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Allison L. LaCroix

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ARTICLE

“BOUND FAST AND BROUGHT UNDER THE YOKE”: JOHN ADAMS AND THE REGULATION OF PRIVACY AT THE FOUNDING

*Alison L. LaCroix**

The announcement of the United States Supreme Court in 1965 that a right to privacy existed, and that it predated the Bill of Rights, launched a historical and legal quest to sound the origins and extent of the right that has continued to the present day.¹ Legal scholars quickly grasped hold of the new star in the constitutional firmament, producing countless books and articles examining the caselaw pedigree and the potential scope of this right to privacy. Historians, however, have for the most part shied away from tracing the origins of the right to privacy, perhaps hoping to avoid the ignominy of practicing “law-office history.”² Instead, some historians have engaged in subtle searches for markers of privacy—such as an emphasis on family,³ a notion of the home as an oasis,⁴ or a minimal

* Doctoral candidate, Department of History, Harvard University. B.A., Yale University; J.D., Yale Law School; A.M., Harvard University. The author thanks Morton J. Horwitz and James T. Kloppenberg for their comments on an earlier draft of this Article. The author also thanks William Birdthistle.

1. *Griswold v. Connecticut*, 381 U.S. 479 (1965) (holding unconstitutional a state law prohibiting the use of contraceptives by married couples). Scholarly interest in the right to privacy originated in 1890, with the publication in the *Harvard Law Review* of Samuel Warren and Louis Brandeis’s seminal article, *The Right to Privacy*. Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 Harv. L. Rev. 193 (1890). Although Warren and Brandeis put forth a compelling argument for the long lineage of the right in English common law, privacy did not gain recognition as a fundamental right for another seventy-five years. After 1965, the right to privacy steadily expanded its ambit, extending governmental protection to abortion as well as other reproductive decisions. See, e.g., *Roe v. Wade*, 410 U.S. 113 (1973) (holding that a woman has a constitutional right to abortion); cf. *Eisenstadt v. Baird*, 405 U.S. 438 (1972) (striking down on equal protection grounds a state law prohibiting the use of contraceptives by unmarried persons).

2. The phrase “law-office history” refers to “the selection of [historical] data favorable to the position being advanced without regard to or concern for contradictory data or proper evaluation of the relevance of the data proffered.” Alfred H. Kelly, *Clio and the Court: An Illicit Love Affair*, 1965 Sup. Ct. Rev. 119, 122 n.13.

3. See, e.g., Edmund S. Morgan, *The Puritan Family: Religion and Domestic Relations in Seventeenth-Century New England* 173 (rev. ed. 1966) (describing New

degree of criminal prosecution⁵—as a means of understanding how Americans have viewed the various spheres of activity that have constituted their world. Rather than searching for the origins of a right to privacy, these scholars broaden the inquiry in an attempt to understand the nature of a realm of human activity that they characterize as “private,” in contrast to a corresponding “public” realm.

Yet the very ambiguity surrounding these terms, with their immense resonance for modern American life, complicates the historiographical project. Does the use of privacy as an analytic tool compromise the historian’s ability to separate the term’s modern connotations from its historical ones? Can early uses of the words “private” and “privacy” ever be understood as the speakers meant them, or has the Supreme Court’s pronouncement that a right to privacy has existed all along simply lulled us into believing that the meaning of these words remains unchanged, and that a stable notion of “privacy” has endured and been celebrated throughout American history? In short, the concept of privacy has not lent itself to easy historical application. Consequently, many historians seem to have abandoned privacy as both an analytical framework and a topic of analysis.

Nowhere is this reluctance to grapple with the myriad layers of privacy more marked than in the historiography of the nation’s founding. The relative dearth of scholarly attention paid to notions of privacy in the 1770s and 1780s is startling; after all, the era that birthed the very Constitution that became the basis of a national valorization of privacy seems a promising candidate for an intellectual history of the idea. Indeed, according to the *Griswold* Court, the colonists carried the notion of privacy with them from the English common law, planting it along with their earliest crops in the rocky soil of the New World and enshrining it in the founding texts of the new nation. In this celebratory view of seventeenth-century events, the germ of a belief in privacy—that is, individual autonomy and freedom from collective scrutiny—inherited in the Anglo-American consciousness,

England Puritans’ shift toward viewing children and family as a wellspring of affection rather than as the locus of communal order and salvation); Daniel Blake Smith, *Inside the Great House: Planter Family Life in Eighteenth-Century Chesapeake Society* 285-89 (1980) (arguing that the late eighteenth century witnessed a “heightened intimacy within the conjugal family” of southern planters).

4. See, e.g., Rhys Isaac, *The Transformation of Virginia, 1740-1790*, at 303-05 (1982) (identifying a late-eighteenth-century tendency to view the home as a sanctuary); Jan Lewis, *The Pursuit of Happiness: Family and Values in Jefferson’s Virginia* 210 (1983) (noting that in the era following the American Revolution, “the pursuit of happiness took men and women home”).

5. See, e.g., David H. Flaherty, *Privacy in Colonial New England* 248 (1972) (citing the existence of a privilege—albeit limited—against self-incrimination as evidence of a right to privacy in colonial New England).

essentially unchanged from 1607 to 1965 and beyond.⁶ This view has met challenges from such scholars of early American history as John Demos and Edmund Morgan, who characterize colonial communities as committed to an overarching social organization based on the connections among individual grace, divine salvation, and communal welfare.⁷ Far from the libertarian paradise that the *Griswold* Court envisioned, colonial New England is for these scholars a tightly knit community, the survival and salvation of which depended on constant public monitoring of what we would now consider quintessentially private behavior, such as childrearing, spirituality, and sexual activity.

Despite disagreements about the extent to which privacy was a value (much less a right) in early America, very few scholars have focused on eighteenth-century notions of privacy. Instead, many historians have avoided the term altogether, concentrating instead on the development of certain aspects of politics and society that they associate with the emergence of a modern, nineteenth-century worldview based on differentiated private and public spheres.⁸ This is an unfortunate trend, for it ignores the many early Americans who thought and wrote extensively about the interaction between private activity and public life in the early Republic. If legal scholars have been too quick to take the *Griswold* Court at its word and accept privacy as a foundational American value, historians seem equally hasty in their willingness to treat privacy as a fundamentally modern idea, and therefore to use it only as a lens through which to view early America rather than as a legitimate subject of inquiry. In almost every case, privacy is celebrated as the fruit of Enlightenment reason, a marker of a fully modern society and an unmitigated social good. People who value privacy are in some way “like us”; people who do not are at best not yet ready for modernity and at worst potential pawns of a totalitarian state.⁹

The writings of John Adams demonstrate, however, that at least

6. At least one scholar has found an “unwritten” right to privacy in colonial America, which he explicitly connects to the *Griswold* decision. See *id.* at 248-49.

7. John Demos, *A Little Commonwealth: Family Life in Plymouth Colony* (2d ed. 2000); Morgan, *supra* note 3. Nancy Cott has made a related argument in the context of divorce law. See Nancy F. Cott, *Divorce and the Changing Status of Women in Eighteenth-Century Massachusetts*, 33 *Wm. & Mary Q.* 586 (1976).

8. See, e.g., Helena M. Wall, *Fierce Communion: Family and Community in Early America* (1990). As Hendrik Hartog has argued in the context of the law of municipal corporations, the nineteenth century was the high tide of formal separation between public and private spheres. See Hendrik Hartog, *Public Property and Private Power: The Corporation of the City of New York in American Law, 1730-1870*, at 3 (1983).

