Democrat and Sentinel.

THE BLESSINGS OF GOVERNMENT, LIKE THE DEWS OF HEAVEN, SHOULD BE DISTRIBUTED ALIKE, UPON THE HIGH AND THE LOW, THE RICH AND THE POOR.

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☞ We clip the following forcible and logically written letter from the *Pennsylvania Argus*, which is well worthy of a perusal

HARLEM, Oct. 6th, 1862.

Dear Sir:—In my note of this morning, I promised to give you more in detail, my views of public affairs, in answer to your kind suggestion, and I now proceed to do so, briefly, but plainly as I can.

I regard our once happy and prosperous Republic as in perilous circumstances. —The unconstitutional and desperate measures of the Administration, which are *straightening rebellion into revolution*, must at last, unless arrested destroy our Union and ruin the country. By a proper concert of *force* and *conciliation*, I think our revolted fellow-citizens might have been brought back to their allegiance in three months time. But *vengeance* has been the plan; and the war has been carried on as if there were no law but "martial law," and no power but despotic dictation.

The effect has been to impose a restraint upon "freedom of opinion and of speech," and to intimidate the people from "criticising" the actions of the executive and his subordinates. The press, to a great extent, has become sycophantic; and those editors, who dare to be independent, have exposed themselves to military surveillance. Our nation is under duress. Can this state of things continue? If it does, there is an end of Liberty. The only hope is that patriotic men will "cry aloud and spare not," until misrule is put down.

"Although from my advanced age," as you say) "I may not live to see the end of the present unhappy conflict," yet I will do what I can "to hand down to posterity unimpaired the priceless legacy left us by our fathers."

It is my opinion that in several instances, President Lincoln, as Commander-in-Chief, has violated the Constitution, and therefore public safety requires that he should be impeached. His culpable subordinates, also, ought to be legally punished, according to their grade and circumstances.

Before I specify my accusations, I wish to suggest some principles that lie at the root of our social polity, and which seem to be forgotten.

Let me remind you, then, that the United States is a Federal Government, composed of several independent States, possessing each, all the full and entire sovereignty of the people. For certain defined purposes, these have joined together and formed by compact a quasi nation; but whose political powers are derivative and limited. No functions can be exercised by the general administration, but such as are clearly granted in the Constitution.—So far they are paramount. But the radical empire remains with the people, and is exercised through their respective State Sovereignties: Personal liberty, property, social institutions, (as marriage, apprenticeships, slavery, &c.,) business transactions, and generally all the relations of private life are directed and regulated exclusively by them. Congress can pass no law affecting individual citizens, their property, their contracts or their crimes, unless the matters involved fall within some of the categories of the delegated authority given in the written charter.

By strict etymology we cannot call the "United States" a nation. "A nascentibus, natio nominata est"—when we say any one was "born in the United States," we mean that he was born in one of the States. There are the homes of the people, their intercourse, their business, and all that makes up a human life. The "United States" exists only in paper compact: yet it seems likely, by aid of an army, to annihilate the original sovereignties and form a dictatorship.

The general government, truly, is only an adapted political machinery, by which the powers of all the States may be concentrated upon certain defined objects, for the welfare of the whole people. If employed, by any of its functionaries, for any other purpose than those designated in the instrument itself, the act is usurpation.

This is clear, for the 10th Article of the "Amendments" declares that "The "powers not delegated to the United "States by the Constitution, nor prohibi- "ted by it to the States, are reserved to "the States respectively, or to the people."

No officer of the general government, therefore, can exercise any authority not given in the written compact of federation. He has no fund of original sovereignty on which he can draw. Implied warrant can only be by judicial interpretation.

I will make two or three further suggestions, also preliminary, but necessary to a right understanding of the points I will present.

The whole governmenial power of the United States is divided into three functional departments, the legislative, the executive, and the judicial. There is no military sovereignty whatever. Armies and navies are the creations of Congress; and depend for their existence and support upon legislative enactments. They must always be subject to legal control. One of the grounds upon which our "Declaration of Independence" rested, was that the King "affected to render the military independent of, and superior to the civil power."

