
1987

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**POPULAR SOVEREIGNTY AND POLITICAL OBLIGATION IN THE
THOUGHT OF JAMES WILSON**

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Abstract

Popular sovereignty is the salient theme of James Wilson's political thought. But Wilson is no less eager to prove that the sovereign people can oblige and bind themselves, or that liberty is consistent with law. He rests his case on a Thomistic view of natural law as reflected in Scottish Common-Sense philosophy; he also utilizes several of the "auxiliary precautions" of Federalism. However, he parts company with his Federalist brethren over the question of representation, and he anticipates a fair degree of republican virtue as a consequence of the act of voting. He further supposes that the people can be trusted to legislate because their interests are homogeneous. In the end, Wilson's democratic sympathies clash with his aristocratic penchant for reputation and honor.

Popular Sovereignty and Political Obligation in the Thought of James Wilson

In his opening address of the *Lectures on Law*, James Wilson avers his special regard for the American nation, a country young and untried but certain to surpass the fabled commonwealths of antiquity: “Were I called upon for my reasons why I deem so highly of the American character, I would assign them in a very few words—That character has been eminently distinguished by the love of liberty, and the love of law.”¹ Although liberty and law are contending objects of affection, one without the other, Wilson explains, is politically ruinous, issuing in anarchical licentiousness or tyrannical oppression (72).² America has achieved, or perhaps has always enjoyed, a balanced harmony of the two. But neither revolutionary patriotism nor constitutional sagacity can guarantee this balance into the future unless the population is properly instructed respecting the origins and requirements of liberty and law. Insofar as Wilson undertakes to provide this instruction, he presents himself as the teacher of the nation and the preserver of its republican character.

From the principle of liberty, one derives what surely is the core of Wilson’s thought,

¹ Robert G. McCloskey, ed., *The Works of James Wilson*, 2 volumes (Cambridge: Harvard University Press, 1967), p. 70. Hereafter cited as *Works*. Parenthetical page references are to *Works*. Volume citation is omitted because pagination is continuous across both volumes.

² At the Pennsylvania Ratifying Convention, Wilson spoke of liberty and happiness being threatened by tyranny and licentiousness. “To guard against the latter,” he observed, “it is necessary that adequate powers should be given to the government, and to protect us from the former, it is requisite that those powers should be properly distributed.” John Bach McMaster and Frederick D. Stone, eds., *Pennsylvania and the Federal Constitution: 1787-1788* (Philadelphia: Historical Society of Pennsylvania, 1888), pp. 263, 283. Since Wilson’s Federalism will be at issue in this paper, it is worth noting that here he anticipates the argument of *Federalist* 51, especially Publius’s concern for “auxiliary precautions.” Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers* (New York: New American Library, 1961), p. 322.

namely, the sovereignty of the people. From the principle of law, one discovers what arguably is the problem of Wilson's thought, namely, the restraint of popular rule. People are free, and yet they are obliged. How Wilson concludes the first and establishes the second will be the subject of this paper, and the Law Lectures will serve as the primary, though by no means the only, source.

I. Popular Sovereignty

Wilson's interest in the question of sovereignty is indeed remarkable, especially in light of the *Federalist Papers* and its near silence concerning this matter.³ Three of the most important chapters of the *Lectures on Law* raise and extensively discuss the subject of final authority,⁴ and countless reaffirmations of the conclusions therein are scattered throughout the whole. Wilson was a Scottish émigré of 1765 who quickly thrust himself into the debates of the resistance period. The unavoidable preoccupation of that period with the issue of sovereign power is something which stayed with Wilson through the drafting of the Constitution and even as he wrote his Law Lectures in 1790-1791.

Wilson accepts from Sir William Blackstone, his chief antagonist in the work, that sovereignty is "supreme, irresistible, absolute, uncontrolled authority" and that it is located in every state (169, 770).⁵ But he disputes Blackstone's claim, based on Pufendorf and ultimately on Hobbes (105), that supremacy is a function of power, and that law is the command of the sovereign. Wilson's response to the legal positivism of his day is reminiscent of arguments found in Rousseau

³ John Diggins, *The Lost Soul of American Politics* (Chicago: University of Chicago Press, 1984), pp. 57-58.

⁴ These are: "Of the General Principles of Law and Obligation," "Of the Law of Nature," and "Of Municipal Law."

⁵ R.G. Adams, *Political Ideas of the American Revolution* (Durham, North Carolina: Trinity College Press, 1922), pp. 138-46.

and Locke: Superior force can compel, says Wilson, but it entails no obligation to obey; on the contrary, “resistance to such force is a right, and, if resistance can prove effectual, it is a duty also” (127, 106)⁶ Furthermore, total subjection to another’s will is an excessive and unnecessary price for peace. Wilson queries, “Must submission to an equal be the yoke, under which we must pass, before we can diffuse the mild power, or participate in the benign influence of law? If such is indeed our fate, let resignation be our aim” (114). Nothing is gained by forgetting the ends of civil life—the happiness of the people—by treating government as unaccountable, or by enslaving oneself to its authority. In the first place, the individual has no such power to give, and if he did, the association subsisting between rulers and ruled would be “neither [a] commonwealth nor [a] body politick” (115). Finally, if law is a command from above instead of an agreement among equals, then, Wilson warns, “we may bid a last adieu to the maxim which I have always deemed of prime importance in the science of government and human laws—a free people are governed by laws, of which they approve” (179).⁷

Hobbes’ argument supposes that people are naturally equal and that the sovereign is an artificial being made great by the submission of others.⁸ The result, as Wilson sees it, is servility for all: “in the attempt to make one person more than man, millions must be made less” (115).⁹

⁶ Rousseau, *On the Social Contract*, I.3.

⁷ Lockean sentiments similar to the argument here and in the above two notes can be found throughout the *Second Treatise*; but see in particular sections 135-40, 149.

⁸ Hobbes is also a contractarian, but he is often not taken seriously since consent with him is a product of fear. *Leviathan*, 14.27; 20.1-2.

