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THE THREAT OF TRIBALISM

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The Constitution once united a diverse country under a banner of ideas. But partisanship has turned Americans against one another—and against the principles enshrined in our founding document.

Editor's Note: This article is part of a series that attempts to answer the question: Is democracy dying?

The U.S. Constitution was and is imperfect. It took a civil war to establish that the principles enumerated in its Bill of Rights extended to all Americans, and the struggle to live up to those principles continues today. But focusing on the Constitution's flaws can overshadow what it did achieve. Its revolutionary ambition was to forge, out of a diverse population, a new national identity, uniting Americans under a banner of ideas. To a remarkable extent, it succeeded.

Even at the country's founding, Americans were a multiethnic, polyglot mix of English, Dutch, Scots, Irish, French, Swedes, Italians, Germans, Greeks, and others. They tended to identify far more strongly as Virginians or New Yorkers than as Americans, complicating any effort to bind the new nation together with common beliefs. Early America was also an unprecedented amalgam of religious denominations, including a variety of dissenters who had been hounded from their Old World homes.

The Constitution managed to overcome these divisions. The way it dealt with religion is illustrative. Colonial America had not embraced tolerance; on the contrary, the dissenters had become persecutors. Virginia imprisoned Quakers. Massachusetts whipped Baptists. Government-established churches were common, and nonbelievers were denied basic civil and political rights. But in a radical act, the Constitution not only guaranteed religious freedom; it also declared that the United States would have no national church and no religious tests for national office. These foundational guarantees helped America avoid the religious wars that for centuries had torn apart the nations of Europe.

"Living in a society that was already diverse and pluralistic," Gordon Wood wrote in *The Radicalism of the American Revolution*, the founding generation realized that the attachments uniting Americans "could not be the traditional ethnic, religious, and tribal loyalties of the Old World." Instead, as Abraham Lincoln put it, reverence for the "Constitution and Laws" was to be America's "political religion." Americans were to be united through a new kind of patriotism—constitutional patriotism—based on ideals enshrined in their founding document.

The dark underside of that document, of course, was racism. Alone among modern Western democracies, the United States maintained extensive race-based slavery within its borders, and the Constitution protected that institution. Only after the cataclysm of the Civil War was the Constitution amended to establish that America's national identity was as neutral racially and

ethnically as it was religiously. With the postwar amendments, the Constitution abolished slavery, established birthright citizenship, guaranteed equal protection under the law, and barred racial discrimination in voting.

The significance of birthright citizenship cannot be overstated. We forget how rare it is: No European or Asian country grants this right. It means that being American is not the preserve of any particular racial, ethnic, or religious subgroup. The United States took another century to begin dismantling the legalized racism that continued unabated after the Civil War. Nonetheless, the core constitutional aspiration—in the 1780s, the 1860s, the 1960s, and the present—has been to create a tribe-transcending national identity.

When we think of tribalism, we tend to focus on the primal pull of race, religion, or ethnicity. But partisan political loyalties can become tribal too. When they do, they can be as destructive as any other allegiance. The Founders understood this. In 1780, John Adams wrote that the "greatest political evil" to be feared under a democratic constitution was the emergence of "two great parties, each arranged under its leader, and concerting measures in opposition to each other." George Washington, in his farewell address, described the "spirit of party" as democracy's "worst enemy." It "agitates the Community with ill-founded jealousies and false alarms, kindles the animosity of one part against another, foments occasionally riot and insurrection."

For all their fears of partisanship, the Founders failed to prevent the rise of parties, and indeed, it's hard to imagine modern representative democracy without multiparty electoral competition. They were right to be apprehensive, as is all too clear when you look at the current state of America's political institutions, which are breaking down under the strain of partisan divisions.

The causes of America's resurgent tribalism are many. They include seismic demographic change, which has led to predictions that whites will lose their majority status within a few decades; declining social mobility and a growing class divide; and media that reward expressions of outrage. All of this has contributed to a climate in which every group in America—minorities *and* whites; conservatives *and* liberals; the working class *and* elites—feels under attack, pitted against the others not just for jobs and spoils, but for the right to define the nation's identity. In these conditions, democracy devolves into a zero-sum competition, one in which parties succeed by stoking voters' fears and appealing to their ugliest us-versus-them instincts.

Video: America Has Always Been a Tribal Society

Amy Chua on tribalism and its effects

Americans on both the left and the right now view their political opponents not as fellow Americans with differing views, but as enemies to be vanquished. And they have come to view the Constitution not as an aspirational statement of shared principles and a bulwark against tribalism, but as a cudgel with which to attack those enemies.

Of course, Americans throughout history have criticized the Constitution. Progressives have tarred it as plutocratic and antidemocratic for more than a century. In 1913, in *An Economic Interpretation of the Constitution of the United States*, Charles A. Beard argued that the "direct,

impelling motive" behind the Constitution was not "some abstraction known as 'justice,' " but the "economic advantages" of the propertied elite.

