CONSTITUTIONAL SMALL TALK

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INTRODUCTION

With *The Words That Made Us,*[2] Akhil Reed Amar has given us a big book. The volume—the first in a planned trilogy—provides a sweeping (re)vision of early American constitutional history that begins with the news reaching Boston in December 1760 that King George II is dead and his son is on the throne, and ends (for now) in 1840 when the Founders have passed away, James Madison's convention notes have just been published, and Congress has apologized for its (unconstitutional) 1798 Sedition Act. Amar's historical account centers on big individuals and their contributions to the big national political conversations and events that determined the shape and workings of America's constitutional system during its first decades.

For Amar, size matters. An important message of the book is that some celebrated figures—John Adams, in particular—have secured larger historical reputations than they actually deserve, while others, such as Thomas Hutchinson (for his sophisticated defense of imperial power) and James Wilson (for explaining that sovereignty is vested in the people and can be divided among governments) merit grander billing. Yet even as Amar brilliantly demonstrates how the words of notable men—Benjamin Franklin, Alexander Hamilton, John Marshall, George Washington ("the real father of the Constitution" (p. 525)), and others—made "Us," his story does not ignore the significance, to our constitutional origins and development, of lesser figures or of the public more generally. For one thing, much of Amar's account centers on episodes of prominent men

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seeking to persuade others, often a great many others: the lawyers (John Adams is one) arguing to judges and the courtroom public in the urgent 1761 Boston writs of assistance case (pp. 14–22); agitators, in print and in person, calling for action during the Sugar and Stamp Act controversies of 1764–1766 (pp. 45–64) and subsequent episodes on the road to revolution; innumerable writers and orators weighing in during robust debates that preceded the ratification of individual state constitutions (pp. 155–62) and then the federal Constitution (pp. 242–61); President Washington, in his inaugural address, making a case for national unity (pp. 307–09); Secretary Hamilton pitching his visionary economic plan to Congress and the public (pp. 360–66); James Madison and Thomas Jefferson soliciting state lawmakers to oppose the 1798 Sedition Act (pp. 453–54); and Chief Justice John Marshall, in *McCulloch v. Maryland*, teaching "all Americans, both in the moment and for all time—how to read the Constitution" (p. 533). Besides the role of the public as audience, Amar signals also when conversations featuring prominent players on the national stage had local, small-stage analogs. For example, during the debate-rich decades of the 1770s and 1780s, Amar reports that

> America's constitutional conversation took many forms . . .—grand oratory and public declamation, Patrick Henry-style; less florid public discourse, as in the Massachusetts Ratifying Convention; high-stakes debates and horse trades behind closed doors, as at Philadelphia; informal mealtime conversations . . .; terse state constitutions in direct discourse with each other; elite newspaper essays; elaborate pamphlets; short squibs, cartoons; poems; performance art; public toasts; and much more (p. 302).

More generally, a key theme of Amar's account is popular sovereignty. It, by definition, is public-oriented: the words of prominent figures mean very little if they do not convince the listening masses. Still, even though the larger public is never far from earshot, by purpose and design, Amar's book is the story of America—not an ethnography of everyday Americans.

This Essay builds on—and out from—Amar's own account to consider more specifically constitutional conversations among ordinary Americans at a local level: what I call constitutional small talk. The Essay is not comprehensive. Its single perspective (one among various possibilities) is how the Constitution itself encourages, facilitates, and even requires conversation among

ordinary citizens. Some constitutional mechanisms, the essay shows, generate conversations at a local level, thereby reinforcing preexisting ties among neighbors while other mechanisms bring individuals into conversations with strangers, within a single state or across the nation. A conversational framework might be applied to many features of the Constitution. This Essay takes up just four topics: federalism, judges and juries, security, and the press.

