



# J U S T I C E

*for*

# A L L

By David Fyten

MARGARET TAYLOR'S VOICE, ADVOCATING THE RIGHTS OF DETAINEES, IS CONSISTENTLY HEARD IN THE DEBATE OVER IMMIGRATION POLICY.

**E**VEN AS A SMALL CHILD, Margaret Taylor could feel the invisible wall between countries. She remembers coming up hard against it crossing over from her hometown of El Paso, Texas, into Juarez, Mexico, then nervously declaring to an imposing border guard on the return trip that she was indeed a citizen of the United States.

As a college student, she learned that the wall not only is excluding, but also confining. Her father, a justice-minded minister, taught her about the plight of political refugees whose requests for sanctuary in the United States were met with an official policy of large-scale detention. Later, she witnessed their harsh treatment firsthand at an immigration detention camp in south Texas.

Her formative years eventually led Taylor, a professor at Wake Forest School of Law, to a distinguished career as an immigration scholar and teacher. From her outpost in North Carolina, which has one of the country's fastest-growing Hispanic populations, she has become a leading expert in her field, one whose voice is consistently heard in the debate over immigration policy and whose work has laid a theoretical foundation for advocates representing detainees.

Prolific and indefatigable, Taylor provides expert analysis to national media, testifies before Congress on detention issues, submits comments on proposed regulations, and helps organize *amicus* briefs in cases challenging mandatory and indefinite

detention. She has served on the advisory board of a project in New York City that tested a model of supervised release as an alternative to detention, and she co-founded an e-mail listserv for teachers of immigration law that has become a vital networking conduit for their community and the venue for much of the extensive mentoring she does.

Colleagues and students alike praise not only her teaching acumen, but also her ability to inculcate in her students the will, in her words, "to do good." In the past two years, she has received the top teaching awards bestowed by both the Wake Forest School of Law and the Association of Immigration Lawyers of America (AILA)—the Joseph Branch Excellence in Teaching Award in 2002



and the Elmer Fried Excellence in Teaching Award in 2003, respectively.

All of this has made Taylor, at forty, a respected figure in academic and professional circles, and her voice an influential one in the impassioned and often-contentious debate

over the tightened entry restrictions and immigrant detention policies the government has implemented in recent years, especially since 2001, in the name of national security.

“Over the past decade, the grounds for deportation have expanded and

the relief from it has contracted,” says Taylor, who is in her thirteenth year at Wake Forest and sixth as a full professor following her appointment to the highest rank at the relatively young age of thirty-four. “Under immigration law, non-citizens subject

to deportation are not entitled to the same constitutional protections and judicial interventions as in other areas of the law. To a scholar, it is an opportunity to address issues that matter in the real world.”

David Martin, a professor at the University of Virginia who formerly served as general counsel for the U.S. Immigration and Naturalization Service (INS), recalls how Taylor’s arguments submitted in response

the agencies and officials who must implement them,” Motomura says. “This focus makes her academic writing more grounded and influential while maintaining the highest standards of conceptual sophistication.”

Ronald F. Wright Jr., one of Taylor’s closest colleagues on the School of Law faculty who co-authored with her an article titled “The Sentencing Judge as Immigration Judge,” specializes in prosecutorial charging decisions

ter devoted to social justice, sent her some literature from the Sanctuary Movement, which was advocating the cause of Central Americans who were being imprisoned by U.S. authorities despite claiming asylum for having fled political violence in their home countries. That awakened her consciousness.

But it was the following year that Taylor had her true epiphany. On her way home from spring break, she



to new detention rules in 1997 were instrumental in persuading the INS (now part of the Department of Homeland Security) to ease certain restrictions. “Margaret is a wonderful colleague,” he says. “Her candor and openness have won her friends—and influence—in academic and government circles alike. Her quiet tenacity in her research helps her excel at getting the story beneath the surface, especially regarding the government’s litigation positions and regulatory changes. As a consequence, she is widely recognized as the leading academic authority on immigration detention.”

Hiroshi Motomura, a respected immigration scholar at UNC-Chapel Hill, praises Taylor’s combination of academic insight and practical focus. “She is particularly interested in how the concepts that have driven detention policy have been put into practice—or not put into practice—by

and criminal sentencing, among other subject areas. “Margaret has a genius for knowing which ideas matter,” Wright notes. “In her research, she chooses topics like detention conditions, access to lawyers, or prosecutorial discretion, ideas that have huge implications for real people. These topics were not hot scholarship topics until Margaret made them that way. In so doing, she changed the national debate.”

What better crucible than Texas—one of two states, along with California, with the country’s highest immigrant populations, and that function as its front-line portals for entry, legal or otherwise—for the forging of a sterling career in immigration law?

When Taylor was ten, her family moved from El Paso to Houston, and she went on to enroll as an honors history student at the University of Texas at Austin. During her junior year, her father, a Presbyterian minis-

ter stopped to observe conditions at the Los Fresnos detention camp outside McAllen, Texas, where thousands of Latin Americans claiming asylum were being held, charged with or convicted of nothing more than the Reagan administration’s hostility to their claims. A Phi Beta Kappa scholar who already had been accepted to Yale School of Law, she knew then that it was the field she would pursue.

