

*POLITICAL SCIENCE 269: THINKING LIKE A LAWYER: THE CONSTITUTION
AND AMERICAN FOREIGN POLICY*

This course will look at the Constitution and how it has 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 in times of war or a foreign policy crisis. Students will learn how to read and analyze legal cases, including famous Supreme Court opinions in the field of foreign relations law. ***As part of this course, we also will reflect on, talk about, 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.

Texts:

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

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

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

UNIT 1 Sep 14

Why was the United States put together as a single country instead of 13 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

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

Total: 18 pages

UNIT 2 Sep 21

An introductory view: In foreign policy, as between the President and Congress, *who* gets to do *what*, and *when*?

Foreign Relations Law (FRL), 14-43

Total: 31 pages

UNIT 3 Sep 28

Why is the Law such a big deal in the United States? 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 (only 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.”

Vol. 1, Part II, Ch. 6, Ch. 8.

Total: 102 pages

UNIT 4 Oct 5

For almost 150 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 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 – read the two links below):

Marbury v. Madison (1803):

http://supreme.findlaw.com/supreme_court/landmark/marbury.html

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

For this week, also read:

The Federalist Papers, Papers # 78, 79, 80, 81, 82.

Total: 70 pages

UNIT 5 Oct 12

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?

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

Total: 40 pages

ONE-HOUR MIDTERM EXAMINATION

UNIT 6 Oct 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?

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

Total: 38 pages

UNIT 7 Oct 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?

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

Total: 22 pages

UNIT 8 Nov 2

How should the President and Congress treat detained terrorist suspects? What are, or should be, the limits on such treatment?

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

Total: 39 pages

UNIT 9 Nov 9

Should the President have the authority to kill U.S. citizens, or foreign nationals, overseas without due process or a trial?

Foreign Relations Law (FRL), 790-805

Total: 15 pages

UNIT 10 Nov 16

Concluding Reflections: Will American Democracy and the Constitution Survive the National Security State?

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

Total: 55 pages

COURSE REVIEW