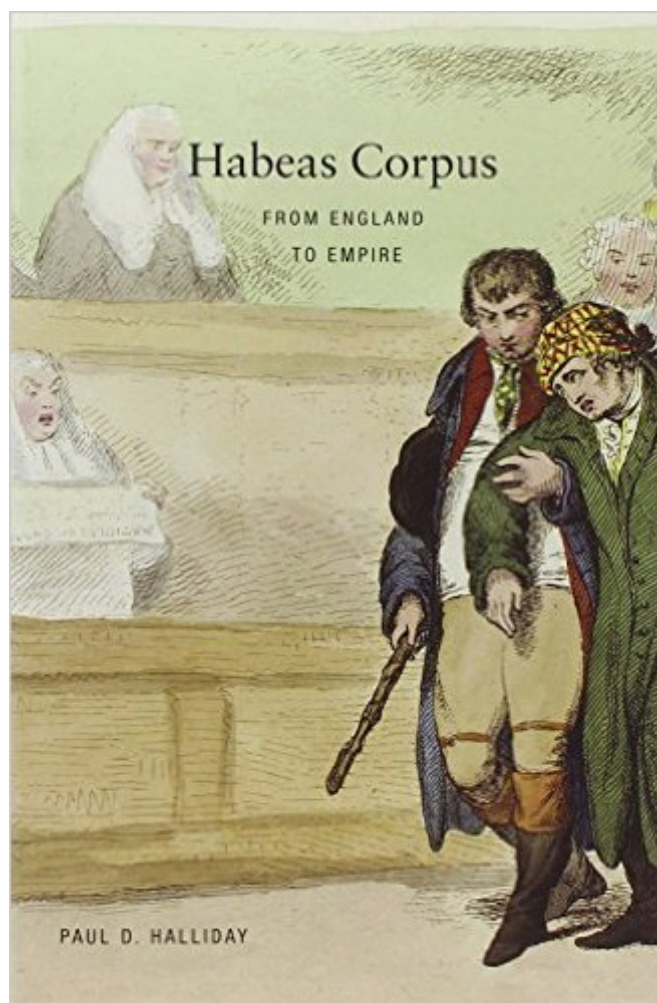


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Habeas Corpus: From England To Empire



Synopsis

We call habeas corpus the Great Writ of Liberty. But it was actually a writ of power. In a work based on an unprecedented study of thousands of cases across more than five hundred years, Paul Halliday provides a sweeping revisionist account of the world's most revered legal device. In the decades around 1600, English judges used ideas about royal power to empower themselves to protect the king's subjects. The key was not the prisoner's "right" to "liberty"—these are modern idioms—but the possible wrongs committed by a jailer or anyone who ordered a prisoner detained. This focus on wrongs gave the writ the force necessary to protect ideas about rights as they developed outside of law. This judicial power carried the writ across the world, from Quebec to Bengal. Paradoxically, the representative impulse, most often expressed through legislative action, did more to undermine the writ than anything else. And the need to control imperial subjects would increasingly constrain judges. The imperial experience is thus crucial for making sense of the broader sweep of the writ's history and of English law. Halliday's work informed the 2008 U.S. Supreme Court ruling in *Boumediene v. Bush* on prisoners in the Guantánamo detention camps. His eagerly anticipated book is certain to be acclaimed the definitive history of habeas corpus.

Book Information

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Customer Reviews

Truly impressive primary research and analysis, and for the most part well written, but the book really did become sometimes become a little confusing for anyone not intimately familiar with 17th century court systems. I learned a lot - in fact it made me rethink habeas in many ways - but I also thought it needed a good editor and if the content weren't relevant to my work I doubt I'd have

plowed all the way through through this brilliant but overwritten and only intermittently accessible tome. IMO such a strong scholarly effort deserved a stronger editorial hand.

This book is impressively researched, and the writing's not bad either, but the author could have boiled it down. His theme is that parliaments, not kings and privy councils, are the real threats to liberty, repeatedly curtailing habeas by statute, while strong judges are the protectors of liberty by issuing the writ when justice required. He makes a persuasive case. But nowhere is that theme stated in the book quite as clearly as just stated in this review, except on the last page.

I am a United States Magistrate Judge whose practice is 90% in habeas corpus. From this exhaustive archival study, I learned that every issue faced by contemporary judges in habeas cases was canvassed by our 16th and 17th century predecessors. Very helpful in thinking about those issues and a great debunking of whig history as well.

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