⁹ James Read stresses the symbolic importance of popular sovereignty: “The power of government can be harmonized with the liberty of citizens only if citizens consistently regard the government as their servant, not their

But an alternate account of the origin of sovereign power would derive it from the natural superiority of one or more people. This is a position which Wilson traces to Aristotle, whom Wilson respectfully begs leave to challenge. There are practical objections to a distributive justice which elevates to king anyone “excelling in *all* virtues.” The contingency of, “if a man can be found,” is a most improbable and uncertain foundation for civil government. Also, the gradations of inequality among citizens would necessitate a similarly complicated system of rule. And experience teaches that the political recognition of excellence generally has a corrupting influence on those esteemed (106-08). Wilson does not deny that some people are superior in talent, accomplishment, and virtue. But he doubts the political relevance of this fact. After all, it is not clear what relation a superior person has to his fellows, whether he is aloof and disinterested or actively engaged for the benefit of others. Wilson puts this as a question, almost as if a positive reply would result in the surrender of power to a king (128). But it is more accurate to say that Wilson’s solution to the “Aristotle problem” is the privatization of excellence. This statement is not meant to imply that virtue is individualistic and arbitrary, for Wilson is a natural-law adherent who denounces moral relativism and skeptical philosophy (139, 216-18). Rather, Wilson maintains that the private is the end for which the public is the means. Politics is but a scaffolding thrown up to erect the more enduring edifice of society (86, 608). Wilson draws a sharp distinction between political life, or government, the purpose of which is to secure and enlarge the rights of men; and social life, especially domestic society, the purpose of which is to promote human excellence, more commonly called happiness (238-39, 285, 592). In this respect, Wilson solves his “Aristotle

master” (*Power versus Liberty: Madison, Hamilton, Wilson, and Jefferson* [University of Virginia Press, 2000], p. 108; also p. 116).

problem” by adopting Aristotle’s eudaemonic mode of thought. Consider, for example, this Aristotelian statement from Wilson’s July Fourth Oration of 1788:

Agriculture, manufactures, and commerce will ensure to us plenty, convenience, and elegance. But is there not something still wanting to finish the man? Are internal virtues and accomplishments less estimable, or less attracting than external arts and ornaments?

The government’s role in fostering moral and intellectual virtue is definite but indirect. By protecting the rights of property, liberty, and subsistence, government produces the serenity of mind in which “the sciences and the virtues love to dwell” (776).¹⁰ The crucial point though is that developed virtue contains its own happiness, that such happiness is private, and that while deserving of honor, it need not be obeyed (128). Virtue is the crown and glory of society, but equality is the bedrock of politics.

Superiority can be divinely ordained, and kings have frequently claimed a divine right to rule. But such a notion, Wilson contends, was originally seized upon as a secular defense against papal plenitude of power; thus, it is not to be taken too seriously (120-21). Second, superiority can arise from nature; but, as just explained, such excellence finds its rightful home in the private regions of society. Since neither God nor nature determines the superior few—at least not in any reliable and relevant way—only human authority can supply their number, and not by forced submission, since force confers no right, but by voluntary agreement. In the absence of divine election, human election is the sole legitimate means for constituting political power (121, 180, 187).

Something of Aristotle has been detected in Wilson, but at bottom his principles are more

¹⁰ For two other affirmations of Aristotelian principles, see *Works*, p. 130 and *The Records of the Federal Convention of 1787*, 4 vols., ed. Max Farrand (New Haven: Yale University Press, 1966), I: 605.

Lockean. Why must political power proceed from human election? Because men are equal in nature and in pre-governmental civil society. They are equal in their possession of natural rights and in their obligations to natural law. They differ in their attributes and dispositions, and social life depends precisely on this diversity and on the division of labor which it engenders. But in the right to be treated fairly and to enjoy the products of their work, the wise and the ignorant, the weak and the artful all stand on an equal footing. Men also are free, since as a consequence of their equality none are superior, and none subordinate (241). Free and equal human beings combine to form society on the basis of unanimous consent and thereafter institute government on the basis of majority consent. As creators of civil government, the people collectively are its sovereign, just as the creator God is sovereign of the universe. They maintain government, supervise it, and have the residual right to alter or abolish it, even the right of revolution (77, 156, 304).¹¹ Here Wilson's Lockeanism is unmistakable, for these are the very arguments used by Locke to defeat the absolutism of Hobbes.

Wilson, however, confronts a somewhat milder variant of absolutism, namely Blackstone's asseverations concerning parliamentary sovereignty. Blackstone is twice quoted dismissing the opinion of Locke that "there remains still inherent in the people a supreme power to alter the legislature." Such a view, says Blackstone, while theoretically just, cannot be adopted nor argued from "under any dispensation of government at present actually existing" (77, 169). Lest revolution occur, and with that society suffer destruction and all positive law suffer repeal, sovereign power must be removed from the people—a la Hobbes—and located in a mixed and differentiated parliament—a la the Glorious Revolution.

Wilson is at pains to contest the argument for parliamentary sovereignty, even as a true

¹¹ McMaster and Stone, *Pennsylvania*, p. 249.

account of the constitution of Great Britain, offering instead common law as evidence of popular consent (170, 182-85). But at other times, Wilson concedes the sovereignty of parliament (309, 770), only to compare it unfavorably to popular sovereignty in the United States. The American people have the distinction of being the first to infuse the whole of government with the principle of representation (312, 402, 763). All branches are elected or trace their power back to the people. Hence supervisory control is exerted by the people and sovereignty effectively retained. In Britain, by contrast, the king as executive is contractually joined to the people rather than delegated to act in their name; the House of Lords represents no one but the Peers assembled; and the Commons has its representative character vitiated by corruption, malapportionment, insufficient numbers, and over-long terms of office (175-76, 311-13, 763). Also in America, the division of power works as a check upon the legislative authority, especially the judicial branch empowered to review the constitutionality of laws (330).¹² Wilson even hazards the first defense of civil disobedience, saying that a further check may be applied by the individual's rightful refusal to obey legislative enactments thought to be unconstitutional (186).¹³

The people are sovereign in America because through their representatives they legislate for themselves. Law is an expression of popular consent rather than a command of superiors. But the rule of law exists only if people are bound, and it is not immediately evident that people can bind themselves. Pufendorf is cited as someone who disputes the possibility of self-binding, for in the absence of superior force to maintain agreements and police the law, self-bound individuals will quickly renounce their obligations (188). Where then is the obligation if people are obliged only for as long as they care to be obliged? Wilson himself seems alert to the force of this question,

¹² Ibid., pp. 304-05, 354.

