

***POL. SCI 269: THINKING LIKE A LAWYER: THE CONSTITUTION, U.S. LAW, AND AMERICAN FOREIGN POLICY IN A TURBULENT WORLD***

This course will look at how the Constitution and U.S. law have shaped the conduct and substance of American foreign policy. Issues will include the President's powers to conduct relations with foreign nations; the struggle for power between the President and Congress over the use of military force; the role of the courts in interpreting treaties and America's international obligations; and the question of how far Congress or the President can restrict the rights of Americans and other persons in the United States in times of war or a foreign policy crisis. Students also will learn how to read and analyze legal cases, including famous U.S. Supreme Court opinions in the field of foreign relations law. *As part of this course, we also will reflect on, and discuss, some of the most intellectually exciting questions in the fields of democratic politics, international relations, and law, and emerge from this course as more effective and thoughtful activists, citizens, and thinking persons.*

The course grade will be based on the following elements: 25% for class attendance, quality of preparation, and participation in class discussions; 25% on one-hour midterm; 50% on final examination.

**COURSE OBJECTIVES:**

1. **To gain a comprehensive understanding of the main cases and legal principles of U.S. foreign relations law and their impact on American legal, political, economic, and strategic developments;**
2. **To gain an accurate understanding of the principal ways in which U.S. foreign relations law affects the U.S. legal system, as well as a solid grasp of how the U.S. Constitution and federal law interact with international law in shaping the law of U.S. foreign relations and the practical conduct of American foreign policy;**
3. **To enhance the student's analytical skills, especially the ability to read and analyze complex legal cases and judicial decisions, and distill the key holdings, rules, and principles flowing from each case, as well as their most significant implications;**
4. **To improve the student's ability to present and defend, orally and in front of the class, various arguments in support of, or against, particular policy positions and legal interpretations deriving from a case**

*Texts:*

Bradley and Goldsmith, *Foreign Relations Law: Cases and Materials*, 5<sup>th</sup> ed. (2014).

Alexis de Tocqueville, *Democracy in America* (1835).

Alexander Hamilton, James Madison, John Jay, *The Federalist Papers* (1788).

**WEEK 1: SEP 5, 7**

Why was the United States put together as a single country instead of thirteen separate independent nations? What is the Constitution all about? Is it, first and foremost, about protecting the country in the midst of a dangerous world? Or are there other important goals and values, such as individual liberty, equality, and the pursuit of happiness?

*Constitution of the United States of America (entire text, about fourteen pages)*

*Foreign Relations Law (FRL), 3-14, 809-816*

*Total: 34 pages*

**WEEK 2: SEP 12, 14**

Why is the Rule of Law so central to U.S. political life? Why are Judges and Courts as powerful and independent as they are in the United States? Is this a good thing or a bad thing? What are some of the consequences? Here is what a very perceptive observer of the United States noticed, back in the 1830s, not long after the country was founded:

*Tocqueville, Democracy in America, Vol. 1, Part 1, Ch. 2, Ch. 3, Ch. 4, Ch. 6, Ch. 8 (the sections that begin with “The Federal Courts” and end with “Why the Federal System is Not Within the Reach of all Nations and Why the Anglo-Americans Have Been Able to Adopt It.”*

*Also, Tocqueville, Vol. 1, Part II, Ch. 6, Ch. 8.*

*Total: 102 pages*

**WEEK 3: SEP 19, 21**

For almost 120 years, the United States Supreme Court was the only court in the entire world that could declare laws unconstitutional and get away with it, no matter how much the king, the president or the legislature might dislike its decision, and no matter how popular the law might have been. How did the Supreme Court get to be so powerful in the United States? (Hint: it took a very clever lawyer to make it happen. His name was John Marshall, and here is how he did it in 1803 – read the two links below):

*Marbury v. Madison (1803):*

[http://supreme.findlaw.com/supreme\\_court/landmark/marbury.html](http://supreme.findlaw.com/supreme_court/landmark/marbury.html)

<http://caselaw.findlaw.com/us-supreme-court/5/137.html>

Also read, *The Federalist Papers*, Papers # 78, 79, 80, 81, 82.

