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Recommended Citation

Marc Arkin, *Regionalism and the Religion Clauses: The Contribution of Fisher Ames*, 47 *Buff. L. Rev.* 763 (1999)

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Regionalism and the Religion Clauses: The Contribution of Fisher Ames

MARC M. ARKIN†

INTRODUCTION

On August 20, 1789, Massachusetts Federalist Fisher Ames rose to address the House of Representatives in one of his rare contributions to the debate on the Bill of Rights.¹ The day before, sitting as a Committee of the Whole, the House had concluded its brief discussion of the proposed religion amendment to the federal Constitution by agreeing to New Hampshire Representative Samuel Livermore's formula that "Congress shall make no laws touching religion, or infringing

† Professor of Law, Fordham University School of Law. I would like to thank Martin Flaherty, Philip Hamburger, Douglas Laycock, Henry Monaghan, Edward Purcell, Jack Rakove, Conrad E. Wright, and most especially, Michael Martin for their comments on earlier versions of this essay. In addition, I would like to thank both Fordham University and Fordham University School of Law for their grants in support of this project. Finally, I express my gratitude to Robert Hanson, and to the research librarians and staff at the Dedham Historical Society, Harvard University's Pusey Library, the Massachusetts Historical Society, and the Southwest Harbor Public Library for their unfailingly gracious assistance and, as to the archives, for their permission to quote materials held in their manuscript collections.

Due to the nature of the materials presented in this article, *BUFFALO LAW REVIEW* and the author have agreed it is appropriate in some instances to vary from the journal's general editorial form.

1. See 1 *THE DEBATES AND PROCEEDINGS IN THE CONGRESS OF THE UNITED STATES* (Joseph Gales & W.W. Seaton eds., Washington, 1834-1856) 796 [hereinafter *ANNALS*]. For the difficulties inherent in the sources for early congressional debates, see, for example, LEONARD W. LEVY, *THE ESTABLISHMENT CLAUSE 187-89* (1986); Marion Tinling, *Thomas Lloyd's Reports of the First Federal Congress*, 18 *WM. & MARY Q.* 519 (1961). The editors of the *Annals* for the session of Congress that framed the Bill of Rights based their report on *Lloyd's Congressional Register*, an unofficial weekly periodical; they further condensed Lloyd's already heavily edited and reconstructed account. In a May 9, 1789, letter to Thomas Jefferson, Madison wrote of Lloyd's "mutilation & perversion" of the record, *quoted in* Tinling, *id.* at 533.

the rights of conscience."² Now, on the 20th, before the House could formally adopt Livermore's language, Representative Ames proposed a different wording. He moved that the amendment be altered to read: "Congress shall make no law establishing religion, or to prevent the free exercise thereof, or to infringe the rights of conscience."³ Without explanation or debate, the House accepted his version and quickly moved on to discuss the rights of citizens to bear arms. By the end of the day, the House had dispatched four of the twelve amendments pending before it.⁴ In the rush, Ames's contribution to the constitutional lexicon passed all but unremarked.

Legal scholars have long been troubled by the "lackluster and apathetic" nature of the House debate regarding the Bill of Rights⁵ and, in particular, by the "sometimes irrelevant, usually apathetic, and unclear" discussion of the religion clauses, a discussion characterized by "ambiguity, brevity, and imprecision in thought and expression."⁶ Few things are more emblematic of these historical difficulties than the treatment accorded Fisher Ames, his role in drafting the religion clauses, and his views on the proper relationship of church and state.

Consider, for example, the account in an influential law review article by Professor Michael McConnell.⁷ According to McConnell:

Ames . . . introduced a new term into the debate: 'free exercise of religion.' 'Free exercise' had been part of most of the state proposals but had not appeared in the Madison, Select Committee or New Hampshire proposals previously debated in the House, all of which had used the alternative formulation 'rights of conscience.' In many contexts, the phrases 'rights of conscience' and 'free exercise of religion' seem to have been used interchangeably. But here, Ames, a notoriously careful draftsman

2. 1 ANNALS, *supra* note 1, at 759.

3. *Id.* at 796.

4. *See id.*

5. Steven D. Smith, *The Writing of the Constitution and the Writing on the Wall*, 19 HARV. J.L. & PUB. POL'Y. 391, 397 (1996).

6. LEVY, *supra* note 1, at 79.

7. Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 HARV. L. REV. 1409 (1990). The Supreme Court has cited Professor McConnell's article several times, most recently in *City of Boerne v. Flores*, 521 U. S. 507, 538, 542 (1997).

and meticulous lawyer, thought it necessary to use both terms.⁸

From this, aided by references drawn from several eighteenth century dictionaries, McConnell concluded that “free exercise is more likely than mere liberty of conscience to generate conflicts with, and claims for exemption from general laws and social mores” and, thus, that the first amendment “extended the broader freedom of action to all believers.”⁹ Ames, according to McConnell, was the agent who introduced this broader notion of religious freedom into the Constitution. And, to McConnell, the religion clauses themselves were primarily focused on safeguarding the rights of individual believers.

Other scholars have contended that a group of conservative New England senators reworked Madison’s original plan for amendments that protected individual rights of “religious belief or worship” and “conscience” from both state and federal infringement.¹⁰ These men represented New England’s “Standing Order” in which church and state were tightly intertwined; as the story goes, they were less interested in safeguarding the rights of individual believers than in protecting their existing state establishments.¹¹ On this view, the establishment clause ultimately enacted by the states represented a compromise between Ames’s proposal

8. *Id.* at 1482-83.

9. *Id.* at 1490. *But see* Philip A. Hamburger, *A Constitutional Right of Religious Exemption: An Historical Perspective*, 60 GEO. WASH. L. J. 915 (1992) (arguing that historical precedent does not support a broad right of religious exemption from otherwise applicable laws).

10. 1 ANNALS, *supra* note 1, at 451-52. *See, e.g.*, IRVING BRANT, LIFE OF JAMES MADISON 267 (1954). *See infra* note 85 for the text of the relevant Madisonian amendments, the fourteenth of which specifically precluded the states from violating the “equal rights of conscience.”

11. BRANT, *supra* note 10, at 267. In recent years a debate has arisen as to whether, at the time the Bill of Rights was ratified, the legal relationship between church and state in New England was an establishment of religion, or, instead, merely involved non-preferential aid to religious groups. *See* GERARD V. BRADLEY, CHURCH-STATE RELATIONSHIPS IN AMERICA 20-21 (1987) (summarizing the debate). Of course, “non-preferential aid” to religious institutions itself can be seen as a form of establishment of religion. *See, e.g.* Douglas Laycock, *Non-Preferential Aid to Religion: A False Claim about Original Intent*, 27 WM. & MARY L. REV. 875 (1986); *see also* AKHIL R. AMAR, THE BILL OF RIGHTS: CREATION AND RECONSTRUCTION 32 (1998) (stating that in 1789 at least six states had state supported churches and eleven of thirteen states had religious qualifications for office holding). No one, however, doubts that tax monies supported religious groups in New England in the late eighteenth century.

and an even more conservative Senate formulation, while Congress decisively rejected Madison's own version.¹² As Akhil Amar, one of the most recent proponents of the "states' rights" interpretation, has recognized, this construction raises some problems of its own when faced with the nationalist politics of the same Federalists: "[T]o avoid anachronism, we must ask why so many Federalists cheerfully conceded a lack of congressional power over press and religion in the states but failed to make similar concessions in response to other Anti-Federalist objections."¹³

These differing perspectives on the religion clauses have one thing in common—they each suggest that the vast judicial and scholarly energy devoted to reconstructing Madison's views on religious freedom,¹⁴ while perhaps satisfying from a twentieth century perspective, itself involves anachronism. Instead, it is the conservative Ames and his ilk who hold the key to the historical meaning of the religion clauses, not the drafter of the Memorial and Remonstrance for Religious Freedom. Yet, it is notable how little Ames's views on the subject—or Ames himself—figure in the legal and historical literature.

Amar fails even to mention Ames in his discussion of the religion clauses, preferring instead to give credit to Livermore.¹⁵ Writers attributing authorship to a Senate cabal

12. See BRADLEY, *supra* note 11, at 87. But see Donald L. Drakeman, *Religion and the Republic: James Madison and the First Amendment*, in JAMES MADISON ON RELIGIOUS LIBERTY 231, 234-35 (Robert S. Alley ed., 1985) (admitting that Congress rejected Madison's draft but arguing that the final version was not contrary to Madison's views because otherwise he "certainly would have taken up his experienced pen to put pressure on the legislative body").

13. AMAR, *supra* note 11, at 37.

14. See, e.g., *Everson v. Bd. of Educ.*, 330 U.S. 1 (1947) (Rutledge, J., dissenting). In *Everson*, Justice Rutledge proclaimed that "[n]o provision of the Constitution is more closely tied to or given content by its generating history than the religion clause of the First Amendment." *Id.* at 33. He then argued that Madison's understanding of the religion clauses determined their meaning: "All the great instruments of the Virginia struggle for religious liberty thus became warp and woof of our constitutional tradition, not simply by the course of history, but by the common unifying force of Madison's life, thought, and sponsorship." *Id.* at 39. Scholars also have treated Madison's views as central to the meaning of the First Amendment. See, e.g., William Van Alstyne, *Trends in the Court: Mr. Jefferson's Crumbling Wall—A Comment on Lynch v. Donnelly*, 1984 DUKE L.J. 770, 773, 777-79. See generally JAMES MADISON ON RELIGIOUS LIBERTY, *supra* note 12.

15. AMAR, *supra* note 11, at 32-45. Amar wrote of the establishment clause that "Samuel Livermore... initially won the assent of the House for this [New

do not suggest ties between the ultra-Federalist Ames and the conservative New Englanders in the upper house.¹⁶ And even those, like McConnell, who recognize the relevance of Ames's views have largely relegated him to their footnotes.¹⁷

The difficulty, according to McConnell, was that Ames, who wrote widely on issues of public importance, "never made any reference . . . to free exercise or to religious freedom."¹⁸ In fact, Ames's most recent biographer, Winfred E.A. Bernhard, ignored Ames's role in providing the "free exercise" language to the House debate.¹⁹ Relying largely on Bernhard's account, McConnell concluded that Ames's

opinions regarding religion [do not] seem noteworthy. He was a member of the majority denomination in his state, the Congregational Church, and left late in life to join the Episcopal Church, apparently because of political differences with the pastor. . . . Evidently his role in drafting the free exercise clause was one of political peacemaker, rather than exponent of a particular vision of religious freedom.²⁰

This pallid view of Fisher Ames fails to withstand close

Hampshire] wording, only to lose in turn to another formulation," presumably that of Ames. *Id.* at 33. Amar continued, when the Senate adopted the final form of the amendment, it had returned to its "states' rights" roots. *Id.* Amar's discussion of the free exercise clause, arguably Ames's more significant contribution to the debate, comprised two pages of text and did not mention Ames. *See id.* at 42-44.

16. *See, e.g.,* BRANT, *supra* note 10; BRADLEY, *supra* note 11.

17. McConnell acknowledged that Ames's views "could be relevant" because he "drafted the last version of the amendment to pass the House" and "his version was quite similar to the amendment that was ultimately ratified." McConnell, *supra* note 7, at 1455 & n.236.

18. *Id.* (relying on WORKS OF FISHER AMES (Seth Ames ed., 1854)).

19. WINFRED E.A. BERNHARD, FISHER AMES (1965). McConnell made the same observation about the Bernhard biography. *See supra* note 7, at 1455 & n.236.

Other sources for Ames's life include Samuel Eliot Morison, *Squire Ames and Doctor Ames*, 1 THE NEW ENG. Q. 5 (1928); Elisha P. Douglass, *Fisher Ames, Spokesman for New England Federalism*, 103 PROC. OF THE AM. PHIL. SOC'Y. 693 (October 1959). In addition, there is William B. Allen's *Foreword* to the Liberty Fund's WORKS OF FISHER AMES at xix (W. B. Allen ed., 1983). Further, J.T. Kirkland's *Life of Fisher Ames* was affixed most recently as a *Preface* to the 1983 Liberty Fund edition, WORKS OF FISHER AMES at xlii (W. B. Allen ed., 1983), having been part of both the 1809 and 1854 editions of Ames's works. *See infra* note 40. All references to Kirkland will be made to the 1983 Liberty Fund edition. Finally, there is a biographical sketch in THE DEBATE ON THE CONSTITUTION: FEDERALIST AND ANTIFEDERALIST SPEECHES, ARTICLES, AND LETTERS DURING THE STRUGGLE OVER RATIFICATION 997 (Bernard M. Bailyn ed., 1993). None of the modern sources discusses Ames's views on religion in depth.

20. McConnell, *supra* note 7, at 1455 & n.236.

scrutiny of the historical record. To the contrary, as a leader of New England's ultra-Federalists, the so-called Essex Junto,²¹ Ames was hardly a political peacemaker. Moreover, Ames's own religious life was not as transparent as McConnell inferred from his membership in the majority Congregational Church. Finally, Ames was not as reticent about the proper relationship between religion and the state as McConnell was led to believe; Ames actually published his views on the subject and wrote a number of private letters that revealed his thoughts regarding the treatment of religious dissent. None of these, it might be added, support the position that Ames accepted an expansive reading of the rights of religious groups to act outside conventional legal norms. Indeed, given his profound sense of the fragility of civil order, it is all but unthinkable that he would have espoused such a position.

In his writings, Ames also provided an answer to Amar's question of why Federalists were willing to make an exception to their nationalist principles in matters of religion. The reason was not primarily, as Amar suggested, that Federalists were comfortable with the tradition of local control over intermediate institutions. Amar did come nearer the mark when he stressed Federalist reliance on religiously-sponsored educational institutions to provide the moral foundation for a republican citizenry.²² Even here, however, Amar failed to recognize that this reliance was built not on the relatively optimistic assumptions of "civic republicanism,"²³ but on a fundamentally pessimistic view of human nature; the aim was not regeneration and education,²⁴

21. See *infra* note 53.

22. AMAR, *supra* note 11, at 45.

23. 'Civic republicanism' is used by historians to denote a strand of ideology common at the time of the American Revolution that self-consciously hearkened back to classical thought and viewed individuals as gaining meaning through their role citizens committed to the common enterprise of self-government. See generally J.G.A. POCOCK, *THE MACHIEVELLIAN MOMENT: FLORENTINE POLITICAL THOUGHT AND THE ATLANTIC REPUBLICAN TRADITION* (1975). The republican model met many scholarly and ideological needs and quickly gained ascendancy, particularly within the legal academy and among those critical of the process-oriented approach of liberalism. See, e.g., Kathryn Abrams, *Law's Republicanism*, 97 *YALE L. J.* 1591 (1988); Daniel T. Rodgers, *Republicanism: The Career of a Concept*, 79 *J. AM. HIST.* 11, 33-34 (1992).

24. AMAR, *supra* note 11, at 45. In this, Amar relied on his reading of GORDON S. WOOD's magisterial work, *THE CREATION OF THE AMERICAN REPUBLIC* 421-29 (1969) (discussing the hope that remained among many Americans, faced with the

but restraint and social control.

Indeed, the key to Ames's apparent inconsistency lies at the intersection between his extraordinarily dark view of human nature and his New England nationalism—a profound regional patriotism that was in tension with his nationalist ambitions.²⁵ Thus, Ames perceived Madison's anti-establishment amendments less as protection for individual religious conscience—something he seemingly took for granted—than as part of a concerted Virginian attempt to undermine New England's deep-rooted social structure and stability in the interest of southern hegemony. Ames joined the effort to preserve local government power over religion in order to prevent the extension of southern political culture into New England. On this view, the debate over the religion clauses is an early salvo in the sectional jockeying that would lead New England Federalists to threaten secession as early as 1804. On the other hand, in keeping with his overarching nationalist emphasis, Ames's language—preventing Congress from establishing religion or interfering with free exercise—admitted greater scope for Congressional action than Livermore's more categorical “no laws touching religion.”²⁶

Further complicating the picture, the late eighteenth century Massachusetts establishment that Ames supported was not the narrow and crabbed Puritanism of current popular culture. Instead, it was liberal in its theology and tolerant in its practice and polity, far more so than most of the New England dissenters who themselves favored disestablishment and certainly more so than its Connecticut counterpart. Indeed, Ames's Enlightenment-influenced

disorders of the 1780s, that moral reform and religious regeneration were possible, continuing earlier republican ideals). In his preface to the 1998 edition, Wood offered the cautionary observation that “republicanism has come to seem to many scholars to be a more distinct and palpable body of thought than it was in fact.” GORDON S. WOOD, *THE CREATION OF THE AMERICAN REPUBLIC* at v, vii (2nd ed. 1998).

25. See, e.g., Edmund S. Morgan, *The Puritan Ethic and the American Revolution*, 24 WM. & MARY Q. 3, 22 (1967), reprinted in *THE CHALLENGE OF THE AMERICAN REVOLUTION* 88, 112 (1976) [hereinafter CHALLENGE] (suggesting that differences between the north and south were “already discernable in the 1780's as the primary source of friction among Americans,” but tracing the friction mainly to tensions over slavery). Amar recognized the importance of what he termed the “states' rights” tradition during the early republic, but, due to his Madisonian emphasis, largely focused on southern developments and overlooked the strong tradition of New England regionalism. AMAR, *supra* note 11, at 4-5.

26. See *infra* note 2 and accompanying text.

attitudes toward religion invert the common understanding of the reactionary ultra-Federalist worldview, the complexity of which has been largely lost in the historians' fascination with the gruesome wreckage of the Federalist Party at the turn of the nineteenth century.²⁷

Thus, the story of Ames and the religion clauses confounds many of the historical assumptions that power current interpretive discourse about the Constitution. The dominant account is that Federalists were aristocratic nationalists; Anti-Federalists were populist localists; that the primary political fault line ran down this divide; that optimistic republicans turned to religious institutions to create virtuous citizens;²⁸ and that Madison was a nationalist throughout the first Congress.²⁹ Yet, in the politics of the religion clauses, the ultra-Federalist Ames took a localist position. Supplanting Madison—who was apparently acting out of state loyalties—Ames and his fellow New Englanders favored public support for religion not as an education to virtue but as an instrument of social control to perpetuate an existing hierarchy. And, they did so in the interests of a regionalism that overrode other party affiliations.

Compounding the irony, Ames himself had more in common with the patrician religiosity and cosmopolitan social attitudes of the southern political elite than he did with most inland New Englanders.³⁰ Yet, his support for a local religious

27. As Linda K. Kerber has gracefully stated, "In a mere twenty years, from 1789 to 1809, the Federalists as a group are assumed to have reversed character; once representing statesmanship of the highest order and originality, they deteriorated, it seems, into a pack of quarreling, ill-tempered curmudgeons, the poorest losers in American history." LINDA K. KERBER, *FEDERALISTS IN DISSENT: IMAGERY AND IDEOLOGY IN JEFFERSONIAN AMERICA* at xi (1980). See also STANLEY ELKINS & ERIC MCKITRICK, *THE AGE OF FEDERALISM* 24 (1993) (Although the early federalism of Washington and Hamilton was foresighted and enlightened, by the turn of the century, the response of Federalism to the political pressures of the day was "that of righteousness under siege, and amounted to little more than a sterile defense of the constituted order against the forces of insubordination and sedition. What had become of Federalism by then did not make a pretty picture."); Marshall Smelser, *The Federalist Period as an Age of Passion*, 10 AM. Q. 391 (1958).

28. See WOOD, *supra* note 24, at 421-29, 516-17, 540-43; see also Morgan, *The Puritan Ethic and the American Revolution*, 24 WM. & MARY Q. 3, reprinted in CHALLENGE, *supra* note 25, at 130; AMAR, *supra* note 11, at 11.

29. See, e.g., LANCE BANNING, *THE SACRED FIRE OF LIBERTY: JAMES MADISON AND THE FOUNDING OF THE AMERICAN REPUBLIC* 3-10, 25 (1995) (citing sources for the prevailing interpretation of Madison's thought while taking issue with their conclusions); AMAR, *supra* note 11, at 29.