¹³ There is the proviso that the individual be prepared to suffer the consequences of a wrong judgment.

for in speaking later of the legislature, he says,

Let us suppose, that this single body, in a lucky moment, should pass a law to restrain itself: in the next moment, an unlucky one, it might repeal the restraining law. Any mounds, which it might raise to confine itself, would still be within the sphere of its own motion; and whatever force should impel it, would necessarily impel those mounds along with it. To stop and to check, as well as to produce motion in this political globe we must possess—what Archimedes wanted—another globe to stand upon (291).¹⁴

To the degree that the legislature is viewed as a distinct social body, as is often the case with Whig republicanism,¹⁵ the people can function as “another globe to stand upon.” But a representative legislature, as Wilson would have it, places government and people on the same globe with no separate ground from which to lever their collective will. Thus, the people binding themselves are essentially unbound—a woeful conclusion which necessitates returning to the jurisprudence of Pufendorf and Hobbes to explain the sources of obligation and the nature of law. But their position is an anathema to Wilson who reiterates his belief that “one man, equal and free, cannot be bound

¹⁴ McMaster and Stone, *Pennsylvania*, p. 304.

¹⁵ Recent literature on Whig republicanism—sometimes called classical republicanism, or classical humanism—is voluminous. A few items will suffice: Caroline Robbins, *The Eighteenth Century Commonwealthmen* (Cambridge: Harvard University Press, 1959); Trevor Colbourn, *The Lamp of Experience* (Chapel Hill: University of North Carolina Press, 1965), pp. 59-198; Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge: Harvard University Press, 1967); Gordon Wood, *The Creation of the American Republic, 1776-1787* (New York: W.W. Norton and Co., 1969), pp. 3-124; Gerald Stourzh, *Alexander Hamilton and the Idea of Republican Government* (Stanford: Stanford University Press, 1970), pp. 38-125; J.G.A. Pocock, *The Machiavellian Moment* (Princeton: Princeton University Press, 1975), pp. 401-552; Diggins, *Lost Soul*, pp. 18-99. For overviews of the literature, see: Robert Shalhope, “Toward a Republican Synthesis: The Emergence of an Understanding of Republicanism in American Historiography,” *William and Mary Quarterly* 29 (1972): 49-80; and James Hutson, “Country, Court, and Constitution: Antifederalism and the Historians,” *William and Mary Quarterly* 38 (1981): 337-68.

by another, who is no more.” At stake is “the fate of all human laws,” for “if a man cannot bind himself no human authority can bind him” (188).

II. Political Obligation

Popular restraint is a significant problem for Wilson because he takes to heart the people’s sovereign right to rule. Robert McCloskey calls him “one of the most consistent democrats of his era.”¹⁶ At the Federal Convention, he was singularly ardent in proposing and defending majoritarian measures. He recommended, for instance: (1) that the House, the Senate, and the executive have their members elected by direct, popular vote; (2) that representation in the Senate be in proportion to population; (3) that House elections be annual; (4) that new states to the union be accorded the same privileges as founding members; (5) that age qualifications for office-holding be eliminated and citizenship requirements reduced; (6) that bare or barely super majorities be sufficient for navigation legislation, for ratification of the Constitution, and for ratification of treaties—and in this last business that the House be involved; also (7), that constitutional ratification be the work of special conventions, popularly elected, instead of sitting legislatures.¹⁷ And there are other proposals in the same vein. Wilson did more than anyone at the Convention to bring democracy into the Constitution. For this, subsequent generations might well be grateful;¹⁸

¹⁶ McCloskey, “Introduction,” in *The Works of James Wilson*, p. 5; also, Ralph Rossum, “James Wilson and the ‘Pyramid of Government,’” *Political Science Reviewer* 6 (1976): 123, 137.

¹⁷ Farrand, *Records*: (1) I: 49, 52, 69, 151, 153-54, 405-06; II: 30; (2) I: 179-80, 202, 450, 482, 550; II: 4, 274; (3) I: 361; (4) I: 605; (5) I: 375; II: 125, 217, 230-31, 268, 269, 272; (6) II: 375, 451, 468-69, 538, 540, 547-48, 549; (7) II: 477.

¹⁸ McCloskey is concerned to explain Wilson’s undeserved obscurity (Introduction, pp. 2-7, 17-19, 45-48).

but such democratic ardor also places him under a peculiar obligation to explain how popular sovereignty is to control itself, for the final objective is lawfulness no less than liberty.

1. *The Law of Nature*

In a speech delivered before the Pennsylvania Ratifying Convention in November of 1787, Wilson had this statement to make:

. . . that the supreme power resides in the people . . . may be called the *panacea* in politicks. There can be no disorder in the community but may here receive a radical cure. If the error be in the legislature, it may be corrected by the constitution; if in the constitution, it may be corrected by the people. There is a remedy, therefore, for every distemper in government, if the people are not wanting to themselves. For a people wanting to themselves, there is no remedy: from their power, as we have seen, there is no appeal: to their error, there is no superior principle of correction (771).¹⁹

Wilson though would allow as an exception to popular sovereignty the correcting restraints of natural law. Wilson is a natural-law theorist. But as with all natural-law theories, the question arises whether this law is known by men, whether human behavior normally, i.e., “naturally,” comports with it, and whether deviations therefrom are punished and the law as a whole upheld—because nature conceived as lawful is something more rigorous than nature conceived as orderly, which order intelligent beings are called upon to acknowledge and glorify. Wilson does answer in the affirmative respecting the first part of the question (known by), but respecting the other two, his answer—less substantial and deliberate—is somewhat difficult to ascertain.

Among equals, Wilson explains, obligation must rightfully proceed from consent. But equal people are still not free to obligate themselves to any course of action they choose, because they are dependent beings and owe obedience to God their creator, who is all wise, all good, and

¹⁹ McMaster and Stone, *Pennsylvania*, p. 351.

all powerful. God, says Wilson, is the efficient cause of moral obligation (132). His will, expressed through nature—and sometimes through revelation—establishes the parameters within which human will operates; it also supplies direction and sanction for positive law. But to be obligatory, God’s will must be known. Wilson contends that God’s will is not known primarily by reason or by faith, which is to say that it is not the province of philosophers or believers. Rather, all humans equally possess the capacity to receive and be guided by divine instruction. This capacity Wilson terms the moral sense, although other denominations include conscience, feeling, intuition, common sense, instinct, sentiment, and affection. Wilson is an exponent of Scottish Common-Sense philosophy, a school of thought whose most prominent members are Francis Hutcheson, Adam Smith, Adam Ferguson, and Thomas Reid.²⁰ Scottish Common Sense, as mediated through Wilson, holds that morality, like mathematics, begins in and depends on intuited, indemonstrable first principles. Wilson does not brave presenting a comprehensive list of these axiomatic truths,²¹ but he does offer as examples truth-telling and protection of the innocent (232-33). First principles, it happens, are felt rather than discovered rationally: “How do you know that you ought to do that

²⁰ Gladys Bryson, *Man and Society: The Scottish Inquiry of the Eighteenth Century* (Princeton: Princeton University Press, 1945); also, Louis Schneider, “Introduction,” in *The Scottish Moralists: On Human Nature and Society* (Chicago: University of Chicago Press, 1967).

