



# GUANTÁNAMO AND BEYOND

EXCEPTIONAL COURTS AND MILITARY  
COMMISSIONS IN COMPARATIVE PERSPECTIVE

Edited by Fionnuala Ni Aoláin & Oren Gross

CAMBRIDGE

# Guantanamo And Beyond Exceptional Courts And Military Commissions In Comparative Perspective

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## **Guantanamo And Beyond Exceptional Courts And Military Commissions In Comparative Perspective:**

**Guantánamo and Beyond** Fionnuala Ni Aoláin, Oren Gross, 2013-08-26 The Military Commissions scheme established by President George W Bush in November 2001 has garnered considerable controversy In parallel with the detention facilities at Guantanamo Bay Cuba the creation of military courts has focused significant global attention on the use of such courts to process and try persons suspected of committing terrorist acts or offenses during armed conflict This book brings together the viewpoints of leading scholars and policy makers on the topic of exceptional courts and military commissions with a series of unique contributions setting out the current state of the field The book assesses the relationship between such courts and other intersecting and overlapping legal arenas including constitutional law international law international human rights law and international humanitarian law By examining the comparative patterns similarities and disjunctions arising from the use of such courts this book also analyzes the political and legal challenges that the creation and operation of exceptional courts produces both within democratic states and for the international community *Military Courts, Civil-Military Relations, and the Legal Battle for Democracy* Brett J. Kyle, Andrew G. Reiter, 2020-12-22 The interaction between military and civilian courts the political power that legal prerogatives can provide to the armed forces and the difficult process civilian politicians face in reforming military justice remain glaringly under examined despite their implications for the quality and survival of democracy This book breaks new ground by providing a theoretically rich global examination of the operation and reform of military courts in democratic countries Drawing on a newly created dataset of 120 countries over more than two centuries it presents the first comprehensive picture of the evolution of military justice across states and over time Combined with qualitative historical case studies of Colombia Portugal Indonesia Fiji Brazil Pakistan and the United States the book presents a new framework for understanding how civilian actors are able to gain or lose legal control of the armed forces The book s findings have important lessons for scholars and policymakers working in the fields of democracy civil military relations human rights and the rule of law Counter-terrorism, Constitutionalism and Miscarriages of Justice Genevieve Lennon, Colin King, Carole McCartney, 2018-11-01 The purpose of this book is to honour the influential and wide ranging work of Professor Clive Walker It explores Professor Walker s influence from three perspectives Firstly it provides a historical reflection upon the development of the law and policy in relation to counter terrorism and miscarriages of justice since the 1970s This historical perspective which is often overlooked is particularly timely 17 years after 9 11 as trends become clearer and historical perspective even more valuable So too with miscarriages of justice while there was considerable public and political scrutiny following high profile miscarriages such as the Birmingham Six Guildford Four and others in the early 1990s today there is much less scrutiny despite significant concern relating to issues such as legal aid and access to justice increasing the potential if not likelihood for miscarriages to occur By including a critical historical perspective this book enables us to learn lessons from the past and to minimise contemporary risks of miscarriages

of justice Secondly this book provides a critical analysis of the law and policy as it stands today and its future trajectory Applying Walker s theoretical and analytical contributions to the field the authors focus on pressing contemporary concerns identifying lacunae where relevant as well as the possible probable and preferable future trends Finally the book celebrates and recognises the significant contributions by Walker with each chapter built around one or more of Walker s key works