30. See EDMUND S. MORGAN, *Conflict and Consensus*, in CHALLENGE, *supra*

establishment ran parallel to the position that Patrick Henry, the Anti-Federalist populist, took in the early Virginia debates. This complexity reflects the beginning of the messy transitions from the Federalist and Anti-Federalist divisions of 1789 to the bitter split between Federalists and Republicans of the 1790s,³¹ from the republicanism of the 1770s to the liberalism of the 1780s and 1790s,³² and the regional fissures that persisted throughout the period.³³ The text of the religion clauses masks these disparate currents and motivations; reconstructing those social and political forces highlights the difficulty of translation from the eighteenth century to the present.³⁴

Part I of this article surveys the life of Fisher Ames in the context of early national politics and considers Ames's attitude toward the amendment process in general and toward Madison in particular. It shows that Ames's general nationalist bias was tempered by an early and growing distrust for Virginia's ambitions and what Ames perceived as its populist politics. Part II discusses Ames's views regarding the proper relationship between religion and the state. It focuses on his belief that New England's establishment of religion was a vital means of social control, necessary to maintain the region's uniquely stable political and social

note 25, 174, 183-88 (noting that from 1763 to 1789 the primary sectional division was between coastal regions and the interior).

31. See Morgan, *The Puritan Ethic and the American Revolution*, 24 WM. & MARY Q. 3, 33, reprinted in CHALLENGE, *supra* note 25, at 126 (noting that there was "no continuity" between the political divisions of the 1770s, 1780s, and 1790s, but suggesting that a shared Puritan culture remained a constant ingredient of American political culture lending stability and continuity to political discourse).

32. The question of when and on what levels of society the transformation of republicanism to liberalism took place is an enormously vexed historiographical question. See, e.g., Rodgers, *supra* note 21, at 33. See generally JOYCE APPLEBY, *LIBERALISM AND REPUBLICANISM IN THE HISTORICAL IMAGINATION* (1992); Robert E. Shallope, *Republicanism and Early American Historiography*, 39 WM. & MARY Q. 334 (1982). Cf. Cass R. Sunstein, *Beyond the Republican Revival*, 97 YALE L. J. 1539, 1567 (1988) (arguing that "[t]he opposition between liberal and republican thought in the context of the framing is . . . largely a false one").

33. See, e.g., BANNING, *supra* note 29, at 14-23 (discussing Madison's regionalism in the early 1780s, including his resentment of New England's failure to aid Virginia after the latter was invaded).

34. For a discussion of the pervasive use of history in modern constitutional interpretation and the difficulties pertaining thereto, see Martin S. Flaherty, *History "Lite" in Modern American Constitutionalism*, 95 COLUM. L. REV. 523 (1995), and examples discussed therein. Cf. BRUCE A. ACKERMAN, *WE THE PEOPLE: FOUNDATIONS* 5 (1991) ("Americans routinely treat the constitutional past as if it contained valuable clues for decoding the meaning of our political present.")

structure, and that southern interests attempted to undermine New England's establishment in order to extend the south's populist political culture. Part III treats Ames's own religious views and his activities within the Massachusetts establishment. It shows that Ames's progressive theology easily coexisted with a reactionary approach to religious institutions, as he regularly manipulated the establishment in his hometown in order to enforce a culture of rank and deference—a dynamic common to the Massachusetts seacoast elite and surpassingly alien to current constitutional discourse. Part IV provides a coda to this discussion with Ames's 1805 election to the presidency of Harvard College as part of the bitter maneuvering by which the Massachusetts establishment placed a Unitarian minister³⁵ in the official pulpit of the university. After Ames died in 1808, both liberal and orthodox factions in the Harvard controversy attempted to claim Ames's posthumous allegiance; their eulogies provide further insight into his religious and social views.

The story that emerges from this study of Ames's political and religious life illuminates what Ames intended when he introduced his cryptic proposal on August 20, 1789. It also provides a far more nuanced understanding of the cultural presuppositions and political compromises that informed the adoption of the religion clauses that eventually became part of the First Amendment.³⁶ In filling in this gap in the constitutional narrative, this article displaces the traditional Madisonian bias in the legal literature.³⁷ Rather, it

35. Unitarianism is a liberal theological movement that derives its name from its core tenet, the rejection of the doctrine of the Trinity. *See, e.g.*, SYDNEY E. AHLSTROM, *A RELIGIOUS HISTORY OF THE AMERICAN PEOPLE* 391-92 (1972).

36. This discussion intentionally skirts the role of originalism in constitutional interpretation, an area in which the literature is so vast as to dwarf the present undertaking. However, an underlying theme of this article is the difficulty of reconstructing the eighteenth century worldview, much less of rendering that view relevant to twentieth century constitutional discourse. For a reasoned summary of the various positions and the historian's role in the originalism debate, see JACK N. RAKOVE, *ORIGINAL MEANINGS: POLITICS AND IDEAS IN THE MAKING OF THE CONSTITUTION* 1-22, 337-68 (1996). *See also* Alfred Kelly, *Clio and the Court: An Illicit Love Affair*, 1965 SUP. CT. REV. 119, 155-58; Paul Finkelman, *The Constitution and the Intentions of the Framers: The Limits of Historical Analysis*, 50 U. PITT. L. REV. 349 (1989).

37. *See, e.g.*, BANNING, *supra* note 29, at 1 (remarking on Madison's "centrality at every step of the creation of the federal republic"); Sunstein, *supra* note 32, at 1563 (asserting that "the importance of Madison for current constitutional controversy does not depend solely on the quality of Madison's thought[,] but also

underscores the sometimes overlooked importance of northern regionalism in constitutional politics as New England fought to preserve its own peculiar institutions from external assault.

I

A.

To his contemporaries, Fisher Ames (1758-1808) was the personification of Federalism, which was as much a culture as a political organization. When he died in 1808, the Federalist party, "which included everybody that was anybody in New England, felt that it had lost an orator equal to Demosthenes, a statesman the peer of Hamilton, and a man of letters with whom no other American would bear comparison."³⁸ His funeral was a state occasion in Boston. The procession, numbering over a thousand, comprised all the wise and the good of Massachusetts, including the President of Harvard College, the junior and senior classes,³⁹ the tutors and professors, the Boston clergy, and the Governor, Lieutenant Governor, and Council of the state. Along the route, shops closed, and in Boston harbor, stilled by Jefferson's embargo, ships flew their colors at half-mast.

Within months, grieving friends rushed *The Works of Fisher Ames* to press,⁴⁰ ensuring that the bereaved nation

on his role as a major figure in the American constitutional tradition).

38. Morison, *supra* note 19, at 5. The description of Ames's funeral that follows is drawn from *id.* at 30-31 and from Douglass, *supra* note 19, at 693-94.

39. A contemporary explained the presence of the junior and senior classes at Harvard saying, they "came to pay their respects to the memory of one, whom they had ever been taught to revere, and who had been elected President of the University." John Pierce, Entry of July 6, 1808, in 1 Memoir of the Reverend John Pierce 194-95 [hereinafter Pierce Memoir] (*on file* with the Massachusetts Historical Society).

40. The collected works of Fisher Ames has gone through several editions. Friends published the first edition of WORKS OF FISHER AMES (1809) shortly after his death. In 1854, his son, Seth Ames, issued an expanded edition of the collection including more of Ames's letters. WORKS OF FISHER AMES, *supra* note 17. Finally, in 1983, the Liberty Fund issued a further expanded modern edition, WORKS OF FISHER AMES (W. B. Allen ed., 1983) [hereinafter WORKS]. All references to WORKS OF FISHER AMES in this article will be to the 1983 Liberty Fund edition. In addition, Pelham W. Ames published a separate collection, SPEECHES OF FISHER AMES IN CONGRESS (1789-1796) (1871).

Many of the friends involved in preparing the first edition of Ames's Works were members of Boston's Wednesday Evening Club. See *infra* note 63. Cf. Letter from

should lack neither suitable models of New England virtue or Federalist prose. Ames—a native of Dedham, a 1774 graduate of Harvard, and a successful member of the Suffolk County bar—firmly entered public life in the fall of 1786 with a series of essays written in response to Daniel Shays's Rebellion.⁴¹ In these early pieces Ames articulated the themes of an entire lifetime:⁴² in the first set, signed Lucius Junius Brutus, Ames demanded that Massachusetts suppress the rebellion by force;⁴³ in the second, signed Camillus, he congratulated state leaders on their use of the militia and suggested that further disorders be avoided by strengthening the federal government.⁴⁴ Underlying both was Ames's belief that liberty, property, and union depended on an aristocracy of the wise, the good, and the well-to-do; his fear that ambitious demagogues would manipulate the people to subvert liberty, confiscate property, and reduce society to anarchy; and his conviction that strong government was essential to check these destructive forces.

As a result of the attention drawn by the letters, Ames was elected to the Massachusetts ratifying convention for the federal Constitution. There, he gained a reputation for oratory, primarily on the strength of a speech that convinced the assembly that biennial congressional elections were not a

Reverend John Eliot to Josiah Quincy (Feb. 6, 1809), in 17 PROCEEDINGS OF THE MASSACHUSETTS HISTORICAL SOCIETY 17-18 (1879-1880):

I will tell you more about him [Rev. John T. Kirkland]. He has had so many months to prepare a memoir of F. Ames. The press is now waiting for him. Mr. Cabot keeps at his side, goads him continually. This afternoon the Ministers met at his house. Mr. C. kept with him upstairs, and made him write,—allowing him only time to come down and pray as usual at our Associations

Id. at 18. Both Kirkland and Quincy eventually served as presidents of Harvard University; Eliot was a member of the Harvard Corporation, its executive governing body.

41. Although these are Ames's first published political writings, Ames's forays into public life date from 1779 when he represented Dedham at a Concord convention on wartime inflation. See BERNHARD, *supra* note 19, at 35; Allen, *supra* note 19, at xx.

42. See, e.g., BERNHARD, *supra* note 19, at 49-51, and Morison, *supra* note 5, at 11 (both pointing out that in these early letters, Ames enunciated the themes that occupied him until his death in 1808).

43. Fisher Ames, *Lucius Junius Brutus I-III*, first published in THE INDEP. CHRON., Oct. 12, 19, and 26, 1786, reprinted in 1 WORKS, *supra* note 40, at 38-56.

44. Fisher Ames, *Camillus I-V*, first published in THE INDEP. CHRON., Feb. 15 and 22, and Mar. 1, 8, 15, 1787, reprinted in 1 WORKS, *supra* note 40, at 56-77, 81-86.

step toward monarchy, but a "security that the sober, second thought of the people shall be law" rather than the "fiery materials" of the "factions of the day."⁴⁵ As an advocate of strong government, Ames vigorously supported Governor Hancock's proposal that the convention accept the Constitution as presented, leaving amendments to the future national Congress.⁴⁶ And, the next winter, supported by a circle of conservatives, Ames was elected to that first Congress, narrowly edging out Samuel Adams for Boston's seat in the House.⁴⁷

Once in Congress, Ames quickly fell behind Alexander Hamilton's nationalist program, proving himself one of Hamilton's most able supporters on the House floor. Throughout Ames's four terms in the House, his record was consistent—in speeches and in voting, he worked to advance the interests of Massachusetts and to enhance the powers of the federal government. In foreign policy, he hewed the Anglophilic Federalist line. After 1793 and the fiasco of Citizen Genet⁴⁸, Ames developed an almost obsessive fear of

45. Fisher Ames, Speech on Constituting the House of Representatives and Propriety of Biennial Elections (Jan. 15, 1788), in 1 WORKS, *supra* note 40, at 544-46. Annual elections were thought to keep representatives closer to the people. As Ames added, "To provide for popular liberty, we must take care that measures shall not be adopted without due deliberation. The member chosen for two years will feel some independence in his seat. The factions of the day will expire before the end of his term." *Id.* at 546.

46. Fisher Ames, Speech On Proposals for Ratification of the Constitution to be Accompanied by Proposed Amendments Rather than Conditioned on Adoption of a Bill of Rights (Feb. 5, 1788), in 1 WORKS, *supra* note 40, at 551-57. Ames feared that the delegates would either reject the constitution outright or would ratify it conditionally. In either case, Massachusetts would be left out of the future government and would be unprotected against the British. As he argued,

If we reject the Constitution, . . . [w]hat security has this single state against foreign enemies? Could we defend the mast country, which the Britons so much desire? Can we protect our fisheries, or secure by treaties a sale for the produce of our lands in foreign markets? . . . The Union is the dike to fence out the flood. That dike is broken and decayed; and, if we do not repair it, when the next spring tide comes, we shall be buried in one common destruction.

Id. at 556-57.

47. See BERNHARD, *supra* note 19, at 72 (reporting that Ames won by six more votes than a majority in the race against Adams).

48. Edmund Genet arrived as French minister to the United States in early 1793 to initial public acclaim and, apparently, to encouragement for French interests by then Secretary of State Edmund Randolph. Genet attempted, however, to recruit armies for France in the United States and fitted privateers to sail against British vessels from American ports. As a result, President

France. In the French Revolution, Ames saw the fulfillment of his grimmest predictions—first elicited by Shays's Rebellion—regarding the inevitable descent of popular rule into demagoguery and the equally inevitable contagion of mob rule and anarchy.⁴⁹

Ames played perhaps his most significant role in national affairs during the foreign policy crises of 1793-1796. Faced with a widening European war, Washington attempted to maintain United States neutrality in order to protect the country's shipping and mercantile interests—sometimes in the face of opposition from within his own administration. In January, 1794, Ames held the House floor for an entire day, speaking against James Madison's proposed "Resolutions," which restricted trade with Britain, ostensibly to obtain commercial concessions. Although the resolutions seemingly reinforced American neutrality, they actually favored France; their defeat was a victory for Washington's policies.⁵⁰ Two years later, in 1796, Ames enjoyed what contemporaries thought his greatest hour, appearing on the House floor to deliver a melodramatic ninety-minute *deathbed* oration on behalf of the Jay Treaty, a speech that was credited with sweeping away Republican opposition to implementation of

Washington requested Genet's recall in August, 1793. See ELKINS & MCKITRICK, *supra* note 27, at 341-53; Letter from Fisher Ames to Thomas Dwight, Jan. 17, 1794, in 2 WORKS, *supra* note 40, at 988-89. Genet's "outrages, for which his masters doubtless gave him authority, ought to provoke indignation." *Id.* at 988.

49. The best description of Ames's state of mind is given by fellow New Englander HENRY ADAMS in his HISTORY OF THE UNITED STATES OF AMERICA DURING THE ADMINISTRATIONS OF THOMAS JEFFERSON (Library of America 1986) (1891). Fear of France

became a monomania with the New England leaders, and took exclusive hold of Fisher Ames, their most brilliant writer and talker, until it degenerated into a morbid illusion. During the last few months of his life, even so late as 1808, this dying man could scarcely speak of his children without expressing his fears of their future servitude to the French. He believed his alarms to be shared by his friends. 'Our days,' he wrote, 'are made heavy with the pressure of anxiety, and our nights restless with visions of horror. We listen to the clank of chains, and overhear the whispers of assassins. We mark the barbarous dissonance of mingled rage and triumph in the yell of an infatuated mob; we see the dismal glare of their burnings, and scent the loathsome steam of human victims offered in sacrifice.

Id. at 59 (quoting Fisher Ames, *The Dangers of American Liberty* (written in early 1805), in 1 WORKS, *supra* note 40, at 131-32)).

50. Fisher Ames, Speech Against Madison's Proposal to Discriminate Against British Commerce (Jan. 27, 1794), in 2 WORKS, *supra* note 40, at 989-1023.

the agreement.⁵¹

Although ill health forced Ames to retire from Congress in 1796, he continued to play a major role in Federalist affairs through his political essays—he founded and was a frequent contributor to *The Palladium*,⁵² and other Boston periodicals—and through his web of personal ties, as evidenced by his vast (and lively) personal correspondence. Indeed, Ames became one of Federalism's chief polemicists against Jefferson's nascent Republican party, railing against its Francophilic leanings and its Virginia associations. Dismayed by Federalist President Adams's diplomatic overtures to end the Quasi-War with France, Ames backed Hamilton's plan to replace Adams with Charles Cotesworth Pinckney in the 1800 election, an effort that backfired to yield Jefferson's victory and the demise of Federalism as a significant political force.

In 1803, Ames, like other New England Federalists, anticipated that the southern voting bloc in Congress would be further strengthened by the concurrent Louisiana Purchase and admission of Ohio to the union. In a desperate move, the Essex Junto⁵³—chief among them, Timothy

51. See Fisher Ames, Speech on the Jay Treaty (Apr. 28, 1796), in 2 WORKS, *supra* note 40, at 1142-82. Ames was already suffering from the ill health that forced him to retire from public life. The speech itself was viewed as the most perfect piece of oratory delivered in the Anglo-American legislative tradition; it was memorized by several generations of New England boys, including the young William Lloyd Garrison. See W. B. Allen, *supra* note 19, at xxx-xxxi.

52. Ames described his hopes for *The Palladium* in the following terms: "Wit and satire should flash like the electrical fire; but *The Palladium* should be fastidiously polite and well-bred. It should whip Jacobins as a gentleman would a chimney-sweeper, at arm's length, and keeping aloof from his soot." Letter from Fisher Ames to Jeremiah Smith (Dec. 14, 1802), in 2 WORKS, *supra* note 40, at 1451-52.

53. Although the term was apparently coined by John Hancock, Ames himself occasionally referred to his ultra-Federalist political allies as the "Essex Junto." Letter from Fisher Ames to Jeremiah Smith (Feb. 16, 1801) in 2 WORKS, *supra* note 40, at 1408. Essex was the Massachusetts county where the conservatives were centered. Henry Adams described the Essex Junto as being comprised of Fisher Ames, George Cabot, Timothy Pickering, and Theophilus Parsons. As Adams stated,

According to Ames, not more than five hundred men fully shared their opinions; but Massachusetts society was so organized as to make their influence great, and experience foretold that as the liberal Federalists should one by one wander to the Democratic camp where they belonged, the conservatism of those who remained would become more bitter and more absolute as the Essex Junto represented a larger and larger proportion of their numbers.

Pickering, once Secretary of State and now Senator from Massachusetts⁵⁴—joined the “River Gods” of Connecticut’s Standing Order to plan an independent Northern Confederation with New England at its center. Despite his conviction that the Louisiana Purchase was unconstitutional,⁵⁵ Ames broke ranks with the ultra-Federalists and opposed secession.⁵⁶ Instead, he counseled that history intended that the Federalists “entrench themselves in the state governments, and endeavor to make state justice and state power a shelter of the wise, and good, and rich, from the wild destroying rage of the southern Jacobins.”⁵⁷ A New England patriot to the end, the despondent Ames spent his last years as a gentleman farmer in Dedham, hoping to find refuge from a disordered populist future in the “ancient manners” of Massachusetts.⁵⁸

ADAMS, *supra* note 49, at 62-63.

54. Pickering has not fared well in the judgment either of history or contemporaries. For the former, see, for example., ELKINS & MCKITTRICK, *supra* note 27, at 626. For the latter, perhaps the verdict of President John Adams will suffice: “Mr. Pickering would have made a good collector of the customs; but he was not so well qualified for a Secretary of State.” It is impossible, however, not to include the comment of Adams’s friend, Benjamin Waterhouse, who described Pickering as a man “who like spoilt wine, grows every day more sour, & is in a fair way of becoming first rate vinegar,” *quoted in* KERBER, *supra* note 27, at 64 & n.102.

55. See, e.g., Fisher Ames, *Republican II*, first published in THE BOSTON GAZETTE, July 18, 1804, *reprinted in* 1 WORKS, *supra* note 40, at 89-91.

The Constitution, alas! that sleeps with Washington, having no mourners but the virtuous, and no monument but history. Louisiana, in open and avowed defiance of the Constitution, is by treaty to be added to the union; the bread of the children of the union is to be taken and given to the dogs.

Id. at 91.

