

Arthur Roebuck Papers

MG32 C68

Vol 1 / 15

nat. archives
Canada

CIVIL LIBERTIES

An Address by

the Hon. Arthur W. Roebuck, K.C.

Member of the Senate of Canada - and

some time Attorney-General

for the Province of Ontario -

Delivered under the Auspices of
The Ottawa Civil Liberties Association

Convention Hall, Chateau Laurier,

Wednesday, May 15, 1946.

CIVIL LIBERTIES

My congratulations are due to the men and women who have initiated the movement in Ottawa for the protection of the Civil Liberties of Canadian people, and who have called this public meeting. They no doubt already know that they have taken on a tough assignment. Fighting for the general principles of liberty is not at all like rescuing fair ladies from bad Barons in enchanted castles. The fair lady is often some poor wretch perhaps unworthy of the effort, and whose conduct has made her decidedly unpopular in the eyes of a great many citizens. The bold, bad Baron is usually a very worthy, upright and self-righteous person whose zeal has blinded him to sound general principles, and the enchanted castle is the fortified citadel of the law.

Champions of Civil Liberty continually fight their battles under such handicaps. Stephen Langdon wrung Magna Charta from the King in the interests primarily of landlords and tax dodgers, although in this instance he did have a real dragon in King John. The Bill of Rights, in the time of Charles II, was in the aid of very unpopular puritans and roundheads. The freedom of the press was won for the sake of a rascal named Wilkes. The Right of Free Speech and of Assembly was established in the interests of all sorts of peculiar persons.

In our own time, if we would defend Liberty, we must continue to do so quite irrespective of the general character or unpopularity of the oppressed, and in utter disregard of the power, apparent good intentions, and respectability of the oppressor.

It is under such circumstances that the Defenders of Civil Liberty must hold the faith in the broad principles of British law, well knowing that if the least of our people can be deprived of the protection of fundamental law, then none of us is safe, and Canada will soon be a land of capricious masters and cringing slaves.

It is a tough job, but a worthwhile job. When I was asked to come here this evening, I specified that I would not speak on the case now current, because certain individuals are before the Court, and I prefer to withhold comment on the general principles until the cases are disposed of. It was therefore understood that I would speak on freedom generally.

DEMOCRACY

Now our first freedom is the Right to Vote. In that I include the right to be governed by those whom we have ourselves appointed to office.

The elements of that right, to be guarded by a Civil Liberties Association are I take it:

- (a) A reasonably wide franchise, unrestricted for any partisan, sectional or private purpose, and subject to only such limitations as are bona fide necessary and are in accordance with common sense, such, for instance, as age, nationality and residence.
- (b) Free elections, efficiently and honestly conducted, that is to say, free from bungling, fraud and intimidation.
- (c) Reasonably frequent elections, and submission by those in authority to the expressed will of the electors.

The liberties of the subject are not defined by any single law or code of law. They depend for the most part on a recognition of principles established and practiced.

The liberties of the subject are found in law as implications from two general principles.

- (a) The subject may do and say what he pleases, provided he does not transgress the substantive law, or infringe the legal rights of others.
- (b) Public authorities, including the Crown, may do only those things which are authorized by common law or statute.

Since Parliament is Sovereign both in Great Britain and in Canada, it follows that the subject cannot possess guaranteed rights, such as do the citizens of many foreign countries. In the United States, sovereignty is recognized as residing in the people, and the government is carried on by the consent of the governed. It is therefore possible for the people generally to lay down certain general principles which are binding upon those in authority in Congress, the Senate and the Cabinet.

In Canada, on the other hand, where Parliament is Sovereign, it is recognized that certain liberties are highly prized by the people, and Parliament is in consequence expected to refrain from interference except under the stress of real emergency.

THE FOUR BEACONS

While the liberties of the subject are not to be found in any code, there are however four important enactments as follows:

- (a) Magna Charta, 1215 (24 Edward 1)
- (b) Petition of Right, 1627, (3 Car. 1. C.1)
- (c) Bill of Rights, 1688, (1 William & Mary, Sess. 2, C.2)
- (d) Act of Settlement, 1700, (12 & 13 William, 3 C.2)

CIVIL LIBERTIES LISTED

Let me endeavour to enumerate the subjects which are generally included in what is known as Civil Liberties in English law:

1. No one shall be arrested or imprisoned,
 - (a) except under some legal warrant or authority
 - (b) subject to some adequate legal means of enforcing this prohibition.

Immunity from wrongful detention and confinement is protected by the action of false imprisonment and by the Writ of Habeas Corpus, reinforced by the Habeas Corpus Acts, under which, upon probable cause shown by affidavit, either of the person himself or of some other person on his behalf, a Writ may be obtained directed to the person having charge of the prisoner to produce the body before the Court in order that the reason of his detention may be inquired into.

2. The right of the citizen to natural justice.
 - (a) No one may be the judge of his own cause - the judge must not be interested in the outcome, and must be impartial.
 - (b) No one may be condemned unheard, or have a decision against him without reasonable opportunity of putting forward his case.

The jury system protects the citizen from the arbitrary powers of the judiciary, and is the right of the individual in event of accusation of serious crimes to have trial by unprofessional representatives of public opinion in the persons of a jury.

3. The right of the citizen to be protected from the threat of a standing army, as provided in the Bill of Rights

and the Army Act.

4. Freedom of Discussion and of the Press, guarded by the law of libel, which insures each man's rights to say and write anything which twelve jurors think should have been said or written.

5. The Right of Assembly in public meetings, all meetings being legal, unless the assembly is for an illegal purpose, or until some illegal act is committed.

