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Professor Amar's Constitutional Philosophy

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Without pigeonholing Professor Amar, would you be able to describe his basic approach to constitutional law? In other words, does he consider himself or is he generally considered an originalist, an advocate of judicial restraint, a proponent of legal realism, etc?

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[Harry Leddy](#) · 2 months ago 🗨

How would Professor Amar respond to Chief Justice Hughes' quote "The Constitution is what the judges say it is."?

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[+ Comment](#)[Serge Danielson-Francois](#) · 2 months ago 🗨

My sense from the lectures so far is that for Professor Amar the words of the Constitution create a context for civic virtue and individual conscience. His presentation of the Preamble focused on the deeds that carefully chosen words enacted.

↑ 2 ↓ · flag

[+ Comment](#)[Alec D. Rogers](#) · 2 months ago 🗨

Prof Amar has called himself an "textualist" - and he absolutely doesn't believe the Constitution is what the Court says (otherwise he'd never criticize an opinion). He seems to believe that if you read enough background and apply certain basic rules you get to a "right" answer from what I can tell having read his books.

↑ 6 ↓ · flag

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Daniel Herz-Roiphe STAFF · 2 months ago 

I think you've hit the nail right on the head, Alec. Professor Amar emphatically rejects the idea (sometimes described as "legal realism") that law is just what judges do. He thinks that questions of constitutional interpretation should be answered in a principled way--using many of the tools that he discusses in his books. I think you're also right that while Amar is a textualist in a certain sense--in that he takes the words of the Constitution very seriously and thinks they are the starting point for interpretation--he also understands that the Constitution's meaning is influenced by other factors as well. In the second half of the course we will go over many of those factors in our discussion of Amar's book, "America's Unwritten Constitution."

Daniel (TA)

↑ 9 ↓ · flag

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sanford l braver · 2 months ago 

That was basically my repeated question as I read his books and watched the lectures: How much of what Prof Amar professes is a matter of opinion vs established fact? How much of what he says would Justices Scalia or Thomas or Ginsburg or Kagan agree with? He says "Dred Scott" was WRONG. Under what criteria is a Supreme Court decision right or wrong? And what does he think the 2nd Amendment says?

↑ 3 ↓ · flag



Alec D. Rogers · a month ago 

Some is, while some is his own theories that the Courts haven't adopted yet. Although we could say this of most constitutional theorists.

↑ 0 ↓ · flag

Joel Kovarsky · a month ago 

Facts are mutable, and the court has been known to reverse itself (you can get a headache with the interpretations of the commerce clause), or at least modify chunks of prior opinion. As to how much agreement you would get between Justice Scalia and Prof. Amar, who knows, but maybe not so much (depending on the situation). The justices do not always agree among themselves, but as I understand it large numbers of their cases are rather mundane, and do not reach the public eye in the way of abortion, gun rights, etc. The justices, in their dissents, often say the "other side" was wrong, and then outline the reasons. Justice Ginsberg has cited Prof. Amar in past decisions: <https://theusconstitution.org/text-history/2185/80-justice-ginsburg-emerges-court%E2%80%99s-new-orig...>

As to Prof. Amar's thoughts on the second amendment, you could read about it: http://digitalcommons.law.yale.edu/fss_papers/855/ .

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lincoln Kamau Signature Track · a month ago 🔗

From what I have seen so far, I would argue Dr. Amar is a proponent of legal realism. He is of the opinion that the constitution is a living document whose interpretation is based on judicial decisions of the day.

I seem to be trending that way especially given the many amendments that have come to reflect the social-political evolution of the day.

↑ 0 ↓ · flag

[+ Comment](#)



Alec D. Rogers · a month ago 🔗

Lincoln,

I don't see that in his writings.

Professor Amar takes great issue with many landmark court decisions, at least in their reasoning and some in their outcome as well.

He does believe in a "living constitution" in the sense that at least some of the provisions' meaning can be altered based upon the way people lead their lives (he calls this the "lived Constitution") and thinks it can help identify those unenumerated rights mentioned in the 9th amendment.

On the other hand, he places less stock in precedent than most constitutional law professors, which explains why we're reading the Constitution and learning about the history of its provisions rather than reading court cases as the basis for the law's substance.

↑ 1 ↓ · flag



Anthony Gary Brown Signature Track · a month ago 🔗

Amar - in the books; less in lectures so far - has many gentle digs at judges, politicians and professors who opine at length on Constitutional Law without demonstrating much familiarity with the actual text of the Constitution itself.

Something I'm especially enjoying is Amar's explicitly multi-disciplinary approach. He uses not just Law as his line of approach, but also Political Science (which he also teaches at Yale) and

History. All to better understand how to "read" the Constitution, in the very widest senses of "reading".

BTW, for those wanting more "pure Law" in the course, there's plenty of that in Part II, the Unwritten Constitution (at least, there is in that book).

Gary B.

↑ 2 ↓ · flag

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Anonymous · [a month ago](#) 🔒

From Prof. Amar's lecture, I had the impression that US constitution's Raison d'etre was tightly connected to National Security during America Founding Fathers' time. Someone here has suggested Federalist paper 10 pointed out that in Madison's mind, Republic was a concept grown out of aversion of French revolution/ mob rule, aka. Democracy. I haven't read Prof. Amar's second book 'Unwritten Constitution'. In my mind, there is a difference between 'Nation' in the sense of Peoples coming together, each bringing their own rich traditions and beliefs opposing the power of any established Sovereign State. The separation of Church and State can also be seen in that logic. Among recent cases, I find this one case most intriguing. I'd like to bring it up here for a closer examination. 'Bond vs. US' <http://www.npr.org/2011/02/22/133946067/constitutional-questions-arise-in-chemicals-case>

↑ 0 ↓ · flag

Joel Kovarsky · [a month ago](#) 🔒

I think this case just recently went before the court: <http://www.npr.org/2013/11/05/243029845/a-toxic-love-triangle-heads-to-the-supreme-court> . The varied briefs filed, and other details, are discussed here: <http://www.scotusblog.com/case-files/cases/bond-v-united-states-2/> . Among those links is a general summary of the case details and arguments: <http://www.scotusblog.com/2013/11/little-drama-more-skepticism-in-treaty-power-case-in-plain-english...> .

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