

SYMPOSIUM: THE LIFE AND CAREER OF JUSTICE JAMES WILSON

James Wilson and the American Founding

WILLIAM EWALD*

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I am going to speak tonight about Supreme Court Justice James Wilson, who lived from 1742 to 1798, and was one of George Washington’s first appointments to the Supreme Court. But, except in passing, I am not going to say much about his time on the Court. I will instead focus on a much earlier period in his career and will have a surprise to announce.

I. WILSON’S LIFE

Let’s start with a brief overview of Wilson’s life. He was born in 1742 in Fifeshire, in the Scottish Lowlands. He studied in the Scottish universities—certainly at St. Andrews and probably also at Glasgow.¹ That is

* Professor of Law and Philosophy, University of Pennsylvania. This is the Salmon P. Chase Lecture, delivered at the U.S. Supreme Court on November 30, 2017. Since I spoke from slides rather than from a polished text, what follows is a cleaned-up version, taken from the audio recording of the talk “as delivered.” There are a few references to the slides, but it will be obvious what the slides depicted. I have resisted the temptation to add new details that have emerged since the lecture. Those will appear in my forthcoming edition of the *Considerations* manuscript mentioned below. © 2019, William Ewald.

1. For the information about Wilson’s connection to Glasgow, I am indebted to the archival researches of Martin Clagett (personal communication). The biographical information in this section has been well-established since Wilson’s lifetime. Ample documentation can be found in two modern

important. The Scottish Enlightenment was at its zenith, the Scottish universities were the best in Europe, and Wilson was exposed to the new intellectual currents in their full force, and in a way that few of the other American Founders can match.

Wilson evidently felt that his prospects in Scotland were limited, and in 1765 he emigrated to Pennsylvania. That was at the height of the Stamp Act crisis, which in retrospect marks the beginning of the American Revolution. He apprenticed himself to read law under John Dickinson, who at the time was just becoming famous as the leading spokesman for the American position in the dispute with Great Britain. Dickinson was evidently satisfied with his student's performance; Wilson set out on his own and quickly established himself as a lawyer on the Pennsylvania frontier. As the crisis with Britain continued, Wilson was drawn into revolutionary politics. He signed the Declaration of Independence in 1776 and the U.S. Constitution in 1787. He took a leading part in the Pennsylvania debates over ratification and was a principal architect of the Pennsylvania Constitution of 1790.

President Washington appointed him to the Supreme Court as an Associate Justice in 1790. At that point, things began to go wrong. Wilson had purchased vast tracts of land in the West, and when the economy declined in the 1790s he was left badly exposed. His speculations collapsed, and his creditors were soon on his trail. They had him committed to debtor's prison. He remains to this day the only sitting Justice of the Supreme Court ever to be sent to prison. His health quickly collapsed, and he died before he could be impeached. That was in 1798.

So he had a disgraceful end, and people mostly wanted to forget about him. He was largely left out of the historical writing of the nineteenth century. Historians wanted heroic figures, people who could be turned into marble statues, and Wilson did not fit. In 1876 his granddaughter, Emily Hollingsworth, donated what was left of his papers to the Historical Society of Pennsylvania. In her covering note, she said that if the papers were of no interest, they could simply be thrown away—she had no further use for them.² She evidently did not know that she was handing over the original drafts of the U.S. Constitution. That is a theme I am going to come back to later: the importance of archives and of archival research to our understanding of the Constitution.

That is all I am going to say about James Wilson's life. For the rest of this talk, I will focus on the two documents he signed: the Constitution, and the Declaration of Independence. As you will see, that is where the surprises are.

biographies: GEOFFREY SEED, *JAMES WILSON* (1978) and CHARLES PAGE SMITH, *JAMES WILSON: FOUNDING FATHER, 1742–1798* (1956).

2. William Ewald, *The Committee of Detail*, 28 CONST. COMMENT. 197, 205 (2012).

II. JAMES WILSON & THE CONSTITUTION

A. *The Constitutional Convention*

Let's start out of chronological order and begin with the Constitution. It will be helpful to begin by reminding you of the principal events of the 1787 Convention.³

The Convention is generally divided into a sequence of episodes. There was a great deal happening on any particular day, but the Convention as a whole unfolds almost like a drama over the course of the summer. First comes the introduction on May 29 of the Virginia Plan, largely drafted by James Madison. Madison's plan favored the interest of the large states and wanted them to have more votes in the Senate. Then follow two weeks of general discussion, mostly dominated by Madison and the delegates from the large states. They favored the creation of a consolidated national government. Wilson was one of the principal spokesmen for the large-state group, along with Madison.

Then, in early June, comes a counter-reaction from the smaller states, embodied in the New Jersey Plan. The New Jersey Plan was defeated on June 19, but that did not end the argument. In fact, it was the beginning of what historians call "The Great Debate" that consumed the Convention for the next month. The argument revolved around the question of representation in the Senate. The big states wanted more senators. The small states wanted equality.

The debate raged into the middle of July and almost tore the Convention to pieces. It was finally resolved on July 16, with the decision that every state would have two Senators. In other words, the small states won the debate. Madison and Wilson understood this very well. They had lost. This victory of the small states is known as the "Connecticut Compromise."

It had been an exhausting month. There followed a few days of desultory discussions. Madison was worn out, depressed by his defeat, and considered leaving the Convention altogether. The weary delegates decided to take a break. They appointed a small committee to write up the results of their deliberations, took ten days off, and resumed business on August 6.

The break refreshed their spirits, and they went back to work. The next five weeks of discussion is less easy to summarize, and Madison's *Notes* become somewhat sketchy. The discussions revolved around matters of detail. There is a good deal of haggling about relatively minor points, as well as much more consequential arguments about the design of the Presidency and especially about the issue of slavery. By mid-September the various deals and compromises had been struck, the document was sent to the Committee of Style for polishing, and the Convention came to an end on September 17.

3. Every history of the Convention discusses these well-known events. *See, e.g.*, RICHARD BEEMAN, PLAIN, HONEST MEN: THE MAKING OF THE AMERICAN CONSTITUTION (2009); MAX FARRAND, THE FRAMING OF THE CONSTITUTION OF THE UNITED STATES (1913); MERRILL JENSEN, THE MAKING OF THE AMERICAN CONSTITUTION (1964); CLINTON ROSSITER, 1787: THE GRAND CONVENTION (1966).