9. See, e.g., David W. Marcell, *Privacy and the American Character*, 66 *S. Atlantic Q.* 1 (1967); Thomas H. O'Connor, *The Right to Privacy in Historical Perspective*, 53 *Mass. L.Q.* 101 (1968). Marcell's and O'Connor's views of privacy as the beneficial and necessary consequence of modernity typify the prevailing attitude in the years immediately following the *Griswold* decision.

one member of the founding generation devoted substantial time and ink to considering the problem of privacy. Adams's writings confirm that privacy was not always among the chief goals of the American republic. On the contrary, Adams displayed a marked suspicion of privacy and the private life. Although he rarely employed the term "privacy," Adams's highly developed political theory assumed the existence of both a public and private realm, arguing consistently that the "private" (a word he frequently used) realm of individual activity comprised only selfish passions and human weakness. Adams therefore premised his theory of government on what he considered a realistic view of human nature, replacing the classical republican ideal of the identity between individual virtue and civic virtue with a systemic solution to humans' tendency toward vice. By severing the connection between the virtue of the citizen and that of the state, Adams drove a wedge between private and public activity, arguing that the private passions for reputation and luxury had to be subdued and controlled by the institutions of government in order for the Republic to function. Adams thus gave up on the private sphere as a source, by itself, of republican virtue and order. As his writings demonstrate, his was among the most developed conceptions of the role of privacy in a republic.

Adams's political theory was not wholly pessimistic with respect to human nature, however. On the contrary, his resistance to the notion of private life stemmed from a basic belief that republican governments required constant scrutiny by citizens, and that citizens should therefore not be permitted to withdraw into the comfortable realm of private interests and pursuits. Rather than constraining individuals' activities, this arrangement would make every citizen "in some degree a statesman," granting an individual the authority "to examine and judge for himself the tendency of political principles and measures."¹⁰ Adams's optimism stemmed from his insistence that this realignment of individuals away from selfish pursuits and toward the welfare of all was possible.

While Adams disdained the activities of the private realm throughout his writings, he never questioned the realm's existence or power. Indeed, his entire system of government was structured to control passion, the private realm's principal component. In contrast to the *Griswoldian* image of the founders as devoted to individual freedom to live beyond the long arm of the state, Adams argued that a nation of citizens engaged only in private pursuits sapped democracy of its strength and subjected unwary citizens to the risk of tyranny. For Adams, privacy clearly existed in early America, but he did not view it as the benign source of autonomy and rights that it would

10. John Adams, *On Self-Delusion, in* The Revolutionary Writings of John Adams 11 (C. Bradley Thompson ed., 2000).

become in the twentieth century.¹¹ Unlike his contemporaries James Madison and Adam Smith, Adams was not willing to believe that the cumulative effect of many private impulses could be harnessed for social good.¹² Madison's and Smith's view may have ultimately prevailed and even paved the way for *Griswold's* embrace of an affirmative right to privacy. But Adams's refusal to accept private vice as a necessary evil was a crucial step in the transition from classical republicanism based on a virtuous populace to liberal republicanism based on a political structure that sought to cabin the worst human tendencies while redirecting others to beneficial ends.

This Article focuses on John Adams's writings on privacy, which remained remarkably consistent throughout a career spanning more than seven decades. Adams was still discussing political theory with various correspondents, most notably Thomas Jefferson, a few days before he died at the age of eighty-nine on July 4, 1826. Although Adams's reputation has, as he feared, not ascended to the level of such Revolutionary peers as Madison, Jefferson and George Washington, he was one of the most prolific political theorists of his time and has been called "the master psychologist" of American political thought.¹³ His major writings, *A Dissertation on the Canon*

11. Throughout this Article, I will use the terms "privacy," "private life," and "the private realm" more or less interchangeably, with each of them referring to a notion of a realm of human activity that exists apart from an accompanying public realm of politics and civic discourse. The phrase "right to privacy" will be used as a term of art for the constitutional right recognized in *Griswold v. Connecticut* and its predecessor rights at common law.

12. The most famous statement of Madison's philosophy on this point is, of course, *The Federalist* No. 10, in which Madison argued that the evils of faction could be cured by setting those factions loose in a large republic, which would in turn provide maximum freedom and stability to its citizens. *The Federalist* No. 10, at 64 (James Madison) (Jacob E. Cooke ed., 1961); see also Lance Banning, *The Sacred Fire of Liberty: James Madison and the Founding of the Federal Republic* 204 (1995). Similarly, in *The Wealth of Nations*, Adam Smith posited that moral as well as economic benefits on an aggregate scale could result from individual choices:

But man has almost constant occasion for the help of his brethren, and it is in vain for him to expect it from their benevolence only. He will be more likely to prevail if he can interest their self-love in his favour, and show them that it is for their own advantage to do for him what he requires of them. . . . It is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but to their self-love, and never talk to them of our own necessities but of their advantages.

Adam Smith, *The Wealth of Nations* I ch. 2 (Alfred A. Knopf 1991) (1776); see also Sheldon S. Wolin, *Politics and Vision: Continuity and Innovation in Western Political Thought* 333 (1960) (describing Smith's "unseen hand" idea as a "theory of individual moral behavior: both the moral good of society and its material well-being had their origins in instinct, desire, and passion; and neither was the result of action intended to advance the good of society as a whole"); cf. Garry Wills, *Inventing America: Jefferson's Declaration of Independence* 232 (1978) (arguing that Smith emphasized "providential harmonies within society" and characterizing Smith a "communitarian" who was "conscripted to individualist uses by nineteenth-century liberalism").

13. Joseph J. Ellis, *Passionate Sage: The Character and Legacy of John Adams* 47

and *Feudal Law* (1765), the *Novanglus* letters (1774-75), *A Defence of the Constitutions of Government of the United States of America* (1786-87), and the *Discourses on Davila* (1790-91), canvass the history of republican government from classical to modern times and assess the prospects of success for the embryo republic founded in 1776 on the western rim of the Atlantic Ocean. But they also contain remarkable insight into human nature, bringing a pragmatic perspective to the difficult project of establishing a new government of a type that had not been seen for more than a thousand years.

This Article tracks some of the major themes of Adams's writing on privacy, discussing the impact of his Puritan background on his thought and then moving to the broader issues that most interested him: virtue, passion, decay, and public life. Each of these concepts provided Adams with fodder for contemplating the nature of privacy, and each became a component of his overall vision of the relationship between public and private life. Analyzing these concepts together allows reexamination of Adams's legacy and theory, pulling together the strands of his suspicion of privacy and his deep conviction that the private realm was no place for American citizens to spend the majority of their time.

