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# James Wilson's Law Lectures

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# NOTES AND DOCUMENTS

## *James Wilson's Law Lectures*

A MAJOR PROBLEM FACED BY STUDENTS OF POLITICAL THEORY, philosophy, or law in the founding era is that many of America's intellectual leaders did not write systematic essays or books. Accordingly, scholars often have to reconstruct their subjects' thoughts based on their actions, contributions to public debates (e.g., speeches in conventions and newspaper articles), and private correspondence. Works like Jefferson's *Notes on Virginia*, Adams's *Thoughts on Government*, and *The Federalist Papers* are partial exceptions to this rule, and scholars have made good use of them. Perhaps the clearest exception to the rule, however, is James Wilson's series of law lectures presented at the College of Philadelphia in 1790–1792. Given their importance, it is remarkable that little attention has been paid to the integrity of the text of his lectures.

James Wilson (1742–1798) was one of only six men to sign both the Declaration of Independence and the Constitution, and his influence on the latter was second only to James Madison's. In addition, he played critical roles in the ratification debates, the Pennsylvania Constitutional Convention of 1789–1790, and on the United States Supreme Court. Desiring to be remembered as America's Blackstone, he took remarkable care to leave a clear, systematic account of his philosophical, political, and legal views in his law lectures. These lectures have hardly gone unnoticed by students of the founding era, but few scholars have discussed potential problems with the text. In fact, scholars have had to rely heavily on the editing skills of Bird Wilson, James's son, who published the first edition of the law lectures in 1804. Although scholars have known of the existence of the sixty-one notebooks containing early and final drafts of the

I am grateful to Joel Sartorius and his colleagues in the Rare Books Department of the Free Library of Philadelphia for their assistance, and to Rachel Sparks and Lee Nash for reading drafts of this work. I would also like to thank George Fox University for providing funds that allowed me to spend time at the Free Library and write this research note.

lectures, until recently the notebooks were either unavailable to the general scholarly community or their location was unknown. Their discovery in the Rare Books Department of the Free Library of Philadelphia is a boon for Wilson scholars, specifically, and students of political theory, philosophy, and law in the founding period, more generally.

### *Wilson's Lectures on Law*

On December 15, 1790, James Wilson stood before “the President of the United States, with his lady—also the Vice-President, and both houses of Congress, the President and both houses of the Legislature of Pennsylvania, together with a great number of ladies and gentlemen . . . the whole comprising a most brilliant and respectable audience,” to present the first in a series of lectures on American law.<sup>1</sup> This lecture, which was published as a pamphlet (the only part of the lectures to be published in Wilson’s lifetime), made it clear that Wilson believed law should be “studied and practised as a science founded in principle” not “followed as a trade depending merely upon precedent.”<sup>2</sup> Accordingly, many of his lectures are devoted to broad moral, epistemological, and political issues. He thought that once law students mastered these foundational topics, they could easily learn the “retail business of law.”<sup>3</sup> Consequently, Wilson’s lectures on law contain some of the most explicitly theoretical analysis of America’s constitutional order by one who played a central role in its formation.

Wilson’s first course of lectures (approximately fifty-eight lectures, the first thirteen chapters of the printed editions of the lectures), virtually ignore the United States and state constitutions and statutory law.<sup>4</sup> These lectures are best characterized as works of philosophy, political theory, and

<sup>1</sup> *Pennsylvania Packet, and Daily Advertiser*, Dec. 25, 1790. Quoted in Stephen Conrad, “Polite Foundation: Citizenship and Common Sense in James Wilson’s Republican Theory,” in *Supreme Court Review*, 1984, ed. Philip B. Kurland (Chicago, 1985), 374.

<sup>2</sup> James Wilson, *An Introductory Lecture to a Course of Law Lectures, to which is added a plan of the lectures* (Philadelphia, 1791). Robert Green McCloskey, ed., *The Works of James Wilson* (Cambridge, MA, 1967), 564 (hereafter cited as *Works*).

<sup>3</sup> *Works*, 397–98.

