

IN

# "HABEAS CORPUS"

COPYRIGHT INCURRED IN U.S.A.  
BY METRO-GOLDWYN-MAYER. ALL RIGHTS  
RESERVED UNDER INTERNATIONAL  
CONVENTION OF BUENOS AIRES.

  
Metro-Goldwyn-Mayer



PASSED BY  
THE NATIONAL BOARD  
OF REVIEW

PRESENTS

# *Habeas corpus*

- *Habeas corpus* ([/'heɪbiəs 'kɔːrpəs/](#); [Medieval Latin](#) translating roughly to "You should have the body") is a [recourse in law](#) whereby a person can report an [unlawful detention or imprisonment](#) before a [court](#), usually through a prison official.
- A writ of habeas corpus is known as "the great and efficacious writ in all manner of illegal confinement", being a remedy available to the meanest against the mightiest. 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 taken 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.

- From Latin *habeas*, 2nd person singular present subjunctive active of *habere*, "to have", "to hold"; and *corpus*, accusative singular of *corpus* "body". In reference to more than one person, *habeas corpora*.
- Literally, the phrase means "you shall have the body". The complete phrase *habeas corpus ad subjiciendum* means "you shall have the person for the purpose of subjecting him/her to (examination)". These are the opening words of writs in 14th century Anglo-French documents requiring a person to be brought before a court or judge, especially to determine if that person is being legally detained

# 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".

# AUSTRALIA

- The writ of *habeas corpus* as a procedural remedy is part of Australia's English law inheritance. 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*.

# CANADA

- *Habeas corpus* rights are part of the British legal tradition inherited by Canada. The rights exist in the common law but have been enshrined in the Constitution Act 1982, under Section Ten of the Charter of Rights and Freedoms. This states that "Everyone has the right on arrest or detention ... (c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful"

# FRANCE

- A fundamental human right in the "1789 Declaration of the Rights of Man" drafted by Lafayette in cooperation with Thomas Jefferson, the guarantees against arbitrary detention are enshrined in the French Constitution and regulated by the Penal Code. The 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.

# 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](#). Alleging that Czechoslovakia had violated Oatis's 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](#). The Commission forwarded the petition to Czechoslovakia, but no other United Nations action was taken. Oatis was released in 1953. Kutner went on to publish numerous articles and books advocating the creation of an "International Court of Habeas Corpus"



# 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."

**THANK YOU FOR YOUR  
ATTENTION**















