

U.S. CONSTITUTIONAL DEVELOPMENT
Fall 2022

Political Science 2327-01

Professor Ken I. Kersch

This class will survey the development of the American constitutional order, from the Founding to the present. Courses in “constitutional law” typically focus almost exclusively on the main lines and subtleties of legal/constitutional doctrine as expounded by the U.S. Supreme Court. We will take a broader, “developmental,” perspective. While we will study many of the same themes that the Supreme Court addresses in its major constitutional decisions (which we will read) – the powers of the national government, the relationship between the national government to the states and individuals, the separation of powers (including the power of the Article III federal judiciary), and (to a lesser extent) individual rights and liberties [the focus of a separate course on Civil Liberties] – the Supreme Court is just one of many political actors and institutions that address these questions. Sometimes it is not the most influential or profound authority on these matters. And, sometimes when it is, it is availing itself of ideas or practices that were first forged elsewhere, by other political actors.

Our ultimate subject is the American constitutional *order* – the durable foundational rules that structure the government and define the relationship of its various parts, to each other and towards the groups, institutions, and individuals that comprise civil society. We will study constitutional *law* as a component of the constitutional *order*. But our subject is the development of the durable patterns and structures of governance in the United States, as they have been shaped both by the Supreme Court (and other courts) and other constitutional and political actors. The relative power and authority of different agencies and institutions of American government (Congress, the President, courts, administrative agencies), non-governmental political institutions (political parties, interest groups) and non-institutional political and social actors and forces (public opinion, economic and military crises, social and reform movements, legal and political currents and ideas) in shaping the nation’s constitutional order has varied significantly from conflict to conflict, and from era to era. Efforts to shape the constitutional order have often been contentious and hard-fought – in one case, leading to Civil War. We will approach the subject chronologically, surveying the Founding, the Marshall and Taney eras, the Civil War, the rise of corporate capitalism, the emergence of the modern state, the New Deal crisis, new forms of rights and liberties, and the new challenges of the national security state.

Office Hours: I will have drop-in office hours (no appointment necessary) X in my office. Other meeting times – both in person and on Zoom – are available by appointment. For those, you should email me -- best -- or otherwise speak to me to set up a time to talk.

Class Meetings/Attendance: This class will meet Tuesdays and Thursdays, X. Except in cases of illness or other important life issue, students are expected to attend all classes (for Covid or disability issues affecting attendance, please make arrangements through the disability office (information below) or the Dean’s office). The class will be part lecture and part discussion. Students are expected to attend all classes, to do all assigned readings prior to class, and to be

ready to discuss the readings and the questions they raise during our class meetings. I reserve the right to call on any student in class at any time.

There will be **no audio or video recordings** of our class meetings. If students must miss a class or classes for an excused absence, they are expected to get the notes from a fellow student. I am happy to meet with students during office hours to discuss the content of the class they may have missed.

Restrictions on Computers in Class: To minimize distractions, students are prohibited from using any type of computer or phone into class that is active/turned on (this means laptops, notebooks, smartphones, etc.) *for any purpose other than bringing up assigned readings on the screen.* Student may not browse the internet, engage in social media, chat, or use their computer for any other purpose than accessing course texts. These restrictions, and this rule, are mandatory. Exceptions will be made in individual cases for legitimate, dean-approved reasons, including disability (information below) and covid-related issues cleared through the Dean's or the disability office.

Readings: Students are required to do the readings *from the assigned texts* -- NOT from what you think are the same thing from Wikipedia and other web sources. While many of those web sources are accurate on the basic (case) facts, and useful for many purposes, they will not place that information in the proper context (both of the course, and historically and politically) in a way that is reliable for this class. The assigned texts are recent work by top scholars reflecting the best, current scholarly understandings of U.S. constitutional development. My purpose in teaching *this course, with these texts* – as opposed of giving you a list of cases, terms, and events to Google – is to initiate you into these more sophisticated understandings of the subject as taught by the assigned texts.

The syllabus list rough “ballpark” dates for the readings. We will proceed with the readings in the order of the syllabus. But I want to allow for flexibility in light of the nature of the discussions, level of student interest, student questions, real-world events etc. that actually take place as we move forward. If you are reasonably sentient and physically present in class, it should be obvious where we are in the syllabus. I will tell you each class how far you should read for the next class. If I forget to do that, ask me. The final exam date and time is set by the University registrar (and thus completely out of my control). Please refer to the University exam schedule for specifics. The other assignments (including the midterm) will be held when I feel we have reached a natural point for it, depending on how the class actually unfolds. I will give you sufficient advance notice of that – at least a full week, and likely somewhat more (and I will likely hint that we are ‘getting to that point’ well before). That said, the midterm is usually takes place midway through the semester, or a little after. That is because this course takes time to build up a sufficient knowledge base to serve as a foundation for a midterm exam. If you are up-to-date on your readings and prepared for each class meeting (required), you should be all set for this.

