

Habeas corpus

From Wikipedia, the free encyclopedia

Habeas corpus (/ˈheɪbiəs ˈkɔːrpəs/ (listen)); from Medieval Latin, lit. 'that you have the body')^[1] is a recourse in law through which a person can report an unlawful detention or imprisonment to a court and request that the court order the custodian of the person, usually a prison official, to bring the prisoner to court, to determine whether the detention is lawful.

The writ of *habeas corpus* was described in the eighteenth century by William Blackstone as a "great and efficacious writ in all manner of illegal confinement".^[2] It is a summons with the force of a court order; it is addressed to the custodian (a prison official, for example) and demands that a prisoner be brought before the court, and that the custodian present proof of authority, allowing the court to determine whether the custodian has lawful authority to detain the prisoner. If the custodian is acting beyond their authority, then the prisoner must be released. Any prisoner, or another person acting on their behalf, may petition the court, or a judge, for a writ of *habeas corpus*. One reason for the writ to be sought by a person other than the prisoner is that the detainee might be held incommunicado. Most civil law jurisdictions provide a similar remedy for those unlawfully detained, but this is not always called *habeas corpus*.^[3] For example, in some Spanish-speaking nations, the equivalent remedy for unlawful imprisonment is the *amparo de libertad* ("protection of freedom").

Habeas corpus has certain limitations. Though a writ of right, it is not a writ of course.^[note 1] It is technically only a procedural remedy; it is a guarantee against any detention that is forbidden by law, but it does not necessarily protect other rights, such as the entitlement to a fair trial. So if an imposition such as internment without trial is permitted by the law, then *habeas corpus* may not be a useful remedy. In some countries, the writ has been temporarily or permanently suspended under the pretext of a war or state of emergency, for example by Abraham Lincoln during the American Civil War (see Habeas Corpus Suspension Act (1863)) and in England in 1795

The right to petition for a writ of *habeas corpus* has nonetheless long been celebrated as the most efficient safeguard of the liberty of the subject. The jurist Albert Venn Dicey wrote that the British Habeas Corpus Acts "declare no principle and define no rights, but they are for practical purposes worth a hundred constitutional articles guaranteeing individual liberty".^[4]

The writ of *habeas corpus* is one of what are called the "extraordinary", "common law", or "prerogative writs", which were historically issued by the English courts in the name of the monarch to control inferior courts and public authorities within the kingdom. The most common of the other such prerogative writs are *quo warranto*, *prohibito*, *mandamus*, *procedendo*, and *certiorari*. The due process for such petitions is not simply civil or criminal, because they incorporate the presumption of non-authority. The official who is the respondent must prove their authority to do or not do something. Failing this, the court must decide for the petitioner, who may be any person, not just an interested party. This differs from a motion in a civil process in which the movant must have standing, and bears the burden of proof.

Etymology

The phrase is from the Latin *habeās*, 2nd person singular present subjunctive active of *habēre*, "to have", "to hold"; and *corpus*, accusative singular of *corpus*, "body". In reference to more than one person, the phrase is *habeas corpora*.

Literally, the phrase means "[we command] that you should have the [detainee's] body [brought to court]"; that is, that the detainee be brought to court in person. The complete phrase *habeas corpus [coram nobis] ad subjiciendum* means "that you have the person [before us] for the purpose of subjecting (the case to examination)". These are words of writs included in a 14th-century Anglo-French document requiring a person to be brought before a court or judge, especially to determine if that person is being legally detained.^[5]

*Praecipimus tibi quod **corpus** A.B. in prisona nostra sub custodia tua detentum, ut dicitur, una cum die et causa captionis et detentionis suae, quocumque nomine praedictus A.B. censeatur in eadem, **habeas** coram nobis ... ad subjiciendum et recipiendum ea quae curia nostra de eo adtunc et ibidem ordinare contigerit in hac parte. Et hoc nullatenus omittatis periculo incumbente. Et habeas ibi hoc breve.*^[6]

We command you, that the **body** of A.B. in our prison under your custody detained, as it is said, together with the day and cause of his taking and detention, by whatever name the said A.B. may be known therein, **you have** at our Court ... to undergo and to receive that which our Court shall then and there consider and order in that behalf. Hereof in no way fail, at your peril. And have you then there this writ.^[6]

Examples

United Kingdom of Great Britain and Northern Ireland

Victoria by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith,

To J.K., Keeper of our Gaol, in the Island of Jersey, and to J.C. Viscount of said Island, Greeting.

We command you that you have the body of C.C.W. detained in our prison under your custody, as it is said, together with the day and cause of his being taken and detained, by whatsoever name he may be called or known, in our Court before us, at Westminster, on the 18th day of January next, to undergo and receive all and singular such matters and things which our said Court shall then and there consider of in this behalf; and have there then this Writ.^[7]

United States of America

United States of America, Second Judicial Circuit, Southern District of New York, ss.: We command you that the body of Charles L. Craig, in your custody detained, as it is said, together with the day and cause of his caption and detention, you safely have before Honorable Martin T. Manton, United States Circuit Judge for the Second Judicial Circuit, within the circuit and district aforesaid, to do and receive all and singular those things which the said judge shall then and there consider of him in this behalf; and have you then and there this writ.

Similarly named writs

The full name of the writ is often used to distinguish it from similar ancient writs, also named *habeas corpus*. These include:

- *Habeas corpus ad deliberandum et recipiendum*: a writ for bringing an accused from a different county into a court in the place where a crime had been committed for purposes of trial, or more literally to return holding the body for purposes of "deliberation and receipt" of a decision. ("Extradition")
- *Habeas corpus ad faciendum et recipiendum* (also called *habeas corpus cum causa*): a writ of a superior court to a custodian to return with the body being held by the order of a lower court "with reasons", for the purpose of "receiving" the decision of the superior court and of "doing" what it ordered.
- *Habeas corpus ad prosequendum*: a writ ordering return with a prisoner for the purpose of "prosecuting" him before the court.
- *Habeas corpus ad respondendum*: a writ ordering return to allow the prisoner to "answer" to new proceedings before the court.
- *Habeas corpus ad testificandum*: a writ ordering return with the body of a prisoner for the purposes of "testifying".

Origins in England

Habeas corpus originally stems from the Assize of Clarendon of 1166, a re-issuance of rights during the reign of Henry II of England in the 12th century.^[8] The foundations for *habeas corpus* are "wrongly thought" to have originated in Magna Carta, but in fact predates it.^[9] This charter declared that:

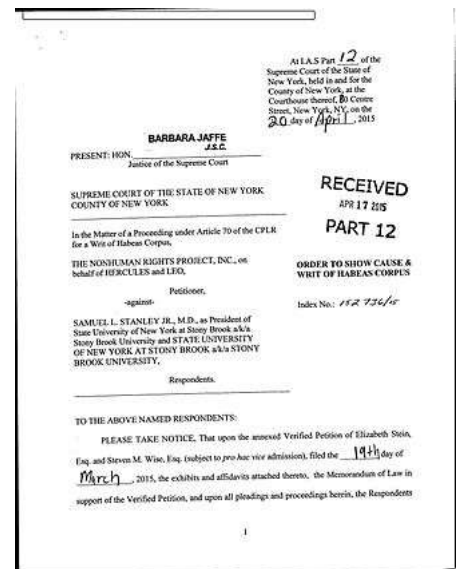
No Freeman shall be taken or imprisoned, or be disseized of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any other wise destroyed; nor will We not pass upon him, nor condemn him, but by lawful judgment of his Peers, or by the Law of the land.

However the preceding article of Magna Carta, nr 38, declares:

No legal officer shall start proceedings against anyone [*not just freemen, this was even then a universal human right*] on his own mere say-so, without reliable witnesses having been brought for the purpose.

