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James Wilson's Reidian Democratic Political Theory: One Founder's Contributions to the US Constitution

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Submitted in fulfilment of the requirements of the Degree of Ph.D.

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Abstract

Scottish born James Wilson is a significant, but often forgotten American Founder. He played a key role in every stage of the development of the US Constitution, participating in the Constitutional Convention and ratification debates, as well as authoritatively interpreting the US Constitution as a Justice of the Supreme Court. Wilson's contributions in each of these stages were radically democratic. This position is exemplified in his Revolution Principle that enshrines the notion that the people can change their constitution and any aspect of their government at any time and for any reason because they are perpetually sovereign, and hence, their consent authorises governments and law. This principle is also at the heart of Wilson's theoretical explanation of his interpretation of the system of law and governance created by the US Constitution and the philosophy that underpins it, which he presents in his Lectures on Law. This explanation, which I describe as Wilson's Democratic Political Theory, greatly aids in understanding Wilson's contributions to the development of the US Constitution. Wilson formulated this theory partly through extensively and significantly adhering to and developing the Common Sense Philosophy of his fellow Scot, Thomas Reid. Though Wilson's adherence to Reid has been recognised, its true extent has not been fully identified and formulated. Recognising Wilson's adherence to Reid, helps reveal and explain that Wilson saw his theory as commencing something akin to a Newtonian revolution in the science of government, which when realised in practice (as he believed the US Constitution had), would commence a peaceful, progressive, and continuous revolution in the praxis of governance and law. This continuous revolution was the result of Wilson's Revolution Principle and his proposed end of government: the protection and improvement of society. In Wilson's theory, this principle and end, working in concert, would lead to the reciprocal improvement of government and society through the development and application of knowledge. This conception of a continuous revolution predicated on reciprocal improvement exemplifies the progressive nature of his Democratic Political Theory. Given Wilson's significance in the development of the US

Constitution and the progressive and radically democratic nature of Wilson's theory, recovering and rehabilitating Wilson supplements and challenges the existing scholarship concerning the early American republic. Furthermore, rehabilitating Wilson also potentially presents an alternative to contemporary conceptions of the Founding and US Constitution, particularly those presented by Originalism and the Founders' Intent Political Ideology. Doing so, could inform and potentially help to address the current American political crisis and the socio-epistemological divide that characterises it. This highlights Wilson's significance, revealing his continued neglect in scholarship as a grave oversight, and his absences from popular American conceptions of the Founding and US Constitution as a disservice to the American people.

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Dedicated to:

My Love Leila, my children, nieces, and nephews (official and chosen) especially Elea and Maxime. I hope we manage to leave you the world better than we found it.

Declaration

I declare that, except where explicit reference is made to the contribution of others, that this dissertation is the result of my own work and has not been submitted for any other degree at the University of Glasgow or any other institution.

David Harrison Peters

Abbreviations

- AP:** Reid, Thomas. *Essays on the Active Powers of Man*. Edited by Knud Haakonssen and James A. Harris. Edinburgh: Edinburgh University Press, 2010.
- DHRC:** Kaminski, John P., Gaspare J. Saladino, Richard Leffler, Charles H. Schoenleber and Margaret A. Hogan, ed. *The Documentary History of the Ratification of the Constitution Digital Edition*. Charlottesville: University of Virginia Press, 2009.
- DSSC:** Elliot, Jonathan, ed., *The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in 1787: Together with the Journal of the Federal Convention, Luther Martin's Letter, Yates's Minutes, Congressional Opinions, Virginia and Kentucky Resolutions of '98-'99, and Other Illustrations of the Constitution*. Vol. 2. Philadelphia: Lippincott, 1941.
- Inq.:** Reid, Thomas. *An Inquiry into the Human Mind on the Principles of Common Sense*. Edited by Derek R. Brookes. Edinburgh: Edinburgh University Press, 2000.
- IP:** Reid, Thomas. *Essays on the Intellectual Powers of Man*. Edited by Derek R. Brookes. Edinburgh: Edinburgh University Press, 2002.
- SCS:** Wilson, James. "Speech on Choosing the Members of the Senate by Electors; Delivered, on 31st December 1789, in the Convention of Pennsylvania, assembled for the purpose of reviewing altering and amending the Constitution of the State." In *The Works of the Honorable James Wilson, L.L.D.: Late One of the Associate Justices of the Supreme Court of the United States, and Professor of Law in the College of Philadelphia*, edited by Bird Wilson. Vol. 3. 3 Vols. Philadelphia: Lorenzo Press, 1804.
- WJW:** Wilson, James. *The Works of the Honorable James Wilson, L.L.D.: Late One of the Associate Justices of the Supreme Court of the United States, and Professor of Law in the College of Philadelphia*. Edited by Bird Wilson. 3 vols. Philadelphia: Lorenzo Press, 1804.

Note on Primary Sources

This thesis will utilise the Edinburgh edition of Reid's work and Philadelphia edition of Wilson's *Works* (1804) because they are recognised as authoritative scholarly editions. However, there is some uncertainty surrounding the historical accuracy of the scholarly editions of Reid's published works. As Derek R. Brookes argues, the 1785 edition (1990) is: "the only current edition available that faithfully represents one of the original editions."¹ There were also potentially official and unauthorised American editions available to Wilson. It is important to be aware of these potential issues, although in Appendix A I illustrate that the editions listed above are sufficient for identifying the selected textual similarities. Thus, when coupled with their standing as authoritative scholarly editions, these works are appropriate and adequately meet the methodological demands of this project, including the assessment of the extent of Wilson's adherence to Reid.

¹ Derek Brookes, "Preface," in *Inq.*, vi.

Preface

In many ways, writing this thesis is the culmination of my own personal journey that has witnessed the radical transformation of my political views and how I understand my native country, the United States. I grew up in the Founders' Intent Political Ideology, being born into a predominately Republican family, and self-identifying as a libertarian. This journey began in Edinburgh where I was pursuing a Masters degree in Intellectual history.¹ I had enrolled in the programme in order to learn more about the philosophies and thinkers that had influenced the American Founders. There I was introduced to the work of James Wilson (1742-1798) and his connection with Thomas Reid (1710-1796) by my lecturer. I pursued the subject, and what my research revealed led me to question many things I had taken for granted, including the bases of my own political positions. This was further fostered by several friends from all over the world through discussions that broadened my perspective and opened my mind. This began to reveal the incongruencies and inaccuracies in my own political positions and conceptions of the American Founding that were grounded in the Founders' Intent Political Ideology.

The experience had permanently changed my perspective, which was starkly revealed to me in conversations on my return home to the States. I could no longer find common ground with those I had once agreed with and began to realise how this ideology inhibits discussion and insulates its adherents from new ideas, information, and perspectives. This came fully into focus during Bernie Sanders' 2016 bid for the Democratic nomination. A number of people I knew, liked his platform and Bernie as a candidate, but could not bring themselves to

¹ David Peters, "James Wilson's Common Sense: How and why James Wilson used Thomas Reid's Common Sense Philosophy in his Lectures on Law," (Masters thesis, University of Edinburgh, 2012). In this dissertation I noticed: Wilson's textual alignment with Reid's work concerning scepticism and empiricism; a relationship concerning the authority of common law; and his repurposing of Reid's first principles. Such points were undeveloped, but inform corresponding portions of this thesis.

support him because he is a democratic-socialist, and hence, for them “un-American”.

I arrived in Dumfries in 2016 with hopes of writing a thesis that would be another small step in dismantling this roadblock to meaningful political debate in the United States. My goal was to illustrate that many of these political positions and reforms were compatible with at least one Founder’s intentions. The hope was that this would help open people’s minds to new ideas and broaden Americans’ perspectives (as discovering Wilson had done for me). And, furthermore, that doing so might allow for substantive debate on political policy.

However, the election of President Donald Trump rapidly revealed the epistemological nature of the divide that had formed in the United States and was widening with each passing day of his administration. In part it was my research on Reid and Wilson at this time that brought the epistemic nature of this divide to the fore, and with it the potentially dire consequences of such a divide in a democracy. These fears were confirmed in the responses to a blog I wrote on the epistemic nature of this divide.² I also began to realise how the President’s rhetoric tapped into the ideology with which I was raised, placing it at the heart of this epistemic breach. He recognised the real grievances of many Americans, earning their trust, and then presented a return to the Founders’ Intent as the panacea to address these issues and “Make America Great Again”. I also saw the further potential in Wilson’s work to dismantle this dangerous ideology through providing an alternative narrative of the Founding and with it an alternative conception of what is “American”. My hope has been that this Wilsonian perspective could cross the epistemological gap and undermine or compete with the Founders’ Intent Political Ideology.

Sadly, as I’ve written this thesis, I’ve watched those “American” principles, virtues, and political positions (supposedly rooted in the founding myth and US Constitution) change with the whims and tantrums of the 45th President, Trump. The epistemological divide has now become characterised by a cult of personality and increasingly violent. This was shockingly revealed on January 6, 2021. The

² David Peters, “On Truth and trump,” *Gate to the Good Life* (Blog), January 29, 2017, <https://gatetothegoodlife.wordpress.com/2017/01/29/on-truth-and-trump/>

world watched as this ideology's adherents (ever watchful for the rise of tyranny as the self-proclaimed guardians of American liberty and the US Constitution), attempted to prevent the peaceful transference of power to duly elected President Joe Biden. They did so by violently breaching the US Capitol, all the time referring to the US Constitution and waving Revolutionary War era flags.

Over a year later, this socio-epistemological divide has only deepened and become more radical with experts warning of a potential civil war on the horizon—a statement that, while frightening—is unsurprising to me having grown up in this ideology. It views violence as the only means to deal with a tyrannical government and sees all governments (or at least Democratic administrations) as inherently tyrannical. The ongoing precarity of the American political situation has marked the journey of the writing of this thesis with both a sense of futility as, from an ocean away, I watched my country tear itself apart, and an idealistic hope that rehabilitating Wilson's work may reveal its potential.

While this hope has been my motivation, the same elements that make Wilson ideal for addressing the current political situation in the United States, also highlights his importance and timeless aspects of his political theory. Wilson's theory raises questions by viewing government from a different perspective than much of the received political tradition. His example elucidates the importance of society and viewing individuals within that context as social beings. This informs and challenges how we think of governments and governing as well as the power of ideas, rhetoric, and the importance of epistemology within it. Furthermore, his recognition of the dialectical interaction between society and government, raises the possibility that the very structures and institutions of government can encourage and improve a population. Such a conception inspires us to think about how to structure governments, not only to control the darker aspects of human nature, but also to encourage our better angels. Wilson's perspective challenges our underlying assumptions about the law, governments, and the practice of governing. It forces us to return to and ponder first principles of governance, the nature of those for whom governments are formed, and the ends for which we form them. I believe this potential in Wilson's work is brought into striking relief when read against the backdrop of this present political moment.

Chapter 1 – Introduction: Recovering James Wilson, a significant and neglected Founder

The story of the Founding of the United States and the development of its Constitution is significant and complex. It remains the focus of debate among scholars and is referenced as authoritative and decisive in American political debates. However, this story is often simplified, homogenised, and particularly in public discourse, mythologised. Exemplifying the reductive retelling of this historical event is the continuing neglect of one of this story's most significant participants: James Wilson (1742-1798). His contributions to the development of the US Constitution were significant at the time, representing a once important strand of the American political tradition that has since been neglected and marginalised. Wilson's contributions and resulting theory were crucially informed by the Common Sense philosophy of his fellow Scot, Thomas Reid (1710-1796), providing a unique perspective on this history, which casts it and the Constitution it produced in a very different, more democratic, and progressive light. Thus, I will argue in this thesis, that rehabilitating the neglected contributions and political theory of this forgotten Founder, James Wilson, has potentially significant implications for both scholarship and contemporary American politics.

