JAMES WILSON

Part One: Foundations

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Final Biography Research Paper

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Submitted April 30, 2023

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We the People *of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity,* ***do ordain and establish*** *this Constitution for the United States of America.*[1]

[1] U.S. Constitution, preamble (emphasis added).

Those who grew up watching Saturday morning cartoons in the 1970s and early 1980s probably have the chorus from the "Preamble" song from *Schoolhouse Rock!* playing in their heads right now. *Schoolhouse Rock!* 1975, "America Rock" season, episode 3, music and lyrics written and performed by Lynn Ahrens, aired October 25, 1975 on the American Broadcasting Company network.

For those unfamiliar with the song, the author highly recommends hearing it at least once before continuing. As of the time of writing, the earworm may be acquired at https://www.youtube.com/watch?v=OqvLi7qZ_yU.

INTRODUCTION

"We the People." These three words are the real American Revolution. There have been wars for independence for as long as peoples have been ruled by others.[2] But "We the People" represents a concept that the world of political states had never seen before, and, one could argue, has never seen since: the concept of popular sovereignty. Briefly put, this is the idea that ultimate governmental authority, accountable to no higher power, rests solely with the citizens of a society—not in its political institutions, nor in those who govern.

Neither Athenian democracy nor Roman republicanism had any such concept.[3] In the modern United Kingdom, it is the institution of Parliament which is sovereign, such that whatever law it enacts is automatically constitutional because it was Parliament which enacted it;[4] whereas the remaining states of the European Union have ceded aspects of sovereignty to a centralized bureaucracy at an even further remove

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[2] *See, generally,* Arther Ferrill, *The Origins of War: From the Stone Age to Alexander the Great*, rev'd ed., New York: Taylor & Francis, 2018.

[3] Though their citizens spoke with varying degrees of individual and corporate authority, it was as participants in—and subjects of—political and religious institutions which possessed ultimate sovereign authority. *See, eg.,* Daniela Louise Cammack, "Rethinking Athenian Democracy" (PhD dissertation, Harvard University, 2013); Michèle Lowrie, "Sovereignty before the Law: Agamben and the Roman Republic," *Law and Humanities*, Vol. 1, No. 1 (2007): 31-55; and Moshe Berent, "Sovereignty: Ancient and Modern," *Polis: The Journal for Ancient Greek and Roman Political Thought*, Vol. 17, Nos. 1 and 2 (2000): 2-34.

[4] *See* Michael Gordon, *Parliamentary Sovereignty in the UK Constitution: Process, Politics and Democracy*, Oxford: Hart Publishing, 2015.

from their people.[5] At the time of writing, the French people are engaged in yet another of their routine nation-wide strikes and protests sparked by their government acting contrary to, and despite, the popular will, so that mass protest is the only way to make their voices heard[6]—and at the same time they are routinely perplexed by the fact that Americans don't feel the same need.[7] Germans are proud of their freedom of speech: their freedom to say anything that their government permits, and have a hard time grasping the American concept that it is the government and not the people which requires permission.[8] Even today, in 2023, true popular sovereignty remains a truly revolutionary idea.

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[5] *See* Paul D. Marquardt, "Subsidiary and Sovereignty in the European Union," *Fordham International Law Journal*, Vol. 18, No. 2 (1994): 616-640.

[6] *See* Christian Oliver, "Why Are the French Protesting? The Reasons behind Macron's Decision to Raise Retirement Age—and Its Consequences," *Daily Mail* (March 24, 2023) at https://www.dailymail.co.uk/news/article-11898999/Why-French-protesting-reasons-Macrons-decision-raise-retirement-age.html.

[7] *See, e.g.,* "Why Don't Americans Strike of Protest Like the Rest of the World Does for Their Rights?" *Reddit: No Stupid Questions* (March 27, 2023) at https://www.reddit.com/r/NoStupidQuestions/comments/123upfx/why_dont_americans_strike_or_protest_like_the; "Why Don't Americans Protest Like the French for Their Rights?" *Reddit: Late Stage Capitalism* (March 19, 2023) at https://www.reddit.com/r/LateStageCapitalism/comments/11vk2c2/why_dont_americans_protest_like_the_french_for; "Why Don't Americans Riot?" *Reddit: Ask Reddit* (2011) at https://www.reddit.com/r/AskReddit/comments/enpm8/why_dont_americans_riot.

[8] *See* Guy E. Carmi, "Dignity Versus Liberty: The Two Western Cultures of Free Speech," *Boston University International Law Journal*, Vol. 26 (2008): 277-374; and Donald P. Kommers, "The Jurisprudence of Free Speech in the United States and the Federal Republic of Germany," *Southern California Law Review*, Vol. 53 (1980): 657-695.

As an aside, in September 2017 the author along with Eric Hilgendorf of the University of Würzburg, Michael Widener of the Yale Law School, and Mark Weiner of the Rutgers School of Law discussed the possibility of putting together a panel on comparative attitudes to freedom of speech, and given current social media debates and various regulatory responses, the time might be right to finally host it now.

Imagine, then how "breathtakingly novel"[9] popular sovereignty must have sounded when it was first proposed by one of the delegates to the Constitutional Convention held in Philadelphia in 1787. This delegate had to argue strenuously to make the idea even comprehensible to his fellows, and then persuade them to adopt it as the foundation of the American system of government. No matter how divided the United States may be politically, no matter how strong the differing views of the proper role and scope of government, the fundamental unspoken principle assumed by all, the heart and soul of American political thought, is this principle of popular sovereignty, of "We the People." Had its author done nothing else in his life, for this alone he would deserve esteem as great as any other Founding Father.

But this man contributed even more to America's unique system. He not only signed the Declaration of Independence, but was instrumental in pushing through its adoption. At the Constitutional Convention he was also responsible for the amendment process which not only enshrines popular sovereignty but ensures that the Constitution remains a living and evolving document. Although a fierce proponent of ending slavery and admitting slaves "on an equality with White Citizens,"[10] when it became clear that the other delegates would never permit it, he proposed the compromise that kept the southern delegates from abandoning the project and dooming the hope of a United States. When it became clear that the states would not accept his proposal that the President be elected by direct popular vote, he invented the Electoral College that

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[9] Akhil Reed Amar, *America's Constitution: A Biography*, New York: Random House, 2005, at 8.

[10] Max Farrand, ed., *The Records of the Federal Convention on 1787*, rev. ed. (1966) 1: 586-588.

blended popular sovereignty with the unique status of the states. More than any other, he was responsible for shaping the American presidency as we know it. He composed the draft of the Constitution which the delegates would ultimately vote upon—introducing as he did so many important details that had not occurred to them, not the least of which was replacing Congress's unlimited grant of authority with a restrictive list of enumerated powers. In other words, inventing the system of limited government. And these are only some of his many contributions to the U.S. Constitution.

Furthermore, as the people of the various states debated whether to ratify the Constitution, an act considered "the most democratic deed the world had ever seen,"[11] they were most influenced, not by the erudite *Federalist Papers* of Madison, Hamilton, and Jay, but by a series of speeches given by this man. Indeed, one could argue that it is this man, and not James Madison, who deserves to be called the "Father of the Constitution."

For these and other reasons, it is safe to say without fear of hyperbole that this man was one of the most important and remarkable of the nation's Founding Fathers, deserving of honor and gratitude from Americans of whatever political stripe.

His name was James Wilson.

And you've probably never heard of him.

[11] Amar, *America's Constitution*, *supra* at 5.

Fig. 1: Jean Pierre Henri Elouis, *James Wilson*, ca. 1792.
Locket, watercolor on ivory, 2 5/8 x 2 in. oval.

Smithsonian American Art Museum, Object No. 1952.3.3.

(Not on view.)

CHAPTER ONE:

THE END

James Wilson died on August 21, 1798. He was fifty-five years old, penniless, and already forgotten by the American people he had served so well.[12]

This was not an accident of fate, nor was it a careless oversight. The American people had forgotten James Wilson for many reasons, none of them good, and some of his own doing.

A native of Scotland, he had emigrated as an adult to the American colonies, settling in the Province of Pennsylvania, where he set up practice as a lawyer.[13] He earned prestige and wealth. With that wealth, he—like many others—engaged in increasingly massive speculation in the frontier lands and new industries of a growing country.[14] For a while, these investments were indeed quite profitable, and naturally

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[12] *See* Nicholas Pedersen, "The Lost Founder: James Wilson in American Memory," *Yale Journal of Law & the Humanities*, Vol. 22 (2010): 257-337, at 272 and *passim*.

[13] William Ewald, "James Wilson and the American Founding," *Georgetown Journal of Law & Public Policy*, Vol. 17, No. 1 (2019): 1-21, at 2.

[14] Land speculation was very common among those with the resources to invest. Alexander Hamilton noted the how investors would buy truly vast tracts of land, hoping to flip them soon after for a profit. Alexander Hamilton, "Report on Vacant Lands, 20 July 1790," in *Reports of the Secretary of the Treasury, 1790-1791*, Vol. 1., National Archives. Unfortunately, economic growth wasn't always as rapid or predictable on the frontier as such speculators might have hoped.

involved the borrowing of huge sums.[15] But as modern-day Americans have learned from the crises of 1987 and 2008, such speculation is only profitable while the larger economy is growing. That bubble burst with a nationwide crash in 1792, followed by another financial panic in 1797. Countless Americans were ruined. And in a country as yet without bankruptcy protections, thousands were imprisoned for debt—including some of the nation's wealthiest financiers.[16] James Wilson shared the same fate. Even though he was by now a highly-regarded professor of law, and was in fact a Justice of the Supreme Court of the United States appointed by George Washington himself[17]—in other words, despite the fact that he had earned the loftiest of social stations—his financial disaster drove him into ignominy. He would spend the final years of his life on the run from creditors, and even doing time in the debtors' prisons of two states.[18] Unjustly, history has blamed him for this fate, continually and uncritically repeating that it was the result of his own bad judgment and a lifetime of misguided and failed investments.[19]

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[15] John Mikhail, "James Wilson, Early American Land Companies, and the Original Meaning of 'Ex Post Facto Law'," *Georgetown Journal of Law & Public Policy*, Vol. 17, No. 1 (2019): 79-146, at 91-96.

[16] Charles Jordan Tabb, "The History of the Bankruptcy Laws in the United States," *American Bankruptcy Institute Law Review*, Vol. 3 (1995): 5-51, at 13-14.

[17] George Washington nominated James Wilson on September 24, 1789, and he was confirmed by the Senate two days later, along with the other five Justices of the newly-established Supreme Court, on September 26, 1789, and he served as Associate Justice until his death. *The Supreme Court of the United States: Its Beginnings & Its Justices 1790-1991*, Washington D.C.: Commission on the Bicentennial of the United States Constitution, 1992, at 60.

[18] Pedersen, "The Lost Founder," *supra* at 271-272.

[19] Much of this is perhaps due to the tendency to rely too heavily on the 1956 biography by Charles Page Smith, discussed below, which paints as Wilson's tragic flaw a ravenous appetite for grandiose speculation on limited capital, a greed that drove a series of ruinous investments which progressively over-extended his finances. Charles Page

But though historians have repeated the error, they didn't commit it. James Wilson's reputation suffered greatly from his financial ruin and his years on the run. The ignominy was real: he was tarred in the public eye as a shameful character who had brought it on himself. These final years destroyed what reputation he had earned.

Anyway, so far as the public was concerned, Wilson's reputation was not so good to begin with. This may explain why it was so easy to smear him for his financial woes, and so easy to believe that mischaracterization. For though within the halls of justice and academia his qualities had been highly valued, the rest of America thought James Wilson little better than a scrub.

From the time of the Declaration of Independence until his death and beyond, James Wilson would be reviled as an opponent of independence, if not an outright

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Smith, *James Wilson: Founding Father, 1742-1798*, Chapel Hill: University of North Carolina Press, 1956. *See, e.g.,* Wayne Trotts, "James Wilson, Forgotten Founding Father," *Pennsylvania Heritage* (Fall 1992) ("America appealed to another, perhaps darker side of James Wilson, as well. For some inexplicable reasons, this young, scholarly farmer's son was also a gambler . . . land speculation and risky business ventures would intrigue Wilson throughout his life. He would pour his boundless energy into one extravagant scheme after another, until it led to his disastrous undoing"); "A More Perfect Union: The Creation of the U.S. Constitution," *National Archives and Records Administration*, at http://law2.umkc.edu/faculty/projects /ftrials/conlaw/conhist.html ("a distinguished lawyer with a penchant for ill-advised land-jobbing schemes"); Kermit L. Hall, "Introduction: The Reputation of James Wilson," in James Wilson, *Collected Works of James Wilson*, Kermit L. Hall and Mark David Hall, eds., Indianapolis: Liberty Fund, 2007 ("He had a formidable appetite for fame and wealth . . .Wilson's adult life was marked by land-development schemes, [and] a corresponding inability to reconcile his quest for individual wealth with a scrupulous attention to the public interest"); David W. Maxey, "The Translation of James Wilson," *Journal of Supreme Court History* (1990): 29-43; Michael H. Taylor, "James Wilson: Anxious Founder" (PhD diss., University of Georgia, 2016) at 5-6; "Art and Architecture: James Wilson," *University of Pennsylvania Law School*, at https://www.law.upenn.edu/live/news/15436-art-and-architecture-james-wilson ("Though widely revered for his intellect, Wilson was not a talented businessman. Throughout his life, he engaged in ill-advised land speculation and manufacturing enterprises that eventually ruined him financially").

traitor. This was a horribly unjust calumny, and a grossly undeserved reputation. Within two years of coming to America, he had written the seminal *Considerations on the Legislative Authority of Parliament*, arguing potently that Britain's parliament could not wield legitimate political authority over the colonists who had no representation, and that "the happiness of the society is the *first* law of every government."[20] In 1774 it attracted great attention among members of the Continental Congress, strongly influencing both John Adams and Thomas Jefferson, who now took up his arguments for self-government;[21] Thomas Jefferson copied out whole passages into his commonplace book, and would rely heavily upon Wilson's language as he drafted the Declaration of Independence.[22] In other pamphlets and acts, James Wilson was an outspoken supporter of independence long before others had even considered the cause.

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[20] James Wilson, *Considerations on the Nature and Extent of the Legislative Authority of the British Parliament*, 1768, in Kermit L. Hall and Mark David Hall, eds., *Collected Works of James Wilson*, Vol. 1, Indianapolis: Liberty Fund, 2007, at 3-31.

[21] Mark Alcorn, "James Wilson's Considerations on the Nature and Extent of the Legislative Authority of the British Parliament," *Western Political Science Association 2010 Annual Meeting Paper* (March 29, 2010).

[22] *See* Gilbert Chinard, *Thomas Jefferson: The Apostle of Americanism*, Boston: Little, Brown, and Company, 1929, at 73.

For one example of recognized similarities with the Declaration of Independence, compare the language of its preamble with this passage from Wilson's pamphlet containing the sentence quoted above:

> 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.

At the outbreak of the war, furthermore, he had been commissioned as a colonel in the Pennsylvania militia, whereupon he personally raised a regiment which would fight under Washington's command.[23] It would fight without him, however, for Pennsylvania's legislature appointed Wilson to the Second Continental Congress, which would issue the Declaration in 1776.

In a cruel twist of fate, however, that same legislature strictly prohibited its delegation from speaking in favor of independence. When the motion was raised, therefore, Wilson was constrained to join the rest of his delegation in voting for a three-week postponement, so that their legislature could be persuaded to change its mind.

That was all it took to sully Wilson's reputation for the rest of his life. Radicals throughout the colonies reacted at once with great hostility. When at last the legislature relented, it would be Wilson who pushed most eloquently for independence, and who persuaded its opponents and skeptics to join in signing the Declaration. But it was too late. Patriots reviled Wilson for not voting for independence right away, radicals hated him for his moderation, and for many Americans, that tar would never wash off.

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[23] Wilson's rank was not ceremonial, and even while debating the declaration as a delegate to the Second Continental Congress he would be involved in such minutiae as having to requisition basic equipment and requesting leave for his officers. *See* James Wilson Requisition, 1776, and Portrait, n.d., Accession #12604, Special Collections, University of Virginia Library (Wilson, as colonel of the 4th Battalion of the Cumberland County Associators, requisitions for four captains in his battalion cross-belts, cartridge cases, pouches, and "sabberts"); George Washington to James Wilson, January 23, 1778, Historical Society of Pennsylvania (granting request for one of his captains to take a leave of absence). Wilson would rise to the rank of brigadier general, and serve as Director-General of the militia. Lucien Hugh Alexander, "James Wilson, Nation-Builder," *The Green Bag*, Vol. XIX, Nos. 1, 2, 3, and 5 (January-May 1907).

This reputation did not simply manifest in unkind thoughts, either. Back in Carlisle, where he had raised his regiment, he was hung in effigy. In 1779, an angry Philadelphia mob went after Wilson in his flesh and blood. The mass of armed men stormed Wilson's home, just a few blocks from Independence Hall, where he and several officers and local leaders had taken shelter. The attackers broke down the door, killing an army captain and setting fire to the house before being driven back. Barricaded and besieged on all sides, the house became "Fort Wilson," with gunfire, bayonets and sledgehammers leaving several dead and many more wounded, until a troop of cavalry arrived to put down the attack—just as the mob was moving a field cannon into place.[24]

Rumor has a way of taking root and feeding on itself. As late as 1822, a historian confidentially mentioned James Wilson as one of the bad guys of the Revolution, and nothing more; part of a "cabal" of plotters seeking to get rid of Washington during 1777 and 1778:

> It is certain, that invidious comparisons, unfavorable to Washington, were at that time too much the fashion of the day. But the nation and the army knew well his worth, and frowned his enemies into silence. Yet certain it is, that at that time he had enemies, and among them were ranked Samuel Adams, the Lees of Virginia, Wilson of Pennsylvania, and some minor characters. . . . The conformity of their views fastened upon them, in the public estimation, a co-operation in design. . . . to substitute General Lee for Washington, but that Gates and Conway thought it a favorable opportunity to make use of the discontents of that party to supplant him themselves.
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> . . .

[24] David Reader, "Fort Wilson," *Philadelphia Encyclopedia*, Rutgers University, 2014, at https://philadelphiaencyclopedia.org/essays/fort-wilson; Charles Page Smith, "The Attack on Fort Wilson," *The Pennsylvania Magazine of History and Biography*, Vol. 78, No. 2 (April 1854): 177-188.

> There is strong reason to believe that at this time, the party that had been formed against General Washington had rather gained ground. The ascendancy of such men as Samuel Adams and Richard H. Lee could not but be felt; and Mifflin and Wilson, leading men in Pennsylvania were both avowedly hostile to him [and their prejudices] manifested a resolution to mingle in, if not to control the proceedings of congress.
>
> . . .
>
> Indeed, there had been about this time a report circulated and credited by some, that a proposition had been made to assume dictatorial powers, and as the pure ermine of innocence is soiled even by the breath of solicitation, this circumstance for awhile affected his standing in public opinion.[25]

To his credit, the author of that history would repent in a subsequent printing of the book: "Having recently ascertained, from the evidence of several highly respectable characters, that I have been led into an error in naming Mr. Wilson of Pennsylvania as one of the cabal opposed to General Washington; in justice to his memory and my own feelings I acknowledge the error, and express my extreme regret at having committed to it."[26] But this apology and the account itself only demonstrate how thoroughly Wilson's reputation had been smeared, so that not only did the allegations persist for the historian to discover, he did not need to be persuaded of their truth.

Wilson's reputation might have been rehabilitated had his signal contributions to the Constitution and its great founding ideas ever come to light. But the delegates to the 1787 convention had been sworn to secrecy, never to divulge what took place inside

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[25] William Johnson, *Sketches of the Life and Correspondence of Nathanael Greene, Major General of the Armies of the United States, in the War of the Revolution*, Vol. 1, Charleston: A. E. Miller, 1822, at 154-155, 166.

[26] *Id.*, "Advertisement," inserted between the dedication page and the preface.

Independence Hall that long hot summer.[27] Wilson remained true to his oath to the end of his days. Others, not so much. Several of the delegates would go on to publicize, memorialize, or even invent their contributions, which helped ensure celebrity during

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[27] There were two aspects to this. One was, like a courthouse "gag order," to prevent the meddling of the press, public, and politicians—especially as the delegates were only authorized to amend the Articles of Confederation, not draw up an entirely new system of government for a new nation—thus freeing the delegates to speak their minds and talk through even off-the-wall ideas without fear of reprisal and misinterpretation. *See* George Mason to George Mason, Jr., May 27, 1787 ("…our doors will be shut, and communications upon the business of the Convention be forbidden during its sitting. This I think myself a proper precaution to prevent mistakes and misrepresentation until the business shall have been completed, when the whole may have a very different complexion from that in which the several crude and indigested parts might in their first shape appear if submitted to the public eye"). Max Farrand, ed., *The Records of the Federal Convention of 1787*, New Haven: Yale University Press, 1911, Vol. III, Appendix A: XXIII. *See also* James Madison to Thomas Jefferson, June 27, 1787 ("It was thought expedient in order to secure unbiassed discussion within doors, and to prevent misconceptions and misconstructions without, to establish some rules of caution which will for no short time restrain even a confidential communication of our proceedings"). *Id*. Vol. III at Appendix A: XXXVII. *See also* Journal of Jared Sparks, April 19, 1830 ("It was likewise best for the convention for forming the Constitution to sit with closed doors, because opinions were so various and at first so crude . . . the minds of the members were changing, and much was to be gained by a yielding and accommodating spirit. [Without secrecy] they would have afterwards supposed consistency required them to maintain their ground, whereas by secret discussion no man felt himself obliged to retain his opinions . . . Madison thinks no Constitution would ever have been adopted by the convention if the debates had been public.") *Id*. Vol. III at Appendix A: CCCLXVII.

The second aspect was for the delegates to take the secrecy of the proceedings to their graves, in order to protect the reputations of the participants from whatever they may have said while "thinking out loud," and moreover because the words of the finished Constitution had to contain its full meaning, and not be subject to enlargement or reinterpretation based on the various inconsistent arguments presented during the long convention. *See Id*. Vol. I at xxiv ("it was understood that the delegates would regard the proceedings as confidential," though as years passed several would reveal what they recalled, with less and less reliability); 15 (rules adopted on May 29, 1787 included the provision that "nothing spoken in the House" could ever be "communicated without leave"); Debate in the U. S. House of Representatives, June 16-20, 1798 (when Abraham Baldwin, a representative from Georgia, spoke on the record of his recollection of the Convention's debates over slavery, the Speaker of the House Jonathan Dayton felt compelled to break with tradition and rise to speak on the record, objecting at great length at the impropriety, as everyone involved had the right to expect the others would "maintain a perfect silence" *Id*. at Appendix A: CCLXXX.

their lifetime as well as a place in history.[28] Each man's recollections naturally tended to focus on his own involvement, however, and James Wilson's name never really came up.

[28] Alexander Hamilton, for one, would create a narrative of being far more involved in the Convention than he was. He, and popular history, glossed over the fact that he did not say a word until June 18, at which point he rose to give a six-hour speech arguing for a return to monarchy, or at least a president and senate who served for life—a speech met with stunned silence by the delegates, who moved on to other matters and politely never brought it up again. *See* Farrand, *supra* Vol. I at 281-311. That was the end of his contributions until the last days of the convention, as he now left in a huff for New York, only returning later (after being chided by Washington) for a single day in August before coming back for the conclusion where he urged unanimity. *See* Alexander Hamilton to George Washington, July 3, 1787, in Farrand, *supra* Vol. III, Appendix A: LIV; George Washington to Alexander Hamilton, July 10, 1787 *Id.* at Appendix A: LIX. The "Hamilton Plan" he credited himself with was never actually submitted for consideration, but was just a summary of how he would have drafted the Constitution, which he wrote for Madison at the end of the Convention *See* Farrand, *supra* Vol. III Appendix F.

Another example is Charles Pinckney of South Carolina, who brazenly tried to make a place for himself in the history books by claiming to have proposed a full plan for the Constitution the day before Madison did. *See* Farrand, *supra* Vol. I at xxii, 16. Thirty-two years later, John Quincy Adams called his bluff. In reply, Pinckney sent Adams the draft from his own papers as proof. But this draft, which historians ever since have cited as the"Pinckney Plan," is on the same paper, with the same watermark, as the letter he wrote in reply—with the same ink, and the same handwriting. Moreover, it is only an awkwardly-worded reconstruction of the actual Constitution, resembling nothing Pinckney said at the convention. *See* Farrand, *supra* Vol. III, Appendix A: CCCXXVI, CCCXXVIII, CCCLXVII. Madison would express great perplexity at Pinckney's claims when he learned of them late in life. *See* Farrand, *supra* Vol. III, Appendix A: CCCLXVII and CCCLXXXII-CCCLXXXVII.

That is a shame, because Pinckney did make an enormously important contribution to the Convention: In the last moments of the last day—as the whole convention was in disarray, about to give up the whole effort, go home, and maybe try again anothe year—Pinckney gave a speech so powerful and moving that the delegates united, going at once from irreconcilable disagreement to voicing a resounding "yes" on the motion to adopt the Constitution. (For an abbreviated version in graphic-novel form, *see* Nathaniel Burney, "What Were They Thinking?" Chapter in "Constitutional Law," *The Illustrated Guide to Law*, at https://lawcomic.net/guide/?p=5175.) It is perhaps a sad irony that Pinckney enjoys an undeserved reputation for contributing to the shape of the Constitution, yet remains largely *un*credited for literally saving the nation.

Madison was no angel himself, either. *See* Fred Barbash, "How James Madison Doctored the Story of the Constitutional Convention of 1787," *The Washington Post* (November 18, 2015).

Thus the only person who might have told the world of Wilson's contributions was Wilson himself, and his sense of honor prevented that from ever happening. It is difficult to overstate the significance of his contributions to the ideas, shape, and details of the United States Constitution. But Wilson's personal virtue concealed his public contributions from public awareness, and from history.[29]

James Wilson had faults, as well. And we can blame one of those faults for doing the most to hide his life from the rest of the world.

In a time where notable individuals might fill shelves with their voluminous correspondence and diaries, James Wilson kept himself to himself. When he wrote anything, it was about the law, or about government, or about principles. He did not write about himself.[30] Worse, Wilson was a terrible correspondent. The common refrain among the letters he received was that he never wrote back, so that even his friends and family had no idea what he was up to. He never wrote to answer how he was doing and what was going on in his life, he never wrote to share memories or thoughts or dreams. Family back home in Scotland only knew of James Wilson's achievements in the new world because reports reached them through the news, not from any notes from him.

When Wilson did write letters, it was either to conduct business, or to ask for something for himself—asking George Washington to appoint him as the Chief Justice of the Supreme Court, asking for supplies for his troops, asking a woman to marry him.

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[29] An irony which would not have been lost on some of the men who had shaped the ideas of James Wilson. See below.

[30] A skim through his collected works is sufficient to see this for oneself. James Wilson, *Collected Works of James Wilson*, Kermit L. Hall and Mark David Hall, eds., Indianapolis: Liberty Fund, 2007.

Though a highly-skilled orator who could fill a lecture hall with his voice, and a drawing room with his powerful six-foot frame, in social life he was quiet and shy. This unfortunately gave an impression of haughtiness to those who did not know him intimately enough to see the kind and friendly man behind the glasses and resting scowl—again, no help to a public reputation. Perhaps it is this natural reticence that kept Wilson from corresponding. Perhaps he felt such chit-chat unimportant. Perhaps he had other reasons for severing communications with those left behind in Scotland, or no reason at all.

Whatever the reason, James Wilson simply did not write the kinds of letters and memoirs that his more famous contemporaries generated beyond counting. And so in his own lifetime his friends and family knew less and less of him, as he fell distant. And afterwards, historians had nothing more to go on than his impersonal speeches, lectures, and essays.

To historians, this tale is all too familiar. How many remarkable lives are lost to time because nothing about them survives in writing?

Attempts have been made to restore and rehabilitate James Wilson's memory. In 1804, Wilson's son Bird—a well-respected lawyer in his own right—made an attempt to preserve his father's legacy by publishing a collection of Wilson's speeches, lectures, and essays. But these were nothing new, nothing that hadn't already been published elsewhere.[31] Bird didn't have anything else to include about his father's role in the Declaration of Independence, ratification, or the development of the judicial branch. He

[31] James Wilson, *The Works of James Wilson*, Bird Wilson, ed., Philadelphia: Lorenzo Press, 1804.

certainly didn't know anything about his father's contributions to the Constitution. So his collected publications was printed, parked on a few library shelves, and remained there to collect dust for generations after.

As noted above, with little more to go on than his sullied reputation, his first mention in the early histories of the Founding era painted him only as a minor villain. Historians would quickly correct that particular error, but restoring him to public memory is taking much, much longer.

In 1824, a young historian named Robert Waln published a volume of biographies of the signers of the Declaration of Independence,[32] and his essay on James Wilson[33] was evidently composed with the assistance of Bird Wilson.[34] At first this news might sound encouraging, as who better than James Wilson's son could provide history with the missing details of his father's life. Unfortunately, Bird must not have known much, for Waln was not able to add much, and much of that was not always accurate. Regardless, the volume did not gain enough attention to put James Wilson in the public mind, and throughout the rest of the 19th-century America's formulation of its founding mythology, Wilson remained in obscurity, forgotten.

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[32] Robert Waln, Jr., *Biography of the Signers to the Declaration of Independence*, Philadelphia: R. W. Pomeroy, 1824.

[33] *Id.*, Vol. VI, at 111-176.

[34] *See* William Ewald, "James Wilson and the Scottish Enlightenment," *Journal of Constitutional Law*, Vol. 12, No. 4 (2010): 1053-1114, at 1109-1113.

In 1896, a law professor in Chicago republished Bird's collection of his father's works, remarking in his preface how strange it was that Wilson had been forgotten.[35] Some in legal academia briefly noted it, but only briefly, and only to observe that the collection was of little importance except as a curiosity.[36] Wilson remained in obscurity.

In 1906, the media spotlight lit up Wilson's name, as a grand ceremony marked the reinterment of his remains to Christ Church in Philadelphia, next to those of his first wife and Benjamin Franklin. Upon learning that Wilson was buried in a shabby, unmarked grave, in a neglected cemetery on a plantation in North Carolina,[37] Philadelphia doctor S. Weir Mitchell convinced local professors to form a committee to bring his remains home. The primary force of the committee was Swarthmore history professor Burton Konkle,[38] though as the ceremony neared the committee would swell with the addition of prominent industrial magnate Andrew Carnegie, the U.S. Attorney General William Moody, and President Theodore Roosevelt.

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[35] James Wilson, *The Works of James Wilson*, James DeWitt Andrews, ed., Chicago: Callaghan and Company, 1896.

[36] *See, e.g.,* E. R. C., "Review: *The Works of James Wilson* by James Wilson and James DeWitt Andrews," *Harvard Law Review*, Vol. 9, No. 8 (1896): 551-551.

[37] Wilson's grave was described in 1904: "There is no stone, save that of a rough rock, lying flat on the ground, that marks his resting place, upon which there is no inscription." Wilson himself was supposed by residents to have been a "Senator of Pennsylvania." R. M. Lee to S. Weir Mitchell, February 24, 1904, Lucien H. Alexander Papers, Historical Society of Pennsylvania. A subsequent letter added, "the grave, which is covered with weeds and straw, as the old grave yard is not looked after." R. M. Lee to S. Weir Mitchell, March 12, 1904, Lucien H. Alexander Papers, Historical Society of Pennsylvania.

[38] Professor Konkle attempted a biography of James Wilson late in life, though it was never published. His manuscript and typescript entitled *Life and Writings of James Wilson* are in the Burton Alva Konkle Manuscripts at the Friends Historical Library of Swarthmore College.