At Yale Taylor took an immigration law course “at the first opportunity I had” and wrote a paper on INS detention that became the basis of her first law review article. After a stellar law school career that included an editorship of the *Yale Law and Policy Review*, she clerked for Judge Jerre S. Williams on the Fifth U.S. Circuit Court of Appeals and worked for two years in an Austin law firm before deciding to pursue an academic career. During her Wake Forest interview in 1991, Taylor told

# THE KEY TOPICS AND THEMES OF MARGARET TAYLOR'S SCHOLARLY WRITING AND POLICY ADVOCACY



## CONDITIONS OF CONFINEMENT IN IMMIGRATION DETENTION.

“The INS was ill-equipped to take on the rapidly expanding system of immigration detention that emerged in the early nineties,” Taylor says. “Even as the INS presided over the fastest growing component of federal incarceration, it had no minimum standards in place to ensure humane conditions of confinement.” Her first article, published in 1995, was the first in the academic literature to focus attention on deplorable immigrant detention conditions and to consider how courts should address constitutional challenges brought by INS detainees to their confinement conditions. A second article detailed the numerous obstacles to securing legal representation

for INS detainees and considered legal challenges and administrative reform to redress this problem.

Shortly after her first article was published, Taylor was invited to speak about INS detention and submit policy recommendations at a forum hosted by the U.S. Commission on Immigration Reform, which was preparing a report to Congress on immigration policy. “It was quite an honor,” she says. “From that experience, I learned the value of scholarship that is linked to social justice. And I met the government officials and advocates for immigrants who are a natural audience for my work.”

## DEPORTATION OF CRIMINAL DEFENDERS.

“‘Out of sight, out of mind’ is the unspoken premise of the policy of deporting criminal offenders,” Taylor says. “But in reality, deporting convicted criminals has little impact on crime in the United States, can foster international crime networks, and can contribute to political instability and other domestic problems in receiving countries.” In 1998, she co-authored a study commissioned by the Inter-American Dialogue, a think tank in Washington, D.C., that considered the geopolitical impact of criminal deportations. Finding that the huge growth in criminal deportation was indeed creating problems in receiving countries, the study concluded that immigration law should return to the time when only serious offenders were deported, and that ties to

the U.S., such as citizen spouses and children, should merit relief from deportation.

Perhaps Taylor’s most controversial piece was the article she co-authored with Wright in the *Emory Law Journal* in 2002. It explored the notion that deportation decisions for some non-citizen offenders should be made at the time of sentencing by the judge that presides over the criminal proceedings. This merger of functions, the authors asserted, would enhance the efficiency of criminal deportation (an idea, Taylor notes as an aside, that is not “wildly popular in the immigration advocacy community”) while providing an array of constitutional protections, including the right to counsel, for non-citizen offenders facing the prospect of being deported.

## RIGHT TO BAIL AND ALTERNATIVES TO DETENTION.

Taylor asserts that due process requires a hearing before a neutral decision-maker before a non-citizen subject to deportation can be detained. In the criminal context, judges routinely grant bail to defendants awaiting trial; denial of bail must be justified by evidence of flight risk or some special danger. In the immigration context, by

contrast, the INS often has unilateral authority to make detention decisions. In addition, Congress passed a law in 1996 mandating detention of virtually all criminal offenders while their deportation hearings are pending, regardless of the seriousness of their crime, their lawful residency status, or their ties to the community.



Dean Robert Walsh that she would be willing to teach a variety of courses as long as she could teach immigration law. Needless to say, he's glad he agreed.

The arc of Taylor's Wake Forest tenure has coincided with the cresting of her specialty. The nineties were a decade of unprecedented growth in immigration detention and the deportation of non-citizen criminal offenders. INS detention capacity grew from roughly 8,000 beds to 22,000 beds and the agency increased by almost ten-fold the number of non-citizen criminal offenders it removes from the country. Taylor notes that these trends were fueled by a tripling of the INS enforcement budget, a stripping of procedural rights for criminal offenders in deportation proceedings, and an expansion of the list of crimes that render a non-citizen deportable. "Now, even long-term permanent residents convicted of relatively minor crimes such as shoplifting or simple assault can be deported for offenses that happened years or even decades ago and did not, at the time of the offense, result in any immigration sanctions," she says.

In deportation proceedings, the constitutional protections of a criminal trial, such as the right to appointed counsel, do not apply. But the Supreme Court has repeatedly held that non-citizens subject to deportation are protected by the due process clause. Much of Taylor's work explores the contours of due process for non-citizen criminal offenders and for INS detainees.

Taylor argues against detention mandates, asserting that immigration enforcement would be more efficient

and humane if Congress and the executive branch instead devoted serious attention to establishing detention alternatives. She served on the advisory board of a pilot project run by the Vera Institute of Justice in New York City, a leading innovator in criminal justice reform, to test supervised release, which works well in the criminal context, as an alternative to immigration detention.

