 3 argues that the IBE theory of juridical proof better explains the rules of evidence and how trial proceedings are structured, compared to legal probabilism. What do the authors mean when they say "[t]he Federal Rules of Evidence ... employ an open-ended system" (p. 262)?

Allen 2017:

- pp. 1-2: introduction, some history and context.

- pp. 3-4: different interpretations of probability (frequency, subjective etc.) and why they are unfit to model juridical proof.

- pp. 4-5: complexity and the example of DNA evidence and hats: what's the significance of this example?

- pp. 5-6: why using likelihood ratios does not help, and the problem of verification.

- pp. 6-7: four requirements of a Bayesian analysis of juridical proof and why they don't hold in any legal system.

- pp. 8-9: relative plausibility and summing up the argument.

Precis. No specific instructions this week. Your precis should describe (a) topic of the paper (or court opinion); (b) main thesis (or theses, if more than one); (c) supporting arguments; (d) objections to these arguments, complications or difficulties that the author considers (if any).

A precis should be no more than one page. If you want to write more, that's fine, but do not exaggerate! Be clear, simple, and concise. Due at the beginning of class.