The reinterment captured the attention of scholars and politicians, and though Roosevelt did not attend in person, a month prior he did laud Wilson's principles in a speech.[39] At the re-burial ceremony itself many others gave speeches, regretting Wilson's absence from the pages of history. But after it was all over, there was nothing left to say. None of it had really been about Wilson, anyway. And so once again his memory lapsed into oblivion.

And as for memorializing Wilson's place in history, the date of his death on that new grave marker in Philadelphia is the wrong date. And as for the birthdate, it appears to be purely the product of somebody's imagination. It is the first example of that date—or any date—as Wilson's date of birth.[40] Again, none of this was really about Wilson.

It seems clear that Wilson's descendants did not know of his contributions to the Constitutional Convention—he apparently believed that his oath of secrecy extended even to his own family. Bird Wilson inherited his father's private papers—a mess of receipts and bills, a few letters that had been saved, and the other accumulated detritus of a life. But though he seems to have shared some of the meager correspondence with

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[39] Roosevelt spoke in October 1906 at the dedication of the new state capital building in Harrisburg. Taking advantage of the attention being paid to Wilson in Pennsylvania that year, with a month to go before some important mid-term elections, the Progressive president latched on to Wilson's Scottish Enlightenment-based concept of "progress" as proclaimed in his law lectures at the College of Philadelphia in the 1790s. Wilson's phrase "t is the glorious destiny of man to be always progressive" was too good to pass up. *See* David H. Burton, "Theodore Roosevelt's Harrisburg Speech: A Progressive Appeal to James Wilson," *Pennsylvania Magazine of History and Biography* (October 1969): 527-542.

Many sources incorrectly state that it was Roosevelt's speech in October that inspired the reinterment ceremony a few weeks later.

[40] This has not prevented nearly every source since 1906 from repeating "September 14, 1742" as the day James Wilson was born. But repetition does not make it any more correct.

researchers, and had collected his father's already-published works, Bird did not realize that the papers contained anything else of importance. Neither does he seem to have had any reason to suspect that they might. James Wilson's papers remained in storage until Bird's death in 1859. The papers were then inherited by Bird's niece, Emily Hollingsworth, who likewise never seems to have inspected their contents. She donated a bundle of papers to the Historical Society of Pennsylvania on June 9, 1876, and a year later they responded with mild thanks, asking if there was anything more, as what she had sent "will make a volume somewhat thin."[41] After another search, she sent another bundle, adding "do not feel obliged to retain any of the Papers you deem inadmissible to the repositories of your Society."[42] She clearly had only selected from a larger collection, because when she died in 1903, it was split among her three executors. The first, Israel Morris, sent to the Historical Society of Pennsylvania enough papers to fill many volumes. The second, Thomas Montgomery, kept his share in his own possession. And nothing is known of what happened to those received by the third executor, Eppingham Morris. [43]

Though Emily Hollingsworth did note that the papers contained correspondence from famous people like Alexander Hamilton and George Washington, it is clear that neither she nor the Historical Society of Pennsylvania knew any more about what her

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[41] John Wallace to Emily Hollingsworth, January 23, 1877, James Wilson Papers, Historical Society of Pennsylvania.

[42] Emily Hollingsworth to John Wallace, January 24, 1877, James Wilson Papers, Historical Society of Pennsylvania.

[43] The provenance of the collection is detailed in Lorianne Updike Toler, "Addendum," *The Pennsylvania Magazine of History and Biography*, Vol. 135, No. 3 (July 2011): 367-374.

grandfather's papers contained. After her donations in 1876 and 1877, the papers gathered dust, unexamined, for another generation.

Then in 1900, historian William Montgomery Meigs published an account of the Convention of 1787.[44] His book included photos of notes in Edmund Randolph's handwriting, which others had previously mentioned as far back as 1887, and which were among the papers of George Mason in the possession of one of Mason's great-granddaughters. Meigs excitedly (though incorrectly) concluded that these notes must have been the first draft of the U. S. Constitution from the Committee of Detail. [45] Then in a somewhat offhand aside, he mentioned that:

> One other draft* is known to exist, but it was evidently drawn at a much later stage of the committee's labors; indeed, they must have been at that time pretty nearly ready to report, for it is extremely similar to the draft actually reported. It is in the handwriting of Wilson, with some marginal alterations by Rutledge.
>
> *This is preserved among the Wilson Papers in the Historical Society of Pennsylvania.[46]

Frustratingly, Meigs gave no account of how he had learned of the "other draft," how he determined that it was in Wilson's handwriting, or whether he himself had ever visited the Historical Society.

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[44] William M. Meigs, *The Growth of the Constitution in the Federal Convention of 1787: An Effort to Trace the Origin and Development of Each Separate Clause from Its First Suggestion in that Body to the Form Finally Approved, Containing Also a Fac-Simile of a Heretofore Unpublished Manuscript of the First Draft of the Instrument Made for Use in the Committee of Detail*, Philadelphia: J. B. Lippincott Company, 1900.

[45] *Id.* at 4, plates preceding 317, and 317-324.

[46] *Id.* at 324.

Subsequently, professor John Franklin Jameson of the University of Chicago sought to determine just what this "other draft" was. One can only imagine his reaction when, after dusting off the Wilson papers at the Historical Society of Pennsylvania, he discovered not one but several drafts of the U.S. Constitution in Wilson's hand, as well as Wilson's notes on the Convention, other documents from the Convention whose existence had been a matter of debate, some correspondence with important Founders, and other documents shedding light on Wilson's public deeds and private life.

Actually, we do not have to imagine his reaction. In 1903 he published his own book on what had happened during the 1787 Convention.[47] Here he concluded that, what Meigs had thought to be the first draft of the Constitution, was instead Randolph's notes to guide the committee as they began their task. But in Wilson's hand, there were two successive drafts of the Constitution.[48] And then there were all the other finds he had discovered. His reaction?

> Then felt I like some watcher of the skies
> When a new planet swims into his ken;
>
> or, more exactly, like one before whose telescope appears an asteroid which pursues exactly the orbit that he had predicted.[49]

Jameson knew he had made a massive discovery.

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[47] John Franklin Jameson, *Studies in the History of the Federal Convention of 1787*, Washington D.C.: Government Printing Office, 1903.

[48] *Id.* at 125-126.

[49] *Id.* at 128 (quoting Keats, *On First Looking into Chapman's Homer*)

Unfortunately, what he'd written was a small publication of the U.S. Government Printing Office, which then as now was known more for printing passports and government documents, and not so much for books. In other words, however revelatory Jameson's discoveries might have been, the rest of the world did not get the news. James Wilson once again failed to make the headlines.

What did happen, however, was that Wilson's papers now become part of a massive historical project to locate and collect every scrap of evidence of what had actually taken place during the Constitutional Convention—every notebook, letter, diary, speech, memoir, press clipping, and box of papers. This effort culminated in 1911 with the publication of Max Farrand's landmark three-volume *Records of the Federal Convention of 1787*, plus a fourth volume in 1937, and most recently a supplemental volume 5 in 1987. In those first three volumes in 1911, having thoroughly analyzed and cross-referenced thousands of pages of letters and notes and documents, Farrand at last recognized the breadth and scope of Wilson's contributions. Indeed, Farrand would praise Wilson above all the other delegates save one:

> Second to Madison and almost on a par with him was James Wilson. In some respects he was Madison's intellectual superior . . . He appreciated the importance of laying the foundations of the new government broad and deep, and he believed that this could only be done by basing it upon the people themselves. This was the principal thing for which he contended in the convention, and with a great measure of success. His work on the committee of detail . . . was also of the greatest service.[50]

[50] Max Farrand, *The Framing of the Constitution of the United States*, New Haven: Yale University Press, 1913, at 197-198.

But even this was not enough to restore James Wilson to public awareness. Apart from Constitutional scholars—for whom Farrand's opus remains their Bible—these new insights never quite filtered out into the story of America's founding. Histories would continue as ever to mention him—if at all—as just another name in a list of signers.

Hoping to remedy this, in 1956 Charles Page Smith published the first attempt at a complete biography of James Wilson: his weighty *James Wilson: Founding Father, 1742-1798*.[51] More hagiography than history, Smith's book contained a great deal of romanticized fiction, and what was not made up from Smith's own imagination is often inaccurate. The book was at least an engaging piece of national pride. But even in the patriotic 1950s it failed to spark the interest of either the public or historians. Smith's biography disappeared into the stacks of some college libraries, and Wilson remained forgotten.[52]

During the Nixon years, a few of the public may have encountered James Wilson in the 1969 Broadway musical *1776*, and its less-well-received 1972 film adaptation (both roundly criticized for historical inaccuracy).[53] The dramatization of the signing of the Declaration of Independence portrayed Wilson as a minor, weak character, "a bespectacled, cautious little sycophant," whose only lines are the comic relief of a small-

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[51] Charles Page Smith, *James Wilson, Founding Father, 1742-1798*, Chapel Hill: University of North Carolina Press, 1956.

[52] Smith, however, would go on to greater achievements with his 1200-page biography of John Adams in 1962, which won the Bancroft Prize for historical writing, and established him as a scholar of the founding generation (though he would never write on Wilson again). "Historian Page Smith Dies at 77 - His People's Histories Won Praise and Awards," *The New York Times*, August 29, 1995.

[53] *See* Peter C. Rollins, ed., *The Columbia Companion to American History on Film: How the Movies have Portrayed the American Past*, New York: Columbia University Press, 2004, at 154.

minded fool. At the climax, it is James Wilson who must cast the deciding vote, and he only changes his mind because he's afraid that he'll be remembered as the man who prevented American independence. Except it's only the being remembered at all that he is afraid of:

> WILSON, *to Dickinson*:
>
> > Please don't push me, John, I know what you want me to do. But Mr. Adams is correct about one thing. *I'm* the one who'll be remembered for it.
>
> DICKINSON:
>
> > What do you mean?
>
> WILSON:
>
> > I'm different from you, John. I'm different from most of the men here. I don't want to be remembered. I just don't want the responsibility!
>
> DICKINSON:
>
> > Yes, well, whether you want it or not, James, there's no way of avoiding it.
>
> WILSON:
>
> > Not necessarily. If I go with them, I'll only be one among dozens; no one will ever remember the name of James Wilson. But if I vote with you, I'll be the man who prevented American independence. I'm sorry, John—I just didn't bargain for that.

In the published script, its author added a historical note which only compounded the play's inaccuracies:

> The conversion of James Wilson of Pennsylvania from the "Nay" to the "Yea" column at the last minute (in Scene 7) is an event without any surviving explanation. All that is definitely known is that Wilson, a former law student of Dickinson's and certainly under his influence in Congress, as

> his previous voting record testifies, suddenly changed his position on independence and, as a result, is generally credited with casting the vote that decided this issue.

One groans. Fortunately or not for the real James Wilson, the fictional one got his wish: the musical was forgettable, and James Wilson remained forgotten.[54]

A generation after Smith, Geoffrey Seed made the second serious modern attempt at a biography. His slim 1978 volume, *James Wilson: Scottish Intellectual and American Statesman,*[55] can be criticized for taking too much at face value, for leaving too much out, and for focusing more on the public deeds than the person who did them. And it failed to garner much notice—even modern scholarship can be unaware of the book's existence. Perhaps it was published too late to profit from the Bicentennial's intense public interest in everything about the founding generation. Whatever the reason, the book didn't change anything: James Wilson would continue to languish in obscurity.

With the new millennium, however, professors of History and of Law have started to take notice of James Wilson, publishing with increasing frequency academic papers on his political theory, his public contributions to American law and government, and even a few on his personal life. His obscurity is a bonus to those scholars in need of something new to write about and something new to say. There is plenty about Wilson that remains to be said.

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[54] Quotations from the book and lyrics as published in Peter Stone and Sherman Edwards, *1776: A Musical Play*, New York: Bantam, 1972. The climactic scene can be viewed online, for what it's worth, at "James Wilson Decides - 1776," YouTube Video, 4:00, November 5, 2020, https://www.youtube.com/watch?v=E5DC6PVv_P8.

[55] Geoffrey Seed, *James Wilson*, Millwood: KTO Press, 1978.

The new scholarship can all agree on one thing, however: James Wilson is still absent from the American story. Writers call him "the forgotten founder" or "the lost founder," and bemoan the injustice of it all, as the history books and the American people continue to remain largely ignorant of one of the most important figures in their nation's founding.

Even these histories can leave much to be desired. Charles Page Smith's romantic hagiography is still treated as "the definitive account" of Wilson's life,[56] and his imaginings and errors have been frequently accepted at face value. Other inaccuracies and errors made since the time of Bird Wilson continue to be repeated uncritically.

And still, despite this new academic interest, James Wilson remains almost entirely unknown. In 2023, the father of "We the People" still remains, for all intents and purposes, our forgotten Founding Father.

But perhaps now we are finally reaching the end—the end of more than two centuries of undeserved obscurity. The pace of scholarship is picking up. Perhaps soon someone will write the book that will at last spark the public's interest and restore James Wilson, faults and all, to his rightful place in history and our founding mythology.

This, however, is just a student paper. And now it must leave James Wilson's end, and turn to his beginning.

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[56] Quoting from Mark David Hall, "The Political and Legal Philosophy of James Wilson" (PhD diss., University of Virginia, 1993). *See also* Nicholas Pedersen, "The Lost Founder: James Wilson in American Memory," *Yale Journal of Law & the Humanities*, Vol. 22 (2010): 257-337, at 318 ("Wilson's first, and to this day only, comprehensive biography);

CHAPTER TWO:

SCOTLAND

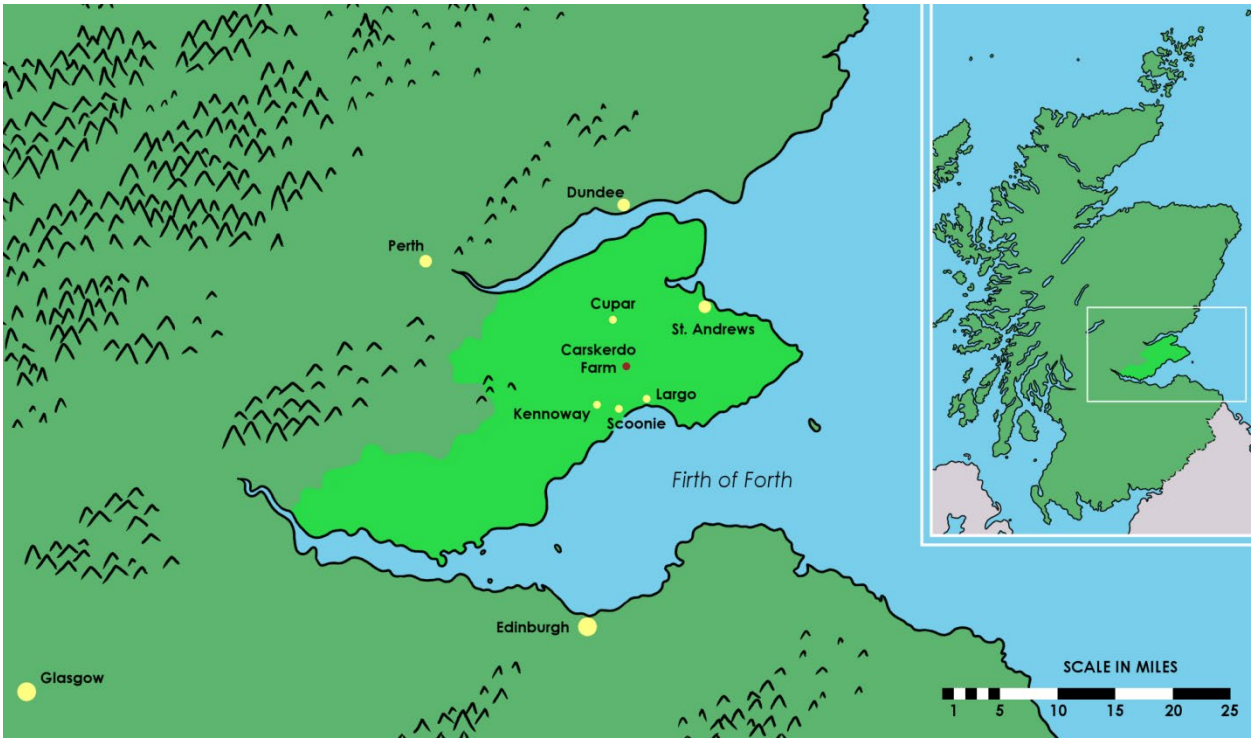

Fig. 2: James Wilson's Scotland—18th Century Fife. Map by the author, Spherical Mercator projection, 2023. The shire of Fife, highlighted in light green, has had the same geographical boundaries since its days as the Pictish kingdom of Fibh,[57] and has historically been naturally isolated from the rest of Scotland by the Firth of Tay to the north, the Firth of Forth to the south, the North Sea to the east, and the Ochil Hills to the west.

[57] Æ J. G. Mackay, *A History of Fife and Kinross, by Æ J. G. Mackay, Sheriff of These Counties*, Edinburgh: William Blackwood and Sons, 1896, at 8-9 (also helpfully noting that "Fibh" and "Fife" are pronounced the same); George Law, "The Earl's Ferry," *The Scottish Historical Review*, Vol. 2, No. 5 (October 1904): 14-29, at 14.

A. A Letter.

To the extent that they mention it at all, historians have generally agreed that most of what we know of James Wilson's life in Scotland is contained in a single letter, written in 1805 by his cousin, Robert Annan.[58] It is a brief account, written in response to a request from Bird Wilson, who—while collecting his father's pamphlets, law lectures, and other works for publication—had written to Annan asking for any details he could remember of James Wilson's life before emigrating to America.[59]

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[58] Charles Page Smith's 1956 biography extrapolated Annan's few sentences into an entire chapter. Smith, *James Wilson, Founding Father*, *supra* at 3-20. As described above, subsequent scholarship has tended to accept that account as accurate. In Seed's 1978 biography, he briefly quoted from the letter and concluded "this is all we know with reasonable certainty of Wilson's early life in Scotland," later reiterating that "most of the knowledge we have of Wilson's early life is derived from a letter dated May 16, 1805, from Robert Annan to Bird Wilson." Seed, *James Wilson*, *supra* at 3, and 191 n. 1.2. *See also* Michael H. Taylor, "James Wilson: Anxious Founder," (PhD diss., *University of Georgia*, 2016) at 10-12; Brian Chmielewski, "James Wilson: A Lost Legacy,"(Masters thesis, *University of Nebraska*, 2012) at 6-7. *But see* William Ewald, "James Wilson and the Scottish Enlightenment," *Journal of Constitutional Law*, Vol. 12, No. 4 (April 2010): 1053-1114, at 1063-1065; and Martin Clagett, "James Wilson—His Scottish Background: Corrections and Additions," *Pennsylvania History: A Journal of Mid-Atlantic Studies*, Vol. 79, No. 2 (Spring 2012): 154-176.

[59] Bird Wilson was, at the time, a prominent legal personage in his own right. He was admitted to the Bar the year before his father died, in 1797, and his father would not even have been able to attend the ceremony as he was on the road evading creditors. In response to the nationwide crisis that had ruined his father and countless others, that same year a federal commission was formed to draft the nation's first Bankruptcy Act, and it is perhaps not surprising that Bird Wilson immediately joined that commission. In 1802, only five years after being admitted as an attorney, Bird was next appointed as the President of the federal Court of Common Pleas for the Seventh Circuit, and this was the position he now held in 1805 when he wrote to Annan.

Twelve years later, very much affected by having been compelled to impose a death sentence, Bird Wilson would resign his judgeship, leave the law entirely, and enter the Episcopalian ministry. Earning great respect in the clergy, he would be elected the professor of Divinity and later Dean of the General Theological Seminary, where he would serve the remainder of his life.

Bird Wilson, *Memoir of the Life of the Right Reverend William White, D.D., Bishop of the Protestant Episcopal Church in the State of Pennsylvania*, Philadelphia: James Kay,

The fact that Bird Wilson had to make such a request is telling. It would seem that James Wilson had been just as close-lipped about his youth and upbringing as he had been about his contributions to the Constitutional Convention of 1787. He had apparently never shared with his own son any stories of his childhood, family life, school days, jobs, or anything else he had done before taking ship at the age of 23. And so it was that, seven years after James Wilson's death, Robert Annan—a Presbyterian minister now nearing the end of his own distinguished career[60]—was asked to recall what he could of Wilson's youth.

Jun. & Brother, 1839; W. White Bronson, *A Memorial of the Rev. Bird Wilson, D.D., LL.D., Late Emeritus Professor of Systematic Divinity in the General Theological Seminary of the Protestant Episcopal Church in the United States of America*, Philadelphia: J. B. Lippincott & Co., 1864; David A. Skeel, Jr., *Debt's Dominion: A History of Bankruptcy Law in America*, Princeton: Princeton University Press, 2001, at 23; Charles Jordan Tabb, "The History of the Bankruptcy Laws in the United States," *American Bankruptcy Institute Law Review*, Vol. 3 (1995): 5-51, at 13-14.

[60] Upon his licensure as a minister by the Associate Presbytery of Perth in April 1761, Robert Annan immediately departed for America as a missionary, where he joined the Associate Presbytery of Pennsylvania. He was soon invited to be the pastor of the Marsh Creek and Oswego congregations near Gettysburg, where he served for five years from 1763 to 1768. In 1769, he moved his family to the Province of New York, where he would serve congregations in Orange County for the next fourteen years until 1783. Like many who had emigrated from the Scottish Lowlands, Annan became an ardent patriot, organized the sending of aid to Boston at the outset of the Revolutionary War, and then served as a chaplain to the Continental Army. Increasingly active and influential in the higher-level affairs of the colonial Presbyterian Church, respect for his extraordinary talent and leadership enabled him to play a key role in resolving a potentially disastrous schism, reuniting the Covenanters and the Seceders in 1782 as the Associate Reformed Church. After the war, he served as pastor of the Long Lane Church in Boston until 1786, then moved to Philadelphia where he led the Old Scots Church for the next sixteen years. During his tenure in Philadelphia, he gained greater recognition in American society with the publication of several works, including a volume on the "Connection between Civil Government and Religion" and a written debate with Benjamin Rush on capital punishment. In 1802, three years before this letter was written, he took charge of the Associated Reformed congregation in Baltimore, Maryland, where he would serve the final ten years of his career. After retiring to a farm in Lancaster County, Pennsylvania, in 1812, he suffered injuries from a fall from his carriage on the way to church one Sunday in 1819, and died from his injuries the following Sunday at his home.

As said, the letter is often alleged to contain all or most of all that is known of those years. But what does it say? No book or paper has quoted the letter in full—instead, one sees the same transcribed excerpts. The letter itself gets cited as being in the collections of the Historical Society of Pennsylvania, which has never possessed it. [61] While this does not necessarily imply that the excerpts were quoted incorrectly, it does raise doubt as to whether sources have read the letter themselves, or are merely relying on earlier incomplete and potentially inaccurate sources.[62]

Fortunately, Max Moeller, the Head of Reader Services at the Library Company of Philadelphia, very kindly located the letter in its Manuscript Department and provided

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William Melancthon Glasgow, *Cyclopedic Manual of the United Presbyterian Church of North America: Comprising a Brief History of Her Ancestral Branches, Ministry, Congregations, Institutions, Courts, Boards, Missions, Periodicals, Etc., and Embellished with the Portraits of the Moderators of the General Assembly since 1858*, Pittsburgh: United Presbyterian Board of Publication, 1903, at 31; "Robert Annan," *Alleghany Chapter, NSDAR - Blacksburg, Virginia*, at https://www.alleghanydar.org/robert-annan.

[61] *See, e.g.,* William Ewald, "James Wilson and the Scottish Enlightenment," *supra* at 1063 note 15; Kevin Diestelow, "The Republic of Happiness: James Wilson, Political Thought, and the American Revolution" (Thesis, The College of William and Mary, 2021) at 16 n. 2.

Martin Clagett not only cites the letter as part of that collection, but adds that he viewed it "courtesy of Dr. Jack Gumbrecht," who is the Assistant Director of Research Services at the Historical Society of Pennsylvania. Clagett, "James Wilson: His Scottish Background," *supra* at 175 note 35.

A careful search of the HSP's catalogues and collection in October 2022, with the kind assistance of Steven Smith, the Director of Research Services, and his staff, found no mention of the letter in any of its collections

[62] To their credit, the authors of the 1956 and 1978 biographies certainly did read the letter, as both correctly attribute its location, and Geoffrey Seed made a photocopy which he presented to the University of St. Andrews in 1977. The photocopy resides in the university's Miscellaneous Papers, Manuscript/Muniment Collection, in set MS37237, item 1.

the author with a scanned copy.[63] In the interest of completeness and future scholarship, therefore, the letter is here transcribed in full, with no changes to spelling or punctuation.

[Cover: postmark and address]

BALT.MD May 18

Bird Wilson Esq[r]
Attorney at law
Philadelphia

[Page 1]

Baltimore May 16 1805

Sir

Your letter dated the 16th of April came to hand only this day. How it came to be so long delayed I cannot conceive. You request me to give you information of several circumstances respecting your deceased Father Judge Wilson. I hasten to gratify you so fully and correctly as I possibly can. His mother and mine were sisters. I was boarded some years in his Father's house when we were both pursuing our classical studies at a grammar school in that Neighborhood and we travelled many a day to school in company. He was the son of William Wilson and Alison Landales both descended of families highly respectable. His Father was distinguished for gravity, piety, and good sense; and was for many years and until his death a ruling Elder in the Church of Scotland. His mother remarkable for a fine person, a superior genius, sound piety and elevation of sentiment. They had three other Sons, John Andrew, and William, who I believe are all dead. Your Father was the oldest of the Sons. They had three daughters older than him; one died young and unmarried; the other two were both married in reputable families; but only one of the two is

[63] The digitized letter as well as an image of its index card from the Library Company of Philadelphia's card catalog remain on file with the author, but they were provided on the understanding that the images were not for publication.

living. Your Father was born in the Shire or County of Fife, about two miles from Coupar the County Town, and about six miles from St: Andrews a Seaport Town on the eastern coast of Scotland. The precise time of his birth I do not certainly know: but to the best of my remembrance, He was about two or three years younger than myself; and I was born in August Ann: 1741. The place of his birth was named Carscurdu, an extensive and productive farm which his Father cultivated for many years. His parents intended your Father for public service in the church, and kept him constantly at school from the time he was capable of receiving instruction. He early gave proofs of a fine genius, a prompt capacity for learning and a steady application. As soon as he had finished his classical education as far as is common at grammar schools, he was sent to the College of

[Page 2]

St: Andrews, where by his merit he obtained at his entrance, what is called a Bursary, that is an annual premium, nearly, if not altogether sufficient to defray the expenses of his education. After going regularly through the different classes, which there commonly occupie four years, He applied to the study of Divinity for some time. But to the best of my recollection, his Father died about this time, and the Widow having a numerous family to attend to, He became for some time a tutor in a gentleman's family. His genius being too sublime for such low drudgery he formed the resolution to try his fortune in America. He arrived in Philadelphia about the year 1766 an entire stranger in a strange land. The only acquaintance he had in America, I believe, was myself. I had arrived her in Ann: 1761. Soon after his arrival he came to visit me, and made known his situation and circumstances, and the course he meant to pursue through life. But his finances were low; and who in a mercenary world would apoint a friendless stranger? To John Dickinson Esq^{r} he applied. But John would do nothing without his fee. He sometimes had thoughts of applying to agriculture and a gentleman in Ph:^{a} proposed to rent him a farm: But he was not able to put stock on it. In this dilemma he applied to me, and I ventured to sell him a farm for £300 and took his own obligations for the payment thereof at easy installments, and when it was in his power. He sold said farm to John Dickinson Esq^{r} and by this means paid John his fee and supported himself at the study of the Law. After appearing at the Bar he soon attracted public attention by distinguished abilities; and gloriously figured in some of the

> grandest scenes of the American revolution. The following part of his history you know. Thus, sir, I have in parts sketched out the chief things in his early life which merit attention; and remain your humble servant
>
> Robert Annan[64]

With respect to James Wilson's life in Scotland before coming to America, Annan did not write of the childhood adventures, life on the family farm, adolescent society, and other personal anecdotes that might have offered Bird some insights into who his father had been. All he thought worth mentioning was that:

1. Both his parents were good, pious people, came from respectable families, and they had a prosperous farm.

2. He had four brothers and five sisters, and he was the oldest of the boys.

3. He was born on the farm around 1743 or 1744.

4. He went to school as soon as he was old enough. He was bright and a good student, and his parents kept him in school in the hopes that he would one day enter the ministry.

5. He received a classical education at the local grammar school. Robert Annan lived with the Wilsons on their farm while attending the same school, and the two would walk to school together.

[64] Robert Annan, Letter to Bird Wilson about Judge Wilson, May 16, 1805. Library Company of Philadelphia, Yi2, 7260F133.

6. After grammar school, Wilson attended the University of St. Andrews on a full scholarship. He completed the usual four-year course of undergraduate studies.

7. He then entered graduate school to earn a degree in Divinity.

8. His father then died, and he ended his studies to help his mother run the farm.

9. He got a job tutoring a gentleman's children.

10. He decided better opportunities for his talents could be found in America.

If this is all that historians and biographers have had to go on, it is perhaps not surprising that they have had little or nothing to say of Wilson's formative years. Which is a shame, because to understand the man that Wilson became, one would wish to understand the circumstances and influences that shaped his personality, his outlook, and his intellect. Still, meager as it is, this account is better than nothing.

Unfortunately, it is wrong.

Not entirely. The details of family and early school days together are essentially correct, and the inaccuracies are not important. (And they are to be expected. Annan was, after all, recalling a childhood more than fifty years gone, in another time and place, practically another world.) But his account of Wilson's life from the time he went to college to the time he emigrated to America is important, and in almost all respects it is wrong.

This is not surprising. Annan had not gone to the university with Wilson. Being the elder of the two cousins, Annan had already gone off to college a couple of years

before. By the time that Wilson would have completed his undergraduate years, Annan had already earned his graduate degree in Divinity, entered the ministry, and emigrated to America himself. His account of these years was therefore not from personal knowledge. One can only speculate as to where he had heard which of the details, and as to which details were what he had been told and which were mis-remembered.

If one accepts that this letter is all we can know of James Wilson's youth and early adulthood, these mistakes could lead a biographer to significant error. One would be drawing conclusions based on incorrect data. The result could be an inaccurate picture of who James Wilson was and why.

It is fortunate, then, that we do not need to rely on the Annan letter. There is plenty of evidence that can be discovered, which lets us say much more about these critical years of James Wilson's life.

B. James Wilson's Scotland.

The year was 1742, and the farmer William Wilson and his wife Alison had been married eight years without the blessing of a son. Children of either sex would of course have been considered a blessing for any farmer, as their free labor was of great value from a young age.[65] But it was sons who would grow to maturity to labor in the fields, join their father in the male sphere of society, and of course inherit.[66] William was already fifty years old, and not getting any younger; Alison was perhaps twenty-one.[67]

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[65] *See, e.g.,* Henry Grey Graham, *The Social Life of Scotland in the Eighteenth Century*, London: Adam and Charles Black, 1901, at 435 ("All work began as early as daybreak in field and shop, and children began their tasks as soon as light would permit"), and 437 ("The customary signal to the [schoolmaster] for breaking up classes in summer was the presentation of an ear of ripe oats on his desk . . . Once free from school, children were kept at work at the farms to long that the poor master suffered grievous loss, as the fees were paid precisely for the period that the pupils attended the school"). Those who enjoy statistical mathematics may also *see, generally,* Mark R. Rosenzweig, "The Demand for Children in Farm Households," *Journal of Political Economy*, Vol. 85, No. 1 (February 1977): 123-146.

[66] Ilya Kotlyar, "The Evolution of the Scots Law and Practice of Succession: 1300-2000," in Maria di Renzo Villata, ed., *Succession Law, Practice, and Society in Europe across the Centuries*, Cham: Springer, 2018, at 167-206.