1.1 - Scotland and the Scottish Enlightenment: James Wilson's early life and context

Wilson's early life in Scotland remains largely lost in the dust of time. However, many scholars rightfully look to this contextualising experience to understand the philosophical thinking that underlay, and thus, aids in understanding Wilson's neglected contributions.¹ Martin Clagett has made laudable efforts to recover this

¹ Kermit L. Hall, "Introduction," in *Collected Works of James Wilson*, ed. Kermit L. Hall & Mark David Hall (Indianapolis: Liberty Fund, 2007), 1:xiv-xvi; Martin Clagett, "James

part of Wilson's biography, leading him to describe Charles Smith's formerly authoritative account of Wilson's life as "more romantic fiction than fact."²

What we do know is that Wilson was born in 1742 to tenant farmers at Carskerdo in Fife and that he would go on to attend the local grammar school in Cupar.³ Wilson's academic prowess (particularly, his proficiency in the Classics) earned him a bursary to attend The University of St Andrews in 1757.⁴ He would leave St. Andrews after only two years, which was not unusual at the time.⁵ Wilson appears to have returned to Cupar and at one point was apprenticed as a law clerk to William Robertson.⁶ In 1763, Wilson would return to his studies, this time at the

Wilson—His Scottish Background: Corrections and Additions," *Pennsylvania History: A Journal of Mid-Atlantic Studies* 79, no. 2 (2012): 170; William Ewald, "James Wilson and the Scottish Enlightenment," *University of Pennsylvania Journal of Constitutional Law* 12, no. 4 (2010); Ian Bartrum, "James Wilson and the Moral Foundations of Popular Sovereignty," *Buffalo Law Review* 64, no. 2 (2016): 232; Aaron T. Knapp, "Law's Revolution: James Wilson and the Birth of American Jurisprudence," *Journal of Law & Politics* 29, no. 2 (2014): 265; Roberta Bayer, "The Common Sense American Republic: The Political Philosophy of James Wilson (1742-1798)," *Studia Gilsoniana* 4, no. 3 (2015): 190-91 & 205; Benjamin W. Redekop, "Reid's Influence in Britain, Germany, France, and America," in *The Cambridge Companion to Thomas Reid*, ed. Terence Cuneo & Rene van Woudenberg (Cambridge: Cambridge University Press, 2004), 327; Geoffrey Seed, *James Wilson* (Millwood: KTO Press, 1978), 5.

² Clagett, "Scottish Background," 155. See also: Ewald, "Scottish Enlightenment," 1111-14.

³ Clagett, "Scottish Background," 158; Ewald, "Scottish Enlightenment," 1062; Ewald, "James Wilson and the Drafting of the Constitution," *University of Pennsylvania Journal of Constitutional Law* 10, no. 5 (2008): 902; Stephen A. Conrad, "Wilson, James (1742-1798), revolutionary politician in America and jurist in the United States," in *Oxford Dictionary of National Biography* (Oxford University Press, 2004), <https://www.oxforddnb.com/view/10.1093/ref:odnb/9780198614128.001.0001/odnb-9780198614128-e-68676>; Bartrum, "Moral Foundations," 258; Nicholas Pedersen, "The Lost Founder: James Wilson in American Memory," *Yale J.L. & Human* 22, no. 2 (2010): 261; Garry Wills, "James Wilson's New Meaning for Sovereignty," in *Conceptual Change and The Constitution*, ed. by Terence Ball and J.G.A Pocock (Lawrence, Kan: University Press of Kansas, 1988), 104; Charles Page Smith, *James Wilson: Founding Father 1742-1798* (Chapel Hill: The University of North Carolina Press), 3; Kermit Hall, "Introduction," 1:xv.

⁴ Clagett, "Scottish Background," 161. See also: Clagett, "Scottish Background," 160; Kermit Hall, "Introduction," 1:xvi; Ewald, "Scottish Enlightenment," 1064; Seed, *James Wilson*, 5.

⁵ Clagett, "Scottish Background," 157.

⁶ Clagett, "Scottish Background," 157-58, & 163-64; Ewald, "Scottish Enlightenment," 1114.

University of Glasgow.⁷ He remained there until 1765, at which time he emigrated, like many of his fellow Scots, to the then British North American colonies.⁸

The Scotland that Wilson grew up and was educated in was experiencing an intellectual renaissance known as the Scottish Enlightenment.⁹ *An Oxford Companion to the Romantic Age* defines the term as: “the accepted label for the efflorescence of intellectual culture in Scotland in the eighteenth century.”¹⁰ Alexander Broadie explains that:

In eighteenth-century Scotland there were many who were willing and able to think for themselves, and the level of tolerance in the country was sufficient to enable thinkers to discuss their ideas in public with relative safety, at which moment there arose geniuses such as Hume, Smith, Reid, Black, and Hutton.¹¹

These geniuses and the myriad of others that partook in this intellectual flourishing were normally moderate Presbyterian members of the Scottish literati, who were professors, lawyers, and preachers.¹² The movement was generally

⁷ Clagett, “Scottish Background,” 166.

⁸ Conrad, “Wilson, James”; Kermit Hall, “Introduction,” 1:xvi.

⁹ Clagett, “Scottish Background”; Ewald, “Scottish Enlightenment”; Leavelle, “James Wilson and the Relation of the Scottish Metaphysics to American Political Thought,” *Political Science Quarterly* 57, no. 3 (1942); Daniel N. Robinson, “The Scottish Enlightenment and the American Founding,” *The Monist* 90, no. 2 (2007), 174-78.

¹⁰ Knud Haakonssen, “Scottish Enlightenment,” in *An Oxford Companion to the Romantic Age* (Oxford University Press, 1999), <https://www.oxfordreference.com/view/10.1093/acref/9780199245437.001.0001/acref-9780199245437-e-628>. See also: Alexander Broadie, “The Rise (And Fall?) Of The Scottish Enlightenment,” in *The Oxford Handbook of Modern Scottish History*, ed. T.M. Devine & J. Wormald (Oxford: Oxford University Press, 2012), 370-71 & 380-81; Ewald, “Scottish Enlightenment,” 1056, & 1081-82; David Walker Howe, “Why the Scottish Enlightenment was Useful to the Framers of the American Constitution,” *Comparative Studies in Society and History* 31, no. 3 (1989): 576-77.

¹¹ Broadie, “Scottish Enlightenment,” 371. See also: Broadie, “Introduction,” in *The Cambridge Companion to Thomas Reid*, ed. Alexander Broadie and Craig Smith, 2nd ed. (Cambridge: Cambridge University Press, 2019), 1.

¹² Nicholas Phillipson, “Scottish Enlightenment,” in *The Oxford Companion to British History* (Oxford University Press, 2015), <https://www.oxfordreference.com/view/10.1093/acref/9780199677832.001.0001/acref-9780199677832-e-3820>; Haakonssen, “Scottish Enlightenment”; Ewald, “Scottish Enlightenment,” 1082-83; Broadie, “Scottish Enlightenment,” 380; Broadie, “Introduction,” 2.

centred around the three major university cities of Aberdeen, Edinburgh, and Glasgow.¹³

However, there is some debate as to whether there is such a thing as a particularly *Scottish* Enlightenment.¹⁴ This is because Scotland was “recognised as a power house of ideas” in the broader context of the concurrent European Enlightenment.¹⁵ Broadie argues that the particularly Scottish institutions (the law, the church, and the university) that contributors to the Enlightenment were members of, informed their ideas: “The outcome was a cultural movement whose Scottishness ran deep, even as the movement produced writings of universal significance.”¹⁶

This particularly Scottish intellectual flourishing grew out of seventeenth century advances in Scotland and its excellent educational system with democratic tendencies, of which Wilson took full advantage.¹⁷ The Scottish education system's excellence was in part due to John Knox's reforms aimed at providing a school in every parish.¹⁸ This goal led to most of the male children from varying classes being educated together in classical studies particularly focused on Latin authors.¹⁹ Education in the classics continued in university where

¹³ Roger L. Emerson, and Mark G. Spencer, “Several Contexts of the Scottish Enlightenment,” in *The Cambridge Companion to the Scottish Enlightenment*, ed. Broadie and Craig Smith, 2nd ed., 20-24; Broadie, “Introduction”, 6.

¹⁴ Broadie, “Introduction,” 2; Haakonssen, “Scottish Enlightenment”; Ewald, “Scottish Enlightenment,” 1082-83; Howe, “Scottish Enlightenment,” 574.

¹⁵ Broadie, “Scottish Enlightenment,” 370. See also: George Elder Davie, *The Democratic Intellect: Scotland and Her Universities in the Nineteenth Century*, ed. Murdo Macdonald, 3rd ed. (Edinburgh: Edinburgh University Press, 2013), 3.

¹⁶ Broadie, “Scottish Enlightenment,” 380. See also: Broadie, ‘Introduction’, 2; Haakonssen, “Scottish Enlightenment,”; Ewald, “Scottish Enlightenment,” 1085.

¹⁷ Concerning seventeenth century advances see: Kelsey Jackson Williams, *The First Scottish Enlightenment: Rebels, Priests, and History* (Oxford: Oxford University Press, 2020); Broadie, “Scottish Enlightenment,” 372-74. Education leading to Enlightenment and democratic tendencies: Ewald, “Scottish Enlightenment,” 1082-86 & 1100-01. Concerning the excellence of Scottish education see: Claggett, “Scottish Background,” 159-60; Kermit Hall, “Introduction,” 1:xv-xvi; Douglas Sloan, *The Scottish Enlightenment and the American College Ideal* (Columbia: Teachers College Press, 1971), 22 & 33.

¹⁸ Ewald, “Scottish Enlightenment,” 1082-83.

¹⁹ Claggett, “Scottish Background,” 159-60.

it was usually supplemented with studies on mathematics, logic, moral philosophy, and natural philosophy.²⁰

The Scottish Enlightenment in part also developed in response to the economic impoverishment and social issues confronting Scotland that precipitated and followed the Act of Union of 1707.²¹ In this Act, Scotland gave up its independence to unify with England, transforming it economically and politically, but also creating further issues that the thinkers of the Scottish Enlightenment were attempting to address.²² As David Howe explains: “The intellectual agenda of the thinkers of the Scottish Enlightenment was set by the practical issues of their time and place.”²³ According to Roger Emerson and Mark Spencer, this led to: “much theorising about society, social change and the nature of freedom”, and for Howe: “serious reflection on the nature of social and economic progress.”²⁴ However, this general motivation did not materialise as the subject matter of a single discipline, nor did it produce what might be called a Scottish school of thought. Instead, the Scottish Enlightenment was characterised by debate and breadth, stretching from natural philosophy and medicine to literature and art.²⁵

²⁰ Clagett, “Scottish Background,” 161; Ewald, “Scottish Enlightenment,” 1100-01.

²¹ Concerning the Scottish Enlightenment as response to the problems facing Scotland see: Emerson and Spencer, “Scottish Enlightenment”; Broadie, “Introduction,” 4; Howe, “Scottish Enlightenment,” 576; Ewald, “Scottish Enlightenment,” 1085-86 & 1105-07. Concerning the Act of Union of 1707, its causes, and effects see: Clare Jackson, “Union Historiographies,” in *the Oxford Handbook of Modern Scottish History*, ed. by Devine & Wormald, 338-354; Karin Bowie, “New Perspectives on Pre-Union Scotland,” in *the Oxford Handbook of Modern Scottish History*, ed. by Devine & Wormald; Emerson & Spencer, “Scottish Enlightenment,” 11-15; Davie, *Democratic Intellect*, 3; Devine, *Scottish Clearances*, 122; Devine, *The Scottish Nation: A Modern History* (Penguin Group, London: 2012), 105; Jeremy Black, *Culloden and the '45* (Gloucester: Sutton, 1990), 193-194; Ewald, “Scottish Enlightenment,” 1088.

