"It is ... important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper factfinder of his guilt with utmost certainty."

IN RE WINSHIP

397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).

A New York statute allowed family courts trying juveniles on criminal charges to convict on the basis of "a preponderance of the evidence" rather than requiring "proof beyond a reasonable doubt." Following the statutory procedure, a family court convicted Samuel Winship, a twelve year old boy, of stealing $112 and sentenced him to six years in a reformatory. On appeal, state courts sustained the constitutionality of the statute; Winship then appealed to the U.S. Supreme Court.

Mr. Justice **BRENNAN** delivered the opinion of the Court....

I

The requirement that guilt of a criminal charge be established by proof beyond a reasonable doubt dates at least from our early years as a Nation. The "demand for a higher degree of persuasion in criminal cases was recurrently expressed from ancient times, [though] its crystallization into the formula 'beyond a reasonable doubt' seems to have occurred as late as 1798. It is now accepted in common law jurisdictions as the measure of persuasion by which the prosecution must convince the trier of all the essential elements of guilt." C. McCormick, *Evidence* § 321, pp. 681682 (1954). Although virtually unanimous adherence to the reasonable-doubt standard in common-law jurisdictions may not conclusively establish it as a requirement of due process, such adherence does "reflect a profound judgment about the way in which law should be enforced and justice administered." Duncan v. Louisiana (1968).

Expressions in many opinions of this Court indicate that it has long been assumed that proof of a criminal charge beyond a reasonable doubt is constitutionally required. See, for example, Miles v. United States (1881); Davis v. United States (1895); Holt v. United States (1910); Wilson v. United States (1914); Brinegar v. United States (1949); Leland v. Oregon (1952); Holland v. United States (1954); Speiser v. Randall (1958).... Mr. Justice Frankfurter stated that "[i]t is the duty of the Government to establish ... guilt beyond a reasonable doubt. This notion– basic in our law and rightly one of the boasts of a free society– is a requirement and a safeguard of due process of law in the historic, procedural content of 'due process.' " *Leland* (dissenting opinion). In a similar vein, the Court said in *Brinegar* that "[g]uilt in a criminal case must be proved beyond a reasonable doubt and by evidence confined to that which long experience in the common-law tradition, to some extent embodied in the Constitution, has crystallized into rules of evidence consistent with that standard. These rules are historically grounded rights of our system, developed to safeguard men from dubious and unjust convictions, with resulting forfeitures of life, liberty and property." Davis v. United States stated that the

requirement is implicit in "constitutions ... [which] recognize the fundamental principles that are deemed essential for the protection of life and liberty." ...

The reasonable-doubt standard plays a vital role in the American scheme of criminal procedure. It is a prime instrument for reducing the risk of convictions resting on factual error. The standard provides concrete substance for the presumption of innocence– that bedrock "axiomatic and elementary" principle whose "enforcement lies at the foundation of the administration of our criminal law." Coffin v. United States [1895]....

... The accused during a criminal prosecution has at stake interests of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction. Accordingly, a society that values the good name and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt about his guilt....

Moreover, use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law. It is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned. It is also important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper factfinder of his guilt with utmost certainty.

Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged....

[The Court went on to hold that this constitutional right, like those of notice of charges, to counsel, to confront and crossexamine witnesses, and not to incriminate oneself, that In re Gault (1967) recognized, applied to juvenile cases in family courts as well as to proceedings against adults in criminal courts.]

[*Reversed*]

Mr. Justice **HARLAN**, concurring....

In this context, I view the requirement of proof beyond a reasonable doubt in a criminal case as bottomed on a fundamental value determination of our society that it is far worse to convict an innocent man than to let a guilty man go free. It is only because of the nearly complete and long-standing acceptance of the reasonable-doubt standard by the States in criminal trials that the Court has not before today had to hold explicitly that due process, as an expression of fundamental procedural fairness, requires a more stringent standard for criminal trials than for ordinary civil litigation....

Mr. Chief Justice **BURGER**, with whom Mr. Justice **STEWART** joins, dissenting....

Mr. Justice **BLACK**, dissenting.