I. FEDERALISM

Federalism, a structural feature of the Constitution, facilitates and broadens political conversation because in a federal system the national government is not the only game in town. When Amar turns his attention to the processes of drafting and ratification of constitutional text after the revolutionary war, he is concerned not just with the Philadelphia convention and debates that led to the ratification of the federal Constitution. Instead, he rightly emphasizes the adoption, beginning in 1776, of state constitutions, as important moments in which citizens within a single state deliberated over the design of their own state governments and in so doing became part of a national conversation about the contours of American constitutionalism itself (p. 155). That would not have happened except for federalism.

Federalism's conversational significance extends beyond a multiplicity of constitutions. Dividing power (as federalism does) between the national government and the states increases opportunities for individuals to serve in elected office—after conversing with and persuading their fellow citizens to vote for them. Divided power also expands opportunities for private citizens to influence law in order to achieve their preferred goals. Rather than voicing their preferences toward a single governing entity, citizens can push their views at the federal, state, or local levels. A loss at one level of government need not foreclose efforts to persuade at another level. Further, when, as is true under the U.S. Constitution, allocations of powers are identified generally, there exist opportunities for ongoing conversation about *which* level of government can and should exercise authority.

Federalism's conversational benefits are also reflected in the electoral system that necessarily results. A federal system

requires multiple elections with voters playing regular and different roles. Federalism means that there are state (and local) governments, thus necessitating the selection of state (and local) representatives and officials. Separately, voters must choose their federal representatives—and our federal elections occur with clockwork frequency. The Constitution requires "the People" of each state to select their members of the House of Representatives every two years.[3] Every four years there is a presidential election and senators are elected for six-year terms. This 2-4-6 pattern means participation in a federal election is never far away. (Even before ratification of the Seventeenth Amendment,[4] when state legislatures appointed senators, those state legislatures were presumed to be (and were) democratically composed and controlled.)[5] Accordingly, a voter in a federal system is called on to make decisions about candidates and issues on a quite regular basis, and to hear pitches from would-be delegates to Washington, D.C., to the statehouse, and to the local school board. A federal system means also that voters serve at different sites of deliberation and decision-making: as citizens of the entire state (when electing senators and other statewide representatives), as members of a congressional district (selecting representatives), and locally (choosing county or town government). So, too, issues about which voters converse and base their choices vary by site and role: the questions a voter might ask of a presidential candidate at a town hall forum are quite different from those directed, over breakfast on Main Street, to the sheriff who seeks reelection.

II. JURIES AND JUDGES

The modern view is that (for better or for worse) courts are elite institutions separated from the masses.[6] A conversational perspective points to a quite different account of courts, at least under the original Constitution and in the period Amar examines.

3. U.S. CONST. art. I, § 2.

4. *Id.* art. I, § 3.

5. *Id.* art. IV, § 4.

6. A central preoccupation of modern scholarship in constitutional law is what Alexander Bickel identified in 1962 as the "counter-majoritarian difficulty." *See* ALEXANDER M. BICKEL, THE LEAST DANGEROUS BRANCH: THE SUPREME COURT AT THE BAR OF POLITICS 16–17 (1962).

Begin with jurors—for they were once the central players in the courtroom.[7] The Constitution requires juries in federal court. Article III says that "Trial of all Crimes" must be by jury;[8] the Sixth Amendment specifies that the jury is to be "of the State and district wherein the crime shall have been committed."[9] The Seventh Amendment preserves the common law right to a jury trial in civil matters involving at least twenty dollars in dispute.[10] It is hard to overstate the significance of these jury provisions in the early decades of the Republic. Most individuals could not expect to serve as an elected or appointed member of the new federal government in the nation's capital. But the Constitution's jury provisions created local federal offices for ordinary people. These provisions meant that across the country members of local communities were brought together to perform a common federal role, as jurors in federal court, charged with following federal procedural rules and applying relevant federal substantive law. Jurors, of course, engage in conversation: they deliberate on the legal (and constitutional) issues raised and the evidence presented before reaching and announcing to listeners their shared verdict.

