
Contents – Outline

- Acknowledgments xiii
- Abbreviations xv
- Preface xvii
- Introduction xix

- 1. The Precipitating Events 1
 - A. September 11, 2001 1
 - B. US & UK Reactions to September 11, 2001 2
 - C. Gitmo—Honor Bound to Defend Freedom 4
 - 1. Black Hole of Cuba 5
 - 2. Abbasi Complains 6
 - 3. We Will Give Them a Fair Trial Then Hang ‘Em 6
 - D. July 7, 2005: And Then There Were Two 8
 - E. Post 7/7 9
 - F. The Perversion of Leadership 12
 - G. Psychology of Panic 13
 - H. How Low Can You Go: Justifying Torture 15
 - 1. War Crimes 16
 - 2. International Committee of the Red Cross 19
 - 3. More Torture Memoranda 21
 - 4. Torture Doesn’t Work 25
 - 5. Guilt from Above—The Eagle Lands 26
 - 6. Surf’s Up—It Don’t Gitmo Better! 27
 - 7. ‘Damn Right’ 29
 - 8. The Water Cure: *Plus ça change, plus c’est la même chose* 31
 - 9. John Ashcroft: String ‘em Up! 33
 - I. The United Kingdom Pitches In 37
- 2. A Short History of Panic Responses 39
 - A. United States 39

- B. United Kingdom: 14B, 18B, & Ireland 44
 - 1. The Troubles 47
 - C. Post-9/11 Legislative Responses 50
 - 1. USA PATRIOT Act 50
 - 2. The UK Anti-Terrorism, Crime and Security Act 2001 (ATCSA) 53
 - D. Internal Administrative Reviews 55
 - 1. The US Inspector General Report 55
 - E. No Basic Cost-Benefit Analysis 57
3. Detention and the Legal Status & Rights of Aliens 61
 - A. United States 61
 - B. United Kingdom & The European Court of Human Rights 68
 4. The Role of the Courts & The Popular Jurisprudence of Counterterrorism 72
 - A. The Neoconservatives 72
 - 1. John Yoo 72
 - 2. Viet Dinh 78
 - 3. Father & Son: Richard & Eric Posner 80
 - 4. Alan Dershowitz & Torture Warrants 91
 - B. US Senate Intelligence Committee CIA Torture Report 96
 - C. Do Rights Trump Security: Ronald Dworkin 99
 - D. The Judicial Review Debate: Dworkin & Waldron 102
 - 1. Richard Bellamy—A Dichard 108
 - 2. David Dyzenhaus 109
 - 3. Experience Speaks: Justice Aharon Barak 110
 5. The Rule of Law 114
 - A. A.V. Dicey 116
 - B. Magna Carta & Habeas Corpus 121
 - C. Rule of Law in Jurisprudential Discourse 122
 - 1. Lon Fuller 122
 - 2. Joseph Raz 122
 - 3. Jeffrey Jowell 123
 - 4. Jeremy Waldron 123
 - 5. John Locke & Thomas Paine 123
 - 6. Tom Bingham 124
 - 7. Lord Woolf, Lord Lester, and Lord Steyn 125
 - D. The Rule of Law and Separation of Powers 128
 - E. A New Sovereign: The Rule of Law 132
 - F. The Human Rights Act 1998 & Parliamentary Sovereignty 135
 - G. The Common Law & Fundamental Rights Today in the United Kingdom 137
 - H. A New and Truly Independent UK Supreme Court 138
 - I. Recent Commentary on the Rule of Law & The Role of the Courts 143
 6. An Applicable International Rule of Law 147
 - A. An Ideal Worth Striving For 147
 - B. The Bangalore Principles 148

