"Religion, the only foundation of government":  
Jacob Rush and the Federalist Judicial Mind,  
1791-1803  

Above all things, Gentlemen, the principles of Christianity should be cherished, and its religious institutions be encouraged by every man who wishes well to his country. A government like ours, floating on the precarious tide of public opinion, can be held securely by nothing else, but the principles of religion; and if it be once driven from this anchor, by the storms of irreligion and licentiousness, it will be quickly overwhelmed by the waves of popular fury and violence. . . .

Hon. Jacob Rush, Extracts from a Charge on Patriotism, April 1799, from Jacob Rush, Charges and Extracts of Charges on Moral and Religious Subjects (Philadelphia, 1803).

I wish, sincerely, that your good example, in endeavoring to bring the people of these United States more acquainted with the laws and principles of their government, was followed. They only require a proper understanding of these to judge rightly on all great national questions; but unfortunately, infinite more pain is taken to blind them by one description of men, than there is to open their eyes, by the other; which, in my opinion, is the source of most of the evils we labor under.

In 1798 Matthew Carey published a satirical attack on William Cobbett, the editor of Philadelphia’s Porcupine’s Gazette, a Federalist newspaper. Carey summarized the issues that mattered to Federalists:

Republics and their friends decry,
And monarchies reign in the sky:
Enhance the glories of a court,
of law--of order--these support--
And eke of church establishment,
That solid prop of government:
Of morals--of obedience too--
Of ev'rything that is great or true:
Show how unfit the people are
To enjoy of government a share--
To anarchy how freedom turns,
And all subjection proudly spurns.

Perhaps few Federalists other than Fisher Ames had views as extreme as those in Carey’s parody, but Carey’s Republican formulation of Federalist principles captured the essence of Federalism. These themes--order, hierarchy, and a republic based on Christianity--were foundational principles of Federalism. They were advanced from the bastions of Federalism: the pulpit, the press, the legislature’s floor, and the bench. Between 1791 and 1803 Federalist judge Jacob Rush delivered charges to grand juries in Pennsylvania. The charges provide a comprehensive picture of Judge Rush’s philosophy. They were published, like those of other prominent judges, in Federalist newspapers such as the Pennsylvania Gazette and were collected and published in 1803. This essay is an attempt

---

to use Rush’s charges and those of his colleagues on the Pennsylvania bench to reconstruct the issues that were important to the Federalist judges.

I. Importance of Grand Jury Charges to Political Debate

Those who assume, at Faction’s call,
A right t’ infringe on rights of all
Who see all honesty a hum,
Who rise because they are scum
Democracy Unveiled

When Thomas Green Fessenden, doing business as Christopher Caustic, wrote the above lines in his epic poem, Democracy Unveiled or Tyranny Stripped of the Garb of Patriotism in 1806, he footnoted them with a citation to a grand jury charge by Pennsylvania Judge Alexander Addison, in which “the distinction between liberty and licentiousness, the dangers to be apprehended from the tyranny of the MANY, ever more dreadful than that of the FEW are painted out in a perspicuous and masterly manner.”

Fessenden’s poem is a blatantly partisan attack on Jefferson and the principles of Deism, Democracy, and the Illuminati, which he was perceived to represent. About half of its 200 pages are taken up with prose footnotes, which cite Federalist political tracts. Addison’s grand jury charge is among those citations and Fessenden’s reliance upon it illustrates the central role of grand jury charges in promoting the Federalist cause.

The charges, like those that had been delivered by Anglo-American judges since

\footnote{Christopher Caustic [Thomas Green Fessenden], Democracy Unveiled or Tyranny Stripped of the Garb of Patriotism 5 (New York, 1805) Shaw and Shoemaker, 8437.}
the seventeenth century, were delivered with the intention of teaching political values to the grand juries and later, when the charges were published, to the readers. Throughout the eighteenth century particularly important charges had been published. James Logan published two charges, which elaborated his social theory on the relationship of humans to the physical universe surrounding them. The grand juries became involved in responding to the charges. In Delaware Chief Justice Benjamin Chew charged the jury on war. In Charleston, South Carolina prominent patriot and later Federalist William Henry Drayton delivered a charge "on the rise of the American empire."

Grand jurors had broad powers, which made them particularly good vehicles for expounding Federalist principles. Jurors knew from their own experience that, as Judge Richard Peters explained to a federal grand jury in Philadelphia in November 1792, they could "present any matter or thing occurring in the district, which you know may be presentable here, as well as such things as shall, through the proper channels, be given you in charge." The charges were, therefore, delivered at the beginning of a court


6 William Henry Drayton, A charge, on the rise of the American empire (Charleston, SC, 1776) Evans 14,741.

7 Pennsylvania Gazette, Nov. 21, 1792. For grand jurors' powers under Pennsylvania
session, to educate the jurors about areas of public concern and, perhaps, grand jurors would take their own initiative and present offenders. Even when the Federalist judges failed to inspire the jurors to indict their neighbors, the charges served as concise statements of Federalist doctrine.

The grand jury provided an excellent audience for the Federalist judges. The jurors were selected by the sheriffs, who were themselves often Federalist officials, so that the jury could be stacked with Federalists.\(^8\) This made the audience receptive to the charges and they often responded by requesting that the judges publish their charges. At other times the jurors issued their own addresses.\(^9\)

The charges could relate to issues as narrow as the duty of following an oath or avoiding dueling or to issues as broad as the alien and sedition acts or the interpretation of the Constitution. The charges, therefore, became a way of teaching political values to jurors; when the charges were published, they communicated the lessons to a substantially larger audience.

In the 1790s, the Federalists became particularly prolific in publishing their jury

\(^8\) See 11 Statutes at Large, supra note 7, at 360, 487-89. See also Aurora, May 16, 1799 (noting that jurors are hand picked by the sheriffs and thus are particularly susceptible to the judges’ opinions).

\(^9\) See, e.g., Vergennes [Vermont] Gazette, May 16, 1799 (reprinting address from Morris County, New Jersey, grand jury to President Adams, expressing concern for obedience to law); John Jay, The Charge of the Chief Justice John Jay to the Grand Jury of the Eastern Circuit (Portsmouth, NH, 1790) Evans 22587 (containing address of grand juror Benjamin Austin).
charges. At first they appeared in newspapers, such as the Pennsylvania Gazette.\textsuperscript{10} They were also circulated as broadsides and small pamphlets.\textsuperscript{11} Supreme Court Justices James Wilson and Samuel Chase delivered, then published charges that were widely-circulated and other federal and state judges in Pennsylvania published their charges.\textsuperscript{12}

Supreme Court Justice Chase’s 1803 widely-circulated jury charge attacked Jefferson’s Maryland supporters across a broad spectrum, from the repeal of the Judiciary Act of 1801 to the establishment of universal male suffrage. It was the "visionary theories" born of European enlightenment ideas that started the republic on the road to "mobocracy" said Chase. He feared that the visionary writers "asserting that men in a state of society are entitled to exercise rights which they possessed in a state of

\textsuperscript{10} See, e.g., Pennsylvania Gazette, Sept. 22, 1798 (Jacob Rush’s charge of August 31, 1798); id., April 20, 1796 (Supreme Court Justice James Iredell’s charge); id., Nov. 21, 1792 (Judge Peters’ charge to U.S. District Court grand jurors); id., Dec. 26, 1792 (Thomas Smith’s charge to Pennsylvania’s Fourth Circuit Court of Common Pleas); Aurora, May 17, 1799 (Supreme Court Justice James Iredell’s charge).

\textsuperscript{11} See, e.g., Pennsylvania Gazette, Sept. 22, 1798, reprinted in [Suffield, Connecticut] Impartial Herald, Oct. 16, 1798 (Jacob Rush’s charge of August 31, 1798), also reprinted in Jacob Rush, Charge Delivered by Judge Rush to the Grand Jury of Luzerne County, Pennsylvania, at the court held August 31, 1798 (Glasgow, 1799); Samuel Preston, A Charge Delivered to the grand jury of Wayne County (Easton, Pa, 1800) Evans 38,321; John F. Grimke, Charge, delivered to the grand juries of Beaufort and Orangeburgh districts (Charleston, S.C., 1798) Evans 35,824 (discussing Illuminati); Alexander Addison, Rise and Progress of Revolution: A Charge to the Grand juries of the County Courts at the fifth Circuit of the State of Pennsylvania (Whitehall, Pa, 1801) Shaw and Shoemaker 15. For a comprehensive collection of grand jury charges delivered by Supreme Court Justice, see 2-3 Supreme Court Documentary Project: The Justices on Circuit, 1790-1801 (Maeva Marcus ed. 1988, 1989).