SHE HAS A REFRESHING WAY,  
IN A WORLD TOO FULL OF  
CYNICISM ABOUT LAW, OF  
CONVINCING HER STUDENTS  
THAT IDEALISM IS AN ASSET  
TO A PROFESSIONAL,  
RATHER THAN SOMETHING  
TO HIDE OR IGNORE."

Taylor has testified before Congress against detention mandates and in favor of supervised release and individualized detention decisions. At a U.S. House hearing in December 2001, the Republican committee chairman permitted the Democrats on the committee to call one witness to counter the testimony of an entire panel of INS officials. Taylor was that witness. (She tells a dramatic story about that appearance. "My trip to D.C. was almost as nerve-racking as being grilled by members of the House of Representatives," she recalls. "My initial flight was so delayed that I was going to miss the hearing. I caught another flight to a different airport, but then my cab driver, who was surely the only taxicab driver in Washington who didn't know how to get to Capitol Hill, had a wreck because he was consulting a

map while driving. At the time of the accident, I was on the cell phone with frantic committee staff members who were already worried that I wasn't going to be there to testify. I got to the hearing with five minutes to spare.")

Taylor acknowledges that her own personal political preferences lean toward the liberal. "But in the context of my work," she adds, "it's important that I be balanced and fair. I try to critique rulings and policies in ways that are helpful and not merely critical."

Taylor was in the nation's capital again this year to hear oral arguments before the Supreme Court challenging the constitutionality of the mandatory detention provision. In the end, the high court upheld the statute. "It was a disappointing decision," Taylor says. "Even though the case was not about terrorism, September 11 seems to have caused the Court to back away from recent cases protecting the liberty interest of non-citizens who are detained. The Court reaffirmed that it will defer to Congress and the executive branch in matters of immigration policy, even when important civil liberties are at stake." The decision provides fodder for her current work, which critiques an emerging trend in immigration enforcement to circumvent bond hearings when they are provided by statute and instead permit the homeland security department to declare that certain individuals or groups, such as Haitian asylum seekers, will be detained automatically without a hearing.

Taylor, who with her husband Vance Parker has two daughters, earns high marks for her teaching as well as her scholarship. "Her



approach to teaching is to move each student's understanding of the material to a much higher analytical level than the student could achieve alone," says Motomura. "But she works just as hard to make them understand that all the analysis in the world won't matter unless they understand how things work in the real world. She is adept at constructing exercises that force students to think not purely theoretically, but how theory and practice are interwoven."

"Margaret knows how to get her students interested in ideas that matter," Wright observes. "Over the years, many students have become passionate about immigration law after taking her course, and some have chosen that area of practice after leaving law school. Margaret shows her students, in and out of class, the ways that legal institutions matter for real people. She has a refreshing way, in a world too full of cynicism about law, of convincing her students that idealism is an asset to a professional, rather than something to hide or ignore."

One of Taylor's former students is Julie Suh (JD '01), who serves as a staff attorney for the U.S. Department of Justice's Board of Immigration Appeals in suburban Washington D.C. "It seems to me that Professor Taylor has such genuine passion for the field because immigration law and policy touch the lives of the most marginalized and powerless individuals in our society," Suh says. "When I was a student in her class, it was that passion that ignited my interest in the

field. She is plugged into both the immigration advocacy and academic communities not only because she is a dedicated and respected scholar, but also because she is very personable and easy to approach."

The AILA is the national association of over 8,000 attorneys and law professors who practice and teach immigration law. Its immediate past president is John L. "Jack" Pinnix (JD '73), a Raleigh attorney specializing in immigration and nationality issues who is a founding board member and national director of the American Immigration Law Foundation, a non-profit educational and service foundation which promotes public understanding of immigration law and policy through education, policy analysis, and support to litigators.



Taylor, with student: 'Margaret knows how to get her students interested in ideas that matter.'

In accepting the Elmer Fried Excellence in Teaching Award at the association's annual conference in New Orleans last June, Taylor mused, with tongue only partly in cheek, that immigration law ought to be a required course in law school.

"Although I don't think my colleagues who teach other courses will be convinced, I developed a pretty impressive list of arguments to support this

radical idea," she told the crowd. "Some of them center on the knowledge and skills acquired in the course. Immigration law teaches students how to read a complicated statute. It makes administrative law concepts come to life, and shows students how an agency operates. Immigration law also underscores for students the importance of constitutional rights—not because they see these rights being vindicated, but rather because students in this class see a very scary picture of what the world looks like when constitutional norms are not fully enforced by the courts."

Taylor then listed her two most important reasons. "First, immigration law restores a human face to the study of law," she said. "Students are moved by the plight of real people they read about in their immigration law casebook and, increasingly, in the newspapers—real people whose lives are threatened; real people impacted by an unduly harsh statute; real people who are victims of an abuse of government power, of bureaucratic bungling, of inexcusable delays. And finally, immigration law shows my students the power of a law degree for doing good.

That's not something we necessarily teach in law school. And that's what impresses me each year at the AILA conference: the enormous amount of dedication and hard work that immigration attorneys do every day to help real people and to do good."