

National Security: Origins, Evolution, and Expansion

LAW 6936, Fall 2019

Professor: Maryam Jamshidi

Class Hours: Wed. 2:30-4:30 pm

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Course Description:

This course explores the what and how of national security. Specifically, what does national security mean and how does it play out institutionally, jurisprudentially, and policy-wise in the United States? Combining historical, legal, and normative perspectives, this course explores how the meaning of national security has shifted and expanded over time. Rather than being exclusively limited to notions of war and foreign policy, the concept of national security also intersects with a wide-range of domestic legal and policy issues, from civil rights and immigration, to private law, business, and environmental and economic issues. Instead of presenting a rigid notion of national security, this course aims to chart the term's complexity, malleability, and capacity to serve ends that are both corrosive and supportive of the public good.

Course Objectives and Student Learning Outcomes:

By the end of this course, you should be able to: (1) articulate the conceptual origins of national security in American legal and political thought; (2) describe national security's place within U.S. society and government, including the relationship and responsibility of the federal government's three branches to national security; (3) identify and evaluate national security's impact upon various areas of law and government policy; (4) interrogate the import and consequence of labeling something a "national security" issue; and (5) evaluate the future prospects for U.S. national security institutionally, legally, and policy-wise, based on current and historical trends.

Course Requirements:

- 1) Read and reflect on all assigned course materials each week;
- 2) Attend every class and participate actively in discussion;
- 3) Submit weekly response papers and final paper.

Weekly Response Papers and Final Paper:

In advance of each class, each member of the seminar will prepare a one to two-page response to readings assigned for that class. Responses should be single-spaced WORD documents, in 12 point, Times New Roman font with 1-inch margins. Your name and the unit number should be placed in the header of each response document. Papers do not have to address the readings comprehensively but should, at minimum, reflect your reactions to or criticisms of those readings that particularly piqued your interest that week. As the class progresses, these reflections may incorporate or reference readings from previous weeks, but should remain primarily focused on readings for the week at hand. Weekly response papers should not be footnoted or otherwise include formal citations. Responses are due each **Wednesday by 9:00am EST** via Canvas. **There is no weekly response due for the first unit/day of class.**

Final papers will be due on **Friday, December 6, 2019 by 11:59 pm EST** and should be submitted via Canvas. The paper should be a 7-9 page discussion of any part of the readings or topics discussed in the seminar. The final paper should not rehash any of your weekly response papers but should, instead, represent new or evolved thinking. You may do additional research for this paper, but are not required to do so. The paper should be footnoted and otherwise should follow the same formatting guidelines as the weekly responses. Footnotes should conform to the Bluebook.

Course Units/Readings:

The course units/readings are listed below. All readings are posted on Canvas. Each unit corresponds roughly to one class period. We may, however, discuss one unit or parts of one unit over more than one class. I will confirm the next assignment at the end of every class, but if you miss class, or I do not announce the unit for any reason, you should prepare the next class unit. Consistent with the American Bar Association Standard 310, you should expect to spend at least 4 hours per week preparing for this two-hour course.

Please note: I reserve the right to remove or add reading assignments.

Class Preparation and Participation:

Meaningful and thorough class preparation by each student is essential to this course's success. I expect each of you to attend each class prepared to participate in the discussion. Preparation includes completing the assigned reading, reviewing notes and/or reading material from prior classes, and reflecting on issues and questions those materials raise. In class, I expect consistent, robust, and respectful participation from every student.

Attendance:

Students are expected to attend every class on time. If you are going to miss a class or be late, you must request approval from me **at least 24-hours prior**, by email, during regular business hours (9 am to 5 pm EST), and you must show good cause. If you miss a class due to a true emergency and could not notify me in advance, you should email me, as soon as possible, with a detailed explanation. If you miss more than one class without receiving my approval or are late

to more than 2 classes, your grade will be reduced by 10% for each absence and 5% for each instance of lateness, thereafter. Observance of a university-recognized religious holiday does not count as an absence. Accordingly, please notify me of such absences **at least 24-hours in advance**.

Electronic Devices:

Because this is a seminar for which in-class participation is key, the use of electronic devices is limited. The only electronic device that may be used in class is a laptop or tablet. In-class cell phone usage, of any kind, is strictly prohibited. Furthermore, laptops and tablets may only be used to access readings for the class; there should, as a result, be no need for extensive in-class typing. If it appears the electronic device policy described in this section is not being followed by any student, then the policy may be revised for the entire class, including prohibiting all electronic device usage. I otherwise reserve the right to revise the electronic device policy to preserve the classroom environment.