<sup>4</sup> Chapter 11 of Wilson’s lectures, which compares the constitutions of the United States and Great Britain, is an exception to this rule, but even here the comparison is at a very high level of abstraction.

jurisprudence. In them, he addressed perennial questions of morality, epistemology, and, to a lesser extent, metaphysics. In doing so he borrowed from and critically evaluated philosophical giants such as René Descartes, Richard Hooker, John Locke, David Hume, Francis Hutcheson, and Thomas Reid. As well, he spent significant time discussing political theory, notably issues involving the origin, nature, and purpose of government, political obligation, and the dangers of concentrated power. Finally, he addressed the nature of law, the nature of international law (where he attempted to mediate between Samuel Pufendorf and Hugo Grotius), and the proper relation between natural and positive law.

For his second course of lectures, which consists of the remaining twenty-two chapters in the printed editions, Wilson turned to a careful examination of the United States and Pennsylvania constitutions. Because he played a significant role in authoring these documents, his understanding of them is particularly interesting. As well, his substantial discussion of natural and positive rights sheds important light on the founders' view of rights. Toward the end of the lectures, Wilson began to introduce his students to the "retail business of law." These chapters tend to be less substantial and more practical than the earlier lectures, but they still often yield significant insight regarding, for instance, the role of juries in determining fact and law, the difference between law and equity, and the role of attorneys in the new republic.<sup>5</sup>

Wilson planned to publish his lectures, which he thought would help secure his reputation as America's Blackstone. However, his duties on the Supreme Court, as well as his worsening financial condition, prevented him from doing so. Six years after his father's death in 1798, Bird Wilson, relying on his father's notebooks, published the first edition of the lectures. In the preface to this work, he claimed not to have altered "the language of the Author," although he confessed to having divided them into "parts and chapters, according to the subjects."<sup>6</sup> Subsequent editions of the lectures edited by James De Witt Andrews (1896) and Robert G. McCloskey (1967) relied completely on Bird's edition.

Wilson's lectures have helped historians, political scientists, and academic lawyers to understand the founding era better.<sup>7</sup> Given their signif-

<sup>5</sup> Page Smith provides a good overview of the lectures in his biography of Wilson, *James Wilson: Founding Father, 1742–1798* (Chapel Hill, NC, 1956), 308–42. I discuss them in detail in Mark Hall, *The Political and Legal Philosophy of James Wilson, 1742–1798* (Columbia, MO, 1997).

<sup>6</sup> *Works*, 64.

<sup>7</sup> In my book on Wilson I discuss numerous works that use the law lectures to shed light on the

icance, it is important to recognize that scholars have had little reason to be confident in the integrity of the text. Although no evidence suggested that Bird grossly distorted his father's lectures, there are reasons to think that his editorial work did make substantive changes to them. Bird was an attorney, and he later edited Matthew Bacon's *A New Abridgment of the Law*, to which he added recent English and American decisions.<sup>8</sup> He might have been tempted to edit his father's work, perhaps altering it to make it appear to be more prescient or to avoid anachronistic or unpopular claims. Certainly he may have felt free to edit his father's spelling, grammar, and syntax.

Even if one accepts Bird's claim that he did not take liberties with his father's words, he admitted to dividing James's work into "parts and chapters, according to the subjects." He also noted that the lecture notes were full of "recapitulations" and "often embraced parts of his observations on different subjects."<sup>9</sup> These claims could be taken to suggest that Bird reordered some of his father's lectures, and perhaps eliminated what he considered to be unnecessary duplication and/or irrelevant commentary. Until recently, scholars have been unable to know.

One notable exception to this rule occurred in the early 1950's, when Page Smith, who was working on his biography of Wilson, was able to see the notebooks. Smith used them to shed light on questions that Wilson had his students debate, and he mentioned in a footnote that the notebooks were in the possession of "James Alan Montgomery, Jr., of Philadelphia," that they "contain early drafts of the lectures," and that a "spot check" of the MSS and the published texts revealed no significant differences."<sup>10</sup> Smith's claim allowed Wilson scholars to have more confidence in Bird's edition, but his admission that he only "spot checked" the lectures remained a cause for concern. No other secondary work on Wilson cites these notebooks.<sup>11</sup>

In the course of my own research on Wilson, I attempted to track

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founding era, in general, or Wilson, more specifically. The lectures had an important influence in nineteenth-century American law as well. See, for instance, Joseph Story, *Commentaries on the Constitution of the United States*, 3rd ed., 2 vols. (Boston, 1858).