²¹ Wilson explains in a roundabout way why a comprehensive list is unimportant: “the law of nature,” he says, “though immutable in its principles, will be progressive in its operations and effects”; thus “the most finished performances executed by human hands cannot be perfect” (*Works*, p. 147). By this account the first principles of natural law should be ascertainable and subject to enumeration; but the more self-evident and truly first they are, such as Thomas Aquinas’s “do good,” the less helpful they are in human affairs. Truth-telling is a property of language and of man’s social nature, for candid discourse breeds confidence and so makes possible association. But even this law of nature is not so primary as to preclude exceptions.

which your conscience enjoins the performance? I can only say, I *feel* that such is my duty.” People must first feel the evil of injuring the innocent before they can reason about their precise obligations. “If a person was not possessed” of such feeling, “it would not be in the power of arguments, to give him any conception of the distinction between right and wrong” (133). The role of reason in moral deliberation is thus instrumental—it determines the means appropriate to ends given by the moral sense. More completely, reason is responsible for proving, extending, and applying what the moral sense has suggested; for rendering exact what moral sense has left unclear; for considering relations and tracing out remote consequences; and for establishing priorities among the rights of men (138). So described, reason seems to hold the same subordinate station that Aristotle allots to prudence in its relation to virtue. Aristotle’s virtue is also an intuitive sense of right and wrong, of noble and base, buttressed by habituation and brought to perfection by the means-reasoning of prudence.²² At the same time, Wilson’s moral sense bears this comparison with Plato, that it relies heavily on the “sentiment of beauty and deformity” (143, 134) and so looks like the moral instruction which Socrates tenders to his warriors, who are wont to obey the philosopher-king because he is perceived to be the supreme object of beauty (by contrast, the philosophers of the Republic are directed by the love of the good, the Agathon).²³ But surely Thomas Aquinas’s teaching on conscience would seem to provide the original for Wilson, who says, in keeping with Aquinas, “As virtue is the business of all men, the first principles of it are written on their hearts, in characters so legible, that no man can pretend ignorance of them, or of his obligations to practice them” (136-37).²⁴

²² Aristotle, *Nicomachean Ethics*, 1144a8, 1145a6.

²³ *Republic*, 401d-402a, 402d, 505a, 508e-509a, 517b-c, 540a-c.

²⁴ *Summa Theologica*, I-II.94.6 and 94.1-5.

The moral sense is the faculty by which people learn the will of God as communicated by the law of nature. The law of nature is obligatory. Wilson regards it as the other side of natural right. If people have a right to life, liberty, property, and a reputation honestly earned,²⁵ they also have an obligation to respect these rights in others. Wilson is especially expansive on the subject when speaking of the law of nations, or natural law applied to states. A nation lies under the obligation to do no wrong or injury, not as an indirect consequence of actions taken or in the proper assertion of its rights, but as “the governing principle of its conduct” (160). Moreover, a nation, like an individual, is commanded by natural law to do good to others. The obligation is strictest respecting the nation’s own well-being (making obligation the same as right) and that of nations nearby; it weakens proportionally as those removed and foreign are comprehended by it. But still some duties are owed to all of mankind. Wilson considers it an obligation inherent in human nature that people—and that people united as nations—develop their powers of moral abstraction, expanding ever more the circle of friends and neighbors to whom solicitous attention is extended. It is the great achievement of civilization that collective behavior has become progressively more sociable, benevolent, and philanthropic. Indeed, Wilson waxes ebullient when he reflects on the further progress the human race is set to achieve (160-65).

But do people, to say nothing of nations, generally discharge these obligations, and is there a price to be paid by those who evade their duties? These are the questions previously asked concerning the law-likeness of natural law. Wilson’s response, it must be said, is not altogether satisfying and is perhaps circular. On the one hand, Wilson detects certain properties or capacities which mark men as uniquely suited to civil life. “The Author of our existence,” he says, “intended us to be social beings; and has, for that end, given us social intellectual powers” (230). These

²⁵ To the Lockean triumvirate of rights, Wilson adds the right of character. *Works*, pp. 405, 593-96, 649-52, 788.

include language and the particular use of it for testifying, commanding, and promising; as well as advising, persuading, consoling, encouraging, soothing, and restraining—all operations which presuppose the company of others. In addition, the human being is possessed of social passions: sexual love, family affection, friendship, esteem, gratitude, benevolence, patriotism, and humanity. In part, Wilson's argument is Aristotelian: there must be society—and society must therefore be natural—because people have these attributes which only society can develop. At the same time, Wilson contends that there must be these attributes because civil society in the absence of them would be too dangerous to maintain (232). Here then is the apparent circularity: Wilson both derives society from the possibilities of human nature and human nature from the requirements of society. Accordingly, what is fundamental and what derivative is unclear. But as to the questions above, the mutual dependence of society need not detract from the assumed propensity of the human race to conduct itself decently. Those gregarious tendencies given by nature are simply augmented by society (139-40). Such a conclusion would be consistent with Wilson's progressivism.

This largely Aristotelian account of the naturalness of society and of the civility of man might, however, be supplanted by a Hobbesian alternative, to wit: proud, diffident, and fearful people associate for the purpose of security and the safe exercise of rights, and their union is upheld, less by social inclinations and agreeable instincts, than by the strong arm of a sovereign. Society is indeed dangerous to maintain, for which reason power must be concentrated. Wilson is loath to acknowledge any such Hobbesian features, denying in particular that the state of nature is characterized by selfishness, discord, and war (228). But he also offers a Hobbesian explanation of why men quit their natural state and join together in civil society:

Amidst this universal independence, the dissensions and animosities between the interfering members of society, would be numerous and ungovernable. The

consequence would be, that each member, in such a natural state, would enjoy less liberty, and suffer more interruption and inconvenience, than he would under a civil government (285; also 765).

