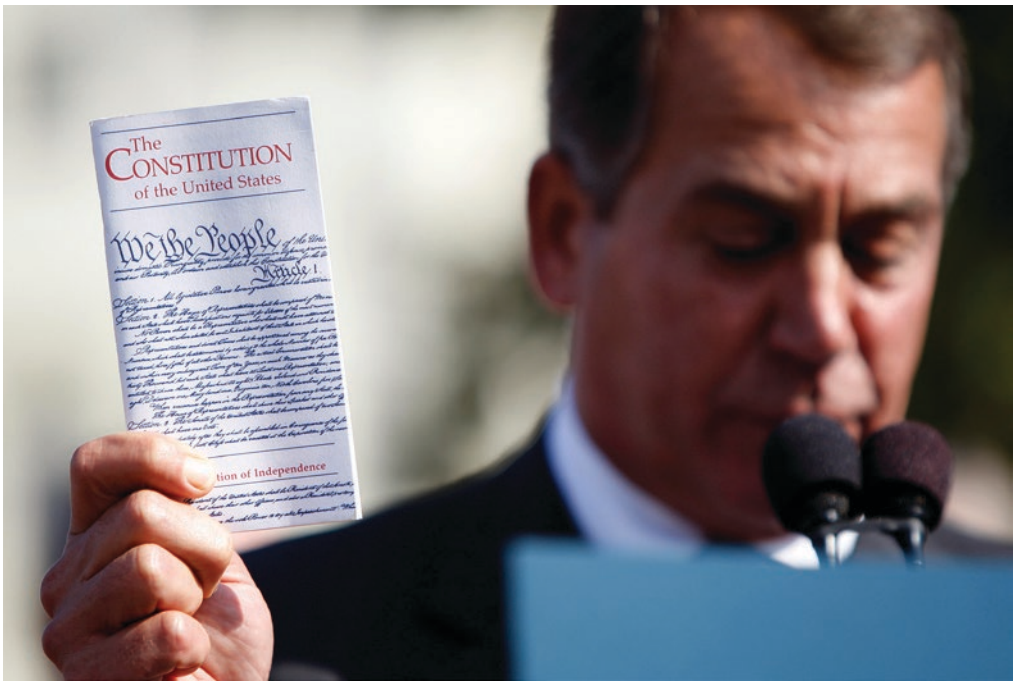
Constitutional Repertoires

Civic Performance at the Threshold of Autocracy

Shannon Steen



Preamble

We all know the story by now: democracy in the United States is in the process of being dismantled. The current administration's lightning-fast project of *Gleichschaltung*—the process of autocratic consolidation by which the institutions of a nation's political, economic, and cultural life are "same circuited" or aligned to uphold an authoritarian political system—has surprised even seasoned political observers by its aggression and speed.[1] Among the many questions raised by this project is the capacity of the Constitution to resist it, especially in light of the executive branch's usurpation of the powers of its coordinate branches of government. The past two years have witnessed a series of breathtaking examples of constitutional breakdown. Just in the Supreme Court, decades of legal precedent on everything from the regulatory capacity of federal agencies to presidential immunity were swept aside prior to the 2024 election, the last in ways widely considered to

1. On *Gleichschaltung* as the process of autocratic consolidation under the Reich, see Childers (2017) and Caplan (2019).

TDR 70:3 (T271) 2026 https://doi.org/10.1017/S1054204326101373

© *The Author(s), 2026. Published by Cambridge University Press on behalf of New York University Tisch School of the Arts.*

have been a breach of the US's foundational rejection of monarchical modes of governance.[2] Most of these topics were revisited in the fall 2025 docket, with voting by mail, search warrants, the Voting Rights Act, Congressional authority over tariffs, and birthright citizenship to be considered in spring 2026. The Court's recent decisions have so profoundly concerned constitutional law specialists that some now refuse to teach the standard foundational US law school course on the topic (Wegman 2024), and a range of prominent historians and legal scholars have recently published books skeptical of the Constitution's capacity for full democratic exercise in the first place (Chemerinsky 2024; Lepore 2025; Rana 2024). The administration's kidnapping of the Venezuelan head of state, threats of extraterritorial annexation of regions like Greenland, and bombing of Iran have jeopardized congressional military authority, and indeed the North Atlantic political order (with all its failings). We are living through the formation of a new American republic, one predicated on a theory of a unitary executive, with major questions regarding the limits of that power.

This predicament coexists with—and is enabled by—an ongoing performance repertoire of civic life around the US Constitution. This repertoire includes public holidays like Constitution Day (which you may or may not know exists), public recitations of the Constitution in the opening of US Congressional sessions, immersive primary and secondary education practices like reenactments of the Constitutional Convention,[3] and theatrical productions such as Heidi Schreck's Broadway (2019) and Amazon Prime show (2020) *What the Constitution Means to Me* (also the most widely produced show on the US regional theatre circuit for 2024 [Weinert-Kendt 2024]). These performances precede, overlap, supplement, bookend, inform, and act on "the law." In delineating the cultural and political field in which the law—as a set of institutional practices—operates, they enact the very grounds of democratic formation.

Given the grave forms of democratic backsliding of just the first year of the new government, it may very well feel inadequate to the moment to excavate the extralegal performance life of the Constitution. But this set of performances shape—in ways legal scholars or political scientists might abhor or shrug off with indifference—the limits and possibilities of how people of and in the United States understand, think about, and even contest the civil structures in which they are enmeshed. On one hand, they form the broader social sense through which "constitutionality"—or the practices, laws, and actions permissible within the political arena of the United States—is understood. Beyond this, they also demonstrate the ways that constitutionality is not simply a set of legal procedures and concepts derived from a document, but a cultural field of which legal practices are one pillar, infused and shaped by a set of practices that are frequently theatrical in multiple ways.

The performances of the Constitution repertoire index the mechanisms by which constitutional protections have come to be abrogated in their own name. While the repertoire has been in process since at least Reconstruction, making it often seem antiquated and atavistic, it is actually primarily an artifact of the period after the Second World War. The cultural mythmaking associated with the

2. For an excellent—and profoundly sobering—assessment of the 2023/2024 Supreme Court term, see Strict Scrutiny (2024). For an analysis of *Trump v. CASA, Inc.*, the 2025 case that shredded the capacity of lower courts to halt unconstitutional executive actions, "removing [...] the key tool to combat executive lawlessness," see Strict Scrutiny (2025).
3. For non-US readers, the Constitutional Convention was the series of meetings held between May and September 1787 to determine the structure of the postrevolution nation, substantially remaking the legal structures of the Articles of Confederacy that had governed the colonies during the period of the War for Independence.

Figure 1. (facing page) Representative John Boehner (R-OH) proffers the Constitution during a protest against the passage of the Affordable Health Care Act, 2009. (Luke Sharrett/The New York Times/Redux)

Shannon Steen (UC Berkeley) is Professor in the Department of Theater, Dance, and Performance Studies. steen21@berkeley.edu

Constitution was largely absent in the first century after its ratification, and instead became a cultural cornerstone of the US rise to global dominance (Rana 2024:ix–xi). But its public cultural field, what legal scholar Aziz Rana refers to as "creedal constitutionalism," has significantly intensified in just the past two decades, making it a contested contemporary field of cultural, social, and political production in urgent need of intervention.

It is terribly easy to dismiss these performances as hopelessly compromised, naïve, idealistic, or even duplicitous. Many of them are exactly that. Both the significant historical record of failure to enforce even the rights enshrined in the Constitution and the current dominant jurisprudential framework of the US understandably induce a well-deserved sense of cynicism. In this context, one of the more vexing characteristics of the constitutional repertoire is the unmistakable sense of veneration that saturates it. More than merely respectful or reverential, these performances are animated by a quasi-religious framework, in which the Constitution is explicitly framed as divinely inspired scripture and its authors endowed with a kind of deific status. Regardless of political affiliation, is it not at all uncommon to hear participants refer to the Constitution as a "sacred" document, a characteristic especially pronounced in—but not limited to—adult Constitution events. This quality of veneration is especially intense in the evocation of the Framers' Constitution (the original document ratified in 1787 in combination with the 1791 Bill of Rights). Even where the post–Civil War or 20th-century amendments are included in performance events, they are framed as continuous with the 1787 Constitution, rather than as part of a distinctive legal framework initiated by, for example, the post-emancipation structures of the post–Civil War republic (a distinction to which I will return), a characteristic that Rana notes imbues the US as a whole with a set of redemptive qualities that are claimed to have been active at the time of the founding, and displaces equally robust traditions of constitutional critique (2024:3).

