THE WORDS THAT MADE US LISTEN TO ONE ANOTHER

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Akhil Reed Amar taught me to love the Constitution, and how to read it. *The Words That Made Us*[2] sets his lessons on constitutional interpretation to an engaging story about the founding of our country. That story inspires the same reverence and respect for the document and the "We" who crafted it that I felt as a college freshman in Professor Amar's class over fifteen years ago. It is a pleasure to read and an honor to review.

I

The Words That Made Us begins with an unfamiliar episode of American history, from which Amar draws an unconventional lesson: the Boston Court House showdown between James Otis Jr. and Thomas Hutchinson, in Amar's words, "reveals the profound passions, the deep tensions, and the underlying forces that would eventually rip the British Empire apart" (p. 30). The vignette reveals something else, too: how difficult it was in 1761—or in 1781 or 1789, for that matter—to know what the law was. Original records were local, and copies were prohibitively expensive, notoriously unreliable, and, unless properly sealed, required live attestation.[3] The legal dispute about writs of assistance flared from an article in the *London Magazine* (p. 13); Hutchinson resolved it by "correspond[ing] with sources in London" (p. 20); and modern observers view it through the prism of newspaper articles and personal memoirs (pp. 14, 20–21).

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2. AKHIL REED AMAR, THE WORDS THAT MADE US: AMERICA'S CONSTITUTIONAL CONVERSATION, 1760–1840 (2021).

3. Stephen E. Sachs, *Full Faith and Credit in the Early Congress*, 95 VA. L. REV. 1201, 1209–12 (2009).

Official records play no visible role.

The challenges of authenticating and effectuating "the public Acts, Records, and judicial Proceedings" of other jurisdictions present an obstacle to union that is easy to forget in the era of Westlaw. The Founders thought those challenges important enough to warrant top billing in Article IV, the "Federal Article"[4] of the Constitution.

The Full Faith and Credit Clause is an underappreciated and underexamined part of the Constitution's answer to what Amar describes as "the key constitutional question" of the period: "were [the Americans of 1776] Americans first, or should their primary loyalties run to their respective colonies-turned-states?" (p. ix). The answer to that question depended not just on how a citizen of Massachusetts, say, would relate to the newly created *federal* government, but also on how he would relate to governments of New York and Virginia and South Carolina. Would he be received in those states as a foreigner or as a fellow citizen?

Article IV offers at least two answers to this subsidiary question. One is the Privileges and Immunities Clause.[5] As Amar writes, the Privileges and Immunities Clause guaranteed that Virginia would "treat a citizen of Massachusetts as a Virginian for most purposes" (pp. 167, 184). The other answer is the Full Faith and Credit Clause. In contrast to the Privileges and Immunities Clause, the Full Faith and Credit Clause enables a citizen of Massachusetts to insist that Virginia treat him the same way *Massachusetts* would treat him, at least in certain circumstances.

The Privileges and Immunities Clause had headlined Article IV of the Articles of Confederation, but it ceded pride of place in the Constitution to the Full Faith and Credit Clause. At first blush, the Full Faith and Credit Clause may seem to strengthen our hypothetical citizen's allegiance to Massachusetts: if Massachusetts could dictate his rights as he travelled around the United States, perhaps he was a Bay-Stater first and foremost. Appearances can be deceiving. The Full Faith and Credit Clause required Virginia magistrates and judges to enforce or apply *Massachusetts* edicts—and not just as a matter of comity, but as a

4. Robert H. Jackson, *Full Faith and Credit—The Lawyer's Clause of the Constitution*, 45 COLUM. L. REV. 1, 2 (1945).

5. U.S. CONST. art. IV, § 2.

matter of law. The States were "Independent Nations"[6] no more (p. 263).[7] And our Massachusetts citizen could trade with his neighbor in Virginia without feeling like he was doing business abroad. For these reasons, the Clause was viewed at the time as "one cement of union between these states," and "one of [the Constitution's] most important and salutary provisions."[8]

The Full Faith and Credit Clause provides: "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."[9]

