Class details

POL-UA9330001/HIST-UA9330001 American Constitution
Spring 2015
CLASS MEETING TIME: Mondays, 6:15pm–9:15pm*
Location to be confirmed.

* There will be a legislative make-up day on a Friday.

Instructor Details

Marvin L Astrada

**Email: ma190@nyu.edu

**Best way to reach me, as I check email consistently

Prerequisites

N/A

Class Description

“It is not important whether or not the interpretation is correct – if men define situations as real, they are real in their consequences.” William I. Thomas

“Just what our forefathers did envision or would have envisioned had they foreseen modern conditions, must be divined from materials almost as enigmatic as the dreams Joseph was called upon to interpret for Pharaoh.”
Justice Robert Jackson, US Supreme Court

This course provides an intensive theoretical foray into the American Constitution, excepting its guarantee of individual rights, such as those enumerated in the Bill of Rights. The Constitution has endured for over two centuries as a touchstone for defining the U.S. as a political unit. As a textual and ideational construct, the Constitution continues to profoundly impact the fabric of American identity and political culture.

The relative brevity of the Constitutional text conceals an intricate textual architecture for the “proper” definition of government and governance. The American Constitution, as text, as political, social, and economic ordering mechanism, as expression of an historical moment, as
a repository of culture and ideology, as a philosophy of government and governance, is considerably complex. The Constitution, in its original as well as amended form, is, among other things, a legal document which sets out the structure of the federal government, defines the legal authority of the federal government (and, to a lesser extent, State governments), and puts forth sundry constraints on the exercise of the federal government’s power. The Constitution lays out the legal relationship between the federal government, State governments, and the persons subject to their respective jurisdictions.

Since the Constitution’s inception, various political actors have put forth competing interpretations of the “true” meaning and purpose of the Constitution. The Constitution—as well as the variegated components informing the document’s meaning, construction, e.g., relevant historical documents—has been the site of intense contestation. It has provided the fulcrum, a context, for conflict surrounding the “correct” interpretation of the Constitution. The Executive, Legislative, and Judicial branches of the federal government, as well as State governments, have at one time vied for being the expounder of Constitutional truth. The federal courts, in particular the US Supreme Court, have produced a distinct constitutional jurisprudence that proffers a “correct” interpretation of the Constitution.

The Constitution is thus central to American government, from the mechanics of government and governance to political identity, thought and culture. Every aspect of a citizen-subject’s being—e.g., rights, freedoms, responsibilities, duties, and obligations— is directly affected by interpretation of the Constitution’s provisions. Myriad interpretations of the Constitution have surfaced over the past two centuries, spawning distinct theoretical, political, and ideological perspectives concerning the “true” or “proper” meaning and purpose of the Constitution in the ordering of the American polity.

In light of the profound impact that the American Constitution has and continues to have on defining the potential and actuality of political, social, and economic reality for its citizen-subjects, this course will provide students with select theoretical tools to critically examine and appraise the American Constitution, in thought and practice. The course thus analyzes the American Constitution from a theoretical, textual, historical, and philosophical perspective. U.S. Supreme Court opinions, in conjunction with additional materials (e.g., law reviews), will be employed to illuminate how constitutional controversies are conceptualized and adjudicated, and how interpretation affects legal, political, social, and economic actuality. Throughout the course students will discern the political, philosophical, and legal dimensions of the American Constitution and Constitutional law.

Desired Outcomes

As a result of completing this course, students will:

1. Be conversant with, and have an appreciation for, theoretical, philosophical, and applied
analysis of the American Constitution.

2. Develop a sophisticated theoretical perspective vis-à-vis analysis and interpretation of US Supreme Court opinions, Constitutional Law, and the Constitution.

3. Identify and apply formal theoretical frameworks that seek to explain and understand the Constitution.

4. Critically analyze and evaluate theories and interpretations of the Constitution.

**Assessment Components**

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<tr>
<th>Component</th>
<th>Percentage</th>
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<tr>
<td>Participation</td>
<td>10% of grade</td>
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<tr>
<td>Short Paper: (3–5 pages)</td>
<td>20% of grade</td>
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<tr>
<td>Short Paper: (3–5 pages)</td>
<td>20% of grade</td>
</tr>
<tr>
<td>Final Paper (10–15 pages)</td>
<td>50% of grade</td>
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Failure to timely submit or fulfill any required course component may result in failure of the class.