For exam purposes, you are *responsible for all the assigned reading*, whether we discuss it in class or not.

Canvas: We will make use of the course Canvas page. Most significantly, many of the readings in this class are posted on the course Canvas page: you will find any reading in the class listed

that is not in a required-for-purchase book posted in the Modules section of the course Canvas page.

Teaching Assistant: X will be the Teaching Assistant for the course. Ethan will be grading all course assignments. He will be available for office hours, and to otherwise speak with students.

Grading: Your grade will be determined as follows: A midterm exam (30%); A final exam during the time scheduled for it by Students Services (40%); Discussion Board Participation (each student will discuss two (2) topics of your choice over the course of the semester) (10%); Class Participation (includes attendance and participation, both in the class itself, and in associated (ungraded) assignments and exercises) (20%).

All grades will be calculated by me, on my personal course Excel sheet -- and not using (idiosyncratic) numbers auto-generated by Canvas.

Academic Integrity: Academic integrity is violated by any dishonest act committed in an academic context, including but not limited to cheating, plagiarism (attempting to pass the work of others off as your own, in any way in any part of an assignment), and submitting for credit in this class work done for another class.

The University's policy on Academic Integrity may be found at www.bc.edu/integrity. Ask me if you have any questions about academic integrity; the Political Science Department also offers a quiz and discussion at <http://www.bc.edu/content/bc/schools/cas/polisci/integrity/quiz.html>. All suspected violations will be reported to the Dean in accordance with University policy. A final grade of "F" for the course will be given in the event of a violation of academic integrity."

Disability Accommodations: If you have a disability and will be requesting accommodations for this course, please register with either Dr. Kathy Duggan (dugganka@bc.edu), Associate Director, Connors Family Learning Center (learning disabilities or AHD) or Dean Rory Stein, (rory.stein@bc.edu), Assistant Dean for students with disabilities, (all other disabilities). Advance notice and appropriate documentation are required for accommodations.

ESL Assistance: Boston College welcomes students from around the world and recognizes the unique perspectives international students bring enrich the campus community. To empower students whose first language is not English, Boston Colleges makes ESL specific resources available on campus, including ESL writing support and conversation appointments through the [Connors Family Learning Center](#). To schedule an appointment call 617-552-0611. A [curated list of web resources](#) is also available through the CFLC website.

Required Books:

- Howard Gillman, Mark A. Graber, and Keith E. Whittington, *American Constitutionalism, Volume 1: Structures of Government* (Oxford University Press, 2022)(Third Edition) (GGW)[also, GGW web sources, which I have posted on Canvas (CV)].
- Andrew Arnold, *A Pocket Guide to the U.S. Constitution: What Every American Needs to Know* (Washington, DC: Georgetown University Press, 2018)(Second Edition)

- Lucas A. Powe, Jr., *The Supreme Court and the American Elite, 1789-2008* (Expanded Second Edition, 2021).
- Jeffrey Rosen, *The Supreme Court: The Personalities and Rivalries that Defined America* (Holt, 2007).
- Additional readings [posted on Canvas – noted below as “CV”].

Readings:

Note: *The assignment of weeks to the readings is approximate. Please keep up with where we are in reality in the actual class.*

WEEK ONE:

Introduction to the Study of American Constitutionalism

Lee Epstein and Eric Posner, “If the Supreme Court is Nakedly Political, Can it Be Just,” *New York Times* (July 2018)(CV); Charlie Savage, “Experts Debate Reducing the Supreme Court’s Power” (CV)

GGW: Preface; Ch. 1. – What is a constitution? What purposes does a constitution serve? How should a constitution be interpreted? How are constitutions enforced? How do they change? What are the best frameworks for understanding and answering these questions?

Arnold, iii-6 [introductory material on “Purpose” and the Constitution’s “Structure and Preamble”].

