An aspect of personal freedom
Leading star : Habeas corpus

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The history of the development of the Law reveals a curious effort by man to restrict and bind himself in order to ensure his security and liberty. There was a time when his might dictated his right ; a time indeed when he had no recourse to any legal arbitration or court of justice. What chaotic situation existed in those pre-historic times can never be adequately known. However, it is interesting to observe that when the records of history began to assume a written form, the earliest known man was already involved in the fierce battle against injustice. He had begun to see the wisdom in insuring true personal liberty with a respect for the rule of Law. Today, the situation appears to be that the Law now has the greatest might and thus dictates the rights of the subject.

One of the things that English Common Law seeks to do is to protect the subject, whose well-being is its main object. Although it imposes rules to regulate his activity in the community, yet the primary aim is not to be an instrument of oppression. Its guiding principles are declared and known. They call for the highest consideration for the welfare of man. These require, among other things, that there must at any given time be set laws, recognisable and definitive ; that, fundamentally, these laws shall exist for the good of man in society ; that the subject shall be informed of the extent of his bondage ; and that he shall be free to do or say what he likes, provided that he does not thereby infringe any provision of the declared and accepted laws of the realm.

It is certainly not in the interest of lasting peace and order in the State that the subject shall live in perpetual fear of arbitrary impositions by the Law.

Although it cannot be said with certainty that the motive of law makers has always been to achieve these ends, the result of historical facts tends to establish this trend. Basically, Law makers in parliaments, or other political institutions, have been interested in the acquisition of **power.** In the quest for this power and its retention for the longest possible time, the politician in a democracy becomes involved in a political courtship with the ordinary subject whose vote can make or unmake him. The natural result is the build-up of ideas complementary to the well-being of the

subject, even though these may not at all times be realisable. Thus, the motive becomes one of trying to **please** the subject, not necessarily of **protecting** him. Yet, in the final analysis, the tendency has been towards the achievement of the latter.

Experience has shown, however, that it is not enough to fight for championship of the subject's cause. He must also be given some incentive or encouragement to respect and obey the laws which bind him. The subject is called upon to adjust himself to certain conditions of discipline for the good of himself and others who make up society. To avoid chaos, he must find good cause for forgoing his natural animal freedom. The modern educated man, fortunately, accepts this as part of his civilisation, and an advance from the primitive state of the pre-historic man. There are many good reasons for obeying the law, he says. His pre-occupation today is not the ethics of it, but the study of the benefits he derives from such obdience. Why waste time on ethics when obedience is compulsory in the nature of things ? Obey he must or face unhappy consequences. What is more important for the non-student of legal history, is the examination of two things :

(i) The extent of the right to personal freedom left to the subject, when all 'deprivations' decreed by law have been considered.

(ii) The facilities provided by the law for the protection of this right.

In our age, perhaps more than in any other, the topic of fundamental human rights has received considerable world-wide attention and study. One great climax at the international level was reached with the Universal Declaration of Human Rights adopted by the United Nations General Assembly on December 10, 1948. Since that date, practically every emerging nation has entrenched its provisions into its constitution. Some have merely declared their recognition or adherence. The Constitution of the Federal Republic of Cameroon "proclaims its adherence to the fundamental freedoms written into the Universal Declaration of Human Rigts..!" (Title 1 Article 1). Thus in most countries with written constitutions, it is easy to read out a list of these rights from a document.

In the Nigerian Constitution, for example, a full Chapter is devoted to fundamental rights. It covers topics like deprivation of life, inhuman treatment, slavery and forced labour and deprivation of **personal liberty**. It also makes constitutional provisions for determination of these rights. The chapter also declares certain freedoms, among them those of conscience, expression, peaceful assembly and association, **movement,** and from discrimination. In England, these rights and freedoms are not so clearly written, but their force is no less.

The law of the Constitution, with all its good intentions for the well-being of the subject, cannot guarantee that such rights as personal safety, as freedom from arbitrary arrest, detention or molestation will not in fact be infringed. No known machinery exists in any state for effectively providing such a guarantee. The state would need to impose such restrictions on human activity and movement that life would become unbearable. And this would be merely to ensure that no one goes near enough to another to infringe his rights, for example, to commit assault on the body of that other, or to arrest or detain him unlawfully. This would not only be impractical and unrealistic, but would defeat the very motive of the subject's well-being. Yet the truth remains that unless it is adequately protected and made enforceable, a right or privilege offered by law to an obeying subject would be practically worthless. This brings us to the second consideration. What facilities are provided for the protection of declared rights and freedoms ? The maxim in English Law is **Ubi jus ibi remedium** (that is, where there is a right there is a remedy). The law creates, in other words, a remedy for each right granted.