\textsuperscript{12} See, e.g., A Charge Delivered by the Hon. James Wilson (Richmond, VA, 1791) Evans 24,006; Samuel Chase, Charge to the Baltimore Grand Jury, in 2 Report of the Trial of the Hon. Samuel Chase v-viii (Samuel H. Smith and Thomas Lloyd eds. 1805) Shaw and Shoemaker 8173.
nature . . . will rapidly progress, until peace and order, freedom and property shall be destroyed." Chase dismissed belief in a state of nature; society is formed "to obtain security" for people and property "from violence." Thus, civil society represented not a sacrifice of rights, but an advance, for without civil society, "a state of liberty could not exist." Chase believed, as did many Federalists, that "the history of mankind (in ancient and modern times) informs us 'that a monarchy may be free, and that a republican may be a tyranny.'" The Republicans found Chase's teachings themselves to be subversive of good order and impeached him on the basis of his 1803 grand jury charge.

The grand jury charges occupied a prominent place in the inculcation of political values and both Federalist and Republican politicians recognized their importance. Opponents of the Federalists were vigilant in policing the power of the Federalist judges' charges. When they had the chance, Republicans used the politically-charged grand jury charges to impeach judges. For example, in 1803 the Pennsylvania Senate impeached Alexander Addison, a judge in western Pennsylvania, for trying to maintain a monopoly on what prosecutor Alexander Dallas called the "extra matter" told to the grand jury. Addison had delivered a charge in December 1800 critical of the French Revolution and recent political trends in Pennsylvania. By itself the charge was not offensive enough to remove the judge, but he also refused to allow a response by another judge, Republican

---


14 On Chase's impeachment, see Goebel, supra note 13, at 674.
Republicans were notably absent on the state and federal benches; therefore, they had to turn to other means to counter the charges. Unfortunately, the Republicans, like their antifederalist predecessors were remarkably outmatched in newspaper battle. Not only did they lack judges who developed well-reasoned charges, but they had few newspapers to disseminate the responses to the Federalists. The most prominent Republican papers included the Philadelphia Aurora, founded in 1790 by Benjamin Franklin Bache, grandson of Franklin, which abandoned its attempts at impartiality in 1793 and became, thereafter, a solidly Republican newspaper, supporting the French Revolution and all causes Republican. Earlier, the Freeman's Journal and later the Philadelphia Argus also supported the cause.\(^{16}\)

Because the Republicans lacked the same type of political domination of the

\(^{15}\) Trial of Alexander Addison, on Impeachment Before the Senate of the Commonwealth of Pennsylvania 96 (William Hamilton, ed., Lancaster, PA, 1803) Shaw and Shoemaker 3631; Richard E. Ellis, The Jeffersonian Crisis: Courts and Politics in the Young Republic 164-65 (1971). The Aurora, in May 16, 1799, complained that Supreme Court Justice James Iredell:

- has commended lectures upon men and things; instead of confining himself, as is his duty, to say what the law is, and to point out the path in which Jurors ought to walk, he enters into political disquisitions, advances opinions extraneous to his sanctions, and exhibits himself a disciple of party. Is it fit that a Judge, who ought to be the most pure, the most impartial, and the most dispassionate of men, should enter into politics of the day in the administration of his august functions? Can justice be dispensed by a judge who permits the sensations of party to intrude themselves to him?

\(^{16}\) See Jeffery A. Smith, Franklin and Bache: Envisioning the Enlightened Republic 107 (1990) (discussing rise of newspapers supporting "enlightened republicanism" and illuminating the difficulties of successfully establishing "a purely republican vehicle of news") (quoting Thomas Jefferson to Benjamin Franklin Bache, April 21, 1791).
judiciary as the Federalists, they used other means of organizing. They published essays in the Philadelphia *Aurora* and *Argus*. Hortensius’ essays developed a critique of the Alien and Sedition Acts based on an analysis of the Constitution, which limited the Federal government’s power; it was a remarkably internal critique, which did not look to larger issues like the role of political theory in Constitutional interpretation.\(^\text{17}\) They formed Democratic-Republican Societies, political organizations which met to discuss political developments and organize opposition at the local level.\(^\text{18}\) Republicans also fostered their political culture through the publication and sale of books, such as Godwin’s *Political Justice* and Richard Alsop’s epic poem *Aristocracy*, and the staging of plays.\(^\text{19}\)

The Republican party eventually became dominant. It was through a combination of Federalist folly and their outmoded, hierarchical ideas that sank the party finally. But in the 1790s and into the nineteenth century, it remained unclear which ideology would triumph. At that time, the jury charges were a way of inculcating political and religious

---

\(^\text{17}\) See Hortensius, *Letters to the American People*, Philadelphia *Aurora*, Feb. 6, 1799 (questioning the application of the English common law to the United States); *id.*, Feb 4, 1799 (opposing federal common law of crimes, claiming that people have a right to vote on criminal laws). Other installments of Hortensius’ Letters, appeared in the *Aurora*, on February 8 and 11, 1799 (discussing Alien and Sedition Acts). See also Philidemos, *An Inquiry Whether the Act of Congress . . . generally called the Sedition Bill, be Unconstitutional or Not*, *Aurora*, Dec. 19, 1798.


\(^\text{19}\) See, e.g., *Aurora*, March 16, 1795 (reviewing the new play Fountainville Forrest, in which "the danger of leaving the path of virtue is well painted . . . and consummate villainy meets it due reward"); *id.*, Feb. 12, 1795 (advertising Godwin’s *Political Justice* and Alsop’s *Aristocracy*, Evans 28,171).
values and of party organization. The charges presented a comprehensive theory of the role of the individual in society, which fit well with Federalist political doctrine.\textsuperscript{20}

II. The Federalist Legal Mind

They each object to the propriety of law and order in society; Think reasons will supply vestments, \v
And make mankind a set of saints
Thomas Green Fessenden, \textit{Democracy Unveiled}\textsuperscript{21}

The reforms of the moderates and radical Republicans have received extensive treatment by historians. The anti-lawyer writings of Honestus, Paine and radicals such as Jesse Higgens, William Duane and Michael Lieb appeal to the twentieth century Progressive mind. They proposed reforms such as the abolition of the common law and its complete replacement by statutes.\textsuperscript{22} But the Federalist legal mind, whose hierarchical teachings lack a similar appeal, has escaped scrutiny until recently when some legal scholars, captured by the appeal of the Federalist agenda of order and law based on Christianity, have given it attention.\textsuperscript{23}

\textsuperscript{20} On the precarious position of the Federalists and Republicans in the 1790s, see Joyce Appleby, \textit{Capitalism and a New Social Order} (1985).

\textsuperscript{21} Fessenden, \textit{supra} note 2, at 41.

\textsuperscript{22} Professor Miller has described the reforms and anti-lawyer sentiment, focusing on the years between the Missouri Compromise and the Civil War. \textit{See} Perry Miller, \textit{The Life of the Mind in America from Revolution to Civil War} (1965). Richard E. Ellis provides the most comprehensive discussion available of Republicans' reforms in the first decade of the nineteenth century. \textit{See} Ellis, \textit{supra} note 15.

\textsuperscript{23} \textit{See}, \textit{e.g.}, Presser, \textit{supra} note 13. Mr. Presser, in an apparent attempt to bring himself to the attention of the Reagan and Bush Justice Department, has spun out his
This paper seeks to examine the Federalists' attitudes towards law through an examination of the grand jury charges delivered by Jacob Rush between 1791 and 1803, as well as some of the other Federalist Judges, principally Alexander Addison. The charges present a particularly convenient way of examining Federalist legal principles and of gauging what issues lay behind the rules that the judges laid down for the citizens to follow. In a world in which Federalists believed that "LITERATURE, well or ill-conducted...is the great engine, by which all civilized States must ultimately be supported or overthrown," it is important to examine the substance of the Federalists' ideas and the ways in which the Federalists propagated their ideas.24

A. Jacob Rush and the Federalist Persuasion

Jacob Rush was born into a Quaker family in Chester County, Pennsylvania, in 1747. The family was destined for eminence. His brother Benjamin, who was born two years before him, was one of the most prominent physicians of the post-Revolutionary

judicial philosophy in numerous articles over the last decade. He offers his book "in the hope that by resurrecting a lost conservative jurisprudence of late-eighteenth-century America, we might gain some insight into how to inform and implement one for the present." Several others have offered their analyses of Federalist grand jury charges with other, more dispassionate, intentions. See David J. Katz, Grand Jury Charges Delivered by Supreme Court Justices Riding Circuit During the 1790s, 14 Cardozo L. Rev. 1045-87 (1993). Professor George Haskins believes that the charges were purely politically motivated. See George Haskins, Foundations of Power: John Marshall, 1801-1815 (1981).

