

National Security Course Offerings

Fall Course Offerings

National Security Law

Fall 2023 Seminar
M 6:00-8:00 in WCC 3018
2 classroom credits

Course Description:

This seminar will address various aspects of the law governing national security. Topics will include constitutional issues regarding national security, electronic surveillance conducted pursuant to the Foreign Intelligence Surveillance Act (FISA), investigative tools authorized under the USA PATRIOT Act, and related topics. National security law is often inaccessible, and can be particularly hard to follow when divorced from the context of historical tradition, governmental structures, and the operational reality in which it functions. The course will aim to present national security law in context, exposing students as much as possible to the real-world effects of applicable legal standards and rules.

Digital Governance: Privacy, Artificial Intelligence and Information Technology

Mr. Alan Raul
Fall 2023 seminar
Th 3:45pm - 5:45pm in WCC Room 3015
2 classroom credits

Course Description:

This seminar will examine the laws, policies and ethical frameworks that govern the use of personal data, automated decision-making, and sensitive cyber technologies. Focus will be on identifying, understanding and evaluating relevant risks, harms, benefits, economic and social impacts, and corresponding tradeoffs. Topics will include digital privacy, data protection, artificial intelligence, behavioral and location tracking, profiling, microtargeting, personalized advertising, biometrics and facial recognition, ubiquitous sensors, commercial collection and use of data, government access and surveillance, Section 230 and online disinformation. US and European privacy and data protection philosophies and protocols will be compared. Readings will include statutes, regulations, judicial decisions, enforcement actions, government reports and policy documents, as

well as scholarly, philosophical, and practical articles, and news stories. Current privacy, data protection and information technology developments will be discussed regularly.

How Wars End: The Role of Negotiation

Professor Robert Mnookin

Fall 2023 reading group

T 6:00pm - 8:00pm in WCC Room 3038

1 classroom credit

Course Description:

It is commonly thought that wars end after a decisive military battle produces to a conclusive victory – one side surrenders and the other side emerges victorious. In fact, recent history suggests things are typically much more complicated: negotiations between the disputants commonly play a critical role in ending armed conflict. One only must consider Korea, Vietnam, Bosnia, Afghanistan, and Iraq. This reading group will explore the role of negotiation in terminating wars.

Through readings, we will explore how a number of wars, including American wars, in fact ended. We will ask: to what extent, if any, did negotiations between the combatants end the fighting? We will see that while the aims of the combatants are typically deeply opposed at the beginning of a war, over time they often converge toward an agreement to stop fighting. In such cases, what produces this convergence? To what extent do factors far removed from the battlefield - economic, political, and social – contribute to the success of negotiations?

Modern Surveillance Law

Mr. Richard Salgado

Fall 2023 seminar

Th 1:30pm - 3:30pm in Lewis Room 202

2 classroom credits

Course Description:

In this course we will examine the law and policy of government surveillance. We will focus on U.S. government signals collection for national security, intelligence gathering, espionage, criminal law enforcement and public safety purposes, and will address transnational implications. Technologies and practices we will cover include wiretapping, stored data collection and mining, location tracking, purchasing from data brokers, encryption and developing eavesdropping techniques. We will explore how government surveillance is permitted, prohibited or controlled by the U.S. Constitution, including the Fourth Amendment, and laws such as the Foreign Intelligence Surveillance Act, the USA Freedom Act, the Patriot Act, the

Electronic Communications Privacy Act, the CLOUD Act, and CALEA. We will also look at the role of executive orders and laws outside the United States. No technical expertise is required.

New Technologies and the Law of War

Dr. Ioannis Kalpouzios

Fall 2023 seminar

M 3:45pm - 5:45pm in WCC Room 5048

2 classroom credits

Course Description:

Changes in contemporary warfare are challenging the fundamental principles of its regulation and their application in practice. From the increasingly asymmetrical relationship in drone warfare against non-state armed groups, through cyberconflict involving both states and corporations, to the gradual move towards fully autonomous weapons, this seminar will offer an in-depth doctrinal analysis of how new weapons technologies are affecting the regulation of war. The course will place special focus on the law of targeting and will cover challenges across international humanitarian law (the law of armed conflict), international criminal law, and international human rights law.

