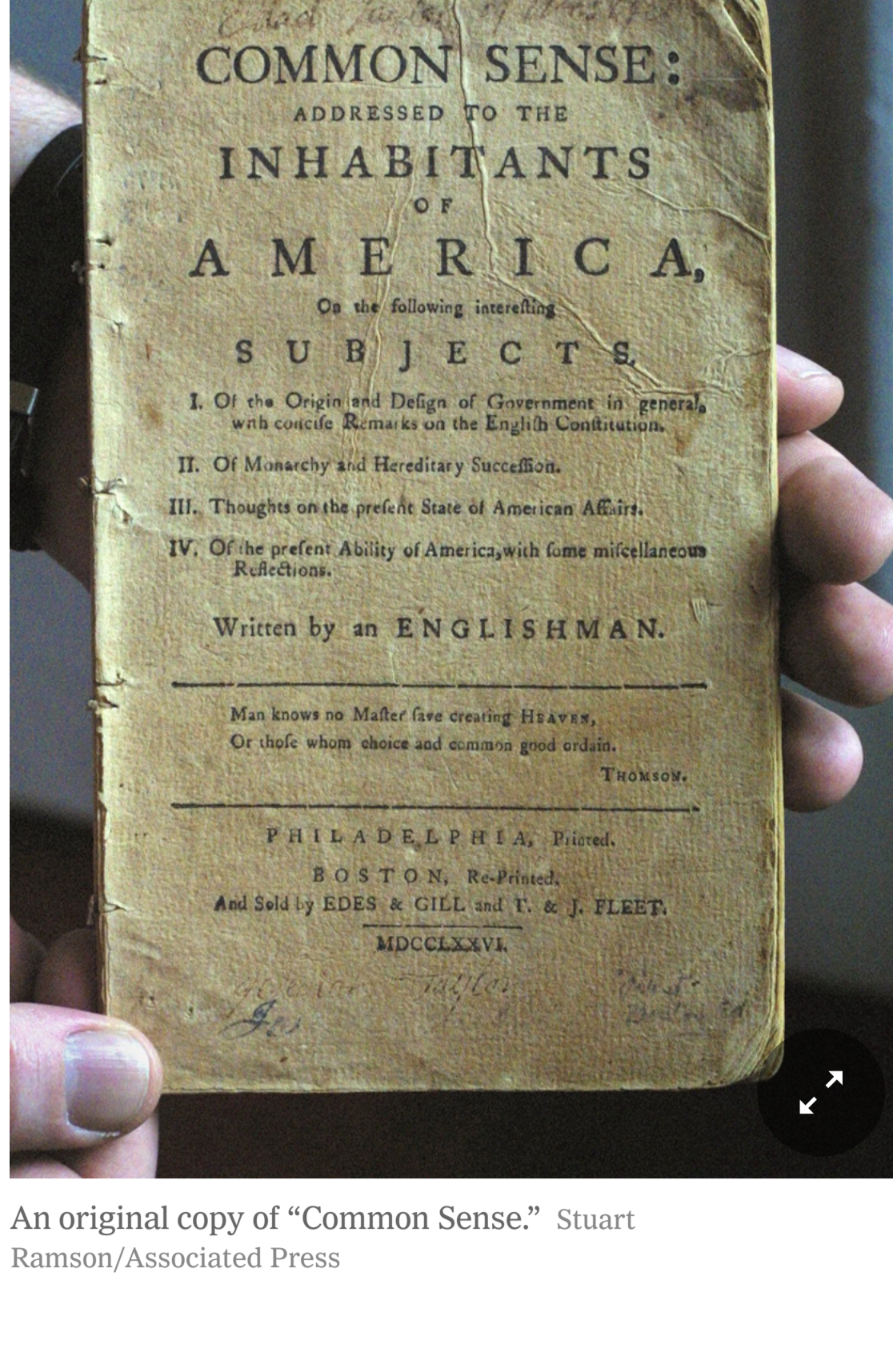


The Constitution Is More Than a Document — It’s a Conversation



An original copy of “Common Sense.” Stuart Ramson/Associated Press

BUY BOOK

When you purchase an independently reviewed book through our site, we earn an affiliate commission.

By **Adam Cohen**

May 4, 2021

THE WORDS THAT MADE US

America’s Constitutional Conversation, 1760-1840

By Akhil Reed Amar

When I was part of a legal team trying to establish that Alabama children in poor school districts had a right to equal educational funding under the state Constitution, we found an unexpected obstacle in our way. In 1956, [Alabama had amended its Constitution](#) to say that nothing in it should be construed as recognizing the right to an education. That prevented us from grounding our claim of a right to equal funding in a state constitutional right to be educated.

We persuaded a judge to strike down the 1956 amendment, in large part by describing the bigoted history and rhetoric behind its adoption. The no-right-to-an-education clause had been added in the wake of *Brown v. Board of Education*, as part of a frenzied racist reaction to the ruling, for the express purpose of trying to prevent Alabama’s segregated schools from being integrated.