²² Davie, *Democratic Intellect*, 3; Jackson, “Union Historiographies”; Bowie, “Pre-Union Scotland”; Ewald, “Scottish Enlightenment,” 1088; Emerson & Spencer, “Scottish Enlightenment,” 11-12.

²³ Howe, “Scottish Enlightenment,” 576. See also: Broadie, “Introduction,” 4; Ewald, “Scottish Enlightenment,” 1085-86, 1091, & 1105-07; Emerson & Spencer, “Scottish Enlightenment,” 14.

²⁴ Respectively: Emerson & Spencer, “Scottish Enlightenment,” 14; & Howe, “Scottish Enlightenment,” 576.

²⁵ Howe, “Scottish Enlightenment,” 576 & 580; Broadie, “Introduction,” 5; Haakonssen, “Scottish Enlightenment”; Samuel Fleischacker, “The Impact on America: Scottish

However, while the Scottish Enlightenment was broad, philosophy did play a central role with the philosophers of the Scottish Enlightenment striving to find nothing less than “a coherent philosophical basis for all human knowledge”.²⁶ Moral philosophy particularly played an important role in addressing the social and political issues facing Scotland. During the Scottish Enlightenment moral philosophy concerned the “whole study of human nature, both normative and descriptive”, which in time would develop into a number of social sciences.²⁷ However, moral philosophy was no exception, and like the broader Scottish Enlightenment, Scots thinkers produced several competing and largely incompatible theories.²⁸

Natural law was considered part of moral philosophy in Scotland at the time and was widely accepted and taught at her universities.²⁹ According to Knud Haakonssen, the natural law generally is a systematisation of the virtue of justice that identifies duties prescribed by nature and corresponding rights as a means to realise: “peace and sociability under civil government rather than [...] divine law.”³⁰

philosophy and the American Founding,” in *The Cambridge Companion to the Scottish Enlightenment*, ed. Alexander Broadie (Cambridge: Cambridge University Press, 2003), 333; Antti Lepisto, *The Rise of Common-Sense Conservatism: The American Right and the Reinvention of the Scottish Enlightenment* (London: The University of Chicago Press, 2021), 38.

²⁶ Haakonssen, “Scottish Enlightenment”. Concerning the central role of philosophy see: Broadie, “Introduction,” 7.

²⁷ Howe, “Scottish Enlightenment,” 576. See also: Haakonssen, “Scottish Enlightenment”; Phillipson, “Scottish Enlightenment”; Ewald, “Scottish Enlightenment,” 1105.

²⁸ Broadie, “Introduction,” 5; Howe, “Scottish Enlightenment,” 580; Fleischacker, “Impact on America,” 333; Lepisto, *Common-Sense Conservatism*, 38; Haakonssen, “Scottish Enlightenment”.

²⁹ John W. Cairns, “Legal Theory in the Scottish Enlightenment,” in *The Cambridge Companion to the Scottish Enlightenment*, ed. Broadie and Craig Smith, 2nd ed., 221; AP, 283; Haakonssen, “From Natural Law to the Rights of Man: a European Perspective on American Debates,” in *A Culture of Rights: The Bill of Rights in philosophy, politics, and law - 1791*, ed. Michael J. Lacey and Knud Haakonssen (Cambridge: Cambridge University Press, 1991), 21.

³⁰ Haakonssen, “Natural Jurisprudence and the Identity of the Scottish Enlightenment,” in *Philosophy and Religion in Enlightenment Britain: New Case Studies*, ed. Ruth Savage (Oxford: Oxford University Press, 2012), 260. See also: Haakonssen, *Natural law and moral philosophy* (Cambridge: Cambridge University Press, 1996), 6-7; Haakonssen,

Wilson was directly exposed to and educated in the Scottish Enlightenment conceptions of moral philosophy and natural law, particularly in Glasgow as one of the centres of the Enlightenment. While Wilson was designated as a theology student at Glasgow, William Ewald explains that: “James Wilson would have received, in his basic arts education, essentially the same instruction as the students of law”, which he would supplement through his apprenticeship as a law clerk.³¹ Furthermore, at Glasgow Wilson may have been exposed to some of the geniuses whom Broadie identifies. A year into Wilson’s studies at Glasgow, Adam Smith (1723-1790) resigned from his post as the chair of Moral Philosophy and Thomas Reid was elected to take his place in 1764.³² Clagett explains he could not determine definitively whether Wilson studied under Reid or Adam Smith, but notes that: “any student who had completed two years of studies in Scottish universities during the late eighteenth century obtained the status of *cives* and was entitled then to attend lectures for free.”³³

From among the competing theories of these Scots it was Thomas Reid’s Common Sense Philosophy that Wilson chose to adhere to, shaping his later contributions to the development of the US Constitution. According to Aaron Knapp, there is a consensus among commentators on Wilson that recognises: “the tremendous influence that Scottish common sense principles had on Wilson’s thinking”.³⁴ Daniel Robinson asserts this position more boldly and simply: “Wilson was a Reidian, [...] by indubitable self-proclamation.”³⁵ Arnaud Leavelle also argues, in reference to Reid’s “Scottish or ‘Common Sense’ Philosophy”, that: “The key to the unique features of Wilson’s thought may be found in this metaphysical discussion.”³⁶ Therefore, there is a consensus among some scholars that, in general, Wilson transported his Scottish education and experience of the

“Natural Jurisprudence and the Theory of Justice,” in *The Cambridge Companion to the Scottish Enlightenment*, ed. Broadie & Craig Smith, 2nd ed., 196. Reid specifically see: Haakonssen, *law and Moral Philosophy*, 202-204.

³¹ Ewald, “Scottish Enlightenment,” 1101. See also: Clagett, “Scottish Background,” 169.

³² Clagett, “Scottish Background,” 171.

³³ Clagett, “Scottish Background,” 171 (emphasis original).

³⁴ Knapp, “Law’s Revolution,” 265.

³⁵ Robinson, “Do the People of the United States Form a Nation? James Wilson’s Theory of Rights,” *International Journal of Constitutional Law* 8, no. 2 (2010): 292.

³⁶ Leavelle, “Wilson and Scottish Metaphysics,” 396.

intellectual culture of the Scottish Enlightenment, and specifically Reid's philosophy, to North America.

1.2 - James Wilson's Significance and the Complexity of the Founding

This education and experience would serve Wilson well in the British North American colonies and the role he would play in their transformation into the United States. On his arrival in the Pennsylvania colony, Wilson, like many Scots, would put his education to use as a tutor at the College of Pennsylvania.³⁷ Wilson continued his legal training under the direction of John Dickinson, who is also remembered as a Founder of the United States.³⁸ Ewald argues, in reference to Wilson's time as a law clerk in Scotland, that: "this early training was doubtless why he was able to complete his legal education in Philadelphia after scarcely a year of apprenticeship with John Dickinson."³⁹

Like Dickinson, Wilson used his education to support the burgeoning colonial cause for independence, writing an influential pamphlet concerning the relationship between the British Parliament and the American colonies at the age of twenty-six.⁴⁰ However, Wilson would wait six years to publish it because his mentor advised him that it was simply too radical.⁴¹ This pamphlet was a significant contribution to the cause of American independence, which, according

³⁷ Ewald, "Scottish Enlightenment," 1113; Clagett, "Scottish Background," 159; Conrad, "Wilson, James"; Bartrum, "Moral Foundations," 258; Kermit Hall, "Introduction," 1:xvi. Concerning this as a general trend among Scottish immigrants see: Ewald, "Scottish Enlightenment," 1057-58; Sloan, *American College Ideal*, 33 & 226; Andrew D. Hook, "Scottish Contributions to the American Enlightenment," *Texas Studies in Literature and Language* 8, no. 4 (1967): 520; Fleischacker, "Impact on America," 329; Redekop, "Reid's Influence," 327-28.

³⁸ Clagett, "Scottish Background," 163-64; Ewald, "Scottish Enlightenment," 1114; Ewald, "Drafting," 904; Kermit Hall, "Introduction," 1:xvi; Conrad, 'Wilson, James'. Concerning John Dickinson, see: Jane Calvert, "America's Forgotten Founder: John Dickinson and the American Revolution," *History Compass* 5, no. 3 (2007).

³⁹ Ewald, "Scottish Enlightenment," 1114.

⁴⁰ Pedersen, "Lost Founder," 258 & 264; Lucien Hugh Alexander, "James Wilson, Patriot, and the Wilson Doctrine," *The North American Review* 183, no. 603 (1906): 972.

⁴¹ Pedersen, "Lost Founder," 264. See also: Alexander, "Wilson Doctrine," 972; Charles Smith, *James Wilson*, 58; Conrad, "Wilson, James"; A. Robinson Hassell, "James Wilson: A Founding Father Lost along the Way," *Judges' Journal* 54, no. 1 (2015): 21.

to Robinson, earned him “international celebrity”.⁴² Other scholars even argue that Wilson’s pamphlet influenced Thomas Jefferson’s drafting of the Declaration of Independence.⁴³ However, Wilson would more directly and significantly contribute to the cause by voting for independence and signing the Declaration of Independence as a member of the Continental Congress.⁴⁴

His Scottish education served Wilson well in navigating the complex and theoretical nature of the debates surrounding the development of the US Constitution. As Tohid Asadi explains: “Philosophy has been permanently a factor at work through the process of law development in [...] human history. And the US Constitution does not happen to be an exception for this convention.”⁴⁵ According to Gordon Wood, the theoretical dimension of the Founding of the United States was present from its inception with the debates over independence focused on the doctrine of sovereignty.⁴⁶ And, while Morton White recognises that the philosophy of the colonists was only “*one* causal factor”, he argues that: “we shall not be able to explain the Revolution unless we understand that philosophy in more than a superficial way.”⁴⁷

This theoretical focus continued into the following decades, permeating the Constitutional Convention and ratification debates, making them complex both in substance and the variety of perspectives present. The Founders were

⁴² Robinson, “Scottish Enlightenment,” 175. See also: Knapp, “Law’s Revolution,” 199; Pedersen, “Lost Founder,” 258 & 263-64.

⁴³ Concerning connection to Jefferson and the Declaration of Independence see: Pedersen, “Lost Founder,” 258, 263-64; Ewald, “Drafting,” 316-317; Hassel, “James Wilson,” 21; Alexander, “Wilson Doctrine,” 972.

⁴⁴ James R. Zink, “James Wilson versus the Bill of Rights: Progress, Popular Sovereignty, and the Idea of the U.S. Constitution,” *Political Research Quarterly* 67, no. 2 (2014): 253; Randolph C. Adams, “The Legal Theories of James Wilson,” *University of Pennsylvania Law Review* 183, no. 4 (1906): 337; Clagett, “Scottish Background,” 154; Robinson, “Wilson’s Theory of Rights,” 287; Conrad, “Wilson, James”; Akhil Reed Amar, “The Consent of the Governed: Constitutional Amendment Outside Article V,” *Columbia Law Review* 94, no. 7 (1994): 474.

