

Peer Assessments (https://class.coursera.org/conlaw-001/human_grading/) / Essay 2 (Option 1)

Help (https://class.coursera.org/conlaw-001/help/peergrading?url=https%3A%2F%2Fclass.coursera.org%2Fconlaw-001%2Fhuman_grading%2Fview%2Fcourses%2F970970%2Fassessments%2F6%2FpeerGradingSets)

Submission Phase

1. Do assignment ☒ (/conlaw-001/human_grading/view/courses/970970/assessments/6/submissions)
due in 2day 4h

Evaluation Phase

2. Evaluate peers ☒ (/conlaw-001/human_grading/view/courses/970970/assessments/6/peerGradingSets)

Results Phase

3. See results  (/conlaw-001/human_grading/view/courses/970970/assessments/6/results/mine)

[← Return to list \(/conlaw-001/human_grading/view/courses/970970/assessments/6/peerGradingSets/2757\)](/conlaw-001/human_grading/view/courses/970970/assessments/6/peerGradingSets/2757)

Congratulations on finishing this assessment. To see your results, come back after the evaluation deadline has passed.

✓ Submitted

[Re-submit evaluation](#)

[+ Evaluate another student \(optional but useful\) \(/conlaw-001/human_grading/view/courses/970970/assessments/6/peerGradingSets/2757/next\)](/conlaw-001/human_grading/view/courses/970970/assessments/6/peerGradingSets/2757/next)

Submission from: Student 3

*Write a **500-750 word** essay response, making sure to address **ALL** parts of the question.*

Some constitutional scholars, who call themselves textualists, say that the only source of meaning in constitutional law should be the text of the Constitution itself. What do you think of this? Consider the arguments Professor Amar makes for when we can go beyond the text and whether you find them persuasive.

The Constitution should be the origin of any Constitutional issue, argument or crisis. However, it is terribly short sighted to rely solely on the document to settle disputes. Throughout American history, each branch of the government has taken liberties with the Constitution and gone beyond the scope of the powers as created by the document itself. The Constitution is a vague document that leaves room for interpretation. Additional resources such as the Federalist papers, State Constitutions and United States Supreme Court decisions must be used to provide greater substance to the scope of Constitutional law.

Professor Amar addressed the inadequacy of the written Constitution by raising the question of who should preside over the Vice President's impeachment trial in his video lectures in Chapter 1 of his book *America's Unwritten Constitution*. Article II of the Constitution addresses the powers and responsibilities of the Presidency, but provides considerable less insight into the Vice Presidency. Professor Amar explains that legal precedent from Sir William Blackstone's *Commentaries on the Laws of England* forms the basic principles of British and American laws (Amar, p. 7) 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. (Amar, p.8)

The United States Supreme Court has decided numerous landmark cases by going beyond the textual limits of the Constitution. In the landmark decision *McCulloch v. Maryland*, 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. Had the US Supreme Court made it's ruling based solely on a strict textual reading of the Constitution, the Bank of the United States would have been ruled unconstitutional and dissolved. Chief Justice Marshall understanding the broader economic and national security benefits that the Bank of the United States provided upheld the Constitutionality of the Bank and opened the door to further Constitutional overreaches.

Contemporary Constitutional conflicts 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. In *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)). Eighty-eight years later, the Supreme Court was asked to address another marital limitation, this time striking down Virginia's ban on interracial marriage in *Loving v. Virginia* (388 U.S. 1 (1967)). The Supreme Court found that Virginia's anti-miscegenation law had violated Richard and Mildred Loving's 14th Amendment Equal Protection rights. (http://www.oyez.org/cases/1960-1969/1966/1966_395 (http://www.oyez.org/cases/1960-1969/1966/1966_395)) The question remains, why would the court uphold a limitation on one kind of marriage, but strike down a limitation on another kind of marriage? The answer lies within state laws themselves and legal precedent.

In the video lectures, Professor Amar made the case that the Supreme Court does not want to force social or legal changes on the entire nation until a majority of states have addressed the issue in one direction. Reynolds challenge was not successful because there was not a major legal ground swell for polygamy. The Loving's challenge was successful because by the time of their challenge to Virginia's anti-miscegenation law, only 16 states still had bans on interracial marriage. The Supreme Court was much more cautious in the *Hollingsworth v. Perry* (570 U.S. (2013)) by striking down California's ban on

same-sex marriage, but not invalidating bans in other states. (<http://www.oyez.org/cases/2010-2019/2012-12-144>) Professor Amar's would point to the Hollingsworth v. Perry ruling as an example of the Supreme Court looking at state law before forcing a change nationwide. Professor Amar has provided ample historical evidence demonstrating the use of additional sources in solving Constitutional conflicts and this trend will undoubtedly continue so long as we use the Constitution as our supreme legal document.

[flag \(/class.coursera.org/conlaw-001/help/flag?url=https%3A%2F%2Fclass.coursera.org%2Fconlaw-001%2Fhuman_grading%2Fview%2Fcourses%2F970970%2Fassessments%2F6%2Fsubmissions%2F2420\)](https://class.coursera.org/conlaw-001/help/flag?url=https%3A%2F%2Fclass.coursera.org%2Fconlaw-001%2Fhuman_grading%2Fview%2Fcourses%2F970970%2Fassessments%2F6%2Fsubmissions%2F2420)

Style and Organization

4: The essay is beautifully written

Strength of Argument

4: The essay provides innovative

Use of Evidence

4: The essay provides ample evidence

Engagement with Course Themes and Critical Thought

4: The essay demonstrates excellent

On-Topic?

4: Yes. The essay answers ALL questions

Overall evaluation/feedback

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

04/11/2014 09:02 PM

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I thought this was well written!

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You've written 6 words

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