The characteristic veneration by participants has unquestionably made the performances of the Constitution repertoire easily conscripted to atavistic and nationalistic ends. In many contexts now, the Constitution has come to supplement the US flag as a symbol of right-wing—and even fascist—nationalist sentiment. Even when the Constitution is invoked as a protection *against* such framings, it is frequently imbued with the kinds of fantasies that Wendy Brown has called the "mythical former splendor" to which attachments to liberal democracy are prone (in QMUL 2024). The result of these tendencies is that the constitutional performance repertoire is frequently dismissed as part of an empty, simplistic, problematic cultural repertoire, and subsequently abandoned along with the social and institutional arenas to which it belongs. But this tendency also relinquishes the definitions and practices of constitutional democracy to the Right.

In addition to the more obvious performance aspects of these events (how the Constitution operates as a script, and what it might be a script *for*) their theatrical structures infuse and create a specific kind of political field. What kinds of social memories are constructed around the Constitution in these performances? Is there some kind of fundamental and unique work in operation when performance becomes one of the central cultural strategies through which US civic selfhood is made? What kind of political subject is produced through these activities?

It is no small project to be mapping these performances at this moment given the shifting legal landscape in the US. What the Constitution *means*—a question so central that it forms the title for Heidi Schreck's theatre piece—is not merely in flux but actively in crisis. What happens to the repertoire of civic practices analyzed here when the structures and legal enforcement of the document that supposedly subtends them are undermined? And what happens to constitutionality when the cultural repertoire that scaffolds it becomes ethically abandoned?

National Scripts

Recitation, Fragmentation, and Social Memory

Since at least Reconstruction, the Constitution has played a central role in the formation of what sociologist Robert N. Bellah once described as the "civil religion" structures of the US, though as a welter of scholars have since pointed out, the set of cultural operations loosely gathered under the umbrella of civil religion have largely served the goals of racial nationalism (see Bellah

1967; Danielson 2019). One of the most intensely sacral-feeling performances of the Constitution is its public reading. Such readings occur in a variety of contexts—some as part of federally mandated educational activities around Constitution Day and also introduced (at least for a time) as part of the biennial start of new congressional sessions. It's not entirely clear when public readings were first held, but the desire for regularized reading events emerged as part of the post–Civil War push for national holidays for which the celebration of the Constitution provided an important inaugural attempt. Proposed as the first national holiday at the first centennial of the Constitution's signing in 1887, Constitution Day was the culmination of efforts to forge national unity in the midst of significant postwar tensions, anti-immigrant hostility, and Progressive Era reforms around expanded compulsory primary education.[4]



Figure 2. Senator Robert Byrd (D-VA) accuses the US Senate of failing to protect the Constitutional guarantee of civil military control during the Iraq War and demands the reinstatement of Constitution Day as a federal holiday, 2003. (Photo courtesy of the Robert C. Byrd Center)

Despite attempts to appeal to Progressive Era intellectuals and patriots alike, the 19th-century attempt to create a national holiday around the Constitution was met with broad indifference and though intermittently revived largely languished in obscurity until the second Iraq War. In September 2004, 18 months into the US invasion (and after the scandals of Abu Ghraib and Fallujah), Democratic Senator Robert Byrd of West Virginia gave a speech demanding Constitution Day's reinstatement as a federal holiday. Asserting that most members of Congress were unfamiliar with its content, Byrd—one of the most visible and vocal dissenters against the Iraq War authorization vote—stressed the Constitution's insistence on civilian military control, and suggested that greater familiarity with the Constitution, including among federal lawmakers, could avoid the trampling of its protections.[5] Noting that at the time of the Constitutional Convention, the pamphlets around the Federalist Papers prompted public and private debates across the nascent republic, Byrd emphasized the importance of public readings of the Constitution as one of the core activities of the holiday, hoping these would provide a public, and even congressional, corrective to ignorance of its content:

> When the Constitution was circulated for ratification in 1787, there was active political debate. The Constitution was a topic of conversation around dinner tables and at public meeting places. [This legislation will] encourage citizens to observe the day with appropri-

4. US national holidays were developed in parallel with the expansion of compulsory universal primary education and traded on significant school participation, especially as education became one of the primary social institutions through which anti-immigration hostility became assuaged through assurances of national assimilation. The more familiar national holidays like Washington's inauguration or Lincoln's birth were installed when Constitution Day failed to catch the popular imagination. For more details see Litwicki (2000:152–53).

5. Building on the argument that the framers were especially concerned to avoid the possibility of a military dictatorship, Byrd reminded members of Congress of the limits of presidential powers: "[The Constitution] is the prism through which each act of our Government should be examined and judged. If such an understanding were in place, we would not have to question aspects of the PATRIOT Act that might threaten privacy and due process rights of Americans because those elements would not have been included. But in our fear of terrorism and due to our inattention to the Constitution, we were stampeded into legislation that erodes some of your rights, some of every citizen's rights. Every time the executive assumes powers that are not challenged by the Congress, and every time Congress gives up its powers to the executive, our Constitution is eroded, and we come one step closer to tyranny when that happens, one step closer to the dictatorship of the executive" (Byrd 2004).

ate ceremonies, including a reading of the Constitution. [...] An informed public is our best defense against tyranny. (Byrd 2004)

Byrd's prescription for public readings of the Constitution sprang from a claim of the centrality of public recitation to democratic formation. Underlying this claim are the 18th- and 19th-century traditions of oration, of which the public recitations of the US Declaration of Independence furnish an important adjacent example. This declaration, as Jay Fliegelman has asserted, was not simply an artifact or document, but a performance, an oral declamation of the colonies' various grievances against the British crown and their justification for separation. So important was the public recitation of independence that vocal intonations, cadences, and gestures were intentionally layered into the rhetorical structure of the declaration's text in order to effect the act of independent nation formation (1993:3). Independence was not simply textual but vocal, embodied, sonic, public. Byrd invoked a similar project with public readings of the Constitution, but with the added assertion that to do so would not simply create greater familiarity with the document but also the grounds for more cohesive agreement about its content, thereby strengthening its capacity for democratic protections.

Byrd's hope that greater intimacy with the Constitution would help foster stronger democratic protections, especially around excess presidential power, instead laid the groundwork for reconfiguring the Constitution as a rallying symbol for the right-wing rump takeover of the Republican Party.[6] In the wake of Byrd's proposal, Congress reinstituted Constitution Day in an amendment to the 2004 appropriations bill, and stipulated that all educational organizations that receive federal funding (including in higher education) must publicly mark the Constitution's ratification in some way and provide programming around it. These requirements have largely been observed in the breach (with some notable exceptions in the upper Midwest), but the Constitution also at this moment became a key scenographic feature of dissent performances against Democratic-led legislative agendas once Barack Obama became president. As part of attempts to defeat the Affordable Care Act (or Obamacare), which passed in 2010, figures in the newly formed Tea Party such as John Boehner (R-OH) began using pocket editions of the Constitution as a prop at rallies against the act, and helped usher in the Tea Party–controlled House of Representatives in 2010 with the demand that any proposed legislation must cite the segment of the Constitution that justified it (Steinhauer 2011).[7] In these contexts, the Tea Party inaugurated the use of the Constitution as a symbol of right-wing nationalist sentiment, and as a mechanism to forestall the creation of better social safety nets.

As House Speaker, Boehner initiated the first in-Congress reading of the full Constitution in US history with the opening of the new session in January 2011. These readings have continued to be performed when the House of Representatives is under Republican control, with the most recent reading in February 2023 under Speaker Kevin McCarthy (R-CA). While appearing to confirm the most cynical possible view of politics-as-theatre (as vapid, empty, pointless nationalistic grandstanding that wastes time and taxpayer money and distracts from more important work of governing the

6. Byrd's centrality to the revival of national celebrations of the Constitution underscores the complicated historical oscillations of the relationship between that document and democratic practice in the US. Though celebrated for his antiwar stance in the last decade of his life, Byrd's early forays into the political realm were markedly white supremacist. He was a Klan member in his early 20s and filibustered the Civil Rights Act of 1964. By the time of the 1968 Civil Rights Act, Byrd had recanted this position (supporting the later legislation), and spent much of the rest of his career apologizing repeatedly for his early affiliations and beliefs (Sturgis 2010).

