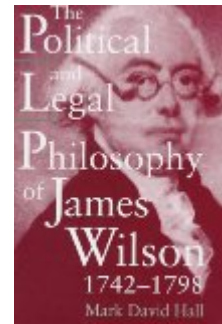


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Mark David Hall. *The Political and Legal Philosophy of James Wilson, 1742-1798*. Columbia: University of Missouri Press, 1997. x + 228 pp. \$37.50 (cloth), ISBN 978-0-8262-1103-3.

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The Problematic Founder

The two-hundredth anniversary of the death of James Wilson, on 21 August 1798, will pass with little notice. Such obscurity would have pained Wilson deeply—for among Americans of his generation he was perhaps most ambitious for undying fame. Further, it fits badly with Wilson's many, extensive contributions to the creation of the American republic and the launching of American law.

Born poor in Scotland in 1742 (we have no record of his birthdate), Wilson pursued his education at St. Andrew's University in Edinburgh and other Scottish schools, and emigrated to Pennsylvania in 1765. Originally planning to enter the clergy or the teaching profession, he changed his focus to the law; after studying under the guidance of John Dickinson, Wilson soon became a leading member of the Pennsylvania bar and threw himself into Pennsylvania's complex, turbulent politics. His notable 1774 pamphlet "Considerations on the Nature and Extent of the Legislative Authority of the British Parliament" advocated the American position in the constitutional controversy with Great Britain. In 1775, Pennsylvania's General Assembly elected Wilson one of the colony's delegates to the Second Continental Congress. Wilson pursued a moderate course, endorsing independence only when the General Assembly repealed its instructions against the measure.

Wilson's adversaries regarded him as too conservative and hostile to the people—a view that Wilson's opposition to the radical Pennsylvania constitution of 1776 fueled. Wilson's activities as a lawyer also continued to

spark political resentment. In late 1778 and 1779, for example, he defended local merchants accused by the state government of having committed treason during the British occupation of Philadelphia; he also represented merchants (including the controversial financier Robert Morris) who fought Pennsylvania's system of wartime price controls. In October 1779, a Philadelphia mob attacked Wilson and several of his political allies, besieging them in his house. Both attackers and defenders were armed with firearms and used them; the gun battle that followed left five attackers and one defender dead, and the "Fort Wilson" incident reinforced Wilson's antidemocratic reputation. Following the Revolution, Wilson's opposition to the Pennsylvania constitution and his business, professional, and political alliance with Robert Morris continued to make him a focus of controversy.

A key advocate of constitutional reform at the state and national levels, Wilson was a Pennsylvania delegate to the Federal Convention of 1787, where he spoke often and eloquently for national constitutional power. He then led the state's Federalists in securing Pennsylvania's adoption of the Constitution. Unfortunately, the Pennsylvania Federalists' hardball tactics, combined with Wilson's continuing opposition to amending the Constitution to add a bill of rights, bolstered his antidemocratic reputation—as did his leadership of the successful 1790 campaign to replace Pennsylvania's 1776 constitution with one incorporating principles of separation of powers and checks and balances.

Ever ambitious, Wilson lobbied President-elect

George Washington to name him the first Chief Justice of the United States Supreme Court, but Washington demurred, preferring the tactful and diplomatic John Jay. Instead, Washington nominated, and the Senate swiftly confirmed, Wilson as the Court's first Associate Justice. Wilson pursued his work on the Supreme Court and his circuit-riding duties with diligence and energy— and yet he found time for another endeavor close to his heart. From 1790 to 1792, he delivered a series of lectures on law at the College of Philadelphia (later the University of Pennsylvania). These lectures (left unfinished at his death and published posthumously in an edition prepared by his son Bird Wilson) were the first sustained American treatment of jurisprudence and law.

Despite these achievements, however, the appalling circumstances of Wilson's tragic death overshadow his life. His longtime legal and business association with Morris, which had spurred his rise to national prominence, helped to bring him down when in 1798 Morris suffered financial collapse. While riding circuit that summer in the Southern states, Justice Wilson was on the run from his creditors, including his old colleague from the Federal Convention, Pierce Butler of South Carolina. The ordeal of flight and arrest broke his health and derailed his mind, and he died in an inn in Edenton, North Carolina, delirious with fever and distraught about his financial collapse. Not until the twentieth century was his body returned to Pennsylvania.