24 Fessenden, supra note 2, at xxi-xxii. Alexander Addison was born in Scotland in 1759 and trained for the ministry at Aberdeen University. He emigrated to America in 1785 and studied law. In 1791 he was appointed President Judge of the Fifth Judicial Circuit in western Pennsylvania. See Ellis, supra note 15, at 165. He published several hundred pages of jury charges in 1803. Alexander Addison, Charges to the Grand Juries of the Counties of the Fifth Circuit in the State of Pennsylvania (Philadelphia, 1800) Evans 36,768-64.
era. Benjamin's son, Richard served in the United States House of Representatives and supported Jefferson and legal reform. Jacob's daughter, Rebecca, wrote the novel Kelroy, which examines relations among women in a wealthy Philadelphia family in the post-Revolutionary era.25

Jacob, like his brother Benjamin, was educated at the Nottingham School in Cecil County Maryland, run by Rev. Samuel Finley, and then at Princeton.26 Following his graduation from Princeton in 1768, he read law in Philadelphia, then went to London to study at the Inns of Court. He returned after two years' stay in London and developed a successful law practice in Philadelphia; he served faithfully during the Revolution, developing a relationship with General (later Governor) Mifflin.27 Rush was elected to the Pennsylvania General Assembly in 1782; two years later Governor Mifflin appointed him to the Supreme Executive Council, which was effectively the Pennsylvania Supreme

25 See Rebecca Rush, Kelroy (Philadelphia, 1806); Richard Rush, American Jurisprudence (Washington, DC, 1815) Shaw and Shoemaker, 35,824.

26 Although his personal papers survived until the early part of the twentieth century, it now appears that they--and most of the details of his life--are now lost. See Louis Richards, Judge Jacob Rush 19 (1914) (reporting that author had access to his personal papers and unpublished grand jury charges). This pamphlet, which is available at the Historical Society of Pennsylvania, was reprinted in abridged form in 39 Pennsylvania Mag. Hist. & Bio. 53-68 (1915). Some of Jacob's letters to his brother Benjamin survive among the Benjamin Rush papers at the American Philosophical Society. See Letters of Benjamin Rush 45 (Lyman H. Butterfield ed. 1951). Based on Butterfield's description, it appears that the papers contain valuable information on Jacob's views, although they are not the papers described in Richards' pamphlet. Short biographical sketches appear in 5 National Cyclopedia of American Biography 150 (1891); David Freeman Hawke, Benjamin Rush: Revolutionary Gadfly 97, 277, 356 (1971).

27 See Jacob Rush to unknown, Oct. 30, 1777, Stouffer Collection, vol. 27, at 2168, Historical Society of Pennsylvania (Rush describes his work as Secretary to General Mifflin).
When the Pennsylvania Constitution was rewritten in 1790 the Supreme Executive Council was eliminated and replaced with an eight-judge body known as the Supreme Court. The Court was composed of three Supreme Court justices and five judges, one from each of the five judicial districts in Pennsylvania. In that shuffle, Rush lost his appointment on the Supreme Executive Council. Apparently as punishment for his brother’s feud with Governor Mifflin, he was exiled to western Pennsylvania by Governor Mifflin when he was appointed head of the Third Judicial Circuit, which encompassed the western counties of Berks, Luzerne, Northampton, and Northumberland. In his capacity as head of the Third Judicial Circuit, Rush heard the initial trial of many cases and charged grand juries. He acquired a reputation as a tough, politically-motivated judge. He was remembered for refusing to listen to motions made on behalf of criminal defendants and for taking the side of Federalists against Republicans in several political disputes that turned in assault and battery cases. Later, he was appointed head of the First Judicial Circuit, encompassing Philadelphia, Bucks, and Reading Counties.

He continued to participate actively in politics. He presided over a Federalist meeting in Philadelphia in 1798 to condemn foreign influence in the United States; he

---

28 See Richards, supra note 26, at 13-14 (discussing his bias in favor of Federalists in cases before him and against Republicans and criminal defendants); Jacob Rush, Charges and Extracts of Charges on Moral and Religious Subjects 83-84 (Philadelphia, 1803) Shaw and Shoemaker 5005 (Rush’s speech on sentencing a defendant to death).

29 See Pennsylvania Constitution of 1790, in The Proceedings Relative to Calling the Conventions of 1776 and 1790 159-60 (Harrisburg, 1825); Benjamin Rush to John Adams, March 15, 1806, 2 Letters of Benjamin Rush 916-17 (discussing Jacob Rush’s appointment to the First Judicial Circuit).
congratulated a grand jury later that year that ties with France were broken and in April 1799, following the Fries Rebellion, praised order based upon Christianity.\textsuperscript{30} Despite some attempts to impeach him, he served out his life appointment, hearing cases until his death in 1819.\textsuperscript{31}

Rush took advantage of his position as a prominent judge to promote his political and religious beliefs. One of his earliest cases involved a struggle over control of the Presbyterian church in Philadelphia. Two factions each claimed the right to govern and his extensive charge to the Philadelphia jury examined the Presbyterian church in both Scotland and America. He was particularly well-versed in Presbyterian doctrine, because he belonged to the Presbyterian church.\textsuperscript{32} His \textit{Observations on the Character of Jesus Christ}, published in 1806, emphasized both the human and divine elements of Christ, with the aim of making his readers more aware of the need to live "with Christ in God."\textsuperscript{33} It countered Deist arguments that Jesus, though a "venerable and admirable"


\textsuperscript{32} \textit{See An Address, delivered July 8, 1790, to the jury in the case of the commonwealth against John Purdon and others} (Philadelphia, 1791) Evans 23,748.

\textsuperscript{33} Jacob Rush, \textit{Observations on the Character of Jesus Christ} 2, 28 (Philadelphia, 1806) Shaw and Shoemaker 11,307. Rush construed the Bible the way that "civilians and lawyers" construe wills: "by looking at other parts" to illuminate the ambiguous portion. "Evidence of this kind has the additional advantage--persons of every capacity, the peasant and the philosopher, can equally comprehend it." \textit{id.} at 2. Jacob Rush continued to publish until his death. \textit{See} Jacob Rush, \textit{Notes on the Last Supper} (Philadelphia, 1819) Shaw and Shoemaker 49,337.
man, was only a human and was not divine.\textsuperscript{34}

It was Rush's judicial utterances, however, that allow the fullest exploration of his political and religious beliefs—and the interconnection between them. He began publishing his charges in newspapers and as pamphlets.\textsuperscript{35} In 1803 the Presbyterian clergy of Philadelphia published a 103 page pamphlet with extracts from Rush's charges on moral and religious subjects. The popular pamphlet was reprinted again in 1804, 1815, and perhaps again in 1829.\textsuperscript{36}

---


\textsuperscript{35} See, e.g., Nature and Importance of An Oath, 2 \textit{Rural Magazine or Vermont Repository} 469-75 (October 1796); [Suffield, Connecticut] \textit{Impartial Herald}, Oct. 16, 1798 (Jacob Rush's charge of August 31, 1798), also reprinted in Jacob Rush, \textit{Charge Delivered by Judge Rush to the Grand Jury of Luzerne County, Pennsylvania, at the court held August 31, 1798} (Glasgow, 1799); \textit{Pennsylvania Gazette}, June 5, 1793 (charge discussing need to suppress violence between French and English sailors).

\textsuperscript{36} See \textit{Charges, supra} note 28; \textit{Charges and Extracts of Charges} (New York, 1804) Shaw and Shoemaker 6000; \textit{ibid} (Lenox, MA, 1815) Shaw and Shoemaker 35,823. Richards' biography of Rush reports that the charges were reprinted in 1829, but I have been unable to locate any evidence of its publication in Shaw and Shoemaker. See Richards, \textit{supra} note 26, at 14. The pamphlet was sponsored by six Presbyterian clergymen of Philadelphia: Ashbel Green, Philip Milldoler, Jacob J. Janeway, George C. Potts, and John Blair Linn. \textit{Charges, supra} note 28, at iv.

The views of Philadelphia's Presbyterian clergy were spelled out in their extensive publications, particularly those of Ashbel Green, who eventually became President of Princeton. On the cast of characters and the efforts of the Presbyterian clergy to fight the "spread of infidel principles," see Ashbel Green, \textit{Life of Ashbel Green} 319-20 (Philadelphia, 1849) (describing Society for improvement of clergymen); \textit{Sermon ... Delivered 19th of February 1795} (Philadelphia, 1795) Evans 28,765 (opposing Deism and
1. Jacob Rush and Religion

The precepts of this religion, which teach us to be diligent in our several stations--to govern our passions--to be obedient to our superiors and rulers--to do good to all men, and whose very essence is peace and good-will to men--the precepts of this religion, reduced to practice, would soon change the face of our affairs. 37

Jacob Rush's philosophy, reduced to its most basic form, had religion at its core. For Rush, religion is the only basis of law and only when people follow Christianity could there be peace. Rush develops the theme that religion is "the surest basis of morality and consequently good government" throughout the charges. Although his charges nominally relate to various subjects, from oaths to dueling to patriotism, each charge is a vehicle for the exploration of the larger issues of religion, order, hierarchy, and obedience. He develops the theme by examining various crimes and duties.