**Assessment Expectations**

**Grade A:** Student demonstrates excellent comprehension and command of the subject matter and materials. Student engages with and makes excellent use of class materials and offers insightful and well-structured arguments in written assignments. Student writes comprehensive essays/exam questions, and written assignments show strong evidence of critical thought and engagement with the readings. Student effectively incorporates class discussion and original thought into written assignments. Student actively and substantively participates in class discussion on a consistent basis.

**Grade B:** Student demonstrates significant comprehension of the subject matter and materials. Student engages class materials and provides comprehensive and informed arguments in written assignments. Student effectively incorporates readings and class discussion into written assignments. Student actively participates in class discussion, and demonstrates a degree of critical thought in written assignments and class discussion.

**Grade C:** Student demonstrates a basic understanding of the subject matter and materials. Written assignments address basic aspects of the subject matter. Student sufficiently incorporates assigned materials into work assignments. Student participates in class discussion, and attempts to incorporate critical thought in written assignments and discussion.

**Grade D:** Student has limited understanding of the subject matter and materials. Written assignments
do not incorporate assigned materials effectively. Limited critical thought or engagement with assigned materials. Limited class participation.

**Grade F:** Student has very limited understanding of the subject matter and materials. Work assignments do not incorporate assigned materials. Very limited critical thought or engagement with assigned materials. Very limited class participation.

### Grade conversion

NYU Washington, DC uses the following scale of numerical equivalents to letter grades:

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<thead>
<tr>
<th>Numerical Range</th>
<th>Letter Grade</th>
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<tbody>
<tr>
<td>100–94</td>
<td>A</td>
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<tr>
<td>93–90</td>
<td>A-</td>
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<tr>
<td>89–87</td>
<td>B+</td>
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<td>86–84</td>
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<td>79–77</td>
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<td>76–74</td>
<td>C</td>
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<td>73–70</td>
<td>C-</td>
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<td>69–67</td>
<td>D+</td>
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<tr>
<td>65–66</td>
<td>D</td>
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<tr>
<td>below 65</td>
<td>F</td>
</tr>
</tbody>
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### Attendance Policy

Study abroad at Global Academic Centers is an academically intensive and immersive experience, in which students from a wide range of backgrounds exchange ideas in discussion-based seminars. Learning in such an environment depends on the active participation of all students. And since classes typically meet once or twice a week, even a single absence can cause a student to miss a significant portion of a course. **To ensure the integrity of this academic experience, class attendance at the centers is mandatory, and unexcused absences will affect students' semester grades.** Students are responsible for making up any work missed due to absence. Repeated absences in a course may result in failure. At all Global Academic Centers, unexcused absences will be penalized with a two percent deduction from the student’s final course grade.

To seek an excused absence for medical reasons, students must email or discuss with the Academic Program Coordinator in advance of their missed class (if not an emergency). For an excused absence, students must produce a doctor’s note (dated and signed by medical professional) with the exact dates of the missed class and/or exam clearly indicated. Please discuss medically excused absences with the Academic Program Coordinator.
Non-medical absences must be discussed with the Academic Program Coordinator prior to the date(s) in question, who will communicate the absence to all relevant faculty members. If faculty members do not receive notification, the student has not procured an excused absence.

NYU Washington, DC expects students to arrive to class promptly (both at the beginning and after any breaks), to be attentive, and to remain for the duration of the class. If full class attendance and participation becomes a problem, it is the prerogative of each instructor to apply the rule for unexcused absences, which may include, but is not limited to, a two percent deduction from the student’s final course grade.

Students are responsible for making up any work missed due to absence. This means they should initiate email and/or office hour discussions to discuss any missed lectures and assignments and arrange a timeline for submitting missed work.

