

The Fate of the American Constitution, 1787–1937

Professor John Witt

Summer 2025

Course Description

Since 1787, the United States Constitution has aimed to hold together a divided political community around a set of basic agreements. Some now call it the oldest constitution in the world still in effect today; others insist that though the textual template has remained in many respects the same, we have actually had two or three, or maybe even four constitutional orders over time, depending on how one counts. Either way, its history has been one of tumult, controversy, and sometimes mass violence from the very start. This course takes up the social and political history of the document and the practices that have arisen around it, from the founding era to the 1937 transformation that now hangs in the balance. Readings and lectures draw on multiple disciplinary approaches to history and law and foreground competing perspectives on the past.

Course Readings

1. Amar, Akhil Reed. *The Words That Made Us: America's Constitutional Conversation, 1760–1840*. New York: Basic Books, 2021.
2. Bernstein, David E. *Rehabilitating Lochner: Defending Individual Rights against Progressive Reform*. Chicago: University of Chicago Press, 2011.
3. Leuchtenberg, William E. *The Supreme Court Reborn: Constitutional Revolution in the Age of Roosevelt*. Oxford: Oxford University Press, 1995. ([This reading can be accessed through Musselman Library with your Gettysburg College credentials.](#))
4. Masur, Kate. *Until Justice Be Done: America's First Civil Rights Movement, from the Revolution to Reconstruction*. New York: W. W. Norton & Company, 2021.
5. Sinha, Manisha. *The Rise and Fall of the Second American Republic: Reconstruction, 1860–1920*. New York: Liveright, 2024.
6. Witt, John Fabian. *American Contagions: Epidemics and the Law from Smallpox to Covid-19*. New Haven: Yale University Press, 2020.

Course Requirements

- Watch all course lectures
- Complete all course readings
- Submit five short papers (500 words each)
- Contribute to nine discussion boards
- Participate in at least three Q&As
- Complete a 15-page (~3,750 words) research paper or project of appropriate rigor
- Complete a course evaluation (A survey link will be sent to your Gettysburg email)

during week eleven of the semester.)

Learning Objectives

1. Understand where the US Constitution came from and what it has meant and done from the founding era into the modern age.
2. Make sense of how a document meant for a lost world on the edge of the British Empire transitioned and changed in the face of vast social changes.
3. Develop a better grip on the historical significance of the constitutional controversies and changes of the twenty-first century.

Class Schedule

Week One: May 29: Making the Constitution

Readings

- Amar, *The Words That Made Us*, 181–271.
- The US Constitution. ([A link to this reading can be found in the Week One module.](#))
- *The Federalist*, Nos. 10, 39, 51, 70, and 78. ([A link to this reading can be found in the Week One module.](#))

Assignments

- Discussion Board One
 - First post due: Sunday, June 1
 - Second post due: Wednesday, June 4
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Week Two: June 5: Rights and Structures in the Early Republic

Readings

- Amar, *The Words That Made Us*, 275–326.
- *Marbury v. Madison*. ([A link to this reading can be found in the Week Two module.](#))
- Gregory Ablavsky, "Beyond the Indian Commerce Clause," *Yale Law Journal* 124, no. 4 (2015): 1012–1090. ([This reading can be accessed through Musselman Library with your Gettysburg College credentials.](#))

Assignments

- Discussion Board Two
 - First post due: Sunday, June 8
 - Second post due: Wednesday, June 11

- Short Paper One due: Wednesday, June 11
 - Write a response paper: You can respond to the prompt created by your section professor or to one of your own design.
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Week Three: June 12: Slavery under the Constitution

Readings

- Mary Frances Berry, "Slavery, the Constitution, and the Founding Fathers," in *African Americans and the Living Constitution*, ed. John Hope Franklin and Genna Rae McNeil (Washington, DC: Smithsonian Institution, 1995), 16–19.
- Masur, *Until Justice Be Done*, 42–266.
- Paul Finkelman, "Garrison's Constitution: The Covenant with Death and How It Was Made," *Prologue Magazine* 32, no. 4 (Winter 2000). ([A link to this reading can be found in the Week Three module.](#))
- Michael P. Zuckert, "Slavery and the Constitution," *National Affairs* 55 (Spring 2023). ([A link to this reading can be found in the Week Three module.](#))