B. James Wilson & The Committee of Detail

What was James Wilson's role in all this? He came from Pennsylvania, he spoke often, and he took the large-state position.⁴ Wilson and Madison were close allies throughout the "Great Debate." Madison's *Notes* frequently say, "Madison proposed and Wilson seconded," or "Wilson proposed and Madison seconded," or sometimes just "Madison and Wilson proposed." There was no other pairing quite like this one.⁵ Madison, of course, has long been known as the "Father of the Constitution" and Wilson was his closest collaborator. So he was an important figure. Writing in 1913, the most influential scholar of the Convention, Max Farrand, who prepared the standard scholarly edition of the documentary sources, labeled Wilson "Madison's ablest supporter."⁶ That characterization has stuck. Wilson comes across in Madison's *Notes* as more aggressive—even a bit of a bully toward the smaller states—while Madison was cooler and more cerebral.

There is a great deal to say about their relationship. But I want to focus on an incident whose importance during the Convention has generally been overlooked: The Committee that met for ten days after the "Connecticut Compromise" while everybody else took a break. This was the committee that prepared the first draft of the Constitution.

Madison was not on this Committee—it is called the Committee of Detail—and his *Notes* have little to say about it. Wilson, however, was the Committee's dominant intellect, and in fact the Committee's notes are in his handwriting. I mentioned earlier that Wilson's granddaughter turned over to the Historical Society of Pennsylvania what survived of her grandfather's papers. The notes of the Committee of Detail were part of what she handed over, though nobody realized what they were until scholars went to work on them early in the twentieth century.

I have written at length about the Committee of Detail.⁷ So let me summarize the principal results. They are pretty surprising.

If you look closely at the reprinting of the various Convention texts in Max Farrand's standard edition, the statistics are quite striking.⁸ Madison's original Virginia Plan fills three pages. The Convention's resolutions given to the Committee of Detail fill six pages. So in two full months of debate the Convention added three pages to Madison's plan. The Report of the Committee of Detail fills twelve pages. In other words, in about a week the Committee doubled the text. The final Constitution, as adopted on September 17, fills fifteen pages. What does that mean? The most intensive period of legislative drafting of

4. For an extensive discussion of the facts mentioned in this paragraph, see William Ewald, *James Wilson and the Drafting of the Constitution*, 10 U. PA. J. CONST. L. 901 (2008).

5. *Id.* at 962.

6. FARRAND, *supra* note 3, at 197–98.

7. See generally Ewald, *supra* note 2.

8. See generally THE RECORDS OF THE FEDERAL CONVENTION OF 1787 (Max Farrand ed., 1911) [hereinafter FARRAND'S RECORDS]; A SUPPLEMENT TO MAX FARRAND'S RECORDS OF THE FEDERAL CONVENTION OF 1787 (James H. Huston ed., 1987).

the entire summer occurred within the Committee of Detail. I remind you that Madison was not a member of this committee and that its drafts are in Wilson's handwriting. For a Wilson biographer, those are suggestive facts.

Oddly—and for reasons it would take too long to discuss—before 2008, nobody seems to have looked especially closely at what the Committee of Detail actually did.⁹ You certainly cannot conclude from the number of pages alone that its work was important. And you cannot conclude from the fact that the manuscripts are in Wilson's handwriting that he was the principal architect. Several of the other members had terrible handwriting, and Wilson may have been chosen simply for his fine penmanship. So you have to look closely.

It turns out, however, that the Committee of Detail produced many of the central elements of the final Constitution. The enumeration of federal powers, the Necessary and Proper clause,¹⁰ the Supremacy Clause, large parts of the design of the Presidency, the specification of the jurisdiction of the federal courts—these things are largely the handiwork of the Committee of Detail, and for the most part their language goes straight from Wilson's manuscript into the final Constitution.

How much of this was Wilson's own contribution? The evidence is difficult to disentangle. I would, of course, like to be able to tell you that Wilson was the primary architect of the Report of the Committee of Detail, which is the first draft of the Constitution. But the documentary evidence will not allow that conclusion. He might have been. He might not. We simply do not know. It is beyond question that he was a powerful intellectual force on the Committee, and for that reason I suspect that he was the principal architect of several of the key structural provisions that made their way into the Constitution. They fit his thinking, and he argued for them on the floor of the Convention. But beyond that, the evidence runs out.

The evidence is, however, quite clear on two points. First, the Committee of Detail was of central importance to the drafting of the Constitution. Second, Wilson was a member of the Committee, and Madison was not. Remember that the standard story holds that James Madison was the principal architect of the Constitution, and Wilson was a kind of assistant, a very able helper. But if we look a bit more closely at Madison's own *Notes*, we see that the familiar story cannot be correct.

In the first place, there is the Committee of Detail. Secondly, much of the design of the Presidency was supplied by Wilson. The Presidency was a topic on which Madison tells us he had thought little before the Convention began, and it is clear that on this major topic he followed Wilson's lead. Finally, and most

9. I called attention to the importance of the Committee in 2008. Ewald, *supra* note 4, at 937–38. That early work was based on the printed texts in Farrand, but it was clear that a detailed examination of the original manuscripts would be necessary. That came in William Ewald & Lorianne Updike Toler, *Early Drafts of the U.S. Constitution*, 35 PA. MAG. HIST. & BIOGRAPHY 227 (2011). The 2012 piece, Ewald, *supra* note 2, provides an extensive analysis of the Committee's work.

10. See, in particular, the acute discussion in John Mikhail, *The Necessary and Proper Clauses*, 102 GEO. L.J. 1045 (2014).

importantly, the underlying philosophical premises of the two men—their views of democracy, popular sovereignty, federalism, republicanism, and representation—are quite different.

Those philosophical differences are a huge topic, and I cannot go into them tonight. You will have to wait for my book. But let me put the central point in a peremptory way—and without the qualifications that would be necessary in a work of scholarship. Wilson, philosophically, is quite different not just from Madison, but from the other delegates to the Convention. He is the only one to argue for a principle of democratic equality—to argue that the Constitution, as a whole, should be based on a principle of one-man-one-vote. He is the only one. That was an extremely unusual position in the eighteenth century. All the other delegates, in varying degrees, wanted restrictions on democracy—a term they generally used with distaste. Wilson used it with approval.

So if you put all this together, you get a very different picture of Wilson from the usual one. Wilson is not just some kind of junior apprentice to Madison, but a major and independent figure in his own right. Can we say that he is a greater figure than Madison? Absolutely not. My only point is that they are different, and that each can help us to understand the other. On some days, Wilson makes better arguments than Madison, and on other days it is the reverse. We do not need to choose.