6. The Right of Association, for the purpose of promotion in unison of all legal purposes.

7. The Right of Equality before the law, irrespective of race, religion, wealth or social standing.

This is by no means an all-inclusive list, but it is sufficient to indicate the general character of the subject matter under discussion. I can add something to it by turning to history.

MAGNA CARTA

To say that Civil Liberties originated with Magna Carta would, of course, be an absurdity. The Saxons were a free people. It was the encroachment of the Monarch upon the liberties of the subject which brought about the rebellion of the Barons and thereby forced the King's signature to the Great Charter. The most famous clause in Magna Carta is all that we need to consider at the moment. It read as follows:

"No free man shall be taken, or imprisoned, or disscized, or outlawed, or exiled, or in any destroyed, nor will we go upon him, nor will we send upon him, except by the legal judgment of his peers or by the law of the land. (39). To no one will we sell, deny, or delay right or justice. (40)."

It was one thing for the King to promise not to "go upon" a man, or "send upon" him except by the judgment of his peers or the law of the land, and not to "sell, deny, or delay right of justice," and quite another thing to enorce such a provision in practice. Habeas Corpus had its origin in Roman law, and was used in England in the Twelfth Century, and was used to prevent vexacious imprisonment on accusations of felony. It was known to the draftees of the Charter. The Writ is specifically mentioned in Article 36 of Magna Charta, which provides that it shall issue gratuitously and shall "not be refused."

HABEAS CORPUS

- It has taken a great many years to establish thoroughly the right of Habeas Corpus in the English law, and the custom still persists of suspending it in times of war or rebellion when the Military take over.

By the time of Charles 1st, the Writ of Habeas Corpus was fully established as the appropriate process for the checking of illegal imprisonment by inferior courts or by public officials. It has been by legislation, however, that the Writ has reached its present importance.

In Darnel's case (1627) the Judges held that the Command of the King was sufficient answer to a writ of Habeas Corpus. Whereupon Parliament passed an act known as the Petition of Right (1627 - 3 Car 1. Cl), which recited that:

"Contrary to the Great Charter and the good laws and statutes of the realm, divers of the King's subjects have of late been imprisoned without any cause shown, and when they were brought up on Habeas Corpus ad subiciendum, and no cause was shown other than the special command of the King signified by the Privy Council, were nevertheless remanded to prison."

Parliament accordingly enacted that:

"No free man in any such manner as is before mentioned shall be imprisoned or detained."

This enactment was not sufficient, however, and in the reign of Charles II, Lord Clarendon was impeached for "causing many persons to be imprisoned against law," and Parliament passed its famous Habeas Corpus Act of 1679, (31 Car. 11, C.2). This Act provided that a judge delaying Habeas Corpus shall forfeit 500 pounds to the party aggrieved.

This Act establishes in English Constitutional law the right of the judiciary to control the executive in order to protect the liberty of the subject.

BILL OF RIGHTS

A very important statute in English Constitutional history is the Bill of Rights 1689, delivered by the Lords and Commons to the Prince and Princess of Orange, afterwards William III and Mary. The Act both settled the succession to the Crown and declared the rights and liberties of the subject. Included in its provisions were the following:

4. The levying of money for or to the use of the Crown, by pretense of prerogative, without grant of Parliament for longer time or in other manner than the same is or shall be granted, is illegal.

5. That it is the right of the Subject to petition the King and all commitments and prosecutions for such petitioning are illegal.

8. That elections of Members of Parliament ought to be free.

9. That the freedom of speech and debates or proceedings of Parliament ought not to be impeached or questioned in any court or place out of Parliament.

10. That excessive bail ought not to be required, nor excessive fines imposed, or cruel or unusual punishment inflicted.

12. That all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void.

13. That for the redress of all grievances, and for the amending, strengthening and preserving of the laws, Parliament ought to be held frequently.

Dispensation by non Obstante was abolished. "Non Obstante" means "notwithstanding", and the effect of it was that a license from the Crown to do that which could not be legally done without such a license was declared illegal.

Thus have the safeguards of our liberties broadened down from precedent to precedent, to quote the language of Tennyson.

ECONOMIC FREEDOM

There still remains another Civil Liberty, which is frequently overlooked in this connection. It is economic freedom, the right of the ownership of oneself, and, in consequence the products of one's labour. In other words, not to be enslaved, robbed or oppressed by any other person or combination of persons, including the Government and its agents. Under this heading is the Right to Strike, to combine in unions, and to picket in varying force and numbers.

Economic freedom in its broadest aspect is still to be obtained, by that I mean the right to retain the full value of one's labours, and to prevent the acquiring of wealth by anyone without giving an adequate consideration in return.

CODE OF LIBERTY

Mr. Diefenbaker has suggested in Parliament that we code the law of Civil Liberties in Canada. I think it is a good idea. The objections to coding is usually that the law to be codified is as yet immature and subject to continual change, and accordingly it should not be reduced to formal writing until the evolution is complete.

Obviously, if we are to wait until all change is complete, no law will ever be reduced to a code. The Bills of Exchange Act and the Sales of Goods Act are excellent examples of the public service to be rendered when a legal subject has become sufficiently settled and known to be safely reduced to writing in precise terms, though great care should be exercised in the drafting.

The French adopted a Declaration of the Rights of Man when the Marquis Lafayette returned to France after the American War of Independence. The Americans have adopted a Bill of Rights as a part of the Constitution of the United States of America. It is not at all beyond the capacity of our people and Parliament to do likewise, and in view of the drift of times towards centralization of government I think it would be well for us to make the attempt.

In all these matters of great public importance the Ottawa Civil Liberties Association may play an important part, and I wish you the greatest success.