

Peer Assessments ([https://class.coursera.org/conlaw-001/human\\_grading/](https://class.coursera.org/conlaw-001/human_grading/)) / Essay 3 (Option 3)

Help ([https://class.coursera.org/conlaw-001/help/peergrading?url=https%3A%2F%2Fclass.coursera.org%2Fconlaw-001%2Fhuman\\_grading%2Fview%2Fcourses%2F970970%2Fassessments%2F11%2Fsubmissions](https://class.coursera.org/conlaw-001/help/peergrading?url=https%3A%2F%2Fclass.coursera.org%2Fconlaw-001%2Fhuman_grading%2Fview%2Fcourses%2F970970%2Fassessments%2F11%2Fsubmissions))

due in 3day 10h

#### Submission Phase

1. Do assignment ☒ ([/conlaw-001/human\\_grading/view/courses/970970/assessments/11/submissions](/conlaw-001/human_grading/view/courses/970970/assessments/11/submissions))

#### Evaluation Phase

2. Evaluate peers  ([/conlaw-001/human\\_grading/view/courses/970970/assessments/11/peerGradingSets](/conlaw-001/human_grading/view/courses/970970/assessments/11/peerGradingSets))

#### Results Phase

3. See results  ([/conlaw-001/human\\_grading/view/courses/970970/assessments/11/results/mine](/conlaw-001/human_grading/view/courses/970970/assessments/11/results/mine))

Your work was submitted. [Review your work \(https://class.coursera.org/conlaw-001/human\\_grading/view/courses/970970/assessments/11/submissions/3534\)](https://class.coursera.org/conlaw-001/human_grading/view/courses/970970/assessments/11/submissions/3534) to make sure everything looks OK.



✓ Submitted. You can still make changes and re-submit before the deadline.

☒ In accordance with the Honor Code, I certify that my answers here are my own work, and that I have appropriately acknowledged all external sources (if any) that were used in this work.

[Re-submit for grading](#)

*Write a short (500 – 750 word) essay answering the prompt. Be specific, using concrete examples that have been covered in the class.*

What does it mean for something to be part of America's "unwritten Constitution"? Give at least three examples of ideas, practices, or texts that can properly be considered part of America's unwritten Constitution, explain what it is about them that gives them such a status, and describe how they have influenced our understanding of the written Constitution.

America's unwritten Constitution encompasses not only rules specifying the substantive content of the nation's supreme law but also rules clarifying the methods for determining the meaning of this supreme law. Since the unwritten constitution does not come with a complete set of instructions about how it should be construed, we must go beyond the text to make sense of the text.

The first example of America's unwritten Constitution is the Ninth Amendment. It affirms the reality of various rights that are not textually enumerated, the rights that are concededly not listed in the document itself. To take this amendment seriously, Americans must go beneath and beyond the Constitution's textually enumerated rights. An example is when the text fails to specify a criminal defendant's entitlement to introduce reliable physical evidence of his innocence, surely this textual omission should not doom a defendant's claim of this right.

A second example is America's preeminent right of the freedom of speech. Textually, this freedom appears in the First Amendment, but if everything depended solely on this explicit patch of constitutional text, which became part of the Constitution in 1791, then the First Congress in 1789 and 1790 would have been free to pass censorship laws had it so chosen. But surely the First Congress had no such power, and surely states have never had proper authority to shut down political discourse, even though the First Amendment does not expressly limit states. The robust, wide-open, and uninhibited freedom of American citizens to express their political opinions is a basic feature of America's unwritten Constitution that predates and outshines the First Amendment.

A third example is when Article II of the Constitution addresses the powers and responsibilities of the Presidency, but provides considerable less insight into the Vice Presidency. The legal precedent from Sir William Blackstone's *Commentaries on the Laws of England* forms the basic principles of British and American laws can help us to address that question. Blackstone's *Commentaries* make the argument that it would be absurd for people to sit in judgment or in positions of power when their own fate is in jeopardy.

Other examples include the United States Supreme Court landmark case that went beyond the textual limits of the Constitution, *McCulloch v. Maryland*, when the Supreme Court found the Bank of the United States to be Constitutional even though the power for Congress to incorporate a bank is not found in Article I or anywhere else in the Constitution for that matter. The Bank of the United States served several purposes for the government such as holding federal deposits, paying soldiers and strengthening the national economy.

Words: 750 / 750

Attach a file (supports: txt, png, jpg, gif, pdf)

Evaluation/feedback on the above work

Note: this section can only be filled out during the evaluation phase.

Strength of Argument

Use of Evidence

Engagement with Course Themes and Critical Thought

On-topic?

Citations:

**B**

*I*

Link

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Math

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Preview

Professor Amar's book:  
"America's Unwritten Constitution, The Precedents and Principles We Live By", Akhil Reed Amar

Class Videos and Discussion Forums from Professor Amar's online Coursera class on "US Constitution", Spring Semester 2014

Other Student's Essay Number 2 Option 1: In evaluating 3 essays for essay 2, I found even more examples than I had found in the above resources. I must admit I am not familiar with the format of some of these resources such as (98 US 145 (1879)) but I did find some information that this resource quoted in someone's essay:

- Sir William Blackstone's *Commentaries on the Laws of England*, (Amar p. 7)
- Blackstone's *Commentaries* make the argument that it would be absurd for people to sit in judgment or in positions of power when their own fate is in jeopardy. (Amar, p.8)
- Reynolds v. United States (98 U.S. 145 (1879)) the Supreme Court upheld a Utah law banning polygamy on the basis that the 1st Amendment protected Freedom of Religion, but did not protect religious practices that are viewed as criminal ([http://www.oyez.org/cases/1851-1900/1878/1878\\_0](http://www.oyez.org/cases/1851-1900/1878/1878_0) )
- Loving v. Virginia (388 U.S. 1 (1967)) when the Supreme Court was asked to address another marital limitation, this time striking down Virginia's ban on interracial marriage ([http://www.oyez.org/cases/1960-1969/1966/1966\\_395](http://www.oyez.org/cases/1960-1969/1966/1966_395))

Words: 229 / 250

[Attach a file](#) (supports: txt, png, jpg, gif, pdf)

**Overall evaluation/feedback**

**Note:** this section can only be filled out during the evaluation phase.

Please briefly explain the grade that you gave on this essay.

✓ Submitted. You can still make changes and re-submit before the deadline.



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[Re-submit for grading](#)