What does it mean to give "full faith and credit" to a sister-state record? Your guess is as good as James Madison's. He called the meaning of the phrase "extremely indeterminate."[10] Two dominant interpretations of the Clause emerged in the early republic and endure today. One holds that the Clause required courts to treat properly authenticated records as proof that the underlying act, record, or judicial proceeding existed or occurred as described in the record. Congress could give the record effect, but until it did, the record remained merely prima facie evidence of the right asserted in the record.[11] The other interpretation holds that the Clause itself required courts to treat at least judgments as conclusive of the underlying right, irrespective of how Congress exercised its power under the second sentence.[12]

To understand what these interpretations mean, consider a Massachusetts judgment that *D* owes *P* a debt. If *P* sues on that judgment in Virginia, what defenses can *D* assert? According to the first, so-called "evidentiary" interpretation of the Clause, the judgment is merely prima facie evidence that *D* owes *P* a debt. *D* may impeach it with contradictory evidence.[13] According to the

6. 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 488 (Max Farrand ed., 1911) [hereinafter FARRAND].

7. Milwaukee County v. M.E. White Co., 296 U.S. 268, 276–77 (1935).

8. Hitchcock v. Aicken, 1 Cai. 460 (1803) (Livingston, J.).

9. U.S. CONST. art. IV, § 1.

10. THE FEDERALIST No. 42 (James Madison).

11. *See, e.g.*, David E. Engdahl, *The Classic Rule of Full Faith and Credit*, 118 YALE L.J. 1584 (2009).

12. *See, e.g.*, Douglas Laycock, *Equal Citizens of Equal and Territorial States: The Constitutional Foundations of Choice of Law*, 9 COLUM. L. REV. 249, 295–301 (1992).

13. JOSEPH STORY, 2 COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1309 (1833).

second, so-called "effects" interpretation of the Clause, the judgment is conclusive on the question whether D owes P a debt. D can deny the existence of the *record*, but once it is properly authenticated, D cannot deny the existence of the *debt*.[14]

The problem with the evidentiary interpretation is that it makes the *first* sentence of the Clause "of little importance."[15] Independent nations treated each other's records with as much dignity as a matter of international law.[16] The Constitution requires "*full* faith and credit." The wages of comity are paltry earnings from such strenuous language.

The problem with the effects interpretation is that it makes the *second* sentence of the Clause unimportant: if "full faith and credit" settled the effect records were to have, then what does it mean for Congress to have the power to "prescribe the Effect thereof"? The Constitution requires "*full* faith and credit." Logically, nothing is greater than "full."[17]

The inclusion of "public Acts" presents a problem for the effects reading, too. What does it mean to give conclusive effect to a law? Does a Virginia court have to apply Massachusetts law, and a Massachusetts court, Virginia law? If so, when? The Clause does not say, and attempting to infer an answer from the sparse but categorial injunction of "full faith and credit" quickly lands us on the other side of the looking glass.[18]

The mystery deepens when we consider Congress's first exercise of its power under the second sentence. In 1790, the First Congress enacted a statute specifying the manner of authenticating "public Acts, Records and judicial Proceedings," and provided that properly authenticated "Records and judicial Proceedings," but not "public Acts," would be treated with "*such* faith and credit . . . as they have by law or usage in the courts of

14. Sachs, *supra* note 3, at 1214–15.

15. THE FEDERALIST No. 42 (James Madison).

16. *See, e.g.*, Phelps v. Holker, 1 U.S. (1 Dall.) 260, 261 (Sup. Ct. Pa. 1788) (argument of Jared Ingersoll); STORY, *supra* note 13, §§ 1304, 1306.

17. Laycock, *supra* note 12, at 296. Some doubt that Congress may exercise its "effect" power to lessen the mandate of the first sentence. STORY, *supra* note 13, at §§ 1302, 1306; *see also* Charles M. Yablon, *Madison's Full Faith and Credit Clause: A Historical Analysis*, 33 CARDOZO L. REV. 125, 126 (2011).

