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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 Guantanamo detention camps. His eagerly anticipated book is certain to be acclaimed the definitive history of habeas corpus.

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Customer Reviews

Halliday's magisterial revisionist history is as impressive as it is indispensable. --David Armitage, author of *The Declaration of Independence: A Global History* In clear, at times compelling, prose Halliday offers an outstanding work of historical and legal scholarship. I am unaware of any

treatment of habeas corpus which covers so broad a canvas or rests upon such massive archival foundations. Halliday has convincingly demolished the traditional myth of habeas corpus. One might even say that the conceptual sophistication, evidential weight, and span of this book point towards a new way of doing constitutional history. --Wilfrid Prest, University of Adelaide

A remarkable work, based on truly heroic research. Halliday explains why liberty in the English sense of the term could only be understood as liberty under the law, and he offers a robust revision of the whiggish view that has traditionally seen the rise of habeas and the rise of parliamentary democracy as part of the same process in the development of liberty. He provides a particularly illuminating account of how the older common law system of largely judge-made law actually worked. Ambitious, convincing, and penetrating, Habeas Corpus will surely stand as the authoritative account. --Christopher W. Brooks, Durham University

Halliday changes the way that we understand both habeas corpus and the power of legal processes more generally. He shows us how kingship helped to shape the writ, how the writ helped to shape the empire, and how historical circumstances helped to shape all three. Based on exhaustive research, this book breaks new ground and suggests new ways of thinking about both rights and liberties. --Cynthia B. Herrup, University of Southern California

This is a book of astonishing forensic brilliance that transforms our understanding of where the liberties of the Anglophone world came from and how they can still be deployed to stop overmighty rulers in their tracks when they abuse their democratic mandate. I have not read a more important history book for many years. --John Morrill, University of Cambridge

With grace, elegance, and insight, Halliday has taken a writ and found an empire. He has not only written a compelling account of habeas corpus, but provided an imaginatively conceived legal history that offers a new model for how to write meaningfully about procedures. This important book is a spectacular achievement. --Mary Sarah Bilder, Boston College Law School

This book is superb. In a tour de force of archival research, Halliday singlehandedly reshapes our view of the historical scope and characteristics of habeas corpus. He demonstrates that the writ must be understood as a feature of the royal prerogative, allowing the king's courts to demand an explanation for the imprisonment of the king's subjects, whether citizen or alien. There is little doubt that this will become the standard account of the Great Writ. --James Oldham, Georgetown University Law Center

A book that every historian of English government and Anglo-American law should read, this will be the starting point for anyone interested in the origins and interpretation of habeas corpus. It rests on deep, original research that is presented with subtlety and sophistication. Habeas Corpus will be an instant classic. --Daniel Hulsebosch, New York University Law School

Halliday constructs an exhaustive and informative legal history of the English writ of habeas corpus from the 16th century to the present...Halliday