In English Law, the main types of remedy open to a subject whose personal freedom has been unlawfully infringed are :

1. **The Extra-Judicial :** *Although it can hardly be called a legal remedy, the law recognises the right of a person to self-defence against an assailant ; provided only that he shall use no more force than is necessary to defend himself. Where, for example, a charge is made expressly which does not justify arrest without a warrant, the person charged may rightly resist arrest by a Police Officer or a private person. However, this remedy is not one that is advisable, especially against a police officer. It will be found, for instance, that where the arrest proves, in the final analysis, to be justifiable, any assault committed on the person of a Police Officer in the process of resistance, will be aggravated by reason of the latter being a member of the Police Force.*

It must however be noted that a man may lawfully shoot and kill another or others who imperil his life, if the shooting is the reasonable way of averting such harm. Some authority exists for an extended proposition that a defence of "Self-defence" will succeed where he shoots and kills another who

seeks forcibly to evict him from his dwelling house. An Appeal Court, for instance, in the case of the King v. Hussey in 1925, quashed a conviction for unlawful wounding, where a tenant shot his land-lord through a keyhole, while that land-lord and his friends were seeking forcibly to evict him. The ground for this seems to be that a man cannot be expected to retreat beyond his home !

2. **Judicial remedies :** *While the subject cannot claim his right to the freedoms (especially that of liberty) to be guaranteed or immune from infringement, the right of recourse to the ordinary Courts of the land for redress is an important constitutional safeguard. I shall now endeavour to state what judicial remedies are available against infringement of personal rights.*

(a) **Criminal prosecution for assault :** *Generally speaking, the State's law officers are responsible for criminal prosecution on behalf of society at large, in respect of assault committed by one person on the person of another. Yet a private person so aggrieved may, usually with the Attorney-General's consent, institute criminal proceedings against his assailant for assault. This is very rare today partly because civil proceedings appear to be more rewarding, and partly because (and this appears to be the real reason) the law officers would themselves initiate prosecution on any facts that establish a prima facie case.*

(b) **Civil action :** *(Usually for assault or false imprisonment). The latter term also includes one of which the subject was unaware at the time. It has for instance been held that where a man was asleep in a room, and another locked the door to the room intending to keep him confined without justification, even though he unlocked the door before the former woke up from his slumber, this was false improsonment. Where a detained person has been subjected to criminal prosecution in a Court of law, and this prosecution failed, he may sue for malicious prosecution if he can show that it had been motivated by malice. Thus, this remedy is also available against public officers (e. g. police officers and keepers of mental hospitals).*

(c) **Application for the prerogative writ of habeas corpus :** *I shall examine this in great detail hereafter. At this stage, it may be regarded merely as a means of procurring the immediate release of a person unlawfully detained.*

Certain obvious difficulties attach to most of the remedies listed above. Self-defence is only effective where the defender is in a

position to defend himself. If he is physically weak, for instance, he cannot effectively fight off or repel an aggressor. He may not have a permit or licence to own a gun. He may be plagued with poverty and cannot finance the pursuit of his rights to a finality. He may be detained in custody, unlawfully or injustifiably, the rest of his life and thereby be incapable of pursing his remedies before the Courts. Or he may be detained for such period as may prove disastrous in many ways. This may cause hardship for him personally. The hardship may involve family commitments, thus bringing other innocent persons into unnecessary jeopardy. His business may be unduly and adversely affected. His employment may be lost. His mental health may suffer or be gravely ruined. In cases of malicious detention, for him to remain in custody may in fact promote the evil gratification of the gaoler.

All these exist, notwithstanding the reparation which the Courts are entitled to attempt to make by way of damages at a later stage. The fact is that no amount of damages awarded by a Court can truly and adequately compensate the aggrieved in some of the situations I have mentioned. Mental health may never be fully restored. A man's children may die of hunger or lack of adequate care. His wife may die of heart failure or worry. She may even fall into unhappy temptations which make an otherwise happy marriage unworkable. He may lose all business connections and contracts, and the like. Where detention has been caused by the State's executive or other public officers, an otherwise good and faithful subject may on eventual release, become an embittered sometimes dangerous citizen.

