

## **Predictive Evidence and Unpredictable Freedom**

When determining in criminal proceedings whether an individual performed a certain culpable action, predictive evidence is often ignored. Most apparently, and with only few exceptions, base-rates are excluded. The hostility of criminal fact-finding toward predictive evidence is also apparent in the deeply-rooted suspicion of bad character and previous convictions. In this paper, I seek to explain this hostility by suggesting that criminal fact-finding implicitly adhere to the view that culpable conduct requires free will that is necessarily unpredictable. While theorists of free will tend to agree that it is possible to predict a free action, at least to some degree of confidence, I contend that criminal fact-finding adheres to the view that free actions cannot have either subjective or objective probabilities. It is not only the lack of sufficient information that prevents an accurate prediction of how an agent will act freely: free actions cannot be predicted because their probability does not exist.