

# **National Security: Origins, Evolution, and Expansion**

## LAW 6936, Spring 2021

Professor: Maryam Jamshidi

Class Hours: Wed. 1:15-3:15 pm

Classroom: HH 285D

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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.

### 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 8:00am EST** via Canvas. **There is no weekly response due for the first unit/day of class.** Extensions on weekly response papers are strongly disfavored and **will be given ONLY in extreme circumstances.** Any such request must be made **at least 24-hours in advance.**

Final papers will be due on **Friday, April 23 by 11:59 pm EST** and should be submitted via Canvas. The paper should be a 10-12 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. Any extensions on the final paper must be requested **at least seven calendar days in advance**, and must show good cause. I reserve the right not to grant requests I believe are unjustified.

### 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 ABA 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 (whether in-person or via Zoom) 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.

For those attending the course online, you must have your video camera on and your actual name visible at the start of and for the duration of class in order to be counted for participation and

attendance purposes. For those attending in person, you must have your nameplate in front of you and visible to me for the duration of class, unless I indicate otherwise.

#### Attendance:

This class only meets thirteen times during the semester so students are expected to attend every class on time. Generally, 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 an excused absence, defined as illness accompanied by a doctor's note or a religious holiday, please also notify me at least 24-hours prior to class, during regular business hours. If the absence is illness related, I will expect to receive a doctor's note in a reasonable amount of time. If you miss a class without following the designated notification process or have more than 2 unexcused late arrivals, your grade will be reduced by 10% for each absence and 5% for each instance of lateness, thereafter.

Students registered for the in-person section must attend in person unless they receive approval in advance from me to participate in class virtually. Students who do not comply with this policy will be counted as absent.

#### COVID-19 Restrictions:

For those attending class in-person, the following policies and requirements are in place to maintain your learning environment and to enhance the safety of our in-classroom interactions:

- You are required to wear approved face coverings at all times during class and within buildings. Following and enforcing these policies and requirements are all of our responsibility. If you fail to properly wear a mask in class, I reserve the right to require that you leave the classroom. Failure to wear a face covering will also lead to a report to the Office of Student Conduct and Conflict Resolution. You will no longer be permitted on the UF Law campus. Finally, Dean Inman will report your noncompliance to the relevant state board of bar examiners.
- This course has been assigned a physical classroom with enough capacity to maintain physical distancing (6 feet between individuals) requirements. Please utilize designated seats and maintain appropriate spacing between students. Please do not move desks or stations.
- Sanitizing supplies are available in the classroom if you wish to wipe down your desks prior to sitting down and at the end of the class.
- Practice physical distancing to the extent possible when entering and exiting the classroom.
- If you are experiencing COVID-19 symptoms (<https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>), please do not come to campus or, if you are already on campus, please immediately leave campus. Please use the UF Health screening system and follow the instructions about when you are able to return to campus. <https://coronavirus.ufhealth.org/screen-test-protect/covid-19-exposure-and-symptoms-who-do-i-call-if/>.

Barring any changes to university policy, the first seven weeks of class will be held in-person. After that, and in line with ABA Guidelines, the last six weeks of class will be fully online.

Electronic Devices:

Unless you are taking this class online, the use of electronic devices is limited. That being said, I would like in-person students to bring their laptops and a headset to class for the first few classes. Depending upon how well the in-class technology works, I may discontinue in-class laptop use. Laptops should not be used for note-taking or consulting readings. Whether you are in-person or participating via Zoom, cell phone usage, of any kind, is strictly prohibited during class. 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 via Zoom on Wednesdays from 4:15-6:15 pm. You do not need to have a class-related question to meet with me. If you would like to attend office hours, please make an appointment via the class Canvas page. 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.

You may also ask questions over email. If the question requires a particularly substantive response, I may ask to discuss in-person or via Zoom. If the question relates to a class policy or in-class procedure noted in this syllabus, then I will refer you to that document for the answer, whether or not the question is asked over email.

#### 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 Dean Mitchell, the Assistant Dean for Student Affairs. Students with disabilities should follow this procedure as early as possible in the semester.

If a student is required to miss classes because of illness, they may contact Dean Inman for access to a recording of the class. Generally, this class will not be recorded.

#### Prohibition on Student Recording and Photography and Social Media Posting:

Students may not take, circulate, or post photos or videos of classroom discussions, whether they are in-person, hybrid, or completely online. Students failing to follow this rule will be referred to the College of Law Honor Code Council and the university's Office of Student Conduct and Conflict Resolution.

#### 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 at 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).

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).

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).

## **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).

Charles Edel, *Impeachment as National Security: The Framers's Intentions*, LAWFARE (Dec. 11, 2019).

### **Unit 5: National Security and Terrorism**

Beverly Gage, *Terrorism and the American Experience: A State of the Field*, 98 J. AM. HIST. 73 (2011).

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

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

Jenny Martinez, *Process and Substance in the "War on Terror,"* 108 COLUM. L. REV. 1013, Introduction & Parts II-III (2008).

### **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 & Parts IIIA-C (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 1-2 (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, 25-40 (2010).

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

Kareem v. Haspel, 412 F. Supp. 3d 52 (2019) (D.D.C. 2019).

Ziglar v. Abbasi, 137 S. Ct. 1843, 1851-63 (2017).

Tanzin v. Tanvir, 592 U.S. \_\_ (2020).

### **Unit 9: National Security and Immigration**

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

Shawn E. Fields, *The Unreviewable Executive?: National Security and the Limits of Plenary Power*, 84 TENN. L. REV. 731, Introduction & Part II (2017).

Cristina Rodriguez, *Trump v. Hawaii and the Future of Presidential Power Over Immigration*, ACS ANALYSIS (Nov. 27, 2018).

Edward Alden, *National Security and U.S. Immigration Policy*, 1 ST. JOHN'S JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW 19 (2010).

### **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, the Environment, & Public Health**

Congressional Research Service, *The International Emergency Economic Powers Act (IEEPA): Origins, Evolution, and Use* 1-27, 36-41 (July 14, 2020).

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



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

David Fidler, *Public Health and National Security in the Global Age: Infectious Diseases, Bioterrorism, and Realpolitik*, 35 GEO. WASH. INT'L L. REV. 787, Part I (2003).

### **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 (2017).

### **Unit 13: National Security vs Human Security**

UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 1994, Chapter 2 (1994) (do not read annexes to chapter).

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

Maryam Jamshidi, *Climate Change Is a Human Security, Not a National Security, Issue*, 93 S. CAL. L. REV. POSTSCRIPT 36 (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).