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THE WILSONIAN DILEMMA

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This essay explores James Wilson's approach to the so-called "Madisonian Dilemma." I first explain how the tension between majority rule and minority rights was more extreme for Wilson than for most founders. I then show how his view of human nature and moral epistemology allowed him to resolve the dilemma. Although Wilson's solution may be less realistic than Madison's, it is still worthy of serious consideration because of its influence on the creation of America's constitutional system.

James Wilson (1742-1798) is perhaps the most underrated founder. One of only six men to sign both the Declaration and the Constitution, his influence on the latter was second only to that of James Madison. Wilson also played a central role in the ratifying debates, and he was the moving force behind the Pennsylvania Constitution of 1790. Furthermore, as a law professor and Supreme Court Justice, he produced some of the period's most profound commentary on the Constitution and American law.

In spite of his importance, Wilson's political theory has been relatively ignored by the scholarly community. This article contributes toward remedying this gap in the literature by addressing Wilson's approach to a central theme in American political theory: the conflict between majority rule and the protection of minority rights. Often described as the "Madisonian Dilemma," the tension between these two ends was actually more extreme for Wilson than Madison. Yet, although Wilson came to a significantly different solution to the problem, his approach to the dilemma has never been systematically examined and analyzed. This may be because his solution is less realistic than Madison's, but even so it should be studied because of its influence on the creation of the American republic.¹

NATURAL LAW AND NATURAL RIGHTS

James Wilson did not have a theory of minority rights *per se*. Instead, he believed that all individuals possess natural rights, whether they are in the minority or the majority. These rights are based upon an explicitly theistic theory of natural law. He taught that "our Creator has a supreme right to prescribe a law for our conduct, and that we are under the most perfect obligation to obey that law, are truths established on the clearest and

most solid principles” (McCloskey 1967, 126). But as clear as these truths were to Wilson, and in spite of his clear presentation of them in his law lectures, many contemporary scholars have ignored this aspect of his thought. It is necessary, therefore, to briefly outline his theory of natural rights.²

Wilson followed Richard Hooker, who himself borrowed from St. Thomas Aquinas, when he divided law into several categories. First Wilson proposed that all law should be divided into two main classes, divine and human. The former may be divided into four species: (1) eternal law, (2) celestial law, (3) physical laws, and (4) “that law which God has made for man in his present state” (McCloskey 1967, 124). The latter, Wilson explained, is called the “law of nature,” if it is addressed to men, or “the law of nations,” if it is addressed to political societies (McCloskey 1967, 123).

The second great class of law is known as “human law.” This law “must rest its authority, ultimately, upon the authority of that law, which is divine” (McCloskey 1967, 123). Wilson taught that it is divided into two species: “1. That which a political society makes for itself. This is municipal law. 2. That which two or more political societies make for themselves. This is the voluntary law of nations” (McCloskey 1967, 125). Wilson was clear that both kinds of law must correspond to natural law, or they are void. It is from this principle that he derived his theory of natural rights.

Wilson did not make the sort of distinctions between the terms “natural law,” “natural right,” and “natural rights” that some philosophers make.⁴ Instead, he thought that natural rights are simply what individuals are “entitled” to by “nature and nature’s law” (McCloskey 1967, 589,722). To claim a natural right is simply another way of appealing to natural law. For instance, if natural law dictates that all persons must be free, it follows that individuals have a natural right to be free. It is therefore necessary for positive law to respect the natural right to freedom.

Wilson’s most extensive discussion of natural rights is seen in his law lecture entitled “Of the Natural Rights of Individuals.” He began by criticizing Edmund Burke and Sir William Blackstone because he thought that they taught that the origin of natural rights is merely human. Instead, Wilson argued that men and women possess rights based on natural law regardless of where or when they live. Central among these are the rights of individuals to safety, property, character, and liberty. He had a fairly expansive understanding of the latter concept, arguing that it includes freedom of religion and the right to “think, to speak, to write, and to publish freely” (McCloskey 1967, 579).⁵

Wilson believed that individuals possess rights other than those mentioned above. It is not necessary, for the purposes of this essay, to examine these rights in detail. What is important is that governments must protect rights. In fact, Wilson argued that governments “should be formed to secure and to enlarge the exercise of the natural rights of its members; and every government, which was not his view, and its principal object, is not a government of the legitimate kind” (McCloskey 1967, 592). All members of society should be equally protected by these laws, whether they are in a minority or a majority, because law is founded upon moral principles, not popular opinion. Foreshadowing John Stuart Mill’s opposition to majority tyranny, Wilson wrote that:

On one side, indeed, there stands a single individual: on the other side, perhaps, there stand millions: but right is weighed by principle; it is not estimated by numbers (McCloskey 1967, 577. Compare with Mill 1989, 20).