[67] William Wilson was baptized on March 19, 1693, and so may have been born in either 1692 or 1693, making him either 41 or 42 at their wedding in 1734. National Records of Scotland, OPR 443/2 (Old Parish Register for the parish of Largo, containing records of births and baptisms from 1670 to 1754, and of proclamations and marriages from 1670 to 1756). Some informal genealogies online offer additional details of William Wilson's life, including a possible previous marriage, but like so many family histories their details are confused, contradict each other, lack evidentiary support, and are difficult to reconcile with the existing evidence. More research would be required before including any such details here.

Alison Landales (also variously spelled as Landal, Landall, Landale, and Landals) was baptized in the parish of Wemyss on February 22, 1713. National Records of Scotland, Old Parish Records 459/20 at 201. Family tradition has been that she was born on the following day, and the genealogical resource *Scotland, Births and Baptisms 1564-1950* gives her birth year as 1707, and genealogical accounts of her dates and relations share much of the same confusion as William's accounts.

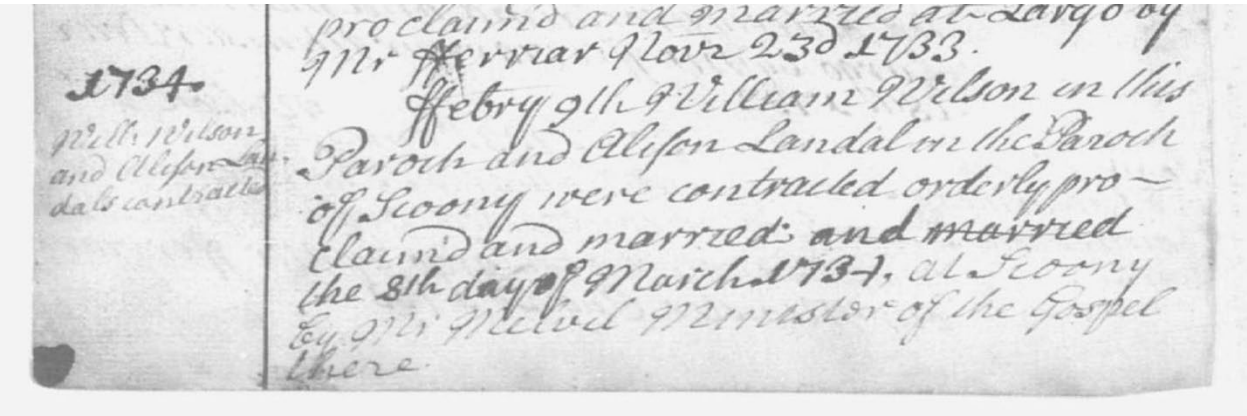

Fig. 3: Registration of Marriage of William Wilson and Alison Landal, March 8, 1734. National Records of Scotland, OPR 443/20 at page 472 (Largo Parish). As the author makes it out, the text reads: "Febry 9th William Wilson in this Paroch and Alison Landal in the Paroch of Scoony were contracted orderly proclaimed and married and married the 8th day of March 1734, at Scoony by Mr Melvil Minister of the Gospel there."

After they wed in 1734,[68] the couple had settled in one of the small towns along Largo Bay on the Firth of Forth, in the county of Fife, where they would have three daughters over the next six years.[69] A tenant farmer, William rented his small croft from

[68] The couple were married in Alison's home parish of Scoonie, though the banns and marriage were recorded in Wiliam's home parish of Largo. National Records of Scotland, OPR 443/20 at 472. *See* Figure *, above. (Various records would spell Alison's last name as Landal, Landale, Landals, or Landales.) This official registry entry confirms the account contained in a family history reportedly at present in the possession of James Wilson of Carskerdo Farm, Fife. *See, e.g.*, Martin Clagett, "James Wilson—His Scottish Background: Corrections and Additions," *Pennsylvania History: A Journal of Mid-Atlantic Studies*, Vol. 79, No. 2 (Spring 2012): 154-176, at 158 and note 13. However, it contradicts the National Records of Scotland's digital record stating that the event took place in Largo on August 3, 1734—a caution against trusting digitized records too completely.

[69] Which small town the settled in is unclear. Margaret is recorded in the registry of Largo parish as baptized on September 23, 1736; Rachel on December 19, 1738; and Jean on August 11, 1740. National Records of Scotland, OPR 443/20 at 326, 338, and 349. This suggests that they had settled in one of the towns in Largo parish, which appears to contradict other sources, including the family history, which assert that they had settled and borne these daughters in the nearby parish of Kennoway *See, e.g.*, Claggett, "James Wilson—His Scottish Background," *supra* at 158 and note 14.

one of the handful of landowners in his parish,[70] employing agricultural methods little changed since the peasantry of earlier eras.[71] Tenant farming itself had only gradually taken shape in the lowlands, beginning around 1600, and many lowland communities still farmed on fields held in common.[72] Modernization and improved husbandry practices would begin to increase productivity in the second half of the century,[73] but until then the general lot of lowland tenant farmers was a poverty that made even short-term drought a dire threat.[74]

Tenant farmers generally leased their land for terms of nine or more years, paying their rents with produce which the landlord could sell for cash.[75] If their leasehold was large enough, a tenant could sub-lease some acreage to a "cottar." Below the cottars in agricultural society were the landless, laboring class of domestic servants and farm hands. Artisans and craftsmen made up a separate category of rural workers, who could live as well as a prosperous tenant farmer.[76]

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[70] Even as late as 1800, there would be only 175 freeholders in all of Fife. John Thomson, *General View of the Agriculture of the County of Fife: with Observations on the Means of its Improvement; Drawn Up for the Consideration of the Board of Agriculture and Internal Improvement*, Edinburgh: J. Moir, 1800, at 57.

[71] T. C. Smout, "A New Look at the Scottish Improvers," *The Scottish Historical Review*, Vol. 91, No. 231 (April 2012): 125-149; I. D. Whyte and K. A. Whyte, "Continuity and Change in a Seventeenth-century Scottish Farming Community," *The Agricultural History Review*, Vol. 32, No. 2 (1984): 159-169.

[72] Bruce P. Lennan, *Enlightenment and Change: Scotland 1746-1832*, Edinburgh: Edinburgh University Press, 2009, at 7.

[73]Thomson, *General View of the Agriculture of the County of Fife*, *supra* at 10-12. *See also* J. D. Mackie, *A History of Scotland*, Second edition, revised and edited by Bruce Lenman and Geoffrey Parker, London: Penguin Books, 1978, at 289-291.

[74] Whyte and Whyte, "Continuity and Change in a Seventeenth-century Scottish Farming Community," *supra* at 159.

[75] Lennan, *Enlightenment and Change*, *supra* at 7.

[76] *Id.*, at 14-15.

But even a prosperous tenant farmer still produced for subsistence, not for surplus. Compared to highland ranchers, whose homes were small affairs of piled stone walls and turf ceilings and whose cattle were too valuable to eat, lowland farmers might be considered wealthy. Their households possessed all sorts of useful items. They owned their own ploughs and horses, and all the tools necessary for sowing, harvesting, and milking. They had the equipment to make their own beer and cheese, to preserve their own food, and other necessities of self-sufficient living off the land. But such property was strictly utilitarian. Maybe a family might possess a "luxury" item, such as a set of drinking glasses.[77] Grander luxuries, such as "chairs, mirrors, and chests of drawers" would not be common until later in the century.[78] Women worked alongside their men, doing heavy manual labor in the fields and barns. And the whole family—which could easily number a dozen or more—lived in that same house, which might only have a single room.

Even so, in William Wilson's own lifetime he had already witnessed his Scotland transform from a comparatively unsophisticated, almost pre-modern society into a land on the cusp of the modern Enlightenment. When he was born in 1693, Scotland was a predominantly agrarian society where women were still routinely tortured and executed for witchcraft,[79] and where one still faced the death penalty for uttering blasphemy—

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[77] *Id.*

[78] *Id.* at 19.

[79] Brian P. Levack, *Witch-Hunting in Scotland: Law, Politics and Religion*, New York: Routledge, 2008. Even when both nations prosecuted witchcraft, Scotland did so at a rate twelve times that of England; and with as many as 2,000 women executed in a country whose population never exceeded one million, the Scottish fear of witchcraft can only have been genuine and intense. *Id.* at 1-2.

even in jest, or during a late-night undergraduate bull session.[80] By the time of his marriage to Alison Landales in 1734, Scotland boasted four major universities (whereas England had only two), which had spawned a new middle class of learned scholars, jurists, medical doctors, and scientists.[81] By 1740, Glasgow was starting to become a wealthy hub of international trade,[82] and throughout the lowlands economic capital, capital investment, and prosperity was on the rise.[83] And at the same time in Glasgow, an Irishman named Francis Hutcheson had been professing theories of moral philosophy that would soon influence the writings of David Hume, Adam Smith, Jeremy Bentham, and many more.[84]

It would be an exaggeration to say that Scotland had transformed in any major way. Not yet. But throughout William Wilson's lifetime thus far the conditions had been laid, and the pressure had been building, for something big to happen. It was into this exciting new Scotland that he and Alison were to bring their family.

At some time between 1740 and 1742, the family moved inland to replace the previous tenants of a farm called "Carskerdo," in the central region of Fife. A century

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[80] *See* Michael F. Graham, *The Blasphemies of Thomas Aikenhead: Boundaries of Belief on the Eve of the Enlightenment*, Edinburgh: Edinburgh University Press, 2008. A moving narrative of young Aikenhead's case also forms the Prologue to Arthur Herman's *How the Scots Invented the Modern World: the True Story of how Western Europe's Poorest Nation Created Our World & Everything in It*, New York: Crown, 2001.

[81] Alexander Broadie, *The Scottish Enlightenment: The Historical Age of the Historical Nation*, Edinburgh: Birlinn, 2001, at 9-29.

[82] *See* Jacob M. Price, "The Rise of Glasgow in the Chesapeake Tobacco Trade, 1707-1775," *The William and Mary Quarterly*, Vol. 11, No. 2 (April 1954): 179-199.

[83] J. D. Mackie, *A History of Scotland*, *supra* at 291-297.

[84] W. R. Scott, "The Never to Be Forgotten Hutcheson: Excerpts from W. R. Scott," preface by Daniel B. Klein, *Econ Journal Watch*, Vol. 1, No. 1, (January 2011): 96-109.

earlier, the farm had already been sufficiently well-known to be shown (as "Carskeirdo") in Blaeu's 1654 *Atlas of Scotland*, so one might presume that it was already more profitable land than that of other Scottish tenant farmers.[85] The farm was about three miles south of the Royal Burgh of Cupar, the major market town of Fife, which meant easy access to buyers of any surplus. As a royal burgh, Cupar also enjoyed a monopoly of access to international imports and exports, and it was the seat of local government as well as commerce. Proximity to Cupar meant opportunity.

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[85] James Gordon (mapmaker), "Fifae Vicecomitatus: The Sherifdome of Fyfe," in *Blaeu Atlas of Scotland*, 1654, collection of the National Library of Scotland, at https://maps.nls.uk/view/00000444#zoom=6&lat=3353&lon=4512&layers=BT. The maps are a delight of the cartographer's art, though more like a work of Tolkien than a surveyor, with the bends of rivers and coastlines more stylized than precise, siting towns like Cowper (Cupar) at noticeably different locations, and depicting the gentle rolling hills of the plain as towering crags. Google Maps would be a better resource for those who wish to visit the farm today and read the family history kept there. https://www.google.com/maps/search/carskerdo+farm/@56.2580081,-2.9937392,16z.

As for the name "Carskerdo," the author has not been able to find a verifiable translation or account of what the word might mean. There appear to be no equivalent suffixes or prefixes in Scots Gaelic, though place names in this part of Scotland often have Pictish or even Norse origins. The Pictish prefix *car-* generally translates as a military camp, stronghold, or fortification—suggesting that the farm may once have been the site of a "Fort Skeirdo," named after perhaps its warlord or a local geographical feature. If named for a person, the root *skeir* has an equivalent in Icelandic, meaning cut or slice, so "Skeirdo" may have been a Norse cognomen for someone who was good with a sword. However, *sker* was Old Norse for a rock, which could refer to a local feature. But now we are at risk of speculation, which the ghost of James Wilson would surely warn against. At any rate, such etymological hypotheses require further research, which would lead even further afield (ha) from the topic at hand.

Fig. 4: Randolph G. Adams, *Wilson Homestead at Carskerdo*, 1931, in "James Wilson and St. Andrews," *The General Magazine and Historical Chronicle*, Vol. 34 (1931): 18-21. In this four-room house lived William Wilson, Alison Wilson, and ten children. Eleven children, counting Robert Annan.

The farm may have been productive, but the family never had much cash. As will be seen, they could even afford this five or six pounds it would have cost to send a child to college for a single term, and James Wilson would regularly send money home from America to help the family make ends meet.

At some point, the family was able to buy Carskerdo outright. The transaction may have happened during the "improvements" rapidly transforming Scotland's agriculture in the mid- to late-18th century, which included many changes in land ownership and use.[86] We know that William himself never owned it in freehold,

[86] *See* Smout, "A New Look at the Scottish Improvers," *supra*.

however, because when he died the "tack," or leasehold, is what his heirs inherited.[87] Today, Carskerdo is a dairy farm still owned and operated by the Wilson family.[88]

Fig. 5: Google Maps Street View, "The entrance to Carskerdo Farm from the A916." Stitched from images captured by Google Street View, September 2021.[89] Dairy cows are visible in the center of the image, and a silo and farm structures are visible at the top right. The sign at the bottom left reads: "J. & I. Wilson & Sons — Carskerdo Farm — Northshields Holstein Friesians and Jerseys."

At Carskerdo, the growing family lived in a stone house with four rooms, two doors, and one fireplace—perhaps a bit cramped by modern standards, but considered cozy and of moderate size at the time.[90] And there, in the autumn of 1742, Alison Wilson

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[87] William Wilson to James Wilson, March 19, 1771, Historical Society of Pennsylvania. (William—James' brother, namesake of their father—wrote that their "Mother has indeed two akers of land and two cows grass which is let to the Honneman at five pounds per anum").

[88] *See* Patsy Hunter, "Huge Changes at Carskerdo," *The Scottish Farmer* (March 17, 2015) at https://www.thescottishfarmer.co.uk/news/14366397.huge-changes-at-carskerdo.

[89] At https://www.google.com/maps/@56.2599286,-2.9974989,3a,15.8y,64.59h,82.14t/data=!3m6!1e1!3m4!1sD-a-jLO94dmlSVKjA-xMXg!2e0!7i16384!8i8192!5m1!1e4, last accessed April 4, 2023.

[90] Randolph Greenfield Adams, *Wilson Homestead at Carskerdo*, 1931, in "James Wilson and St. Andrews," *The General Magazine and Historical Chronicle*, Vol. 34 (1931): 18-21, at 19 (pleasantly describing the efforts of two notable professors, Adams and George Macauley Trevelyan, tramping the lanes of Fife trying to find the farm).

at last gave birth to her first son: James Wilson, the future Founding Father.[91] The infant Jamie would be christened the following summer in Largo on June 14, 1743.[92]

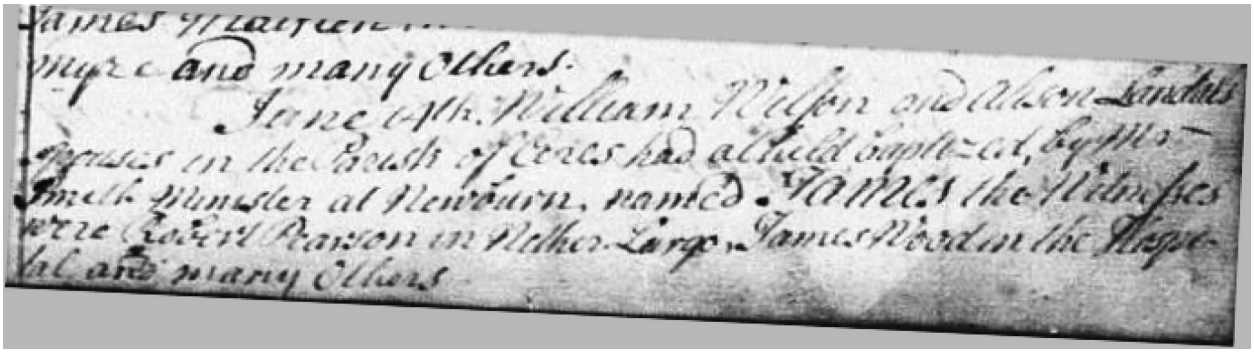

Fig. 6: Registration of Baptism of James Wilson, June 14, 1743. National Records of Scotland, OPR 443/2 at page 62. As the author makes it out, the text reads: "June 14th. William Wilson and Alison Landals spouses in the Parish of Ceres had a Child baptized by Mr Smith Minister at Newburn, named James the Witnesses were Robert Pearson in Nether Largo, James Wood in the Hospital, and many Others."

Three more sons and one more daughter would bless the family over the next eight years.[93] In those same years, Scotland itself and its very identity would be rocked to the core.

When James (called "Jam," pronounced "Jame") was three years old, the Jacobite Rebellion of 1745 came to Edinburgh, in Charles Stuart's failed attempt to

[91] James Wilson's date of birth is generally stated to be September 14, 1742. However, the only source for this assertion seems to be date on the gravestone from his 1906 reinterment, which gives the wrong date for his death (August 23 instead of August 21) and thus—like nearly every other account of Wilson's life—must be read with a certain skepticism.

[92] National Records of Scotland, OPR 443/2 at 62.

[93] *Id.*, OPR 443/2 at 373 (John, christened May 19, 1745), 381 (Elizabeth, February 22, 1747), 388 (William, July 17, 1748), and 419 (Andrew, October 12, 1752).

reclaim the British throne from the House of Hanover. Only a short ferry ride away,[94] Edinburgh would change hands from the British to the Jacobites and back again in the coming months, and two important battles would be fought nearby at Prestonpans and at Falkirk Moor along the Firth of Forth. Nevertheless, Bonnie Prince Charlie's taking of Scotland, aborted invasion of England, and ultimate defeat in the far north[95] had little if any direct impact on the children of William Wilson on the fields of Fife. The rising and its aftermath would, however, influence the sensibilities of the adults of Fife, Edinburgh, and Glasgow who would mold and instruct the young James Wilson as he grew to adulthood.

Jacobites had attempted to restore the House of Stuart ever since the Glorious Revolution of 1688, with an immediate uprising in 1689, another upon the Hanoverian succession in in 1715, another in 1719, two failed French naval invasions, and any number of plots and conspiracies. [96] Although the movement served a variety of motives—from a sense of ethnic pride, to aristocratic preservation of feudal rights and titles, to a sense that government was illegitimate when humans interfered with the

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[94] R. A. Paxton, "Engineering Challenges Before the Bridge," in Roland Paxton, ed., *100 Years of the Forth Bridge*, London: Thomas Telford, 1990, at 1-6.

[95] A thorough narrative may be found in Jacqueline Riding, *Jacobites: A New History of the '45 Rebellion*, New York: Bloomsbury Press, 2016; and the context and influences on Charles Stuart's thoughts and decision are thoroughly detailed in Susan MacLean Kybett, *Bonnie Prince Charlie: A Biography of Charles Edward Stuart*, London: Unwin Hyman, 1988.

[96] *See* James Pringle Thomson, ed., *The Jacobite Rebellions (1689-1746)*, London: G. Bell and Sons, 1914 (in which Thomson has compiled an excellent collection of primary sources and first-hand accounts). *See also* Allan I. MacInnes, "Jacobitism in Scotland: Episodic Cause or National Movement?" *The Scottish Historical Review*, Vol. 86, No. 222, Part 2 (October 2007): 225-252; and Daniel Szechi, *1715: The Great Jacobite Rebellion*, New Haven: Yale University Press, 2006.

divine right of kings, to a drive to protect the people's right to dissent[97]—the primary Jacobite adherents were Roman Catholics, especially those of the Highland clans. The Presbyterian lowland farmers and villagers had no dog in this fight between the Churches of Rome and England; and to the urban merchants and literati, the Jacobites of the Highlands were an embarrassment at best, backward relics of an uncivilized time and "a threat to public order."[98]

But with the '45, a new motive for supporting the Stuart claim crossed all religious and socioeconomic lines: a nationalist desire for an independent Scotland. The Acts of Union in 1707 which irrevocably united the kingdoms of Scotland and England into a single Great Britain had been an economic boon for Scotland, of that there could be no doubt. But it had been forced on Scotland at a moment of exceptional weakness, and there was resentment at not having had much of a say in the matter. The titled aristocracy had largely abandoned Scotland, moving south to be closer to the heart of the new union in London, which left the towns and parishes of Scotland in the charge of its educated class of lawyers and clergy—a class that was not invested in the new governmental arrangement as the nobility now was. By 1745, Scots of the highlands and lowlands alike chafed at the subordination of their identity and culture to that of their neighbor to the south. Just by Fife, the city of Edinburgh itself now swelled with support for secession from the union and Scottish independence, desiring not so much the restoration of the Stuart line in England, but rather restoration of the political authority

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[97] F. J. McLynn, "The Ideology of Jacobitism on the Eve of the Rising of 1745—Part I," *History of European Ideas*, Vol. 6, No. 1 (1985): 1-18.

[98] William Ewald, "James Wilson and the Scottish Enlightenment," *Journal of Constitutional Law*, Vol. 12, No. 4 (2010): 1053-1114 at 1088.

and importance it had once enjoyed as the seat of Scotland's parliament. [99] And in Fife itself, not far from Carskerdo, many of the students and faculty of the University of St. Andrews were demonstrating in support of Bonnie Prince Charlie—and would continue to do so into 1746. The lowland Protestants still may have looked down on the highland clans, but now they were on the same side, with the same goal: an independent Scotland.

And so, after Prince Charlie's easy march across the Highlands and bloodless occupation of Edinburgh, and his decisive victory at Prestonpans, his Edinburgh Council strongly advised against marching on London, that he instead focus on securing independence for Scotland and shoring up its defenses against any future British invasion. [100]

With Charles' defeat died all hope of Scottish independence, and the restoration of diminished identity and political power. Worse, Scotland was made to suffer as punishment for its insubordination. 1746 saw British troops march through the Highlands to disarm and impoverish the population, seizing every weapon that could be found, burning the fields of crops, confiscating the livestock, and even slaughtering entire settlements—women, children and the elderly included. Jacobite supporters were rounded up by the thousands, many hundreds were transported and sold into labor, and over a hundred were executed.[101] With the Highlands thus impoverished, its landlords

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[99] Jeffrey Stephen, "Scottish Nationalism and Stuart Unionism: The Edinburgh Council, 1745," *Journal of British Studies*, Vol. 49 (January 2010): 47-72 at 52-54.

[100] *Id.* at 52-54.

[101] Geoffrey Plank, *Rebellion and Savagery: The Jacobite Rising of 1745 and the British Empire*, Philadelphia: University of Pennsylvania Press, 2006, at 1-4, 29-76.

soon faced mounting debts and bankruptcy. They could little resist the ensuing enclosures, their socioeconomic reduction in status to that of tenants of large-scale farms with even higher rents, or being displaced from the farms entirely to work in fisheries or rock quarries; and starting in 1750 the whole region endured the mass—often forcible—evictions of the Highland Clearances.[102] At the same time, great numbers of young Scots would find a home in the British army, which, under the leadership of the same general who had crushed the Highlands, rapidly expanded into a role of empire-building, and perhaps ironically instilled a zealous loyalty to the same British Empire that had destroyed them.[103]

Skipping ahead for a moment, this means that during the same period when James Wilson would himself emigrate to the American colonies, tens of thousands of destitute Highland folk were also emigrating there as a result of the Clearances—except that unlike Wilson most of these "were loyalists, fiercely opposed to American independence."[104]

In London, Parliament imposed the 1746 Act of Proscription, which excluded Fife and Edinburgh but did apply to their near neighbor shires of Perth and Stirling. The 1746 Act severely punished the bearing of arms or even possessing a weapon in one's

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[102] Eric Richards, *A History of the Highland Clearances: Agrarian Transformation and the Evictions 1746-1886*, London: Croom Helm, 1982.

[103] Linda Colley, *Britons: Forging the Nation 1707-1837*, revised edition, New Haven: Yale University Press, 2009, at 130-132.

[104] William Ewald, "James Wilson and the Scottish Enlightenment," *supra* at 1089 (citing Bernard Bailyn and Barbara DeWolfe, *Voyagers to the West: A Passage in the Peopling of America on the Eve of the Revolution*, New York: Knopf, 1986, at 26-27; Linda Colley, *Britons: Forging the Nation*, *supra* at 140; and G. Murray Logan, *Scottish Highlanders and the American Revolution*, Halifax: McCurdy, 1976).

home, and even punished the wearing of tartan fabric—with six months in prison for a first offense, and transportation for the second.[105] Irrespective of whether it was an indigenous or invented tradition, the tartan was an important tangible representation of Scottish identity, and along with bagpipes it had been banned outright.[106] In a very real sense, it was a crime to be a Scot.

Even the lowland Scots of the Kirk (the Presbyterian Church), of the commercial towns, and of the universities and professions, felt themselves the subject of undeserved ridicule, regarded just as culturally backward as they themselves had regarded the Highland clans.[107] When Dr. Johnson published his *Dictionary* in London 1755, his definition of "Oats" read simply: "A grain, which in England is generally given to horses, but in Scotland supports the people."[108]

We do not know whether the Wilson family supported the Rising and independence, nor do we know whether they personally experienced any degradation and discrimination in the years that followed. But the Scottish society in which James Wilson was growing up was saturated with a background hum of resentment and

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[105] Act of Proscription, 19 Geo. 2, c. 39 (1746).

[106] Matthew P. Dziennik, "Whig Tartan: Material Culture and its Use in the Scottish Highlands. 1746-1815," *Past & Present*, Vol. 217, No. 1 (November 2012): 117-147.

[107] William Ewald, "James Wilson and the Scottish Enlightenment," *supra* at 1087.

[108] Samuel Johnson, "Oats," in *A Dictionary of the English Language: In which the Words are Deduced from their Originals, and Illustrated with Different Significations by Examples from the Best Writers, to which are Prefixed, a History of the Language, and an English Grammar*, Vol. II, London: W. Strahan, 1755, at OBD-OBE (volume is unpaginated, the entry can be seen at the Internet Archive, https://archive.org/details/johnsons_dictionary_1755/page/n1406). The Dictionary includes a few other jabs at the Scots in quotations from literature. One other entry that may or may not be in jest is the word "Narrate:" which Johnson defines as "To relate; to tell; a word only used in Scotland."

oppression. The young boy may or may not have heard adults speak it out loud, and he might not have understood what they were talking about if he did. But he could not help but be trained by the pervasive atmosphere to share, perhaps only an emotional feeling if not a reasoned conception, his society's perception that it was being done wrong.

At the same time, that same society was rapidly transforming, experiencing renewed economic growth, modernization of its agriculture, and a flourishing of intellectual ideas in its universities. All of this—the Rising of '45 and its aftermath, but also the clearly tangible progress—presented those intellectuals with serious questions: How could an entire civilization be changed so dramatically in such a short time? How could a country such as Scotland come to submit to the dominion of another such as England? Did the process by which the "barbarous" mountain tribesmen had been "civilized" imply some truths about the nature of civilization itself? Was progress an inevitable force of history, pushing human societies towards more perfect forms?

The thinkers who wrestled with these questions would draw conclusions that were novel in their time to a degree that is hard to imagine today, as their ideas would go on to powerfully re-shape Western culture, to the extent that in present-day Europe, Canada, Australia, and the United States they feel simply obvious and naturally true. And in just a few years, these men would be the university professors instilling their fresh ideas into the minds of their students, one of whom would be James Wilson.

But we are getting ahead of ourselves. First, he had to learn to read.

C. School Days.

It has been noted above that Robert Annan's 1805 letter, describing James Wilson's years in Scotland, didn't say much. But those few details which Annan considered worth relating are telling. On reviewing the letter, one notices that Annan specifically focused his narrative on Wilson's education: Wilson began going to school at an early age, then he studied Classics with Annan at a local grammar school, then he won a scholarship to the University of St. Andrews, and then went on to study Divinity after his four undergraduate years.

This is not surprising. For in the Scotland in which they grew up, next to God and the Kirk it was education that mattered most. Indeed, if one had to name the single attribute that most set Scotland apart from the rest of the world in the 18th century, it would have to be the Scottish commitment to education.

Ever since the Reformation, Scotland's churches and Parliament had made numerous attempts to ensure that the whole population might attain the literacy necessary for individuals to read the Bible for themselves, but without much success.[109] Then Scotland's government passed the "Great Act of 1696," officially titled "An Act for Settling of Schools," which not only ordained but funded the provision of a schoolhouse in every parish of the kingdom, as well as a schoolmaster who was to be provided with his own house and garden, and who was to be supported by an annual salary plus a fee for each student being taught.[110] The people of the Lowlands met this Act with an

[109] *See, generally,* Alexander Wright, *The History of Education and of the Old Parish Schools of Scotland*, Edinburgh: John Menzies & Co., 1898, ch. 2-9.

[110] *Id*. at 106-108, and 149-151.

enthusiasm which, after the 1707 Act of Union, developed into outright zeal. Within a single generation, every parish in the Lowlands had a school and a schoolmaster teaching boys and girls alike the rudiments of reading and grammar, as did a majority of the Highland parishes. A schoolhouse was typically a house like any other, with a single classroom for as many as 80 pupils at a time. In many places, schoolhouses might be "small dirty rooms . . . dense with smoke of the peat lighted to warm the children . . . [with] no desks to write at and no benches to sit upon, and the scholars lay on floors, filthy with their muddied coating of rushes or straw which it was the task of the children to supply."[111] In James Wilson's county of Fife, however, the residents ensured that the schoolhouses, though austere, were well-built and maintained in good repair.[112]

Children first attended their local parish school around the age of five or six, and might remain only a year or two—few attended more than three years.[113] Ideally, children were expected to attend their parish school from the ages of six through nine ("above fyve and under ten yeares"), and parents who ignored truancy warnings could be summoned before the local kirk sessions, which might impose fines, censure, and even deny the family charity assistance.[114] In the parish of Cupar, it appears that practically every child attended the parish school, and there is no record of any child there who did not.

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[111] Henry Grey Graham, *The Social Life of Scotland in the Eighteenth Century*, London: Adam and Charles Black, 1901, at 425.

[112] James M. Beale, *A History of the Burgh & Parochial Schools of Fife*, Edinburgh: Lindsay & Co., 1983, at 136-137.

[113] Martin Clagett, "James Wilson—His Scottish Background," *supra* at 159.

[114] Beale, *A History of the Burgh & Parochial Schools of Fife*, *supra* at 11 and 18.

In these classrooms the Scots changed practically overnight from one of the least-advanced peoples in Europe to far and away the most literate and well-educated. By 1750, when James Wilson would have been attending his local parish school, 75% of Scotland's male population was literate, compared to only 53% of males in England, and far lower proportions on the continent. Every Lowland town had its own public library, lending out to gentry and tradesmen and domestic servants alike books not only on religious topics but on history, Shakespeare, philosophy, new ideas in farming, and scientific discoveries. Furthermore, the parish schools had a somewhat equalizing effect on Scottish society, as the sons of lairds and of laborers attended together and sat side by side.[115]

Such schooling and self-study made the Scots increasingly prosperous—a fact that only drove their zeal for education. Farming improvements alone drove a century-long Agricultural Revolution, generating significant wealth as farmers replaced their rustic traditions with sophisticated modern practices. "In no other European country did education count for so much, or enjoy so broad a base."[116]

This is not to say, however, that students themselves enjoyed their time at school. Flogging was deemed an important pedagogical tool, and a good lashing with a birch rod was considered necessary for every boy, every day:

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[115] Colin Russell, *Who Made the Scottish Enlightenment? A Personal, Biographical and Analytical Enquiry*, U.K.: Xlibris, 2014, at 164.

