

time—by Mr. Sandwell, of Toronto *Saturday Night* in a radio address under the series called "Our Heritage of Freedom", which was conducted some years ago, in which he seemed to take this latter position.

Perhaps in England the peak of this progression to absolutism was reached during the reign of King John. If so, sir, the retrogression from absolutism begins with magna carta on the meadows of Runnymede and rounds down from precedent to precedent until we attain the free institutions of which all British people are so proud.

If there is one thing I wish to emphasize, and to repeat time and time again, in so far as British history is concerned—and British history is largely our history, because we derive many of our institutions from them—the greatest charters and declarations which assert and define our liberties have never been regarded as constructive new law but always as the assertion of ancient rights and privileges. That is a very important thing to remember. Thus, where magna carta asserts the rights of every free man to the lawful judgment of his peers, it is the ancient right of trial by jury which is being asserted there. And trial by jury exists among Anglo-Saxons from early days, but no man has been able to trace its beginning or its origin. Similarly the right of habeas corpus, discussed in this House of Commons a year ago, existed long prior to the passage of the Habeas Corpus Act. There is legislation bearing upon it to the days of the Tudors. Once again there is no historical, documentary record of its origin in British law.

When, therefore, we are confronted with proposals to legislate upon the question of human rights, we may with wisdom and propriety pause to consider whether our efforts are likely to result in the broadening of our rights and privileges, or whether perhaps we shall not blunder into the curtailment of them. Thus, sir, if in some statute or constitutional amendment we undertake to embalm and catalogue all the rights of man, and through oversight we omit just one item, it may be open to the courts to decide that because our bill of rights omits this particular thing, no such right exists. Hence in this country, taking its main traditions from two great nations, with its heritage of freedom largely based and founded upon common law, and with its free democratic political institutions, I suggest that people should scrutinize and analyse closely any proposal to legislate about human rights and fundamental freedoms.

[Mr. Mackenzie.]

Many of the rights and privileges which we prize highly we do not owe to specific statutes. Rather we owe them to the absence of laws which would prohibit them. In my view it is more important that we should think and talk about freedom than that we should pass legislation in regard to it.

One of the great functions of parliament is the scrutinizing of acts of government—and from the activities of my hon. friends opposite in the last three months, I think that task is being most admirably performed. We of the Liberal party who constitute the present government believe intensely in the value of parliament, in which the grievances of the people may be brought to the light of day and analysed and discussed to the end that remedies may be found.

In a generation, sir, in which there has been for countless millions a greater curtailment of freedom than has been experienced since the barbaric empires of old, nothing is more important than that this parliament should be a forum for expounding the principles of freedom, so that men may learn to value them, and be willing to fight and, if need be, to die for them.

Again I come to that famous speech by Field Marshal Smuts on October 17, 1934. These are his words:

The fight for human freedom is indeed the supreme issue of the future, as it has always been in the past. The new dictatorship is nothing but the old tyranny writ large. I fear the new tyranny more than I fear the danger of another great war. Tyranny is infectious. As Burke said: it is a weed which grows in all soils, and it is its nature to spread.

When, however, I warn against possible danger in the impulse to put freedom in a straitjacket by seeking to define it in words, I do not necessarily subscribe to the proposition that the present state of the law is perfect.

We had a distinguished Conservative parliamentarian here a few years ago—many of my colleagues will remember him—in the person of C. H. Cahan, who was a brilliant constitutional lawyer, although a profound philosophic pessimist. He made a most remarkable address in the series of broadcasts known as "Our Heritage of Freedom", one paragraph of which was in these words:

Law has been contemptuously called the governing of the living by the dead. But we can never escape from our historic continuity with the past. It is inevitable that the past should govern the present; but the present is only the passing moment, and each succeeding generation makes its own contribution, however meagre, to the living growth of law.