No other conclusion is warranted, Wilson taught, since natural law was created by God and therefore provides an absolute, immutable, and universal moral standard. The individual rights of men and women are founded on this law. Human laws must be based on this higher law if they are to be valid. Any human law that does not meet this criterion is void. Wilson’s view of natural rights must be considered a “strong” theory because he held that everyone’s rights, even those of a small minority, must always be protected. How this may be done, and how natural law/rights may be known is discussed below. First, however, it is necessary to examine the other horn of the Wilsonian Dilemma.

WILSON THE DEMOCRAT

Because Wilson believed so strongly that individual rights must be protected, one might assume he would join many of the other founders in their distrust of majority rule. Indeed, James Madison suggested in a letter to Thomas Jefferson that

the invasion of private rights is **chiefly** to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the Government is mere instrument of the major number of its constituents (Meyers 1973, 206).

In addition to theoretical problems he might have had, Wilson had also been a victim of mob violence, the ultimate tyranny of the majority (Smith 1956). It is somewhat surprising, then, that he was one of the most consistent and ardent promoters of democracy in late eighteenth century America. Wilson

held that governments must be based on consent if they are to be legitimate. Further, he vigorously advocated institutions of government that maximize citizen participation in public affairs. Although one commentator's description of him as an advocate of "unrestrained majoritarianism" is an exaggeration, he was clearly one of the foremost democrats in the founding period (Rossum 1976, 116).

Central to Wilson's theory of government is the importance of popular consent. He noted "[t]hat the supreme power...should be vested in the people, is in my judgement the great panacea of human politics. It is a power paramount to every constitution, inalienable in its nature, and indefinite in its extent" (McMaster and Stone 1970, 230). Wilson taught that popular consent could be transferred to a legitimate government through the device of a social contract. He followed Locke, however, in arguing that the people always retain their sovereignty, they cannot contract it away (McMaster and Stone 1970; Locke 1988). While Americans might place a system of government over themselves, they are always sovereign. They are the foundation upon which government is dependent. Their consent, he proposed, is the "sole legitimate principle of obedience to human laws" (McCloskey 1967, 180).⁶

Wilson's theory of popular sovereignty led him to have a more progressive view of suffrage than most of his contemporaries. Believing that every independent person should be able to vote, he taught that

[t]his darling privilege of freeman [suffrage] should certainly be extended as far as considerations of safety and order will possibly admit. The correct theory and the true principles of liberty require, that every citizen, whose circumstances do not render him necessarily dependent on the will of another, should possess a vote in electing those, by whose conduct his property, his reputation, his liberty, and his life, may be all most materially affected (McCloskey 1967, 406).

For Wilson, only those individuals free from the direct influence of others should vote. Through the use of this standard he concluded that suffrage should be given to "every freeman." Following this principle, he joined his colleagues in concluding that children should not vote because they are under the direct control of their parents. Similarly, women, presumed to be under the control of their husbands, and slaves, clearly controlled by their masters, had no right to suffrage (McCloskey 1967).⁷

Many of Wilson's contemporaries also applied this logic to males who did not own land. Gouverneur Morris, for instance, proposed that there be a free-hold qualification for voting in national elections because landless males would be easily controlled by the rich. Although this provision was

supported by many founders, including James Madison, Wilson rejected it as unnecessary and dangerous. The Convention eventually compromised by allowing states to decide their own qualifications (Farrand [1911] 1966). Many of them eventually chose to liberalize their voting laws to meet Wilson's more democratic standards. In Pennsylvania, he personally led the fight in the convention of 1789-90 which resulted in an "almost negligible tax qualification for voting" (McCloskey 1967, 5).

Wilson consistently advocated a liberal view of suffrage. In this manner he attempted to broaden the foundation of government. To him, government is like a pyramid, with a constituent people as its base. He explained that

[t]he pyramid of government—and a republican government may well receive that beautiful and solid form—should be raised to a dignified altitude: but its foundation must, of consequence, be broad, and strong, and deep. The authority, the interests, and the affections of the people at large are the only foundation, on which a superstructure, proposed to be at once durable and magnificent, can be rationally erected (McCloskey 1967, 403).

