

# Preface

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This casebook examines the constitutional and statutory law that regulates the conduct of U.S. foreign relations. The topics covered include the distribution of foreign relations authority between the three federal branches, the relationship between the federal government and the states in regulating foreign relations, and the status of international law in U.S. courts. In addition to including excerpts of the major Supreme Court decisions in this area (and some lower court decisions that we thought would be helpful for teaching purposes), we have included a variety of non-case materials, including historical documents; excerpts of statutes, treaties, and Executive Branch pronouncements and memoranda; and detailed Notes and Questions.

One of our goals in the book is to give students a sense of the rich history associated with foreign relations law. History is especially important in this field because much of the content of U.S. foreign relations law has developed in response to, and thus can best be understood in light of, discrete historical events. Historical research also has played a significant role in foreign relations scholarship. As a result, much of the first chapter is devoted to history, and we sketch the historical origins of all of the major foreign relations doctrines as they are presented.

Despite these historical materials, the focus of the book is on contemporary controversies, such as debates over the validity of executive agreements, the nature and limits of the war power, the scope of the treaty power, the legitimacy of international human rights litigation, and the propriety of judicial deference to the Executive Branch. In addition to describing the positions taken on these issues by institutional actors, we have attempted to give students some exposure to the extensive academic debates on these topics. We have avoided, however, including long excerpts of law review articles, which, in our experience, are not the best vehicle for teaching. Instead, we have attempted to weave the relevant academic arguments into the Notes and Questions that follow each set of cases and materials.

Without advocating any particular approach to constitutional interpretation, we have also attempted to get students to focus closely on the text of the Constitution—a practice that we believe will be useful to them as lawyers. In addition, we emphasize issues of constitutional structure, especially federalism and separation of powers. Regardless of one's views about the legal relevance of these structural principles to foreign relations (a matter of some debate), we believe it is important to understand these principles, at least for their political significance. A related theme of the book concerns “legal process” questions about the relative competence of various institutional actors to conduct U.S. foreign relations, questions that overlap with work that has been done in the political science area.

The casebook also emphasizes continuities and discontinuities between foreign relations law and “mainstream” constitutional law, statutory law, and federal jurisdiction issues. Indeed, we believe that many important constitutional law and federal courts doctrines—such as the political question doctrine, federal common law, and dormant preemption—have some of their most interesting applications in the foreign relations context. As a result, it is our hope that the book will appeal not only to students interested in international studies, but also to students interested in domestic constitutional and jurisdictional issues. We also hope that domestic law scholars will be tempted by this book to teach a course in foreign relations law.

Foreign relations law is a fast-changing field, and this eighth edition takes account of numerous developments since the last edition. Among other things, it discusses recent Supreme Court decisions, such as *Nestle USA, Inc. v. Doe* (concerning the extraterritorial application of the Alien Tort Statute), *Turkiye Halk Bankasi A.S. v. United States* (concerning foreign sovereign immunity in criminal cases), and decisions addressing the “state secrets” privilege. It also takes account of important legislative changes, such as Congress’s overhaul of the transparency regime governing executive agreements, and various Executive Branch actions, such as the termination of certain international agreements by the Trump administration, sanctions imposed by the Biden administration in response to Russia’s invasion of Ukraine, and restrictions imposed by the Biden administration on targeted killings. The Notes and Questions in the book have also been updated throughout to take account of recent scholarship and important lower court decisions.

This edition generally retains the organizational structure of the last edition, in which the book is divided into four thematic Parts: Introduction; Government Institutions; International Law in the U.S. Legal System; and International Crime, War, and Terrorism. In Chapter 3, we have created a new section on economic sanctions, reflecting the growing significance of this aspect of U.S. foreign policy. We have also in that chapter expanded the discussion of executive authority relating to diplomacy. In Chapter 4, we have created a new section on state international agreements, an addition prompted in part by the Trump administration’s unsuccessful challenge to a climate change-related agreement made by the state of California with the Canadian province of Quebec. We have shortened the coverage in Chapter 7 of litigation under the Alien Tort Statute in light of the decline of that litigation after a series of restrictive Supreme Court decisions. In Chapter 8, we have eliminated the materials on piracy prosecutions because of the specialized nature of the topic. Finally, we have combined Chapters 9 and 10 (concerning war powers and the “war on terrorism”) into a single chapter, a change prompted by the diminished salience of the military detention and trial issues that were once prominent in the wake of the September 11 terrorist attacks.

Although (and indeed because) we have participated as scholars in many of the debates implicated by the cases and materials in this book, we have tried hard to present the issues and questions in a balanced manner. We welcome feedback on this and any other aspect of the casebook.

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