- in the original Latin:

Nullus balivus ponat aliquem ad legem, simplici sua loquela, sine testibus fidelibus ad hoc aductis^[8]



writ of habeas corpus

Pursuant to that language, a person may not be subjected to any legal proceeding, such as arrest and imprisonment, without sufficient evidence having already been collected to show that there is a *prima facie* case to answer. This evidence must be collected beforehand, because it must be available to be exhibited in a public hearing within hours, or at the most days, after arrest, not months or longer as may happen in other jurisdictions that apply Napoleonic-inquisitorial criminal laws where evidence is commonly sought after a suspect's incarceration. Any charge levelled at the hearing thus must be based on evidence already collected, and an arrest and incarceration order is not lawful if not supported by sufficient evidence.

In contrast with the common law approach, consider the case of *Luciano Ferrari-Bravo v. Italy*^[10] the European Court of Human Rights ruled that "detention is intended to facilitate ... the preliminary investigation". Ferrari-Bravo sought relief after nearly five years of preventive detention, and his application was rejected. The European Court of Human Rights deemed the five-year detention to be "reasonable" under Article 6 of the European Convention on Human Rights, which provides that a prisoner has a right to a public hearing before an impartial tribunal within a "reasonable" time after arrest. After his eventual trial, the evidence against Ferrari-Bravo was deemed insufficient and he was found not guilty.

William Blackstone cites the first recorded usage of *habeas corpus ad subjiciendum* in 1305, during the reign of King Edward I. However, other writs were issued with the same effect as early as the reign of Henry II in the 12th century. Blackstone explained the basis of the writ, saying "[t]he king is at all times entitled to have an account, why the liberty of any of his subjects is restrained, wherever that restraint may be inflicted."^[12] The procedure for issuing a writ of *habeas corpus* was first codified by the Habeas Corpus Act 1679, following judicial rulings which had restricted the effectiveness of the writ. A previous law (the Habeas Corpus Act 1640) had been passed forty years earlier to overturn a ruling that the command of the King was a sufficient answer to a petition of *habeas corpus*.^{[13][14]} The cornerstone purpose of the *writ of habeas corpus* was to limit the King's Chancery's ability to undermine the surety of law by allowing courts of justice decisions to be overturned in favor and application of *equity*, a process managed by the Chancellor (a bishop) with the King's authority.^[15]

The 1679 codification of *habeas corpus* took place in the context of a sharp confrontation between King Charles II and Parliament, which was dominated by the then sharply oppositional, nascent Whig Party. The Whig leaders had good reasons to fear the King moving against them through the courts (as indeed happened in 1681) and regarded *habeas corpus* as safeguarding their own persons. The short-lived Parliament which made this enactment came to be known as the Habeas Corpus Parliament – being dissolved by the King immediately afterwards.

Then, as now, the writ of *habeas corpus* was issued by a superior court in the name of the Sovereign, and commanded the addressee (a lower court, sheriff, or private subject) to produce the prisoner before the royal courts of law. A *habeas corpus* petition could be made by the prisoner him or herself or by a third party on his or her behalf and, as a result of the Habeas Corpus Acts, could be made regardless of whether the court was in session, by presenting the petition to a judge. Since the 18th century the writ has also been used in cases of unlawful detention by private individuals, most famously in Somerset's Case (1772), where the black slave, Somerset, was ordered to be freed.^[16] During that case, these famous words are said to have been uttered: "... that the air of England was too pure for slavery"^[17] (although it was the lawyers in argument who expressly used this phrase – referenced from a much earlier argument heard in The Star Chamber – and not Lord Mansfield himself). During the Seven Years' War and later conflicts, the Writ was used on behalf of soldiers and sailors pressed into military and naval service.^[18] The Habeas Corpus Act 1816 introduced some changes and expanded the territoriality of the legislation.

The privilege of *habeas corpus* has been suspended or restricted several times during English history, most recently during the 18th and 19th centuries. Although internment without trial has been authorised by statute since that time, for example during the two World Wars and the Troubles in Northern Ireland, the *habeas corpus* procedure has in modern times always technically remained available to such internees. However, as *habeas corpus* is only a procedural device to examine the lawfulness of a prisoner's detention, so long as the detention is in accordance with an Act of Parliament, the petition for *habeas corpus* is unsuccessful. Since the passage of the Human Rights Act 1998, the courts have been able to declare an Act of Parliament to be incompatible with the European Convention on Human Rights, but such a declaration of incompatibility has no legal effect unless and until it is acted upon by the government.^[19]

The wording of the writ of *habeas corpus* implies that the prisoner is brought to the court for the legality of the imprisonment to be examined. However, rather than issuing the writ immediately and waiting for the return of the writ by the custodian, modern practice in England is for the original application to be followed by a hearing with both parties present to decide the legality of the detention, without any writ being issued. If the detention is held to be unlawful, the prisoner can usually then be released or bailed by order of the court without having to be produced before it. With the development of modern public law, applications for *habeas corpus* have been to some extent discouraged, in favour of applications for judicial review.^[20] The writ, however, maintains its vigour, and was held by the UK Supreme Court in 2012 to be available in respect of a prisoner captured by British forces in Afghanistan, albeit that the Secretary of State made a valid return to the writ justifying the detention of the claimant.^[21]

Precedents in medieval Catalonia and Biscay

Although the first recorded historical references come from Anglo-Saxon law in the 12th century and one of the first documents referring to this right is a law of the English Parliament (1679), in Catalonia there are references from 1428 in the *recurs de manifestació de persones* (appeal of people's manifestation) collected in the *Furs de les Corts* of the Crown of Aragon and some references to this term in the Law of the Lordship of Biscay (1527).

Other jurisdictions

Australia

The writ of *habeas corpus* as a procedural remedy is part of Australia's English law inheritance.^[22] In 2005, the Australian parliament passed the Australian Anti-Terrorism Act 2005. Some legal experts questioned the constitutionality of the act, due in part to limitations it placed on *habeas corpus*.^{[23][24][25]}

Canada

Habeas corpus rights are part of the British legal tradition inherited by Canada. The rights exist in the common law and have been enshrined in section 10(c) of the *Charter of Rights and Freedoms*, which states that "[e]veryone has the right on arrest or detention ... to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful".^[26] The test for *habeas corpus* in Canada was established by the Supreme Court of Canada in *Mission Institution v Khela*,^[27] as follows:

To be successful, an application for *habeas corpus* must satisfy the following criteria. First, the applicant [i.e., the person seeking *habeas corpus* review] must establish that he or she has been deprived of liberty. Once a deprivation of liberty is proven, the applicant must raise a legitimate ground upon which to question its legality. If the applicant has raised such a ground, the onus shifts to the respondent authorities [i.e., the person or institution detaining the applicant] to show that the deprivation of liberty was lawful.^[28]

Suspension of the writ in Canadian history occurred at multiple times. During the October Crisis in 1970, the War Measures Act was invoked by the Governor General of Canada on the constitutional advice of Prime Minister Pierre Trudeau, who had received a request from the Quebec Cabinet.^[29] The Act was also used to justify German, Slavic, and Ukrainian Canadian internment during the First World War, and the internment of German-Canadians, Italian-Canadians and Japanese-Canadians during the Second World War. The writ was suspended for several years following the Battle of Fort Erie (1866) during the Fenian Rising, though the suspension was only ever applied to suspects in the Thomas D'Arcy McGee assassination.^[30]

The writ is available where there is no other adequate remedy. However, a superior court always has the discretion to grant the writ even in the face of an alternative remedy (see *May v Ferndale Institution*).^[31] Under the Criminal Code the writ is largely unavailable if a statutory right of appeal exists, whether or not this right has been exercised.