List of/Links for Useful Websites on the Constitution and Constitutionalism (CV)(browse)

DISCUSSION BOARD EXERCISE OPTIONS:

1)

<https://constitutioncenter.org/debate/podcasts/the-history-of-supreme-court-confirmation-hearings>

2)

<https://constitutioncenter.org/debate/podcasts/live-at-americas-town-hall-the-human-side-of-judging>

WEEK TWO:

The Beginnings of the American Constitutional Order (1776-1789)

Preface: Constitutionalism in the American Colonies Before 1776

GGW: Ch. 2 – Common law background; emergence of a British constitutional dispute between London and the American colonies

Independence and the First State and National Constitution(s)

GGW: Ch. 3, 49-83 – the first constitutions (state constitutions; Articles of Confederation); debating the national (1787) constitution; ratification

Arnold, 7-53 [material on “Three Branches of Government, Article I (Congress)”].

DISCUSSION BOARD EXERCISE OPTIONS:

3)

<https://constitutioncenter.org/debate/podcasts/the-federalists-vs-the-anti-federalists>

Constitutional Design: Government Powers, Separated

GGW: Ch. 3, 83-92; Arnold, 74-78 [on “Limitations on State Sovereignty”] – Constitutional Convention Debates; Ratification Debates; Constitutional Convention Debates; Ratification Debates; John Adams, Thoughts on Government (CV); The Federalist, No. 49, 57 and 62 (CV)

The Judiciary and the Bill of Rights

GGW: Ch. 3, 56-65; Arnold, 67-73 [on “Article III – The Judiciary”], 79-120 [on the Amendments, up-to and including the 13th Amendment]; Rosen, Introduction – Federalists and (“antifederalist” opposition).

Arnold, 53-67 [on Article II – The Executive], 74-80 [on Limitations on State Sovereignty and the Article Five Amendment Process] (skim).

WEEKS THREE/FOUR:

Constitutionalism in the Early Republic (1789-1828)

The Politics of the Early National Era

GGW: Ch. 4, 93-101; Powe, Preface, Ch. 1.

Establishing the Power of Judicial Review

GGW: Ch. 4, 101-112 (*Calder v. Bull*; *Marbury v. Madison*; Jefferson on Departmentalism)

Rosen, Ch. 1 (“The Virginia Aristocrats: John Marshall and Thomas Jefferson”)

Graber, “The Problematic Establishment of Judicial Review” (CV).

Kersch, “A Friend to the Union” (CV)

Thomas Jefferson, First Inaugural Address (1801)(CV)

Supervising the States through Judicial Review

GGW: Ch. 4, 112-116: *Martin v. Hunter’s Lessee*; *Fletcher v. Peck* (CV);
Algernon Sidney [Spencer Roane], “On the Lottery Decisions” (CV)

Consolidating National Power

GGW: Ch. 4, 116-142 – Strict construction v. broad construction; Jefferson and Hamilton debate the Bank; *McCulloch v. Maryland* (1819), and the Spencer Roane-John Marshall debate *McCulloch*; James Monroe and Daniel Webster debate the draft; territorial expansion

The States Push Back: Powers/Sovereignty of the States

GGW: Ch. 4, 149-158 – *Chisholm v. Georgia*; *Virginia and Kentucky Resolutions*; Debates over internal improvements.

The National Power to Regulate Commerce

GGW: Ch. 4, 142-147 (*Gibbons v. Ogden*)

And the residual state police powers to regulate health, safety, and morals

GGW: Ch. 5, 208-211 (*Willson v. Blackbird Creek Marsh Co*; *City of New York v. Miln/Passenger Cases* (CV); *Cooley v. Board of Wardens*)

Executive Power in the Early Republic

GGW: Ch. 4, 158-168 – Appointment and Removal Power; Treaty Power; Executive Privilege

Clement Fatovic, “Constitutionalism and Presidential Prerogative: Jeffersonian and Hamiltonian Perspectives,” *American Journal of Political Science* 48 (2004): 429-444 (CV)

WEEKS FIVE/SIX:

Jacksonian/Antebellum Constitutionalism (1829-1860)

Political Context

GGW: Ch. 5, 173-179

Powe, Ch. 4 (“The Sectional Crisis and the Jacksonian Court”)

Contentious Constitutional Politics Inside and Outside the Courts

GGW: Ch. 5, 185-187, 211-214; *Luther v. Borden*; John C. Calhoun, Fort Hill Address; Andrew Jackson, Proclamation on Nullification (CV)

Bradley D. Hays, “Nullification and the Political, Legal, and Quasi-Legal Constitutions,” *Publius* (2012): 1-22. (CV)

The President v. Congress: The Contending Constitutional Visions of the Whigs and the Jacksonian Democrats

GGW: Ch. 5, 189-194, 215-222, 226-229 – Necessary and Proper; Andrew Jackson Bank Veto; Bank Deposit Removal Debate; Veto Power Debate.

