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PAPERS FROM THE SOCIETY

FOR THE

Diffusion of Political Knowledge.

REPLY

TO

PRESIDENT LINCOLN'S LETTER

OF 12TH JUNE, 1863.

Henry Laurens was President of the Continental Congress in 1779. In 1780 he was sent as Minister to Holland. On his way he was captured, and imprisoned in the Tower of London for fourteen months. When Lord Shelburne became Premier, Laurens was brought up, on Habeas Corpus, and released. After his release, he was treated with great kindness and respect by the British authorities. He dined with Lord Shelburne. After dinner, the conversation turned on the separation of the two countries. Lord Shelburne remarked:

"I AM SORRY FOR YOUR PEOPLE." "WHY SO?" ASKED LAURENS. "THEY WILL LOSE THE HABEAS CORPUS," WAS THE REPLY. "LOSE THE HABEAS CORPUS!" SAID LAURENS. "YES," SAID LORD SHELBURNE. "WE PURCHASED IT WITH CENTURIES OF WRANGLING, MANY YEARS OF FIGHTING, AND HAD IT CONFIRMED BY AT LEAST FIFTY ACTS OF PARLIAMENT. ALL THIS TAUGHT THE NATION ITS VALUE; AND IT IS SO INGRAINED INTO THEIR CREED, AS THE VERY FOUNDATION OF THEIR LIBERTY, THAT NO MAN OR PARTY WILL EVER DARE TRAMPLE ON IT. YOUR PEOPLE WILL PICK IT UP, AND ATTEMPT TO USE IT; BUT, HAVING COST THEM NOTHING, THEY WILL NOT KNOW HOW TO APPRECIATE IT. AT THE FIRST GREAT INTERNAL FEUD THAT YOU HAVE, THE MAJORITY WILL TRAMPLE UPON IT, AND THE PEOPLE WILL PERMIT IT TO BE DONE, AND SO WILL GO YOUR LIBERTY!"

Published Journal of Henry Laurens.

PRESIDENT, PROF. S. F. B. MORSE,
SECRETARY, WM. McMURRAY,
TREASURER, LORING ANDREWS.

OFFICE OF THE SOCIETY,
No. 13 PARK ROW, NEW-YORK.
C. MASON, Cor. Sec'y,
To whom all communications may be addressed.

READ—DISCUSS—DIFFUSE.

REPLY TO PRESIDENT LINCOLN'S LETTER.

To His Excellency Abraham Lincoln,
President of the United States:

SIR: Your answer, which has appeared in the public prints, to the resolutions adopted at a recent meeting in the city of Albany, affirming the personal rights and liberties of the citizens of this country, has been referred to the undersigned—the Committee who prepared and reported those resolutions. The subject will now receive from us some further attention, which your answer seems to justify, if not to invite. We hope not to appear wanting in the respect due to your high position, if we reply with a freedom and earnestness suggested by the infinite gravity and importance of the questions upon which you have thought proper to take issue at the bar of public opinion.

You seem to be aware that the Constitution of the United States, which you have sworn to protect and defend, contains the following guarantees to which we again ask your attention: (1) Congress shall make no law abridging the freedom of speech or of the press. (2) The right of the people to be secure in their persons against unreasonable seizures, shall not be violated, and no warrant shall issue but upon probable cause supported by oath. (3) No person except soldiers and mariners in the service of the Government shall be held to answer for a capital or infamous crime, unless on presentment or indictment of a grand jury, nor shall any person be deprived of life, liberty, or property without due process of law. (4) In all criminal prosecutions, the accused shall enjoy the right of a speedy and public trial by an impartial jury of the State or District in which the crime shall have been committed, and to be confronted with the witnesses against him.

You are also, no doubt, aware that on the adoption of the Constitution, these invaluable provisions were proposed by the jealous caution of the States, and were inserted as amendments for a perpetual assurance of liberty against the encroachments of power. From your earliest reading of history, you also know that the great principles of liberty and

law which underlie these provisions were derived to us from the British Constitution. In that country they were secured by *Magna Charta* more than six hundred years ago, and they have been confirmed by many and repeated statutes of the realm. A single palpable violation of them in England would not only arouse the public indignation, but would endanger the throne itself. For a persistent disregard of them, Charles the First was dethroned and beheaded by his rebellious subjects.