France

As a fundamental human right in the 1789 Declaration of the Rights of Man and of the Citizen drafted by Lafayette in cooperation with Thomas Jefferson,^[32] safeguards against arbitrary detention are enshrined in the French Constitution and regulated by the Penal Code. These safeguards are equivalent to those found under the Habeas-Corpus provisions found in Germany, the United States and several Commonwealth countries. The French system of accountability prescribes severe penalties for ministers, police officers and civil and judiciary authorities who either violate or fail to enforce the law.

Article 7 of [1789] Declaration also provides that "No individual may be accused, arrested, or detained except where the law so prescribes, and in accordance with the procedure it has laid down." ... The Constitution further states that "No one may be arbitrarily detained. The judicial authority, guardian of individual liberty, ensures the observance of this principle under the condition specified by law." Its article 5 provides that everyone has the right to liberty and sets forth permissible circumstances under which people may be deprived of their liberty and procedural safeguards in case of detention. In particular, it states that "anyone deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful".^[33]

France and the United States played a synergistic role in the international team, led by Eleanor Roosevelt, which crafted the Universal Declaration of Human Rights. The French judge and Nobel Peace Laureate René Cassin produced the first draft^{[34][35]} and argued against arbitrary

detentions. René Cassin and the French team subsequently championed the *habeas corpus* provisions enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms.^[36]

Germany

Germany has constitutional guarantees against improper detention and these have been implemented in statutory law in a manner that can be considered as equivalent to writs of *habeas corpus*.

Article 104, paragraph 1 of the Basic Law for the Federal Republic of Germany provides that deprivations of liberty may be imposed only on the basis of a specific enabling statute that also must include procedural rules. Article 104, paragraph 2 requires that any arrested individual be brought before a judge by the end of the day following the day of the arrest. For those detained as criminal suspects, article 104, paragraph 3 specifically requires that the judge must grant a hearing to the suspect in order to rule on the detention.

Restrictions on the power of the authorities to arrest and detain individuals also emanate from article 2 paragraph 2 of the Basic Law which guarantees liberty and requires a statutory authorization for any deprivation of liberty. In addition, several other articles of the Basic Law have a bearing on the issue. The most important of these are article 19, which generally requires a statutory basis for any infringements of the fundamental rights guaranteed by the Basic Law while also guaranteeing judicial review; article 20, paragraph 3, which guarantees the rule of law; and article 3 which guarantees equality.

In particular, a constitutional obligation to grant remedies for improper detention is required by article 19, paragraph 4 of the Basic Law, which provides as follows: "Should any person's right be violated by public authority, he may have recourse to the courts. If no other jurisdiction has been established, recourse shall be to the ordinary courts."^[37]

India

The Indian judiciary, in a catena of cases, has effectively resorted to the writ of *habeas corpus* to secure release of a person from illegal detention.^[38] For example, in October 2009, the Karnataka High Court heard a *habeas corpus* petition filed by the parents of a girl who married a Muslim boy from Kannur district and was allegedly confined in a *madrassa* in Malapuram town.^[39] Usually, in most other jurisdictions, the writ is directed at police authorities. The extension to non-state authorities has its grounds in two cases: the 1898 Queen's Bench case of *Ex Parte Daisy Hopkins*, wherein the Proctor of Cambridge University did detain and arrest Hopkins without his jurisdiction, and Hopkins was released,^[40] and that of *Somerset v Stewart*, in which an African slave whose master had moved to London was freed by action of the writ.

The Indian judiciary has dispensed with the traditional doctrine of *locus standi*, so that if a detained person is not in a position to file a petition, it can be moved on his behalf by any other person. The scope of *habeas* relief has expanded in recent times by actions of the Indian judiciary.^[41]

In 1976, the *habeas writ* was used in the Rajan case, a student victim of torture in local police custody during the nationwide Emergency in India. On 12 March 2014, Subrata Roy's counsel approached the Chief Justice moving a *habeas corpus* petition. It was also filed by the Panthers Party to protest the imprisonment of Anna Hazare, a social activist.

Ireland

In the Republic of Ireland, the writ of *habeas corpus* is available at common law and under the Habeas Corpus Acts of 1782 and 1816.

A remedy equivalent to *habeas corpus* is also guaranteed by Article 40 of the 1937 constitution. The article guarantees that "no citizen shall be deprived of his personal liberty save in accordance with law" and outlines a specific procedure for the High Court to enquire into the lawfulness of any person's detention. It does not mention the Latin term *habeas corpus*, but includes the English phrase "produce the body".

Article 40.4.2° provides that a prisoner, or anyone acting on his behalf, may make a complaint to the High Court (or to any High Court judge) of unlawful detention. The court must then investigate the matter "forthwith" and may order that the defendant bring the prisoner before the court and give reasons for his detention. The court must immediately release the detainee unless it is satisfied that he is being held lawfully. The remedy is available not only to prisoners of the state, but also to persons unlawfully detained by any private party. However, the constitution provides that the procedure is not binding on the Defence Forces during a state of war or armed rebellion.

The full text of Article 40.4.2° is as follows:

Upon complaint being made by or on behalf of any person to the High Court or any judge thereof alleging that such person is being unlawfully detained, the High Court and any and every judge thereof to whom such complaint is made shall forthwith enquire into the said complaint and may order the person in whose custody such person is detained to *produce the body* of such person before the High Court on a named day and to certify in writing the grounds of his detention, and the High Court shall, upon the body of such person being produced before that Court and after giving the person in whose custody he is detained an opportunity of justifying the detention, order the release of such person from such detention unless satisfied that he is being detained in accordance with the law. [italics added]

The writ of *habeas corpus* continued as part of the Irish law when the state seceded from the United Kingdom in 1922. A remedy equivalent to *habeas corpus* was also guaranteed by Article 6 of the Constitution of the Irish Free State, enacted in 1922. That article used similar wording to Article 40.4 of the current constitution, which replaced it 1937.

The relationship between the Article 40 and the Habeas Corpus Acts of 1782 and 1816 is ambiguous, and Forde and Leonard write that "The extent if any to which Article 40.4 has replaced these Acts has yet to be determined". In *The State (Ahern) v. Cotter* (1982) Walsh J. opined that the ancient writ referred to in the Habeas Corpus Acts remains in existence in Irish law as a separate remedy from that provided for in Article 40.^[42]

In 1941, the Article 40 procedure was restricted by the Second Amendment. Prior to the amendment, a prisoner had the constitutional right to apply to any High Court judge for an enquiry into her detention, and to as many High Court judges as she wished. If the prisoner successfully challenged her detention before the High Court she was entitled to immediate, unconditional release.

The Second Amendment provided that a prisoner has only the right to apply to a single judge, and, once a writ has been issued, the President of the High Court has authority to choose the judge or panel of three judges who will decide the case. If the High Court finds that the prisoner's detention is unlawful due to the unconstitutionality of a law the judge must refer the matter to the Supreme Court, and until the Supreme Court's decision is rendered the prisoner may be released only on bail.

The power of the state to detain persons prior to trial was extended by the Sixteenth Amendment, in 1996. In 1965, the Supreme Court ruled in the *O'Callaghan* case that the constitution required that an individual charged with a crime could be refused bail only if she was likely to flee or to interfere with witnesses or evidence. Since the Sixteenth Amendment, it has been possible for a court to take into account whether a person has committed serious crimes while on bail in the past.

