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James Wilson, a Man for All Seasons (Chapter 7 of The Political and Legal Philosophy of James Wilson 1742-1798)

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James Wilson, a Man for All Seasons

This work began with the claim that James Wilson was one of the most important, yet one of the most frequently overlooked, founders. It has attempted to demonstrate that he merits examination because of his significant role in the founding period. Wilson's contributions as a member of Congress, constitution maker, law professor, and Supreme Court justice should not be overlooked. But his political significance does not necessarily mean that his political theory is worthy of attention.

Some scholars have proposed that Wilson's political thought was either unoriginal or contradictory. This concluding chapter takes issue with such analysis. It contends that although Wilson borrowed from a variety of philosophical traditions, he utilized them selectively, and altered them radically, to create a significantly different system of political thought. Wilson's innovative ideas led him to propose constitutional and legal provisions that were far ahead of their time. The political theory behind these contributions is as relevant today as it was in the founding period.

I

Jean-Marc Pascal concludes his work on Wilson by noting that "it must be acknowledged that . . . Wilson was not an original thinker." He argues that the founder still deserves study, but primarily because of his active role in the creation of the Constitution. While Pascal acknowledges that Wilson had political ideas, he proposes that they were merely reflections of the "intellectual climate of his day."¹

1. *Political Ideas of James Wilson*, 324.

Pascal's analysis misses the genius of Wilson's thought. Wilson drew from a variety of intellectual traditions to create an innovative and sophisticated political theory. In it he combined the best ideas of the time: popular sovereignty, majority rule, and individual rights. When he turned to the task of constitution making, Wilson's unique ideas led him to be the founding period's foremost advocate of a strong and democratic national government that clearly protects individual rights.

Wilson undeniably borrowed ideas from many different thinkers. This is not, however, proof that he was unoriginal. As King Solomon said, "What has been will be again, what has been done will be done again; there is nothing new under the sun."² Almost every great thinker has learned from his or her predecessors. Aristotle was influenced by Plato, who was influenced by Socrates. These philosophers may be considered innovative, however, insofar as they improved their mentors' ideas and adapted them to fit new circumstances. Wilson, likewise, should be considered an original thinker in that he borrowed elements from a variety of intellectual traditions and applied them to the creation of the American republic. He read widely and was not afraid to use the ideas of others. Yet he did not rely uncritically on any particular thinker. He often combined concepts from one or more traditions, or radically altered them, to arrive at his own conclusions. A brief review of several of the major schools of thought Wilson utilized illustrates the broad and rich intellectual heritage from which he drew.

Of primary importance for Wilson was the Christian natural law tradition. He believed that God had created a universal, immutable moral law and that this law is the standard against which all acts, whether by individuals or governments, must be measured. It also serves as the basis for Wilson's theory of natural rights. Because rights are based on natural law, they should never be violated. Of course this assumes that the rights are properly understood, which is why Wilson spent such a large portion of his law lectures discussing the natural rights of individuals. In the final analysis, if a government passes a law restricting the natural rights of individuals,

2. Ecclesiastes 1:9.

the law is void. This is true even if the law is supported by a vast majority, for right is "weighed by principle" not "estimated by numbers."³

Although Wilson's natural law theory was fairly traditional, he borrowed from Scottish Enlightenment thought to develop his own moral epistemology. Specifically, he followed Francis Hutcheson and Thomas Reid when he argued that all men and women possess a moral sense through which they may understand natural law. Reason may occasionally play a role in knowing moral truth, but usually the moral sense is sufficient. Thus the average person has the same ability to know natural law as does a philosopher, theologian, or natural aristocrat. Scottish Enlightenment thinkers also influenced his relatively optimistic view of human nature.

When Wilson considered his natural law theory together with his understanding of moral epistemology and his view of human nature, he was led to accept many of John Locke's political ideas. Wilson followed Locke in contending that governments are formed by men through the device of a social contract. The objective of government, the two thinkers agreed, is protecting natural rights. Although Wilson rejected some of Locke's important ideas, such as his empirical epistemology and labor theory of value, he joined him in stressing the sovereignty of the people as the only true foundation for government. In addition, Wilson joined many of Locke's followers in their support for a commercial republic.

Wilson also borrowed ideas from the ancients and their republican interpreters in the founding period. Through them, he came to accept the notion that virtue is important for the success of a republic. In particular, he believed that citizens must be willing to sacrifice themselves for the good of the community, to participate in government without considering their own interests. Like the ancients, Wilson thought virtue to be so important that governments should actively encourage their citizens to develop it. Aspects of this tradition also helped to reinforce his support for separated powers, although without the rigid class structure that many classical republicans adhered to.

3. *Works*, 577.

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Whenever Wilson discussed the role of government or the nature of law, he often began by examining the English legal tradition. He consistently referred to jurists such as Sir Francis Bacon and Sir Edward Coke as authorities, yet he did not hesitate to question them. Of particular importance to Wilson was Sir William Blackstone, whom he cited more than any other writer, but usually only in order to attack him. Perhaps more significant than any one thinker in this tradition were the English common law precedents that Wilson used to flesh out the details of his own system of law.