18. *See* Alaska Packers Ass'n v. Industrial Accident Comm'n of Cal., 294 U.S. 532, 547 (1935). Laycock argues that the Clause incorporates "a background set of choice-of-law rules," but those rules are difficult to discern from either text or history. *See* Laycock *supra* note 12, at 289.

the state from whence" they came.[19] If "faith and credit" in the statute referred merely to evidentiary treatment, then why omit "public Acts"? But if Congress intended to give legal effect to records and judicial proceedings, then does that not mean that the First Congress, comprised of men who ratified the Constitution, understood "faith and credit" to mean "effect"? And regardless of which construction one favors, does not the act merely declare what the Constitution already requires—be that admission as evidence or conclusive effect?

II

My purpose here is not primarily to solve this mystery. Whatever meaning one gives the Clause, it touches themes that run through *The Words That Made Us*: among these, union, democracy, and conversation. It provides an opportunity to test the book's theses about those themes and the men whose lives they defined. And it allows us to explore how Amar's Marshallian approach to constitutional interpretation—one that "link[s] the panoramic and the particular" (p. 530)—can be used to illuminate the meaning of one of the Constitution's more obscure provisions.

A

Union was the value that was the most on the minds of the Clause's early defenders and expositors. Madison classed the Clause—particularly its grant of congressional power—as among those provisions "which provide for the harmony and proper intercourse among the States."[20] "Harmony" because the jealousies and frictions that characterize political borders (p. 229) are not just the obvious, public ones like competition for resources or restrictions on trade. The Framers sought to dampen *private* cross-border disputes, too, like those that might arise when a party to a judicial proceeding in one state "suddenly and secretly translate[s]" his "effects" to a more debtor-friendly neighboring state.[21] "Proper intercourse" because predictable and uniform rules for collecting debts across state lines would stimulate interstate trade.

One lesson we might draw from the Clause's position within

19. Act of May 26, 1790, ch. XI, 1 Stat. 122.
20. THE FEDERALIST No. 42 (James Madison).
21. *Id*.

the machinery of union is that the *second* sentence is the more important one. The first sentence was to be carried out primarily by the courts of the several States.[22] The second, by Congress. Which of the two would be more effective at quieting interstate disagreements and creating a predictable and uniform system for authenticating and enforcing judgments?

James Wilson knew the answer to this question. He was on the committee that added the second sentence to the Clause.[23] At the Philadelphia Convention, the original proposal tracked its predecessor in the Articles of Confederation by imposing a duty on the states without empowering Congress to define or enforce it. Wilson warned his fellow delegates "that if the Legislature were not allowed to *declare the effect* the provision would amount to nothing more than what now takes place among all Independent Nations."[24]

Seven years later, while riding circuit in Pennsylvania in 1794, then-Justice Wilson presided over an action of debt on a judgment obtained in New Jersey. The question presented was whether the defendant in the Pennsylvania action could attack the New Jersey judgment on its merits. Wilson found

> no difficulty in this case. . . . [F]or, whatever doubts there might be on the words of the Constitution, the act of Congress effectually removes them; declaring in direct terms, that the record shall have the same *effect* in this Court, as in the Court from which it was taken.[25]

Congress had made the judgment conclusive of the debt.

It should not surprise a reader of *The Words That Made Us* that Wilson would advocate (and later focus his attention on) federal action to reconfigure the States' relationships with each

22. Laycock, *supra* note 12, at 305.

23. 2 FARRAND, *supra* note 6, at 448.

24. *Id.* at 488.

25. Armstrong v. Carson's Executors, 2 U.S. (2 Dal.) 302, 303 (Pa. Cir. Ct. 1794) (emphasis added). Justice Wilson would soon find himself on the run from his own creditors. He was twice imprisoned for his debts—the second time, by a fellow delegate to the Philadelphia Convention: Pierce Butler. William Ewald, *James Wilson and the Drafting of the Constitution* 10 U. PA. J. CONST. L. 901, 914 (2008). Butler, like Wilson, helped to shape Article IV: he introduced the Fugitive Slave Clause. FARRAND, *supra* note 6, at 453–54; *see also id.* 443 (Wilson objecting to Butler's first proposal). The Fugitive Slave Clause carved out an exception to the Full Faith and Credit Clause by forbidding slaves from invoking "any Law or Regulation" of a state into which they escaped to "be discharged from [their] Service or Labour." U.S. CONST. art. IV, § 2, cl. 3.