As for the question “Who is the Father of the Constitution?” I hope it is clear that the question is misconceived. It misunderstands what happened in Philadelphia—as Madison of course repeatedly said. If you go to Oxford University’s new “Project Quill” website, you can see a graphical representation of all the decision points at the Convention.¹¹ There are about 2,500 of them. The proceedings were far too complicated for any one delegate to understand the entire process, let alone control it. There were too many actors, too many decisions, too many trade-offs, and too many secret bargains. So the label “Father of the Constitution” is best abandoned.

I am about to stop talking about the Constitutional Convention. But before I do, let me restate my principal point in slightly different language. If you look at the constitutional philosophies of the principal Founders—Madison, Gouverneur Morris, Hamilton, Jefferson, John Jay, Roger Sherman, John Adams, Washington, Franklin—Wilson comes closest to anticipating the frontier democracy that evolved during the nineteenth century. Remember: Wilson was something of an adventurer. As a young man, he got on a boat and headed for the colonies. Much like Lincoln, he practiced law on the frontier. Philosophically, he was committed to a kind of democratic egalitarianism. I do not wish to exaggerate the point. He was a highly-educated Philadelphia gentleman of the eighteenth century. But unlike most of his eighteenth-century companions, I think Wilson

11. Constitutional Convention of 1787: Grand Convention at Philadelphia, May to September, 1787, QUILL PROJECT, https://www.quillproject.net/activity_summary/6 [<https://perma.cc/R6RA-DWAJ>] (last visited Nov. 2, 2018).

would have felt at least somewhat at home in the democracy of Andrew Jackson and of Abraham Lincoln.

III. JAMES WILSON & THE DECLARATION OF INDEPENDENCE

I have not yet come to my surprise. But let me now turn to the other document Wilson signed: The Declaration of Independence, and the year 1774.

I say 1774 because 1776 is a painful topic for a Wilson biographer to talk about. Most people, if they know about Wilson at all, know about him from the Broadway musical *1776*. That musical appeared in 1969 and was the *Hamilton* of its day. It won the Tony Award in 1969 for Best Musical and later became a successful Hollywood film.¹²

The plot involves the maneuverings leading up to the vote to declare independence. On one side are the ardent advocates of independence: John Adams, Thomas Jefferson, Benjamin Franklin, and their allies. They sing the best songs. But you need dramatic tension, and on the other side are those who hesitate. Their leader is John Dickinson from the Pennsylvania delegation. You will remember that Wilson studied law with Dickinson. In the climax of the musical, the vote comes down to Pennsylvania. All the other states have voted yes. But a unanimous vote of all the states is essential. If Pennsylvania votes no, independence cannot succeed. And the Pennsylvania delegation is split. Franklin is a yes. Dickinson is a no. And James Wilson is stuck in the middle, unable to make up his mind.

In the end, Wilson votes with Franklin. But he does so for essentially cowardly reasons. As he explains to Dickinson, if he votes no he will always be remembered as the man who prevented American independence. But if he goes with Franklin and the rest, he will be just one of the crowd. “I’m different from you, John,” he says. “I’m different from most of the men here. I don’t *want* to be remembered. I just don’t want the responsibility.”

Dickinson is portrayed in the musical as an admirable figure, acting from deep personal conviction. But Wilson is indecisive, vacillating, contemptible. There is no doubt about the musical’s final judgment of Wilson, which is put into the mouth of a disgusted Dickinson: “And is that how new nations are formed?” he asks Wilson. “By a nonentity trying to preserve the anonymity he so richly deserves?”

“A nonentity trying to preserve the anonymity he so richly deserves.” Harsh words. So I am going to skip over 1776 and turn to the more promising year of 1774.

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12. It also won the Tony awards for best actor and best director. *History*, TONY AWARDS, https://www.tonyawards.com/en_US/history/pastwinners/tonys_results.html?lname=1776 [<https://perma.cc/4NRP-SGLL>] (last visited Jan. 21, 2019).

Let me remind you of the situation in 1774. The previous winter, in December 1773, a group of American patriots in Boston had dressed up as Indians and tossed a consignment of British tea into Boston Harbor. The British responded by declaring martial law and sending troops to occupy Boston.

That provoked a crisis throughout the colonies. The First Continental Congress was called to Philadelphia to decide how to respond. It began to meet on September 5, 1774.

Up to that time, the legal arguments about the rights and responsibilities of the colonists, and about the British authority to tax them, had been carried on squarely inside the framework of the British Constitution. The Americans regarded themselves as loyal subjects of King George III, and there was little hint that they wished to secede from the British Empire. They wanted their traditional rights respected—their rights as Englishmen—but that was a different matter altogether.¹³

At the start of the Continental Congress, however, two anonymous pamphlets appeared. These pamphlets signaled a change in the way the Americans thought about their relationship with the British Empire.

The first was printed in Virginia in early August. It is twenty-three pages long and entitled *A Summary View of the Rights of British America*.¹⁴ It was notable for two things: It was beautifully written and it was extremely angry. It caught the colonial mood. The friends of the author had published it in Virginia without his permission. One of the Virginia delegates carried a copy to Philadelphia and made sure that it was reprinted just as the Continental Congress was getting started. Everybody read it and everybody talked about it.

Some of the arguments now appear a bit overstated. For instance, the author of the *Summary View* says:

By an act passed in the 5th Year of the reign of his late majesty King George II, an American subject is forbidden to make a HAT for himself of the FUR which he has taken perhaps on his own soil; *an instance of despotism to which no parallel can be produced in the most arbitrary ages of British history.*

That is rhetorical excess, no doubt about it. But more important is an unambiguous statement of a legal principle that had rarely been stated so forthrightly: “The true ground on which we declare these acts [of Parliament] void is, that the British parliament has no right to exercise authority over us.”

The author of the *Summary View*, as I am sure you have guessed, was Thomas Jefferson, and this was his first major piece of political writing. He went on to make a somewhat surprising suggestion. You will recall that in Jefferson’s

13. The literature on these topics is of course voluminous. See generally BERNARD BAILYN, *THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION* (1967).

14. THOMAS JEFFERSON, *A SUMMARY VIEW OF THE RIGHTS OF BRITISH AMERICA* (1774), reprinted in *1 THE PAPERS OF THOMAS JEFFERSON* 119 (Julian Boyd ed., 1950).

Declaration of Independence, written about eighteen months later, the villain is King George III. But in 1774, Jefferson has a different target. The villain is Parliament, and he looks to King George to save the situation. The pamphlet is a “humble and dutiful” petition, asking the King to use his royal veto and to set aside the offending statutes.¹⁵

It is worthwhile to consider how that suggestion would have been received in London. Jefferson’s petition was, of course, hopeless. The core understanding of the British Constitution, shared by essentially everybody from the King on down, was that the Glorious Revolution of 1688 had established the supremacy of Parliament. The Stuart monarchs had indeed exercised their prerogative powers and their royal veto, but that was precisely the problem. They had been arbitrary despots, and the Glorious Revolution had brought them to heel. It had established the rule of law, government by consent of the governed, and the principles of enlightened liberty that had made the British Constitution the marvel of Europe. The consequence had been an end to the civil wars, and nearly a century of prosperity, stability, liberty, and an expanding overseas empire.