Judges, Amar aptly shows, are also significant conversationists: among the oratorical stars of Amar's book are John Marshall and Joseph Story, who formed a "judicial team" (p. 559) greater, for its contribution to constitutional history, than the sum of its parts. Again, though, we can redirect Amar's lens away from the landmark rulings of the Marshall Court and the influential pages of Story's treatise (p. 582) to take up smaller, localized instances of judicial conversation.

On that score, though, start first not with federal but state courts—responsible historically, as now (even as the federal judiciary has grown), for the vast bulk of legal disputes. The Constitution *altered* the status of state judges. Rather than charged solely with interpreting, articulating and applying state laws, state judges, the federal Constitution says, are deemed "bound" to follow, as supreme, federal law, "any Thing in the Constitution or Laws of any State to the Contrary

7. *See* AMAR, *supra* note 2, at 334 ("Far more than is true today, jurors at the Founding participated vigorously in legal and constitutional conversation.").

8. U.S. CONST. art. III, § 2.

9. *Id.* amend. VI.

10. *Id.* amend. VII.

notwithstanding."[11] Under the Constitution, federal law, including federal constitutional law, is not, therefore, reserved for distant and unfamiliar federal courts, but is made the domain of every state court—thus bringing conversation about federal constitutional requirements into every state and local courthouse. But it's not just federal law in the background. For while the Constitution mandates "one Supreme Court," it does not require that there be *any* lower federal courts—leaving their existence up to Congress.[12] Given that the full scope of the federal "judicial Power" is not vested in the Supreme Court—which has only limited original jurisdiction—and the Court's appellate jurisdiction is subject to "such Exceptions . . . as the Congress shall make,"[13] the Constitution plainly contemplates *state* courts as alternative venues for adjudication of cases that fall within the scope of Article III. Accordingly, state judges engage with federal law not solely because it is supreme and therefore might limit what they can otherwise do, but directly, when they hear cases involving claims under or issues of federal law.

As for the federal courts themselves, the Judiciary Act of 1789[14] deserves close attention. That statute, in which Congress first deployed its powers to structure and regulate the federal judiciary, pushed down the judicial ladder, to state courts and to lower federal courts, decisions on, and therefore conversations about, constitutional questions. In the Act, the Supreme Court's original jurisdiction closely matched that specified in Article III,[15] but Congress sharply limited the Court's appellate powers.[16] Congress gave the Court *no* authority to review criminal convictions from the lower federal courts the Act created (which had exclusive jurisdiction in federal criminal cases);[17] in civil cases, review of circuit court decisions required a

11. *Id*. Art. VI, § 2.

12. *Id.* art. III, § 1.

13. *Id.* art. III, § 2.

14. Judiciary Act of 1789, ch. 20, 1 Stat. 73.

15. *See id*. § 13, 1 Stat. at 80–81 (specifying the Supreme Court's original jurisdiction).

16. *See id*. § 13, 1 Stat. at 81 ("The Supreme Court shall also have appellate jurisdiction from the circuit courts and courts of the several states, in the cases herein after specially provided for.").

17. *Id*. §§ 9 & 11, 1 Stat. at 76, 78. The Supreme Court and the lower federal courts did, however, have a power of habeas review with respect to federal detainees. *See id*. § 14, 1 Stat. at 81–82.

whopping $2,000 in controversy.[18] The Judiciary Act also specified only limited circumstances in which the Court could review state court rulings on federal issues. Section 25 provided for review of decisions of a state's highest court invalidating a federal statute, treaty, or federal executive action.[19] The Supreme Court could also review state court decisions denying a title, right, privilege, or exemption claimed by a party under the Constitution or other federal law.[20] When state law was challenged on federal constitutional grounds, the Supreme Court could *only* review the state court decision if it *rejected* the federal constitutional claim and upheld the state law; there was *no* review if the state court accepted the constitutional claim and invalidated the challenged state law.[21] (Only in 1914 did the Supreme Court gain statutory authority to review state court decisions *upholding* a federal claim against state government.[22]) While, under the Act, the Supreme Court thus had an appellate role, that role was tightly circumscribed, such that for many cases, final decision lay in state court or in lower federal court—by judges, in other words, hearing the case not from the nation's capital but in courthouses located across the land.

