



“A Reply to Horace Binney’s Pamphlet on Habeas Corpus” by “A member of the Phila. Bar”
Phila., 1862

Page 39 The Constitution, assuming that the privilege of the Writ of Habeas Corpus shall exist complete and universal, and thus authorizing it, authorizes it to be suspended on certain conditions. The method of ascertaining doubtful powers of our government, by recurring to the source whence most of its principles have drawn, may be truthfully employed in the present case. This leads to the conclusion that Legislature was intended to possess the power over the privilege of the Writ, and that, even assuming that English analogy is excluded, the Legislature would have invested with the power on original grounds: that the distinctions attempted to be drawn by Mr. Binney, either do not exist, or if they do, that they do not affect the analogy: that the phrase “suspending the privilege” is perfectly applicable to the Legislature: that the history and position of the clause, and the authority and opinion, both judicial and popular, are on the side of Congress: that the language of the exception was not intended to designate the department of the government which was to exercise the power; and that if it was, the Legislature is the safest and most capable, and therefore the most proper depository of the power.