

**HABEAS CORPUS AND CIVIL LIBERTY.**

*Habeas Corpus* is justly regarded as the bulwark of freedom by Englishmen and Americans. It is peculiar to the Anglo Saxon race, and no people are justly entitled to be called free who do not possess it, or possessing it, fail to guard it as the foundation of all their liberties. The Barons of Runnymede rebelled against King JOHN because its implied provisions were disregarded. So sacred did the English people consider *Magna Charta*, in which *Habeas Corpus* was virtually contained in all its essential provisions, as the ground work of their national existence, that between the date of its original promulgation and the accession of the Tudors, no fewer than thirty-eight solemn confirmations by successive sovereigns, are recorded. These ratifications were not always extorted from weak and pusillanimous monarchs, like JOHN, HENRY III, and HENRY VI. The greater number are from their ablest and most self-willed kings. EDWARD III ratified it no less than fifteen times, and HENRY IV, founder of the Lancastrians, six times. This shows how jealously they guarded the great charter of their freedom. The danger lay not so much in attempts at subversion on the part of her weak monarchs as of her able and imperious ones—men like the conquerors of Crecy and Agincourt. But military fame and great executive ability only made them guard with greater watchfulness the actual and possible aggressions of their possessor upon *Magna Charta*. Holding, as they did, the purse-strings of the nation, every infraction of the charter of freedom was resisted, and a vote of supplies conditioned only by a substantial redress of grievances.

It has been supposed by many that *Habeas Corpus* had no existence until its provisions were formulated by Lord SHAFESBURY, and passed by Parliament in 1679, in the 31st year of CHARLES II. This is a mistake. In the charter extorted from King JOHN occurs the following language: "No freeman shall be taken or imprisoned, or be disseized of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any otherwise destroyed, nor will we pass upon him, nor send upon him but by lawful judgment of his peers, or by the law of the land. We will sell to no man, we will not delay to any man justice or right."

Noble words these, and not mere words because they were intended to be enforced. Twenty-five of the great Barons of the realm were appointed to see these provisions carried out, and the repeated confirmations in this and subsequent reigns show how well they and their successors fulfilled their trust. No one can doubt that *Habeas Corpus* in all its essentials is contained in the paragraph we have quoted. Mr. HALLAM, in his "Middle Ages," observes that "from the era of King JOHN's charter, it must have been a clear principle of the English Constitution that no man can be detained in prison without trial. Whether courts of justice framed the writ of *Habeas Corpus* in conformity to the spirit of this clause, or found it already in their Register, it became from that era the right of every subject to demand it. That writ, rendered more actively remedial by the statute of CHARLES II, but founded on the broad basis of *Magna Charta*, is the principal bulwark of English liberty." Again: "It is obvious that these words, interpreted by any honest court of law, convey an ample security for the two main rights of civil society; i. e., rights of property and personal liberty of the citizen."

But Englishmen were not aware that any new immunity or right had been granted them by the promulgation of *Magna Charta*. It was not looked upon as a concession, and to that extent a curtailment, of the royal prerogative. *Magna Charta* was only a recognition of the sometime dormant provisions embodied in the charter produced by STEPHEN LANGTON, Archbishop of Canterbury, which had been granted by HENRY I on his accession to the crown in 1100, one hundred and fifteen years before RUNNYMEDE. Nor was it new in the time of HENRY I. His charter promised that he would not seize the revenues of the church; that he would not oppress the Barons by feudal exactions, and that in respect to the masses of the people—the Saxons—he would regard and observe the laws of EDWARD THE CONFESSOR. Upon this charter, found by LANGTON in a monastery, and shown by him to the Barons of King JOHN, was founded *Magna Charta*. But neither did its provisions originate with EDWARD THE CONFESSOR. He based his laws on the laws of ETHELBERT, ALFRED THE GREAT, and King INA. Indeed they were rather a digest, a sort of Justinian Pandects, embodying and adapting previous laws to the usage and spirit of his time. We think we could even show that the spirit of *Habeas Corpus* and the Great Charter existed at a more remote period than this. So acute a writer as MONTESQUIEU says that a fair interpretation of the 11th chapter in the Germania of TACITUS will show the genius of the English Constitution, and an examination of the Islandic Sagas proves unquestionably that in legislation, and the criminal jurisprudence of that remote people, the spirit of the great charter existed. We have shown that *Habeas Corpus* is implicitly contained in the *Magna Charta* of King JOHN; that *Magna Charta* was based on the charter of HENRY I; that the charter of HENRY I only formulated and summarised the laws of EDWARD THE CONFESSOR, and that the laws of the Confessor were a digest of the laws of ETHELBERT, ALFRED and INA. No law outside of Roman jurisprudence has such an honorable and remote ancestry. No law like it has ever existed in the legislation of all time. Only one analogous instance viz: the right of "appeal" among the Romans. This was the bulwark of Roman civil liberty till the extinction of the Republic, when it perished, being swallowed up in the surrender of all legislative and executive power to the Emperor.

