

CONSTITUTIONALISM AND THE COMMON GOOD

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These remarks, delivered upon receipt of the 2025 Joseph Story Award, reflect on the Founders' views of constitutionalism and of the common good, and how those ideas are relevant today. In contrast to modern approaches to constitutional law, the Founders had a more capacious understanding of constitutionalism—one that encompassed not only judicially enforceable law but also constitutional principles that constrained and guided ordinary politics. The most important of those principles was the common good—an idea staunchly opposed to political tribalism. In an era of entrenched judicial supremacy and escalating partisanship, it is worth remembering and reviving these critical features of our constitutional past.

Thank you. I'm humbled to join so many wonderful past honorees of the Story Award. And I'm especially glad that somebody's still paying attention to those of us who aren't on social media.

I write as a historian, and one of my favorite parts of the job is learning about how differently the Founders thought about the Constitution. I want to frame my remarks around two of those differences—one relating to their idea of constitutionalism and the other relating to the common good.

So, let's start with the idea of constitutionalism. We're used to thinking about the Constitution as a legal document—something

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that is principally up to judges to interpret and enforce.¹ And so we treat politics and constitutional law as separate domains.²

But the Founders had a different view. It's true that by the late 1780s many of them were open to the judicial enforcement of certain well-settled constitutional rules.³ But judicial review was only one piece of the puzzle.⁴

¹ See, e.g., *City of Boerne v. Flores*, 521 U.S. 507 (1997); *Cooper v. Aaron*, 358 U.S. 1 (1958); see also LARRY D. KRAMER, *THE PEOPLE THEMSELVES: POPULAR CONSTITUTIONALISM AND JUDICIAL REVIEW* 24 (2004) ("For us, the Constitution is a subset of law, and law is something presumptively and primarily, even if not exclusively, within the province of courts."). The political-question doctrine is the exception that proves the rule. Compare *Rucho v. Common Cause*, 588 U.S. 684, 718 (2019) (holding that partisan gerrymandering claims are not justiciable because judges lack manageable standards to assess those claims), with *id.* at 721 (Kagan, J., dissenting) ("For the first time ever, this Court refuses to remedy a constitutional violation because it thinks the task beyond judicial capabilities.").

² See KRAMER, *supra* note 1, at 24 ("In our world, there is law and there is politics, with nothing much in between."). Many authors have considered the law/politics distinction in terms of how much "politics" does or should influence "law." See generally Larry Alexander, *Law and Politics: What Is Their Relation?*, 41 HARV. J.L. & PUB. POL'Y 355 (2018).

By contrast, my interest in these remarks is whether constitutional concepts that lack legally determinate content should nonetheless constrain and guide decisions by political actors. Today, we generally treat such wholly "political" decisions as being left entirely to the discretion of politicians, unconstrained by legal norms. See Thomas C. Grey, *Constitutionalism: An Analytic Framework*, 20 NOMOS 189, 195 (1979) ("The American tendency to link legal constitutionalism with judicial review is reinforced by one school of positivist jurisprudence, which insists that the linkage is a conceptually necessary one—that constitutional norms not enforced in courts of law are by definition only extralegal norms." (emphasis in original)).

³ See, e.g., THE FEDERALIST NO. 78 (Alexander Hamilton). The Constitution expressly anticipates judicial review of state legislation by state judges. See U.S. CONST. art. VI, cl. 2 ("This Constitution . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby . . ."); see also Jack N. Rakove, *The Origins of Judicial Review: A Plea for New Contexts*, 49 STAN. L. REV. 1031, 1047 (1997) (noting the Framers' anticipation of judicial review of state legislation).

⁴ As Professor Larry Kramer observes, "[a]n argument to assign courts a role in enforcing the constitution may have been in the air, but it was hardly one that had achieved widespread notice or approbation so far as the general public was concerned or that could be called established." KRAMER, *supra* note 1, at 71; see also Daniel J. Hulsebosch, *Bringing the People Back In*, 80 N.Y.U. L. REV. 653, 674 (2005) ("Kramer succeeds in showing that these early instances of judicial review were marginal, and

Just consider Madison's *Federalist* 51, which was all about constitutional enforcement but didn't even mention judicial review.⁵ Instead, Madison was focused on institutional design—on things that shape political relationships and foster certain ways of

that when the institution first appeared judges portrayed it as yet another mode of vindicating popular sovereignty.”).