American history offers few sadder contrasts between aspiration and fate than that of James Wilson. This contrast has helped cause Wilson's continuing neglect in the historiography of the American Revolution, the making of the Constitution, and the early American republic. By contrast with such figures as James Madison, Alexander Hamilton, and Thomas Jefferson, Wilson languishes in obscurity. Only a handful of major books have been devoted to him, and virtually all of them— including Charles Page Smith's excellent biography[1] and Robert G. McCloskey's definitive John Harvard Library edition of Wilson's Works[2]—are out of print. Wilson also has been the subject of a scattering of articles and has figured as a supporting player in some major historical monographs.[3]

Mark David Hall's welcome new study, *The Political and Legal Philosophy of James Wilson, 1742-1798*, ought to spur a resurgence of scholarly interest in Wilson. In significant ways, Hall (assistant professor of political science at East Central University in Ada, Oklahoma) fulfills his promise to present the first sustained, rigorous

analysis of Wilson's political and legal philosophy. This review examines the strengths and weaknesses of Hall's monograph (some of them owing to the genre in which he chose to write) and explores why James Wilson continues to languish in the shadows of historical investigation.

Hall's first chapter sketches Wilson's life and career, emphasizing his roles as political thinker and constitutional statesman (but leaving out the painful details of Wilson's fall, final illness, and death) and concludes with a sketch of Wilson's place in American historiography. The body of Hall's book provides a thoughtful and rigorous examination of Wilson's political thought. Hall begins by elucidating the foundations of Wilson's thought, emphasizing his interest in moral theory and natural law, which Hall identifies as central to his "sophisticated philosophy of politics" (p. 34, and Chapter Two). He builds on these arguments to trace Wilson's system of moral epistemology (Chapter Three). Hall then assesses Wilson as democrat and aristocrat. Chapter Four claims Wilson as "the most democratic man in America" (p. 90); Chapter Five devotes extensive space and energy to refuting the recurring charge (made by his contemporary adversaries and generations of later historians) that Wilson was an aristocrat hostile to democracy. Chapter Six examines the nature of Wilson's nationalism, focusing on his arguments for the Constitution in the Federal Convention, the ratification controversy, his law lectures, and his notable opinion in *Chisholm v. Georgia* (1793), the only first-rank case the Supreme Court decided during his tenure as an Associate Justice. Chapter Seven concludes the book by recapitulates its argument; Hall insists there that "[t]he political theory behind [Wilson's] contributions is as relevant today as it was in the founding period" (p. 193).

Hall's book is clearly written and enlightening; one of his greatest strengths is his ability to unpack and explain complex and arcane arguments and subjects. In particular, Hall gives Wilson's law lectures at the University of Pennsylvania the most sustained, intellectually sophisticated, and sympathetic interpretation since that offered by McCloskey in his still-essential introduction to his edition of Wilson's *Works*. Thus, Hall's study will amply repay careful reading by scholars of American constitutional history and political thought as well as historians of the colonial, Revolutionary, Confederation, and early national periods.

Hall's methodology—structuring his inquiry by reference to Wilson's law lectures—makes good sense, in

large part because Wilson hoped that they would form the centerpiece of his magnum opus. Wilson dreamed of writing a treatise to rival Sir William Blackstone's *Commentaries on the Laws of England* (1765-1769) as a definitive exposition of common and public law for the rising American nation; the surviving law lectures are all that remains of his grand design. At the same time, Hall's decision to make Wilson's law lectures the foundation of his enterprise poses significant problems. Despite Hall's attempts to reflect the growth of Wilson's thought over time, his book remains essentially static, chained to the law lectures as their key reference point. To be sure, Hall insists that Wilson was perhaps the most consistent political thinker of his generation. Even so, the reader cannot help suspecting that Wilson's long and elaborate path from colonial American lawyer to Revolutionary politician to early national practitioner to Framers to Supreme Court Justice and law professor might have shaped and reshaped his ideas and arguments as he confronted changing problems and circumstances.

Moreover, some substantive flaws plague Hall's monograph. The first and second are not only linked to the problem mentioned immediately above; they may be rooted in the genre into which Hall's book falls—the monograph that recovers and elucidates a given historical actor's thought. Such studies run the risk of imposing more order and system on their subject's thinking than may actually have been there. Perhaps this risk is worth running in Wilson's case precisely because, as noted, he had such strong intellectual aspirations. He hoped to build an edifice of thought and argument as his lasting monument, so that edifice— or its surviving fragment— can legitimately be read as the core of his thought. Moreover, if Hall is correct about Wilson's consistency over the period from his emergence as a colonial polemicist in 1774 to his death in 1798, he may not be as guilty of overemphasizing Wilson's coherence and consistency as might at first appear. The second flaw is Hall's occasional tendency to present Wilson as an abstract political thinker with little connection to the major events and political challenges of his day. Books of this genre often display a too-close focus on their subject's thought without reference to its political, social, or legal contexts.