“Universal independence,” it should be observed, is not for Wilson the same thing as natural liberty. (Wilson involves himself in a protracted and mostly semantic debate with Edmund Burke as to whether natural liberty is surrendered to or preserved by civil society [586-92].) On the contrary, natural liberty is just by definition, and serves as the foundation of civil liberty, because it operates under the constraints of natural law. But how does natural liberty, restrained and directed by natural law, degenerate into universal independence? If people are typically just, benevolent, and grateful, why would their independence discombobulate the state of nature? Often Wilson posits that people are predisposed to live by natural law, as when he says, “Deeply laid in human nature, we now behold the basis of one of the principal pillars of municipal law; that which enforces the obligations of promises, agreements, and engagements” (232; also 191). But in the end his position appears to be that the moral sense is not so powerful an inclination, nor a self-enforcing one, except by the joys and pangs of conscience (141). A clear conscience, Wilson affirms, is important to human happiness, a guilty conscience a deterrent to some wrongdoing. Wilson, it is safe to say, is an optimist in his assessment of human nature. But he is not a utopian. “In the science of politicks, we consider not so much what man ought to be, as what he really is” (390). And what he really is, by Wilson's lights, is a rational creature who intuits the moral law, but whose passions can overrule his intuition and whose reason too often fails him (291, 140-41).²⁶ Accordingly, external assistance is called for, which it is the business of the municipal law to supply: the great end of law is “to punish, and, by punishing, to prevent . . . violations of property and of personal security” (233).

²⁶ Rossum, “Pyramid of Government,” p. 137, n. 128.

It seems then that Wilson's interest in the law of nature is not to find therein an effective law which determines behavior and punishes injustice, or a state of nature which is self-regulating, or a human nature which is unsullied and preternaturally good. There is, as noted, some of this at work. But his dominant concern is to discover in human nature a standard of right which can guide the lawmaking of civil society. By so doing, he means to combat the skepticism emanating from the Enlightenment and depriving the rights of man of their foundation in nature.²⁷ This is Wilson's qualified Aristotelianism. But because nature's standard is accessible to all through the medium of moral sense, it additionally affords a moral argument for democratic self-rule; and this is Wilson's Thomistic Lockeanism, or his Scottish sentimentalism.

2. Government and Citizenship

Natural law does not settle the question of whether man is able to bind himself, because natural law is divinely ordained. But natural law in the end takes its efficacy from human law, over which man has final control. Can then this human law have strength and constancy enough to bind, without negating the liberty of those who make it?

One place to begin is with the principle of consent. "All human laws should be founded on the consent of those, who obey them," says Wilson (180). But consent can be registered in a variety of ways: by approbation, ratification, experience. Wilson makes a point of arguing that custom is a form of active, popular consent rather than a habit of obedience (102, 122-23). Apparently then, the consent of the governed does not require lawmaking by referendum. And in the matter of majority rule, Wilson adopts the traditional position that the dissenting minority has given its

²⁷ Arnauld B. Leavelle, "James Wilson and the Relation of the Scottish Metaphysics to American Thought," *Political Science Quarterly* 57 (1942): 399-403.

consent at an earlier stage: “But it is to be remembered, that society is constituted for a certain purpose; and that each member of it consents that this purpose shall be carried on; and, consequently, that everything necessary for carrying it on shall be done” (242). Among the things necessary, of course, is majority rule, since unanimity is beyond reach, and since the minority is less likely than the majority to be correct in their opinions and less likely to embody the common interest (243). The first of these latter points connects with Wilson’s central claim that the moral sense is equally distributed among men and is the greater part of moral judgment (143).²⁸

To allow for tacit consent is to place the people at one remove from direct participation and so to provide law with a beginning measure of insulation. For other such checks, one must look to the Constitution which Wilson helped to draft and in Pennsylvania was called upon to defend. Wilson pays special attention to bicameralism (an institution which came late to Pennsylvania) and the separation of powers. The division of the legislature into two chambers is the accepted means for preventing the abuse of its power. And abuse is to be expected since “passions and prejudices [are not] less frequently to be found in publick bodies, than in individuals” (291). This is a check consistent with popular sovereignty because the Senate is a popularly constituted body, even though elected by state legislatures. (The Senate cannot represent state sovereignty, as some think, for only the people are sovereign.) Unlike the British House of Lords, the Senate derives its powers from the people. Nevertheless, its esprit du corps, its physical separation from the House, its peculiar powers, longer tenure, and fewer numbers, all ensure that, despite a common origin in the people, the Senate will develop a character of its own; as such it will preserve the usefulness of bicameralism (414-15). The Senate’s function is to restrain the

²⁸ Charles Page Smith, *James Wilson, Founding Father* (Chapel Hill: University of North Carolina Press, 1956), p. 322.

exuberance of the House, but also to dispel its apathy. Wilson seems here to treat the government almost like a mixed regime in which wisdom is supplied by the Senate, goodness by the House, and energy by the executive (290, 303).²⁹ But for the most part wisdom is a consequence of delay and repetition (791). With two chambers, there are two chances, and if one chamber strays from the principles of the Constitution, the other is available to call it back. “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 renewed or drawn back to their first principles” (291). This is the work of bicameralism.

Regarding the separation of powers, Wilson asserts—following Federalist opinion of the day—that separation does not mean isolation and autonomy. Independence is ensured if the full powers of one branch are not placed in the hands of another, and if the proceedings of each branch are beyond interference from either of the other two. Once decisions are taken, however, outside influence is properly brought to bear, producing the mutual dependency among the branches known as checks and balances (298-99).³⁰

Wilson’s chief purpose is to explain why the executive and the judiciary are coequal, democratic branches and why suspicion directed toward them is misplaced. Having grown accustomed to monarchy during the colonial years, and to royally appointed governors and judges, the American people harbor a prejudice against these branches, while retaining a Whiggish affection for their legislatures. But again, all branches derive their authority from the people, and so all branches are deserving of equal trust. Thus, the executive branch can be energetic and the courts empowered with judicial review, and singly or combined they can resist the legislature,

²⁹ Energy is a consequence of ample powers being given to the national government.

