

# American Constitutional Law

Fall 2020

01:790:401

Instructor: Kyle J. Morgan Ph.D.

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Class Meetings (ONLINE): Tuesday/Friday 11:30 – 12:50

Office Hours: Via Webex (<https://rutgers.webex.com/meet/kjm225>)

Tuesday and Thursday 1:30-2:50, or by arrangement.

## Course Description

In this course we will cover the development of American Constitutional Law by looking at how the case law has developed over our country's history, how the social and political landscape has evolved, and how those interact and influence each other. In addition to focusing on development of American Constitutional Law, we will also analyze how that influences the current debates before the nation and our judiciary. By the end of the semester, students will have an introduction to American Constitutional Law, providing a basis for them to study this further should they go onto law school or for them to be a more informed and engaged citizen regardless of what is next in their lives.

**Important Note:** This class will be taught synchronously. This means that students are expected to attend, and participate in, the live online lectures that will occur during the time when the course is scheduled for (Tuesdays and Fridays, 11:30-12:50). A link for the lectures will be posted on the course's Canvas page.

**Please be aware, that this course requires a lot of work, especially reading.** You are expected to complete the readings for this course prior to class so that we can have a discussion about the readings and the themes that motivate each class.

## Required Texts

American Constitutionalism: Volume 1: Structures of Government (1<sup>st</sup> or 2<sup>nd</sup> Edition) (GGW in the reading list)

All other readings will be made available on Canvas

## Course Requirements

- Complete all required readings prior to that day's class and be prepared to discuss them.
- Complete all assignments on time
- Actively participate in class discussions.
- Regularly check your Canvas Course Site at [canvas.rutgers.edu](https://canvas.rutgers.edu). (To access Canvas, you will need your Rutgers Net ID and password. You will receive announcements from Canvas at your Rutgers e-mail address, so remember to check that account frequently!)

## Grading

- Grades will be determined based on the following percentages:
  - Case briefs: 20%
  - Participation: 15%

- Midterm: 30%
- Final: 35%

### **Case Briefs:**

Throughout the semester there are case briefs due for some of the weeks. These cases will either be in the textbook (GGW) or will be made available on Canvas. For most of the weeks you will see that there are several cases you are expected to brief. There will be a place in the assignments tab on canvas where you will upload your briefs (AS A PDF OR WORD DOCUMENT ONLY!) For each batch of cases that are due I will select one case, at random, to grade.

Briefs will be graded on a 0-2 scale. 2 for a complete brief, 1 for a brief that is missing key elements, and 0 if the brief is not submitted or has other serious issues with it.

Briefs are supposed to be brief. Each case you brief should be limited to two double spaced pages. We will go over the specifics more thoroughly prior to the first brief being due. However, your brief should cover the following elements the case name, citation, description of the facts (BRIEFLY!), what is the question of law, and a short summary of how the court came to its legal decision.

This is good practice for life after graduation! In law school, practicing law, or working more generally, when your boss says “give me a brief summary of X” if you go and hand her a 10 page explanation of the case, business plan, policy proposal, etc they will NOT be happy. A goal of these briefs is to help you be able to condense complicated and detailed information into a simple and digestible explanation. Case briefs that are over two pages cannot receive over a 1 when graded.

### **Late briefs will NOT be accepted.**

All cases and podcasts are required reading/listening, even if not assigned to brief or summarize, and you will be expected to know them for the exams.

### **Policies**

- Attendance and participation in all classes is expected.
- Note: I realize in the current environment we're all working under less than ideal conditions. IF you have a problem (technical, environmental, or anything else) being able to participate in the live (online) lectures, please contact me so we can work out an alternative to cover the participation requirement for this course.
- Students are expected to abide by the University's code of student conduct while attending classes. Instances of misconduct, disruption, harassment, defamation, or other violations will be reported to administrators, and will be adjudicated in accordance with Rutgers policy. Please review section seven of the Rutgers University Code of Student Conduct: <http://studentconduct.rutgers.edu>.
- You must review and abide by the University's Policy on Academic Integrity. This can be found online at: <http://academicintegrity.rutgers.edu>.
- Rutgers, the State University of New Jersey abides by the Americans with Disabilities Act of 1990, the Americans with Disabilities Act Amendments (ADAA) of 2008, and Sections 504 and 508 that mandate that reasonable accommodations be provided for qualified students with disabilities. If you have a disability and may require some type of instructional and/or

examination accommodation, please register with the Office of Disability Services for Students, which is dedicated to providing services and administering exams with accommodations for students with disabilities. **The Office of Disability Services for Students can be contacted by calling 848.445.6800 and is located on the Livingston campus at the following address: 54 Joyce Kilmer Avenue, Suite A145, Piscataway, NJ 08854.**

- If you believe you will be requiring an accommodation, please get the process started with ODS soon. I will gladly work with you to make sure we can structure things to make the class work for you, but you still need to speak with ODS to formally get this process started.

