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James Wilson

Presbyterian, Anglican, Thomist, or Deist? Does It Matter?

Mark D. Hall

James Wilson is buried in America's Westminster Abby—Christ Church, Philadelphia. This Anglican church is only blocks away from the First Presbyterian church in Philadelphia, where Wilson rented a pew until the end of his life. Some scholars report that Wilson joined the Anglican Communion in 1778, perhaps at the behest of one his best friends, William White, the first Anglican bishop of Philadelphia. Others claim he that never abandoned the Presbyterianism of his native Scotland. Still others pay no attention to his denominational commitments, arguing that he was actually a Thomist or a deist. Finally, some scholars say nothing about his religious identification or beliefs, apparently concluding that these things are unrelated to his political and legal accomplishments.

It is a central thesis of this book, and of this chapter, that religion does matter. It matters for a number of reasons, but with respect to politics it is particularly significant because the most interesting political questions are ultimately moral questions, and most peoples' moral views are tied to their religious commitments. Even if political actors are not themselves religious (and many of them have been), they have been forced to take into account the religious sensibilities of the people they represent or govern. This is particularly true with respect to America, where religion—specifically, Christianity—has been central to our political tradition. It is certainly true in the case of James Wilson.

BIOGRAPHY

James Wilson was born in Carskerdo, Scotland, in 1742, the son of a lower-middle-class farmer. Dedicated to the ministry at birth, he received an uncommonly good classical education that enabled him to win a scholarship to the University of St. Andrews. Wilson studied there for four years before entering the university's divinity school, St. Mary's, in 1761. He was forced to withdraw in 1762 upon the death of his father, and for a few years served as a tutor to support his family. The life of a pedagogue did not suit Wilson, so as soon as his siblings were old enough to support their mother, he immigrated to America in search of greater opportunities. Arriving in Pennsylvania in 1765, Wilson taught Latin and Greek at the College of Philadelphia for a year before reading law under John Dickinson. He flourished as a lawyer and, as the Revolution approached, was drawn into politics.

Wilson achieved national recognition in 1774 with the publication of "Considerations on the Nature and Extent of the Legislative Authority of the British Parliament," the first essay to argue that Americans had absolutely no obligation to obey Parliament. He was able to put his theory of resistance into practice after he was appointed to the Continental Congress in 1775. He became an important participant in the debates over the controversy with Great Britain, and eventually cast the tie-breaking vote in the Pennsylvania delegation in favor of independence.

Wilson was one of the eight framers of the Declaration of Independence to attend the Constitutional Convention, and one of only six to sign both documents. Among the few delegates to attend the convention from start to finish, he participated in all of the most significant proceedings. He spoke more times (168) than any other member, save Gouverneur Morris, and was a member of the important Committee of Detail. His contributions have led scholars as diverse as James Bryce, Randolph G. Adams, Max Farrand, Ralph Ketcham, Adrienne Koch, Clinton Rossiter, Samuel Beer, and Paul Johnson to agree that Wilson was second only to James Madison, and was perhaps on a par with him, in terms of influence on the Constitution.¹

Under Wilson's leadership, Pennsylvania became the second state, and the first large one, to ratify the Constitution. As the only member of the state's ratifying convention to have attended the federal convention, Wilson was in an excellent position to defend the Constitution. He began his defense with his "State House Yard Speech," an ad-

dress that soon became, according to Gordon Wood, "the basis of all Federalist thinking."² By the end of 1787, the speech had been reprinted in thirty-four newspapers in twelve states, and it was circulated in pamphlet form throughout the former colonies.³ According to Bernard Bailyn, "in the 'transient circumstances' of the time it was not so much the *Federalist* papers that captured most people's imaginations as James Wilson's speech of October 6, 1787, the most famous, to some the most notorious, federalist statement of the time."⁴ Following the ratification of the U.S. Constitution, Wilson played a major role in the Pennsylvania constitutional convention of 1789–1790.⁵

Wilson was appointed associate justice of the U.S. Supreme Court in 1789. Although the Court heard relatively few cases during his tenure, he wrote notable opinions in *Hylton v. U.S.* (1796), *Ware v. Hylton* (1796), *Wiscart v. D'Auchy* (1796), and *Chisholm v. Georgia* (1793). His most significant opinion was issued while riding circuit in 1792. In *Hayburn's case*, Wilson led Justice John Blair and district court judge Richard Peters to declare Congress's Invalid Pension Act of 1792 to be unconstitutional. Because Congress rapidly altered the act to meet his objections, and because the Supreme Court never issued an opinion, the case is often overlooked as the first instance where a federal court declared an act of Congress to be unconstitutional.⁶

Wilson's most significant contribution to American jurisprudence took place off the Court. From 1790 to 1792 he gave a series of law lectures at the College of Philadelphia. Because he believed that law should be "studied and practised as a science founded in principle" not "followed as a trade depending merely upon precedent," many of his lectures are devoted to broad moral, epistemological, and political issues.⁷ Consequently, they contain some of the most explicitly theoretical analysis of America's constitutional order by one who played a central role in its formation.⁸

Wilson was never able to revise his lectures into the definitive treatise on American law that he desired (they were, however, edited and published by his son, Bird Wilson, in 1804).⁹ In 1798 an economic downturn devastated an overleveraged Wilson, who had begun speculating in western land in the early 1770s. Thrown into jail on two separate occasions, he spent his final days hiding from creditors in a tavern in Edenton, North Carolina. There, he contracted malaria and died on August 21, 1798. He was buried with little ceremony in Edenton, where his body remained until it was reburied at Christ Church in 1906.

THE LITERATURE

Throughout the twentieth century, scholars have had a tendency to dismiss many of the founders' religious claims as rhetorical flourish. In a similar manner, many recent students of Wilson ignore his clear, consistent, and systematic appeals to God, generally, and Christian natural law theory, more specifically. A good example of this is Roderick Hills's 1989 article "The Reconciliation of Law and Liberty in James Wilson," in which Hills argues that the primary purpose of Wilson's law lectures was to synthesize "Grotius's notion of natural liberty or perfect justice with the ancient Stoic notion of natural law or distributive justice."¹⁰ This thesis is not patently unreasonable, but it is troubling that Hills refuses to defend his assertion that Wilson's conception of natural liberty or law was completely secular.¹¹ He simply ignores Wilson's clear statements that natural law is based on God. More significantly, given the thesis of his article, Hills does not even discuss Wilson's claim that Grotius weakened international law by removing it from its natural law foundation.¹²

Like Hills, other recent Wilson scholars, including Stephen Conrad, Jennifer Nedelsky, Shannon Stimson, and Samuel Beer, ignore his reliance on a traditional Christian conception of natural law.¹³ In doing so, these authors neglect some of Wilson's most important and interesting views. For instance, none of them even refers to his claim that Congress is limited by "natural or revealed law" and his strong implication that the Supreme Court can strike down a statute on the basis of this law. It is possible, of course, to argue that Wilson was confused or not serious when he made these statements, but these scholars do not make this argument.¹⁴

