

**POLITICAL SCIENCE 5140**  
**LAW, POLITICS, AND WAR**

Fall 2017  
M 1430-15:20  
MAIN 318  
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Course Objectives

This course analyses the relationship between law, politics, and war, with particular emphasis on the American experience since 1787. How have questions of war affected political and legal orders ancient and modern? How did war define the American constitutional experience both during and after the Federal Convention? We will examine the relationship of freedom to war and its conduct in such important historical conflicts as the Persian War, the Second World War, the Vietnam War, and the war against terror post-9/11. We will also ask whether the authoritarian or totalitarian threats to liberal democracy in the twentieth century lost the wars they did because liberal democracies were better at waging war or because other contingencies caused them to lose these critical conflicts. What exactly is the relationship between political regime types and their ability to wage war?

A significant portion of the course will also look at the historical development of law and war in the United States. What were the critical historical developments that defined the nature of American politics and presidential and congressional war powers? What issues of war and foreign policy have confronted America over its history and how have these issues been dealt with?

Please note that this course is **not** a "baby law" class and does not propose to look into the arcana of technical legal disputes. Rather, the emphasis of the course is on, first, the nature of war and its conduct, and, second, how war has shaped the broader legal and political contours of political regimes and in particular the American constitutional order.

**This class will be conducted as a seminar. We do A LOT OF READING in this class. If you are NOT prepared to do the reading, DO NOT TAKE THIS CLASS.**

Since this class will be conducted as a seminar, I expect students to actively participate in class discussion. **It will be virtually impossible to receive an "A" in this course** if you do not keep up with the readings and come to class prepared to discuss them. Mere attendance is insufficient to garner a good grade. **You must also complete ALL ASSIGNMENTS to receive a passing grade in this course.**

**PLEASE NOTE THAT IF YOU PLAGIARIZE ON ANY ASSIGNMENT, YOU WILL RECEIVE AN “F” IN THE COURSE. THE POLITICAL SCIENCE DEPARTMENT HAS SOFTWARE THAT CAN DETECT PLAGIARISM FROM VIRTUALLY ANY SOURCE, SO IF YOU PLAGIARIZE YOU WILL GET CAUGHT. DO NOT PLAGIARIZE. YOU MAY WANT TO CONSULT THE UNIVERSITY GUIDELINES ABOUT WHAT CONSTITUTES PLAGIARISM. I WILL NOT ACCEPT ANY EXCUSES FOR PLAGIARISM.**

## **COURSE REQUIREMENTS**

### **Required Texts:**

- (1) Victor Davis Hanson. *Carnage and Culture: Landmark Battles in the Rise of Western Power*. New York: Anchor Books, 2002.
- (2) Azar Gat. *Victorious and Vulnerable: Why Democracy Won in the 20<sup>th</sup> Century and How It Is Still Imperiled*. Lanham, MD. Rowman & Littlefield, 2010.
- (3) John Yoo, *The Powers of War and Peace: The Constitution and Foreign Affairs After 9/11*. Chicago: University of Chicago Press, 2005.

There are additional readings referred to in the syllabus as “electronic” that will be emailed to students **registered for the course**. Please make sure you are registered for the course.

**You must keep up with all of the readings and attend and participate in all classes. IF YOU MISS MORE THAN ONE CLASS, YOUR GRADE MAY BE REDUCED BY 10 POINTS OUT OF 100. FOR EVERY ADDITIONAL CLASS MISSED, YOUR GRADE MAY BE REDUCED EVEN MORE. DON’T MISS CLASSES.**

### **Grade Distribution:**

|   |        |
|---|--------|
| (1) Mid-Term Exam                         | = 35%  |
| (2) Final Take-Home Exam                  | = 50%  |
| (3) Class Presentations and Participation | = 15%  |
| TOTAL                                     | = 100% |

**FAILURE TO COMPLETE ANY OF THE ABOVE GRADING COMPONENTS WILL RESULT IN AN F GRADE FOR THE COURSE.**

(1) The **MID-TERM EXAM** will be held in class **FROM 2:30 - 3:45, MONDAY, OCTOBER 23, 2017. IT WILL COVER EVERYTHING WE HAVE COMPLETED UP UNTIL THE END OF CLASS MONDAY, OCTOBER 16.** The format for the exam will be **two essay questions**. You will be asked to summarize and comment upon issues, readings, and lectures

addressed up until the time of the exam. You will be graded on how well you answer the questions as well as on how well you integrate the readings and lecture materials into your answers. **NO MAKE-UP EXAMS OR REWRITES WILL BE ALLOWED. IF YOU CANNOT ATTEND THIS EXAM, DO NOT TAKE THIS CLASS.**