I. PURITANISM

For an individual who left remarkably complete records of his activities and thoughts, Adams has generated a considerable amount of dispute among historians. One major area of debate has been the impact of Adams's Puritan heritage on his political philosophy—specifically, the degree to which the Puritan ethos of worldly austerity and the faith's close association of political and spiritual life influenced Adams's thinking about the formation of republics. Born to a long line of Massachusetts smallholders, the son of a deacon, Adams received an education that inculcated in him the precepts of Calvinism. Adams seriously considered studying for the ministry, spending the year after his graduation from Harvard fretting about his fitness for the profession and ultimately deciding to pursue a career in law. In his intellectual biography of Adams, C. Bradley Thompson attributes Adams's decision not to enter the ministry to a theological controversy that took place in Adams's hometown of Braintree while he was at Harvard, which ended in the public censure of a clergyman whose views had strayed too close to Arminian doctrines of free will. Shortly thereafter, Adams rejected several foundational tenets of Calvinism, adopting instead what Thompson calls a "religion of civic

(1993). Adams's contemporaries referred to him as "the Atlas" and the "colossus" of independence. David McCullough, *John Adams* 127, 163 (2001) (quoting Richard Stockton, New Jersey delegate to the Continental Congress, and Thomas Jefferson, respectively).

morality” influenced by Lockean and Newtonian thought as well as the writings of several liberal English theologians.¹⁴

Despite Adams’s youthful protestations against Calvinism, reformed Christianity clearly remained important in his thought. At a minimum, it harmonized with his political philosophy, providing a theological underpinning for his theories. Writing in 1796, Adams observed that a “great Advantage” of Christianity was that it taught the “Duties and Rights of The Man and the Citizen.” Promises of “future Life are thus added to the Observance of civil and political as well as domestic and private Duties.”¹⁵ Moreover, on several occasions the young Adams draped himself in the mantle of seventeenth-century Puritan worthies, engaging in 1767 in a spirited exchange of articles under the name “Governor Winthrop” with an interlocutor calling himself “Governor Bradford.” The articles had nothing to do with religion, focusing on a controversy in the Massachusetts House of Representatives and urging the people of Massachusetts not to allow the repeal of the Stamp Act to dissuade them from their newfound American patriotism. Yet Adams’s identification with the leader of the Puritan Massachusetts Bay Colony was motivated by more than simple expedience. The very language that Adams employed sounded the century-old Calvinist themes of decadence and renewal, connecting the health of the individual body with that of the civic body: “Calamities are the caustics and cathartics of the body politic. They arouse the soul. They restore original virtues. They reduce a constitution back to its first principles.”¹⁶ Haranguing his fellow colonists not to allow British overtures to lull them into “such a tame, torpid state of indolence and inattention, that the missionaries of slavery are suffered to preach their abominable doctrines,”¹⁷ Adams borrowed the rhetoric of what Edmund Morgan calls “the Puritan Ethic,” embracing adversity as an opportunity to test the mettle of one’s faith.¹⁸

Puritanism therefore had a profound influence on Adams, as it did on many members of the Revolutionary generation.¹⁹ Certainly, Puritan theology and Adams’s Revolutionary thought shared at least one characteristic: distrust of a too-private life, with its potential to detach individuals from the Puritan commonwealth or the republican

14. C. Bradley Thompson, *John Adams and the Spirit of Liberty* 6-13, 23 (1998).

15. *Id.* at 23 (quoting 3 *Diary and Autobiography of John Adams* 240-41 (L.H. Butterfield ed., 1962)).

16. John Adams, *Governor Winthrop to Governor Bradford*, in *The Revolutionary Writings of John Adams* 60 (C. Bradley Thompson ed., 2000).

17. *Id.*

18. Edmund S. Morgan, *The Puritan Ethic and the American Revolution*, 24 *Wm. & Mary Q.* 3 (1967).

19. *See id.*; *see also* Richard L. Bushman, *From Puritan to Yankee: Character and the Social Order in Connecticut, 1690-1765* (1967); Michael Walzer, *The Revolution of the Saints: A Study in the Origins of Radical Politics* (Atheneum 1976) (1965).

state. To stave off such offenses to the polity, Puritan communities engaged in elaborate surveillance and prosecution of deviant behavior and issued jeremiads against corruption and decline. Adams, for his part, engaged in his own laments of human nature, as when he railed in 1774 against Bostonians' boundless greed for imported British tea:

What numbers there are in every community, who have no providence or prudence in their private affairs, but will go on indulging the present appetite, prejudice, or passion, to the ruin of their estates and families, as well as their own health and characters! How much larger is the number of those who have no foresight for the public, or consideration of the freedom of posterity! . . . Must the wise, the virtuous and worthy part of the community, who constituted a very great majority, surrender their liberty, and involve their posterity in misery, in complaisance to a detestable, though small, party of knaves, and a despicable, though more numerous, company of fools?²⁰

Would the wise, the virtuous, and the worthy be degraded into the same dependence on imported luxuries that afflicted the knaves and fools? Or would the knaves and fools realize the wickedness of their ways and reform in time to save their entire community? Adams's critique explicitly linked "private affairs" with the "public" and with "posterity," spelling out the dire consequences of the unwholesome "appetite, prejudice, or passion" that he saw in his fellow citizens. The nature of the distress was clear: Private choices caused public hardship and rendered the town vulnerable to further British exploitation. But Adams's diatribe contains far more than this simple statement of cause and effect. As his Puritan forbears had done, Adams condemned the private weaknesses that endangered the entire community. Like his ancestors' Puritan zeal, which linked "[p]ersonal salvation and national reformation" in a "highly collective emotion," Adams's revolutionary rhetoric deplored private interests and self-involved citizens.²¹ The two strains of thought thus shared a language based on the quest for virtue, the inevitability of corruption, the remoteness of salvation, and the enervating effects of worldly luxury. As Edmund Morgan has argued, the colonial boycott movements represented "a way of reaffirming and rehabilitating the virtues of the Puritan Ethic," in particular the idea that "adversity provided a spur to virtue."²² Virtue, however, would prove more elusive in the 1770s and 1780s than it had for any previous generation, leading Adams to conclude that private virtue could not sustain a republic.

20. John Adams, *Novanglus*, No. VI, in *The Revolutionary Writings of John Adams* 213 (C. Bradley Thompson ed., 2000).

21. See Walzer, *supra* note 19, at 170, 12.

22. Morgan, *supra* note 18, at 8.

II. VIRTUE

In addition to the Puritan Ethic, the Revolutionary generation was deeply affected by the ideals of the classical republican (or civic humanist) tradition, which J.G.A. Pocock has described as “anchored in the Florentine Renaissance, Anglicized by James Harrington, Algernon Sidney, and Henry St. John, Viscount Bolingbroke, but looking unmistakably back to antiquity and to Aristotle, Polybius, and Cicero.”²³ The essential element of classical republicanism was its reliance on citizen virtue to maintain the fragile balance between tyranny (defined as an excess of monarchy) and anarchy (defined as an excess of democracy). A republic, therefore, demanded what Gordon Wood terms “extraordinary moral character” of its people, in that “each man must somehow be persuaded to submerge his personal wants into the greater good of the whole.”²⁴ This public virtue would stem from individuals’ private virtue, in a process of aggregation and cumulation of acts of virtue between citizens.

By the 1780s, however, the promises of classical republicanism appeared to many Americans as nothing more than empty blandishments. Under the relatively weak structure of the Articles of Confederation, state legislatures seemed to have run amok, passing and then rapidly repealing laws, engaging in irresponsible paper money schemes, passing debtor-friendly legislation that hindered collection by creditors, and abandoning themselves to the type of “democratic despotism” that Adams and others had once viewed as a contradiction in terms.²⁵ In late 1786, the rebellion led by Daniel Shays in western Massachusetts, which protested high taxes and demanded additional debtor relief, provided vivid evidence of the defects of the Confederation. To the emerging Federalist camp, which counted Adams among its more independent members, the conclusion was clear: The people’s virtue provided an insufficient foundation on which to build the national edifice. The very institutions of government would have to be reconstituted in order to bolster capricious citizen character with steady, systemic structures. As Wood puts it, the Federalists “hoped to create an entirely new and original sort of republican government—a republic which did not require a virtuous people for its sustenance.” Because American character had proved insufficiently virtuous to support the republic, the republic would have to be reformed so as to “moderate the effects of its viciousness.”²⁶

23. J.G.A. Pocock, *Virtue and Commerce in the Eighteenth Century*, 3 J. Interdisc. Hist. 119, 120 (1972).

24. Gordon S. Wood, *The Creation of the American Republic, 1776-1787*, at 68 (1969).

25. *Id.* at 404.