[116] Arthur Herman, *How the Scots Invented the Modern World: the True Story of How Western Europe's Poorest Nation Created Our World & Everything in It*, New York: Crown Publishers, 2001, at 21.

> A boy was simply regarded as a creature sent by Providence into the world to be flogged. Boys were whipped when they were unable to say their lessons, and this was perfectly just; but they were also whipped when they could say them, so that they might remember them till the next day. To every pupil the master was thus an object of terror; his fury was dreaded . . . By making a free and unmerciful use of the rod the master reigned supreme, but reigned as a despot, often detested and unbeloved . . . "Out of the whole four years of my attendance," [Lord Cockburn] writes, "there were probably not ten days in which I was not flogged at least once.[117]

But the experience, hated and feared at the time, could be recalled with approval in later years. Of his days as schoolboy in the 1760s, the poet Robert Burns would later write, "Though I cost the schoolmaster some thrashings, I made an excellent English scholar; and against the years of ten or eleven, I was absolutely a critic in substantive verbs and particles."[118]

Burns, the son of a plowman, went on to receive secondary education at a Scottish Grammar School. Grammar schools offered to Scottish students of all backgrounds the classical education that in England would have been only available to the gentry, preparing boys of seven or eight who were likely candidates for university education and life in one of the learned professions—the clergy, medicine, and the law.[119] These were rigorous schools: an aspiring grammar school instructor had to go

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[117] Alexander Wright, *The History of Education and of the Old Parish Schools of Scotland*, *supra* at 163.

[118] Robert Burns to John Moore, 2 August 1787, transcribed in William Harvey, *Robert Burns in Stirlingshire*, Stirling: Mackay, 1899, at 49.

[119] The "learned professions" historically have been distinct from all other occupations, for the reason that such professionals directly act on behalf of another person, to protect the parishioner's soul, the patient's health and life, and the client's welfare and liberty. With these enormous powers came the responsibility and duty to put the other person's interests above the professional's own personal interests, and acquiring the necessary

through a competitive selection process, demonstrating proficiency in both Latin and Greek, as well as "mathematics, history, geography, natural philosophy [science], and other kindred subjects."[120] Scotland's universities required a mastery of Latin for admission, as university lectures were generally given in Latin, and the traditional first year of university studies included the study of classical Greek, so the primary focus of Scotland's Grammar Schools had always been to instill fluency in Latin and familiarity with classical Latin and Greek literature.[121] A typical grammar school student in the 18th century could expect five years of study until the age of twelve or thirteen—and some remained for seven or even eight years—during which time the boy would have studied the works of Virgil, Horace, Aesop, Cicero, Sallust, Julius Caesar, Livy, Terence, Ovid, and more; he would have engaged in debates, recitations, and other forms of public speaking; and he would have composed and declaimed his own Latin prose and verse.[122]

This is the education which James Wilson would receive at the grammar school in Cupar. In the normal order of things, Wilson would have attended his parish school in Ceres from roughly 1748 to 1751, ages six to nine. During this time he seems to have demonstrated sufficient aptitude for his parents to think him destined for the

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specialized knowledge was the original purpose of a university education. *See* John W. Wade, "Public Responsibilities of the Learned Professions," *Louisiana Law Review*, Vol. 21, No. 1 (December 1960): 130-139; Rosemary O'Day, "Social Change in the History of Education: Perspectives on the Emergence of Learned Professions in England, c. 1500-1800," *Journal of the History of Education Society*, Vol. 36, No. 4-5 (2007): 409-428.

[120] Alexander Wright, *The History of Education and of the Old Parish Schools of Scotland*, *supra* at 119.

[121] John Strong, *A History of Secondary Education in Scotland: an Account of Scottish Secondary Education from Early Times to the Education Act of 1908*, Oxford: Clarendon Press, 1909, at 135-140, 154-155.

[122] James Grant, *History of the Burgh and Parish Schools of Scotland*, *Volume I: Burgh Schools*, Glasgow: William Collins, Sons, & Co., 1876, at 336-343.

ministry,[123] and in 1751 he began walking from Carskerdo farm to the Cupar grammar school with his cousin Robert Annan.

It must have been a sacrifice for the Wilson farm to be deprived of the labor of its eldest son. But the farm must have been doing well enough that it could spare him. After all, it was feeding a family of two adults and eleven children—including Annan, also a scholar rather than a laborer. The cost of sending him to the grammar school would have ranged from one shilling to three shillings per month,[124] depending on which classes and how many the student was attending.

To get a sense of what those shillings meant to a family such as the Wilsons, one can apply inflation statistics to find the relative value in present-day currency. One shilling in 1751 had the same buying power as £8.36 ($11.50) in 2021. Three shillings in 1751 could buy the same amount of goods as £25.07 ($34.49). But simple inflation is misleading. The costs of living and income have changed significantly since then, so that spending a shilling in 1751 was a much bigger hit to a family's finances than £8.36 would be today. A more meaningful calculation would be to find the amount that would have the same impact today. Applying those figures, for the Wilson family to spend one shilling in 1751, it would have had the same impact as a low-income family today spending £134.70 ($185.31). Spending three shillings would have felt like spending £404.20 ($556.06). [125]

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[123] *See* Aleson Lansdale Wilson to James Wilson, July 25, 1791, Historical Society of Pennsylvania.

[124] Clagett, "James Wilson—His Scottish Background," *supra* at 175 n. 34.

[125] These calculations, and others which follow, were made with the assistance of the data sets, informational resources, and calculators provided by the Economic History

In other words, sending James Wilson to grammar school eleven months out of the year would have been the equivalent of a low-income family today scraping together anywhere from $2,038 to $6,117 for tuition at an elite (but not boarding) prep school. It was a sacrifice, and it was a sacrifice which would increase every year—not only with rising fees, but also with the value of James' lost labor. The Wilsons clearly believed that it was worth it.

Cupar's school was considered one of the best. One of the few original grammar schools to survive the Reformation, it had been a famous school for four hundred or even five hundred years.[126] Cupar's status as a Royal Burgh, a major market town, and a center of government provided it with the resources to ensure that its grammar school had facilities and funding that others could not. Though it had its ups and downs in the 18th century, in Wilson's time the school was flourishing: its schoolmaster was paid one of the highest salaries; the faculty which served under him always included two full doctors; and the school attracted so many students that they would have to sit on both sides of the desks facing each other, and the school would later need to be divided into two.[127] The school building itself had been "taken down and rebuilt from the foundations" in 1726, complete with a cupola and a school clock, to provide a more suitable and modern facility.[128] From 1744 until 1786, the master of the school was John

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Association, available at measuringworth.com. Math errors are those of the author, and resulting figures are rounded to the nearest approximate.

[126] James M. Beale, *A History of the Burgh & Parochial Schools of Fife*, *supra* at 4.

[127] *Id.* at 143-146. In 1788 the school would be divided into the grammar school proper, which would continue to teach the classics in Latin, and a second "English school" teaching literature, geography, bookkeeping, the "principalls of Geometry," and "the Mathematicke." *Id.*

[128] *Id.* at 146.

Halket, a man held in high regard, and previously the master of the grammar school in Prestonpans.[129]

Officially, Cupar's grammar school was in session nearly the whole year, only taking a single late-summer vacation of four to six weeks beginning at the end of August.[130] However, its master also gave the students days off on "Publick Mercat [market] days and other publick days," and granted them a reprieve from instruction on days when the school was visited by notable scholars (presumably so that the students could be edified by an address or other informal interaction).[131] However, boys aged nine to fifteen could not keep bottled up their need to ramble, horse around, and otherwise 'be boys,' and were frequently compelled to just take off on their own little breaks, much to the consternation of the faculty. And so an earlier master and the town council had reached a compromise whereby the school would "grant the play," by allowing all the pupils to take off the entire first Monday of each month.[132]

James Wilson spent the next six years receiving a thorough education in the classics, Latin, debate, and public speaking. For the rest of his life, he would be noted for the depth of his erudition, his eloquence of language, and "a powerful and well-

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[129] Halket is fondly remembered in Alexander Carlyle, *Autobiography of the Rev. Dr. Alexander Carlyle, Minister of Inveresk, Containing Memorials of the Men and Events of His Time*, Edinburgh: William Blackwood and Sons, 1860, at 57-61 (from his manuscript of 1805).

[130] James M. Beale, *A History of the Burgh & Parochial Schools of Fife*, *supra* at 146.

[131] Cupar Presbytery Session Minutes, September 23, 1720, *Records of the Church of Scotland*, University of St. Andrews Special Collections, GB 227 CH2/82/5.

[132] *Id.*

modulated voice which he had completely under command at all times."[133] As will be seen, though these years of grammar school may not have set him on a path of success in Scotland, in America this education would contribute significantly to his career, from his first job as an instructor of Classics at the College of Philadelphia (now the University of Pennsylvania), to his contributions to American political thought and the Constitution, to his jurisprudence in the first years of the Supreme Court.

Shortly after he turned 15, James Wilson traveled to the fishing town of St. Andrews on the coast of Fife, to take part in the competitive examination for one of four available bursaries at its great and ancient university. A bursary was the equivalent of a "full ride" scholarship covering the student's tuition fees, housing, and meals—which in those years was valued at £5, 11s, 1d. There were four bursaries granted to each incoming class, for a total of sixteen. Although "intended for poor students only, poverty alone was never a sufficient qualification," and so applicants had to undergo a "comparative trial" to ensure that they were granted to the most capable.[134]

To give context to that £5, 11s, 1d., in terms of purchasing power it was the equivalent of roughly £800 ($1,100) in 2021. But price inflation is not the best comparison, because rising standards of living mean that the same equivalent price would have represented a larger share of a family's resources. Taking this into account, that £5, 11s, 1d. in 1757 would have impacted a cash-poor family like the Wilsons as an outlay of roughly £13,000 ($17,884) to a low-income family in 2021.

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[133] George Logan Young, "The Services of James Wilson in the Continental Congress" (PhD diss., Lehigh University, 1954), at 10.

[134] James Maitland Anderson, ed., *The Matriculation Roll of the University of St Andrews 1747 - 1897*, Edinburgh: William Blackwood and Sons, 1905, at xxxviii-xxxix.

This tells us more about the Wilson family's affairs. Annan reports that their farm prospered, and there is certainly no indication that any of the numerous family were going hungry. They had enough surplus that they could spare James for grammar school and pay his fees. But sending him to college would have been like having to come up with $18,000, and this they could not do. If James Wilson did not win a bursary, he was not going to college.

The young man was, however, "most capable." On November 7, 1757, he was awarded one of those four precious bursaries, entered the United College of the University of St Andrews, and entered the next phase of his education.[135]

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[135] The entry in the school record book reads as follows:

St Salv. Coll Nov 7 1757

[Faculty present:] Mr Da. Young, Mr Morton, Dr Simson
Mr To. Young, Mr Wilson

> This being the Day appointed for the Bursar trial the following Candidates appeared, Viz Charles Scot, David Reid, Willm Garvie, Willm Thomson, Jas Wilson, Jon Campbell, Jon Warden, Laurence Johnston, Patr Rob, & Thos Foggs, and upon the usual trials the following four were found most most [sic] deserving. Viz William Garvie, Jon Campbell, Patrick Rob, and Jas Wilson, who were called and allowed to take their Seats at the Bursar Table, & appointed to pay each of them £10 Scots to the Tailar

at 167-168.

The Scots currency was valued at £12 Scots for every £1 sterling, so that each £1 Scots was worth 1s. 8d sterling. The £10 Scots paid to the tailor was thus the equivalent of 16s. 8d. sterling. This seemingly trifling amount had the buying power of almost £120 ($165) in 2021, and the financial impact of nearly £2,000 ($2,751).

D. St. Andrews.

When James Wilson entered the University of St. Andrews at the beginning of November, 1757, the timing could not have been more fortuitous. The university had just spent the preceding ten years of scrambling to re-establish itself at the forefront of Scotland's intellectual world. Now it was primed to instill its students, not only with the intellectual rigor and specialized knowledge required for the practice of law, medicine, and the ministry, but also with the modern philosophical ideas at the cutting edge of Enlightenment thought—all of which would powerfully re-shape the mind of this fifteen-year-old farmboy.

As one of Scotland's five "great universities," the University of St. Andrews had always enjoyed a prestigious reputation. But truth be told, it had lost almost all of its former glory well before James Wilson was born. When the university was founded in 1413, the town of St. Andrews—named for the patron saint of Scotland—had already made its name as a religious center and an important market town, and it would gain further status as the seat of Scotland's archbishopric from 1472. But by the 18th century it had decayed into a "gloomy" fishing town, its former grandeur now "humiliating" empty ruins, and even the fishing poor after generations of over-exploitation.[136] Its university had fared no better.

The decline had begun in earnest in the aftermath of 1689's Glorious Revolution—when the archbishopric and indeed the entire Restoration Episcopate were

[136] Lee Davies, "The Fishing Industry and the Development of Tourism in St. Andrews and the East Neuk Burghs of Fife, c. 1785-1914" (PhD diss., University of St. Andrews, 1978), at 1-4 (quoting Samuel Johnson and Francis Douglas); T. C. Smout and Mairi Stewart, *The Firth of Forth: An Environmental History*, Glasgow: Birlinn, 2012, ch. 2.

abolished in retaliation for their outspoken support for James VII of Scotland and II of England. The loss of its archbishops meant the loss forever of the town's ecclesiastical and political importance. Without such a draw, the geographic isolation of Fife—and of St. Andrews as a lonely promontory on the peninsula's far eastern shore—began to act as a barrier to trade and economic growth. Scotland's economy shifted west, concentrating in places such as Glasgow which could more readily trade with the American colonies. Fewer people coming to St. Andrews meant fewer students for its university, and a dwindling economy meant less funds for paying professors and repairing buildings.[137] An outbreak of Jacobite demonstrations by its students after the Hanoverian succession only persuaded Government to close its purse tight, and its ears tighter against pleas for funding.[138] Though none of this seemed to have affected the students much, as they continued living and studying in much the same manner as they had for generations, the student body was soon only half the size it had been in 1689, while in that same time enrollment at the universities of Glasgow and Edinburgh had shot up "by leaps and bounds."[139]

The University of St. Andrews had long consisted of three colleges: the undergraduate colleges of St. Salvator and St. Leonard, and the graduate college of St. Mary for those seeking a degree in Divinity. In 1730, the total enrollment in all three colleges was only 150 students.[140] Visitors mourned that the once-majestic buildings of

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[137] Ronald Gordon Cant, *The University of St Andrews: A Short History*, rev'd ed., Edinburgh: Scottish Academic Press, 1970, at 73, 77-79.

[138] *Id* at 86.

[139] *Id*.at 85.

[140] *Id*.

the colleges were "entirely neglected and unaccountably out of repair," as holes in the roofs and broken windows went unmended as the years went on.[141] Along with the student population and the school's state of repair, the quality of the faculty also underwent a long decline, due largely to the fact that instructors were paid a pittance "the meanness" of which "must needs be a discouragement to men of learning and abilities to accept" positions there.[142] It did not help that St. Andrews still utilized the medieval system of regenting, where a single instructor (or "regent") would be assigned a class of incoming first-year students, who would be his only students for the next four years, teaching all of their classes in progression, before starting over again with a new incoming class.[143]

Some of this would be remedied—if only for a few decades—with the consolidation of the two undergraduate colleges into a single United College of the University of St. Andrews by an Act of the Parliament of Great Britain in 1747. The Act provided much-needed funding for construction, maintenance, and salaries, while the merger itself eliminated the inefficiencies of duplicated expenditure, facilities, and personnel. In addition, the faculty was improved: no longer generalist regents, each was now a proper "professor," specializing in a single subject matter.[144]

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[141] R. G. Cant, *The University of St Andrews*, *supra* at 89 (quoting John Macky, Daniel Defoe, and others). Cant points out in a footnote that the students did not help matters, as it was their tradition "to celebrate the end of the session by breaking all the windows in the college." *Id*. n. 3.

[142] Preamble, University of Saint Andrews Act, 1747, Stat. 20 Geo. 2, c. 32.

[143] James Maitland Anderson, ed., *The Matriculation Roll of the University of St Andrews 1747 - 1897*, Edinburgh: William Blackwood and Sons, 1905, at xxiv.

[144] University of Saint Andrews Act, 1747, *supra*. *See also* Anderson, *The Matriculation Roll*, *supra* at xxix; and Cant, *The University of St Andrews*, *supra* at 91.

Almost at once the University of St. Andrews began to regain prosperity and prestige. The dilapidated dormitories were replaced with new buildings, including a three-level neo-classical residence with a long arcade that opened onto the large quadrangle that even now remains the central feature of the university.[145] Men of distinction and learning began taking posts as "professors," each holding the Chair of his specific discipline. Demonstrating that St. Andrews was once again at the forefront of learning, a new field of Civil History was added to the curriculum—the very concept of History as a discipline being only recently invented by philosophers of the Scottish Enlightenment, and now a symbol of modern thought.[146] (The Chair also provided a sinecure for one of the college instructors made redundant by the merger, giving him a salaried post but not making his course a mandatory part of the curriculum.) The university's library—which also served as the University's formal ceremonial space—had as complete a collection of books as could be hoped, with a copy of every book published in Great Britain since 1709 and more.[147]

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[145] Cant, *The University of St Andrews*, *supra* at 93-94.

[146] The Chair of Civil History also provided a sinecure for an aged college lecturer who had been made redundant by the merger. William Vilant had been the full professor of Humanity (the Latin classics) at St. Salvator's College since 1695, but in the United College that Chair was given to his younger colleague from St. Leonard's. The Chair of Civil History ensured him a tenured position, though his course would be an optional elective rather than a mandatory part of the curriculum. Anderson, *The Matriculation Roll*, *supra* at xxxii, lxxvii-lxxix.

[147] Anderson, *The Matriculation Roll*, *supra* at ixix; Cant, *The University of St Andrews*, *supra* at 95-96.

Fig. 7: St. Salvator's Quadrangle, known affectionately as "Sallie's Quad." Iain Masterton, *St Salvator's Quad at St Andrews University*, March 28, 2019, in *The Sunday Times*, April 28, 2019.

And so when James Wilson came to St. Andrews in the fall of 1757, he entered an institution which—like Scotland itself—was shaking off its shoddy past. In fact, he arrived at the peak of its glory, for later decades would see St. Andrews begin to decline again. He literally could not have attended at a better time. This was a lucky accident of timing, of course, not driven by fate or any such narrative causality destining a character for greatness.[148] History doesn't work that way. But this circumstance in itself would be

[148] Although not the first to use the phrases "narrative causality" and "narrative imperative" to refer to the human tendency to think of lives and history as if they are driven by a plot, Terry Pratchett must be credited with putting both the phrase and the idea into common use. *See* Terry Pratchett, *Witches Abroad*, London: Gollancz, 1991, at 8 and *passim*; Terry Pratchett, Ian Stewart, and Jack Cohen, *The Science of Discworld*, London: Ebury, 1999, *passim*. The tendency even affects writing about scientific processes. *See* John Gribbin, *In Search of the Big Bang*, London: Corgi, 1987, at 195-196 ("this is necessary license; it would break up the flow of the story too much to keep

just as important in shaping the lived experience and worldview of the young student as would be the lectures of his professors. Wilson was enveloped in an environment of progress and improvement, and daily experienced the "awesomeness" it could achieve. It could only have seemed a natural fact that humans and human society were perfectible.

Upon entering the school, James Wilson at once attained new social status. He set aside the clothing of a layman, of a farmer's son, and put on the scarlet robes of an undergraduate.[149] Receiving the gown symbolized the "transition from boyhood to manhood," and students were expected to wear their scarlet robes even as they roamed the town beyond the school walls.[150] The daily wearing of the short, sleeveless gown in school and out must have helped instill in the students a sense of unity, of belonging to a team. It is difficult to overstate the degree to which garments in 18th-century Scotland conveyed social rank and status. The robe gave students—especially students of modest

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putting in cautions"). The author is well aware of this danger, and apologizes for the inevitable lapses which have escaped his attention.

[149] Although in previous generations the scarlet robe was awarded only after advancing to one's second year, by Wilson's time it was worn by first-year students as well. *See* Jonathan C. Cooper, "The Scarlet Gown: History and Development of Scottish Undergraduate Dress," *Transactions of the Burgon Society*, Vol. 10 (2010): 8-42, at 15.

[150] Since 1642 St. Andrews had "ordained, that the whole Students of the University . . . go in there gownes, both within the Colledge and without upon the streets." Cooper, "The Scarlet Gown," *supra* at 14 (quoting the report of the Revolutionary Commission of the General Assembly).

The reason for this ordinance was not to mark the students as more special than the rest of the town, however. It was so that "students, particularly at night, could be watched and tracked down by the disciplinary officers." W. N. Hargreaves-Mawdsley, *A History of Academical Dress in Europe until the End of the Eighteenth Century*, Oxford: Clarendon Press, 1963, at 139.

backgrounds—a constant affirmation that they had risen in society, of their membership in an elite class which could not be concealed.

Fig. 8: 18th-century scarlet gowns of the United College, detail from an untitled and unattributed painting in the collection of the Museum of the University of St. Andrews, displayed online at https://museumoftheuniversityofstandrews.wordpress.com/2014/06/17/dressed-to-impress-st-andrews-and-the-scarlet-gown. The painting depicts the sleeveless scarlet gown that was worn in James Wilson's time. There was no prescribed headwear, and until the late 19th century students wore whatever hats were in fashion. Cooper, "The Scarlet Gown," *supra* at 33.

This team identity was strengthened by the fact that St. Andrews was a residential institution. Technically, this meant that the students all lived in a common dormitory, took their meals together, went to classes together, studied together, and talked about it all together in their rooms in the evenings (although the reality was that many of those who could afford it preferred to find rooms in the town and have their bull sessions in the local taverns). Whether they lived in the dorm or in town, all of the students of each entering class went to all the same lectures together as a group during their first year, and for the remainder of their four years they would continue to attend the required courses as a group. Shared stresses and hardships, challenges and successes, inevitably formed each class into its own tightly-knit band of brothers, sharing a deep intellectual intimacy that would last throughout adulthood.

As mentioned, when James Wilson entered the school, St. Andrews sported a new residence hall. But one can understand why those who could afford it preferred other quarters. Students lived two to a room, furnished with a Calvinist simplicity with a table, two chairs, and a medieval box bed—a mattress entirely sealed within a wooden cupboard with a cabinet door or sliding panels.[151] As the recipient of a bursary, however, James Wilson was required to live in the dorm.

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[151] Such beds had already long since passed out of fashion, but though the ideas taught in the classrooms may have been modernizing, time did not seem to otherwise affect the ancient universities. A hundred years later, however, Emily Brontë's Nelly Dean would note the advantages of the box bed:

> I fastened my door and glanced round for the bed. The whole furniture consisted of a chair, a clothes-press, and a large oak case, with squares cut out near the top, resembling coach windows.
>
> Having approached this structure, I looked inside, and perceived it to be a singular sort of old-fashioned couch, very

Perhaps to other students the living arrangements may have seemed spartan. But to James Wilson? At home, two adults and eleven children squashed together in the same small house. Here he had a full room shared with only one other student. A room filled with furniture—their own furniture. And that box bed, which others might have found quaint or bizarre, offered James the first space of his own, the first privacy he had experienced in his life. It is difficult to imagine him complaining at being required to live in such comparative luxury.

Schedule and routines provided both structure and ritual to residents' daily life.[152] The college bell rang at 5:00 a.m. to rouse the students. At six, the school's gates would be opened to welcome the students and faculty who lived in town. Each week a different member of the faculty served as the Hebdomadar (Latin for "weekly"), living in the residence and supervising the students' conduct, and around six in the morning he would make his rounds to make sure that everyone was up and about, and then conduct the morning prayers. Resident students would take breakfast in their rooms, and each student was issued a pewter plate and a silver spoon for the term (forks and knives were their own responsibility). After the morning lectures, the school's full faculty and staff

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> conveniently designed to obviate the necessity for every member of the family having a room to himself. In fact, it formed a little closet, and the ledge of a window, which it enclosed, served as a table.
>
> I slid back the panelled sides, got in with my light, pulled them together again, and felt secure against the vigilance of Heathcliff, and every one else.

Emily Brontë, *The Annotated Wuthering Heights*, Janet Gezari, ed., Cambridge, Harvard University Press, 2014, at 64.

Claustrophobics, however, might disagree with her sentiment of cozy security.

[152] *See* Cant, *The University of St Andrews*, *supra* at 84, 98.

met for the day's main meal, dinner, which was served in the residence hall's dining room—though not all ate equally well. The students who sat with the faculty at the High Table—the "Boarders"—were paying for school and ate better than the Bursars and Portioners whose education was provided at the University's expense.[153] At the

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[153] Portioners, sometimes called Portionists, were students of lesser means who had not been awarded a full bursary scholarship. They were not given rooms in the residence hall, but lived with the household of the college's Principal. It appears that, of the great universities, only St. Andrews made such a provision, in addition to its bursaries. Students were categorized further as "Primars," the sons of peers; "Secondars," the sons of landed gentry and the professional class; and "Ternars," students of all other backgrounds. *See* Stephen Cowley, "Rational Piety and Social Reform in Glasgow: The Life, Philosophy and Political Economy of James Mylne" (PhD diss., University of Edinburgh, 2013), at 23.

Another category of scholarship at St. Andrews was the Server: Four students were granted the same room and tuition as the bursars, but had to partially compensate the school by waiting on the tables at meals. Anderson, *The Matriculation Roll*, *supra* at xxxviii.

The food allowances for each of the categories were spelled out with some specificity:

> That each Border at ye High table shall have for Breakfast one third of a loaf and one mutchkin of milk to be carried to his chamber by the Table servers, amongst whom this service shall be divided according to the Principal's order (his own server being exempted therefrom) and each Boarder shall have of bread and ale at Dinner and Supper as formerly.
>
> That each Bursar shall have for Breakfast one third of a scone and a mutchkin of milk or ale, for which he shall go to the pantry himself and carry it to his own chamber, and eat it there. That he shall have at Dinner one half of a scone and one mutchkin of ale; and at Supper one half of a loaf and one mutchkin and a half of milk or ale and that their server shall have one scone and one chepin of ale per day.
>
> That each Portioner shall have for Breakfast one fourth of a Loaf and one mutchkin of milk or ale, for which he shall go to the Pantry himself and carry it to his own chamber and eat it there. That he shall have at Dinner one fourth of a loaf and a mutchkin of ale; and at Supper one half of a loaf and a mutchkin of milk or ale, and that their server shall have one scon and three half mutchkins of ale per day.

beginning of dinner, the week's Hebdomar would say the grace, and at the end of the meal one of the Bursary students, such as James Wilson, would deliver to the assembled school body a reading from Scripture and a Psalm. After the afternoon lectures there would be leisure time until the evening meal, supper. Supper was technically supposed to be, like dinner, enjoyed by all in the dining room; but the resident students generally took their plates back to their own rooms.[154] Whatever they did with their leisure time, the resident students were to be back at the college before 10:00 p.m., for that was when the gates would be shut.[155]

James Wilson's life at St. Andrews, apart from his studies, was thus one guaranteed to improve his abilities and standing. As a Bursar, he had no choice but to share in the intimate camaraderie of his classmates; to share and debate their ideas and his own; to broaden his horizon with the diversity of their backgrounds as sons of lords,

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> That the milk which is brought to ye College be applyed first to the Boarders (if they require it) then to ye Bursars and lastly to ye Portioners.
>
> . . .
>
> Than on Sundays the bursars and portioners shall have only one-third of a loaf to supper, seeing they have flesh then; and on the same account the servers shall have only one-third of a scone.

United College Minutes, January 1740, extracted in John Herkless and Robert Kerr Hannay, eds., *The College of St. Leonard: Being Documents with Translations and Historical Introductions*, Edinburgh: William Blackwood and Sons, 1905, at 225-226.

[154] Although the author can find no account of where the students and faculty living in town took their evening meal, it would certainly make sense for them to find less spartan fare in the outside world. Their absence might have been an incentive, or perhaps an example, justifying the other students to just take it in their rooms as they did for breakfast.

[155] However, given that the undergraduates were all teenage boys, one can readily imagine regular adventures of climbing the wall or otherwise sneaking back in after the gates had been closed, with the Hebdomadar and beadles turning varying degrees of a blind eye.

lawyers, and laborers alike; to regularly practice his public speaking with dinnertime Bible readings; and to gain the elevated social status shared by all university students regardless of family.

Further elevation came near the end of his first term. Admission to the United College had not automatically made James Wilson, or any of the other 29 new students of his entering class,[156] a member of the University of St. Andrews. The formal act of admission to the University only took place as one neared completion of his first undergraduate year, in a ceremony known as Matriculation. This ceremony was held in the formal library hall, where the underclassmen would be "introduced" to the university, traditionally by the professor of Greek. At James Wilson's ceremony on February 23, 1758, conducted in Latin, he was introduced by the name "Jacobus Wilson," as a student of the professor of Greek, Walter Wilson, or rather "Ex classe Magistri Gualteri Wilson Graecae Linguae Professoris."[157] Matriculation was much more than admission to the university—Matriculation at any of Scotland's universities inducted a student into all them. Once matriculated at St. Andrews, then, one could transfer to any of the others at any time—even later in life—and simply pick up at whatever stage one had left off.[158] For James Wilson, this would be a matter of great importance some years later, after events had turned his life upside down.

Further elevation occurred in the January or February of one's second year, when students underwent a ritual that was peculiar to St. Andrews: the "semi-powdering."

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[156] Anderson, *The Matriculation Roll*, *supra* at lxxxvii.

[157] *Id*. at 9-10.

[158] *Id*. at xxii.

This was a student tradition, involving no little merrymaking, at which each second-year student (or "semi") would put on for the first time the powdered wig—an accessory that erased the distinction between youth and age, but most importantly marked one as a gentleman.

"The signifiers of dress" were strongly ingrained in the culture of 18th-century Scotland, expressing one's place in the social order, and emphasizing "the political and economic superiority" of those in the top ranks.[159] The powdered wig—unlike the various wigs worn by non-elites—had great symbolic importance, bestowing upon those who wore it "status, masculine respectability, and authority."[160] For a student at St. Andrews, undergoing the powdering "marked his attainment of man's estate."[161] For James Wilson, this must have had great meaning indeed, as for the rest of his life he would continue to wear "a freshly powdered wig," even after it had gone out of fashion in America.[162]

Of course one of the most important influences the university could have on James Wilson was its academics: the professors who would teach him, and the lessons he would learn. Wilson's course of study was prescribed by the 1747 Act which had established the United College. Each term began at the start of November, and finished

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[159] Matthew Glozier, "Clothing and the Fashion System in Early Modern Scotland," *Journal of the Sydney Society for Scottish History*, Vol. 3 (1995): 36-52, at 51.

[160] Samuel Marknäs, "Casting Off Powder: The Death of the Powdered Wig and Birth of British Sartorial Modernity, 1795-1812" (M.A. Thesis, Uppsala Universitet, 2021) at 4-5.

[161] George S. Pryde, "Review of *Two Students at St. Andrews, 1711-1716* by William Croft Dickinson," *The Scottish Historical Review*, Vol. 32, No. 114 (October 1953): 156-161, at 158. *See also* Cooper, "The Scarlet Gown," *supra* at 15.