(2) The **FINAL TAKE-HOME EXAM** will be handed out at the beginning of class on **MONDAY, NOVEMBER 27, 2017**. You will once again be asked to summarize and comment upon issues, readings, and lectures addressed up until the time of the exam. This exam will consist of **three essay questions. Your answers cannot exceed 4 PAGES PER QUESTION for UNDERGRADUATES (TOTAL 12 PAGES, double-spaced, typed, 12 point font or larger, with page numbers included in the text) or FIVE PAGES PER QUESTION for GRADUATE STUDENTS (TOTAL 15 PAGES, double-spaced, typed, 12 point font or larger, with page numbers included in the text). This page limit is STRICT.** The final exam will include all material covered in the course, with an emphasis on material covered since the mid-term exam. **The exam must be returned to me at the BEGINNING OF CLASS, MONDAY, DECEMBER 4, 2017. NO EXTENSIONS WILL BE GRANTED. It is also imperative at this level that your take-home exam be WELL ORGANIZED, WELL THOUGHT OUT, AND VERY WELL WRITTEN. If I have to struggle to read your exam answers, you will not receive a good grade.** Also, **DO NOT EMAIL ME YOUR EXAM**. You must bring a hard copy of the exam to class Monday, December 4.

(3) **CLASS PRESENTATIONS AND PARTICIPATION.** You will be assessed for your participation in class discussion. Part—and only part—of that assessment will consist of your presentations in class. For those presentations, two students will be selected to provide comments on each of the readings on the syllabus. (Longer readings, such as books, will be broken down into a variety of segments consisting of a few chapters each.) The first student presenting will **outline** the reading. The second student presenting will **critique** the reading. There is **no written requirement** for the presentations. Students doing the **outlines** will be limited to **5 minutes**. Students doing **critiques** will be limited to **2 minutes**. For **each class, you must do all of the required readings**. I will call on students to discuss the readings in every class, not just those who do the presentations. **Please be prepared.**

### **COURSE OUTLINE (ALL READINGS ARE REQUIRED READINGS)**

#### **INTRODUCTION (August 28)**

No readings

#### **NO CLASS MONDAY, SEPTEMBER 4 (LABOR DAY)**

#### **1. IS THERE A WESTERN WAY OF WAR? (Sept. 11 - Sept. 18)**

Victor Davis Hanson, *Carnage and Culture*, Preface, Chs. 1, 2, 4, 7, 9, 10, Epilogue, and Afterward

**2. WAR AND DEMOCRACY (Sept. 25 - Oct.2)**

Azar Gat, *Victorious and Vulnerable*, entirety

**3. WAR AND AMERICAN LAW AND POLITICS (Oct. 9 - Oct. 16)**

Karl-Friedrich Walling, *Republican Empire*, Chs. 3, 5, and 8 (electronic)

Robert Kagan, *Dangerous Nation*, Chs. 1-2 (electronic)

Bruce Porter, *War and the Rise of the State: The Military Foundations of Modern Politics*, Ch. 7 (electronic)

The **MID-TERM EXAM** will be held in class **FROM 2:30 - 3:45, MONDAY, OCTOBER 23, 2017. IT WILL COVER EVERYTHING WE HAVE COMPLETED UP UNTIL THE END OF CLASS MONDAY, OCTOBER 16. THE REMAINDER OF THE CLASS OCTOBER 23 WILL CONTINUE WITH THE READINGS FOR THE COURSE.**

**4. PRESIDENTIAL WAR POWERS: A NARROW CONSTRUCTION (Oct. 23 - Oct. 30)**

Louis Fisher, *Presidential War Power*, Preface, Chs. 1, 2, and 11 (electronic)

**5. PRESIDENTIAL WAR POWERS: A BROAD CONSTRUCTION (Oct. 30 - Nov. 6)**

*United States v. Curtiss-Wright Export Corporation* (1936) (electronic)

John Yoo, *The Powers of War and Peace*, Preface, Chs. 1-5, 9.

**6. WAR, NECESSITY, AND THE PROBLEM OF DISCRETION IN LAW (Nov. 13)**

Harvey C. Mansfield, *Taming the Prince*, Ch. 10, "Republicanizing the Executive" (electronic)

**7. PREROGATIVE POWERS (Nov. 13)**

*Youngstown Sheet & Tube Company v. Sawyer* (1952) (electronic)

**8. WAR AND INDIVIDUAL RIGHTS (Nov. 20 - Nov. 27)**

*Ex Parte Milligan* (1866) (electronic)

*Korematsu v. United States* (1944) (electronic)

*Ex Parte Quirin* (1942) (electronic)

*Hamdi v. Rumsfeld* (2004) (electronic)

*Boumediene v. Bush* (2008) (electronic)

**9. CONCLUSION: LAW, POLITICS, AND WAR IN AMERICA (Dec. 4)**

No readings

The **FINAL TAKE-HOME EXAM** will be handed out at the beginning of class on **MONDAY, NOVEMBER 27, 2017**. The exam must be returned to me at the beginning of class **MONDAY, DECEMBER 4, 2017**. **NO EXTENSIONS WILL BE GRANTED**. Also, **DO NOT EMAIL ME YOUR EXAM**. You must bring a hard copy of the exam to class Monday, December 4.