56. See Fisher Ames, *Republican XIII*, first published in THE BOSTON GAZETTE, Sept. 27, 1804, *reprinted in* 1 WORKS, *supra* note 40, at 231-32

Extreme indeed must those public evils be which could justify resort to the tremendous evil of a separation. Vain [. . .] those hopes which many repose on the superior good order of a northern confederacy over the turbulent Parisian license of Southern jacobinism. They forget that by erecting a northern republic, the seeds of intestine commotion, sown thick in human nature, and sprouting up to rankness in all the existing institutions of our country, would bear a plentiful crop of revolutions and civil wars. We should take jacobinism home into our bosoms.

Id.

57. Letter from Fisher Ames to Christopher Gore (Dec. 13, 1802) in 2 WORKS, *supra* note 40, at 1445.

58. Fisher Ames, *Dangers of American Liberty* (written in early 1805), in 1 WORKS, *supra* note 40, at 133.

B.

These developments lay well in the future when, in the late spring of 1789, James Madison brought before the House a rambling proposal for seventeen amendments to the federal constitution.⁵⁹ Ames's open partisanship even at this early date and his frank distaste for Virginia's political ambitions made him an unlikely "political peacemaker" during the ensuing amendment debates. But, if not a peacemaker among factions, what was Ames's attitude toward amending the federal constitution and what role did he play in the deliberations?

As evidenced by his 1788 speech to the Massachusetts ratifying convention,⁶⁰ Ames approached amendment pragmatically, as a distasteful political necessity in order to achieve a strong central government. Although Ames's private correspondence reflected his view that amendments were essential to conciliate the opposition, the purpose of conciliation was "to have every American think the union so indissoluble and integral, that the corn would not grow, nor the pot boil, if it should be broken."⁶¹ Ames's primary goal was to ensure that the amendments did not weaken the national government; his letters reek with increasing exasperation at Madison for pandering to popular opinion at the risk of diluting federal power and with growing disdain for the Madisonian amendments themselves. Rather, Ames chafed

59. See 1 ANNALS, *supra* note 1, at 451.

60. Ames, *supra* note 45, at 551-57. In this speech, Ames argued that

[t]he attention of the people is excited from one end of the state to the other, and they will watch and control the conduct of their members in Congress. Such amendments as afford better security to liberty will be supported by the people . . . Either the amendments will be agreed to by the Union or they will not. If it is admitted that they will be agreed to, there is an end of the objection . . . and we ought to be unanimous for the Constitution. If it is said that they will not be agreed to, then it must be because they are not approved by the United States, or at least nine of them. . . . The argument that the amendments will not prevail, is not only without force, but directly against those who use it, unless they admit that we have no need of a government, or assert that, by ripping up the foundations of the compact, upon which we now stand, and setting the whole Constitution afloat, and introducing an infinity of new subjects of controversy, we pursue the best method to secure the entire unanimity of thirteen states.

Id. at 555-56.

61. Letter from Fisher Ames to George Richards Minot (July 23, 1789), in 1 WORKS, *supra* note 40, at 695.

at the slow pace of House business—attributing the delay to Virginia's refusal to accept procedures that would lessen its influence—and remained eager to return to the more important task of enacting the legislative foundation for the nationalist program.⁶²

Despite his skepticism, Ames's regular dispatches to lawyer George Richards Minot and fellow members of Boston's well-connected Wednesday Evening Club reflected close attention to the progress of Madison's amendments.⁶³

62. Ames was not alone in thinking that the House had more important fish to fry than Madison's amendments. Among the matters before the House at the time Madison introduced his proposed amendments were the first federal judiciary bill, whether presidents could discharge members of the executive once confirmed by the Senate, where to locate the national capital, and sources of revenue for the new government. Madison's proposal was so low on the list of congressional priorities that he was forced to cajole his colleagues into hearing the suggested amendments—to "beg the House to indulge him." 1 ANNALS, *supra* note 1, at 257, 448-59. Generously, one representative agreed to postpone discussion of his own bill for establishing a land office, but added with respect to the land office bill that "in point of importance, every candid mind would acknowledge its preference[.]" *quoted in* Smith, *supra* note 5, at 397.

63. Many of Ames's letters to Minot were intended for reading at the Wednesday Evening Club, a select group of about twelve well-placed Federalists, drawn equally from the clergy, the medical profession and the bar. Accordingly, the letters may be counted among Ames's public policy statements, although they were intended for a very sympathetic and narrow audience.

The Wednesday Evening Club was founded in 1777 with the purpose of "a large amount of social pleasure . . . [and] that intellectual improvement which comes from intercourse with intelligent and cultivated minds." THE CENTENNIAL CELEBRATION OF THE WEDNESDAY EVENING CLUB 3 (1878) (*on file with the Massachusetts Historical Society*). Minot joined in 1777; Ames became a member in 1786 at the time he published the Brutus and Camillus letters. *See infra* notes 41-42 and accompanying text.

After the Revolution, Boston had more than a dozen literary, scientific, and social organizations formed by men of influence and prestige. In almost every case, the prime movers in these organizations were the liberal clergy, supported by members of their congregations. *See* CONRAD WRIGHT, THE BEGINNINGS OF UNITARIANISM IN AMERICA 260-65 (1955).

The Wednesday Evening Club was one of these groups; its "membership list through the decades is a roll of the social elite of Boston." *Id.* at 261-62. *See also* THE CENTENNIAL CELEBRATION OF THE WEDNESDAY EVENING CLUB, *supra*, at 141-45 (containing, *inter alia*, club membership lists). By Wright's tally, at the end of the eighteenth century, every member of the Wednesday Evening Club but one belonged to one of Boston's liberal churches and, needless to say, every member was a High Federalist. *See* WRIGHT, *supra*, at 261.

For example, George Richards Minot—the recipient of Ames's political dispatches—was associated with King's Chapel, where the openly Unitarian James Freeman (also a Wednesday Evening Club member until his death in 1804) was minister. Other members included John T. Kirkland, the liberal minister of

Initially, Ames's letters focused on Madison himself, taking a rather guarded view of the man. Only a few months into the first Congress, Ames confided his reservations: "I think him [Madison] a good man and an able man, but he has rather too much theory, and wants that discretion which men of business commonly have. He is also very timid, and seems evidently to want manly firmness and energy of character."⁶⁴ In the next letter, Ames clarified his feelings, to correct an apparent misunderstanding. His attitude was not "contempt" for Madison, but, rather, "impatience" with Madison's faults because he saw "in Madison, with his great knowledge and merit, so much error, and some of it so very unaccountable, and tending to so much mischief."⁶⁵ The nature of Madison's "error" was not hard to locate; even in 1789, Ames saw Madison as "very much devoted to the French" and noted that "his reasonings were not very logical, nor much to the credit of his political character."⁶⁶

New South who would assume the presidency of Harvard in 1810, and lawyer Josiah Quincy, one of his parishioners, who would become president of Harvard in 1829. Club member John Eliot was the liberal minister of New North; Judges Thomas Dawes and John Davis both rejoiced under the Federal Street ministry of the famous liberal William Ellery Channing who settled there in 1803. *See id.* at 261 & n.9. If a man can be known by the company he keeps, Ames kept theologically liberal company indeed.

64. Letter from Fisher Ames to George Richards Minot (May 18, 1789), in 1 WORKS, *supra* note 40, at 628.

65. Letter from Fisher Ames to George Richards Minot (May 29, 1789), in 1 WORKS, *supra* note 40, at 636.

That you may be less liable to misunderstand my idea of him in future, take this explication of it. He is probably deficient in that fervor and vigor of character which you will expect in a great man. He is not likely to risk bold measures, like Charles Fox, nor even to persevere in any measures against a firm opposition, like the first Pitt. He derives from nature an excellent understanding, but I think he excels in the quality of judgment. . . . As a reasoner, he is remarkably perspicuous and methodical. He is a studious man, devoted to public business, and a thorough master of almost every public question that can arise, or he will spare no pains to become so. . . . Upon the whole, he is an useful, respectable, worthy man, in a degree so eminent, that his character will not sink. . . . Let me add, without meaning to detract, that he is too much attached to his theories, for a politician. He is well versed in public life, was bred to it, and has no other profession. Yet, may I say it, it is rather a science, than a business, with him. He adopts his maxims as he finds them in books, and with too little regard to the actual state of things. . . . I say again, that he is afraid, even to timidity, of his state. . . .

Id. at 637-38.

66. *Id.* at 637. *Cf.* BANNING, *supra* note 29, at 18-19 (noting Madison's early

By early July, while Madison's draft amendments were awaiting the preliminary attention of a Committee of the Whole,⁶⁷ Ames was drawing a decidedly less generous picture of Madison. No longer merely "afraid, even to timidity, of his state,"⁶⁸ now Madison was too much of a toady, driven by the desire for popularity among the people Virginia, "whose murmurs, if louder than a whisper, make Mr. Madison's heart quake."⁶⁹ Indeed, Madison was among "the aristocracy of the southern nabobs" whose dreams were haunted by the "spectre of Patrick Henry," the cagey Anti-Federalist leader who had backed Madison into supporting amendments in the first place.⁷⁰

Francophile leanings).

67. The House originally set aside Madison's amendments for later consideration by a Committee of the Whole. After waiting six weeks, on July 21, Madison finally moved to bring the amendments up for discussion; it was not until then that the House voted to refer Madison's proposal, along with the proposals from the state ratifying conventions, to a select committee. See 1 ANNALS, *supra* note 1, at 690-91.

68. Letter from Fisher Ames to George Richards Minot (May 29, 1789), in 1 WORKS, *supra* note 40, at 638.

69. Letter from Fisher Ames to George Richards Minot (July 2, 1789), in 1 WORKS, *supra* note 40, at 680.

70. Letter from Fisher Ames to George Richards Minot (July 8, 1789), in 1 WORKS, *supra* note 40, at 686-87. See also Letter from Fisher Ames to William Tudor (March 8, 1790), in 1 WORKS, *supra* note 40, at 729 (Madison is "so afraid that the mob will cry out, *crucify him*; sees Patrick Henry's shade at his bedside every night"). Cf. Letter from Fisher Ames to George Richards Minot (Nov. 1791), in 2 WORKS, *supra* note 40, at 880 ("Patrick Henry, and some others of eminent talents, and influence, have continued *antis*, and have assiduously nursed the embryos of faction, which the adoption of the Constitution did not destroy. It soon gave popularity to the *antis* with a grumbling multitude.").

At the time of ratification, Madison was well-known to be hostile to the prospect of constitutional alteration. Although he sat on the committee that drafted the amendments recommended by the Virginia ratifying convention, Madison admitted that he viewed amendment as a necessary evil to obtain approval of the constitution. See, e.g., Letter from James Madison to George Washington (June 27, 1788), in 11 THE PAPERS OF JAMES MADISON 182 (Robert A. Rutland & Charles F. Hobson eds., 1977) [hereinafter "MADISON PAPERS"]; Letter from James Madison to Thomas Jefferson (Oct. 17, 1788), in 5 THE WRITINGS OF JAMES MADISON 271 (Gaillard Hunt ed., 1901). Subsequently, Henry maneuvered Madison into a difficult House election contest against the young James Monroe in a district dominated by Henry and Monroe supporters. Monroe supported amending the constitution and Madison appeared likely to lose the contest until, pressed by his advisors, see Letter from George Nicholas to James Madison, (Jan. 2, 1789), in 11 MADISON PAPERS, *supra*, at 406, Madison announced himself in favor of amendments in a letter—published in the course of the campaign—to Baptist minister George Eve. See Letter from James Madison to Rev. George Eve (Jan. 2, 1789), in 11 MADISON PAPERS, *supra*, at 404-05.

Ames now saw the amendments as reflecting the weaknesses of Madison's political character and, therefore, as permeated by Virginia's populist political culture. He felt that Madison served the whims of his constituents, rather than guiding the people as befitted a leader of judgment and substance. Writing to a friend, Ames announced that "Mr. Madison has introduced his long expected amendments," continuing:

They are the fruit of much labor and research. He has hunted up all the grievances and complaints of newspapers, all the articles of conventions, and the small talk of their debates. It contains a bill of rights, the right of enjoying property, of changing the government at pleasure, freedom of the press, of conscience, of juries, exemption from general warrants, gradual increase of representatives. . . . This is the substance. There is too much of it. Oh! I had forgot, the right of the people to bear arms. . . .

Upon the whole it may do some good towards quieting men, who attend to sounds only, and may get the mover some popularity, which he wishes.⁷¹

To Minot, Ames more candidly termed the amendments "a prodigious great dose. . . . But it will stimulate the stomach as little as hasty-pudding. It is rather food than physic. An immense mass of sweet and other herbs and roots for a diet drink."⁷²

Impatient with the House for its "unceasing speechifying"⁷³ and for conducting its business at a "slow trot,"⁷⁴ Ames greeted the July 21 decision to consign the

It should be added that the dislike between Madison and Ames became mutual. Madison gossiped that Ames owed his success in the 1794 House election to the votes of Negroes and British sailors "smuggled in under a very lax mode of conducting the election" 6 THE WRITINGS OF JAMES MADISON, *supra*, at 229, quoted in Douglass, *supra* note 18, at 709. See generally BANNING, *supra* note 26 (tracing Madison's early Virginia centrism).

71. Letter from Fisher Ames to Thomas Dwight (June 11, 1789), in 1 WORKS, *supra* note 40, at 642.

72. Letter from Fisher Ames to George Richards Minot (June 2, 1789), in 1 WORKS, *supra* note 40, at 643. Cf. BRADLEY, *supra* note 11, at 86, 88 (citing equally negative descriptions in other contemporaneous sources).

73. Letter from Fisher Ames to George Richards Minot (June 23, 1789), in 1 WORKS, *supra* note 40, at 677.

74. Letter from Fisher Ames to George Richards Minot (July 8, 1789), in 1 WORKS, *supra* note 40, at 683. He blamed the slow pace on the Virginians, saying: "There is certainly a bad method of doing business [in the House]. Too little use is made of special committees. Virginia is stiff and touchy against any change of the

amendments to a select committee with uncharacteristic optimism.⁷⁵ Until then, he had blamed the languid pace of House business on Virginia's "stiff and touchy" refusal to replace the practice of proceeding as Committee of the Whole with "special committees."⁷⁶ On reflection, however, Ames had grown even more disturbed by the populist nature of Madison's amendments. Summing up the status of House deliberations, he told Minot in a sharply worded and often-quoted passage that

I hope much debate will be avoided by this mode, and that the amendments will be more rational, and less *ad populum*, than Madison's. It is necessary to conciliate, and I would have amendments. But they should not be trash, such as would dishonor the Constitution, without pleasing its enemies.⁷⁷

committee of the whole." *Id.* at 685. See also Letter from Fisher Ames to William Tudor (July 12, 1789), in 1 WORKS, *supra* note 40, at 689. ("Our progress has been slow. . . . We have certainly proceeded more tardily than I expected, or will affect to approve." Ames studied law in Tudor's offices. See Allen, *supra* note 19, at xx.

75. 1 ANNALS, *supra* note 1, at 688-89.

76. Letter from Fisher Ames to George Richards Minot (July 8, 1789), in 1 WORKS, *supra* note 40, at 685. Ames's belief in the obstructiveness of the southern contingent found confirmation in 1791, when he and Madison and opposed one another over the creation of a national bank. Ames attributed the dispute—and the general bitterness of congressional debate—to differences between north and south:

To the northward, we see how necessary it is to defend property by steady laws. . . . At the southward, a few gentlemen govern; the law is their coat of mail; it keeps off the weapons of the foreigners, their creditors, and at the same time it governs the multitude, secures negroes, &c., which is of double use to them. . . . Most of the measures of Congress have been opposed by the southern members. I speak not merely of their members, but their gentlemen, &c., at home. . . . The states of Virginia, North Carolina, and Georgia are large territories. Being strong, and expecting by increase to be stronger, the government of Congress over them seems mortifying to their state pride. The pride of the strong is not soothed by yielding to a stronger. . . . [T]he strength as well as hopes of the Union reside with the middle and eastern states. . . . I will not tire you with more speculation; but I will confess my belief that if, now, a vote was to be taken, 'Shall the Constitution be adopted,' and the people of Virginia, and the other more southern states, (the city of Charleston, excepted,) should answer instantly, according to their present feelings and opinions, it would be in the negative.

Letter from Fisher Ames to George Richards Minot (Nov. 30, 1791), 2 WORKS, *supra* note 40, at 879-82.

77. Letter from Fisher Ames to George Richards Minot (July 23, 1789), in 1 WORKS, *supra* note 40, at 694. Ames's view regarding the necessity of amendments

Three weeks later, a few days before the House took up the amendments as revised by the select committee, Ames again complained to Minot that the process was moving too slowly, postponing more important national business.⁷⁸ Anticipating the impending amendment debates, however, Ames declared that, as a New Englander with concerns for the future, "it behooves me to interest myself in the affair."⁷⁹ With a shrewd Yankee eye, he reflected on the potential for mischief in tinkering with the Constitution,

It will consume a good deal of time, and renew the party struggles of the states. It will set Deacon Smead and many others to constitution-making, a trade which requires little stock, and often thrives without much custom. The workman is often satisfied to be the sole consumer.⁸⁰

Despite these drawbacks, Ames concluded that he was "persuaded" that it was "proper to propose amendments, without delay," recognizing that with proper handling the process would yield political advantage for the nationalist cause.⁸¹ A narrowly crafted set of amendments would do the government no harm and put the opposition in the difficult position of speaking against the very enactments that they had earlier demanded as a condition of supporting the Constitution:

if the *antis* affect to say that they [the amendments] are of no

was consistent with his stance in the Massachusetts ratifying convention. See *supra* note 43 and accompanying text. Modern commentators have made much of Ames's use of the word "trash" to describe Madison's proposed amendments. See, e.g., BRADLEY, *supra* note 11, at 88.

78. Letter from Fisher Ames to George Richards Minot (Aug. 12, 1789), in 1 WORKS, *supra* note 40, at 696-97. ("We are beginning the amendments in a committee of the whole. We have voted to take up the subject, in preference to the judiciary, to incorporate them into the Constitution, and not to require, in committee, two thirds to a vote. This cost us the day. To-morrow we proceed.") The creation of a federal judiciary was an essential element of the nationalist agenda since a federal forum to enforce federal law and to hear cases in diversity would limit state power and strengthen the central government. See, e.g., JEAN EDWARD SMITH, JOHN MARSHALL: DEFINER OF A NATION 301-308 (1996).

79. Letter from Fisher Ames to George Richards Minot (August 12, 1789), in 1 WORKS, *supra* note 40, at 697. The full context is instructive: "Some general, before engaging, said to his soldiers, 'Think of your ancestors, and think of your posterity.' . . . If I am to be guided by your advice, to marry and live in Boston, it behooves me to interest myself in the affair." *Id.*

80. *Id.*

81. *Id.* at 697.

consequence, they may be reproached with their opposition to the government,⁸² because they protested that the principles were important.

C.

Aside from scattered speeches on procedure and representation, these comments represent the sum of Ames's recorded observations about amendment. As they demonstrate, although Ames disliked reopening the constitutional debates, he was a pragmatic politician who intended to make the best of a questionable bargain. And, he clearly understood the importance of amendments for New England's "posterity."⁸³ At the same time, Ames had grown increasingly critical of both Madison and the Madisonian amendments as he became better acquainted with both. As to Madison's amendments, Ames considered them to be a scattershot effort to gain popularity with the electorate—"trash"⁸⁴—and not a judicious addition to the Constitution. But, he was not willing to delay important legislation to spend time on Madison's proposals. Like other contemporaries, Ames failed to realize that the amendments would loom larger in the historical imagination than much of the legislative agenda that drew his attention.

It is, therefore, fair to infer that the religion amendment—the sole substantive proposal Ames advanced in the course of the debates—reflected issues of importance to him and its language held significant purpose. Given Ames's distrust of the Virginia delegation and—as will be discussed further in the next section—his commitment to New England's tradition of compulsory support for religion, it appears that he introduced his version of the religion clauses in order to protect the New England Way from southern hostility.