Thus the people are the foundation upon which a constitution can be based. The government is then created by this document, which outlines the powers of the various institutions. Theoretically institutions could take a multitude of forms, so long as the people consent to them. To Wilson, however, the best government is that which maximizes the participation of the people. Accordingly, he was the most consistent proponent of democracy at the Constitutional Convention of 1787.⁸

From the start of the Convention, Wilson contended that every institution should be as firmly based in the direct consent of the people as possible. For instance, he advocated the direct popular election of both representatives and senators. In addition, he argued that since people, not states, are the basis of representation, members of both houses ought to be elected from proportionally sized districts to prevent unfair influence by a minority (Farrand 1966). He explained that

all elections ought to be equal. Elections are equal, when a given number of citizens, in one part of the state, choose as many representatives, as are chosen by the same number of citizens, in any other part of the state. In this manner, the proportion of representatives and of the constituents will remain invariably the same (McCloskey 1967, 406).

For the same reason Wilson proposed the direct, popular election of the executive.⁹ In doing so he realized that he was at odds with much of the

conventional wisdom of his day. He admitted that his proposal might be considered "chimerical," but he noted that "at least in theory he was for an election by the people" (Farrand 1966, I:68). When few delegates supported this proposal, Wilson joined with others to contain his loss by helping to form the electoral college. This vehicle allowed the states to appoint electors in any manner they saw fit, which at least left open the possibility that states could choose them by popular vote (Farrand 1966; McCloskey 1967). He also fought for a variety of small details that illustrate his profound commitment to democracy.¹⁰

Skeptics have claimed that Wilson supported majority rule simply for rhetorical reasons, or because his state would benefit from representation on the basis of population (Jenson 1956; Sargent 1988). Such analysis ignores Wilson's advocacy of democracy throughout his lifetime. For instance, Wilson, as the undisputed leader of Pennsylvania's constitutional convention of 1789-90, deserves credit for winning the direct, popular election of the governor, representatives, and senators (Seed 1978; McCloskey 1967). He also faithfully supported the principle of one-man-one-vote, arguing that it should be applied to each branch of the legislature. Finally, he again showed himself to be a consistent democrat even regarding the details of government when he opposed any form of term limits and supported a provision for compulsory voting, "if elections are not properly attended" (Seed 1978, 137).

Wilson was one of this country's greatest democrats in the founding era. On many issues he was far ahead of his time. For example, Wilson's ideal of a popularly elected senate was not constitutionally protected until the Seventeenth Amendment was ratified in 1913. Similarly, his principle of one-man-one-vote was not guaranteed until the 1964 Supreme Court case *Wesberry v. Sanders*. And to this day, America has still not adopted Wilson's proposal that the people directly elect the president. It thus is fair to conclude with Charles Page Smith that Wilson

believed in the political capacity of the people, and was anxious to have them exercise political power directly rather than filtered through various political mediums designed to sift out "ignorant passions." Far more than most of his colleagues Wilson stood in the main current of what was to become the American democratic tradition (1956, 238).

MORAL EPISTEMOLOGY AND HUMAN NATURE

The "Wilsonian dilemma" arises because of Wilson's support for two good but seemingly incompatible ends. On the one hand was his belief that natural rights must be protected by the government. On the other was his

insistence that governments must be based on the direct consent of the people. For many thinkers these two goals are mutually exclusive. Wilson, however, believed that majority rule and the creation of human law in agreement with natural law (thereby not violating natural rights) went hand-in-hand. He reached this conclusion because of his moral epistemology and view of human nature.

Wilson contended that the “will of God,” in moral matters, is discovered through “our conscience, by our reason, and by the Holy Scriptures” (McCloskey 1967, 133). If there seems to be disagreement among these, he proposed that “[w]here the latter give instructions, those instructions are supereminently authentic” (McCloskey 1967, 144). Revelation given to men and women in the Bible contains “moral precepts” that “form a part of the law of nature” (McCloskey 1967, 143). But these principles deal primarily with the relationship between God and individuals. Because the Scriptures do not give specific instructions on many matters,

whosoever expects to find, in them particular directions for every moral doubt which arises, expects more than he will find. They generally presuppose a knowledge of the principles of morality; and are employed not so much in teaching new rules on this subject, as in enforcing the practice of those already known, by a greater certainty, and by new sanctions (McCloskey 1967, 144).