Grading:

Your grade will be based on class participation (30%), your weekly response papers (30%), and the final paper (40%). Weekly response papers will be graded check plus (corresponding to an A), check (corresponding to a B), check minus (corresponding to a C), and check double minus (corresponding to a D). Your final paper will receive a letter grade. The Levin College of Law's mean and mandatory distributions are posted on the College's website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B (Average)	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

The law school's grading policy is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

Office Hours:

I will hold office hours after class on Wednesdays from 4:30-5:45 pm. If I need to reschedule my office hours for any reason, I will make an announcement in class and/or email the group. Outside of office hours, I am happy to meet by appointment; please email me to arrange. I also maintain an open-door drop-in policy: if my door is open, I am available.

Accommodations:

Students requesting accommodation for disabilities must first register with the Disability Resource Center (<http://www.dso.ufl.edu/drc/>). Once registered, students will receive an accommodation letter, which must be presented to the Assistant Dean for Student Affairs when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester.

Student Course Evaluations:

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>. Students will be notified when the evaluation period opens and can complete evaluations through the email they receive from GatorEvals in their Canvas course menu under GatorEvals or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

Academic Honesty:

Academic honesty and integrity are fundamental values of the UF Law School community. You should be sure you understand and comply with the UF Student Honor Code, available at <https://www.dso.ufl.edu/sccr/process/student-conduct-honor-code/>, and the Law School's application of it, available at <https://www.law.ufl.edu/life-at-uf-law/officeof-student-affairs/additional-information/honor-code-and-committee/honor-code>.

Course Units and Readings

Unit 1: National Security – What Is It?

Aziz Rana, *Who Decides on Security*, 44 CONN L. REV. 1417, Parts 1-4 (2012).

Laura Donohue, *The Limits of National Security*, 48 AM. CRIM. L. REV. 1573, 1573-89, 1705-1715, 1732-1756 (2011).

Unit 2: National Security and the Executive Branch

Jon J. Rosenwasser and Michael Warner, *History of the Interagency Process for Foreign Relations in the United States: Murphy's Law?*, in *THE NATIONAL SECURITY ENTERPRISE: NAVIGATING THE LABYRINTH* (Roger George *et al.* eds., 2017).

Eric Posner and Adrian Vermeule, *THE EXECUTIVE UNBOUND: AFTER THE MADISONIAN REPUBLIC*, Introduction (2011).

Jack Goldsmith, *POWER AND CONSTRAINT: THE ACCOUNTABLE PRESIDENCY AFTER 9/11*, Introduction & Chapter 1 (2012).

Dana Priest and William Arkin, *Top Secret America: A Hidden World, Growing Beyond Control*, *THE WASH. POST*, July 19, 2010.

Jon Michaels, *Deputizing Homeland Security*, 88 *TEX. L. REV.* 1435, Introduction, Parts I & II (2010).

Unit 3: National Security and the Courts

Youngstown Sheet & Tube Co v. Sawyer, 343 U.S. 579, Opinions of Justices Black and Jackson (1952).

Trump v. Hawaii, 138 S. Ct. 2392, Opinion of Justice Roberts, Sections I, II, IIIA, IVB-D, very very briefly skim rest of opinion; Dissents from Justices Breyer and Sotomayor, in full (2018).

David Rudenstein, *THE AGE OF DEFERENCE: THE SUPREME COURT, NATIONAL SECURITY, AND THE CONSTITUTIONAL ORDER*, Chapter 1 (2016).

Ganesh Sitaraman and Ingrid Wuerth, *The Normalization of Foreign Relations Law*, 128 *HARV. L. REV.* 1899, Introduction, Parts I, IIA-B, & III (2015).

Robert Chesney, *National Security Fact Deference*, 95 *VA. L. REV.* 1361, Introduction & Part I (2009).

Unit 4: National Security and the Legislative Branch

David P. Auerswald and Colton C. Campbell, *Congress: The Other Branch*, in *THE NATIONAL SECURITY ENTERPRISE: NAVIGATING THE LABYRINTH* (Roger George *et al.* eds., 2017).

Elizabeth Goitein, *The Alarming Scope of the President's Emergency Powers*, *THE ATLANTIC*, January/ February 2019.

Amy Stein, *A Statutory National Security President*, 70 *FLA. L. REV.* 1183, [Skip Part II] (2018).

Unit 5: National Security and Terrorism

Lisa Stampnitzky, *DISCIPLINING TERROR: HOW EXPERTS INVENTED TERRORISM*, Chapters 3 and 7 (2013).

Mary Dudziak, *WAR TIME: AN IDEA, ITS HISTORY, ITS CONSEQUENCES*, Chapter 4 (2012).

John T. Parry, *Terrorism and the New Criminal Process*, 15 WM. & MARY BILL RTS. J. 765, Introduction & Parts I, IV (2007).