26. *Id.* at 475. J.G.A. Pocock has charged Wood with exaggerating the magnitude of the shift that occurred in republican thought in 1787-88, arguing that a balanced

Adams, who approved of the new Constitution that emerged out of the postwar desire for structure, consistently warned against relying solely on individual virtue, which he considered “the effect of the well ordered constitution, rather than the cause.”²⁷ Unfortunately for his contemporaries and for posterity, however, Adams observed the post-Revolutionary crisis from England, where he served from 1785 to 1788 as the Republic’s first minister to the Court of St. James. He could not contribute his considerable expertise on the subject of human vice and virtue to the Constitutional Convention, which met in Philadelphia from 1787 to 1788. Despite his distance from his nascent nation, however, the indefatigable Adams busied himself between visits to the frosty Hanoverian court by penning his three-volume *Defence of the Constitutions of the United States of America*. True to its name, the *Defence* undertook to rebut the claim of French radical Anne-Robert-Jacques Turgot that the bicameral constitutions adopted by virtually all the American states, including Adams’s own Massachusetts constitution, merely reproduced the outmoded and anti-democratic structure of the British constitution. Yet Adams’s interest in defending the states’ tripartite “mixed governments” did not prevent him from including his views on virtue in the *Defence*.

According to Adams, virtue and its components, such as the love of liberty, were insufficient—and possibly unnecessary—elements of republican government. Indeed, Adams expanded the Federalist anxiety about the inadequacy of virtue, fearing not only that a lack of private *virtue* would prove unable to counterbalance government corruption but also that private *corruption* might replace virtue and gnaw away at the republic from within. In other words, Adams found in virtue another reason to distrust citizens in their capacity as private individuals. “The numbers of men in all ages have preferred ease, slumber, and good cheer to liberty, when they have been in competition,” Adams wrote. “We must not then depend alone upon the love of liberty in the soul of man for its preservation.”²⁸ As in the early days of the war, when he had lambasted his fellow citizens as “knaves” and “fools” for failing to curb their thirst for tea and thereby ensuring the colony’s dependence on British trade, Adams argued in the 1780s and 1790s that a government could not rely on its citizens to possess the discipline or will to choose the virtuous course of action

republic of one, few, and many need not be the only arena for classical virtue. See Pocock, *supra* note 23, at 133. As Adams’s writings make clear, however, the founders had by the 1780s abandoned classical virtue as a realistic basis on which to build a nation.

27. John Adams, 3 A *Defence of the Constitutions of Government of the United States of America* (1786-87), *reprinted in* 6 *The Works of John Adams, Second President of the United States: With a Life of the Author* 1, 219 (Charles Francis Adams ed., 1851).

28. Letter from John Adams to Samuel Adams (Oct. 18, 1790), *reprinted in* *The Political Writings of John Adams* 664, 668 (George W. Carey ed., 2000).

for themselves or their country. Absent this private will, therefore, Adams called on organized, public entities to step in and take charge.

Reflecting on the state of the nation in a 1790 letter to Samuel Adams, then-Vice President John Adams wrote:

“The love of liberty,” you say, “is interwoven in the soul of man.” So it is . . . in that of a wolf; and I doubt whether it be much more rational, generous, or social, in one than in the other, until in man it is enlightened by experience, reflection, education, and civil and political institutions²⁹

With his readiness to give up on virtue altogether as a source of political order, Adams essentially severed the classical causal link between private behavior and public result. In its place, he offered a systemic solution that, unlike the Federalist Constitution, established a public realm of balanced government and checks on power that explicitly sought to control the “[s]elf-interest, private avidity, ambition, and avarice” that he viewed as the dominant threats to the stability of the new republic.³⁰ Unlike Madison, who believed that public benefits could be reaped from private defects (e.g., the desire to form factions) if those defects were properly harnessed, Adams refused to believe that private impulses could be rehabilitated and insisted that they had no place in a healthy government.

Moreover, Adams believed that government ought to bind citizens together and encourage them to become invested in the commonwealth. To this end, he argued that government should “compel all to respect the common right, the public good, the universal law, in preference to all private and partial considerations.”³¹ This goal stands in sharp contrast to that of the English-derived “Country ideology” that J.G.A. Pocock associates with Revolutionary thought. In Pocock’s view, Country ideology envisioned a man “so independent of other men and their social structures that his dedication to the *res publica* could be wholly autonomous.”³² To Adams, the risk that men and women left alone would surrender to their private vices was simply too great to rely on anything except the controlling power of public authority. The inevitability of vice (or, to use the Puritan term, sin) was a major premise of Adams’s conclusion that private drives had to be subordinated to public objectives. The notion that citizens possessed a “right to be let alone” would have struck Adams as mere sophistry, a clever justification for a lack of prudence and restraint.³³

29. *Id.*

30. John Adams, 3 A Defence of the Constitutions of Government of the United States of America, reprinted in *The Political Writings of John Adams: Representative Selections* 105, 150 (George A. Peek, Jr. ed., 1954).

31. *Id.* at 147.

32. Pocock, *supra* note 23, at 122, 129.

33. By 1890, however, Adams’s distrust of unchecked human nature had clearly

III. PASSION

Once virtue had lost its primacy in republican political theory, there remained one source of private influence on public affairs: the passions. For Adams and his contemporaries, the term "passion" encompassed varied human desires, such as the desire for reputation, for wealth, and for all other forms of gratification. Although some scholars, such as Albert Hirschman, have argued that early-eighteenth-century thought transformed the passions from a destructive and sinful force to a creative and beneficial one, many of the founders—and Adams in particular—remained influenced by the older notion of passions as harmful, selfish, and fundamentally irrational.³⁴ Indeed, in the minds of Adams and his contemporaries, the passions represented the primary impediment to private virtue, and therefore the primary incitement to bad behavior. By the time he was twenty years old, Adams had developed the perspective on passion that would inform his political theory for the rest of his life:

He is not a wise man, and is unfit to fill any important station in society, that has left one passion in his soul unsubdued. . . . These passions should be bound fast, and brought under the yoke. Untamed, they are lawless bulls; they roar and bluster, defy all control, and sometimes murder their proper owner. But, properly inured to obedience, they take their places under the yoke without noise, and labor vigorously in their master's service.³⁵

Like vice, passion inhered in human nature; unlike vice, however, it could be controlled and used in the service of public order.

Thirty-two years after Adams advocated yoking private passion to the service of the common weal, reformers such as Madison made a similar case for their new Constitution. As part of their effort to replace a government that depended on the people's virtue with one that incorporated the people's shortcomings in its very structure, Madison and the other drafters produced a Constitution that, in the words of Gordon Wood, "cut through the structure of the states to the people themselves and yet was not dependent on the character of that people."³⁶ In essence, the Constitution "depended for stability, not on virtue, but upon the counterbalanced energies of competing private interests."³⁷ The relatively benign-sounding "interest" concealed a

fallen out of favor. Brandeis and Warren described privacy as "the right to enjoy life,—the right to be let alone." Warren & Brandeis, *supra* note 1, at 193.

34. See Albert O. Hirschman, *The Passions and the Interests: Political Arguments for Capitalism Before Its Triumph* 47 (rev. ed. 1997).

35. John Adams, *Diary: With Passages from an Autobiography* (June 14, 1756), in 2 *The Works of John Adams, Second President of the United States: With a Life of the Author* 3, 22 (Charles Francis Adams ed., 1850).

