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REMARKS on the Amendments to the Federal Constitution, proposed by the Conventions of Massachusetts, New-Hampshire, New-York, Virginia, South and North-Carolina, with the minorities of Pennsylvania and Maryland, by a FOREIGN SPECTATOR.

NUMBER XI.

We shall now proceed to view those amendments which particularly concern several personal rights and liberties.

Arbitrary imprisonment has in all ages and countries been a favourite and formidable instrument of tyranny. “To bereave a man of life (says a well-known author) or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism, as must at once convey the alarm of tyranny throughout the whole nation; but confinement of the person, by secretly hurrying him to gaol, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore *a more dangerous engine* of arbitrary government.<sup>(a)</sup>” A provision must then be made, that if any person should, without a legal cause, be committed or detained in prison, or otherwise restrained by any authority whatever, he shall be discharged, bailed, or brought to a speedy trial according to circumstances. This is done by that excellent law, called the writ of habeas corpus, which is deservedly extolled as one of the principal balwarks of a free constitution. Yet when the state is in real danger, even this valuable privilege must be suspended. A person who may injure the life, property and liberty of many fellow-citizens, and stab his country in the most sensible part, must be secured without formal delay; no bail can be responsible for his good behaviour; a legal trial may for some time be impracticable; in some cases his punishment may even encrease the fury of rebellion. It is not common that innocent people incur such strong suspicion, as to be long deprived of liberty; but if, by some extraordinary causes, it was to be the lot of a faithful citizen, would he not freely submit to a general regulation so necessary for the safety of his country, and all his dear connexions! In Great-Britain, the parliament can, whenever it sees proper, by suspending the habeas corpus act for a limited time, authorise the executive to imprison suspected persons, without giving any reason for so doing. — “The nation parts with its liberty for a while, in order to preserve it for ever,” as the above judicious author expresses it.<sup>(b)</sup>

The federal constitution, on the true principles of liberty and patriotism, enacts by the 2d part 9th sect. 1st art. *that the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.* The convention of New-

York would add this limitation: *that the privilege of the habeas corpus shall not by any law be suspended for a longer term than six months, or until twenty days after the meeting of the Congress next following the passing the act for such suspension*, 10 am. As the safety, perhaps the preservation of the country, renders this act necessary, it must also determine its duration. It would be folly, nay, cruelty, to repeal it in the height of rebellion, or when a powerful enemy, assisted by a band of traitors, spills the best blood of America, and murders her patriots in dungeons or prison-ships. No! by the sacred name of liberty, by the honor of the union, by every faithful American heart! if my father, son, or brother has forfeited his liberty to an injured country, let his worthless body be secured by walls, and if necessary, by chains. I remark again, that innocence can scarcely ever, for a long time, suffer from suspicion. The more vigorous efforts we make in such public disasters, the sooner will the mild laws and all the blessings of civil government be restored.

What is said on this matter, is a sufficient reply to the 12th amend. of the New-Hampshire convention, *that congress shall never disarm any citizen, unless such as are or have been in actual rebellion*. If, by the acknowledged necessity of suspending the privilege of *habeas corpus*, a suspected person may be secured, he may much more be disarmed. In such unhappy times it may be very expedient to disarm those, who cannot conveniently be guarded, or whose conduct has been less obnoxious. Indeed to prevent by such a gentle measure, crimes and misery, is at once justice to the nation, and mercy to deluded wretches, who may otherwise, by the instigation of a dark and bloody ringleader, commit many horrid murders, for which they must suffer condign punishments.

The minority of Pennsylvania seems to have been desirous of limiting the federal power in these cases; but their conviction of its necessity appears by those very parts of the 3d and 7th amendments framed in this view, to wit, *that no man be deprived of his liberty except by the law of the land, or the judgment of his peers—and that no law shall be passed for disarming the people, or any of them, unless for crimes committed, or real danger of public injury from individuals*. The occasional suspension of the above privilege becomes pro tempore the law of the land, and by virtue of it dangerous persons are secured. Insurrections against the federal government are undoubtedly real dangers of public injury, not only from individuals, but great bodies; consequently the laws of the union should be competent for the disarming of both.

Not to be misunderstood, I shall add, that the suspension of *habeas corpus* is by no means requisite in commotions that may be quelled by the ordinary resources of public justice;—neither do I wish for any such rigorous riot acts, by which human lives are destroyed merely to prevent moderate damage to property, or some other not very grievous disorders. Indeed the spirit of republican liberty will be a sufficient guard against such; and of the two evils, extreme lenity is most to be apprehended.

(a) *Blackstone's Commentaries*, vol. 1, page 156.

(b) *Ditto*, page 126.

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