Third, Hall sometimes acts as a special pleader for Wilson. Take the question of Wilson's democratic commitments versus his alleged aristocratic leanings, to which Hall devotes two extensive, vigorously argued chapters. To identify Wilson as “the most democratic man in America,” given the presence of Thomas Paine, for example, seems a major stretch. Moreover, whether we

view Wilson's opposition to the 1776 Pennsylvania constitution as anti-democratic, certainly the constitution's supporters did, and his political reputation is a salient historical fact, whether undeserved or not. Also, Hall dismisses Wilson's personal habits (for example, his use of a coach drawn by four horses) as irrelevant to the question of his character as a democrat. In the process, however, he overlooks the work of many recent historians who emphasize the role of self-presentation as a form of political statement in Revolutionary and early national America.[4]

Finally, although this book's title declares its focus to be Wilson's “political *and legal* philosophy” (emphasis added), law curiously takes a back seat in its pages. Other than one chapter title's reference to natural law (Chapter Two), law appears nowhere in the book's table of contents. Nor is law a large heading in the book's index. Indeed, Hall seems to suggest that law was ancillary to Wilson's intellectual quest to construct a coherent, ordered political philosophy for a new independent nation (e.g., p. 28). Thus, Wilson's work as lawyer, judge, and law professor appear in Hall's pages only as the restricted professional context within which he applied his ideas as a law lecturer, a judge, and an advocate of American nationalism and vigorous national government.

Hall's seeming downgrading of law in Wilson's life and thought is particularly odd, given that many historians and political scientists are devoting renewed attention to the centrality of law in the Revolutionary generation's constitutional and political thought. For example, in a formidable series of books and articles, Professor John Phillip Reid of New York University Law School has proposed the concept of “law-mindedness” as a central component of American thought and character. As Reid argues, the Americans who opposed British colonial policy and eventually decided to declare American independence were steeped in law. The law they knew and cherished was the common and customary law of seventeenth-century England, which still reigned in America, and the seventeenth-century understanding of the unwritten English constitution as a restraint on arbitrary power. Reid has shown also that these bodies of constitutional and legal doctrine continued to influence American experiments in state and federal constitution-making to the end of the century and beyond.[5] And yet Hall nowhere cites or even mentions Reid's work—an inexplicable omission of scholarship that might well have offered further illumination of Wilson as a legal thinker.

Nonetheless, despite these faults,[6] Hall's lucid and

accessible study remains a valuable resource for those who would seek to understand James Wilson and his role in the creation of the American republic. Perhaps it will spur the reprinting of Smith's James Wilson and McCloskey's edition of the Works—and, further down the road, the writing of a modern comprehensive biography to succeed Smith's and the preparation of an edition of Wilson's writings and correspondence more comprehensive than McCloskey's.[7]

We return to the question with which we began: Why has Wilson languished in historiographical neglect? Hall's book amply demonstrates Wilson's significance in the constitutional and political history of the early American republic, and his enduring importance as a political thinker. He also cites reasons (pp. 31-4) why, in his view, Wilson has not received the scholarly attention that he deserves. They include the circumstances of his fall from eminence and his death; the careless repetition of baseless charges against him, such as his supposed hostility to George Washington, his alleged opposition to American independence, and his putative involvement in land fraud; and the bias of historians. Leaving aside other problems (Wilson's heavy and prolix style, and his published and unpublished writings' unavailability[8]), Wilson does not fit well with the prevailing bright-line boundaries that some modern historians and legal scholars discern in the era of the American Revolution and the making of the Constitution. That Wilson was at once democratic and conservative does not fit with prevailing assumptions about the relationship between democracy and conservatism, just as Thomas Paine's democracy seems to modern eyes to fit ill with his writings in support of Robert Morris's Bank of North America. Furthermore, Wilson's commitment to nationalism and national constitutional power (like that of his contemporary Alexander Hamilton) has seemed, in recent years, at odds with what most Americans view as the halcyon bygone days of small, weak, limited federal government. Therefore, studying James Wilson—as Hall's estimable book suggests—also enables us to recover his era's difference from our idealized or caricatured vision of it, and his time's complexities and ambiguities as well.