Thus, while Wilson respected and deferred to the Bible, he did not think that it contained the sort of practical moral guidance necessary for governing individuals and society. Instead, he proposed that to solve most moral problems, God gave men and women a moral sense and reason to provide knowledge of the natural law.

Wilson borrowed from both Francis Hutcheson and Thomas Reid when he argued that all men and women have a sixth sense whereby they intuitively know the difference between right and wrong.¹¹ As evidence for the moral sense, Wilson pointed to the ability of children to distinguish between good and bad actions, even though their ability to reason is not well developed. He also made an anthropological argument, referring to the fact that every culture and language has similar notions of value. Wilson admitted that he could not “prove” the existence of a moral sense. It is something all individuals simply “feel.” He explained that:

The science of morals, as well as other sciences, is founded on truths, that cannot be discovered or proved by reasoning. Reason is confined to the investigation of unknown truths by the means of such as are known. We cannot, therefore, begin to reason, till we are

furnished, otherwise than by reason, with some truths, on which we can found our arguments (McCloskey 1967, 133).

The moral sense provides knowledge of the basic principles of natural law. Usually this knowledge is sufficient to solve moral problems, but hard cases occasionally arise. Wilson, quoting Reid, taught that:

Moral truths may be divided into two classes; such as are selfevident, and such as, from the selfevident ones, are deduced by reasoning. If the first be not discerned without reasoning, reasoning can never discern the last. The cases that require reasoning are few, compared with those that require none; and a man may be very honest and virtuous, who cannot reason, and who knows not what demonstration means (McCloskey 1967, 136).¹²

Most moral problems, then, may be solved by following the dictates of one's moral sense. Moral dilemmas that require individuals to reason from intuitive first principles to the appropriate conclusion are rare. Unfortunately, Wilson did not explore the distinction between these two types of moral problems, or even give examples of each kind. Perhaps he did not think this was necessary since almost every moral problem may be solved through the moral sense alone (McCloskey 1967).

Wilson acknowledged that there is an important difference between knowing and doing good. Although all people possess a moral sense, not all choose to follow it. This is because men and women have free wills. Individuals may be led by their self-interest, passions, or prejudices to ignore their moral impulses and do what they know is wrong. If they do so over a long period of time, their moral senses may become dull. In a similar manner, if a society has bad laws, which are contrary to natural law, the moral senses of its citizens may be corrupted (McCloskey 1967).

Yet Wilson clearly thought that most people know and follow correct moral principles. In this respect he rejected the Hobbesian notion that men are excessively self-interested. He also challenged the liberal mechanistic view of the formation of society when he proposed that humans are naturally sociable. He explained that "the Author of our existence intended us to be social beings; and has, for that end, given us social intellectual powers" (McCloskey 1967, 230). As such, men and women naturally form and perpetuate societies. Further, within these societies they usually act in a moral manner. "Even the most consummate liar," he pointed out, "declares truths much more frequently than falsehoods" (McCloskey 1967, 395).

Wilson's relatively positive view of human nature and society is not surprising given his adherence to Scottish moral sense theory. Although

the Scottish thinkers were not in total agreement on the subject, most of them shared Wilson's optimistic views (Bryson 1945; Schneider 1967). Yet even if men and women are not predominantly self-interested, it does not follow that they are not in need of training. To this end, as Beer (1993), Conrad (1985), Nedelsky (1990) have demonstrated, Wilson supported a subtle form of civic education.¹³ He believed that properly designed democratic institutions would help bring the people together and encourage them to be patriotic. Through their participation in the new republic's government, he was confident that America would become a "progressive state, moving on towards perfection" (McCloskey 1967, 84).

Wilson's rejection of the liberal view of human nature and the formation of society has led some to suggest that he was strongly influenced by the classical republican tradition (Sellers 1994; Pascal 1991). There is a good deal of truth in this claim as it applies to his understanding of civic education, but ultimately this tradition alone cannot explain his political theory. It is more accurate to say that he borrowed some classical ideas to help create a state where natural rights can best be protected. Although he defended these rights by appealing to natural law, his understanding of them was relatively modern and his views regarding who could be citizens encompassed far more people than most classical republicans would allow.

