

The Detention Debate: Habeas Corpus and the War on Terror

Not since World War II have United States courts been so engaged in defining the federal government's power to detain enemies at home and abroad. Then, as now, the United States had forces stationed on multiple continents running prisons, trying cases, and imposing sentences. Detainees sought relief in U.S. courts, and a body of law emerged that balanced the government's interest in waging war effectively against the rights of Americans and foreigners to have judicial review of their detention and sentences.

This body of law remained largely untouched for nearly fifty years. Then, in the wake of September 11th, the United States entered into conflicts in Afghanistan and Iraq and began detaining suspected enemy combatants in the Middle East and at the Guantanamo Bay Naval Base in Cuba. As before, prisoners appealed to federal courts, which have struggled to pick up where they left off and adapt old doctrines to an entirely new form of war. Each year another case or two wind their way to the Supreme Court and become the most watched, lauded, and criticized opinions of the term.

Despite this broad interest, the problem is that the cases are framed in imposing terms as petitions for *habeas corpus* and turn on highly technical questions of law. As such, lawyers and non-lawyers alike do not fully grasp the questions the courts are answering, and substantive debate over the relevant issues is left to the law reviews, which are not widely circulated and seldom read. No existing book or edited volume captures this most important and exciting legal debate of the decade.

The Detention Debate will be a discussion of these major issues facing the courts, Congress, and the President. It will include contributions from widely-regarded scholars and lawyers from across the ideological spectrum, allowing the authors to respond to one another's arguments in an interactive series of chapters. This format will be provocative and push the issues forward, unlike typical static compilations. Organizationally, *The Detention Debate* will begin with an introductory chapter canvassing the history of the law of detention. It will then provide an overview of the major themes the contributors will develop: domestic detention, detention abroad, and attempts by both aliens and citizens to challenge their convictions by foreign tribunals. A concluding chapter will take stock of the debate, synthesizing the various points and recommending possible ways forward.

Derek Smith and Blaine Evanson are uniquely suited to moderate this debate. They have spent a year in the legal trenches, as it were; each serving as law clerks on the Court of Appeals for the District of Columbia Circuit during a year that saw several landmark detention decisions likely to end up before the Supreme Court. They gained a unique perspective on these cases, but remain detached in a field that tends to polarize its participants. At the same time, they both have the educational, writing, and editing experience to produce a first-rate book and enlist a top-flight group of authors. Derek, a graduate of Harvard University, Yale Law School, and Oxford University, where he received a D.Phil. in International Relations, is the author of *Deterring America: Rogue States and the Proliferation of Weapons of Mass Destruction*, published by Cambridge University Press in June 2006. He served as an articles editor of the *Yale Journal of International Law* and has written numerous articles on foreign affairs. Blaine, a graduate of Brigham Young University and Columbia Law School, was both a senior editor of the *Columbia Law Review* and an editor for the *Harvard Journal of Law & Public Policy*. He has published in the *Georgetown Journal of Law & Public Policy* and the *Columbia Journal of European Law*.

The Detention Debate promises to capture the interest of those concerned about United States detention practices, but intimidated by the legalese surrounding the debate. By shedding unnecessary jargon and explaining the key issues under discussion, it will serve as a valuable resource in a virtually empty area of scholarship.