³⁰ Wilson would seem to oppose presidential lobbying in support of favored legislation.

without the democratic character of the Constitution suffering compromise. But in point of fact, the electorate does not have direct control over the executive, and the court, although ultimately dependent on the people, is, for the sake of justice, set apart from “every veering gale of politicks” (297). By presenting the executive and judicial branches as representative institutions equal to the legislature, and by making all three branches share equally the confidence of the people, Wilson has introduced checking devices under the cover of democracy. In the name of the people, the president and court can obstruct the will of the Congress, of the only body actually elected by the people. Publius, in *Federalist* 78, similarly dons the mantle of popular sovereignty to explain the court’s exercise of judicial review: this is not a power which places the least democratic branch above the most democratic, he says; rather it is an exertion of popular will, as expressed in the Constitution, against legislative will, as expressed in statutory law. The people against the legislature; the court as the trusted guardian of the people’s will!³¹ Both Publius and Wilson suppose that the restraint of the legislative branch is consistent with democracy because the restraining institutions are themselves fully democratic. But this is more than a little disingenuous, for the presidency is partly monarchic (e.g., a unitary executive),³² while the court is significantly

³¹ Leavelle, “Scottish Metaphysics,” pp. 407, 409. Leavelle recognizes a “potential contradiction between Wilson’s defense of popular consent and his assertion of the right of judicial review over the acts of the legislature,” and he concludes that “the presence of natural law in Wilson’s system [leads] to the erection of a structure of government in which the judiciary [is] granted ultimate supremacy and which [is] thereby well suited to safeguard the moral foundations of society.” McMaster and Stone, *Pennsylvania*, pp. 304-05.

³² Wilson describes unity in the executive as a form of public accountability—the executive is checked by visibility. (The legislature, on the other hand, is checked by internal division.) But what makes the executive accountable also makes him strong. A strong and singular executive, visible to the people, bears a distinct resemblance to an elected monarch. *Works*, pp. 293-96; McMaster and Stone, *Pennsylvania*, p. 342.

aristocratic (e.g., legal wisdom and life tenure). As with tacit consent, it seems that the people bind themselves only indirectly and at a distance while more immediately they are bound by institutions of a monarchic and aristocratic temper. All in all, America does betray some features of a mixed regime,³³ notwithstanding disclaimers that the government created is “purely democratical” (772, 303).³⁴ These checks and balances may in fact produce lawfulness, but is the people’s liberty surrendered in the process?

Were there much more of this, one might be tempted to locate Wilson entirely within the company of Federalists, as someone who thought with Publius that the failings of democracy were not to be corrected by more democracy.³⁵ Publius says famously that he seeks a republican remedy for the diseases most incident to republican government.³⁶ What is meant by this profession is that Publian proposals for the extended sphere, separation of powers, bicameralism, federalism, representation, and a written constitution are compatible with popular sovereignty, not that they are particular exercises thereof.³⁷ As noted before, the *Federalist Papers* is mostly silent about the

³³ That America is a mixed regime is the thesis of two books by Paul Eidelberg: *The Philosophy of the American Constitution* (New York: Free Press, 1968) and *A Discourse on Statesmanship* (Urbana: University of Illinois Press, 1974). See also Wood, *Creation*, pp. 517-18, 562.

³⁴ McMaster and Stone, *Pennsylvania*, p. 412.

³⁵ Martin Diamond, “Democracy and The Federalist: A Reconsideration of the Framers’ Intent,” *American Political Science Review* 53 (1959): 52-68. Rossum, who argues the democratic character of Wilson’s thought, does not concede that bicameralism and separation of powers have undemocratic features affixed to them. (“Pyramid of Government,” p. 131).

³⁶ *Federalist* 10, p. 84.

³⁷ See *Federalist* 63 where Publius says that the distinctive feature of American representation “lies in the total exclusion of the people, in their collective capacity, from any share in the [government] (p. 387). (Italics in the

people's ultimate right to rule.

Wilson's democratic bona fides are most evident in his discussion of representation and citizenship. Wilson accepts representation as an expedient necessary to large states—which is to say that direct rule by the people would be preferable if contemporary states were as small as ancient republics. Theoretically speaking, Wilson is a proponent of direct democracy, a position starkly at variance with that taken by Publius and most other Federalists. But states are large, the people cannot themselves assemble, and so the public business must be transacted by elected officials. Still, the measure of their legitimacy is the difference obtaining “between that which is done by the people in their own persons, and that which is done by their deputies” (405, 782, 790).³⁸ “The legislature ought to be the most exact transcript of the whole society,”³⁹ that way the electorate will have confidence in their representatives; and “confidence,” says Wilson, sounding a prominent Antifederalist theme,⁴⁰ “—mutual and endearing confidence—between those who impart power and those to whom power is imparted, is the brightest gem in the diadem of a republic” (791).

The one concession which Wilson makes to the Federalist view of representation is the size of election districts: he would have them large so that “the choice will be more wise and enlightened” (417) He is like Publius in wanting to rid elections of “the vicious arts by which

original.)

³⁸ McMaster and Stone, *Pennsylvania*, p. 395.

³⁹ Farrand, *Records*, I: 132.

⁴⁰ See, for example, the speeches of Melancton Smith delivered on June 20 and 21, 1788 at the New York Ratifying Convention. They are reprinted in *The Anti-Federalist*, ed. Herbert Storing (Chicago: University of Chicago Press, 1985), pp. 337, 340.

elections are too often carried,”⁴¹ thinking that “intrigue and cunning . . . are most successful in a contracted sphere” (417). At the Pennsylvania Ratifying Convention, Wilson remarked that the larger the district, “the greater the probability of selecting wise and virtuous characters.”⁴² But these characters—natural aristocrats—are nevertheless charged with expressing “the same sentiments, which the represented, if possessed of equal information, would express” (406). Thus, elected officials have limited authority to refine and enlarge the opinions of their constituents.

Might though the people work this refinement themselves? Wilson believes that the close representation of the people’s views needs not result in selfish and shortsighted policies. The reason is that the people are capable of quick improvement and can rise well above their customary mediocrity. What mainly will effect this pedagogic transformation is the franchise, the basic citizen’s right to vote. One striking feature of Wilson’s thought is the confidence he has in the edifying properties of suffrage:

. . . the right of suffrage, properly understood, properly valued, properly cultivated, and properly exercised, is a rich mine of intelligence and patriotism . . . an abundant source of the most rational, the most improving, and the most endearing connexion among citizens . . . and . . . a most powerful, and, at the same time a most pleasing bond of union between the citizens, and those whom they select for the different offices and departments of government (789; also 405).