Far more surprising, writers who believe that America had a "Christian Founding" and who claim that virtually every founder was an orthodox Christian have either ignored Wilson or have questioned his orthodoxy. For instance, John Eidsmoe provides a detailed treatment of thirteen founders in *Christianity and the Constitution*, where he classifies George Washington, Alexander Hamilton, and James Madison as "strong Christians," but does not even consider Wilson, even though the latter had more influence on the Constitution than any founder besides Madison.¹⁵ More to the point, M. E. Bradford notes in *A Worthy Company* that fifty to fifty-three of the fifty-five authors of the Constitution were orthodox Christians, definitively leaving out only Hugh Williamson (a heterodox Presbyterian who speculated

about unfallen men who lived on comets) and Wilson (who, he allows, might have been a deist, but "was probably a free thinker in the privacy of his study").¹⁶

Although recent scholars have tended to dismiss or ignore Wilson's religious language, this has not always been the case. Randolph G. Adams, in the preface to his 1930 collection of Wilson's writings, noted the similarities between Wilson and St. Thomas Aquinas and suggested that further study of this connection might prove fruitful.¹⁷ This claim prompted a number of Catholic scholars to look at Wilson. Pioneering work in this regard was done by May G. O'Donnell, who published her findings in a 1937 book, *James Wilson and the Natural Law Basis of Positive Law*. More significant, and far more theoretically sophisticated, was William F. Obering's 1938 work, *The Philosophy of Law of James Wilson*. He contends that "Wilson was a convinced theist and bases the whole system of law on God, the Creator, an all-wise, and benevolent Providence of the universe."¹⁸ Obering argues that this commitment provided Wilson with a "solid metaphysical foundation under his ethics in general and his jurisprudence in particular."¹⁹ Once such a base was established, it was possible for Wilson to build a comprehensive theory of government and law. Obering ends his work with the conclusion that Wilson was effectively a Thomist.²⁰

For thirty years after the publication of Father Obering's book, Neo-Scholastic scholars published an impressive number of doctoral dissertations, articles, and books arguing that Wilson was a serious natural law theorist.²¹ Few of these works were theoretically sophisticated or added anything new to Obering's interpretation. One exception to this rule, Francis De Sales Powell's 1951 dissertation, "A Thomistic Evaluation of James Wilson and Thomas Reid," takes issue with Obering's attempt to reconcile Wilson's use of both Scottish moral-sense theory and Thomism. However, this work is never cited in the literature on Wilson.²² In fact, other than Obering's book, it is rare to find any of these works cited by contemporary scholars. The main reason for this seems to be that Neo-Scholastic authors primarily wrote in Neo-Scholastic forums, where they could make assumptions that were unpopular in the general academy. Thus, they wrote primarily for themselves and had little influence on mainstream scholarship of the founding era, in general, or, more specifically, on Wilson scholarship.

One does not need to be a Thomist to conclude that Wilson embraced a Christian conception of natural law. For instance, Robert G.

McCloskey, the great student of American political thought and editor of Wilson's papers, noted,

Among the several things that might be emphasized about this Wilsonian concept of natural law, perhaps the most important are its explicitly deistic origin and its normative quality. This is not the secularized natural law of some eighteenth century rationalists nor is it merely a morally indifferent rule of necessity like the "laws" of motion. It is God's ordainment, and it imposes ethical duties on men and on states.²³

In my 1997 book, *The Political and Legal Philosophy of James Wilson*, I argue that both McCloskey and Neo-Scholastics were correct in recognizing the importance of Wilson's appeals to the Christian natural law tradition. No substantive claim of my book has been attacked by reviewers of the book as much as this one. Most notably, David Thomas Konig, Stephen Conrad, and Gary McDowell have criticized my interpretation in book reviews.²⁴ However, like the scholars mentioned above who reject the importance of Wilson's appeals to the Christian natural law tradition, they offer no arguments to support their criticism.²⁵ On the other hand, several scholars have suggested that a major strength of my book is that I take Wilson's Christian natural law teachings seriously.²⁶

The only academic to publish a substantive critique of the idea that Wilson was a serious Christian natural law theorist, in both his review of my book and in his own article on Wilson, is Eduardo Velásquez.²⁷ He argues that sophisticated scholars can carefully read between the lines of Wilson's "Christian" rhetoric to find that for him, "human happiness or pleasure is the foundation of the natural law."²⁸ Moreover, Wilson's emphasis on self-preservation and acceptance of consent theory help to demonstrate that he does not adhere to the Christian natural law tradition. Instead, Velásquez argues that he embraced a modern theory of natural rights grounded primarily in self-interest, albeit one ameliorated by his affirmation of human sociability.²⁹

Wilson clearly and consistently appealed to Christian principles throughout his works, something particularly evident and relevant with respect to his natural law theory. Given this reality, why do most contemporary students of Wilson ignore or refuse to take seriously his religious views? I believe that there are three major answers to this question. First, all too many academics remain convinced that intelligent people are not religious. Hence, it follows that the religious language of an obviously intelligent person like Wilson must be merely

rhetorical. Second, some scholars who respect religion or are religious themselves believe modern liberalism is so antithetical to religion that when they conclude that Wilson is a liberal, they automatically dismiss his religious language as window dressing. Finally, some scholars are so desirous of finding a new, more interesting, interpretation of Wilson that they see little reason to resuscitate a seventy-year-old interpretation (even in part) and favor a new reading of Wilson more in accord with current scholarly trends.

Of course, few scholars would admit to adhering to the first or third reasons for neglecting Wilson's Christian theory of natural law, and I do not mean to question the good faith of any specific scholar I have mentioned. Moreover, I should make it clear that I believe a student of Wilson could legitimately conclude that he was not sincere about his religious/moral beliefs without fitting into any of the above three categories. However, as I argue below, there is a strong *prima facie* case that important elements of Wilson's political and legal philosophy rely on explicitly Christian principles. If scholars want to deny this, they should, at a minimum, provide arguments for their position.

RELIGIOUS BELIEFS AND DENOMINATION COMMITMENTS

Wilson was raised a Scottish Presbyterian, he studied to become a Presbyterian minister, and his best biographer, Page Smith, wrote that he "could never bring himself to abandon completely the forms and doctrines of his parents' church."³⁰ Similarly, William B. Miller, relying on church archives, documented that Wilson was a member of the governing board of the Presbyterian church of Carlisle in 1773 and that he made regular contributions to, and rented a pew from, the First Presbyterian Church of Philadelphia from 1778 until his death in 1798.³¹ Nevertheless, it is not clear that Wilson remained an active member of the church of his youth throughout his entire life.

Shortly after arriving in America, Wilson became fast friends with William White, who later became the first Anglican bishop of Philadelphia. In 1768, the two friends wrote a series of newspaper articles for the *Pennsylvania Chronicle and Universal Advertiser*.³² Around this time, Page Smith suggested that White had almost convinced Wilson to become an Anglican, but that he did not succeed.³³ However, L. J. Trinterud, in his book on early American Presbyterianism, claimed that Wilson left the Presbyterian Church in 1782.³⁴

Moreover, several scholars have stated that Wilson became an Episcopalian, and Deborah Gough even specifies that he joined Christ Church in 1778.³⁵ However, none of these authors offer any evidence to support their claims.