Further, just as it limited the appellate role of the Supreme Court, the Judiciary Act also specified (and thereby limited) the jurisdiction of the lower federal courts, specifically recognized state court jurisdiction in certain federal cases,[23] and limited removal of cases from state to federal court.[24] Today, we think of federal courts as open to hear all federal matters, but that was not Congress's original design. Aside from the brief experience of the so-called Midnight Judges Act of February 1801,[25] lower

18. *Id*. § 22, 1 Stat. at 84.

19. *Id*. § 25, 1 Stat. at 85–87.

20. *Id*. § 25, 1 Stat. at 85–87.

21. *Id*.

22. *See* An Act to Amend an Act entitled An Act to Codify, Revise, and Amend the Laws Relating to the Judiciary, approved March 3, 1911, Pub. L. No. 224, ch. 2, 38 Stat. 790, 790 (1914).

23. *See* Judiciary Act of 1789, § 10, 1 Stat at 77–78 (specifying cases in which district courts and state courts share jurisdiction); § 11, 1 Stat at 78–79 (specifying cases in which circuit courts and state courts share jurisdiction).

24. *See id.* § 12, 1 Stat at 79–80 (specifying requirements to remove a case from state court to federal circuit court).

25. *See* Judiciary Act of 1801, ch. 4, § 11, 2 Stat. 89, 92 (giving the circuit courts "cognizance" of all cases "arising under" the Constitution and federal laws), *repealed by* An Act to Repeal Certain Acts Respecting the Organization of the Courts of the United States and for Other Purposes, ch. 8, § 1, 2 Stat. 132, 132 (1802).

federal courts lacked general federal question jurisdiction until 1875.[26] The result was to push a good deal of judicial decision-making down (below the Supreme Court) and outward (to state courts).

As Amar recognizes (p. 333), there is also conversational significance to Congress's choice, in the 1789 Act, not to create permanent circuit courts. The Act grouped thirteen federal districts into three circuits, and specified "that there shall be held annually in each district of said circuits, two courts, which shall be called Circuit Courts, and shall consist of any two justices of the Supreme Court, and the district judge of such districts, any two of whom shall constitute a quorum."[27] With six Supreme Court justices,[28] this circuit-riding math worked out just right. Members of the Court famously hated the assigned duty (Thomas Johnson resigned from the Court over it)[29] and they complained regularly about it to Congress.[30] Although in 1793 Congress reduced to one the number of justices required on a circuit court,[31] except for the brief experiment (instigated by John Adams) of 1801,[32] it did not eliminate the circuit-riding obligation until 1891.[33]

From a conversational perspective, circuit riding entailed important benefits. For one thing, circuit riding worked in tandem with the other mechanisms just described to push down resolution of legal issues. Even in cases in which the Supreme

26. Judiciary Act of 1875, ch. 137, § 1, 18 Stat. 470, 470.

27. Judiciary Act of 1789, ch. 20, § 4, 1 Stat. 73, 74–75.

28. *Id*. § 1, 1 Stat. at 73. (providing for a chief justice and five associate justices).

29. *See* Letter from Thomas Johnson to George Washington (Jan. 16, 1793), *in* 1 THE DOCUMENTARY HISTORY OF THE SUPREME COURT OF THE UNITED STATES, 1789–1800, at 80 (Maeva Marcus & James Perry eds., 1985) ("I cannot resolve to spend six Months in the Year of the few I may have left from my Family, on Roads at Taverns chiefly and often in Situations where the most moderate Desires are disappointed").