The fact has already passed into history, that the sacred rights and immunities which were designed to be protected by these constitutional guarantees, have not been preserved to the people during your administration. In violation of the first of them, the freedom of the press has been denied. In repeated instances newspapers have been suppressed in the loyal States, because they criticised, as constitutionally they might, those fatal errors of policy which have characterized the conduct of public affairs since your advent to power. In violation of the second of them, hundreds and, we believe, thousands of men, have been seized and immured in prisons and bastiles, not only without warrant upon probable cause, but without any warrant, and for no other cause than a constitutional exercise of freedom of speech. In violation of all these guarantees, a distinguished citizen of a peaceful and loyal State has been torn from his home at midnight by a band of soldiers, acting under the order of one of your generals, tried before a military commission, without judge or jury, convicted and sentenced without even the suggestion of any offense known to the Constitution or laws of this country. For all these acts you avow yourself ultimately responsible. In the special case of Mr. Vallandigham, the injustice commenced by your subordinate was consummated by a sentence of exile from his home, pronounced by you. That great wrong, more than any other which preceded it, asserts the principles of a supreme despotism.

These repeated and continued inva-

sions of constitutional liberty and private right, have occasioned profound anxiety in the public mind. The apprehension and alarm which they are calculated to produce have been greatly enhanced by your attempt to justify them, because in that attempt you assume to yourself a rightful authority possessed by no constitutional monarch on earth. We accept the declaration that you prefer to exercise this authority with a moderation not hitherto exhibited. But believing as we do, that your forbearance is not the tenure by which liberty is enjoyed in this country, we propose to challenge the grounds on which your claim of supreme power is based. While yielding to you as a constitutional magistrate the deference to which you are entitled, we can not accord to you the despotic power you claim, however indulgent and gracious you may promise to be in wielding it.

We have carefully considered the grounds on which your pretensions to more than regal authority are claimed to rest; and if we do not misinterpret the misty and clouded forms of expression in which those pretensions are set forth, your meaning is, that while the rights of the citizen are protected by the Constitution in time of peace, they are suspended or lost in time of war, when invasion or rebellion exist. You do not, like many others in whose minds reason and the love of regulated liberty seem to be overthrown by the excitements of the hour, attempt to base this conclusion upon a supposed military necessity existing outside of and transcending the Constitution, a military necessity behind which the Constitution itself disappears in a total eclipse. We do not find this gigantic and monstrous heresy put forth in your plea for absolute power, but we do find another equally subversive of liberty and law, and quite as certainly tending to the establishment of despotism. You claim to have found not outside, but within the Constitution, a principle or germ of arbitrary power, which in time of war expands at once into an absolute sovereignty, wielded by one man; so that liberty perishes, or is dependent on his will, his discretion, or his caprice. This extraordinary doctrine you claim to derive wholly from that

clause of the Constitution which, in case of invasion or rebellion, permits the writ of *habeas corpus* to be suspended. Upon this ground your whole argument is based.

You must permit us to say to you, with all due respect, with the earnestness demanded by the occasion, that the American people will never acquiesce in this doctrine. In their opinion the guarantees of the Constitution which secure to them freedom of speech and of the press, immunity from arrest for offenses unknown to the laws of the land, and the right of trial by jury before the tribunals provided by those laws, instead of military commissions and drum-head courts-martial, are living and vital principles IN PEACE AND IN WAR, at all times and under all circumstances. No sophistry or argument can shake this conviction, nor will the people require its confirmation by logical sequences and deductions. It is a conviction deeply interwoven with the instincts, the habits, and the education of our countrymen. The right to form opinions upon public measures and men, and to declare those opinions by speech or writing, with the utmost latitude of expression; the right of personal liberty, unless forfeited according to established laws, and for offenses previously defined by law; the right, when accused of crime, to be tried where law is administered, and punishment is pronounced only when the crime is legally ascertained—all these are rights instantly perceived without argument or proof. No refinement of logic can unsettle them in the minds of freemen; no power can annihilate them, and no force at the command of any chief magistrate can compel their surrender.