To referee between these competing claims, I examined the pew rental records and other documents for Christ Church, Philadelphia. I found no mention of Wilson or his family until March 1794, where he is recorded as renting three seats on the front row of the church's gallery. The seats cost approximately seven pounds per year, and his accounts were paid in full until the end of his life. Interestingly, the account warden continued to charge Wilson's estate for the pew until 1801 when his son, Bird, paid the accumulated debt and took over the pew in his own name.³⁶

Of course, renting a pew may say little about Wilson's actual commitments (after all, Wilson apparently rented pews at two different churches between 1794 and 1798, and founders like Benjamin Franklin rented a pew from Christ Church). Other evidence, however, suggests that Wilson's conversion was more than window dressing. For instance, his son, Bird, who later became an Episcopalian priest, noted in his biography of William White that he had been raised under White's "pastoral care."³⁷ As well, Wilson had his last son, Henry, baptized at Christ Church soon after his birth in 1796.³⁸ On balance, the evidence strongly suggests that James Wilson became an active Episcopalian in 1794.

Denominational commitments are not unimportant, but more significant for our purpose is the extent to which Wilson's Christian beliefs influenced his political philosophy and, hence, his contributions to the creation of the American republic. Rather than attempt to summarize all of his beliefs that influenced his political views and actions, I shall focus on his acceptance of Christian natural law theory. This focus is justified in light of the significance of natural law for Wilson's political theory and actions. It also allows me to document my claim in some detail, making it difficult for skeptics to claim that I am basing my argument on isolated or unimportant passages from Wilson's works.

WILSON'S THEORY OF NATURAL LAW

The Neo-Scholastic interest in Wilson discussed above is somewhat ironic as Wilson was a lifelong Protestant who never cited St. Thomas

Aquinas, and his references to the Catholic Church or, particularly, popes, were often negative.³⁹ However, throughout his works, and particularly in his law lectures, Wilson clearly, consistently, and systematically appealed to the Christian natural law tradition.

He began his law lectures by focusing on the theoretical basis of law, noting that "to direct the more important parts of our conduct, the bountiful Governour of the universe has been graciously pleased to provide us with a law; and that, to direct the less important parts of it, he has made us capable of providing a law for ourselves."⁴⁰ Following Richard Hooker, who in turn borrowed from St. Thomas Aquinas, he divided the first type of law, which he called "divine law," into four "species."⁴¹

The first species of divine law, "eternal law," concerns God's eternal plan for the universe.⁴² Wilson's understanding of the second species of law, "celestial law," came directly from Richard Hooker's *Of the Laws of Ecclesiastical Polity*. Like Hooker, he believed that celestial law governs men and angels in the "celestial and perfect state." Accordingly, it is not clear to men in the present state because they can see it "but darkly, and as through a glass."⁴³ The third species of divine law is comprised of physical laws by which "the irrational and inanimate parts of the creation are governed." He explained that the "great Creator of all things has established general and fixed rules, according to which all the phenomena of the material universe are produced and regulated." The science whereby these laws may be known is called natural philosophy.⁴⁴

The fourth type of divine law is "that law which God has made for man in his present state." There are several manifestations of this law:

As promulgated by reason and the moral sense, it has been called natural; as promulgated by the holy scriptures, it has been called revealed law.

As addressed to men, it has been denominated the law of nature; as addressed to political societies, it has been denominated the law of nations.

But it should always be remembered, that this law, natural or revealed, made for men or for nations, flows from the same divine source: it is the law of God.⁴⁵

Wilson contended that because God created the world and has "infinite power—infinite wisdom—and infinite goodness," he has "supreme right to prescribe a law for our conduct, and that we are under the most perfect obligation to obey that law."⁴⁶ Similarly, he stated several times that our obligation to obey natural law is rooted in the "will of God."⁴⁷

Wilson argued that God's laws are always good. Negatively, they prevent "chaos and disorder."⁴⁸ Positively, they promote the happiness of men and women. He contended,

Being infinitely and eternally happy in himself, his goodness alone could move him to create us, and give us the means of happiness. The same principle that moved his creating, moves his governing power. The rule of his government we shall find to be reduced to this one paternal command—Let man pursue his own perfection and happiness.⁴⁹

Wilson's connection of God's laws to happiness have led some scholars to conclude that he was a utilitarian or a Hobbesian natural-rights theorist. Yet, in the context of his lectures, Wilson is no more a utilitarian or modern natural-right theorist than St. Thomas, who also connected God's natural law to human perfection and human happiness.⁵⁰

God's moral laws may be known through the "reason, conscience, and the holy scriptures."⁵¹ Because humans are made in the image of God, and because Wilson's view of the Fall was more Catholic than Calvinist, he did not see anything contradictory in arguing that natural law could be known through reflecting on one's nature. More than once he quoted St. Paul's claim that natural law is "engraven by God on the hearts of men."⁵² Moreover, one can learn much about God's laws from studying nature. Sounding like St. Thomas, he noted,

When we view the inanimate and irrational creation around and above us, and contemplate the beautiful order observed in all its motions and appearances; is it not the supposition unnatural and improbable—that the rational and moral world should be abandoned to the frolicks of chance, or to the ravage of disorder?⁵³

Wilson believed that every human has a moral sense that provides knowledge of the first principles of morality. Such knowledge allows men and women to resolve most moral problems, but it is occasionally necessary to reason from first principles to solve particular problems. Moreover, one's moral sense, and even the moral sense of a society, may become corrupt through disuse, faulty education, or bad laws. Thus, it is not surprising that people have moral disagreements and that some cultures accept practices that are considered immoral by people in other cultures. Even so, careful consideration will show that people and cultures agree on moral issues far more often than they disagree. As people come to understand the requirements of natural law, it may be said to progress. In Wilson's words, "the law of nature, though immutable in its principles, will be progressive in its op-

erations and effects." He was quite clear that it is only our knowledge of the natural law that changes, not the natural law itself.⁵⁴

The second great class of law, human law, "must rest its authority, ultimately, upon the authority of that law which is divine."⁵⁵ It may be 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."⁵⁶ Municipal law includes the civil and criminal laws made by legislatures for the governing of society. In creating these laws, legislators must remain cognizant of "the very close and interesting connexion, which subsists between the law of nature and municipal law."⁵⁷ He emphasized that human laws should be "an emanation from the law of nature and morality." If they are not, they are void.⁵⁸

The second species of human law is the "law of nature, when applied to states or political societies." Wilson examined this law, now commonly referred to as international law, in detail. In doing so he became, according to Randolph G. Adams, the first American to write systematically about the law of nations. He approached the subject by critiquing the views of two of the giants of international law, Hugo Grotius and Samuel von Pufendorf. Most significant for our purposes, Wilson was highly critical of Grotius for depriving the law of nations of the "greatest part of its obligatory force" by removing the idea that it is based on natural law, which is based upon "the will of God."⁵⁹