The Constitution in three articles defines and limits the ruling departments. The first declares that "all legislative "powers her by granted, shall be vested "in a Congress, &c." The second says that "the executive power shall be vested "in a President, &c." And the third provides that "the judicial power of the United States shall be vested in a Supreme Court, &c."

In these three functional classes, independent yet co-ordinate—mutual checks yet mutual supports—all the political power of the United States Government is comprised.

Congress only can pass laws: the President is bound to execute them: and the judiciary decides upon their import and their operative validity. "The judicial "power shall extend to all cases arising "under the Constitution, &c." [See Art. 3d, Sec. 2d.]

The President, therefore, cannot settle definitely, the meaning of the Constitution if a question is made: neither can Congress interpret, conclusively, one of its own acts, if a controversy arises respecting it. The Judiciary, only, can do these things: and if any one refuses obedience to its decisions he incurs a civil penalty: if they are resisted by force of arms, it would be treason.

These principles, that lie at the foundation of our social fabric, are lost sight of in these troublous times. Municipal law seems to be thought as "inoperative as the "Pope's bull against the comet," which the inventive pleasantry of Mr. Lincoln presented a few days ago to the clerical delegation from Chicago. If this was intended as a quip at Romanists, perhaps there was more humor than dignity in the stroke of wit. In the same conference, however, the President afterwards expressed himself seriously in language that clearly indicates his political view of duty and obligation: and illustrates those acts that I mean to reprehend. I will quote his words and then present the charges I make against his official conduct:

"Understand," says he to the gentlemen in conference, "I raise no objection "against it on legal or Constitutional "grounds; for as Commander-in-Chief of "the army and navy, in time of war, I "suppose I have a right to take any mea- "sure which may best subdue the enemy. "Nor do I urge objections of a moral na- "ture in view of possible consequences of "insurrection and massacre at the South. "I view the matter as a practical war "measure, &c." [See Phila. "Inquirer," September 23d, 1862.

In this remarkable declaration, the President, as Commander-in-Chief, assumes a power that "overrides the Constitution," sets at naught the laws of the land, and the usages of civilized warfare, and violates the obligations of humanity. I deny that he has a "right to take any measure which may best subdue the enemy," unless warranted by higher authority. He is the mere instrument to execute the laws, and can only do what they command or permit.

Congress has power, by the Constitution, (Art. VIII,) "To raise and support armies"—"to provide and maintain a navy," and to make rules for the government and regulation of the land and naval forces."

The President, as Commander-in-Chief, may enforce these enactments upon "officers and soldiers," but has no authority, from his station, to interfere with the person or private rights of a citizen. During the revolutionary war, the loyalists, or "tories," as they were called, were very troublesome. To remedy the mischief, Congress passed a resolution, vesting Gen. Washington with a kind of *dictatorial* power, "for the term of six months, unless sooner determined." He was allowed "to arrest and confine persons" disaffected to the American cause, and, "return to the States, of which they are citi- "zens, their names and the nature of "their offences, together with the wit- "nesses to prove them." They were not to be tried by a court martial, but by a civil tribunal. One man was taken under this resolution, and delivered to the Governor of Connecticut, but he was pardoned. No citizen was ever held subject to military law. In our present civil war, or rather rebellion, Congress has not authorized the Commander-in-Chief to arrest civilians: and even if such an act were passed, I deny its validity, in regions where the regular judicial power was in the free exercise of its functions. There never has been a hostile force in any of the Northern or middle States, yet citizens have been seized and carried from their homes and families, to Fortress Monroe. I refer, for illustration, to one case in hundreds, perhaps—that of Mr. Ingersoll.

Without extending further, these general remarks I will now state my grounds of impeachment: and,

1st. The President has suspended the writ of *habeas corpus* this I regard as an infraction of the Constitution, and a violation of the guaranteed and personal liberty and safety of citizens. It involves both usurpation tyranny, as I will show.

What is the habeas corpus? It is the palladium of freedom. Take it away, and power is despotism. To understand it correctly, we must go back to the English source, from whence many of our civil and social institutions are derived.

