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Educational materials for the Scottish Enlightenment

In this essay, Daniel Robinson discusses the thought of James Wilson as an example of the Scottish Enlightenment's influence on American thinking about natural law. James Wilson, one of the six original justices of the Supreme Court of the United States, comes to fairly conventional conclusions about natural law and seems to have strong similarities with the thought of John Locke. At the same time, however, he emphatically rejects the ideas that are the philosophical premises of Locke's political thought. In this, he demonstrates the influence of the prominent 18th-century Scottish philosopher, Thomas Reid. Reid argued that the philosophy of his time had ventured too far into abstraction and idealism and needed to be brought back to a reliance on common sense. Likewise, James Wilson believed that political thought had come to depend too much on abstract ideas and terminology, with little correspondence to real life. This is evident in his decision in Chisholm v. Georgia, in which he tries to reform common understandings of the ideas of "state" and "sovereignty." James Wilson did not want to abandon the idea of natural law, but to reform it; he believed that anything that was truly natural law would not require any abstract principles in order to be understood, but could be known from common sense. Wilson's thinking was popular among the American revolutionary generation and contributed to the idea of "self-evident" rights, one of the first principles of our country's political and legal thought. In the source readings associated with this section, you will have a chance to analyze Reid's and Wilson's thoughts on natural rights and on the role of common sense in philosophy. As you read, try to determine how these ideas relate to earlier conceptions of natural law, and consider how their influence may have survived in present-day American political thought.

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THOMAS REID

Thomas Reid was born in Kincardineshire, Scotland in 1710. As a student at the University of Aberdeen, he studied mathematics and Newton's *Principia*. In 1736, he left the university to enter the ministry at New Machar. It was in these years that he began his philosophical work.

Reid's first publication, titled *An Essay on Quantity*, critiqued Francis Hutcheson's argument that mathematics should be applied to concepts of beauty and virtue. This first work gained Reid the appointment of Professor of Philosophy at the University of Aberdeen in 1752. There he lectured on mathematics, physics, logic, and ethics, and he also founded the Aberdeen Philosophical Society. Out of the society emerged the school of common-sense philosophy, which argued that human inquiry begins from a set of "common-sense" principles imprinted by God on the human mind. Reid's philosophy was largely influenced by Hume; he sent some of his work to Hume as a response to problems he perceived in Hume's philosophy.

Reid's papers for the society were published as *An Inquiry into the Human Mind on the Principles of Common Sense* in 1764. In that year Reid was also made Professor of Moral Philosophy at the University of Glasgow (a position formerly held by Adam Smith). He later resigned from the position in order to give more time to his writing. The last ten years of his life saw two final major works, including his Essays on the Intellectual Powers of Man (1785) and *Essays on the Active Powers of Man* (1788). Reid died in Glasgow in 1796.

To read more about Reid's life and works, please click here.

JAMES WILSON

James Wilson was born in St. Andrews, Scotland in 1742. Before he emigrated to the American colonies in 1765, he studied at the University of St. Andrews, the University of Glasgow, and the University of Edinburgh. Wilson spent his first two years in America teaching Latin at the College of Philadelphia. He was admitted to the bar in 1767, and he quickly became an active voice in the debate surrounding colonial independence.

In 1774, he published a pamphlet titled Considerations on the Nature and Extent of the Legislative Authority of the British Parliament, where he argued against British sovereignty over the colonies. He was elected to the Continental Congress in 1775, and in the same year he received a military commission. Part of his efforts in Congress included the address *To the Inhabitants of the United States*, in which Wilson encouraged the people to support colonial independence.

Wilson was present at the 1787 Constitutional Convention, and he served as the Constitution's chief defender to the Pennsylvania ratification convention. In 1789, George Washington appointed Wilson an associate justice of the Supreme Court, and in the following year he became a professor of law at the University of Pennsylvania. In 1793, Wilson wrote the decision in Chisholm v. Georgia, arguing that the people of America comprised a sovereign nation rather than a confederacy of sovereign states. He remained on the Supreme Court until his death near Edenton, North Carolina in 1798.

To read more about Wilson's life and works, please click here*.*

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auditors:

audience, literally "hearers"

Blackstone, William:

(1723 – 1780) English judge and philosopher of law; author of the authoritative Commentaries on the Laws of England. For William Blackstone's biography, see the sections of this website on "Natural Law and the Colonial Roots of American Constitutionalism" and "Common Law and the Law of Reason."

