



James Wilson, Justice

James Wilson (1742–1798)

Miniature; artist unknown
Smithsonian Institution

First professor of law at the College of Philadelphia (1790) and at the University of Pennsylvania (1792). Organized the law department and delivered the first law lectures in the Federalist period.

Born and educated in Scotland, he arrived in Philadelphia in 1765, becoming Latin tutor and lecturer in English at the College of Philadelphia and receiving an honorary A.M. (1766). After being admitted to the bar, he was a member of the Provincial Convention, the Continental Congress, and the Constitutional Convention of the United States (1787). One of only six men to sign both the Declaration of Independence and the Constitution, he was an associate justice of the Supreme Court of the United States and trustee of the University.

In the 1967 edition of the works of James Wilson, three-quarters of the pages are taken up with the law lectures which he gave or planned for delivery at the University of Pennsylvania, beginning in 1790. In presenting Wilson's writings, the editor, Robert G. McCloskey, comments on the almost complete obscurity which now surrounds their author. The variety of the contributions of this little remembered founding father of the University and of the American Republic makes his fall into oblivion all the more astonishing. For, as McCloskey states, Wilson was: "a signer of the Declaration, one of the primary figures in the Constitutional Convention, the leader of the ratification movement in Pennsylvania, the architect of the Pennsylvania constitution of 1790, one of the six original justices of the Supreme Court, the new Republic's first law professor, and the only founding father to essay a general theory of government and law."¹ To this list of Wilson's major accomplishments can be added a number of other roles and titles, and these complete the picture of a forceful and energetic representative of revolutionary and early federal America: delegate to the second Continental Congress, elected colonel in the Pennsylvania militia, proponent of the first Bank of North America and, throughout his career, rapacious speculator in land.

Wilson employed his energies and talents untiringly in the service of the Republic. At the same time, he was set on procuring both fame and wealth for himself. One result of his personal ambition was that, during his lifetime, his enemies often attributed his actions to aristocracy and self-interest; and if history has failed to accord him his proper place in its annals after his death, this may also be attributed to the disrepute of his last years. In his confident optimism about the course of American democracy and his predictions on this subject, Wilson showed greater prescience than any of his contemporaries.² Yet, perhaps because of the events connected with his financial collapse he seems not to have received even the credit most certainly due him for his contributions to American law and his part in setting up the new government of the United States.

During his life, Wilson associated with the great men of the time. Because of the heroic dimension accorded to the founding fathers, there are

elements of a classical tragedy in the peripeteia of his disgrace and downfall. The dénouement with its disastrous ending was brought about by his relentless pursuit of material reward, and it has been described as a “peculiarly American tragedy.”³ On the human level, his fate would undoubtedly have been interpreted as the wages of his overweening pride by the strict Calvinist family he had left behind in Scotland. In a letter from Coul in 1769, his brother remarks: “Mother says it would give her more pleasure to see evidences of your being bound on the way to Zion and set out for the Celestial Country than to hear of your purchasing the greatest fortune.” It must be added that even these dour, straight-laced Scots were favorably impressed by Wilson’s position and influence, for the letter goes on, “at the same time she thinks she has reason to bless God for countenancing you in your secular affairs.”⁴

Wilson was born in 1742 in Fifeshire, on the windswept eastern shore of Scotland where every owner of rent-free land, however small, could call himself a laird and, most likely, boast among his possessions of: “a puckle [grain] of land, a lump of debt, a doocot [dovecote], and a law plea.”⁵ As the son of a farmer, when he won a scholarship to St. Andrews, Wilson entered the university as a “terner”—one of the third or common rank. His father died before he had completed his studies for the ministry in the strict “Associate Presbytery” to which his parents adhered. Forced to help support his sisters and younger brothers, he took a position, first as a tutor and later in accounting. An interesting sidelight on the determined character of the young Scot, already marked for success, appears in the description of his first game of golf. An Edinburgh merchant, Thomas Young, invited him to a few rounds, and Wilson proceeded to rout his host although he had never played before in his life.⁶ Small wonder if he felt hampered by the narrow scope of employment open to a farmer’s son as well as by the Presbytery’s sanctions against the sin of pride. Not without difficulty, Wilson succeeded in gaining his mother’s consent and incurred his first debt by borrowing from relatives to pay for his voyage to the colonies. In 1765, he arrived in America, vowing never again to make the stormy crossing from Glasgow to New York.