⁴⁵ Tohid Asadi, “En Route to the US Constitution Founding Fathers and Lockean Philosophy,” *Historia Constitucional* no. 16 (2015): 419.

⁴⁶ Gordon S. Wood, *The Creation of the American Republic 1776-1787* (Chapel Hill: The University of North Carolina, 1969), 345. See also concerning its continued importance: Gordon Wood, *Creation*, 352-54.

⁴⁷ Morton White, *The Philosophy of the American Revolution* (New York: Oxford University Press, 1978), 6 (Emphasis added).

attempting to create a government powerful enough to be effective, but which would not descend into tyranny.⁴⁸ They were practical and eclectic in this endeavour, drawing on a number of classical and modern sources on law, politics, history, and philosophy.⁴⁹ However, the Founders' pragmatism and eclectic use of sources meant, according to Ewald, that even when members of the Constitutional Convention voted the same way, they: "often did so for very different reasons."⁵⁰ According to Jack Heyburn, these reasons included the delegates' different conceptions of "the nature of government", to which Knapp adds, their different conceptions of human nature.⁵¹

This theoretical focus characterised the ratification debates as well, and they were even more complex. This increased complexity was a result of the exponential increase in participants debating the proposed Constitution in their state conventions, newspapers, and pamphlets. As Pauline Maier argues, the pamphlets written for and against the Constitution were largely written and influential for their local communities, meaning that the ratification debates: "happened in thirteen different places, sometimes simultaneously."⁵² According to Bernard Bailyn this was a: "fierce political battle which every informed person knew would determine the future of the new nation."⁵³

⁴⁸ David J. Bederman, *The Classical Foundations of the American Constitution: Prevailing Wisdom* (Cambridge: Cambridge University Press, 2008), 95-96 & 190.

⁴⁹ Howe, "Scottish Enlightenment," 584; Gordon Wood, *Creation*, 8; Bederman, *Classical*, 27 & 49; Robinson, "Scottish Enlightenment," 180; Paul Eidelberg, *The Philosophy of the American Constitution: A reinterpretation of the intentions of the Founding Fathers* (London: Collier-MacMillan Limited, 1986), 4-5.

⁵⁰ Ewald, "Scottish Enlightenment," 1054.

⁵¹ Jack Heyburn, "Gouverneur Morris and James Wilson at the Constitutional Convention," *University of Pennsylvania Journal of Constitutional Law* 20, no. 1 (2017): 196. Concerning human nature, see: Knapp, "Law's Revolution," 221. See also: Knapp, "Law's Revolution," 258.

⁵² Pauline Maier, *Ratification: The People Debate the Constitution 1787-1788* (New York: Simon & Schuster, 2010), x. Concerning the focus on local communities, See: Maier, *Ratification*, 85.

⁵³ Bernard Bailyn, *To Begin the World Anew: The Genius and Ambiguities of the American Founders* (New York: Vintage Books, 2003), 103. See also: Eidelberg, *American Constitution*, 29; Max M. Edling, *A Revolution in Favour of Government: Origins of the U.S. Constitution and the Making of the American State* (Oxford: Oxford University Press, 2003), 7; Joseph M. Lynch, *Negotiating the Constitution: The Earliest Debates over Original Intent* (London: Cornell University Press, 1999), 7.

One of the unifying themes of these debates was the question of divided sovereignty: which government, the Federal or the States, would be sovereign? Gordon Wood describes this question of divided sovereignty as: “the most powerful obstacle to the acceptance of the new Constitution”, and one that placed the debate in abstract theoretical terms.⁵⁴

Wilson played a significant role in this complex process, beginning at the Constitutional Convention.⁵⁵ He entered the Convention widely regarded by his peers as the most intelligent member present and the greatest lawyer in the United States at the time.⁵⁶ During the Constitutional Convention, Wilson played an active role, speaking the second most number of times and working on the Committee of Detail to draft the actual document.⁵⁷ Due to his extensive contributions to the framing of the Constitution, Wilson is widely recognised by historians, and even by James Madison (1751-1836), as the second most important

⁵⁴ Gordon Wood, *Creation*, 529. Concerning theoretical terms see: Gordon Wood, *Creation*, 345 & 354.

⁵⁵ *Britannica Academic* s.v. “Constitutional Convention,” <https://academic.eb.com>.

⁵⁶ Hassell, “James Wilson,” 20 & 23; Bartrum, “Moral Foundations,” 256; Adams, “Legal Theories,” 337-338; Amar, “Consent of the Governed,” 474; Ewald, “Scottish Enlightenment,” 1061; Charles Smith, *James Wilson*, 341; Michael W. McConnell, “James Wilson’s Contributions to the Construction of Article II,” *Georgetown Journal of Law & Public Policy* 17, no. 1 (2019): 23; Alexander, “Wilson Doctrine,” 973; Pedersen, “Lost Founder,” 258; Arthur E. Wilmarth Jr., “Elusive Foundation: John Marshall, James Wilson, and the Problem of Reconciling Popular Sovereignty and Natural Law Jurisprudence in the New Federal Republic,” *George Washington Law Review* 72, no. 1-2 (2003): 145.

⁵⁷ Wilson’s role on the Committee of Detail: Bartrum, “Moral Foundations,” 259; Knapp, “Law’s Revolution,” 207-09; Zink, “Bill of Rights,” 253; Zink, “Liberty and Law,” 443; Hassell, “James Wilson,” 20 & 23; Pedersen, “Lost Founder,” 269; Alexander, “Wilson Doctrine,” 973; Seed, *James Wilson*, 81; Clagett, “Scottish Background,” 155; Ewald, “Drafting,” 924 & 962-63; Max Farrand, *The Framing of the Constitution of the United States* (New Haven: Yale University Press, 1913), 197-198. For times speaking in the convention see: Mark David Hall, *Political and legal philosophy of James Wilson, 1742-1798* (Columbia: Missouri University Press, 1997), 21; Hassell, “James Wilson,” 24; Bartrum, “Moral Foundations,” 261.

member of the convention.⁵⁸ By signing the Constitution, Wilson would become one of only six men to have signed both it and the Declaration of Independence.⁵⁹

Having signed the proposed Constitution, Wilson went on to successfully advocate for its ratification. The debate over the proposed Constitution was between pro-constitution Federalists and its critics who became known as Anti-Federalists.⁶⁰ Wilson secured Pennsylvania's vote for the ratification of the proposed Constitution in the Philadelphia Ratifying Convention of 1787, while his State House Yard Speech, given in support of the Federalist cause, was broadly read and influential.⁶¹ It was during these debates that Wilson made his greatest contribution to the development of the US Constitution.

Wilson's great contribution in these debates was articulating his Revolution Principle as the foundation of the proposed Constitution in response to one of the Anti-federalists' strongest arguments against the proposed Constitution: the problem of divided sovereignty. According to Gordon Wood, Wilson's principle successfully addressed this problem and in doing so: "would eventually become the basis of the Federalist thinking".⁶² Or, as Maier describes it: "an intellectual

⁵⁸ Pedersen, "Lost Founder," 268-69; Robinson, "Wilson's Theory of Rights," 287; Robinson, "Scottish Enlightenment," 175; Wilmarth, "Elusive Foundations," 144; Hassell, "James Wilson," 21; Bartrum, "Moral Foundations," 259; Amar, "Consent of the Governed," 474; Conrad, "Wilson, James"; Leonard W. Levy, *Original Intent and the Framers' Constitution* (Chicago: Ivan R Dee, 1988) 153-154.

⁵⁹ Zink, "Bill of Rights," 253; Adams, "Legal Theories," 337; Clagett, "Scottish Background," 154; Robinson, "Wilson's Theory of Rights," 287; Conrad, "Wilson, James"; Amar, "Consent of the Governed," 474.

⁶⁰ Maier notes that the term Anti-federalist was used as a "name of reproach" and not taken up by the critics of the US Constitution. However, I will use the term because it is largely used in the literature, and thus, allows for greater clarity. Maier, *Ratification*, xv.

⁶¹ Concerning Wilson's crucial role in ratification: Levy, *Framers' Constitution*, 153; Gordon Wood, *Creation*, 539; Knapp, "Law's Revolution," 299; Randy E. Barnett, "The People or the State?: Chisholm V. Georgia and Popular Sovereignty," *Virginia Law Review* 93, no. 7 (2007): 1733-34; Seed, *James Wilson*, 86-87; Conrad, "Wilson, James"; Charles Smith, *James Wilson*, 279. Concerning the role of his State House Yard Speech: Hassell, "James Wilson," 25; Pedersen, "Lost Founder," 270; Maier, *Ratification*, 80-81; Bartrum, "Moral Foundations," 256-57; Edling, *In Favour of Government*, 121; Robinson, "Scottish Enlightenment," 175, Kermit Hall, "Introduction," xx; Conrad, "Wilson, James".

⁶² Gordon Wood, *Creation*, 530.

foundation for American federalism.”⁶³ Wilson believed his Revolution Principle could appropriately be called a “*panacea* in politicks (sic)”, using it as such in the debates to address other challenges as well.⁶⁴ This principle, according to Wilson, states that with: “the sovereign power residing in the people, they may change their constitution and government whenever they please”.⁶⁵ Wilson’s principle asserts a radically democratic position based on popular sovereignty. Among some historians, this has earned Wilson titles such as: “the founding father most committed to democracy”, and “Popular sovereignty’s most thoughtful and determined advocate”.⁶⁶

Wilson continued to influence the development of the US Constitution after its ratification as one of the first Supreme Court Justices where he again asserted his Revolution Principle as the foundation of the US Constitution.⁶⁷ During this time Wilson would also give his posthumously published Lectures on Law (1804). In these Lectures Wilson presents what I call, his Democratic Political Theory, which he developed in response to the problems and debates that arose during the development of the US Constitution. In these Lectures Wilson would explain

⁶³ Maier, *Ratification*, 110. See also: Akhil Reed Amar, “Of Sovereignty and Federalism,” *The Yale Law Journal* 96, no. 2 (1987): 1437; Knapp, “Law’s Revolution,” 230, & 299; Pedersen, “Lost Founder,” 270-71, & 322.

⁶⁴ *DSSC*, 2:433.

⁶⁵ *WJW*, 1:21.

⁶⁶ Respectively: Knapp, “Law’s Revolution,” 299 & Bartrum, “Moral Foundations,” 231. Concerning Wilson and democracy, see: Charles Smith, *James Wilson*, 230; Seed, *James Wilson*, 16, 22, & 82; Seed, *James Wilson*, 181-83; Pedersen, “Lost Founder,” 270. Concerning Wilson and popular sovereignty, see: Pedersen, “Lost Founder,” 272; Bartrum, “Moral Foundations,” 235; Leavelle, “Wilson and Scottish Metaphysics,” 405; Alexander, “Wilson Doctrine,” 974; Kermit Hall, “Introduction,” 1:xiii-xiv; Charles Smith, *James Wilson*, 257.