Madison's initial proposals of June 8 reached both state and federal regulation of religion and doubtless confirmed Ames's suspicions regarding southern intentions.⁸⁵ After all,

82. *Id.*

83. See *infra* note 79.

84. See *infra* note 77 and accompanying text.

85. See 1 ANNALS, *supra* note 1, at 451-52. The fourth of Madison's proffered amendments promised that "[t]he civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor

it was a mere four years since Madison's anonymously circulated Memorial and Remonstrance spearheaded the defeat of Patrick Henry's "Bill for establishing a provision for teachers of the Christian religion," which would have provided Virginia with a system of compulsory ministerial support similar to that of New England. And, it was a mere three years since the Virginia legislature substituted Jefferson's now-famous Statute for Religious Liberty for the Henry bill.⁸⁶ Ames could not but have drawn the connection between Virginia's own experience, Madison's proposals for constitutional amendments protecting "equal rights of conscience" from state interference, and an effort to obtain state disestablishment throughout the new nation, including in New England.

Indeed, despite Madison's disclaimers about the limited powers of the federal government, the proposal that emerged from the select committee was textually vague as to which government—state or federal or both—was bound by the command that "No religion shall be established by law, nor shall the equal rights of conscience be infringed."⁸⁷ As if to underscore the regional issues at stake, New Englanders took the lead in the brief debate of August 15,⁸⁸ warily circling the issue of state prerogatives and emphasizing the importance of religion, while the southerners remained silent, save for Madison, who defended the proposal. The discussion can be captured in a few paragraphs.

Peter Sylvester of New York opened, expressing his reservation that the proposed language might "be thought to have a tendency to abolish religion altogether."⁸⁹ Massa-

shall the full and equal rights of conscience be in any manner, or on any pretext, infringed." *Id.* at 451. The fourteenth proposed that "[n]o state shall violate the equal rights of conscience, or the freedom of the press, or the trial by jury in criminal cases." *Id.* at 452.

86. See, e.g., Marc M. Arkin, "The Intractable Principle": David Hume, James Madison, and the Tenth Federalist, 39 AM. J. LEGAL HIST. 148, 170-73 (1995) (summarizing the Virginia experience with disestablishment).

87. 1 ANNALS, *supra* note 1, at 757. The select committee was comprised of one member from each state, with Madison representing Virginia. See *id.* at 691. The committee's deliberations took one week, sandwiched between other congressional business; it left no record of its discussions. Under the circumstances, it is unsurprising that the amendments it reported to the House reflected little change from Madison's original proposal.

88. The debate, as reported in the ANNALS, takes up less than three pages. See *id.* at 757-59.

89. *Id.* at 757.

chusetts Anti-Federalist Elbridge Gerry suggested that "it would read better if it was, that no religious doctrine shall be established by law."⁹⁰ For his part, Roger Sherman of Connecticut complained that the entire amendment was unnecessary because Congress had no power delegated to it under the constitution "to make religious establishments."⁹¹ Madison agreed, but suggested that the people feared establishment of a national religion

[w]hether the words are necessary or not. . . they had been required by some of the State Conventions, who seemed to entertain an opinion that under the clause of the constitution, which gave power to Congress to make all laws necessary and proper to carry into execution the constitution, and the laws under it, enabled them to make laws of such a nature as might infringe the rights of conscience, and establish a national religion; to prevent these effects he presumed the amendment was intended. . . .⁹²

After Madison finished, Benjamin Huntington of Connecticut admitted that, while he shared Madison's understanding of the amendment as written, others might find it convenient to put another construction upon it.⁹³ In particular, he worried that the amendment would interfere with New England's existing arrangements for public funding of its churches:

The ministers of their congregations to the Eastward were maintained by the contributions⁹⁴ of those who belonged to their society; the expense of building meeting-houses was contributed in the same manner. These things were regulated by by-laws. If an action was brought before a Federal Court on any of these cases, the person who had neglected to perform his engagements could not be compelled to do it; for a support of ministers, or building of places of worship might be construed as a religious establishment.⁹⁵

Drawing upon the gloomy example of Rhode Island, whose charter forbade religious establishments altogether,

90. *Id.*

91. *Id.*

92. *Id.*

93. *See id.*

94. The term *contribution* was frequently used to describe compulsory taxes for the support of religion. *See, e.g.,* M. LOUISE GREENE, DEVELOPMENT OF RELIGIOUS LIBERTY IN CONNECTICUT 372 (1905).

95. 1 ANNALS, *supra* note 1, at 758.

Huntington concluded with the hope that “the amendment would be made in such a way as to secure the rights of conscience, and a free exercise of the rights of religion, but not to patronize those who professed no religion at all.”⁹⁶

In response, Madison offered to clarify the amendment by inserting the word “national” before “religion” because he believed “that the people feared one sect might obtain a pre-eminence, or two combine together, and establish a religion to which they would compel others to conform.”⁹⁷ At this point Livermore announced that he

was not satisfied with that amendment; but he did not wish them [the House] to dwell long on the subject. He thought it would be better if it was altered, and made to read in this manner, that Congress shall make⁹⁸ no laws touching religion, or infringing the rights of conscience.

Livermore’s version quickly passed by a vote of 31 to 20.⁹⁹

It was Livermore’s substitution of the active for the passive voice—“Congress shall make no laws touching religion, or infringing the rights of conscience”¹⁰⁰—that finally clarified the subject of Madison’s proposal—“No religion shall be established by law nor shall the rights of conscience be infringed.”¹⁰¹ Ames’s August 20 revision—“Congress shall make no law establishing religion, or to prevent the free exercise thereof, or to infringe the rights of conscience”¹⁰²—actually narrowed the restriction on federal legislation while leaving the rights of state governments definitively untouched. Ames’s more focused wording reserved a greater scope for federal activity involving religion, such as enforcing “by-laws” in federal courts, providing for congressional chaplains, or issuing proclamations of Thanksgiving—an approach more practical than Livermore’s and more in keeping with New England customs.¹⁰³ On any reading,

96. *Id.*

97. *Id.* at 758.

98. *Id.* at 759.

99. *See id.*

100. *Id.*

101. *Id.* at 757.

102. *Id.* at 796.

103. For example, almost immediately after agreeing to a Bill of Rights, both houses of Congress, passed a resolution for a “day of public thanksgiving and prayer to be observed, . . . for the many signal favors of Almighty God.” During the House debate, it was a representative from South Carolina who objected that

Ames's proposal preserved New England's public support for religion from the incursions of southern political culture, thus permitting the Federalists to seek shelter in the ancient manners of Massachusetts.¹⁰⁴ Ames's writings from 1801 onward explicitly support this reading of his 1789 contribution to the amendment debate.

II

Although Ames never wrote about the constitutional amendment he helped to draft, in 1801, he did publish his thoughts regarding the proper relationship of church and state: there should be public support for a learned clergy in every town. Entwined with these views was Ames's explicit conviction that from the amendment process on, the south intended to destroy New England's inherited expression of that proper relationship, and with it, New England's unique culture and stable social order. The tone of Ames's remarks likely intensified with the Federalist reverses of the intervening years; nevertheless, there can be little doubt, based on his contemporaneous letters about the politics and personalities of amendment, that Ames harbored these views in 1789 during the amendment debates.

Thus, in May 1801, as part of an essay entitled *Phocion VII*,¹⁰⁵ Ames committed his thoughts on the proper role of religion in the state to *The Palladium*. It is a passage worth considering in detail, particularly since it has been overlooked in the existing literature on both Ames and the First Amendment. Ames began with the glories of New England's founding, the source of its success:

New England can boast that its ancestors were Englishmen, which, I confess, I consider as matter of boasting, and that they

"this . . . is a business with which Congress have nothing to do; it is a religious matter, and, as such, is proscribed to us." 1 ANNALS, *supra* note 1, at 914-15. Similarly, on September 22, 1789, the same Congress that passed the religion clauses passed a statute providing a salary for congressional chaplains. 1 Stat. 71 (1789). See also *Marsh v. Chambers*, 463 U.S. 783, 787-88 (1983) (discussing provision for legislative chaplains by the Congress that passed the Bill of Rights).

104. See *infra* note 23, and accompanying text.

105. Ordinarily, essays written in 1801 might be questionable evidence for views held twelve years earlier. However, the uncanny consistency of Ames's thought—and the extraordinary constancy with which he expressed those thoughts from the time of Shays's Rebellion until his death—support the inference in his case, as do his contemporaneous letters.

were the best of Englishmen. They were serious, devout Christians, of pure, exemplary morals, zealous lovers of liberty, well educated, and men of substantial property. There was never a new colony formed of better materials; never was one more carefully founded on plan and system, and no plan or system has discovered more foresight, or been crowned with more splendid success. Our forefathers immediately displayed a zeal and watchfulness, that the new society should be of the best sort . . . they excluded not only foreigners, but immoral persons, from political power, and even from inhabitancy.¹⁰⁶

Ames understood that, in the post-revolutionary era, a "zeal" to exclude both foreigners and "immoral persons" might strike some as "meanness and narrowness of spirit."¹⁰⁷ To the contrary, he asserted, New England owed "its schools, colleges, towns, and parishes, its close population, its learned clergy, much of its light and knowledge, its arts and commerce, and spirit of enterprise, to this early wisdom of our ancestors."¹⁰⁸ Not only was New England populous, learned, and prosperous because of its religious roots, it was alone among the regions of the United States to enjoy "a distinct and well-defined national character;" indeed, it was the only part of the country that "has yet any pretensions" to such a character.¹⁰⁹

Like John Winthrop and Cotton Mather before him, Ames believed in New England's unique place in history. But, animated by his overwhelming dread of change, Ames stressed the limits of New England's exemplary power. "[M]any truly enlightened citizens" had tried to emulate New England by introducing into their states the "schools, town divisions, and other institutions of New England." These transplants were destined to fail, however, because they lacked the authority of settled culture; they "would be novelties, whose authority would be for an age or two feeble and limited, in comparison of old habits and institutions."¹¹⁰

At the heart of New England's singularly successful culture, for Ames, was its long tradition of support for a "learned clergy"¹¹¹ in every "small district,"¹¹² bringing

106. Fisher Ames, *Phocion VII*, first published in *THE PALLADIUM* May 26, 1801, reprinted in 1 *WORKS*, *supra* note 40, at 295.

107. *Id.*

108. *Id.* at 295-96.

109. *Id.* at 296.

110. *Id.*

111. See *infra* note 108 and accompanying text.

stability to religion and morals alike. Referring obliquely to the movement that had achieved disestablishment of the Episcopal Church in Virginia—a movement led by Jefferson and Madison—Ames asserted:

Besides, most of the southern men of sense have prejudices in respect to the establishment of a learned clergy, and obliging every small district to support a minister. Without this precious security for the support of good morals and true religion, the attempt will be vain to adopt the laws and institutions of our ancestors.¹¹³

Not only did anti-establishment views hold sway among the southern elite, but, according to Ames, the common people identified opposition to compulsory support for the ministry with republican principles. In their ignorance, they considered any religious establishment to be a vestige of English rule and, accordingly, of tyranny and bigotry:

Nay, popular prejudices against these institutions are fixed, and have been cherished in most of the Southern states. They, perhaps sincerely, consider these as burdensome and tyrannical restraints, and, without very well knowing what they are,¹¹⁴ unite in disclaiming them as English, and remnants of bigotry.

With the groundwork laid, Ames reached the critical passage describing his understanding of Madison's religion amendments and the intent behind them. Virginians were so convinced—presumably by their demagogic leadership—that compulsory support for the ministry violated republican principles that they had instructed their congressmen to seek disestablishment. Apparently referring to the instructions issuing from the Virginia ratifying convention, Ames concluded his litany of horrors: "Hence the laws and customs of England are so much represented in Virginia as inconsistent with republicanism, that they have voted to instruct their members in Congress to procure their formal abolition."¹¹⁵

Ames, it might be noted, vehemently opposed instruction because it vested control of the legislature in the volatile

112. See Ames, *supra* note 108, at 296.

113. *Id.*

114. *Id.*

115. *Id.* Four years later, in 1805, Ames described the governing Jeffersonians as being "in avowed hostility to our religious institutions." Ames, *supra* note 58, at 133.

hands of public opinion and permitted the people to govern their betters, inverting what he saw as the proper social hierarchy.¹¹⁶ To Ames, Virginia's instructions reflected just such a popular error; rightly understood, religious observance led by a learned clergy was the foundation of both civil liberty and a stable society, and, of a genuinely republican government. Clinging to an older political tradition than that of his southern counterparts, Ames had always described the key to Anglo-American liberty as "restraint."¹¹⁷ Such "liberty calms and restrains the licentious passions" that would otherwise overwhelm a republic. And, this kind of

liberty depends on our education, our laws and habits, to which even prejudices yield; on the dispersion of our people on farms, and on the almost equal diffusion of property; it is founded on morals and religion, whose authority reigns in the heart; and on the influence all these produce on public opinion, before that opinion governs rulers.¹¹⁸

Obsessed with the precariousness of republican government, Ames further argued that public office should be confined to men "who profess the best moral and religious principles;" no one else would have the fortitude to hold back the "turbulence of our democracy."¹¹⁹ So profound were the temptations of power that republican leaders would

116. See *infra* notes 43-44 and accompanying text.

117. Fisher Ames, Eulogy of Washington, Delivered at the Request of the Legislature of Massachusetts (Feb. 8, 1800), in 1 WORKS, *supra* note 40, at 532.

118. *Id.* The consistency of Ames's views is well illustrated by the fact that twelve years earlier, in 1788, in a speech to the Massachusetts ratifying convention, he asserted in virtually identical words, the "liberty of one depends not so much on the removal of all restraint from him, as on the due restraint upon the liberty of others." Ames, *supra* note 45, at 544.

119. Ames, *supra* note 49, at 134. In the same piece, Ames continued,

Is the turbulence of our democracy to be restrained by preferring to the magistracy only the grave and upright, the men who profess the best moral and religious principles, and whose lives bear testimony in favor of their profession, whose virtues inspire confidence, whose services, gratitude, and whose talents command admiration? . . . But the bare moving of this question will be understood as a sarcasm by men of both parties.

Id. This 1805 statement mirrors Ames's 1789 objection to a constitutional amendment giving states the right to instruct their representatives in which he argued that the House would be more responsible were it "composed of men of independent principles, integrity, and eminent abilities" rather than if it were bound by state instruction. 1 ANNALS, *supra* note 1, at 755-56.

otherwise degenerate into demagogues, flattering the people into believing that their voice "is the voice of God," with the result that "neither religion, nor morals, nor policy, nor the people themselves can erect any barrier against the reasonable or the capricious exercise of their power."¹²⁰

As Ames admitted, even New England's steady habits were not immune to the seductive influence of southern republicanism and the policies of the Jefferson administration. By 1805, Ames believed that, under republicanism's pull, Massachusetts's long-standing parish tax model had eroded,¹²¹ leaving some churches to the insecurity of voluntary support, with all the "steadiness of sentiment and fashion."¹²² Looking back to an idealized past from the vantage point of Jefferson's second term, he complained that this dangerous change in New England's social order portended ill for the country as a whole:

Are we to be sheltered by the force of ancient manners? Will this be sufficient to control the two evil spirits of license and innovation? Where is any vestige of those manners left, but in New England? And even in New England their authority is contested and their purity debased. Are our civil and religious institutions to stand so firmly as to sustain themselves and so much of the fabric of the public order as is propped by their support?¹²³

If there was any hope left for New England, it was "owing to the tenaciousness with which even a degenerate people maintain their habits, and to a yet remaining, though impaired veneration for the maxims of our ancestors."¹²⁴

Ames seldom wrote of religion except as a source of stabilizing moral order, essential to the fabric of custom and culture that created the restraint necessary for self-government.¹²⁵ Although this was hardly a novel view, Ames

120. Fisher Ames, *Equality IV*, first published in *THE PALLADIUM*, Dec. 4, 1801, reprinted in 1 *WORKS*, *supra* note 40, at 247.

121. Massachusetts did not formally end the requirement that residents pay taxes to support a local ministry until 1833. See, for example, the account of the disestablishment in Massachusetts in *LEVY*, *supra* note 1, at 26-38.

122. Ames, *supra* note 58, at 133.

123. *Id.*

124. *Id.*

125. See, e.g., Fisher Ames, *Republican II*, first printed in *THE BOSTON GAZETTE* (July 26, 1804), reprinted in 1 *WORKS*, *supra* note 40, at 90. (There may be "the most liberty there, where the turbulent passions are the least excited, and where the old habits and sober reasons of the people are left free to govern them.")

was unusual in focusing on the importance of day-to-day habit in maintaining the fragile social order. For example, Ames considered the French Revolution's tampering with the mundane institutions that undergirded the people's moral education to be among its worst excesses. "[W]hat sort of society would you have," Ames asked, from those who "make your people scoff at their morals, and unlearn an education to virtue; displace the Christian sabbath by a profane one, for a respite once in ten days from the toils of murder . . . ?"¹²⁶

If religious observance led by a "learned clergy"¹²⁷ could educate the people in republican virtue and deference, the converse was also true. Religious impulses not guided by an educated minister—the so-called enthusiastic movements that first shocked Boston's elite during the great religious revival of the 1740s¹²⁸—could be a powerful force for social disorder. Unsurprisingly, Ames's writings are extremely wary of such movements; indeed, his entire political philosophy was dominated by fear of the irrational side of human nature. This anxiety, linking sectarian enthusiasm with the potential for social disorder, made Ames an unlikely exponent of a broad right of religious exemption from otherwise applicable social constraints and must inform any understanding of his meaning in the free exercise clause.

In a tradition going back at least to the essays of David Hume, and well-known to the former colonists, Ames likened political factions to uncontrolled sectarian movements.¹²⁹ Both were irrational forces that could topple governments and, ultimately, ordered society itself. Thus, Ames based one of his more strident anti-Jeffersonian polemics on an analogy

126. Ames, *supra* note 58, at 179.

127. See *infra* note 108 and accompanying text.

128. For the reaction of upper class Boston to the Great Awakening of the 1740s, see, for example, WRIGHT, *supra* note 63, at 28-58. Opponents of the revival vigorously defended a settled and learned ministry, as well as the remainder of the New England church order. See, e.g., CHARLES CHAUNCY, SEASONABLE THOUGHTS ON THE STATE OF RELIGION IN NEW ENGLAND 226-27 (1743):

Men of All Occupations, who are vain enough to think themselves fit to be *Teachers* of others; Men who, though they have *no Learning*, and but *small Capacities*, yet imagine they are able, and without Study too, to speak to the *Spiritual Profit* of such as are willing to hear them. . . .

Id.

129. See, e.g., Fisher Ames, *Laocoon I*, first published in THE BOSTON GAZETTE (Apr. 17, 1799), reprinted in 1 WORKS, *supra* note 40, at 187. For a fuller discussion of the link between religious and political faction in eighteenth century thought, see generally Arkin, *supra* note 86.

between political party and religious movement:

[W]hether their characters are formed by the weak facility of their faith, or their faith determined by the sour, malignant, and suspicious cast of their temperament, yet all agree in this one point, all are moved by some fixed prejudice or strong passion, some powerful spring of action, so blended with self-interest, or self-love, and so exalted into fanaticism, that the ordinary powers of the man, and the extraordinary powers conferred on the enthusiast, are equally devoted to their cause of anarchy.¹³⁰

Underlying Ames's belief that uncontrolled passion—whether religious or political—led to anarchy, was a classical vision of human nature as dominated by its baser appetites,¹³¹ restrained only by educated reason. Ordinary men could not practice the virtues necessary to self-government without the aid of institutions that taught them to suppress their natural destructive desires. Moreover, the people could not be expected to support those constraining institutions in the absence of compulsion. Tradition and religious usage gave this coercive role to the New England magistrate;¹³² custom and habit provided only a partial solution to supporting the religious institutions that themselves provided the means of "civil and restraining grace"¹³³ to society.