Moreover, even though many Founding-era elites accepted judicial review by 1787, they also tended to view fundamental law in ways that resembled ordinary law only in part. See JONATHAN GIENAPP, *AGAINST CONSTITUTIONAL ORIGINALISM: A HISTORICAL CRITIQUE* 156–59 (2024). For example, although social-contractarian principles (including those mentioned in declaratory provisions of written constitutions) were widely accepted as fundamental law, those principles were sometimes legally underdeterminate and thus subject to resolution principally—if not exclusively—through constitutional politics. See Jud Campbell, *Determining Rights*, 138 HARV. L. REV. 921, 934–36, 947 (2025); see also *id.* at 970–73 (discussing different views of the judicial enforceability of legally underdeterminate features of fundamental law).

The writings of Brutus and Alexander Hamilton are a case in point. Both men anticipated judicial review. See Brutus No. 11 (Jan. 31, 1788), reprinted in 15 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 512, 513 (John P. Kaminski et al. eds., 1984) (“[The Constitution] vests the judicial [branch] with a power to resolve all questions that may arise on any case on the construction of the constitution”); THE FEDERALIST NO. 78 (Alexander Hamilton) (embracing judicial review). But both men also agreed that written constitutional provisions were not *always* judicially enforceable. See Brutus No. 6 (Dec. 27, 1787), reprinted in 15 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION, *supra*, at 110, 115 (“It will then be matter of opinion, what tends to the general welfare; and the Congress will be the only judges in the matter.”); THE FEDERALIST NO. 83 (Alexander Hamilton) (“The minority of Pennsylvania have proposed . . . ‘trial by jury shall be as heretofore’—and this I maintain would be absolutely senseless and nugatory. . . . It would therefore be destitute of a precise meaning, and inoperative from its uncertainty.”); THE FEDERALIST NO. 84 (Alexander Hamilton) (“[W]hatever has been said about [the freedom of the press] in [state constitutions] amounts to nothing. . . . Who can give it any definition[?] . . . [I]ts security, whatever fine declarations may be inserted in any constitution respecting it, must altogether depend on public opinion, and on the general spirit of the people and of the government.”); see also Jud Campbell, *Judicial Review and the Enumeration of Rights*, 15 GEO. J.L. & PUB. POL’Y 569, 573 (2017) (“Questions ‘of mere expediency or policy’ simply were not amenable to judicial resolution.” (quoting Letter from James Madison to Spencer Roane (Sep. 2, 1819), in 1 THE PAPERS OF JAMES MADISON: RETIREMENT SERIES 500, 501 (David B. Mattern et al. eds., 2009))).

⁵ See THE FEDERALIST NO. 51 (James Madison).

thinking, certain norms.⁶ And his core insight is one that other Founders shared.⁷

That insight is that fidelity to the Constitution depends far more on constitutional culture, both within the government and in the public at large, and less on judicial enforcement.⁸ It requires that all citizens and all politicians—not just judges and lawyers—know

⁶ *Id.* (arguing that “the interior structure of the government” be designed so as to “keep[] each [branch] in [its] proper place[]” before addressing the separation of powers between the branches and then addressing the design of the legislative branch and the role of federalism); see also THE FEDERALIST NO. 57 (James Madison) (“The aim of every political Constitution is, or ought to be, first to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of the society; and in the next place, to take the most effectual precautions for keeping them virtuous whilst they continue to hold their public trust.”).

⁷ See, e.g., Theophilus Parsons, *The Essex Result* (1778), in THEOPHILUS PARSONS, MEMOIR OF THEOPHILUS PARSONS 359, 369 (Bos., Ticknor & Fields 1861) (“Let the supreme power be so disposed and ballanced, that the laws may have in view the interest of the whole[.]”); see also *infra* notes 8–11 (collecting sources). For work highlighting different understandings of the term “constitution,” see Mary Sarah Bilder, *The Emerging Genre of The Constitution: Kent Newmyer and the Heroic Age*, 52 CONN. L. REV. 1263, 1267 (2021) and JONATHAN GIENAPP, THE SECOND CREATION: FIXING THE AMERICAN CONSTITUTION IN THE FOUNDING ERA 7, 32–34, 40–41 (2018).