⁶⁷ Concerning Wilson as one of the first Supreme Court Justices see: Zink, “Liberty and Law,” 443; Conrad, “Common-Law,” 187; Conrad, “Polite Foundation: Citizenship and Common Sense in James Wilson’s Republican Theory,” *The supreme Court Review* (1984): 359-60; Conrad, “Wilson, James”; Sophia A. Rosenfeld, *Common sense: a political history* (London: Harvard University Press, 2011) 176; Bartrum, “Moral Foundations,” 275; Knapp, “Law’s Revolution,” 252; Zink, “Bill of Rights,” 253; Hassell, “James Wilson,” 21; Pedersen, “Lost Founder,” 294; Bayer, “Common Sense Republic,” 188; Wilmarth, “Elusive Foundations,” 116; Seed, *James Wilson*, 141 & 150; Fleischacker, “Impact on America,” 317; Clagett, “Scottish Background,” 154; Alexander, “Wilson Doctrine,” 972; Leavelle, “Wilson and Scottish Metaphysics,” 395; Heyburn, “Morris and Wilson,” 171. Wilson’s assertion of the Revolution Principle as a Supreme Court Justice will be discussed in chapter 6, see particularly: Sections, 6.2-3.

and justify the implications of his Revolution Principle, as the core of his theory. Knapp describes these Lectures as the first: “sustained attempt by a native jurist in American history to reflect systematically on the nature of American law as distinct from its English counterpart, Wilson's law lectures gave birth to American jurisprudence as such.”⁶⁸

The role Wilson played in the development of the US Constitution was significant with some scholars going so far as to suggest that Wilson, not James Madison, should hold the title of father of the US Constitution.⁶⁹ Moreover, Wilson held a unique position politically that he advocated throughout his public life. As we shall see, Wilson's position is developed from his Scottish Enlightenment education and experience. As Nicholas Pedersen explains:

Wilson's political views—a blend, highly incongruous at the time, of advocacy for both radical democracy and centralization of power—ingratiated him to neither side of this political divide. Wilson was difficult to classify—an intellectual maverick whose stances on a number of issues outraged Jeffersonians and Hamiltonians alike.⁷⁰

Wilson played a unique and significant role in these historical events, providing a different perspective on them and the US Constitution. This should be of great interest to scholars and Americans alike, but instead it has been neglected and forgotten.

It is widely agreed that Wilson's neglect stems from his early and tragic death in 1798.⁷¹ His early demise meant he did not have the opportunity to produce an extensive correspondence, “the lifeblood of biographers”.⁷² It also meant he would never hold a higher office than Associate Justice of the Supreme Court, such as Chief Justice, which would have helped him be better remembered

⁶⁸ Knapp, “Law's Revolution,” 194. See also: Bartrum, “Moral Foundations,” 232-33; Leavelle, “Wilson and Scottish Metaphysics,” 395-96; Conrad, “Common-Law,” 194; Barnett, “Chisholm V. Georgia,” 1734.

⁶⁹ Pedersen, “Lost Founder,” 269; Alexander, “Wilson Doctrine,” 973.

⁷⁰ Pedersen, “Lost Founder,” 282.

⁷¹ Pedersen, “Lost Founder,” 272 & 288; Wilmarth, “Elusive Foundations,” 190; Ewald, “Drafting,” 914-15 & 926; Knapp, “Law's Revolution,” 283; Conrad, “Wilson, James”; Hassel, “James Wilson,” 27; Seed, *James Wilson*, 178-79 & 183; Charles Smith, *James Wilson*, 388.

⁷² Seed, *James Wilson*, 179. see also: Pedersen, “Lost Founder,” 286.

in American history.⁷³ However, the tragic and, at the time, disgraceful circumstances surrounding his early death (likely precipitating it), have also contributed to his neglect.⁷⁴

Wilson had made land speculations, which were premised on the rapid growth and economic development of the fledgling United States.⁷⁵ These investments became top heavy and collapsed in the economic crisis of the 1790s.⁷⁶ According to one of Wilson's biographers, Geoffrey Seed, in his land speculations Wilson: "displayed the characteristics of a compulsive gambler", rather than greed or ignorance.⁷⁷ However, Wilson argued in his essay "On the Improvement and Settlement of Lands in the United States" (mid-1790s), that he could bring together the abundance of labour in Europe with the uncultivated land of America to relieve the poverty in Europe and help the fledgling United States rapidly develop.⁷⁸ This could point to Wilson holding truly altruistic sentiments for both his former and adopted countries, or it could have been Wilson's way of justifying his failed land speculations.

Wilson's hopes and motives are unknowable, but what is clear is that his efforts to dig himself out of this crisis were unsuccessful and only made matters worse.⁷⁹ At the time of his death, Wilson, a Justice of the Supreme Court, was on the run from the law and creditors, in a time when debtors' prisons existed and

⁷³ Pedersen, "Lost Founder," 283.

⁷⁴ Seed, *James Wilson*, 177; Knapp, "Law's Revolution," 283; Ewald, "Drafting," 914-15 & 925-26.

⁷⁵ Seed, *James Wilson*, 160-62, & 167; Charles Smith, *James Wilson*, 165-66, 168, & 382; Hassel, "James Wilson," 26-27; Pedersen, "Lost Founder," 288.

⁷⁶ Pedersen, "Lost Founder," 272 & 288; Seed, *James Wilson*, 177; Wilmarth, "Elusive Foundations," 190; Knapp, "Law's Revolution," 283; Gordon Wood, *The Radicalism of the American Revolution* (New York: Alfred A. Knopf, 1992), 266; Ewald, "Drafting," 914-15 & 926; Kermit Hall, "Introduction," 1:xxv; Conrad, "Wilson, James"; Charles Smith, *James Wilson*, 384-88.

⁷⁷ Seed, *James Wilson*, 160. See also: Pedersen, "Lost Founder," 288.

⁷⁸ James Wilson, *On the improvement and settlement of lands in the United States* (Philadelphia: The Free Library of Philadelphia, 1946), 11-13. See also: Charles Smith, *James Wilson*, 165-66; Seed, *James Wilson*, 160 & 167.

⁷⁹ Pedersen, "Lost Founder," 271-72; Knapp, "Law's Revolution," 283; Conrad, "Wilson, James"; Hassel, "James Wilson," 26; Gordon Wood, *Radicalism*, 266-67; Ewald, "Drafting," 925-26; Seed, *James Wilson*, 177; Charles Smith, *James Wilson*, 384-88; Kermit Hall, "Introduction," 1:xxv.

economic misfortune was dishonourable.⁸⁰ This led his former friends and colleagues to distance themselves, contributing to his later neglect.⁸¹ While this is an unflattering end to say the least, it is important to note that these events happened *after* Wilson's contributions to the Founding of the United States and development of its Constitution. Therefore, the circumstances surrounding Wilson's death, may not be at all relevant to understanding and evaluating these contributions.⁸²

Nevertheless, the dishonour of the circumstances surrounding his death, has greatly contributed, in concert with other factors noted above, to Wilson's near-total eradication from narratives of the United States' founding.⁸³ Pedersen makes this argument and lays out the on-going neglect of Wilson at length in his "The Lost Founder". There he explains that:

Wilson's absence from the historical discourse has not gone unnoticed. When forty-five authorities on the Founding were recently asked to rank the most neglected key Founders, they placed James Wilson in first by a wide margin.⁸⁴

Given Wilson's significant role and unique perspective, this continuing neglect presents our current understanding of the development of the US Constitution as grossly incomplete and therefore probably inaccurate.

⁸⁰ Pedersen, "Lost Founder," 288; Conrad, "Wilson, James"; Knapp, "Law's Revolution," 283; Hassel, "James Wilson," 26; Gordon Wood, *Radicalism*, 266; Kermit Hall, "Introduction," 1:xxv; Seed, *James Wilson*, 183; Ewald, "Scottish Enlightenment," 1054; Wilmarth, "Elusive Foundations," 190.

⁸¹ Pedersen, "Lost Founder," 288.

⁸² Knapp, "Law's Revolution," 283-84; Ewald, "Drafting," 925-28.

⁸³ Pedersen, "Lost Founder". See also: Conrad, "Wilson, James"; Seed, *James Wilson*, 178-9 & 183; Ewald, "Scottish Enlightenment," 1054; Ewald, "Drafting," 914-15 & 925-28.

⁸⁴ Pedersen, "Lost Founder," 330. Wilson as forgotten see: Ewald, "Drafting," 925-28; Ewald, "Scottish Enlightenment," 1054; Eduardo A. Velasquez, "Rethinking America's Modernity: Natural Law, Natural Rights and the Character of James Wilson's Liberal Republicanism," *Polity* 29, no. 2 (1996), 193; Bayer, "Common Sense Republic," 205-06; Conrad, "Common-Law," 186-87; Hassel, "James Wilson," 21; Conrad, "Wilson, James".

1.3 - The Founders' Contemporary Significance to the Current American Political Crisis

This neglect and the resulting inadequacies in our understanding of this historical event are even more significant because of the importance of the Founding and development of the US Constitution to Americans in the present. Pedersen, explains that:

For Americans, the story of the Founding is as important as stories come. "As long as the Republic endures," [Gordon] Wood has written, "Americans are destined to look back to its founding," not just for a sense of how our country was born, but also for our sense of collective American identity.⁸⁵

This historical event clearly holds a significant place in the American psyche, which the unique democratic characteristics of Wilson's theory could beneficially inform. This leads Pedersen to argue that: "Wilson's absence from the Pantheon of Founders does a disservice not only to him, but to the American People and the government that serves them."⁸⁶

However, the Founding and the development of the US Constitution has come to play a more critical and decisive role in popular American politics and constitutional law, becoming mythologised in the process. In constitutional law, there is a method of constitutional interpretation known as Originalism that utilises this history to attempt to divine the original meaning of the US Constitution in terms of authorial intent.⁸⁷ This concept has seeped into popular American rhetoric, becoming what I describe as the Founders' Intent Political

⁸⁵ Pedersen, "Lost Founder," 332.

⁸⁶ Pedersen, "Lost Founder," 260.

⁸⁷ Matthew D. Bunker, "Originalism 2.0 Meets the First Amendment: The 'New Originalism,' Interpretive Methodology, and Freedom of Expression," *Communication Law and Policy* 17, no. 4 (2012); Barnette, "Chisholm V. Georgia," 1744; Jared A. Goldstein, "The Tea Party Movement and the Perils of Popular Originalism," *Arizona Law Review* 53, no. 2 (2011): 830; Gary L. McDowell, *The Language of Law and the Foundations of American Constitutionalism* (Cambridge: Cambridge University Press, 2010), 2; O'Neil, *Originalism in American Law and Politics: A Constitutional History* (London: The Johns Hopkins University Press, 2005), 1-2; Bederman, *Classical Foundations*, 229.

Ideology.⁸⁸ This ideology looks to the history of the American Founding and particularly the Founders' intentions as decisive in debates over political policy and defining Americanness.⁸⁹ This has led to the effectual mythologisation of this historical event. As Howe explains, there is now a prevalent narrative that views the US Constitution as "a timeless document received by a grateful nation through an almost supernatural 'miracle at Philadelphia'", which he dismisses as: "Current propaganda".⁹⁰

Jared Goldstein's description of the "The Tea Party movement's constitutional rhetoric" exemplifies this mythologisation of the US Constitution and the Founders' Intent Political Ideology.⁹¹ The movement's goal is to recover what they hold is the golden age of the American Founding through a dogmatic adherence to their mythologised version of the Founders' original intentions.⁹² While the Tea Party movement has faded from public view, its Founders' Intent Political Ideology rhetoric resonates strongly with former President Donald Trump's slogan: "Make America Great Again". Moreover, Originalism as a methodology is still used and respected by the Supreme Court. This methodology and ideology have calcified this historical source of collective identity, using a caricature of it as a litmus test to determine the *Americanness* of political policies, ideologies, or forms of governance.⁹³ Originalism and the Founders' Intent Political Ideology are inherently conservative and are becoming increasingly regressive.⁹⁴

⁸⁸ Goldstein, "Tea Party," 831.

⁸⁹ Goldstein, "Tea Party". This will be discussed in: Section 8.2.

⁹⁰ Howe, "Scottish Enlightenment," 586. See also: Bederman, *Classical Foundations*, 229

⁹¹ Goldstein, "Tea Party," 831.