30. *See, e.g.,* Letter from the Justices of the Supreme Court to the Congress of the United States (Aug. 9, 1792), *in* 2 THE DOCUMENTARY HISTORY OF THE SUPREME COURT OF THE UNITED STATES, 1789–1800, at 289–90 (Maeva Marcus ed., 1988) ("[No] set of Judges, however robust, would be able to support and punctually execute such severe duties for any length of time.").

31. Judiciary Act of 1793, ch. 22, § 1, 1 Stat. 333, 333–34.

32. *See* Judiciary Act of 1801, ch. 4, § 7, 2 Stat. 89, 90–91 (creating six new circuit courts staffed with sixteen new circuit court judges), *repealed by* Act of Mar. 8, 1802, ch. 8, § 1, 2 Stat. 132, 132.

33. *See* Judiciary Act of 1891, ch. 517, §§ 2–3, 26 Stat. 826, 826–27 (establishing intermediate courts of appeals and specifying that Supreme Court Justices are "competent to sit as judges of the circuit court of appeals within their respective circuits.").

Court had appellate power, in deciding whether to seek review at the Supreme Court, parties losing at the circuit court would surely consider the role of members of the Court, at the circuit level, in the ruling reached. Circuit riding also meant that the justices were viewed and heard in courtrooms across the country—alongside local juries. As Amar notes,

> [t]he seemingly odd even number of six [justices] suggests that in 1789 perhaps the most important function of the Supreme Court was not, as it is today [. . .] to provide a timely and definitive answer to virtually every legal and constitutional question. Rather, the key role, or at least one key role, of the early justices was to fan out and spend time in cities and counties across the land, listening to—literally hearing the cases of—local folk. (p. 333)

Members of Congress evidently shared this view: having the Justices on the road kept them in touch with "the great mass of the community."[34] The great mass was also brought in touch with the Justices.

III. SECURITY

Amar emphasizes the Constitution's geostrategic elements—and he traces these to the influence of George Washington, uniquely positioned to know and care about the new nation's security vulnerabilities (p. 187). Washington understood, Amar explains, that "America would need a Constitution that would enable Washington personally, and all who would afterward stand in his shoes, to stymie the British again, if necessary, and to do so with or without the French" and, from a geostrategic perspective, the resulting Constitution gave Washington "what he wanted and needed for himself and for his country" (p. 213). Departing from the sluggish military tools the Articles of Confederation offered up, the Constitution seeds a centralized and efficient military structure by empowering the federal government to declare war, as well as to raise and outfit armies and a navy and to enlist the militia,[35] all under the control of the Commander-in-Chief.[36]

Security might seem to have little to do with conversation.

34. CONG. GLOBE, 40th Cong., 3d Sess. 1487 (1869) (statement of Sen. Charles R. Buckalew).

35. U.S. CONST. art. I, § 8.

36. *Id.* art II, § 2.

But the Constitution's security measures laid domestic groundwork for inter-state harmony and the flourishing of conversation-inducing social networks across the land. Many enumerated federal powers are not deemed exclusive: this gives rise to the possibility that states might share the power and be free to regulate where the federal government has not. Not so with respect to federal security powers. In nationalizing military power, the Constitution also specifically takes from states the tools of war that would otherwise risk inter-state conflict. Article I, section 10 prevents states (absent congressional consent) from "keep[ing] Troops, or Ships of War in time of Peace" and from "engag[ing] in War, unless actually invaded, or in such imminent Danger as will not admit of delay."[37] Even if they had the means to do so, states, therefore, cannot launch preemptive attacks. States also cannot ward off attack or tie their own geostrategic fates to other powers through treaties or other alliances either with each other or with foreign nations.[38] And what was most likely to generate interstate conflict? Economic protectionism. The Constitution heads off commercial disputes and promotes the free flow of goods across state lines. Article I gives Congress authority to "regulate Commerce with foreign Nations, and among the several States," and it simultaneously bars Congress and the states from burdening the interstate movement of commercial goods with tariffs or other taxes.[39] Finally, the Constitution bars states from mistreating visitors—whether they arrive for business or pleasure—from other states: Article IV mandates equality with respect to "privileges and immunities" a state accords its own citizens.[40] Interstate conversation might be contentious but it won't lead to warfare.