[162] James D. Best, *Tempest at Dawn*, Tuscon: Wheatmark, 2010, at 109.

early the following May. From the records of the University of St. Andrews, one can reconstruct James Wilson's schedule:

Year 1, 1757-1758: Humanity (Latin, Classics)
Prof. Alexander Morton (Chair from 1753 - 1769)
Greek
Prof. Walter Wilson (1748 - 1769)

Year 2, 1758-1759: Humanity
Prof. Alexander Morton
Greek
Prof. Walter Wilson
Mathematics
Prof. David Gregory (1747 - 1765)
Logic, Rhetoric, and Metaphysics
Prof. Robert Watson (1756 - 1778)

Year 3, 1759-1760: Humanity
Prof. Alexander Morton
Greek
Prof. Walter Wilson
Mathematics
Prof. David Gregory
Moral Philosophy
Prof. John Young (1747 - 1772)

Year 4, 1760-1761: Humanity

Prof. Alexander Morton

Greek

Prof. Walter Wilson

Mathematics

Prof. David Gregory

Natural Philosophy (physical sciences)

Prof. William Wilkie (1759 - 1772)

In addition to these mandatory courses, students were encouraged to attend the lectures in Civil History as an elective, as well as any other lectures that might be offered during the term by the faculty or visiting scholars.[163]

It would appear that James Wilson took advantage of the opportunity right from the start. In addition to his first-year curriculum of Latin and Greek, he added studies in Theology, consistent with the expectation that he would go on to pursue a degree in Divinity. On February 15, 1758, he signed out a copy of Turnbull's *The Principles of Moral and Christian Philosophy*, which he did not return until May 3. On February 18, he signed out Wendelin's *Christianae Theologiae*, though he returned that one the following week. On February 25th, he checked out the third volume of Carroll's *Remarks upon Mr. Clarke's Sermons*, which he returned on March 24, whereupon he signed out Theodore Beza's *New Testament in Greek and Latin*, which along with Turnbull he returned on May 3.[164]

[163] Anderson, *The Matriculation Roll*, *supra* at xxv, lxxiv-lxxx.

[164] Register, St. Andrews Library.

It would appear that Wilson wanted to get a head start on the next year, as well, because over the summer break he returned to the St. Andrews library to check out another book. On June 7, 1758 he signed out the first volume of Joseph Addison's *Plays*, the first of which was Addison's 1713 drama, *Cato, a Tragedy*.[165]

Addison's *Cato* was a heroic drama with an emphatically republican sentiment. It depicted an idealized version of the Roman orator's suicide, a virtuous man preferring to die rather than compromise his moral principles. But more than that, and unlike the similar tale of Socrates, Addison's was a political hero, defending the principles of liberty and the opposition of tyranny.[166] An instant hit upon its debut in London, where it ran continuously from 1713 to 1750, from 1735 onwards *Cato* would also the most frequently performed play in the American colonies—and echoes of its lines can be seen in Madison and Hamilton's essays in the *Federalist Papers*.[167] The play and the others in the collection also happened to be a favorite theme of a professor he would have the coming term, Robert Watson.

If one relied on Robert Annan's letter and the other biographical accounts of Wilson's life, one would believe that James Wilson received the full four-year curriculum before proceeding to the university's graduate college, St. Mary's, to study divinity. But as will be explained later, Wilson did not stay at the United College for the

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[165] Joseph Addison, *Plays Written by the Right Honourable Joseph Addison, Esq.*, London: J. Tonson, 1735.

[166] M. M. Kelsall, "The Meaning of Addison's Cato," *The Review of English Studies*, Vol. 17, No. 66 (May 1966): 149-162.

[167] Eva Saks, "The Staging of the Constitution, or, the Republican Masque of *The Federalist Papers*," *Theatre Journal*, Vol. 41, No. 3 (October 1989): 360-380, *passim* and at 370-374.

full four years. Instead, he ended his studies at St. Andrews after his second term, in early 1759.

When under the impression that he had remained for the full four years, historians could conclude that his thought had been influenced by John Young's lectures on Moral Philosophy and William Wilkie's on Natural Philosophy. Those would have been significant influences—Wilkie in particular was a noteworthy intellectual in the Scottish Enlightenment, known not only as an excellent teacher of the new developments in science, but also a poet and an all-around Renaissance Man.[168] But it was not to be.

Wilson did have a remarkable professor, however: his second-year professor of Logic, Rhetoric, and Metaphysics, the aforementioned Robert Watson.

Robert Watson.

Robert Watson is often assumed to have done little more than re-deliver lectures that Adam Smith had given at the University of Edinburgh in 1750. That certainly would have exposed James Wilson to the cutting-edge ideas of one of the Enlightenment's leading minds, well before they reached America in printed form. But although Watson did study under Smith and teach from Smith's materials while at Edinburgh, at St. Andrews he was very much his own lecturer.

[168] *See* Richard B. Sher, *The Enlightenment & the Book: Scottish Authors & Their Publishers in Eighteenth-Century Britain, Ireland, & America*, Chicago: University of Chicago Press, 2006, Ch. 1.

When Smith left suddenly at the beginning of January 1751, to take up the Chair of Logic at the University of Glasgow, the University of Edinburgh recruited his star pupil Robert Watson to continue the course from where Smith had left off and give lectures "similar to Smith's." So the common assumption that he simply read from Smith's notes and re-delivered Smith's lectures is not an irrational guess. But it is incorrect. Watson's lectures at St. Andrews have been preserved in manuscripts and in surviving notebooks of his students, and from these one can readily discern that the ideas he shared during James Wilson's term with him were already advancing into new territory.[169]

Robert Watson's lectures that year are excellent examples of Scottish Enlightenment thought. The philosophers of this movement lived through a period of great social, political, and economic change in Scotland—a period marked by rapid improvement as Scotland lurched forward out of the middle ages into the forefront of the modern world. As philosophers of every age have done—from Aristotle to Hobbs to Marx and beyond—they could not help but generalize their own unique lived experience into an explanation of humankind in all places and at all times. For the men of the Scottish Enlightenment, perhaps the core assumption of their new thinking was their concept of history as a story of Progress: that human existence underwent a process of improvement, a process which could be studied scientifically. It was an idea that had emerged in the previous century with early Whig theory of men like John Locke, who had witnessed the revolutions of Newton as well as William and Mary. But the idea of

[169] These are wonderfully described and summarized in Paul G. Bator, "The Unpublished Rhetoric Lectures of Robert Watson, Professor of Logic, Rhetoric, and Metaphysics at the University of St. Andrews, 1756-1778," *Rhetorica: A Journal of the History of Rhetoric*, Vol. 12, No. 1 (1994): 67-113.

History as a scientific study of Progress gained its greatest impetus and influence from the Scottish Enlightenment thinkers like Hume, Smith, Hutcheson, Reid, and Bentham—whose influence would ironically be felt most beyond their own shores, in the new ideas of America, those of Rousseau and the Declaration of the Rights of Man, Simón Bolívar, the United Nations, Marxism, Capitalism, and even the *Encyclopedia Britannica*.[170] This intellectual revolution in Scotland is correctly deemed "one of the decisive turning points for the transition of Western Europe,"[171] the West, and the beginnings of the modern world.

A corollary of this idea is the philosophy known as "Common-Sense Realism," or the "Scottish School of Common Sense." Just as "history-as-progress" taught that improvement could be achieved through the application of rational thought, Common-Sense Realism as envisioned by Reid, Ferguson, Beattie, and others held it to be self-evident that humans were capable of doing it. In what would become the foundation of modern methods of gathering knowledge and understanding our world, the Common-Sense school held that we live in a real world; that though our senses may be flawed or

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[170] *See, e.g.*, John Robertson, "Enlightenment and Modernity, Historians and Philosophers," *International Journal for History, Culture and Modernity*, Vol. 8, No. 3-4 (2020): 278-321; William Ewald, "James Wilson and the Scottish Enlightenment," *supra*; Cairns Craig, *Intending Scotland: Explorations in Scottish Culture since the Enlightenment,* Edinburgh: Edinburgh University Press, 2009; Silvia Sebastiani, "'Race', Women and Progress in the Scottish Enlightenment," in Knott, S. and Taylor, B., eds., *Women, Gender and Enlightenment*, London: Palgrave Macmillan, 2005, at 75-96; John Robertson, "The Scottish Contribution to the Enlightenment," in P. Wood, ed., *The Scottish Enlightenment: Essays in Reinterpretation*, Woodbridge: Suffolk, 2000; H. R. Trevor-Roper, "The Scottish Enlightenment," *Studies on Voltaire and the Eighteenth Century*, Vol. 58 (1967): 1635-1658; and Stewart Sutherland et al., "Scottish Enlightenment," *Encyclopedia Britannica* at https://www.britannica.com/event/Scottish-Enlightenment.

[171] Neil Davidson, "Scotland: Birthplace of Passive Revolution?" *Capital & Class*, Vol. 34, No. 3 (2010): 343-359, at 343.

fooled, through our senses we can perceive reality; and that through the application of human reason we can make sense of it all, rule out misconceptions, and so gain a better understanding of reality. These were not special talents, but natural abilities that everyone is born with. To people of present-day Western society, such ideas must seem, well, common sense. But at the time it was revolutionary, a refutation of even Descartes and Locke, and stood in stark contrast to the skepticism of other Scottish Enlightenment thinkers such as Hume. We now can see Scottish Common-Sense Realism as a key foundation for the development of the scientific method, empirical analysis, legal principles of evidence, early psychiatry, the abolition of slavery, and of course American political thought.[172]

Robert Watson was himself a noted historian, in addition to his role as professor of logic and rhetoric. He had internalized the sense that the lesson of history was that humankind was capable of improvement, and that by employing human reason and intellect not only individuals but all of society could be made better, happier, and more just. This philosophy affected even his lectures on the seemingly non-metaphysical subjects of Logic and Rhetoric.

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[172] R. F. Stalley, "Common Sense and Enlightenment: the Philosophy of Thomas Reid," in Peter Gilmour, ed., *Philosophers of the Enlightenment*, Edinburgh: Edinburgh University Press, 1990; William W. Cobern and Cathleen C. Loving, "An Essay for Educators: Epistemological Realism Really Is Common Sense," *Science & Education*, Vol. 17 (2008): 425-447; Charles Barzun, "Common Sense and Legal Science," *Virginia Law Review*, Vol. 90, No. 4 (September 2013): 1051-1092. Perhaps ironically, Common-Sense Philosophy would later be championed by fundamentalist evangelical Christians in the United States to argue that faith-based beliefs could be discovered to be just as "real" as the findings of any scientific study. *See* Bradford McCall, "The Pentecostal Reappropriation of Common Sense Realism," *Journal of Pentecostal Theology*, Vol. 19, No. 1 (2010): 59-75.

Logic, then as now, involved training students to think with precision, to identify and avoid error, and to present arguments as cogent evidentiary proofs leading to a conclusion. Mastering the application of clear reason and sound judgment was the prerequisite for all other higher learning—the study of law, mathematics, philosophy, the sciences, and even history all necessitated more rigorous analysis than most people were accustomed to. But for Watson, logic was above all else the key to unlocking the secrets of rational understanding. Logic provided the essential tools for improving one's own thoughts and principles, and those of society. As taught by Watson, it was with the clear reason and sound judgment attained through mastery of logic that humans could ultimately discover Truth.[173]

But it is in his lectures on Rhetoric that Watson pushed forward into his own new realms of Scottish Enlightenment thought. At the beginning of the term, Watson pronounced to his students that "the first advantage to be drawn from the Rules of Rhetorick is that they improve our Taste." But by this, he made clear, he did not simply mean the pleasance of one's aesthetics. Improving one's taste could only lead to "improvement in Virtue," as defined by new Common-Sense School theories of morality. To Watson, rhetoric was not merely the skill of effective public speaking and persuasive use of language. Language was not simply a tool for communicating with others. Poetry and drama were not merely ways to create beauty and arouse the soul. All were means by which an individual could improve himself and thus become a more virtuous, worthy human being.

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[173] Bator, "The Unpublished Rhetoric Lectures of Robert Watson," *supra* at 80-83.

This was a departure not only from more recent thinkers such as Hume, Locke, and Descartes, but from the great Latin writers Watson's students had been diligently studying since they were nine or ten. To such as Cato, a good rhetorician was a "good man speaking well." Watson reversed that. He taught that, by speaking well, one could make oneself a good man. The rhetoricians he was creating would be men capable of criticizing their own thoughts, of spotting and correcting their own errors, and capable of composing the thoughts inside their own head in whatever manner would be best suited to accurately re-create them inside all the heads of their audience. His rhetoricians would not merely appreciate beautiful poetry, stirring narrative, and provocative drama; they would know what made it beautiful, stirring, and provocative, and do it themselves. With such skills, Watson's new rhetoricians would improve their use of language, yes, but more importantly they would improve the quality of their own thoughts, and thereby progress into better human beings who could help make a better society.[174] And as for the play version of *Cato*, which James Wilson read over the summer before the 1758-1759 term, it and Addison's other works were among Watson's favorite examples for demonstrating precisely what he meant.[175]

After five years at grammar school learning to declaim and debate from the oratory of classical Rome, James Wilson and the rest of his class must have realized how new and different this approach was. Watson had replaced the traditional pedagogy, which had barely changed since the late Middle Ages, with a new way of teaching that exposed his students to the latest ideas of Scotland's intellectuals. These students, who

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[174] *Id*. at 83-111.

[175] Though as Bator points out, Watson could also use Addison as an example of what not to do. *Id*. at 96.

all attended the same lectures together and lived and debated together in their tightly-knit groups, would have drilled these ideas into each other as they discussed, debated, and disputed in the evenings of that second year.

As shall be seen, Watson's lessons had a significant impact on the thinking of James Wilson, whose application of such thought would not only help form America's drive for independence (and even influence Thomas Jefferson's words in the Declaration of Independence), but would help shape the institutions and philosophy of American government and jurisprudence. James Wilson turned out to be the student every professor dreams of.

Those who knew Wilson in America certainly knew that Watson had made an important impact on James Wilson's thinking. In his 1824 *Biography of the Signers to the Declaration of Independence,* Robert Waln, Jr. included an account of James Wilson's life which Waln appears to have carefully researched with the assistance of Bird Wilson, and with access to family letters that unfortunately have not survived.[176] In this account, Waln asserted that James Wilson owed much of his accomplishment to Watson: "It was under the tuition of the . . . celebrated Dr. Watts [sic], in rhetoric and logic, that he laid the foundation of the celebrity which he subsequently acquired, as a powerful orator, and almost irresistible logician."[177]

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[176] *See* Ewald, "James Wilson and the Scottish Enlightenment," *supra* at 1109-1113.

[177] Robert Waln, Jr., *Biography of the Signers to the Declaration of Independence*, Vol. VI, Philadelphia: R. W. Pomeroy, 1824, at 114.

A caveat, however: Waln in the same passage asserts that Wilson also studied under "the famous Dr. Blair" at the University of Edinburgh. From this, the Annan letter, and other sources, it would seem that by the 1820s James Wilson's brief stay at Edinburgh's English School (discussed in detail below) had been distorted into an idea that he had

The same year that Robert Watson's required class was opening Wilson's mind to some of the new ideas of the Scottish Enlightenment as they related to logic and language, it may be that the young student was discovering even more of these ideas in an elective. Perhaps he was sitting in on John Young's third-year class on Moral Philosophy. For in addition to various books for his Humanity course throughout the term, and still more theological works, on February 12, 1759, Wilson signed out a copy of *A System Moral Philosophy*, by Francis Hutcheson—the father of the Scottish Enlightenment. Wilson kept the book through the end of the term, returning it on May 3, 1759.

Francis Hutcheson

One cannot overstate the influence that Francis Hutcheson had on the new political philosophies emerging in Scotland's universities. Nor can one overstate the influence that he had, through men such as James Wilson, on the political thought yet to arise in the Americas.

Hutcheson was Ulster Scot, born in northern Ireland but culturally Scottish. After receiving his degree in Theology from the University of Glasgow, he moved to Dublin where he opened an academy and began publishing essays on good and evil, beauty and virtue. In Dublin, he made a name for himself among the city's radical Whigs, then his reputation began to spread even wider. His alma mater offered him the position of professor, and in 1730 he began teaching as the Chair of Moral Philosophy at the University of Glasgow.

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studied at Edinburgh. Though the famous Hugh Blair certainly lectured at Edinburgh, James Wilson never attended that university.

Hutcheson was revolutionary as a pedagogue. He gave his lectures in English instead of Latin. He strode up and down the aisles as he spoke. He didn't stick to the script of teaching philosophy students about philosophers, but engaged his students in an effort to teach the virtues that would improve society. "Admittedly the superior of his predecessors . . . The freshness of his thought, its departure from the usual academic spirit, his eloquence and earnestness [gave him] the wonderful hold he had upon the minds of young men."[178] Among those student was a young Adam Smith, who will figure further on in this paper.

Hutcheson's ideas on Moral Philosophy introduced themes that would be developed at length by those who followed. He taught that, among the natural senses humans employ to perceive themselves and the world around them, one was an innate moral sense. That people naturally perceive what is morally right. And that, though of course everything suffers ups and downs, when people behave morally it tends to add up over time into historical Progress—improving the virtues of individuals would lead to improving the welfare and happiness of their whole society. And because of the moral sense and the gift of reason, such improvement could be attained.

This "moral sense" theory explained the concept of "rights." He started with the presumption that, so long as one did not stand to lose personally, people generally and naturally favor the pursuit of "publick good" over the private gain of some other individual or group. This natural inclination, he said, stemmed from the innate moral sense. There were certain things that were absolutely necessary for the public good—

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[178] William Robert Scott, *Francis Hutcheson: His Life, Teaching, and Position in the History of Philosophy*, Cambridge: Cambridge University Press, 1900, at 64.

such as not being killed, or being able to keep what you'd earned, or the freedom to do things for the common good—that if society allowed them to be violated, it "would make life intolerable." Protecting such necessary expectations as life, property, and liberty, preserved society itself. These expectations he called "perfect rights."[179]

What Hutcheson called "imperfect rights" were the kinds of things that make it easy to get along with each other. Manners and politeness. Charity and gratitude. Would society fail if people got rude or didn't share their property with those who needed more? No. It might not be as pleasant, and we wouldn't get as much done, but it wouldn't make everyone miserable.[180]

Then there was a third category which he called "external rights," but which is closer in meaning to the kind of thing police vice squads used to enforce: gambling, drinking, etc. Activities that are actually detrimental to the public, but if you try to prevent it and punish it the outcome would be even worse. Prohibition is the example that usually comes to mind.[181]

This was a clear way of thinking about rights as expectations—expectations that absolutely must be protected, expectations that only require gentle enforcement, and expectations that one isn't going to be punished for certain kinds of things.

When it came to government, therefore, the concept of rights clearly limited its authority. Person A cannot take away—or alienate—the rights of person B. And if

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[179] Francis Hutcheson, *An Inquiry into the Original of Our Ideas of Beauty and Virtue in Two Treatises*, Wolfgang Leidhold, ed., Indianapolis: Liberty Fund, 2008, at 183-184.

[180] *Id*. at 184.

[181] *Id*. at 185.

nobody has the power to alienate people's rights, then nobody can delegate such power to their government. Certain rights were immune from government violation—they were "inalienable."[182]

And therefore, if the people are in danger of having their inalienable rights violated by their government, for the good of society they have the duty and obligation to prevent it—even if that means taking the power away from their government entirely. "Necessity to avoid Ruin requires it."[183]

And so by perceiving what it morally right, we recognize the existence of rights, and will know when standing up to government is the right thing to do for the public good. And people can get better at discerning what it virtuous, true, and beautiful. As individuals get better at it, society as a whole improves. And as society improves, so History makes Progress.

As mentioned, these were radical ideas at the time. For Scots raised in the dour Calvinism of the Kirk—and for budding theology students like James Wilson—they were doubly radical: Where was original sin? This was a philosophy allowing for and even encouraging redemption, not predestination.

In the book Wilson chad hecked out, Hutcheson's posthumous 1755 *System of Moral Philosophy*, the abstract principles were given practical application to the world of government. Moral Philosophy had become a political creed. One famous passage can be summarized in this way:

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[182] *Id.* at 192.

[183] *Id.* at 194-195.

1) A mother country should govern its colonies with "safe, mild, and gentle limited power."

2) If:

a) The mother country instead exercises "severe and absolute" power

or

b) The mother country imposes oppressive laws;

and if the colony can be self-sufficient on its own;

then

3) The colony is no longer bound to continue as a subject.

In other words, nobody consents to be subjected to dangerous or oppressive power. Nobody ought to lose "their own and their posterity's" "liberty and happiness" for the sake of a government they don't need.[184]

Hutcheson argued forcefully that the natural inherent morality meant concern for each other. His virtues were what would today be called "pro-social" attitudes. Vices involved serving oneself at the expense of others. Morality rested on two foundations: utility and benevolence.[185]

It was heady stuff. One can already see forming in James Wilson's mind in 1759 the ideas that would have such force several years later in America.

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[184] *See* Caroline Robbins, "'When It Is that Colonies May Turn Independent': An Analysis of the Environment and Politics of Francis Hutcheson (1694-1746)," *The William and Mary Quarterly*, Vol. 11, No. 2 (April 1954): 214-251, at 216-217.

[185] Lenman, *Enlightenment and Change*, *supra* at 125-128.

After only two years at the University of St. Andrews, James Wilson at 17 was already a dramatically different person. He had elevated his social station from that of a country farmer's son to that of a full member of Scotland's great universities, dressed in scarlet robes, attended by servants, and bewigged as a social elite. He was bound for a life in the learned professions, the class of men who ran Scottish society. Intellectually, he had grown even more. Already well-trained in the ideas of classical Rome, his mind had been trained to think for itself, with a rigor rarely attained in a normal life. And this mind had been filled with astonishing new ideas and philosophies, entirely new ways of thinking, that represented the cutting edge of Western thought. He had come to the university at precisely the right time to ride the crest of the wave of Scottish Enlightenment thinking that was about to change the world.

This teenager had to have known his future held opportunities of greatness. And he still had another two years in which to fill his mind, to prepare, and to learn at the feet of the great thinkers of the day.

Near the end of Wilson's second term, on February 12, 1759, the University of St. Andrews awarded Pennsylvania colonist Benjamin Franklin with an honorary LL.D. to mark his scientific and political achievements. [186] In the fall of that year, Franklin traveled to St. Andrews to receive his degree in person. The conferral took place on October 2, 1759, in the library hall, with great ceremony: The students, in scarlet robes, lined the walls. In front of them, the faculty sat in a ring of chairs. Franklin entered wearing an elegant all-black gown "faced in front and on the collar with black velvet"—

[186] The University of St. Andrews: Degree of Doctor of Laws, 12 February 1759, *National Archives*, at https://founders.archives.gov/documents/Franklin/01-08-02-0072.

the traditional robes of an LL.D.[187] Kneeling in the center of the circle, he received the Latin benediction bestowing the new rank; the "graduation cap" was briefly placed on his head (it was then, as now, a fragile square of black velvet that had been in use since the Reformation); and he rose to be acclaimed by all present as a Doctor of Laws. It was his first degree of higher learning, and for the rest of his life he would be respectfully referred to as Doctor Franklin.

Benjamin Franklin stayed in Scotland for a month, delivering a series of lectures on electricity and other scientific matters at Edinburgh, dining and conversing with the leading intellectuals of the Scottish Enlightenment—David Hume, Lord Kames (who became a close friend), Adam Smith, and many others.[188] These encounters and conversations dramatically affected Franklin's thinking, and would have a lasting impact on his political philosophy after his return to the Province of Pennsylvania. For the students of St. Andrews, Benjamin Franklin's visit that September was a remarkable

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[187] He would not have worn a special cap, however. Being considered too popish, caps and hoods had been done away with long ago during the Reformation, and would not return until the following century. One wore one's usual hat. Hargreaves-Mawdsley, *A History of Academical Dress*, *supra* at 138-139.

Some accounts describe the robes as being the combined gown and cassock of French universities, and that the ceremony would conclude with him being draped in "the hood of scarlet silk lined with white satin." *See* J. Bennett Nolan, *Benjamin Franklin in Scotland and Ireland, 1759 and 1771*, Philadelphia: University of Pennsylvania Press, 1956 at 78-79; and J. B. Salmond, ed., *The Aim and the End: Being Lectures and Addresses Delivered by Sir James Colquhoun Irvine*, Edinburgh: Oliver & Boyd, 1956, at 239-240. But these garments were not adopted at St. Andrews until 1868—these accounts stem from a speculative recreation of the scene by Irvine in 1938. Jonathan C. Cooper, "Reforms to Scottish Academical Dress during the 1860s," *Transactions of the Burgon Society*, Vol. 19 (2020): 122-151 at 136.

[188] Andrew Hook, *Scotland and America: A Study of Cultural Relations, 1750-1835*, Glasgow: Blackie and Son, 1975, at 19.

opportunity to not only meet the man and perhaps shake his hand, but to hear in person his ideas and those of the philosophers who were shaping a new world.

Historians, of course, have happily noted this felicitous moment: James Wilson and Benjamin Franklin, the two delegates from Pennsylvania who would work together for American independence and the Constitution, must have met in person in St. Andrews seventeen years before the Declaration.[189]

Unfortunately, James Wilson missed it all. History would have to wait a while for the two to meet and join forces in the causes of independence and government. When Wilson finished his second term in early 1759, that marked the end of his time at St. Andrews. Although the narrative has always been, as Robert Annan recalled, that Wilson studied at the United College the full four years, then remained to begin his Divinity studies at St. Mary's, that's not what happened.

In the spring of 1759, James Wilson left St. Andrews, went home to Carskerdo farm, and never came back.

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[189] *See* Nolan, *Benjamin Franklin in Scotland and Ireland*, *supra* at 79 ("Among the students who gathered on that October day in 1759 to witness the investiture of the illustrious scientist was a raw-boned, shock-haired country lad named James Wilson"); Ewald, "James Wilson and the Scottish Enlightenment," *supra* at 1064.

E. Blindsided.

When James Wilson left St. Andrews in early May 1759, at the close of his second term, he went home to Carskerdo. That much is not surprising. But everything that happened next is a puzzle.

Once he got home, James immediately enrolled once again in the Cupar Grammar School. John Halket was still the schoolmaster, and Wilson paid him a tutelage fee of two shillings for the month of May.[190] Why?

Without more information, one can only speculate as to why the bewigged university student would feel the need to get more instruction at his old college-prep school. Perhaps he wanted to noodle through some ideas with his former teacher. Perhaps he wanted to keep practicing his skills over the break. Perhaps he was thinking of joining the grammar school's faculty. Perhaps he just wanted to spend his days doing something besides farm chores. We don't yet know.[191]

Whatever he meant to do, we do know it didn't happen. After May, with three months remaining in the grammar school term, he stopped going. He did not return to the grammar school when it resumed September.

Then in November, when he ordinarily would have begun his third year at St. Andrews, he returned to the grammar school once again. That whole school year, instead of donning his scarlet robe to attend lectures of Mathematics and Moral

[190] Clagett, "James Wilson—His Scottish Background," *supra* at 163.

[191] Cupar's burgh records have recently been collected in the national archives, though not yet digitized or electronically catalogued, so further research may reveal clues to this and other open questions.

Philosophy with his St. Andrews comrades, Wilson went to grammar school where ten-year-olds were learning the rudiments of Latin.[192]

And the next year, when he would have been completing his undergraduate studies, receiving his degree as a Master of Arts, and preparing to advance to St. Mary's to study divinity, he yet again sat in the grammar school at Cupar.[193]

It does not appear that he was a daily student. His combined tutelage fees for these two terms reportedly totaled only half a shilling more than the two shillings he had paid for the single month of May 1759.[194] Whatever his reason for going back to grammar school, it only required him to show up two or three times per month, on average. He was clearly doing something else with his time. But what?

Then, after February 1761, he stopped attending even Cupar Grammar School. Nothing has yet been discovered that reveals why he stopped, or what he did next. More than a year would pass before James Wilson again appears in the historical record, with his signature appearing on a court document in Cupar dated April 16, 1762.[195]

The document—along with much of the other evidence for this part of James Wilson's life—was discovered through the diligent research of Martin Clagett, now a

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[192] Clagett, "James Wilson—His Scottish Background," *supra* at 163.

[193] *Id.*

[194] *Id.*

For reference, the 2s. fee for May 1759 had the equivalent purchasing power of £16.30 ($22.42) in 2021. It felt like having to pay £245.50 ($337.73) for a month's tuition.

In contrast, the 2s. 6d. fees for November 1759 through February 1761 had the purchasing power of £20.37 ($28.02) and the impact of £306.90 ($422.20).

[195] *Id.*

postdoctoral researcher at the College of William and Mary. The only description he has given of the document is that it had something to do with a civil lawsuit before the town court. His key observation is that Wilson signed the document as the apprentice of lawyer William Robertson, the Town Clerk of Cupar. If correct, this would be a significant piece of the puzzle.

That claim will explored more thoroughly in the next section. But it must be noted that no basis is given for the conclusion that Wilson had signed as an apprentice. Other assertions in that paper are only speculative, while others appear to involve errors of interpretation, and others are contradicted by the evidence. Clagett deserves a great deal of praise for his legwork, and he deserves full credit and gratitude for his revelations upending the traditional narrative—demonstrating, for example ,that Wilson had not attended St. Andrews beyond his second year, that he did not pursue a graduate degree in Divinity, and that he did not study at the University of Edinburgh. Much of the evidence we presently have with which to piece together a meaningful narrative of Wilson's life after St. Andrews is the result of Clagett's research. But without more supporting evidence, one cannot yet reach the same conclusion with respect to this document.

Worse, the one signature during the apprenticeship for which Clagett provides an image, from two years later in 1764, has Wilson signing not as an apprentice, but as "witness."[196]

[196] Clagett, "James Wilson—His Scottish Background," *supra* at 165, Fig. 2.

If Clagett is correct in saying that Wilson was a lawyer's apprentice in April 1762, however, that only raises more questions: If he had left school to become an apprentice, that was three years ago—why did he not do so at the time? Was the apprenticeship the reason why he stopped going to the grammar school in February 1761? If so, then why is there no evidence of it in the Town Clerk's records until more than a year later? If not, then what was he doing in the meantime? Without more evidence, such questions can only lead to speculation on top of speculation.

Returning, then, to the first puzzle, one has to ask why James Wilson did not return to St. Andrews after his second year. Is it because he could not afford the tuition? No. He had a full-ride scholarship as a bursary, which covered the full four years of study at the United College.

Is this when his father died?

In Robert Annan's letter, he says that James Wilson had already completed four years at St. Andrews, and had begun another, when his father died, forcing Wilson to return home to help support the family, taking for a time a job tutoring a gentleman's children. Given that Wilson began his studies at St. Andrews in 1757, this account would mean that his father died during the winter of 1759-1760.

We know that this account is wrong. But what if the only part Annan had mis-remembered was how long Wilson had attended St. Andrews, but the part about leaving school because his father had died was correct? As we will see, Wilson did eventually receive four and a half years of university education, so may it be that Annan simply remembered the sequence of events in the wrong order?

If that is the case, then it could be that William Wilson's death was not the reason why he left graduate studies, but was instead the reason why he did not complete his undergraduate years.

The evidence is circumstantial, but there nevertheless is evidence to suggest that William Wilson died in May or June, 1759. Such an event would fit with James Wilson discontinuing his attendance at the grammar school after a single month. Now the eldest man of the house—and his brothers too young to take charge—James would have had to help manage the affairs of the estate as he grieved.

It would also explain why he did not return to St. Andrews that November. As the 17-year-old man of the family, it would have been his moral duty to remain and help his mother manage the farm and the raising of his many siblings. From what we know of James Wilson's character, this would not have been a duty he would have run away from.

It would also explain both his sporadic attendance at the grammar school through February 1761, as well as Annan's otherwise wholly uncorroborated assertion that Wilson spent a period of time tutoring for a nearby family. The tutoring job was precisely suited for a young man of education, and was not considered demeaning—his mentor Professor Watson had gotten his start as a professor through tutoring a gentleman's son, and the great Hutcheson himself had tutored while at university. For James, a tutoring position would have provided a much-welcome supplement to the family income, and such a role would have made better use of James' abilities than tending to the cows or manhandling a plough.