⁹² Goldstein, "Tea Party," 831.

⁹³ Concerning Originalism, see: Goldstein, "Tea Party," 847; Bunker, "Originalism 2.0," 329-30. This will be more fully explained in: Section, 8.2.

⁹⁴ Goldstein, "Tea Party," 832-33, & 836-37; Bunker, "Originalism 2.0," 329; O'Neil, *Originalism in American Law*, 101 & 188; Jack N. Rakove, "Mr. Meese, Meet Mr. Madison," in *Interpreting the Constitution: The Debate Over Original Intent*, ed. Jack N. Rakove (Boston: Northeastern University Press, 1990), 180; Edwin Meese III, "Interpreting the Constitution," in *Interpreting the Constitution*, ed. Rakove, 18; McDowell, *The Language of Law*, 3. The regressive nature of Originalism and the Founders' Intent Political Ideology will be discussed in greater detail in: Section, 8.2.

However, fundamentally, the Founders' Intent Political Ideology is problematic because it has become the political expression of the current socio-epistemological divide in the United States and has likely exacerbated it. Journalist David Roberts describes the epistemological nature of this divide, thus: "The US is experiencing a deep epistemic breach, a split not just in what we value or want, but in who we trust, how we come to know things, and what we believe we know—what we believe exists, is true, has happened and is happening."⁹⁵ Many have recognised the roots of the epistemological nature of this divide in the rise of right-wing media.⁹⁶ Some research also suggests this divide has roots in the pervasive and unconscious absorption of John Locke's (1632-1704) political theory in the United States and the Neoconservative's utilisation of a reshaped Scottish Moral Sentimentalism.⁹⁷ This divide has effectively arrested any meaningful communication between the two sides, and, in doing so, has inhibited effective governance.⁹⁸

Yet, what makes this divide truly troubling is its existential scope. For adherents to the Founders' Intent Political Ideology this is a divide between true

⁹⁵ David Roberts, "America is Facing an Epistemic Crisis," *Vox*, November 2, 2017, <https://www.vox.com/policy-and-politics/2017/11/2/16588964/america-epistemic-crisis>.

⁹⁶ David Roberts, "Donald Trump and the Rise of Tribal Epistemology," *Vox*, May 19, 2017, <https://www.vox.com/policy-and-politics/2017/3/22/14762030/donald-trump-tribal-epistemology>. See also: Cory J. Clark & Bo M. Winegard, "Tribalism in War and Peace: The Nature and Evolution of Ideological Epistemology and Its Significance for Modern Social Science," *Psychological Inquiry* 31, no. 1 (2020).

⁹⁷ Roots in Locke see: Paul L. Nevins, *The Politics of Selfishness: How John Locke's Legacy is Paralyzing America* (Santa Barbara: Praeger, 2010), 189-97. See also: Jeannie Love, "The Rugged Individualist Club," *Administrative Theory & Praxis* 30, no. 4 (2008); Neo-Conservative roots: Lepisto, *Common-Sense Conservatism*, 18 & 82.

⁹⁸ Pete Coleman, "Can't Touch This — Why talking across our political divide is not enough," *The Hill*, 13 May 2020, <https://thehill.com/opinion/campaign/497365-cant-touch-this-why-talking-across-our-political-divide-is-not-enough>; "More Now Say It's 'Stressful' to Discuss Politics With People They Disagree With," *Pew Research Center*, 5 November 2018, <https://www.pewresearch.org/politics/2018/11/05/more-now-say-its-stressful-to-discuss-politics-with-people-they-disagree-with/>; David Botti, "America's Political Divide by the Numbers," *BBC*, 12 June 2014, <https://www.bbc.co.uk/news/av/magazine-27629535>; Darrell M. West, "Divided Politics, Divided Nation," *Brookings*, 25 February 2020, <https://www.brookings.edu/book/divided-politics-divided-nation/>; Gerald F. Seib, "How the U.S. Became a Nation Divided," *Wall Street Journal*, 17 December 2019, <https://www.wsj.com/articles/how-the-u-s-became-a-nation-divided-11576630802>

Americans faithful to the Founders' Intent and un-American leftist elites and intellectuals, whom they regard as invaders, attempting to destroy America with their foreign ideas.⁹⁹ This perspective has left some believing that violence is the only and justified means to save, purify, and restore America to its former greatness.¹⁰⁰ This was seen on January 6th 2021, where a mob of insurrectionists, waving Revolutionary War era flags at the US Capitol, attempted a coup.¹⁰¹ The nature of this current political crisis presents the history of the Founding as an important and possibly critical subject of research, particularly with reference to Wilson's neglected contributions to the development of the US Constitution.

1.4 - Research Question and Chapter Outline

This thesis attempts to explore the question: *How significant are James Wilson's neglected Reidian contributions to the US Constitution with regard to understanding its development, meaning, and to informing the present political*

⁹⁹ Goldstein, "Tea Party," 832-33, 836-40, 842, 847-48, & 857. See also: Lepisto, *Common-Sense Conservatism*, 2-3; Bunker, "Originalism 2.0," 344 & 354.

¹⁰⁰ Andrew Solender, "Gaetz Tells Supporters Second Amendment Is For 'Armed Rebellion Against the Government'," *Forbes*, May 28, 2021, <https://www.forbes.com/sites/andrewsolender/2021/05/28/gaetz-tells-supporters-2nd-amendment-is-for-armed-rebellion-against-the-government/?sh=175afadd196f>; Jay Reeves & Julie Carr Smyth, "Some in the GOP Parrot Far-Right Talk of a Coming Civil War," PBS, January 16, 2021, <https://www.pbs.org/newshour/politics/some-in-the-gop-parrot-far-right-talk-of-a-coming-civil-war>; Eric Lutz, "Madison Cawthorn is Openly Talking about Civil War at this Point," *Vanity Fair*, August 31, 2021, <https://www.vanityfair.com/news/2021/08/madison-cawthorn-is-openly-talking-about-civil-war-at-this-point>.

¹⁰¹ Perry Bacon Jr. "In America's 'Uncivil War,' Republicans are the Aggressors," *FiveThirtyEight*, February 8, 2021, <https://fivethirtyeight.com/features/in-americas-uncivil-war-republicans-are-the-aggressors/>; Marshall Cohen, "January 6 Was Opposite of 1776, Judge tells Rioter Who Carried Revolutionary Flag into US Capitol," *CNN*, December 2, 2021, <https://edition.cnn.com/2021/12/02/politics/january-6-andrew-wrigley/index.html>; Jordan E. Taylor, "What Pro-Trump Insurrectionists Share — and Don't — with the American Revolution," *The Washington Post*, January 7, 2021, <https://www.washingtonpost.com/outlook/2021/01/07/what-pro-trump-insurrectionists-share-dont-with-american-revolution/>; Marc Fisher, Meagan Flynn, Jessica Contera, & Carol D. Leonnig. "The Four-Hour Insurrection," *The Washington Post*, 7 January 2021, <https://www.washingtonpost.com/graphics/2021/politics/trump-insurrection-capitol/>.

debate and divide in the United States? Answering this question requires comparing Wilson's contributions to the development of the US Constitution to existing scholarship to determine to what extent they call that scholarship into question and/ or supplement it. It also requires determining the extent to which Wilson's contributions may be capable of informing contemporary understandings of the development of the US Constitution and with it the present political situation in the United States.

These endeavours require elucidating the significance of Wilson's participation in the development of the US Constitution and recovering the historical meaning of Wilson's contributions. The first of these can be largely accomplished by using existing Wilson scholarship. However, the latter is greatly aided by answering a supplementary question, implied in the guiding question's use of "Reidian": To what extent does Wilson adhere to and develop Thomas Reid's philosophy? This supplementary question will be answered by determining how often and close Wilson's adherence is and how useful it is for recovering and understanding the meaning of his contributions.

In chapter 2, I begin to address these questions by discussing the pertinent scholarship on the early American republic and Wilson with which this thesis engages and by outlining my methodology. I will introduce Gordon Wood's thesis that the Federalists and the US Constitution are defined by an aristocratic bent, which I will use as a foil in this thesis to illustrate how recovering Wilson's contributions can inform current scholarship. I also determine which aspects of the myriad of intellectual history methodologies available I will use to answer the guiding and supplementary questions of this thesis. I largely rely on Adrian Blau's critique and development of Quentin Skinner's concept of *intended meaning* and his own concept of *extended meaning*. I also discuss several other important concepts, including the idea of influence in terms of context.

Chapter 3 discusses Wilson's reception of the Scottish Enlightenment and other traditions, which I then use to explore Wilson's natural law theory. I provide examples of Wilson's eclectic use of several traditions and thinkers. However, I also provide evidence of the extensive nature of Wilson's adherence to Reid, which suggests that this adherence is significant in Wilson's thought. To aid in exploring Wilson's adherence to and development of Reid I provide a brief

summary of Reid's philosophy. I use this summary to illuminate that Wilson adheres to Reid's conception of human nature. I argue this reveals that Wilson developed an alternative modern natural law theory. Wilson's Reidian conception of human nature and his natural law theory informed by it are foundational for what I call his Democratic Political Theory. Importantly, they help explain Wilson's conception of human sovereignty, and in the following chapters, continue to be useful for revealing and explaining other key aspects of Wilson's theory.

Wilson's position and arguments in the Constitutional Convention are analysed in chapter 4. To understand Wilson's contributions this chapter commences by explaining Wilson's principle of consent. I explain this principle by examining Wilson's rejection of the Theory of Superiority through its resonance with his translation of Reid's attempted refutation of the Theory of Ideas into his own political theory. I also provide a deeper understanding of this principle by formulating how it relates to Wilson's conception of human sovereignty as grounded in his Reidian conception of human nature.

Next, I discuss the questions and problems that led to and arose during the Constitutional Convention, in order to understand how Wilson engaged with and attempted to solve them. I then reveal how Wilson's consistent advocacy for democracy, particularly concerning representation and popular ratification, is rooted in his principle of consent. Finally, I use this information to begin to contest Gordon Wood's thesis. In part this will be done by contrasting Wilson's position with Madison's, which will disclose how Wilson's neglected contributions can inform our understanding of this complex historical event.

The ratification debates are discussed in chapter 5 with a particular focus on Wilson's assertion and use of the Revolution Principle to address the challenges against the proposed Constitution. The chapter similarly begins by explaining Wilson's Revolution Principle as a radically extensive expression of his intertwined principles of consent and sovereignty. Significantly, this reveals that Wilson justifies the Revolution Principle by adapting Reid's third test of first principles to mark consent as a first principle, helping explain its extensiveness. The major challenges facing the proposed Constitution will then be identified and discussed in the following section. This context is used in the third section to explain Wilson's use of the Revolution Principle to address the challenges that arose in

the ratification debates, which characterises and reveals his radically democratic interpretation of the Constitution. The final section explores how influential Wilson's interpretation was, again partly through a comparison with Madison's. This will largely be done by utilising the existing scholarship to show that Wilson's radically democratic interpretation was broadly influential, constituting a significant strand of the American political tradition, which highlights the inadequacies and inaccuracies of Gordon Wood's thesis.

