

HABEAS CORPUS

The right to petition for a writ of habeas corpus has long been celebrated as the most efficient safeguard of the liberty of the subject. Albert Venn Dicey wrote that the Habeas Corpus Acts “declare no principle and define no rights, but they are for practical purposes worth a hundred constitutional articles guaranteeing individual liberty.” In most countries, however, the procedure of habeas corpus can be suspended in time of national emergency.

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 has the burden to prove his 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.