*Total: 70 pages*

**WEEK 4: SEP 26, 28**

An introductory view of the constitutional and legal framework behind United States foreign relations: In foreign policy, as between the President and Congress, *who* gets to do *what*, and *when*?

*The Neutrality Controversy of 1793*

*Ex-Parte Merryman (1861)*

*Chinese Exclusion Case (1889)*

*Carter v. Carter Coal Co. (1936)*

*United States v. Curtiss-Wright Export Corp. (1937)*

*Foreign Relations Law (FRL), 14-43*

*Total: 31 pages*

**WEEK 5: OCT 3, 5**

How broad are the powers of Congress and the President in foreign relations? What can Congress do and not do? How about the President? How far can the President act?

*Fong Yue Ting v. United States (1893)*

*United States v. Clark (2006)*

*United States v. Bellaizac-Hurtado (2012)*

*Youngstown Sheet & Tube Co. v. Sawyer (1951)*

*Dames & Moore v. Regan (1981)*

*Zivotofsky v. Secretary of State (2013)*

*Foreign Relations Law (FRL), 137-145, 157-189*

*Total: 40 pages*

**WEEK 6: OCT 10: REVIEW**

**OCT 12: ONE-HOUR MIDTERM EXAMINATION**

**WEEK 7: OCT 17, 19**

Who gets to put the United States at war with foreign countries, Congress or the President? Why does this question matter? What answer does the Constitution offer? Does this answer make sense today? How about uses of force short of all-out war? Does the Constitution say anything about those cases?

Federalist Papers # 24, #25, #69 (1787-1788)

*Bas v. Tingy (1800)*

*Brown v. United States (1814)*

*Orlando v. Laird (1971)*

Mexican-American War (1846)

*Durand v. Hollins (1860)*

*The Prize Cases (1863)*

Korean War (1950) and Libyan intervention (2011)

*Foreign Relations Law (FRL), 585-623 (to note # 8).*

*Total: 38 pages*

**WEEK 8: OCT 24, 26**

How far should the President or Congress be allowed to restrict individual liberties and constitutional guarantees for the sake of the conduct of foreign policy or the exigencies of war?

*Reid v. Covert (1950)*

*United States v. Verdugo-Urquidez (1984)*

*Ex Parte Milligan (1865)*

*Korematsu v. United States (1943)*

*Ex Parte Endo (1944)*

*New York Times v. United States (1971)*

*Foreign Relations Law (FRL), 513-517, 667-685*

*Total: 22 pages*

## **WEEK 9: OCT 31, NOV 2**

How should the President and Congress treat detained terrorist suspects? What are, or should be, the limits on such treatment? How does the Constitution interact with international law on these issues?

*Hamdi v. Rumsfeld (2004)*

*Hamdan v. Rumsfeld (2006)*

*Boumediene v. Bush (2008)*

*Foreign Relations Law (FRL), 705-713, 726-735, 741-755, 761-769*

*Total: 29 pages*

## **WEEK 10: NOV 7, 9**

Should the President have the authority to kill U.S. citizens, or foreign nationals, overseas without due process or a trial, through air drones or any other military means?

*Third Geneva Convention Relative to the Treatment of Prisoners of War (1949)*

*Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1987); U.S. Reservations; 18 U.S.C. § 2340; 18 U.S.C. § 2340A*

*Memorandum from Jay S. Bybee to Alberto R. Gonzales (2002)*

*Memorandum from Daniel Levin to James B. Comey (2004)*

*Al-Aulaqi v. Obama (2010)*

*Speech by U.S. State Department Legal Adviser, Harold Hongju Koh (2010)*

*Speech by United States Attorney General Eric Holder (2012)*

*Foreign Relations Law (FRL), 761-769, 790-805*

*Total: 23 pages*

**WEEK 11: NOV 14, NOV 16**

Concluding Reflections: Will American Democracy and the Constitution Survive the National Security State? And what implications would the outcome have for the rest of the world?

*Alexis de Tocqueville, Democracy in America, Vol. 1, Part II, Ch. 7, Ch. 9.*

*Total: 55 pages*

**WEEK 12: NOV 21 COURSE REVIEW**