For example, he uses the "oath" as a way of exploring the need to tell the truth and the implications for society if people are dishonest. Swearing tends to lesson the seriousness of oaths, Rush thought; and society should not allow one to do what would

advancing obedience as a primary goal of Christianity); Eliphaz Liberalissimus [Green], A Letter to a Preacher of Liberal Sentiments (Philadelphia, 1792) Evans 24,365; Green, Obedience to the Laws of God the one and indispensible defense of nations (Philadelphia, 1798) Evans 33,816.

Other clergymen published on similar topics, see J. J. Janeway, The Internal Evidence of the Holy Bible (Philadelphia, 1845); J. J. Janeway, Duties and Responsibilities of the Professional Office in Theological Seminaries (Pittsburgh, 1828) (I have not read either of Janeway's works); John Blair Linn, A Letter to Joseph Priestly (Philadelphia, 1803); [Linn], Miscellaneous Works, Prose and Poetical (New York, 1795) Evans 28,973 (published when Linn was only 18 years old); Linn, The Poetical Wanderer ... dissertations on the early poetry of Greece, on tragic poetry, and on the power of noble actions on the Mind (New York, 1796) Evans 30,696.

37 Rush, supra note 11, at 39 (charge of April 1799).
destroy society if everyone did it. Upon the bedrock principle of Christianity Rush builds his charges.

Judge Rush uses the law prohibiting work or games on the Sabbath as a way of examining further the dependence of government upon religion. Here again he drew upon his belief that government only passed laws for the public benefit. And there were plenty of benefits from following the Sabbath. It promoted both spiritual and temporal well-being and provided a way of learning rules and of rest; the poor and lower classes especially benefited.

The Biblical injunction against work on the Sabbath demonstrated that the law was wise. Human experience reinforced the injunction—as far back as ancient Egypt, there was a day of rest. Rush was able to tie together his ideas, because religion provided the basis for laws and morality provided a way of ordering society. Simply because laws are dictated by morality, the people must follow them. But the Sabbath was no small matter to Rush; it was not a mere matter of whether a few people were playing games or doing business on Sunday. The existence of government hung in the balance:

It has often been said the Sabbath is the palladium of our religion, and that as this day is observed or neglected, Christianity will stand or fall. If this be really the case, there is reason to fear it will not be of long continuance among us. One thing, in my judgment, is certain. If it does fall, it will fall like a strong man—it will pull down the pillars of government, and bury our country in ruins. Every wicked man is an enemy to his country; because he breaks her laws, and spreads the contagion of vice around him; and because his conduct has a direct tendency to bring down the vengeance of heaven on his devoted country.38

38 Charges, supra note 28, at 48.
Rush left the grand jurors in fear for the very continuation of society if the laws—which were based on Christian principles—were not followed. Observance of the Sabbath had occupied a central position in Rush's thinking for many years. In 1794, soon after the Pennsylvania legislature passed a law prohibiting labor or play on Sundays, Rush wrote to the Reading clergy requesting their help in stopping children from playing on Sundays. He feared that if children were not taught to obey the laws of "GOD and man" early in life that they would fail to learn respect for law. In a charge, after describing a parade in France in which a "strumpet" was dressed as the "Goddess of Reason," Rush observed that "this scheme . . . accompanied as it was with music and every species of parade and pagentry that had a tendency to make an impression on the minds of the illiterate class of mankind, must have done vast mischief." But Rush thought the mischief was trivial when compared with "the infinitely pernicious consequences of abolishing the Christian Sabbath, and subverting the institution of marriage." 39

Rush did not even need to look to as serious an offense as Sabbath-breaking to find a moral offense that was capable of destroying society. Common swearing would do it. Rush proposed that the state should prohibit whatever tended to injure it, including profane swearing. And in case the jurors did not agree with him that an occasional outburst of "GOD," "JESUS CHRIST," or "HOLY GHOST," was harmful, they needed only hear his charge on duelling, where Rush conjured up the image of duels fought over

39 His volume of Charges conveniently printed his letter to the Clergy, as well as the Act on "Vice and Immorality." See Id. at 80-83, 96-103; Rush, supra note 11, at 10.
swears. He proposed taking the "axe, as far as possible, . . . to the root of the evil."\(^{40}\)

But religion was important to Judge Rush for the beneficial effects it had on control of human behavior. Religion provided a way of conditioning humans to obey their superiors. Thus, he hypothesizes that Montesquieu would praise Christianity's moral code: "How admirable is this religion, which, while it seems only to have in view the felicity of the other world, constitutes the happiness of this!"\(^{41}\)

The best statement of Judge Rush's full philosophy appears in the first charge, "Upon Human and Divine Law and Their Consequences," an attack on Deism. He argues that "the **great end** of all laws, both human and divine, is the same . . . the happiness of those who are subjects of them." Human laws only punish those who are caught; divine law, however, will punish anyone who is guilty. Everyone will be caught and punished. This argument had two purposes. First, it supported Rush's belief that all law must be followed; second, it led to the attack on the Deist belief that remorseful individuals should be pardoned for their crimes. "Upon this ground," Rush thought, "the Deist and the friends of Christianity are at issue." Rush argued that contrition was unlikely to be sincere, but even if it were sincere, it would be inappropriate to allow individuals to commit a crime without punishment. Sorrow, moreover, "in the very nature of things, can never be an atonement for past offenses."\(^{42}\)

\(^{40}\) **Id.** at 55, 59, 92.

\(^{41}\) **Id.** at 39. Rush distinguished, however, between certain sins that took place in private--such as private drunkenness--and those that took place in public. Only public transgressions were subject to punishment by human laws. See "Man--The Subject of Moral and Social Obligations," **id.** at 78-80.

\(^{42}\) **Charges, supra** note 28, at 15, 20.
Such beliefs undermined, according to Rush, the "pillar of Deism" that an offender's repentance removed the need to punish him. But Rush was not content with that attack; he continued with other "reflections . . . unusual in an address to a Grand Jury." He attacked Deism by arguing that "revelation is necessary to show on what terms the deity will pardon violations of his laws." Rush catalogued for the jurors a number of phenomena that could not be explained by reason, from the sun to magnetism, to the beating of the human heart and then asked the Deists to "explain to me these and ten thousand other mysteries." He concluded that Deists were attacking "religion, the only true foundation of government. . . . Save us, gracious heaven from such patriots, and the extension of their baneful principles among us!"\(^{43}\)

Religion is also central to understanding the Federalist persuasion. In his Farewell Address, President Washington asked "Where is the security for property, for reputation, for life, if the sense of religious obligation desert the oaths which are the instruments of investigation in courts of justice?" He continued "Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. . . . Virtue or morality is a necessary spring of government."\(^{44}\) Thus, on

\(^{43}\) Id. at 23-25.

\(^{44}\) George Washington, Farewell Address, Sept. 17, 1796, in Basic Writings of George Washington 627, 637 (Saxe Commins ed. 1942). For discussion of the connection of religion to law, see Mark DeWolf Howe, The Garden and the Wilderness: Religion in the American Constitutional History (1966). Professor Perry Miller examined the connection between Christianity and liberty in the Revolutionary era in "From Covenant to Revival," Nature's Nation 90-120 (1967). Alan Heimert carries the story forward through the early republic and argues that the Federalists were opposing both the Deists and the evangelical Protestants. See Alan Heimert, Religion and The American Mind from Great Awakening to Revolution chap. 10, esp. 536 (1966). Both Heimert and
Washington's birthday, Timothy Pickering toasted "religion and morality, essential supports [of] a free government."  

The theme of religion and government appeared in Federalist literature as well. In the "Essay on the Literary Republic," which appeared in the Portfolio in 1807, the narrator told of his dream of a visit to a city (perhaps Philadelphia in the future) where censors destroyed philosophical books. The lesson was that books were useless and "nothing is stable but religion and truth, and that prince alone is happy who is guided by their counsels." It is religion that provides the basis for society and religion is important because it makes people obedient.

2. Obedience as a form of ordering society

If religion is the basis of Rush's world, order and hierarchy are the values that religion supports. Order is necessary for society to function.

A people who disobey the laws of God and man, have no right or reason to expect a continuance of their prosperity; because obedience to the law is the appointed means of attaining it; otherwise the laws had never been made. There is no other way of discharging our duty to our country, but by

Miller concentrate on the positive aspects of religion in framing the principles governing the Republic.


46 Essay on the Literary Republic, 6 The Portfolio at 490, 491 (1807) (censor carts away books on jurisprudence to use for kindling). For similar statements by Federalist clergy, see Jedidiah Morse, A Sermon, Delivered at the New North Church . . . May 9th, 1798 (Boston, 1798) Evans 24,148-49 (expressing fear of French Revolution's conspiracy against religion and order); Timothy Dwight, The Duty of Americans at the Present Crisis (New Haven, 1798) Evans 33,656 (analogizing Illuminati and philosophes as part of conspiracy against Christianity).
yielding obedience to all her laws; not this or that law, but every law . . . .