The majority states that "many opinions of this Court indicate that it has long been assumed that proof of a criminal charge beyond a reasonable doubt is constitutionally required." ... I have joined in some of those opinions, as well as the dissenting opinion of Mr. Justice Frankfurter in *Leland*. The Court has never clearly held, however, that proof beyond a reasonable doubt is either expressly or impliedly commanded by any provision of the Constitution. The Bill of Rights, which in my view is made fully applicable to the States by the Fourteenth Amendment, see Adamson v. California (1947) (dissenting opinion), does by express language provide for, among other things, a right to counsel in criminal trials, a right to indictment, and the right of a defendant to be informed of the nature of the charges against him. And in two places the Constitution provides for trial by jury, but nowhere in that document is there any statement that conviction of crime requires proof of guilt beyond a reasonable doubt. The Constitution thus goes into some detail to spell out what kind of trial a defendant charged with crime should have, and I believe the Court has no power to add to or subtract from the procedures set forth by the Founders. I realize that it is far easier to substitute individual judges' ideas of "fairness" for the fairness prescribed by the Constitution, but I shall not at any time surrender my belief that that document itself should be our guide, not our own concept of what is fair, decent, and right. That this old "shock-the-conscience" test is what the Court is relying on, rather than the words of the Constitution, is clearly enough revealed by the reference of the majority to "fair treatment" and to the statement by the dissenting judges in the New York Court of Appeals that failure to require proof beyond a reasonable doubt amounts to a "lack of fundamental fairness." As I have said time and time again, I prefer to put my faith in the words of the written Constitution itself rather than to rely on the shifting, day-to-day standards of fairness of individual judges....

It can be, and has been, argued that when this Court strikes down a legislative act because it offends the idea of "fundamental fairness," it furthers the basic thrust of our Bill of Rights by protecting individual freedom. But that argument ignores the effect of such decisions on perhaps the most fundamental individual liberty of our people– the right of each man to participate in the self-government of his society. Our Federal Government was set up as one of limited powers, but it was also given broad power to do all that was "necessary and proper" to carry out its basic purpose of governing the Nation, so long as those powers were not exercised contrary to the limitations set forth in the Constitution. And the States, to the extent they are not restrained by the provisions in that document, were to be left free to govern themselves in accordance with their own views of fairness and decency.... The people, through their elected representatives, may of course be wrong in making those determinations, but the right of self-government that our Constitution preserves is just as important as any of the specific individual freedoms preserved in the Bill of Rights. The liberty of government by the people, in my opinion, should never be denied by this Court except when the decision of the people as stated in laws passed by their chosen representatives, conflicts with the express or necessarily implied commands of our Constitution....

Editors' Notes

(1) **Query**: How do the interpretive *modes* and *techniques* that Brennan and Black use in this case differ? How do Harlan's differ from Brennan's and Black's? To what extent is Black debating the majority on the question of WHO shall interpret the Constitution? To what degree do the three interrogatives WHAT, WHO, and HOW shade into each other here?

(2) **Query**: Where does Harlan find the "fundamental value determination of our society that it is far worse to convict an innocent man than to let a guilty man go free"? If this value has been so fundamental, why, as Black in effect asks, is it not plainly written in the constitutional document?

(3) **Query**: Does Black's insistence on the "plain words" of the document conflict with Ronald Dworkin's distinction between "concepts" and "conceptions" (reprinted above, p. 168)? Does Black's insistence on the Court's not going beyond the document's plain words square with his opinion in Afroyim v. Rusk (1967; reprinted above, p. 1093)?

(4) **Query**: In Louisville v. Thompson (1960), Black wrote the opinion for the Court holding that the due process clause precluded conviction of a person without evidence of his or her guilt. Are plain words any more dispositive of that issue than of proof "beyond a reasonable doubt"?

(5) Jackson v. Virginia (1979) distinguished between the "necessity of proof beyond a reasonable doubt" and "presumption of innocence" and held that both are rights protected by the due process clauses of the Fifth and Fourteenth Amendments. For other cases expounding on this principle, see Estelle v. Williams (1976) and Sandstrom v. Montana (1979). Schall v. Martin (1984) held, however, that a juvenile judge may incarcerate for a brief period an accused juvenile whom the judge thinks likely to commit a crime before coming to trial. See generally C. Herman Pritchett, *Constitutional Civil Liberties* (Englewood Cliffs, N.J.: Prentice-Hall, 1984), pp. 230231.