Assignments

- Discussion Board Three
 - First post due: Sunday, June 15
 - Second post due: Wednesday, June 18
 - Final Project/Paper Question due: Wednesday, June 18
 - In roughly 1–2 pages, outline the question your final project or paper will attempt to answer. This should include a description of the paper or project you are proposing, some background information and historical context on your topic, a brief description of your research plan, and a justification for why your particular project or paper is worth pursuing.
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Week Four: June 19: Constitutionalisms and the Market Revolution

Readings

- *Trustees of Dartmouth College v. Woodward* (1819). ([A link to this reading can be found in the Week Four module.](#))
- *Charles River Bridge v. Warren Bridge* (1837). ([A link to this reading can be found in the Week Four module.](#))
- Pauline Maier, "The Revolutionary Origins of the American Corporation," *The William and Mary Quarterly* 50, no. 1 (January 1993): 51–84. ([This reading can be accessed through Musselman Library with your Gettysburg College credentials.](#))
- Barry Weingast, "The Economic Role of Political Institutions: Market-Preserving Federalism and Economic Development," *Journal of Law, Economics, & Organization*

11, no. 1 (April 1995): 1–31. ([This reading can be accessed through Musselman Library with your Gettysburg College credentials.](#))

Assignments

- Discussion Board Four
 - First post due: Sunday, June 22
 - Second post due: Wednesday, June 25
 - Short Paper Two due: Wednesday, June 25
 - Write a response paper: You can respond to the prompt created by your section professor or to one of your own design.
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Week Five: June 26: Things Fall Apart: Civil War

Readings

- *Dred Scott v. Sanford* (1857). ([A link to this reading can be found in the Week Five module.](#))
- James Oakes, *The Scorpion's Sting: Antislavery and the Coming of the Civil War* (W. W. Norton & Company, 2014), 22–50.
- Masur, *Until Justice Be Done*, 267–302.
- *Abraham Lincoln and the Emancipation Proclamation: A Selection of Documents for Teachers* (Gilder Lehrman Institute, 2008), 5–27. ([A link to this reading can be found in the Week Five module.](#))
- John Fabian Witt, *Lincoln's Code: The Laws of War in American History* (Free Press, 2012), 72–78.
- *Instructions for the Government of Armies of the United States in the Field* (Washington: Government Printing Office, 1898), selected articles. ([A link to this reading can be found in the Week Five module.](#))
- Abraham Lincoln to James Conkling, August 26, 1863. ([A link to this reading can be found in the Week Five module.](#))

Assignments

- Discussion Board Five
 - First post due: Sunday, June 29
 - Second post due: Wednesday, July 2
- Revised Question and Proposed Bibliography due: Wednesday, July 2
 1. Revise your initial proposal to incorporate your section professor's feedback AND
 2. Create an annotated bibliography containing at least five sources. Each of these sources should be followed by a short paragraph describing the source and what it will contribute to your final project/paper.

Week Six: July 3: Reconstructing the Constitution

Readings

- Sinha, *The Rise and Fall of the Second American Republic*, 3–230.
- Masur, *Until Justice Be Done*, 303–341.
- W. E. B. Du Bois, "The Freedmen's Bureau," *The Atlantic*, March 1901. ([This reading can be accessed through Musselman Library with your Gettysburg College credentials.](#))
- Michael A. Ross, "Justice Miller's Reconstruction: The Slaughter-House Cases, Health Codes, and Civil Rights in New Orleans, 1861-1873," *The Journal of Southern History* 64, no.4 (November 1998): 649–676. ([This reading can be accessed through Musselman Library with your Gettysburg College credentials.](#))

Assignments

- Discussion Board Six
 - First post due: Sunday, July 6
 - Second post due: Wednesday, July 9
- Short Paper Three due: Wednesday, July 9
 - Write a response paper: You can respond to the prompt created by your section professor or to one of your own design.

