

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

due in 1day 15h

#### Submission Phase

1. Do assignment ☒ ([/conlaw-001/human\\_grading/view/courses/970970/assessments/6/submissions](/conlaw-001/human_grading/view/courses/970970/assessments/6/submissions))

#### Evaluation Phase

2. Evaluate peers  ([/conlaw-001/human\\_grading/view/courses/970970/assessments/6/peerGradingSets](/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](/conlaw-001/human_grading/view/courses/970970/assessments/6/results/mine))

Your work was submitted. [Review your work \(https://class.coursera.org/conlaw-001/human\\_grading/view/courses/970970/assessments/6/submissions/2355\)](https://class.coursera.org/conlaw-001/human_grading/view/courses/970970/assessments/6/submissions/2355) 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 **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.

All information and quotes taken from Prof. Amar's "Unwritten Constitution" book:

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.

Without an unwritten Constitution of some sort, we would not even be able to properly identify the official written Constitution. Much but not all of America's unwritten Constitution does involve written materials, such as venerable Supreme Court opinions, landmark congressional statutes and iconic presidential proclamations. These materials while surely written texts, are nonetheless distinct from the written Constitution and thus properly described by lawyers and judges as parts of America's unwritten Constitution.

The Ninth Amendment 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.

The Ninth Amendment is not the only textual portal welcoming us to journey beyond the Constitution's text, and the trail of unenumerated rights is only one of several routes worth traveling in search of America's unwritten Constitution. Many topics that also influence America's unwritten Constitution include federalism, women's rights, popular constitutionalism, criminal procedure, voting rights and the amendment process. With case studies drawn from these and other areas, America's two Constitutions, written and unwritten, cohere to form a single Constitutional system. The written Constitution cannot work as intended without something outside it—America's unwritten Constitution—to fill in the gaps and to stabilize it. Over the centuries, various extratextual practices and precedents that have done justice to the text have flourished while other extratextual practices and precedents that have done violence to the text have faded away.

One 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

Words: 705 / 750

Attach a file

(supports: txt, png, jpg, gif, pdf)

Style and Organization

Strength of Argument

Use of Evidence

Engagement with Course Themes and Critical Thought

On-Topic?

### 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.

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You've written 0 words

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

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