### **Email, contacting me, and office hours**

I am here to help! If you have questions, concerns, or need extra discussion for readings and assignments, I am your resource. Please email me ([Kyle.Morgan@rutgers.edu](mailto:Kyle.Morgan@rutgers.edu)) with any questions or come by office hours.

Students can reach me on weekdays, Monday through Friday. Please note that I check my email periodically between 8 AM and 6 PM; depending on the complexity of the question and day it was emailed, allow one to two days for a response, Monday through Friday.

Like most of you my inbox gets clogged with incoming emails, please if you email me something and I have not gotten back to you in a few days send me an email to remind me. Help me help you.

### **Academic Integrity**

“Academic freedom is a fundamental right in any institution of higher learning. Honesty and integrity are necessary preconditions of this freedom. *Academic integrity requires that all academic work be wholly the product of an identified individual or individuals. Joint efforts are legitimate only when the assistance of others is explicitly acknowledged.* Ethical conduct is the obligation of every member of the University community, and breaches of academic integrity constitute serious offenses.”

<http://teachx.rutgers.edu/integrity/policy.html#Integrity>

I expect that all of the work you hand in to me is work that you have produced on your own and that any information you obtain from other sources will be properly cited. While I encourage students to study together, *when you submit work for this class, it must be wholly your own.* If you have any questions or concerns about plagiarism, please see the university policy on academic integrity at <http://nbacademicintegrity.rutgers.edu/> or see me. Plagiarizing someone else’s work or other suspected violations of academic integrity will be referred to the appropriate Dean for investigation. If you have any questions or concerns about my expectations, please do not hesitate to ask me.

**Beware the on-line case summaries:** It is very easy to find on-line summaries/briefs of the cases we read in this class. I do not care if you read them – I expect many of you will, especially early on when the language of the cases is confusing. I encourage you to use whatever (legitimate) resources you have available! **However**, reading the case opinions in our textbook is an important part of learning in this class and your case briefs (along with everything you write for this class!) must be in your own words.

There are three dangers of reading on-line summaries in lieu of the cases themselves. First, summaries often use legal terms and other language that the excerpted versions in your book leave

out. This is a dead give-away to me that you did not read the case itself and are plagiarizing someone else's legal summaries! Second, you will need to use the language of case opinions in the analytic and case law exams. If you are reading summaries instead of the judicial opinions themselves, you will not learn the proper language and will perform poorly on the exams. In addition, when you have to read whole cases on-line later in the semester (those that are not in the textbook), you will be completely at sea. Finally, the legal issues and language that we will focus on in this class are often different from the ones that law schools care about. Unless you read what I assign, you are likely to miss out on important points that you will need to know for exams and other written assignments.

So, do not rely on Google to do your work for you! You can read as many summaries as you like to better understand what the cases are about but you must do the heavy lifting of this class yourself: specifically reading the legal opinions and write your own briefs.

## Finding Support At Rutgers

### Rutgers Health Services

- <http://health.rutgers.edu>
- Medical <http://rhsmedical.rutgers.edu>
- Counseling, Alcohol & Other Drug Assistance Program & Psychiatric Services (CAPS) <http://rhscaps.rutgers.edu>
- Pharmacy <http://rhspharmacy.rutgers.edu>
- Health Outreach, Promotion & Education (H.O.P.E.) <http://rhshope.rutgers.edu>

### Academic Deans and the Office of Academic Services

- <http://sasundergrad.rutgers.edu>
- <https://sebs.rutgers.edu/academics/>
- <http://www.business.rutgers.edu/>
- <http://www.masongross.rutgers.edu/content/undergraduate-academic-advisors>
- [http://pharmacy.rutgers.edu/content/academic\\_services](http://pharmacy.rutgers.edu/content/academic_services)
- <http://soe.rutgers.edu/oas/advising>

### Dean of Students

- <http://deanofstudents.rutgers.edu>
- <https://undergraduate.rutgers.edu/for-students/student-resources/campus-deans>