The haibeas corpus, then, was a common law remedy, for such as were imprisoned unjustly. But, although it was not credited by statute, there have been many parlimentary acts to prevent abuses, and secure its opperation. Thus, by the "petition of right," (3d Car. 1st.) it is enacted, "That no freeman shall be im- "prisoned or detained without cause "shown, to which he make answer ac- "cording to law;" and by 16th Car. 1st: "If any person be restrained of his liberty "by order of any illegal Court, or by "command of the King's majesty in per- "son, or by warrant of the council board, "or by any of the privy council, he shall, "upon demand of his counsel, have a "writ of *habeas corpus*, to bring his body "before the court of King's bench or "common pleas, who shall determine "whether the cause of his commitment be "just, and thereupon do as to justice "shall appertain." It is evident from this statute, that the Queen of England now dare not "suspend" or disobey a writ of habeas corpus. It is strange indeed, if our President may exercise a power over the person of a citizen, which the greatest monarch in the world is restrained from doing.

The methods of obtaining and enforcing this remedy, are amplified by act of 31st Car., 2nd, to which I will only refer. It is called the "Second magna charta, and bulwark of English liberty," because it fully provided for the security of personal freedom, in conformity with the explicit concession extorted from John in 1215, by the barons of Runnemeade. It is now a settled principle, "that no freeman shall be taken or im- "prisoned, but by lawful judgement of "his equals, or by the law of the land." No exigent restraint of the person of the meanest subject, by the monarch himself, or by his order, is permitted. "The King cannot command any one, by word of mouth, to be arrested: for he must do it by writ, or by order of his courts, according to law; nor may the king arrest any man for suspicion of treason or felony, as his subjects may, because if he doeth wrong; the party cannot have an action against him." 2 Inst. 186.

These fundamental axioms, as they may now be called, are of great importance to the people. For if it were left in the power of the highest magistrate to imprison arbitrarily—without relief—whenever he or his officers thought proper, there would soon be an end of all rights and immunities. When such despotic rule is exercised, therefore, the habeas corpus is the certain, prompt and efficient remedy. It cannot, upon any pretence of "public necessity," be denied or delayed.

I will quote a few sentences on this subject from an English standard work. "The happiness of our constitution is, that it is not left to the executive power to determine when the danger of the State is so great as to render this measure expedient; for it is the parliament only, or legislative power, that, whenever it sees proper, can authorize the crown, by suspending the habeas corpus act, for a short and limited time, to imprison suspected persons, without giving any reason for so doing. As the Senate of Rome was wont to have recourse to a dictator —a magistrate of absolute authority— when they judged the Republic in any imminent danger. The decree of the Senate which usually preceded the nomination of this majistrate—"dent operam cnosules ne quid republica detrimenti capiat," was called, "senatus consultum ultimæ necessitates."

It is indeed a case of extreme public necessity that will induce the parliament of England to suspend the habeas corpus; and the instances are very few. The fixed rule of their constitutional law is that "when a probable ground is shown that the party is imprisoned without just cause—2 inst. 415—the habeas corpus is a writ of right which may not be denied, but ought to be granted to every man that is committed to prison or detained there, or otherwise restrained, though it be by command of the king, the privy council or any other." com. jour. 1st April 1628.

I have thus given English law and English judicial sentiment on this subject; and I aver that it is the law and the sentiment (as it is the safety) of our people as manifested in our constitution, our statutes, the usages of our courts, and the opinions of our judges and jurists, as I will endeavor to show.

The *right of personal freedom* and the immediate *remedy* for the *violation* of it, came to our country with the earliest colonists. As soon as regular governments were organized, the great and noble principles of the "*Magna Charta*" and the "Bill of Rights" were asserted and maintained. These were embodied in an act of Parliament [1st Wm. and Mary, Stat. 2, chap. 2] which, in one of its provisions, denied to the crown "the power of dispensing with and suspending the laws."

In all the colonial governments the habeas corpus was used, as regulated by the common law and the British statutes. —After the revolution no remedy for imprisonment or detainor was provided in any constitution or by art of legislation. *This writ* remained and was employed as in England. It was everywhere recognized—but always as previously existing. The habeas corpus is a *writ of right*, which government cannot abolish. As well might a legislative body take away the right of personal liberty, as annul this legal instrument for its preservation.

