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## Book Note

# THE ORIGINS OF REASONABLE DOUBT: THEOLOGICAL ROOTS OF THE CRIMINAL TRIAL, by James Q. Whitman[1]

HAMZA S. DAWOOD

**TO BE CONVICTED OF A CRIME** in the common law world, an accused person must be proven guilty beyond a reasonable doubt. Because proving facts beyond a reasonable doubt under strict rules of evidence can be very difficult, the reasonable doubt standard is widely celebrated today as providing protection to the accused from false conviction. Fascinatingly, in spite of the reasonable doubt standard's centrality to the common law, significant uncertainty remains among lawyers, judges, scholars, and jurors as to what reasonable doubt actually means. In *The Origins of Reasonable Doubt*, James Q. Whitman strives to account for the ambiguity which surrounds the reasonable doubt rule. Drawing heavily on persuasive theological and historical evidence, Whitman ultimately demonstrates that much of the confusion regarding what constitutes reasonable doubt is attributable to the fact that the rule originated in Medieval Christian Theology and has, over many hundreds of years, been clumsily converted into secular, criminal law. For Whitman, this process of conversion has resulted in society losing sight of the original purpose of "reasonable doubt" and has signally contributed to modern confusion as to what the concept means.

According to Whitman, confusion over what constitutes reasonable doubt has given rise to a morally troubling reality in common law societies: criminally accused persons are often sent to prison, or even death, based on an evidentiary rule that essentially nobody understands. Whitman contends that this disquieting situation has arisen because the reasonable doubt rule is used to guide factual proof inquiries in modern criminal proceedings, even though it was never originally intended to serve this purpose. Drawing on an impressive variety of primary

1. (New Haven: Yale University Press, 2008) 288 pages.

sources, from the tracts of Early Church Fathers to the writings of medieval English jurists, Whitman convincingly argues that the reasonable doubt rule was originally designed for the benefit of jurors, rather than criminally accused persons. Whitman details how the doctrine was initially developed to provide moral comfort to medieval jurors, who doubted their moral authority to judge others and hesitated to convict accused persons because early Christian theology dictated that they would incur eternal damnation if they found an innocent person guilty. As Whitman puts it, the reasonable doubt doctrine ultimately arose in England in the seventeenth and eighteenth centuries as a response to the "religiously motivated reluctance to convict" that prevailed in the premodern world,[2] and it sought to make conviction easier—not harder—by assuring jurors that they could convict without fear of perdition as long as any doubts they had about an accused person's guilt were not reasonable. In view of the reasonable doubt rule's medieval origins as a reliable source of moral comfort rather than factual proof, Whitman argues, it is not surprising that the doctrine causes so much vexation today, as judges and juries try to use the rule to guide their factual inquiries in criminal trials.

In the end, Whitman contends that, although calls for radical reform of common law criminal procedure have considerable merit because of the reasonable doubt doctrine's frailties in assisting the search for truth at trial, such suggestions for reform are unrealistic, given the common law's deep conservatism and attachment to tradition. For Whitman, the biggest reform lesson that we, as a society, can learn from the history of the reasonable doubt rule is that we should be more like the medieval jurors for whom the rule was originally designed—we must approach the task of criminal judgment with a sober sense of fear, humility, and public duty, always being cognizant of the doubts surrounding our own moral authority to judge.

2. *Ibid.* at 4.