NATURAL RIGHTS

According to Brian Tierney, thinkers in the Christian natural law tradition have derived natural rights from natural laws since at least the twelfth century.⁶⁰ Similarly, scholars such as Clinton Rossiter have argued that many of the founders relied on "natural law as the source of natural rights."⁶¹ This is clearly the case with Wilson, who referred to the "rights, to which we are entitled by the supreme and uncontrollable laws of nature" and argued that natural rights are simply rights individuals are "entitled" to "by nature and nature's law."⁶²

Over the last fifty years, a number of scholars, particularly those influenced by Leo Strauss, have argued that thinkers such as Thomas Hobbes and John Locke fundamentally altered traditional Christian natural law theory while retaining some of its language. Instead of relying on God as the source of natural law, they adopted a theory of

natural rights based on self-interest. Many of these scholars agree that this theory was prevalent among American elites in the founding era. This tradition has encouraged some scholars to attribute such views to Wilson, in spite of his pervasive Christian natural law rhetoric.⁶³

No one has made this case with respect for Wilson more clearly than Eduardo Velásquez. In doing so, he focuses much attention on Wilson's claim that "the defense of one's self, [is] justly called the primary law of nature."⁶⁴ While this quotation does have a Hobbesian flavor, in the context of all of Wilson's writings on natural law, it is more likely that Wilson's view of self-preservation and its place in his moral system was no more Hobbesian than similar views offered by St. Thomas in *Summa Theologica* (I, II, Q. 94, a. 2) or by Cicero in *Pro Milone*, which Wilson cited and quoted from in support of the above quotation.⁶⁵ In fact, Velásquez attempts to ameliorate his claim regarding Wilson's natural-rights theory by arguing that he borrowed from Scottish notions of human sociability.⁶⁶ But Wilson's view of rights is better understood in light of the Christian natural law tradition.

Wilson thought that because natural rights are based on natural law, they exist prior to government. Being ultimately grounded in God, they must always be respected. The protection of natural rights is the first task of government. Wilson rhetorically asked,

What was the primary and principal object in the institution of government? Was it—I speak of the primary and principal object—was it to acquire new rights by a human establishment? Or was it, by a human establishment, to acquire a new security for the possession or the recovery of those rights, to the enjoyment or acquisition of which we were previously entitled by the immediate gift, or by the unerring law, of our all-wise and all-beneficent Creator?⁶⁷

For him it was clearly the latter.

Wilson provided an extensive discussion of the nature and scope of natural rights in his law lecture entitled "Of the Natural Rights of Individuals." Among other things, he argued that an individual has a "natural right to his property, to his character, to liberty, and to safety."⁶⁸ Although all of these are worthy of discussion, I focus here on his view of the right to life and liberty as they most clearly demonstrate the close connection between natural law and natural rights.

When discussing liberty, Wilson rejected the extreme, individualistic brand of freedom envisioned by many modern liberals. Instead, he taught that liberty must always be understood within the limits placed on it by moral and civil law. He noted. "Without liberty, law

loses its nature and its name, and becomes oppression. Without law, liberty also loses its nature and its name, and becomes licentiousness." This concept was so important to Wilson that he quoted a similar dictum from Cicero as the epigraph for his law lectures: *Lex fundamentum est libertatis, qua fruimur. Legum omnes servi sumus, ut liberi esse possimus.*⁶⁹

In the state of nature, there is no civil law, so liberty is limited only by natural law. In civil society men and women are still required to obey the latter, but they are also bound by positive laws. Wilson conceded that "by the municipal law, some things may be prohibited, which are not prohibited by the law of nature."⁷⁰ Yet, restrictions may not violate the natural rights of a person, and they must clearly benefit the public. Although Wilson did not provide a detailed discussion regarding what sort of regulations would be acceptable, it seems clear that he was referring either to minor restrictions, such as requiring drivers to drive on the right side of the road, or more significant restrictions in times of extreme danger, such as conscription during times of war. It is evident, however, that he had confidence that under a just government, individuals would be freer than they were in a state of nature. There is no reason to doubt his sincerity when he claimed that

under a government which is wise and good, every citizen will gain more liberty than he can lose by these prohibitions. He will gain more by the limitation of other men's freedom, than he can lose by the diminution of his own. He will gain more by the enlarged and undisturbed exercise of his natural liberty in innumerable instances, than he can lose by the restriction of it in a few.⁷¹

Wilson had a fairly expansive conception of the scope of liberty protected by natural law. This is best illustrated by his discussion of freedom of conscience, or, in his words, "rights of conscience inviolate."⁷² He contended,

The right of private judgment is one of the greatest advantages of mankind; and is always considered as such. To be deprived of it is insufferable. To enjoy it lays a foundation for that peace of mind, which the laws cannot give, and for the loss of which the laws can offer no compensation.⁷³

Because individuals must be free to make their own choices, Wilson supported the general freedom of an individual to "act according to his own inclination" if he "does no injury to others" and if "more public interests do not demand his labours."⁷⁴ It is not clear exactly how

far Wilson was ready to extend this principle, but at a minimum he certainly meant that the government should not interfere with an individual's liberty to think and believe what he wants. This was particularly true in matters of religion.

Given the centrality of Christianity for Wilson's political theory, it is important to emphasize that he was a strong advocate of religious liberty. In his inaugural law lecture, for instance, after he praised Locke's work on religious toleration, he reminded his audience that a law in favor of freedom of religion had been passed in Maryland as early as 1649. He then noted with pride that when Lord Baltimore was urged to repeal the law, "with the enlightened principles of a man and a Christian, he had the fortitude to declare, that he never would assent to the repeal of a law, which protected the natural rights of men, by ensuring every one freedom of action and thought."⁷⁵ Moreover, Wilson did not restrict his conception of liberty to matters of the heart and mind. He fully supported the right of the people "to speak, to write, to print, and to publish freely." Yet, he believed each of these rights to have limits, as indicated by his support of laws against libel and slander.⁷⁶

Wilson embraced a thoroughly Christian view of the right to life. He explained, with evident approval,

With consistency, beautiful and undeviating, human life, from its commencement to its close, is protected by the common law. In the contemplation of the law, life begins when the infant is first able stir in the womb. By the law, life is protected not only from immediate destruction, but from every degree of actual violence, and in some cases, from every degree of danger.⁷⁷

On the basis of this principle, Wilson criticized ancient societies, such as Sparta, Athens, China, and Rome, for the practice of exposing or killing unwanted infants. He also condemned the "gentle Hindoo" who "is laudably averse to the shedding of blood; but he carries his worn out friend and benefactor to perish on the banks of the Ganges."⁷⁸ He justified laws against crimes such as "assault," "battery," "rape," and "homicide" because these actions violate this right.⁷⁹

The right to life was very important to Wilson. From the womb to one's natural death, it must be protected. The high value he placed on life came from his view of its origin. In his most famous Supreme Court opinion, he noted, "MAN, fearfully and wonderfully made, is the workmanship of his all perfect CREATOR."⁸⁰ The implications of this are significant. For instance, when writing on suicide, he explained that

it was not by his own voluntary act that the man made his appearance upon the theatre of life; he cannot, therefore, plead the right of the nation, by his own voluntary act to make his exit. He did not make; therefore, he has no right to destroy himself. He alone, whose gift this state of existence is, has the right to say when and how it shall receive its termination.⁸¹