Rush supported his arguments on the need for order by reference to the Bible. "As the divine Author of Christianity said to his followers—"Ye are my disciples, if ye do whatsoever I command you;"—so I say to you, Gentlemen, You are good citizens, if you do whatsoever the law enjoins; not if you obey this, that or the other law, but every law." 48

Many of the charges illustrated the importance of obedience to God and law in the same way that each of his charges illustrated the central role of God in society. Thus, a charge on gaming became the vehicle for exploration of the need for following every law, regardless of whether one approved of it or not. "Laws in their very nature, are intended to operate as restraints upon the will and inclination," Rush reminded the jurors. Therefore, individuals were not allowed to determine the appropriateness of following laws themselves. Anything else except obedience to every law subverted society. Do not be fooled by the slanderer, the adulterer, or even the common swearer; they each pled that their offenses hurt no one. But the citizen who obeys only those with which he agrees "has not a single drop of federal or republican blood in his veins, or benevolence in his heart." The connection between obedience and patriotism was explored in more depth in his charge on patriotism, where he argued that "the principle

47 Charges, supra note 28, at 48-49.

48 Id. at 48-49.
of patriotism is a principle of obedience to the laws of God."

Rush could not stress enough that "obedience was made for man by his Creator, and man was made for obedience." It remains unclear what the three most important factors in real estate were in the early nineteenth century; Rush was explicit, however, about the three most important duties of citizens in a republic. They were, he told the jurors: "obedience," "obedience," and "obedience." He closed his unrelenting charge by observing that "Order is heaven's first law--and should be the first law of earth . . . universal order is necessarily productive of universal happiness."

The American republic was not like other countries, where laws were made arbitrarily. Rush worried, like other Federalists, that individual men were subverting law to their own desires. Thomas Dobson, in his Letters on the Existence and Character of the Deity, captured well the Federalists' concern.

"The reign of the Law . . . is indispensably requisite in every republic . . . [A republic] ought to be a government, not of men nor of parties, but of LAWS." Closely linked--indeed inextricably connected--to order in Rush's world was the need to follow laws created by God and men.

Rush's emphasis on order placed him squarely within the Federalist doctrine. All of human history and experience, as well as the writings of political theorists, demonstrated the need for order in society. From the lowest plant life through humans

---

49 Charges, supra note 28, at 76, 38.

50 Id. at 76, 78.

to God, Alexander Addison told a grand jury, "we see order rising above order, degree above degree, power over power, and, of beings of the same species, different grounds of wealth and eminence. This is the will of God; and every attempt to disturb this order of subordination, is an attempt against the will and power of the Almighty." Alexander Addison, charging a jury in December 1800 warned of the need to strive to maintain "rational liberty" against licentiousness. "[B]y aspiring to more, neglecting all experience, and countering all authority," Addison feared the people might "destroy the bliss of true liberty and plunge ourselves into confusion, anarchy, and despotism."52

And it was only virtue, instilled by Christianity, that stood in the way of disorder. Images of the wrecked Roman and Athenian republics pervaded Federalist writings and even their art.53 The picture of instability pervaded the Federalist mind. In an editorial in the Portfolio, for example, a Federalist analogized the state to a vessel. He observed that a "powerful party is arrayed in open hostility to the judiciary; a plan has been avowed, and is ripe for execution, to cut away the great political anchor at which, in the strong times of peril and dismay, the vessel of state has rode in safety."54 Order was a crucial value for Federalists because it preserved property and the "true freedom"


54 6 The Portfolio 77 (1807).
of the people to security.

3. Politics and the Charges

Rush's charges reacted to political events. He responded, like other jurists, to upheaval in western Pennsylvania over the excise tax. The upheaval, which culminated in the Whiskey Rebellion in the summer of 1794 began almost immediately after the passage of the tax in March 1791. Farmers in the western Pennsylvania counties of Allegheny, Fayette, Washington, and Westmoreland were particularly vociferous in their protests against the federal tax and the federal officers who enforced it. Some minor violence broke out, including the tarring and feathering of several officials.

President Washington took steps to quell the unrest. Following the initial outbreak of protest in western Pennsylvania in 1792, President Washington issued a widely-circulated proclamation urging support for law. Washington also wrote to Pennsylvania Governor Thomas Mifflin asking for his support in maintaining peace. Mifflin, in turn, urged Pennsylvania judges to "promote a due obedience to the constitutional laws of the Union." "Permit me," he wrote, "to request that you will take every official opportunity to inculcate the indispensable duty of obedience to the acts of Congress; and, particularly, that you will be pleased, as far as the jurisdiction of your circuit extends, to charge the Grand Juries of the several counties within your district to

---

55 See Proclamation, Sept. 15, 1792, reprinted in Basic Writings of George Washington 589-90 (Saxe Commins ed. 1948); Thomas Slaughter, The Whiskey Rebellion 122-24 (1986). In commenting on the proclamation, Judge Thomas Smith of western Pennsylvania commented parenthetically to his grand jurors that "you have all read or heard read" President Washington's proclamation. Pennsylvania Gazette, Dec. 26, 1792.
enquire into, and present, all offenses of the nature to which the proclamation refers.  

Despite the fact that Judge Thomas Smith, President of Pennsylvania's Fourth Judicial Circuit (encompassing the counties of Cumberland, Mifflin, Huntingdon, Bedford, and Franklin) had "no occasion to point out a single offender against the law under construction," he readily complied with Mifflin's request. He acknowledged his own misgivings about the legislation, but asked "are a few to set up their private opinion against the wisdom of the society at large, of which they are members? . . . No government could subsist, were this allowed; anarchy, individual ruin and national destruction, must be the consequence." Judge Smith went on to emphasize the need to have obedience to law. Such obedience, Smith though, "will have an equal tendency to ensure to us individual peace and prosperity, and national safety and greatness."

Judge Smith supported his argument with an appeal to patriotism. During the framing of the Federal and state constitutions, patriotism prevailed over "wild ambition void of principle, or hunters after popularity without merit to deserve it." By playing upon the traditional fear of excise taxes imposed in England and Ireland--"(and a parrot might learn to repeat the words in a few hours)"--"the dullest and stupidest chatter[er] might have passed for an enlightened patriot." But that did not happen and Smith hoped that it would not happen now. Instead, he urged citizens who thought a law was defective to point out "with manly freedom, which is always accompanied with decorum,

---

the evil consequences... and to promote proper representations to those whom we have entrusted with the legislative power." He confidently predicted that "we may be sure that they will repeal every law liable to such objections, or so modify it, as to make it promotive of the general welfare in the best manner."^57

Unfortunately, Judge Smith’s appeals to peaceful protests to change the laws were inadequate and by the summer of 1794 open hostilities had emerged. The Federalists’ attempts to shore up support for the excise law were insufficient; by the summer of 1794, the four western Pennsylvania counties were in open rebellion and Washington felt it was necessary to call out Federal troops in September 1794.

In September 1794, in the midst of the Rebellion, but before any Federal troops had marched to the other side of the Allegheny mountains into western Pennsylvania, Alexander Addison, the President Judge of the Fifth Judicial Circuit (encompassing the counties of Washington, Allegheny, Westmoreland, and Fayette), charged his grand jurors on the "necessity of submission to the excise law." He urged in conciliatory terms that war was appropriate only when there was no other way to remedy an evil. Because the rebellious counties had three representatives in Congress, they could expect to remedy the evils of the excise tax. Instead, Addison feared that "we wish now for a liberty destructive of those principles which we formerly fought, and the French now

---

^57 Id. Smith concluded his charge by declaring that the Associate Judges of the Fourth Circuit joined with him "in recommending obedience to the laws of the land, as indispensably necessary to secure and perpetuate the peace, liberty, safety and happiness of the people." Id.
fight, to establish.\textsuperscript{58}

War would bring no resolution; Addison painted a scene of general destruction, where the United States sent army after army across the Alleghenies to subdue the rebels. "All mutual confidence will be at an end and all the band of society will be dissolved. . . . There will be no power of government to control the violence of the wicked." Addison looked far into the future and asked where the rebellion would end? If they were not subdued by the United States, would they be accepted as part of Canada, would they fight the Indians at their own expense, and conquer the territories all the way to the Mississippi? If that happened, who would negotiate with France and Spain to insure that the Mississippi was open to commerce?\textsuperscript{59}

In the wake of the Whiskey Rebellion, several judges published their grand jury charges urging respect for law. Addison issued a charge in December 1794 on the Whiskey Rebellion, "the most alarming event that has occurred in America for many years."\textsuperscript{60} He began by distinguishing between revolutions conducted by free people from a usurped power, "which are to be expected," and those of a people "living under a settled and free government of laws established by their own will." Those governments of laws, such as the United States, established by "will and changeable when and to what [the people] please," cannot consistent with liberty allow individuals dissatisfied with their

\textsuperscript{58} Addison, supra note 24, at 115.

\textsuperscript{59} Id. at 104.