The judiciary of the United States, as soon as organized, was warranted in granting this writ, and was bound to do so when proper occasions demanded. This particular function had spontaneous origin with the court itself, and was not derived from the 14th section of the act of 1789, which refers to it as a subsistent process.

The habeas corpus cannot be abrogated by any governmental power because it is not a political faculty, but a personal right, and is so distinctly regarded in the Constitution.

If a judge denies the writ, when a case is properly presented, he may be impeached: if an officer fails to serve it, he may be punished for neglect of duty; and if the party to whom it is directed, refuses obedience, he may be treated as for contempt.

But it may be suspended for a short time and in particular circumstances.—(See Const., art. 1st, sec. 9.

By what authority, is the question?

The constitution declares that, "The privilege of the writ of *habeas corpus* shall not be suspended, unless when in the cases of rebellion or invasion, the public safety may require it."

This provision is contained in the first article, which defines the "legislative power." There is no allusion to it in any other part of the instrument. It is one of those clauses which in the margin of of the printed volumes of the laws, are designated as "Limitation of the powers of Congress;" and would seem to relate exclusively to the legislative department. Such I think, until lately, has been the universal opinion. The courts have so decided, and jurists and statesmen have concurred.

The President has "suspended" the habeas corpus for an indefinite period. this is, virtually, an abrogation of the law of redress, which can only be done by the maker. None but the power that creates can annul. A law may be violated or disregarded, but it is the "rule of action" until it is repealed or changed.

We know of no delegated authority that originated the habeas corpus. It has existed from a time, whereof "the memory of man runneth not to the contrary." It was an act of the sovereign people's will and is above all written charters now existing. No Parliament, Congress or other representative body may defeat, delay or modify its operation, without the consent of their constituents. Nor will any chief magistrate be allowed to set it aside at his pleasure.

The people in the exercise of their radical empire, may consent to its "suspension" for a brief period, in certain circumstances. But, did they give authority to judge of the occasion, to their immediate representatives, whom they appointed to enact their laws? Or did they trust such dangerous prerogative to the man who was to command their armies and direct their military force? Let every prudent patriotic citizen answer these questions to himself.

The habeas corpus remedy for imprisonment or personal detention is a law of the highest order, and the whole proceeding is exclusively within the regular cognizance of the judiciary department. The President can have nothing to do with it, unless to see that it "be faithfully executed" if in any possible circumstances his action should be required.

A reffference to the early history of our country will show, that our forefathers had abundant reasons for providing every possible security agaist executive tyranny. —During the despotic reign of James 2d, his governors and star chamber judges exercised the most arbitrary and unlimited control over the persons and privileges of the colonists. I will give a single instance by way of illustration. The citizens of the town of Ipswich, Massachusetts, feeling greatly oppressed by the tax imposed by the mere will of the governor, held a meeting, in which they claimed the liberty of "free born English subjects, &c." For this bold declaration, many of them were arrested by command of the Governor, and among them was one John Wise, the minister of the place. He plead before the council that he had rights, but was told by one of the Judges that "he had no more privilege left him than not to be sold for a slave." A habeas corpus was refused. He was suspended form his ministerial functions, imprisoned and fined. Many others suffered in the same way. This was the kind of discipline exercised by executive power in the colonies. in the mother country, the reign of William and Mary brought freedom; but on the American plantations, tyranny was continued until the revolution. When the associates of Wise were on trial before the "Star Chamber" tribunal, they defended themselves under Magna Charta and the statutes, which secured to every British subject his personal rights. They were told, however, by the Judges, that "they must not think the laws of England followed them to the ends of the earth, or wherever they went; and they were, in a most arbitrary manner, condemned.

These lessons of experience were sufficient to admonish the framers of our Constitution not to give the "Commander-in Chief" of our army authority, also, to suspend the habeas corpus at his will.

This would make him a dictator and our government would be a military despotism.