7. The Tea Party was a right-wing faction of the Republican Party formed in 2009 in response to the election of Barack Obama. The movement gained support by claiming to oppose his administration's spending on social infrastructure, staging tax day protests and, later, protests against the Affordable Care Act ahead of its formal passage in 2010. Once the Republican party won the House of Representatives in 2010, Tea Party representatives, despite their relatively small numbers and even opposition from within the Republican Party, came to dominate policy making in the party and therefore in the House. For a more detailed history of the Tea Party as a rump faction that took over the Republican Party, see Blum (2020).

country), the in-Congress readings have been much more gravely active and productive than this view allows. They promote specific legal frameworks around the Constitution, install particular social memories of its content, and reinforce deeply partisan claims to constitutionality itself. These ends have been achieved largely through constructions of the Constitution as script, and more specifically through a set of editorial choices with profound implications.

In the 2011 reading, the House member leading it, Republican Bob Goodlatte of Virginia, used a version of the Constitution that deleted any language that had been, in his words, "superseded" by later amendments (Congressional Record 2011:H54). Notably among the deletions were the "three-fifths" clause of Article 1 (one of the most famous clauses of the Constitution),[8] the Prohibition amendment (though confusingly its repeal in Amendment 21 was read), the provision that US Senators be elected by state legislatures, and the clause of Article 2 describing congressional authority to determine presidential succession in the case of death, resignation, or incapacitation. Goodlatte's text did, however, include language that by his own logic should have been struck, including the segment from Article 1 about taxation that was rendered legally inoperable by the Sixteenth Amendment (which established federal income tax). He also inserted noncanonical material like the preamble to the Bill of Rights, the ratification dates for the Nineteenth and Twenty-First to Twenty-Seventh Amendments (but only those amendments), and grammatical corrections of the original parchment copy of the Constitution (Lithwick 2011; Beck 2019).[9] This version of the Constitution has been retained for all subsequent Congressional readings, despite public pledges like Kevin McCarthy's in 2023 to "read EVERY word" of the Constitution (Broadwater 2023).

In light of these revisions, House Democrats—who had not been provided beforehand with a copy of the text to be read—preempted the beginning of the reading to ask for the logic and reasoning behind Goodlatte's editorial choices. Democrat Jay Inslee of Washington pointed out that amendments are not held to have *deleted* the original language of the Constitution. Instead, he asserted, constitutional provisions that have been amended are retained as the basis for active legal adjudication: "it has been up to us to ascertain the intent of the amendments to figure out which language is operative or not. But the language has not specifically been deleted by the amendment" (Congressional Record 2011:H54). More pointedly, Democrat Jesse Jackson Jr. of Illinois noted that the redaction of text like the three-fifths clause of Article 1 threatened to erase the historical context and rationale for Black political activism, and to restructure national identity as a result:

> This is very emotional for me. This is very emotional, I know, for a number of Members, given the struggle [...] of African Americans, given the struggle of women to create a more perfect document, to hear that those elements of the Constitution that have been redacted by amendment are no less serious, no less part of our ongoing struggle to improve the country and to make the country better, and our sense in our struggle and who we are. When we were informed, for example, that the three-fifths clause would not be mentioned and that other elements of the Constitution which justify why some of us fight for programs in the Congress will not be written in the redacted version, it is of consequence to who we are. (Congressional Record 2011)[10]

Jackson emphasizes the link between the textual preservation of political conflict within the nation's central governance document and the preservation of democracy. The latter depends, he argues, on the visibility and public awareness of that history. The 2011 revisions abrogated observed textual practices of the Constitution that had been active since its ratification for precisely this reason.

8. For non-US readers, the three-fifths clause of Article I counted enslaved people as three-fifths of a person for purposes of taxation and federal representation, allowing slave-holding states to deny the full personhood of the enslaved while simultaneously creating a representational advantage in institutions like the House of Representatives and the Electoral College (and through it, an advantage in presidential elections).
9. For a full list of emendations to the Constitution made in the version read aloud in Congress, see Beck (2019:223–25).
10. For video of Jackson's speech in advance of the reading, please see C-SPAN (2011:timecode 1:03:02–1:05:08).



Figure 3. Representative Jesse Jackson Jr. (D-IL) objects to partisan redactions in the first in-Congress reading of the Constitution in US history, 2011. (Courtesy of C-SPAN)

Constitutional law scholar Laurence Tribe reminds us that the US specifically determined that its national Constitution would *only* be amended, not edited, precisely so that the document as a whole would hold and reflect the histories of debate and struggle that are a central source of US national identity, and also of democratic political systems more broadly.[11] The US Constitution is written, he asserts,

> only in a forward-moving manner that never backspaces to erase a word that went before. [...] By keeping even textually superseded language intact and fully visible in each circulated copy of official text, we undermine efforts to sanitize or otherwise rewrite our troubled history as those in power throughout the world are wont to do. (Tribe 2008:59, 64)

This somewhat unusual definition of democratic operations—that they are only possible when the history and debates about ethical violation are continually visible—is enshrined in constitutional law debates. It claims that one critical democratic function of the Constitution is to act as a form of national social memory, or the way that social artifacts "link individuals and groups to their collective sense of history, and to their nation's perceived past" (DeLyser 2005:xii–xiii). The Constitution's capacity for democratic protection, Jackson and Tribe assert, lies in no small part in reminding us of its *failures*. When those reminders are removed, so are the rationales for amendments to the original legal structure of the country.

Given these implications, the editorial choices of the Republicans reflected an attempt to produce a new text of the Constitution and to assert it as the official version, a point made by several political journalists at the time.[12] And in 2026, 15 years later, we might also ask: once elements like the three-fifths clause are removed (without the formal vote required to allow such a change), what would prevent the removal of the actual amendments designed to remediate them in the first place?

11. The same is not true of state constitutions, which are textually revised as they are amended. These have "current" versions that reflect deletions or revisions, with past versions archived for reference.
12. See especially on this point Lithwick, "Constitutional Whitewash" (2011).

At a moment when the Reconstruction amendments (especially the Fourteenth and Fifteenth, but perhaps even the Thirteenth as well) that ensure due process rights, enshrine civil rights protections, and establish birthright citizenship are among the Constitutional provisions most at risk, the attempt to expunge the segments of the Constitution they were designed to address seems especially ominous.

The ensuing questions in law reviews and news commentary across the country are familiar to anyone who has thought about the practices of textual or script editing. As legal scholar Peter Beck put it:

> What is a true copy of the Constitution? One that reflects all the provisions with legal force today—and only those provisions? One that includes every word added to the document—and not a single annotative word in addition? Or one that includes all the words—and notes (or, online, hyperlinks) to clarify what has been "superseded" or revised? [...] But parts of this legal document are indeed legally inoperative, some more obviously than others. [...] Should they be legally "operative," in any sense? [...] Sometimes the answer is obvious: you cannot rely on the Eighteenth Amendment [Prohibition] in court. But other times the answer is not so clear: Could you rely on the preamble's guarantee of "the blessings of liberty"? Can you cite to the 1808 slavery clauses, or use the ratification dates in an argument? (2019:226–27)

Counterintuitively, the insistence on the "amended, modern" version of the Constitution enables the sense of scriptural veneration around it. The retention of the entire text actually undermines the deification of the founders and the tendency to treat the document they produced as somehow sacred or holy. As political journalist Adam Serwer highlighted, "the reason to include the superseded text is to remind us that the Constitution, while a remarkable document, was not carved out of stone tablets by a finger of light at the summit of Mount Sinai. It was written by men, and despite its promise, it possessed flaws at the moment of its creation that still reverberate today" (in Lithwick 2011). The flaws on which Serwer insists are part of the performative legal force of the Constitution, woven into their locutionary effects.