Wilson traveled on to Pennsylvania with a letter of introduction to Richard Peters, one of the trustees of the College of Philadelphia. He was immediately taken on as Latin tutor since men with his training were rare in the colonies. In the fall of that year, he taught Greek, Latin, grammar, and rhetoric and was rewarded at the commencement of 1766 with the honorary Master of Arts degree, reserved primarily for faculty, which he had requested. On the same occasion, the recently appointed professor of medicine, John Morgan, received a medal for a political essay. Having found his feet in Philadelphia by this time, Wilson foresaw that it would be advantageous for him to embark on the study of law. Another loan from a prosperous relative who had gone to school with him in

Scotland before settling down in Pennsylvania permitted the young immigrant to enter the law offices of John Dickinson, one of the most respected legal minds of the time. Dickinson would later play a prominent part in state politics and, together with his Scottish student, in the earliest independent government of the United States.

In less than a year, Wilson was admitted to the bar. He started practicing on his own in 1768, choosing to set himself up first in Reading and later in Carlisle. These were frontier communities where his adroit handling of land litigation cases brought him recognition and the beginnings of a fortune. During this time, he married an heiress for love, and under the influence of Dickinson, whose *Farmers Letters* had been a literary success, he contributed moralizing essays to the *Philadelphia Chronicle*. Written in collaboration with his friend Billy White, the articles were signed pseudonymously by "The Visitant." The identity of this personage was warmly debated in Philadelphia where few suspected that one of the two authors would later become the first Episcopal bishop of Pennsylvania, while the other would be among the original justices of the Supreme Court.⁷

In these years, Wilson continued to find time to lecture in English literature at the College of Philadelphia. From the beginning, however, his skills in writing and law were employed for political ends. As early as 1768, he composed one of the most cogent and lucid statements on the causes of the Revolution in a pamphlet entitled *Considerations on the Nature and Extent of the Legislative Authority of the British Parliament*. He was advised against publishing what amounted to an attack on Parliament; when it was finally distributed six years later, the atmosphere was one of defiance occasioned by the Boston Port Act. Wilson seems to have had the misfortune of being in the van of circumstances and announcing new ideas before the time was fully ripe. On this occasion, his statement that Parliament should have no voice in the affairs of the colonies was a radical sentiment although, when he had written it, Wilson was still convinced that there could be perpetual union with the mother country in a looser association under the crown. But it was many years before the British government came up with the idea of according dominion status to colonial possessions. By the time Wilson became a delegate to the Continental Congress, his standpoint had become that of a conservative Whig. His initial reluctance to vote for total independence caused a delay, and his resistance at this point was never forgotten. Yet it was principally occasioned by his own consistency in the face of rapidly changing circumstances.

The "Revolutionary patriot" recognized by so few Americans today was characterized in glowing terms by Benjamin Rush. No doubt Rush's memory was further enhanced by Wilson's eloquent defense of the Constitution for which both Pennsylvanians later labored unstintingly:

JAMES WILSON. An eminent lawyer and a great and enlightened statesman. He had been educated for a clergyman in Scotland, and was a profound and accurate scholar. He spoke often in Congress, and his eloquence was of the most commanding kind. He reasoned, declaimed, and persuaded according to the circumstances with equal effect. His mind, while he spoke, was one blaze of light. Not a word ever fell from his lips out of time, or out of place, nor could a word be taken from or added to his speeches without injuring them. He rendered great and essential services to his country in every stage of the Revolution.⁸

Having passed from radical to conservative views by staying in the same place, Wilson found himself in strong opposition to the Pennsylvania constitution of 1776. He became an active member of the Republican society and was ousted from Congress in 1777. Nonetheless, with business interests second only to his vigorous political activities, he moved his family to Philadelphia where he promptly gained notoriety and unpopularity by defending a number of wealthy Quaker loyalists, two of whom were executed for treason. Wilson's defense involved a thorough investigation of the nature of treasonable acts and provided a new and more limited definition which gave the individual citizen considerably greater protection against capricious and arbitrary accusations of treason. It is likely, too, that Wilson's adaptation of English law to the American situation in this instance provided the basis for the treason clause later introduced into the Constitution, since it was submitted to the Federal Convention by the Committee of Detail of which he was a member.⁹