Unfortunately, the right of suffrage has not in the past, nor yet in the present, been nearly so well regarded. Wilson tries to excuse current reprobate practices of electioneering and the inattention exhibited by the people—“the most important servants of the publick will be voted in without consideration and without care” (157)—by noting that elections prior to the Revolution were inconsiderable exercises confined to the staffing of but one branch of government over which two

⁴¹ *Federalist*, 10, p. 82.

⁴² McMaster and Stone, *Pennsylvania*, pp. 395, 336.

nonrepresentative branches fielded absolute vetoes (786). Because old habits die hard, there has still been no improvement; but the “fond conjecture” is nonetheless entertained that elections will soon come to be treated with the solemnity they deserve.

Wilson envisages from the act of voting the creation of a citizen who is

employed, on every convenient occasion, in making researches after proper persons for filling the different departments of power; in discussing, with his neighbours and fellow citizens, the qualities that should be possessed by those who fill the several offices; and in acquiring information, with the spirit of manly candour, concerning the manners, and history, and characters of those, who are likely to be candidates for the publick choice. A habit of conversing and reflecting on these subjects, and of governing his actions by the result of his deliberations, will form, in the mind of the citizen, a uniform, a strong, and a lively sensibility to the interests of his country

By these means, and in this manner, pure and genuine patriotism—that kind, which consists in liberal investigation and disinterested conduct—is produced, cherished, and strengthened in the mind (788).

Such reflective patriotism on the part of average citizens would answer many of the standard objections against the agent theory of representation—unless of course there were smoldering divisions within the body politic which earnest participation by citizens would flame into factions. But Wilson does not much travel down this dark Madisonian byway. He seems to assume that the community is homogeneous, enough so that the common interest is tantamount to the sum of individual interests (790).⁴³ He assumes, in other words, the essential compatibility of the interests making up the aggregate. He even treats the people of the nation, when comparing them to a special body of electors, as a single, unified group, and says that their interest more nearly approximates the common good (789). It is not unreasonable to expect, therefore, that the active participation of

⁴³ Civilized nations, as previously noted, are also diverse. But from diversity comes interdependence, and from interdependence homogeneity of interest. *Works*, pp. 240-41. Jennifer Nedelsky notes “the striking absence of conflict in [Wilson’s] vision of republican government” (*Private Property and the Limits of American Constitutionalism* [Chicago: University of Chicago Press, 1990], p. 113; also pp. 127, 138-39).

patriotic and enlightened citizens, all of one kind, will be disciplined and lawful, and that popular sovereignty will consequently be controlled.

Perhaps it seems that Wilson is drifting perilously close to Whig republicanism, pinning democratic self-rule to the virtue of the citizen body.⁴⁴ But in fact he is rather restrained in the demands he places upon people. For instance, he describes citizenship modestly as a relaxation of the bow of private industry. Citizens need not be public minded first, last, and always. “I am far from insinuating,” he protests,

that every citizen should be an enthusiast in politicks, or that the interests of himself, his family, and those who depend on him for their comfortable situation in life, should be absorbed in Quixotic speculations about the management or the reformation of the state. But there is surely a golden mean in things; and there can be no real incompatibility between the discharge of one’s publick and that of his private duty (787).

Apart from responsible voting, duty requires that the common advantage take precedence over private interest. This may be difficult to achieve since “it is the nature of man, to pursue his own interest, in preference to the public good.”⁴⁵ But a well-constructed and impartially administered state does not often face such a dilemma, Wilson asserts. And if burdens are needlessly imposed or extended beyond what the emergency requires, the government is effectively a tyranny, with revolution being a legitimate remedy. Personal sacrifices to the public good should thus be held to a minimum, and, when normal conditions return, compensation should be paid. Wilson also notes that citizens are obliged to respect the offices of state because public esteem is a principal inducement for qualified people to come into government and faithfully execute its functions. Last,

⁴⁴ Nedelsky takes this view, stating that Wilson’s understanding of popular sovereignty “demands a great deal of the people” (*Private Property*, p. 111).

⁴⁵ “An Address to a Mass Meeting at the State House in Philadelphia, 6th 33 October, 1787,” in *Selected Essays of James Wilson*, ed. R.G. Adams (New York: Alfred A. Knopf, 1930), p. 59.

and most obvious, it is the citizens' duty to obey the laws. Here we reach the heart of the matter—a sovereign people binding themselves by law. Their security, their liberty, and their dignity as citizens, says Wilson, depend on self-government, or the capacity to rule and control themselves. But it is not altruism or public spiritedness, as much as it is interest, that accounts for their capacity: the people will obey the laws they make because those laws reflect their own interests (574-77).⁴⁶ No resplendent virtue or uncommon wisdom is required, merely “a general identity of interest, and a perfect equality of duties and rights” (575).

III. Conclusion

Wilson mixes together in his constitutional stew a concoction of disparate ingredients designed to satisfy the mind's appetite for lawful freedom, or for popular sovereignty coupled with popular restraint. He takes human nature as his broth, claiming that it is instructed by a divinely ordained law of nature. To some degree man is in easy harmony with this law and typically

⁴⁶ In a 1785 pamphlet considering renewal of the charter of the Bank of North America, Wilson contested the legislature's discretionary power of repeal over all forms of legislation: “In a law respecting the rights and properties of all citizens of the state, this power may be safely exercised by the legislature. Why? Because, in this case, the interest of those who make the law (the members of the assembly and their constituents) and the interests of those who are affected by the law (the members of the assembly and their constituents) is the same. It is a common cause, and may, therefore, be safely trusted to the representatives of the community. Very different is the case with regard to a law, by which the state grants privileges to a congregation or other society” (*Works*, pp. 833-34). Such legislation is in effect a compact, and alteration or repeal of compacts requires the consent of both parties. And at the Federal Convention Wilson argued against lodging appointment power in the legislature on grounds that its motives—corruption, bribery, influence—were dissimilar to those of the people. The legislature was deserving of confidence, he said, only “in acts which were to affect them and their constituents alike” (Farrand, *Records*, II: 32).

complies with its directives. But he is a free agent, and, if given the power, can certainly do as he likes. Unfortunately, politics is always a matter of judging in one's own case, of being party to the controversy one is called upon to settle. Accordingly, "the sacred impartiality of [judges] . . . is too frequently lost in the sordid interestedness of [parties], and in the arrogant power of [legislators]" (578). When Wilson was a colonist contesting the asserted sovereignty of the British Parliament, he asked cynically whether Americans should depend on British veneration for the dictates of natural justice: "A very little share of experience in the world . . . will sufficiently convince us, that a regard to justice is by no means the ruling principle in human nature" (734).