For our little public-interest trial team, this legal battle was a pointed lesson in how constitutions are constructed. They may contain abstract assertions of rights (or nonrights), expressed in grandiloquent language, but they are inescapably a reflection of the views and words of the place and time that produced them. Scratch the Alabama Constitution’s bland declaration that “nothing in this Constitution shall be construed as creating or recognizing” the right to an education, and you will find the sort of ugly bombast that culminated in Gov. [George Wallace declaring “segregation today, segregation tomorrow, segregation forever.”](#)

This essential reality about how constitutions emerge is no less true of the United States Constitution and other foundational documents like the Declaration of Independence. [Akhil Reed Amar](#),

the Sterling professor of law and political science at Yale, explores this territory brilliantly in “The Words That Made Us,” his deeply probing, highly readable study of “America’s constitutional conversation” from 1760 to 1840. As the title reveals, his chief concern is words, and as the subtitle indicates, those words are less the text of the Constitution itself than the rich cacophony of expression — the national conversation — that produced that text.

ADVERTISEMENT

Amar starts his narrative slightly earlier than most histories of the American Revolution, in 1760, when a merchant ship arrived with the news that elderly King George II had died. From there, he surveys high points of the era that are staples of American history class — like the Boston Tea Party — and others that are less so, like [Paxton’s Case](#), a dispute over the arcane issue of “writs of assistance,” which helped colonial authorities prevent smuggling.

Amar emphasizes the conversations surrounding these critical moments. The Colonies’ break with Britain was a result not merely of acts of resistance and military battles, but also of a steadily building, verbally expressed consensus among the people — in speeches, pamphlets, newspapers, even cartoons — in favor of independence. The building blocks of this conversation ranged from the tendentious, like Thomas Paine’s “Common Sense,” to the merely logistical, like the [letter of the Virginia House of Burgesses](#) proposing the formation of a network of correspondence among all the colonial assemblies.

Amar presents his cast of characters, who range from the iconic to the obscure, not only as soldiers, convention delegates and elected officials, but also as communicators. He notes that five of the six main founders — Alexander Hamilton, Benjamin Franklin, James Madison, Thomas Jefferson and John Adams — were “newspaper scribblers.” And George Washington, he says, was one of the great letter writers of his age and an “outstanding *listener*.” Indeed, at the Constitutional Convention in Philadelphia, Washington was “the listener in chief.”

If willingness to converse is one of the greatest virtues in Amar’s telling, refusing to is among the worst sins — and blunders. He notes that King George III fueled the Revolutionary fires by his unwillingness to listen to his American subjects. The king did not try to talk with Franklin, who lived in London for many years, or other American leaders, to seek common ground. When colonists wrote him a polite petition, he would not let it be read to him.

For all of his insightful, and at times surprising, reflections on the founders, Amar is no exponent of the great man theory of history, at least when it comes to the key documents of early America. He strongly suggests that America as a whole — through its great national conversation — did more to draft the Declaration of Independence than Jefferson, and more to write the Constitution than Madison. Most of the Constitution, he says, “simply followed from the logic” of the American constitutional conversation from 1764 to 1787.

ADVERTISEMENT

This national conversation continued after the Constitution was written. It prompted the adoption of the Bill of Rights, the first 10 amendments that enshrined freedom of speech, protection against cruel and unusual punishment, and other rights highly valued by the public of that time. And it shaped how the newly created Constitution would be interpreted. Amar explains that in the early years, “conversation circles” played a major role in giving the new document meaning, as “the Constitution nudged senators to deliberate with senators; House members likewise to talk among themselves; justices to converse with local judges, juries and lawyers”; and “presidents to confer with” cabinet members and top staffers.

If it sounds as if Amar is suggesting that much of our constitutional heritage has been “crowdsourced,” he himself embraces that term. The Revolutionary era was, in his account, an age of communication rivaling our own technology-powered one. “The extraordinary conversational regime that dawned in the 1760s was not email, not the internet, not Google, not Facebook, not YouTube, not Instagram, Twitter or Zoom,” he writes. “But in hindsight this regime can be seen as anticipating these later developments.”

Excellent as “The Words That Made Us” is, there are ways it might have been even better. One involves class. Amar is appropriately attentive to the relative absence of Black Americans, women and Indians from the constitutional conversation (though he notes that their participation grew over time). It would have been good if he had said more about the exclusion of poor people, since so much of the discussion in this era was dominated by economic elites. At times, his radar for class issues seems to falter, as when he calls the [Supreme Court justice Joseph Story](#) — the son of a prominent Boston surgeon, and a graduate of Harvard College — “entirely self-made.”

Also less than ideal is the book’s length. Amar declares that he wants students, pundits, politicians and the general citizenry to read his history and be improved by it. The chances of them doing so are reduced considerably by a three-digit page count that begins with an “8.” Portions could have been trimmed, or placed in an online appendix, in the interest of luring more people into the conversation.

More readers would be a good thing. The conception of our constitutional heritage put forth in “The Words That Made Us” is enormously appealing — democratic, inclusive and rooted in an ethos of “Come now, let us reason together.” As Amar notes, our national “constitutional conversation continues” to this day “in courtrooms, classrooms, newsrooms, family rooms and everywhere in between.” In addition to educating the Americans engaged in this discussion about their rich constitutional legacy, the book has a generous spirit that can be a much-needed balm in these troubled times.

ADVERTISEMENT