release, since a discharge from custody was the only function of the writ,[287] but this restraint too the Court has abandoned in an emphasis upon the statutory language directing the habeas court to "dispose of the matter as law and justice require." [288] Thus, even if a prisoner has been released from jail, the presence of collateral consequences flowing from his conviction gives the court jurisdiction to determine the constitutional validity of the conviction.[289]

Petitioners seeking federal *habeas* relief must first exhaust their state remedies, a limitation long settled in the case law and codified in 1948.[290] Prisoners are required to present their claims in state court only once, either on appeal or collateral attack, and they need not return time and again to raise their issues before coming to federal court.[291] In addition, "[w]hen a state court declines to review the merits of a petitioner's claim on the ground that it has done so already, it creates no bar to federal habeas review. . . . A claim is procedurally barred when it has not been fairly presented to the state courts for their initial consideration—not when the claim has been presented more than once." [292]

Although they were once required to petition the Supreme Court on *certiorari* to review directly their state convictions, prisoners have been relieved of this largely pointless exercise,[293] but, if the Supreme Court has taken and decided a case, then its judgment is

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Rumsfeld v. Padilla, 542 U.S. 426 (2004) (federal district court in New York lacks jurisdiction over prisoner being held in a naval brig in Charleston, South Carolina; the commander of the brig, not the Secretary of Defense, is the immediate custodian and proper respondent).

[287] McNally v. Hill, 293 U.S. 131 (1934); Parker v. Ellis, 362 U.S. 574 (1960).

[288] 28 U.S.C. § 2243. *See* Peyton v. Rowe, 391 U.S. 54 (1968). *See also* Maleng v. Cook, 490 U.S. 488 (1989).

[289] Carafas v. LaVallee, 391 U.S. 234 (1968), overruling Parker v. Ellis, 362 U.S. 574 (1960). In Peyton v. Rowe, 391 U.S. 54 (1968), the Court overruled McNally v. Hill, 293 U.S. 131 (1934), and held that a prisoner may attack on *habeas* the second of two consecutive sentences while still serving the first. *See also* Walker v. Wainwright, 390 U.S. 335 (1968) (prisoner may attack the first of two consecutive sentences although the only effect of a successful attack would be immediate confinement on the second sentence). Braden v. 30th Judicial Circuit Court, 410 U.S. 484 (1973), held that one sufficiently in custody of a state could use *habeas* to challenge the state's failure to bring him to trial on pending charges.

[290] 28 U.S.C. § 2254(b). See Preiser v. Rodriguez, 411 U.S. 475, 490–497 (1973), and id. at 500, 512–24 (Justice Brennan dissenting); Rose v. Lundy, 455 U.S. 509, 515–21 (1982). If a prisoner submits a petition with both exhausted and unexhausted claims, the *habeas* court must dismiss the entire petition. Rose v. Lundy, 455 U.S. at 518–519. Exhaustion first developed in cases brought by persons in state custody prior to any judgment. *Ex parte* Royall, 117 U.S. 241 (1886); Urquhart v. Brown, 205 U.S. 179 (1907).

[291] Brown v. Allen, 344 U.S. 443, 447–450 (1953); id. at 502 (Justice Frankfurter concurring); Castille v. Peoples, 489 U.S. 346, 350 (1989).

[292] Cone v. Bell, 556 U.S. ___, No. 07–1114, slip op. at 17, 18 (2009).

[293] Fay v. Noia, 372 U.S. 391, 435 (1963), overruling Darr v. Burford, 339 U.S. 200 (1950).