⁸ See Jonathan Gienapp, *Democratic Culture and Democratic Shocks: The Limits of Constitutional Cycles*, 86 MO. L. REV. 501, 504 (2021) [hereinafter Gienapp, *Democratic Culture*] (“At the Founding, commentators stressed time and again that republican political institutions could not stand alone; they could not endure unless Americans behaved like a republican people.”); KRAMER, *supra* note 1, at 71–72 (“For most [Americans], including most politicians and public leaders, the focus remained on traditional popular means of enforcing the constitution . . .”); DONALD S. LUTZ, THE ORIGINS OF AMERICAN CONSTITUTIONALISM 77 (1988) (“[T]here must be more than institutions for collective decision-making. There must be values, attitudes, and commitments—a mental stance, if you will—that lead people to frame their discourse, approach problems, and justify solutions in terms of the long-term community interests.”); see also, e.g., *Hortensius*, MASS. CENTINEL, Aug. 27, 1788, reprinted in 39 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 151, 152 (John P. Kaminski et al. eds., 2023) (“Our first and principal care ought to be, in being watchful of whom we trust . . . [I]f the representatives are virtuous, the people may live happy. But when the citizens neglect this great and important privilege . . . designing men may step into authority. . .”). For a discussion of the popular means of constitutional enforcement, see KRAMER, *supra*, at 24–34.

and care about the Constitution and its underlying principles.⁹ This is why the Founders were so obsessed with education, and with other ways of developing civic virtue, including religion.¹⁰ Promoting constitutional culture is also the primary argument that Madison offered in favor of having a bill of rights—which he said wouldn’t create new rights; it would just help “to establish the public opinion in their favor.”¹¹

⁹ See, e.g., NATHANIEL CHIPMAN, *SKETCHES OF THE PRINCIPLES OF GOVERNMENT* 152 (Rutland, J. Lyon 1793) (“To render the public sentiment a more rational, and a more powerful check upon every department of government, it is essential, that there be, in the constitution of every free state, an effectual provision for the dissemination of useful knowledge.”); see also Hulsebosch, *supra* note 4, at 679 (“Departmentalism could only function within a robust political culture that placed a premium on education, accessible public information, and vigorous public discussion.”); Ralph Ketcham, *Publius: Sustaining the Republican Principle*, 44 WM. & MARY Q. 576, 579 (1987) (“The Antifederalists paid particular attention to keeping legislatures in close contact with the people both to encourage public virtue in citizenry and to keep legislators attuned to the well-being of those for whom they made laws.”).

¹⁰ See Alan Gibson, *Ancients, Moderns and Americans: The Republicanism-Liberalism Debate Revisited*, 21 HIST. POL. THOUGHT 261, 298–99 (2000); Gienapp, *Democratic Culture*, *supra* note 8, at 506–08; Ketcham, *supra* note 9, at 578; LUTZ, *supra* note 8, at 87; FORREST McDONALD, *NOVUS ORDO SECLORUM: THE INTELLECTUAL ORIGINS OF THE CONSTITUTION* 71–73, 190–91 (1985); see also, e.g., Letter from John Adams to Mercy Otis Warren (Apr. 16, 1776), in 4 THE PAPERS OF JOHN ADAMS 124 (Robert J. Taylor ed., 1979) (“Such a [republican] Government is only to be supported by pure Religion, or Austere Morals. Public Virtue cannot exist in a Nation without private, and public Virtue is the only Foundation of Republics. There must be a possitive Passion for the public good, the public Interest . . . or there can be no Republican Government, nor any real Liberty.”). Belief in the importance of civic virtue was widely shared but not uniform. The Founders disagreed in various ways over the extent to which widespread civic virtue was necessary and attainable. For a brief historiographical discussion, see Gibson, *supra*, at 291–93.