Life is a gift from God, and it must be protected. For this reason natural law prevents individuals from killing or attacking each other, although it allows for death as a punishment for particularly horrible crimes. If a person is sentenced to death, however, Wilson made it clear in a grand jury charge that "an interval should be permitted to elapse before [the sentence's] execution, as will render the language of political expediency consonant to the language of religion."⁸²

Wilson's view of natural rights was firmly based upon his theory of natural law. Because rights are based upon God's universal and absolute law, they must always be respected. Such a theory helped Wilson to justify the colonies' revolt against England, and it played an important role in his contributions to the creation of the American republic.⁸³ Yet, the rights of individuals are limited by the natural law upon which they are founded. Wilson clearly rejected the extreme individualistic view of rights that would come to dominate American political theory and law.⁸⁴

RELEVANCE AND IMPACT

Wilson's view of rights is relevant today as scholars attempt to understand the founders' views of the nature and limits of the rights protected by the Constitution and Bill of Rights. Although he was not immediately involved in writing or ratifying the Bill of Rights, given his significant role in writing, ratifying, and interpreting the U.S. Constitution and his influence on American law through his law lectures, Wilson's views are clearly worthy of consideration. Surely they are at least as relevant as those of Thomas Jefferson, whose 1802 letter to the Danbury Baptist Association has wielded such influence in American constitutional law (and, of course, Jefferson wasn't even in America when the Constitution or Bill of Rights were written or ratified).

More significantly, virtually all of Wilson's contributions to the creation of American political institutions were influenced by his belief that "the primary and the principle object in the institution of

government" is "to acquire a new security for the possession or the recovery of those rights, to the enjoyment or acquisition of which we were previously entitled by the immediate gift, or by the unerring law, of our all-wise and all-beneficent Creator."⁸⁵ Because he thought every person could know natural law "by our conscience, by our reason, and by the Holy Scriptures" and because he had a relatively optimistic view of human nature, he was led to embrace democracy with more consistency than any other major founder.⁸⁶ He advocated, for instance, the direct, popular, and proportional election of representatives, senators, and the chief executive at both the federal and state levels. Also, he opposed property qualifications for voters and limitations on who could hold office.

Although Wilson was a consistent advocate of democratic institutions, he recognized that humans are corruptible; therefore, he did not rely uncritically on the goodwill of elected officials or the electorate. Accordingly, he supported the separation of powers and checks and balances. Significantly, he argued that legislatures are limited in what they can do by "natural and revealed law," and the context of this claim suggests that he believed courts could declare legislative acts that did so to be void.⁸⁷

Although Wilson supported judicial review, he objected to the addition of a bill of rights to the U.S. Constitution because he thought Congress was already limited by its enumerated powers and, more significantly, that a bill of rights would be dangerous. He argued that if an "attempt to enumerate [natural rights] is made, it must be remembered that if the enumeration is not complete, everything not expressly mentioned will be presumed to be purposefully omitted."⁸⁸ To address this problem, Madison proposed, and the states eventually ratified, the Ninth Amendment to the U.S. Constitution.

Wilson's contributions at the federal convention and his view of judicial review and the Bill of Rights cannot be understood if one does not comprehend his theory of natural rights. The latter is best interpreted in light of the Christian natural law tradition. Because rights are based on a universal, transcendent conception of natural law, they must be protected against infringements from both minorities and majorities. The primary purpose of government is to protect these rights and to make positive law in accordance with natural law. Wilson's views on natural law and how it is known informed his many significant contributions to the creation of the American republic.

CONCLUSION

Space constraints prevent a more detailed discussion of the relationship between Wilson's religious faith and his political theory and actions. In my book on Wilson, I attempt to flesh these out in detail and consider them in their proper historical context. Even the limited discussion of Wilson in this chapter, however, should make it clear that a strong case can be made that he was a serious Christian thinker. This suggests that contemporary scholars who simply ignore Wilson's religious language do so at great risk. Although it is possible to argue that all of Wilson's religious language was mere rhetorical flourish, it is troubling that many contemporary Wilson scholars do not even feel compelled to make such an argument.

APPENDIX: OF LAWS

Of law there are different kinds. All, however, may be arranged in two different classes. 1. Divine. 2. Human laws. The descriptive epithets employed denote, that the former have God, the latter, man, for their author.

The laws of God may be divided into the following species.

1. That law, the book of which we are neither able nor worthy to open. Of this law, the author and observer is God. He is a law to himself, as well as to all created things. This law we may name the "law eternal."
2. That law, which is made for angels and the spirits of the just made perfect. This may be called the "law celestial." This law, and the glorious state for which it is adapted, we see, at present, but darkly and as through a glass: but hereafter we shall see even as we are seen; and shall know even as we are known. From the wisdom and the goodness of the adorable Author and Preserver of the universe, we are justified in concluding, that the celestial and perfect state is governed, as all other things are, by his established laws. What those laws are, it is not yet given us to know; but on one truth we may rely with sure and certain confidence—those laws are wise and good. For another truth we have infallible authority—those laws are strictly obeyed: "In heaven his will is done."
3. That law, by which the irrational and inanimate parts of the creation are governed. The great Creator of all things has established general and fixed rules, according to which all the phenomena of the material universe are produced and regulated. These rules are usually denominated laws of nature. The science, which has those laws for its object,

is distinguished by the name of natural philosophy. It is sometimes called, the philosophy of body. Of this science, there are numerous branches.

4. That law, which God has made for man in his present state; that law, which is communicated to us by reason and conscience, the divine monitors within us, and by the sacred oracles, the divine monitors without us. This law has undergone several subdivisions, and has been known by distinct appellations, according to the different ways in which it has been promulgated, and the different objects which it respects.

As promulgated by reason and the moral sense, it has been called natural; as promulgated by the holy scriptures, it has been called revealed law.

As addressed to men, it has been denominated the law of nature; as addressed to political societies, it has been denominated the law of nations.

But it should always be remembered, that this law, natural or revealed, made for men or for nations, flows from the same divine source: it is the law of God.

Nature, or, to speak more properly, the Author of nature, has done much for us; but it is his gracious appointment and will, that we should also do much for ourselves. What we do, indeed, must be founded on what he has done; and the deficiencies of our laws must be supplied by the perfections of his. Human law must rest its authority, ultimately, upon the authority of that law, which is divine.

Of that law, the following are maxims—that no injury should be done—that a lawful engagement, voluntarily made, should be faithfully fulfilled. We now see the deep and the solid foundations of human law.

It is of 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.

In all these species of law—the law eternal—the law celestial—the law natural—the divine law, as it respects men and nations—the human law, as it also respects men and nations—man is deeply and intimately concerned. Of all these species of law, therefore, the knowledge must be most important to man.