Cicero:

(106 – 43 BC) Roman philosopher, politician, and orator who helped lay the foundation for the Western natural law tradition. For more information on Cicero and his relationship to the natural law tradition, please see the section of this website on "Cicero and the Natural Law."

contextualism:

see RELATIVISM

inimical:

opposed, literally "like an enemy"

jurisprudence:

philosophy of law, rational clarification of legal principles

Magna Carta:

the charter signed by King John of England in 1215, protecting many right and guaranteeing that the monarch would be bound by law

obeisant:

submissive, subservient, obsequious

parasitic:

of plants or persons; having the nature or habits of a parasite; living off another. To say that a concept is parasitic on another concept is to say that the former is dependent on the latter for its validity, and does not subsist in itself

Pennsylvania Ratifying Convention:

the assembly responsible for ratifying the Constitution in the commonwealth of Pennsylvania. Its delegates were elected by the people, but it was independent of the existing state government.

putative:

supposed; commonly put forward or accepted as true

relativism:

the idea that truths, and especially moral truths, are different in different times, places, and contexts, and that it is therefore impossible to establish any universally binding truth

Witherspoon, John:

(1723 – 1794) a Scot by birth, he emigrated to America where he became the president of Princeton University and an influential Presbyterian minister. He was a signer of the Declaration of Independence, and a representative in the Continental Congress during the Revolutionary War. He is not famous as an original thinker, though he was highly successful in disseminating the Scottish common sense philosophy in America.

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I. Introduction: There is controversy over the theoretical foundations of James Wilson's highly influential jurisprudence. It can be shown, though, that he departs from traditional English natural-law thinking to follow the ideas of Thomas Reid, a prominent philosopher of the Scottish Enlightenment.

II. Wilson's view of natural law.

A. Wilson shares Cicero's opinion that there is a law that we know naturally and which guarantees our rights.

B. He argues against those who maintained that all rights have their origins in the decisions of civil governments. For Wilson, the rights of man are a consequence of human nature, and therefore are founded by the same God who created human nature.

III. Wilson and Locke.

A. Though Wilson and Locke share many political conclusions, Wilson is careful to distance himself from the philosophical and psychological ideas that serve as the premises of Locke's thought.

B. Wilson worried that Locke's theories treated human rights as a relative matter that could differ in different societies.

C. Wilson, on the other hand, argued that the rights guaranteed in the Constitution were not created in the Constitution. Rather, they are derived from universal first principles, and apply equally to people in every country.

IV. Wilson and Reid.

A. Wilson, citing Reid, criticizes Locke's idea that all moral and political conclusions ought to be derived from reason. For Wilson, intuition and common sense are more important in making real-life decisions.

B. Most of the founding fathers, like Wilson, respected Locke, but in general they shared Wilson's disinclination to demand complex theoretical or metaphysical justifications for their beliefs.

V. Chisholm v. Georgia (1793).

A. In this legal case, a citizen of South Carolina sued the state of Georgia before the Supreme Court for fulfillment of a contract. Georgia claimed that, as a sovereign state, it was not subject to federal courts.

B. Wilson argued that Georgia's claim was based on a prevalent misunderstanding of the ideas of "state" and "sovereignty."

1. He argued that, since a state's actions were determined by people, a state could be held to many of the same standards as a person. States have no dignity not derived from the human dignity of their citizens, and so for a state to disregard human dignity would be to disregard its own.

2. According to Wilson, the people and not the government are sovereign in America. States, therefore, cannot claim "sovereignty" as an excuse to ignore individual rights.

VI. Conclusion: Wilson's thought about law demonstrates a rejection of the arcane theories of other natural-law theorists. Following Thomas Reid, he insists that the most important truths about human nature and natural rights can be known from common sense.

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I. Basic Interpretation

If you are interested in learning more about James Wilson and the Scottish common sense philosophy after reading Daniel Robinson's essay, please go to the Primary Source Documents to read some of the texts mentioned in the essay. Biographies of James Wilson, and Thomas Reid are also available. As you go back to the primary sources, keep in mind the following questions:

1. Where do natural rights originate, according to Wilson? Why does he resist the idea that rights are created in civil society?
2. How does Wilson differ from Locke? Why is this important?
3. What were the main issues of the case *Chisholm v. Georgia*?
4. In his opinion in *Chisholm v. Georgia*, Wilson discusses several notions about sovereignty. What does he think sovereignty consists of? Why are the United States unlike other "sovereign states"?
5. Why did Wilson think an individual had the power to sue a state?