**Courts at War** Gregory Burnep,2021 On June 28 2004 the US Supreme Court broke with a long standing tradition of deference to the executive in wartime national security cases and became an important actor in an armed conflict By declining to rubber stamp the executive branch s actions the judiciary would henceforth play a major role in shaping national security policies in the war on terror After the September 11 2001 terrorist attacks lawyers lawsuits and court decisions have repeatedly altered the landscape in the policy areas of detention and military commissions In *Courts at War* Gregory Burnep explores how after 9 11 lawyers and judges became deeply involved in an armed conflict with important consequences for presidential authority the separation of powers and the treatment of individuals suspected of posing a threat to the United States *Courts at War* goes beyond the post 9 11 armed conflict It analyzes the changes in the position of courts vis vis the other branches of government courts in conflict with the executive the legislature or both even courts in conflict with other courts The consequences included increased checks on presidential authority and greater levels of due process for suspected belligerents held in US custody But Burnep also shows that there are unintended consequences that accompany these developments Burnep innovatively applies an interbranch perspective to persuasively argue that litigation and judicial involvement have important implications for changing patterns of policy development in a wide range of national security policy areas including surveillance interrogation targeted killings and President Trump s travel ban

*Special Advocates in the Adversarial System* John Jackson,2019-07-24 The last twenty years have seen an unprecedented rise in the use of secret courts or closed material proceedings largely brought about in response to the need to protect intelligence sources in the fight against terrorism This has called into question the commitment of legal systems to long cherished principles of adversarial justice and due process Foremost among the measures designed to minimise the prejudice caused to parties who have been excluded from such proceedings has been the use of special advocates who are given access to sensitive national security material and can make representations to the court on behalf of excluded parties Special advocates are now deployed across a range of administrative civil and criminal proceedings in many common law jurisdictions including the UK Canada New Zealand Hong Kong and Australia This book analyses the professional services special advocates offer across a range of different types of closed proceedings Drawing on extensive interviews with special advocates and with lawyers and judges who have worked with them the book examines the manner in which special advocates are appointed and supported how their position differs from that of ordinary counsel within the adversarial system and the challenges they face in the work that they do Comparisons are made between different special advocate systems and with other models of security

cleared counsel including that used in the United States to consider what changes might be made to strengthen their adversarial role in closed proceedings In making an assessment of the future of special advocacy the book argues that there is a need to reconceptualise the unique role that special advocates play in the administration of justice      **Routledge Handbook of Law and Terrorism** Genevieve Lennon, Clive Walker, 2015-07-16 In the years since 9 11 counter terrorism law and policy has proliferated across the world This handbook comprehensively surveys how the law has been deployed in all aspects of counter terrorism It provides an authoritative and critical analysis of counter terrorism laws in domestic jurisdictions taking a comparative approach to a range of jurisdictions especially the UK the US Australia Canada and Europe The contributions to the book are written by experts in the field of terrorism law and policy allowing for discussion of a wide range of regulatory responses and strategies of governance The book is divided into four parts reflective of established counter terrorism strategic approaches and covers key themes such as Policing and special powers including surveillance Criminal offences and court processes Prevention of radicalisation and manifestations of extremism Protective preparative security The penology of terrorism In addressing counter terrorism laws across a broad range of topics and jurisdictions the handbook will be of great interest and use to researchers students and practitioners in criminal law counter terrorism and security studies      *The Oxford Handbook of International Law in Armed Conflict* Andrew Clapham, Paola Gaeta, Tom Haeck, Alice Priddy, 2014-03-13 Over the past ten years the content and application of international law in armed conflict has changed dramatically This Oxford Handbook provides an authoritative and comprehensive study of the role of international law in armed conflict and engages in a broad analysis of international humanitarian law human rights law refugee law international criminal law environmental law and the law on the use of force With an international group of expert contributors the Handbook has a global multi disciplinary perspective on the place of law in war The Handbook consists of 32 chapters in seven parts Part I provides the historical background of international law in armed conflict and sets out its contemporary challenges Part II considers the relevant sources of international law Part III describes the different legal regimes land warfare air warfare maritime warfare the law of occupation the law applicable to peace operations and the law of neutrality Part IV introduces crucial concepts in humanitarian law the use of weapons proportionality the principle of distinction and internal armed conflict Part V looks at rights issues life torture fair trials the environment economic social and cultural rights the protection of cultural property and the human rights of members of the armed forces Part VI covers key issues in times of conflict the use of force terrorism unlawful combatants mercenaries forced migration and issues of gender Part VII deals with accountability for war crimes the responsibility of non state actors compensation before national courts and finally transitional justice      **Harvard Law Review: Volume 127, Number 8 - June 2014** Harvard Law Review, 2014-06-10 Harvard Law Review Number 8 June 2014 includes an extensive Symposium on Freedom of the Press as well as an article The Criminal Court Audience in a Post Trial World by Jocelyn Simonson and a book review essay The