<sup>8</sup> Matthew Bacon, *A New Abridgment of the Law*, ed. Bird Wilson (Philadelphia, 1811).

<sup>9</sup> *Works*, 64.

<sup>10</sup> Smith, *James Wilson*, 408.

<sup>11</sup> Maeva Marcus et al., in *The Documentary History of the Supreme Court of the United States, 1789–1800*, vol. 2 (New York, 1988), used and cited several of the Free Library's notebooks as sources for three of Wilson's grand jury charges, but gave no indication that the Free Library's collection contained the notebooks with drafts of Wilson's law lectures.

down the notebooks containing Wilson's law lectures. The *National Union Catalog of Manuscript Collections* contained no mention of them, and I was unable to contact James Montgomery Jr. or his descendents. Accordingly, like other Wilson scholars, I had to rely upon Bird's edition of the lectures for my analysis. In 2001, however, Mr. Andrew T. Hyman, an attorney, contacted me with a question about James Wilson. In the course of our conversation I mentioned the problem of the missing notebooks. Mr. Hyman was able to track down James Montgomery's will and discover that he donated the notebooks to the Free Library of Philadelphia in 1968 and 1969. Although the Free Library issued a press release about the notebooks in 1969, they were never listed in the *National Union Catalog* or elsewhere, so their location remained a mystery to Wilson scholars.<sup>12</sup>

The James Wilson Notebooks at the Free Library of Philadelphia consist of sixty-nine notebooks. Of these, nine contain early drafts of the lectures, fifty-two contain final versions of the lectures, and eight contain a miscellaneous collection of questions he asked his law students along with their responses, draft grand jury charges, early versions of his "Plan for Improving the United States," and copies of a few letters. In some places the final versions are heavily edited, with some sections crossed out and other passages clearly added at a later date. Together, the notebooks contain enough new information to justify a new, critical edition of Wilson's law lectures, if not his complete works.

### *The Draft Lectures*

The first eighteen notebooks are roughly paired, with one notebook containing very rough drafts of lectures for every notebook containing the final version. The nine notebooks containing drafts correspond to Wilson's first thirty-three law lectures, which are reprinted in the first eight chapters of the McCloskey edition of Wilson's lectures (the correspondence between the lecture and chapter numbers is discussed below).<sup>13</sup> Page Smith noted the existence of these drafts, but he made

<sup>12</sup> The press release, which is dated Feb. 13, 1969, mentions only the first thirty-six notebooks. However, the Free Library's accession numbers indicate that the volumes were donated in 1968 and 1969. The press release is on file in the Rare Books Department at the Free Library of Philadelphia.

<sup>13</sup> When comparing Wilson's notebooks to the printed edition of the lectures, I will use McCloskey's edition because of its widespread availability. As noted earlier, McCloskey's version is

little use of them.<sup>14</sup> They are, however, useful for understanding the development of Wilson's thought. In many places they consist of a string of quotations from legal and moral philosophers. Some of these quotes and citations survive in Wilson's final drafts, but most do not. However, there is often a substantive connection between the quotations and the final lectures.