These will include the principles of distinction and proportionality associated with urban warfare, non-state armed groups, and civilians “directly participating in hostilities”; weapons technology and the obligation “to take all feasible precautions to protect the civilian population”; the challenges of proving violations of international humanitarian law and the law of war crimes, including the question of intent, the ex post facto divination of the mind of the commander, and the questions of evidence, including through the use of Open Source Intelligence. The technologies considered will include those involved in remote targeted killings and the individualization of war; the evolution of cyber-weapons; finally, the evolution of artificial intelligence towards fully autonomous weapons. The latter will allow the course to relate the practical and doctrinal analysis to the fundamental questions posed by the mechanization of judgement in the conduct of war.

The Non-Delegation Doctrine in Foreign Affairs

Professor Jack Goldsmith

Fall 2023 seminar

M 6:00pm - 8:00pm in Lewis Room 214

2 classroom credits

Course Description:

There is renewed interest, in the Supreme Court and in scholarship, in the nondelegation doctrine. The Court has at various times—most famously in *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304

(1936)—suggested that the nondelegation doctrine operates less restrictively when Congress delegates foreign affairs authority to the president. This seminar will examine in depth the justification for (if any) and proper scope of this exception. The seminar will take a comprehensive look at the history of the nondelegation doctrine (case law and historical practice) with special attention to the foreign affairs exception, and will ask in particular about how this exception should relate to various related foreign affairs law doctrines (such as the president's authority to make congressional-executive agreements) and administrative law doctrines (such as Chevron and the major questions doctrine).

Engaging China

Professor William Alford
Fall 2023 reading group
Th 6:00pm - 8:00pm in WCC Room 3019
1 classroom credit

Course Description:

This one unit course will examine the role that China has been playing in a world order in flux. We will consider, inter alia, China's engagement of existing global norms, ways in which China may (or may not) now or in the foreseeable future be shaping such norms, and their impact on China. In the course of so doing, we will also address the manner of US engagement with such norms.

Each of our six sessions will cover a specific topic. In past years topics have, inter alia, included trade, law and development, human rights, the legal profession, corporate social responsibility, corporate governance, the Foreign Corrupt Practices Act, climate change, foreign investment, and the roles of the US and China in Africa - with the precise configuration from among these to be determined closer to the start of the semester. We have each year done at least one, and often more, mock negotiations.

In several prior years, we have held two or three of our six sessions jointly with a comparable class at a PRC university, via electronic means. Whether we are able to do that this coming fall will depend in important part on the state of the larger US-PRC relationship. If we are able to do it jointly, we likely will hold those two or three joint sessions later in the evening (e.g. 7-9 or 8-10) given the time difference between Cambridge and the PRC.

Corporate Accountability in Armed Conflict

Dr. Ioannis Kalpouzos
Fall 2023 seminar
T 3:45pm - 5:45pm in WCC Room 5048
2 classroom credits

Course Description:

This seminar will examine the law governing the increasingly diverse activities of corporations in armed conflict and the avenues for their accountability. The seminar will begin with charting the evolution of the legal status of multinational corporations in international law and their relationship with states. The seminar will then be structured around three types of corporations and their involvement in war: private military companies (PMCs) participating in armed conflict; corporations trading arms; corporations operating in or profiting from a situation of belligerent occupation or unlawful annexation. Issues covered will include: the

law governing the conduct of PMCs and avenues for their accountability; arms trade law and direct or accessorial liability for arms traders; the war crime of pillage, including through the exploitation of natural resources in (prolonged) occupation; accountability mechanisms, including international criminal law, human rights law, and soft law mechanisms such as the UN Guidelines for Business and Human Rights and the OECD Guidelines for Multinational Enterprises. Reference will be made to contemporary cases, including in the context of the conflicts in Ukraine, Yemen, Western Sahara and Palestine.

U.S. Economic Statecraft Law

Professor Mark Wu
Fall 2023 course
M, T 10:15am - 12:15pm in WCC Room B015
4 classroom credits

Course Description:

This course examines the laws underlying U.S. policymaking for trade. It explores the different means through which the U.S. has attempted to use trade agreements as well as unilateral measures to advance its economic and geostrategic interests. How is policy crafted among the different agencies and branches within the U.S. government? How have digital technology, offshoring, the rise of China, and the impasse in multilateral negotiations impacted U.S. interests and strategy? Among the topics to be explored are: delegation of powers; national security reviews; preference programs for developing countries; recent free trade agreements (TPP and USMCA); export controls; and adjustment assistance for workers displaced by trade. Particular emphasis will be placed on comparing the Trump Administration's policies with those of its recent predecessors.