Italy

The right to freedom from arbitrary detention is guaranteed by Article 13 of the Constitution of Italy, which states:^[43]

Personal liberty is inviolable. No one may be detained, inspected, or searched nor otherwise subjected to any restriction of personal liberty except by order of the Judiciary stating a reason and only in such cases and in such manner as provided by the law. In exceptional circumstances and under such conditions of necessity and urgency as shall conclusively be defined by the law, the police may take provisional measures that shall be referred within 48 hours to the Judiciary for validation and which, in default of such validation in the following 48 hours, shall be revoked and considered null and void. Any act of physical and moral violence against a person subjected to restriction of personal liberty shall be punished. The law shall establish the maximum duration of preventive detention.

This implies that within 48 hours every arrest made by a police force must be validated by a court.

Furthermore, if subject to a valid detention, an arrested can ask for a review of the detention to another court, called the Review Court (*Tribunale del Riesame*, also known as the Freedom Court, *Tribunale della Libertà*).

Macau

In Macau, the relevant provision is Article 204 in the Code of Penal Processes,^[44] which became law in 1996 under Portuguese rule. *Habeas corpus* cases are heard before the Tribunal of Ultimate Instance. A notable case is Case 3/2008 in Macau.

Malaysia

In Malaysia, the remedy of *habeas corpus* is guaranteed by the federal constitution, although not by name. Article 5(2) of the Constitution of Malaysia provides that "Where complaint is made to a High Court or any judge thereof that a person is being unlawfully detained the court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the court and release him".

As there are several statutes, for example, the Internal Security Act 1960, that still permit detention without trial, the procedure is usually effective in such cases only if it can be shown that there was a procedural error in the way that the detention was ordered.

New Zealand

In New Zealand, *habeas corpus* may be invoked against the government or private individuals. In 2006, a child was allegedly kidnapped by his maternal grandfather after a custody dispute. The father began *habeas corpus* proceedings against the mother, the grandfather, the grandmother, the great grandmother, and another person alleged to have assisted in the kidnap of the child. The mother did not present the child to the court and so was imprisoned for contempt of court.^[45] She was released when the grandfather came forward with the child in late January 2007.

Pakistan

Issuance of a writ is an exercise of an extraordinary jurisdiction of the superior courts in Pakistan. A writ of *habeas corpus* may be issued by any High Court of a province in Pakistan. Article 199 of the 1973 Constitution of the Islamic Republic of Pakistan, specifically provides for the issuance of a writ of *habeas corpus*, empowering the courts to exercise this prerogative. Subject to the Article 199 of the Constitution, "A High Court may, if it is satisfied that no other adequate remedy is provided by law, on the application of any person, make an order that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without a lawful authority or in an unlawful manner". The hallmark of extraordinary constitutional jurisdiction is to keep various functionaries of State within the ambit of their authority. Once a High Court has assumed jurisdiction to adjudicate the matter before it, justiciability of the issue raised before it is beyond question. The Supreme Court of Pakistan has stated clearly that the use of words "in an unlawful manner" implies that the court may examine, if a statute has allowed such detention, whether it was a colorable exercise of the power of authority. Thus, the court can examine the malafides of the action taken.^[46]

Portugal

In Portugal, article 31 of the Constitution guarantees citizens against improper arrest, imprisonment or detention.

The full text of Article 31 is as follows:^[47]

Article 31 (*Habeas corpus*)

1. *Habeas corpus* is available to counter misuse of power in the form of illegal arrest, imprisonment or detention. Application for it must be made to the competent court.
2. Application for a *habeas corpus* order may be made by the person so arrested, imprisoned or detained, or by any citizen in possession of his political rights.
3. Within a time limit of eight days of an application for *habeas corpus*, the judge shall rule thereon in a hearing that shall be subject to the adversarial principle.

There are also statutory provisions, most notably the Code of Criminal Procedure, articles 220 and 222 that stipulate the reasons by which a judge may guarantee *habeas corpus*.^[48]

The Philippines

In the Bill of Rights of the Philippine constitution, *habeas corpus* is guaranteed in terms almost identically to those used in the U.S. Constitution. Article 3, Section 15 of the Constitution of the Philippines states that "The privilege of the writ of *habeas corpus* shall not be suspended except in cases of invasion or rebellion when the public safety requires it".

In 1971, after the Plaza Miranda bombing, the Marcos administration, under Ferdinand Marcos, suspended *habeas corpus* in an effort to stifle the oncoming insurgency, having blamed the Filipino Communist Party for the events of August 21. Many considered this to be a prelude to martial law. After widespread protests, however, the Marcos administration decided to reintroduce the writ. The writ was again suspended when Marcos declared martial law in 1972.^{[49][50]}

In December 2009, *habeas corpus* was suspended in Maguindanao as President Gloria Macapagal Arroyo placed the province under martial law. This occurred in response to the Maguindanao massacre.^[51]

In 2016, President Rodrigo Duterte said he was planning on suspending *habeas corpus*.^[52]

At 10 pm on 23 May 2017 Philippine time, President Rodrigo Duterte declared martial law in the whole island of Mindanao including Sulu and Tawi-tawi for the period of 60 days due to the series of attacks mounted by the Maute group, an ISIS-linked terrorist organization. The declaration suspended the writ.^[53]

Scotland

The Parliament of Scotland passed a law to have the same effect as *habeas corpus* in the 18th century. This is now known as the Criminal Procedure Act 1701 c.6.^[54] It was originally called "the Act for preventing wrongful imprisonment and against undue delays in trials". It is still in force although certain parts have been repealed.

Spain

The present Constitution of Spain states that "A *habeas corpus* procedure shall be provided for by law to ensure the immediate handing over to the judicial authorities of any person illegally arrested". The statute which regulates the procedure is the *Law of Habeas Corpus of 24 May 1984*, which provides that a person imprisoned may, on her or his own or through a third person, allege that she or he is imprisoned unlawfully and request to appear before a judge. The request must specify the grounds on which the detention is considered to be unlawful, which can be, for example, that the custodian holding the prisoner does not have the legal authority, that the prisoner's constitutional rights have been violated, or that he has been subjected to mistreatment. The judge may then request additional information if needed, and may issue a *habeas corpus* order, at which point the custodian has 24 hours to bring the prisoner before the judge.

Historically, many of the territories of Spain had remedies equivalent to the *habeas corpus*, such as the privilege of *manifestación* in the Crown of Aragon or the right of the Tree in Biscay.

Taiwan

Habeas corpus is explicitly stated in article 8 of the Constitution of the Republic of China, in which guarantees that anyone has the right to request a writ of *habeas corpus* for himself or any other person that is being detained by any organization or individual other than courts. Also, courts shall not reject the request, nor order the detainer to investigate and report before surrendering the detainee; the detainer must bring the person in question to the court within 24 hours without condition, and the detainee shall be released on the spot if the detention is deemed illegal. The article was further enforced by the Habeas Corpus Act.^[55]

United States

The United States inherited *habeas corpus* from the English common law. In England, the writ was issued in the name of the monarch. When the original thirteen American colonies declared independence, and became a republic based on popular sovereignty, any person, in the name of the people, acquired authority to initiate such writs. The U.S. Constitution specifically includes the *habeas* procedure in the Suspension Clause (Clause 2), located in Article One, Section 9. This states that "The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it".^[14]

The writ of *habeas corpus ad subjiciendum* is a civil, not criminal, *ex parte* proceeding in which a court inquires as to the legitimacy of a prisoner's custody. Typically, *habeas corpus* proceedings are to determine whether the court that imposed sentence on the defendant had jurisdiction and authority to do so, or whether the defendant's sentence has expired. *Habeas corpus* is also used as a legal avenue to challenge other types of custody such as pretrial detention or detention by the United States Bureau of Immigration and Customs Enforcement pursuant to a deportation proceeding.^[56]

Presidents Abraham Lincoln and Ulysses Grant suspended *habeas corpus* during the Civil War and Reconstruction for some places or types of cases.^{[57][58]} During World War II, President Franklin D. Roosevelt suspended habeas corpus. Following the September 11 attacks, President George W. Bush attempted to place Guantanamo Bay detainees outside of the jurisdiction of *habeas corpus*, but the Supreme Court of the United States overturned this action in *Boumediene v. Bush*.