It provided that no Roman citizen condemned to death by the Criminal Court should be executed until he should have first

can citizens, inherited from Englishmen. But it is only inherited. They have never yet fought to establish it. When they do they will prize it more, and guard more scrupulously against its violation. Once, indeed, while yet colonies, they fought to secure the benefits of its provisions. Among the grievances enumerated in the Declaration of Independence, this occurs, and it touched a chord that vibrated to the heart of every freeman. The fathers of the Republic took care to incorporate it in the Constitution, and to provide for its suspension—only by Congress in seasons of great national peril, and for the shortest possible time. No nation that has it not is free. No nation that looks upon its suspension with unconcern, or the refusal of its provisions to the humblest of the oppressed, deserves to be free. In our haste to be rich, in our engrossment in the material pursuits of life, we are in danger of bartering the noblest heritage ever bequeathed to man for a miserable mess of pottage. Acquiescence in wrong becomes a crime. The refusal to see the consequences which must inevitably arise from deliberate and persistent violations of inherited rights in the interests of political parties when the Republic is menaced by no danger, save from those who, for their own behoof, lay their hands on it vitals, argues an indifference which is criminal and suicidal.

From the bill lately passed by Congress we quote: "It shall be lawful for the President of the United States, when in his judgment the public safety shall require it, to suspend the writ of *Habeas Corpus*." What does the Constitution say? "The writ of *Habeas Corpus* shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require it." Where exists rebellion or invasion? Certainly not within the limits of these United States, unless it be the invasion of the rights of the people, guaranteed by the Constitution, by an unscrupulous Executive, backed by a servile Legislature, whose sole object is to perpetuate the rule of a minority, though at the expense of all that the fathers of the Republic thought worth fighting for, and worthy of freemen to live for.

Contrast with this the late provision for suspension of *Habeas Corpus* by the British Parliament in disaffected Ireland. There agrarian outrages had made life and property insecure, and the ordinary constabulary was unable to maintain order. Provision was made for its suspension for a limited time, but only under the greatest possible safeguards. The Lord Lieutenant found it necessary to suspend it, but confined the suspension to a single district in a single county, and then immediately reported to the Home Office in full the reasons why. But Congress makes provision for its suspension at the discretion of the President, in a time of profound peace, in all the States and among the 38,000,000 of people who compose this Union. Is not this such an occasion as the possible one to which HALLEM referred when he said: "If mere temporary circumstances or the doubtful plea of political necessity shall lead men to look on its denial with apathy, the most distinguishing character of our Constitution will be effaced?" Lord CHATHAM, when referring to this great bulwark of civil liberty, once said: "Every man's house is his CASTLE. It may not be protected by moat or drawbridge; it may be no more than a straw-thatched shed which the winds of heaven may pierce and the rains of heaven drench, but the King of England may not enter it—he dare not."

We do not look so much to the population of our great cities for the just indignation which shall rebuke the servility of the National Legislature and the grasping ambition of the Executive, as to the sturdy yeomanry of the country—the inhabitants of the rural districts. The large cities are absorbed in manufactures, commerce, and the accumulation of wealth from these sources, most of which consists in stocks and personal property. These, from the insecure nature of such investments, and there liability to fluctuation in value, thereby endangering the regularity and uniformity of their dividends, are more ready to acquiesce in violations of fundamental law which do not immediately threaten their investments. Civil commotion is their abhorrence. They will endure anything rather than risk civil war in which they may be ruined. Hence great capitalists and monopolists are always found to be the strongest supporters of *de facto* Governments, whether founded on usurpation or not. But the agricultural community, and this, fortunately constitutes the large majority of our populations, are most jealous of the liberties they enjoy. Their easy competence, removed equally from penury and luxury, fosters a healthy habit of independence. Their wealth is not colossal, while it is securely invested in real estate. This constitutes them the bone and sinew, and the mainstay of the land. They are the natural break-water against the seas of innovation, which ever and anon threaten every free people. If they become careless and indifferent, the liberties of the country may be given up for lost. Our trust is in them. The freemen of America have not yet, we believe, forgotten their birthright; and if ever the day shall come—which may God avert—when it shall be necessary to do battle for our *Habeas Corpus* and *Magna Charta*, as did the brave old Roundheads of England, we believe that another CROMWELL and another HAMPDEN will find such compatriots to follow them as taught to despots the salutary lesson that the many were not made for the few, and that the inalienable rights of a free people can not be violated with impunity. May it not be our fate to realize the truth of Goldsmith's lines,

"'Till fares the land to hastening ills a prey,  
Where wealth accumulates and men decay;  
Princes and Lords may flourish or may fade,  
A breath can make them as a breath has made;  
But a bold peasantry, their country's pride,  
When once destroyed, can never be supplied."