37. *Id.* art. I, § 10.

38. *See id*. (prohibiting states from "enter[ing] into any Treaty, Alliance, or Confederation" or (absent congressional consent) from "enter[ing] into any Agreement or Compact with another State, or with a foreign Power.").

39. *Id.* art. I, § 8. Article I, section 9 bars federal taxes or duties on "Articles exported from any State," bars federal regulations that give a "preference . . . to the Ports of one State over those of another," and bars federal duties on ships entering one state from another. *Id.* art. I, § 9. Article I, section 10 bars states "without the Consent of the Congress" from "lay[ing] any Imposts or Duties on Imports or Exports" beyond what is "absolutely necessary" to execute the state's inspection laws (and with net proceeds reverting in any event to the federal treasury) and prohibits "any Duty of Tonnage" absent congressional consent. *Id*. art. I, § 10.

40. *Id.* art. IV, § 2.

IV. PRESS

The First Amendment obviously serves conversational ends by protecting speech, press, assemblies, petitions, and religious gatherings. Within this set, the press deserves special mention. A good part of Amar's account involves broad dissemination of ideas and reports of events through newspapers. Besides circulation of essays and speeches by political figures—"all the great founding fathers were early sires and children of America's emerging newspaper culture" (p. 304)—and other commentators, newspapers were the means for intrastate and interstate distribution of state constitutions (pp. 157–58), for rapid dissemination of the proposed federal Constitution (published in "nearly every newspaper in America" (p. 226)), for keeping Americans appraised of the Adams administration's sedition prosecutions (p. 445), and for getting out court decisions in *McCulloch* and other closely watched cases (p. 539).

In all of this, congressional power mattered as much as First Amendment freedom. Congress could "make no law . . . abridging the freedom . . . of the press,"[41] but nothing barred Congress from using its enumerated powers to make laws to increase newspaper circulation—and thereby bridge geographic distances that choked information flows. In this regard, nothing was more important to constitutional small talk than the first federal post office laws. Article I of the Constitution gives Congress the power "[t]o establish Post Offices and post Roads."[42] Although the Continental Congress had created an American postal system in 1775, it remained stunted, with only 69 offices in 1788.[43] After ratification of the federal Constitution, Congress moved rapidly to expand the postal system. The 1792 Post Office Act launched a national network of post offices[44] and the system grew rapidly: 903 post offices in 1800; 4,500 in 1820; 8,450 in 1830; and 13,468 in 1840.[45] By 1828, the United States

41. *Id.* amend. I.

42. *Id*. art. I, § 8.

43. Richard R. John, *Recasting the Information Infrastructure for the Industrial Age, in* A NATION TRANSFORMED BY INFORMATION: HOW INFORMATION HAS SHAPED THE UNITED STATES FROM COLONIAL TIMES TO THE PRESENT 55, 57 (Alfred D. Chandler Jr. & James W. Cortada eds., 2000). *See also* RICHARD R. JOHN, SPREADING THE NEWS: THE AMERICAN POSTAL SYSTEM FROM FRANKLIN TO MORSE (1995).