Equivalent remedies

Biscay

In 1526, the *Fuero Nuevo of the Señorío de Vizcaya* (*New Charter of the Lordship of Biscay*) established a form of *habeas corpus* in the territory of the Señorío de Vizcaya, now part of Spain. This revised version of the *Fuero Viejo* (Old Charter) of 1451 codified the medieval custom whereby no person could be arbitrarily detained without being summoned first to the Oak of Gernika, an ancestral oak tree located in the outskirts of Gernika under which all laws of the Lordship of Biscay were passed.

The New Charter formalised that no one could be detained without a court order (Law 26 of Chapter 9) nor due to debts (Law 3 of Chapter 16). It also established due process and a form of *habeas corpus*: no one could be arrested without previously having been summoned to the Oak of Gernika and given 30 days to answer the said summons. Upon appearing under the Tree, they had to be provided with accusations and all evidence held against them so that they could defend themselves (Law 7 of Chapter 9).^[59]

No one could be sent to prison or deprived of their freedom until being formally trialed. No one could be accused of a different crime until their current court trial was over (Law 5 of Chapter 5). Those fearing they were being arrested illegally could appeal to the *Regimiento General* that their rights could be upheld. The *Regimiento*, the executive arm of the Juntas Generales of Biscay, would demand the prisoner be handed over to them, and thereafter the prisoner would be released and placed under the protection of the *Regimiento* while awaiting for trial.^[60]

Crown of Aragon

The Crown of Aragon had a remedy equivalent to the *habeas corpus* called the *manifestación de personas*, literally, *demonstration of persons*.^[61] According to the right of *manifestación*, the Justicia de Aragon, lit. *Justice of Aragon*, an Aragonese judiciary figure similar to an ombudsman, but with far reaching executive powers, could require a judge, a court of justice, or any other official that they handed over to the *Justicia*, i.e., that they be *demonstrated* to the *Justicia*, anyone being prosecuted, so as to guarantee that this person's rights were upheld, and that no violence would befall this person prior to their being sentenced.^[62]

The *Justicia* retained the right to examine the judgement passed, and decide whether it satisfied the conditions of a fair trial. If the *Justicia* was not satisfied, he could refuse to hand over the accused back to the authorities. The right of *manifestación* acted like a *habeas corpus*: knowing that the appeal to the *Justicia* would immediately follow any unlawful detention, these were effectively illegal. Equally, torture, which had been banned in Aragon since 1325, would never take place.^[62]

In some cases, people exerting their right of *manifestación* were kept under the *Justicia*'s watch in *manifestación* prisons, famous for their mild and easy conditions, or under house arrest. More generally however, the person was released from confinement and placed under the *Justicia*'s *protection*, awaiting for trial. The *Justicia* always granted the right of *manifestación* by default, but they only really had to act in extreme cases, as for instance famously happened in 1590 when Antonio Pérez, the disgraced secretary to Philip II of Spain, fled from Castile to Aragon and used his Aragonese ascendancy to appeal to the *Justicia* for *manifestación* right, thereby preventing his arrest at the King's behest.

The right of *manifestación* was codified in 1325 in the *Declaratio Privilegii generalis* passed by the Aragonese Corts under king James II of Aragon.^[63] It had been practised since the inception of the kingdom of Aragon in the 11th century, and therefore predates the English *habeas corpus* itself.^[62]

Poland

In 1430, King Władysław II Jagiełło of Poland granted the Privilege of Jedlnia, which proclaimed, *Neminem captivabimus nisi iure victum* ("We will not imprison anyone except if convicted by law"). This revolutionary innovation in civil libertarianism gave Polish citizens due process-style rights that did not exist in any other European country for another 250 years. Originally, the Privilege of Jedlnia was restricted to the nobility, the szlachta. It was extended to cover townsmen in the 1791 Constitution. Importantly, social classifications in the Polish–Lithuanian Commonwealth were not as rigid as in other European countries; townspeople and Jews were

sometimes ennobled. The Privilege of Jedlnia provided broader coverage than many subsequently enacted habeas corpus laws, because Poland's nobility constituted an unusually large percentage of the country's total population, which was Europe's largest. As a result, by the 16th century, it was protecting the liberty of between five hundred thousand and a million Poles.^[64]

Roman-Dutch law

In South Africa and other countries whose legal systems are based on Roman-Dutch law, the *interdictum de homine libero exhibendo* is the equivalent of the writ of *habeas corpus*.^[65] In South Africa, it has been entrenched in the Bill of Rights, which provides in section 35(2)(d) that every detained person has the right to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released.

World *habeas corpus*

In the 1950s, American lawyer Luis Kutner began advocating an international writ of *habeas corpus* to protect individual human rights. In 1952, he filed a petition for a "United Nations Writ of Habeas Corpus" on behalf of William N. Oatis, an American journalist jailed the previous year by the Communist government of Czechoslovakia.^[note 2] Alleging that Czechoslovakia had violated Oatis' rights under the United Nations Charter and the Universal Declaration of Human Rights and that the United Nations General Assembly had "inherent power" to fashion remedies for human rights violations, the petition was filed with the United Nations Commission on Human Rights.^{[66]:303,309–314} The Commission forwarded the petition to Czechoslovakia, but no other United Nations action was taken.^[66] Oatis was released in 1953. Kutner went on to publish numerous articles and books advocating the creation of an "International Court of Habeas Corpus".^[note 3]

International human rights standards

Article 3 of the Universal Declaration of Human Rights provides that "everyone has the right to life, liberty and security of person". Article 5 of the European Convention on Human Rights goes further and calls for persons detained to have the right to challenge their detention, providing at article 5.4:

Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

See also

- Arbitrary arrest and detention
- *corpus delicti* – other Latin legal term using *corpus*, here meaning the fact of a crime having been committed, not the body of the person being detained nor (as sometimes inaccurately used) the body of the victim
- Habeas corpus petitions of Guantanamo Bay detainees
- *Habeas Corpus* (play), by the English writer and playwright Alan Bennett.
- Habeas Corpus Restoration Act of 2007
- *Habeas data*
- Edward Hyde, 1st Earl of Clarendon

- [Habeas Corpus Parliament](#)
- [List of legal Latin terms](#)
- [Military Commissions Act of 2006](#)
- [Murder conviction without a body](#)
- [Neminem captivabimus](#)
- [Presumption of innocence](#)
- [Philippine *habeas corpus* cases](#)
- [Remand](#)
- [Security of person](#)
- [Recurso de amparo](#) (writ of *amparo*)
- [Subpoena ad testificandum](#)
- [Subpoena duces tecum](#)

Notes

1. The applicant must make out a *prima facie* case. However, once that is done, the applicant is entitled to the writ as of right, which is then granted *ex debito justitiae* ("from a debt of justice", that is, as a matter of right).
2. The petition was titled "United Nations Ex Rel., Luis Kutner, For and on Behalf of William N. Oatis, Petitioner, v. Czechoslovakia, Respondent – Petition of Luis Kutner For and on Behalf of William N. Oatis, For a United Nations Writ of Habeas Corpus." See Jackson (2006).^[66]:303,309
3. Luis Kutner's first article was "A Proposal for a United Nations Writ of Habeas Corpus ..."^[67] See also Kutner's book (1962)^[68] for his draft of a "Treaty-Statute of the International Court of Habeas Corpus".