Week Seven: July 10: The Police Power and the Constitution

Readings

- Witt, *American Contagions*, all.
- Christopher G. Tiedeman, *A Treatise on the Limitations of Police Power in the United States: Considered from both a Civil and Criminal Standpoint* (St. Louis: F. H. Thomas Law Book Co., 1886), 1–16, 102–103. ([A link to this reading can be found in the Week Seven module.](#))

Assignments

- Discussion Board Seven
 - First post due: Sunday, July 13
 - Second post due: Wednesday, July 16
- Short Paper Four due: Wednesday, July 16
 - Write a response paper: You can respond to the prompt created by your section professor or to one of your own design.

Week Eight: July 17: New Powers: Building an Empire and Creating the Modern Fiscal State

Readings

- Sinha, *The Rise and Fall of the Second American Republic*, 307–346, 389–423.
- Beth Lew-Williams, *The Chinese Must Go: Violence, Exclusion, and the Making of the Alien in America* (Harvard University Press, 2018), 169–193. ([This reading can be accessed through Musselman Library with your Gettysburg College credentials.](#))
- Hidetaka Hirota, "The Moment of Transition: State Officials, the Federal Government, and the Formation of American Immigration Policy," *The Journal of American History* 99, no. 4 (March 2013): 1092–1094, 1105–1108. ([This reading can be accessed through Musselman Library with your Gettysburg College credentials.](#))
- Ajay K. Mehrota, *The Making of the Modern American Fiscal State: Law, Politics, and the Rise of Progressive Taxation* (New York: Cambridge University Press, 2013), 37–85, 242–289. ([This reading can be accessed through Musselman Library with your Gettysburg College credentials.](#))

Assignments

- Project/Paper Preview due: Wednesday, July 23
 - Project: Submissions of the project preview will differ from project to project according to type. Determine an appropriate portion of your final project to turn in with your section professor.
 - Paper: Turn in a rough draft of the first five pages of your final paper.

Week Nine: July 24: Capitalism's Constitution?

Readings

- William E. Forbath, "The Shaping of the American Labor Movement," *Harvard Law Review* 102, no. 6 (April 1989): 1111–1116, 1132–1179, and 1202–1214. ([This reading can be accessed through Musselman Library with your Gettysburg College credentials.](#))
- Joseph Fishkin and William E. Forbath, *The Anti-Oligarchy Constitution* (Cambridge: Harvard University Press, 2022), 138–184.
- David E. Bernstein, *Rehabilitating Lochner: Defending Individual Rights against Progressive Reform* (Chicago: University of Chicago Press, 2011), 1–55.

Assignments

- Discussion Board Eight
 - First post due: Sunday, July 27

- Second post due: Wednesday, July 30
 - Short Paper Five due: Wednesday, July 30
 - Write a response paper: You can respond to the prompt created by your section professor or to one of your own design.
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Week Ten: July 31: New Constitutions: Jim Crow, Indian Tribes, and the Nineteenth Amendment

Readings

- Dylan C. Penningroth, "Everyday Use: A History of Civil Rights in Black Churches," *The Journal of American History* 107 (March 2021): 871–898. ([This reading can be accessed through Musselman Library with your Gettysburg College credentials.](#))
- The Civil Rights Cases—Prequels and Sequels: From *Hall v. DeCuir* to *Plessy v. Ferguson*. (A link to this reading can be found in the Week Ten module.)
- Sinha, *Rise and Fall of the Second American Republic*, 424–461.
- Ned Blackhawk, *The Rediscovery of America: Native Peoples and the Unmaking of U.S. History* (New Haven: Yale University Press, 2023), 365–407. ([This reading can be accessed through Musselman Library with your Gettysburg College credentials.](#))