Performance Atmosphere and Counter-Irruption

Perhaps another way to assess the impact of constitutional editing is to ask the following: if the Constitution is on some level a script—which both its congressional reading and debates about its editing certainly suggest—what is it a script *for*? The US Constitution is not an exciting read. Its preamble aside, it lacks ringing phrasing or aspirational rhetorical flourishes—it does not trip pleasingly from the tongue. Most of the document concerns the set up and procedures of the coordinate branches of government, and so reads more like organizational bylaws than a set of philosophical tenets crafted to quicken the political imagination.

The constitutional script produced for the congressional reading events in no way captured or guaranteed or indicated the multiple semantic registers put into action in its reading. The affective atmosphere of the event, the casting of the reading, and several moments of counter-irruption that marked it encode the processes of democratic contestation at the heart of considerations of the Constitution. As Diana Taylor (2003) would have predicted, these performance elements are nearly all absent in the official congressional transcript, but central to their political meanings, implications, and effects.

The sense of veneration exemplified by Jackson's comment about the Constitution's "sacredness" is, ironically, in many ways undermined precisely in its public oral recitation. In reading it aloud, members of Congress tripped over its language, substituted incorrect words, and even accidentally read a few clauses out of order (C-SPAN 2011). Though there was a celebratory atmosphere in the inaugural reading in 2011, the energy of the chamber notably waned once members began reading through the bylaw elements of the Constitution. Subsequent readings became increasingly enervated, the celebratory tone and occasional applause dissipated through repetition of language that is fundamentally technical and dry (Canning 2024).

On one hand, this discrepancy seems to exemplify the divisions Hannah Arendt identifies as separate realms of the political: "speech-making and decision-taking, the oratory and the business, the thinking and the persuading, and the actual doing" ([1963] 2016:17). But what if, as Catherine M. Cole or Joshua Chambers-Letson insist, these realms mutually enable one another? Both researchers have asserted that the institutional force of "the law"—its capacity to mandate, regulate, idealize, or manage behavior on a macro-scale—rests on a series of acts that are fundamentally theatrical (Cole 2010; Chambers-Letson 2013).

To that end, the confused and contestatory performance atmosphere of the 2011 reading is especially important to parse.[13] Cultural geographer Ben Anderson describes "affective atmospheres" as the "material imagination" that "emanate[s] from but exceed[s] the assembling of bodies" and allows us to understand the social meaning of an event as at once specific and ambiguous, "singular and vague," and that also constantly emerges from and transforms the shared ground of any particular assembly (Anderson 2009:77). This is the "ambiance" or "energy" of a given space or event, the way it seeps—preconsciously—into the bodies, actions, and experiences of participants, and shapes their conscious articulation of these elements. In Laura Levin's parsing of Anderson, an attention to atmospheres helps us better understand the "porousness of character and environment," and also allows us to "frame politics as a scenographic relation," or a set of scenarios in which environment shapes the reciprocal relationship between how participants understand events unfolding around them and how they act within that unfolding (Levin 2023).

The performance atmosphere of the 2011 reading was nominally celebratory and seemingly bipartisan. Members of each party took turns reading successive clauses of the Constitution and assembled members enthusiastically applauded key moments, including Boehner' reading the preamble, John Lewis (D-GA) reading the Thirteenth Amendment, and Scott Rigell (R-VA) and Mel Watt (D-NC) reading the Fourteenth Amendment (Canning 2024). But it was not quite clear what was being celebrated in these responses—the aspirational sentiments of collective democracy? The legal changes that nominally enfranchised those excluded from basic citizenship rights at the time of the document's original framing? The fact of the Congress beginning a new session? The imprimatur of civil rights history being used to validate whatever legislative agenda might emerge in the new session?

Regardless of the possible answers, the celebratory atmosphere of the 2011 reading could not camouflage the largely partisan nature of the proceedings, particularly in a set of markedly forceful counter-irruptions. Jay Inslee was so loudly booed when he objected to Republican refusals to precirculate the edited version of the Constitution that he was obliged to pause his comments until the Speaker pro tempore could restore order to the chamber. Republican members actively drowned out his objections to not being shown the altered Constitution in advance (C-SPAN 2011:timecode 1:00:00–1:02:08). The reading had to be paused when the clause regarding the requirement of US birth for the presidency was read as a member of the gallery was ejected for repeatedly shouting "Except Obama!" (1:32.51–1:33.32). These moments served as a reverse version of the Situationist "irruption," or the forceful, confrontational actions designed to break through the alienated forms of pseudoreality created by the commodified "society of the spectacle." Adopting the feel (or performance atmosphere) of authenticity the Situationists used as a breakthrough mechanism, these partisan moments instead reinforced nationalist skepticism of birthright citizenship and attempted to foreclose questions over even the content of Constitution itself.

While the readings could not foresee the scale of democratic reversals the US is now undergoing, they may well have helped pave one avenue for them. Perhaps no other performance choice of the Constitution more clearly dramatizes our current moment than the decision to *suspend* the congressional readings—as compromised and as troubling as these have been—in January 2025.

13. For the following elaboration on "performance atmospheres," see Laura Levin's 2023 essay on *Succession*, developed for the ASTR working group on Political and Performance Theory, co-convened with Christopher Grobe.

Having so energetically semantically positioned themselves as defenders of the Constitution and its central role in defining US political life, Republicans retracted its public recitation in the chambers they now controlled. If one of the signal features of the 119th Congress has been its refusal to act as an independent branch of government, even in arenas explicitly constructed as within its purview, its decision to no longer read aloud the document that enshrines its responsibilities and powers pointedly illustrates its abandonment of one of the core features of US democratic operations.

Reenactment and Constitutional Continuity

K–12 Education

The implications of the congressionally edited version of the Constitution become even more pointed in the context of educational practices. If congressional readings of the Constitution are primarily performances of partisan editorial control with historiographic implications, school-age performances around the Constitution reverse this dynamic, focusing primarily on its history, with implications for how its content is (or isn't) understood in the present. And while adult performances tend towards a kind of nationalistic construction that binds participants to center-right (and sometimes even extreme right-wing) sentiment and legal framings, this is not necessarily true of those in educational contexts.

K–12 teaching materials on the US Constitution make up a densely competitive and confusing cultural space. Though individual school districts determine overall curricula, teachers looking for aids or lesson plans beyond whatever their districts formally adopt are confronted by a bewildering thicket of organizations offering these, from governmental agencies like the Department of Education and the Library of Congress, to public-private entities like the Smithsonian or private ones whose goals, orientation, and funding are often obscured by bland domain names like "ConstitutionFacts.com" or "TeachingAmericanhistory.org." Regardless of where they come from, education materials tend to emphasize the origins of the Constitution, with the lion's share of lesson plans, books, activities, classroom posters, and so forth designed to introduce students to the debates that operated as part of the 1787 Constitutional Convention and the 1791 introduction of the Bill of Rights. Many of the class activities involve reenactment scenarios, sometimes invoking the explicitly theatrical (like lessons on Alexander Hamilton using songs from the Broadway musical), but more involve simulation practices (Students of History n.d.). The simplest of these resemble immersive acting exercises, in which students take on the role of one of the members of the Constitutional Convention, do background research on their positions and the conditions that motivated them, dress up as that framer, and then reenact the debates of the convention (Tucker 2022). Others immerse students in the process of governmental development; one especially interesting exercise involves breaking students into small groups that must create a structure for class governance more democratic than the "monarchical" version with the teacher as primary authority. Students individually develop their own set of procedures and a rationale for them and then try to persuade one another to adopt their plan. Afterwards, they reflect on the process of trying to identify better systems of governance and of persuading others of their suggestions (George Washington's Mount Vernon n.d.).

While these practices would be seen by teachers and education researchers as an example of Jean Piaget's constructivist pedagogy theories (the idea that children construct knowledge and come to understand the world through experiential and social interactions; 1973), performance scholars will recognize that these exercises also depend on what Scott Magelssen has parsed as "simming," or the use of theatre and performance practices "in which participants play out a scripted or improvised narrative in order to gain or produce understanding of a situation and its context" (2014:3). The "knowledge construction" process that Piaget theorized depends—in these examples—on implementing the subjunctive procedures of performance world-making. Students behave "as if" they are trying to advance a set of philosophical values ("all men are created equal") or protect certain economic conditions (like slavery) regardless of whether they personally identify with these, and then actually attempt to develop governance policies and procedures around them. Consciously or not, these exercises also develop standard acting skills like the analysis of given



Figure 4. Middle-school children in costume reenact the Constitutional Convention. (Courtesy of George Washington's Mt. Vernon)

circumstances, character traits, objectives and barriers, rhetorical subtext, key events and turning points in a narrative, and relationship dynamics. Students then inhabit "characters" based on these analyses, all with a view to "educate, persuade, indoctrinate, or transform participants by exposing them to history, culture, or a looming time to come" (Magelssen 2014:3).