George III understood all this, and if he had ever been tempted to follow Jefferson’s advice—which he was not—he would quickly have been deposed and sent back to Hanover. So Jefferson’s suggestion was a complete nonstarter.

Did Jefferson himself realize this? It is not clear that he did. The problem—and here I refer you to the important book by Eric Nelson—is that Jefferson and many of the colonists were still thinking in terms of a seventeenth-century constitution, while the British had advanced to the eighteenth-century conception that we find most clearly articulated in Blackstone.¹⁶ That way of putting the matter is very crude, but the basic point is that in 1774 you can see a clash of two conceptions of the British Constitution: one from the seventeenth century, and the other from the eighteenth.

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But back to the First Continental Congress. I said that there were two anonymous pamphlets that appeared in Philadelphia in September 1774. The first was Jefferson’s *Summary View*. The second appeared about three weeks later. It was called *Considerations on the Nature and the Extent of the Legislative Authority of the British Parliament*.¹⁷ You will recall that Jefferson’s pamphlet was beautifully written and very angry. This new pamphlet was different. It was not as eloquent, and the tone was much cooler—at times almost pedantic. But it did something Jefferson’s pamphlet did not. Remember that Jefferson had made a profoundly revolutionary assertion: “The true ground on which we declare these acts void is, that the British parliament has no right to exercise authority over us.”

15. *Id.* The “humble and dutiful” language appears in the first sentence.

16. See generally ERIC NELSON, *THE ROYALIST REVOLUTION* (2014).

17. JAMES WILSON, *CONSIDERATIONS ON THE NATURE AND THE EXTENT OF THE LEGISLATIVE AUTHORITY OF THE BRITISH PARLIAMENT* (Gale Ecco 2018) (1774).

That is a dramatic claim. But Jefferson does not offer an argument. He merely states the proposition as though it is obvious.

The new pamphlet is entirely devoted to providing that argument. It starts where Jefferson left off. Its goal is to analyze the central question that Jefferson had left hanging: What authority does parliament have to legislate for the colonies? It provides thirty-two pages of close analysis. And the answer is the same as Jefferson's: None. Parliament has no authority to legislate for the colonies on any matter whatsoever.

The new pamphlet makes a couple of remarkable philosophical maneuvers. To see just how remarkable, you need to immerse yourself in the earlier pamphlet literature. Most of the legal argumentation had taken place inside the traditional legal framework of the British Constitution. But this new pamphlet, although it goes deeply into the common-law precedents, also stands back from the entire British constitutional tradition and attempts to examine its foundations. It contains a remarkable attack on Blackstone's theory of parliamentary sovereignty—what amounts to both a philosophical and a legal assault on the British conception of the constitutional structure of the Empire.

This anonymous pamphlet landed like a bombshell in the third week of the Continental Congress. Everyone asked: Who wrote it? An answer quickly appeared. The first part of the pamphlet was reprinted on October 20 on the front page of *Rivington's Gazetteer* in New York. It now had the title, "*The Celebrated Dr. Franklin's Considerations on the Nature and the Extent of the Legislative Authority of the British Parliament.*"¹⁸ That was enough to guarantee widespread publicity. Benjamin Franklin was the most famous human being in the Western Hemisphere. He had recently returned to America after nearly two decades in London. So people on both sides of the Atlantic studied his words—or what they believed to be his words.

This misattribution persisted for about six crucial weeks, during which the First Continental Congress met and dissolved. But then came a retraction. It almost certainly came from Franklin, or from one of his associates. He wished to make clear that the pamphlet went too far. So there was an anonymous letter to *Rivington's Gazetteer*, published on December 1:

Mr. Rivington, You have been misinformed in attributing to Dr. Benjamin Franklin the piece entitled Considerations on the Nature and Extent of legislative Authority of the British Parliament over the American Colonies. His political principles are quite different. That gentleman always acknowledged that Great Britain has a right to regulate our trade.—The real author of that performance is Mr. Wilson, of this province, a native of Scotland, and a warm patriot.¹⁹

18. *The Celebrated Dr. Franklin's Considerations on the Nature and the Extent of the Legislative Authority of the British Parliament*, RIVINGTON'S N.Y. GAZETTEER, Oct. 20, 1774.

19. RIVINGTON'S N.Y. GAZETTEER, Dec. 1, 1774.

In other words, as of December 1774, the argument in Wilson's pamphlet was still too radical for Benjamin Franklin to endorse, and he disassociated himself from it.

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Neither Jefferson nor Wilson attended the First Continental Congress. But by the end of 1774 their writings had made them famous throughout British America. They were both elected as delegates to the Second Congress that began meeting after the bloodshed of Lexington and Concord in 1775.

I said that Wilson's *Considerations* pamphlet make some remarkable philosophical maneuvers. One paragraph in particular deserves close attention. It comes close to the beginning of the pamphlet. Here it is:

All men are by nature equal and free: No one has a right to any authority over another without his consent: All lawful government is founded on the consent of those who are subject to it: such consent was given with a view to ensure and to increase the happiness of the governed above what they could enjoy in an independent and unconnected state of nature. The consequence is, that the happiness of the society is the first law of every government.

There is no trace of such an argument in Jefferson's *Summary View*. Nor will you find it anywhere else in Jefferson's papers before 1776. The argument first appears in his "original rough draft" for the Declaration of Independence. The crucial sentence is this:

We hold these truths to be sacred & undeniable; that all men are created equal and independant [sic], that from that equal creation they derive rights inherent & inalienable, among which are the preservation of life, & liberty & the pursuit of happiness; that to secure these ends, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government shall become destructive of these ends, it is the right of the people to alter or to abolish it, & to institute new government, laying it's foundation on such principles & organizing it's powers in such form, as to them shall seem most likely to effect their safety & happiness.²⁰

Could Wilson's *Considerations* pamphlet have influenced the Preamble of the Declaration? Historians have long thought so, and the evidence is strong. Of the five members of the Committee charged with drafting the Declaration, three certainly knew Wilson's pamphlet: Benjamin Franklin (who was suspected of having written it), John Adams (who wrote to Abigail Adams about his admiration of Wilson), and Thomas Jefferson (who not only read Wilson's pamphlet, but took

20. The "original rough draft" has often been reprinted. The reprintings all go back to a foundational work of textual scholarship, JULIAN P. BOYD, *THE DECLARATION OF INDEPENDENCE: THE EVOLUTION OF THE TEXT AS SHOWN IN FACSIMILES OF VARIOUS DRAFTS BY ITS AUTHOR*, THOMAS JEFFERSON (1945). I have preserved Jefferson's orthography and punctuation, but not his minor deletions and insertions.

the trouble to copy out long extracts into his commonplace book). Gilbert Chinard pointed this out nearly a century ago, and Wilson's influence on the Preamble has long been acknowledged.²¹ That should not be surprising. In 1776, Wilson's *Considerations* was the most philosophically sophisticated defense of the American position, and in all likelihood Jefferson had it on his desk as he composed the Declaration.

