



THE ORATION

DELIVERED BY
SIR DEREK OULTON GCB, QC
IN THE COLLEGE HALL ON THE OCCASION OF
THE PEPYS COMMEMORATION 23TH FEBRUARY 2007

MASTER, FELLOWS, MEMBERS OF THE COLLEGE AND VERY WELCOME GUESTS

It's my privilege on this special evening to talk to you for a little while about someone who came from humble beginnings and rose to being held in high regard by ministers, only to fall from grace and to be imprisoned in the Tower. He was released, and again worked his way back into favour. Twice when he was up here at Cambridge, and again when he was serving the Navy, he found himself in trouble. Dropping my voice at this point, I'm sorry to have to say that he was accused of unnatural vice. Borrowing from Dryden, a writer describing his appearance has said

*'His long chin proved his wit; his saint-like grace,
A church vermilion and a Moses face.'*

The man of whom I'm talking wasn't of course the hero of this evening's eponymous dinner, though his machinations bid fair to bring that hero down. He was, it has been said, *'a bull-necked, bow-legged young man who three times changed his religion, was expelled from both school and university and was a congenital perjurer.'* Titus Oates.

In October 1678 an unpleasant murder took place. Sir Edmund Godfrey, a popular magistrate, was discovered in a ditch at the foot of Primrose Hill, run through with his own sword. By that evening it was being rumoured all round the town that he'd been murdered by Papists. The Catholics responded that he'd clearly committed suicide but how, the triumphant Protestants asked, could he have run a sword through himself after he was dead because, as has been said, it *'passed through his body as dry as a butcher's knife through a well-hung carcass'*. And (a nice touch) how could he have got himself to so obscure and dirty a spot as Primrose Hill with his shoes untouched by mud and clearly only recently polished? Panic built, and some Catholic widows, desperate to protect themselves, went to extreme lengths. They married Protestant widowers. Macaulay described the state of affairs with his usual hyperbole. *'The capital and the whole nation went mad with hatred*

and fear. The corpse of the murdered magistrate was exhibited during several days to the gaze of great multitudes, and was then committed to the grave with strange and terrible ceremonies.'

The aftermath of that murder was to give Pepys the most worrying time of his life. In the month before it occurred, Titus Oates had approached Godfrey, claiming that he had proof of a plot to assassinate the King and to replace him with his Catholic brother, the future James II. All the leading Protestants would then be killed. Despite his unconvincing evidence he was believed, and numerous prosecutions and convictions followed. When Godfrey was murdered Oates exploited it to launch a public campaign against '*the Papists*'. A remarkably unattractive character, at the time of the Popish Plot Oates was described as having a face of a rainbow colour, with the rest of his body black. And also that '*his off hind leg is somewhat shorter than the other*'. A curious description, which makes him sound like a quadruped. The news of Godfrey's murder was instantly sensational and chilling, and a hunt began for the murderer. Orders went out to the ports to watch for a fleeing Jesuit assassin. A report from Gravesend came back, admitting the escape of a man, who for some strange reason took as an alias the name of Godfrey, who fitted the bill perfectly. That report landed on Samuel Pepys's desk. With his customary energy he immediately fired off letters by express to try to apprehend the man, but 'Godfrey' was too good at the game and successfully escaped. When he learned what Pepys had tried to do he became a most dangerous enemy.

As the effects of Oates's accusations and rumours built up, Pepys was accused in Parliament of Catholicism. The attack on him began with the arrest on false evidence of one of his clerks, Samuel Atkins, who was charged with being an accessory to Godfrey's murder, but Pepys moved with his usual speed and efficiency and proved that Atkins had a complete alibi. He was acquitted, but three others were hanged. Pepys himself was then attacked, principally by someone who became the arch-villain in his life, a crook calling himself Colonel John Scott. Scott was in fact the 'Godfrey' who had escaped at Gravesend, and who all his life had a bitter grudge against Pepys for trying to get him arrested. The whole story is fascinatingly told in a book entitled *The Plot against Pepys* by James and Ben Long, which Faber are publishing this August, and which shows Scott to have been a first-order con man. On 20th May 1679 he stepped forward to the bar of the House of Lords and said that Pepys was a traitor, accusing him of having supplied maps and information about the fleet to the French government. Pepys was forced to resign as Secretary to the Admiralty and was committed to the Tower. From there he was moved to the King's Bench and faced trial on a capital charge. After considerable delays, during which he worked with tremendous energy gathering evidence for his defence, he appeared before the court.

