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## **Shining right to liberty corroded**

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It is 1626. Five knights stand ankle-deep in the filth and mire of a London prison hulk. Unwashed, unshaven and squalid, they file a writ asking the king to explain their imprisonment.

The knights were not aware this would become a momentous occasion in legal history. They simply wanted to know why they were detained so they could apply for bail and probably resume jousting.

They had been detained without charge by Charles I, a king with impeccable taste, a proud stammer and a penchant for tyrannical rule. The knights were imprisoned after refusing to pay loans the king had demanded illegally, to fund his disastrous foreign policy exploits on the continent.

Though the knights' appeals failed initially, they eventually formulated the Petition of Right. Out of the indignation of five unkempt knights came a foundational document in liberal democracy expressing the right to liberty, the presumption of innocence and the separation of powers. These lofty ideals were all anchored in one seemingly banal right: the right to bail.

Yesterday in the NSW Parliament, amid vacant stares and the rustling of parliamentary papers, the knights' cataclysmic battle was forgotten. Bail, our once-triumphant symbol of liberty, appeared like a washed-up salmon flopping limply on the floor of the Legislative Council. The Attorney-General, John Hatzistergos, boasted that NSW had the "toughest bail laws in the country" as he introduced yet another amendment to them. Where previously an accused could apply for bail in a local court an unlimited number of times, under the new rules they would only have one chance. The minister made some concessions for people who are not represented by a lawyer when bail is refused, or where new facts come to light.

Once a person is denied bail they will be placed in prison for an indefinite period until their trial. All this for someone who has not been convicted and whom the law, at least in theory, presumes to be innocent.

While we may be forgiven for failing to pay collective homage to the knights, we would do well to remember that the right to bail is just as crucial to civil liberties as the right to know the reason for your incarceration. Bail can be a difficult issue to feel passionate about. In the bacchanalian delights and gothic intrigues of criminal law, it shuffles awkwardly back and forth on the sidelines. But beneath its daggy proceduralism lies a gleaming armour of principle on which the very core of our legal system rests.

Bail represents the liberty of the subject, the right to due process and the presumption of innocence. It balances the demands of the state - that the accused turns up in court - with those demands of the individual. When spurned, bail can wreak havoc on an individual's life.

Criminologists have repeatedly found that denying an accused bail increases their likelihood of being convicted and results in substantial pre-trial punishment. They will be imprisoned in a maximum-security remand cell with limited access to prisoner programs, they will be denied an income, possibly lose their job and will be cut off from community and support networks.

The Attorney-General said yesterday that restricting access to bail applications in the local courts would increase "the safety of our citizens" and would also "help protect victims of violent crime".

"Currently there is no limit on the number of times a cashed-up accused can apply to the local court for bail," he said. "This means that victims of crime are forced to re-live the events leading up to the arrest of the defendant."

Such claims seem dubious. A bail application does not require the victim to re-live a crime. It simply involves the judge assessing whether the accused meets the criteria for bail, including housing. And people accused of crime are generally not "cashed up". They are more likely to be poor, homeless or with an intellectual disability.

The proposed changes follow two decades of eroding the right to bail. Almost since its inception in 1978, the NSW Bail Act has all but crumbled under the weight of exclusion clauses.

When Charles I exercised his divine right to rule in arbitrary and abusive fashion, the populace and their representatives drafted the Petition of Right. When he ignored this they chopped off his head. It seems our own bill of rights is well overdue; or, failing this, a few swift and timely decapitations.