Please note that for classes involving a field trip or other external visit, transportation difficulties are never grounds for an excused absence. It is the student’s responsibility to arrive at the announced meeting point in a punctual and timely fashion. Staff members may always be reached by cell phone for advice regarding public transportation.

### Late Submission of Work

1) Written work due in class must be submitted in a timely manner during the assigned class time to the professor.

2) Late work should be emailed to the faculty as soon as it is completed. (If the assignment must be submitted in person, the Academic Program Coordinator can collect on behalf of the faculty between the hours of 9–5, M–F.)

3) Late work will be reduced for a fraction of a letter grade (e.g.,: A to A-, A- to B+, etc.) for every day it is late, including weekends.

4) Written work during the semester that is submitted 5 days after the submission date (including weekends) without an agreed extension fails and is given a zero.

5) Students who arrive to class late for an exam do not have automatic approval to take extra time to complete the exam.

6) Students who miss an exam (including the final) without previously arranged permission will receive a zero on that exam.

7) Assignments due during finals week that are submitted more than 3 days without previously arranged extensions will not be accepted and will receive a zero. Any exceptions or extensions for
work during finals week must be discussed with the Site Director.

**Students with Disabilities**

Accommodations are available for students with documented disabilities. Please contact the Moses Center for Students with Disabilities at +1-212-998-4980 or see their website (http://www.nyu.edu/life/safety-health-andwellness/students-with-disabilities.html) for further information.

**Plagiarism Policy**

As the University's policy on “Academic Integrity for Students at NYU” states: “At NYU, a commitment to excellence, fairness, honesty, and respect within and outside the classroom is essential to maintaining the integrity of our community. By accepting membership in this community, students take responsibility for demonstrating these values in their own conduct and for recognizing and supporting these values in others.” Students at Global Academic Centers must follow the University and school policies.

The presentation of another person’s words, ideas, judgment, images, or data as though they were your own, whether intentionally or unintentionally, constitutes an act of plagiarism.

NYU Washington, DC takes plagiarism very seriously; penalties follow and may exceed those set out by your home school. All your written work must be submitted as a hard copy AND in electronic form to the instructor. Your instructor may ask you to sign a declaration of authorship form.

It is also an offense to submit work for assignments from two different courses that is substantially the same (be it oral presentations or written work). If there is an overlap of the subject of your assignment with one that you produced for another course (either in the current or any previous semester), you MUST inform your professor.

For guidelines on academic honesty, clarification of the definition of plagiarism, examples of procedures and sanctions, and resources to support proper citation, please see:

http://www.nyu.edu/about/policies-guidelines-compliance/policies-and-guidelines/academic-integrity-for-students-at-nyu.html

http://gls.nyu.edu/page/gls.academicintegrity

http://cas.nyu.edu/page/academicintegrity

**Required Text**


*Note: Students may purchase the newer 6<sup>th</sup> ed. of the CB if they prefer, but 5<sup>th</sup> ed. is recommended, as it constitutes the basis of readings for the class.

**Supplemental Texts(s) (not required for purchase)**

Additional reading materials to be assigned (PDF format)

**Internet Research Guidelines**

Although Internet research is neither required nor expected for this course, students are permitted to obtain material from the Internet for researching and writing assignments. ANY material (to include, but not limited to, quotations, concepts, graphs, charts, and/or analytic frameworks) obtained from the Internet is to be cited properly. Failure to do so constitutes plagiarism.

**Additional Required Equipment**

N/A

**Additional Thoughts & Information**

1. The Instructor reserves the right to alter the syllabus as needed. Students will be given notice of any change(s).

2. Given the intensive and rigorous nature of the subject matter, absences will most likely negatively impact the final grade, as the class will be dealing with material that is complex, and perhaps new to many students. Attending every class is strongly encouraged. Additionally, completion of the readings, while required, will also substantially aid in your becoming conversant with the complex enterprise of interpreting, explaining, and understanding the Constitution.