When Ames wrote of New England's "religious institutions,"¹³⁴ he referred not only to the parish tax support for the "learned clergy,"¹³⁵ but to the preeminence of that clergy in the life of Massachusetts. This ascendancy

130. Ames, *supra* note 129, at 192. The essay began with the announcement: "Some labor has been recently bestowed on the proposition, that the sect of jacobins is not to be converted." *Id.* at 187. In keeping with the journalistic conventions of the day, Ames also characterized the Jeffersonians not only as "fanatics," but as "salamanders . . . toads . . . [that] suck no aliment from the earth but its poisons," and "serpents in winter" who "rest in their lurking- places . . . the better to concoct their venom." *Id.* at 192.

131. See, e.g., PLATO, *THE REPUBLIC*, BOOKS VII AND IX, (H.D.P. Lee trans., 1955) (discussing the characteristics of the imperfect society); BERNARD BAILYN, *THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION* 55-60 (1967) (discussing the aggressive and expansive nature of the appetite for power as the central image in the ideology of the revolutionary generation).

132. See, e.g., DAVID HALL, *THE FAITHFUL SHEPHERD: A HISTORY OF THE NEW ENGLAND MINISTRY IN THE SEVENTEENTH CENTURY* 121-55 (1974).

133. See generally THOMAS HOOKER, *A SURVEY OF THE SUMME OF CHURCH DISCIPLINE* (1648) and *THE SOULES PREPARATION* (1632).

134. See *infra* note 123 and accompanying text.

135. See *infra* note 108 and accompanying text.

manifested itself everywhere from the Christian discipline ostensibly exerted over daily life in individual parishes to such public events as Election Day Sermons, Militia Day Sermons, and Boston's Great and Thursday Lecture; it extended to the governance of the commonwealth's most important public institution, Harvard College, the center of the state's intellectual life and the training ground of its elite, and it reached into a web of voluntary organizations that reinforced the alliance between religious and secular leaders. But, in the years after the revolutionary war, the social uniformity of the Massachusetts establishment was matched by a remarkable and growing variety of theological opinion.

III

A.

Although Fisher Ames was quite clear that a "learned clergy"¹³⁶ ought to be established in every town, he was considerably less explicit about the religious message that "learned clergy"¹³⁷ should convey to the people of Massachusetts. Ames's descriptions of the place of religion in the well-regulated state have a conventional ring;¹³⁸ they sound less of religious conviction than of an outlook that had as its mainstays a hierarchical social order and sectional loyalty. In fact, Ames's own religious life, and that of his Federalist allies, reveals much about the internal workings of the Massachusetts establishment: although its ecclesiastical structure was set by the ancestral New England Way, its theological life was hardly traditional. Not only was the establishment that Fisher Ames defended intellectually diverse, but it was far more theologically liberal than modern expectations might suggest.

As a personal matter, Ames had more in common with the patrician religiosity of George Washington and other "southern nabobs"¹³⁹ than with the experiential piety that

136. See *infra* note 108 and accompanying text.

137. See *infra* note 108 and accompanying text.

138. As Ames once remarked, "It is ever a misfortune for a man to differ from the political or religious creed of his fellow countrymen." Letter from Fisher Ames to Timothy Pickering (Feb. 14, 1806), in Pickering-Ames Correspondence, Timothy Pickering Papers, (unpublished manuscript (*on file* with the Massachusetts Historical Society) [hereinafter Pickering Papers]).

139. See *infra* note 67 and accompanying text.

was making its way up the Connecticut River Valley into Massachusetts in the form of a Second Great Awakening.¹⁴⁰ In this, he was very much a man of his class, for the elitist, politically conservative ultra-Federalists of eastern Massachusetts were, almost to a man, theological liberals¹⁴¹ and quite tolerant in religious matters. And, the clergy in the Boston area were, almost to a man, ultra-Federalists.¹⁴²

140. According to Reverend William Montague, the Episcopal minister in Dedham, Ames was appalled by the spread of enthusiastic religion as it worked its way up the Connecticut River Valley into Massachusetts: "He once observed in conversation on the subjects of *new lights* and the visionary flights in societies of Christians called Hopkinsians, that if he lived in a place where they prevailed, in all their unwarrantable tyranny and fanatic consequences, he would run from it with his family almost as soon as he would run from the plague." William Montague, *Memoir of Fisher Ames*, in *DIOCESAN REGISTER AND THE NEW ENGLAND THE CALENDAR FOR YEAR OF OUR LORD AND SAVIOUR 1812*, at 242, Dedham Historical Society.

Hopkinsians were followers of the New England theologian Samuel Hopkins (1721-1803), a pupil of Jonathan Edwards and founder of the stricter and more aggressive branch of the New Divinity, which was identified with moral and evangelistic enterprises at the time. Hopkins is most commonly remembered for his transformation of the Edwardsean doctrine of "disinterested benevolence" into a belief that true virtue consists in a willingness to be damned for the glory of God. See, e.g., AHLSTROM, *supra* note 35, at 407-09 (1972).

141. From the Great Awakening of the 1740s until approximately 1805, the intellectual hallmark of theological liberalism was Arminianism, the belief that men are born with a capacity both for sin and righteousness and that they can respond to the impulse toward holiness as well as toward evil. Arminianism contrasted with the orthodox Calvinist doctrine of innate depravity, which stressed the inability of men to respond to the divine message without the unmerited intervention of God's grace. Liberals—and many Calvinists—also believed that reason could establish the fundamentals of "natural religion," but without the special revelation of God's will in Scripture, natural religion was incomplete. Finally, liberals tended to be uncomfortable with the doctrine of the Trinity, believing it to be unwarranted by Scripture. Nevertheless, open anti-Trinitarianism was not common until around the turn of the century. Only after Arminianism had fully taken root did the liberal clergy begin to toy with such anti-Trinitarian positions as Arianism (the belief that Jesus, although divine, was created by—and therefore not equal to—the Father) and Socinianism (the belief that Jesus was human). See, e.g., WRIGHT, *supra* note 63, at 3-5; AHLSTROM, *supra* note 35, at 388-402. See also JOSEPH HAROUTUNIAN, *PIETY VERSUS MORALISM: THE PASSING OF THE NEW ENGLAND THEOLOGY* (1932).

142. See, e.g., WRIGHT, *supra* note 63, at 6-7.

By the end of the eighteenth century, a decision-making elite had developed in Boston, which was in communication with similar groups in such towns as Salem and Worcester, and with the clergy, at least, in many smaller communities. Over a period of two generations, Arminianism had become the theology of this elite. It did not expand beyond the area which this elite controlled, nor within that area did it penetrate to groups significantly lower in the class structure. Liberal

Emptied of much of its evangelical fervor, by the late 1780s, the Massachusetts religious establishment was seen by its Federalist supporters primarily as a vehicle for social control rather than as a source of individual regeneration and salvation. Indeed, despite the liberal theology of its leaders, as an institution, the Massachusetts establishment served to support the social order of hierarchy and deference that was the foundation of the ultra-Federalist worldview. In his private life, Fisher Ames embodied these seemingly contradictory currents, shedding light on his attitudes when he framed the final version of the religion clauses in the House debate. Ames's liberal religious views were coupled with energetic efforts to manipulate Dedham's establishment in order to preserve its "ancient manners" from the encroachment of egalitarian mores. The alien nature of this dynamic—and its unabashedly reactionary vision of the goal of state-supported religion—accentuates the difficulty of translating the experience of the early national period into modern constitutional discourse about the relationship between religion and government.

The Ames family always had a worldly bent. Fisher Ames's father and eldest brother were both physicians who also compiled *Ames's Astronomical Diary and Almanack*, a publication that rivaled the more famous *Poor Richard's Almanack* in its day.¹⁴³ His mother ran Fisher's Tavern on the post road southwest of Boston; while growing up, Fisher Ames lived in the family tavern.

In fact, the senior Dr. Ames's religious convictions were not all they might have been. Just after Fisher's birth in 1758, the newly settled town minister, Jason Haven, exhorted Dr. Ames to give more attention to "the Advancement of your Spiritual Health & Prosperity," asserting that it grieved him that one "so well acquainted

Christianity was roughly coterminous with a particular social class.

Id.

Wright observed that the Arminian or liberal ministers often held the anti-egalitarian social philosophy of High Federalism. In a Phi Beta Kappa oration to the students at Harvard, Ames's friend John Kirkland, for example, defined American equality as "an equality which secures the rich from rapacity, no less than the poor from oppression; the high from envy, no less than the low from contempt; an equality, which proclaims peace alike to the mansions of the affluent, and the humble dwellings of the poor[.]" *quoted in id.* at 250.

143. The *Ames Almanack* had a circulation of approximately 60,000 copies in its best years. See BERNHARD, *supra* note 19, at 6-7.

with Religion in Theory, should in so many Instances fall short of acting up to the Character of a true Christian." Ames's business interests served to "crowd out the Exercises of Religion," and as the Reverend Haven warned, "O Sir, gaurd [sic] especially against the amusing hurrying scenes of the World which are so fatal to Religion."¹⁴⁴ When First Church completed its new building in 1762, Dr. Ames had third choice among the fifty pews on the main floor of the meetinghouse.¹⁴⁵ To Reverend Haven's consternation, Dr. Ames did not occupy his pew very often; indeed, if the editorial content of *Ames's Almanack* is any indication, the doctor had become a deist.¹⁴⁶

Dr. Ames died in 1764, when Fisher was six years old. The boy's college preparation fell to the long-suffering Reverend Haven, who thus assumed an important role in Ames's intellectual development.¹⁴⁷ Throughout Haven's long ministry over the people of Dedham—a ministry that stretched from his ordination in 1756 to his death in 1803—he remained a moderate Calvinist.¹⁴⁸ His sermons, under

144. Letter from Jason Haven to Nathaniel Ames, Sr. (July 17, 1759), Nathaniel Ames Papers (on file with the Dedham Historical Society), in Milton Byrd, *Nathaniel Ames and His Minister*, 14 WM. & MARY Q. 595, 597 (1957).

145. CHARLES WARREN, *JACOBIN AND JUNTO, OR EARLY AMERICAN POLITICS AS VIEWED IN THE DIARY OF DR. NATHANIEL AMES 1758-1822*, at 286-87 (1931). The persons paying the highest parish tax rate had the first choice of pew, which reverted to the church if the owner ceased to be a taxpayer.

146. At the very least, Dr. Ames's views were those of a supernatural rationalist. See *infra* note 182 and accompanying text. Consider the following poems composed by Dr. Ames. The first is from the ALMANACK for 1731: "Almighty Power doth over all preside./ And Providence the smallest Atoms guide,/And every Atom of this mighty Frame/ (By him Created) out of Nothing came,]" quoted in BERNHARD, *supra* note 18, at 12. The second is from the ALMANACK for 1741: "These Massy Globes their Maker's Skill display,/But the Minutest Creatures do their part,/The groveling Worm that under Foot is trod/And smallest Mite proclaim a GOD." *Id.* at 13.

147. Jason Haven was born on March 2, 1733 in Framingham, Massachusetts, and graduated with the Harvard College class of 1754. He was called by a divided vote to the First Congregational Church of Dedham in 1755 and was ordained on February 5, 1756 by a council notable for the unusual step of having spent the previous day hearing objections raised against the candidate. In this and the biographical discussion that follows, I have relied on the analysis in CLIFFORD K. SHIPTON, 17 SIBLEY'S HARVARD GRADUATES 447-55 (1975).

148. John Adams reported the following encounter on their mutual graduation day from Harvard:

Mr. Haven . . . told me very civilly that he supposed I took my faith on Trust from Dr. Mayhew, and added that he believed the doctrine of the satisfaction of Jesus Christ to be essential to Christianity, and that he

which Ames grew up, focused on the traditional doctrines of the total depravity of mankind, the atonement of Jesus, and salvation only through the unmerited grace of God. In this, Haven distinguished himself from many of his fellow Harvard graduates, who were publicly preaching that men were born with the ability to aid in their own salvation and privately questioning the doctrine of the Trinity itself.¹⁴⁹

But, like many Massachusetts Calvinists during the latter part of the eighteenth century, Haven was irenic in both temperament and practice. True to the Congregationalist heritage of independent churches,¹⁵⁰ he repeatedly stated that the clergy had no authority to dictate their doctrinal views to others,¹⁵¹ including other members of the clergy.¹⁵² Haven's emphasis on "freedom of inquiry" meant that, despite his own orthodoxy, he was very tolerant of the liberal views developing among Boston's Congregational Churches and within his own congregation.

Evidence of Haven's broad-mindedness¹⁵³ and of the

would not believe this satisfaction, unless he believed the Divinity of Christ[,]

quoted in id. at 447. Dr. Mayhew was a well-known liberal who had published a sermon in 1755 attacking Trinitarian doctrine and stressing the unity of God. *See, e.g.,* WRIGHT, *supra* note 63, at 204.

149. *See infra* notes 141-42 and accompanying text.

150. Congregationalism is, strictly speaking, a form of church polity stressing the independence of individual churches and not a body of doctrine. Thus, it was fairly easy for the Massachusetts establishment to accommodate a range of theological opinions. Moreover, the liberals made distaste for theological controversy a point of honor and never excluded orthodox Calvinists from fellowship on doctrinal grounds. Thus, in 1791, a visiting Presbyterian discovered to his horror that the Boston Association of Ministers included men of all shades of belief: "Some are Calvinists, some Universalists, some Arminians, some Arians, and one at least is a Socinian." If the purpose of the Association was to "shake hands, and talk of politics and science, laugh, and eat raisins and almonds, and apples and cake, and drink wine and tea, and then go about their business when they please," the visitor had no objection, "[b]ut for the purposes of church government, to me, at least, it appears ludicrous." LIFE OF ASHBEL GREEN (Joseph H. Jones ed., 1849), *quoted in* WRIGHT, *supra* note 63, at 265-66. *See also id.* at 238-39.

151. *See, e.g.,* JASON HAVEN, A SERMON PREACHED JULY 4, 1764, at 8-9 (stating that the laity should not accept the clergy's interpretation of scripture with "a blind and implicit faith and obedience" because "[t]his would be very unreasonable, unless that was true, which we believe to be false; and the pretence to which we utterly condemn, namely, that infallibility is vested in the ministerial office").

152. *See* Jason Haven, *The Charge*, in JOHN ELIOT, A.M., A SERMON PREACHED IN MILTON 44 (1797).

153. Throughout his career, Haven regularly exchanged pulpits with other ministers in the Boston area, who represented a wide range of theological views, another indication of tolerance. In an era of life settlements among the clergy,

liberal drift of Dedham—both Church and community—can be found in his encouragement of the adoption of a new “Form of Christian Union and Covenant Engagements” for church membership.¹⁵⁴ Dedham continued, well into the nineteenth century, to follow the time-honored New England distinction between members of the parish—persons who lived in the town and attended the church—and communicant members of the church—those who by a special profession of faith joined the covenanted body of the church and were subject to its more stringent discipline. Under Haven’s stewardship, in 1793, the Dedham Church abandoned its traditional covenant,¹⁵⁵ which had stressed specific Calvinist doctrines, and accepted a form so explicitly liberal—and devoid of creedal content—that it served the Unitarians of the next generation.¹⁵⁶

In 1794, shortly after the birth of their first child and two years after their marriage, Fisher and Frances Ames joined

ministers exchanged pulpits partly to give their congregations some variety in preaching styles and theological emphasis. Collegiality became an important issue among the Massachusetts clergy, and in the Dedham Church in particular during the tenure of Haven’s successor, Joshua Bates, who refused to exchange with anyone but orthodox Calvinists. *See infra* note 168 and accompanying text.

154. Other evidence can be found in shifting attitudes toward music and the psalms. For example, in 1784, the First Church switched from the old New England version of the Psalms (used for hymns) to one edited by Tate and Brady; in 1793, the Church adopted Dr. Watts’s version, a sign of liberalism. In 1785, the deacons still followed the custom of reading the psalms line-by-line, with the congregation singing responsively after each line; by 1803, the church had voted to purchase a base viol to improve its musical life. *See* WARREN, *supra* note 145, at 287. A conservative source approvingly reported that Ames “strenuously opposed the proposal to introduce a new collection [of psalms] into the religious society to which he belonged.” *Obituary: Tribute to the Hon. Fisher Ames*, 1 THE PANOPLIST AND MISSIONARY MAGAZINE UNITED 92, 94 (July 1808) [hereinafter “*Tribute*”].

155. The original covenant is reproduced in ALVAN LAMSON, *A History of the First Church and Parish in Dedham*, in THREE DISCOURSES, DELIVERED ON OCCASION OF THE COMPLETION, NOVEMBER 18, 1838 OF THE SECOND CENTURY SINCE THE GATHERING OF SAID CHURCH 82-83 (Note C to Sermon 1) (1839).

156. The new covenant reflected the biblicism typical of liberals at the turn of the century:

We profess our belief of the Christian Religion. We unite ourselves together for the purpose of obeying the precepts and honoring the institutions of the religion we profess. We covenant and agree with each other, to live together as a band of christian brethren, to give and receive counsel and reproof, with meekness and candor, to submit with a christian temper to the discipline, which the Gospel authorizes the church to administer; and diligently to seek after the will of God, and carefully to obey all his commands.

Id. at 65.

the First Church of Dedham, apparently under the newly adopted covenant.¹⁵⁷ Despite his church membership, however, Ames's private letters indicate that he had inherited his family's worldly temperament, although much of the evidence is by negation. A thorough reading of those letters—otherwise full of chat about the weather, health, children, family visits, agricultural experiments, and assorted small talk—discloses none of the casual allusions to religious observance that might be expected in a person of even conventional piety. There are no comments about church attendance;¹⁵⁸ no mention of sermons heard; edifying books read; meals taken after family prayers; or any of the other staples of energetic New England Protestantism. Letters do not close with blessings.¹⁵⁹

157. Ames had married Frances Worthington, third daughter of John Worthington of Springfield, Massachusetts on July 15, 1792. In 1808, at Ames's death, they had seven children, of whom six were boys, the oldest being fifteen. See Kirkland, *supra* note 19, at lii.

As part of its tolerant attitude, common to many Boston area churches at the time, the Dedham congregation permitted those applying for membership to use either the 1793 covenant or the older covenant in making their profession of faith. At the same time, the Church eased the procedures for owning the covenant. Rather than requiring the applicant to make a public statement before the church, the person simply had to make his intentions known to the minister

who shall mention it in public, a fortnight before the admission of said person. If no solid objection be offered within that term, the person's name shall be entered in the church Book, and said person shall be considered as a member of the church, entitled to all the privileges of the same, and under the obligations of the before mentioned covenant and agreemen[.]

quoted in id. Beyond the obvious social considerations—and notwithstanding a lifelong leaning toward the Episcopal Church—Ames joined the Dedham Church out of personal regard for Reverend Haven. See Montague, *supra* note 123, at 246.

158. Only after Ames's death did various competing groups describe him as regularly attending one church or another "till precluded by indisposition," *Tribute*, *supra* note 154, at 94, and make much of the vigor with which he took part in worship. See Montague, *supra* note 140, at 246 (Ames attended the service of the Episcopal Church "when able until he died"; "At Church Mr. Ames always appeared to enter with spirit and devotion into the service by audible responding in the litany and the gloria patri."). Even Kirkland was careful to add that, "[a]t about thirty-five, he made a public profession of his belief in the Christian religion, and was a regular attendant on its services." Kirkland, *supra* note 19, at li. On the other hand, Ames's desire to obtain a permanent pew for his family indicates at least a social commitment to attending services. See *infra* note 180 and accompanying text.

