

The Library of America • Story of the Week

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The Nature of Liberty

EVERY time an officer of the constabulary, in the execution of his just and awful powers under American law, produces a compound fracture of the occiput of some citizen in his custody, with hemorrhage, shock, coma and death, there comes a feeble, falsetto protest from specialists in human liberty. Is it a fact without significance that this protest is never supported by the great body of American freemen, setting aside the actual heirs and creditors of the victim? I think not. Here, as usual, public opinion is very realistic. It does not rise against the policeman for the plain and simple reason that it does not question his right to do what he has done. Policemen are not given night-sticks for ornament. They are given them for the purpose of cracking the skulls of the recalcitrant plain people, Democrats and Republicans alike. When they execute that high duty they are palpably within their rights.

The specialists aforesaid are the same fanatics who shake the air with sobs every time the Postmaster-General of the United States bars a periodical from the mails because its ideas do not please him, and every time some poor Russian is deported for reading Karl Marx, and every time a Prohibition enforcement officer murders a bootlegger who resists his levies, and every time agents of the Department of Justice throw an Italian out of the window, and every time the Ku Klux Klan or the American Legion tars and feathers a Socialist evangelist. In brief, they are Radicals, and to scratch one with a pitchfork is to expose a Bolshevik. They are men standing in contempt of American institutions and in enmity to American idealism. And their evil principles are no less offensive to right-thinking and red-blooded Americans when they are United States Senators or editors of wealthy newspapers than when they are degraded I.W.W.'s throwing dead cats and infernal machines into meetings of the Rotary Club.

What ails them primarily is the ignorant and uncritical monomania that afflicts every sort of fanatic, at all times and

everywhere. Having mastered with their limited faculties the theoretical principles set forth in the Bill of Rights, they work themselves into a passionate conviction that those principles are identical with the rules of law and justice, and ought to be enforced literally, and without the slightest regard for circumstance and expediency. It is precisely as if a High Church rector, accidentally looking into the Book of Chronicles, and especially Chapter II, should suddenly issue a mandate from his pulpit ordering his parishioners, on penalty of excommunication and the fires of hell, to follow exactly the example set forth, to wit: "And Jesse begat his first born Eliab, and Abinadab the second, and Shimma the third, Netheneel the fourth, Raddai the fifth, Ozen the sixth, David the seventh," and so on. It might be very sound theoretical theology, but it would surely be out of harmony with modern ideas, and the rev. gentleman would be extremely lucky if the bishop did not give him 10 days in the diocesan hoosegow.

So with the Bill of Rights. As adopted by the Fathers of the Republic, it was gross, crude, inelastic, a bit fanciful and transcendental. It specified the rights of a citizen, but it said nothing whatever about his duties. Since then, by the orderly processes of legislative science and by the even more subtle and beautiful devices of juridic art, it has been kneaded and mellowed into a far greater pliability and reasonableness. On the one hand, the citizen still retains the great privilege of membership in the most superb free nation ever witnessed on this earth. On the other hand, as a result of countless shrewd enactments and sagacious decisions, his natural lusts and appetites are held in laudable check, and he is thus kept in order and decorum. No artificial impediment stands in the way of his highest aspiration. He may become anything, including even a policeman. But once a policeman, he is protected by the legislative and judicial arms in the peculiar rights and prerogatives that go with his high office, including especially the right to jug the laity at his will, to sweat and mug them, to subject them to the third degree, and to subdue their resistance by beating out their brains. Those who are unaware of this are simply ignorant of the basic principles of American jurisprudence, as they have been exposed times without number by the courts of first instance and ratified in lofty terms by the

Supreme Court of the United States. The one aim of the controlling decisions, magnificently attained, is to safeguard public order and the public security, and to substitute a judicial process for the inchoate and dangerous interaction of discordant egos.