In another development which raised the suspicions of his adversaries and produced a long and heated battle with the Pennsylvania radicals, Wilson saw a need to establish a national bank. Its first function would be to provide funds for the provisioning of the army. Wilson had read the work of Sir James Steuart, and had been struck by the similarity between the situation dealt with by the Scots economist and the state of affairs at home.¹⁰ In America as well, he felt, it should be possible for notes to be issued on land and other securities since, as in all new countries, cash for further development was in short supply. Wilson acted as legal adviser to the Bank of North America and spoke eloquently in its defense; he "also became, quite promptly, its most persistent debtor."¹¹

Throughout his public life, Wilson speculated in land, making huge purchases in the south and west as well as in the state of Pennsylvania. A small deposit was all that was required in order to procure a "warrant" or preliminary title to land which could then be surveyed. Clear title could be obtained later on payment of the balance. In order not to forfeit his original investment, Wilson engaged in all manner of complicated arrangements for raising money and, as land values rose, he was continually tempted to acquire greater areas than he could reasonably hope to redeem. Towards the end of the century, new settlers were failing to

arrive in their hoped-for numbers to buy up the surveyed land, while investments from the Old World began to be diverted to finance the wars in Europe. It was then that Wilson suffered financial ruin along with a number of other prominent Philadelphians. The financier, Robert Morris, wrote: "I am seriously uneasy, for W—l—n's affairs will make the vultures more keen after me."¹² In his commonplace book, Benjamin Rush records 150 failures in the city over a period of six weeks at the end of 1796. He comments on the extreme measures taken by some victims of this crash and adds, with disapproval: "Judge Wilson deeply distressed; his resource was reading novels constantly."¹³

For a surprising number of years, however, Wilson managed to keep disaster in his personal enterprises at bay. In fact, during these years he made his greatest contribution to public affairs, playing a major role in drawing up the Constitution and achieving ratification by the State of Pennsylvania. At the Federal Convention, Wilson was one of the two men most familiar with the subject of political economy and thus in a position to judge the central problem of dual sovereignty. In most instances, he and the other principal proponent of federation, James Madison, agreed with each other. Wilson argued for a central government upon a broadly democratic base. As he was to describe it in his law lectures: "The pyramid of government— and a republican government may well receive that beautiful and solid form—should be raised to a dignified altitude; but its foundations must, of consequence, be broad, and strong, and deep. The authority, the interests, and the affections of the people at large are the only foundation, on which a superstructure, proposed to be at once durable and magnificent, can be rationally erected."¹⁴ He favored direct popular election for the President as well as for both houses of Congress but later compromised and was instrumental in working out a plan for the electoral college.

Wilson was not only committed to popular rule but optimistic about the effect the will of the people would have on government. This faith in a relatively untried venture in democracy may have had its seeds in his background and upbringing. The area of Scotland where he had been raised was relatively poor but it was also egalitarian in the way property was distributed among social classes. Wilson was also influenced by the Scottish philosopher Thomas Reid, who had subscribed to the notion of a benevolent human nature. Given this view, it was possible to see men's behavior in society as being moral and not molded by self-interest alone.¹⁵ While both Adams and Hamilton drew back from granting too much power to the common people, Wilson believed in universal manhood suffrage.

Wilson was one of only six men who signed both the Declaration and the Constitution, the only delegate to the ratifying convention of the State of Pennsylvania who had also been a member of the Federal Convention.

As such, he was not only called upon to explain the proposed Constitution but also became its most eloquent defender. The radicals, who were losing their hold in the state, still imputed aristocratic motives to Wilson's defense, although it was on the grounds of legal weakness that he had opposed the state constitution of 1776, and not because of the democratic principles on which it was based. A pamphleteer proffers the following ironical "receipt" for a stinging anti-Federalist attack. It must include forty mentions of MR. WILSON, along with "*Well-born nine times, Aristocracy, eighteen times . . . and lastly GEORGE MASON'S Right Hand in a Cutting Box, nineteen times.*" In defense of Wilson's stiff bearing which caused this Scottish commoner to be repeatedly accused of "aristocracy," a Federalist friend explained Wilson's "lordly carriage" as being the result of an effort to keep his spectacles from falling off his nose.¹⁶

Wilson's speech before the ratifying convention was widely read in the other colonies. On receiving a copy of it, Washington expressed the wish for it to be printed and circulated. The example of ratification by the large and influential State of Pennsylvania was of importance to the other states, and it had been achieved in large part through Wilson's efforts and eloquence. Ratification constituted a defeat for the western radicals in the state legislature whose influence had been gradually waning, with opposition from the Republican society which included men as diversified in interests and politics as Rush and Wilson. The experience Wilson had gained in drawing up the national Constitution stood him in good stead when, in 1790, he had the task of framing a new state constitution which closely followed the national model.