It, therefore, becomes necessary for an unlawful detention not only to be discouraged by legislation, but that its duration should be reduced to the barest minimum possible. This is where the English law has made one of the greatest contributions to human liberty, by the institution of the prerogative process known as **Habeas Corpus ad subjiciendum.** I shall now proceed to examine this unique institution under the Common Law system.

The writ of Habeas Corpus ad subjiciendum

This is usually referred to merely as the writ of Habeas Corpus. A "writ" is simply a written command in the sovereign's (or state's) name, giving a directive to an official or any subject to do or refrain from doing a specified act. "Habeas Corpus" is a Latin expression which means "you may have the body." The writ which commonly bears the name has been described as :

A prerogative process for securing the liberty of the subject by affording effective means of immediate release from unlawful or unjustifiable detention, whether in prison or in private custody. (Halsburys).

It is a command requiring that the body of a person held in the custody of another be brought before a court of competent jurisdiction on a given date. The view is to compel the gaoler to show just cause why the liberty or freedom of movement of that body shall not be restored. In the words of Lord Mansfield (C. J.) in the case of Rex versus Cowle, 1759 :

If any man be imprisoned by another a corpus cum causa (i. e. habeas Corpus) can be granted to those who imprison him, for the King ought to have an account rendered to him concerning the liberty of his subjects, and the restraint thereof.

The principle involved here is to test the legality of the imprisonment or detention. The important consideration is whether he who detains another has jurisdiction or power under the law to detain that other. Even where such jurisdiction clearly exists, the Court would still be entitled to examine further if it has been properly exercised. The word, "properly" used here embraces or means "lawfully," and does not connote a mere disregard of formality. If an improper motive (for example malice) has accompanied a particular exercise, the effect would appear to be that **any act** in that exercise, purporting to be done under such jurisdiction, would be illegal. In other words a gaoler vested with jurisdiction, cannot under it, lawfully perpetrate an act dictated by some improper motive. In respect of that specific exercise the unlawful or improper motive ousts jurisdiction.

The court will not, however, embark on determining substantive questions of guilt, for instance, in criminal causes. If it finds that there is justification or good cause for the detention, the court orders that it shall continue. If, on the other hand, it appears to the court that any man does suffer injury or wrong by his imprisonment, it would order immediate release from the confinement.

The question that at once poses itself concerns the definitions of words like "unlawful" or "unjustifiable." As a general proposition I would say that any detention of the subject is unlawful unless it is authorised by or justifiable under any provision of the known or existing laws of the realm. Thus, unless the law stipulates that a subject's liberty can be curtailed or removed in any given circumstances, deprivation of such liberty, to whatever extent, cannot rightly or lawfully be effected. Even where some provision is made for

curtailment or removal in general terms, English law requires, with only few exceptions, that the resultant imprisonment or detention shall not be for an unreasonably long period. Where a man has been arrested for a specific offence, not only should he be told at the time of arrest what is the nature of the crime, but also, steps should be taken within reasonable time to bring him before a court for justice to be done to him according to the law. To detain him for an unreasonable period would reduce the lawful to the unlawful, and entitle the detainee to a successful application for Habeas Corpus to put an end to it. The question what is 'reasonable' or otherwise is a matter entirely for the court. An arrest purporting to be auhorised by or made under a non-existing law or one that is no longer in force would be a fine example of the unlawful.

A release by the court does not however amount to an acquittal. As I have said, the court in these proceedings is only seised with the question of the legality of detention. In a criminal case, for example, where the court has duly inquired into the circumstances of the detention or imprisonment, it would order either that :

(a) the party be released on bail until trial or

(b) that he be released unconditionally.

Neither of these affects any substantive charge that may subsist or be contemplated against the accused person. The remedy is merely concerned with putting an end to a detention that is, in the eyes of law, unlawful or wrongful, and thus restore freedom and liberty where it is due.

Detention can also occur on civil grounds, for example, under a claim of authority. This is not uncommon in cases involving the disputed custody of infants or young persons. A writ of Habeas Corpus gives the court the right to inquire into the circumstances of the existing custody and to award such custody to the proper person.