Let us imagine an example. You are, say, a peaceable citizen on your way home from your place of employment. A police sergeant, detecting you in the crowd, approaches you, lays his hand on your collar, and informs you that you are under arrest for killing a trolley conductor in Altoona, Pa., in 1917. Amazed by the accusation, you decide hastily that the officer has lost his wits, and take to your heels. He pursues you. You continue to run. He draws his revolver and fires at you. He misses you. He fires again and fetches you in the leg. You fall and he is upon you. You prepare to resist his apparently maniacal assault. He beats you into insensibility with his espantoon, and drags you to the patrol box.

Arrived at the watch house you are locked in a room with five detectives, and for six hours they question you with subtle art. You grow angry—perhaps robbed of your customary politeness by the throbbing in your head and leg—and answer tartly. They knock you down. Having failed to wring a confession from you, they lock you in a cell, and leave you there all night. The next day you are taken to police headquarters, your photograph is made for the Rogues' Gallery, and a print is duly deposited in the section labeled "Murderers." You are then carted to jail and locked up again. There you remain until the trolley conductor's wife comes down from Altoona to identify you. She astonishes the police by saying that you are not the man. The actual murderer, it appears, was an Italian. After holding you a day or two longer, to search your house for stills, audit your income tax returns, and investigate the premarital chastity of your wife, they let you go.

You are naturally somewhat irritated by your experience and perhaps your wife urges you to seek redress. Well, what are your remedies? If you are a firebrand, you reach out absurdly for those of a preposterous nature: the instant jailing of the sergeant, the dismissal of the Police Commissioner, the release of Mooney, a fair trial for Sacco and Vanzetti, free trade with Russia, One Big Union. But if you are a 100 per cent. American

and respect the laws and institutions of your country, you send for your solicitor—and at once he shows you just how far your rights go, and where they end. You cannot cause the arrest of the sergeant, for you resisted him when he attempted to arrest you, and when you resisted him he acquired an instant right to take you by force. You cannot proceed against him for accusing you falsely, for he has a right to make summary arrests for felony, and the courts have many times decided that a public officer, so long as he cannot be charged with corruption or malice, is not liable for errors of judgment made in the execution of his sworn duty. You cannot get the detectives on the mat, for when they questioned you you were a prisoner accused of murder, and it was their duty and their right to do so. You cannot sue the turnkey at the watch house or the warden at the jail for locking you up, for they received your body, as the law says, in a lawful and regular manner, and would have been liable to penalty if they had turned you loose.

But have you no redress whatever, no rights at all? Certainly you have a right, and the courts have jealously guarded it. You have a clear right, guaranteed to you under the Constitution, to go into a court of equity and apply for a mandamus requiring the *Polizei* to cease forthwith to expose your portrait in the Rogues' Gallery among the murderers. This is your inalienable right, and no man or men on earth can take it away from you. You cannot prevent them cherishing your portrait in their secret files, but you can get an order commanding them to refrain forever from exposing it to the gaze of idle visitors, and if you can introduce yourself unseen into their studio and prove that they disregard that order, you can have them haled into court for contempt and fined by the learned judge.

Thus the law, statute, common and case, protects the free American against injustice. It is ignorance of that subtle and perfect process and not any special love of liberty *per se* that causes radicals of anti-American kidney to rage every time an officer of the *gendarmerie*, in the simple execution of his duty, knocks a citizen in the head. The *gendarme* plainly has an inherent and inalienable right to knock him in the head: it is an essential part of his general prerogative as a sworn officer of the public peace and a representative of the sovereign power of the state. He may, true enough, exercise that prerogative in a

manner liable to challenge on the ground that it is imprudent and lacking in sound judgment. On such questions reasonable men may differ. But it must be obvious that the sane and decorous way to settle differences of opinion of that sort is not by public outcry and florid appeals to sentimentality, not by ill-disguised playing to class consciousness and antisocial prejudice, but by an orderly resort to the checks and remedies superimposed upon the Bill of Rights by the calm deliberation and austere logic of the courts of equity.

The law protects the citizen. But to get its protection he must show due respect for its wise and delicate processes.