### Writing Centers

- <http://wp.rutgers.edu/tutoring/writingcenters>

### Office of Violence Prevention & Victim Assistance

- <http://vpva.rutgers.edu>

### Center for Social Justice & LGBTQ Communities

- <http://socialjustice.rutgers.edu/>

### Office of Disabilities Services

- <https://ods.rutgers.edu>

#### **Public Safety**

- RUPD <http://publicsafety.rutgers.edu/rupd/>
- Department of Transportation Services <http://rudots.rutgers.edu/>

#### **COVID-19 and The Fall Semester:**

We are all going to be going through this unique semester together. If you are having trouble with this course, please do not hesitate to reach out to me. I want everyone to succeed in this course, and I am more than happy to work with you towards that. Please be in contact with me during the semester if you are having trouble or run into unforeseen complications, it is much easier to work through these during the semester than at the very last minute.

We're all in this together, so let's make this semester as enjoyable and successful as possible!

## American Constitutional Law Class Schedule:

- Class 1: Tuesday September 1<sup>st</sup>
  - Introductions
- Class 2: Friday September 4<sup>th</sup>
  - Introduction to American Constitutionalism
  - Readings:
    - GGW Chapter 1
- Class 3: Tuesday September 8<sup>th</sup>
  - **RUTGERS LABOR DAY SCHEDULE CHANGE: NO CLASS**
- Class 4: Friday September 11<sup>th</sup>
  - The U.S. Constitution
  - Readings:
    - The U.S. Constitution (GGW Appendix 1)
    - The Framers Coup (Podcast, Canvas)
    - Our Undemocratic Constitution 1 – 39 (Canvas)
- Class 5: Tuesday September 15<sup>th</sup>
  - How Did we get here?
  - Readings:
    - GGW Chapter 2
    - GGW Chapter 3 (to page 64)
- Class 6: Friday September 18<sup>th</sup>
  - Founding Principles
  - Readings:
    - GGW Chapter 3 (64 – End)
    - America The Unusual, Kingdon, 1-10, 13-18,23-38 (Canvas)
- Class 7: Tuesday September 22<sup>nd</sup>
  - Who should determine what the Constitution means?
  - Readings:
    - “We the people” Ackerman, 1-57 (Canvas)
- Class 8: Friday September 25<sup>th</sup>
  - The SCOTUS begins to flex
  - Readings
    - GGW Chapter 4
  - Assignments:
    - Brief the following cases for today:
      - Marbury v. Madison
      - Calder v. Bull

- McCulloch v. Maryland
  - Chisholm v. Georgia
- Class 9: Tuesday September 29<sup>th</sup>
  - Old Issues, New Cases: Taxing and Spending
  - Readings:
    - NFIB v. Sebelius (Canvas)
    - Helverling v. Davis (Canvas)
- Class 10: Friday October 2<sup>nd</sup>
  - The strain over slavery
  - Readings:
    - GGW Chapter 5
  - Assignments:
    - Brief the following cases for today:
      - Luther v. Borden
      - Prigg v. Pennsylvania
      - Dredd Scott v. Sandford
      - Worcester v. Georgia
- Class 11: Tuesday October 6<sup>th</sup>
  - The Strain over slavery (part 2)
  - Readings:
    - "The Constitution was indeed pro-slavery" (Canvas)
    - "Constitutionally, slavery is no national institution" (Canvas)
    - "Frederick Douglass: The Constitution of the United States: Is It Pro-slavery or Anti-slavery?" (Canvas)
    - "John C. Calhoun, Speech on slavery resolutions, U.S. Senate, 1847" (Canvas)
- Class 12: Friday October 9<sup>th</sup>
  - The Civil War, War Time Power, and Reconstruction
  - Readings:
    - GGW Chapter 6
  - Assignments:
    - Brief the following cases for today:
      - Mississippi v. Johnson
      - Ex Parte McCardle
      - Hepburn v. Griswold
- Class 13: Tuesday October 13<sup>th</sup>
  - Executive Powers
  - Readings:
    - Randolph Moss, Office of Legal Counsel, "A Sitting President's Amenability to Indictment and Criminal Prosecution," GGW Supplemental Material (Canvas)
    - "Holder Assertion of Executive Power Over Documents," GGW Supplemental Material (Canvas)