So far as it is possible for us to understand, from your language, the mental process which has led you to the alarming conclusions indicated by your communication, it is this: the *habeas corpus* is a remedial writ, issued by courts and magistrates, to inquire into the cause of any imprisonment or restraint of liberty; on the return of which and upon due examination, the person imprisoned is discharged, if the restraint is unlawful, or admitted to bail if he appears to have been lawfully arrested, and is held to answer a criminal accusation. Inas-

much as this process may be suspended in time of war, you seem to think that every remedy for a false and unlawful imprisonment is abrogated; and from this postulate you reach, at a single bound, the conclusion that there is no liberty under the Constitution which does not depend on the gracious indulgence of the Executive only. This great heresy once established, and by this mode of induction, there springs at once into existence a brood of crimes or offenses undefined by any rule, and hitherto unknown to the laws of this country; and this is followed by indiscriminate arrests, midnight seizures, military commissions, unheard-of modes of trial and punishment, and all the machinery of terror and despotism. Your language does not permit us to doubt as to your essential meaning, for you tell us, that "arrests are made not so much for what has been done, as for what probably would be done." And, again: "The man who stands by and says nothing when the peril of his government is discussed, can not be misunderstood. If not hindered, (of course by arrest,) he is sure to help the enemy, and much more if he talks ambiguously, talks for his country with 'buts' and 'ifs' and 'ands.'" You also tell us that the arrests complained of have not been made "for the treason defined in the Constitution," nor "for any capital or otherwise infamous crimes, nor were the proceedings following, in any constitutional or legal sense, criminal prosecutions." The very ground, then, of your justification is, that the victims of arbitrary arrest were obedient to every law, were guiltless of any known and defined offense, and therefore were without the protection of the Constitution. The suspension of the writ of *habeas corpus*, instead of being intended to prevent the enlargement of arrested criminals until a legal trial and conviction can be had, is designed according to your doctrine, to subject innocent men to your supreme will and pleasure. Silence itself is punishable according to this extraordinary theory, and still more so the expression of opinions, however loyal, if attended with criticism upon the policy of the Government. We must respectfully refuse our assent to this theory of constitutional law. We think

that men may be rightfully silent if they so choose, while clamorous and needy patriots proclaim the praises of those who wield power; and as to the "buts," the "ifs," and the "ands," these are Saxon words, and belong to the vocabulary of freemen.

We have already said that the intuition of a free people instantly rejects these dangerous and unheard-of doctrines. It is not our purpose to enter upon an elaborate and extended refutation of them. We submit to you, however, one or two considerations, in the hope that you will review the subject with the earnest attention which its supreme importance demands. We say, then, we are not aware that the writ of *habeas corpus* is now suspended in any of the peaceful and loyal States of the Union. An act of Congress, approved by you on the third of March, 1863, authorized the President to suspend it during the present rebellion. That the suspension is a legislative, and not an executive act, has been held in every judicial decision ever made in this country, and we think it can not be delegated to any other branch of the Government. But passing over that consideration, you have not exercised the power which Congress attempted to confer upon you, and the writ is not suspended in any part of the country where the civil laws are in force. Now, inasmuch as your doctrine of the arbitrary arrest and imprisonment of innocent men, in admitted violation of express constitutional guarantees, is wholly derived from a suspension of the *habeas corpus*, the first step to be taken, in the ascent to absolute power, ought to be to make it known to the people that the writ is in fact suspended, to the end that they may know what is their condition. You have not yet exercised this power, and therefore, according to your own constitutional thesis, your conclusion falls to the ground. It is one of the provisions of the Constitution, and of the very highest value, that no *ex post facto* law shall be passed the meaning of which is, that no act which is not against the law when committed, can be made criminal by subsequent legislation. But your claim is, that when the writ of *habeas corpus* is suspended, you may lawfully imprison and punish for the

crimes of silence, of speech, and opinion. But as these are not offenses against the known and established law of the land, the constitutional principle to which we now refer plainly requires that you should, before taking cognizance of such offenses, make known the rule of action, in order that the people may be advised in due season, so as not to become liable to its penalties. Let us turn your attention to the most glaring and indefensible of all the assaults upon constitutional liberty, which have marked the history of your administration. No one has ever pretended that the writ of *habeas corpus* was suspended in the State of Ohio, where the arrest of a citizen at midnight, already referred to, was made, and he placed before a military court-martial for trial and sentence, upon charges and specifications which admitted his innocence according to the existing laws of this country. Upon your own doctrine, then, can you hesitate to redress that monstrous wrong?

