



# The golden thread

By Richard Faulks

**M**any of us grew up listening to Horace Rumpole address juries about the single golden thread running through the criminal law. Even before I considered studying law, John Mortimer's wonderful character had imprinted on my mind, and no doubt many of yours, that important principle: namely, that the burden of proving guilt lies with the prosecution, and that a person is presumed to be innocent until proven otherwise.

The golden thread, according to Rumpole, stems from the famous words of Lord Viscount Sankey in *Woolmington v DPP* (1935) where he said: "Throughout the web of English criminal law, one golden thread is always to be seen, that is that the duty of the prosecution is to prove the prisoner's guilt."

Recently I was also reminded that the very document from which much of our law can be traced, the Magna Carta, also spoke of the importance of rights and that no one was to deny or delay 'right or justice'. It says: 'No free [person] shall be taken, imprisoned, outlawed, banished or in any way destroyed, nor will we proceed against or prosecute [them] except by the lawful judgment of [their] equals and the law of the land.' (Line 40)

At our national conference in Melbourne in 2004, I listened with interest to the important presentation from Tom Percy QC where he spoke

about the erosion of the rights of the accused in criminal law matters in Australia. Since then, further examples have emerged. The NSW government is pressing for majority verdicts in murder cases. It is unclear why serious cases, such as those involving murder, should be treated in a different way from other offences. Why create inequity between different jurisdictions in Australia and between state and federal law? Such a move is contrary to the recommendations made by the Law Reform Commission. It raises a very significant question as to what constitutes a reasonable doubt.

Worse still are the provisions of the Anti-Terrorism Bill (No. 2) 2005. This law erodes many of the rights of people living in Australia. One significant concern is that people can effectively be deprived of liberty through the actions of the Executive without any intervention from a court whatsoever. A person can be 'controlled' or 'detained' by the government without the adjudication of criminal guilt concerning past conduct. Further, such orders can be granted without the proof of guilt beyond reasonable doubt and specifically on the civil standard of the balance of probabilities. With such serious allegations, how can this be correct?

These laws also clearly deny the accused the right to know what they are accused of, the evidence which is relied upon, and are not provided with any right of appeal concerning the

merits of any such action by the government. As Jon Stanhope said in the last edition of *Precedent*, "When we suspend the right to know what we are accused of and the right to appeal on the merits, aren't we effectively saying there is no longer a rule of law?"

Right now, the NSW government is reviewing the whole concept of the 'right to silence'. Never before has there been a greater need for members of the Australian Lawyers Alliance to speak out about these fundamental rights. Our existing laws provide extensive powers for the full investigation of terrorist and other criminal acts, and the laying of charges where appropriate. There is no reason for the fundamental rights of the accused to be sacrificed in that process. There is no reason for such persons to be dealt with except by the lawful judgement of their equals and the law of the land (Magna Carta).

Surely if John Mortimer were writing his *Rumpole* series today, he would seriously be questioning whether the golden thread has been lost or, at the very least, is in danger of being broken. ■

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