Magelssen warns that simming, like other performance activities, can enable liberatory effects, but can also "function as intensive propaganda, immersive baptisms of a nation's most impressionable citizens into partisan histories of that nation's events" (3). To a great extent, this peril lies in the significant power that subjunctive world-making has to form the self. Piaget advocated for constructivist pedagogies because the experiential knowledge they enabled was the form most likely to be internalized and acted on by the child.

The possibilities of constructivist self-making carry enormous implications for the political contours of the US. One of the most critical pillars for this revolves around the slaveholding origins of the US—and students' reflection on that fact—which comprises a core element of K–12 Constitution pedagogies. In convention reenactments, students are often assigned framers, told their framer's slaveholding status (or opposition to it), and are asked to research the impact of that status on their positions in the Constitutional Convention and to present those arguments as their own. This practice is now significantly constrained by the introduction of anti-CRT (critical race studies) legislation in local and state jurisdictions across the US. As of March 2026, anti-CRT measures have been passed at the state level in 30 states, at the local level in another 4, and in school districts in an additional 10 (including in "blue" states like California, Washington, and New York).[14] Given that so many teachers now work in locations where they potentially cannot even raise the existence of the three-fifths clause without threat of job loss, attempts at historical obfuscation like the congressional editing of the Constitution are reinforced and exacerbated in the very institutional spaces where they might be challenged.

14. For a full, up-to-date list of states and localities with anti-CRT legislation, please consult the CRT Forward project from UCLA's School of Law Critical Race Studies Program last updated in August 2024 (see UCLA 2021), and its update from October 2024 (UCLA 2024).

The implications of these measures are intensified by the very significant weight that the Framers' Constitution is given in K–12 pedagogical structures, which heavily subordinate the post-1791 amendments and the tidal wave shifts they enabled in jurisprudence, individual rights, and national identity. Students are eventually introduced to these later amendments (i.e., the Eleventh and beyond), but these tend to be covered via rather cursory glosses of major historical events like Reconstruction, Prohibition and its repeal, voting rights for women, and so forth. This disparity is especially acute in the introduction of the post–Civil War or Reconstruction amendments, which often are barely covered. The basic provisions of the Thirteenth, Fourteenth, and Fifteenth Amendments effectively inaugurated a new legal framework for the US, so much so that some historians argue they effectively mark the start of a "Second American Republic" restructured around emancipation, citizenship, and voting rights (Foner 2019; Downs 2019). These massive shifts in the US legal framework generally are not covered in significant detail, and certainly lack the level of personal immersion afforded by the various pedagogical investments in the Framers' Constitution.

There are several reasons for this lapse, many of them stemming from poor coverage of Reconstruction in US history curricula. In most secondary education contexts, students learn US history in two years—8th and 11th grades. In 8th grade, when children are age 13 to 14, students learn the precolonial history of North America through to the Civil War. The Civil War tends to be covered towards the end of the school year with the result that Reconstruction, if handled at all, is often rushed, compressed, and glossed over, and complex topics like the structure and political context of the amendments or the exclusion of Indigenous peoples from them—let alone the failure to ensure full legal and political rights to Black people despite their passage—is barely covered. There is quite simply no time for anything like the complex and detailed experience simulations that mark instruction on the Constitutional Convention, despite the fact that the Reconstruction amendments were crucial to the expansion of political enfranchisement in the 19th century and beyond. These amendments were marked by political debates and contexts every bit as complex and important to current forms of social and legal conflict, and remain the backbone of democratic civil legal rights today. Students don't come back to US history until 11th grade, three years later, at which point the curriculum picks up with the *end* of Reconstruction, and teachers frequently omit it altogether in favor of the historical dynamics around industrialization and urbanization, immigration and hostility towards it, Progressive Era reforms, and so forth.

To the extent that students are exposed to Reconstruction at all, they are usually only exposed at 13–14 years old, and so may not yet have the cognitive, intellectual, or social sophistication to handle the complexities raised by this period, let alone the complicated legal debates and frameworks that were created around them. Unless students take advanced college preparatory classes like Advanced Placement or International Baccalaureate, they may well never return to these events. To the extent that they revisit the social, political, or legal questions raised by the Reconstruction amendments, it's generally through the legal histories of the mid-20th century Civil Rights movement. These practices go a long way towards explaining the fact that when most Americans think of "the Constitution" they usually think of the image of its signing in the 18th century (most vividly via Howard Chandler Christy's 1940 painting that is a mainstay of US history textbooks) and of the rights covered in its first 10 amendments.

These curricular structures reinforce what historian Gregory P. Downs (2019) has called the tendency to see the Civil War as a fundamentally restorative event with constitutional continuity at its core, rather than as an event that ended a first American republic founded in slavery and inaugurated a second republic structured around its abolition. Downs observes that the Thirteenth, Fourteenth, and Fifteenth Amendments were only successfully ratified in former slaveholding states through the threat of martial law, a fact that detractors and supporters alike used to claim their revolutionary status. The changes wrought by these amendments ushered in not just a new jurisprudential framework, but a new Senate, House, and Supreme Court, and even a widely expanded map



Figure 5. Howard Chandler Christy, Scene at the Signing of the Constitution of the United States *(1940), which currently hangs in the east stairwell of the US House of Representatives. (Public domain)*

of the country.[15] As Downs phrases it, "to acknowledge the birth of a Second Republic"—in other words, to see the Reconstruction amendments as inaugurating a national political and legal framework distinctive and separate from that of the republic enshrined in the framers' Constitution—is "to abandon the myth that the Constitution saved the United States" (2019:4). The political implications of this suppression are significant:

> A just-so story of constitutional resilience anchors a hopeful, false vision of the future, a promise that having survived civil war in its past, the nation can survive its present. This optimistic view reassures us that American politics is meant to be safe and reliable, an ahistorical dreamtime free from the horrors that dissolve other nations. (4)

Compounding the ahistorical faith-like attachment to constitutional resilience that these practices cultivate is their obscuring of the series of subsequent "American republics": the New Deal republic, the Civil Rights republic, the neoliberal republic—even the possibility of a "unitary executive" republic, with the Constitution still claimed at its core even as its most fundamental democratic structures are dismantled, ignored, or suppressed.

Heidi Schreck's Veneration Intervention

Heidi Schreck's *What the Constitution Means to Me* intervenes in precisely this contested field. The show intertwines a performance of civics pedagogy with a series of anecdotes on the ways women, Black, Indigenous, and non–gender conforming people are functionally excluded from legal protections in the US, often in lethal ways. The first two-thirds of the show recreates Schreck's adolescent

15. Downs asserts, "By the time the Republicans were finished in 1872, the nation's map, House, Senate, Supreme Court, and Constitution were all permanently different" (2019:15).



Figure 6. Rosdely Ciprian debating Heidi Schreck in What the Constitution Means to Me*, Helen Hayes Theater, 2019. (Photo by Joan Marcus)*

career in the constitutional knowledge competition circuit hosted by the American Legion, during which Schreck reperforms her own high school speech of the play's title.[16] The last third stages a school debate between Schreck and an actual high school student on the question of whether the Constitution should be abolished and replaced, with audience members serving as the debate judges. The show's stage popularity led to the creation of an Amazon Prime recording that dropped in 2020, and in the year prior to the 2024 election was the most frequently produced show in the regional theatre repertoire.[17]

Despite repeated reassurances of her own deep reverence and abiding love for the Constitution, Schreck actually intervenes in the conventions of constitutional veneration in her show. She focuses on the Reconstruction amendments, dramatizes the successes and failures of high school civics training, calls for a restructuring of the current "rights" framing in the US, and illustrates the constraints that would shape such efforts.