Positive Foundations of Formalism False Necessity and American Legal Realism by Lawrence B Solum Specifically the Symposium on press freedoms features Introduction Reflections on the First Amendment and the Information Economy by Mark Tushnet The New New York Times Free Speech Lawyering in the Age of Google and Twitter by Marvin Ammori Old School New School Speech Regulation by Jack M Balkin First Amendment Common Sense by Susan Crawford More than a Feeling Emotion and the First Amendment by Rebecca Tushnet Press Exceptionalism by Sonja R West The issue includes these student contributions Note Congressional Control of Foreign Assistance to Post Coup States Note A Bad Man Is Hard to Find Note Mediation of Investor State Conflicts In addition case notes explore Recent Cases on such subjects as the FCC power to create Open Internet rules whether enforcement of a foreign judgment is state action and threat convictions in internet free speech cases as well as Recent Legislation on immigration law and local entity compliance in California The issue includes several Recent Publications summaries Finally as the final issue of volume 127 it contains a comprehensive Index of each article essay book review and student work from the year The Harvard Law Review is offered in a quality digital edition featuring active Contents linked notes active URLs in notes and proper ebook and Bluebook formatting The Review is a student run organization whose primary purpose is to publish a journal of legal scholarship The organization is formally independent of the Harvard Law School Student editors make all editorial and organizational decisions

**Public Trials** Lida Maxwell, 2015 There are certain moments such as the American founding or the Civil Rights Movement that we revisit again and again as instances of democratic triumph and there are other moments that haunt us as instances of democratic failure How should we view moments of democratic failure when both the law and citizens forsake justice Do such moments reveal a wholesale failure of democracy or a more contested failing pointing to what could have been and still might be Public Trials reveals the considerable stakes of how we understand democratic failure Maxwell argues against a tendency in the thinking of Plato Rousseau and contemporary theorists to view moments of democratic failure as indicative of the failure of democracy inasmuch as such thinking leads to a deference to authority that unintentionally encourages complicity in elite and legal failures to assure justice In contrast what Maxwell calls lost cause narratives of democratic failure reveal the contingency of democratic failure by showing that things could have been otherwise and with public action and response might yet be A politics of lost causes calls for democratic responsiveness to failure via practices of resistance theatrical claims making and re narration Maxwell makes a powerful case for the politics of lost causes by examining public controversies over trials She focuses on the dilemmas and diagnoses of democratic failure in four instances Edmund Burke s speeches and writings on the Warren Hastings trial in late 18th century Britain Emile Zola s writings on the Dreyfus Affair in late 19th century France Hannah Arendt s writings on the Eichmann trial in 1960 s Israel and Kathryn Bigelow s recent narration of the lack of trials of alleged terrorist detainees in Zero Dark Thirty Maxwell marshals her subtle historically grounded readings of these texts to show the dangers of despairing of democracy altogether as well as the necessity of re

narrating instances of democratic failure so as to cultivate public responsiveness to such failures in the future

**Proportionality in Crime Control and Criminal Justice** Emmanouil Billis, Nandor Knust, Jon Petter Rui, 2021-04-22

This edited volume seeks to reassess the old and to analyse and develop novel approaches to the notion of proportionality in criminal matters and the new security architecture. The discourse is not limited to conventional constitutional constellations and standard problems of sentencing in traditional criminal proceedings. Rather, the book offers an interdisciplinary and cross-jurisdictional exploration of highly topical proportionality-related issues pertinent to penal theory and legal philosophy: criminalisation policies, security and anti-terrorism strategies, alternative types of justice delivery and supranational enforcement as well as human rights and international criminal and humanitarian law. In today's global risk society with its numerous visible and invisible enemies of the state and the individual balancing freedom and security has become nothing less than an attempt at untying a Gordian knot. Against this background, the proportionality of measures of crime prevention and repression is unquestionably an issue of utmost importance which basic research and legal policy in rule of law based systems are urgently called to address. The timely and fascinating contributions in this book covering jurisdictions from both the common law and the civil law as well as hybrid and international jurisdictions will appeal to academics, researchers, policy advisers and practitioners working in the areas of national and international criminal law, comparative criminal justice, criminology and legal philosophy as well as constitutional and security law.