In the years since his service as tutor at the College of Philadelphia, Wilson had remained in touch with William Smith. He sympathized with the provost's claim that the statute of 1779 had been an abrogation of the original charter. Elected a trustee that year, he almost immediately found himself in the position of being "retained as Council [*sic*] and . . . required to undertake the Defence of the Charter Rights of this Institution before the House of Assembly."¹⁷ At that time, his eloquence fell on deaf ears but, ten years later, he played a part in restoring all its former rights to the College. Not long after the restitution of the charter, Wilson made his most notable contribution to the history of the University.

In the first week after the trustees resumed their meetings in March 1789, they received a petition from "a Number of young Gentlemen Students in Law, who have formed themselves into a Society for their mutual improvement," for permission to hold their meetings in one of the rooms in the College. The request was granted, and the next year the time seemed ripe to Charles Smith, Esquire, to transmit the following opinion to the trustees through his father, Provost Smith: "That among the many other Improvements of the Plan of liberal Education in this College, the Institution of a Law Lecture or Lectures has been considered as very

necessary and essential." The petitioner was ready to offer his services to the College as professor of law or, if this course of action was not approved, to start lecturing anyway in the hope of receiving such recognition thereafter. But, if the trustees were fully prepared to act on the proposal for a professorship in law as they had been when they elected the first professor of medicine, Charles Smith had not armed himself with the credentials of a John Morgan.

A committee of three was appointed, including Wilson and Edward Shippen, Esquire, and a report was promptly submitted on the purpose of a "system of Law lectures in this country." A prime function would be to explain the Constitution of the United States, so recently framed, and "to ascertain the merits of that Constitution by comparing it with the Constitutions of other states—with the principles of Government and with the Rites [*sic*] of Man." The proposal for a history of the law from the earliest times and the place allotted to a full explication of the common law indicate the scope of Wilson's intended lectures. According to the minutes, the plan was approved on Friday, 14 August, and on the following Tuesday "Mr. Wilson, by a Ballot taken for choosing a Professor of Law, was unanimously elected."¹⁸

Law had been taught for over a decade at William and Mary by Jefferson's preceptor, George Wythe, while Judge Tapping Reeve's law school in Litchfield, Connecticut, had been in operation for six years. The importance of the lectures at the University of Pennsylvania, however, was that they were systematic. Since they were the first to be inaugurated in the Federal period, they presented Wilson with an excellent opportunity to examine the Constitution. Delivered by a lawgiver who had achieved prominence in the Federal debate and whose intellect and eloquence were so generally admired, the lectures were an event of major importance in the Republic.

In 1790, Philadelphia had just become the seat of government and would remain the capital city for a decade. That year, Congress reconvened in the city in time to attend the lectures on December 15. The audience which assembled at the College Building at Fourth and Arch was both prominent and, in Wilson's own words "*fair*," for Martha Washington had accompanied her husband and Vice-president Adams, and there were other women present. The lectures were heard by members of Congress and of the state legislature along with professional lawyers and students, and the entire board of trustees who entered their invitation and acceptance in the Minute Book. Some of the people in the audience had no legal training, and this was in line with the purpose of the lectures, as originally stated, to "furnish a rational and useful entertainment to gentlemen of all professions, but particularly to assist in forming the Legislator, the Magistrate, the Lawyer."¹⁹ Wilson's claim to speak to the layman as well as to the specialist appears in a rhetorical statement of the

people's role in democratic government: "The science of law should, in some measure, and in some degree, be the study of every free citizen, and of every free man. Every free citizen and every free man has duties to perform and rights to claim. Unless, in some measure, and in some degree, he knows those duties and those rights, he can never act a just and independent part."²⁰

If John Morgan's *Discourse* at the foundation of the medical department occurred at the apogee of his career, Wilson's delivery of his first law lectures also appears as something of a climax to his professional life. Wilson took the event as proof that, in a land of lawyers, he was accepted as the most learned and profound legal scholar of his generation.²¹ This certitude led him to join other office-seekers in proposing himself to George Washington as chief justice of the Supreme Court. When it came, his nomination was only as an associate justice. But the lectures provided him with an opportunity, only a short time afterwards, of laying the foundation for a system of American jurisprudence.