\textsuperscript{60} See id. at 113-28. It was printed in the 	extit{Pennsylvania Gazette} on January 5, 1795. Addison's first-hand knowledge of American events only extended back eleven years; he arrived from Scotland in 1783.
laws to violently oppose them. Such actions, Addison thought, will do more to "show the inefficacy of a free representative government than all the arts and arguments which its enemies have ever invented."\textsuperscript{61}

Addison's charge, which sounded like a treatise on political theory, is different from Smith's charge in that he attempted to defend democracy. He argued that the liberty enjoyed in a "savage state" is limited by degrees as the government attempts "to preserve one man from the force or fraud of another." As violence and disorder increase, Addison told the grand jury, more power is given to the government to restrain violence, until all power is vested in one ruler. "Such has been the progress of governments, and such, by the violence of passions, may be the progress of ours."\textsuperscript{62} The tendency of each community to establish its own laws would result in no state and no laws. Thus, Addison worried, "forcible opposition to law instead of favoring liberty is the surest way to destroy it." And in case the grand jurors needed a more graphic explanation of Addison's abstract reasoning, he added "chopping off heads was spoken of as easily as slicing a cucumber, and burning houses became as trivial as tearing waste paper. Introduce assassination or any other species of crime under a plausible pretence and it will soon spread over the country and extend to every object."\textsuperscript{63}

\textsuperscript{61} Addison, supra note 24, at 113. Judge Rush used similar terms in urging respect for all laws. "It should be remembered, that it is not the imperious mandate of an arbitrary monarch, or an edict of the dark age of ignorance and superstition--but the law of a free people, passed by one of the most enlightened governments upon earth--a law flowing from the deliberate act of our own Representatives." Charges, supra note 28, at 76.

\textsuperscript{62} Addison, supra note 24, at 114-14.

\textsuperscript{63} Id. at 115, 118.
He discussed the stages of the rebellion and particular offenses against the peace and then finished the charge by asking the jurors to return indictments against the people who raised liberty poles and those who attempted to prevent the signing of the submission to the Federal government (in effect the peace treaty). If the western Pennsylvania state courts prosecuted the rebels, Addison told the jurors, they would more readily gain the confidence of the Federal government.\textsuperscript{64} No indictments were ever returned by the grand jury.

United States Supreme Court Justice James Iredell delivered a charge to the federal grand jury in the middle district of Pennsylvania in April 1796, which further developed the patriotism theme. The thesis of his charge was that "all who love their country may be expected to obey its laws." He went on to discuss the need to prosecute people who violate common law, constitutional, and statutory crimes, regardless of whether one agrees with the position of the lawbreakers. Only "by paying proper obedience to the constituted authorities of our country . . . and by constantly bearing in mind that the law which protects others protects ourselves" is it possible to maintain republican government. "We shall arrogate what no true friend to liberty can consistently claim, if we fail in that measure of obedience to the government of our country in cases that are not perfectly agreeable to us," he concluded.\textsuperscript{65}

\textsuperscript{64} Id. at 126-27.

\textsuperscript{65} See Pennsylvania Gazette, April 20, 1796 (published at the request of the grand jury). For the grand jurors' response to Iredell's charge, see id. One of the grand jurors was named Jacob Fries; his relationship to John Fries, who lent his name to the 1798-99 rebellion, is unknown.
Judge Rush's response remains obscure; his response to another, and somewhat later, rebellion is clearer. In 1798, a new round of Federalist legislation in Congress sparked another rebellion in Pennsylvania. This time the rebellion was centered in southern and eastern Pennsylvania. According to the most recent historical interpretation, the heavily German--and patriotic--population of the counties of southeastern Pennsylvania associated the taxes, which were enforced by assessors from religious groups traditionally less patriotic than the "church Germans." The taxes were painted by Republicans as part of a "tory" plot to reduce the Germans patriots to serfdom; that is how a significant number of the Germans saw the taxes and the Alien and Sedition Laws.66

It appeared initially that there would be a relatively peaceful settlement, because the United States Marshall was able to arrest eighteen leaders of the rebellion; then on March 7, 1799 Jacob Fries and approximately 140 armed men in Bethlehem, Pennsylvania forcibly freed the prisoners from the Marshall's custody. Some evidence indicates that the Fries contingent was content to let the issue rest there and to allow enforcement of the taxes. President Adams was not.

On March 12, Adams issued a proclamation calling for the suppression of the rebellion. Four weeks later the Federal troops were assembled and marched into

---

66 See Eric McKitrick and Stanley Elkins, The Age of Federalism 696-98 (1993). For a sympathetic interpretation of Fries, see William Davis, The Fries Rebellion, 1798-99 (1899) (reprinted articles published in Davis' newspaper in 1858, which collected reminiscences of eye witnesses to the rebellion). For a self-consciously hostile interpretation of Fries, which argues that the rebellion was as significant as the Whiskey Rebellion see Presser, supra note 13, at 31-33.
Pennsylvania. Fries and several other leaders of the March 7, 1799 confrontation with the United States Marshall were tried for treason before United States Supreme Court Justice James Iredell and United States District Judge Richard Peters. Fries was convicted and sentenced to death, but had his conviction overturned when it was discovered that the jury was stacked with Federalists; the second trial, presided over by United States Supreme Court Justice Samuel Chase, also resulted in conviction and a death sentence, but President Adams pardoned Fries. Chase's role in the trial was important at his impeachment trial in 1806.67

Shortly after Fries' trial, Justice Iredell delivered a grand jury charge urging respect for law. He used Major Andre as an example of the danger of following one's own conscience rather than the law. "If men of good character can be tempted to violate the strict duties of morality," Iredell asked the jury, "what may be expected from others who have neither character nor virtue?"68

In April 1799, before Fries had been tried, and while Federal troops still occupied

67 For contemporary discussion of the rebellion, see Porcupine's Gazette, May 10, 1799; Philadelphia Aurora, April 8, 1799; May 13, 1799. The Aurora had several editorials reacting to the Federalist calls for "order and good government" on April 24 and May 14, 1799.

68 Aurora, May 17, 1799. The Aurora printed the charge in order to criticize Iredell's politics. See supra note 15. Thus, the Aurora could criticize the charge on May 16, 1799 by observing that:

In the fashionable language of federalism, liberty means arbitrary power, hence the Irish are free and are abused for wishing to rid themselves of liberty. . . . The liberty which is now enjoyed in Ireland and was lately enjoyed in Rome and Venice is no doubt wished to be transferred to the United States, out of pure love for the people, and hence the lamentations of some Judges and Jurors over the fate of republicanized Europe.
the southeastern Pennsylvania counties of Montgomery and Bucks, Jacob Rush charged a
grand jury on patriotism. Although the charge does not mention Fries, its call for order
seems to be a response to the Rebellion. "If you really love your country you will
observe her laws and her statutes, which are framed to promote and to perpetuate her
welfare," he said. Rush defined the true principle of patriotism in terms of "obedience to
the laws of God, and of our country, manifesting itself in the discharge of our religious,
moral and social duties." Rush recognized that obedience itself might prove too flimsy a
basis for maintaining order. There needed to be some foundational principle governing
the obedience. That foundational principle was religion, for a "country over-run with
moral disorders, cannot be long exempt from political paroxysms of convulsive and fatal
tendency." Rush drew upon Deuteronomy to show the Biblical grounding of obedience:
"If you love me you will keep my commandments--Ye are my friends if you do
whatsoever I command you." Thus, Christianity provided an analogy for obedience: "as
in Christianity, so it is in patriotism--Obediences is the unerring criterion, the sole
decisive mark of affection." He dismissed as groundless, as had Addison, Smith, and
Iredell the fear that the legislature might take away liberty. "Our Rulers . . . deriving
their existence from popular election," will remove their "oppressive hand" "the instant it
is felt by the people . . . with the same felicity [that] 'the Lion shakes the dew from his
mane.'" Instead, he concluded "the precepts of this religion, which teach us to be diligent
to our several stations--to be obedient--to govern our passions--to do good to men."

Judge Rush's charges served a dual purpose; defeating John Fries and his

69 Charges, supra note 28, at 36, 38, 39.
followers was the immediate purpose. The instillation of virtue and his brand of patriotism was the larger purpose. It was virtue that was the "foundation of Republics." Rush and the other Federalist judges stressed the need for virtue and patriotism based on religion.

4. The French Revolution and Jury Charges

The French Revolution, which was running its course simultaneously with the Age of Federalism, loomed over and colored the thought of the Federalists. The course of the Revolution demonstrated in concrete terms the dangers to the Federalists in the same way that the loss of freedom in the European Republics raised the fears of the American Revolutionaries and the revolution in St. Domingo raised the specter of slave rebellion in the antebellum south. Federalists feared the increasingly violent nature of the revolution and its effects on its American imitators. For example, when some Whiskey rebels proposed the construction of guillotines, Federalists pointed to the proposal as evidence of the failure of democracy. Federalists who looked beyond France saw other examples of the danger of democracy. Thomas Green Fessenden used

---

70 Gazette of the United States, Jan. 5, 1802, quoted in Kerber, supra note 45, at 201. For similar statements, see Charles Crawford, The Progress of Liberty 3 (Philadelphia, 1796) Evans 30,297 (claiming democracy is as dangerous as Catholicism).

