

# Who Cares?

A Stark warning from **Christopher Gill** on the danger to our liberty from continental justice

What are the principles upon which traditional English common law is founded? Firstly, that until proved otherwise, every person is presumed innocent. The presumption of innocence is the very keystone of the British criminal justice system.

Secondly, except under the circumstances prescribed in the latter-day Prevention of Terrorism Act, nobody may have their liberty infringed without being charged in open court within 24 hours of arrest. Crucially, the 'charge' has to be backed by *prima facie* evidence. Even when the suspect is thought to have committed murder, detention without charge may only be extended, with the permission of magistrates, to a maximum of 96 hours.

This fundamental principle is enshrined in the law of *Habeas Corpus* which Archbishop Desmond Tutu once described as being "such an incredible part of freedom."

Thirdly, the right to trial by jury, originating in *Magna Carta*, forms part of the very bedrock of the British criminal justice system. Its significance is that it ensures the defendant can insist that he or she is 'tried' by his or her peers – '12 good men and true' – drawn at random from amongst the general public and demonstrably independent of 'the powers that be' who might otherwise act in an authoritarian and arbitrary fashion.

Fourthly, until recently that was, it was always held that that once a defendant had been acquitted it was unlawful to charge that person again with the same offence. Double Jeopardy was something that British subjects have therefore never had to worry about. The view was taken that it was totally unacceptable that a potentially innocent person should

forever live under the threat of being dragged through the courts again and again in the circumstances in which the prosecution had failed to establish guilt in the first place.

An unwritten principle of the British criminal justice system was that it was better that 10 guilty men went free than that one innocent person be hanged.

Fifthly, in order to avoid the possibility of defendants being condemned on the strength of their own testimony, the law embraces the right to silence.

Sixthly, the inadmissibility of hearsay avoids the possibility of defendants being found guilty on the basis of say-so-evidence from absent 'witnesses'.

Seventhly, the withholding of previous convictions ensures that the hearing of cases brought to court is not prejudiced by the defendant's previous record.

Eighthly, trials in *absentia*, in other words, trials in the absence of the defendant, have no place in the British criminal justice system.

Finally, we have reporting restrictions so that whilst matters are *sub judice*, press reporting is limited so as not to prejudice a fair trial.

As can be seen from the foregoing, the British system of criminal justice has bent over backwards to protect and defend the individual from state-inspired coercion. It has been the individual's sure protection against false accusation, arbitrary arrest and wrongful imprisonment.

As we face a future in which the harmonisation of criminal justice systems within the European Union looms ever closer, it is instructive to note that there is no European equivalent of the law of *Habeas Corpus* in continental Europe, trial by jury is a little-known concept and they most certainly don't

start from a position of presumed innocence!

As for all the other defences against state coercion that we British enjoy, in the event of an acquittal, the continental systems allow the prosecution to appeal for the defendant to be tried again; a defendant's refusal to answer questions is regarded as an admissions of guilt; reported or 'hearsay' evidence is frequently used to obtain convictions; a defendant's record, including prosecutions pending, may be read out in the hearing; the defendant may be tried without being present in court or, as recently confirmed, without the defendant even being aware of the hearing and, not least, the press are free to name names and express opinions both before and during the course of a trial.

At time when we stand in extreme danger of having the European Court of Justice made superior to our own national institutions, those of us who were born free – for that is the very nature of our British inheritance – would do well to contemplate the condemnable words of Admiral Blake, the chief founder of England's naval supremacy in the 17<sup>th</sup> century, that "I will have the whole world know that none but an Englishman shall chastise and Englishman."

The English common law is what has made us a free people. The prospect of surrendering it in favour of criminal justice systems whose *raison d'être* is to ensure the supremacy of the state rather than the freedom of the individual is really too awful to contemplate, but be warned and very afraid. That is precisely the direction in which your government is taking us.

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