In both civil and criminal causes, therefore, the wrongful or illegal detention of a subject is the basis of jurisdiction in Habeas Corpus. In an Indian case (Zarabibi versus Razzak) in 1960, it was said that "the real interest and well-being of the person ought to be not only the determining but the sole consideration." It is to provide the most realistic and most effective remedy for any infringement of the right to liberty which the subject is granted by the constitution.

English Law has often been attacked from outside the Common Law 'empire' for 'protecting criminals unduly'. I can only politely

describe this charge as unjustifiable. By any standards, it is clear that no one can rightly be called a criminal or treated as one until he has been shown to have committed a known offence against the recognised law of the land. Until this is established by proof, the party involved in a charge remains merely a suspect who may or may not be guilty. He remains a respectable subject, entitled to **all** the privileges given by law to **all subjects** within the realm. The State with its laws should exist for the gratification of the subject. It is the child of man's effort and a servant to his endeavours. The welfare of man should be the paramount pre-occupation of the State and the laws it keeps.

The State or its laws cannot claim to be more important, nor is it entitled to presume that the subject is at all times plagued with indignity or vice, until he comes before its courts to establish the contrary. A charge against a subject is , therefore, a very serious thing. It challenges the integrity of the subject, threatens his freedom and places in jeopardy his whole future in society.

The solemn graveness of this calls for the highest standards of conduct and consideration , as well as the strongest sense of value and fairplay on the part of all authorities concerned with the maintenance of law and order. The subject's integrity and innocence must be presumed and upheld, until, in court, reason is provided to justify the contrary. This is the only proper attitude. For man is the supreme element in the making of laws. The law is in fact what he makes it. The law must accordingly respect the dignity of man. When he binds himself with laws, it is to establish an order in which his liberty is ensured. The duty of the State and its laws must be to promote this. His freedoms should not unnecessarily (and unlawfully) be infringed or disturbed. The emphasis is on the words 'unnecessarily' and 'unlawfully.' If it is decreed by law that arrest shall follow a certain act, it is the right of the citizen to be brought as quickly as possible before an appropriate court of law for justice to be done. If justice dictates that he shall lose his life, or his liberty for a given period, then and only then can this be rigthly done. A detention for an indefinite period without trial is considered to be undesirable, because it blocks the quick and effective administration of justice. Only the courts can see that justice is done according to the law. Therefore, if justice is intended to be done at all, those responsible for the maintenance of law and order must encourage the earliest possible arrival at the institution seised with competence to dispense it.

The breath of every honest citizen is the thought of a just law ; a law that promotes his well-being ; a law that protects his inalienable and fundamental rights ; a law repressive only of oppression. When the State with its laws embarks on the disastrous pilgrimage to the oppression of the subject and the liquidation of his fundamental rights, it takes its first step towards self-annihilation.

Recognising the importance of these concepts, English Law has evolved this process of Habeas Corpus as part and parcel of the drive to ensure personal freedom and liberty. Habeas Corpus ad subjiciendum represents the Common Law concept of remedies at its most characteristic and protective. Its aim is not to protect a **criminal,** but to protect the right to which a **subject** is entitled within the judicial jurisdiction.

Against whom is it available ?

The writ of Habeas Corpus has been described as one of such a sovereign and transcendent authority that no privilege of person or place can stand against it (Wilm. 88). Subject to some essential exceptions which I shall deal with hereafter, the writ is available against **any person** who detains another. So far, I have dealt with the straightforward situations involving two subjects, and also involving the Police and subject. The question often asked is whether it is available against the Crown, or the Executive (including Ministers and other State Officials). The answer to this appears to horrify many.

Halsbury's Laws of England (3rd Edition) states the law as follows :

> *In any matter involving the liberty of the subject the action of the Crown or its ministers or officials is subject to the supervision and control of the judges on Habeas Corpus.* (page 25).

The leading case on this is Rex Versus the Governor of Brixton Prison, Ex parte Sarno (1916 2K. B. page 742). There it was held that if it is clear that an act is done by the executive with the intention of misusing its powers, the court has jurisdiction to deal with the matter on an application for a writ of Habeas Corpus, although the custody of the applicant may be technically legal and the point is not strictly before the court, having regard to the form in which the application is made.