Schreck cannily eschews the framers' amendments in the Bill of Rights (which easily would have furnished her with material to discuss hot-button issues from gun control to abortion to speech and assembly rights) and instead focuses the audience on the Reconstruction Constitution. In a segment of the American Legion competition in which participants draw an amendment from a coffee can, recite it from memory, and explain its content via personal anecdotes, Schreck pulls the Fourteenth

16. The American Legion is the organization of war veterans established in 1919 that created the forerunner to the contemporary Veteran's Administration and also created legal codes geared to prevent protest activities involving the US national flag.

17. *What the Constitution Means to Me* was first developed for Clubbed Thumb's new play festival in the summer of 2017 and had a major regional theatre premiere at Berkeley Repertory Theatre in 2018. It had an off-Broadway production at the New York Theater Workshop in fall of 2018 and moved to Broadway at the Hayes Theater in spring 2019, a film of which became available on Amazon Prime in October 2020.

Amendment, one of the most important and legally influential of the Constitution. Ratified in 1868, the Fourteenth is sometimes referred to as a mini-Constitution, designating citizenship and its protections for freed slaves (especially in Confederate states where evolving postwar Black Codes sought to deprive them of these). As Schreck notes, its key provisions include the privileges and immunities of citizenship, due process rights, and equal protection, all of which took direct aim at the Black Codes by explicitly requiring states to provide access to these protections for all citizens regardless of identity.[18] Schreck points out that the amendment is the key constitutional provision used to desegregate the US, prohibit gender discrimination, create birthright citizenship, and ensure equal voting rights and sexual privacy in the 20th and into the 21st century (all of which are currently imperiled). Every Supreme Court term includes cases requiring the interpretation of the Fourteenth Amendment (Foner 2019:xxi); in Downs's words, "no other amendment—no provision of the Constitution—affects jurisprudence and daily life so powerfully" (Downs 2019:46).

Schreck also elaborates, however, that in its original framing the Fourteenth Amendment also explicitly limited the privileges and protections of citizenship to men and excluded Indigenous Americans from those protections. Although Schreck does not address this in the show, the amendment also limits these protections to citizens, leaving noncitizen residents with many fewer constitutionally protected rights. She uses the conventions of the American Legion competition to stress two major failures of the amendment: the ongoing failure to secure these protections (especially for women), and the insufficiency of educational strategies to confront these problems. Building on the competition's mandate that contestants provide a personal connection to the amendment each draws, she stages a series of disruptions in the competition format in the form of personal narrative and historical detail, and contextualizes these stories within a stream of statistics on domestic violence in the US: "four women are murdered every day in this country by a male partner. One in four girls will be sexually abused before they turn eighteen. One in four women will be raped by the time they are my age now. And ten million American women live in violent households" (2020b:37).

Schreck insists that this epidemic of violence against women means that they are still—as they were at the time of the Fourteenth Amendment's ratification—stripped of the equal protection rights due to them. To underscore this point, she caps these histories with the harrowing 2005 domestic violence case *Castle Rock v. Gonzales*, in which the local police in Castle Rock, Colorado, failed to uphold a restraining order against a violent ex-husband, allowing him to murder his three daughters despite their mother's desperate pleas for their protection. The police department lost the initial case but appealed to the Supreme Court, who in a 7–2 opinion penned by Antonin Scalia determined that demands on police to make decisions in the moment outweighed their obligation by state law to protect Gonzales and her daughters (545 US 748 [2005]). The decision effectively gutted Colorado's law on restraining orders, the 1994 Violence Against Women Act, and the potential of the Fourteenth Amendment to ensure the civil rights of women. (For readers attentive to the events of 6 January 2021, the voice in the production of the attorney for the Castle Rock police station is John Eastman, who later drafted the legal memo attempting to convince Vice President Mike Pence to overturn the results of the 2020 presidential election [Shivaram 2022]).[19]

18. The first clause of the Fourteenth Amendment reads, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws" (US Const. amend. XIV, § 1).

19. The 1994 Violence Against Women Act was the first federal legislation designed to comprehensively address violence against women. Among its provisions were mandates not just to enforce protection orders like Gonzales's, but to do so across state lines, to provide these protections for noncitizen residents of the US, to focus on underserved populations (including Indigenous women), to increase penalties for violent crimes against women, and to create the Department of Justice's Office on Violence Against Women (OVW). In the 15 years after the law's passage, stalking was defined as criminal behavior in several states for the first time, date and spousal rape laws were tightened, and intimate partner crime declined by more than 50% (Women's Legal Defense and Education Fund n.d.).

These anecdotes comprise extensive asides in which the adult Schreck breaks the reenactment framework of the adolescent competitions. They dramatize how pedagogical performances like the American Legion competition cannot manage or contain these histories of violence—they spill out all over, disrupting the competition's progress and operation. The onstage male moderator—one of the host's Legionnaires—repeatedly interrupts Schreck's long, winding stories to try to constrain her within the competition rules, only to have the anecdotes reemerge—the devastation they record butting into and unsettling the competition rules over and over again—messy and unruly. Eventually, the Legionnaire himself can no longer prevent the irruptions and leaves the stage altogether. Once the Legionnaire effectively disappears from the stage, so does the competition defending the Constitution, leaving only the stories of its failures to reverberate.

Schreck uses the history and statistics around the failure to protect women's lives to demonstrate the insufficiency of pedagogical structures designed to correct them. In the last third of the show, she debates actual high school students on the question of replacing the current US Constitution. With audience members encouraged to applaud or boo, Schreck and a rotating cast of teen performers engage in an extraordinarily lively and vigorous debate over whether the Constitution should be abolished. Their arguments follow fairly predictable lines. Arguments to retain the Constitution focus less on defending the strengths of the current document and more on the likely liabilities of drafting a new one, particularly around the fact that the people in charge of determining a new Constitution would almost certainly be largely of the same demographic as those behind the current one, and would shape it to protect the same racial and gendered interests. Both sides echo the likely progressive political losses of abolishing the Constitution—gay marriage, reproductive rights, and desegregation all gone in significant regions of the country. Both also echo Timothy Snyder's point that democracy isn't guaranteed by a piece of paper but must be enacted by regular members of society all the time, and that a more democratic Constitution on its own will be meaningless without active protection and reinforcement by the population it represents (2017:22–25).

Schreck uses the failures to enforce constitutional rights to call for a restructuring of US jurisprudence around the model of positive rights. She points out that the Constitution legally enshrines "negative" rights—ones that protect individuals from excess governmental force or encroachment, focused on preventing obstacles, barriers, or restraints to democratic exercise. An artifact of modern democracy's origins in concerns about excessive monarchical power, the negative rights framing of the Constitution has often been used as the basis for barriers to equal rights (like those of the Fourteenth Amendment), inhibiting progress on this front. Schreck passionately asserts that the retention of the negative-rights framework of the Constitution "perpetuates white supremacy, misogyny, and violence," and calls for a positive-rights Constitution designed to "actively rectify the inequality at the heart of this country and to actively protect human rights" (2020b:74).

The scenography of *What the Constitution Means to Me*, however, illuminates how historical institutional structures constrain attempts to reframe civic life. Schreck's discussion of the limits of the Fourteenth Amendment and the debate over the abolition of the Constitution unfold within an interior of the American Legion. Three walls containing the portraits of 163 veterans, all men, mostly white, gaze down on Schreck and her fellow castmates. That these debates occur under the gaze of men who quite literally fought with their lives to protect the legal frameworks Constitution—in both its protective and also its violently exclusionist senses—is one of the central visual ironies of the show. Designer Rachel Hauck intentionally created the set's panoptic intensity, remarking, "I admit I made her a pretty merciless environment. I think it's the meanest set I've ever designed" (in Weinert-Kendt 2019). Schreck at one point describes how much she longs to do away with the veteran's portraits ("I wish we could have one of those Broadway set changes that could just take all of this away" [2020b:52]), but to no avail. The stubborn visual palimpsest reminds viewers that any debates about constitutional reform or replacement will inescapably occur—literally or figuratively—within contexts like the American Legion. It serves as a visual

reminder of Downs's observation that "assumptions about [constitutional] continuity shape how people see the country and how scholars analyze its past. These assumptions constrain our political history and our political imagination" (2019:14).