36. Wood, *supra* note 24, at 475.

37. Christopher Grasso, *A Speaking Aristocracy: Transforming Public Discourse in Eighteenth-Century Connecticut* 361 (1999).

neat legerdemain, insofar as it was a euphemism for a passion that could be deliberately controlled and deployed against another, more destructive passion.³⁸ In *The Federalist* No. 51, Madison articulated the revolutionary idea that the very architecture of government could direct the passions toward productive ends:

This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power; where the constant aim is, to divide and arrange the several offices in such a manner as that each may be a check on the other; that the private interest of every individual may be a centinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the state.³⁹

Realizing that ungoverned passions could only sink the Republic in the quagmire of personal desires and squabbles, Madison argued that the structure of the Constitution allowed it to check the passions' destructive effects and even extract benefits from them by pitting interest against interest.

Adams concurred in the need for the state to act as what Hirschman calls "a transformer, a civilizing medium."⁴⁰ Yet Adams did not share even the guarded optimism of *The Federalist* No. 51, for he placed no trust in the ability of private interests to stand guard over public rights. On the contrary, he firmly believed that only the public realm of the state possessed the necessary architecture to act as a sentinel.⁴¹ For Adams, government's primary purpose was regulating the passions. Indeed, he feared that ignoring the passions or pretending that they did not exist would lead to the kind of tyranny that had gripped revolutionary France—a futile search for human perfectibility that would inevitably lead to violence and destruction. While Adams was serving as vice president, he exhorted the French people to use government as a check on passion rather than as an excuse to

38. See Hirschman, *supra* note 34, at 20-21.

39. *The Federalist* No. 51 (James Madison), *supra* note 12, at 349. As Lance Banning has noted, however, it is a mistake to read *The Federalist* No. 51 as a complete departure from the British republican tradition. See Banning, *supra* note 12, at 214-19.

40. Hirschman, *supra* note 34, at 16.

41. Adams set forth his vision of private interests kept in check by the state in an 1813 letter to Jefferson, in which Adams described the place of aristocracy in a mixed government.

If I could prevent its deleterious influence I would put it all into 'The Hole' of Calcutta: but as this is impossible, as it is a Phoenix that rises again out of its own Ashes, I know no better Way than to chain it in a 'Hole by itself,' and place a *Watchfull Centinel* on each Side of it.

Letter from John Adams to Thomas Jefferson (Dec. 19, 1813), in 2 *The Adams-Jefferson Letters: The Complete Correspondence Between Thomas Jefferson and Abigail and John Adams* 409 (Lester J. Cappon ed., 1959) (emphasis added).

surrender to baser interests. "Frenchmen! Act and think like yourselves!" Adams implored in *Discourses on Davila*, his series of letters published in the *Gazette of the United States* between 1790 and 1791. "Consider that government is intended to set bounds to passions which nature has not limited; and to assist reason, conscience, justice, and truth in controlling interests which without it would be as unjust as uncontrollable."⁴² The public realm of government, therefore, would necessarily possess a monopoly on the power to "restrict the public expression of passions inimical to the cultivation of man's reason."⁴³ If passions represented the private side of life, reason exemplified the virtues of the public realm—the realm that truly mattered.⁴⁴

Moreover, contrary to the charges of his many critics, Adams believed that passions influenced interactions at all levels of society and were not simply confined to the binary of the few versus the many.⁴⁵ For Adams, the most disruptive passions were also the most universal: the related desires of emulation, ambition, jealousy, and envy, all of which he attributed to the "[s]pectemur agendo" impulse⁴⁶ (literally, "Let us be seen in action"),⁴⁷ which Adams considered "the great principle of activity for the good of others."⁴⁸ This "*passion for distinction*" infected all men, for the "desire to be observed, considered, esteemed, praised, beloved, and admired by his fellows is one of the earliest as well as keenest dispositions discovered in the heart of man."⁴⁹

Needless to say, this passion required a social realm to provide an arena for the ritual display and affirmation of individuals' reputation. Something more was needed, however, to transform the social arena from a mere theatre of personality to a genuinely public realm devoted to the people's welfare (*salus populi*). Adams insisted that only government could curb the destructive nature of the passion for distinction and extract some small benefit. "It is a principal end of

42. John Adams, *Discourses on Davila* (1790-91), reprinted in *The Political Writings of John Adams: Representative Selections 190-91* (George A. Peek, Jr. ed., 1954). In a footnote dated 1813, Adams commented, "Frenchmen neither saw, heard, nor felt or understood this." *Id.* at 191 n.15.

43. Grant B. Mindle, *Liberalism, Privacy, and Autonomy*, 51 *J. Pol.* 575, 577 (1989).

44. *See id.* at 576-77.

45. The most notable modern proponent of this view is Gordon Wood, who has argued that Adams viewed politics as a contest between the interests of democracy and those of the aristocracy. *See* Wood, *supra* note 24, at 576. Adams's most vociferous contemporary critic was John Taylor of Caroline, whose 1814 *Inquiry into the Principles and Policy of the Government of the United States* aimed to rebut Adams's *Defence of the Constitutions of Government*. Taylor claimed to have spent more than twenty years composing his five-hundred-page tome.

46. Adams, *supra* note 30, at 178.

47. Thompson, *supra* note 14, at 154.

48. Adams, *supra* note 30, at 178.

49. *Id.* at 176.

government to regulate this passion," Adams wrote in *Davila*, "which in its turn becomes a principal means of government."⁵⁰ Keenly aware of the dangers of either leaving the passions unregulated or simply ignoring them, as he felt the French revolutionaries had, Adams feared the corruption and degeneracy that awaited an insufficiently vigilant government and a citizenry engrossed in the pursuit of private passions. In contrast to the attitude of post-*Griswold* Americans, Adams saw only chaos resulting from the belief that individual autonomy represented an end in itself.

IV. DECAY

The threat of social decay lurked close to the surface of Adams's thought, as it did for virtually every member of the founding generation. Chief among the founders' fears was the prospect that all nations—including their own infant one—might be bound to an immutable biological progression of birth, maturity, decay, and death.⁵¹ Far from a vague forecast of events that might occur in subsequent centuries, the prognosis provided clear signposts for monitoring the health of one's nation. Adams, for example, inveighed against the indicia of refinement that late-eighteenth-century Americans increasingly adopted, associating such fripperies as "balls, assemblages, cards, equipage, tea, and elegance of every kind with monarchy" and other noxious forms of late-stage civilization.⁵² Anxious that the life cycle of the Republic might have already commenced, Adams and his contemporaries searched constantly for harbingers of social collapse.

Inevitably, they turned to their fellow citizens, seeking clues to the fate of society in individual behavior. And oftentimes, Adams and his associates found their contemporaries wanting, in thrall to the *spectemur agendo* as well as the more prosaic temptations of luxury items such as coffee, sugar, and imported manufactured goods. Such shortsightedness infuriated Adams as much in the 1790s as it had in 1774, when he had accused Bostonians of truckling to British commercial interests by continuing to consume imported tea. Adams consistently viewed such actions as a selfish retreat into privacy, an irresponsible refusal to recognize the public, political consequences of individual decisions. His disapproval of such myopia was compounded by his belief that it was all too common. Adams

50. *Id.* at 178.