And if James had not been a tutor, then he would have been needed on the farm at least until his younger brothers were old enough to take over, which wouldn't be for another couple of years. His education would have to be on hold. In the meantime, he may well have wished to stop in with his former schoolmaster from time to time to prevent his skills from growing rusty. And if he began a legal apprenticeship in March of 1761, that would explain why he no longer needed to keep his hand in at the grammar school. All of this would be consistent with the evidence.

The narrative is neat and tidy, and it makes sense. Circumstantial evidence is no less valid than an eyewitness account, and is frequently more reliable. Unfortunately, another eyewitness account presents us with some reasonable doubt.

In 1771, James' younger brother William wrote to him in America, to describe the handling of their father's estate:

> Dear Brother
>
> As along time has elapsed since we wrot you but it is still longer since we had any from you John Balfour wrot you in the month of July last if I remember right and we have received none from you near this twelve months now and it was dated the Second of of Janry 1770, but as there is an Opertunity just now I drop you a few lines by the hands of one Mr Smith a Seceder minister who goes from this place tomorrow and is bound for Philadelphia which will serve to let you know that I and all other friends in this place are in good health at present Excepting my Mother who has been bad this long time and still continues no better there is nothing remarkable in this place at present with respect to my fathers Effects We put all to a publick at Martinmass last and after Paying al the debt the remainder will scarce amount to one hundred pounds John gets the tack for his share of the Effects and indeed the best share too for it is reconed worth as much as we shall have over among us all my Mother has indeed two akers of land and two cows grass which is let to the Honneman at five pounds per anum as he

> lives at Coull which will enable her to give me more monie to put me in som way or other but I am not resolved yet what way of life to Chuse for unluckiely Spalding and I parted about a year ago and it is still in [agelaion?] befor the Court of Session whos favours it will go into is yet unknown but both M^{r} Gourley my agent & M^{r} Crosbee my advacat is in good hopes that I shall come off with hounor I hope in a few weeks to be Resolved what to do and so soon as it shall happen I shall writ you by Post and Give you a sheet with three pages of it covered with what news I can recolect before that time as I am going just now to deliver this to M^{r} Smith as he goes off tomorrow morning all friends Joins me in Compliments to you & still Remains Dear Brother your sincer freinds and well Wishers for them I sign my name as they are not present
>
> William Wilson
>
> Carskerdo
>
> 19th March 1771
>
> PS I had almost forgot to let you know that John Swan of Preston hall is married to a daughter of Mr Boggier of Keltie & Jock has got a son whos name is George after George Jaimie[197]

According to this letter, their father's estate was settled the previous Martinmas, which was observed on Thursday, November 22, 1770.[198] It would be safe to say that their father died intestate, partly because no will is recorded for him in the National Records, but mostly because it was almost unheard of for a Scot to leave a will in those

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[197] William Wilson to James Wilson, March 19, 1771. Collection of the Historical Society of Pennsylvania.

[198] Martinmas was observed on November 11. This might at first make William's account seem strange, for November 11, 1770, was a Sunday, and there is no way that any legal business—or any business at all—was going to take place on a Sunday in 18th-century Scotland. However, it was only a Sunday in the Gregorian calendar. And although Scotland and England adopted that calendar in 1752, when it came to liturgical festivals the old Julian calendar was still being used. Martinmas in the liturgical calendar thus fell on November 22. *See* Robert Poole, "'Give Us Our Eleven Days!': Calendar Reform in Eighteenth-Century England," *Past & Present*, No 149 (November, 1995): 95-139.

days.[199] Then as now, inheritance law was meant to operate without the need for wills, crafted to reflect what most people would want to happen. Instead of proceeding through the equivalent of probate, therefore, it was put to the "public law" to settle the estate.[200] The oldest of the sons (after James) was John, and he received the "tack" or the leasehold of the farm.[201] After paying off their father's debts, the balance of the estate only totaled about £50, roughly the same as the value of the leasehold. However, their mother Alison had by this time the ownership of some land and cows which she leased out for £5 per year in supplemental income, with which she intended to help the younger William get his own start in life.

If the senior William Wilson had died in 1759, then that would mean the executry of his tiny estate had taken eleven years. There is nothing to suggest any complications requiring a process longer than a few months. This letter strongly implies that he died not in 1759, nor in 1762, but in 1770—years after James Wilson had emigrated to America.

As mentioned above, when Robert Waln, Jr. wrote his biography in 1824, he told a different story than Annan. Again, he appears to have had the assistance of Bird Wilson and access to family correspondence that no longer exists. But this account is not helpful:

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[199] *See* Kenneth G. C. Reid, ed., *Comparative Succession Law: Volume I: Testamentary Formalities*, Oxford: Oxford University Press, 2011, at 404.

[200] A record of the event would be one of the many missing pieces that might be discovered in a further search of Cupar's court records.

[201] A record of the original leasehold and its renewals, plus the new one in John's name, would also be documents to seek.

> [James Wilson's] family was respectable, but not wealthy . . . His father was a reputable farmer, and a man of character: that he was in good circumstances, appears probable, from the education given to his son, but he is said to have injured his affairs, by the same passion for speculation, which that son unfortunately inherited. After the death of his father, his mother again married, and must have been in straightened [sic] circumstances, as Mr. Wilson frequently sent her pecuniary aid from this country, even when he was himself much embarrassed.[202]

Bird Wilson certainly would have had personal knowledge of his father sending money to his mother, so it is not surprising that this part was accurate. He must not have known the events that happened in Scotland however—again, it seems that his father never talked about those days—because Waln had to guess, and he guessed wrong.

There is no evidence that Alison Wilson ever "again remarried." There are no records of her ever marrying any other—records which the parish scrupulously maintained. In all her letters into old age, she remained Alison Wilson. Her other sons would still live at Carskerdo as they grew to adulthood, married, and had children of their own.

And though there is no reason to doubt that William Wilson was a reputable farmer and a man of character, he was never "in good circumstances." He could not afford even the five or six pounds needed to send James to college. Perhaps he did injure his affairs with unfortunate debts—we know from the younger William's letter that he died with outstanding debts that the subtext suggests ate up much of what the family hoped to inherit—but there is little basis for thinking that a tenant farmer had the

[202] Waln, *Biography of the Signers*, Vol. VI, *supra* at 113.

means with which to invest in speculative real estate or commercial ventures, or that such opportunities would even present themselves to a country farmer.[203]

The "why" therefore remains a puzzle. More research must be conducted before we can understand Why James Wilson never returned to St. Andrews, why he went back to the grammar school, why he kept going to the grammar school for so long, and why he disappears from the historical record for so many years.

But the "what" is less of a puzzle. We know that these things happened.

Whatever caused this chain of events—whether the death of his father or some other crisis—it was disastrous. Whatever it was must have blindsided him, taken him by surprise. Whatever it was, it was sufficiently dire to derail James Wilson's life just as it was getting up to speed.

Up until that moment in mid-1759, Wilson's life had been proceeding along a steady trajectory, from the parish school to the grammar school to the university. He had been preparing for a future as one of Scotland's learned professionals; he had been inducted into their elite society; he had been going places. Suddenly it was over. He was

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[203] Despite being a keen researcher, willing to dive into mountains of records, Waln was never the most accurate of historians. As has been observed, "his two major historical studies, an ambitious history of China and a popular life of the Marquis de Lafayette, are full of prejudice," and demonstrate too much "liberal use of his imagination in interpreting the facts of history." William S. Hastings, "Robert Waln, Jr.: Quaker Satirist and Historian," *The Pennsylvania Magazine of History and Biography*, Vol. 76, No. 1 (January 1952): 71-80, at 71 and 77-78. Referring to his biography of Lafayette, Hastings added, "As history, the biography has limitations; as a story well told, it can still be read with pleasure." *Id.* at 78. The same can be said of his even more ambitious biographies of the lives of the Signers, which filled nine volumes, all entertaining, and for which he conducted a truly prodigious amount of research, yet must be read with a large grain of salt.

thrown from scarlet-robed academe into a schoolroom of preteens, from the realm of philosophers to that of fields and farm.

These years were no less formative for the young man than any that had gone before. These would have been years of great disappointment at being knocked off track, of great frustration and confusion at not knowing what his future now held, of great worry that he might never get that life back—and perhaps even of grief. Though he would move forward once again, it is reasonable to conclude that these years added bitterness and hurt to the man he would become. Life had dealt him a blow, and it would take him years to recover.

Perhaps this is why, though praised for his bearing and deportment, the adult James Wilson would also be marked by his contemporaries for the pinched and dissatisfied expression that seemed permanently set in his face.

Fig. 9: John Trumbull, *Declaration of Independence* (1819), detail. James Wilson is the figure wearing glasses and a powdered wig. He was thirty-four at the signing.

F. The Law?

From the letters of Wilson's mother Alison, and that of his cousin Robert Annan, there is little doubt that Wilson's parents strongly desired that he should enter the ministry. Even when he had made a name for himself in the new United States, his mother still wished that he had instead been a clergyman in the Kirk. And it certainly seems that when James Wilson first entered St. Andrews in 1757 he fully intended to follow his parent's wishes. But if Martin Claggett's suggestion is correct, then at some point before the spring of 1762, he decided on a different learned profession: the law.

As mentioned, Claggett's account does not offer a basis for this conclusion. Nevertheless, there is some extrinsic evidence which could make a compelling case for its accuracy. At the very least, it offers some clues. For that evidence to make sense, however, a brief summary of Scotland's legal environment at the time will be necessary.

The legal system in Scotland was not the same as that of England and her colonies. The English and colonial systems employed Common Law jurisprudence: instead of *pre*scribing rules for society with detailed statutes and regulations, the Common Law attempted to *de*scribe the rules by which society already operated. The Common Law grew and evolved over time, with judges applying principles and precedent to each case, and with each case adding one tiny piece to a vast jigsaw puzzle. Lawyers and judges trained to do so could assemble these bits and pieces into rules that could apply to any case, unlike statutes whose applicability is limited by their language and by the foresight of those who drafted them. It was a truly unique system, used nowhere else in the world.

In Scotland, as in the kingdoms of continental Europe, the system of Civil Law prevailed.[204] Civil Law had its origins in the medieval rediscovery of the law code which had been assembled for the Roman emperor Justinian. During the whole period of the Roman Republic and its Empire, there had never been a collected body of its laws. Instead, edicts and commands were issued *ad hoc* by the Senate, governors, emperors, and various officials. Law cases were decided by oratory and reputation, not by application of defined legal principles, and if any record was made it was more for the speeches than their results. By Justinian's time, a vast hodgpodge of such documents, scrolls, and even scraps of paper lay in various archives throughout the empire. At his command, Roman scholars gathered everything they could, deciphered the rules and principles that could be gleaned from it all, and between 529 and 534 A.D. issued the *Corpus Iuris Civilis* in three volumes. Its first volume, the *Code*, contained a compilation of selected acts that were now considered binding law. Its second volume, the *Digest*, contained scholarly analysis of the legal concepts, and also had the force of law. A third volume, the *Institutes*, was a treatise teaching law and jurisprudence to its readers, and which expanded on the *Code* and the *Digest*, and which also carried the force of law. Subsequent laws were added to a fourth volume, the *Novels*.

Although Justinian's Code would be important in the early Byzantine Empire for a time, it was soon forgotten in the West. That is, until the reforming Pope Gregory

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[204] For more on what is here summarized, *see generally* John Henry Merryman and Rogelio Pérez-Perdomo, *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America*, Stanford: Stanford University Press, 2019; Davide Cantoni and Noam Yuchtman, "Medieval Universities, Legal Institutions, and the Commercial Revolution," *The Quarterly Journal of Economics*, Vol. 129, No. 2 (May 2014): 823-888; and Thomas Glyn Watkin, *An Historical Introduction to Modern Civil Law*, London: Ashgate Publishing, 1999.

became embroiled in a conflict with the Holy Roman Emperors for political power. But to back up his claims, the Pope had little more than moral authority. Gregory's Papal Party urgently sought something stronger. They needed a solid legal basis for the assertion of universal Church jurisdiction, one which even the Holy Roman Emperors would have to accept as legitimate. They got it when a monk in northern Italy discovered an ancient copy of Justinian's *Corpus Iuris Civilis*.

At once, it became the subject of intense study. Around 1088, an institution was established in Bologna to allow scholars from around Europe to come study the text and receive instruction. "Glossators" taught these scholars by reading passages out loud for the students to copy, and then lecturing to give them an explanation, or "gloss," on what each passage meant. Similar institutions popped up in other major cities, and thus the first universities were born.

These new universities created a new class of people: lawyers. Trained to interpret these ancient texts, it was their job to master and apply this obscure and arcane field of knowledge. This *Iuris Civilis*, Civil Law, was wholly unfamiliar to people whose rules of justice until now had been found in tradition and cultural norms. Law had replace lore. The rules of life were no longer principles that everybody already knew—law had become something strange, discoverable only after years of specialized study. Lawyers became as indispensable to secular and religious life as a physician when one was sick, or a priest when one was dying.

In 1140, the monk Gratian did for church Canon Law what Justinian's officials had done for Roman Law. After studying the Civil Law, he analyzed thousands of canons

that had been issued over the centuries, reconciled them, and synthesized them all into a single massive body of Canon Law, his *Concordance of Discordant Canons*. It was again not a description of the norms people lived by, but his prescription of the rules they ought to obey. In his *Concordance*, he invented a new hierarchy of law: Divine Law above all, then Natural Law over society, then under that the Positive Law of authoritarian decree. All of these—divine, natural, and positive law— trumped the norms of Customary law at the bottom of the hierarchy.

The study of law evolved from trying to reconstruct the laws as understood in Justinian's day, to looking deeper for an intellectual foundation of underlying principles. To facilitate this, the universities introduced the study of the classical Greeks, largely ignored thus far, but who had at least been more philosophical than the Romans. Aristotle taught these new scholars to attack custom by the application of reason, to discern better truths, which could now be written in stone as unbending Civil Law.

And so practices that varied from place to place or from time to time were replaced with uniform written codes—a development welcomed by urban merchants and government administrators who desired predictability. Seemingly overnight, Civil Law had dominated all of Western Europe except England. From this point onward, however—up to the Industrial Revolution—the study of Civil Law would change very little. Universities would employ the same methods they had instituted early in their medieval development.

Eighteenth-century Scotland was no different. In the universities, prospective lawyers first studied Justinian's *Institutes* to learn what law was, how it worked, and its

important principles. After mastering that treatise, they then moved on to the study of Justinian's *Digest*, studying the commentary of sixth-century Byzantine scholars. Courses in Natural Jurisprudence, Moral Philosophy, Theology, Public Law, Private Law, Government, and so forth rounded out the law student's intellectual foundations. Finally, students would descend from the ivory tower for a more practical course in Scots Law.[205]

On completing their studies, however, few Scottish scholars would receive a law degree. The LL.D, such as the one awarded to Benjamin Franklin, was almost exclusively an honorary degree, given to mark individuals who had distinguished themselves in the world beyond academia. Those few who did earn an LL.D at the completion of their university education were those marked for prestigious roles in government, not for drafting contracts or defending clients in court.[206]

With or without a degree, the university education was nevertheless an important prerequisite for those who sought admission to the Faculty of Advocates—the elite cadre of Scottish lawyers permitted to appear before the Court of Session and the High Court of Justiciary. In those supreme courts, advocates were expected to demonstrate an excellence of oral and written rhetoric, and able to present thoroughly-reasoned

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[205] *See* John Finlay, "Legal Education, 1650-1850," in Robert Anderson et al., eds.., *The Edinburgh History of Education in Scotland*, Edinburgh: Edinburgh University Press, 2015.

[206] James Coutts, *A History of the University of Glasgow: From its Foundation in 1451 to 1909*, Glasgow: James Maclehose and Sons, 1909, at 235.

arguments drawing on the principles of Roman law, the rules of Scots law, and the ideals of philosophy.[207]

For the majority of Scottish legal practitioners, however, university education was not required. There were plenty of lower courts, sheriff's courts, town councils, and other areas where one could practice law without membership in the Faculty of Advocates. The Procurators who argued cases before the lower courts, and the Writers who drew up legal documents, needed only to pass examination by fellow practitioners.[208] This they could do after spending some years as an apprentice to a practitioner. Some courts even insisted that one first be trained under someone who already practiced before that court. Hands-on learning-by-doing was how one learned the ins and outs of Civil Law and how it was practiced. A university education was nice, but for most Scottish lawyers an apprenticeship was absolutely necessary.

Though rules varied from jurisdiction to jurisdiction, generally a young man could apply for an apprenticeship once he had reached the age of 15, had attended at least four years of grammar school, and had achieved proficiency in Latin. If he succeeded in getting a practicing lawyer to sign his indenture, the boy could expect to spend five years or more as an apprentice, as he probably would not be permitted to be examined until he was 21. The lawyer was bound to teach his apprentice everything he

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[207] Finlay, "Legal Education," *supra* at 114-115.

The 1771 letter from William Wilson to James Wilson describing the settlement of their father's estate is also an illustration of this requirement. William and an associate—maybe one to whom William had been apprenticed, or perhaps a business partner—had fallen out. The case had gone all the way up to the Court of Session, and William had therefore retained an advocate. The expense cannot have been welcome.

[208] John Finlay, "The Lower Branch of the Legal Profession in Early Modern Scotland," *Edinburgh Law Review*, Vol. 11 (2007): 31-61.

knew, and to "conceal nothing." Meanwhile, the apprentice was expected to learn all the practices and procedures of acting as a Procurator or Writer in that jurisdiction.

Additionally, those hoping to become Writers were expected to learn other pertinent skills such as bookkeeping.[209] They would be managing the affairs of merchants, of landlords, and of civic government, and needed the practical foundation to do it properly.

Which brings us back to James Wilson. There is strong evidence suggesting that, before coming to America, he received substantial training in the Civil Law, and in the Scottish court system.

For example, Wilson is believed to have been the principal author of Article III of the U.S. Constitution, which establishes the federal judiciary. It appeared in the draft which emerged from the Committee of Detail in Wilson's handwriting. The system it established bears little resemblance to the courts of England, where multiple courts had multiple areas of jurisdiction—sometimes distinct, sometimes overlapping, sometimes in competition with one another. Article III, in contrast, ordains that there will be a single organized hierarchy of courts: inferior courts (to be defined by Congress later) handling trials of fact, and a Supreme Court at the top deciding appeals on the law. This is the Scottish system, whose Court of Session was "sovereign and supreme," having the power to review and reverse the judgments of the inferior local courts, and where advocates argued law and principles instead of facts.[210]

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[209] Finlay, "Legal Education," *supra* at 123-125.

[210] *See* James E. Pfander and Daniel D. Birk, "Article III and the Scottish Judiciary," *Harvard Law Review*, Vol. 124, No. 7 (May 2011): 1613-1687, at 1674 et seq.

In his lectures as a law professor in 1791 and 1792, James Wilson made it very clear that this is precisely what he had done. In his lecture "Of the Judicial Department," after giving a history of courts of justice from the time of ancient Egypt to the Anglo-Saxon Witenagemote, he laid out how England had created so many different courts with so many different jurisdictions, with three separate Common Law courts alone. But in the United States, the federal courts constituted a single cohesive system: numerous District Courts trying cases at the local level, with a few Circuit Courts supervising them and hearing appeals on the law, and a single Supreme Court of the United States at the top with ultimate authority over what the law was and how the lower courts should apply it. [211]

It was a long lecture that explored all these legal systems, and those of the various U.S. states, in minute detail. He then paused, saying "Perhaps I ought here to make an apology for the degree of minuteness, with which I have surveyed and described them. Let me apologize by reciting an incident, which I remember to have heard in my younger years."

> From the castle of Edinburgh, in Scotland, the prospect is uncommonly rich, extensive, and diversified. A young gentleman, born and educated at no very considerable distance from it, set out on his travels through Europe, with a view to notice attentively every thing, which he should find most worthy of his remark. When he was at Rome, the subject of exquisite prospects became, one day, the topick of conversation in a company of literati, to whom he had been introduced. Among others, that from the castle of Edinburgh was mentioned; and to our young traveller a reference was naturally made for a minute description of its different parts

[211] James Wilson, "Of the Judicial Department," in Lectures on Law, Part 2, Ch. III, in *The Works of James Wilson* Vol. 2. viewable online at https://oll.libertyfund.org/title/garrison-collected-works-of-james-wilson-vol-2.

> and beauties. They expressed themselves happy in so fine an opportunity of learning every particular concerning that, of which vague and general accounts had so much excited their admiration. With blushes, he was obliged to disclose the fact—that though he had resided, from his birth, near an object, which so well deserved to be known, yet he had never bestowed upon it the least share of attention, and was, therefore, totally unqualified to gratify the company by describing it. A profound silence was observed. It was not lost upon the young traveller. He returned immediately to Scotland, and acquired the knowledge of what was worthy to be known at home, before he went farther abroad in search of what was remarkable in foreign countries.

The anecdote seems to be a not-too-heavily-veiled hint at where this American system originally came from. Still later in the lecture, Wilson added:

> According to the rules of judicial architecture, a system of courts should resemble a pyramid. Its base should be broad and spacious: it should lessen as it rises: its summit should be a single point. To express myself without a metaphor—in every judicial department, well arranged and well organized, there should be a regular, progressive gradation of jurisdiction; and one supreme tribunal should superintend and govern all the others. [212]

These examples demonstrate a familiarity with the Scottish legal system—and disapproval of the English—that one would expect of someone trained to practice within that system. And they are evidence that this familiarity is what influenced Wilson's

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[212] Wilson loved the pyramid metaphor. He used it at the Constitutional Convention of 1787 to argue for popular sovereignty, when most delegates thought the problem with the Articles of Confederation had been too much, rather than too little democracy. The broader the base of the nation's pyramid, he argued, the higher the nation could rise. He repeated the metaphor during Pennsylvania's ratifying convention, during the convention he led which created Pennsylvania's new state constitution, and repeatedly used it during his law lectures in multiple contexts.

In this he was not remotely alone. The pyramid was an excellent metaphor, employed by philosophers, politicians, and of course features prominently on the Great Seal of the United States.

formulation of the Judicial Branch. But for those for whom this evidence is not wholly compelling, a further example might tip the balance:

As a Supreme Court Justice, the most significant opinion James Wilson wrote was not only a shining example of Scottish legal training, but also a blatant rejection of the jurisprudence of Anglo-American Common Law. In *Chisholm v. Georgia*, 2 U.S. (2 Dall.) 419 (1793), Wilson rejected the state of Georgia's claim that it was protected by "sovereign immunity" from being sued by a mere citizen from a different state. In his explanation of why Georgia was wrong, Wilson did not reason as would a judge trained in the Common Law. Instead of appealing to precedent, he argued in the manner of a Scottish Advocate making his case before the Court of Session—with an erudite, learned, and philosophical examination. Professor Watson would have been proud of the rhetoric which followed.

Like any skilled orator, Wilson began by summarizing how he was going to proceed: "1st. By the principles of general jurisprudence. 2nd. By the laws and practice of particular States and Kingdoms" and "3rdly. and chiefly, I shall examine the important question before us by the Constitution of the United States, and the legitimate result of that valuable instrument."[213] One is not shocked to learn that he introduced the argument which followed by quoting from the Common Sense philosophy of Thomas Reid.

[213] *Chisholm v. Georgia*, 2 U.S. 419 (1793) at 453.

And as a skilled orator might do, Wilson then figuratively cleared his throat before proceeding, with a dismissive observation that anyone arguing that a state is sovereign must not understand even the plain language of the Constitution:

> To the Constitution of the United States, the term SOVEREIGN, is totally unknown. There is but one place where it could have been used with propriety. But even in that place, it would not, perhaps, have comported with the delicacy of those who ordained and established that Constitution. They might have announced themselves "SOVEREIGN" people of the United States. But serenely conscious of the fact, they avoided the ostentatious declaration.[214]

One can almost hear the grumbling tone of astonishment that this even had to be explained.

The remainder of his opinion soars from Cicero to Bracton; from the kings of Sparta, Prussia, and France, to inquiring into what a state even is. But he took pains, lest there be any doubt about the legal principles driving his opinion, to draw a clear line between his Scottish-American philosophy on the one hand, and the Common Law philosophy of English law, as exemplified by Sir William Blackstone.

To Blackstone, it was obvious that the state was sovereign, and not the people. And to Blackstone it was equally obvious that the sovereign could not be sued. And indeed that was a correct summary of how an English court would have viewed this case.

[214] *Id*. 2 U.S. at 454.

But though that may have been the way they did things in England, Wilson said, that was not how America did things under the U.S. Constitution.[215]

Prior to Clagett's revelation that Wilson had apprenticed to the law in Scotland, the accepted narrative had always been that his first exposure to the law had been under the tutelage of John Dickinson in Philadelphia.[216] But if that narrative were correct, then one would expect Wilson's legal experience and training to be primarily that of the Common Law. There is no indication that he ever studied law at a Scottish university, and so he would have had to have absorbed these principles and ways of thinking about law through casual association and cultural osmosis. Given that the knowledge and skills required years of specialized training, that alternative can be ruled out.

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[215] To echo the introduction to this paper, one further quotation from this decision is warranted. Noting that in Britain, it is Parliament that is sovereign, Wilson firmly pointed out that even though it is a form of representative government, it is not at all what is meant by popular sovereignty:

> The Parliament form the great body politic of England! What, then, or where, are the People? Nothing! Nowhere! They are not so much as even the "baseless fabric of a vision!" From legal contemplation they totally disappear! Am I not warranted in saying that, if this is a just description, a government, so and justly so described, is a despotic government?

Id., 2 U.S. at 462.

If the reader is imagining the livid scowl on Wilson's face as he penned these words, imagine his dismay at what happened next. Congress proposed a constitutional amendment that would undo *Chisholm* and grant the states sovereign immunity. To nobody's surprise, the states ratified it on February 7, 1795. It was the very first amendment to the Constitution after the Bill of Rights, and it had been adopted in perfect accordance with the process that Wilson himself had crafted. *See (or don't, if you'd rather not)*, U.S. Const. amend. XI.

[216] *See, e.g.*, Robert Annan to Bird Wilson, *supra*; and Waln, *Biography of the Signers*, *supra* at 114-115 ("Soon after the completion of his education, and without selecting or embracing any profession, he resolved to emigrate to America . . . [where] . . . he obtained the situation of a student of law, in the office of Mr. John Dickinson").

The circumstances of Wilson's admission to the Pennsylvania Bar also weigh heavily in favor of his having already received significant legal training in Scotland before his arrival.

Unlike Scotland, where one's education alone could suffice to qualify one for admission to the practice of law at even the highest levels, the courts of the Province of Pennsylvania required practical first-hand experience of the law as it was practiced in real life. A bare minimum of five years was required, with either "a regular apprenticeship to some gentleman of known abilities in the profession for the term of four years" plus one year of practice in a lower court, "or 3 years apprenticeship and 2 years practice."[217]

Under these rules, if Wilson had not apprenticed in Scotland before coming to America, he might have turned thirty before being allowed to set foot in a courthouse to earn his own living.

The rules did allow for an exception: "Gentlemen of character and standing from any of the neighboring colonies or elsewhere," or who "have studied in any of the inns of court in England" were eligible for admission as well.[218] At first glance, this reciprocity rule seems to only be intended to admit men to the Pennsylvania Bar who had already been admitted to the Bar in another Common Law jurisdiction. And James certainly had not studied at the Inns of Court. But the first clause on its own could be interpreted to

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[217] *Rules of the Supreme Court of Pennsylvania* (September 24, 1767), quoted in Albert Smith Faught, "Early Rules of Court in Pennsylvania," *Dickinson Law Review*, Vol. 44, No. 4 (May 1940): 273-289, at 279.

[218] *Id.*

allow the admission of any man from any jurisdiction, whether he had studied or practiced law or not, so long as he was a "gentleman of character and standing."

This he could certainly prove. Immediately upon his arrival in Philadelphia, he began lecturing on Latin at the College of Philadelphia. The trustees were so impressed with his education and intellect that on Commencement Day 1766—at Wilson's request—they awarded him an honorary degree as Master of Arts "in consideration of his merit and his having had a regular education in the universities of Scotland."[219] This mark of distinction must have been a great relief to him, beyond the gratification he must have felt, as it removed the greatest obstacle to his admission to the practice of law.

Character and standing were only prerequisites, however. A prospective attorney still had to be examined, and satisfy the rest of the Bar that he knew what he was doing.[220] Furthermore, Pennsylvania made no distinction between Writers and Advocates—lawyers were expected to be able to argue the law in court and try cases, in addition to drafting wills and contracts and deeds.[221] There was no way around it: James Wilson needed a mentor. He needed to apprentice himself to a distinguished local lawyer in Pennsylvania, who could show him the ropes and get him up to speed with how things were done over here, and who could then also vouch for him as eligible for examination.

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[219] Thomas Harrison Montgomery, *A History of the University of Pennsylvania from its Foundation to A.D. 1770*, Philadelphia: George W. Jacobs & Co., 1900, at 458-459.

[220] *Rules of the Supreme Court of Pennsylvania*, *supra*, Rule of April 10, 1759.

[221] *Id*., Rule of October 19, 1765.

That mentor would of course be the prominent colonial lawyer John Dickinson—the same who later led the Pennsylvania delegation which threatened to stymie the Declaration of Independence—and who would again serve with Wilson as a delegate to the 1787 Constitutional Convention (this time as a delegate from Delaware). But as Robert Annan stated in his letter, Dickinson would do nothing without his fee. And so Annan "sold" some land to Wilson, with which he could pay the cost of his tuition.

All that remained now were the requisite three or four years of "reading law" with Dickinson that he would need in order to learn Pennsylvania law, the procedures of the Pennsylvania courts, the ins and out of practicing in Philadelphia, and of course all the courtroom skills and drafting techniques necessary for representing the people and businesses of the province.

James Wilson was called to the Bar and admitted to the practice of law in the province of Pennsylvania in November, 1767.[222] He had been with Dickinson only about a year or so.[223] It is highly unlikely that even the talented James Wilson, under the tutelage even the esteemed John Dickinson, could have mastered an entire course of law, from a cold start, in such a short time. It would make a great deal more sense if Wilson was already fully trained in Scottish law and procedure. In that case, he would already have the legally-trained mind and familiarity with how courts and lawyers

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[222] *See* Louis Richards, Esq., "Hon. James Wilson at Reading, Penna.," *The Pennsylvania Magazine of History and Biography*, Vol. 31, No. 1 (1907): 48-52, at 48;

[223] Notably, this was the same year that Dickinson began publishing his *Letters from a Farmer in Pennsylvania* arguing that Parliament's Townshend Acts were an unconstitutional tax on the colonies.

performed their day-to-day tasks. All he would need was a little exposure and instruction to learn how Pennsylvania differed in the details.

All of this is strong circumstantial evidence that James Wilson did indeed indenture as an apprentice to the Town Clerk of Cupar during the years before he emigrated to America. Documentary proof would be preferable, of course. And it may exist. But until such time as it is (re)discovered, the evidence does seem sufficient.

There is one other bit of proof, as well:

The Town Clerk was the chief attorney for his burgh. His office was in charge of all the legal and administrative documents for all the matters before the town courts, and for all the activities of the Town Council. The Town Clerk thus had to be a master of deeds, trusts, account books, regulations, procedures, contracts, written motions, written pleas, writs, warrants, council records, memoranda, and all the other innumerable details of government that ran on paperwork.[224]

In Scottish legal practice, therefore, a Town Clerk was not an Advocate or a Procurator. He was a Writer, and probably the most thoroughly skilled and experienced Writer for miles around. His was "a respected and influential position within any local community" and he "enjoyed a guaranteed income."[225]

It ought to be fairly straightforward, then, to check the records of an official whose very job it was to keep records. The books of the Royal Burgh of Cupar—in

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[224] *See* John Finlay, *Legal Practice in Eighteenth-Century Scotland*, Leiden: Brill, 2015, at 288-305.