As a demonstration of this dilemma, the debate segment of *What the Constitution Means to Me* concludes by having a randomly selected audience member determine whether the Constitution should be retained (2020b:75). The closing credits for the Prime version note that in the 183-performance Broadway run of the show, only 57 audiences—fewer than one-third—voted to abolish the Constitution (Schreck 2020a:1:39:06).

Constitutional Performativity and the Overton Window

The production history of *What the Constitution Means to Me* had quite impressive timing relative to national legal contexts. Its Broadway opening followed Brett Kavanaugh's Supreme Court confirmation hearings by six months and its Prime debut in October 2020 coincided with those for Amy Coney Barrett. The questions Schreck raises regarding the failure to protect women from epidemic levels of violence resonated loudly in that context. But the show—and its lapses—read much differently in 2026.

Two of the show's primary lapses resonate strongly in the contemporary landscape. The first is its almost forcedly cheery optimism that the Constitution could somehow itself protect democratic operations, despite questions the show raises on exactly that point. As has been repeatedly demonstrated in the past year, upholding even the formal institutionalized structures of the Constitution depends on a set of operational norms (or a kind of tacit institutional social compact) that are not statutorily established and so are essentially unenforceable.

The show also doesn't—and likely couldn't—foresee the scale of democratic reversals the US is now undergoing. *What the Constitution Means to Me* is centrally preoccupied with expanding and strengthening the kinds of positive rights protections that emerged from the third New Deal and fourth Civil Rights republics. The emerging fifth republic seems bent on rolling back the rights of not just these later republics, but of the second republic (especially regarding birthright citizenship, due process, and equal protection rights—all legacies of the Fourteenth Amendment), and perhaps even the first. The current attempts to suppress campus speech, subordinate Congress, and end the independence of the federal judiciary imperil the foundational structures that are the essential condition of all other democratic possibility. The creation of a positive rights judicial framework depends on the institutional structures of that first republic—no independent judiciary, no Congressional oversight, no speech rights, then no positive rights, especially as they pertain to any even remotely marginalized group. The latter simply depend on the robust institutional operations of the former.

The desire to fight against and unmake the veneration tendencies of the constitutional repertoire—especially as it upholds the fantasies and exclusions of liberal democracy—should avoid underestimating the gravity and peril of the current moment. To put this another way, while we might be tempted to see democracy as yet another neoliberal fantasy (see Dean 2009), we should not ignore the very real dangers that failing to protect it would intensify. One not-uncommon observation of this moment is that it simply proves that the US legal system has only ever served to terrorize people of color and its protective capacity has only ever served white interests. In this view, to defend concepts of democracy now is also to defend those ongoing practices. There is unquestionably ample evidence of the failures of US legal institutions to fully uphold the legal rights of its marginalized peoples, to say nothing of the even more precarious or nonexistent rights of noncitizen residents. These examples demonstrate massive structural failures in the operation of democracy in the US. However, the assertion that these failures indicate the failure of democracy *as a whole* rests on a totalizing sensibility that denies the very real gains that were made on this front in the mid-20th century, partly on the basis of the Reconstruction amendments. It assumes that failures to rid legal institutions of structural racism entirely somehow mean that the civil rights republic was in effect the *same* as the Jim Crow republic, or that *de facto* and *de jure* segregation

or discrimination are effectively coextensive with one another. These assertions also sidestep the question of whether allowing democracy—with its many flaws and shortcomings—to collapse will somehow improve the conditions of people whom the law has abandoned or failed to protect. The absence of a democratic state will not, for example, prevent the kinds of carcerality or economic desperation that have stripped so many people living within the US of their rights, dignity, and lives. If anything, as we are already seeing, it will intensify these effects.

To take one recent example of this, when Kristi Noem, Secretary of the Department of Homeland Security, defined the right of habeas corpus during her 20 May 2025 Congressional testimony as "a constitutional right that the president has to be able to remove people from this country" she was roundly mocked for the profound ignorance of this statement (Neuman 2025). However, her claim was not merely appallingly ignorant, shocking as it was, nor even simply a revelation of the American republic's legal operations all along. In its full extent, it is—as has repeatedly been a central tactic of those in the MAGA orbit—a performative act that energetically remakes the Overton Window around deportation, executive power, and constitutionality writ large (see Mackinac Center 2019). In the postfact world built relentlessly over the past 25 years, claims like Noem's simply are not subject to the rules of constative utterance—they are not intended to reflect (or not) a set of already extent and verifiable truths. They *make* something. In a context in which the actual content of the Constitution fails to have broad public awareness, there is no mechanism by which to contest—let alone counteract—the extralegal expansion of executive power in Noem's claim in any meaningful social sense.

The following story drives this point home. Chillingly, in early August 2025 the Library of Congress was caught having deleted entire segments of Article 1 from its "Constitution Annotated" website, developed specifically as an education resource on the Constitution (Whittaker and Davis 2025). Article 1 sets up and outlines the powers of Congress, and large parts of Section 8 as well as the entirety of Sections 9 and 10 had simply disappeared. Reddit users began writing about the missing text on August 6 and using the Wayback Machine traced the deletions to mid-July. As one online commenter parsed it, "They didn't amend the Constitution. They didn't debate it in Congress. They just erased two of the most protective sections; the ones that deal with habeas corpus, limits on federal power, and Congress's sole authority to set tariffs" (wesjulieorth 2025). The story of the deletions was picked up by outlets like *Axios*, *Rolling Stone*, and Fox's "Live Now," but was notably absent from "paper of record" outlets like *The Washington Post* and *The New York Times*. To debunk the point that the deletions were governmental in nature, some sites presented the story as fact-checking the question "Did President Trump 'Remove' Parts of the Constitution?," which was then framed as a *false* claim on the argument that complete copies of the Constitution still circulated on websites run by the National Archives and the National Constitution Center, and that the directive to remove the material hadn't come from the president (Miller 2025 and Putterman 2025). The Library of Congress quickly restored the missing material once journalists began writing about it, but despite official requests for information from members of the House of Representatives gave no explanation of how the text had come to disappear other than to claim a coding error (Takano 2025).

In this setting, the constitutional performance repertoire—and its reform—is not simply an anodyne centrist fantasy of US political and social life. It is an essential political foundation.

References

Anderson, Ben. 2009. "Affective Atmospheres." *Emotion, Space, and Society* 2, 2:77–81. www.sciencedirect.com/journal/emotion-space-and-society/vol/2/issue/2

Arendt, Hannah. (1963) 2016. *On Revolution*. Faber & Faber, Limited.

Beck, Peter. 2019. "The Parts We Skip: A Taxonomy of Constitutional Irrelevancy." *Constitutional Commentary*, University of Minnesota Law Review. Accessed 13 August 2023. https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=2200&context=concomm

Bellah, Robert N. 1967. "Civil Religion in America." *Dædalus, Journal of the American Academy of Arts and Sciences* 96, 1 (Winter):1–21.

Blum, Rachel M. 2020. *How the Tea Party Captured the GOP: Insurgent Factions in American Politics*. University of Chicago Press.

Broadwater, Luke. 2023. "House G.O.P. Leads Constitution Read-Along, Seeking an Edge on Patriotism." *New York Times*, 7 February. www.nytimes.com/2023/02/07/us/politics/house-republicans-constitution-patriotism.html

Byrd, Robert. 2004. "Celebrating the Constitution." *Congressional Record* 150, 113 (20 September). Accessed 23 July 2023. https://www.congress.gov/congressional-record/volume-150/issue-113/senate-section/article/S9371-2

Canning, Gabrielle. 2024. Research assistance on Congressional recitations 2011-2023, unpublished research notes.

Caplan, Jane. 2019. *Nazi Germany: A Very Short Introduction*. Oxford University Press.

Chambers-Letson, Joshua. 2013. *A Race So Different: Performance and Law in Asian America*. New York University Press.

Chemerinsky, Erwin. 2024. *No Democracy Lasts Forever: How the Constitution Threatens the United States.* Liveright Publishing.

Childers, Thomas. 2017. *The Third Reich: A History of Nazi Germany.* Simon & Schuster.

Cole, Catherine M. 2010. *Performing South Africa's Truth Commission: Stages of Transition*. Indiana University Press.