In recent years, however, the American left has become more and more influenced by identity politics, a force that has changed the way many progressives view the Constitution. For some on the left, the document is irredeemably stained by the sins of the Founding Fathers, who preached liberty while holding people in chains. Days after the 2016 election, the president of the University of Virginia quoted Thomas Jefferson, the school's founder, in an email to students. In response, 469 students and faculty signed an open letter declaring that they were "deeply offended" at the use of Jefferson as a "moral compass." Speaking to students at the University of Missouri in 2016, a Black Lives Matter co-founder went further: "The people vowing to protect the Constitution are vowing to protect white supremacy and genocide."

Just a few decades ago, the cause of racial justice in America was articulated in constitutional language. "Black activists from Martin Luther King, Jr., to the Black Panthers," wrote the law professor Dorothy E. Roberts in 1997, "framed their demands in terms of constitutional rights." Today, the Constitution itself is in the crosshairs.

Many progressives, particularly young ones, have turned against what were once sacrosanct American principles. Freedom of speech is an instrument of the dehumanization of women and minorities. Religious liberty is an engine of discrimination. Property rights are a shield for structural injustice and white supremacy. In a recent poll, two-thirds of college-age Democrats said that "a diverse and inclusive society" is more important than "protecting free speech rights." Only 30 percent of Americans born in the 1980s believe that living in a democracy is "essential," compared with 72 percent of Americans born in the 1930s.

Several progressive organizations, including the ACLU, remain staunch defenders of the Constitution. At Yale Law School, where we teach, students working in our clinics have won important courtroom victories vindicating constitutional rights. But a significant generational shift appears to be in progress. One of our students told us: "I don't know any lefty people my age who aren't seriously questioning whether the First Amendment is still on balance a good thing."

On the right, open hostility to the Constitution is less common; most mainstream conservatives see themselves as proud defenders of the document. But majorities on the right today are nonetheless beginning to reject core constitutional principles.

President Donald Trump routinely calls the media "the enemy of the American people," and his view seems to have currency in his party. In a 2017 survey by the Pew Research Center, less than half of Republicans said that the freedom of the press "to criticize politicians" was "very important" to maintaining a strong democracy in the United States. In other 2017 surveys, more than half of Trump supporters said the president "should be able to overturn decisions by judges that he disagrees with," and more than half of Republicans said they would support postponing the 2020 presidential election if Trump proposed delaying it "until the country can make sure that only eligible American citizens can vote." If these views became reality, that would be the end of constitutional democracy as we know it.

The problem runs deeper still. Since the 2004 publication of Samuel P. Huntington's *Who Are We?*—which argued that America's "Anglo-Protestant" identity and culture are threatened by large-scale Hispanic immigration—there have been calls on the mainstream right to define America's national identity in racial, ethnic, or religious terms, whether as white, European, or Judeo-Christian. **According to a 2016 survey commissioned by the bipartisan Democracy Fund, 30 percent of Trump voters think European ancestry is "important" to "being American"; 56 percent of Republicans and a full 63 percent of Trump supporters said the same of being Christian. This trend runs counter to the Constitution's foundational ideal: an America where citizens are citizens, regardless of race or religion; an America whose national identity belongs to no one tribe.**

As professors specializing in constitutional law and comparative politics, we're often asked whether there's another country that could serve as a model for the United States as it attempts to overcome its divisions. We always respond no—America is the best model.

For all its flaws, the United States is uniquely equipped to unite a diverse and divided society. Alone among the world powers, America has succeeded in forging a strong group-transcending national identity without requiring its citizens to shed or suppress their subgroup identities. In the United States, you can be Irish American, Syrian American, or Japanese American, and be intensely patriotic at the same time. We take this for granted, but consider how strange it would be to call someone "Irish French" or "Japanese Chinese."

Most European and all East Asian countries originated as, and continue to be, ethnic nations, whose citizens are overwhelmingly composed of a particular ethnic group supplying the country's name as well as its national language and dominant culture. Strongly ethnic nations, such as China and Hungary, tend to be less embracing of minority cultures. But even a diverse, multiethnic democracy like France differs markedly from the United States. France has a powerful national identity but insists that its ethnic and religious minorities thoroughly assimilate, at least publicly. (Many believe that France's attempts to force assimilation, including its infamous "burkini" ban, have backfired with the country's Muslims, contributing to social unrest and radicalization.) As former French President Nicolas Sarkozy put it in 2016, "If you want to become French, you speak French, you live like the French, and you don't try and change a way of life that has been ours for so many years."

America is not an ethnic nation. Its citizens don't have to choose between a national identity and multiculturalism. Americans can have both. But the key is constitutional patriotism. We have to remain united by and through the Constitution, regardless of our ideological disagreements.

There are lessons here for both the left and the right. The right needs to recognize that making good on the Constitution's promises requires much more than flag-waving. If millions of people believe that, because of their skin color or religion, they are not treated equally, how can they be expected to see the Constitution's resounding principles as anything but hollow?

For its part, the left needs to rethink its scorched-earth approach to American history and ideals. Exposing injustice, past and present, is important, but there's a world of difference between saying that America has repeatedly failed to live up to its constitutional principles and saying

that those principles are lies or smoke screens for oppression. Washington and Jefferson were slave owners. They were also political visionaries who helped give birth to what would become the most inclusive form of governance in world history.