other to match the People's new understanding of sovereignty (pp. 206–08). Did the positions of other Founders on union also tend to be a good predicter of their positions on the Clause? This question struck me as I was reading about the full faith and credit statute enacted by the First Congress. It was proposed by a federalist—a commercial lawyer in the mold of Alexander Hamilton.[26] Yet, we have little insight into what was said about it on the floor, in part because our best source on the Senate debates, an agrarian democrat in the mold of Thomas Jefferson, was hungover the day it was debated in the Senate. He noted "no Debate of any Consequence" in his diary.[27] Again, no reader of *The Words That Made Us* would find this "conversation" surprising in what it reveals about the emphasis of the nascent political parties forming around Hamilton and Jefferson (pp. 401–05, 525–26).

Not all the Founding Fathers and Sons profiled in *The Words That Made Us* weighed in on the Full Faith and Credit Clause. But those that did, did so in a way that conforms to the portraits Amar paints of them. For example, Amar describes Madison as "powerful thinker" who ultimately held union "nearest to [his] heart," but who sometimes failed to see or support the policies that best promoted it (pp. 203, 525, 670, 694). Madison's record on the Full Faith and Credit Clause fits this picture. On the one hand, he championed the Clause at the Philadelphia Convention as part of his "vision of the federal government as a neutral arbiter among the states"[28] (pp. 196–97). He was the only Publius to discuss the Clause in *The Federalist Papers*.[29] And at the Virginia ratifying convention, he insisted that it was "absolutely necessary."[30] Yet even while he understood the importance of the Clause, it was not his priority. Pressed by George Mason to explain "how far it may be proper that congress shall declare the effects" of state acts, Madison confessed that he had "not employed a thought on the subject."[31] It seems likely that he

26. Sachs, *supra* note 3, at 1232, n.124.

27. *Id.* at 1233, n.127; United States Senate, *The First Two Senators*, https://bit.ly/2YUVWti (accessed Oct. 15, 2021); 9 DOCUMENTARY HISTORY OF THE FIRST FEDERAL CONGRESS 260 (1988) (Diary of William Maclay, May 4, 1790).

28. Yablon, *supra* note 17, at 151–52; *see* FARRAND, *supra* note 6, at 448, 489 (Madison proposing strengthening amendments).

29. THE FEDERALIST No. 42 (James Madison).

30. 3 THE DEBATES IN THE SEVERAL STATE CONVENTIONS 529 (Jonathan Elliot ed. 1836).

31. *Id.*

missed the House vote on the first Full Faith and Credit statute, and his contemporaneous correspondence is dominated by a different matter of credit: assumption of state war debts (pp. 360–64).[32]

Fittingly, as president, Madison would appoint the pro-union justice (p. 538) who would neutralize the most union-promoting feature of the Clause.[33] Justice Joseph Story did so because he failed to appreciate another important value protected by the Clause: democracy.

B

The connection between the Full Faith and Credit Clause and democracy may be less obvious. Yet horizontal choice-of-law questions present democratic problems. A citizen will be represented in at most one of the two or more States whose acts, records or judicial proceedings are cited to resolve a dispute. Whenever the question of faith and credit came up in the Early Republic, you were sure to hear voices raised in concern about subjecting the citizens of one state to the laws or judgments of another.[34]

Knowing that the framers and ratifiers were sensitive to concerns about regulation "without representation" (pp. 87–93) also helps us to better understand the Clause's design. As with union, democracy favors a construction that gives significance to the second sentence of the Clause. Again, who is a better representative of the People of the United States, Congress or the state courts? A *federal statute* addresses concerns about democracy by placing the choice of law decision in the hands of a *representative* body that represents *everyone*.

