He is elected, as I have already said, for the brief term of four years, and is made personally responsible, by impeachment, for malfeasance in office. He is from necessity and the nature of his duties the commander-in-chief of the army and navy, and of the militia, when called into actual service. But no appropriation for the support of the army can be made by Congress for a longer term than two years; so that it is in the power of the succeeding House of Representatives to withhold the appropriation for its support, and thus disband it, if in their judgment the President used or designed to use it for improper purposes. And although the militia, when in actual service, are under his command, yet the appointment of the officers is reserved to the States, as a security against the use of the military power for purposes dangerous to the liberties of the people or the rights of the States.

So, too, his powers in relation to the civil duties and authority necessarily conferred on him are carefully restricted, as well as those belonging to his military character. He cannot appoint the ordinary officers of government, nor make a treaty with a foreign nation or Indian tribe, without the advice and consent of the Senate, and cannot appoint even inferior officers, unless he is authorized by an act of Congress to do so. He is not empowered to arrest any one charged with an offence against the United States, and whom he may, from the evidence before him, believe to be guilty; nor can he authorize any officer, civil or military, to exercise this power; for the 5th article of the amendments to the constitution expressly provides that no person "shall be deprived of life, liberty or property, without due process of law"—that is, judicial process.

And even if the privilege of the writ of *habeas aorpus* were suspended by act of Congress, and a party not subject to the rules and articles of war was afterwards arrested and imprisoned by regular judicial process, he could not be detained in prison or brought to trial before a military tribunal; for the article in the amendments to the constitution immediately following the one above referred to—that is, the 6th article—provides that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence."

And the only power, therefore, which the President possesses, where the "life, liberty and 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 shall 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, as they are expounded and adjudged by the co ordinate branch of the government to which that duty is assigned by the constitution. It is thus made his duty to come in aid of the judicial authority, if it shall be resisted by a force too strong to be overcome without the assistance of the executive arm; but in exercising this power, he acts in subordination to judicial authority, assisting it to execute its process and enforce its judgments.

With such provisions in the constitution, expressed in language too clear to be misunderstood by any one, 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 privileges 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. Nor can any argument be drawn from the nature of sovereignty, or the necessity of government, for self-defence in times of tumult and danger. The government of the United States is one of delegated and limited powers. It derives its existence and authority altogether from the constitution, and neither of its branches, executive, legislative or judicial, can exercise any of the powers of government beyond those specified and granted: for the 10th article of the Amendments to the Constitution in express terms provides that "the powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Indeed the security against imprisonment by executive authority provided for in the 5th article of the Amendments to the Constitution, which I have before quoted, is nothing more than a copy of a like provision in the English constitution, which had been firmly established before the declaration of independence.

Blackstone, in his Commentaries (1st vol., 133) states it in the following words:

"To make imprisonment lawful, it must be either by process of law from the courts of judicature, or by warrant from some legal officer having authority to commit to prison." And the people of the United Colonies, who had themselves lived under its protection while they were British subjects, were well aware of the necessity of this safeguard for their personal liberty. And no one can believe that in framing a government intended to guard still more efficiently the rights and liberties of the citizen against executive encroachment and oppression, they would have conferred on the President a power which the history of England had proved to be dangerous and oppressive in the hands of the crown, and which the people of England had compelled it to surrender, after a long and obstinate struggle on the part of the English Executive to usurp and retain it.

The right of the subject to the benefit of the writ of *habeas corpus*, it must be recollected, was one of the great points in controversy during the long struggle in England between arbitrary government and free institutions, and must therefore have strongly attracted the attention of the statesmen engaged in framing a new and as they supposed a freer government than the one which they had thrown off by the revolution. For from the earliest history of the common law, if a person were imprisoned, no matter by what authority, he had a right to the writ of *habeas corpus* to bring his case before the King's Bench; and if no specific offence was charged against him in the warrant of commitment, he was entitled to be forthwith discharged; and if an offence was charged which was bailable in its character, the court was bound to set him at liberty on bail. And the most exciting contests between the crown and the people of England, from the time of Magna Charta, were in relation to the privilege of this writ; and they continued until the passage of the statute of 31st Chas. II, commonly known as the great *Habeas Corpus* Act.

This statute put an end to the struggle, and finally and firmly secured the liberty of the subject against the usurpation and oppression of the executive branch of the government. It nevertheless conferred no new right upon the subject, but only secured a right already existing; for, although the right could not justly be denied, there was often no effectual remedy against its violation. Until the statute 13th Wm. III., the judges held their offices at the pleasure of the king, and the influence which he exercised over timid, time-serving and partizan judges, often induced them, upon some pretext or other, to refuse to discharge the party, although entitled by law to his discharge, or delayed their decisions from time to time, so as to prolong the imprisonment of persons who were obnoxious to the king for their political opinions, or had incurred his resentment in any other way.

The great and inestimable value of the *Habeas Corpus* Act of the 31st Chas. II., is, that it contains provisions which compel courts and judges, and all parties concerned, to perform their duties promptly, in the manner specified in the statute.

A passage in Blackstone's Commentaries, showing the ancient state of the law on this subject, and the abuses which were practised through the power and influence of the crown, and a short extract from Hallam's Constitutional History, stating the circumstances which gave rise to the passage of this statute, explain briefly but fully all that is material to this subject.

Blackstone, in his Commentaries on the Laws of England (3rd vol., 133, 134), says:

"To assert an absolute exemption from imprisonment in all cases, is inconsistent with every idea of law and political society, and in the end would destroy all civil liberty, by rendering its protection impossible.