¹¹ CONG. REGISTER (June 8, 1789), reprinted in 11 THE DOCUMENTARY HISTORY OF THE FIRST FEDERAL CONGRESS 818, 823 (Charlene Bangs Bickford et al. eds., 1992) (remarks of Rep. Madison); see COLLEEN A. SHEEHAN, *JAMES MADISON AND THE SPIRIT OF REPUBLICAN SELF-GOVERNMENT* 108–09 (2009); JACK N. RAKOVE, *ORIGINAL MEANINGS: POLITICS AND IDEAS IN THE MAKING OF THE CONSTITUTION* 334–35 (1996).

Other Founders constantly mentioned political safeguards as the principal way of securing rights. See, e.g., [James Kent], *A Country Federalist*, *POUGHKEEPSIE COUNTRY J.*, Dec. 19, 1787, reprinted in 19 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 430, 435 (John P. Kaminski et al. eds., 2003) (“[T]he uniform experience of history demonstrates that government founded on elective principles or on the broad

So, my first point is that the Founders had this much broader sense of what constitutionalism was all about. Judicially enforceable constitutional *law* was only part of a much bigger constitutional picture.

And that ties into the other concept that I want to mention: the common good. The common good was a central idea in Founding-era constitutionalism. As the Founders saw things, the political society itself was formed to advance the common good,¹² so that

basis of the people, never will violate the laws of justice and good order, unless the people are so stupid as to neglect their rights, or so corrupt as to countenance the conduct of a wicked administration.”); Virginia Ratification Convention Debates (June 12, 1788), in 39 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION, *supra* note 8, at 16, 16–17 (remarks of Edmund Pendleton) (“By this [representation] we preserve the great principle, of the primary right of power in the people, and should deviations happen from our interests, the spirit of liberty in future elections will correct it.—A security I esteem far superior to Paper-Bills of Rights. . . . We are finally safe while we preserve the representative character.”); [Noah Webster], *Giles Hickory*, N.Y. AM. MAG., Jan. 1, 1788, reprinted in 20 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 553, 554–55 (John P. Kaminski et al. eds., 2004) (“In our governments, there is . . . no power that has an interest detached from that of the public; consequently there is no power existing against which it is necessary to guard. While our Legislatures therefore remain elective . . . the rights of the people will be perfectly secure without any declaration in their favor.”); [Roger Sherman], *A Citizen of New Haven*, CONN. COURANT, Jan. 7, 1788, reprinted in 3 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 524, 524 (Merrill Jensen ed., 1978) (“The greatest security that a people can have for the enjoyment of their rights and liberties is that no laws can be made to bind them nor any taxes be imposed upon them without their consent by representatives of their own choosing, who will participate with them in the public burthens and benefits[.]”); N.Y. Ratification Convention Debates (June 21, 1788), in 22 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 1753 (John P. Kaminski et al. eds., 2008) (remarks of Melancton Smith) (“A representative body, composed principally of respectable yeomanry is the best possible security to liberty.”).

¹² See, e.g., Brutus No. 2 (Nov. 1, 1787), reprinted in 13 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 524, 525 (John P. Kaminski et al. eds., 1981) (“The common good, therefore, is the end of civil government, and common consent, the foundation on which it is established.”); N.Y. Ratification Convention Debates (June 27, 1788), in 22 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION, *supra* note 11, at 1937 (remarks of John Williams) (characterizing “the public good” as “the great end of all government”); Parsons, *supra* note 7, at 366 (“Each individual also surrenders the power of controuling his natural alienable rights, *only*

concept became the guiding principle for every exercise of public authority—every legislative vote, every executive action.¹³ The common good was their constitutional north star.¹⁴

So, what did the common good entail? It was the good of the political society and its members—in other words, the general welfare.¹⁵ Its opposite was corruption and factionalism—the narrow pursuit of private interests, or the interests of only those in

when the good of the whole requires it. The supreme power therefore can do nothing but what is for the good of the whole . . .” (emphasis in original)).