3. Participation: The fact that participation constitutes 10% of the final grade notwithstanding, I strongly suggest students actively (and substantively) participate. It is my sincere wish to make this an engaging, interesting, and illuminating experience for all of us. Active participation will not only enhance your classroom experience, but will provide you with rich insight as you complete your graded assignments.
INTRODUCTION: INTERPRETING THE CONSTITUTION—ISSUES & CHALLENGES

The Constitution, Constitutional Law & Theory

- What is the Constitution?
- Overview of Theories of Constitution and Doctrines of Con Law
- Text, Philosophy & Interpretation
- History, Politics, Culture & the Ordering of a Polity

Readings:

- The Federalist Papers: 10  http://avalon.law.yale.edu/18th_century/fed10.asp
- The Federalist Papers: 51  http://avalon.law.yale.edu/18th_century/fed51.asp
- Constitution of the United States, CB pp. 1-15 (*focus on pp. 1-8, esp. Article III)
- *Recommended: Historical Background of the Constitution, CB pp. 19-26

Class will not meet next Monday because of the Presidents Day holiday.
CONSTITUTIONAL INTERPRETERS: AN OVERVIEW

Readings:


Judicial Review

Readings:

- The Federalist Papers: 78  [http://avalon.law.yale.edu/18th_century/fed78.asp](http://avalon.law.yale.edu/18th_century/fed78.asp)
- Note on the Marshall Court, CB pp. 97-103
- *Stuart v. Laird* & Notes, CB pp. 104-108
- *Marbury v. Madison* & Notes, CB pp. 108-124
- Theories of Judicial Review, CB pp. 124-136

Session 4 – 3/2/15

CONSTITUTIONAL INTERPRETERS (Continued)

What if the President disagrees with the Court about the meaning of the Constitution?

Readings:

- Andrew Jackson's Veto Message and Notes, CB pp. 74-79
- Note on Presidential Authority (Meyers, Freytag, and Chada, CB pp. 79-81)
- Limiting Executive Authority (*Little v. Barreme*), CB pp. 138-140

Can the States resist a law they believe to be unconstitutional?

Readings:
What does “commerce among the several States” mean and who can regulate it?

Readings:

- Gibbons v. Ogden and Notes, CB pp. 168-180
- Note on Language, Purpose, and Meaning, CB pp. 180-186
- Note on the Taney Court, CB pp. 187-191
- *Optional background info: Note on Interstate Federalism and the National Economy, CB pp. 729-736

**CRITICAL RESPONSE PAPER #1 DUE AT THE BEGINNING OF SESSION 4**

Session 5 – 3/9/15

THEORY & STRUCTURE OF GOVERNMENT

Federalism

Readings:

- Note on the Natural Law Tradition and Calder v. Bull, CB pp. 146-153
- Note: Is Constitutional Law a Comedy or a Tragedy? CB pp. 153-156
- Corfield v. Coryell, CB pp. 209-210
- Crandall v. Nevada & Notes, CB pp. 210-217
- Notes & Prigg v. Pennsylvania, CB pp. 217-228
- Dred Scott v. Sandford & Notes, CB pp. 229-253
Session 6 – 3/16/15

THEORY & STRUCTURE OF GOVERNMENT (Continued)

The War Power

Readings:

- Notes on Secession, CB pp. 261-271 (*Recommended)
- **The Prize Cases**, CB pp. 271-275
- **Ex Parte Merryman & Notes**, CB pp. 276-285
- Note on Limiting the President's Power as Commander in Chief & **Little v. Barreme**, pp. 138-140
- **Youngstown Sheet and Tube Co. v. Sawyer** (& Note2), CB pp. 819-836

*Class will not meet next Monday due to Spring Break*

Session 7 – 3/30/15

THEORY & STRUCTURE OF GOVERNMENT (Continued)

War Power, Emergency & Civil Rights

Readings:

- **Hamdi v. Rumsfeld** (Also Rumsfeld v. Padilla, Rasul v. Bush Note #8), CB pp. 841-851, 855-864, 868-870
- **Ex Parte Milligan** & Notes, CB pp. 287-291
- Note on Torture and Presidential Power, CB pp. 878-881
- **Korematsu v. United States** & Notes, CB pp. 966-979

