

Show Me the Body

In this lesson students learn about the protections of writs of habeas corpus, the history of this Constitutional protection, and how it can be use.

GRADES	4 th , 5 th or older
TIME	1 class period
SUBJECTS	History, Civics, creative writing
STRATEGIES	Class participation
TAGS	Constitution, habeas corpus, American History, protected rights, the Great Writ



Habeas Corpus
"Guardian of Personal Liberty"

Glossary

- habeas corpus - (Latin) effective translation: You who hold the body must bring the body to court
- writ - a court order that must be obeyed immediately
- custody - having control of someone or something
- custodian - the person having control of someone or something
- detain - prevent from leaving
- detainee - a person prevented from leaving, a prisoner

Setting the Stage

Read the following to yourself, and then explain it in your own words to students.

The Constitution establishes a government that protects many individual rights. Some protections are clearly stated in the Constitution and its Amendments. Others are implied or referred to because they were something so basic and understood to exist that the writers did not need to state them expressly. An example of a protection that is not expressly stated but is referred to in the Constitution is the Writ of Habeas Corpus.

The Writ of Habeas Corpus, called "the Great Writ" was part of the Common Law in England since the 12th century, and in the American Colonies since their beginning. It is the single most powerful protection against unlawful confinement/imprisonment. The effect of the Writ of Habeas Corpus is that court issuing the writ (a writ is an order from the court) is the legal demand that whoever has custody of the prisoner (sheriff, prison, etc.) must bring him to court immediately and prove that the prisoner is being held legally. If legal grounds are not proven, the prisoner must be released on the spot. "Habeas Corpus" are Latin words that literally mean " hold/have the body", and

The Writ of Habeas Corpus effectively means, " We (a Court) command that you who hold the body [have the person being detained] bring the body [the detainee] before us."

A person jailed or anyone on his behalf can file for the writ.

As with other American legal system features, the Great Writ's use was accepted by the colonies by their adoption of English common law. By the time of the American Revolutionary War, the writ was part of every American colony's common law, (laws not written and passed by the Legislature but rather in general use and upheld by the Courts) except for South Carolina, which did have it, but in the form of a written law passed by the state legislature. In fact, the writ's use as a safeguard for liberty was so important to the colonists that the British government's refusal to issue writs was one of the grievances causing the Revolution.

Reflecting the importance of the writ, the Constitution of the United States provides that:

[t]he 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 (Art. I, § 9, Cl. 2).

The Constitution says that the use of the writ of habeas corpus cannot be suspended except in cases of invasion or rebellion, and law since says that even in those circumstances it can only be suspended by a law passed by Congress (not by courts, not by the President, etc.).

Let's look to history to see the importance of the Writ of Habeas Corpus.

Activity 1 – Discuss examples

From the 18th Century

During the years leading up to the American Revolution, colonists were sometimes arrested and kept for days and even weeks without any evidence against them or a trial. British-appointed judges refused to grant Writs of Habeas Corpus, though doing so was the law. If you had been living then and were arrested without cause, and British-paid judges refused to issue a Writ of Habeas Corpus on your behalf, what could you do to get out of jail? (Essentially nothing unless someone of influence comes to your aid.)

From the 21st Century

Imagine there is a legal demonstration going on a public street. Police are present as a normal precaution. You are not part of the demonstration, but it's on the street of your work. More and more demonstrators come until an enormous crowd is in the street. As often happens when masses gather, some get into a scuffle that grows into violence. Just as you are leaving work, trying to skirt past the street fighting, the crowd spills onto the sidewalk, and the police arrest forty people and sweep you up with them. You are all taken straight to a huge cell at the city jail. You tell everyone with whom you come in contact that you were not even at the demonstration, but more than 48 hours later you are still in jail and have not even seen a judge. What can you do? (Call a friend or attorney to initiate a habeas corpus hearing immediately.) Discussion to follow.

Activity 2 – Write letter in role of detainee, followed by a discussion

As someone who was taken into jail improperly and still doesn't know why after 3 days, write a letter to your family or to an attorney. Discuss what happened and what you need them to do. Use either the revolutionary period or the present as the period in which you live and write a specific date in your letter.

Extension – Legal Research

There are quite several ways in which someone could be taken into or held in confinement improperly and getting a Writ of Habeas Corpus issued is the way to get the prisoner in front of a judge and probably free. One is excessive bail.

Write a short report on what bail is and what excessive bail is, using interviews or online research at <https://www.annenbergclassroom.org/eighth-amendment/>.

Sources

Constitution, Article I, § 9, Clause 2 The Suspension Clause: The Privileges of the Writ of Habeas Corpus shall not be suspended unless when in Cases of Rebellion or Invasion the public Safety may require it

https://www.law.cornell.edu/wex/habeas_corpus

<https://dictionary.law.com/Default.aspx?selected=848>