Justice Story wrote the first Supreme Court opinion about

32. *See, e.g.*, Letter from James Madison, Jr., to James Madison, Sr. (May 2, 1790), *available at* https://founders.archives.gov/documents/Madison/01-13-02-0128 (announcing his intention to take time off of legislative business); Letter from James Madison, Jr., to Edmund Randolph (May 6, 1790), *available at* https://founders.archives.gov/documents/Madison/01-13-02-0135 (discussing state debts and reporting "I have been confined nearly" a week with illness). The 1790 Act passed the House on May 3, 1790. 1 ANNALS CONG. 1603 (Joseph Gales ed., 1834).

33. *See infra* pp. 48–9.

34. *See, e.g.,* Miller v. Hall, 1 U.S. (1 Dall.) 229, 232 (Penn. 1878) (in Articles-of-Confederation-era case presenting faith and credit issue, addressing "the argument, that no person can be bound by the law to which he has not either directly or virtually consented"); FARRAND, *supra* note 6, 488 (Johnson); *see also* Yablon, *supra* note 17, at 138–39.

faith and credit in *Mills v. Duryee*.[35] Like Justice Wilson, he did not offer an interpretation of the first sentence of the Clause but instead rested the Court's holding on the 1790 statute. He concluded that Congress had "declared the *effect* of the record by declaring what faith and credit shall be given to it."[36] Implicitly, then, he concluded that Congress had the power to declare the effect of the record.[37]

Story would later revise that conclusion in his *Commentaries on the Constitution of the United States.* There, he would argue that Congress's powers were to specify the manner of proving records and to "declare the effect" of the *manner of proof*, not of the record itself.[38] Congress could not vary the effect of the record once properly authenticated because the first sentence already required states "to attribute" to sister-state records "absolute verity."[39] Story constructs his interpretation according to the Clause's "design": "to form a more perfect Union."[40] But he fails adequately to attend to democratic considerations. By diminishing Congress's power, he diminishes the role of the People in deciding how the "more perfect Union" would be forged.

This misstep is consistent with Amar's portrait of Story. Story was born after 1776 (p. 553) and early left the world of "politicking and electioneering" for "a life of the mind" (pp. 555, 564).[41] Having never experienced "taxation without representation," Story was less attuned to the democratic values that lived symbiotically with his unionist ones.[42] Historians often overstate his mentor's emphasis on judicial power (pp. 560–62). Chief

35. 11 U.S. (7 Cranch) 481 (1813).

36. *Id.* at 484.

37. *Mills* (and several other decisions discussed here) originated in a federal court that was not expressly subject to the Clause's command. Laycock, *supra* note 12, at 305. But whatever the 1790 statute required of federal courts, it required of state courts, too, so the constitutional construction remains implicit in Story's analysis.

38. STORY, *supra* note 13, at §§ 1312–13.

39. *Id.* at § 1310.

40. *Id.* at § 1309.

41. Story's youth meant that he could not "rely on personal memory when pondering the significance . . . of the Constitution" (p. 553). Had he participated in the Philadelphia Convention, he would have known that the drafters substituted "thereof" for "judgments obtained in one State shall have in another." FARRAND, *supra* note 6, at 488. This tends to suggest that "the effect thereof" was at least intended to mean the effect of the records, not the effect of the manner of proof.

42. *See* U.S. Term Limits v. Thornton, 514 U.S. 779, 856 (1995) (Thomas, J., dissenting).

Justice Marshall had a robust vision of legislative power, even if he sometimes willfully misconstrued its exercise (p. 496). It was Story who became "for Article III what Hamilton was for Article II" (p. 528).