The United Nations Principles to Combat Impunity: A Commentary Frank Haldemann, Thomas Unger, 2018-03-21. The fight against impunity has become a growing concern of the international community. Updated in 2005, the UN Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity is the fruit of several years of study developed under the aegis of the UN Commission on Human Rights and then affirmed by the Human Rights Council. These Principles are today widely accepted as constituting an authoritative reference point for efforts in the fight against impunity for gross human rights abuses and serious violations of international humanitarian law. As a comprehensive attempt to codify universal accountability norms, the UN Set of Principles marks a significant step forward in the debate on the obligation of states to combat impunity in its various forms. Bringing together leading experts in the field, this volume provides comprehensive academic commentary of the 38 principles. The book is a perfect companion to the document setting out the text of the Principles alongside detailed analysis as well as a full introduction and a guide to the relevant literature and case law. The commentary advances debates and clarifies complex legal issues, making it an essential resource for legal academics, students and practitioners working in fields such as human rights, international criminal law and transitional justice.

Judicial Independence Under Threat Dimitrios Giannouloupoloulos, Yvonne McDermott, 2022-08-11. Judicial Independence Under Threat seeks to situate contemporary challenges to judicial independence in their proper legal, philosophical, political and historical contexts. It asks how threats to judicial independence can be protected against.

Uncertain Justice Laurence Tribe, Joshua Matz, 2014-06-03

An assessment of how the Supreme Court under Chief Justice John Roberts is significantly influencing the nation's laws and reinterpreting the Constitution includes in depth analysis of recent rulings and their implications

*Detention of Terrorism Suspects* Maureen Duffy, 2018-02-08 Controversial erosions of individual liberties in the name of anti terrorism are ongoing in liberal democracies The focus of this book is on the manner in which strategic discourse has been used to create accepted political narratives It specifically links aspects of that discourse to problematic and evolving terrorism detention practices that happen outside of traditional criminal and wartime paradigms with examples including the detentions at Guantanamo Bay and security certificates in Canada This book suggests that biased political discourse has in some respects continued to fuel public misconceptions about terrorism which have then led to problematic legal enactments supported by those misconceptions It introduces this idea by presenting current examples such as some of the language used by US President Donald Trump regarding terrorism and it argues that such language has supported questionable legal responses to terrorism It then critiques political arguments that began after 9 11 many of which are still foundational as terrorism detention practices evolve The focus is on language emanating from the US and the book links this language to specific examples of changed detention practices from the US Canada and the UK Terrorism is undoubtedly a real threat but that does not mean that all perceptions of how to respond to terrorism are valid As international terrorism continues to grow and to change this book offers valuable insights into problems that have arisen from specific responses with the objective of avoiding those problems going forward

*Human Rights and America's War on Terror* Satvinder S. Juss, 2018-10-25 This volume examines the success of the 9 11 attacks in undermining the cherished principles of Western democracy free speech and tolerance which were central to US values It is argued that this has led to the USA fighting disastrous wars in Afghanistan and Iraq and to sanctioning the use of torture and imprisonment without trial in Guantanamo Bay extraordinary rendition surveillance and drone attacks At home it has resulted in restrictions of civil liberties and the growth of an ill affordable military and security apparatus In this collection the authors note the irony that the shocking destruction of the World Trade Center on 9 11 should become the justification for the relentless expansion of security agencies Yet this is a salutary illustration of how the security agencies in the USA have adopted faulty preconceptions which have become too embedded within the institution to be abandoned without loss of credibility and prestige The book presents a timely assessment of both the human rights costs of the war on terror and the methods used to wage and relentlessly continue that war It will be of interest to researchers academics practitioners and students in the fields of human rights law criminal justice criminology politics and international studies