¹³ See, e.g., JAMES OTIS, *THE RIGHTS OF THE BRITISH COLONIES ASSERTED AND PROVED* 30 (Bos., Edes & Gill 1764) (“[Americans are] entitled to all the rights of nature . . . [and] are not to be restrained in the exercise of any of these rights, but for the evident good of the whole community.”); CHIPMAN, *supra* note 9, at 105 (“[A]ll legitimate government is founded in the rights of the people; [] it is an institution for their convenience and happiness . . .”); *id.* at 117 (defending “the due exercise of the powers of government, for the common good”); Brutus No. 6, *supra* note 4, at 115 (“[E]very man . . . [is] bound by the immutable laws of God and reason, always to will what is right. It is certainly right and fit, that the governors of every people should provide for the common defence and general welfare; every government, therefore, . . . is limited in the exercise of [its] power.”).

¹⁴ Some scholars have aptly questioned the judicial enforceability of this overarching principle. See Samuel L. Bray & Paul B. Miller, *Against Fiduciary Constitutionalism*, 106 VA. L. REV. 1479, 1483–84 (2020). But as noted in the first part of my remarks, judicial enforceability was not the touchstone of American constitutionalism at the Founding. Accord Charles F. Capps, *Does the Law Ever Run Out?*, 100 NOTRE DAME L. REV. 983, 1002 n.103 (2025) (“[A]lthough [scholars] may be right that officials’ public-trust obligations are not generally judicially enforceable, they trade on a false dichotomy when they conclude that therefore the obligations are merely moral or political.”).

¹⁵ See GORDON S. WOOD, *THE CREATION OF THE AMERICAN REPUBLIC, 1776–1787*, at 53–65, 608 (1998); WILLI PAUL ADAMS, *THE FIRST AMERICAN CONSTITUTIONS: REPUBLICAN IDEOLOGY AND THE MAKING OF THE STATE CONSTITUTIONS IN THE REVOLUTIONARY ERA* 218–27 (2001); [David Ramsay], *Civis, To The Citizens of South Carolina*, CHARLESTON COLUMBIAN HERALD, Feb. 4, 1788, reprinted in 16 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 21, 22 (John P. Kaminski & Gaspare J. Saladino eds., 1986) (“[I]n society, every individual must sacrifice a part of his natural rights; the minority must yield to the majority, and the collective interest must controul particular interests.”); Noah Webster, *An Oration on the Anniversary of the Declaration of Independence* (1802), in 2 AMERICAN POLITICAL WRITING DURING THE FOUNDING ERA: 1760–1805, at 1220, 1228 (Charles S. Hyneman & Donald S. Lutz eds., 1983) (“Of course, by the very constitution of society, the will of each member is restrained by the laws of general utility, or common good, the details of which are to be regulated by the supreme power.”).

power and their supporters.¹⁶ In essence, pursuing the common good required the rejection of tribalism.¹⁷ It required considering everyone's interests equally, and only then discerning the good of the whole.¹⁸

This is what Madison was talking about in *Federalist 51* when he famously warned about the "oppressions of factious majorities" violating "the rights of the minority."¹⁹ He wasn't talking about

¹⁶ See GORDON S. WOOD, *THE RADICALISM OF THE AMERICAN REVOLUTION* 104–05 (1991) ("Public virtue was the sacrifice of private desires and interests for the public interest. It was devotion to the commonweal. . . . Precisely because republics required civic virtue and disinterestedness among their citizens, they were very fragile polities, extremely liable to corruption."); see also, e.g., ALGERNON SIDNEY, *DISCOURSES CONCERNING GOVERNMENT* 125 (London, J. Darby 1704) ("The Laws that aim at the publick Good, make no distinction of Persons[.]"); *The Impartial Examiner* No. 1, VA. INDEP. CHRONICLE, Feb. 27, 1788, reprinted in 8 *THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION* 420, 420 (John P. Kaminski & Gaspare J. Saladino eds., 1988) (arguing that government officials should have "no other view than the general good of all without any regard to private interest . . . [and should] take equal care of the whole body of the community, so as not to favor one part more than another"); [Fisher Ames], *Camillus II*, INDEP. CHRONICLE, Feb. 22, 1787, reprinted in 1 *WORKS OF FISHER AMES* 63, 63 (William B. Allen ed., 1983) ("As the supreme power resides in the General Court, it is their duty to exercise it, according to their best discretion, for the common good, without being deterred by the factious clamor of individuals, however numerous, much less by the intrigues of the disaffected.").

¹⁷ See, e.g., *THE FEDERALIST* NO. 10 (James Madison) (lamenting "that the public good is disregarded in the conflicts of rival parties" and defining a "faction" as a group "who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community").