51. See Drew R. McCoy, *The Elusive Republic: Political Economy in Jeffersonian America* 33 (1980).

52. Richard L. Bushman, *The Refinement of America: Persons, Houses, Cities* 193 (1992). Bushman focuses specifically on Adams's reaction to the spread of genteel culture, describing Adams as an "outspoken" but ambivalent critic of refinement and noting that both John and Abigail Adams enjoyed the cosmopolitan delights of Parisian society when they lived there between 1783 and 1785. *Id.* at 197.

therefore approached the problems of luxury and decadence much as he had the problem of passion: He advocated designing institutional structures that would compensate for the dangerous proclivities of private citizens and encourage them to view private behavior as intimately connected to the fate of the Republic.

This "paradigm of virtue and corruption," to use J.G.A. Pocock's term, encouraged Adams and his contemporaries in their belief that individual decadence—on the part of both leaders and citizens—could spread into public life, thereby infecting the social and political fabric of the nation.⁵³ In 1770, Adams confided to his diary his fears of social decay and its effect on government:

In times of simplicity and innocence, ability and integrity will be the principal recommendations to the public service, and the sole title to those honors and emoluments which are in the power of the public to bestow. But when elegance, luxury, and effeminacy begin to be established, these rewards will begin to be distributed to vanity and folly; but when a government becomes totally corrupted, the system of God Almighty in the government of the world, and the rules of all good government upon earth, will be reversed, and virtue, integrity, and ability, will become the objects of the malice, hatred, and revenge of the men in power, and folly, vice, and villany will be cherished and supported.⁵⁴

Adams's diary entry painted a bleak picture of a government sapped of fortitude and a society bereft of character. As a young man witnessing the first struggles for independence, he envisioned the creep of corruption originating with the people and spreading to the state, easily making the leap from private to public decadence. Writing to his wife, Abigail, in 1776, Adams enumerated the elements of a corrupt society—"Vanity, and Gaiety, a Love of Pomp and Dress, Furniture, Equipage, Buildings, great Company, expensive Diversions, and elegant Entertainments"—and could only conclude, "[T]here is no knowing where they will stop, nor into what Evils, natural, moral, or political, they will lead us."⁵⁵ These misgivings about human nature, which Adams considered simple realism, remained with him throughout his life.⁵⁶

53. J.G.A. Pocock, *Virtue, Commerce, and History: Essays on Political Thought, Chiefly in the Eighteenth Century* 48 (1985).

54. John Adams, *Diary: With Passages from an Autobiography* (Aug. 22, 1770), in 2 *The Works of John Adams, Second President of the United States: With a Life of the Author* 250-51 (Charles Francis Adams ed., 1850).

55. Bushman, *supra* note 19, at 199 (quoting Adams). Shortly after his inauguration as president in 1797, Adams himself felt compelled to resist the allure of European-style equipage when he learned that Abigail, who was at home in Quincy, Massachusetts, had had the family coat of arms painted on her carriage. He immediately asked her to have the device painted out, commenting, "They shall have a republican President in earnest." McCullough, *supra* note 13, at 468.

56. On this point, I disagree with the conclusion of several historians who posit a dramatic shift in Adams's attitude toward the morality of the American people

Yet Adams's unflattering characterization of the American character should not be taken as evidence of thoroughgoing pessimism about the fate of the Republic. On the contrary, as a young man and in his latter years, Adams believed that the institutional structure of government could provide a mechanism for harnessing passion and putting it to work in the service of the public. In keeping with the Federalist shift away from the classical politics of virtue, Adams "believed that a virtuous citizenry could be generated by channeling the passions through a well-balanced constitution."⁵⁷ Once again, Adams looked hopefully toward public, institutional solutions to private, individual problems. As he wrote to Mercy Otis Warren in 1776 and reiterated a decade later in *A Defence of the Constitutions*, "the Form of Government . . . gives the decisive Colour to the Manners of the People, more than any other Thing."⁵⁸ The problem, therefore, was "to find a form of government best calculated to prevent the bad effects and corruption of luxury, when, in the ordinary course of things, it must be expected to come in."⁵⁹

Notwithstanding the ostensibly tonic effects of the Constitution on republican morality, Adams constantly worried that the success of the American endeavor might condemn the young nation to treading the same gilded path as its debauched elder sisters in Europe. Just as he feared that underestimating the destructive capacity of private passion might doom the United States to French-style anarchy, Adams warned his contemporaries that giving in to fashion and greed might lead to the "luxury, effeminacy, and venality" that had "arrived at such a shocking pitch in England."⁶⁰ Adams thus explicitly connected the moral corruption of private individuals with the decay of public virtue. "I fear that human nature will be found to be the same in America as it has been in Europe, and that the true principles of

between the 1770s and the 1790s. Notable among this group is John R. Howe, Jr. See John R. Howe, Jr., *The Changing Political Thought of John Adams* (1966).

57. Thompson, *supra* note 14, at 199.

58. Letter from John Adams to Mercy Otis Warren (Jan. 8, 1776), in 3 *The Papers of John Adams* 397-98 (Robert J. Taylor et al. eds., 1979).

59. Adams, *supra* note 27, at 94.

60. John Adams, *Novanglus, No. II*, in 4 *The Works of John Adams, Second President of the United States: With a Life of the Author* 28 (Charles Francis Adams ed., reprint 1969) (1850). A gloomy Adams reiterated this point in a letter to Jefferson written in 1787, when war with France seemed imminent:

The War that is now breaking out will render our Country, whether she is forced into it, or not, rich, great and powerful in comparison of what she now is, and Riches Grandeur and Power will have the same effect upon American as it has upon European minds. We have seen enough already to be sure of this. A Covent Garden Rake will never be wise enough to take warning from the Claps caught by his Companions. When he comes to be poked himself he may possibly repent and reform.

Letter from John Adams to Thomas Jefferson (Oct. 9, 1787), in 1 *The Adams-Jefferson Letters: The Complete Correspondence Between Thomas Jefferson and Abigail and John Adams* 203 (Lester J. Cappon ed., 1959).

liberty will not be sufficiently attended to," he wrote in 1776.⁶¹ Retreat to the secluded confines of fine carriages and fashionable drawing rooms would constitute abandonment of the republican project. Worse, a mass surrender to luxury would drain the public realm of its lifeblood, replacing vigorous, civic morality with lax, selfish indulgence. Even the most carefully crafted system of balanced government might not be able to compensate for such a vacuum of private integrity. With this fear in mind, Adams in *Davila* exhorted his fellow citizens to marshal their republican mettle in the face of mounting aggression abroad and party conflict at home:

Americans! . . . Instead of following any foreign example, to return to the *legislation of confusion*, contemplate the means of restoring decency, honesty, and order in society by preserving and completing, if anything should be found necessary to complete, the balance of your government. In a well-balanced government, reason, conscience, truth, and virtue must be respected by all parties, and exerted for the public good.⁶²

Corruption on an individual level led directly to confusion and disorder in the public realm. The most feasible solution was to bolster the institutions of government and hope that they could contain the soporific effects of luxury.

V. PUBLIC LIFE

Despite Adams's preoccupation with the consequences of human weakness, at no point did he completely despair of the potential of the American people to shake off their torpor of vice, passions, and luxury and to throw themselves into the project of self-government. His distrust of the private side of life did not lead him to endorse the kind of invasive, totalitarian state that modern observers typically associate with societies that do not recognize a right to individual privacy. On the contrary, Adams believed that people must act as engaged citizens first, and individuals only secondarily, to avoid political enslavement and achieve liberation. For Adams, unlike for his post-*Griswold* descendants, privacy was not a right that an individual claimed against the state but a condition that prevented citizens from engaging in self-government. Arguments for privacy, therefore, sounded to Adams and his contemporaries suspiciously close to calls for citizens to withdraw from the realm of government and society and to bury themselves in the pursuits of reputation, wealth, and comfort. Such a scenario characterized the tyrannical

61. Letter from John Adams to Joseph Hawley (Aug. 25, 1776), in *The Political Writings of John Adams* 654 (George W. Carey ed., 2000).