6. How is the influence of Thomas Reid's philosophy reflected in James Wilson's jurisprudence?

II. Connections to Other Thinkers

In order to understand the thought of James Wilson and Thomas Reid, it is important to place them in their proper context. Both were well versed in the tradition of natural law represented by figures like Hobbes and Locke, but they openly disagreed with these thinkers, and set out to build a theory of natural law based on a new set of principles. As you learn more about their ideas, consider how they interact with those of earlier and later thinkers:

1. Perhaps the central tenet of James Wilson's political philosophy is his statement that "government is instituted for the sake of man." How much does this idea have in common with the Aristotelian teaching that the political community exists "for the sake of the good life"? What are the differences between Wilson's and Aristotle's views of the purpose of government?
2. In his essay, Robinson discusses the "relationship between Locke's psychology and his political science," which he argues is closer than has been usually thought. James Wilson, following Thomas Reid, has serious misgivings about Locke's psychological theories. In what ways do these misgivings carry over to Locke's political thought? What evidence for this can you find in Wilson's writings?
3. Although Thomas Hobbes is usually interpreted as a defender of the absolute sovereignty of the state, Hobbes himself makes very clear that he believes, as Wilson does, that government is established to protect people's rights. Are there any deeper similarities between the two thinkers? Why might Wilson object to Hobbes's view of the state?
4. The New Natural Lawyers maintain that certain goods appear to humans as self-evidently desirable, and that the natural law is derived from these self-evident premises. Natural-law thinking, however, is often criticized for its dependence on metaphysical principles not generally accepted. In your opinion, would Reid and Wilson join in this criticism, or would they accept New Natural Law as a philosophy based on common sense? Are there any differences between Reid and Wilson's approach to natural law, and that of the New Natural Lawyers?
5. James Wilson insists that in America it is the individuals, and not the government, who are ultimately sovereign. How might this keep him from the positivism of someone like Justice Holmes, who argued that a majority could legitimately enact any laws it wished? In *Chisholm v. Georgia*, Wilson argued that the state of Georgia was not sovereign, and could therefore be called to account. Is there any way, in his view, to hold the sovereign people accountable? What does this have to do with his thought about natural rights?
6. Wilson argues that governments are not immune from moral law, and that they are bound to act justly. Other thinkers, such as Machiavelli and Guicciardini, proposing the idea of "reason of state," have suggested that the ordinary rules of right and wrong do not apply to governments, and that sovereign states may do unjust actions in the interest of their sovereignty. What are the grounds for Wilson's rejection of this argument? Does he think the government is always bound by moral rules, or can there be exceptions?

III. Critical Interpretation

With a basic understanding of the thought of James Wilson and Thomas Reid, let us examine their work more critically. Are we persuaded by their arguments for a theory of natural law based on common sense? Are there any gaps or contradictions in their arguments? Use the questions below as a guide:

1. *Chisholm v. Georgia*, though one of the most important early Supreme Court cases, has had little long-term influence on American law. Only two years after the Supreme Court's decision was given, the Eleventh Amendment to the Constitution was ratified, prohibiting citizens from suing state governments. Evidently, most Americans did not share Justice Wilson's view of the relative powers of citizens, state governments, and the federal government. Do you think they were right to challenge his decision? To what extent did the Eleventh Amendment represent a rejection of Wilson's conception of the American government and its purpose?
2. In his decision in *Chisholm v. Georgia*, Justice Wilson argues that "laws derived from the pure source of equality and justice must be founded on the consent of those whose obedience they require." Wilson would insist both that laws be derived from natural law, and that they be founded on the consent of the governed. But these two do not always coincide: we know that people can consent to laws that go against the natural law, or refuse to accept laws based on the natural law. In these cases, which of these principles ought to take precedence? Is there anything in Wilson's writings to suggest how he might resolve this problem?
3. In his discussion of natural rights in the *Lectures on Law*, Wilson lists the usual triad of life, liberty, and property, but he also includes a lengthy discussion of marriage, the rights and duties of parents, and the responsibilities of servants and masters. Why do you think Wilson includes these topics in the context of a discussion of "natural rights"? What does this suggest about his view of the human person? How does it compare to the view held by other philosophers of natural right?
4. Furthermore, are we to infer that Wilson considers marriage, contracts between masters and servants, and other such things matters not of civil law, but of natural right? What are the political consequences of this idea?
5. Wilson argues that honor is one of the basic human desires, and that the preservation of one's honor is a human right. He is careful, though, to distinguish between two kinds of honor. Monarchical honor, he argues, "judges of actions not as they are good, but as they are showy; not as they are just, but as they are grand"; under a republican government, however, honor's "connexion with virtue is indissoluble." Is this distinction fair? In your opinion, does a democratic form of government help to ensure that honor be given only to those that deserve it? Why or why not?
6. In his decision in *Chisholm v. Georgia*, Wilson argues that the Constitution was formed not by the governments of the states, but by "us the people" directly. He believes that the federal government has jurisdiction over the state government of Georgia, because it was the people of Georgia, and not the government of Georgia, that ratified the constitution in that state. But if the governments of the several states are not intermediate between the individuals and the federal government, what purpose do they serve? According to Justice Wilson's logic in Chisholm v. Georgia, what is the purpose of state governments? Are they obsolete under the new constitutional régime? Why or why not?
7. Thomas Reid and James Wilson both propose to avoid the obscure language and conceptual conundrums of more abstract thinkers by a reliance on "common sense." How do they defend common sense as a legitimate source of first principles? Do we accept Wilson's argument "that to make nothing selfevident, is to take away all possibility of knowing any thing"?
8. Reid writes that "nature has put [moral] knowledge within the reach of all men." But, given the very different positions of rational people on fundamental moral questions, do you think "common sense" can really serve as the foundation of a political system? Are basic moral truths really self-evident to everyone? Are Reid's and Wilson's appeals to common sense merely a way of evading hard questions, or are they a legitimate response to the counterintuitive idealist theories of thinkers like Locke, Berkeley, and Hume?

IV. Connections to Contemporary Concerns

The thought of James Wilson, (and through him, Thomas Reid), had a great influence on the legal thought of our country's founding generation, with a legacy that continues today. Let us now turn to some contemporary issues, and see how James Wilson's thought can be applied to them.

1. The issue of federalism is a controversial one in modern American politics. In the course of America's history, the relationship of the federal and state government has changed dramatically, as the federal government has exerted more control over the states. This has taken the form of direct coercion (as when federal marshals enforced desegregation laws) and of less obvious control (as when highway funding is tied to drinking-age laws). What do you think is the appropriate balance of power between federal and state governments? What means do you think the federal government ought to be able to use to influence the states? How might Justice Wilson's arguments about federal jurisdiction over Georgia influence your conclusion?
2. Today, many people argue that conventional laws and attitudes about marriage and the family are irrational, or grounded only in prejudice, and ought to be changed to allow for alternative family arrangements. James Wilson, on the other hand, contends that the norms of family life exist prior to all civil law, and are intimately connected to human nature. How might he respond to those who defend less traditional family arrangements? Who do you think would have the better of the argument?
3. Robinson writes that, according to Wilson, the political and moral principles behind the American Revolution "were neither local nor situational nor even historical. Rather, they are universal, and thus the creation of the United States exemplifies what the motto conveys: Novus ordo saeclorum." This sounds similar to one of the justifications offered for America's wars in Afghanistan and Iraq: it was argued that America had an obligation to bring a democratic form of government to those countries. In implying that the principles of the American Revolution are universal, has Wilson committed himself as well to the project of spreading American-style democracy abroad? Why or why not?
4. Most of the philosophical and economic theories of the present time are extraordinarily complex, and often counterintuitive. Materialist philosophers lay out complex reasons to explain why human consciousness is an illusion; Keynesian economists devise elaborate formulas to prove that a country needs to spend money to save money. At least before the justifications for these positions are understood, common sense rebels. Thomas Reid and James Wilson seem to be telling us that common sense should be trusted. If we agree with Reid and Wilson, is there any place for complicated arguments and fine reasoning? Do Reid and Wilson allow for a middle ground between abstract idealism and unthinking acceptance of common sense?
5. James Wilson's argument is very clear: in America, the people are sovereign, and government at every level exists to obey their will and to serve their interests. But the American government does not always act on the basis of popular support. When the federal government has recently bailed out banks and reformed the healthcare system, these measures have met with fierce popular resistance. Those in the federal government who proposed them and carried them out, however, understood these policies to be for the common good. Do you think the government is ever justified in enacting unpopular policies, even if they are in the public interest? Are there any limits to the sovereignty of the people?