In the final analysis Wilson had an optimistic, but not utopian, view of human nature. He thought that individuals are naturally sociable and that they usually act in a moral manner. Through education and participation in democratic institutions they can become better citizens. But Wilson was enough of a realist to recognize that humans are occasionally "seduced, by our passions and by our prejudices" (McCloskey 1967, 291). Hence he saw the necessity for government and laws.

WILSON'S SOLUTION

When Wilson coupled his optimistic view of human nature with his moral sense theory, he arrived at a solution to the so-called Madisonian dilemma. Because of his moral epistemology, he thought that most moral problems could be solved by individuals through the use of their moral sense. Since everyone possesses this sense equally, it follows that whatever most people think is morally correct is, indeed, correct. Thus the surest way to know moral truth is to look at the opinions of the people, not philosophers, theologians, or other "experts" (McCloskey 1967).¹⁴

Wilson taught that the best way to make laws in agreement with natural law is to make them according to the will of the people. "Happily," he remarked, "the general and most important principles of law are not removed to a very great distance from common apprehension" (McCloskey

1967, 72). Majorities in a democracy can generally be trusted to enact fair laws. Theoretically, since there is only one moral truth, and because all men and women may know it, majority opinion should always be unanimous. Wilson recognized, however, that this is seldom the case. On any given issue some people will be led astray by their own interests, or will be unable to reason to correct conclusions. Also, lack of knowledge about a situation might result in men and women reaching different conclusions. In these circumstances, "the voice of the majority must still be deemed the will of the whole" (McCloskey 1967, 242). The only other option, Wilson explained, is to adopt a minority's opinion. This would be unfair and, more important, probably wrong.

Following the will of the majority "is most reasonable; because it is not so probable, that a greater number, as that a smaller number concurring in judgement, should be mistaken" (McCloskey 1967, 243). Thus majority rule is not an end in itself. Rather, majorities govern because they are more likely than minorities to legislate according to the natural law. The latter must abide by the decisions of the former because of their original consent to a democratic form of government (McCloskey 1967).

Wilson was led by his understanding of moral sense philosophy and his faith in human nature to embrace majority rule. Through the collective judgement of the people, utilizing their moral sense and reason, natural law can be known and translated into positive law. It must be emphasized that Wilson supported democracy because it is the best way to know natural law, not as an end in itself. Through democratic institutions it is possible to create a system of law which "rests its authority, ultimately, upon the authority of that law which is divine" (McCloskey 1967, 124).

In some respects, Wilson's solution may leave one longing for, in Samuel Beer's words, "not only astringency of Madison's style but the skepticism of his psychology" (1993, 368). Yet Wilson was not simply a philosopher who could stop reasoning when he reached an ideal conclusion. He was also a politician who recognized the reality that individuals and majorities do not always act morally. Undaunted by this fact, he carefully expanded his theory to take this reality into account.

COUNTER-MAJORITARIAN CHECKS

Although Wilson was generally optimistic about the nature of persons, he realized that humans are "frail and imperfect" (McCloskey 1967, 278). Men and women may act immorally in the pursuit of their own interests. Even majorities might occasionally violate natural law if their passions overrule their moral senses or, though these cases are rare, they are unable

to reason to appropriate conclusions. It was in these sorts of circumstances that tyranny could arise in the United States.

Wilson feared two types of tyranny. The first was that of a few corrupt legislators conspiring to deprive the people of their rights and liberties. To prevent this, Wilson supported a variety of measures that made it extremely difficult to form such a cabal. These included the separation of powers and checks and balances between the branches of the national government. Perhaps more significant, the direct involvement of the people in regularly selecting almost every member of government would prevent corruption and minority tyranny (Farrand 1966; McCloskey 1967).¹⁵

More important for the purposes of this essay, however, was Wilson's fear of majority tyranny. He admitted that the masses occasionally act on the basis of "self-interest," "passions," and/or "prejudices" or they "become inflamed by mutual imitation and example" (McCloskey 1967, 291). In these cases they may support dangerous or immoral laws. To restrain the excesses of the majority, and its influence on their elected representatives, Wilson supported several important checks aimed at restricting the power of the people and those representatives most immediately accountable to them. For instance, although he advocated the direct election of senators, Wilson believed that they should have much longer terms than representatives so that they would not be as immediately accountable to the people. In this manner the Senate should serve as a check on hasty action by the House of Representatives. For similar reasons Wilson also supported the creation of a Council of Revision and an executive veto (Farrand 1966).