Slavery

GGW: Ch. 3, 65-68; Ch. 5, 194-201, 201-208; slavery and the Constitution; fugitive slave issue; slavery and western expansion; *Prigg v. Pennsylvania*; *Dred Scott v. Sanford*; Lincoln on *Dred Scott*.

WEEKS SEVEN/EIGHT:**Secession, Civil War and Reconstruction (1861-1876)**Secession

GGW: 260-262 – Abraham Lincoln’s First Inaugural Address.

Washington Gladden, “The Bursting of the Storm,” from *Recollections* (1909)(CV)

GGW: Ch. 6, 262-274 – Federalism during the Civil War; the status of the former Confederate states during Reconstruction (*Texas v. White*)

Powe, Ch. 5 (“Civil War and Reconstruction”)

Arnold, 118-140 [Civil War Amendments]

Presidential War Powers

GGW: Ch. 5, 222-224 – Mexican War issues (Texas)

GGW: Ch. 6, 277-293 – Martial Law; Habeas Corpus; Foreign Affairs and War Powers; Emancipation; *The Prize Cases*; *Ex Parte Merryman*

Congressional Powers: War and Reconstruction

GGW: Ch. 6, 242-252 -- Legal Tender debate (*Hepburn v. Griswold*; *Legal Tender Cases*).

GGW: Ch. 6, 231-242, 293-296 – Congress and the judiciary (*Ex Parte McCordle*); Congress and the President (Andrew Johnson Impeachment).

Michael Vorenberg, “Bringing the Constitution Back In: Amendment, Innovation, and Popular Democracy During the Civil War Era, in Meg Jacobs, William J. Novak, and Julian Zelizer, eds, *The Democratic Experiment: New Directions in American Political History* (Princeton, 2003) (CV).

DISCUSSION BOARD EXERCISE OPTIONS:

4)

<https://constitutioncenter.org/debate/podcasts/history-of-impeachment-from-andrew-johnson-to-today>

WEEKS NINE/TEN:

Republican Party Dominance (1877-1932)

Political Context

GGW: Ch. 7, 298-305

Courts and Judges and the Claims of Fundamental Law and Rights versus The Claims of Elected, Representative Legislatures and Direct Democracy

GGW: Ch. 7, 306-321 – Populists, Progressives and Conservatives: Democracy/Majority Rule, foundational law, and fundamental rights; judicial review as a problem (*Slaughterhouse Cases*; *Lochner v. New York* (CV))

GGW: Ch. 7, 356-363, 365-370 – Commerce Clause and the police power revisited; *Wabash, St. Louis, and Pacific RR*; *Munn v. Illinois*.

Rosen, Ch. 2 (“The Legacy of the Civil War: John Marshall Harlan and Oliver Wendell Holmes, Jr.”)

Justice David Brewer, “The Nation’s Safeguard” (CV)

Justice Stephen Field, “The Centenary of the Supreme Court of the United States” (CV)

William G. Ross, *A Muted Fury: Populists, Progressives, and Labor Unions Confront the Courts* (Princeton, 1993), 1-21 (CV)

James Bradley Thayer, “The Scope and Origin of the American Doctrine of Constitutional Law (CV)

Powe, Chs. 6 & 7 (“Industrializing America”; “Progressivism, Normalcy, and Depression”).

Arnold, 141-145 [Progressive Era Amendments]

Congress Moves to Regulate and Tax Corporations

GGW: Ch. 7, 329-351 – Antitrust; Federal police powers? Income Tax (*U.S. v. E.C. Knight*; *Champion v. Ames*; *Hammer v. Dagenhart*; *Pollack v. Farmers’ Loan and Trust*; *Bailey v. Drexel Furniture*)

Congress and Civil Rights after the End of Reconstruction (1877)

GGW: Ch. 7, 321-329 (*Civil Rights Cases*; Dyer Anti-Lynching Bill (CV))

Henry Louis Gates, Jr., “The ‘Lost Cause’ Built Jim Crow,” *NY Times* (CV)

Presidents and the Establishment and Direction of the Bureaucratic/Administrative State

Non-Delegation Doctrine

Presidential Appointment Power in the Age of Congressional Government (CV)