Congressional Record. 2011. 6 January. 157, 2 [Pages H53–H62]. https://www.congress.gov/congressional-record/volume-157/issue-2/house-section/article/H53-1

C-SPAN. 2011. "U.S. House of Representatives. Members of the House read the Constitution aloud beginning at 11:00 a.m." 6 January. Accessed 5 August 2023. https://www.c-span.org/video/?297341-1/house-session

Danielson, Leilah. 2019. "Civil Religion as Myth, Not History." *Religions* 10, 6:373–92.

Dean, Jodi. 2009. *Democracy and Other Neoliberal Fantasies: Communicative Capitalism and Left Politics*. Duke University Press.

DeLyser, Dydia. 2005. *Ramona Memories: Tourism and the Shaping of Southern California*. University of Minnesota Press.

Downs, Gregory P. 2019. *The Second American Revolution: The Civil War-era Struggle over Cuba and the Rebirth of the American Republic*. University of North Carolina Press.

Foner, Eric. 2019. *The Second Founding: How the Civil War and Reconstruction Remade the Constitution*. W.W. Norton & Co., Inc.

Fliegelman, Jay. 1993. *Declaring Independence: Jefferson, Natural Language, and the Culture of Performance.* Stanford University Press.

George Washington's Mount Vernon. n.d. "A Classroom Constitutional Convention." Accessed 20 September 2023. https://www.mountvernon.org/education/for-teachers/lessonplans/lesson/a-classroom-constitutional-convention

Lepore, Jill. 2025. *We the People: A History of the US Constitution*. Liveright Publishing.

Levin, Laura. 2023. "Nice Safe Spaces: The Backstage Politics of Cynicism in *Succession*." Paper presented as part of the Political and Performance Theory working group. ASTR annual conference, Providence, RI.

Lithwick, Dahlia. 2011. "Constitutional Whitewash: What House Republicans left out when they read (parts of) America's founding document." *Slate*, 6 January. Accessed 9 August 2023. https://slate.com/news-and-politics/2011/01/what-house-republicans-left-out-when-they-read-parts-of-america-s-founding-document.html

Litwicki, Ellen M. 2000. *America's Public Holidays, 1865–1920*. Smithsonian Institution Press.

Mackinac Center. 2019. "The Overton Window." Accessed 25 January 2026. https://www.mackinac.org/OvertonWindow

Magelssen, Scott. 2014. *Simming: Participatory Performance and the Making of Meaning.* University of Michigan Press.

Miller, Heather. 2025. "Why parts of the Constitution went missing from US government website." *Fox Live Now*, 7 August. www.livenowfox.com/news/constitution-missing-library-congress-website

Neuman, Scott. 2025. "DHS secretary misstates meaning of habeas corpus under Senate scrutiny." *NPR*, 20 May. Accessed 18 July 2025. www.npr.org/2025/05/20/nx-s1-5405144/habeas-corpus-noem-dhs-senate

Piaget, Jean. 1973. *Psychology and Epistemology: Towards a Theory of Knowledge*. Allen Lane.

Putterman, Samantha. 2025. "Fact Check: Were Parts of the Constitution 'Removed' by the Trump Administration?" WRAL News, 14 August. www.wral.com/story/fact-check-were-parts-of-the-constitution-removed-by-the-trump-administration/22118924/

QMUL School of Law. 2024. "Critical Legal Talk Series: 'Reparative Democracy.'" YouTube, 10 April. A talk by Wendy Brown. www.youtube.com/watch?v=MuHnyGPJD8c

Rana, Aziz. 2024. *The Constitutional Bind: How Americans Came to Idolize a Document that Fails Them*. University of Chicago Press.

Schreck, Heidi. 2020a. *What the Constitution Means to Me*. Amazon Prime. Dir. Marielle Heller. Accessed 15 December 2020. https://www.amazon.com/What-Constitution-Means-Me/dp/B08KRB3FQ4

Schreck, Heidi. 2020b. *What the Constitution Means to Me*. Theatre Communications Group.

Shivaram, Deepa. 2022. "Who is John Eastman, the Trump lawyer at the center of the Jan. 6 investigation?" *NPR*, 17 June. Accessed 17 June 2025. https://www.npr.org/2022/06/17/1105600072/who-is-john-eastman-the-trump-lawyer-at-the-center-of-the-jan-6-investigation

Snyder, Timothy. 2017. *On Tyranny: Twenty Lessons from the Twentieth Century*. Crown Books.

Steinhauer, Jennifer. 2011. "The Constitution Has its Day (More or Less) in House." *New York Times*, 6 January. Accessed 11 August 2023. https://www.nytimes.com/2011/01/07/us/politics/07constitution.html#:~:text=The%20reading%20of%20the%20full,the%20Constitution%20that%20justifies%20its

Strict Scrutiny. 2024. "A Terrible, Horrible, No Good, Very Bad Term." *Crooked*, 8 July. Accessed 15 August. https://crooked.com/podcast/a-terrible-horrible-no-good-very-bad-term/

Strict Scrutiny. 2025. "SCOTUS clears the way for Trump's lawlessness." *Crooked*, 27 June. Accessed 8 July. https://crooked.com/podcast/scotus-clears-the-way-for-trumps-lawlessness/

Students of History. n.d. "Alexander Hamilton: Lesson Plan for the Musical." Accessed 15 September 2023. https://www.teacherspayteachers.com/Product/Alexander-Hamilton-Lesson-Plan-for-the-Musical-2284173

Sturgis, Sue. 2010. "From prejudice to progress: The political evolution of Sen. Robert Byrd." *Facing South*, 28 June. www.facingsouth.org/2010/06/from-prejudice-to-progress-the-political-evolution-of-sen-robert-byrd.html#:~:text=Too%20poor%20to%20attend%20college,Martin%20Luther%20King%20Jr

Takano, Mark. 2025. "Library of Congress Erases Parts of Constitution from Website, Rep. Takano Demands Answers." Letter to Acting Librarian of Congress Robert Newlen. Takano.house.gov, 6 August. https://takano.house.gov/imo/media/doc/loc_-_constitution_annotated_letter.pdf

Taylor, Diana. 2003. *The Archive and the Repertoire: Performing Cultural Memory in the Americas*. Duke University Press.

Tribe, Laurence H. 2008. *The Invisible Constitution*. Oxford University Press.

Tucker, Ellen. 2022. "Reenacting the Constitutional Convention." Teaching American History, 8 February. Accessed 15 September 2023. https://teachingamericanhistory.org/blog/eighth-graders-reenact-the-constitutional-convention/

UCLA Critical Race Studies Program. 2021. "CRT Forward." Accessed 10 August 2023. https://crtforward.law.ucla.edu/map/

UCLA Critical Race Studies Program. 2024. "CRT Forward Trends as of 2024." 31 October. Accessed 26 February 2026. https://crtforward.law.ucla.edu/crt-forward-trends-as-of-october-2024/

Wegman, Jesse. 2024. "The Crisis in Teaching Constitutional Law." *The New York Times*, 26 February. www.nytimes.com/2024/02/26/opinion/constitutional-law-crisis-supreme-court.html

Weinert-Kendt, Rob. 2019. "A Set as 'Intense' as the Stories the 'Constitution' Tells." *New York Times*, 24 April. www.nytimes.com/2019/04/24/theater/what-the-constitution-means-to-me-set.html

Weinert-Kendt, Rob. 2024. "The Top 10 Most-Produced Plays of the 2024-25 Season." *American Theatre*, 25 September. www.americantheatre.org/2024/09/25/the-top-10-most-produced-plays-of-the-2024-25-season/

Wesjulieorth. 2025. Threads post, 6 August. www.threads.com/@wesjulieorth/post/DNBYjUavGwz/breaking-the-official-us-government-website-has-quietly-removed-sections-9-and-1

Whittaker, Zack, and Dominic-Mardori Davis. 2025. "Key sections of the US Constitution Deleted from Government's Website." *TechCrunch*, 6 August. https://techcrunch.com/2025/08/06/key-sections-of-the-us-constitution-deleted-from-governments-website/

Women's Legal Defense and Education Fund. n.d. Accessed 27 February 2025. www.legalmomentum.org/history-vawa