Scholars have long known that Wilson read and cited authorities such as Thomas Reid, William Blackstone, Francis Hutcheson, Hugo Grotius, Richard Hooker, and Samuel Pufendorf. The drafts of the lectures enable them to trace the influence of each thinker on Wilson's first thirty-three lectures, lectures that contain some of his most important philosophical work. The drafts are particularly important as Wilson, following common practice, did not always quote or cite his sources in the final versions of his works. For instance, in his lecture on the law of nature, Wilson quoted an entire paragraph from Thomas Reid's *Essay on Intellectual Power*, but neglected to put the passage in quotation marks or provide a citation.<sup>15</sup> Such borrowing might go unnoticed by scholars who are not intimately familiar with Reid, but a scholar who compares the drafts to the final copies could easily discover it.<sup>16</sup>

Beginning roughly at Wilson's thirty-fourth lecture (chapter 9 in the McCloskey edition), there are no notebooks that are used solely for drafting lectures. It is possible that such notebooks existed but were lost.<sup>17</sup> All of the remaining notebooks with final versions of the lectures, however, contain at least some of James Wilson's editing marks, and some are extensively edited, which suggests that he abandoned his practice of creating a very rough draft of the lectures. Certainly it would be less necessary for him to do so as he moved from the more philosophical lectures to those involving more mundane issues of law. Nevertheless, the editorial changes to the final notebooks are revealing.

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taken from Bird's—it differs only in that he added a few notes and corrected a few obvious errors.

<sup>14</sup> Smith, *James Wilson*, 314.

<sup>15</sup> The passage to which I am referring begins "Moral truths" and is found in *Works*, 136.

<sup>16</sup> Shannon C. Stimson notes several of these passages in "A Jury of the Country": Common Sense Philosophy and the Jurisprudence of James Wilson," in *Scotland and America in the Age of the Enlightenment*, ed. Richard B. Sher and Jeffrey R. Smitten (Princeton, NJ, 1990), 208.

<sup>17</sup> It is also possible that they exist today, but their location is unknown. However, in the first eighteen notebooks, Wilson often distinguished between the draft notebooks and the final editions. For instance, the first three draft notebooks (after "Introductory") are labeled "No. 1," "No. 2," and "No. 3," whereas the first three notebooks containing the final versions are labeled "F No. 1," "F No. 2," "F No. 3." Beginning with notebook 14, no notebook contains an "F" in its label.

*The Final Drafts*

Fifty-two of the notebooks in the Free Library's collection contain the final drafts of the law lectures.<sup>18</sup> Most of these are in Wilson's hand, although a small percentage of them are in a far neater script that is clearly not his. Page Smith speculated, and he was probably correct, that James had Bird write out some of the final lectures.<sup>19</sup> In any case, the neat handwriting always correlates with rough drafts, so there is no question that anyone other than James Wilson is the author of the final drafts of the law lectures.

The final drafts reveal that Bird Wilson was, in many respects, a faithful editor. Even though Bird's introduction suggests that he rearranged some of the lectures, and even though the lectures do not follow exactly the plan laid out by Wilson in his first lecture, Bird did not rearrange any of his father's lectures.<sup>20</sup> He did, however, combine many of them. Throughout the notebooks Wilson numbered the lectures as he intended to deliver them. He labeled what Bird has as his first chapter "Introductory," and then offered what Bird has as chapter 2 in three lectures, clearly marked "L1," "L2," and "L3." These labels continue through the first course of lectures, running, with some gaps, from "Introductory" to "L58." The lectures are reprinted in exactly the order they were delivered in the first thirteen chapters of Bird's edition. Wilson began labeling the second course of lectures in a similar manner, but he stopped doing so with "L7" (which covers the first two-and-a-half chapters of the second part of Bird's edition).

Bird published the lectures in the order in which they were delivered, and he was faithful to the substance of the original text. He rarely altered his father's prose, eliminated passages, elaborated on them, or inaccurately transcribed handwriting, although I found examples of all these things. In most instances these departures are not significant, but several are noteworthy. For example, in notebook 15, Wilson clearly crossed out the major part of a paragraph dealing with factions. Bird Wilson ignored this and included it anyway. The paragraph, which begins "How easily is the

<sup>18</sup> This count treats notebook 50 as part of the law lectures rather than one of the miscellaneous notebooks (this issue is discussed below).

<sup>19</sup> Smith, *James Wilson*, 314.