It was not so intended. The "people" of the several States, who had the ultimate sovereignty, in order to "promote the general welfare, and secure the blessings of liberty," agreed to form a Union, or quasi nation, with certain granted and limited powers. These were divided into three functional departments, each independent, but all co-operating to advance the common objects. The making of the laws was the faculty of Congress immediately representing the people. To the President was given the execution of them only, and to "one supreme court, and to such inferior courts as the congress may from time to time ordain and establish," was entrusted the whole "judicial power." The judges are appointed to interpret and decide the law in all cases that arrive within their constitutional range. Neither of the other departments can control or interfere with their adjudications.

The President has been defended for his high handed acts of usurpation and tyranny, upon the alleged ground that the "suspension" of the habeas corpus is an executive measure, and within the range of his duties as "command-in-chief" —The absurdity of this position must be obvious to every person who has studied the principles of our social polity, and the structure of our constitution. The habeas corpus remedy is a law emanating originally from the highest sovereign authority—the people. It can only be repealed by the power that made it: a general and unlimited suspension is in effect a repeal or abrogation. This, therefore, is a legislative act which even Congress cannot do except so far as the constitution warrants. To allow the executive to annul or defeat the operations of a law, is to annihilate the government. If he can prevent the action of the habeas corpus—a law of the radical sovereignty—*a fortiori* he may at any time set aside an act of Congress; and thus absolve all political functions—and be a despot. If he can destroy, by his mere *ne jubeo* this personal right, he may every other.

But the constitution cannot be mistaken in its import: and a reffference to its history places the matter beyond doubt. The Convention sat a long time, and many plans and propositions were submitted.—The resolution offered in relation to the habeas corpus, was "that it should "not be suspended by the Legislature, ex- "cept upon the most urgent and pressing "occasion, and for a limited time, not "exceeding——months." Not a single member suggested the idea of conferring such a power upon the executive.

When all the different propositions were presented, they were referred to a committee, who proceeded to prepare the instrument.

The first article, in relation to "the power of Congress," was considered and adopted, before any of the others were discussed. In that first article the habeas corpus clause is introduced as one of the "limitations of the power of Congress." It is in the 9th section, and reads, in connection, thus: "The migration or impor- "tation of such persons as any of the "States now existing shall think proper "to admit, shall not be prohibited by the "Congress, prior to the year 1808; but a "tax or duty may be imposed upon such "importation, not exceeding ten dollars "for each person." "The privilege of "the writ of habeas corpus shall not be "suspended unless when in case of re- "bellion or invasion, the public safety "may require it." So it continues through seven clauses.—The words "by the Congress" are not repeated, because they were unnecessary to the proper meaning, and would have been tautological. The whole section regards restraint upon the action of the legislature, and does not refer to any other department.

There is misapprehension on another point. The President has no constitutional power to determine that there is "rebellion or invasion," when "the public safety" may require "suspension."

Congress only can "provide for calling forth the militia to execute the laws of the Union, suppress insurrection, and repel invasions;" and Congress alone can "provide for organizing and disciplining the militia, and for governing such part of them as may be employed in the service of the United States." The Commander-in-chief must execute the laws; he cannot make them.

To provide, however, for contingencies, when Congress is not in session, that body, by Act of February 28th, 1795, had vested the President with power to call out the militia for "thirty days after the commencement of the then next Spring," if insurrection or invasion should happen.—If Mr. Lincoln had drafted 500,000 men, at the beginning of our troubles, the rebellion might have been suppressed. He did not do so then, and his power now only extends to the conduct of the army—not in the field, however; to the enforcement of the "rules and regulations:" and such other laws as Congress may enact. He is a mere executive. Any other view would be destructive of our social freedom.

If the President may say a tumult of the people, in an extreme part of the Union, is an insurrection, "call forth the militia to suppress it: declare martial law; make military arrests from Georgia to Maine; and suspend the habeas corpus, then is an end of civil liberty.

As I mean to notice all these topics, by just and candid "criticism," I will conclude, as to the last particular, by a few words of reference.

The habeas corpus, which we have from England, is used precisely as it is in that country. The suspension there is a legislative act. The executive cannot control or interfere with the writ.

Since the recognition of the great principles of the "Magna charta," in the "Bill of Rights," there have been very few instances of "suspension," and every one of them by Parliament.