Counterintuitively, Story's construction undermines both union and democracy by relegating Congress's power to technical matters. By legislating "prolix" choice-of-law rules (p. 536), Congress could accommodate the People's more strongly felt desires for local self-determination while still preserving union.[43] But the inflexible constitutional rule that grew from the seeds of Story's *Commentaries* could not withstand the winds of public policy.[44] Courts have carved out *ad hoc* exceptions that have weakened the Constitution's command without giving the People commensurate control over the process.[45]

C

An important insight of *The Words That Made Us*, noted by many of its deservedly enthusiastic reviewers, is that the Constitution is the product of a conversation. Equally important is the book's insight that the Constitution is the *producer* of the conversation through which we govern ourselves (e.g., p. 268). The Constitution tells us more about *who* gets to decide and *how* they decide than it tells us what the content of the decisions must be.[46] This insight may be less novel, but it is one we often forget,

43. Engdahl, *supra* note 11, at 1628.

44. The "subtle and wily politician" Madison (p. 367) understood that inflexible rules provided "opportunities for evasion." Yablon, *supra* note 17, at 159.

45. Yarborough v. Yarborough, 290 U.S. 202, 215–17 & n.2 (1933) (Stone, J., dissenting) (describing exceptions courts made in the face of congressional inaction). Justice Frankfurter cautioned against judicial creativity on matters of faith and credit on the ground that courts lacked the prerogatives and competence of Congress, but those considerations have prompted underenforcement of the "faith and credit" principle instead. Williams v. North Carolina, 317 U.S. 287, 304–07 (1942) (Frankfurter, J., concurring). The Court has treated "public Acts" in particular with diffidence because "the question of which sovereign interest should be deemed more weighty is not one that can be easily answered." Franchise Tax Board of Cal. v. Hyatt, 538 U.S. 488, 494–98 (2003); *see also* Jackson, *supra* note 4, at 16.

As this latter statement demonstrates, democratic concerns were inextricably tied to concerns about "state sovereignty." *See, e.g.*, FARRAND, *supra* note 6, at 488 (Randolph); *Wilson v. Robertson*, 1 Tenn. (1 Overt.) 266, 268 (1808); *see also* Miller, 1 U.S. at 232 (rejecting argument that giving credit to sister-state act is "derogatory to the independence and sovereignty of this state"). Congressional legislation represented a way of accommodating local differences without acceding to the exaggerated claims of sovereignty that vexed Story, much as they do Amar (p. 455).

46. Of course, the structure of the conversation shapes its outputs (*e.g.,* p. 260).

and *The Words That Made Us* offers many important reminders.

The book discusses several provisions of the Constitution that created "conversational circles" (p. 376). I would add to the list of conversation-structuring provisions the Full Faith and Credit Clause. The Clause and the statutes that implement it structure the conversation between the States instead of displacing it.[47]

The insight illuminates the shape of Congress's power, too. Consider the problem of "public Acts," which has raised the greatest alarm among those jealous of state prerogatives.[48] In 1814, Senator Outerbridge Horsey of Delaware opined on the floor of the Senate that the word "effect" in the second sentence of the Clause could not be read literally, or it would "convey [] a most extraordinary power to Congress—A power which would swallow up the state sovereignties."[49] He offered the following hypothetical: "The legislature of Virginia, for instance, [may] pass an act limiting the rights of suffrage to freeholders; take this section literally, and Congress may declare that such act shall have the same *effect* in Pennsylvania or Massachusetts as it has in Virginia and *vice versa*."[50]

Could Congress exercise its power under the Clause to elevate the legislature of one State as a secondary national legislature, by giving generally applicable laws enacted by that legislature effect in all other States? I think the answer to this question is "no." The Constitution guaranteed States "equality" within the "federal edifice" (p. 237). The first sentence of the Clause states that "Full Faith and Credit shall be given in *each* State" to the records of "*every other* State." Congress may have the power to tell us what that "full faith and credit" looks like, but it may not rewrite the requirement that "each State" give it to "every other State."[51] Congress may referee the conversation, not

47. Jackson, *supra* note 4, at 17 (The Clause promotes union "but without aggrandizement of federal power at the expense of the states"); *see also* Yablon, *supra* note 17, at 172.

48. Engdahl, *supra* note 11, at 1621–22; *see also* Pacific Employers Ins. Co. v. Industrial Accident Comm'n, 306 U.S. 493, 501 (1939).

49. Sachs, *supra* note 3, at 1265–66, n.283 (quoting Congress. Senate of the U. States, Daily Nat'l Intelligencer (Wash., D.C.), May 5, 1814).