But, sir, we can not acquiesce in your dogmas that arrests and imprisonment, without warrant or criminal accusation, in their nature lawless and arbitrary, opposed to the very letter of constitutional guarantees, can become in any sense rightful, by reason of a suspension of the writ of *habeas corpus*. We deny that the suspension of a single and peculiar remedy for such wrongs brings into existence new and unknown classes of offenses, or new causes for depriving men of their liberty. It is one of the most material purposes of that writ, to enlarge upon bail persons who, upon probable cause, are duly and legally charged with some known crime; and a suspension of the writ was never asked for in England or in this country, except to prevent such enlargement when the supposed offense was against the safety of the government. In the year 1807, at the time of Burr's alleged conspiracy, a bill was passed in the Senate of the United States, suspending the writ of *habeas corpus* for a limited time in all cases where persons were charged on oath with treason or other high crime or misdemeanor, endangering the peace or safety of the government. But your doctrine undisguisedly is, that a suspension of this writ justifies arrests without

warrant, without oath, and even without suspicion of treason or other crime. Your doctrine denies the freedom of speech and of the press; it invades the sacred domain of opinion and discussion; it denounces the "ifs" and the "buts" of the English language, and even the refuge of silence is insecure.

We repeat, a suspension of the writ of *habeas corpus* merely dispenses with a single and peculiar remedy against an unlawful imprisonment; but if that remedy had never existed, the right to liberty would be the same, and every invasion of that right would be condemned not only by the Constitution, but, by principles of far greater antiquity than the writ itself. Our common law is not at all indebted to this writ for its action of false imprisonment, and the action would remain to the citizen if the writ were abolished forever. Again, every man when his life or liberty is threatened, without the warrant of law, may lawfully resist, and if necessary, in self-defense, may take the life of the aggressor. Moreover, the people of this country may demand the impeachment of the President himself for the exercise of arbitrary power. And when all these remedies shall prove inadequate for the protection of free institutions, there remains, in the last resort, the supreme right of revolution. You once announced this right with a latitude of expression which may well be considered dangerous in the present crisis of our national history. You said: "Any people anywhere, being inclined and having the power, have the right to rise up and shake off the existing government, and form a new one that suits them better. Nor is this right confined to cases where the people of an existing government may choose to exercise it. Any portion of such people that can may revolutionize and make their own of so much of the territory as they inhabit. More than this, a majority of any portion of such people may revolutionize, putting down a minority intermingled with or near about them, who may oppose their movements." (Vol. XIX., *Congressional Globe*, p. 94.) Such were your opinions, and you had a constitutional right to declare them. If a citizen now should

utter sentiments far less dangerous in their tendency, your nearest military commander may consign him to a dungeon, or to the tender mercies of a court-martial, and you would approve the proceeding.

In our deliberate judgment, the Constitution is not open to the new interpretation suggested by your communication now before us. We think every part of that instrument is harmonious and consistent. The possible suspension of the writ of *habeas corpus* is consistent with freedom of speech and of the press. The suspension of that remedial process may prevent the enlargement of the accused traitor or conspirator, until he shall be legally tried and convicted or acquitted, but in this we find no justification for arrest and imprisonment without warrant, without cause, without the accusation or suspicion of crime. It seems to us, moreover, too plain for argument that the sacred right of trial by jury, and in courts where the law of the land is the rule of decision, is a right which is never dormant, never suspended, in peaceful and loyal communities and States. Will you, Mr. President, maintain, that because the writ of *habeas corpus* may be in suspense, you can substitute soldiers and bayonets for the peaceful operation of the laws, military commissions and inquisitorial modes of trial for the courts and juries prescribed by the Constitution itself? And if you can not maintain this, then let us ask, where is the justification for the monstrous proceeding in the case of a citizen of Ohio, to which we have called your attention? We know that a recreant judge, whose name has already descended to merited contempt, found the apology on the *outside* of the supreme and fundamental law of the Constitution. But this is not the foundation on which your superstructure of power is built.