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But at this point we need to be extremely careful. It is true that Wilson anticipated the Preamble, and true that Jefferson studied his pamphlet. But we cannot assume that the Preamble meant the same thing to Jefferson or to Wilson as it does to us. That is: We cannot assume that Jefferson or Wilson gave it the same importance that we give it, or that Abraham Lincoln gave it.

Why not? About a decade ago, the historian David Armitage published a wonderful, short book about the global impact of the Declaration—about its influence on other countries.²² He pointed out that there have been about 100 “declarations of independence” since 1776. He also pointed out that almost none of them invokes the language of Jefferson's Preamble. In particular, they do not invoke the famous second sentence, whose rough draft I have just quoted.

That is an extremely surprising fact. For Americans, the language about “life, liberty, and the pursuit of happiness”—and especially the clause, “all men are created equal”—are the very heart of the Declaration. That is certainly what Abraham Lincoln thought, and that assumption is reflected in the inscriptions on the walls of the Lincoln Memorial and the Jefferson Memorial. But for most of the rest of the world, the part of the Declaration that matters is the body of the document—the declaring of national independence—and not the language about individual rights. So they leave the Preamble out. The reasons are complicated, and Armitage explores them at length. But his observation raises an important question: Why should we think that Jefferson viewed the matter any differently? What reason, in other words, do we have for thinking that Jefferson regarded the Preamble as important?

I recognize that this is a strange question. Jefferson asked that his authorship of the Declaration be placed on his tombstone, so he clearly regarded the Declaration as important. But that is not quite my question. My question is about

21. Carl Becker's influential monograph of 1922 pointed out the similarities between Jefferson's Preamble and Wilson's pamphlet. CARL BECKER, *THE DECLARATION OF INDEPENDENCE: A STUDY IN THE HISTORY OF POLITICAL IDEAS* 105–13 (1922). Gilbert Chinard in 1929 then added the observation that Jefferson had copied extracts from Wilson's pamphlet into his commonplace book. GILBERT CHINARD, *THOMAS JEFFERSON: THE APOSTLE OF AMERICANISM* 73 (1929). These points were noted in GARRY WILLS, *INVENTING AMERICA* 251 (1978). Incidentally, there are various ways of dividing up the text of the Declaration. A careful discussion of the point, and an insightful reading of the text is provided by DANIELLE ALLEN, *OUR DECLARATION: A READING OF THE DECLARATION OF INDEPENDENCE IN DEFENSE OF EQUALITY* (2014). For my purposes in this talk, a less sophisticated division will suffice, and I divide the Declaration into the *Preamble* (which sets forth the general philosophical propositions) and the *Body* (which lists the colonists' grievances against King George III).

22. DAVID ARMITAGE, *THE DECLARATION OF INDEPENDENCE: A GLOBAL HISTORY* (2007).

the Preamble, since that is the bit that Wilson influenced. And my question is: What did Jefferson say about the *Preamble* in the time between the adoption of the Declaration and his own death on July 4, 1826? That is half a century, almost to the minute. How often does he refer to the Preamble, and what does he have to say about it?

The Jefferson papers have recently been digitized, and we can do a few simple word searches. Let us begin with the famous phrase: “pursuit of happiness.” Jefferson does indeed use this combination of words a few times. There are a couple of letters to young ladies in which he advises them to pursue happiness. But he is not here talking about the Declaration. In one letter from 1817 there is a brief allusion to “life, liberty, and the pursuit of happiness.” Jefferson is in fact talking about the codification of Virginia law, which happened in 1776. But it is reasonable to assume that he is also alluding to the Preamble. Let’s count that as one hit. Otherwise the words “pursuit of happiness” turn up empty.²³

So let us try some other word searches. “Inalienable” turns up a single hit (in July 1803), but it is unrelated to the Declaration. “Self-evident” gives us three hits in fifty years. None is related to the Declaration. (I have of course tried various spellings and punctuations for all these phrases.)

But what about the crucial phrase, “all men are created equal”? That, after all, is the proposition to which the nation was dedicated in 1776, and you find it in both the Lincoln and the Jefferson memorials. How often does Jefferson refer to it?

Let us first fix a modern baseline. If you search the *Congressional Record* for the past fifty years, you get roughly 2,500 hits. That does not count Fourth of July speeches by members of Congress, but we can do a back-of-the-envelope calculation. Pretty much every member of Congress gives at least one speech on the Fourth of July, and pretty much every speech quotes the Preamble. At a conservative guess, that would give you more than 20,000 hits in the past fifty years.

So how often do the words “created equal” occur in the papers of Thomas Jefferson?

Let us start with letters written to Jefferson. There is a quotation of the phrase “all men are created equal” in the famous letter of Benjamin Banneker to Jefferson, written in August 1791. Banneker, a free man of color, wrote to ask Jefferson how he reconciled slavery with the Preamble. Jefferson wrote back to express sympathy with “our black brethren,” but ignored Banneker’s question about the Declaration. Jefferson’s letter does not discuss the phrase “all men are

23. The searches mentioned here were all done on the University of Virginia’s Project Rotunda website: The Founding Era Collection, <https://rotunda.upress.virginia.edu/founders/> [<https://perma.cc/2HNL-NPCA>]. I experimented with various permutations and combinations of searches, with multiple spellings of the relevant phrases, and with multiple wildcards. It should be noted that the electronic version of the Jefferson papers is nearly complete, but not quite. A similar point holds for most of the other Founders whose Rotunda writings I searched. It is therefore still possible that new material might emerge that is not covered by these searches.

created equal,” and he makes no reference to the Preamble.²⁴

What about documents written by Jefferson himself? What about letters, or speeches, or diaries, or essays, or anything at all? How often does Jefferson himself use the phrase?—In the fifty years between 1776 and the July 4, 1826, Jefferson uses the phrase “created equal” not a single time.