<sup>20</sup> Wilson provided a general outline of his lectures in *Works*, 89–96. He departed from it primarily by covering the topics "philosophy of evidence" and "comparison of U.S. with Great Britain" approximately nine chapters (by Bird's division) earlier than his plan indicated (cf. *Works*, 93, 55–57).



esprit du corps generated" on page 266 of the McCloskey edition, and ends with "application of esprit du corps!" on page 267, emphasizes the ease with which factions are formed and the powerful conflicts in which they engage.<sup>21</sup> Wilson may have changed his mind about the truth of the passage, or, more likely, he decided that he did not want to emphasize the point. Whatever his reasoning, Wilson scholars should be aware that he did not intend the passage to be included in the published version of the lectures.

Conversely, Bird left out the last two sentences in Wilson's final draft of his last lecture. These sentences, which would have followed "Pennsylvania" on page 707 of McCloskey's edition, read: "To man and to Society the Subject is truly important. We took a general view of it in Prospect, before we entered upon Particulars: Now let us turn and take a retrospective Survey of the Ground, which we have passed."<sup>22</sup> These sentences show that Wilson considered his lectures to be complete (with the exception of the "retrospective," which he presumably did not compose, unless it is his "History of Property" discussed below). This finding is significant because Wilson's lectures are often described as "unfinished" or "abandoned."<sup>23</sup> It is the case that Wilson did not deliver them all, and they certainly become sketchy toward the end of the lecture series, but these sentences indicate that Wilson had, in fact, covered the ground that he intended to cover in his lectures.

Bird Wilson was a good editor, but he did consistently change his father's text in three ways. First, and least significant, he often combined short paragraphs into longer ones, but his combinations almost always make sense and never alter the meaning of the text. Second, he did not capitalize many of the words that his father capitalized. In many cases Bird's changes conform to modern usage, but there are occasions that might lead a careful reader of the text to wonder why James did not follow eighteenth-century (and in some cases contemporary) practices. For instance, James capitalized, but Bird's edition of the lectures often does not capitalize, words like "Revelation," "Scripture," and "Christian."<sup>24</sup> Similarly, Bird sometimes, but not always, capitalized words that are clearly referring to God, such as "Author" and "Observer."<sup>25</sup> Conversely,

<sup>21</sup> Notebook 15, p. 23.

<sup>22</sup> Notebook 49, pp. 16–17.

<sup>23</sup> See, for instance, Bird Wilson, in *Works*, 59; Smith, *James Wilson*, 346.

<sup>24</sup> Compare notebook F4, p. 16 with *Works*, 143–44.

<sup>25</sup> Compare notebook F2, pp. 30–31 with *Works*, 124.

Bird capitalized each letter of “MAN” on page 195 of McCloskey’s edition of the lecture, whereas Wilson had merely capitalized and underlined the word, as he did for the words “subject” and “author,” which immediately follow it. Such editorial choices leave a text that might suggest that Wilson was more sympathetic to the radical Enlightenment than he was, but such an implication is obviously misleading in light of Wilson’s text.<sup>26</sup>

The third major change Bird consistently made is that he did not emphasize many of the words his father did. From a modern perspective, James Wilson underlined far too many words. Bird reduced the number of words that are emphasized, but his edition, like McCloskey’s edition, does emphasize some words, usually by italicizing them. For instance, in the very first paragraph of his “Introductory” lecture (McCloskey’s chapter 1), Wilson underlined the following words: “this,” “first,” “fair,” “brilliant,” “Whole,” “very respectable,” “Politeness,” and “Brilliancy,” whereas the McCloskey edition only italicizes “fair” (and, note, does not capitalize “Whole,” “Politeness,” and “Brilliancy”). These changes are not particularly significant, and they arguably make the text easier to read for the modern reader.

In some cases, however, Bird’s deletion of emphasis is significant. For instance, in his discussion of the difference between public and private liberty, Wilson wrote that public liberty is well secured, but that “the most formidable Enemy to private Liberty, is, at this Moment, the Law of the Land.”<sup>27</sup> This emphasis went well beyond his usual practice of underlining individual words (and, in fact, “private” and “Law” are underlined twice). McCloskey’s edition, following Bird’s, merely puts “private” in italics.<sup>28</sup> Wilson’s emphasis in his notebooks shows that he was particularly concerned about threats bad laws pose to private liberty.