Those parts of natural philosophy, which more immediately relate to the human body, are appropriated to the profession of physick.

The law eternal, the law celestial, and the law divine, as they are disclosed by that revelation, which has brought life and immortality to light, are the more peculiar objects of the profession of divinity.

The law of nature, the law of nations, and the municipal law form the objects of the profession of law.

From this short, but plain and, I hope, just statement of things, we perceive a principle of connexion between all the learned professions; but especially

between the two last mentioned. Far from being rivals or enemies, religion and law are twin sisters, friends, and mutual assistants. Indeed, these two sciences run into each other. The divine law, as discovered by reason and the moral sense, forms an essential part of both.

From this statement of things, we also perceive how important and dignified the profession of the law is, when traced to its sources, and viewed in its just extent.

The immediate objects of our attention are, the law of nature, the law of nations, and the municipal law. On the two first of these three great heads, I shall be very general. On the last, especially on those parts of it, which comprehend the constitutions and public law, I shall be more particular and minute.

NOTES

1. James Bryce, "James Wilson: An Appreciation," *The Pennsylvania Magazine of History and Biography* (October 1936), 360; Randolph G. Adams, ed. *Selected Political Essays of James Wilson* (New York: Alfred Knopf), 20; Max Farrand, *The Framing of the Constitution of the United States* (New Haven, CT: Yale University Press, 1913), 197; Ralph Ketcham, *James Madison: A Biography* (Charlottesville: University Press of Virginia, 1971), 229; Adrienne Koch, "Introduction," in *Notes of the Debates in the Federal Convention of 1787* (New York: W.W. Norton, 1987), xii; Clinton Rossiter, *1787: The Grand Convention* (New York: W.W. Norton and Co., 1966), 247–48; Samuel Beer, *To Make A Nation* (Cambridge, MA: Harvard University Press, 1993), 360; Paul Johnson, *A History of the American People* (New York: HarperCollins, 1997), 193.

2. Gordon Wood, *The Creation of the American Republic* (Chapel Hill: University of North Carolina Press, 1969), 530, 539–40.

3. John P. Kaminski and Gaspare J. Saladino, eds. *The Documentary History of the Ratification of the Constitution* (Madison: State Historical Society of Wisconsin, 1981), 13:344.

4. Bernard Bailyn, *The Ideological Origins of the American Revolution*. Enlarged ed. (Cambridge, MA: Harvard University Press, 1992), 328.

5. See especially Robert Brunhouse, *The Counter-Revolution in Pennsylvania, 1776–1790* (New York: Octagon Books, 1972).

6. 2 U.S. (2 Dall.) 410 (1792); Max Farrand, "The First Hayburn case, 1792," *American Historical Review* (1907–1908), 281–85.

7. Robert McCloskey, ed. *The Works of James Wilson*, 2 vols. (Cambridge, MA: The Belknap Press of Harvard University Press, 1967), 564 (hereafter cited as *Works*).

8. Benjamin F. Wright, *American Interpretations of Natural Law* (Cambridge, MA: Harvard University Press, 1931), 281. The lectures were particularly influential in the nineteenth century. Joseph Story, for instance, refers to them throughout his *Commentaries on the Constitution of the United States*, 3rd ed. 2 vols. (Boston: Little, Brown, and Co., 1858).

9. On the text of the lectures, and Bird Wilson's changes, see Mark David Hall, "James Wilson's Law Lectures," *The Pennsylvania Magazine of History and Biography* CXXXVIII (January 2004), 63–76.

10. Roderick M. Hills Jr., "The Reconciliation of Law and Liberty in James Wilson," *Harvard Journal of Law and Public Policy* 12 (1989), 891.

11. Hills suggests that Wilson's claim that "Order proportion and fitness pervade the universe" shows that he had a stoic view of natural law (*Works*, 67; Hills, "Reconciliation," 893). He does not attack, or even acknowledge, the possibility that this idea could have a Thomistic origin.

12. *Works*, 150.

13. Stephen A. Conrad, "Polite Foundation: Citizenship and Common Sense in James Wilson's Republican Theory," 1984 *Supreme Court Review*, ed. Philip Kurland (Chicago: Chicago University Press, 1985); Stephen A. Conrad, "Metaphor and Imagination in James Wilson's Theory of Federal Union," *Law and Social Inquiry* 13 (1988): 1-70; Stephen A. Conrad, "James Wilson's 'Assimilation of the Common-Law Mind,'" *Northwestern University Law Review* 84 (Fall 1989): 186-219; Jennifer Nedelsky, *Private Property and the Limits of American Constitutionalism* (Chicago: University of Chicago Press, 1990); Shannon Stimson, "'A Jury of the Country,' Common Sense Philosophy and the Jurisprudence of James Wilson," in Richard Sher and Jeffrey Smitten, eds., *Scotland and America in the Age of Enlightenment* (Princeton, NJ: Princeton University Press, 1990); Samuel Beer, *To Make a Nation*.

14. *Works*, 329.

15. John Eidsmoe, *Christianity and the Constitution: The Faith of Our Founding Fathers* (Grand Rapids, MI: Baker Book House, 1987). Similarly, see Norman Cousins, *In God We Trust: The Religious Beliefs and Ideas of the American Founding Fathers* (New York: Harper & Brothers, 1958).

16. M. E. Bradford, *A Worthy Company: Brief Lives of the Framers of the United States Constitution* (Marlborough, NH: Plymouth Rock Foundation, 1982), ix, 81-87. Tim LaHaye follows Bradford's analysis uncritically in *Faith of Our Founding Fathers* (Brentwood, TN: Wolgemuth and Hyatt, 1987).

17. Randolph G. Adams, *Selected Political Essays of James Wilson* (New York: Alfred A. Knopf, 1930), 7.

18. William F. Obering, *The Philosophy of Law of James Wilson: A Study in Comparative Jurisprudence* (Washington, DC: Catholic University of America, 1938), 50.

19. Obering, *The Philosophy of Law*, 19.

20. Obering, *The Philosophy of Law*, 186.

21. See for example, J. Moss Ives, "St. Thomas Aquinas and the Constitution," *Thought* 13 (December 1937): 567-87; and Mary T. Delahanty, *The Integralist Philosophy of James Wilson* (New York: Pageant Press, 1969).

22. Francis De Sales Powell, "A Thomistic Evaluation of James Wilson and Thomas Reid," Ph.D. dissertation, Georgetown University, 1951.

23. McCloskey, in *Works*, 38. Also see Hadley Arkes, *Beyond the Constitution* (Princeton, NJ: Princeton University Press, 1990), 64, and John West, *The Politics of Revelation and Reason: Religion and Civic Life in the New Nation* (Lawrence: University Press of Kansas, 1996), 41-45.

24. Reviews of my book include David Thomas Konig, *American Historical Review* (February 1999): 185-86; Stephen A. Conrad, *Journal of American History* (June 1998): 217-18; Gary McDowell, *Times Literary Supplement* (April 30, 1999): 12-13.