Finally, the writings of continental jurists, including Hugo Grotius and Samuel von Pufendorf, contributed to Wilson's high regard for international law. These thinkers helped him to envision a community of nations governed by law. Wilson was, in fact, the first American to write systematically about the law of nations.⁴ Another continental thinker, Jean-Jacques Burlamaqui, helped to convince Wilson that happiness should be a key end of government.

There were, of course, many other influences on Wilson. He referred to literally hundreds of scholars, whose ideas he borrowed and utilized, but upon whom he did not rely uncritically. He took what he considered to be the strongest aspects of each school and put them together in an innovative manner to produce a radically democratic political theory. The importance of Wilson's ideas is best seen in his farsighted contributions to the founding of the American republic.

II

Wilson's political theory led him to be the founding period's foremost advocate of a strong and democratic national government that clearly protects individual rights. As such, he distinguished himself from the other founders and influenced the shape of what America would become. Even when Wilson lost battles during the constitutional convention, the future often affirmed his position. Today, the American constitutional system is closer to his vision than to that of any other founder.

4. *Selected Political Essays*, ed. Adams, 8; Crosskey, *Politics and the Constitution*, 571.

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Wilson most clearly differed from the other framers of the Constitution in his advocacy of an extremely democratic central government. Few founders agreed with him that the House of Representatives, the Senate, and the executive should all be elected directly by the people. Of his proposals in this regard, only the direct election of representatives was written into the Constitution. Yet the nation eventually followed Wilson as states began to allow the people to directly vote for their senators, a right eventually guaranteed for all Americans in 1913 by the Seventeenth Amendment. Similarly, by 1824 most states agreed with him that the people should choose their own presidential electors. Today almost no layperson, and only a few scholars, believe that electors are necessary. It is safe to suggest that if another candidate with fewer popular votes than his opponent is elected president, the electoral college will be abolished and Wilson's "chimerical" idea of direct popular election of the chief executive will become a reality.

Of equal significance was Wilson's advocacy of the principle of one-person-one-vote. He consistently fought for this ideal during the constitutional convention, but it was not until the 1964 Supreme Court decision in *Wesberry v. Sanders* that it was applied to the national government. In fact, Justice Hugo Black's opinion for the Court cited Wilson's law lectures on this point. Although widely accepted today, Wilson's position was unusual in the founding period. As Robert McCloskey pointed out, Wilson was "the *only* important founding father who expressed himself unequivocally" in support of proportional representation.⁵ Similarly, he also argued for a broader conception of suffrage, and had more faith in the people to make good choices, than any other founder.

While Wilson was more democratic than his peers, he joined them in their distrust of power. He was particularly concerned that government officials might become corrupt or be influenced by either a minority or a majority to violate the rights of an individual or small group. Accordingly, he supported the separation of powers and a variety of checks and balances, including an executive veto and judicial review. Wilson's unusually strong reliance on natural

5. *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964); *Works*, 1 (italics in original).

law theory led him to have one of the most expansive views of the latter. Although his approach to natural law is not widely accepted by jurists today, few founders understood like he did the role that the courts, particularly the Supreme Court, would come to play in the American constitutional system. But it should be remembered that Wilson was confident that majorities would almost always act according to natural law. Thus he thought that checks on the will of the majority would rarely be used.

Because he was so sure that democratic majorities would legislate properly, Wilson proposed a larger role for the federal government than many of his colleagues were willing to accept. As early as 1785 he argued in "Considerations on the Bank of North America" that "[t]he United States have general rights, general powers, and general obligations," and that the national government may therefore pass legislation it believes will promote the "general interest" of the country. Yet by the time of the Pennsylvania ratifying convention Wilson had made it clear that he thought the federal government should only do things individuals, businesses, or local governments could not easily do. These tasks included providing for external security, regulating trade, and encouraging the development of the nation. To meet the latter end, he wanted the government to take an active role in internal improvements, including the creation of canals, roads, and forts. His rationale for national power of this scope anticipated Alexander Hamilton's later arguments for the constitutionality of the national bank.⁶

Throughout his career, Wilson was often ahead of his time in his support for innovative political or legal concepts. For instance, he conceived of the idea of dominion status for British colonies six years before Thomas Jefferson or John Adams, and seventy years before the British actually adopted it. Wilson's plans for the empire may have helped him develop the radical conception of federalism that he promoted at the constitutional convention. His theory that two independent government bodies could exercise authority over the same territory shaped the relationship between states and the national government for years to come.

6. *Works*, 829; Hamilton, "Opinion on the Constitutionality of an Act to Establish a National Bank" and "Report on Manufactures," in *Selected Writings and Speeches of Alexander Hamilton*, ed. Morton Frisch.

A cursory reading of the debates of the federal convention indicates Wilson's importance. He encouraged his fellow delegates to create a strong and democratic, but limited, national government. Many scholars have noted, at least in passing, his influence at the convention and in Pennsylvania. And history, by and large, has affirmed Wilson on the points he lost in the convention, such as the direct election of senators, proportional representation, and judicial review. Each of his contributions stemmed from an aspect of his political philosophy. To understand the creation of the American republic, then, it is necessary to study Wilson's political ideas.