GGW, Ch. 7, 371-384 – Appointment and Removal Power revisited (*Myers v. United States*; *Blue v. Beach* (IN); *Hampton v. U.S.*); New theories of executive power (Cleveland, TR; Taft; Wilson)

DISCUSSION BOARD EXERCISE OPTIONS:

5)

<https://constitutioncenter.org/debate/podcasts/william-howard-taft-and-the-constitution>

WEEKS ELEVEN/TWELVE:

Democratic Party Dominance: The New Deal and the Great Society (1933-1968)

Political Context

GGW: Ch. 8, 387-393

Arnold, 145-156 [New Deal/Postwar Amendments]

Taming the “Obstructionist” Courts

GGW: Ch. 8, 393- 406 (*U.S. v Carolene Products* (1938); Gold Clause Dispute; Court-packing plan)

Franklin Delano Roosevelt – Four Freedoms Speech (1941)(CV)

Unleashing the Liberal Congress (Economics and Social Welfare)

GGW: Ch. 8, 424-437, 446-453 – Commerce power; taxing and spending power (*Schechter Poultry v. U.S.*; *U.S. v. Butler*; *Morehead v. Tiplado*; *U.S. v. Darby*; *NLRB v. Jones and Laughlin Steel*; *Wickard v. Filburn*; *Steward Machine v. Davis*)

Empowering – and Limiting -- the Modern President

GGW: Ch. 8, 457-475 (*Youngstown Sheet and Tube v. Sawyer*; *Humphrey’s Executor v. U.S.*; *Schechter Poultry v. U.S.*; *Humphrey’s Executor v. U.S.*; *U.S. v. Curtiss-Wright*; *Ex parte Quirin* (CV); *Ex parte Endo* (CV); Administrative Procedure Act (1946); U.S. Department of Justice/U.S. Department of Education “Dear Colleague Letter on Transgender Students” (May 13, 2016) (CV)).

The Re-emergence of Judicial Power (and Resistance) – Equal Protection and the Nationalization of Civil Liberties – The Ambitious and Empowered Democratic Dream Court

Political Reaction to *Brown v. Board of Education* (1954)(CV)

GGW: Ch. 8, 406-422 – *Brown* and the Little Rock (Southern Manifesto; Eisenhower Address on Little Rock Schools Crisis; *Cooper v. Aaron*; *Flast v. Cohen*; *Baker v. Carr*; Incorporation – The nationalization of civil liberties (See GGW 187-189 *Barron v. Baltimore* as relates to the adoption of the 14th Amendment (1868)).

Unleashing the Congress (Civil Rights) – Nationalizing Civil Rights Under the Commerce Clause and the Reconstruction Amendments

The Civil Rights Act of 1964 (CV)

GGW: Ch. 8, 437-446 (*Heart of Atlanta Motel v. U.S.*; *Katzenbach v. McClung*; *South Carolina v. Katzenbach*; *Katzenbach v. Morgan* (CV)).

WEEK THIRTEEN/FOURTEEN:

The Conservative Ascendency/Divided Government/Constitutional Contention (1968-1993)

Political Context: Liberal or Conservative?

GGW: Ch. 9, 497-498, Ch. 10, 521-525, Ch. 11, 564-565, (Nixon, Carter, Reagan, Clinton, Obama)

Liberals and Conservatives Debate Judicial Power

GGW: Ch. 10, 526-535; Ch. 11, 580-585, 653-658 (Meese, Rehnquist, and Brennan debate originalism v. living constitutionalism; judicial activism and judicial restraint; the Bork hearings); The Nomination of Merrick Garland to the U.S. Supreme Court (CV); Debate re eliminating the judicial filibuster.

Ronald Reagan Speech on Robert Bork Nomination the Supreme Court (1987):

<https://www.youtube.com/watch?v=TSkRtD7YaLM>

Massachusetts Senator Ted Kennedy on Robert Bork (1987):

<https://www.youtube.com/watch?v=Xza0MfDXZIE>

A Slow-Moving Federalism Restoration?

GGW: Ch. 9, 498-505, Ch. 10, 535-546, Ch. 11, 585-616, Ch. 12 – 658-667; 673-683 (*National League of Cities v. Usery*; *South Dakota v. Dole*; *Garcia v. San Antonio Transit Authority*; *Printz v. U.S.*; *U.S. v. Lopez*; *U.S. v. Morrison*; *Granolm v. Heald*; *Gonzales v. Raich*; *Arizona v. U.S.*, *NFIB v. Sebelius*).