159. In an extensive review of Ames's manuscript correspondence, the only letter found that closed with a conventional "God bless you pray," was one from Fisher Ames to Dwight Foster (Nov. 7, 1796), Gilder-Lehrman Collection, Pierpont

References to providence or divine guidance are rare. Thus, in discussing Federalism's declining stock, Ames spoke of catching the favorable "vicissitudes of political fortune," not the guiding hand of providence.¹⁶⁰ Only when expressing relief at learning his mistake in believing that Bonaparte had fully conquered Europe, did Ames invoke "kind heaven still the protector of this spiritless country."¹⁶¹ Even accounts of illness and recovery—Ames enjoyed ill health and relentlessly chronicled the health of those near to him—are devoid of invocations of divine aid or mercy.¹⁶²

To the contrary, most of Ames's religious allusions are passing and jocular: Of the prejudice against the bar, "I suppose the world will not allow the lawyers to compare their persecutions with those of the primitive Christians;"¹⁶³ of his own health, "My constitution is like that of federalism too feeble for a full allowance even of water gruel, and like that, all the Doctor I have is a Jacobin. The Lord you say have mercy on me a sinner;"¹⁶⁴ of his hopes for ending his

Morgan Library. In this casual note, Ames attempted to recruit Foster to join a party taking a portchaise by stages from Dedham through Springfield and from there to New York.

160. Letter from Fisher Ames to Timothy Pickering (Apr. 28, 1804), in Pickering Papers, *supra* note 138.

161. Letter from Fisher Ames to Timothy Pickering (Mar. 3, 1806), in Pickering Papers, *supra* note 138. The full phrase is more bellicose than pious: "Thank kind heaven, still the protector of this spiritless country, the Russian bayonets are long, and the French had four inches of them in their vitals before they could reach their antagonists. . . ." *Id.*

162. See, e.g., Letter from Fisher Ames to Thomas Dwight, (Sept. 16, 1792), Ma. Unacc. Autographs, Miscellaneous American Collection, Pierpont Morgan Library. This letter includes a cheerful discussion of the recovered health of Ames's father-in-law, Colonel Worthington, and a discussion of a smallpox epidemic:

This town is an hospital. The gowns which men, women, & children, black & white, have put on look queerly, especially in the cold easterly weather. By way of precaution against the small pox, they expose themselves to the cold in a manner that would impair the health of the most robust—However, few die and on the whole the disease is very mild, I have no small apprehensions for my mother at Dedham who would not venture, & ought not to have the infection.

Id.

163. Letter from Fisher Ames to William Tudor (Feb. 7, 1790), in *A Memoir of Hon. William Tudor*, 8 COLLECTIONS OF THE MASSACHUSETTS HISTORICAL SOCIETY, 2d Ser., 320, 321 (1826).

164. Letter from Fisher Ames to Thomas Dwight (Jan. 15, 1804), Fisher Ames Collection, Dedham Historical Society. The Jacobin physician to whom Ames refers is his brother, Nathaniel Ames, well-known for radical political views and pugnacious behavior, both of which he chronicled in a diary. See THE DIARY OF DR. NATHANIEL AMES OF DEDHAM, MASSACHUSETTS: 1758-1822 (Robert B. Hanson ed.,

“miserable bachelor state,” “[b]ut I have such a sense of my forlorn condition as [?], and fits me for the state of regeneration. I protest against any wicked interpretations.”¹⁶⁵ Jefferson’s first inaugural address was dismissed with the comment: “I am edified as much as if I had heard a Methodist sermon in a barn.”¹⁶⁶

Ever the advocate of New England fileopietry, Ames hoped that Forefathers Day, a local holiday, would receive “as it deserves, a serious and even religious turn” that “might be diffused over New England.”¹⁶⁷ Thanksgiving, a more conventionally religious celebration, was another matter entirely. Wishing his brother-in-law an “agreeable Thanksgiving”, he continued,

I will not decide whether our forefathers foresaw all the good effects of eating pumpkin pies in a social manner, & almost as a nation, but I believe good fellowship has been extended as a consequence. It is a day set apart for conviviality—for collecting kindred & for hearing a political sermon. The scattered rays of sentiment are drawn to a focus & gather heat & give light.¹⁶⁸

Ames’s letters are suffused with this cosmopolitan expansiveness. Nowhere is it more evident than in his views regarding the theater, since theatrical attendance was a litmus test of religious sincerity well into the nineteenth century.¹⁶⁹ Commenting on plans for a *theatre* in Boston,

1998) [hereinafter DIARY]. All further citations to *Nathaniel Ames’s Diary* will be to the Hanson edition.

165. Letter from Fisher Ames to Thomas Dwight (May 11, 1791), in Fisher Ames Papers (on file with the Dedham Historical Society).

166. Quoted in Douglass, *supra* note 19, at 715. Ames continued,

The men who have the best principles and those who act from the worst will talk alike, only that the latter will exceed the former in fervor. . . . Suppose a missionary should go to the Indians and preach self-denial and another should exhort them to drink rum. Which would first convert the heathen?

Id.

167. Letter from Fisher Ames to Timothy Pickering (Dec. 22, 1806), in Pickering Papers, *supra* note 138.

168. Letter from Fisher Ames to Thomas Dwight (Nov. 29, 1792), Fisher Ames Collection, Dedham Historical Society.

169. Ames’s attitude toward the theater reinforces the fact that he had more in common with the culture of the southern aristocracy than with northern evangelicals. Consider for example, the role of the theater in the life of George Washington. Washington was greatly influenced by Addison’s play, *Cato*, and had it performed for his troops at Valley Forge. Moreover, according to ELKINS & MCKITTRICK, in deciding what personal style he should strike as the first president,

Ames wrote his former law teacher, William Tudor,

[w]hether the stage is a friend or foe to taste and morals is possibly not capable of very full proof; nor does it seem to me necessary to decide the point with more than we have. For as people *earn*¹⁷⁰ their own money, it seems reasonable that they should spend it.

Whatever Ames's vision of a church establishment in practice, it clearly implied the liberty to dispose of one's earnings in any way "not palpably hurtful,"¹⁷¹ even buying a ticket to a play.

Aside from these cultural attitudes, Ames's letters suggest ample measure of that tolerance for diverse religious views and "freedom of inquiry" that characterized the Massachusetts establishment during the Federal period. In November of 1791, for example, Ames visited the Shaker community of Bethlehem in Pennsylvania and described the experience to Thomas Dwight: "I saw as many ugly women & girls with closed caps, a little puff'd at the ears, as you could well imagine together—possibly 200—They seem to be an humane well regulated little community."¹⁷² This stands in marked contrast to Dwight's own comments about a later visit to the Shaker community in New Lebanon; after seeing the Shakers dance, he called them "poor deluded fools."¹⁷³ Similarly, Ames was appalled by the French revolution's violent suppression of the Catholic Church; despite New

Washington chose to "make no calls, accept no invitations, and give no large entertainments, but to go to the theater occasionally and to hold one hour-long levee a week, asking a few of the guests each time to remain for dinner." ELKINS & MCKITRICK, *supra* note 27, at 48-49. See also Smith, *supra* note 5, at 98, 102 (describing Marshall as an "avid theatergoer at a time when the theater was considered beyond the pale by much of America's religious establishment" and how Marshall often attended performances of travelling companies with James Monroe when they were young men in Richmond).

170. Letter from Fisher Ames to William Tudor (Nov. 24, 1791), in *Memoir of Hon. William Tudor*, 8 COLLECTIONS OF THE MASSACHUSETTS HISTORICAL SOCIETY, 2d. Ser., 323, 324 (1826).

171. *Id.*

172. Letter from Fisher Ames to Thomas Dwight (Nov. 22, 1791), in Fisher Ames Collection, Dedham Historical Society. Note that Ames was favorably disposed toward the Shakers because they were a "well regulated" community and did not comment at all on their somewhat eccentric theological views or worship practices.

173. Letter from Thomas Dwight to Hannah Dwight (October 17, 1798), in Dwight-Howard Papers, Massachusetts Historical Society, quoted in BERNHARD, *supra* note 18, at 303.

England's anti-Catholicism, Ames condemned those who justified French conduct in the name of introducing "true worship" in France.¹⁷⁴

Most telling is an 1808 exchange between Ames and his eldest son, Worthington, while the boy was attending school in Deerfield. Worthington wrote his father about a local group of Baptists:

I am sorry to inform you that they [the Baptists] increase very fast in numbers of ignorant people for none but people of the grossest ignorance could be imposed so grossly. A contagious disorder of a new and alarming appearance [sic] here which frightened some poor people to such a degree that they thought they must remedy the evil by turning Baptists who think with many other religious sects that those who do not join them will certainly be damned that is to say they think that the ceremony of baptism makes so much difference Indeed it is my opinion that baptism is a mere type of our acceptance or belief [sic] in the Christi[] religion and then whether more or less water be sprinkled upon is in my opinion the most imaterial [sic] thing that could be taken up but that they have altered everything almost of our ceremony's [sic] and substituted some of their own forms as all have to undergo some kind of penance and find comfort in various ways some say they saw a light some a track in [a] brook¹⁷⁵

Baptists were increasing in numbers as part of the turn-of-the-century religious revival begun on the frontier and pressing up the Connecticut River Valley into Massachusetts.¹⁷⁶ The sect was, at the time, the very antithesis of the decorous religion of the seacoast elite. Stressing experiential piety, it drew much of its membership from the

174. Fisher Ames, *Laocoon II*, in 1 WORKS, *supra* note 40, at 198. Ames elaborated:

How many professors of the christian religion have seen with complacency, nay with joy and exaltation, the downfall of priests and creeds and churches in France? The unspeakable cruelties and crimes exercised against catholics, they tell us will introduce the true worship, and that they admire, and we are bound to approve, proceedings that are so wicked, because they will be so useful. The sophistry that can thus silence conscience and varnish crimes, has no less succeeded in blinding the understandings of these honest jacobins (so called) to the absolute falsehood of their political notions.

Id.

175. Letter from John Worthington Ames to Fisher Ames (Mar. 28, 1808), in Fisher Ames Papers (on file with the Dedham Historical Society).

176. See, e.g., NATHAN O. HATCH, *THE DEMOCRATIZATION OF AMERICAN CHRISTIANITY* (1989).

lower classes and did not ordinarily have a college-educated clergy. Nevertheless, in his response, Ames brought his son up short:

I make no doubt the Baptists are ignorant enthusiasts, but they are no doubt sincere. Their ignorance I suppose they could not help, but God will accept sincerity. Their forms make them no better perhaps no worse, and if their religion makes them better men, it does much good. Be careful how you show scorn and contempt for these poor people, and indeed for anybody as long as you live. In the course of our lives we can hardly avoid making too many enemies, and contempt is bitterly remembered when real injuries are forgotten.¹⁷⁷

Although apprehensive about the increasingly democratic fruits of evangelicalism, Ames declined to pass judgment on the sincere religious observances of others. Instead, he measured their faith solely in moralistic terms, whether their religion "makes them better men."¹⁷⁸

Interestingly, this letter to his son contains a significant clue to Ames's own religious sympathies; he closed it with the injunction, repeated in at least one other letter to Worthington: "I charge you read your Bible often always study it on Sundays."¹⁷⁹ In a brief 1801 essay in *The Palladium*, Ames suggested that schools should use the Bible as a primer rather than specially written textbooks filled with sentimental fables.¹⁸⁰ Ever the consequentialist with regard to religion, Ames concluded that the standardization of linguistic usage under the influence of the Bible would provide one more national unifying force. The result would be good morals and good grammar attained painlessly. Why, he asked,

should not the Bible regain the place it once held as a school book? Its morals are pure, its examples captivating and noble. The reverence for the sacred book that is thus early impressed lasts

177. Letter from Fisher Ames to John Worthington Ames (Apr. 9, 1808), in Fisher Ames Papers, Dedham Historical Society.

178. *Id.*

179. *Id.*; See Letter from Fisher Ames to John Worthington Ames (Feb. 15, 1808), in Fisher Ames Papers (on file with the Dedham Historical Society ("While you study Greek do not neglect to read the English Bible every Sunday. Study it. . . .PS In future practice writing on the second side of your letters. It is singular and unnecessary to leave it blank.")).

180. See Fisher Ames, *School Books*, first published in *The Palladium*, Jan. 27, 1801, reprinted in 1 WORKS, *supra* note 40, at 11.

long; and probably, if not firmly impressed in infancy, never takes firm hold of the mind. One consideration more is important. In no book is there so good English, so pure and so elegant; and by teaching all the same book, they will speak alike, and the Bible will justly remain the standard of language as well as of faith. A barbarous provincial jargon will be banished, and taste, corrupted by pompous Johnsonian affectation, will be restored.¹⁸¹

Theological liberals emphasized the Bible and "biblical religion";¹⁸² orthodox Calvinists tended to speak in terms of creeds and doctrinal elements of faith as well as scripture. Indeed, liberals never tired of reminding the orthodox that nothing was essential to the "enjoyment of christian privileges, farther than a profession of the christian faith or doctrines, as *there* [in the New Testament] revealed, and a practice conformable to the rules of the gospel[.]"¹⁸³ Certainly, Ames's approach to the Bible reinforces the view that he shared the non-doctrinal theological views of his fellow ultra-Federalists.

181. *Id.* at 11-12. As if to prove the paucity of Ames's published record on religion, the editors of *The Panoplist* devoted a full paragraph of their obituary of Ames to material gleaned from this piece, concluding that Ames was devoted to the King James version of the Bible because he believed that no one could become truly eloquent without "being a constant reader of the Bible." *Tribute*, *supra* note 154, at 94. Kirkland supports Ames's stylistic admiration for the Bible, noting that he "was accustomed to read the Scriptures, not only as containing a system of truth and duty, but as displaying, in their poetical parts, all that is sublime, animated, and affecting in composition." Kirkland, *supra* note 19, at xlvii. See *infra* note 18. *The Panoplist* obituary also contains evidence that Ames shared the rationalistic approach to the Bible common among moderate Calvinists and liberals after the middle of the eighteenth century. It reported a conversation in which Ames stated "that it appeared to him impossible for any man of a fair mind to read the Old Testament, and meditate on its contents, without a conviction of its truth and inspiration." According to the writer, Ames reasoned that no other nation of the ancient world, including many that were more advanced than the Hebrews, had attained "[such] sublime and correct ideas . . . of God." *Tribute*, *supra* note 154, at 93. On the other hand, *The Panoplist* tried to use Ames's belief in the inspiration of the Hebrew Bible against liberal elements—notably Joseph Stevens Buckminster of Brattle Street Church—who were introducing European advances in Biblical criticism to the United States. See *id.*; Charles C. Forman, *Elected Now By Time*, in *A STREAM OF LIGHT: A SHORT HISTORY OF AMERICAN UNITARIANISM* 3, 1-16 (Conrad Wright ed., 1989).

182. See, e.g., AHLSTROM, *supra* note 35, at 401 and WRIGHT, *supra* note 60, at 235-40 (stressing that the Bible permitted liberals to avoid the theological controversies that might have exposed their divergence from orthodox Calvinism).

183. John Tucker, *A Reply to the Rev. Mr. Chandler's Answer* (1768), quoted in WRIGHT, *supra* note 60, at 236.

B.

Once resident in Dedham after retiring from Congress, Ames's participation in the day-to-day life of the Massachusetts establishment consistently reflected his esthetic and moralistic approach to religion. It also showed the tension between Ames's backward-looking vision of a hierarchical society supported by religious leadership and the increasingly powerful pull of egalitarian ideology even in Dedham.

By 1802, the Reverend Haven's intellectual powers were failing. As a socially prominent member of Dedham's First Church, Ames was appointed a member of the committee charged with finding a new minister.¹⁸⁴ The choice fell on Joshua Bates.¹⁸⁵ The standard account is that Bates was an orthodox Calvinist; Ames demanded for him a traditional life settlement; this split the congregation, causing Dr. Nathaniel Ames, among others, to withdraw and join the recently revived Episcopal Church; eventually, Fisher Ames himself also withdrew from First Church, as a result of political disagreements with Bates, and joined the Episcopal Church.¹⁸⁶

In fact, although Bates eventually joined the orthodox party and, to the consternation of his people, after 1808 refused to exchange pulpits with anyone except theological conservatives, in 1802, ministerial candidate Bates appeared

184. Entry for March 2, 1802, Records of the First Parish in Dedham, Massachusetts, 1763-1807 (unpublished manuscript, on file with the Dedham Historical Society) [hereinafter First Parish Records]. The Parish was looking for a preacher to supply the pulpit on a temporary basis in the expectation that he would become Haven's permanent associate if the arrangement worked out. Reverend Haven's traditional life settlement (or, in modern terms, life tenure) dictated this complex state of affairs.

185. Joshua Bates (1776-1854) was born in Cohasset, Massachusetts, and was admitted to the sophomore class at Harvard in 1797, at the age of 21. He graduated with the class of 1800, became an assistant teacher at Phillips Academy preparatory school in Andover, and studied theology with Jonathan French. After a year, he gave up teaching and studied theology full time, eventually being ordained to the Dedham pastorate. In 1818, after his relationship with the Dedham Church had soured, Bates resigned to become president of Middlebury College. See WILLIAM B. SPRAGUE, 2 ANNALS OF THE AMERICAN PULPIT; OR COMMEMORATIVE NOTICES OF DISTINGUISHED AMERICAN CLERGYMEN OF VARIOUS DENOMINATIONS, FROM THE EARLY SETTLEMENT OF THE COUNTRY TO THE CLOSE OF THE YEAR EIGHTEEN HUNDRED AND FIFTY-FIVE 465-71 (1857).

186. See BERNHARD, *supra* note 19, at 330-31, relied upon by McConnell, *supra* note 7, at 1455 & n.236.

to be either a moderate Calvinist or a liberal¹⁸⁷—insofar as theology mattered at the time. Presumably of greater importance to Ames, Bates had impeccable Federalist connections.¹⁸⁸ Indeed, Ames's desire to secure a High Federalist for the pulpit appears to rest at the heart of his maneuvering. The political sermon remained, after all, an essential part of the minister's role in New England life.

Thus, in late April, 1802, Ames wrote Bates in an effort to persuade him to preach on a trial basis as soon as possible. Ames cited “[a]s a reason for our importunity,” that the “uncertainty of preaching here tends to the hazard of that harmony which has long happily subsisted in the parish.” What is more, Ames added, “It seems to be generally desired that some gentleman of sense and merit should be employed as a *candidate*,” so that Bates's proposed “delay of several weeks is not to be desired.” Ames concluded, however, “[f]rom

187. Given the latitudinarian temper of Boston's clerical circles in 1800, it is unlikely that anyone scrutinized Bates's theology very closely. The signals apparently pointed to a moderate stance not unlike that of Reverend Haven; Bates was a Harvard graduate and had studied theology in Andover with moderate Calvinist Jonathan French, a man known both for personal kindness and aversion to theological controversy. In retrospect, however, at least one liberal participant in the rift between liberals and orthodox described French as “Calvinistick.” John Pierce, Entry of June 1828, 5 *Memoirs of Rev. John Pierce*, Pierce Family Papers, Massachusetts Historical Society.

For Bates's theological views, see, for example, LAMSON, *supra* note 155, at 68-69. Lamson, the Unitarian minister who succeeded Bates, claimed that Bates seemed to be a liberal or a rationalist at the time of his ordination but that he subsequently fell in with the conservatives because of his Andover connections. See also ROBERT BRAND HANSON, *DEDHAM, MASSACHUSETTS: 1635-1890*, 191 (1976) (suggesting that Bates appeared liberal at the time of his settlement, relying on the fact that the Parish itself was primarily liberal and had heard him preach without developing opposition).

Compare the foregoing with the Entry of February 1, 1805, Doctor John Eliot's Journal, in Conrad Wright, *The Election of Henry Ware: Two Contemporary Accounts*, 17 *HARV. LIBR. BULL.* 245 (1969). Eliot, a known liberal, noted in his journal that Eliphalet Pearson favored Joshua Bates for the Harvard's Hollis Professorship of theology, adding that Bates “would have made a good professor.” *Id.* at 264. Eliot was willing to vote for moderate Calvinists for the office but made strongly disparaging comments in his Journal about the conservatives. Pearson would only vote for orthodox candidates. Taken together, this suggests Bates was a moderate Calvinist at the time of his call to the Dedham Church, but that he may already have been shifting his allegiance to the orthodox.