C. Post-World War II International Human Rights and Humanitarian Law	149
D. Customary International Law	151
1. <i>The Charming Betsy</i>	152
2. <i>The Paquete Habana</i>	153
E. US Attempts to Evade International Law	154
1. Response of the International Committee of the Red Cross	157
2. Response of the Eminent Jurists Panel	157
F. Application of International Law in <i>Hamdan</i> and <i>Boumediene</i>	159
G. An International Judiciary	161
H. International Law Compliance	162
I. The Role of ‘Foreign Law’ in the US Courts	163
J. International and Foreign Law in the Guantanamo Amici Briefs	165
K. Pragmatic Use of International Law	168
7. Guantanamo & Belmarsh	171
A. Guantanamo Bay	172
B. Prior US Supreme Court Habeas Cases	174
C. The Guantanamo Quartet	175
1. <i>Rasul</i>	175
2. <i>Hamdi</i>	177
3. <i>Hamdan</i>	181
4. <i>Boumediene</i>	183
D. Politics and the US Supreme Court	192
E. Judicial Differences between the United States and the United Kingdom	198
F. The Belmarsh Quartet	199
1. <i>Belmarsh I</i>	199
2. <i>Belmarsh II</i> (Torture Evidence)	206
3. <i>Belmarsh III</i>	210
4. <i>Belmarsh IV</i>	213
8. The War Paradigm Versus the Criminal Law in the United States and United Kingdom	217
A. The Northern Ireland Experience	219
1. IRA Recruitment	221
B. The International Commission of Jurists Assesses the War Paradigm	222
C. Continuing Consequences of the War Paradigm	223
1. Anwar Al-Aulaqi	224
2. Targeted Killings	225
3. Secrecy	227
4. Authority to Detain	229
5. Prisoners of War and Rendition	231
6. <i>El-Masri v Tenet</i>	232
7. <i>Arar v Ashcroft</i>	233
8. <i>Rasul v Myers</i>	235
D. US Alien Resident Detainees	237
1. <i>Al-Marri v Pucciarelli</i>	237
2. <i>Iqbal v Hasty</i>	237

E. US Citizen Detainees	238
1. <i>Al-Kidd v Ashcroft</i>	238
2. <i>Hedges v Obama</i>	240
3. <i>Rumsfeld v Padilla</i>	241
F. Guantanamo Review Task Force Executive Report	242
G. The Guantanamo Military War Crimes Trial of Omar Khadr	244
H. Habeas Procedures: Judicial Reality in the Post- <i>Boumediene</i> World	244
1. <i>Al-Bihani v Obama</i>	244
2. <i>Al-Adabi v Obama</i>	247
3. <i>Latif v Obama</i>	249
4. <i>Al Maqaleh v Gates</i>	252
I. And the Beat Goes On	253
1. <i>Padilla v Yoo</i>	253
2. <i>Boumediene Lives</i>	255
J. ‘The Brits Do It Better’	256
K. The Peculiar Cases of Binyam Mohamed	258
L. <i>Mohamed v Jeppesen Dataplan, Inc.</i>	261
9. R v A: <i>Marbury</i> Judicial Review by Interpretation in the United Kingdom	264
A. <i>R v A</i>	264
B. Human Rights Act & Parliamentary Sovereignty	276
C. More Milestones on the Road to <i>Marbury</i>	278
D. Pre-HRA Cases in Which Judicial Review Was Accomplished	279
1. <i>Factortame</i>	279
2. <i>Anisminic</i>	280
10. Judicial Deference	282
Conclusion	290
A. Judicial Review of Executive and Legislative Responses to Terrorism	291
B. Rule of Law and the Prosecution of Terror Suspects	295
C. Drone Strike Policy and the Rule of Law	299
D. President Obama Speaks	305
E. Accountability for Government-Sanctioned Abuse and Torture	307
F. Coda	310
APPENDIX A: HONOR BOUND TO DEFEND FREEDOM	313
APPENDIX B: PRESIDENT BUSH’S MILITARY ORDER OF NOVEMBER 13, 2001	315
BIBLIOGRAPHY	321
TABLE OF CASES	345
TABLE OF STATUTES AND INTERNATIONAL INSTRUMENTS	351
INDEX	355