

The Presumption of Punishment

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Abstract The presumption of innocence undergirds the American criminal justice system. It is so fundamental that it is derived from the concepts of due process and the importance of a fair trial. An informed, historical understanding of the interaction between the presumption of innocence and key tenets of due process can help clarify the meaning and application of the presumption of innocence in the modern day. Due process, as developed throughout English and US. Colonial history leading up to the formation of the US. Constitution, has two important implications. First, due process provides a general guarantee of liberty against punishment or imprisonment without a fair trial. Second, due process requires that a jury, as opposed to a judge, determine the factual guilt of a defendant at trial. These two key tenets were historically fundamental to due process and should guide how the presumption of innocence impacts various stages of trial, including pretrial detention decisions and sentencing. Returning to a historical understanding of due process requires that judges not determine facts or punish individuals before a trial has occurred.

Keywords Due process · Fifth amendment · Sixth amendment · Jury trial · Presumption of innocence · Sentencing · Magna carta · Detention · Trial · Judges

Few concepts are more central to the functioning of our criminal justice system than the presumption of innocence—that is, the fundamental right of a criminal defendant to remain innocent until proven guilty beyond a reasonable doubt (Coffin 1895). So critical is this right that the United States Supreme Court (Coffin), the founding documents of different nations. (French Declaration 1789; Konstitutsiya Rossiiskoi 1993), and the United Nation’s Universal Declaration of Human Rights (1948) have all recognized it as the primary mechanism through which other critical rights are guaranteed. Truly astounding is the depth and breadth of literature devoted to the subject (Beccaria di Marchese 2009; Laufer

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