That is pretty surprising—though it is not yet the surprise I promised. But let us explore this matter a little bit further and try word searches on some other digital collections. In all cases, I searched for the phrase “created equal,” hoping that would lead to discussions of the Preamble to the Declaration.

George Washington was not involved in drafting the Declaration, and he did not live as long as Jefferson. So it is not surprising that his score, like Jefferson’s, is zero.

John Adams is a better bet. Like Jefferson, Adams helped to draft the Declaration. Like Jefferson, he died precisely fifty years later. And, like Jefferson, his score is zero.

The same thing is true if you search the papers of Benjamin Franklin, James Madison, Alexander Hamilton, John Jay, and Dolley Madison. They never use the phrase “created equal.” You can try searching their papers for “pursuit of happiness” and “self-evident” and “inalienable.” You get the same result. You can also search the twenty-six volumes of the *Letters of Congress*, which cover the years 1774–1789. You will get a couple of hits just *before* July 4, 1776—and zero thereafter.

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I conclude from all this that the Preamble to the Declaration did not have the same importance to the eighteenth-century Founders that it has for us.²⁵ How can we explain this? Let me sketch an answer. It owes a great deal to the work of Pauline Maier. Her research in this area is fundamental, and she worked out the main contours of the answer before the age of digital word searches.²⁶

Basically, the story goes like this: Starting in July 1777, Americans got into the habit of celebrating the anniversary of American independence. July 2 would have been the natural choice, since that was the day of the actual vote. But they let the date slip, and by the time somebody noticed it was too late. So they had the celebration on July 4. It has remained there ever since. For the next couple of decades there was an annual party to celebrate Independence Day. That was what they were celebrating: the *act* of independence, the *act* of separating from Great Britain. They were not celebrating a *document*, and they were not celebrating *Thomas Jefferson*. In fact his authorship of the Declaration was not generally known.

24. See generally SILVIO A. BEDINI, *THE LIFE OF BENJAMIN BANNEKER* (1972).

25. Just to be clear: I am talking about references to a particular famous passage *in a particular text*. I am not making claims about Jefferson’s views on *equality*, which is a much larger topic.

26. PAULINE MAIER, *AMERICAN SCRIPTURE: MAKING THE DECLARATION OF INDEPENDENCE* (1997); see also Charles Warren, *Fourth of July Myths*, 2 WM. & MARY Q. 237 (1945).

But then, in the 1790s, something changed. Political parties emerged: the Federalists and the Republicans. Adams and Hamilton were the leaders of the Federalists, and Jefferson of the Republicans. Jefferson was elected President in 1800, and his Republicans supporters began to come to the Independence Day celebrations waving the Declaration—that is, the *document*—and pointing out that their leader was the author.

So now, from roughly 1800 onwards, the *text* of the document becomes important. But notice: The annual celebrations are still celebrations of Independence Day. Relations with Great Britain are still tense. There is another war in 1812, and the British burn the White House. Jefferson's list of grievances against George III still resonate throughout these years. That was the part of the Declaration that mattered—not the Preamble. And I believe that was the way that Jefferson saw matters until the day he died, and it is why he wanted to assert the authorship on his tombstone. At any rate, as I have emphasized, he seems never to have mentioned the Preamble, even once.

But by the time of Jefferson's death in 1826, the national mood was shifting. The wars with Britain were over, and relations were peaceful. And now there was a new issue to worry about: slavery. The Missouri Compromise of 1820 had postponed the day of reckoning, but everybody could see it coming. And now the text of the Declaration began to be looked at in a new way. The early abolitionists pointed to the beginning of the document Americans had been celebrating for the past twenty-five years. They came to the annual party, and they said, in effect: *Read it!* William Lloyd Garrison takes up the theme, and of course there is Frederick Douglass's oration of 1852, *What to the Slave is the Fourth of July?* And then we come to Abraham Lincoln. How many times does he refer to "all men are created equal"? There is no need to do a word search for Lincoln. You will quickly be overwhelmed. The phrase is everywhere, and he puts it into the opening sentence of the Gettysburg Address. From Lincoln's day forward, it was the *Preamble* that mattered, and Jefferson's list of grievances receded into the background.

IV. THE DECLARATION AND THE RATIFICATION OF THE CONSTITUTION

Let me sum up these various points, which I hope you will agree are surprising. In the eighteenth century we find very few references to the text of the Declaration of Independence, and essentially no references whatsoever to the Preamble. The Declaration only begins to be celebrated around 1800, and the Preamble only begins to be noticed after Jefferson's death in 1826.

But let us not leave matters there. There is one last place where we can do a digital word-search. The Ratification of the Constitution happened in 1787–1788. There was a great debate throughout the United States. The printed materials fill some 30 volumes of the *Documentary History of the Ratification of the Constitution*—a great scholarly project that is now nearing completion. It is valuable because it does not just contain the writings of a few elite Founders, but of

all the participants in the public debate. What happens if we look there for references to “created equal”?

We do not get many hits—only four, in fact. That is, four references to the Preamble in *all* the Ratification debates, throughout the United States. Two of those references, both from New York, are negligible. But the last two are important. They both come on December 4, 1787, at a crucial turning point in the Pennsylvania ratification convention.²⁷ The Convention had been meeting for two weeks. The opponents of the Constitution had dominated the proceedings and had set forth their objections. On December 4, James Wilson, the chief defender of the Constitution, gave a speech that lasted the entire day. It was his longest speech of the Ratification Convention. It turned the tide, and it secured Pennsylvania’s ratification.

At the apex of his speech, Wilson invokes the Preamble to the Declaration. He quotes the entire famous sentence about self-evident truths, the pursuit of happiness, and, of course, “all men are created equal.” At this point, it might be appropriate to remind you that that sentence in the Declaration was itself a re-working of Wilson’s *Considerations* pamphlet of 1774.

This is surprising enough. Wilson, so far as I have been able to determine, is the only Founder who so much as *mentions* the Preamble in the eighteenth century. He not only mentions it but does so at a moment of supreme political drama. And then, immediately after having quoted the Preamble, he adds a sentence that, in context, can only be called astonishing: “This [i.e. the Preamble] is the broad basis on which our independence was placed; on the same certain and solid foundation this system [of the U.S. Constitution] is erected.”²⁸

But there is more. Six months earlier, on June 19, during the Constitutional Convention, Wilson had also read from the Declaration. June 19 was one of the most tumultuous days of the Convention. On that day, the New Jersey Plan was defeated and the Great Debate that was to consume the Convention for the next five weeks began. Madison’s *Notes* tell us that at the end of this dramatic day Wilson took the floor and “read the declaration of Independence.”²⁹ It is not clear exactly which parts of the Declaration Wilson read. (I doubt it was the whole thing.) But that is not really what matters here. What matters is that, as far as can be determined from the four volumes of Convention records, James Wilson is the *only* delegate to have made any reference whatsoever to the Declaration—and once again, we find him doing so at a pivotal moment in the proceedings.