From very early times, the writ has been used freely by detainees. This right of the subject was backed by legislation from

time to time. The **Magna Carter** (1215), perhaps the oldest known, laid down the rule that no man should be punished except by the judgement of his peers or the law of the land ; and that to none should justice be denied. **The Petition of Rights** (1628) contained, among other things, protests against arbitrary imprisonment, the use of commissions of martial law in times of peace and the billeting of soldiers upon private persons. These two milestones in English Legal and Constitutional history appear to have provided the basis on which the courts and subsequent legislations have enforced this right. **The Habeas Corpus Act** 1679, dealing with criminal cases, was specifically passed "for the better securing the liberty of the subject."

As early as the reign as Henry VII, the writ was known to have been issued against the Crown itself. In the Stuart period, it was frequently used as a Constitutional remedy in cases of illegal imprisonment by the Crown or the Executive. In the reign of Charles I, the writ was granted on a motion to test the legality of imprisonment which purported to be made "by the special command of His Majesty." The issue arose in the Darnel's Case in 1627. Chief Justice Hyde made the following comment :

> *Whether the commitment be by the King or others this Court is the place where the King doth sit in person, and we have power to examine it ; and if it appears that any man hath injury or wrong by his imprisonment, we have power to deliver and discharge him ; if otherwise he is to be remanded by us to prison again.*

Half a century later (in the Case of Rex versus Browne, Corbet, etc., 1686), the court held that a warrant of commitment issued under the royal sign mannual (that is, under the King's own hand without seal), or under the hand of any Secretary or Officer of State, was bad. The court accordingly discharged the party to safeguard the corpus. Here the judges owe a sacred duty to safeguard the liberty of the subjects within the jurisdiction, no matter how humble or meek, against anyone, no matter how powerful or important. This is irrespective of the status of the subject — be he a citizen or an alien — provided only that he is entilted to resort to the court to secure any rights he may have.

The writ provides a two-fold protection from an arbitrary executive. In the first place the subject must be discharged forthwith if the cause of detention shown is inadequate or unjustified. Secondly, even if such a cause be sufficient or justified, the writ may secure a speedy trial, thus avoiding further detention for an

indefinite or unreasonable period. Alternatively, a remand on bail may be granted. In the words of Dicey :

> *While the Habeas Corpus Act is in force,* **no person** *committed to prison on a charge of crime can be kept long in confinement, for he has the legal means of insisting upon either being let out upon bail, or else of being brought to speedy trial.*

Who may apply for the Writ ?

Apart from the detainee himself, any person on his behalf may obtain the writ. This is a necessary and practical safeguard. The Habeas Corpus Act of 1679 (Section 2) gave this right to any person to liberate another from an illegal imprisonment. There appears, however, to be some limitations to this. There is legal authority for saying that a mere stranger or volunteer, who has no authority to appear on behalf of a prisoner or right to represent him will not be allowed to apply for Habeas Corpus. (R. v. Clarke 1762). There must be some interest, some relationship between the applicant and the detainee. A person who is legally entitled to the custody of another (e. g. a guardian) may invoke the writ in order to regain that custody. Other cases which have been entertained include an application by a husband on behalf of his wife (R. T. Clarke), vice-versa (Cobbett v. Husdon 1850), father on behalf of son (Re Thompson 1860). From Ashby v. White 1704 and Re Daley 1860, it would appear that the right is extended to an agent or friend. (But, it is advisable that Counsel (lawyer) should make the application, as the court as a rule will not allow the applicant to move in person).

A great constitutional safeguard afforded by this writ is the right to apply to one judge or court after another. If one refuses, you have a right to apply to another, until you have gone to all courts having jurisdiction to hear applications. This right was upheld by the Judical Committee of the Privy Council in England, concerning an appeal in a Nigerian case involving a chieftain (see Eshugbayi Eleko versus Governor of Nigeria, 1928). The Chief whose deportation had been ordered, sought to apply for the writ to one judge after another of the High Court of Nigeria. It was held that he had the right this to do, despite the fact that the case had been decided on its merit on each occasion.

Exceptions

Above the liberty of the individual subject is the overall welfare of all subjects in general and the State in particular. A subject's right to choose an occupation may be suspended. He may be com-

pulsorily drawn into the national service in the interest of the nation. Thus, too, where a state of emergency is declared in time of war, if the internment of an alien enemy is considered by the executive to be desirable in the interest of the safety of the realm, and the government thereupon interns such alien enemy, the action of the executive in so doing is not and should not be, open to review by the courts by means of Habeas Corpus. A notice of an intended internment cannot be challenged by the writ either. An enemy who is a prisoner of war cannot avail himself of Habeas Corpus.