188. For example, Bates studied theology with Reverend Jonathan French in Andover. See *infra* note 168. After President Washington's 1789 visit to Andover, his nephews, Bushrod and Augustus Washington, lived in the French household, while attending Phillips Academy. See SHIPTON, *supra* note 147, at 518.

the testimony of those who have the pleasure to be acquainted with you, we chuse to wait for you rather than not to engage you at all."¹⁸⁹ Well-recommended gentlemen of "sense and merit" were Federalists, regardless of theology.

In any event, once the trial period was over, both the Church and the Parish voted unanimously to invite Bates to settle among them; the records do not show any other candidate under consideration.¹⁹⁰ Controversy arose almost at once, however, over the terms of the appointment.¹⁹¹ The Parish committee given the assignment of issuing the invitation wanted to settle Bates "as long as he shall supply the pulpit to the satisfaction of a Major part of the Church and Parish."¹⁹² Fisher Ames was a prime mover in convincing the community to provide Bates the traditional life tenure of the New England clergy—to last "so long as he shall carry on the work of the ministry among us."¹⁹³

It is important to understand the issues in this rancorous battle over ministerial tenure. For Ames, in a world threatened by "innovation" and "republican license," the town minister's lifetime settlement was vital to the traditional

189. Letter from Fisher Ames to Joshua Bates (Apr. 26, 1806), in Fisher Ames Papers (on file with the Dedham Historical Society).

190. Entries of November 1802 and November 29, 1802, in First Parish Records, *supra* note 184, at 274-75. Reverend Haven told the Parish that the Church had voted unanimously to give Bates a call to settle as his colleague; the Parish then voted by a vote of 64 to 0 to ratify the call. The same records reflect no discussion of Bates's theological views. The speed with which objections arose to the terms of the contract—both as to length and salary—suggests that, whatever the vote, Parish members were uncomfortable with Bates.

191. The meetings over the terms of Bates's settlement were rancorous, with salary arrangements proving as volatile as the issue of tenure. See, e.g., Entries of December 30, 1802 and January 2, 1803, in *id.* at 279-80. Since the minister's salary was paid from a tax assessment, Bates's compensation was the subject of heated bargaining, exacerbated by the inflation of the Revolutionary period. In reading the sources, it is difficult to avoid the impression that the relationship was ill-starred from the beginning.

192. Entry of December 9, 1802, in First Parish Records, *supra* note 184, at 277.

193. *Id.* at 278. The traditional life settlement which placed a minister over a church for as long as he lived was becoming less common at the end of the eighteenth century as part of the professionalization of the clergy. This meant that clergy were seeking professional advancement to other posts at the same time that congregations wanted to shed themselves of uncongenial ministers. Ames's insistence on a life settlement, thus, looked back to a world of different social norms. See generally DANIEL C. CALHOUN, PROFESSIONAL LIVES IN AMERICA: STRUCTURE AND ASPIRATION, 1750-1850 (1965); DONALD M. SCOTT, FROM OFFICE TO PROFESSION: THE NEW ENGLAND MINISTRY, 1750-1850 (1978).

ordering of New England society; it was a precondition of the moral leadership that educated the people in the restraint necessary to self-government, as well as in deference to the aristocracy of the wise, the good, and the wealthy. Once settled, ministers were to lead their flock, not serve at its pleasure.

Dedham's Republicans took the other side, believing it was the congregation's right to judge the quality of its pastor and to dismiss him if he was found wanting.¹⁹⁴ Further fuelling the resentment was the substantial size of the tax assessment needed to pay the—possibly unpopular—minister's salary. As Dr. Nathaniel Ames, Fisher's Jacobin elder brother, wrote in his diary, the townspeople

were first taken in by two upstart lawyers to defeat their own purpose—and F. Ames wishing to shut me out of the meeting so as to enjoy my pew, haranged them so pathetically about their pious forebears that he cram'd the Priest down their throats tail foremost Civil & ecclesiastical oppression & intrigue triumphant— Harrangueing arrogating blackguarding &c: in parish meeting beat the people out of their sense, . . . & drum good people out of the meeting playing the rogues march . . . we wanted mutual freedom to go to worship, unhandcuff'd, not to be obliged to support a preacher after he grows disgustful unable or too lazy or negligent to perform his duty as we think the terms tempt him¹⁹⁵

Having prevailed on the issue of life tenure, Ames pressed the Parish to ordain Bates as soon as possible. This time, Nathaniel underscored the financial burden imposed on the town, as he wrote:

The Parish that is F. Ames & Dn. Bullard after midnight caucus's agree to handcuff the Parish & their children & bind them to pay an enormous Salary of 1522 dols and have Bates ordained 16th March next. I & others having joined the Episcopal Church, they

194. See, e.g., Entry of Dec. 30, 1802, in 2 DIARY, *supra* note 164, at 776-77. Dr. Ames wrote,

I having previously sounded many of the parishioners found each I convers'd with desirous to have him [Bates] settled on such terms as may make him alert to his duty to carry on the work of the ministry here so long as he give satisfaction to the majority of the parish. I attended hoping to find them adhering to some such stipulations with generous terms for him also on his side of the contract. . . .

Id.

195. Entry of Dec. 30, 1802, in *id.* at 777-78. See also HANSON, *supra* note 187, at 190-91.

exult at our departure . . . as not more to be troubled with our opposition¹⁹⁶

Bates was ordained on March 16, 1803;¹⁹⁷ two months later, Reverend Haven died.

Whatever his subsequent relations with Reverend Bates, the seeds of Fisher Ames's departure for the Episcopal Church rested not in Bates's politics but in a more prosaic source, hinted at when Nathaniel Ames darkly observed that "F. Ames wish[ed] to shut me out of the meeting so as to enjoy my pew."¹⁹⁸ Pews were a frequent source of contention in traditional New England churches because they were both a form of real property and a potent status symbol. To help defray the cost of building a meetinghouse, congregants purchased their pews; they then bought and sold their seats in church as fortune and demographics dictated. In Dedham, as in most towns, pews were initially assigned according to social status¹⁹⁹ based on the amount of parish taxes paid; the general rule was the closer to the pulpit and the center aisle, the better.

Dedham's First Church was chronically short of space to house the town's growing population; built in 1762, there were only fifty pews on the lower floor of the meetinghouse where the "wise and the good and the well-to-do" could properly attend to the word of God. As the elder son, Nathaniel Ames apparently inherited the family pew from his father and shared it with his brother's family. When Nathaniel Ames left First Church in the row over Bates, he left Fisher without a place to sit. As Nathaniel observed, still seething over Bates's settlement, "F. Ames forfeits & quits

196. Entry of Feb. 10, 1803, in 2 DIARY, *supra* note 164, at 779; HANSON, *supra* note 187, at 191.

197. The ordination committee put in bills of \$218.65. Entry of Mar. 21, 1803, Records of First Parish at 287. Nathaniel Ames described the event in his usual trenchant style, "Bates ordain'd, Clergy stuff'd. Vast provisions." Entry of Mar. 16, 1803, in 2 DIARY, *supra* note 164, at 783.

198. Entry of Dec. 30, 1802, *in id.* at 777.

199. This is hardly surprising in a world in which college class rank—an important visual cue in processions and public exercises—was based not on a student's academic performance but on the status of his family. While this regime was breaking down at the end of the eighteenth century, it is one indication of how distant the Federalist perspective is from our own and how different even the Jeffersonian world was from the Age of Federalism. The issue of status also explains why the provision of a pew was so important to Ames, a great believer in the rituals of hierarchy.

my pew, for expelling me from the Meetinghouse."²⁰⁰ By the end of July, Nathaniel recorded, "Sam Richards set up in my pew. begins today at price to be agreed."²⁰¹

Without an appropriate seat for his family, Ames could not properly demonstrate his place in the community. As a result, from 1803 until late in 1806, Ames served on a seemingly endless series of failed committees appointed by the Church to consider how to expand the capacity of the Church to provide pews for those who had none.²⁰² From the sidelines, newly-minted Episcopalian Nathaniel Ames complained, "The Old Parish of Dedham by intrigue of Lawyers bro't into a boil by an unnecessary Vote to enlarge the Meetinghouse to accommodate F.[isher] A.[mes] with a pew."²⁰³

By the end of 1806, differences within the Church over seating had become so bitter that a committee recommended

200. Entry of Jan. 20, 1803, in 2 DIARY, *supra* note 164, at 779. Nathaniel's pique may better be seen in his Entry of Dec. 6, 1803:

Bo't of Elijah Fisher a heap of Dung @ 20 dols, and in carting away on my clover F. Ames came & storm'd at my presumption to my men in buying Dung without his leave when I did not know he arrogated all the Dung as well as all the Religion in Dedham—After turning me out of the house of G— I expected he would allow me to grovel in Dung[.]

Id.

201. Entry of July 31, 1803, *id.* at 790. It seems that Nathaniel was renting the pew to Richards; he continues to mention the cost of the pew in his diary even after he and Richards fell out over unrelated issues.

202. The account of the efforts to enlarge the meetinghouse of Dedham's First Church is drawn from First Parish Records, *supra* note 184. In February, 1803, the Parish had appointed a committee to report on possible alterations to the meetinghouse to accommodate inhabitants of Dedham without seats. In late March, the Parish rejected the report. A week later, the committee suggested adding an eight foot extension to the meetinghouse to make room for more pews. In April, 1804, a year after the committee presented its second report, the Parish rejected it.

Then, in November, 1804, based on yet another report, the Parish voted to enlarge the meetinghouse as long as the addition would cost it nothing. Nevertheless, in March, 1805, the Parish was still considering whether to fund the expansion, with several alternative proposals on the table. In April, the Parish accepted a plan for dividing up the costs of alteration. In late August, the Parish was still discussing the plan it had already accepted, having now accepted an alternative version. In a formal letter dated August 1805, the petitioners for the new pews—including Fisher Ames—threw up their hands and relinquished the right to expand the meetinghouse granted them by the November, 1804 Parish vote. Even this did not end the dispute over pews. By November, 1806, another Parish committee had been appointed to consider "providing seats in the Meetinghouse for those who have none," again Fisher Ames served on the committee.

203. Miscellaneous Mementos, 1805, in 2 DIARY, *supra* note 164, at 821.

that persons in five neighboring towns be chosen as neutral arbitrators to appraise the value of the pews in the original meetinghouse, and to develop plans to compensate existing pewholders and purchase pews in a new meetinghouse when one was built. Ames was among the signers of this report. Instead, in February 1807, the existing pewholders offered an alternative plan for assessment if the Parish would agree to enlarge the old meetinghouse rather than build a new one.

Eventually, the Parish rescinded its authorization for a new meetinghouse, and the effort to expand the seating collapsed again. As a result, Fisher Ames's family began attending Episcopal services.²⁰⁴ On Christmas Eve of 1807, Ames openly proclaimed his new allegiance: he had his house decorated with "green bows."²⁰⁵ A month later, in a letter dated January, 21, 1808, Fisher Ames requested dismissal from Dedham's First Church with respectful words for Reverend Bates: "As to yourself, Reverend Sir, it is a pleasure to reiterate that, I shall continue to cherish the sentiments of esteem and respectful attachment, to which your merit as a man and a minister justly entitle you."²⁰⁶ Of course, not too much can be made of this. Ames was always the soul of

204. The Reverend William Montague, minister of Dedham's Episcopal Church at the time of these events, wrote that Ames "no doubt would have continued to his death [in the Congregational Church] (for he was a man not given to change) had it not been for the circumstance which took place about the close of the year 1806, viz. he could not to his mind accommodate himself and his family with a pew, and a vote could not be obtained to enlarge the meeting house or build a new one. This led him to join himself and his family to the Episcopal Church, which he did." Montague, *supra* note 140, at 246-47. Although Montague is hardly a disinterested witness, this comment bears the ring of truth both in its recognition of Ames's personal aversion to change and in its less than flattering reason for his conversion to episcopacy.

205. *Id.* at 247. Presumably Reverend Montague was writing of the custom of decorating houses with evergreen boughs. According to Reverend Montague, Ames also took the occasion to make "some beautiful observations on that ancient custom 'which has become,' as 'venerable by age,' as the 'assembly's catechism.'" *Id.* The public significance of the event is important. Although few went so far as Boston's Samuel Sewall, who spent Christmas Day in the edifying activity of rearranging the occupants of the family crypt, New Englanders ordinarily minimized the Christmas celebration because they associated it with the Church of Rome.

206. Letter from Fisher Ames to Rev. Joshua Bates (Jan. 21, 1808), *quoted in id.* at 245. See also HANSON, *supra* note 187, at 192. By this point, Bates seems to have lost whatever support he had in Dedham. As a High Federalist, his political commentary was not appreciated by a congregation that voted Republican on a ratio of three to one. As a person, he was less than tactful, leading to such incidents as the *en masse* resignation of the church choir. See *id.* at 192-93.

politeness.²⁰⁷ Oddly, First Church never formally dismissed its most prominent member.²⁰⁸ As a result, the Congregationalists were still able to claim Ames as one of their own when he died on July Fourth of 1808.²⁰⁹

The story is preserved that shortly after Ames joined the Episcopal Church, one of its members offered to sell him very reasonably a pew that she still owned in the First Church meetinghouse, telling him that it was the best pew in the building. Still, he replied, he did not want it. She then said, "if they build a new splendid meetinghouse, Mr. Ames, I suppose you will go back to meeting." According to the story, he "gravely replied, No, Madam, if they build a meetinghouse of *Silver* and line it with *Gold* and gave me the best pew in it, *I shall go to Church.*"²¹⁰ Those relating the anecdote considered it evidence of Ames's attachment to the Episcopal Church; others might think it demonstrated his disgust with a fractious First Church.

As this anecdote implies, although the shortage of pews provided the proximate cause for Ames's move to the

207. Witness Ames's words of farewell to First Church in the same letter: "In respect to the Church and Society under your pastoral care, it is the earnest wish of my heart, that both may continue free from the spirit of discord, as for the first, and for one who withdraws, may many and worthier be added[.]" *quoted in* Montague, *supra* note 140, at 246.

208. See CHURCHES OF DEDHAM, MASSACHUSETTS, 1638-1844: ADMISSIONS, DISMISSIONS, ADULT BAPTISMS, AND PROCEEDINGS UNDER THE HALF-WAY COVENANT (Robert B. Hanson ed., 1990) (showing that First Church does not record a dismission of Fisher and Frances Ames); Montague, *supra* note 140, at 246.

Their love and esteem for him as an exemplary christian brother was so great, and they parted with him with such reluctance that the above letter was not even read in their Church for months after their pastor received it; indeed, with such reluctance did they part with this good man, that they never did formally dismiss him, untill [sic], with very christian love and charity for good people of every denomination, he took his dismission from ALL Churches MILITANT and joined the ONE TRIUMPHANT. . .

Id.

209. See, e.g., the comments of Rev. John Pierce of Brookline regarding Ames's funeral: "Prayers according to the Church of England were read by Mr. Montague. He [Ames] was not in reality an episcopalian. For he was a member of Mr. Bates's Church. But being utterly unable to obtain accommodations for his family in the meetinghouse, he was obliged to go to Church." Entry of July 5, 1808, 1 Memoir at 194-95; *Tribute*, *supra* note 154, at 94. *The Panoplist* was organized by the "Friends to Evangelical Truth" and represented the evangelical, rather than the liberal, wing of Congregationalism. Reverend Jedediah Morse was editor of the paper. See Forman, *supra* note 181, at 16.

210. Montague, *supra* note 140, at 247.

Episcopal Church, other factors, including Ames's longstanding Anglophilia²¹¹ and his involvement in a series of land deals organized by the local Episcopal minister may have played a role in the decision.²¹² The same Reverend Montague, hardly a disinterested witness, suggested that Ames joined the Episcopal Church for another reason: concern that the religious enthusiasm spreading from Connecticut to Massachusetts would infect Dedham's First Church. As Montague wrote:

And perhaps seeing it [enthusiasm] begin to prevail, in so many places in or near his own neighborhood, led him to read some of the most approved writers on the controversy between the *Church* and *non conformists*, which finally determined him to place himself and his family in the Episcopal Church, not only as an assylum [sic] against all similar tumults that will naturally and frequently arise (especially in the country) in societies under so democratic a government as that of the Congregational Churches; but also to secure his devotions by means of an established form of prayer; from being oftentimes interrupted by extemporaneous, unconnected effusions of an overheated brain.²¹³

In retrospect, it seems improbable that Dedham, a settled and liberal parish, would be overtaken by the kind of frontier revival enthusiasm that prompted laymen to interrupt the minister with their own uncouth extemporaneous prayers. Nevertheless, Ames's fear of democratic disorder was so great

211. Reverend Montague reported that, at the time Ames joined the Congregational Church, he told a neighbor that, "if he lived in England or any place where the Episcopal Church was regular and in order, he should be of that communion; but (as it was now in New-England (and at that time particularly so in Dedham) in a broken, disorganized state, little more than scattered congregations with a form of prayer) he should join the communion of the congregational church." *Id.* at 246. In fact, as a rising political star during the early national period, membership in the Episcopal communion would have been a liability. Cf. BERNHARD, *supra* note 19, at 44 (noting that, as a young lawyer, Ames represented an Anglican minister who had fled to England in 1778, attempting to reclaim a loan on the minister's behalf).

Ames also married into an openly Anglophilic family. His father-in-law, Colonel John Worthington, was well-known for his Tory sympathies. A member of the Massachusetts General Court between 1747 and 1774, Worthington reluctantly agreed to separation from England. *See id.* at 202.

212. *See, e.g.,* Memoranda 1804, in 2 DIARY, *supra* note 164, at 820. ("Montague treats his Church members with utmost contempt, alienates S. Colburns Donation to Dedham Church without ceremony—besides several pieces to Fisher Ames. . .").

213. Montague, *supra* note 140, at 243.

near the end of his life that there may be some truth to Montague's account.²¹⁴ Certainly, Ames's love for tradition, hierarchy, and formality were all gratified by the Episcopal rite and by the cadences of the Book of Common Prayer.²¹⁵ In any event, Ames's alarm at the prospect of even the minor disruption of worship by enthusiasts seems to undercut a broad understanding of the term "free exercise" during the constitutional debates.

In joining the Episcopal communion, Ames changed his form of worship and church polity; he did not have to change his theological views. The Church of England traditionally had strong Arminian leanings and the Massachusetts Episcopal Churches were as theologically liberal as any other churches whose members were drawn from the seacoast elite. For example, in the 1780s, King's Chapel, Massachusetts's first Anglican Church, followed ultra-liberal minister James Freeman out of the Episcopal communion and into becoming the first openly Unitarian church in New England.²¹⁶ Montague, although less than energetic in the pursuit of his pastoral duties,²¹⁷ sided with the liberals in the theological controversies of the day and stoutly asserted that Ames had confessed himself a theological liberal—or at most a moderate Calvinist—in all his dealings with his new pastor.²¹⁸

214. *But see infra* note 60 and accompanying text (regarding Ames's 1808 letter to his son Worthington espousing toleration for Baptists even though they are "ignorant enthusiasts.")

215. *See* Montague, *supra* note 140, at 247.

It was observed to him [Fisher Ames] that the Episcopal Church, differed very widely from the Congregational platform in her ordination, government and mode of worship, he replied, 'the difference is what I like,' and for which I give the Church the preference, those were his words.

Id.

216. Freeman initially led his congregation into Arianism, or the belief that Jesus, while not divine, was superior to ordinary human beings. When the Episcopal hierarchy delayed Freeman's ordination because of his views on the Trinity and the liturgy, King's Chapel simply ordained Freeman itself. *See* WRIGHT, *supra* note 63, at 210-12.

217. Montague led a rather checkered career. Nathaniel Ames's diary is replete with complaints about Montague's shady financial dealings with church assets and his inattention to ministerial duties, particularly his failure to preach regularly as stipulated in his contract. *See, e.g.*, Memoranda 1804, in 2 DIARY, *supra* note 164, at 798; *see also* Entry of May 3, 1794, in 1 DIARY, *supra* note 164, at 565 ("This day find Montague, as Robins said, a Puppy, Liar, &c:").