25. Unless one counts as an argument Stephen Conrad's implication that I am inclined toward a natural law interpretation because I am a cultural conservative, a claim

he supports by pointing out that I cite books by James Davison Hunter and James Q. Wilson in the conclusion to my book. Ironically, Hunter was not arguing for any sort of natural law theory, and I have criticized James Q. Wilson for not following through on the natural law implications in his book that I cite in my conclusion (Mark Hall, review of James Q. Wilson, *The Moral Sense*, *Southeastern Political Review* 23 [March 1995], 170–71). If Conrad wanted to show that I think natural law theory has much to offer contemporary theoretical debates, he might have cited my text in the conclusion, where I say that it does, or noted my praise of John Finnis and Robert George as being among the best contemporary natural law theorists. Mark Hall, *The Political and Legal Philosophy of James Wilson* (Columbia: University of Missouri Press, 1997), 199–201. Once he has demonstrated this point, however, it is still incumbent upon him to offer some reason why my claim that Wilson's commitment to the Christian natural law tradition was of primary (but not sole) importance is false.

26. See, for instance, George Carey, *American Political Science Review* 92 (March 1998): 203–4; Michael Novak, *On Two Wings: Humble Faith and Common Sense at the American Founding* (San Francisco: Encounter, 2002), 140; Garrett Ward Sheldon, *The Political Philosophy of James Madison* (Baltimore: Johns Hopkins University Press, 2001), 130.

27. Eduardo A. Velásquez, *Law and History Review* (Spring 1999): 184–87; Eduardo Velásquez, "Rethinking America's Modernity: Natural Law, Natural Rights and the Character of James Wilson's Liberal Republicanism," *Polity* 29 (Winter 1996), 193–220. Several authors assert that Wilson rejected Christian natural law theory in books dedicated to broader themes. Some, such as Wilson Carey McWilliams and Thomas Pangle, make short arguments to support their assertions. Their arguments are not unreasonable, but in the context of the whole of Wilson's treatment of natural law, they are not convincing. I address some of these claims in notes throughout this chapter. Wilson Carey McWilliams, *The Idea of Fraternity in America* (Berkeley: University of California Press, 1973), 193–99; Thomas Pangle, *The Spirit of Modern Republicanism: The Moral Vision of the American Founders and the Philosophy of Locke* (Chicago: University of Chicago Press, 1988), 122–23; Morton Horwitz, *The Transformation of American Law: 1780–1860* (Cambridge, MA: Harvard University Press, 1977), 8–20.

28. Velásquez, "Rethinking America's Modernity," 205.

29. Velásquez, "Rethinking America's Modernity," 205–20; and Velasquez, review of *The Political and Legal Philosophy of James Wilson*, 187.

30. Page Smith, *James Wilson: Founding Father, 1742–1798* (Chapel Hill: University of North Carolina Press, 1956), 28.

31. William B. Miller, "Presbyterian Signers of the Declaration of Independence," *Journal of the Presbyterian Historical Society* 36 (September 1958): 148–51.

32. Smith, *James Wilson*, 32–35.

33. Smith, *James Wilson*, 28–29.

34. L. J. Trinterud, *The Formation of an American Tradition: A Re-examination of Colonial Presbyterianism* (Philadelphia: Westminster Press, 1949), 256–57.

35. Deborah Gough, *Christ Church, Philadelphia* (Philadelphia: Barra Foundation, 1995), 137, 145; M. E. Bradford, *A Worth Company*, 83. Cf. Owen Ireland, *Religion, Ethnicity and Politics: Ratifying the Constitution in Pennsylvania* (University Park: The Pennsylvania State University Press, 1995), esp. 167, 259.

36. Pew Registers, Lists of Pew Holders, 1785–1800; Account Wardens, Pew Rent Records 1770–1801. Christ Church Archives Microfilm, reels 28–30. The pew rental records also show that Christ Church provided a pew for the “President of the United States” when the national government met in Philadelphia.

37. Bird Wilson, *Memoir of the Life of the Right Reverend William White, D.D.* (Philadelphia: James Kay, Jun. & Brother, 1839), 269.

38. Henry was Wilson’s only child by his second wife, Hannah. Hannah Wilson was raised a Quaker, so there is no reason to believe that James had Henry baptized at Christ Church on her behalf. Smith, *James Wilson*, 380.

39. See, for instance, *Works*, 63, 120, 729–30.

40. *Works*, 126. Note that Wilson seems to depart from common practice by not capitalizing personal pronouns referring to God. In his lecture drafts, however, he follows traditional practices and capitalizes such pronouns. For some reason, his son, or the printer, changed these pronouns to the lower case. For further discussion see Mark David Hall, “James Wilson’s Law Lectures,” 70–71.

41. *Works*, 123.

42. *Works*, 123–24; Aquinas, *Summa Theologica*, Q.93. Art. 1–6

43. *Works*, 124; Richard Hooker, *Laws of Ecclesiastical Polity*, ed. John Keble (Oxford: The Clarendon Press, 1888), 1:204–5.

44. *Works*, 124.

45. *Works*.

46. *Works*, 128, 126, 132–33. In his discussion of the relationship between God’s goodness and power, Wilson proposed and then immediately rejected the idea that “infinite goodness could be disjoined from almighty power.” Wilson Carey McWilliams takes this to be a subtle hint that he rejected traditional Christian theology. However, I think it is more accurate to focus on Wilson’s conclusion, which is best regarded as a first principle that people cannot help but believe. In other words, it is simply obvious, if not rationally provable, that God is omnipotent, omniscient, and good. Of course the modern reader might object that this notion of God is really a Judeo-Christian one, and that this is hardly a principle to which all people naturally gravitate (if such principles do in fact exist), but the correctness of Wilson’s claim is not at issue here (*Works*, 128, McWilliams, *The Idea of Fraternity in America*, 194).

47. For example, *Works*, 132, 150, 153.

48. *Works*, 130.

49. *Works*, 129.

50. For instance, Cornelia Geer Le Boutillier asserted that Wilson’s natural law ideas were “completely utilitarian,” in *American Democracy and Natural Law* (New York, Columbia University Press, 1950), 115, 118. More recently, Eduardo Velásquez has argued that it is important that Wilson shifted his claim that God wants man to “pursue his own perfection and happiness” to God wanting man to “pursue his happiness and perfection” (Velásquez “Rethinking America’s Modernity,” 204–5; *Works* 129, 145). However, if one considers the context of both claims, a different picture emerges. I do this in the text for the first quote and would point out that the second one is followed by a discussion of the immutable and universal character of natural law (*Works* 129, 145). Moreover, Wilson later discussed men seeking their “perfection or happiness,” although this time in the context of human government (*Works*, 579). Altogether, when Wilson’s claims are taken in context, his teachings are thoroughly

compatible with a Christian conception of natural law, as is recognized by his Neo-Scholastic interpreters (e.g., Obering, *Philosophy of Law*, 51–57). Cf. Aristotle, *Ethics*, esp. bks. 1 and 10; St. Thomas Aquinas, *Summa Theologica*, II, I, Qs. 1–5.

51. *Works*, 144.