III

America's current constitutional system closely mirrors that envisioned by Wilson. Yet today many Americans would disagree with aspects of Wilson's political theory. This is a cause for concern, for as Wilson wrote of governments, "There is not in the whole science of politicks a more solid or a more important maxim than this—that of all governments, those are the best, which, by the natural effect of their constitutions, are frequently drawn back to their first principles."⁷ People, like governments, should return to and reflect upon the first principles of their constitutions. In the United States, Wilson's political theory, which contributed so much to the country's constitutional system, deserves serious consideration.

This book has attempted to clearly explain and analyze Wilson's political philosophy. It would be inappropriate, at this point, to attempt to apply his thought to contemporary social and political issues in a sustained manner. Such an endeavor would quickly date the book and could call into question the objectivity of the author. However, it seems permissible to note a few possible contributions that Wilson's political theory could make to the larger theoretical debates at the dawn of a new century.

One of the tenets of Wilson's political theory that has been largely abandoned by most political theorists is his conception of natural law. He argued that natural rights are based upon this law, and that the end of government is to create legislation in accordance with it.

7. *Works*, 291.

If the idea of a universal, absolute moral standard is rejected, upon what will natural rights be based and what becomes the object of political debate? As James Davison Hunter suggests, the rejection of a shared moral standard turns democratic politics into a simple struggle for power, a "culture war" that democracy may not survive.⁸

Along these lines, Wilson's view of natural rights was far less individualistic than that shared by many contemporary Americans. Although he clearly supported a strong theory of rights, he also understood that liberty without law is merely licentiousness. Of course the law he had in mind is not necessarily human law; in many cases it is moral or divine law. Nevertheless, the important point is that liberty cannot remain liberty unless it is exercised with restraint—a restraint too many Americans ignore today.⁹

According to Wilson's democratic theory, natural law could be known to ordinary individuals through their moral senses. The combination of these ideas led him to conclude that democracy is the best form of government. Yet today many Americans, especially elites, either implicitly or explicitly reject moral sense theory. Although some scholars have begun to seriously reconsider the idea, one must question the feasibility of democracy if moral questions can be answered only by "moral experts," on the one hand, or by practitioners of amoral power politics, on the other.¹⁰

Another issue emphasized by Wilson but largely ignored in the late twentieth century is the creation of virtuous citizens. Wilson recognized that families play the most important role in this process,

8. *Culture Wars: The Struggle to Define America* (New York: Basic Books, 1991) and *Before the Shooting Begins: Searching for Democracy in America's Culture War* (New York: Free Press, 1994). Among the best discussions of contemporary natural law theory are John Finnis, *Natural Law and Natural Rights* (Oxford: Oxford University Press, 1990); Robert P. George, ed., *Natural Law Theory: Contemporary Essays* (New York: Oxford University Press, 1992); and Michael Novak, *The Spirit of Democratic Capitalism* (New York: Simon and Schuster, 1982).

9. Communitarian critics of liberalism make this point well but then falter when discussing what sort of restraints are appropriate and why. See generally Sandel, *Democracy's Discontent*; Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (New York: Free Press, 1991); and Amitai Etzioni, *The Spirit of Community: Rights, Responsibilities, and the Communitarian Agenda* (New York: Crown Publishers, 1993).

10. On contemporary moral sense theory see especially Wilson, *Moral Sense*.

but he also thought that education, laws, and participation in politics were significant factors. Yet today it seems that few families stress the importance of duty—and indeed one may question the extent to which some families teach any moral standards. Further, some educators seem more interested in encouraging students to challenge authority rather than to respect it, the idea that law has a teaching function is often ridiculed, and participation in politics is often viewed as a vice rather than a virtue. Of course not all of this is a bad thing—after all, authority should sometimes be challenged. Yet it seems reasonable to consider whether or not children are receiving the sort of training that is necessary to make them good, democratic citizens.¹¹

The preceding paragraphs have suggested a few areas in which Americans have to one degree or another abandoned ideas that Wilson considered necessary for the survival of the American constitutional system. His other insights into the nature of society, sovereignty, federalism, representation, and judicial review also deserve reconsideration in light of today's problems. Such analysis, however, is beyond the scope of this work, which has attempted to take the first step by providing a systematic and comprehensive analysis of Wilson's political and legal theory.

James Wilson was one of the most important and theoretically interesting founders. He creatively adapted ideas from a variety of intellectual traditions to solve a series of intellectual and practical problems. His political theory led him to support the best ideas in the founding period: popular sovereignty, constitutionalism, majority rule, and natural rights. From his early days as a revolutionary to his final days as a Supreme Court justice, he consistently applied his political theory to the concrete problems of nation building. In doing so, he was confident that he was helping to create a constitutional system dedicated to the protection of the "natural rights of its members," which is, after all, "the primary and the principle object in the institution of government."¹²

11. On this issue it is hard to improve on Tocqueville, *Democracy in America*. Also see Wilfred McClay, "The Soul of Man Under Federalism," *First Things* 64 (June/July 1996): 21–26.

12. *Works*, 592, 585.