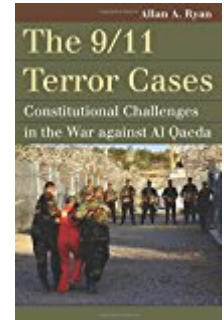


Allan A. Ryan. *The 9/11 Terror Cases: Constitutional Challenges in the War against Al Qaeda*. Lawrence: University Press of Kansas, 2015. 256 pp. \$19.95, paper, ISBN 978-0-7006-2170-5.



Reviewed by Sahar Khan

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Commissioned by Margaret Sankey (Air University)

Allan A. Ryan's *The 9/11 Terror Cases: Constitutional Challenges in the War against Al Qaeda* is a breath of fresh air amongst the numerous books written by politicians, journalists, academics, military and intelligence officers following the attacks of September 11. Ryan begins the book with the promise that it is for the curious unfamiliar citizen, and delivers by providing an objective analysis of a very complicated topic: the challenges made to the US Constitution following the invasion of Afghanistan and how the American legal and political system has responded to such challenges.

The attacks of September 11 are embedded in the minds of Americans as an act of war, though Ryan correctly states that they should have been treated as crimes. After the attacks, the Bush administration launched an invasion of Afghanistan and detained over 700 individuals, or "aliens." All of them were brought over to the backwater US naval base on Guantanamo Bay, Cuba—commonly referred to as Gitmo—making the base the center of controversy. In order to explain why Gitmo re-

mains functional despite President Barack Obama's promise to have it closed eight years ago, Ryan draws on his experience as a lawyer and teacher of the law of war to explain, in exceptionally clear language, the complexities surrounding the barriers to its closure. He uses the principle of the separation of powers as a lens to examine the terror cases. The separation of powers is based on limiting the power of each branch: Congress makes laws, the executive implements the laws, and the courts interpret the laws while serving as arbitrators. Though using the separation of powers as an analytical lens is not a new approach, he does so effectively to explain how the terror cases are unique: the Supreme Court decided four cases between 2004 and 2008, and each case not only highlighted but created tension and conflict between each branch of government.

For example, in *Rasul v. Bush* (2004), the question was: Can Gitmo detainees be tried in US federal courts? In *Hamdi v. Rumsfeld* and *Rumsfeld v. Padilla* (2004), the key questions were: Can the president order an American citizen to be con-

fined indefinitely without trial? And must federal courts, in the interest of national security, always yield to the president? In *Hamdan v. Rumsfeld* (2006), the Supreme Court dealt with the issue of military commissions: their jurisdiction and design. Ryan walks the reader through each case with painstaking chronological accuracy and clarity. In fact, reading the book makes one feel like a student in his class, not only learning about important events but being exposed to crucial legal concepts that form the basis of American law and government.

The conclusion, however, leaves the reader wanting more. While the separation of powers is one of the pillars of the Constitution, concluding by stating that it is the judiciary that most often, and most visibly, sets the boundaries of separation is unsatisfying. Instead of how the judiciary uses the principle of the separation of powers to limit the branches of government, the highlight of the book should have been how the Supreme Court had tried to avoid addressing the scope of presidential authority in the terror cases brought before it, such as detaining US residents (in the case of *Padilla* and *al-Marri v. Spagone* [2009] in chapter 4), barring detainees' access to the US judicial system (as was the question in *Rasul*), and establishing military commissions (as was the case in *Hamdan*). The Supreme Court did so by being extremely careful and selective on the questions it would consider in each case that came before it. In his description of events, Ryan more or less justifies the Supreme Court's narrowing approach, and hence, introduces his bias toward the Court. His analysis, though largely objective and based on a careful reading of the decisions, makes clear his belief that the Supreme Court adequately and satisfactorily addressed the constitutional challenges brought forth by the 9/11 terror cases. As a non-lawyer, I'm not sure I am convinced of that.

Overall, experts and non-experts, academics and non-academics, lawyers and non-lawyers,

and the general population will learn a great deal from this book. This book shows how Gitmo's continued existence serves a symbol of the United States' struggle to reconcile the restraints imposed on its wartime power by both domestic and international law, and it rightfully advocates closing the detention center. Finally, Ryan's book is vital for those trying to understand how the United States is upholding and restructuring the due process of law, separation of powers, and presidential authority when it comes to the Global War on Terror.

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