<sup>26</sup> I am not suggesting that Wilson’s son, who later became an Episcopalian minister, intentionally misrepresented his father’s religious views. Bird probably did not think the changes were important, or perhaps the printer made them. In any case, careful students of Wilson’s work would obviously prefer a more accurate version of Wilson’s text. The issue is particularly important in light of the debate about Wilson’s religious views. On this debate see Mark Hall, “James Wilson: Scottish Presbyterian, Aristocratic Anglican, Thomist, or Closet Deist? Does it Matter?” in *The Founders on God and Government*, ed. Daniel Dreisbach, Mark Hall, and Jeffry Morrison (Lanham, MD, forthcoming).

<sup>27</sup> Notebook 44, p. 36.

<sup>28</sup> *Works*, 647. Similarly, in a passage only a few pages away from this one, Wilson underlined the long sentence on page 649 of the McCloskey edition that begins “Every wanton, or careless, or unnecessary act of authority,” and ends with “esse possimus,” an emphasis that is not reflected in the text. Notebook 44, pp. 38–44.

Even with the exceptions noted above, it is fair to say that Bird Wilson did a reasonable job reproducing his father's lectures largely as he wrote them. Nevertheless, he understandably did not include material that his father wanted eliminated or indicate last minute changes or additions. These changes, however, shed light on the development of Wilson's ideas and his thought process.

Virtually all of the notebooks contain ninety pages. Wilson wrote on every other page, so that every page of text faces a blank page. He numbered the pages he planned to write on, but not the blank pages. This method left room for him to go back and edit the text by crossing out material he wanted to eliminate and placing material that he wanted to add on the blank page across from where he wanted it (he indicated where it should go with a variety of editorial marks). In many notebooks, Wilson only crossed out and/or added a few words, phrases, or sentences. Occasionally, however, he added page after page of new text, or crossed out large portions of the existing text.

As might be expected, many of Wilson's changes are simply matters of style. Many crossed-out sentences are extraneous, and much of the added material simply covers more thoroughly particular areas of law. Occasionally, however, changes are intriguing. For instance, in describing the nature of the federal union, Wilson originally wrote: "Let us turn our most scrutinizing attention to the Situation in which, on the Principles of that System, the States, and the People of the States, composing the American Union stand with Regard to one another . . ." He then crossed out "of the States," which leaves the sentence, by my transcription, as: "Let us turn our most scrutinizing attention to the Situation in which, on the Principles of that System, the States, and the People composing the American Union, stand with Regard to one another . . ." In Bird's edition, however, the sentence reads "Let us turn our most scrutinizing attention to the situation in which, on the principles of that system, the states and the people, composing the American union, stand with regard to one another . . ." <sup>29</sup> It is likely that the first version of the sentence placed too much emphasis on the centrality of the states for Wilson. Accordingly, he altered it to emphasize the role of both the states and the American people in America's federal system. Some of this clarity is lost, however, by Bird's version of the sentence.

<sup>29</sup> Notebook 16, p. 30; *Works*, 281.

Bird seldom made a mistake transcribing his father's editorial changes, but the editorial changes themselves are often revealing. For instance, in a discussion of checks and balances, Wilson originally wrote that "The General Assembly of Pennsylvania is entrusted with the legislative Power of the Commonwealth," but that this power is subject to checks by the executive and that it is "subject to another given degree of control by the judicial department, whenever the laws, though in fact passed, are found to be contradictory to the constitution." Wilson then altered the first sentence to read: "The Congress is entrusted with the legislative Power of the United States."<sup>30</sup> Wilson probably made this change to emphasize to his audience that the Supreme Court has the ability to strike down an act of Congress, a controversial proposition at the time.