62. John Adams, *Discourses on Davila* (1790-91), reprinted in *The Political Writings of John Adams: Representative Selections* 191 (George A. Peek, Jr. ed., 1954).

governments of the Old World, where palace intrigues and court machinations unfolded far from the lives of everyday subjects. In these societies, a vast gulf separated the private lives of individuals from the realm of public authority. Adams, however, insisted that republican government required an enlightened citizenry that would emerge from the private realm of home and work to monitor, question, and inform the work of government in a kind of Habermasian “public sphere in the political realm.”⁶³ Thus, Adams trusted the private individual only when he or she was willing to enter the public zone.

On a practical level, then, Adams subscribed to the belief that “self-immersion” in the comforts of life would inevitably endanger republican government by distracting citizens from civic responsibility.⁶⁴ As he wrote to Mercy Otis Warren in 1776, the new republic would require “a positive Passion for the public good, the public Interest, Honour, Power and Glory, established in the Minds of the People.” This public passion therefore had to be “Superiour to all private Passions.” In short, Adams wrote, “[A]ll Things must give Way to the public.”⁶⁵ Specifically, he argued that citizens must constantly scrutinize the affairs of government, putting aside their private pursuits in order to shine a cleansing light on the public realm. Passive acquiescence in the decisions of government did not befit citizens of a republic, Adams believed. At no time was he more proud of his fellow citizens than when they first came together to resist the Stamp Act. “The year 1765 has been the most remarkable year of my life,” he confided to his diary.

The people, even to the lowest ranks, have become more attentive to their liberties, more inquisitive about them, and more determined to defend them, than they were ever before known or had occasion to be. . . . Our presses have groaned, our pulpits have thundered, our legislatures have resolved, our towns have voted; the crown officers have everywhere trembled, and all their little tools and creatures been afraid to speak and ashamed to be seen.⁶⁶

Nevertheless, Adams ruefully concluded that determination alone

63. Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society* 30 (Thomas Burger & Frederick Lawrence trans., MIT Press 2000) (1990). For a discussion of the role of the “bourgeois public sphere” in the context of early Republican print culture, see Michael Warner, *The Letters of the Republic: Publication and the Public Sphere in Eighteenth-Century America* (1990).

64. Lance Banning, *Some Second Thoughts on Virtue and the Course of Revolutionary Thinking*, in *Conceptual Change and the Constitution* 194, 200 (Terence Ball & J.G.A. Pocock eds., 1988).

65. Letter from John Adams to Mercy Otis Warren (Apr. 16, 1776), *quoted in* Howe, *supra* note 56, at 31-32.

66. John Adams, *Diary: With Passages from an Autobiography* (Dec. 18, 1765), in *2 The Works of John Adams, Second President of the United States: With a Life of the Author* 154 (Charles Francis Adams ed., 1850).

would not ensure liberty. "This spirit, however, has not yet been sufficient to banish from persons in authority that timidity which they have discovered from the beginning."⁶⁷ Also necessary was thoroughgoing vigilance on the part of citizens, such that their rights could not be threatened in the first place. In short, private life would have to be subordinated to public life in order to draw citizens into the political realm and keep them there. "[T]he spirit of liberty is and ought to be a jealous, a watchful spirit," Adams wrote in the guise of Governor Winthrop. "*Obsta Principiis* [resist the first beginnings] is her motto and maxim; knowing that her enemies are secret and cunning, making the earliest advances slowly, silently, and softly."⁶⁸ This jealous watchfulness would prove salutary to citizens as well as the state; moreover, it would bring private passions to bear on the public realm of government. Convinced that "citizens neither could nor should act selflessly," Adams and his fellow Revolutionaries put selfishness to work by asking citizens to enter the political fray and defend their liberties against government encroachment.⁶⁹

Indeed, even the famous writs of assistance case of 1761, in which James Otis argued that the general search warrants issued to customs officers violated the natural rights of Englishmen and were therefore void, can be viewed not simply as a precursor to the Fourth Amendment search-and-seizure rules but also as a statement of a particularly eighteenth-century vision of privacy.⁷⁰ Adams's autobiography suggests that he viewed the controversy as a dispute about the rights of the citizenry to live unmolested by the long arm of the British Crown rather than the rights of a single citizen to be free from the inquiries of customs surveyor general Thomas Lechmere:

England proud of its power and holding Us in Contempt would never give up its pretensions. The Americans devoutly attached to their Liberties, would never submit, at least without an entire devastation of the Country, and a general destruction of their Lives.⁷¹

Years later, Adams struck a similarly grand note in describing the scene in the Council Chamber of Boston's Town House: "Every Man of a crowded Audience appeared to me to go away, as I did, ready to take Arms against Writs of Assistance. Then and there was the first scene of the first Act of Opposition to the arbitrary Claims of Great

67. *Id.* at 154-55.

68. John Adams, *Governor Winthrop to Governor Bradford (1767)*, reprinted in 1 Papers of John Adams 200 (Robert J. Taylor et al. eds., 1979) (emphasis added).

69. See Banning, *supra* note 64, at 199.

70. See generally William Cuddihy & B. Carmon Hardy, *A Man's House Was Not His Castle: Origins of the Fourth Amendment to the United States Constitution*, 37 Wm. & Mary Q. 371 (1980) (discussing the writs of assistance case).

71. John Adams: *A Biography in His Own Words* 53 (James Bishop Peabody ed., 1973) (quoting Adams).

Britain.⁷² Notwithstanding the likelihood that Adams indulged in a few ex post rhetorical embellishments, the tenor of the comments suggests that Adams viewed the writs of assistance case as involving a kind of common, public privacy—the shielding of the citizenry from a particular overweening government, not the defense of individuals from intrusions in general. Adams's celebration of the case thus comported with his overarching belief that citizens ought to be encouraged to enter the public sphere and protected when they did so.

For Adams and many of his contemporaries, then, the public realm determined the nature, content, and extent of the private realm.⁷³ Adams's statement to Warren that "all Things must give Way to the Public" suggested that he espoused what Quentin Skinner has called the essence of the neo-roman theory of the state: namely, "that it is only possible to be free in a free state."⁷⁴ In other words, the conditions of individuals' private lives stemmed directly from the condition of their government. Still more abstractly, Adams's statement suggests a fully developed vision of differentiated public and private spheres, and a consequent quest to submerge private desires and passions in the larger project of building the Republic. This point is both historical and historiographical, for it relates to what one scholar terms the "convergence of public sphere theory and the history of private life."⁷⁵ That is, there exist many theories of the public sphere and perhaps still more histories of private life. Yet very few historians have proposed theories of the private sphere, despite the obsession of post-*Griswold* jurisprudence and political theory with individual privacy. Has the twentieth-century valorization of privacy in the form of personal autonomy prevented historians from examining the intellectual history of the concept? Quite possibly. As Adams's writings demonstrate, however, many eighteenth-century Americans thought extensively about privacy, believed that it existed,

72. *Id.* at 55 (quoting Adams). For a complete account of the trial and Adams's involvement, see 2 *Legal Papers of John Adams* 106-47 (L. Kinvin Wroth & Hiller B. Zobel eds., 1965).