Something more fibrous than natural law seems needed to control the actions of men, and so added to the constitutional stew is the meat of government. First, it is allowed that the essentials of free government are in place if power is merely drawn from the people, not exercised by them (791). The consent of the governed is thought to be given tacitly in some cases, with custom accepted as a form of active consent. Next, the functions of government are separated, and the legislature divided in two, so that the delays caused by the system of checks and balances will leaven democratic self-rule with the wisdom and justice of aristocratic regimes. The patience of the public is obtained by a tactical scattering of its allegiance—all branches discharge the public will, even when they check the one body whose power is given directly and immediately by the people.

The above qualifications to popular rule seem like pure Federalism. But Wilson strays from the Federalist fold with his Antifederalist insistence that representatives be agents of their constituents and that collectively they miniaturize the contours of society. Unlike Publius, Wilson does not support the positive good of representative democracy—it rather is an unfortunate but necessary consequence of the augmented size of modern nations. But this effort to invigorate the

people's sovereignty by representational populism runs the risk of loosening the self-restraints of law. Here Wilson resorts not to an institutional corrective, but to the character of the people themselves—hence come the vegetables which supply the stew its nutrition. Without expecting Roman republicans on American soil, Wilson supposes that access to the *res publica* through the right of suffrage will produce a body politic which is patriotic and enlightened, and that, combined with the interest citizens have in obeying laws of their own devising, there will be sufficient internal control to sustain the law-abidingness of a free and sovereign people.⁴⁷

Two somewhat hidden facets of Wilson's thought would appear now to be crucial—and these are the spices of the stew which establish its singular flavor. One is that commerce unifies rather than fragments society. America is a burgeoning commercial nation, and commerce will make it an interdependent whole with basic interests shared by all (240-41).⁴⁸ Although never exactly saying so, Wilson seems convinced that the proper strategy is to attack the causes of faction and not, as Publius argues, to encourage faction so as better to control its effects. In any event, a factious society would upset the hope that, because people's interests are uniform, they can legislate fairly and observe the laws they enact. Also, it seems thought that commercial activity will not become a privatizing vortex into which all public consciousness disappears.

The source of Wilson's confidence—and the second facet of his thought—is the putative nature of man as a progressive being and the power of a republican constitution to shape that nature for the good. Nothing more clearly distinguishes Wilson from Whig republicanism, and from Rousseau, than the conviction that civilization is progressive and that the arts and sciences improve

⁴⁷ Nedelsky, *Private Property*, pp. 134-36.

⁴⁸ McMaster and Stone, *Pennsylvania*, p. 357.

rather than corrupt the morals of men (84, 146-47).⁴⁹ Wilson even supposes that in the future public opinion will be so enlightened as to make natural law an effective deterrent to injustice (578). As for the influence of a good constitution, the effects it works on people, he declares, are remarkable indeed. The knowledge that one is free, that the innocent are protected by law and the meritorious esteemed, inspires him with “ardent affection for the publick” and stimulates “his strongest patriotick exertions” (307). Thus, even in a commercial society, the expectation is that political affairs can retain their rightful hold on the attentions of men.

Some fifty years after Wilson’s *Lectures on Law*, a French visitor pointed out the causal connection between materialism and individualism.⁵⁰ Not long afterward the Civil War conclusively established that the people of America were not united by a single interest. And throughout our history it has been sadly evident that the right of suffrage is not the elixir that Wilson hoped it would be. Wilson is sometimes lauded as the most prescient of the Founders, as the man who best anticipated the democratic direction which the regime was destined to take.⁵¹ But on several key points, Wilson is wide of the mark. And the essential one, that the people’s sovereignty be executed by look-alike representatives, is as troubling for Wilson’s own theory as its implementation has been for succeeding generations. In the effort to provide a durable “chain of communication” between the electorate and their officials, Wilson confesses that the qualities

⁴⁹ Wilson’s thought is not entirely antithetical to Whig republicanism; for instance, he makes constant reference to the democratic practices of Anglo-Saxons. On this point see Colbourn, *Lamp*, pp. 125-27.

⁵⁰ Tocqueville, *Democracy in America*, vol. 2 (New York: Vintage Books, 1945), p. 149. Here, as elsewhere, Tocqueville argues that Americans have managed to forestall individualism by attacking its causes (pp. 149-50).

⁵¹ McCloskey, “Introduction,” pp. 2-6; Rossum, “Pyramid of Government,” pp. 113-19.

of the latter are not a matter of great importance: “If the materials, which form this chain, are sound and strong; I shall not be very anxious about the degree to which they are polished” (786). On the other hand, he lists it among the laws of nations that the management of a community’s affairs be entrusted only to its “wisest and best citizens” (157, 289). Society needs its best people in high office, and these people need the responsibilities of office to flourish. For Wilson, ambition is a virtue, and a reputation honestly won is a primary right of men. At the Federal Convention he offered a clue as to how he might reconcile the tension between the active sovereignty of the many and the ambition of the few. When it was contended that the people wish to check the influence of officials by making them ineligible for additional or successive offices,⁵² Wilson replied in opposition that were he to sacrifice his own judgment in order to flatter the prejudices of his constituents, he would dread their likely retort: “Did you suppose the people of Pennsylvania had not good sense enough to receive a good Government?”⁵³ In other words, Wilson imputed to his constituents the good sense of deferring to his better judgment. But one wonders how tenable this position really is. Despite occasional overtures to natural aristocracy, Wilson’s theory of representation depreciates the talent and contribution of elected officials; finally, it leads to instructed delegates, mere ciphers of the people’s will. But a government so constituted would hardly be attractive to, nor would find use for, men of exceptional ambition, such as Wilson himself. It is often charged against Publius that he created a government which by its internal

⁵² In a speech delivered on January 19, 1790 in the Pennsylvania Convention, Wilson fought against a motion that proposed barring federal officials from holding offices in the state. Wilson, who was then an associate justice of the United States Supreme Court, was candid about the personal interest he had in the matter—he wanted for his ambition the largest field possible. *Works*, pp. 794-802.

⁵³ Farrand, *Records*, II: 287-88; also, *Works*, pp. 760-61.

workings would have progressively less need for the statesmanlike wisdom of the Founding generation.⁵⁴ Wilson might similarly be charged, although not on grounds that the government is too mechanistic, but rather that it is too egalitarian.

⁵⁴ Diamond, "Framers' Intent," p. 68.