

National Security: Origins, Evolution, and Expansion

LAW 6936, Spring 2023

Professor: Maryam Jamshidi

Class Hours: Wed. 10-12 pm

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General Course Information

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 Units/Readings:

The course units/readings are listed below. All readings are posted on Canvas. Please be sure to register for the Canvas course and have any required materials with you in print. You are responsible for checking your Canvas page and the e-mail connected to the page on a regular basis for any class announcements or adjustments.

Each unit corresponds to roughly 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 confirm the readings, you should prepare the next class unit listed on this syllabus. 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, with advance notice.

Learning Outcomes:

The ABA requires that all law schools adopt "learning outcomes." By the end of this course, you should be able to: (1) articulate the conceptual origins of national security in U.S. 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.

Weekly Response Papers and Final Paper:

In advance of each class, every member of the seminar will prepare a one page (comprising the FULL page) response to readings assigned for that class. I will not read past one page. **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 **two or more readings** that particularly piqued your interest that week. As the class progresses, these reflections may incorporate or reference readings from previous weeks, but should always 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 **Tuesday by 9 am ET** via Canvas. **There is no weekly response due for the first unit/day of class.** Please budget adequate time to complete these responses—leaving them until the last minute is generally a bad idea. 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 via email.** **If you miss a class, you must still submit a weekly response paper.**

Final papers will be due on **Friday, April 28 by 11:59 pm ET** and should be submitted via Canvas. The final paper should be a 10-12 page, single-spaced discussion of any part of the readings or topics discussed in the seminar. It 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. You may also pick a national security-related topic that was not discussed in class, though outside research will inevitably be necessary if you chose this option. The final paper should be footnoted, but should otherwise follow the same formatting guidelines as the weekly response papers. Footnotes should conform to the Bluebook. Please make sure to submit the paper as a WORD document. Any extensions on the final paper must be requested **at least seven calendar days in advance of the due date,** and show good cause. I reserve the right not to grant requests I believe are unjustified.

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
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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

Office Hours and Email Policy:

I will hold office hours on **Mondays from 3-5 pm ET** in my office, starting Monday, January 23. You do not need to have a class-related question to meet with me. 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.

Class Preparation and Participation:

Meaningful and thorough class preparation by each student is essential to this seminar's success, which is light on lecture and heavy on student-focused, in-class discussion. I expect each of you to attend every class prepared to participate in the conversation. 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. As reflected in the grading rubric, meaningful in-class participation is a key component of your final grade.

Attendance:

This class only meets thirteen times 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 PT), and you must show good cause. **I will generally permit students to miss ONE class, if good cause is shown**. If you miss a class due to an excused absence, defined as illness accompanied by a doctor's note or a religious holiday (which does not require documentation), please also notify me at least 24-hours prior to class, during regular business hours, via email.

If you miss more than one class without my permission or have more than two unexcused late arrivals, your grade will be reduced by 10% for each absence and 5% for each instance of lateness, thereafter.

Please also note that leaving class early—without my permission—will be counted as an unexcused absence. Permission to leave class early will only be granted at my discretion

Electronic Devices:

Laptop and cell phone usage is strictly prohibited in this class. If you need to use a laptop for an accommodation-based reason, please let me know. See below for further information on the school's disability-related accommodation policy.

Recordings of Class

All classes will be recorded via Mediasite in case students must miss class for health reasons. The Office of Student Affairs will work with faculty to determine when students may have access to these recordings, and the recordings will be password protected. It is the student's responsibility to contact the Office of Student Affairs as soon as possible after an absence.

Disability Related-Accommodations:

Students requesting accommodations for disabilities must first register with the Disability Resource Center (<https://disability.ufl.edu/>). Once registered, students will receive an accommodation letter, which must be presented to the Assistant Dean for Student Affairs (Assistant Dean Brian Mitchell). Students with disabilities should follow this procedure as early as possible in the semester. It is important for students to share their accommodation letter with their instructor and discuss their access needs as early as possible in the semester. Students may access information about various resources on the UF Law Student Resources Canvas page, available here (<https://ufl.instructure.com/courses/427635>).

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. Click here (<https://gatorevals.aa.ufl.edu/students/>) for guidance on how to give feedback in a professional and respectful manner. Students will be notified when the evaluation period opens and may 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 here (<https://gatorevals.aa.ufl.edu/public-results/>).

Academic Honesty:

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Law Honor Code located here

<https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code>). The UF Law Honor Code also prohibits use of artificial intelligence, including, but not limited to, ChatGPT and Harvey, to assist in completing quizzes, exams, papers, or other assessments.

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, 6 (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 majority opinion; Dissent from Sotomayor (only), 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).

Skim Trump v. Hawaii from Unit 3.

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, 5141 S. Ct. 486 (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).