References

1. "habeas corpus" (<http://www.merriam-webster.com/dictionary/habeas%20corpus>). *Merriam-Webster*. Retrieved 22 April 2015.
2. Blackstone, William (1979) [1768]. *Commentaries on the Laws of England: A facsimile of the first edition of 1765–1769*. Vol. 3. Chicago: University of Chicago Press. pp. 129–137.
3. Dicey, Albert Venn (1908). *Introduction to the Study of the Law of the Constitution* (<https://books.google.com/books?id=kz40AAAIAAJ&q=INTRODUCTION+TO+THE+STUDY+OF+THE+LAW+OF+THE+CONSTITUTION+A.+V.+Dicey&pg=PR3>).
4. Wright, Anthony (1994). *Citizens and Subjects: an essay on British politics* (<https://books.google.com/books?id=I7oOAAAQAAJ&q=declare+no+principle+and+define+no+rights%2C+but+they+are+for+practical+purposes+worth+a+hundred+constitutional+articles+guaranteeing+individual+liberty&pg=PA16>). Routledge. ISBN 9780415049641 – via Google Books.
5. "habeas corpus" (<http://www.etymonline.com/index.php?term=habeas%20corpus>). *Online Etymology Dictionary*. Retrieved 17 February 2013.
6. Hurd, Rollin Carlos (1858). *Treatise on the Right of Personal Liberty, and on the Writ of Habeas Corpus and the Practice Connected with it: With a view of the Law of Extradition of Fugitives*. Vol. 3. W. C. Little and Company. p. 232.
7. Dicey, Albert Venn (1889). *Introduction to the Study of the Law of the Constitution (1915)* (<http://archive.org/details/introductiontos04dicegoog>).
8. "Assize of Clarendon, 1166" (<http://avalon.law.yale.edu/medieval/assizecl.asp>). Yale University. 1 December 1998.
9. Turner, Ralph V. (2003). *Magna Carta*. Pearson. pp. 162, 219.

10. "Application No. 9627/81 Luciano Ferrari-Bravo v. Italy, Decision on the admissibility of the application" (<https://web.archive.org/web/20190222095219/http://echr.ketse.com/doc/9627.81-en-19840314/>). *ECHR CaseLaw*. 14 March 1984. p. 37. Archived from the original (<http://echr.ketse.com/doc/9627.81-en-19840314/>) on 22 February 2019. Retrieved 21 February 2019.
11. *The Founders' Constitution* (http://press-pubs.uchicago.edu/founders/documents/a1_9_2s4.html). Vol. 3. Chicago: University of Chicago Press. 1979. Article 1, Section 9, Clause 2, Document 4. Retrieved 6 October 2017.
12. Blackstone (1768)^[2] reproduced in *The Founders' Constitution* (2017).^[11]
13. Cohen, Maxwell (1940). "Habeas Corpus Cum Causa – The emergence of the modern writ-II" (<http://heinonline.org/HOL/LandingPage?handle=hein.journals/canbarev18&div=24>). *Can. B. Rev.* **18**: 172, 174–175.
14. Craies, William Feilden (1911). "Habeas Corpus" (https://en.wikisource.org/wiki/1911_Encyclop%C3%A6dia_Britannica/Habeas_Corpus). In Chisholm, Hugh (ed.). *Encyclopædia Britannica*. Vol. 12 (11th ed.). Cambridge University Press. pp. 784–786.
15. Landman, James. "Understanding Habeas Corpus" (https://www.americanbar.org/content/dam/aba/images/public_education/05_mar08_habeascorpus_landman.pdf) (PDF). *American Bar Association*.
16. Moncreiff, Frederick Charles (2006). *The Wit and Wisdom of the Bench and Bar*. The Lawbook Exchange, Ltd. pp. 85–86.
17. *Somerset v Stewart*, 98 ER 499, 501 (<http://www.commonlii.org/uk/cases/EngR/1772/57.pdf>) (Lofft 1 1772).
18. Costello, Kevin (2008). "Habeas Corpus and Military and Naval Impressment 1756–1816". *The Journal of Legal History*. **29** (2): 215. doi:10.1080/01440360802196679 (<https://doi.org/10.1080/01440360802196679>). hdl:10197/6059 (<https://hdl.handle.net/10197%2F6059>). S2CID 143694900 (<https://api.semanticscholar.org/CorpusID:143694900>).
19. Sixteenth Report (<https://publications.parliament.uk/pa/jt200607/jtselect/jtrights/128/12807.htm>). Joint Committee On Human Rights (Report). Parliament of the United Kingdom.
20. Re: (Habeas Corpus) [1996] QB 599; Re B [1991] 1 FLR 106
21. *Secretary of State for Foreign and Commonwealth Affairs v Rahmatullah*, 48 (UKSC 2012).
22. Clark, David; McCoy, Gerard (1998). *Habeas Corpus*. Federation Press.
23. "A human rights guide to Australia's counter-terrorism laws" (<https://www.humanrights.gov.au/human-rights-guide-australias-counter-terrorism-laws>). *Australian Human Rights Commission*. 14 December 2012. Retrieved 13 April 2015.
24. "National security and anti-terrorism laws in Australia" (http://www.thenewsmanual.net/Resources/medialaw_in_australia_06.html). *The News Manual*. UNESCO. Retrieved 13 April 2015.
25. Rix, Mark (2006). "Australia's Anti-Terrorism Legislation – The national security state and the community legal sector" (<http://ro.uow.edu.au/cgi/viewcontent.cgi?article=1003&context=gsbapers>). *Research Online*. University of Wollongong. Retrieved 13 April 2015.
26. *Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 10 (<http://canlii.ca/t/ldsx#sec10>)
27. Davis, Ian (2019). "Taking Prisoners' Rights Seriously on Substantive Habeas Corpus Review" (<https://commentary.canlii.org/w/canlii/2019CanLIIDocs2835>). *Canadian Journal of Human Rights*. **29**: 34–35. 2019 CanLIIDocs 2835 – via CanLII.
28. *Mission Institution v Khela*, 2014 SCC 24 at para 30 (<http://canlii.ca/t/g69pq#par30>)
29. Parkes, Debra (2012). "The 'Great Writ' Reinvigorated? Habeas Corpus in Contemporary Canada" (<https://commentary.canlii.org/w/canlii/2012CanLIIDocs271>). *Manitoba Law Journal*. **36** (1): 352. 2012 CanLIIDocs 271 – via CanLII.
30. Wilson, David A. "The Fenians in Canada" (<http://www.collectionscanada.gc.ca/obj/033001/f2/033001-1402.7-e.pdf>) (PDF). Library and Archives Canada. Retrieved 2 October 2013.
31. *May v Ferndale Institution*, 2005 SCC 82 (<https://www.canlii.org/en/ca/scc/doc/2005/2005scc82/2005scc82.html>), [2005] 3 SCR 809 (22 December 2005)