Chapter 6 explores Wilson's assertion of the Revolution Principle in his authoritative interpretation of the US Constitution as a Supreme Court Justice in *Henfield's* case and the *Chisholm* case. This chapter begins by exploring the Reidian foundation of Wilson's conception of trial by jury generally and particularly as a democratic institution. This helps explain Wilson's conception and justification of jury sovereignty, which presents trial by jury as a conduit for the people to exercise the Revolution Principle. In the second section, this is used to provide a better understanding of Wilson's guidance to the jury in *Henfield's* case, namely, that it was their right and duty to decide the law, not just the facts, of a criminal case. The following section concerns the *Chisholm* case, in which Wilson's Revolution Principle is also relevant, in terms of the people's perpetual sovereignty. The final section discusses whether the Eleventh Amendment (passed in response to the *Chisholm* decision) actually repudiates Wilson's democratic assertions. This places Gordon Wood's thesis in further doubt, while also presenting Wilson's interpretation in both cases, and particularly his Revolution Principle, as part of federal and constitutional law precedence.

Wilson's *Lectures on Law* are discussed in chapter 7, as a systematic explanation of the Constitution and American jurisprudence, that reveals Wilson's vision of American democracy as constituting a revolution in the science and practice of governance. The first section discusses Wilson's adherence to his interpretation of Reid's conception of Sir Francis Bacon (1561-1626) and Sir Isaac Newton's (1643-1728) method for establishing a science that can support the development of knowledge through the establishment of proper first principles. The following section explores Wilson's conception of the social development of knowledge, which he draws from Reid's philosophy. This includes explicating Wilson's conception of the interdependence between society and knowledge that

he sees as present in Reid's philosophy. Wilson's justification of what I call his social end of government—the protection and improvement of society—is discussed in the third section. Again, Wilson's adherence to and development of Reid's philosophy helps reveal that Wilson holds that government has a duty and corresponding extensive jurisdiction to improve society, or in Wilson's terms, fulfil the duties of humanity. This comes to light by further formulating Wilson's Reidian conception of the natural law, including his conception of ultimate ends and moral first principles.

The final section of chapter 7 draws these concepts together to reveal the progressive nature of Wilson's radically Democratic Political Theory. I do so by elucidating Wilson's vision of American democracy as the practical realisation of his theory. It consists, via the Revolution Principle, in: *a continual, peaceful, and progressive revolution in the science and practice of government through the development of knowledge, through which both society and government may be reciprocally improved.*

The thesis concludes by answering the guiding research question through explaining how recovering Wilson's neglected contributions informs existing scholarship and exploring how rehabilitating them could potentially address the current political crisis in the United States. This will include reviewing Wilson's extensive adherence to and development of Reid's philosophy, how it aids in understanding his theory, and how it informs existing Wilson scholarship. It will also include reviewing how Wilson's contributions reveal the inadequacies and inaccuracies of Gordon Wood's thesis. However, I also discuss how Wilson's example calls into question the scholarship that presents Locke as the predominant influence on the Founders as well as scholars' characterisation of the Scottish Enlightenment's influence. Furthermore, I will use Wilson as an example to discuss methodological questions concerning the accuracy, practicability, and value of discussing a political document like the US Constitution in terms of intended authorial meaning.

The second section begins the process of exploring how Rehabilitating Wilson's theory could address the current political crisis by explaining the rise and nature of Originalism and the Founders' intent political ideology. This includes discussing Neo-conservatism and the pervasive Lockean political subconscious of

America as resonating with and potentially at the roots of this methodology and ideology. I then illustrate how these elements contributed to the formation of a socio-epistemological divide in the United States and have exacerbated it. The following section discusses how Wilson's contributions and theory present an authoritative counter example to Originalism, the Founders' Intent Political Ideology, and the Neo-conservative reinvention of Scottish Moral Sentimentalism. Of particular interest is the methodological critique of Originalism implicit in Wilson's theory that presents Originalism as antithetical to the US Constitution and does so within its epistemological framework. The final section will explore how Wilson's theory could function as the foundation for an alternative progressive American political ideology, which could compete with the Founders' Intent Political Ideology, helping address the current political crisis. These discussions concerning the potential of rehabilitating Wilson's theory (when coupled with how recovering his theory dramatically informs the historical record), will show that Wilson's neglected contributions are highly significant. It will reveal that their continued neglect in scholarship is a potentially grave oversight and their absences from American political discourse and popular consciousness is an on-going "disservice" to the United States.¹⁰²

¹⁰² Pedersen, "Lost Founder," 260.

Chapter 2 — Mapping Scholarship and Determining Methodology

The Founding of the United States continues to capture the attention of historians, resulting in several comprehensive narratives. The theoretical and philosophical dimension of the American Revolution, and particularly the later development of the US Constitution, has been a focus of the discipline of intellectual history with an eye to identifying the different influences on the Founders.¹ Generally, these attempts at a comprehensive history neglect Wilson or fail to recognise important aspects of his theory. However, in more recent years, scholarship on Wilson has begun to grow with a few burgeoning debates. Nevertheless, as already intimated, Wilson still presents a large gap in the literature as a neglected or forgotten Founder.² Similarly, intellectual history's standing as a discipline is relatively new and at times a subject of debate. In part this is because intellectual history is not characterised by a dominant methodology, but rather by debates concerning methodologies. Given the guiding question of this thesis, providing the scholarly context will greatly aid in answering it. Similarly, determining a methodology is not only necessary for a work of intellectual history, but doing so provides clarity and aids in addressing the guiding and supplemental questions of this thesis.

2.1 - Literature Review: The Founding, Wilson, and his adherence to Reid

Among the comprehensive narratives concerning the development of the US Constitution, some have focused on economic, others sociological, and still others the diplomatic dimension of the process of binding thirteen independent states

¹ Stefan Collini, "Identity of Intellectual History," in *A Companion to Intellectual History*, ed. Richard Whatmore & Brian Young (West Sussex: John Wiley & Sons, 2016), 9.

² Ewald, "Scottish Enlightenment," 1054. See also: Section, 1.2.

into a unified nation.³ The diplomatic narrative argues that the US Constitution was an American effort to create a strong national government in order to compete with and better protect the confederated States from European powers.⁴ The economic and sociological narratives view the US Constitution as a counter revolution of the few against the many.⁵ This economic narrative, championed by Charles Beard and largely disproven, claims the Constitution's central purpose was the protection of property rights.⁶ It explains the divide between Federalists and Anti-Federalists in economic terms of those with property and debtors respectively.⁷ The sociological narrative, advocated by Gordon Wood, describes this divide as one between aristocratic Federalists and democratic Anti-Federalists, presenting the US Constitution as "intrinsically an aristocratic document designed to check the democratic tendencies of the period".⁸ However, some scholars argue that Gordon Wood's seminal and formidable work on the subject overstates the homogeneous nature of the Federalist and Anti-Federalist's positions.⁹

³ Robbie J. Totten, "Security, Two Diplomacies, and the Formation of the U.S. Constitution: Review, Interpretation, and New Directions for the Study of the Early American Period," *Diplomatic History* 36, no. 1 (2012): 80-81.

⁴ Edling, *In Favour of Government*, 4 & 219-30; Totten, "Security," 80-82.

⁵ Charles Austin Beard, *An Economic Interpretation of the Constitution of the United States* (New York: Macmillan, 1913); Robert E. Brown, *Charles Beard and the Constitution: A critical analysis of "An Economic Interpretation of the Constitution"* (Princeton: Princeton University Press, 1959), 19-20; Knapp, "Law's Revolutionary," 302; Amar, "Consent of the Governed," 496-97.

⁶ Beard, *Economic Interpretation*. Arguments against Beard's position, see: Brown, *Beard and the Constitution*, 21; Ewald, "Drafting," 912; Amar, "Consent of the Governed," 496-97; Eidelberg, *American Constitution*, 12-13; Gordon Wood, *Radicalism*, 4-5; Gordon Wood, *Creation*, 484; George William Van Cleve, "The Anti-Federalists' Toughest Challenge: Paper Money, Debt Relief, and the Ratification of the Constitution," *Journal of the Early Republic* 34, no. 4 (2014): 531.

⁷ Beard, *Economic Interpretation*.

⁸ Gordon Wood, *Creation*, 513. See also: Gordon Wood, *Creation*, 503, 513 & 516; Gordon Wood, *The American Revolution: A History* (New York: Modern Library, 2002), 140; Knapp, "Law's Revolution," 211-15 & 219-21, & 304; Maier, *Ratification*, 68; Bartrum, "Moral Foundations," 262; Eidelberg, *American Constitution*, 19-20; Edling, *In Favour of Government*, 3-4.

⁹ Logan Everett Sawyer III, "Method and Dialogue in History and Originalism," *Law and History Review* 37, no. 3 (2019): 854-55; Knapp, "Law's Revolution," 304; Edling, *In Favour of Government*, 3-4; Eidelberg, *American Constitution*, 21 & 57; Maier, *Ratification*, xv.

There is a general critique that these comprehensive narratives do not take into account the complexity of this debate, leading them to venerate certain voices and generalise from them inappropriately, resulting in misleading oversimplifications and errors. For instance, Saul Cornell argues that it seems: “ironic that historians and lawyers interested in the original debate over the Constitution have generally relied on the most thoughtful, not the most representative, voices to construct a historical portrait of ratification.”¹⁰ As I discuss in my conclusion, the tendency of these comprehensive narratives to simplify this history through misleading generalisations appear to have contributed to the rise of Originalism and the general mythologisation of the Founding and US Constitution.

Bailyn, along with other scholars, focuses this critique on the treatment of the *Federalist Papers* as: “a formal, careful deliberated discourse of basic theory.”¹¹ Instead, he argues that they were in fact: “polemical essays directed to specific institutional proposals written in the heat of a fierce political battle”.¹² Maier adds to this argument, noting specifically that the influence of the *Federalist Papers* was: “felt most intensely in the ratification politics of their home state.”¹³ Furthermore, Max Edling argues that Madison and Hamilton’s arguments in the *Federalist Papers* concerning the creation of barriers to limit government seem “strangely out of tune with the basic thrust of the Federalist argument.”¹⁴ Alternatively, he claims the Federalists were united in their advocacy: “for a national government with the ability to act”.¹⁵

This critique and the contemporary political significance of the historical event has led to the addition of other forgotten voices (particularly those of the Anti-Federalists).¹⁶ It has also led historians to comment on the search for

¹⁰ Saul Cornell, *The Other Founders: Anti-Federalism and the Dissenting Tradition in America, 1788-1828* (London: The University of North Carolina Press, 1999), 10. See also: Edling, *In Favour of Government*, 3-4.

¹¹ Bailyn, *Begin the World Anew*, 103. See also: Maier, *Ratification*, 86; Eidelberg, *American Constitution*, 29; Edling, *In Favour of Government*, 7; Lynch, *Negotiating the Constitution*, 7.

¹² Bailyn, *Begin the World Anew*, 103.

¹³ Maier, *Ratification*, 85. See also: Pedersen, “Lost Founder,” 270-71.

¹⁴ Edling, *In Favour of Government*, 7.

¹⁵ Edling, *In Favour of Government*, 7.

¹⁶ Cornell, *Other Founders*, 3. See also: Maier, *Ratification*, x.

authorial intent in the Constitution. For instance, Howe argues: "If the effort to recover the original purposes of the document has no other practical consequence, it should demonstrate the futility of attempting to control our own use of the Constitution by appealing to 'the intent of the framers.'" ¹⁷

Some scholars writing directly on the use of the Founders' Intentions in contemporary politics have argued that it goes beyond the limitations of history as a discipline.¹⁸ Other scholars present a list of critiques against this practice, including that it goes against the Founders' Intentions.¹⁹ However, some historians such as Gary McDowell argue that Originalism has been: "the received tradition in the Anglo-American legal system for hundreds of years."²⁰ Attempting to recover the authorial intended meaning of most historical texts is an appropriate aim of historiography.²¹ However, I propose in my conclusion that searching for *the* intended meaning of collectively created political documents, such as the US Constitution, is impracticable and misleading.²² Moreover, neither of these historiographic observations offers any support for the claim that past intentions ought to govern current practice.