50. *Id.* (emphasis added).

51. *See* Franchise Tax Bd. of Cal. v. Hyatt, 136 S. Ct. 1277, 1282 (2016) (describing the Clause's principle of "constitutional equality among the States" (quotation marks omitted)).

shut it down.[52]

Just as conversation helps us to understand the Clause, the Clause helps us to understand conversation. The most robust conversation about what has been aptly named the Lawyer's Clause[53] was the conversation among the courts. For the first twenty-some years of the Constitution's life, courts put forth a stunning variety of opinions on the meaning of the Clause and the First Congress's implementing legislation.[54] In late 1812, Chief Justice Marshall added his voice while riding circuit in North Carolina, when he held that neither the Clause nor the statute required courts to give effect to sister-state judgments. His opening words exhibit his characteristic awareness of the conversation in which he was engaged (pp. 549–50): "As this very important question has not yet been decided in this court, nor in the supreme court of the United States, my brother judge and myself feel ourselves at liberty to pronounce that opinion which our own judgment dictates." He closed by acknowledging that his colleagues on the Supreme Court were unlikely to agree with him.[55] And indeed, just four months later, the Supreme Court decided *Mills v. Duryee*.[56] True to form (p. 540), Chief Justice Marshall did not register a dissent.

As already discussed, Justice Story would later change the opinion he articulated for the Court in *Mills*. In his famous *Commentaries*—yet another important element of our constitutional conversation (pp. 566–68)—he would articulate the opinion that has become the doctrine: the Constitution *itself* requires states to give conclusive effect to sister-state records.[57]

One critical ingredient of an effective constitutional conversation is humility. That is the value the Full Faith and Credit Clause was meant to instill by requiring States to accept the judgments of their peers. "Faith" and "credit" are humility's

52. *See id.* at 1287 (Roberts, C.J., dissenting) (criticizing the majority for treating the Clause as a "create-your-own-law provision" instead of a "choice of law provision").

53. Jackson, *supra* note 4.

54. *See, e.g.*, Bartlet v. Knight, 1 Mass. (1 Will.) 401, 401–05 (1805) (reporter surveying cases); Winchester v. Evans, 3 Tenn. (1 Cooke) 420, 426–28 (1813) (argument of counsel, collecting cases).

55. Peck v. Williamson, 19 Fed. Cas. 85, 85 (C.C.D.N.C. 1813).

56. Mills v. Duryee, 11 U.S. (7 Cranch) 481, 484 (1813).

57. Engdahl, *supra* note 11, at 1654, n. 310. The Supreme Court has not adopted Story's conclusion that Congress's power is limited to technical matters. The scope of Congress's power remains contested, and its potential, unrealized. Sachs, *supra* note 3, at 1278–79.

currency.[58] Like Marshall and Story, we must always be willing to be in conversation with others and with ourselves: "He who lives a long life & never changes his opinions may value himself upon his consistency; but rarely can be complimented for his wisdom. Experience cures us of many of our theories . . . ." (p. 555).[59] Chief Justice Marshall changed his construction in deference to Justice Story, who in turn changed his mind after digesting another two decades of decisional law. I happen to think the second about-face was wrong, but no matter. The conversation continues.

That conversation will be immeasurably enriched by Professor Amar's contribution.

58. These conversational values work hand-in-hand with union and democracy. *See* Thomas B. Griffith, *Civic Charity and the Constitution*, 43 HARV. J. L. & PUB. POL'Y 633 (2020).

59. Here, Amar quotes Story from 1 LIFE OF HARRISON GRAY OTIS 122–23 (Morison, ed., 1913) (letter of Dec. 27, 1818). Story's wisdom has echoed through the ages. *See, e.g.*, South Dakota v. Wayfair, Inc., 138 S. Ct. 2080, 2100 (2018) (Thomas, J., concurring) ("[I]t is never too late to 'surrende[r] former views to a better considered position.'" (quoting McGrath v. Kristensen, 340 U.S. 162, 178 (1950) (Jackson, J., concurring) (collecting other examples)).