32. "[Marquis de Lafayette](http://www.monticello.org/site/jefferson/marquis-de-lafayette)" (<http://www.monticello.org/site/jefferson/marquis-de-lafayette>). Thomas Jefferson Encyclopedia. 2014. Retrieved 15 June 2014.
33. Atwill, Nicole (2009). "[Habeas Corpus Rights: France](https://www.loc.gov/law/help/habeas-corpus/france.php)" (<https://www.loc.gov/law/help/habeas-corpus/france.php>). U.S. Library of Congress. Retrieved 14 June 2014.
34. Glendon, Mary Ann; Decaux, Emmanuel. "[A World Made New – Eleanor Roosevelt and the Universal Declaration of Human Rights](https://web.archive.org/web/20140714114736/http://www.droits-fondamentaux.org/spip.php?article42)" (<https://web.archive.org/web/20140714114736/http://www.droits-fondamentaux.org/spip.php?article42>). Le Centre de recherche sur les droits de l'homme et le droit humanitaire, CRDH, Université Panthéon-Assas. Archived from the original (<http://www.droits-fondamentaux.org/spip.php?article42>) on 14 July 2014. Retrieved 15 June 2014.
35. "[History of the Document](https://www.un.org/en/documents/udhr/history.shtml)" (<https://www.un.org/en/documents/udhr/history.shtml>). The Universal Declaration of Human Rights. The United Nations. Retrieved 15 June 2014.
36. Winter, Jay; Prost, Antoine (June 2013). "[René Cassin and Human Rights: From the Great War to the Universal Declaration](http://www.cambridge.org/us/academic/subjects/history/twentieth-century-european-history/rene-cassin-and-human-rights-great-war-universal-declaration?format=HB)" (<http://www.cambridge.org/us/academic/subjects/history/twentieth-century-european-history/rene-cassin-and-human-rights-great-war-universal-declaration?format=HB>). Cambridge University Press. Retrieved 30 December 2013.
37. "[Habeas Corpus Rights: Germany](https://www.loc.gov/law/help/habeas-corpus/germany.php)" (<https://www.loc.gov/law/help/habeas-corpus/germany.php>). *Loc.gov*. Law Library of Congress. March 2009. Retrieved 17 June 2013.
38. Baxi, Pratiksha (April 2009). "[Habeas Corpus Juridical Narratives of Sexual Governance](https://web.archive.org/web/20161006125237/http://www.jnu.ac.in/cslg/workingPaper/09-Habeus%20%28Pratiksha%20Baxi%29.pdf)" (<https://web.archive.org/web/20161006125237/http://www.jnu.ac.in/cslg/workingPaper/09-Habeus%20%28Pratiksha%20Baxi%29.pdf>) (PDF). Centre for the Study of Law and Governance (Reprint 2012 ed.). New Delhi: Jawaharlal Nehru University. Archived from the original (<http://www.jnu.ac.in/cslg/workingPaper/09-Habeus%20%28Pratiksha%20Baxi%29.pdf>) (PDF) on 6 October 2016. Retrieved 23 November 2015.
39. "['Love Jihad': Court unhappy with probe](http://www.thehindu.com/todays-paper/tp-national/tp-kerala/love-jihad-court-unhappy-with-probe/article169724.ece)" (<http://www.thehindu.com/todays-paper/tp-national/tp-kerala/love-jihad-court-unhappy-with-probe/article169724.ece>). *The Hindu*. 27 October 2009.
40. *Ex parte, Hopkins (Daisy)*, 56 JP 262; 61 LJQB 240 (1891).
41. "[Writ of Habeas Corpus for securing liberty](http://www.legalserviceindia.com/articles/wha.htm)" (<http://www.legalserviceindia.com/articles/wha.htm>). *Legalserviceindia.com*. ABS-CBN News. Retrieved 30 August 2010.
42. Forde, Michael; Leonard, David (2013). *Constitutional Law of Ireland*. pp. 371–372.
43. "[The Italian Constitution](http://www.quirinale.it/page/costituzione)" (<http://www.quirinale.it/page/costituzione>). The official website of the Presidency of the Italian Republic.
44. "[Código de Processo Penal Artico 204.º \(Macau\)](https://bo.io.gov.mo/bo/i/96/36/codpropenpt/codpropen0001.asp#a204)" (<https://bo.io.gov.mo/bo/i/96/36/codpropenpt/codpropen0001.asp#a204>) (in Portuguese).
45. "[New Zealand Herald newspaper](http://www.nzherald.co.nz/section/1/story.cfm?c_id=1&ObjectID=10407667)" (http://www.nzherald.co.nz/section/1/story.cfm?c_id=1&ObjectID=10407667). *Nzherald.co.nz*. 26 October 2006. Retrieved 30 August 2010.
46. "[Habeas Corpus Rights: Pakistan](https://www.loc.gov/law/help/habeas-corpus/pakistan.php)" (<https://www.loc.gov/law/help/habeas-corpus/pakistan.php>). *loc.gov*. March 2009.
47. "[Constitution of the Portuguese Republic](https://dre.pt/constitution-of-the-portuguese-republic)" (<https://dre.pt/constitution-of-the-portuguese-republic>). *dre.pt*. Retrieved 10 October 2020.
48. "[Portuguese Criminal Procedure Code \(Código de Processo Penal\)](https://dre.pt/web/guest/legislacao-consolidada/-/lc/117352444/201903111102/73648523/diploma/indice)" (<https://dre.pt/web/guest/legislacao-consolidada/-/lc/117352444/201903111102/73648523/diploma/indice>). *dre.pt*. Retrieved 10 October 2020.
49. "[FALSE: 'Only one executed,' 'none arrested' under Marcos' Martial Law – Enrile](https://www.rappler.com/newsbreak/fact-check/false-only-one-executed-none-arrested-criticizing-marcos-martial-law)" (<https://www.rappler.com/newsbreak/fact-check/false-only-one-executed-none-arrested-criticizing-marcos-martial-law>). *Rappler*. 21 September 2018. Retrieved 29 October 2021.
50. Tan, Ab (18 January 1981). "[Marcos Ends Martial Law, Keeps Tight Grip](https://www.washingtonpost.com/archive/politics/1981/01/18/marcos-ends-martial-law-keeps-tight-grip/89533b86-8100-4713-9e77-6e4ebab6bacb/)" (<https://www.washingtonpost.com/archive/politics/1981/01/18/marcos-ends-martial-law-keeps-tight-grip/89533b86-8100-4713-9e77-6e4ebab6bacb/>). *Washington Post*. ISSN 0190-8286 (<https://www.worldcat.org/issn/0190-8286>). Retrieved 29 October 2021.