- “Immunity of the Assistant to the President from Congressional Subpoena,”  
GGW Supplemental Material (Canvas)
- Class 14: Friday October 16<sup>th</sup>
  - Executive v. Legislature
  - Readings:
    - Trump v. Mazars (Canvas)
    - Trump v. Vance (Canvas)
  - Assignments:
    - Brief the following cases for today:
      - Trump v. Mazars
      - Trump v. Vance
- Class 15: Tuesday October 20<sup>th</sup>
  - Midterm Review in class
- Class 16: Friday October 23<sup>rd</sup>
  - MIDTERM DURING CLASS TIME!
- Class 17: Tuesday October 27<sup>th</sup>
  - The great depression, the New Deal, and “The switch in time”
  - Readings:
    - GGW Chapter 7
  - Assignments:
    - Brief the following cases for today:
      - The Slaughter House Cases
      - Champion v. Ames
      - Bailey v. Drexel Furniture Co.
      - Munn v. Illinois
- Class 18: Friday October 30<sup>th</sup>
  - Regulation, Reconstruction, and Business
  - Readings:
    - GGW Chapter 8
  - Assignments:
    - Brief the following cases for today:
      - U.S. v. Caroline Products
      - Baker v. Carr
      - NLRB v. Jones and Laughlin Steel Corp
      - Wickard v. Filburn
      - Heart of Atlanta Motel v. US
      - US v. Butler
- Class 19: Tuesday November 3<sup>rd</sup>
  - Election Day Tangent
  - Readings:
    - Wisconsin 2020 Decision (Canvas)

- Gerrymandering Decisions (Canvas)
  - Shelby County v. Holder (Canvas)
- Class 20: Friday November 6<sup>th</sup>
  - The Court flexes again, but the nation flexes back
  - Readings:
    - GGW Chapter 9
  - Assignments:
    - Brief the following cases for today:
      - United States v. Nixon
- Class 21: Tuesday November 10<sup>th</sup>
  - Impeachment
  - Readings:
    - Democracy Works Impeachment Podcast (Canvas)
    - Articles of impeachment, Richard Milhous Nixon (1974) (Canvas)
    - Olson memorandum on confidentiality/executive privilege with AG (1982) (Canvas)
    - Articles of impeachment, William Jefferson Clinton (1998) (Canvas)
    - Letter on Congressional Oversight (1999) (Canvas)
    - A Sitting President's Amenability to Indictment and Criminal Prosecution, Randolph Ross, Office of Legal Counsel (2000) (Canvas)
    - Committee on the Judiciary v. Miers (2008) (Canvas)
    - Assertion of Executive Power Over Documents, AG Eric Holder (2012) (Canvas)
    - Trump v. Vance (US District Court for Southern District of New York) (2019) (Canvas)
- Class 22: Friday November 13<sup>th</sup>
  - The Reagan Revolution
  - Readings:
    - GGW Chapter 10
  - Assignments:
    - Brief the following cases for today:
      - South Dakota v. Dole
      - Immigration and Naturalization Services v. Chada
      - Bowsher v. Synar
      - Morrison v. Olson
- Class 23: Tuesday November 17<sup>th</sup>
  - Weaponizing the judiciary
  - Readings:
    - The Rise of the Conservative Legal Movement, Teles, 1-57, 220-264 (Canvas)
- Class 24: Friday November 20<sup>th</sup>
  - Implementation and Impact
  - Readings:
    - Implementation and Impact, Canon and Johnson, 154-217 (Canvas)

- Class 25: Tuesday November 24<sup>th</sup>
  - Contemporary Issues
  - Readings:
    - GGW 11
  - Assignments:
    - Brief the following cases for today:
      - City of Borne v. Flores
      - Massachusetts v. EPA
      - Gonzales v. Raich
      - US Term Limits v. Thornton
      - Clinton v. Jones
      - Hamdi v. Rumsfeld
  
- Class 26: Wednesday November 25<sup>th</sup>
  - No Class, go enjoy Thanksgiving!
  
- Class 27: Tuesday December 1<sup>st</sup>
  - Contemporary Debates
  - Readings:
    - “Privatized Immigration Detention and Federalism,” Stanford Law Review (Canvas)
    - “Plaintiffs Motion for Preliminary Injunction,” GGW Supplementary Materials (Canvas)
    - “Making America 1920 Again: Nativism, Immigration Past and Present,” Julia Young, Journal of Migration and Human Security, 2017 (Canvas)
  
- Class 28: Friday December 4<sup>th</sup>
  - What’s happening this term?
  - Readings:
    - TBD
  - Assignments:
    - Brief the following cases for today:
      - TBD based on Court’s docket!
  
- Class 14: Tuesday December 8<sup>th</sup>
  - Final Exam Review!