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Notes:

[1]. Charles Page Smith, *James Wilson: Founding Father, 1742-1798*. Chapel Hill: University of North Carolina Press for Institute of Early American History and

Culture, 1956.

[2]. Robert G. McCloskey, ed., *The Works of James Wilson*, 2 vols. Cambridge, Mass.: Belknap Press of Harvard University Press, 1967 [John Harvard Library].

[3]. See, e.g., Samuel H. Beer, *To Make a Nation: The Rediscovery of American Federalism* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1993), 322-377; Jennifer Nedelsky, *Private Property and the Limits of American Constitutionalism: The Madisonian Framework and Its Legacy* (Chicago: University of Chicago Press, 1990), 96-140. Articles include George W. Carey, "James Wilson's Political Thought and the Constitutional Convention," *Political Science Reviewer* 17 (fall 1987): 50-107; Stephen A. Conrad, "James Wilson's 'Assimilation of the Common-Law Mind'," *Northwestern University Law Review* 84 (1989): 186-219; Stephen A. Conrad, "Metaphor and Imagination in James Wilson's Theory of Federal Union," *Law and Social Inquiry* 13 (1988): 1-70; Ralph A. Rossum, "James Wilson and the 'Pyramid of Government'," *Political Science Reviewer* 6 (1976): 113-134. This listing is illustrative rather than comprehensive. Hall's book carefully examines the existing scholarly literature on Wilson - see esp. 1-6 and 31-4.

[4]. See, e.g., Jay Fliegelman, *Declaring Independence: Jefferson, Natural Language, and the Character of Performance* (Stanford: Stanford University Press, 1993); Richard L. Bushman, *The Refinement of America: Persons, Houses, Cities* (New York: Alfred A. Knopf, 1992). This discussion is indebted to the work-in-progress of Professor Joanne B. Freeman of Yale University on political culture and political combat in the early American republic.

[5]. See, e.g., John Phillip Reid, *Constitutional History of the American Revolution*, 4 vols. (Madison, Wis.: University of Wisconsin Press, 1986-1993); John Phillip Reid, *Constitutional History of the American Revolution: Abridged Edition* (Madison, Wis.: University of Wisconsin Press, 1995).

[6]. It also is unfortunate that Hall's book is plagued by a series of minor but annoying mistakes in citation. In particular, legal and constitutional historians will wince in embarrassment at Hall's citations to books by "William Hurst" (pp. 16n26, 210) and "Morton J. Horowitz" (pp. 37n6, 210). These and many other typographical errors reflect badly on the care with which the University of Missouri Press copyedited Hall's book; they should be corrected in any future edition.

[7]. In this connection, Hall's references (pp. 2, 2n4, 211) to Burton Alva Konkle's unpublished two-volume biography and four-volume typescript edition of Wilson's writings, now reposing in the library of Swarthmore College, are tantalizing. Perhaps Konkle's work could serve as the basis for a modern edition.

[8]. So, too, John Jay, the first Chief Justice of the United States Supreme Court, has not had a comprehensive biography since Frank Monaghan's inadequate and overwritten *John Jay* (Indianapolis and New York: Bobbs-Merrill, 1937). By contrast with Wilson, however, Jay has had one late-nineteenth-century edition of his writings -Henry P. Johnston, ed., *The Writings of John Jay*, 4 volumes (New York: G. P. Putnam's Sons, 1893-1897; reprint in one volume, New York: Da Capo Press, 1971). In 1976, the late Richard B. Morris launched a new project to supplement Johnston's edition, which produced two volumes taking the story through Jay's appointment as the Confederation's Secretary for Foreign

Affairs in late 1784. See generally Richard B. Morris, ed., *John Jay: Unpublished Writings*, 2 volumes of 4 projected (New York: Harper & Row, 1975-1980). Professor Morris also wrote three books dealing with Jay or including him as a major focus: Richard B. Morris, *John Jay, The Nation, and the Court* (Boston: Boston University Press, 1967); Richard B. Morris, *Seven Who Shaped Our Destiny: The Founding Fathers as Revolutionaries* (New York: Harper & Row, 1973); and Richard B. Morris, *Witnesses at the Creation: Hamilton, Madison, Jay, and the Constitution* (New York: Henry Holt, 1985). Unfortunately, Professor Morris died in 1989, and Columbia shut down the Jay project in January 1997, citing lack of funds as the reason for the decision. Jay still awaits his modern biographer and a comprehensive, complete edition of his papers.

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