William Scheuerman, *The Accountable Presidency After 9/11*, 28 CONSTCOM 519 (2013).

Unit 6: National Security and Identity

Korematsu v. United States, 323 U.S. 214 (1944).

Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575 (2002).

Shirin Sinnar, *Separate and Unequal: The Law of Domestic and International Terrorism*, 117 MICH L. REV. 1333, Introduction & Part V (only first 8 pages of Part V) (2019).

Amna Akbar, *National Security's Broken Windows*, 62 UCLA L. REV. 834, Introduction & Part II (2015).

Unit 7: National Security and the Criminal Law

Wadie Said, *CRIMES OF TERROR: THE LEGAL AND POLITICAL IMPLICATIONS OF FEDERAL TERRORISM PROSECUTIONS*, Chapters 2-3 (2015).

Sameer Ahmed, *Is History Repeating Itself? Sentencing Young American Muslims in the War on Terror*, 126 Y.L.J. 1520, Introduction & Part I (2017).

Dru Stevenson, *Effect of the National Security Paradigm on Criminal Law*, 22 STAN. L. & POL'Y REV. 129 (2011).

Unit 8: National Security and Civil Liberties

Holder v. Humanitarian Law Project, 561 U.S. 1, 7-18, 25-62 (2010).

Zaidan v. Trump, 317 F. Supp. 3d. 8, Introduction & Parts I, III.A.2-3 (2018).

David Cole, *The New McCarthyism: Repeating History in the War on Terrorism*, 38 HARV. C.R.-C. L. REV. 1, Introduction & Part I (2003).

Matt Taibbi, *How to Survive America's Kill List*, ROLLING STONE, July 19, 2018.

Unit 9: National Security and Immigration

Chae Chin Ping v. United States, 130 U.S. 581 (1889) (edited).

Shoba Sivaprasad Wadhia, *Is Immigration Law National Security Law?*, 66 EMORY L.J. 669 (2017).

David A. Martin, *Why Immigration's Plenary Power Doctrine Endures*, 68 OKLA. L. REV. 29 (2015).

Cristina Rodriguez, *Trump v. Hawaii and the Future of Presidential Power Over Immigration*, ACS ANALYSIS, [Skip Part III.B], Nov. 27, 2018.

Unit 10: National Security and Privacy

Jennifer Stisa Granick, *AMERICAN SPIES: MODERN SURVEILLANCE, WHY YOU SHOULD CARE, AND WHAT TO DO ABOUT IT*, Chapters 12-14 (2017).

Erik Luna, *The Bin Laden Exception*, 106 NW. U. L. REV. 1489 (2012).

Unit 11: National Security and the Economy, Natural Disasters, and the Environment

J. Benton Heath, *National Security and Economic Globalization: Toward Collision or Reconciliation?*, 42 FORDHAM INT'L L. J. 1431 (2019).

Lisa Grow Sun & RonNell Andersen Jones, *Disaggregating Disasters*, 60 UCLA L. REV. 884, Introduction, Parts III-IV, & Conclusion (2013).

Sarah E. Light, *Valuing National Security: Climate Change, the Military, and Society*, 61 UCLA L. REV. 1772, Introduction & Parts II-III (2014).

Mark Nevitt, *The Commander in Chief's Authority to Combat Climate Change*, 37 CARDOZO L. REV. 437, Introduction & Parts I, III.C, IV (2015).

Unit 12: National Security in Private and Procedural Law

Andrew Verstein, *The Corporate Governance of National Security*, 95 WASH. U. L. REV. 775, Introduction & Parts II, III.A., IV (2018).

Maryam Jamshidi, *How the War on Terror Is Transforming Private U.S. Law*, 96 WASH. U. L. REV. 559, Introduction, Parts II.A., III-IV, & Conclusion (2018).

Shirin Sinnar, *The Lost Story of Iqbal*, 105 GEO. L. J. 379, Introduction, Parts I-II, IV, & Conclusion (2016).

Unit 13: National Security vs Human Security

UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 1994, Chapter 2 (1994).

Derek Reveron and Kathleen Mahoney-Norris, *Incorporating Human Security into National Strategy*, 17 GEO. PUB. POL'Y REV. 61 (2012).

Maryam Jamshidi, *Rethinking National Security Through Climate Change* (2019).

Yaniv Roznai, *The Insecurity of Human Security*, 32 WISC. INT'L L.J. 95, Introduction & Parts I, III (2014).

Crister S. Garrett, *Steeped in Insecurity, Democracy, Conflict, and the Threat of Populist Security*, in UNDERSTANDING NEW SECURITY THREATS (Michel Gueldry *et al.* eds., 2019).