

Peer Assessments (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%2Fresults%2Fmine)

Submission Phase

1. Do assignment ☒ (/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)

Results Phase

3. See results ☒ (/conlaw-001/human_grading/view/courses/970970/assessments/11/results/mine)

Your effective grade is **20**

Your unadjusted grade is 20, which is simply the grade you received from your peers.

See below for details.

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.

All quotes for Essay 3 Option 3 from: Professor Amar's "Unwritten Constitution" book, videos, discussions, and from reading other's essay 2 option 1:

America's unwritten Constitution encompasses not only rules specifying the substantive rights 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.

Even more examples of contemporary Constitutional conflicts that I learned from reading others essays, such as freedom to marry will rely on extra textual sources such as State Law and legal precedent to fully frame the Constitutionality of the debate and to help Court and other public policy officials in making decisions about this issue. The Constitution itself does not address the issue of marriage directly, but courts have consulted state laws and precedent when ruling on marriage issues of polygamy, inter-racial marriage and most recently same-sex marriage. Examples include *Reynolds v. United States* 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. The Supreme Court was asked to address another marital limitation, this time striking down Virginia's ban on interracial marriage in *Loving v. Virginia*. The Supreme Court found that Virginia's anti-miscegenation, a ban on interracial marriage, law had violated Richard and Mildred Loving's 14th Amendment Equal Protection rights, and also, only 16 states still had bans on interracial marriage. The Supreme Court does not want to force social or legal changes on the nation until a majority of states have addressed the issue in one direction.

A vision of the nature of constitutional interpretation are the tools and techniques for going beyond the written Constitution while remaining faithful to it. The terse text of the Constitution has always pointed beyond itself, inviting readers to fill in its gaps by consulting extratextual sources such as judicial opinions, executive practices, legislative enactments, and American traditions. America's written Constitution thus bids us to heed her unwritten Constitution, which in turn refers us back, in various

Evaluation/feedback on the above work

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

Style and Organization
Score from your peers: 4

Strength of Argument
Score from your peers: 4

Use of Evidence
Score from your peers: 4

Engagement with Course Themes and Critical Thought
Score from your peers: 4

On-topic?
Score from your peers: 4

All quotes for Essay 3 Option 3 from: Professor Amar's "Unwritten Constitution" book, videos, discussions, and from reading other's essay 2 option 1.

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)

--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))

Essay3Option3 Citations (<https://s3.amazonaws.com/coursera-uploads/user-519c50709447eca98fc650d0/970970/asst-11/d6f5a4e0ccb011e3980d9361ef3784bd.pdf>)

Overall evaluation/feedback

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

peer 1 → Well Done! This essay was well written & thought out. The writing style is commendable and organization of information is excellent! Great Work & Keep it Up!

peer 2 → The task was to pick three texts, practices, examples or ideas. I don't clearly see it. However , that essay touches most parts of the topic. Good job with the citation.

peer 3 → Nice from a historical perspective of parts and binding them into their connection to the constitution. Overall a very good presentation with a clear understanding of the course materials.