This drawing of an explicit connection between the Declaration and the Constitution is not something you find in Jefferson, or Madison, or Adams, or Hamilton, or any of the others. We seem to be in the world of the Gettysburg Address—but decades before Lincoln was born.

27. 2 DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 472–73 (Merrill Jensen, ed. 1976).

28. *Id.* at 473.

29. 1 FARRAND’S RECORDS, *supra* note 8, at 324.

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Let me now briefly take stock. This will be a good point to pull together what I have said about Wilson's relation to the Constitutional Convention and his relationship to the Declaration of Independence. At the Convention, he is generally portrayed as a figure of only secondary importance—as Madison's loyal assistant. But as I have explained, that picture is seriously incomplete. In the first place, Wilson was the leading intellect on the Committee of Detail, which did most of the actual drafting of the Constitution. Secondly, he was the principal architect of the American Presidency. But the third point is the most important. Of all the delegates to the 1787 Convention, Wilson is the one whose constitutional views approximate most closely to the one-man-one-vote frontier democracy that was to emerge in the nineteenth century. That is the world we associate with Andrew Jackson and Abraham Lincoln. The other framers—Washington, Hamilton, Adams, Jefferson, Madison, Dickinson, and the rest—were gentlemen of the 18th century, and they thought like gentlemen of the eighteenth century. So did Wilson. But Wilson, unlike the others, at times can seem to have one foot planted in the century that was to come.

As for the Declaration, I would emphasize two points. First (and as others have pointed out), Wilson's *Considerations* pamphlet of 1774 almost certainly supplied Jefferson with the language of the Preamble. But secondly, as far as the surviving evidence shows, Wilson was the only one of the Founders to have thought of the Preamble as a statement of the constitutional values of the new republic. It is not just that he is the only one to mention the Preamble. The point is much more profound. He connects the Declaration to the Constitution in a way that is strikingly reminiscent of the Gettysburg Address—but he got there threescore and sixteen years before Lincoln.

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These facts are surprising. Are they the surprise I promised you? Not yet. But they are thought-provoking, and a stimulus to further investigation. So we need to ask: Where did Wilson's ideas come from? What are the sources of his constitutional thought? And having asked those questions, we naturally want to know more about the *Considerations* pamphlet of 1774, and the circumstances under which it was drafted.

But now we run into a problem. In contrast to the papers of the other Founders—which exist in handsome letterpress editions, running to hundreds of volumes—the papers of James Wilson are a disaster. Many of them were physically destroyed after his death, and we do not have much more than what his granddaughter gave to the Historical Society of Pennsylvania in 1876. I am at work on a scholarly edition, but that is going to take time.

But there is one ray of hope. The great textual editor Julian P. Boyd—he edited the papers of Thomas Jefferson, setting the modern standard for textual scholarship—observed already in 1940 that the manuscript of the *Considerations* exists in the Wilson papers. He said that a careful comparison of the manuscript

with the published pamphlet ought to be done. He made these remarks in an obscure footnote. Boyd did not know the facts that I have been describing this evening, linking the *Considerations* to the Declaration and the Constitution. Perhaps for that reason he did not pursue his suggestion.³⁰

There was doubtless another reason, which it is important to emphasize. If you eyeball the manuscript—here you can see it from the slide—you quickly notice two things. First, you see that the manuscript is quite clean, and is obviously the source of the printed pamphlet. Here, for comparison, is a slide of the pamphlet. The manuscript fills twenty-seven pages, and the printed pamphlet fills thirty-two. So they are the same length.

Secondly, and more importantly, a quick inspection shows you that Wilson's deletions and insertions and re-writings are infrequent. If you check a few of them, you see at once that they are insignificant. So a careful re-transcription is going to be a lot of work, and in the end it is not going to reveal anything new.

I am pretty sure Boyd went through this process of reasoning, because it is precisely how I reasoned when I first looked at the manuscript eight or nine years ago. I took photos, and they sat on my laptop for several years. That is where the slides you are looking at came from. I hope you notice something interesting about them that I missed.

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A couple of years ago, one of the students in my Wilson seminar—Jack Sheehan—was looking for a project. He was interested in textual editing. I suggested we might do a transcription of the *Considerations*. At the time, I had not figured out of the story I have just told you, so I thought of this as a minor but necessary task, a step towards preparing a scholarly edition of Wilson's writings. Please do not look at me. You should be looking at the slide.

So Jack and I commandeered a vacant faculty office and got to work. It is very boring. He had a word-processed version of the 1774 pamphlet, which you can download from the Liberty Fund website. I had the images of the handwritten manuscript. The idea was to produce a text that matched the manuscript and that would display all the changes. So I would read out five or six words, carefully noting any deletions and any oddities of spelling or capitalization or punctuation. Jack would type in the changes, and then read back the five or six words, which I would double check against the manuscript. Then we would proceed to the next five or six words. It is slow work, and extremely dull. It is also thankless, and you had better get tenure before you do this sort of thing. Your Dean is not going to reward you, let me tell you.

30. Julian P. Boyd, *Joseph Galloway's Plans of Union for the British Empire, 1774–1788*, 64 PA. MAG. HIST. & BIOGRAPHY 492, 495 n.8 (1940) (“Wilson’s original manuscript for his *Considerations*, which is in The Historical Society of Pennsylvania, was written about 1770. A careful collation of the manuscript and an exact editing of it should be done. This important contribution to the political theory of the Revolution, based on a thorough study of legal and constitutional precedents, has been reprinted several times, but never, since 1774, from the original manuscript.”).

Jack and I pretty early found something interesting: Wilson had altered the order of one sentence near the beginning, interchanging a couple of clauses. Jack typed in the change, and we crawled forward, five or six words at a time.

Pretty soon you go into a kind of trance, intensely focused on the words, and trying to make sure you are getting them right. You forget about the larger context, and you stop paying attention to what the words mean. That can come later, but first you need to establish the text.

About an hour into the process, something surprising happened. I was reading from a totally clean bit of the manuscript—no insertions or deletions or strange spellings. I suddenly noticed that Jack was busy typing. He had clearly misunderstood his job. So I told him I wanted him only to type in the *new* bits. He did not need to re-type the text of the published pamphlet.