Assignments

- Rough Draft due: Wednesday, August 6
 - Project: Submissions of the project rough draft will differ from project to project according to type. Determine an appropriate portion of your final project to turn in with your section professor.
 - Paper: Turn in a rough draft of the first ten pages (at minimum) of your final paper.
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Week Eleven: August 7: 1937: A Third Republic

Readings

- Leuchtenberg, *The Supreme Court Reborn*, 52–179. ([This reading can be accessed through Musselman Library with your Gettysburg College credentials.](#))
- John Fabian Witt, "The Showdown: FDR vs. the Supreme Court," *The Nation*, June 27, 2023. ([A link to this reading can be found in the Week Eleven module.](#))
- David Bernstein, *Rehabilitating Lochner*, 90–130.

Assignments

- Discussion Board Nine
 - First post due: Sunday, August 10
 - Second post due: Wednesday, August 13

Week Twelve: August 14: The New Deal Order and Its DiscontentsReadings

- Leuchtenberg, *The Supreme Court Reborn*, 180–258. ([This reading can be accessed through Musselman Library with your Gettysburg College credentials.](#))
- Risa L. Goluboff, "The Lost Promise of Civil Rights," *Virginia Law Review* 93 (2007): 85–103. ([This reading can be accessed through Musselman Library with your Gettysburg College credentials.](#))
- Ken I. Kersch, *Conservatives and the Constitution: Imagining Constitutional Restoration in the Heyday of American Liberalism* (Cambridge University Press, 2019), vii–xviii, 1–102.

Assignments

- Final Project/Paper due: Wednesday, August 20
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Course and Program Policies

It is the responsibility of students to know, understand, and abide by course and program policies.

For a full overview of program policies, review the Gettysburg College–Gilder Lehrman Institute Student Handbook.

Course correspondence

Correspondence with faculty and administrators should be formal. Include a subject line, addressee, and closing. Put the name and number of your course in the subject line.

Plagiarism and AI

This program uses Turnitin to check for instances of plagiarism and AI. Plagiarism and papers composed fully or in part by AI will not be tolerated. This includes self-plagiarism. A student caught plagiarizing or composing papers with AI for the first time may receive a zero on the assignment. A student caught plagiarizing or composing with AI for a second time may be permanently removed from the program.

Your section professor will set the policies for use of AI for research or purposes other than composing your papers.

Late work

Assignments should be submitted no later than 11:59 p.m. Pacific Time on the due date unless otherwise specified by your section professor. If you think you will be unable to

submit an assignment on time, it is your responsibility to contact your section professor to ask for an extension before the assignment's due date. Late assignments will be docked 5% if less than a week late, 10% if one week late, and an additional 10% for each subsequent week.

Grading scale

Letter Grade	Number Grade	Grade Points
A	95%-100%	4
A-	90%-94%	3.67
B+	87%-89%	3.33
B	84%-86%	3
B-	80%-83%	2.67
C+	77%-79%	2.33
C	74%-76%	2
C-	70%-73%	1.67
D+	67%-69%	1.33
D	64%-66%	1
D-	60%-63%	.67
F	0%-59%	0

Assignment Descriptions

Short Papers (25% of grade – 5% per short paper)

Students will complete five short papers. Each should be approximately 500 words long. The purpose of these papers is not to merely summarize weekly readings but to demonstrate that you have read them analytically and contextually. Students have the option of responding to a prompt created by their section professor or to one of their own design. Prompts should reflect the themes discussed in course readings. If you need help getting started, you can complete one of the options listed below.

Complete a thesis identification - Select one of your assigned readings and focus on identifying the thesis as well as the evidence the authors use to support that thesis.

Complete a primary source evaluation - Evaluate a primary source from the Gilder Lehrman Collection or elsewhere. Primary sources must be relevant to that week's readings. Keep the following questions in mind:

- Who is the author of this document?
- Who was their intended audience?
- How might both author and audience impact the content of the document?
- For what reason was this document created?