Because in the end it petered out inconclusively, it's easy to treat Pepys's trial as no more than a fairly minor interruption in a successful career – just an unfortunate

brush with the law. It was very far from being that. Make no mistake, Pepys was in deadly peril of his life, and only good fortune and his energy and abilities saved him from the horrors of being drawn to Tyburn and there hanged and quartered. There was then no presumption of innocence (very much the reverse in a prosecution for treason), and no Court of Criminal Appeal to act as a safeguard against an unjust conviction. Many innocent people were put to death and many more were unjustly imprisoned and unfairly treated. And as Macaulay put it, *'From all the brothels, gambling houses and spunging houses of London, false witnesses poured forth'*.

Fortunately for Pepys, the Attorney General appearing for the prosecution had only the corrupt Scott on whom to rely, and he lacked the second witness that by law he needed to draw up an indictment against Pepys. In the meantime, however, he was determined to prevent him from going free. Pepys's best hope of winning back his freedom was the *Habeas Corpus Act*. *Habeas corpus* was and is the old writ which acts as a key safeguard against arbitrary imprisonment. It allowed any imprisoned person to demand an appearance in court, and compelled the gaoler to bring him to court and give reasons for the imprisonment. If these were insufficient the prisoner had to be released. Moreover, and of vital concern to Pepys, a prisoner couldn't be detained indefinitely. After two terms without trial he had to be released. It was habeas corpus that was used in 1891 to bring about the release from the Spinning House of the famous Daisy Hopkins, who'd been incarcerated there by the Vice-Chancellor for her presumption in *'walking with a member of the university'*, which was not an offence known to the law. That, in a borrowed phrase of Denis Murphy's describing the incident, was when the Cambridge streets were *'dark with something more than night.'* And much more dramatically, it was issued in 1771 to secure the release of the slave James Somerset from a ship in the Thames, when Chief Justice Mansfield after much prevarication memorably said *'the black must be discharged'*.

The old writ suffered from a number of defects, but in 1679, just in time for Pepys as it turned out, Parliament passed the *Habeas Corpus Amendment Act* to block these holes. But it only became law through a hilarious piece of horseplay. A similar measure had been rejected by the Lords ten years before and there was every likelihood that the current Bill would suffer the same fate. Lord Grey, who was teller for the Whigs who were promoting it, was noting down the number of the individual Lords as they came past him. He suddenly saw, waddling with considerable difficulty down the division lobby towards him, an enormously fat peer. Instead of writing One on the division list, as he'd done for each of the other peers who had passed him, in a moment of complete mischief, he wrote the figure Ten. And then, seeing that the other teller hadn't noticed anything amiss, he kept his miscount and by a few votes the Bill just became law. That Act has since been widely copied round the world and has rightly been regarded as a bedrock of freedom.

The Attorney General was determined to bring Pepys down, and took several technical points against him on the *Habeas Corpus Act*, but Pepys with his quick wits was able each time to rebut him. On a final point the Attorney was supported by two of the justices, who were clearly hostile to Pepys. But very surprisingly the Chief Justice, Sir William Scroggs, a man with an evil reputation for injustice in Popish Plot trials, came to his aid and held that he was entitled by *habeas corpus* to his liberty if, as was the case, he hadn't been tried within a given time. Pepys walked out of court with a light step, and with characteristic insouciance celebrated by going to see the play *She Would If She Could*. Finally in June 1680 the Attorney General was unable to produce any evidence against Pepys and he was discharged.

Thoroughly unsatisfactory though it was, the trial I suggest demonstrated three things. First, as any lawyer would continue to emphasise today, the great strength and importance of the old writ of *habeas corpus*. Secondly, the vital need for an independent judiciary. Thirdly, Pepys's amazing intellectual skill and his calm courage when successfully defending himself in a hostile and unfamiliar environment

Over our six centuries, many remarkable men and women, some famous and some infamous, have walked through First Court, and what they've said and done has often held and impressed our minds. But only one, who has given his name to Second Court, truly holds our hearts. That lovable, wayward, women-loving, music-loving diarist of genius. I admiringly ask you to rise and drink our traditional toast to **THE IMMORTAL MEMORY OF SAMUEL PEPYS**.