Session 8 – 4/6/15

ENDURING IMPACT OF RECONSTRUCTION & REACTION

Introduction

Readings

- **The Fourteenth Amendment**, CB pp. 11-12
• History of the Adoption of the Fourteenth Amendment, CB pp. 301-313, Skim 314-319

Reconstruction Amendments & the Privileges & Immunities of National Citizenship

Readings:

• The Slaughterhouse Cases & Notes, CB pp. 320-337

Session 9 – 4/13/15

ENDURING IMPACT OF RECONSTRUCTION & REACTION (CONTINUED)

The Reconstruction Amendments & Race

Readings:

• Strauder v. West Virginia and Notes, CB pp. 351-357
• Plessy v. Ferguson & Notes, CB pp. 357-368
• Charles Black, the Lawfulness of the Segregation Decisions, CB pp. 368-369
• Note on The Spirit of Plessy and Giles v. Harris, CB pp. 370-373
• The Civil Rights Cases & Notes, CB pp. 373-385

**CRITICAL RESPONSE PAPER #2 DUE AT THE BEGINNING OF SESSION 9

Session 10 – 4/20/15

THE LOCHNER ERA

Due Process

Readings:

• Notes on the Rise of Substantive Due Process, CB pp. 412-416
• Lochner v. State of New York & Notes, CB pp. 417-422
• Notes on the Jurisprudence of the Lochner Era, CB pp. 422-431

Federalism and National Powers

Readings:
Session 11 – 4/27/15

THE NEW DEAL AND THE EMERGENCE OF THE MODERN PARADIGM OF JUDICIAL SCRUTINY

Overview

Readings:

- Notes on Incorporation, CB pp. 485-497
- Home Building & Loan Association v. Blaisdell & Notes, CB pp. 501-510
- Notes & West Coast Hotel v. Parrish, CB pp. 510-513
- U.S. v. Carolene Products Co., CB pp. 513-520
- Williamson v. Lee Optical Co. & Notes, CB pp. 520-527

Session 12 – 5/4/15

NATIONAL POWER FROM THE NEW DEAL TO THE REHNQUIST COURT

The Modern Regulatory State

Readings:

- NLRB v. Jones and Laughlin Steel Corp. & Notes, CB pp. 549-550
- United States v. Darby & Notes, CB pp. 551-553
- Wickard v. Filburn & Notes, CB pp. 553-556
- Note on Constitutional Revolution, CB pp. 556-558

The Warren Court and the Civil Rights Movement

Readings:
• Notes, Heart of Atlanta Motel, Taxing and Spending Powers, Steward Machine v. Davis, CB pp. 559-570
• Notes and South Carolina v. Katzenbach, CB pp. 570-576
• Katzenbach v. Morgan & Notes, CB pp. 576-591

Please note that our next class meeting is this Friday

**Session 13 – 5/8/15 (A FRIDAY: LEGISLATIVE MAKE-UP DAY)**

**SELECT CONTEMPORARY ISSUES & ENDURING CHALLENGES**

Values, Norms & the Constitution

Readings:


The Reach of the Commerce Clause

Readings:

• United States v. Lopez & Notes, CB pp. 600-627
• Note on the Spending Clause and South Dakota v. Dole, CB pp. 627-629

**Session 14 – 5/11/15**

**CONTEMPORARY ISSUES & ENDURING CHALLENGES (Continued)**

Implied Limits on Federal Regulation of the States

Readings:

• Notes on State Sovereignty, CB pp. 649-653
• Garcia v. San Antonio Metropolitan Transit Authority & Notes, CB pp. 653-663
• Gregory v. Ashcroft CB pp. 665-672
• New York v. United States & Notes, CB pp. 674-692
• Printz v. United States, CB pp. 693-705
• **Alden v. Maine** and Notes on the Eleventh Amendment, CB pp. 705-711

Congressional Power to Enforce Civil War Amendments

Readings:

• **City of Boerne v. Flores**, Notes, CB pp. 629-649

History & Tradition in Constitutional Interpretation

Readings:


Session 15 – 5/18/15 (FINAL EXAM WEEK)

Conclusion

**FINAL PAPER ASSIGNMENT: DUE ON 05/18/15 by 5PM EST via NYU Classes**

Classroom Etiquette

1. Please arrive on time; lateness is extremely disruptive. If you must be late, please enter in an unobtrusive and quiet manner. Once the class has started, students are expected to stay until the end of the class period. Lastly, please be attentive and respectful for the duration of the class period; refrain from talking or making other noise while in class. Failure to arrive promptly and remain for the duration of the class will result in student being marked absent.