51. Andoy Barrios (5 December 2009). "Arroyo proclaims martial law in Maguindanao" (<http://www.abs-cbnnews.com/nation/12/04/09/arroyo-orders-martial-law-maguindanao>). *Abs-cbnnews.com*. ABS-CBN News Online. Retrieved 30 August 2010.
52. Esmaguél, Paterno II (13 November 2016). "Duterte to suspend writ of habeas corpus if 'forced'" (<http://www.rappler.com/nation/152167-duterte-suspend-writ-habeas-corpus-warning>). *rappler.com*. Rappler. Retrieved 3 March 2020.
53. de Santos, Jonathan; Pareño, Roel; Romero, Alexis; Mendez, Christina (24 May 2017). "Duterte declares martial law in Mindanao" (<http://www.philstar.com/headlines/2017/05/23/1703088/duterte-declares-martial-law-mindanao>). *Philadelphia Star*. Retrieved 23 May 2017.
54. See [Full text of the Act](http://www.statutelaw.gov.uk/content.aspx?ActiveTextDocId=1519689) (<http://www.statutelaw.gov.uk/content.aspx?ActiveTextDocId=1519689>). This law was given its current short title by the [Statute Law Revision \(Scotland\) Act 1964](#)
55. "Habeas Corpus Act - Article Content - Laws & Regulations Database of The Republic of China (Taiwan)" (<https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0010008>). Retrieved 8 January 2023.
56. Kim, Jonathan, ed. (June 2017). "Habeas Corpus" (https://www.law.cornell.edu/wex/habeas_corpus). *Cornell Law School - Legal Information Institute - Habeas Corpus*. Retrieved 1 March 2021.
57. "Abraham Lincoln's 1862 Proclamation Suspending Habeas Corpus" (<http://usgovinfo.about.com/od/historicdocuments/a/lincolnhabeas.htm>). Usgovinfo.about.com. Retrieved 17 June 2013.
58. "Ulysses S. Grant: Proclamation 204 – Suspending the Writ of Habeas Corpus in the County of Union, South Carolina" (<http://www.presidency.ucsb.edu/ws/index.php?pid=70261>). Presidency.ucsb.edu. Retrieved 17 June 2013.
59. Trask, L. (1997). *The History of Basque*. Routledge. ISBN 0-415-13116-2.
60. Trask, L. (1997). *The History of Basque*. Routledge. ISBN 0-415-13116-2.
61. Giesey, R.E. (1968). *If not, not: The Oath of the Aragonese and the Legendary Laws of Sobrarbe*. Princeton University Press.
62. Tomás y Valiente, Francisco (2000). *La tortura judicial en España* (2ª ed.). Barcelona: Crítica. ISBN 84-8432-029-4.
63. González Antón, Luis (1975). *Las Uniones aragonesas y las Cortes del Reino (1283-1301)*. Escuela de Estudios Medievales; CSIC. Zaragoza: Librería General. ISBN 978-84-00-04150-2.
- Antón, Luis González (1975). *Texto* (<https://books.google.com/books?id=sIYVCrZY8-4C&pg=PP1>). Vol. I. ISBN 978-84-00-04151-9 – via Google Books.
- Antón, Luis González (1975). *Documentos* (<https://books.google.com/books?id=FVbKFaPne8sC&pg=PP1>). Vol. II. ISBN 978-84-00-04177-9 – via Google Books.
64. Cole, Daniel H. (22 September 1998). "Poland's 1997 Constitution in Its Historical Context" (<http://indylaw.indiana.edu/instructors/cole/web%20page/polconst.pdf>) (PDF). Indiana University School of Law.
65. Watney, Murdoch (2011). "Arrest, detention and the *interdictum de homine libero exhibendo*" (http://reference.sabinet.co.za/webx/access/electronic_journals/ju_tsar/ju_tsar_2011_n3_a10.pdf) (PDF). *Journal of South African Law*. **2011** (3): 555–562.
66. Jackson, Vicki C. (January 2006). "World Habeas Corpus" (<https://web.archive.org/web/20140713163945/http://cornelllawreview.org/files/2013/03/Jacksonfinal.pdf>) (PDF). *Cornell Law Review*. **91**. Archived from the original (<http://cornelllawreview.org/files/2013/03/Jacksonfinal.pdf>) (PDF) on 13 July 2014. Retrieved 18 June 2013.
67. Kutner, Luis (June 1954). "A Proposal for a United Nations Writ of Habeas Corpus and International Court of Human Rights". *Tulane Law Review*. **28**: 417–441.
68. Kutner, Luis (1962). *World Habeas Corpus*. Dobbs Ferry, NY: Oceana. p. 266.

Further reading

- Bandele, Asha (1996). "Habeas Corpus is a legal Entitlement". *Absence in the Palms of My*

Hands & Other Poems. New York, NY: Harlem River Press.

- Carpenter, A.H. (October 1902). "Habeas Corpus in the Colonies". *The American Historical Review*. **8** (1): 18–27. doi:10.2307/1832572 (<https://doi.org/10.2307%2F1832572>). JSTOR 1832572 (<https://www.jstor.org/stable/1832572>).
- Fisher, Louis (2003). *Nazi Saboteurs on Trial: A military tribunal and American law*. University Press of Kansas. ISBN 0-7006-1238-6.
- Dobbs, Michael (2004). *Saboteurs: The Nazi raid on America*. Vintage. ISBN 1-4000-3042-0.
- Doyle, Charles (2006). Federal Habeas Corpus: A brief legal overview (Report). Congressional Research Service.
- Irons, Peter (1999). *A People's History of the Supreme Court*. Viking. ISBN 0-670-87006-4. Political context for *Ex Parte Milligan* explained on pp. 186–189.
- Nutting, Helen A. (April 1960). "The Most Wholesome Law—The Habeas Corpus Act of 1679". *The American Historical Review*. **65** (3): 527–543. doi:10.2307/1849620 (<https://doi.org/10.2307%2F1849620>). JSTOR 1849620 (<https://www.jstor.org/stable/1849620>).
- Stone, Geoffrey R. (2004). *Perilous Times: Free speech in wartime, from the Sedition Act to the War on Terrorism*. Norton. ISBN 0-393-05880-8.
- Federman, Cary (2006). *The Body and the State: Habeas Corpus and American Jurisprudence*. SUNY. ISBN 0-7914-6703-1.
- Freedman, Eric M. (2001). *Habeas Corpus: Rethinking the great writ of liberty*. NYU Press. ISBN 0-8147-2717-4.
- Seghetti, Lisa M.; James, Nathan (2006). Federal Habeas Corpus Relief: Background, legislation, and issues (Report). Congressional Research Service.
- Wilkes, Donald E. Jr. (1995). "The Georgia Death Penalty Habeas Corpus Reform Act of 1995" (http://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1223&context=fac_artchop). *digitalcommons.law.uga.edu*.

"Habeas Corpus: The Great Writ Hit" (http://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1052&context=fac_pm). 2006.

Wilkes, Donald (2008). "Habeas Corpus Uncorpsed" (http://digitalcommons.law.uga.edu/fac_pm/167/). *Popular Media*.

Wilkes, Donald (2006). "Habeas Corpus and Baseball" (http://digitalcommons.law.uga.edu/fac_artchop/225/). *Scholarly Works*.

"The Writ of Habeas Corpus in Georgia" (http://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1064&context=fac_pm). 2007.

"Writ of Habeas Corpus" (<https://web.archive.org/web/20121211221825/http://www.georgiaencyclopedia.org/nge/Home.jsp>). *The New Georgia Encyclopedia*. 2009. Archived from the original (<http://www.georgiaencyclopedia.org/nge/Article.jsp?path=/GovernmentPolitics/Government/StateGovernment/ConstitutionalHistory&id=h-3741>) on 11 December 2012.

- Walker, Robert S., Ph.D. (1960). "The Constitutional and Legal Development of Habeas Corpus". *Arts and Sciences Studies*. **57** (9). LCC H31.053, no.3 (<https://catalog.loc.gov/vwebv/search?searchCode=CALL%2B&searchArg=H31.053%2C+no.3&searchType=1&recCount=25>).
- Walker, Robert Searles, Ph.D. (2006). *Habeas Corpus – Writ of Liberty: English and American origins and development* (Revised ed.). Amazon Books. ISBN 978-1-4196-4478-8. OCLC 156915626 (<https://www.worldcat.org/oclc/156915626>).
- "Petition for Habeas Corpus" (<http://digital.library.shsu.edu/cdm/ref/collection/p243coll3/id/2184>). *The Newton Gresham Library Digital Collections*. 16 April 1843. Retrieved 27 October 2018.
- "Habeas Schmabeas" (http://www.thislife.org/Radio_Episode.aspx?episode=331). *This American Life* (audio & transcript). Episode 331. 2007. NPR.
- "Writ of Habeas Corpus and Indian Constitution" (<https://web.archive.org/web/20150819225044/http://www.lexwarrior.org/writ-of-habeas-corpus-and-indian-constitution.html>). Archived from

the original (<http://www.lexwarrier.org/writ-of-habeas-corpus-and-indian-constitution.html>) on 19 August 2015.

External links

-  Media related to [Habeas corpus](#) at Wikimedia Commons
-

Retrieved from "https://en.wikipedia.org/w/index.php?title=Habeas_corpus&oldid=1153123726"