44. An Act to Establish the Post-Office and Post Roads Within the United States, ch. 7, 1 Stat. 232 (1792).

45. *See* John, *Recasting the Information Infrastructure for the Industrial Age*, *supra*

had the largest postal system in the world.[46]

Of particular importance is what Congress made the new postal system do for newspapers. The 1792 Act authorized mailing of newspapers at heavily subsidized rates. Under the statute, newspapers sent up to 100 miles were charged just one penny; over 100 miles the rate was 1.5 cents.[47] Mailing a letter, by contrast, ran 6 cents (up to 30 miles) to 25 cents (over 450 miles) per page.[48] (In 1794, Congress even amended the pricing scheme to permit newspapers to be delivered anywhere in the state of publication for just a penny.)[49] The 1792 Act also allowed every newspaper editor in the country to send, free of charge, a copy of his newspapers to every other editor.[50] Further, the 1792 Act authorized other enterprises to use federal postal roads to transport and deliver newspapers (letters and other items had to travel through the official mail).[51]

These mechanisms were the means for sharing news over long distances: individuals could subscribe to newspapers from distant markets and newsmen could get their own local news to other newsmen anywhere in the nation. As a result of the Post Office Act, newspapers circulated in the new nation at a phenomenal rate.[52] After 1792, "large numbers of Americans subscribed to nonlocal journals, and newsprint flooded every post office in the country," so that, almost immediately, "[n]ewspapers were the staple item of postal exchange."[53] Fusion of post and press brought Americans together in shared informational and conversational relationships. Consistent with the design of the 1792 Act, "[t]he post and the press were deeply intertwined and mutually supportive cultural institutions; their

note 43, at 59–60.

46. *See id.* at 60.

47. An Act to Establish the Post-Office and Post Roads Within the United States, ch. 7, § 22, 1 Stat. 232, 238 (1792).

48. *Id*. § 9, 1 Stat. at 235.

49. An Act to Establish the Post-Office and Post-Roads Within the United States, ch. 23, § 22, 1 Stat. 354, 362 (1794).

50. An Act to Establish the Post-Office and Post Roads Within the United States, ch. 7, § 21, 1 Stat. 232, 238 (1792).

51. *Id*. § 14, 1 Stat. at 236.

52. *See* John, *Recasting the Information Infrastructure for the Industrial Age*, *supra* note 43, at 59–60 ("In 1800, the postal system transmitted 1.9 million newspapers and 2 million letters. By 1840, [the system transmitted some] 39 million newspapers and more than 40 million letters.").

53. DAVID HENKIN, THE POSTAL AGE: THE EMERGENCE OF MODERN COMMUNICATIONS IN NINETEENTH-CENTURY AMERICA 42 (2006).

claims to overcome barriers of time and space by bringing news from afar (typically at weekly intervals) were essentially one and the same."[54] Of particular note, rural residents had access to the very same news sources as urban dwellers: "[t]he rural American Northeast was the first place in the Western world where much of society . . . came to accept the integration of local and distant worlds."[55] Further, while a letter might be read privately, newspaper-reading was a social activity: newspapers were routinely read aloud to others and shared in taverns and coffeehouses.[56] Congress's use of a constitutional power produced conversation.

CONCLUSION

In the postscript to *The Words That Made Us*, Amar expresses deep concern about today's "widespread constitutional illiteracy" (p. 675). He asks: "Without a deep understanding of our collective constitutional past, how can Americans live together? . . . Without a shared understanding of the basic rules of constitutional interpretation, how can Americans live free and thrive?" (pp. 675–76). If constitutional small talk matters for social harmony, freedom, and flourishing, knowledge of the past and familiarity with the basic features of our constitutional system are essential. Constitutional conversation, whether big or small, cannot proceed without a shared sense of where we came from and where in the future we might venture. Amar has promised us two more volumes to bring things up to the present day—and to our present state. In the historical periods those two sequels will cover, the conversational circles, inevitably, will shift—with new actors and new issues occupying center stage. So, too, small talk will change shape and focus if it plays, as it surely will, a continued role in making us—and in making us equal and modern.

54. *Id*. at 43.

55. WILLIAM J. GILMORE, READING BECOMES A NECESSITY OF LIFE: MATERIAL AND CULTURAL LIFE IN RURAL NEW ENGLAND, 1780–1835, at 351 (1989).

56. *See* John, *Recasting the Information Infrastructure for the Industrial Age*, *supra* note 43, at 59–60.