Note that this class does not require any previous knowledge of trade law. However, students who already have taken the upper-level International Trade Law course are welcome to enroll, as this course serves as a complement to that course. It is intended to cover elements of U.S. domestic law related to trade. Students interested primarily in WTO law are advised to take the International Trade Law class in addition (or instead) of this course.

Public International Law

Professor Naz Modirzadeh
Fall 2023 course
Th, F 10:15am - 12:15pm in Langdell Hall Room 272 - South
4 classroom credits

Course Description:

This is an introductory course to public international law. The first part of the course provides a classical foundation to the sources and subjects, as well as key tenets and core concepts, of international law. We will also discuss the role of public international organizations such as the United Nations in developing, interpreting, and shaping the international legal system. The second part of the course will focus on selected topics, including the use of force, international human rights law, international humanitarian law, and international refugee and migration law. These topics may change based on contemporary events and debates.

We will also explore critical perspectives from within the field, as well as external challenges to the legitimacy of public international law.

Spring '24 Course Offerings

Climate Lawyering

Professor Richard Lazarus

Spring 2024 course

M, T 3:45pm - 5:45pm

2 classroom credits

Course Description:

The threat of potentially catastrophic consequences from climate change due to increasing concentrations of greenhouse gas in the atmosphere is both enormous and unyielding. To date, however, our nation has mostly stumbled in its efforts to craft laws that meet the immense challenge of reducing domestic greenhouse gas emissions and that redress the massive adverse effects of climate change that can no longer be avoided during our own lifetimes.

Meeting those lawmaking challenges will require far more than the enactment of traditional pollution control laws that impose emissions limitations on the largest immediate domestic sources of greenhouse gases, such as motor vehicles, power plants, and other industrial activities that burn fossil fuels to produce energy. No less than a wholesale transformation of how we produce and distribute energy will be required. The necessary technology to accomplish that transformation already exists or is within reach. The principal obstacle is instead existing laws that fail to control emissions adequately, unwittingly promote the status quo, and erect insurmountable hurdles to securing the necessary reform of the nation's laws.

This course will examine the constructive role that lawyers can play in addressing climate change in several diverse legal practice areas beyond classic pollution control and natural resource management, including, for example, corporate law, energy regulation, financial regulation, intellectual property law, national security law, and international climate treaty negotiation. Their work, moreover, can be in a wide variety of practice settings, whether as federal, state, tribal, or local government lawyers; public interest advocates for national and local environmental organizations; or private sector lawyers — including those in large and small law firms serving as counsel to private companies seeking to sell products and services that promote such a transition.

International Law of the Sea

Professor James Kraska

Spring 2024 course

Th 4:15pm - 7:30pm

3 classroom credits

Course Description:

This course explores the international law of the sea, a body of public international law that governs the rights and duties of states in their use of the oceans and seas. The law of the sea is a prominent feature of international politics, evident in disputes ranging from the South China Sea to the Arctic Ocean and the Black Sea, as well as international environmental law, biodiversity, and climate change.

This course presents the institutional structure, doctrines, and norms that govern activities in the oceans, seas, coastal areas, and ports, including: contending rights and jurisdiction; maritime zones; marine living resources and fisheries; offshore energy and deep seabed mining; submarine cables; international trade, shipping and navigation; maritime law enforcement and human rights; marine environmental protection; marine scientific research and marine technology; naval operations and conflict at sea; marine biodiversity, climate change, and sustainable development; maritime boundary delimitation; and international arbitration, litigation, and dispute resolution. Along the way we encounter foundational concepts of international law, such as state sovereignty.

Laws of War

Professor Naz Modirzadeh
Spring 2024 course
Th, F 10:15am - 12:15pm
4 classroom credits

Course Description:

The law of war is one of the oldest branches of international law, but whether its centuries-old norms align with modern conflicts remains a contested area of legal practice and interpretation. This course will explore the primary fields of international law concerning recourse to force and situations of armed conflict. We will examine foundational doctrines and concepts and then explore some of the foremost contemporary challenges. We will consider, for example, direct participation of civilians in hostilities; the geographic, temporal, material, and personal scope of armed conflict; the interplay between international human rights law, international criminal law, and IHL; and the relationship between the legal framework governing terrorism and IHL. We will investigate such questions as: how does international law regulate the means and methods of warfare, protection of civilians, and humanitarian access in situations of armed conflict? How does international law classify and regulate different categories of armed conflict, and how does it distinguish armed conflicts from other situations of organized armed violence? How does the law seek to balance principles of military necessity and humanity? And how does the law address emergent technologies?