[225] *Id.*, at 288.

particular its court records—should indicate whether William Robertson was the Town Clerk during the relevant years, and whether he had taken on a young man named James Wilson as an apprentice. Except that nothing is ever so straightforward. The Court Books for the Royal Burgh of Cupar do indeed exist—they are in the collections of the University of St. Andrews, and the relevant years are to be found in Vol. B13/11/3—but as of April 2023 that volume is no longer available, due to preservation issues.

Other evidence demonstrates that William Robertson was the Town Clerk. As a matter of fact, he had a son, Thomas. And when James Wilson was being admitted to the Bar in Pennsylvania in 1767, Thomas Robertson was employed as a Writer by the Burgh of Cupar, Fife.[226]

If James Wilson was apprenticed to a Writer, then that means he was training to be a Writer and not a courtroom advocate. It also means that he would need to broaden his education before being allowed to be examined for admission. He would have to take courses in subjects besides the law, such as bookkeeping.

And as will be discussed shortly, James Wilson did indeed study bookkeeping during this period.

But first, he went back to college.

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[226] *Id.*, at 305. Thomas Robertson was a special kind of Writer known as an Assessor. The role of an Assessor was to advise local councils and magistrates on such matters as whether a proposed action was legal. Thomas was the advisor to the Cupar magistrate entitled the Dean of Guild, who handled matters involving buildings. Apparently, they did not get along, because Thomas later got in trouble for horsewhipping Cupar's Dean of Guild.

G. Glasgow.

Fig. 10: Robert Paul, "A View of Glasgow from the South West," engraving, 1764. Glasgow University Library Special Collections, Bh13-x.7.

Had all gone according to plan, the school year of 1762-1763 would have been James Wilson's first year of graduate studies in Divinity at the College of St. Mary in the University of St. Andrews. All had not gone according to plan. But the beginning of that school year at least saw him back in college. He had picked up where he had left off, and was now beginning his third undergraduate year. Only now he was not attending the nearby St. Andrews with which he was so familiar. Neither was he attending the University of Edinburgh just across the Firth. James Wilson had gone much farther down the road. He had gone to Glasgow.

Why Glasgow? The easiest answer may be the most likely: In 1762, of all the universities in Scotland—some might argue in all the world—Glasgow had the best professors. It had the richest intellectual life. For a young man intent on going places, the University of Glasgow was the place to be.

The town itself was booming with the success of its international trade, particularly as the middleman to Europe of America's tobacco. Edinburgh may have been Scotland's political center, but Glasgow was its cosmopolitan center of commerce, its direct connection to the rest of the world. Its population was well-educated even by Scottish standards, and the townsfolk filled their leisure time with books, lectures, literary and philosophical clubs, and otherwise diving into a world of new ideas.

The university was where a lot of those ideas were originating. Francis Hutcheson, "the father of the Scottish Enlightenment" had died before this, but his Chair of Moral Philosophy was now held by Adam Smith, still known for his *Wealth of Nations*. Two years after Wilson arrived, the same Chair would pass to Thomas Reid, the father of Common Sense philosophy. These three alone account for some of the most significant influences the Scottish Enlightenment would have on modern thought. And they were not the only ones. Joseph Black was at Glasgow, lecturing on Chemistry, John Millar on Law, John Anderson on Natural Philosophy, and more.

Students in these years were free to sit in on as many different lectures, by as many different professors, as they could manage. With the ideas of the modern world happening right there in those lecture halls, in real time, few students passed up the

opportunity. Shortly after coming to Glasgow, Reid would describe it to a former colleague back at the University of Aberdeen:

> My hearers commonly attend my class two years at least. They pay fees for the first two years, and then they are *cives* of the class, and may attend gratis as many years as they please. Many attend the moral philosophy class four or five years; so that I have many preachers and students of divinity and law of considerable standing, before whom I stand in awe to speak.[227]

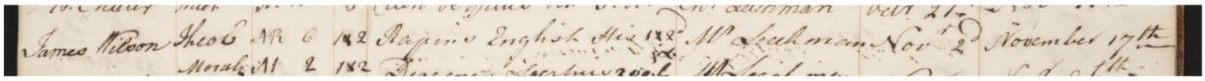
These students clearly knew that they were on to a good thing.

The assertion that Wilson came to Glasgow in the fall of 1762 is significant, because thus far the understanding has been that he did not arrive until 1763. But if it can be established that he arrived that one year earlier, it would have important effects on our understanding of his time at Glasgow, and the influences it may have had on his future political thought.

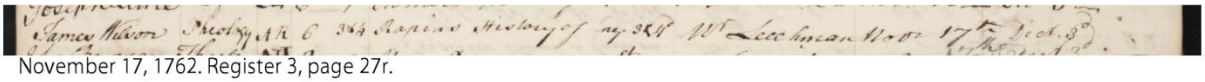
Fortunately, Wilson's attendance at Glasgow is readily established.

As depicted in the following figure, James Wilson's signature appears numerous times in the library's registers, and it is unmistakably his hand:

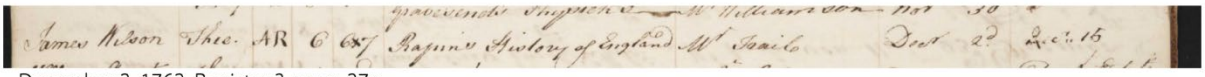
[227] Thomas Reid to Andrew Skene, November 14, 1764, in Paul Wood, ed., *The Correspondence of Thomas Reid*, Edinburgh: Edinburgh University Press, 2002.



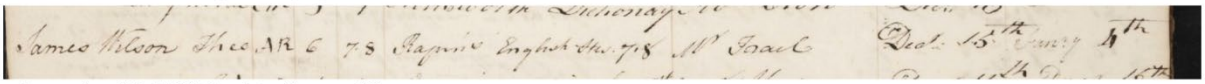
November 2, 1762. Register 3, page 26v.



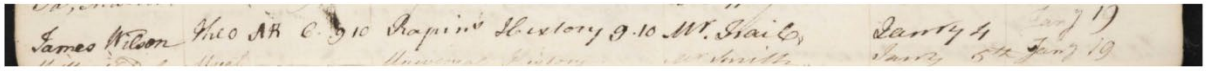
November 17, 1762. Register 3, page 27r.



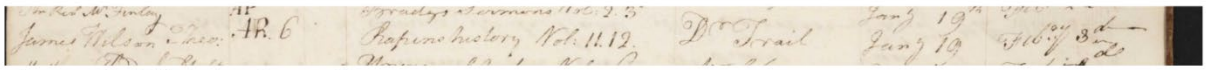
December 2, 1762. Register 3, page 27v.



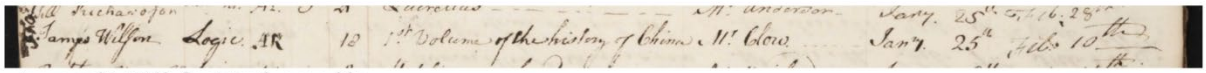
December 15, 1762. Register 3, page 28r.



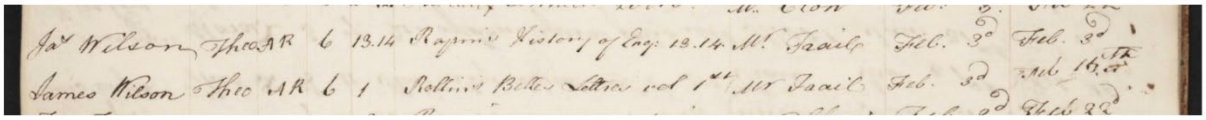
January 4, 1763. Register 3, page 28v.



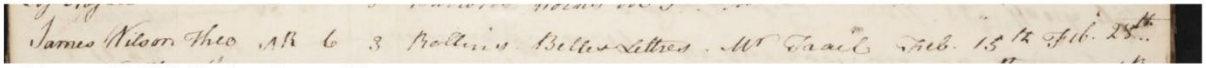
January 19, 1763. Register 3, page 29v.



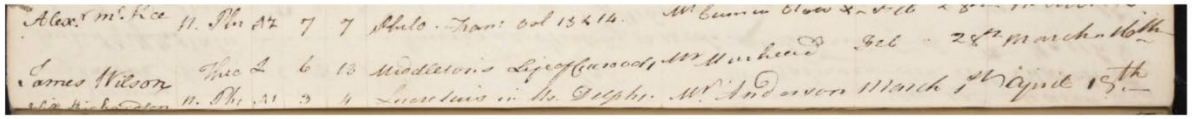
January 25, 1763. Register 3, page 30r.



February 3, 1763. Register 3, page 30v. (Oops, checked out the wrong book the first time.)



February 15, 1763. Register 3, page 31r.



February 28, 1763. Register 3, page 31v.

Fig. 11: James Wilson signatures, register of the University of Glasgow library for the 1762-1763 school year.

Compare the above signatures from his first term at Glasgow with the below signatures from his last term at St. Andrews:

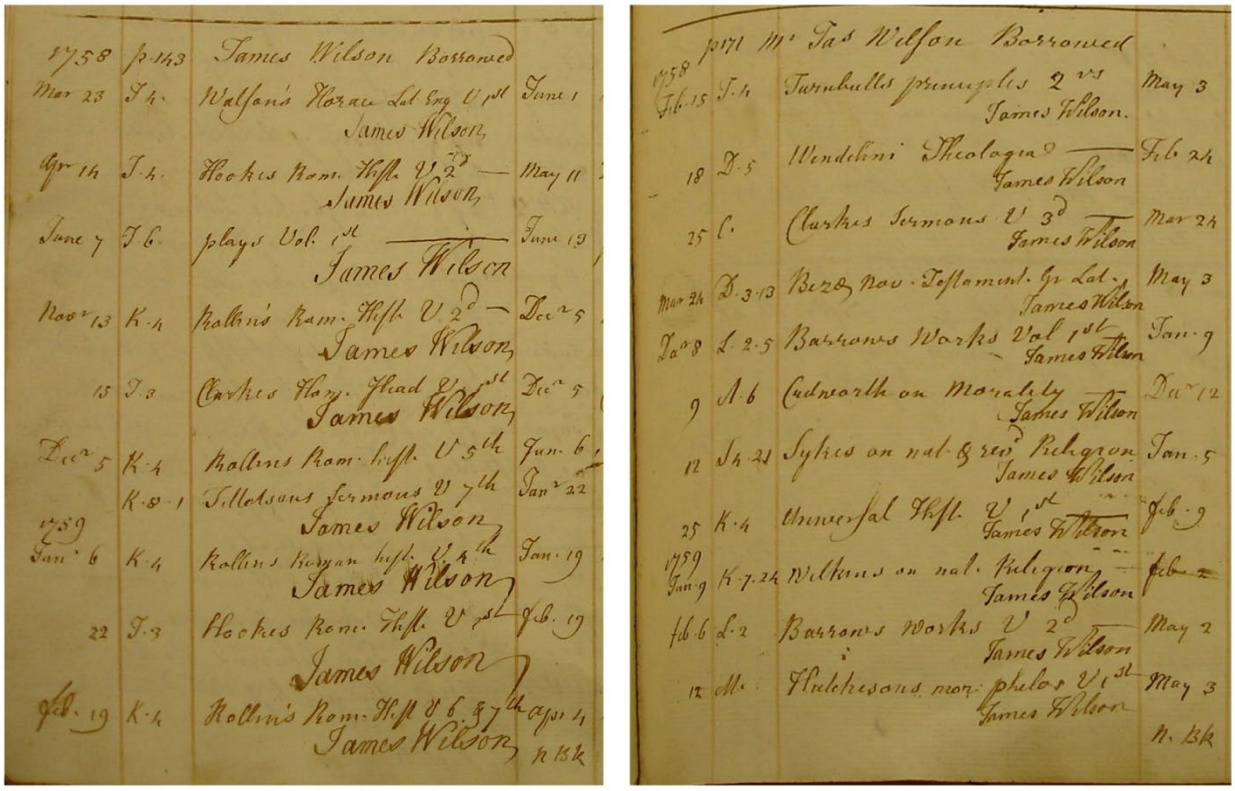


Fig. 12: James Wilson signatures, register of the University of St. Andrews library from March 1758 through May 1759.

The evidence thus appears clear that James Wilson was attending the University of Glasgow beginning in the fall of 1762. This places him at the university a full year earlier than has previously been asserted.[228]

Lest there be any confusion, the next figure shows every signature in the University of Glasgow library register by a person named James Wilson:

[228] Martin Clagett stated that Wilson's first appearance in the records was November 16, 1763. "James Wilson—His Scottish Background," *supra* at 164-165.

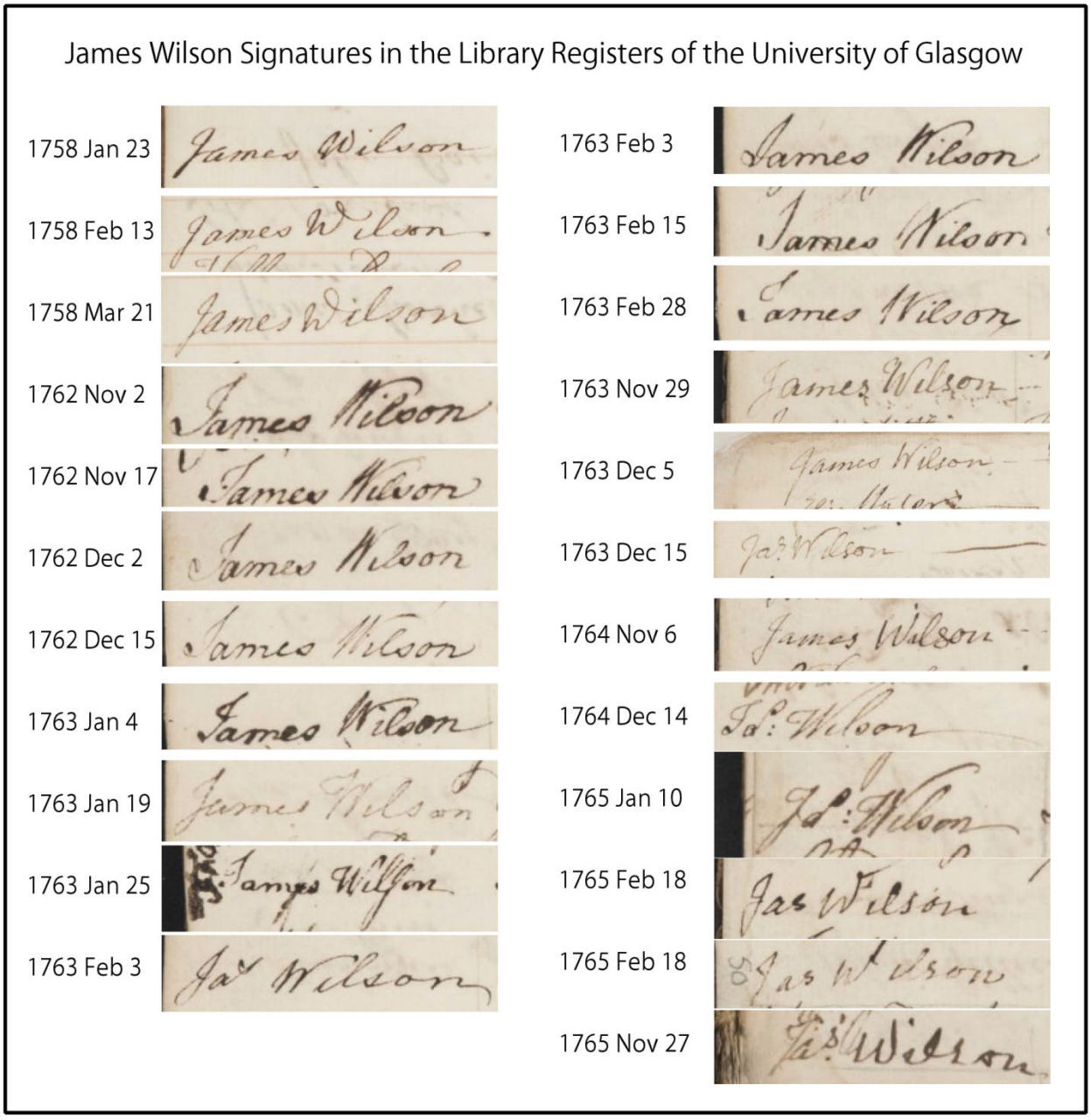


Fig. 13: Signatures of University of Glasgow Students Named James Wilson, 1758-1765. Collage by the author, from the Library of the University of Glasgow, Register 2 at sheets 12v, 14v, and 18v; Register 3 at sheets 26v, 27r, 27v, 28r, 28v, 29v, 30r, 30v, 31r, 31v, 35r, 35v, 40r, 42v, 44v, 50r; and Register 6 at sheet 3r.

It is apparent that there are three different hands signing their name here. One student has three signatures, on January 23, February 13, and March 21, 1758. The capital "J" has a rounded top and a narrow bottom, and the right arm of the capital W

curves back in upon itself, twice making a full loop. Another student has four signatures, one on November 6, 1764, two on February 18, 1765, and one on November 27, 1765. These feature a less steady hand than the others, its capital "W" has rounded curves instead of points at the bottom, and that letter also terminates at the top right with a sudden change of direction. And he identifies himself as a graduate Divinity student, which removes any remaining doubt.

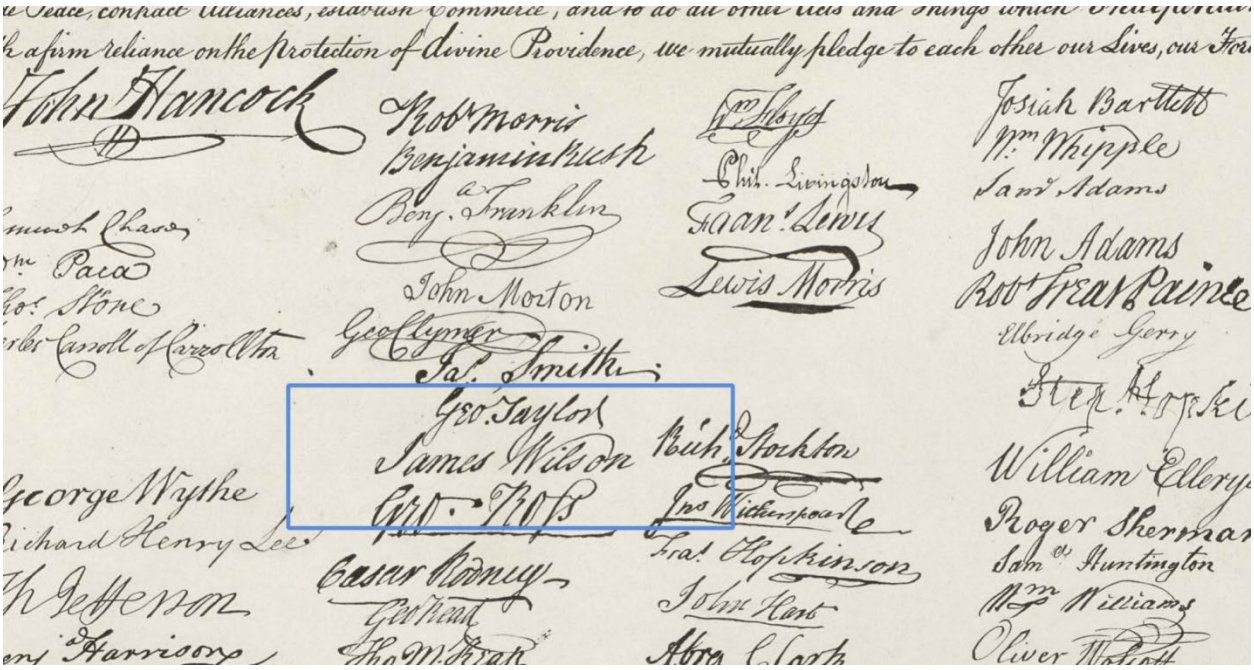


Fig. 14: The Declaration of Independence, 1776. Detail.

The hand which signed the remaining signatures from November 2, 1762, through January 10, 1765, however, is the same which signed out Addison's *Plays* over the summer of 1758 and the Declaration of Independence in 1776. The capital "J" loops in to a sharp point at the top, and descends to either an open hook or connecting loop depending on his mood. There is an experiment, quickly discarded, with using the long s in "Wilson." And the capital W remains consistent throughout, with bold sharp points at the bottom, ending with a drawn-out flourish that reaches to the "l" or even arcs over it.

The fact that James Wilson began attending Glasgow in the fall of 1762 instead of the fall of 1763 changes one important assumption about who his professors were. If he had started in 1763, his Moral Philosophy professor would have been Adam Smith, but only for the first two months. Smith left the school at that point and his lectures were carried on by a Divinity student, Thomas Young. However, because he started in 1762, James Wilson's professor of Moral Philosophy for the entire term would have been Adam Smith. And what's more, for that 1762-1763 term, we have a pretty good idea of what was said in those lectures.

Adam Smith.

Adam Smith is generally mis-remembered these days as a laissez-faire economist who held that if people are free to pursue their unbridled self-interest, then everything will generally work out for the best, as if guided by an "invisible hand."[229] This is wrong in every respect.

Adam Smith was not an economist in the present sense of the word. He did not teach a subject called Economics. And he utterly rejected the idea that naked self-interest led to general good. That idea belonged to Bernard Mandeville, not to Adam Smith. And in his *Theory of Moral Sentiments*, Smith held nothing back in his criticism of that idea—calling it "wholly pernicious" and "in almost every respect erroneous."[230]

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[229] *See, e.g.,* Subitha Subramaniam, "The Rise of the Visible Hand in Economic Policy," *Financial Times* (May 2, 2015) ("His 1776 insight, that markets, left alone allocate resources better and more efficiently than any other system, has endured the test of time. Smith believed in a laissez-faire world, where greed is good. . .").

[230] Adam Smith, "The Theory of Moral Sentiments," in Dugald Stewart, ed., *The Works of Adam Smith*, Vol. I, London: Cadell and Davies, 1812, at 545.

As a student of Francis Hutcheson, Adam Smith had absorbed his ideas of a natural sense of right and wrong, and of improving oneself in order to improve society. Now as a professor himself, he would explore more deeply what all that meant.

Smith first sparked attention with a series of public lectures in Edinburgh in 1748, in which he reached his first important conclusion: "the obvious and simple system of natural liberty."

When Hutcheson died, Adam Smith came to Glasgow, and had succeeded him as the Chair of Moral Philosophy. In that seat, he would further develop the ideas of his mentor. These did not include the idea that "greed is good." That was a product of Mandeville's Anglo-Dutch world. Adam Smith was a product of, and now a leading light of, the Scottish Enlightenment whose ideas centered on virtue.

Adam Smith did not teach that freedom to pursue one's raw self-interest could lead to the greater good. Hutcheson had taught him that such selfishness is the core of all vice. What led to the greater good, Adam Smith held—what enabled mankind to naturally find itself experiencing the greater good—was *enlightened* self-interest. Doing what was best for you because it was the most ethical thing for you to do, the most pro-social thing to do. It was by doing good that one would do well.

The "alpha wolves" and "masters of the universe" of Wall Street infamy may consider him their patron saint, but Adam Smith wholly mistrusted such people, believing that even when they were just sitting down to socialize they were inevitably conspiring to line their pockets at the expense of the rest of society. Yes, artificial distortions imposed by governments are bad, he would argue, as they result in mis-

allocation of resources and wealth. But, he would not hesitate to add, so do the distortions created by merchants and monopolists.

In other words, he was not the Chair of Unfettered Commerce. He was the Chair of Moral Philosophy—*Moral* Philosophy. The core of his lectures was an exploration of civic virtue, what it meant, and how to attain it. And to be a student at those lectures was an experience like no other.

Like Hutcheson, Smith lectured in plain English instead of Latin. Also like Hutcheson, he began his lectures at 7:00 a.m. And like all other professors, he did prepare his lectures ahead of time, writing out the concepts he wanted to convey. But unlike other professors, he wasn't preparing a script. Smith did not read his lectures at his students. And any students who expected to be spoon-fed knowledge were in for a surprise.

Instead of receiving fully-formed ideas, Smith's students witnessed them taking shape, seemingly in real time. He would build up to his ideas, ask questions he didn't know the answer to, break off to give an illustration of what he was talking about. It seemed as if he was thinking out loud:

> rather slow and hesitating at first, but [becoming] more fluent and animated as he went on, defending his tenets, combating objections to them, and pouring forth illustrations—somewhat diffuse, but with the main doctrines still discernible through all the mazes of his oratory.[231]

Sometimes, he really was thinking out loud. As he explored the prepared topics and argued their proofs, he sometimes discovered a new line of reasoning, a

[231] Coutts, *A History of the University of Glasgow*, *supra* at 221.

contradiction, a flaw, or a new solution. While ostensibly lecturing on how the world was, he was in truth actively trying to figure it all out. If there were systems that could explain how humans and their societies worked, he wanted to discover them and understand them.

In these lectures, students listened as Smith fleshed out and tested the ideas that would become his two great works: *The Theory of Moral Sentiments* and *The Wealth of Nations*.[232] (He had also planned, but never completed, a third volume on law and government.)

We have a good idea of what was contained in his lectures, because his 1759 volume *The Theory of Moral Sentiments* would later be fleshed out with actual student notes from his lectures, the whole bundle being published more than a century later in1896 as *Lectures on Justice, Police, Revenue, and Arms.*[233] By correlating references to events in the outside world, it has been deduced that these lectures began in the session of 1762-1763—the session during which James Wilson was his student.[234]

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[232] If you have not yet read these, that is probably a good thing. Adam Smith's ideas may be touch on the sublime, but his prose does not. "Impenetrable," "over-detailed," and "tedious" are fair descriptions for long stretches of pages, punctuated by the more human passages that can be enjoyable or even exciting to read. Fortunately, other authors have found ways to present his ideas in a more accessible package. *See*, *e.g.*, P. J. O'Rourke, *On the Wealth of Nations*, London: Atlantic Books, 2007.

[233] Adam Smith, *Lectures on Justice, Police, Revenue, and Arms*, Edwin Cannan, ed., Oxford: Clarendon Press, 1896.

[234] *Id.*, Editor's Introduction, at xx.

Cannan suggests that the lectures could also possibly have been given during the beginning of the 1763-1764 session prior to Smith's departure at the new year, but it is somewhat unlikely that the full course of lectures had been delivered in the two months of November and December 1763.

The course was divided into four modules: "natural theology," "ethics," "general jurisprudence," and "the nature of political institutions."[235] Like Hutcheson, As Hutcheson had done to a lesser degree, Smith had expanded Moral Philosophy far beyond the study of what philosophers have said about ethics, into the realm of exploring new ideas of truth, beauty, virtue, and civic society. Civic virtue and moral duty had been extolled since ancient times. Smith wanted to find out what it was about civic virtue and moral duty that made them so important.

Hutcheson's moral sense was a starting point: Everybody can recognize right from wrong. But that was not enough. How do we use it? His answer was our human emotions of sympathy and empathy. We can sense how others feel. We can imagine how our conduct might affect them. These social powers are what make it possible to apply our sense of right and wrong to act in a properly pro-social way. If we have a touch of virtue and a touch of wisdom, we can act in the right way for the betterment of others, and thereby better ourselves. That means we sometimes have a duty to act, "to protect the weak, to curb the violent, and to chastise the guilty"—allowing bad to happen is not neutral, it is harmful.[236]

To the annoyance of some Christians—but perhaps not the Calvinists in his audience—Smith said you don't learn morality by reading scripture. You don't learn it by reading *anything*, because true morality is what comes naturally (if one has been raised right, that is, and also if makes the effort to imagine how others will be affected—so not

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[235] Coutts, *A History of the University of Glasgow, supra* at 221.

[236] *Theory of Moral Sentiments,* in *The Whole Works of Adam Smith*, Vol. I, *supra* at 98-99.

necessarily naturally at all).[237] Those who don't make the effort, however—those who act without regard for right or wrong—are again not neutral but "the vilest and most abject."[238]

If his *Theory of Moral Sentiments* is about making the world better by making it better for others, that is only half of the whole idea. Improvement comes improving oneself, after all. And so his *Wealth of Nations* is about taking care of yourself so that you will be in a position to take care of everyone else. Or, as P. J. O'Rourke neatly paraphrased it: "A broke, naked, hungry, and self-loathing me is of no use to anyone in the neighborhood."[239]

After publishing his *Theory of Moral Sentiments* in 1759, he had been spending more time developing ideas of jurisprudence and government. By the time James Wilson would have been sitting in the lecture hall, half of the year was now devoted to exploring their underlying principles, how their institutions had developed, and how to apply these new ideas of morality and liberty.

The very first lecture laid some foundations by exploring what government is even for, which subsequent lectures developed through the history of various forms of government, from kingdoms and feudalism to Parliament, English justice, and the Rights of Englishmen. In his exploration of that last theme, Smith began a train of thought that may have sparked Wilson's later concept of popular sovereignty.

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[237] *Id.* at 158.

[238] *Id.* at 135.

[239] O'Rourke, *On the Wealth of Nations*, *supra* at 36.

The lecture began with a deceptively simple question: How do you hold a sovereign accountable? It's easy to haul its subjects into court when they've done wrong. "But there are no judges to determine when sovereigns do wrong. To suppose a sovereign subject to judgment, supposes another sovereign." Social-contract theory, like that of Locke, he had already disproven as illogical, so people didn't have a right of resistance on the basis that the king had torn up the contract.[240] So what could the people do?

He wasn't sure. "It must be allowed that resistance is in some cases lawful, but it's excessively difficult" to define what a sovereign is allowed to do. He thought out loud about different systems, the French system, England's parliament, the Catholic Church… but it always came down to the fact that *nobody* can tell a true sovereign what to do. People need to have some way to keep their government in check, but if the government is sovereign, how could it be done? For Adam Smith, it had to remain a puzzlement. Class was over.[241]

He had been so close. By his reasoning, the only way to truly keep government in check is for the government to *not* be the sovereign. But to Adam Smith that would have been a self-contradiction. Government and sovereign were the same thing. One is tempted to wonder whether this was when James Wilson began to question that assumption.

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[240] Adam Smith, *Of Justice*, Division I: Of Public Jurisprudence, §16: Of the Rights of Subjects, in *The Whole Works of Adam Smith*, Vol. I, *supra* at 66.

[241] *Id*. at 68-72.

What other classes did James Wilson take that year? The library records which so helpfully show that he was there in 1762 are not so helpful at answering this question. The books for only a small proportion of Glasgow's classes would have been checked out from that library.

Unlike St. Andrews, which only had had the one library, Glasgow had several libraries on campus. Some departments had their own libraries. The books he checked out for Humanity, for example, would have come from the Humanity department's library. Most borrowing simply wouldn't appear in this register.

Furthermore, whereas in St. Andrews the University library was the only game in town, the wealthy city of Glasgow had its own public library, several booksellers, and plenty of private libraries where a student could find texts without recording for future researchers what they were reading and what subjects they were taking.

Fortunately, thanks to Reid's 1764 letter, we know it was the norm for Glasgow students to attend popular classes regardless of their year or even their field of concentration. Adam Smith's lectures were so popular, in fact, that students transferred from other universities in Scotland and even from universities in continental Europe in order to cram into his lecture hall. Black may well have had Divinity students in his chem lab.

James Wilson attended Glasgow for three terms: 1762-1763, 1763-1764, and 1764-1765. He had an abundance of opportunity to study from Smith, Reid, Millar, Black, Anderson, and the rest. And not once, but multiple years in a row. The odds are that, when in Glasgow, he did as the Glaswegians did.

The library roll does tell us a few things about Wilson's courses and professors, however.