¹⁸ As Madison explained, the "great desideratum" in constitutional design was to create a government that was "sufficiently neutral between the different interests and factions, to controul one part of the Society from invading the rights of another, and at the same time sufficiently controuled itself, from setting up an interest adverse to that of the whole Society." James Madison, *Vices of the Political System of the United States* (1787), in 9 *THE PAPERS OF JAMES MADISON* 345, 357 (Robert A. Rutland et al. eds., 1975); see also Alan Gibson, *Madison's "Great Desideratum": Impartial Administration and the Extended Republic*, 1 *AM. POL. THOUGHT* 181, 195 (2012) (highlighting the connection of these ideas to Madison's involvement in the earlier fight in Virginia over religious assessments).

¹⁹ *THE FEDERALIST* NO. 51 (James Madison). The government, in other words, should not be "adverse to the rights of other citizens," as James Madison put it, or act by

judicially enforceable constitutional rights. Rather, Madison was referring to a majority's disregard for the common good—the willingness of “factions” to use politics simply to capture wealth and power, and to pursue their own interests at the expense of their rivals.²⁰ Of course, he recognized that men aren't angels and that we can sometimes harness self-interest in useful ways.²¹ But the key point here is that constitutionalism is about a lot more than following particular rules. It's about ensuring, as best we can, that all political power is exercised justly, and for the right sorts of reasons, with equal regard to all our fellow citizens.

So where does that leave us? Today, we've taken such a narrow view of constitutionalism. Constitutional law only sets the political ground rules. And otherwise, politics is just hardball, and hardball is a competition for power. Norms that aren't judicially enforceable are disposable, and the trash bin is rapidly filling up. And I really worry about what our political system has lost without a broader constitutional culture and without our Founders' constitutional guiding star.

We can do better. The Founders appreciated that politics won't ever be perfect. But “*more perfect*” self-government is always achievable and very much worth pursuing.²²

“disregarding the rights of another.” THE FEDERALIST NO. 10 (James Madison) (emphases added).

²⁰ Accord CHIPMAN, *supra* note 9, at 75 (“The interests of the minority, which, upon a right of mutual compromise, are entitled to a proportionable regard, are too often neglected, or wholly sacrificed to the more powerful interests of the majority.”); see also LUTZ, *supra* note 8, at 76–77 (discussing the priority of the common good over individual interest).

²¹ See THE FEDERALIST NO. 51 (James Madison) (“[T]he great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department, the necessary constitutional means, *and personal motives*, to resist encroachments of the others.” (emphasis added)); see also McDONALD, *supra* note 10, at 188–89 (identifying others who acknowledged the inescapability of self-interest). But see SHEEHAN, *supra* note 11, at 60 (recognizing Madison's skepticism of a political system that relies principally on the personal self-interest of politicians).

²² Cf. U.S. CONST. pmb. (describing the goal of establishing “a more perfect Union”).

And that responsibility resides with all of us. We can still debate the meaning of “commerce” or “executive power,”²³ or what methods of constitutional interpretation to follow.²⁴ And those debates really do matter. But as constitutional problems go, they pale in comparison to having a political order dominated by tribalism, with a lost sense of common purpose. And it’s on all of us to do better—to not let ourselves get siloed; to understand and care about each other, especially across difference; and to not lose faith in a better tomorrow.

²³ See, e.g., Jack M. Balkin, *Commerce*, 109 MICH. L. REV. 1 (2010); Randy E. Barnett, *The Original Meaning of the Commerce Clause*, 68 U. CHI. L. REV. 101 (2001); MICHAEL W. MCCONNELL, *THE PRESIDENT WHO WOULD NOT BE KING: EXECUTIVE POWER UNDER THE CONSTITUTION* (2020); Julian Davis Mortenson, *The Executive Power Clause*, 168 U. PA. L. REV. 1269 (2020).

²⁴ See, e.g., Mitchell N. Berman, *Our Principled Constitution*, 166 U. PA. L. REV. 1325 (2018); Michael W. McConnell, *Time, Institutions, and Interpretation*, 95 B.U. L. REV. 1745 (2015).