The Security Council

Professor Naz Modirzadeh
Spring 2024 seminar
W 3:45pm - 5:45pm
2 classroom credits

Course Description:

The United Nations Security Council is at the heart of the post-WWII international order — but whether it should remain so is a live question in multilateral affairs. The Council is often referred to as the world's executive, but it also increasingly exercises a kind of legislative power. Its discretion is extensive, if not

unlimited. Its power is ostensibly justified, as states have conferred to it the primary responsibility for the maintenance of international peace and security. Has the Council lived up to this weighty challenge?

The seminar will engage intensive current debates about possible reform of the Council, foundational questions concerning its current and potential role, its representativeness, its impact, and its relevance. We will explore these questions by examining several contemporary legal and policy issues concerning the Security Council. These include issues related to interpretation of Security Council resolutions, disobedience of the Council's decisions, the role of Elected Members, and proposals for institutional reform, as well as various thematic and country-specific matters pertaining to, among others, war and peace, climate change, and terrorism (potentially encompassing issues developing in real-time during the semester).

Legal Problems in Cybersecurity and Cyber Conflict

Mr. Timothy Edgar
Spring 2024 course
Th 3:45pm - 7:00pm
3 classroom credits

Course Description:

Cybersecurity and cyber conflict pose unique legal problems for governments, companies and citizens, with profound implications for the future of the internet. Computer systems and networks remain vulnerable to cyberattacks, and sensitive commercial and government data continues to be leaked or stolen at increasing rates. This course will examine the legal problems confronting the international community, the United States government and the private sector as they address network and computer insecurity. Topics covered will include the international law of armed conflict, criminal law, regulation and its alternatives, along with the impact of malicious cyber activity and defensive measures on human rights, civil liberties and privacy.

Comparative Law: Why Law? The Experience of China

Professor William Alford
Spring 2024 course
M, W 10:15am - 12:15pm
4 classroom credits

Course Description:

This course uses the example of China as a springboard for asking fundamental questions about the nature of law, and the ways in which it may (or may not) differ in different societies. Historically, China is said to have developed one of the world's great civilizations while according law a far less prominent role than in virtually any other. This course will test that assertion by commencing with an examination of classic Chinese thinking about the role of law in a well-ordered society and a consideration of the nature of legal institutions, formal and informal, in pre-20th century China-all in a richly comparative setting. It will then examine the history of Sino-Western interaction through law, intriguing and important both in itself and for the broader inquiry into which it opens concerning the transmission of ideas of law cross culturally.

The remainder (and bulk) of the course will use the example of the People's Republic of China - which has, for example, gone from a few thousand to hundreds of thousands of lawyers in a few decades - to ask what it means to build a legal order. Simply stated, what is central and why, what is universal and what culturally specific and why, and so forth? In addition to examining the principal institutions of the Party-state and the uses to which law is put, the contemporary parts of the course will consider issues of the economy (e.g., corporate governance and trade), human rights, the family and much more.

This course, which satisfies the Law School's international legal studies graduation requirement for JDs, is intended to be inviting to individuals both with and without prior study of China.

Presidential Power in an Era of Conflict

Mr. W. Neil Eggleston
Spring 2024 seminar
M 3:45pm - 5:45pm
2 classroom credits

Course Description:

This course will explore the modern exercise of Presidential power in foreign affairs, military and covert actions, domestic affairs, and executive actions. We will consider the Vesting Clause, the Necessary and Proper Clause, and the Take Care Clause; the President's war powers, treaties, and other diplomacy; the appointment and confirmation of Officers; the power to grant pardons and commutations; and ethical issues in Presidential administrations. The course will examine the extent of and constraints on Presidential power and the ways in which executive branch conflicts with the other two branches of government are addressed and resolved. While focusing on contemporary issues and recent disputes, the course will draw on historical precedent to give students a grounded and contextual understanding of Presidential power.

Public International Law

Professor Gabriella Blum
Spring 2024 course
W, Th 1:30pm - 3:30pm
4 classroom credits

Course Description:

This is an introductory course to public international law. The first part of the course examines the nature, sources, and methods of international law, the relationship between international law and domestic U.S. law, the determination of international responsibility and the resolution of international disputes, and the bases of national jurisdiction over international conduct. In the second part of the course we will study select substantive areas of international law, including the use of force and the laws of war, human rights, international criminal law, and international trade law. Where relevant, the course will follow current events.