In the 1762-1763 term, for his Theology class, he checked out seven books on English history, two volumes on Belles Lettres, and one book on the life of Cicero. The class had some faculty turnover during the year: For November it was taught by the Principal of the University, the theologian William Leechman.[242] Then the Divinity professor Robert Trail took over from December through February.[243] Then the end of the year was covered by the Logic professor James Clow[244] and the Humanity professor George Muirhead.[245]

That same year, we know he also took Professor Clow's course in Logic and Rhetoric, for which he checked out the first volume of a history of China.[246]

No more is recorded in the library register for the 1762-1763 term.

The 1763-1764 term is even more sparsely documented. Wilson checked out one book for an Adam Smith course (presumably Moral Philosophy),[247] one for Robert

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[242] Register 3, pages 26v (Rapin's *The History of England* 1 & 2) and 27r (Rapin 3 & 4).

[243] Register 3, pages 27v (Rapin 5 & 6), 28r (Rapin 7 & 8), 28v (Rapin 9 & 10), 29v (Rapin 11 & 12), 30v (Rapin 13 & 14), and 30v (Rollin's *Belles Lettres* 1).

[244] Register 3, page 31r (Rollin's *Belles Lettres*).

[245] Register 3, page 31v (Middleton's *Life of Cicero* 1).

[246] Register 3, page 30r.

[247] Register 3, page 35r (Ellis's *A Voyage to Hudson's Bay*). The book is an account of an unsuccessful search for a Northwest Passage from 1746-1747, and includes a "short natural history of the country" complete with illustrations of the various wildlife (including the "sea unicorn," or narwhal; a truly bizarre rendition of a walrus, or "sea horse," which resembles the front end of a saber-tooth cat attached to the back end of a

Trail's Theology class,[248] and one for Patrick Cumin—the professor of Oriental Languages, but who was apparently also subbing in for the Theology class.[249] Wilson had clearly opted to take the Theology class a second time, and it would seem he came back for more Adam Smith as well. That would have been normal, as has been seen. Unfortunately, this was the term when Smith took a leave of absence at the beginning of January, then decided not to come back. (He did return all the student fees, however. At his recommendation, Divinity student Thomas Young completed the term, dictating from Smith's notes.)

Wilson's 1764-1765 term is equally sparsely-recorded in the library register. For his Natural Philosophy class, he checked out Thomas Stanley's *Lives of the Philosophers* twice, first for professor James Moor,[250] and then for professor John Anderson.[251]

John Anderson was one of the leading scientists of his day, with a preference for practicality and realism. By this time he was concentrating on physics, and his experiments were building some of the stepping stones between Newton and the Victorians to come such as Lord Kelvin. The self-described "mechanic" employed to make the apparatus and instruments was James Watt. Watt's own experiments at this time would lead to his invention of the first practical steam engine.

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seal, with a strange claw projecting out of its belly). It does not appear to have inspired Wilson to become an explorer.

[248] Register 3, page 35v (Tillotson's *Sermons* 1).

[249] Register 3, page 35v (*Hebrew Bible* 1).

[250] Register 3, page 42v.

[251] Register 3, page 44v.

Apart from Wilson's schedule, the library register contains one more bit of information: During his first year at Glasgow, James signed out the 5th and 6th volumes of Rapin's *History of England* on December 2, 1762. (See Fig. 11, above). What makes this interesting is that Martin Clagett tells us that, over sixty miles away in Cupar, James Wilson signed a legal record as William Robertson's apprentice on December 2, 1762.[252] Watt's experiments had not led to the invention of the railway yet, so it is not possible that Wilson was in two places at the same time. Was the signature on the Cupar document actually that of James Wilson? Is the date of the Cupar document merely an error of transcription? Could it have been something Wilson had sent back by post? Clagett did not provide an image or description of the Cupar document, so this is a mystery that will require further research to resolve.

The library record thus does not tell us everything, but it still tells us plenty. After having completed two terms at St. Andrews University, followed by a break in which he supplemented his theoretical education with three years of real-world experience, James Wilson returned to the halls of academe at the University of Glasgow. He arrived at precisely the best moment, when the university was reaching new heights, producing ideas and ways of thinking that were in more ways than one revolutionary. James had the opportunity to learn from as many of the professors as he could, and as often as he wished. And he spent the next three years of his life doing just that.

But when the 1764-1765 term ended, it was time to call an end to his education, and put it to work. What was he going to do?

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[252] Clagett, "James Wilson—His Scottish Background," *supra* at 163

He wasn't going to join the ministry. Though he had completed a fifth year of college, he had not spent that year earning a degree in Divinity. It would seem that he had decided to enter the legal profession. We know from his own subsequent lectures on the law that he had a solid grounding in it as the law was taught in Scottish universities, and among possible others he had learned about it from the great Adam Smith. And before that, he very likely had some experience as an apprentice to a busy Town Clerk. He could go on and try to be an Advocate—he certainly had the training and education, the intellect and the rhetorical skills necessary for admission to the elite who argued the law before the supreme courts. But his ambition seemed to lie more in the line of handling transactions. It would seem that he had decided on being a Writer.

To be a Writer, however, he needed more than a university education. He needed some practical schooling as well. He needed to learn bookkeeping.

H. Making Book.

As mentioned earlier, if one wanted to learn bookkeeping, one attended one of the English Schools which had sprung up alongside the old grammar schools. Not in Cupar, though. One was coming soon, but it hadn't opened yet.

Edinburgh, on the other hand, had not one but several English Schools, established by the city starting in late 1721. In fact, in that same spring of 1759 when James Wilson had left St. Andrews, Edinburgh had established three such schools. To one of them, located at the "bottom of Peebles Wynd," the city had appointed as master Thomas Young.[253]

Peebles Wynd was a long, narrow, medieval alley filled with shambling buildings and many nooks and crannies. Based on contemporary reports, it must have smelled to high heaven. For at ten o'clock every night, with accompanying shouts of "gardy loo!" the residents of Edinburgh emptied all their chamber pots out into the lane. As for those unlucky enough to be passing below, they

> would agonizingly cry out "Haud yer hand"; but too often the shout was unheard or too late, and a drenched periwig and besmirched three-cornered hat were borne dripping and ill-scented home. At the dreaded hour when the domestic abominations were flung out, when the smells (known as the "flowers of Edinburgh") filled the air, the citizens burnt their sheets of brown paper to neutralize the odors of the outside, which penetrated their rooms within. On the ground all night the dirt and ordure lay . . . [until] the shopkeepers, treading

[253] Alexander Law, *Education in Edinburgh in the Eighteenth Century*, 1959 (unpublished typescript in the collection of the library of the University of Edinburgh), at 63.

> cautiously amid the filth and over the teeming gutters . . . set forth to open their booths.[254]

But where the English School was sited, conditions were more pleasant. There, Peebles Wynd opened onto Edinburgh's broad main thoroughfare. And if one turned left, a short stroll would take one past the grand churches, houses of Parliament, and the courthouses, before rising to the castle atop its hill.

Fig. 15: William Edgar, *Plan of the City and Castle of Edinburgh*, 1765 (detail). Peeble's Wynd is highlighted in blue, with the approximate location of the school circled.

In the summer of 1765, James Wilson entered Thomas Young's school at the end of Peebles Wynd. It is not known where Wilson took up residence, but as he was not wealthy one might expect that he lived in one of the winding old shambles, and not along the high street. We do know that he arrived in the middle of June, and took up the

[254] Henry Grey Graham, *The Social Life of Scotland in the Eighteenth Century*, London: Adam and Charles Black, 1901, at 83.

study of bookkeeping, because twenty years later, Young would write to him to reminisce:

> Upon recollection you will remember, that on June 13th 1765, you did me the honour to begin the writing a Course of Bookkeeping in Merchant business under my ***. I had not the pleasure of being your first, yet I daresay, I had that of being the last Teacher, you had occasion for. I have often reflected with regret, that our acquaintancy had no sooner commenced, than it was interupted, by your going abroad.

[Young's letter is more popularly quoted as a footnote in the history of Golf and its coming to America, as it continues with the following anecdote:]

> You will perhaps recollect, that during your stay there, I one day pressed and prevailed with you, to take a game at golf with me on the Brunsfield links, a diversion you was totally unacquainted with, my proposal was to instruct you in it, but how sadly was I mortify'd at your beating me every round; this I thought often since, had something prophetic in it; & may it always happen to you, and all your opponents in all your laudable undertakings.[255]

Young signed the letter "Teacher of English," residing at "President Stairs, Parliament Square." Peebles Wynd and its neighbors had recently been demolished for the construction of the South Bridge, and the school would appear to have relocated a few blocks West to that more elegant location.

As for James Wilson, however, Young tells us that he did not remain there long. For someone raised in the open air and sea breezes of Fife, the stench of Edinburgh's cramped and foul conditions might have induced him to leave. Or was there something else in the air?

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[255] Thomas Young to James Wilson, January 26, 1786, James A. Montgomery Collection, Historical Society of Pennsylvania.

Fig. 16: “The Parliament Close and Public Characters Fifty Years Since,” by Sir David Wilkie, 1844. The painting depicts the square as it appeared when Young wrote to Wilson. The President Stairs formed a narrow alley between the yellow church buildings and the grey government buildings to the right, at the far side of the square.

I. Goodbye to Scotland .

There was a downside to all this education. Scotland was producing more learned professionals, clerks, and accountants than its economy had room for. The whole population was little more than a million people,[256] and most were still subsistence farmers.[257] In the whole of Fife there were only about 80,000 people, and the parishes of Cupar and Ceres combined—towns, farms, and all—still only numbered around 5,000.[258] Behind the rarefied philosophies of the universities, the wealth of Glasgow's tobacco lords, and the social clubs of the urban literati, lay "a general background of widespread poverty."[259] The people of Scotland didn't need more lawyers or accountants, and they couldn't afford them if they did.

At some point, not long after arriving in Edinburgh in June 1765, James Wilson looked at his future and decided that Scotland held no opportunities for him. He would be 23 years old that fall, with five years of the best university education in the world, and what did he have to look forward to? Getting a government job on Robertson's staff in Cupar? Going into practice as a Writer drafting contracts and deeds, in an increasingly oversaturated market? He made up his mind to go to America.

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[256] James Gray, ed., *Scottish Population Statistics, Including Webster's Analysis of Population 1755*, Edinburgh: T. and A. Constable, 1952, at 82. Webster's 1755 census calculated a total population of 1,265,380. By 1801, this had only risen to 1.6 million.

[257] Ian Charles Cargill Graham, *Colonists from Scotland: Emigration to North America, 1707-1783*, Ithaca: Cornell University Press, 1956, at 1.

[258] Gray, *Scottish Population Statistics*, *supra* at 39.

[259] Graham, *Colonists from Scotland*, *supra* at 32.

He was by no means alone. Up to now, emigration from Scotland had been a slow trickle of mostly indentured servants heading for the tobacco plantations of Virginia and the Carolinas. But by 1765, the pressure had built like one of Watt's steam chambers. Suddenly, a great wave of Scots began pouring out of the country, heading to England, to Europe, and to America. Pushed out by an economy that had no room for them, and pulled by the opportunities that awaited them elsewhere. Scotland may not have needed the highly-educated young men it had created, but their abilities were in great demand elsewhere.

It wasn't only the educated who were in demand. In the American colonies, the end of the Seven Years' War in 1763 freed their economies, and new trade restrictions like the 1764 Sugar Act forced them to manufacture what they could no longer buy. Scotland's skilled tradesmen responded at once to an American demand that "called urgently for millwrights, house carpenters, coppersmiths, blacksmiths, bricklayers, and wrights and masons."[260] The colonies began offering generous inducements of free land and money to encourage Scots and others to come make their homes there.[261] Land grants would be forfeited if a specified number of emigrants did not settle within as little as two years, however, so those who settled first would send advertisements back to Scotland telling more people to come.

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[260] *Id.* at 92.

[261] Mildred Campbell, "English Emigration on the Eve of the American Revolution," *The American Historical Review*, Vol. 61, No. 1 (October 1995): 1-20, at 17.

The situation was ideal for speculators wishing to get rich quick. But that comes later in James Wilson's story. For now, he had to cross the Atlantic, and that was not as simple as it sounds.

It's not that there were any regulatory obstacles. It is true that the wave of immigration would be slowed after 1770, when the British government imposed restrictions to stop the brain drain. And it ceased entirely in 1775 with an outright ban during the Revolutionary War. But until then, the only real obstacle to Scots who wanted to find opportunity elsewhere was the cost of passage. To leave the island, one necessarily had to take ship. The problem was that travel by ship could be prohibitively expensive.

The cost of passage from Scotland to America varied from ship to ship, and from passenger to passenger. Fares were not fixed; travelers would negotiate their own price with the ship's captain, and discounted group rates were not uncommon. For the most part, however, the cost for one adult to cross the Atlantic was around £5 or £6 sterling.[262] Based on mere inflation, that would represent a ticket price of £727 to £873 ($1000 to $1,200) in 2021 currency. Factoring in cost of living changes, the equivalent financial impact would be like spending £11,400 to £13,680 ($15,683 to $18,820).

Put another way, the passage alone would cost as much as his bursary had been worth, representing the cost of tuition, room, and board for a year at St. Andrews. For a

[262] *Id.*

well-employed mason back in Cupar, it represented half a year's income. And James Wilson was not a well-employed anything. [263]

And that was only the cost of passage. Once he got to America, he would need to pay for food and lodging until he got the right kind of job and got on his feet. He would probably need to pay for further travel, as well. People bound for the northern colonies might be landed at Halifax in Nova Scotia, where they would then have to catch the packet sailing for Boston or New York.

Did he even know anybody in New York? Most Scots had settled in Virginia or the Carolinas to work in the tobacco fields—not states known for their bustling cities. A good number had gone to Pennsylvania, however. He might be able to get letters of introduction from well-respected people here in Scotland that could open some doors for him in Philadelphia. But first he had to raise enough money to get there.

When looked at in terms of today's dollars, one realizes how staggering the cost of emigration truly was. It also explains why options such as indentured servitude for a number of years to repay the cost were appealing to laborers without such resources. Another option was to travel on credit, with the expectation that one could earn enough in America to pay off the debt, though such terms also provided for a term of servitude if the debt was not repaid.

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[263] *See* A. L. Bowley, "The Statistics of Wages in the United Kingdom During the Last Hundred Years (Part VII) Wages in the Building Trades—Contd. Scotland and Ireland," *Journal of the Royal Statistical Society*, Vol. 63, No. 3 (September 1900): 485-497, at 488. During the warm months when business was good, a mason was earning six shillings a week. Even a generous assumption that a mason had the equivalent of 40 such weeks' income throughout a year, that comes to six pounds.

James Wilson was not in the market for an indentured servitude or farmland. He needed to get to one of the cities, where there was employment for those who labored with their minds and their speech, not with their hands. But the passage alone cost as much as the value of his bursary—an entire year's tuition, room, and board at St. Andrews. For even a well-employed artisan such as a mason in Cupar, it represented half a year's income. On top of that, he would need money with on which to live until he could find work—food and lodging at the very least, and he might need to pay for a seat in a carriage And James Wilson was not a well-employed anything. How was he going to raise the money?

He left Edinburgh, returned to Carskerdo and Cupar, and asked everyone he knew if they could front him the money he needed. He promised to pay them back when he was able.

Not everybody agreed that he needed to go to America. A few years later, after he had successfully established his law practice in Pennsylvania, his sister Margaret would write to him, reminding him of this. "It gives me great pleasur to haier that you are wll and busnes prospering," she wrote. But he ought to have stayed. He would have had "excellent prospects" had he remained in Scotland, while still being near to his family.[264]

Others, however, were enthusiastic supporters. One was his soon-to-be brother in law, John Balfour.[265] Balfour was even enthusiastic about the possibility of joining him

[264] Margaret Wilson to James Wilson, July 2, 1769. James A. Montgomery Collection, Historical Society of Pennsylvania.

[265] John Balfour to James Wilson, September 19, 1794. James A. Montgomery Collection, Historical Society of Pennsylvania.

at some point. In 1769, the day after Margaret wrote to him, he also wrote. After complaining—like almost everyone else—that James never wrote any more, Balfour said that he had a good mind to settle all his business and go to America, if only Wilson could propose "a good skeame" for him.[266]

It is clear that enough people did agree to help James get to America. It is probably a safe guess that they were numerous, given that the amount involved represented a significant portion of a year's income. One can conclude as well that, for at least some of them, the amounts they contributed were a real sacrifice, because in more letters—over the next twenty-nine years—would wonder when he was going to pay them back. The money appears to have been sorely expected.

In 1772, for example, his mother wrote to complain that he had not returned any of the money he had borrowed from the family. "I thought you might have minded it and pay me the monie you Borrowed so soon as in your power."[267] James' brother added a

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Balfour was betrothed to James' sister Jean Wilson in Ceres on March 1, 1765. OPR 415 at 30/26. They were married in Markinch on September 2, 1765. OPR 447 at 10/538.

[266] John Balfour to James Wilson, July 3, 1769. James A. Montgomery Collection, Historical Society of Pennsylvania.

A year later, Balfour would write again to say "It gives me great trouble that we get so seldom word." John Balfour to James Wilson, July 6, 1769. James A. Montgomery Collection, Historical Society of Pennsylvania.

[267] Alison Landale Wilson to James Wilson, June 15, 1772. James A. Montgomery Collection, Historical Society of Pennsylvania.

Alison also bemoaned the fact that James had gotten married the previous year, but hadn't bothered to write to let the family know. In an "I told you so," she reminded him that she'd predicted he wouldn't write.

Ever religious, and ever hopeful that he would give up the law and join the ministry where he belonged, she pleaded with him to give up his worldly pursuits and return his attention to the godly "things of another world," warning that "you'll find this world and

more pointed postscript: "were it in your power to send home the payment of the money you took away with you it would be very acceptable as those from whom you got it is surprised that you never paid them or at least wrote them a letter of excuse."[268]

Chagrined, Wilson sent his mother a draft on his bank for £14 13s (£1,992 ($2,740) in 2021 money), repaid William separately, and set up an annuity that would regularly send his mother some money for the rest of her life. But there were still more people he had not repaid.

A year later, William wrote to tell him that their brother John had drowned one night as he was returning to Carskerdo. At the end of the letter, he made sure to also remind James that there were still people waiting for their money to be repaid—now eight years after it had been advanced:

> Dear Brother
>
> [. . .] This will also inform you of the Melencoly accident which happened here in October last our Brother John who was down at Largo & in his Return home between Eight & nine o Clock at night the watters was very high & the Night dark he was unfortnatly dround in the Helleden Burn at the back of Balcruvie Castle & was Caired down the Stream to the Sea Shore where he was Found Next morning — the news of which was alearming to all of us & in particular to our Mother who was bad for a considerable time after but has now got the better of it a good deall. he has left behind him a son & a daughter at freinds here ar in helth only our Sister in Coull who has been bad with her old distemper loosing the power of her body but is some better now And [w] left M[r] Robertson at Martimuss last & went to Edin' & writs with M[r] Oliver Gowley there is no other thing that occurs to me at present worth writing you. only Some of those who were so

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all its Glory but a meserable comforter to you." Her prediction would be wrong for two more decades… until of course it would prove true.

[268] *Id.*

> good as advane monie for you when you left Scotland think you might Remit home pay to them & hopes you will do it first Opertunity Mother Sisters & Brother Joins me in Compliments to our new Sister & you & beggs leve to be recommended to her & adding more but remains Dear Brother Yours Affectionatly
>
> William Wilson[269]

Twenty-nine years after the fact, his onetime friend John Balfour alluding to having done his "utmost" to help pay for Wilson's passage when James was in need, "as far as my own circumstances would permit." Though not asking for any repayment, he sadly wondered what he and his wife possibly could have done to have lost Wilson's friendship, as it seemed that Wilson had been shunning them for all these years:

> Cameron 19th Sep. 1794
>
> Dear Brother
>
> I take the present opportunity of the return of a vessel from Leith of writting you again as I have frequently Done in hopes that on receipt of this you will return an answer we Frequently hear of you being still in the land of the living and of your filling up a very conspicuous station in America but for reasons unknown to us we have not the pleasure of a direct correspondence with you. I dare say you have had us represented to you in a very unfavourable light, however this may be I do not know but I am certain I did my utmost for the accomodation and relife of our friends when in need as far as my own circumstances would permit and I am also certain that no friend you have or had ever in Scotland did

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[269] William Wilson to James Wilson, March 21, 1773. Historical Society of Pennsylvania.

Balcruvie Castle was a ruin of a tower, built on the edge of a steep bank over a small stream known as the Kell Burn. Keil's Den is a bend in the stream not far north of Largo. If one followed the stream north a short distance, one would come to the road that led to Carskerdo and Cupar. The ruin still stands, and is now known as Pitcruvie Castle.

Another point of interest in the letter is that William notes that a mutual acquaintance left the employ of the Town Clerk, William Robertson, the previous November to go take a job as a Writer in Edinburgh. Had that acquaintance been a fellow apprentice with James?

more nor even near so much for your mother when in reduced circumstances as I have done however what I did I did without grudge and I think it somewhat surprising when I think of the agreeable friendship we had before and some time after you left Scotland that now we should be denied the Comfort of a correspondence with you.

I have been in Cameron ever since you left Scotland and have for the most part had enough to Do such altho I never have made money I have always had good enough credit I have had eigh of family six sons and two Daughters my Daughters are both gone as I mentioned to you before the youngest of my sons is eight years old and the two oldest are settled by themselves

The prosperous state of America is very much spoke of here and great numbers are setting off for it when ever an opportunity offers I have a Friend a cousins son a very agreeable young man bred a house Carpenter who has some thought of coming out in the Spring of the year and would wish to know that encouragement is to be met with he has been for some time a Mr Builder in Edinburg and is a very skilled hand in Architecture but ever since the outbreaking of this ruinous war in which we are so unnecessarily and unhappily engaged Busness in that line has entirley stopt and trade of every sort has suffered very much Scotland before the comencment of the present contest had arrived at a pitch of grandeur hitherto unknown but ever since seems to be very much on the decline a Discontent prevails among the lower and midling Class of the people which I am much afraid will at some time be very Dangerous to the state at present our government is very vigilant in watching their motions some have already been aprehended and prosecuted as seditious persons and at present their is two persons under sentence of Death for high treason improvements in agriculture have gone on very rapidly within these few years and there is a very great alteration on the face of the country

I have no other news to [part of the page is missing] you be so kind as write on receipt and let us know if you could be of any service to my friend by recommending him to any Gentleman in that way This with Compliments to you and family Jam

Dear Brother

yours the same as ever

Jo: Balfour

> PS Jeanie wishes to be particularly remembered to you she has been at times very Low spirited since the Loss of her Daughters a Letter from you would be very highly esteemed by her and I think you will certainly satisfy our anxiety seeing she is now the only near friend you have in Scotland J.B.[270]

These letters certainly do not reflect well on Wilson. But they do establish the means by which Wilson was able to afford his passage to America.

As for the details of that voyage, nothing can yet be known. The author has made a diligent search of such shipping records as are available in online databases, as well as the dataset of ship logbooks collected by the Climatological Database for the World's Oceans, emigration records, and newspaper accounts. But thus far no information can be found offering any evidence of precisely when James Wilson left Scotland, nor which port he departed from, which ship he sailed on, which port he landed at, or when he arrived.

Some accounts do state that he arrived in New York in 1765, and from there completed his journey to Philadelphia, but the source of that assertion is unknown, and no evidence has been discovered which might verify it. The earliest mention that he had arrived in New York was in the 1824 Waln account, but no date was given beyond saying that Wilson was around 21 years old at the time.[271] The brief biography in Goodrich's

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[270] John Balfour to James Wilson, September 19, 1794. Historical Society of Pennsylvania.

[271] Waln, *Biography of the Signers*, *supra* at 114. Again, Waln did have access to records no longer available, but at the same time he is not reliable. Interestingly, however, making Wilson to be 21 in 1765 rather than 23 would comport more with Annan's

1829 *Lives of the Signers* implies that he sailed directly to Philadelphia.[272] No accounts mention when in 1765 he is supposed to have arrived in New York, nor do they mention how long he stayed there. All sources do agree, however that he arrived in Philadelphia in early 1766. That does agree with the evidence, and his life from that point forward is fairly well-documented.

But as for the crossing itself, all that is known is that the trip was unpleasant. (Writing to James Wilson several years later, John Balfour said that the situation in Scotland had deteriorated so much that he and others were thinking of taking their families to America. He then jokingly suggested that it would be the only way any of them would get to see Wilson in person again, saying "I remember you got so bad wether in your passage from Scotland, we almost dispair of you making a vizet.")[273]

As for the rest, we know that James Wilson did manage to raise the money he needed, that he did succeed in obtaining letters of introduction to prominent members of Philadelphia society, and that at some point in the second half of 1765 or early 1766, he boarded a ship and left behind the Scotland where he had been born, where his family had raised him, where he had suffered a shocking disappointment, where he had

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recollection that Wilson was two years his junior or so. This is yet another avenue to be pursued at a later date.

[272] Charles Augustus Goodrich, *Lives of the Signers to the Declaration of Independence*, New York: William Reed & Co., 1829, at 301.

[273] John Balfour to James Wilson, April 4, 1773. James A. Montgomery Collection, Historical Society of Pennsylvania.

If he did come to America, he added, he hoped that Wilson was "successful enough in his estate" to have a farm he could rent to him.

persevered. He left behind the Scotland whose schools and universities and ideas had prepared him for greatness.

And we know that he never returned.

* * *

What happened?

At this point it could feel as if, when James Wilson left Scotland behind and cut his ties to that land, he also cut himself off from all the people there who loved him, who nurtured him, and who had faith in him. For the rest of his life, they would send him letters sharing their lives, wondering how he was, and wondering why he never wrote back. As the years passed they take on a wounded tone, hurt by his silence, at having been cruelly shut out of his life, and not knowing why.

When Wilson married in 1771, he didn't write to let them know. They found out later, through the grapevine. Still, they wrote to congratulate him. He does not appear to have replied. When he sent money to his mother, it was via an impersonal bank draft and a hands-off annuity. The money did not come with a letter. His mother wrote in pain that she would rather have him than the money. He does not appear to have replied.

Why? By all accounts, James Wilson was a kind and thoughtful man, with a deep sense of justice and doing the right thing. What possibly could have hurt him, to make him so unkind, thoughtless, and hurtful to the people who had loved him most? What happened?

Was there some resentment over whatever had derailed his life in between St. Andrews and Glasgow? If it were true, however, that would mean that James had kept it bottled up inside himself all that time, more than six years, without anyone the wiser.

Did something shameful happen in those years—an illegitimate child, a university scandal—something he desperately did not want to be reminded of? So he avoided anything that might reopen the old wound? In that case, however, one would expect that everyone back home already knew. And there is no hint that any of them suspected him of anything less than excellent character.

Was he reinventing himself? Sometimes when people begin a new life—starting over in a new city, transitioning gender, pursing a new calling—it means establishing a new identity and writing an entirely new narrative of who they are. Sometimes this requires emotional barriers against anything that might resurrect their old identity. But for James Wilson, this again does not fit what we know. On the contrary, far from creating a new identity for himself in America, he brought his past with him and everything that had made him who he was. He had worked hard to become who he was, and now he was going to put all that work to good use.

Was he escaping a miserable or abusive family? Again, there is no reason to even suspect such a thing. All the evidence shows a family that cared for him. And he always went home to Carskerdo, it had always been home.

There is no indication that he had any problem whatsoever with anybody before he left. He had friends and family who were willing to dig deep into their pockets to help him to a better future, from sending him to grammar school to sending him to America. They certainly had no problem with him

The more one investigates what must have happened, the more the evidence suggests that nothing had happened.

Distance helped. Letters took months to arrive. No phones rang or buzzed to demand immediate communication. There was no hurry. We do know that even before he left he had a reputation as a bad correspondent—as his mother said in her 1772 letter, she'd already predicted that their communication would be "broken up" because he wasn't going to write home. As a bad correspondent, he likely put off responding to letters—perhaps even opening them—until it became easier not to do it at all. And he *was* busy, establishing his new life, starting a family with his new wife, and putting some of those abstract ideas from school into real-world practice.

Such things might explain his inaction, but they do not excuse the pain it caused. His sense of duty compelled him to give money to his brother and mother, even in the years when he could ill afford it. But his sense of duty did not extend to giving of himself. In this failing, he had forgotten the lectures about virtue and duty being tied to

sympathy and empathy, of being aware of the effects of ones actions or inactions on others, and trying not to hurt them. Adam Smith would not have been pleased.

So of course his loved ones back home were frustrated and confused, wondering what they could have done that made James Wilson cut them out of his life. Because nobody had done anything. Wilson wasn't angry or upset or vindictive. He was simply living a new life, and they weren't there to be part of it. His mother and sisters and brothers, his childhood friends and neighbors, his university comrades and adult mentors, all those who had loved him and supported him… they were out of sight, and out of mind.

J. A Young Man on the Threshold.

As James Wilson prepared to disembark from the ship that had brought him to the New World, he was a young man on the threshold of a new life. He certainly hoped that he would make something of it here. We sitting here more than two hundred years after that life had ended know full well what he made of it. We can read books describing his amazing achievements and his ignominious failures. But he had no way of knowing what the future would bring. He could not have even suspected it. Nevertheless, it was that young man standing on that boat who was going to accomplish all of it.

So who *was* he? Who was this young James Wilson?

For over two hundred years he has languished in obscurity, even when the records of his adult accomplishments were there to be seen. But until recently, very little was known of his life before America, and most of that was wrong. History has been denied the twenty-three years of life in Scotland that made him into that man, the formative experiences that defined the character and principles and beliefs which would drive the actions that made him great. History knew that, at just the right moment in history, he was the right man at the right time. But history did not know why.

Fortunately, thanks to researchers like Martin Clagett, we are starting to learn a little more. With any luck, this paper has added to that knowledge. We can finally start to answer that question, and say who the young James Wilson was, and why.

Upcoming Sections:

PART ONE: FOUNDATIONS

Chapter Three: A New World.

A. A New Life.

Arrival: Colonies in crisis.

Tutor of Classics at the College of Philadelphia.

Awarded honorary MA.

B. The Law!

Apprenticed to lawyer John Dickinson.

Opens his own practice in Reading.

Moves to Carlisle.

Writes his *Considerations on the Nature and Extent of the Legislative Authority of the British Government*.

With Bishop William White, co-authors *The Visitant*.

C. A New Family.

Investing in growth.

The Bird Family.

Marries Rachel Bird.

Fatherhood.

D. The Gathering Storm.

Rumblings of independence.

An early adopter.

PART TWO: FOUNDING

Chapter Four: Civil War.

Forms the 4th Cumberland County Battalion of Associators.

His *Considerations* gets people's attention.

Delegate to the Second Continental Congress.

The battle for the Declaration of Independence.

"Fort Wilson."

Appointed Advocate General of the government of France.

The Board of War.

The Bank of North America.

Independence at last… Now what?

Chapter Five: Father of the Constitution.

A confederation.

The events of the Constitutional Convention, May-September 1787.

The Scottish Enlightenment, civic virtue, and other foreign ideas.

Popular sovereignty.

"One man, one vote."

"Banishing slavery out of this country."

The Three-Fifths Compromise.

"The principal architect of the executive branch."

The Electoral College.

Amendments, yes. Bill of Rights? No.

"One blaze of light"—Wilson drafts the Constitution.

Ratification.

Wilson's "Speech in the Statehouse Yard."

Further efforts, the *Federalist Papers*, and final victory.

Chapter Six: Shaping America's Law.

A time to grieve: Rachel's death.

Drafting a new constitution for Pennsylvania.

The Supreme Court, but not the Chief Justice.

Professor of Law: Wilson's lectures and their influence.

Wilson's jurisprudence on the Supreme Court, and its legacy.

Chapter Seven: Ruin.

Accusations of self-dealing, and the threat of impeachment.

The financial crisis.

Remarriage to Hannah Gray, and the death of a child.

On the circuit, on the lam.

A life ends.

Conclusions.

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