

GVPT 439c
Mid-Term Exam
Fall 2023

This is an open book, open notes, “open everything” exam. You may consult any source you wish. You may not, however, consult your colleagues. Your answers should be yours and yours alone. Please sign the Honor pledge on your exam showing compliance with the exam directions. Also, please put your name on each page of your exam submission. Most questions can be answered in 3 or 4 paragraphs. Be concise and precise! Your total exam submission should not exceed 6 pages, single-spaced with double spaces between each paragraph, 12-point type and 1-inch margins.

Answer 10 and **ONLY** 10 of the following questions:

1. Judicial minimalism is an approach to constitutional interpretation, not a theory. Agree or disagree. Why?
2. *Roe v. Wade* is arguably an example of intra-textualism. Explain why. (Be specific.)
3. List 3 criticisms of original intent originalism. Does original public meaning originalism successfully address these criticisms?
4. Briefly explain Justice Brennan’s conception of “contemporary ratification.”
5. a) There are 2 parts to Ely’s process theory of constitutional interpretation. What are they?
b) Ely attempted to develop a theory that was mostly (entirely?) procedural, *i.e.*, its goal was to eliminate substantive considerations by the Court. Did he succeed? Why or why not?
6. What is the counter-majoritarian difficulty? Is counter-majoritarianism really a problem? Why or why not?
7. Was *Brown v. Board of Education* an aspirationalist decision? Why or why not?
8. What type of originalism is Scalia doing in *D.C. v. Heller*? Is Stevens doing a different type of originalism in the dissent or does he just reach a different conclusion?
9. Is common good originalism actually originalism? Why or why not?
10. Briefly explain Balkin’s theory of “Cycles of Constitutional Time.”
11. Does the Ninth Amendment provide for unenumerated rights or is it just a “rule of construction”? Explain.