The most significant counter-majoritarian check that Wilson supported was that of judicial review of both state and congressional legislation (Farrand 1966). He believed that it is an important form of institutional protection for the Supreme Court, and that it is a means of protecting the rights of the people. In his law lectures, Wilson explained that legislation might be vetoed by the executive and that it is

subject also to another given degree of control by the judiciary department, whenever the laws, though in fact passed, are found to be contradictory to the constitution (McCloskey 1967, 300).

The Supreme Court is in a particularly good position to check Congress because justices would be well trained in complex legal matters and would be somewhat insulated from popular passions (McCloskey 1967; Farrand 1966). If laws contradict the Constitution, the Court may prevent their enforcement. Wilson showed that he was serious in this regard when he led two other judges in refusing to comply with an unconstitutional order of Congress.¹⁶

Although the concept of judicial review of congressional legislation was not widely supported, Wilson also advocated the more controversial idea that legislature is bound by something besides the Constitution. In his law lectures he compared the United States to England, noting that English courts have the ability to declare acts of Parliament void if they contradict natural law. He then wrote that in the United States “the legislative authority is subjected to another, **beside that arising from natural and revealed law**; it is subjected to the control arising from the constitution” (McCloskey 1967, 329 [emphasis added]).¹⁷ Thus Wilson was prepared to invest the Court with a good deal of power to check the will of the people, as manifested through their representatives, on the basis of unwritten natural law.

Wilson’s support of counter-majoritarian institutions and practices seems to repudiate his democratic theory. If democracy is the best way to make positive law in agreement with natural law, why is it ever necessary to check the will of the people? To understand why Wilson was not inconsistent in this regard, it is first important to recognize that most of his so-called counter-majoritarian checks are actually fairly democratic. For instance, both senators and the president are ultimately accountable to the people—they are simply less immediately accountable than representatives. Further, he was confident that these and other counter-majoritarian checks would not be used very often. Regarding judicial review, for instance, he wrote that “[l]aws may be unjust, may be unwise, may be dangerous, may be destructive; and yet not be so unconstitutional as to justify the Judges in refusing to give them effect” (Farrand 1966, II:73). He also argued for judicial self-restraint, noting that a “prudent and cautious judge” will “remember, that his duty and his business is, not to make the law, but to interpret and apply it” (McCloskey 1967, 502).

Wilson did not seriously consider the possibility that the Court would use its powers to thwart the majority on many issues. He believed it would use its power of judicial review only rarely, and then to strike down blatantly unconstitutional or unjust laws. Thus counter-majoritarian checks like the Senate, the executive veto, and judicial review are best viewed as temporary injunctions for preventing majorities from acting out of “passions” and “prejudices” that are “inflamed by mutual imitation and example” (McCloskey 1967, 291). In the final analysis they cannot prevent the people from passing a law or constitutional amendment, but this is as it should be since the people are best able to create laws in agreement with natural law. Further, through education and participation in democratic institutions the people will eventually progress to the point where majorities can always be trusted and checks and balances will no longer be needed (McCloskey

1967). Until that day, however, Wilson was realistic enough to see their utility.

CONCLUSION

It is unfortunate that Wilson's approach to the so-called Madisonian dilemma has received little attention. The dilemma was more extreme for Wilson than Madison insofar as he had a "stronger" theory of natural rights and was more democratic than the latter. Yet, in a sense, the Madisonian dilemma was not a dilemma for Wilson, since one of the two ends took priority over the other. He did not support majority rule as an end in itself, but merely as a means to protect minority rights.

In the final analysis, it is tempting to criticize Wilson for having too optimistic a view of human nature. Certainly many contemporary political scientists are likely to prefer Madison's more practical solutions. Yet Wilson's formulation of and solution to the Madisonian dilemma is worthy of consideration if one agrees with his claim that the primary purpose of government is to protect natural rights. If this is true, then Wilson's approach has merit insofar as he consciously addressed the problem of creating political institutions capable of knowing and protecting these rights.

