Every decade seems to present a cataclysm in the field of U.S. foreign relations, whether it be the dramatic withdrawal of U.S. forces from Vietnam, the collapse of communism in the Soviet Union and Eastern Europe, the horrific terrorist attacks of September 11, the ensuing U.S. interventions in Afghanistan and Iraq, or the revolutionary wave of uprisings in the Arab world since 2011, triggering in part military intervention in Libya and waves of refugees from Syria.

Between those cataclysms, less dramatic transnational events also occur that can deeply affect the U.S. polity, such as adherence to or withdrawal from trade agreements that both help and hurt U.S. industry; pursuit of litigation in U.S. courts that seeks to promote respect for human rights abroad; enactment of state-level sanctions directed at foreign governments, which might also impede federal policy; or invocation of immunities by States or State officials to preclude the jurisdiction of U.S. courts for allegedly wrongful acts.

This course book introduces law students, and upper-level undergraduate students, to the constitutional rules, principal statutes, and landmark judicial decisions applicable to such cataclysms and events in the field of U.S. “foreign relations law.” The seven Chapters cover the core areas of substantive law and procedure, addressing the manner in which international law (the law of nations and treaties) becomes a part of U.S. law, and the manner in which power is allocated within the federal government and between the federal government and the several states. Each Chapter is further sub-divided into topics appropriate for coverage during one or two classes. The cases and materials are designed to inform the reader and to provoke discussion about de lege lata (the law as it is) and de lege ferenda (the law as it should be). Detailed notes guide the reader through the major thematic elements, pose questions for further analysis, and provide suggestions for additional reading. An appendix sets forth various practice exercises related to the readings that may be used to enhance the classroom experience, by having students play particular roles for addressing fictitious (but realistic) problems.

Why use this particular course book? Course books in constitutional, criminal, and international law touch upon various aspects of the field of U.S. foreign relations law, but largely in a hit-or-miss fashion. Course books on particular subjects of transnational affairs, such as on trade law, terrorism, or human rights, provide a detailed look at a slice of the field, but at the expense of the broader range of substance and structure. By contrast, this course book provides a comprehensive overview of the field
of U.S. foreign relations law, thereby laying the groundwork for more detailed study. The issues addressed in this course book are of enormous importance—perhaps the most monumental that any lawyer ever confronts. In times of national emergency, such as a large-scale terrorist attack, how should one think about the relative allocation of the powers of Congress and the president? What are the effects on U.S. law and policy when the United States adheres to a treaty that, for example, prohibits torture? Should rules developed through the practice of nations worldwide be used as a part of internal U.S. law, including for interpretation of the U.S. Constitution? When can the president introduce U.S. armed forces into hostilities without congressional authorization? What role can the courts play in adjudicating such disputes?

Such questions have been hotly debated, of course, since the earliest days of the Republic, and many contemporary arguments are but replays of previous disputes. Consequently materials once written on parchment retain an enduring relevance. Yet, as the nation moves forward in this twenty-first century, old controversies do take on new forms. Unprecedented threats are posed not only to the nation, but also to the values at the heart of our legal structure. These cases and materials provide students an opportunity to confront these difficult choices of law, policy, and social values in both an historical and contemporary context.

Please note that cases have been edited to omit most citations and footnotes. For materials relating to this casebook, visit our website at: http://www.foreignrelationslaw.com. We welcome the comments of instructors and students who use this book. Subsequent editions will benefit greatly from your advice and counsel.

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September 2017
ACKNOWLEDGMENTS

The authors wish to acknowledge the invaluable help of the following research assistants: Marta Bylica, Jeremiah Cioffi, Alden DiIanni-Morton, Clayton Mark, and Elle Ross. The authors’ students at George Washington University and Vanderbilt University made helpful comments on ways of improving the prior editions, as did instructors at other colleges and universities who taught from those editions. Finally, the authors acknowledge, with appreciation, the permission granted to reprint copyrighted material contained herein.