218. *See* Montague, *supra* note 140, at 242. Montague stated,

Thus, Fisher Ames found himself on the dissenting side of the establishment that he had helped to preserve and whose virtues he had extolled. And, as a dissenter, Ames was briefly drawn into a conflict that demonstrated firsthand how the Massachusetts system of town autonomy supported the dominant Congregational Church at the expense of other, ostensibly protected, denominations—something that readers today might see as an undue burden on the “free exercise of religion.” Yet, there is no surviving indication that Ames was especially troubled by this state of affairs. All that is left of his efforts to direct his parish taxes to the support of the Episcopal Church is the formal legal minimum—a certificate of dissent and a letter of request to the Parish Treasurer.²¹⁹

In 1805, the redoubtable Nathaniel Ames realized that Dedham was ignoring the Massachusetts law allowing the transfer of church taxes paid by members of “dissenting” churches to the support of their own minister,²²⁰ a not uncommon situation.²²¹ In his inimitable style, Nathaniel Ames entered the event in his diary:

Parish Committee finally refuse to obey the law as to refunding taxes assessd on different sects of worship—And add insult to injury—for Ben Weatherby one of the Assessors told me if a law authorized a man to change his religion as his coat it was a bad law—I told him he was as big a tyrant or would be as Bonaparte—And that an action would determine now he had refused Montague’s order.²²²

Calvenism [sic] in this country (to use one of his own figures on another occasion) ‘is like moonshine; it comprehends every thing but discovers nothing.’ If it means the Gospel as explained and understood by the late Dr. Doddridge of (old) England, and the present Dr. Joseph Lathrop, of New-England, and all the best writers of the Episcopal Church, Mr. Ames was a Calvinist. But if Calvin’s system of divinity is what the late Dr. Samuel Hopkins, of Newport, explained it to be, and understood it to mean, Mr. Ames viewed it (that is Hopkinsian Calvinism) almost as baneful to society, as that spirit of witchcraft, which infested this country about a century ago.

Id.

219. The paucity of records may reflect Ames’s genuine disinterest—Montague appears to have been the driving force behind the fight—or it may reflect Ames’s rapidly deteriorating health in the spring of 1808.

220. See, e.g., HANSON, *supra* note 187, at 192 (crediting Nathaniel Ames with the discovery that the funds were being retained by First Church).

221. See, e.g., WRIGHT, *supra* note 63, at 228; BRADLEY, *supra* note 11, at 22-27.

222. Miscellaneous Memento Entry for Mar. 7, 1805, in 2 DIARY, *supra* note 164, at 821.

As promised, during September Term of 1807, Reverend Montague sued the First Parish in Norfolk Supreme Judicial Court demanding his share of the assessments and complaining that the town assessors refused to refund parish taxes paid by Episcopal Church members before 1806.²²³

In March 1808, shortly after Fisher Ames requested dismissal from the Congregational Church, he sent a letter to the Treasurer of the First Parish, drily remarking that "I am assessed considerable sums for the ministerial uses in said Parish" and asserting his right to have the payments for 1807 "paid over to my religious teacher the Rev'd William Montague."²²⁴ Accompanying Ames's letter was the statutorily required certificate attesting to the fact that "Fisher Ames of Dedham aforesaid Esquire doth belong to said society [the religious sect or denomination called Episcopalian]; and that he frequently and usually, when able, attends with us in our stated meetings for religious worship."²²⁵ The fight to redirect the tax payments, however, fell to others.²²⁶ As the certificate indirectly indicated, Ames was already in the throes of his final illness; he died in July 1808, less than four months after presenting his certificate of dissent.

IV

Ironically, for a man whose religious life appears to have been largely a matter of social convention, two and one half years before his death Ames played a supporting role in one of New England's most significant religious schisms. For, in December 1805, as part of the maneuvering that installed the

223. Statement of the Case of William C. Montague vs. The First Parish in Dedham, September Term 1807, Norfolk Supreme Judicial Court, in Records of the First Congregational Church and Parish in Dedham (unpublished manuscript, on file with the Dedham Historical Society) [hereinafter First Congregational Records].

224. Letter from Fisher Ames to the Parish Treasurer of the First Parish in Dedham (Mar. 16, 1808), in First Congregational Records, *supra* note 223.

225. Letter of William Montague, Jesse Towell, and Timothy Richards, Dedham, Jan. 30, 1808, in First Congregational Records, *supra* note 223. Both this and the preceding letter are preserved among a series of documents dealing with tax assessments and church membership.

226. Not until March of 1809 did the Parish Records of First Church reflect an expenditure of \$301.63, transferring to Montague the parish rates paid by members of the Episcopal Church in 1807, including the 1807 assessment paid by Fisher Ames. Entry of Mar. 7, 1809, in First Parish Records, *supra* note 184. See Entries of Mar. 1807-Mar. 1809, *in id.*

openly Unitarian Henry Ware as Harvard's Hollis Professor of Divinity, Fisher Ames was elected president of Harvard College.

The Harvard controversy began in 1803 with the death of Hollis Professor David Tappan,²²⁷ a moderate Calvinist of the old Massachusetts variety. It intensified when President Joseph Willard, another moderate, passed away unexpectedly in September 1804, leaving the university with two important posts to fill.²²⁸ After protracted efforts to appoint a moderate to the theology chair failed, Ware, an avowed Unitarian, was elected in February of 1805. Subsequently, Ames emerged as the unanimous choice for the presidency,²²⁹ a compromise candidate who allowed the electors to sidestep the two frontrunners, each of whom was allied with one of the existing factions.²³⁰

227. The Hollis Professorship of Divinity at Harvard was the oldest endowed university chair in America, established in 1721 by the will of Thomas Hollis, a London merchant with Baptist affiliations. Tappan was the third incumbent of the Chair, well-liked and respected by liberals and orthodox alike. When Tappan died in August, 1803, university President Joseph Willard, himself a moderate Calvinist, apparently hoped another moderate might be chosen. Unfortunately for Willard, the leading candidate was Reverend Henry Ware, minister of Hingham's First Parish, whose Christology was openly Unitarian. In this and in much that follows, I am indebted to WRIGHT, *supra* note 63, at 252-80 and *supra* note 168, the latter of which analyzes the personalities and voting patterns in Harvard's governing bodies and provides printed versions of both Reverend John Eliot's and Professor Eliphalet Pearson's accounts of events in the election.

228. Foreseeing controversy from Ware's appointment, Willard had procrastinated. More than a year went by without any movement on a candidate; there was dark talk in the Boston newspapers that the university had diverted the Hollis Professor's salary to unauthorized uses. Then, in September, 1804, Willard himself died.

To be precise, at Willard's death, Harvard faced three vacancies, since a Fellow of the Corporation died at about the same time as President Willard. The latter vacancy was filled when the Board of Overseers elected Reverend John Eliot as a Fellow. Thus, he was the most junior Fellow of the Corporation in all the deliberations that follow. See WRIGHT, *supra* note 168, at 247-48; WRIGHT, *supra* note 60, at 274-77.

229. Ames was elected on December 11, 1805, almost fifteen months after President Willard's death. Entry of Dec. 11, 1805, in Records of the Harvard Corporation 77 (unpublished manuscript, on file with the Harvard University Archives, Pusey Library). Like many compromise candidates, it is unlikely that anyone believed that Ames's presidency would be a long one, since his declining health had been common knowledge since 1796. Thus, the factions probably expected breathing room to regroup for the next round without materially affecting the balance of power.

230. Sidney Willard, son of the recently-deceased President Willard and college librarian in 1805, bore out this reading of Ames's election. Based on his

Behind the lengthy maneuvering was a deeper rivalry. Yale-trained theological militants led by Reverend Jedediah Morse—then settled in a Charlestown pulpit—had sensed their moment to remake Massachusetts in the image of Connecticut by isolating the theological liberals and seizing control of the college for the orthodox. Harvard-trained liberals saw in Morse's effort nothing less than a threat to the social fabric of Massachusetts.²³¹ What transpired was a clash of mutually uncomprehending cultures, one primarily religious and the other—the reigning establishment—primarily secular and political. Indeed, the entire controversy epitomized the close relationship between political and religious hierarchies within the Massachusetts establishment.

Although Ames declined the Harvard post on account of ill health,²³² the circumstances of his election thrust his personal religious views to the fore. When Ames died three years later, the hard feelings over Ware's election had not

"conversation with the Fellows," Willard reported that the choice of Ames "probably, was made with little expectation that the office would be accepted by him, and might seem to indicate a *wish* on the part of the majority of the Corporation to escape from the alternative of choosing between two academical Professors." SIDNEY WILLARD, 2 MEMORIES OF YOUTH AND MANHOOD 174 (1855). The lengthy delay was caused by the fact that one of the candidates, Eliphalet Pearson, also sat on the university's governing board. According to Josiah Quincy, writing long after the fact, "To the candidates for the president's chair, proposed by the other members of the Corporation, his opposition was uniform; a decision was consequently postponed until more than a year had elapsed after the death of President Willard." JOSIAH QUINCY, 2 THE HISTORY OF HARVARD UNIVERSITY 268 (1840).

231. At least in the privacy of his own diary, one of the participants, Reverend John Pierce of Brookline cast the battle in these terms and was unable to resist crowing about the liberal victory. Writing after the 1810 election of Reverend John Kirkland fully secured the liberals' ascendancy, he commented:

The Connecticut clergy, & those who united with them in religious sentiments, appear wounded at this appointment for they consider it hostile to the prevalence of their religious doctrines. No doubt, it is one of the completest triumphs of free inquiry in matters of religion over Calvinian usurpation ever known in the annals of the University.

Pierce, Entry of Nov. 1810, 1 Memoirs at 308-09.

232. Letter from Fisher Ames to Eliphalet Pearson (Jan. 5, 1806), in College Papers, Volume 5 (unpublished manuscript, on file with the Harvard University Archives, Pusey Library). The letter, somewhat redacted and bearing the date Jan. 6, 1806, is in 2 WORKS, *supra* note 19, at 1490-92. Pearson read the letter to the other members of the Harvard Corporation a week later, Entry of Jan. 13, 1806, in Records of the Harvard University Corporation, *supra* note 229, at 80.

abated;²³³ both liberal and conservative eulogists took the field to claim his posthumous allegiance. Although clearly biased, these writings serve as excellent secondary evidence for Ames's personal beliefs, confirming the inferences drawn from Ames's own writings in the preceding discussion.

In fact, Fisher Ames was an astute choice for Harvard's president, because, as a layman, his theological views were suitably obscure. On the one hand, Ames shared the Federalist establishment's attitudes regarding the moral utility of religion, was broadly tolerant of diverse religious views, and minimized the importance of particular theological doctrines and creeds. On the other hand, the orthodox drew comfort from the fact that Ames had grown up under the ministry of a moderate Calvinist and had actively supported Joshua Bates, now aligning himself with the conservatives, for the Dedham pastorate. Moreover, Ames had not openly denied the existence of the Trinity and was known to be temperamentally a traditionalist. This meant that many orthodox elements of religious pedagogy and public worship—such as versions of the hymns and psalms—remained congenial to him, a matter of great concern to the Morse faction.²³⁴

All these strains of his religious life—the formalism, the traditionalism, and the theological liberalism—appear in the eulogies published by both factions after his death. On one matter they all agreed; Ames loathed “innovation” in religion as in all things. *The Panoplist*, a periodical edited by Jedediah Morse, described Ames as “generally Calvinistic” although “[a]n enemy to metaphysical and controversial divinity . . . [who] disliked the use of technical and sectarian phrases.”²³⁵ On the other hand, *The Panoplist* claimed that Ames “frequently used [the term Trinity] with reverence, and in a manner, which implied his belief of the doctrine[,]” just as “he often declared” his “persuasion of the *divinity of Christ*.”²³⁶

Indeed, *The Panoplist* reported, Ames's views “resulted from a particular investigation of the subject;” according to

233. See, e.g., Pierce, Entry of Nov. 1810, 1 *Memoirs* at 308.

234. *The Panoplist* reported that not only did Ames favor the use of Isaac Watts's Hymns and the King James Bible, but he “strenuously opposed” the introduction of a new collection of hymns into First Church. *Tribute*, *supra* note 154, at 94.

235. *Id.* at 93.

236. *Id.*

the orthodox, Ames “once read the Evangelists with the sole purpose of learning *what the Saviour had said of himself*.”²³⁷ The irony that this was a task once set for himself by Thomas Jefferson did not appear to cross the writer’s mind. Closer to the heart of the matter, *The Panoplist* remarked that

[h]e recommended the teaching of the Assembly’s Catechism; not perhaps, because he was perfectly satisfied with every expression it contained; but because, as he remarked, it was ‘a good thing on the whole;’ because ‘it had become venerable by age;’ because ‘our pious ancestors taught it to their children with happy effect;’ and because ‘he was opposed to innovation—unwilling to leave an old, experienced path, for one new and uncertain.’²³⁸

In the preface to the first edition of Ames’s collected works, Ames’s friend, John T. Kirkland, took issue with *The Panoplist’s* interpretation. While agreeing that the “objects of religion presented themselves with a strong interest” to Ames’s mind,²³⁹ and that Ames “placed a full reliance on the divine origin of Christianity,”²⁴⁰ Kirkland averred that Ames’s convictions were confined to “those leading principles, about which Christians have little diversity of opinion.” As to “[s]ubtle questions of theology . . . he neither pretended nor desired to investigate, satisfied that they related to points uncertain or unimportant.”²⁴¹ Instead, according to Kirkland, Ames measured “the genuineness and value of [religious] impressions and feelings by their moral tendency,”²⁴² “[i]n estimating a sect, he regarded more its temper than its tenets.”²⁴³ Ames was “the last to countenance exclusive claims to purity of faith, founded on a zeal for particular dogmas which multitudes of good men . . . utterly reject.”²⁴⁴

Instead, the orthodox had “misconstrued” Ames’s “prudence and moderation,” and “modesty and awe” with regard to “sacred subjects” into an “assent to propositions, which he meant merely not to deny” or into “an adoption of opinions or language which he meant merely not to con-

237. *Id.* at 94.

238. *Id.* at 94.

239. Kirkland, *supra* note 19, at 1.

240. *Id.* at l-li.

241. *Id.*

242. *Id.*

243. *Id.* at li-lii.

244. *Id.*

denn."²⁴⁵ In sum:

He was no enemy to improvement, to fair inquiry, and Christian freedom; but innovation in the modes of worship and instruction, without palpable necessity or advantage, he discouraged, as tending to break the salutary associations of the pious mind.²⁴⁶

It appears that, in the tradition of the gospel, Fisher Ames could minister to each in his own self-image, but to all in the selfsame Federalist spirit.²⁴⁷

Ames's successor, Professor Samuel Webber, accepted the Harvard presidency with reluctance. According to Reverend John Pierce, "he had a diffident sense of his qualifications for the trust office; & as from the previous election of Mr. Ames, he felt, that he was not the first in the minds of the government."²⁴⁸ In any event, Webber's tenure in office was brief. He died in July 1810. The next appointment was Ames's old friend, the Reverend John Kirkland. Once again, John Pierce's observations are of interest; they show the qualifications the Corporation had sought when electing Ames five years earlier:

Indeed, though Dr. Kirkland is a high federalist, and has the entire confidence of that class of politicians stigmatized with the opprobrious epithet of the Essex Junto, and though he decidedly belongs to the liberal sect in religion; yet he maintains & expresses his opinions with so much discretion and moderation, and with such complete control over his passions, that he almost wholly disarms opposition of its hatred and its virulence.²⁴⁹

With Kirkland's election, Harvard was secure from the baleful parochial influence of Yale. The theological liberals' victory was complete at the same time that the political fortunes of the Essex Junto were in disarray. James Madison was president; the country was on the verge of war with Britain. Four years later, in 1814, meeting in secret at the Hartford Convention, the High Federalists would urge a separate peace with England and again plot the secession of New England. The world that Fisher Ames knew was now

245. *Id.*

246. *Id.* at li-iii.

247. See 1 *Corinthians* 9:19-23.

248. Pierce, Entry of July 1810, 1 *Memoirs* at 289.

249. Pierce, Entry of Nov. 1810, *Inauguration of Dr. Kirkland*, in 1 *Memoirs*, at 308.

confined, as the old line about Unitarianism²⁵⁰ would have it, to the neighborhood of Boston.

There is a more personal end to the story. As Ames approached death in the spring of 1808, friends came to visit and reported on his decline.²⁵¹ Edifying deathbed scenes of Christian faith and resignation were a staple of New England culture and literature. Yet, it seems that despite the best efforts of those around him to make use of his iconic status, Ames could not quite be made to fit into the model of uplifting leave-taking. Reverend Montague, of course, claimed that Ames had requested "the Church service" at home during his last illness but was unable to find anything else to say.²⁵² Kirkland was silent. *The Panoplist*, as befits the orthodox publication it was, presented an orthodox death scene:

In his last sickness; when near his end, and when he had just expressed his apprehension and belief of his approaching dissolution, he exhibited perfect submission to the divine will, and the fullest assurance of divine favor. 'I have,' said he, 'peace of mind. It may arise from stupidity; but I think it is founded on a belief of the gospel.'²⁵³

There is a certain comfort in knowing that Fisher Ames retained his mordant sense of humor to the end.

CONCLUSION

It is a long journey from the heady days of the first Congress to the Unitarian controversy, although it spans less than two decades in the history of the Republic. In fact, Massachusetts formally retained an establishment of religion until 1833. Its structure, however, was seriously compromised in 1821 by the famous case of *Baker v. Fales*,²⁵⁴ popularly known as the "Dedham decision." Ironically, the case arose in 1818 when Dedham's First Parish chose a

250. The line runs that the tenets of Unitarianism are limited to "the fatherhood of God, the brotherhood of man, and the neighborhood of Boston."

251. See, e.g., Letter from William Eustis to Henry Dearborn (June 24, 1808), in Miscellaneous Bound Collection, Massachusetts Historical Society ("Yesterday I made a visit to poor Fisher Ames at Dedham. He is almost gone—wasted to a skeleton, and narrowing, as he expressed it, his circle, he cannot remain long—he was very amiable and interesting—more so now than ever. So we go.")

252. Montague, *supra* note 123, at 247.

253. *Tribute*, *supra* note 154, at 94.

254. 16 Mass. 487 (1820).

Unitarian to replace the departing Joshua Bates. As a result, a majority of the Church members withdrew, taking with them the Church records and the communion plate. The remaining minority claimed that the continuity of the covenanted Church rested with them, the saving remnant who stayed behind in fellowship. A Unitarian-dominated Supreme Judicial Court agreed, awarding them the "rights and property" belonging to First Church.²⁵⁵ Within a few years, the Standing Order collapsed of its own weight.

The twists and turns of the period, as they played out in Fisher Ames's life and thought, show a world far removed from our own. Bound by alien social conventions of hierarchy and deference, the ultra-Federalists advocated a religious establishment that in many ways mirrored the British establishment that their pious forebears had fled. It was at once socially conservative and religiously latitudinarian—so that in its broad *via media*, it encompassed a range of opinion from orthodox Calvinism to views verging on deism, while permitting outright dissenters on its fringes.

At the same time, Ames and his cohort viewed the establishment as central to New England's "national character," a key to New England exceptionalism. Their protectiveness toward this establishment during the compromises that yielded both the constitution and the Bill of Rights, is reminiscent of another section's defense of another peculiar institution. Both New England and the south claimed that an alien and uncomprehending regional culture wished to destroy an institution central to their identity and way of life. Both repeatedly threatened secession to protect their distinctive society; their mutual suspicion and regional patriotism should remind modern readers how far the several states were from being a single nation in the early years of the Republic. But, if the analogy between religion and slavery during the constitutional period is at all instructive, it suggests yet a greater gulf between the world of the Framers and the present, one which adds a further caution in using the Framers' understanding of the place of religion in society as a guide to our reading of the establishment and free exercise clauses today.

255. *Id.* at 488 ("When a majority of the members of a Congregational church separate from a majority of the parish, the members who remain, although a minority, constitute the church in such parish, and retain the rights and property belonging thereto.").