Although Wilson and Madison differed in their understanding of the Madisonian dilemma, in practice they supported very similar institutions of government at the Constitutional Convention. Their primary difference was that Wilson more readily supported thoroughly democratic institutions such as the direct, popular, and proportionate election of representatives, senators, and even the president. Since 1789, the Constitution has been changed by amendments, court cases, and political practice to recognize these ideals. As the Constitution has become more democratic, most reasonable political scientists and historians would agree that America has done a better job of protecting the rights of minorities. Although this protection has sometimes apparently been expanded in spite of majority opinion, it has always occurred within the constitutional framework envisioned by Wilson.

If Wilson's practical solutions to the perennial problem of modern democracy have been successful, it is only reasonable to carefully examine the political theory which led him to embrace these solutions. In doing so political scientists can learn more about the founding era, and they can better understand America's current constitutional system. Further, if Wilson's theory is correct, it may be possible to use his principles to help create new democracies dedicated to the protection of the "natural rights of its mem-

bers," which is, after all, "the primary and the principle object in the institution of government" (McCloskey 1967, 592).

NOTES

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¹There have been several fine studies on various aspects of Wilson's thought, but given his importance it is fair to say that he has been relatively ignored by the general scholarly community. The bibliography includes the most important published studies of Wilson's political theory. For discussion of the Madisonian dilemma see especially Dahl (1956); Bickel (1962).

²Scholars who ignore Wilson's theistic natural law theory include Hills (1989), Conrad (1985, 1988), Nedelsky (1990), and Horowitz (1977).

³Compare Wilson's classification of law with Hooker (1888) and Aquinas (1945). Also see Obering (1938) and O'Donnell (1937).

⁴For an example of someone who uses these distinctions carefully see Strauss (1950).

⁵Wilson did not support the addition of a bill of rights to the Constitution because he believed such a document would limit, rather than protect, the rights of men and women. On this issue see McMaster and Stone (1970). Arkes (1990) contends that Wilson's argument has merit.

It is true, as Shain (1994) points out, that Wilson, like most founders, would have rejected the excessively individualistic view of rights held by many modern Americans. Yet Wilson's view of rights was clearly more liberal and less communal than Shain believes. Also see McCloskey (1967).

⁶For a good discussion of Wilson's theory of sovereignty in relation to federalism see Beer (1992) and Dennison (1977).

⁷It should be noted that Wilson opposed the institution of slavery and apparently favored the right of freed slaves to vote (McCloskey 1967).

⁸Some of Wilson's contemporaries argued that he was not democratic enough. Chief among the evidence they cited was his opposition to the Pennsylvania Constitution of 1776. His objections, however, stemmed

from his belief that the institutions created by this document were flawed. While he was concerned with majority tyranny, he was not against the creation of democratic institutions. The connection between popular sovereignty and the creation of good laws is discussed below.

⁹On Wilson's contributions to the creation of the presidency see especially DiClerico (1987) and McCarthy (1987).

¹⁰For instance, Wilson opposed all proposed restrictions on who could hold office, including those based on age, country of origin, length of residence, and length of time in office (Farrand 1966).

¹¹Unlike some moral sense theorists, such as David Hume or Adam Smith, Wilson contended that the moral sense gives knowledge of the natural law. Scottish moral sense theory can be traced back to the Earl of Shaftesbury. For further discussion see MacIntyre (1988), Hutcheson (1969), Reid ([1785] 1827, [1764] 1970), and Stimson (1990).

¹²Wilson borrowed this passage from Thomas Reid (1827, 353-55) without citation.

¹³The above noted literature provides a good discussion of the importance of democratic participation and community in Wilson's thought, but the authors neglect the significance of his natural law claims. As a result they have difficulty explaining Wilson's counter-majoritarian checks. I discuss these issues in the last two sections of this essay.

¹⁴Wood (1991) emphasizes the relationship between moral sense theory and democratic equality.

¹⁵One of the most important reasons Wilson opposed the Pennsylvania Constitution of 1776 was that it did not contain separated powers or checks and balances that he believed necessary to prevent corruption. Nedelsky (1990) proposes that Wilson's support for checks and balances was aimed solely at tyranny by governing officials.

¹⁶*Hayburn's Case* (1792). For further discussion see Farrand (1907-08).

¹⁷This passage is ignored by most recent discussions of Wilson's democratic theory. See, for instance, Nedelsky (1990), Conrad (1985), Beer (1993), and Hills (1989).

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Hayburn's Case. 1792. 2 U.S. (2 Dall.) 411.

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