

Opinion of Chief Justice Taneyⁱ

“The following is the opinion in the habeas corpus case of John Merryman, filed by Chief Justice Taney, of the Supreme Court of the United States, in the Circuit Court of the United States for the fourth Circuit in and for Maryland district.

...A copy of the warrant, or order, under which the prisoner was arrested, was demanded by this counsel and refused. And it is not alleged in the return that any specific act, constituting an offense against the laws of the United States, has been charged against him upon oath; but he appears to have been arrested upon general charges of treason and rebellion, without proof, and without giving the names of witnesses, or specifying the acts which, in judgment of the military officer, constituted these crimes. And, having the prisoner thus in custody upon these vague and unsupported accusations, he refuses to obey the writ of habeas corpus, upon the ground that it is duly authorized by the President to suspend it.

...As the case comes before me, therefore, I understand that the President not only claims the right to suspend the writ of habeas corpus himself at his discretion, but to delegate that discretionary power to the military officer, and to leave it to him to determine whether he will or will not obey judicial process that may be served upon him.

*...And I am certainly adorned to it with some surprise, for I had supposed it to be one of those points of constitutional law upon which there was no difference of opinion and that it was admitted to all hands that the privilege of the writ could not be suspended, **except by act of Congress.***

....I should have contended myself with referring to the clause in the constitution...But, being thus officially notified that the privilege of the writ had been suspended under orders and by the authority of the President, and believing as I do that the President has exercised a power which he does not possess under the constitution, a proper respect for the high office he fills requires me to state plainly and fully the grounds of my opinion.

...This article {writ of habeas corpus} is devoted to the legislative department of the United States, and has not the slightest reference to the Executive department. It begins by providing ‘that all legislative powers therein granted shall be vested in a Congress of the United States which shall consist of a Senate and House of Representatives.’ ...it proceeds to enumerate specifically the legislative powers which it hereby grants, the legislative powers which it expressly prohibits, and at the conclusion of this specification, a clause is inserted, giving Congress, ‘the power to make all laws which may be necessary and proper for carrying into execution the foregoing powers, and all other powers.’

...the only power, therefore, which the President possesses where the ‘life, liberty, or property’ of a private citizen is concerned is the power and duty prescribed in the third section of the second article, which requires ‘that he shall take care that the laws be faithfully executed.’ He is not authorized to execute

them himself or through agents or officers, civil or military, appointed by himself, but he is to take care that they be faithfully carried into execution...

With such provisions in the constitution expressed in language too clear to be misunderstood by anyone, I can see no ground whatever for supposing that the President, in any emergency; or in any state of things, can authorize the suspension of the privilege of the writ of habeas corpus or arrest a citizen except in aid of the judicial power. He certainly does not faithfully execute the laws, if he takes upon himself legislative power by suspending the writ of habeas corpus and the judicial power also, by arresting and imprisoning a person without due process of law.”

ⁱ The Sun Papers, June 3, 1861