“That’s what I’m doing,” he said. “This stuff is new.” He paused. “Why? Is that important?”

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It did not take long to figure out what any fool, looking at the manuscript and comparing it to the pamphlet, should have spotted at a glance. The pamphlet is thirty-two pages, and the manuscript is twenty-nine. But the manuscript is written on large sheets, in small handwriting, from one edge of the paper to the other, with no margins and no paragraphs. If you compare two arbitrary pages – like the ones you have been looking at—you see at once that the manuscript is very much longer. The published manuscript is about 12,000 words. The manuscript turns out to be about 30,000 words. But because some of the pamphlet is not in the manuscript, the amount of new material is somewhat greater than those figures suggest.

Let me say three things about that.

First, 30,000 words is a lot. That is somewhere between a long article and a short monograph. New documents of this length from the Founding Era are extremely rare, and most of them were uncovered in the nineteenth century. The twentieth century added bits and pieces—a letter here, a diary entry there, an oblique remark recorded by somebody’s grandchild. But a sustained argument of this length, exploring questions of American independence? I am not aware of anything comparable. So Jack Sheehan and I got incredibly lucky.

Secondly, the manuscript turns out to be extremely rich. I am still analyzing it, and probably a year from sending it to a publisher. But here is what I can tell you. The manuscript was a highly technical legal analysis. It is filled with references to seventeenth-century common law. It is copiously documented. There are lots of abbreviated references, and it takes time to track them down and to identify the specific editions that Wilson was using. That is itself a very useful enterprise: it tells you what books Wilson had at his disposal. I believe—though nothing much turns on the point—that Wilson’s manuscript is the most sophisticated legal analysis of the American dispute with Great Britain to have been written before 1776. But whether or not that judgment is correct, this is a document of exceptional complexity and importance.

When Wilson went to publish his piece in 1774, he cut out most of the legal technicalities. He was of course right to do so. The manuscript is long, and detailed, and intricate, and full of obscure footnotes. It would never have served for a general audience. It would have cemented his reputation as a pedant of the first-order. So he cut it. But for a historian of the Revolution, the things he cut are extremely interesting. Their very pedantry is what makes them useful. The manuscript is filled with footnotes, and they open up a door into Wilson's mental world. Since I am still trying to find my way, I will not attempt to say anything more.

There is also a third point. You will recall that Wilson is not given a large billing in the events leading up to independence. Historians slot his *Considerations* pamphlet into its public chronological sequence. We have the Boston Tea Party, followed by Jefferson's angry pamphlet, then Wilson's calmer one, exploring the issues that Jefferson had raised. From the public point of view, that is how events unfolded. You will also recall that the musical *1776* portrays Wilson as a contemptible and indecisive figure, tugged back and forth between Franklin and Dickinson: "A nonentity seeking the anonymity he so richly deserves."

Well—the manuscript allows us to put a date on Wilson's original draft of the *Considerations*. His pamphlet remarks that it was drafted some years before 1774. Historians have argued about exactly when it was written, but the most careful historians followed Boyd's estimate of "probably around 1770." But internal evidence in the manuscript allows a more precise dating. The manuscript was completed, at the latest, by December 1768.³¹

Recall that, even in 1774, Wilson's argument was more radical than Franklin was willing to endorse, and it was certainly far more radical than Dickinson. But the actual date of composition was 1768. So the Broadway musical picture of an indecisive James Wilson being tugged back and forth between these two men could scarcely be more mistaken. Wilson was ahead of them all—ahead of Franklin, ahead of Dickinson, ahead of Jefferson, ahead even of John Adams. So much for Broadway musicals.

CONCLUSION

Let me briefly sum up. There is one enormous thing about James Wilson that I have scarcely mentioned. For me, it is almost the most important thing, but also the most difficult. That is his connection to Scotland, to the philosophical world of the Scottish Enlightenment, to Scots law, and to the civilian legal systems of continental Europe. Scotland of course was not a common-law system, and for my purposes that is extremely important. Wilson lies at the intersection of two difficult strands of eighteenth-century thought: technical eighteenth-century law,

31. Carl Becker and Julian Boyd Becker both dated the manuscript to 1770. BECKER, *supra* note 21, at 106; Boyd, *supra* note 30, at 495 n.8. Page Smith conjectured that the date was earlier, but the evidence he supplied was inconclusive, and careful historians sided with Becker and Boyd. SMITH, *supra* note 1.

and technical eighteenth-century philosophy. Trying to unravel those strands and to explore their relation to each other is an extremely challenging problem. But it is hard to discuss these things in a general lecture, so I have simply skipped them.

Still, I hope I have said enough about Wilson to persuade you that he is more important than is generally recognized. At the Philadelphia Convention he was at the center of things. He was an energetic participant in the debates, served on the Committee of Detail, was central to the design of the Presidency, and alone among the delegates urged a democratic Constitution that anticipates the world of the nineteenth century. Furthermore, there is the Declaration, his influence on the Preamble, and, most significantly, the fact that he is the only one of the Founders to treat the Preamble as a statement of the principles underlying the Constitution. It was a remarkable anticipation of ideas that were to reach fruition in the Gettysburg Address.

So where does that leave us? Where does that place Wilson among the leaders of the American Revolution?

If we are talking about political leadership and about influence on “the course of human events,” Wilson, it seems to me, is of only secondary importance. He was significant, but he was never President, he led no political party, he commanded no armies, and he died in disgrace. His contemporaries seem not to have liked him very much. You certainly cannot compare him to Washington or Franklin or Madison or Jefferson or Hamilton or John Adams. As a political actor, he seems to me less important than John Hancock, or John Jay, or Samuel Adams, or Edmund Randolph, or a couple of dozen other leaders of the Revolution.

Wilson’s importance, it seems to me, is almost entirely as a thinker, as a highly-trained philosopher and lawyer, and as a theorist of the Constitution. And here the picture looks quite different. If we ask who were the leading constitutional thinkers of the American Revolution—and if we measure them by the usual philosophical virtues of originality, influence, breadth, technical mastery of legal and philosophical argument, prescience, coherence, depth of insight—then I believe we end up with five names. There are the two Virginians: James Madison and Thomas Jefferson. There are the two Northern Federalists: John Adams and Alexander Hamilton. And there is one bookish Scotsman with glasses: James Wilson. Those five seem to me to be the top layer of constitutional thinkers. There were of course many others who participated in the constitutional debates of the eighteenth century, but none who ranks with those five. How should we rank them among themselves? That is a deeply misguided question. They are all important, and you cannot understand any one of them without understanding the others.