provides an expertly developed analysis which draws multiple interesting connections between the writ of habeas corpus and sources of English law, many of which are connected to the U.S. Constitution...This book is highly recommended for...individuals who are seriously interested in this component of legal history. --Steven Puro (Library Journal 2010-02-15)[A] superb history of habeas corpus...Part legal drama, part subtle causal analysis, this book proves that a gripping history of a legal writ is no contradiction in terms...[A] lucid and learned account. --Adrian Vermeule (New Republic online 2010-03-01)In what was a heroic research quest, Mr. Halliday has undertaken a needed and timely reexamination of what some call the "great writ of liberty"--the writ of habeas corpus--and concludes that its basic purpose is about who gets to exercise power and not at all about individual rights as most of us quite wrongly think...This book of meticulous history is as fresh as today's headlines and should be required reading for anyone concerned about our rights and our security. --James Srodes (Washington Times 2010-03-29)[Halliday] challenges the way that most chroniclers go about drafting constitutional history...In order to better understand the history of the Great Writ, he went beyond the well-known commentaries of Blackstone and his countryman Edward Coke and turned to thousands of unopened parchment documents, concerning more than eleven thousand habeas cases from 1500 to 1800, from London's National Archives...And as he worked through the documents, he discovered that they tell a very different story than the lofty historical writing about the writ might suggest...If habeas corpus is a tool of judicial power, its greatest enemy is often the elected branches that fear that power, particularly in wartime. That was precisely the rationale that Congress used in passing the Military Commissions Act, which barred more than four hundred detainees at GuantÃnamo from having access to the writ. When the Supreme Court found that action unconstitutional, it was, in many ways, just one more battle in a centuries-long fight over institutional power...Habeas Corpus isÃ¢âfull of colorful judges, unhappy sailors, and enough estranged wives to make these thousands of dusty old documents come vividly to life. But as a challenge to legal historians and their sacred-cow interpretations of the foundations of personal liberty--and, more essentially, as a methodological revision of the standard historical scholarship on the law--this book will change the landscape altogether. It serves as a critical reminder to the rest of us that even in wartime, at great distances, and across hundreds of years, the best way to judge the facts is to begin by looking at them. --Dahlia Lithwick (Bookforum 2010-04-01)Timely, important and thought-provoking...Eschewing a Whiggish reliance on the triumphalist assertions of well-known legal writers, Halliday uses the "often filthy and rumpled" writs, return to writs, enrolled copies, court orders and affidavits in the court of King's Bench archives to construct a radically revisionist account of how the writ worked between 1500 and 1800. --Clare

Jackson (Literary Review 2010-04-01)[A] monumental work...For anyone deeply interested in these issues it provides an invigorating blast against received ideas and intellectual complacency. Above all, it challenges us to think again about the foundation stones of personal liberty. (The Economist 2010-04-17)Not the least merit of Paul Halliday's enthralling and scholarly historical survey, focusing primarily on the years 1500-1800, is to remind us of what could be seen as the glory days of habeas corpus...Halliday's researches not only illuminate the legal history of habeas corpus but also provide fascinating insights into the social history of the period he studies....Halliday's researches yield a rich harvest of human stories which have all the vividness of the common law itself, yet fall into a discernible pattern which he traces with skill and clarity. --Tom Bingham (London Review of Books 2010-10-07)The year's most readable book about English common law came from an American history professor--Habeas Corpus. The legal wonder that Britain bequeathed the world has unlocked prison doors for so many who have been wrongly detained; Paul Halliday tells the story for general readers, and lets the lawyers grub around his copious footnotes if interested in the technicalities. --Geoffrey Robertson (New Statesman 2010-11-22)[A] splendid and important book...It is one of the great strengths of Halliday's book that he is able to combine discussion of some of the international and continuing ramifications of habeas corpus with massive precise and forensic archival research into its English origins and evolution...It casts much brilliant new light on the subject. --Linda Colley (Times Literary Supplement 2010-12-17)[An] engaging book...[Halliday] has drawn on a detailed study of habeas corpus cases in the King's Bench in London between 1500 and 1800. The book is a monument to his thoroughgoing investigation of original documents, most of them still kept in the British National Archives...Despite its detail, lengthy endnotes, and an index stretching over 160 pages (or a third of the book), Halliday realizes the simple truth that the cases he describes are all human stories. They show the law, in its busy daily work, where it matters most. --Michael Kirby (Australian Book Review 2011-04-01)

Paul D. Halliday is Professor of History at the University of Virginia.

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.

Both tedious & brilliant. In order to understand why a man has the right to know why another man has no right to put him in a room & lock him up without full justification under law for the act, you must read this. His plain point: empire leads to suspension, finally loss of habeas corpus. His barely hidden point: Guantanamo Bay.

When I began to study American Law, I began to realize that you had to really understand what life was like when the statutes and cases that make up the common law were created. We never got that aspect of matters in US history classes in high school or college. This book puts so many issues in context with regard to law and history, and their relevance in our lives even today. It should be the textbook reading for any US history class, at least for those teachers who want to stimulate creative thinking, rather than just pick up a pay check.

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.

Footnotes are indispensable - it would have been easier to read if the notes were on the same page. Most scholarly presentation of a rather obscure bit of history usually ignored in American Law Schools. Obviously this subject was dredged up in *Boumediene v. Bush*. James F. Schoener

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