2. **Electronic Devices.** Personal computers (for the purpose of note-taking) should be the only electronic devices utilized while attending class. Please refrain from engaging in online social media of any kind (e.g., Twitter, Facebook, and the like) while using computers in class. While I can understand the allure of passing time in class via social media, doing so will negatively impact your experience/final grade. If you are caught using social media for part or all of class time, then you are, in essence, not in class and will be marked absent. Furthermore, if computer use for anything other than note taking or completing specific in-class reading/research exercises becomes a problem, then the use of personal computers in the classroom will be prohibited for all students. I will do everything I can to develop and stimulate your interest in the subject matter, but an effort to seriously and substantively engage must take place from you (the student) as well.
While in class please **turn off/silence ALL electronic devices, including but not limited to cell-phones**. The sundry noises emitted from various electronic devices are disruptive. **Please do not use a cell phone in class.** If you are expecting or must take a call, excuse yourself quietly from the classroom; please **do not answer your phone while in the classroom**. **Please do not use a cell phone while in class for any purpose.** Interruptions of this nature will negatively impact your experience/grade in the class. I reserve the right to ask you to leave the classroom and mark you absent if you violate this policy. Problem behavior will be reported to the Academic Director/Coordinator.

3. As educated adults with aspirations for leadership/making significant contributions in your respective fields, I expect, while in the classroom (and outside of the classroom), that you comport yourself properly. Respect and civility between students and students and the professor is **basic and expected at all times**.

### Required Co-curricular Activities

Tentatively, a guest presenter is scheduled to speak at the Federal Judicial Center, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Washington DC, 20002. The FJC is located next to Union Station, easily accessible via the Metro. Students will be given advance notice of date/time of the presentation.

### Suggested Co-curricular Activities

If you have time, I suggest attending a federal court proceeding and/or oral argument.


### Your Instructor

Greetings. I completed an M.A. and Ph.D. in Politics and International Relations at Florida International University, a J.D. at Rutgers University Law School, and an M.A. and C.A.S. at Wesleyan University. My graduate and legal studies and research have focused on American government, U.S. foreign policy, international organization, national security studies, international law, political culture, and Latin America.
Presently, I am a Research Associate at the Federal Judicial Center, Washington, D.C. I am responsible for the design and conduct of social scientific, legal, qualitative, and quantitative research projects pertaining to all facets of the administration of justice in the federal judiciary. Previously, I served as Research Scientist with the Applied Research Center at Florida International University where I developed a standard analytic framework to identify and assess the strategic culture of Latin American countries vis-à-vis U.S. foreign policy, and analyzed the regional impact of Islamic thought and Muslim identity in Latin America. I have taught international relations theory and foreign policy analysis at the U.S. Joint Special Operations University, Tampa, FL, as well as introductory and advanced undergraduate-level classes at the university level.

Recent research projects have involved redefinition and application of a strategic culture approach to the Americas, and positing a new theoretical framework for conceptualizing and analyzing an emergent society of states in a rapidly evolving world. I have presented my research at professional conferences, and have published in the field of US foreign policy and international relations (American Power after 9/11 (New York: Palgrave-Macmillan 2010); Russia & Latin America: From Nation State to Society of States (New York: Palgrave-Macmillan 2013)).

My interests include: being a Marvel Comics collector and enthusiast (Silver Age); international relations; reading; writing; cigars; dogs; and music (classic rock and drums). I am more than happy to discuss any of the aforementioned interests with you that we may have in common, as well as provide any insight I can offer vis-à-vis academic and professional interests you may have, e.g., the courts, law, law school, international politics/relations, and/or government.