71 Professor Bailyn discusses the impact of the loss of freedom in Sweden, Denmark and Venice, as well as the precarious position of other republics, such as Switzerland, on the thinking and actions of the American Revolutionary generation. See Bernard Bailyn, The Ideological Origins of the American Revolution 63-67 (2nd ed. 1992). See also H. Trevor Colbourn, The Lamp of Experience: Whig History and the Intellectual Origins of the American Revolution (1965). On the impact of the St. Domingo revolution on American fear of slave revolts, see William Freehling, Prelude to Civil War 60, 112-14, 307 (1965); cf. Elkins & McKitrick, supra note 66, at 662.
Guthrie's *Tour Through the Tavrida, or Crimea, the ancient Kingdom of Bosphorus* to describe the danger of living in a state of nature, a radical form of democracy. He quoted Guthrie's description of savages in Turkey and Arabia and concluded that "man in a state of nature . . we are sorry to acknowledge, after the light thrown on the subject by our late circumnavigators, . . [is] the most savage and dangerous animal in nature."72

The dual threat posed by French atheism and French conceptions of democracy brooded over the Federalists judges as they articulated a jurisprudence designed to limit the power of democracy and to inject Christianity into the state. Much of Judge Rush's charges had that effect; he also charged specifically on America's relations with France. He worried about the dangerous effect that the Revolution had on order in France and warned against the moral corruption of French atheism. Only by avoiding contact with France and focusing on morals within the United States could the republic be preserved from destruction. In discussing the July 17, 1799 break between the United States and France, he said "from a country thus steeped in vice and corruption, surely every . . lover of country will rejoice that we are at last divorced."73


73 See Rush, supra note 11, at 15. For similar statements by Federalist clergy, see Samuel Stillman, *A Sermon Preached at Boston, April 25, 1799* (Boston, 1799) Evans 36,369; Jedidah Morse, *A Sermon, Exhibiting the Present Dangers* (Hartford, 1799) Evans 35,838. See also Bloch, supra note 34, at 206 (discussing clergy's fear of France); Richard Buel, *Securing the Revolution, 1789-1815*, 172-74 (1972) (discussing Rush's
Addison's charges also had the effect of opposing the French Revolution. In an 1800 charge, the Rise and Progress of Revolution, he showed the specific evils of the French Revolution. Drawing upon Federalist writings on conspiracy in the French Revolution, Addison charged that the "end, which the promoters of those Revolutions had in view, was the destruction of all authority human and divine, of all authority founded on faith and the destruction of all Revelation, of all government . . . of all the bonds of human society." In typical Federalist concern over liberty, Addison said, "their liberty was that every man should be free from all law, and be a law to himself."  

2. Sources of Rush's World

Jacob Rush, who remains almost anonymous in writings on the Federalist period, itself one of the neglected periods in American culture, does not appear to have the "scholar's favorite virtue--influence." He does, it appears, however, have a virtue that rivals influence in the scholar's catalog--representativeness. The examination of Rush's charge).

In case one doubts that Rush feared monarchy more than atheism, one needs only listen to his conclusion of his charge on the French Revolution:

July 17 "is a declaration, I trust, of our independence from France, and of our perpetual exemption from the baneful effect of her morals, her religion and her politics. From calamities infinitely more to be dreaded than those commemorated upon the 4th of July, it is calculated to secure us. The one shielded us only from political dependence and subjection . . . but the other, we flatter ourselves, will be the means of saving us from religious, moral, and political destruction." Rush, supra note 11, at 15-16.

Addison, supra note 11, at 7-8.

See The Puritans in America: A Narrative Anthology 294 (Alan Heimert and Andrew Delbanco 1985) (discussing Edward Taylor). It remains possible that Rush's charges, which were reprinted several times in the early nineteenth century, were influential in shaping public opinion, but he seems to be more important for what his public utterances depict, rather than for what they created.
intellectual world tells a good deal about the issues facing Federalists and the world of ideas that they inhabited.

Rush lived in the world of religion. Many of his ideas appear similar to what other Federalists were arguing with respect to the role of religion in American life. He variously cites the Bible, providing his own gloss, as well as popular commentators on the Bible, including Robert Steele's *Christian Hero*, Soame Jenyns, *On the Internal Evidence of the Christian Religion*, and John Guyse, *The Holy Spirit of a Divine Person*.76

At other times, without specific attribution, he refers to "writers on the subject of ethics," who have divided the duties of man into those owed to individuals and those owed to society. The casual nature suggests that the divisions were natural to his way of thinking. He refers to Locke's discussion of card playing and quotes Francis Bacon to endorse the effect of Christianity on public morality.77 Rush drew upon examples from history and comparative religion to illustrate the importance of morality and the religion. He uses the observance of the Sabbath in other religions to demonstrate its importance.

The use of history is reminiscent of Montesquieu, to whom he refers in several charges. There are also occasional references to classical authors, such as Juvenal and Cicero.

The judges had ample Federalist writings to draw upon for scenes of atheism and

---


77 *Charges*, supra note 28, at 80 (referring to writers who divide duties into those owed to the public and those owed as individuals); *id.* at 73 (referring to Locke); *id.* at 25 (quoting Bacon).
destruction of society. Judge Addison’s charge on the French Revolution explicitly recommends Abbe Barreul’s interpretation of the French Revolution as a conspiracy to overturn religion and government.\textsuperscript{78}

Rush also lived in the world of opposition to Enlightenment thinkers and he reserved a particular disdain for them. In several charges he alludes to Thomas Paine. In his most comprehensive charge, "Upon Human and Divine Laws and Their Consequences," Rush makes a thinly veiled attack on a "supposed patriot" "(generally supposed to have been actuated by an uncommon zeal for the 'rights of man')" who availed himself of his literary reputation in his attempt to "overthrow all religion."

Indeed, Paine and his Deist co-conspirators seem to be lurking below the surface in each charge when Rush warns of the recent waves of irreligion and the attacks on Christianity. When Rush emphasizes obedience, not individual thinking, he is at the vanguard of the Federalist war with the Deists.\textsuperscript{79}

\textsuperscript{78} Id. at 43-44; id. at 39 (Montesquieu). See also id. at 72 (no one escapes from gaming); 27 (swearing oaths is part of Muslim faith); id. at 34 (Juvenal); 94 (Cicero and Aristotle). See Addison, supra note 11, at 7-8; Abbe Barruel, Memoirs Illustrating the History of Jacobinism (Hartofrd, 1799) Evans 35,153. For other popular Federalist writings detailing the alleged conspiracy of the philosophers against religion and government, see John Robison, Proofs of a Conspiracy Against all the Religions and Governments of Europe (New York, 1799) Evans 34,478; William Cobbett, History of American Jacobins, Commonly Called Democrats (Philadelphia, 1796) Evans 30,209.

\textsuperscript{79} Charges, supra note 28, at 22, 39; Rush, Charge, supra note 11 (warning of connection between France and American irreligion). See also id. at 38 ("Obedience to the laws of God . . . is substantial patriotism . . . that does not evaporate in empty noise about the Rights of Man or the Virtues of Federalism."). In one charge he linked the philosophers to atheism and conspiracy:

It is a well known fact, that that kingdom previous to the disorders which now distract it, swarmed with atheists, who dignified themselves with the name of philosophers . . . . These men, who have been educated in the
He can, however, invoke them when they have ideas that are useful to him. Thus, he quoted Montesquieu to show that "the principles of Christianity deeply engraved on the heart would be infinitely more powerful than the false honor of monarchies, the humane virtues of republics, or the servile fear of despotic states." Even Cesare Beccaria, who is usually identified with the limitation or modification of punishment, which is at odds with Rush's need for punishment, is invoked to show that issuing individual pardons is inconsistent with justice.

C. The Judiciary vs. the Scientists

The Rush family provides a window into differences in attitudes of lawyers and scientists in the early republic. The relationship between individuals' occupations and their ideology has attracted some of the best scholars of modern social science. Much like the relationship between law and literature in the early republic, scholars have analyzed the degree to which lawyers' attitudes to hierarchy and order correlated with their occupation. The general picture emerging from the scholarship is that lawyers

Atheistical school, that had been publically taught for half a century in Europe, by Voltaire, D'Alenberte, and the great Frederick of Prussia--combining their influence, with the politicians, happily, or rather unhappily, united religion and ambition in the attainment of the same object. Rush, supra note 11, at 8.

Charges, supra note 28, at 24-25.


See generally Talcott Parsons, Political Ideologies (1959).