These relatively small changes in Wilson's final drafts show that the notebooks can shed light on Wilson's work. However, there are a variety of longer passages that will interest students of the founding. For instance, Wilson crossed out a lengthy paragraph in which he argued that societies should be judged by how they treat women.<sup>31</sup> Scholars interested in his epistemological views will want to read the long passage on the importance of affections, or the sentence in a longer passage borrowed from Thomas Reid that he deleted.<sup>32</sup> Similarly, Wilson quoted and then eliminated a long passage from Locke's *Essay Concerning Human Understanding* toward the end of his lectures.<sup>33</sup> And, as one might expect, there are numerous passages on legal or political matters that Wilson struck out, such as an abstract discussion on the importance of an energetic executive or a more specific examination of cabinet offices.<sup>34</sup>

<sup>30</sup> Notebook 18, p. 5; *Works*, 300.

<sup>31</sup> Notebook "Introductory," p. 46. This would have appeared after "peculiarly important" in *Works*, 88.

<sup>32</sup> Notebook F3, pp. 36–40. The lengthy passage would have appeared after "affections and actions" in *Works*, 136; the passage from Reid after "last" in the unattributed Reid quote in *Works*, 136.

<sup>33</sup> Notebook 24, pp. 5–6. The passage would have appeared after "doubt and suspicion" in *Works*, 371. See also the miscellaneous notebook entitled "Letters concerning the Digest and Charge No. 4 and Letters to P.U.S.," p. 10.

<sup>34</sup> Notebook 17, p. 28. The paragraph would have followed "enlightened" in *Works*, 292. Wilson wrote two paragraphs on the subordinate officers in the executive branch. He then crossed them out and moved on to the judicial branch. See notebook 30, p. 9; *Works*, 444.

### *Miscellaneous Notebooks*

The final drafts of Wilson's law lectures are contained in notebooks labeled "Introductory" and then 1–49.<sup>35</sup> Interestingly, there is a notebook labeled "50" which contains Wilson's unfinished "On the history of property," which was published by Bird Wilson, James Andrews, and Robert McCloskey as the first document in their collections of "Miscellaneous Papers" following the end of the law lectures. Given its placement and number, it is possible that Wilson intended the piece to be the beginning of his "retrospective Survey of the Ground" covered in the law lectures (promised in the very last sentence of his law lectures that was deleted by Bird), rather than a separate document.<sup>36</sup> Like the lectures, Wilson's draft is faithfully reproduced in Bird's edition (with the sort of exceptions that are noted above).

The remaining eight notebooks in the Free Library's collection are not numbered, but are labeled roughly according to content. They include: "Questions No. 1 Digest," "Questions No. 2," "Questions no. 3, charge [?]," "Questions No. 4, Digest," "Letters concerning the Digest and Charge No. 4 and Letters to P.U.S.," "Improvements," "Improvements of the U.S.," "Charge Number 7." Some of the material in these notebooks has been published before, notably the three grand jury charges, the final drafts of Wilson's proposal for writing legal digests, and his plan for improving the United States. Much of the rest of the material in these notebooks, however, has never been published.

The notebooks labeled "Questions" contain questions posed by Wilson to his law students and his summaries of their answers. Page Smith discussed these questions and answers in his biography of Wilson, and he noted that many of the questions were preceded by brief lectures. These lectures, many of which are five to seven notebook pages long, have never been published. In some cases their contents are not particularly interesting, or they overlap with material covered in the published lectures. In other instances, such as his brief lecture preceding the question "Whether the Produce of the Land is to be commended as the sole Source of Wealth and Revenue of a Nation; and whether, supposing it to be so, it would, upon that Supposition, be proper or prudent to impose Restraints on

<sup>35</sup> An "F" precedes notebooks numbered 1–4 and 9–13. Beginning with notebook 14, no notebooks are preceded by "Fs."

<sup>36</sup> Notebook 49, p. 18; *Works*, 707–20.

Manufactures or Trade?" his lecture suggests that he was more supportive of free market economics than some scholars have believed.<sup>37</sup> As well, given the prominence of many of his students, their recorded answers will be of interest to students of the founding as well.<sup>38</sup>

It is well known that Wilson was a land speculator, but less well known are his plans for facilitating the development of western land. One of the most ambitious of these plans was laid out in his essay *On the Improvement and Settlement of Lands in the United States*.<sup>39</sup> A very rough draft of this essay, along with a variety of financial calculations, can be found in his notebook labeled "Improvements." A far more detailed plan is found in the notebook "Improvements of the U.S." Like the final drafts of the law lectures, the draft of his "Improvements" essay, and his letters to the Pennsylvania Assembly and George Washington regarding his legal digest, contain editorial changes that will interest Wilson scholars.