We have mentioned the act of the last Congress professing to authorize a suspension of the writ of *habeas corpus*. This act now demands your special attention, because, if we are not greatly in error, its terms and plain intention are directly opposed to all the arguments and conclusions of your communication. That act, besides provid-

ing that the *habeas corpus* may be suspended, expressly commands that the names of all persons theretofore or thereafter arrested by authority of the President, or his cabinet ministers, *being citizens of states in which the administration of the laws has continued unimpaired*, shall be returned to the courts of the United States for the districts in which such persons reside, or in which their supposed offenses were committed; and such return being made, if the next grand jury attending the courts does not indict the alleged offenders, then the judges are commanded to issue an order for their immediate discharge from imprisonment. Now, we can not help asking whether you have overlooked this law, which most assuredly you are bound to observe, or whether it be your intention to disregard it? Its meaning certainly can not be mistaken. By it the national Legislature has said that the President may suspend the accustomed writ of *habeas corpus*, but at the same time it has commanded that all arrests under his authority shall be promptly made known to the courts of justice, and that the accused parties shall be liberated, unless presented by a grand jury according to the Constitution, and tried by a jury in the ancient and accustomed mode. The President may possibly, so far as Congress can give the right, arrest without legal cause or warrant. We certainly deny that Congress can confer this right, because it is forbidden by the higher law of the Constitution. But, waiving that consideration, this statute, by its very terms, promptly removes the proceeding in every case into the courts where the safeguards of liberty are observed, and where the persons detained are to be discharged, unless indicted for *criminal offenses* against the established and ascertained laws of the country.

Upon what foundation, then, permit us to ask, do you rest the pretension that men who are not accused of crime may be seized and imprisoned or banished at the will and pleasure of the President or any of his subordinates in civil and military positions? Where is the warrant for invading the freedom of speech and of the press? Where the

justification for placing the citizen on trial without the presentment of a grand jury and before military commissions? THERE IS NO POWER IN THIS COUNTRY WHICH CAN DISPENSE WITH ITS LAWS. The President is as much bound by them as the humblest individual. We pray you to bear in mind, in order that you may duly estimate the feeling of the people on this subject, that for the crime of dispensing with the laws and statutes of Great Britain, our ancestors brought one monarch to the scaffold, and expelled another from his throne.

This power which you have erected in theory is of vast and illimitable proportions. If we may trust you to exercise it mercifully and leniently, your successor, whether immediate or more remote, may wield it with the energy of a Cæsar or Napoleon, and with the will of a despot and a tyrant. It is a power without boundary or limit, because it proceeds upon a total suspension of all the constitutional and legal safeguards which protect the rights of the citizen. It is a power not inaptly described in the language of one of your Secretaries. Said Mr. Seward to the British Minister in Washington: "I can touch a bell on my right hand, and order the arrest of a citizen of Ohio. I can touch the bell again, and order the imprisonment of a citizen of New-York, and no power on earth but that of the President can release them. Can the Queen of England, in her dominions, do as much?" This is the very language of a perfect despotism, and we learn from you, with profound emotion, that this is no idle boast. It is a despotism unlimited in principle, because the same arbitrary and unrestrained will or discretion which can place men under illegal restraint or banish them, can apply the rack or the thumb-screw, can put to torture or to death. Not thus have the people of this country hitherto understood their Constitution. No argument can commend to their judgment such interpretations of the Great Charter of their liberties. Quick as the lightning's flash, the intuitive sense of freemen perceives the sophistry and rejects the conclusion.

Some other matters which your Excellency has presented demand our notice.

In justification of your course as to Mr. Vallandigham, you have referred to the arrest of Judge Hall, at New-Orleans, by order of General Jackson; but that case differs widely from the case of Mr. Vallandigham. New-Orleans was then, as you truly state, under "martial or military law." This was not so in Ohio, where Mr. Vallandigham was arrested. The administration of the civil law had not been disturbed in that Commonwealth. The courts were open, and justice was dispensed with its accustomed promptitude. In the case of Judge Hall, General Jackson in a few days sent him outside of the line of his encampments and set him at liberty; but you have undertaken to banish Mr. Vallandigham from his home. You seem also to have forgotten that General Jackson submitted implicitly to the judgment of the court which imposed the fine upon him; that he promptly paid it; that he enjoined his friends to assent, "as he most freely did, to the decision which had just been pronounced against him."