See, e.g., James M. Banner, Jr., To the Hartford Convention: The Federalists and
were traditionally Federalists and scientists are generally Republicans. Historians recognize that the correlation is not perfect; some lawyers, such as prominent Pennsylvanians Peter DuPonceau and Alexander J. Dallas, were Republicans and some physicians certainly were Federalists, but the correlation is strong enough that there is a need to examine it further. There appear to be differences based on profession. James Banner has taken a similar interpretation in his study of Massachusetts Federalists, To the Hartford Convention. He explained the differences in political affiliation between the lawyers and physicians in terms of differences in the structure of the professions. Where the legal profession was organized hierarchically in Massachusetts, the medical profession was open. Even training of physicians was decentralized; medicine was a path to social and economic advancement for people from rural areas. Banner hypothesized that the differences in prestige, wealth, and organization of the two professions accounted for the differences in political affiliations

the Origins of Party Politics in Massachusetts, 1789-1815 184-88 (1970); Heimert, supra note 44, at 179-83 (attributing anti-lawyer sentiment to their enforcement of hierarchy, particularly during Shays' Rebellion). See also Bailyn, supra note 71, at 30-31 (common law constitutional thought correlates with lawyers' support for Revolution); Forrest McDonald, Novus Ordo Seclorum: The Intellectual Origins of the Constitution 20-80 (1985) (identifying lawyers' attitudes towards liberty and property as central to framing of Constitution).


86 See Kerber, supra note 45, at 148-49 (concluding that majority of Philadelphia bar was "probably" Federalist); Banner, supra note 84, at 184 ("In the case of law . . . social origins and training, as well as the structure and ethic of the profession, powerfully disposed the legal practitioner toward Federalism."); in Daniel Aaron ed. (discussing dissents between Federalist and Republican physicians in Philadelphia over causes and treatments of yellow fever).
of the two groups. Attitudes towards religion, and attitudes toward science, which seem to parallel religious values, appear to explain some of the differences between physicians and lawyers. For example, the American Philosophical Society, a bastion of Republicans, promoted study of natural history, which Federalists found disturbing and inconsistent with their understanding of limitless nature. One might argue that average physicians more were likely to accept rationalist view and lawyers more likely to want stability because their professions taught those different values.

The Rush brothers provide one window into the differences of lawyers and scientists. When one contrasts Jacob Rush's conservatism and hierarchical world view with the views of his brother Benjamin Rush, who was born two years earlier, one is left wondering how to explain the differences. The Rush brothers were close; they lived together in Philadelphia in the 1770s. Benjamin dedicated his Essays to Jacob and attempted to have his brother appointed a Federal district judge during the Adams Administration. To some extent, the differences between Benjamin and Jacob Rush may be exaggerated. Historians have taken a too optimistic assessment of Benjamin's Republicanism. He pessimistically wrote to John Adams in 1789 that "an Hundred years hence, absolute monarchy will probably be rendered necessary in our country by the corruption of our people."

Benjamin Rush had some religious values that were similar to those of his brother Jacob. By the 1790s, the optimistic Benjamin who placed faith in politics had turned

---

87 Banner, supra note 84, at 187-91.

88 See generally Kerber, supra note 45, chap. 3.
pessimistic. Influenced by Edmund Burke, he feared that "disorder would reign everywhere until the coming of the Messiah." In a letter to British abolitionist Granville Sharp, Benjamin worried about the decline in Christianity. "Tyranny, anarchy, war, debt, standing armies . . . are the natural consequences of liberty and power uncontrolled by the spirit of Christianity." By the late 1790s he "anticipate[d] nothing but suffering to the human race while the present systems of paganism, deism, and atheism prevail in the world." In a letter to a former student, he endorsed Montesquieu's statement that "Christianity is full of good sense." By 1808, he had given up attending both the Presbyterian and Episcopal churches, but continued to have beliefs that were "a compound of orthodoxy and heterodoxy."

Benjamin also advocated using the Bible to teach reading in the public schools, in order to teach students morality. Nevertheless, Benjamin seems to have had a larger role for Christianity than his brother, who saw religion as a way of controlling individuals. Benjamin saw Christianity as providing a basis for republican government and he saw a need for compassion, which seems absent from Jacob's thinking. For example, he opposed capital punishment, which his brother apparently imposed with the relish of one

---

89 Rush to Noah Webster, June 20, 1799, 2 Letters of Benjamin Rush, supra note 29, at 811; Rush to John Steward, Dec. 28, 1796, id. at 783; Rush to John Adams, April 5, 1808, id. at 962-63.

90 See Heimert, supra note 44, at 529 (distinguishing Benjamin's invocation of Christianity as a basis of republicanism and Jacob's conservatism); John M. Kloos, A Sense of Diety: The Republican Spirituality of Dr. Benjamin Rush 81 (1991) (focusing on Christianity as basis for republicanism in Benjamin's thought). Unlike his brother, he believed that religious opinions had only "slender influence" upon people's behavior. Rush to Thomas Jefferson, Letters of Benjamin Rush, supra note 29, at 864.
carrying out a divine command.\footnote{On capital punishment, see Kloos, supra note 90, at 98-99; Charges, supra note 28, at 83-84; Richards, supra note 26, at 15 (detailing Rush’s refusal to hear appeals from sentence of death); 1 Letters of Bejamin Rush, supra note 29, at 600 (lamenting Quakers’ refusal to allow a black church to meet in the Quakers’ meeting house, because the black church sings hymns).}

Some other differences remain between the brothers. Jacob maintained his membership in the Presbyterian church, while Benjamin left the church and advocated universal salvation. While Jacob thought that the use of the oath was indispensable for witnesses in court, Benjamin advocated abolishing oaths.\footnote{Eric Foner, Tom Paine and Revolutionary America 135-26 shows that Dr. Rush was fearful of democracy. As Dr. Rush wrote in a letter to John Adams, "a simple Democracy or unbalanced republic, is one of the greatest evils." 1 Letters of Benjamin Rush, supra note ? , at 521-22 (July 21, 1789).} A full analysis of the differences between Benjamin and Jacob will require examination of Jacob’s letters to his brother, which are in the American Philosophical Society. Nevertheless, there appear to be some important similarities in their reliance on religion for preserving virtue and in their pessimism towards democracy, but Benjamin does not appear to have the same narrow role of religion in providing order and structure to society as Jacob.

Conclusion

Take my advice, which, not pursuing
Your’re surely in the road to ruin,
For, rul’d by man, and not by law,
Your rights will not be worth a straw\footnote{Fessenden, supra note 2, at 210.}

Whatever one thinks of the assessments of David Hackett Fisher and Richard
Buel that the Federalists of the 1790s adopted the techniques of their political rivals in order to appeal to voters--while still maintaining their hierarchical political philosophy--it appears that Federalist judges used their positions to appeal politically to their jurors, and, through the publication of their charges, to the public in general.

In particular, Judge Jacob Rush used his power to advance the position of Federalists that Christianity was the keystone of the republic. Without Christianity, there could be no morality and the republic would quickly crumble. Upon the bedrock of Christianity, Rush built a superstructure consisting of obedience to authority. Obedience was commanded by God and was necessary to the maintenance of order. Even the slightest deviation from obedience to both human and divine laws could destroy the republic in a short while. One only needed to look to France to see the likely conclusion to America's infidelity.

In his charges on commonplace subjects such as drunkenness, observance of the Sabbath, patriotism, swearing, and gambling, Rush advanced Christianity and obedience in opposition to Deists and anyone else who failed to follow the laws laid down by God and humans. When Rush in 1796 impugned the patriotism of Thomas Paine for undermining "religion, the only foundation of government," he was part of the Federalist fight for the soul of the American republic. The hierarchy represented by his party was passing away and with it the world of which he was a part. But he did everything possible to maintain the values of the Federalists until his death in 1819, as the nation was beginning to face the crisis that eventually did tear down the pillars supporting the American republic.
Buel that the Federalists of the 1790s adopted the techniques of their political rivals in order to appeal to voters—while still maintaining their hierarchical political philosophy—it appears that Federalist judges used their positions to appeal politically to their jurors, and, through the publication of their charges, to the public in general.

In particular, Judge Jacob Rush used his power to advance the position of Federalists that Christianity was the keystone of the republic. Without Christianity, there could be no morality and the republic would quickly crumble. Upon the bedrock of Christianity, Rush built a superstructure consisting of obedience to authority. Obedience was commanded by God and was necessary to the maintenance of order. Even the slightest deviation from obedience to both human and divine laws could destroy the republic in a short while. One only needed to look to France to see the likely conclusion to America's infidelity.

In his charges on commonplace subjects such as drunkenness, observance of the Sabbath, patriotism, swearing, and gambling, Rush advanced Christianity and obedience in opposition to Deists and anyone else who failed to follow the laws laid down by God and humans. When Rush in 1796 impugned the patriotism of Thomas Paine for undermining "religion, the only foundation of government," he was part of the Federalist fight for the soul of the American republic. The hierarchy represented by his party was passing away and with it the world of which he was a part. But he did everything possible to maintain the values of the Federalists until his death in 1819, as the nation was beginning to face the crisis that eventually did tear down the pillars supporting the American republic.