### Conclusion

The Wilson notebooks at the Free Library of Philadelphia make available to scholars an invaluable collection of manuscripts. Some of these documents have not been published in any form. Although the final version of the law lectures was published, scholars have not had access to the notebooks containing Wilson's handwritten drafts. In addition, nine of the notebooks contain early drafts of the lectures that were later revised in a substantial manner. These notebooks shed light on the development of Wilson's ideas.

<sup>37</sup> See, for instance, Frank Bourgin, *The Great Challenge: The Myth of Laissez-Faire in the Early Republic* (New York, 1989).

<sup>38</sup> Smith, *James Wilson*, 336–41. Wilson's fifteen students included the sons of many American leaders, and several of them became influential in their own right. At least eleven of his students went on to practice law. Students included: Seth Chapman, Henry Clymer, John Clymer, Jonathan Condy, Samuel Dickinson, Charles Evans, James Gibson, Joseph Hopkinson, Cantwell Jones, Michael Keppele, Robert Morris, William White Morris, John Read, Ceasar Rodney, and Evan Thomas.

<sup>39</sup> James Wilson, *On the Improvement and Settlement of Lands in the United States; An Essay by the Late James Wilson, Justice of the Federal Supreme Court, Presented by Him to Dr. Benjamin Rush, by the Heirs of Dr. Rush to the Library Company of Philadelphia, and Now by the Library Company to the Public* (Philadelphia, 1946). The essay was taken from a handwritten manuscript in the Rush Papers at the Library Company of Philadelphia. Its contents are discussed in Smith, *James Wilson*, 159–68.

The discovery of final drafts of Wilson's law lectures allows scholars to answer many questions about the extent to which Bird edited his father's lectures. They show that Bird did not reorder the lectures or revise their substance. However, he did combine lectures into chapters, alter capitalization and emphasis, and make a few transcription errors. And he did not include his father's editorial changes to the final draft. Many of Bird's decisions are defensible, but the careful student of James Wilson will obviously want to know about these changes.

The Free Library notebooks do not contain startling revelations that will radically alter our understanding of Wilson. Given the significance of the lectures as one of the few systematic works by an important founder, however, the information in them justifies the publication of a new, critical edition of Wilson's works. This edition should contain both the rough and final drafts of the lectures, and his editorial changes should be noted. It ought to retain Wilson's original spelling, capitalization, emphases, and lecture numbers. Without question, the new edition should include the unpublished material in the eight miscellaneous manuscripts. Such an edition of his lectures might not gain Wilson the reputation as America's Blackstone, but it would enable scholars to better understand this significant founder.<sup>40</sup>

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<sup>40</sup> A new edition of Wilson's works might also include sections of the minutes of the College of Philadelphia trustees that concern the law lectures. Wilson was a member of the board of trustees, and he served on the eight-person committee that produced a report indicating what areas of law the lectures should cover. The committee's guidelines were broad, and Wilson certainly covered the material indicated by them (the committee requested "at least Twenty-four" lectures, Wilson offered more than three times this number). Wilson was unanimously elected by the trustees to serve as professor of law, which led to his resignation from the board. See University of Pennsylvania Trustee Minutes, vol. 2, 1768–1791, pp. 212–16. University of Pennsylvania Archives.

The new edition should also contain the series of essays Wilson wrote with William White, who later became the first Episcopalian bishop of Philadelphia, for the *Pennsylvania Chronicle and Universal Advertiser* between Feb. 1 and May 16, 1768. It might also include Wilson's judicial opinions, and his comments at the federal Constitutional Convention, Pennsylvania's ratifying convention, and the Pennsylvania Constitutional Convention of 1789–1790.