The lectures proposed by Wilson included nothing less than a complete survey of systems of law past and present, culminating in one adapted to the needs of the new Republic. Conscious of the importance for America of the English common law for which he had very great respect, Wilson nonetheless drew analogies with the great democracies of the past, for "government, founded solely on representation, made its first appearance on this, and not the other side of the Atlantick."²² Like many before and after him, he emphasized the love of the American people for liberty and law; but his particular contribution at that moment in history was the synthesis he proposed between the two. The hard-nosed attitude of some of his contemporaries made them ready, at this point, to sacrifice many aspects of universal liberty to the rule of law. Wilson firmly believed that these ideals could coexist harmoniously in a democratic state. In this, he demonstrated a faith in popular democracy uncommon at the time.

The law lectures were intended to be given over a period of three years. With his customary energy, Wilson set about preparing compendious notes which amounted to a dissertation on the nature of law and encompassed epistemology and political theory, a study of natural law, common law, and the law of nations, as well as including the promised treatment of constitutional law with respect to the government of the United States and the Commonwealth of Pennsylvania. Not content with one vast project alone, he also began work on a complete digest of the laws of the state and the nation. As it turned out, Wilson actually delivered only about half the lectures he composed. He terminated the course after the second winter, and, although he was unanimously elected as professor of law when the College and the University of Pennsylvania were united, he never taught again. Bird Wilson, who assembled and published his father's writings in 1804, states the facts without further elucidation: "The causes of these

circumstances are not within the Editor's knowledge."²³ It is certain, however, that, along with a preoccupation with his duties on the Supreme Court, there was also increasing pressure on him in these years from his business affairs. At the time when he had touched a high point in his life as legislator and scholar, his compulsive speculation was catching up with him. It is possible that his debts had already jeopardized any chance he might have had of becoming chief justice during his lifetime; now they were to lead to an ignominious end, not only to his temporal and material ambitions, but perhaps to his hopes of being remembered by posterity.

After 1797, there was no escape from his creditors. While he was out of Philadelphia on the business of the Supreme Court, Wilson was arrested and thrown into debtor's prison. Released on bail, he fled to North Carolina where he was jailed for a second time and also suffered an attack of malaria. Although money was somehow again procured to post bail, there were insufficient funds to feed and clothe the family. His young second wife, who occupied squalid rooms in the Hornblow Tavern in Edenton with him, writes of being unable to go out for want of shoes, and her youngest stepchild, in a letter from school in Pottstown about his papa's health, comments pathetically: "I am hardly fit to be seen my trousers is so bad."²⁴ Resisting to the last the idea of dismembering his vast empire of encumbered land, Wilson suffered a stroke during the torrid summer of 1798. Ruined in mind and body, goods and reputation, he died on August 21 and was buried far from the scenes of his triumph by the waters of Albemarle Sound.²⁵

Even the law lectures which were assembled and printed after his death did little to restore Wilson's tarnished reputation. They had been intended for oral delivery, and, in some cases, all that he left were notes. The solidity of the content suffered from the incomplete form in which he had abandoned his ambitious project for establishing a new jurisprudence in America. In this way he lost the chance of being remembered as "the John Locke of America's Glorious Revolution."²⁶

It was not until a hundred years later that a portrait of the University of Pennsylvania's first professor of law was painted for the new law building at Thirty-fourth and Chestnut Streets.²⁷ Copied from a miniature, now in the Smithsonian, it shows a man of ruddy complexion with a neat white wig who peers out from behind heavy spectacles perched on his snub nose. Another portrait looks down on the justices of the Supreme Court of America, a body whose function Wilson foresaw as vital to the government of the United States. Few of the men of 1776 played a greater role in establishing that government than the stiff Scottish lawyer, teacher, and University trustee who since his death has been almost completely forgotten by Pennsylvania and the rest of the country alike.