Congress: Too Weak, or Constitutionally Unconstrained?

GGW: Ch. 11, 600-606, Ch. 12, 667-673 – Federal regulation of elections (*U.S. Term Limits v. Thornton*; *Shelby County v. Holder*)

GGW: Ch. 10, 548-562; Ch. 11, 616-620 – Separation of powers; commerce power (*INS v. Chadha*; *Morrison v. Olson*; *Clinton v. New York*; *NFIB v. Sebelius*; *Lucia v. SEC* (CV)).

Reigning in the Administrative State: Reviving the Non-Delegation Doctrine?

Bowers and Sheffner, “The Supreme Court’s ‘Major Questions’ Doctrine: Background and Recent Developments,” *Congressional Research Service Legal Sidebar* (May 22, 2022)(CV)

Contemporary Debates Concerning Presidential Powers

Appointment and Removal

GGW: Ch. 12, 707-713 (*Seila Law v. SEC*)

War Powers, National Security, and Court Supervision of the Executive Branch

GGW: Ch. 8, 466-468, Ch. 9, 505-511; Ch. 11, 623-640, 683-693 – Memo on Use of Force in Korea; Vietnam and the War Powers Resolution; John Yoo Memo on President’s authority to conduct military operations; Bybee, “Authority of the President to Use Military Force Against Iraq”; Bybee “Torture” Memo; *Hamdi v. Rumsfeld*; Kress Memo on use of force in Libya; Engel, April 2018 Airstrikes Against Syrian Chemical-Weapons Facilities

“Taking Care”: Executing the Laws

GGW: Ch. 10, 554-562, Ch. 11, 620-622 (*Morrison v. Olson*; Dellinger Memo)

Presidential Constitutional Duty Hearings (the “lawless” Obama Presidency) (CV)

Department of Justice/Department of Education “Dear Colleague Letter on Transgender Students” (May 13, 2016) (CV)

Janet Napolitano, “The Truth About Young Immigrants and DACA,” *New York Times* (Nov. 30, 2016)(CV).

DISCUSSION BOARD EXERCISE OPTIONS:

6)

<https://constitutioncenter.org/debate/podcasts/deconstructing-the-administrative-state>

7)

<https://constitutioncenter.org/debate/podcasts/is-the-presidency-too-powerful>

Executive Privilege and the Question of the Rule of Law and Immunity from Prosecution

GGW: Ch. 9, 511-516, Ch. 11, 644-647, Ch. 12, 719-732 (The Watergate Scandal/*U.S. v. Nixon*; The Clinton Sex Scandals/*Clinton v. Jones*; the Mueller Investigation of Donald Trump re Russian Interference).

Dixon, “Amenability of the President, Vice President and Other Civil Officers to Federal Criminal Prosecution while in Office;” Randolph Moss, “A Sitting President’s Amenability to Indictment and Criminal Prosecution” (CV)

GGW: Ch. 12, 732-748 – *Trump v. Mazars*; Congressional Investigations of Trump Links to Russian Electoral Interference; The First and Second Trump Impeachments

Conclusion

Constitutional Restoration or Constitutional Breakdown? Trumpism, and An Ambitious and Empowered Republican Dream Court

GGW: Ch. 12, 649-653

Arnold, 159-164 [The American Creed]

Michael Anton, “The Flight 93 Election” (*Claremont Review of Books*)(CV)

Donald Trump’s Inaugural Address (CV)

Powe, Chs. 12, 13 (“The Kennedy Court,” “The Republican Dream Court”)

GGW: 752-753 – Vice President Mike Pence Memo on Counting Electoral Votes

Timothy Snyder, “The American Abyss” (*New York Times*, January 9, 2021)(CV)

Barton Gellman, “Trump’s Next Coup Has Already Begun,” *The Atlantic* (January/February 2022)(CV)

DISCUSSION BOARD EXERCISE OPTIONS:

8)

<https://constitutioncenter.org/debate/podcasts/when-can-the-president-claim-executive-privilege>

9)

<https://constitutioncenter.org/debate/podcasts/president-trump-and-the-federal-judiciary>

10)

<https://constitutioncenter.org/debate/podcasts/is-there-a-supreme-court-legitimacy-crisis>

11)

<https://slate.com/news-and-politics/2019/04/court-packing-has-become-a-litmus-test-left.html>

12)

<https://constitutioncenter.org/debate/podcasts/what-would-madison-think-today>