The more usual practice today is for a declaration of a state of emergency to be accompanied by granting certain extraordinary powers to the Executive in the interest of security. These powers include those of arrest without warrant, deportation and the like. The exercise of these powers shall not be reviewed by the court by means of a writ of Habeas Corpus. In such cases, the ordinary courts have no jurisdiction. It has been asked whether the Special Courts (including in some cases Military Tribunals) usually set up in times of emergency, have powers to entertain the writ. It would appear that a man detained under an emergency cannot avail himself of the writ anywhere. In England, the old practice in times of war was to pass what was commonly referred to as Habeas Corpus Suspension Acts. These prevented its use even for purposes of procuring speedy trial or bail. This was extended to cases of persons charged with treason and other specified offences. They 'suspended' but did not permanently remove the right to apply for Habeas Corpus ; nor was illegal arrest thereby legalised by the Acts. So, as soon as the suspension was lifted, the subject once again could pursue his normal remedies, including an action for false imprisonment or malicious prosecution. It was thus necessary, and this was the practice, to pass Indemnity Acts at the end of the suspension. These protected the Executive, and those acting under instructions, from the consequences of any incidental illegal acts perpetrated during the suspension.

The practice today in England appears to be for an Act of Parliament to declare a state of emergency, grant wide powers in general terms to the Executive, and legalise in effect any otherwise illegal acts which may be carried out during the emergency. Any detention under such emergency is thus removed from the competence of judicial review.

In criminal cases, Habeas Corpus will not be granted to a person committed for a felony or treason where this is expressed in the warrant of commitment.. It will also be refused to persons

convicted or detained in execution of legal process (e. g. an order of Court) or sentenced after conviction. It will not be granted to a party to a suit, who is in lawful custody, to enable him to appear in court for the purpose of arguing his case in person, unless his appearance is absolutely necessary in the interest of Justice. It was held in a case that if a person is arrested abroad and is brought before a court in England charged with an offence which that court has jurisdiction to hear, the court has no power, once that person is in lawful custody in England, to go into the question of the circumstances in which he may have been brought there. If, however, in military proceedings, there has been such delay in bringing a man to trial as to amount to oppression, the High Court on an application for Habeas Corpus can interfere and admit him to bail. (R. v. Officer Commanding Depot Battalion, R. A. S. C. Colchester, Ex Parte 1949 [1]. The writ will not be issued against any person who is resident outside the jurisdiction ; nor in respect of an alien detained within the jurisdiction in a foreign embassy.

It is also worthy of note that the writ of Habeas Corpus is intended to be used as a remedy only. It must not be employed to gratify punitive ends. If, for instance, custody has in fact ceased before the application is made, the writ will not issue. However, the court would examine the circumstances of such cessation of custody if it is alleged that the release was counterfeited and a pretended ignorance of the new place of custody or the custodian is insisted on. Where a man fraudulently parts with the custody of a child after he had been served with a writ of Habeas Corpus, or evades service of it in order to get rid of such custody, he commits plain contempt of court. In a case where a servant left the services of A and entered that of B, the court held that A could not regain the servant's services indirectly by an application for Habeas Corpus. Thus the writ of Habeas Corpus has its essential limits. It seeks to do no more than frustrate unlawful detention of the subject or to restore custody where it lawfully belongs. It takes its leave in times of emergency or in circumstances in which the greater interest of the security of all supercedes the immediate demands of the individual member for freedom of movement.

Conclusion

I have endeavoured to explain the role of this unique remedy in English Common Law system. In emerging nations, where long experience cannot rightly be claimed, the nationalist governments

1) See also Halsburys at page 35.

which only recently replaced colonial administrations have sought to ensure :

1. *that the injustice and deprivations of human rights which flourished during the colonial era are totally liquidated ;*

and

2. *that the aspects of the colonial administration that were conducive to progress and the well-being of the masses should be retained, and where possible improved.*

As I said earlier on, the Universal Declaration of Human Rights is a standard document accepted by all nations. It states in its preamble that the recognition of the inherent dignity and equal and inalienable rights of all the members of the human family is the foundation of freedom, justice and peace in the world. It recognises further that it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law. Article 3 declares firmly that "Everyone has the right to life, liberty and security of person."