73. This is the most profound point of disagreement between the Adams view and the Brandeis-Warren view. Brandeis and Warren based their newly discovered right to privacy on a vision of individual autonomy, which they saw as the basis of an enlightened civilization: "[T]he protection of society must come mainly through a recognition of the rights of the individual. Each man is responsible for his own acts and omissions only." Warren & Brandeis, *supra* note 1, at 219-20. At least one legal scholar has pointed out that Brandeis and Warren's purported common law right to privacy, which they claimed had evolved in Anglo-American law, was "not . . . a picture of the law as it was, but of the law as they believed (or hoped) it should be." Ken Gormley, *One Hundred Years of Privacy*, 1992 *Wis. L. Rev.* 1335, 1347-48.

74. Quentin Skinner, *Liberty Before Liberalism* 60 (1998). Skinner's "neo-roman" theory is essentially analogous to the republican or civic humanist tradition.

75. Dena Goodman, *Public Sphere and Private Life: Toward a Synthesis of Current Historiographical Approaches to the Old Regime*, 31 *Hist. & Theory* 1, 12 (1992). Goodman's primary focus is the Old Regime in France, but her analysis is equally applicable to the early American republic.

but ultimately concluded that it was slippery stuff not to be trusted except in controlled conditions.

VI. CONCLUSION

The concept of privacy has not been altogether absent from the historiography of the early Republic. A few scholars agree that the founders took a dim view of privacy. According to Gordon Wood, the Federalists charged the Articles of Confederation with permitting greed and speculation to run rampant, leading to large-scale social and political disintegration: "The wholesale pursuits of private interest and private luxury were, they thought, undermining America's capacity for republican government. They designed the Constitution in order to save American republicanism from the deadly effects of these private pursuits of happiness."⁷⁶ Grant Mindle, meanwhile, has argued that the founders disparaged privacy, exiling it to the realm of passion and offering it limited protection under the rubric of "property."⁷⁷ Insofar as they suggest that the founders did not embrace the concept of privacy, both historians paint a picture of the founding generation that is decidedly at odds with the *Griswold* story of the-right-that-was-there-all-along, a story that Adams's writings also call into question. Yet Wood's instrumental, causation-focused argument suggests that the founders' true motivation was a fear of popular politics more than of privacy per se, and Mindle's insistence on contrasting the founders with the Brandeis-Warren and twentieth-century visions of privacy possesses overtones of the asymptotic search for original intent. Moreover, Wood attributes the founders' privacy anxiety solely to the events of the Confederation years. As Adams's writings demonstrate, however, the origins of the founders' preoccupation with the evils of privacy ran far deeper than either of these accounts suggests. Indeed, only a broader, more cultural reading of the role of privacy truly captures the extent to which the concept influenced the attitudes of the founding generation—especially Adams—concerning several of the most significant issues of contemporary political theory: virtue, passion, decay, and public life.

To leaf through Adams's abundant writings is to be struck by the number of pages devoted to plumbing the depths of both friends and strangers' motivations, desires, and disappointments. Throughout his life, Adams paid close attention to human nature on a large scale, bringing his vast knowledge of law and history to bear on his equally

76. Gordon S. Wood, *Interests and Disinterestedness in the Making of the Constitution*, in *Beyond Confederation: Origins of the Constitution and American National Identity* 69, 81 (Richard Beeman et al. eds., 1987). Michael Sandel cites Wood to support his claim that the United States has become a "procedural republic" and is therefore unable to address deep moral questions. Michael J. Sandel, *Democracy's Discontent: America in Search of a Public Philosophy* 108, 129 (1996).

77. Mindle, *supra* note 43, at 583.

vast experience in the world of people. A few points seemed clear to him: (1) all people felt the impulse toward vice, passion, and comfort; (2) left to themselves, the majority of people would follow those impulses; and (3) the work of government was to harness these impulses and put them to productive use, subordinating personal drives and selfish motives to an overarching institutional system.⁷⁸ Indeed, no founder understood the need to suppress personal desires more fully than the second President of the United States, who constantly upbraided himself for his own character flaws and mistakes of judgment.⁷⁹ To a modern reader, Adams's deep suspicion of the private realm underpins his anxious comments on virtue, passion, decay, and public life. Moreover, the very words "private" and "public" formed a kind of refrain in his writings, suggesting that the author himself may have been conscious that his views stemmed from an overarching suspicion of privacy.

Yet the suspicion of privacy that Adams had so forthrightly articulated during his lifetime, and that many of his contemporaries appeared to share, somehow vanished from the landscape after his death. Rather than hailing Adams as one architect of a system that put private desires to work in the service of the common weal, many Americans of the nineteenth and twentieth centuries awarded this distinction solely to Madison, associating Adams with old regimes of monarchy and aristocracy based on a misreading of his *Defence of Constitutions* and *Discourses on Davila*.⁸⁰ Moreover, they forgot his warnings against vice, passion, and decay as well as the distrust of privacy that lay beneath those warnings. As Joseph Ellis has argued, Adams's views simply did not comport with the liberal vision that came to dominate nineteenth- and twentieth-century America, for Adams

represents a cluster of political principles that do not fit comfortably within the framework of our national political mythology. Memorials will only be erected to him, according to this train of

78. In a related vein, Joanne Freeman has argued that honor politics, especially dueling and other reputation-based practices, formed "a regulated force of government, the ultimate check in an intricate system of checks and balances." Joanne B. Freeman, *Affairs of Honor: National Politics in the New Republic* xix (2001).

79. Adams's diary seems to have provided the chief receptacle for this stream of self-criticism. "Vanity I am sensible, is my cardinal Vice and cardinal Folly," read one chastisement, "and I am in continual Danger, when in Company, of being led an ignis fatuus Chase by it, without the strictest caution and watchfulness over my self." Ellis, *supra* note 13, at 49-50 (quoting Adams).

80. Gordon Wood and Joyce Appleby have each argued that Adams was—and was seen as—increasingly out of touch with the liberalization of America after the 1790s. One chapter in Wood's *Creation of the American Republic* bears the title "The Relevance and Irrelevance of John Adams." Wood, *supra* note 24, at 567-92; see also Joyce Appleby, *The New Republican Synthesis and the Changing Political Ideas of John Adams*, 25 *Am. Q.* 578, 579-80 (1973).

thought, when the rhetoric of Jeffersonian liberalism ceases to dominate mainstream American culture; when the exaltation of “the people” is replaced by a quasi-sacred devotion to “the public”⁸¹

Just as Adams had feared throughout his life, his longtime rival and friend Jefferson—whose soul Adams had once described as “poisoned with ambition”—outstripped him in the race to claim posterity.⁸²

Most startling, however, has been the power of the liberal, Jeffersonian vision to blot out any memory of the second president’s lifetime contemplation and suspicion of privacy. As *Griswold* and the progeny of that fecund case have demonstrated, the *private* realm, not the public one, captured the imaginations of twentieth-century American political and legal theorists, culminating in the addition of the right to privacy to Jefferson’s list of self-evident truths. Although privacy has certainly established itself in modern America, Adams’s writings remind us that events might have turned out differently. In contrast to *Griswold*’s view of privacy as a frail flower needing constant protection from the destructive force of the state, Adams saw privacy as pervasive and omnipresent, and private interests as tenacious weeds that managed to work their way into every crevice of human interaction. To the public, with its duties, not to individuals, with their privileges: this was Adams’s deepest allegiance. Adams found worrisome signs of privacy—such as vice, passion, and decay—at every turn, but he remained confident throughout his life that its harmful effects could be contained by a vigorous public realm.

81. Ellis, *supra* note 13, at 232.

82. McCullough, *supra* note 13, at 448 (quoting Adams).