52. *Works*, 125, 133–34, 143–45, 200, 102, 136. Compare the last quote with Romans 2: 14–15: “For when the Gentiles, which have not the law, do by nature the things contained in the law, these, having not the law, are a law unto themselves: Which shew the work of the law *written in their hearts*, their conscience also bearing witness . . .” (emphasis added).

53. *Works*, 129. Compare this quote with St. Thomas Aquinas, *On Truth*, Q. 5, a. 2, c.; and *Summa Theologica*, Q. 94.

Unlike some of his contemporaries, Wilson did not think that the Bible was only a source of moral teaching. He seemed to take seriously its discussion of miracles such as the flood, the Tower of Babel, and the Resurrection. *Works*, 376, 711–12, 715. See also *Works*, 126, 130, 143, 399, 585. For a detailed discussion of Wilson’s view of the Bible, human nature, and moral epistemology, see ch. 3 of my book *The Political and Legal Philosophy of James Wilson*.

54. *Works*, 133–67, 197–26, 628, 821, 147.

55. *Works*, 124.

56. *Works*, 125.

57. *Works*, 587.

58. *Works*, 617, 329.

59. *Works*, 150.

60. Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150–1625* (Grand Rapids, MI: Eerdmans, 1997). Of course, there is plenty of debate on the subject of when individual subjective rights arose. Even if one is convinced that Tierney is wrong, however, it is indisputable that some Christian thinkers have thought it possible to derive natural rights from a Christian conception of natural law. Twentieth-century proponents of this idea include Jacques Maritain, *The Rights of Man and Natural Law* (New York: Scribner, 1943), and John Finnis, *Natural Law and Natural Rights* (New York: Oxford, 1980).

61. Clinton Rossiter, *Seedtime of the Republic* (New York: Harcourt, Brace, and World, 1953), 369.

62. *Works*, 722, 589, 241, 753. On the connection between natural law and natural rights in America, see also Mortimer J. Adler and William Gorman, *The American Testament* (New York: Praeger Publisher, 1975), 33–41; and Ellis Sandoz, *A Government of Laws* (Baton Rouge: Louisiana State University Press, 1990), 162–217, esp. 189–97. Not surprisingly, the idea that natural rights are derived from natural law was accepted by all of Wilson’s Neo-Thomistic interpreters. For a good example, of this see William F. Obering, “Our Constitutional Origins,” *Thought* 11 (December 1937): 600.

Wilson used the term *rights* to refer to “natural rights,” “constitutional rights,” and “legal rights.” It is important, therefore, to examine closely the context in which he discussed rights. See, for example, *Works*, 93, 148, 153, 284, 325–26, 495, and 583–610.

63. Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1950); Martin Diamond, “Democracy and *The Federalist*: A Reconsideration of the Framers’ Intent,” *American Political Science Review* 53 (March 1959): 52–68; and Walter Berns, “Judicial Review and the Right and Laws of Nature,” *The Supreme Court*

Review, 1982, ed. Philip Kurland (Chicago: University of Chicago Press, 1983); Pangl, *The Spirit of Modern Republicanism*, esp. 122–23. See also Philip A. Hamburger, “Natural Rights, Natural Law, and American Constitutions,” *Yale Law Journal* (January 1993): 907–60. Wilson is quite critical of Hobbes, but thinkers influenced by Strauss correctly point out that Hobbes had become so vilified even in his own lifetime that his followers would (or will) rarely identify with him (e.g. *Works*, 105, 464).

64. Velásquez, “Rethinking America’s Modernity,” 210, 193–96; *Works*, 609. Velásquez criticizes me for not discussing this claim in my book on Wilson (Velásquez, “Rethinking America’s Modernity,” 187). Although I do not discuss the passage, I do discuss Wilson’s views regarding the right to preserve oneself (Hall, *Political and Legal Philosophy of James Wilson*, 57–58).

65. *Works*, 609. Velásquez neglects to note that Wilson appealed to Cicero’s work as his authority for this claim.

66. Jean M. Yarbrough makes a similar argument with respect to Thomas Jefferson and then suggests that it applied to Wilson as well in *American Virtues: Thomas Jefferson on the Character of a Free People* (Lawrence: University Press of Kansas, 1998), 203, n86.

67. *Works*, 585.

68. *Works*, 592. Compare with John Locke, *Second Treatise*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1960), 268–78, 283–86, 304.

69. *Works*, 72. Adler and Gorman translate the quote to read, “Law is the foundation of the liberty we enjoy. We are all servants of the laws in order that we can be free.” Adler and Gorman, *The American Testament*, 118.

70. *Works*, 587.

71. *Works*, 592, 579, 587–88. Compare with Barry Shain, *The Myth of American Individualism: The Protestant Origins of American Political Thought* (Princeton, NJ: Princeton University Press, 1994). Yet, Wilson did not agree with all of the community restrictions discussed by Shain (esp. 153–92). For a good discussion of Wilson’s views in this regard see Obering, *Philosophy of Law*, 99–100.

72. *Works*, 159.

73. *Works*.

74. *Works*, 587, 242, 71, 104, 579, and 649. Even Shain agrees that the founders had a fairly modern, expansive view of freedom of conscience (*Myth of American Individualism*, 30, 163–65, 176).

75. *Works*, 71, 104.

76. *Works*, 242, 579, 596, 649. With respect to religion, Wilson noted without comment that “[p]rofaneness and blasphemy are offenses, punishable by fine and imprisonment. Christianity is a part of the common law.” Similarly, he remarked that certain “vicious and dishonorable” vices may be censored by the public (*Works*, 671, 242).

77. *Works*, 597.

78. *Works*, 596–97.

79. *Works*, 533–662, 653, 656, 657.

80. *Chisholm v. Georgia*, 2 U.S. (2 Dall.) 419, 455 (emphasis in original). Later in the opinion he wrote that “*Man himself*, free and honest, is, I speak as to this world, the noblest work of God.” (emphasis in original, 463). Similarly, in his law lectures, he wrote that “the mind is of an order higher than that of the body, even more of the

wisdom and skill of the divine Architect is displayed in its structure. In all respects, fearfully and wonderfully are we made" (*Works* 202; Cf. Psalms 139: 13–14).

81. *Works*, 155.

82. *Works*, 818, 806, 661, 669.

83. *Works*, 721–46.

84. On this movement, see especially Michael Sandel, *Democracy's Discontent: America in Search of a Public Philosophy* (Cambridge, MA: Harvard University Press, 1996).

85. Sandel, *Democracy's Discontent*, 585. This is an important corrective to scholars who argue that the founders were primarily concerned with promoting their own self-interest, or that of their race, class, and gender.

86. Sandel, *Democracy's Discontent*, 133. I present this argument in detail in Mark Hall, "The Wilsonian Dilemma," *Southeastern Political Review* 25 (December 1997): 641–58.

87. *Works*, 329–30. For a detailed discussion, see Hall, *Political and Legal Philosophy of James Wilson*, chs. 4 and 5.

88. John McMaster and Frederick D. Stone, eds. *Pennsylvania and the Federal Constitution 1787–1788* (New York: Da Capo Press, 1970), 1:254.