Apart from inserting these ideas into the constitutions of these young nations, the nationalists have at all times declared their determination to fight to achieve human freedom, justice and peace. These declarations seem loudest when the foe is imperialism or the imperialist. In my view, it should be louder still in the great task of national reconstruction.

But declarations are not enough. The greater effort must of necessity be the establishment of institutions capable of converting these ideas into practical reality. One such avenue is the writ of Habeas Corpus. Those who seek to protect the masses from the tyranny and oppression which some colonial masters administered, must find wisdom in the adoption of this writ. It is not enough either, merely to create a right under a constitution. It is more important to create effective remedy against its infringement. For, as I said earlier on, a right is worthless unless there is an effective means of protecting or enforcing it.

The Federal Republic of Cameroon is the greatest political and legal laboratory in Africa. It is in Cameroon that there is a direct confrontation with the problem of fusing two European legal and political systems, and of compromising the cultures on which they are based with the indigenous African culture. The success of the experiment in this Federation would provide an inspiration to African Unity and Pan-Africanism.

No one need condemn a system merely because it is French or English or African ; all of these forces are at work here. In the decades that lie immediately ahead, we shall be involved in the establishment of a system which is unique and workable. It is bound in the nature of things to draw its inspiration from the two great European systems which have influenced our development. It must seriously take into account the African cultural universe in which it is to operate. Here indeed is an opportunity to breathe reality into the lazy dream of the nationalist to create a society in which all shall be entitled to live and grow in freedom and to pursue without undue hindrance any occupation of their choice.

The West Cameroon legal system is the child of the English Common Law. It would appear that there is sufficient authority for saying that the judiciary there recognises the remedy of Habeas Corpus and would enforce it. Before re-unification, this was undoubtedly so. After separation from Nigeria, Section 50 (3) of the Southern Cameroons (Constitution) Order-in-Council 1960 provided inter alia :

> *That the High Court of the Southern Cameroon shall be a superior court of record and . . . shall have all the powers of such a court . . . !"*

These power were the same as those within the competence of the Courts of England and include the right to issue a writ of Habeas Corpus.

After re-unification, the Supreme Court (West Cameroon) Ordinance 61-OF-9 of 16 October 1961, Article 8 (Federal Gazette 1961 at page 18) states as follows :

> **The High Court shall have jurisdiction to hear and determine any application made to it in respect of fundamental human rights and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any rights to which the person who makes the application may be entitled.**

Article 1 of the Federal Constitution "affirms its adherence to the fundamental freedoms set out in the Universal Declarations of Human Rights . . . !"

There is no legislation that specifically prohibits the issue of the writ of Habeas Corpus in West Cameroon, **nor indeed anywhere in the Federation**. In my view, the provisions quoted above guarantee the protection of this remedy, at least in West Cameroon.

With regard to East Cameroon, this remedy is unknown to the judicial system. It is however noteworthy that a reasonable number of legal and judicial officers here know of its existence. I am encouraged by the though that the few with whom I have discussed its application have been enthusiastic about its extension to East Cameroon. I can only hope that this enthusiasm will spread to all who read this article not only in this country but throughout Africa ; especially those to whom this remedy is both foreign and strange.

I would strongly urge all who are, or will be, concerned directly or indirectly with the fusion or reform of the Laws of Cameroon — especially at the federal level — to give this remedy adequate consideration and the chance it deserves.

It would appear that the necessary machinery for its administration already exists in the East Cameroon legal system. The present **Tribunal d'Etat** seised with jurisdiction in matters relating to complaints or charges by individual subjects against the Government, its officials, certain public corporations, etc., is one such ideal judicial institution. At the federal level, the Federal Court of Justice could be saddled with the jurisdiction. In both cases, all that is needed is the creation of this valuable remedy for the subject.

My appeal also goes to the authorities in the non-English speaking states of Africa where this remedy is unknown. It has helped to create order and peace in many nations. It can certainly help to maintain them in our dear Cameroon and elsewhere or to restore them in those lands where there is strife. This is an epoch-making era. The greatest tribute we can pay to this age is an unfailing effort to convert our supreme notions or ideals of fundamental human rights into practical reality. Let us be thankful that we have the privilege of belonging to this eventful age.