Complete a book review - Focus on one of the secondary sources assigned in this course and critique it. Keep the following questions in mind:

- What is the author's argument?
- Does the author adequately support their argument?
- Are you convinced of their argument? If not, why not?
- How does this source fit into the larger discussion of its topic?

Discussion Board Posts (18% of grade – 2% per discussion board)

Students will interact in 9 discussion boards in this course. Discussion boards are led by section professors, who will provide specific instructions for participation in their section. You are required to make at least one post to each discussion board and respond to **at least two other students**.

Question-and-Answer Sessions (15% of grade – 5% per reaction)

Throughout the semester the lead professor of each course will conduct five Q&As. Students **MUST** attend at least three of these sessions for each course they are taking. **In order to receive credit for attending each Q&A, you must complete a 1–2-paragraph Q&A Reaction within 24 hours of participation.** Note: If you cannot attend three of the five Q&As, you may receive credit by viewing archived Q&As and completing a 500-word review of topics covered for each missed Q&A. **Makeup assignments must be completed within two weeks of the missed Q&A.**

Final Project/Paper (42% of grade)

For the final assignment of each course, you will choose to complete either a research project or 15-page research paper. Research projects are a public-education tool designed for the general population, teachers, and/or students of varying ages. Sample projects include (but are not limited to) vodcasts and podcasts, documentary editing and transcription, websites, annotated readers, walking tours, or museum exhibits. Lesson plans *will not* be accepted. A 5-page paper narrative must accompany the project. Your section professor must approve research projects.

The research paper can be a traditional position paper that uses original research to prove a thesis statement or a historiography paper that critically examines how American historians

have interpreted the same event differently and why shifts in historical debates may have occurred.

Both final assignment options require you to ask an open-ended historical question (something that does not have an easy yes or no answer) that you do not yet know the answer to. You will then use the research process (pulling from a variety of resources, mostly primary source documents) to explore that question and create a thesis-driven answer. Regardless of whether you choose to pursue a project or paper, finals are scaffolded throughout the semester. This method breaks up a large grade into smaller constituent grades and allows time to incorporate instructor feedback into assignments.

Scaffolded Assignments

- Final Project/Paper Proposal (2%)

In roughly 1–2 pages, you should outline the main question, topic, or purpose of your final project or paper. This should include a description of the project or paper you are proposing, some background information and historical context on your topic (answer the questions who, what, where, and when), a brief description of your research plan (this does not need to be super specific, but should outline how many weeks you plan to research, if you need to schedule research trips or if your sources are published or available digitally, and when you plan to begin writing) and a justification for why your particular project or paper is worth pursuing (what is the significance of this topic? What does it add to our historical knowledge? Are you filling a gap that other historians have overlooked such as considering race, ethnicity, or gender?)

- Revised Proposal and Annotated Bibliography (3.5%)

This assignment will give you the opportunity to incorporate the feedback you received on the first draft of your proposal. In addition to incorporating your section professor's comments, you will also submit a proposed bibliography listing five sources you plan on utilizing in your research for your final product. Each of these sources should be followed by a brief summary (3–5 sentences) of the source and what it will contribute to your research process.

- Project or Paper Preview (5%)

This will give you the opportunity to show the progress you have made on your final project or paper and get some early-stage feedback from your section professor. For a final project, determine with your section professor an appropriate portion of your final submission to turn in. For a final paper, this should be roughly the first five pages of what will ultimately be your final submission.

- Rough Draft (10.5%):

For a final project, determine with your section professor an appropriate portion of your final submission to turn in. For a final paper, this should be, at minimum, the first ten pages of what will ultimately be your final submission.

- Final Product (21%):

Final Project: Much like the final paper option, a final project is meant to prove that you have mastered the content covered by this course. We encourage you to be creative in your approach to this project, though it should be equivalent in rigor and workload to a final paper.

Final Paper: Final papers should be at least fifteen pages in length. These can take the form of research papers or historiography papers.