More than this, you overlook the fact that the then administration (in the language of a well-known author) "mildly but decidedly rebuked the proceedings of General Jackson," and that the President viewed the subject with "surprise and solicitude." Unlike President Madison, you, in a case much more unwarranted, approve the proceedings of your subordinate officer, and in addition, justify your course by a carefully considered argument in its support.

It is true that after some thirty years, Congress, in consideration of the devoted and patriotic services of General Jackson, refunded the amount of the fine he had paid! But the long delay in doing this proved how reluctant the American people were to do any thing which could be considered as in any way approving the disregard shown to the majesty of the law, even by one who so eminently enjoyed their confidence and regard.

One subject more, and we shall conclude. You express your regret that our meeting spoke "as Democrats," and you say that "in this time of national peril you would have preferred to meet us upon a level, one step higher than any party platform." You thus compel us to allude to matters which we should

have preferred to pass by. But we can not omit to notice your criticism, as it casts at least an implied reproach upon our motives and our proceedings. We beg to remind you that when the hour of our country's peril had come; when it was evident that a most gigantic effort was to be made to subvert our institutions and to overthrow the Government; when it was vitally important that party feelings should be laid aside, and that all should be called upon to unite most cordially and vigorously to maintain the Union; at the time you were sworn into office as President of the United States, when you should have urged your fellow-citizens in the most emphatic manner to overlook all past differences, and to rally in defense of their country and its institutions; when you should have enjoined respect for the laws and the Constitution, so clearly disregarded by the South—you chose, for the first time under the like circumstances in the history of our country, to set up a party platform, called "the Chicago platform" as your creed, to advance it beyond the Constitution, and to speak disparagingly of that great conservative tribunal of our country, so highly respected by all thinking men who have inquired into our institutions—THE SUPREME COURT OF THE UNITED STATES.

Your administration has been true to the principles you then laid down. Notwithstanding the fact that several hundred thousand Democrats in the loyal States cheerfully responded to the call of their country, filled the ranks of its armies, and by "their strong hands and willing arms" aided to maintain your Excellency and the officers of Government in the possession of our national capital—notwithstanding the fact that the great body of the Democrats of the country have, in the most patriotic spirit, given their best efforts, their treasure, their brothers and their sons to sustain the Government and to put down the rebellion, you, choosing to overlook all this, have made your appointments to civil office from your cabinet officers and foreign ministers, down to the persons of lowest official grade among the tens of thousands engaged in collecting the revenues of the country, exclusively from your political associates.

Under such circumstances, virtually proscribed by your administration, and while most of the leading journals which supported it approved the sentence pronounced against Mr. Vallandigham, it was our true course, our honest course, to meet as "Democrats," that neither your Excellency nor the country might mistake our antecedents or our position.

In closing this communication, we desire to reëfirm our determination, and, we doubt not, that of every one who attended the meeting which adopted the resolutions we have discussed, expressed in one of those resolutions, to devote "all our energies to sustain the cause of the Union."

Permit us, then, in this spirit, to ask your Excellency to reëxamine the grave subjects we have considered, to the end that, on your retirement from the high position you occupy, you may leave behind you no doctrines and no further precedents of despotic power to prevent you and your posterity from enjoying that constitutional liberty which is the inheritance of us all, and to the end, also, that history may speak of your administration with indulgence, if it can not with approval.

We are, sir, with great respect, yours very truly,

JOHN V. L. PRUYN,
Chairman of Committee.

JAMES KIDD,
GILBERT C. DAVIDSON,
J. V. P. QUACKENBUSH,
WM. A. FASSETT,
O. M. HUNGERFORD,
JOHN HOGAN,
HENRY LANSING,
S. HAND,
M. K. COHEN,
JOHN CUTLER,
C. VAN BENTHUYSEN,
GEORGE H. THACHER,
C. W. ARMSTRONG,
WILLIAM DOYLE,
FRANKLIN TOWNSEND,
WILLIAM APPLETON,
B. R. SPELMAN,
JAMES MCKOWN,
A. H. TREMAIN,
DANIEL SHAW,
W. SIMON,
A. E. STIMSON,
ISAAC LEDERER.

ALBANY, June 30, 1863.