**The Oxford Handbook of Criminal Law** Markus D Dubber, Tatjana Hörnle, 2014-11-27 The Oxford Handbook of Criminal Law reflects the continued transformation of criminal law into a global discipline providing scholars with a comprehensive international resource a common point of entry into cutting edge contemporary research and a snapshot of the state and scope of the field To this end the Handbook takes a broad approach to its subject matter disciplinarily



geographically and systematically Its contributors include current and future research leaders representing a variety of legal systems methodologies areas of expertise and research agendas The Handbook is divided into four parts Approaches Methods I Systems Methods II Aspects Issues III and Contexts Comparisons IV Part I includes essays exploring various methodological approaches to criminal law such as criminology feminist studies and history Part II provides an overview of systems or models of criminal law laying the foundation for further inquiry into specific conceptions of criminal law as well as for comparative analysis such as Islamic Marxist and military law Part III covers the three aspects of the penal process the definition of norms and principles of liability substantive criminal law along with a less detailed treatment of the imposition of norms criminal procedure and the infliction of sanctions prison law Contributors consider the basic topics traditionally addressed in scholarship on the general and special parts of the substantive criminal law such as jurisdiction mens rea justifications and excuses Part IV places criminal law in context both domestically and transnationally by exploring the contrasts between criminal law and other species of law and state power and by investigating criminal law s place in the projects of comparative law transnational and international law

**International Conflict and Security Law** Laurie R. Blank, 2023-02-14 This incisive book provides an extensive analysis of the robust array of international law applicable across the spectrum of international conflict and security With a particular focus on new and emerging technologies and domains such as cyber and outer space Laurie Blank illustrates how international conflict and security law applies to 21st century challenges

*The EU Charter of Fundamental Rights* Steve Peers, Tamara Hervey, Jeff Kenner, Angela Ward, 2021-11-18 this most thorough commentary must be regarded as the Bible on the Charter Peter Oliver Common Market Law Review This second edition of the first commentary of the EU Charter of Fundamental Rights in English written by experts from several EU Member States provides an authoritative but succinct statement of how the Charter impacts upon EU domestic and international law Following the conventional article by article approach each commentator offers an expert view of how each article is either already being interpreted in the courts or is likely to be interpreted Each commentary is referenced to the case law and is augmented with extensive references to further reading This is a much welcomed new edition of the authoritative guide to the Charter

*War, States, and Contention* Sidney Tarrow, 2015-05-21 For the last two decades Sidney Tarrow has explored contentious politics disruptions of the settled political order caused by social movements These disruptions range from strikes and street protests to riots and civil disobedience to revolution In *War States and Contention* Tarrow shows how such movements sometimes trigger and guide the course of war and how they sometimes rise during war and in war s wake to change regimes or even overthrow states Tarrow draws on evidence from historical and contemporary cases including revolutionary France the United States from the Civil War to the anti Vietnam War movement Italy after World War I and the United States during the decade following 9 11 In the twenty first century movements are becoming transnational and globalization and internationalization are moving war beyond conflict between states The

radically new phenomenon is not that movements make war against states but that states make war against movements Tarrow finds this an especially troublesome development in recent U S history He argues that that the United States is in danger of abandoning the devotion to rights it had expanded through two centuries of struggle and that Americans are now institutionalizing as a new normal the abuse of rights in the name of national security He expands this hypothesis to the global level through what he calls the international state of emergency      **Sacred Men** Keith L. Camacho,2019-11-22 Keith L Camacho examines the U S Navy s war crimes tribunal in Guam between 1944 and 1949 which tried members of Guam s indigenous Chamorro community and Japanese nationals and its role in shaping contemporary domestic and international laws regarding combatants jurisdiction and property

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