In order to understand these debates and different Founders' positions, scholars have looked to the sources that influenced the Founders. These influences include classical statesmen, philosophers, and historians, as well as modern political theorists, English Constitutional history, and British political

¹⁷ Howe, "Scottish Enlightenment," 587. See also: Knapp, "Law's Revolution," 285.

¹⁸ Levy, *Framers' Constitution*, 398; Paul Finkelman, "The Constitution and The Intentions of The Framers: The Limits of Historical Analysis," *University Of Pittsburgh Law Review* 50, no. 2 (1989): 398; Howe, "Scottish Enlightenment," 587.

¹⁹ Bunker, "Originalism 2.0," 332-333; Jefferson H. Powell, "The Original Understanding of Original Intent," in *Interpreting the Constitution*, ed. Rakove, 87-88; Charles A. Lofgren, "The Original Understanding of Original Intent?" in *Interpreting the Constitution*, ed. Rakove, 118 & 122; Finkelman, "Intentions of The Framers," 353-55; Lynch, *Negotiating the Constitution*, 221; Levy, *Framers' Constitution*, 1-5 & 19; Goldstein, "Tea Party," 830; Simon J. Gilhooley. "The Framers Themselves: Constitutional Authorship during the Ratification," *American Political Thought* 2 (2013): 83.

²⁰ McDowell, *Language of Law*, 2. See also: McDowell, *Language of Law*, xi; Lofgren, "Original Intent?" 118; Lino A. Graglia, "How the Constitution Disappeared," in *Interpreting the Constitution*, ed. Rakove, 35.

²¹ See: Section, 2.2.

²² see: Section, 8.1.

institutions, including the common law.²³ More recently, the Scottish Enlightenment has also been recognised as a significant influence on those developing the US Constitution.²⁴

The argument for the classical influence can be seen in recent works such as *Rome reborn on western shores: historical imagination and the creation of the American republic* by Eran Shalev, and David J. Bederman's: *The Classical Foundations of the American Constitution: Prevailing Wisdom*.²⁵ In his monograph, Bederman argues against Charles Mullet's assertion that: "classicism was a mere window dressing to the pragmatic, hard-knuckled politics of the period."²⁶ Instead, he argues that the classical influence provided the Founders with, among other things, a "virtually complete political vocabulary" through which to communicate ideas effectively and the Founders' foundation for understanding "natural law and Enlightenment political philosophy."²⁷ He also notes that the classics were not the sole influence on the Founding Generation, but an important one that must be: "taken into account in any intelligible interpretation of the original intent of the Constitution."²⁸

Scholars note that the Founders were familiar with the British constitution and political institutions because the United States began as British Colonies and many of the Founders were lawyers, and thus, trained in the English common law tradition.²⁹ To understand the common law as well as the English constitution,

²³ Eidelberg, *American Constitution*, 4; Asadi, "Founding Fathers," 407-08.

²⁴ Ewald, "Scottish Enlightenment," 1056.

²⁵ Eran Shalev, *Rome Reborn on Western Shores: Historical Imagination and the Creation of the American Republic* (Charlottesville: University of Virginia Press, 2009); Bederman, *Classical Foundations*.

²⁶ Bederman, *Classical Foundations*, 222. Concerning the classics as window dressing see: Bederman, *Classical Foundations*, 18; Nevins, *Politics of Selfishness*, 6.

²⁷ Bederman, *Classical Foundations*, 26.

²⁸ Bederman, *Classical Foundations*, 227.

²⁹ Common law: Jefferson Powell, "Original Understanding," 58-61; Edward A. Purcell Jr., "Democracy, the Constitution, and Legal Positivism in America: Lessons from a Winding and Troubled History," *Florida Law Review* 66, no. 4 (2014): 1463; Levy, *Framers' Constitution*, 5; Bederman, *Classical Foundations*, 10-11, 48, & 160-161; Knapp, "Law's Revolution"; Conrad, "Common Law"; Bayer, "Common Sense Republic"; Wilmarth, "Elusive Foundations"; Ewald, "Scottish Enlightenment"; George M. Dennison, "The 'Revolution Principle': Ideology and Constitutionalism in the Thought of James Wilson", *The Review of Politics* 39, no. 2 (1977): 178.

many of the Founding generation looked to Lord Coke and particularly Sir William Blackstone (1723-1780), as the received authority on the subject.³⁰ American Founders also looked to modern political theorists such as Montesquieu and Rousseau.³¹ However, Locke is often referred to as a dominant influence on the Founders.³² Paul Nevins summarises this position in his statement that: “the U.S. constitutional system, as devised by the Founding Fathers, is essentially an extension and an endorsement of Locke’s politics”.³³ However, Samuel Fleischacker in his chapter: “The impact on America: Scottish philosophy and the American founding”, argues this exclusive and narrow picture of the Founding is “badly misleading”, pointing to the Founders’ connection to the Scottish Enlightenment.³⁴

The recognition of the Scottish Enlightenment as an influence on the Founders was relatively neglected until the publication of Garry Wills’: *Inventing America: Jefferson’s Declaration of Independence*, after which it has grown more rapidly.³⁵ According to Ewald, this is a shift from the previous primarily “Anglo-centric” understanding of the Constitution.³⁶ According to several scholars, this influence primarily came through education, with Americans attempting to imitate Scottish universities and educated Scots emigrating to the colonies to teach as tutors and at universities.³⁷ Robinson presents John Witherspoon (1723-

³⁰ Wilmarth, “Elusive Foundations,” 122; Bederman, *Classical foundations*, 10-12; Cornell, *Other Founders*, 263; Dennison, “Revolution Principle,” 179; Bartrum, “Moral Foundations,” 292; Bayer, “Common Sense Republic,” 199 & 205-206.

³¹ Bederman, *Classical Foundations*, 16 & 47; Paul Merrill Spurlin, *Montesquieu in America, 1760-1801* (Louisiana State University Press, 1940); Jean-Claude Lamberti, “Montesquieu in America,” *Archives Européennes De Sociologie European Journal of Sociology* 32, no. 1 (1991); Eidlberg, *American Constitution*, 4; Asadi, “Founding Fathers,” 408; Gordon S. Wood, *Creation*, 356; Howe, “Scottish Enlightenment,” 582-83.

³² For example, see: See: Asadi, “Founding Fathers”; Jerome Huyler, *Locke in America: The Moral Philosophy of the Founding Era* (Lawrence: University Press of Kansas, 1995).

³³ Nevins, *Politics of Selfishness*, 8.

³⁴ Fleischacker, “Impact on America,” 316.

³⁵ Howe, “Scottish Enlightenment,” 572; Bartrum, “Moral Foundations,” 233; Ewald, “Scottish Enlightenment,” 1057 & 1059. See: Garry Wills, *Inventing America: Jefferson’s Declaration of Independence* (Garden City, NY: Doubleday, 1978).

³⁶ Ewald, “Scottish Enlightenment,” 1056.

³⁷ Sloan, *American College Ideal*, 33 & 226; Ewald, “Scottish Enlightenment,” 1057-58. Howe, “Scottish Enlightenment,” 574; Hook, “American Enlightenment,” 520; Redekop,

1794) as epitomising this academic conduit of influence, as the President of Princeton University, during which time his students would include: “future President of the United States, James Madison” as well as fifty-nine members of congress, five delegates to the Constitutional Convention, and three Supreme Court Justices.³⁸ However, his support of the Popular Party in the Church of Scotland (who were evangelical), in opposition to the Moderates (many of whom constituted and supported the enlightenment in Scotland), makes his connection to the Scottish Enlightenment somewhat tenuous.³⁹

The Scots’ role in American education was no small matter. Fleischacker lists the fledgling American academy alongside the Declaration of Independence and the Constitution as one of: “the three pillars of the American founding”.⁴⁰ He identifies Reid as the most important Scottish influence in the American academy, being used primarily to “refute the doctrines of his fellow Scot, David Hume”, while Henry May extends and develops this position.⁴¹ Fleischacker also explains that this general connection has been used to “help underwrite specific claims for the importance of Hutcheson to Jefferson, of Hume to Madison, and of Reid to several eighteenth-century leaders of American education.”⁴² However, Howe argues that the American Founders’ eclecticism makes it: “a hopeless enterprise [...] to try to single out individual thinkers, Scottish or other, and weigh their

“Reid’s Influence,” 327-29; Fleischacker, “Impact on America”; Bayer, “Common Sense Republic,” 205; Clagett, “Scottish Background,” 159.

³⁸ Robinson, “Scottish Enlightenment,” 171. See also: Robinson, “Witherspoon, Scottish Philosophy and the American Founding,” *Journal of Scottish Philosophy* 13, no. 3 (2015); James J. S. Foster, *Scottish Philosophy in America* (Exeter: Imprint Academic, 2012); Gideon Mailer, “Anglo-Scottish Union and John Witherspoon’s American Revolution,” *The William and Mary Quarterly* 67, no. 4 (2010): 710; Redekop, “Reid’s Influence,” 327-28.

³⁹ Mailer, “John Witherspoon’s American Revolution,” 713; Foster, *Scottish Philosophy in America*, 43-44.

⁴⁰ Fleischacker, “Impact on America,” 328.

⁴¹ Fleischacker, “Impact on America,” 329. See also: Henry Farnham May, *The Enlightenment in America* (New York: Oxford University Press, 1976), 344. See also: Lepisto, *Common-Sense Conservatism*, 37; Redekop, “Reid’s Influence,” 327-29; Peter J. Diamond, “Witherspoon, William Smith and the Scottish Philosophy in Revolutionary America,” in *Scotland and America in the Age of Enlightenment*, ed. Richard B. Sher and Jeffrey R. Smitten (Edinburgh: Edinburgh University Press, 1990), 117-22.

⁴² Fleischacker, “Impact on America,” 318.

relative influence on America.”⁴³ Instead, he proposes that Scottish thinkers spread: “a rich intellectual table from which the Americans could pick and choose and feast.”⁴⁴

From this table scholars have focused on the Scots’ theorising about society as well as referencing Baconianism as a particular mark of the Scottish Enlightenment.⁴⁵ There was debate concerning society and human sociability within the Scottish Enlightenment, although Fleischacker notes that: “The Scots did tend to share some general views on the sociability of human nature”.⁴⁶ Gordon Wood, James Zink, and other scholars generally propose that the human sociability identified by “Scottish moral or common sense thinking” was used to soften, socialise, and extend the individualistic views of Locke and the harsher asocial conception of human nature presented by Thomas Hobbes (1588-1679).⁴⁷ Fleischacker and Howe support this position by arguing that the Scots saw themselves as working within Locke’s tradition.⁴⁸ Without reference to Locke, Leavelle similarly states that Scottish or common sense philosophy is: “relevant to an understanding of American theories of the natural law basis of society and the moral purposes of government”.⁴⁹

These examples, and particularly the Scots’ modification of Locke, present the influences on the Founding generation as something of a collage with the scholarship debating the degree and location of influences with few definitive lines. This presents the Founders, in Howe’s words as: “too resourceful and practical to be anything other than eclectic.”⁵⁰ While this is certainly true on a

⁴³ Howe, “Scottish Enlightenment,” 584. See also: Gordon Wood, *Creation*, 8.

⁴⁴ Howe, “Scottish Enlightenment,” 580. See also: May, *Enlightenment in America*, 344.

⁴⁵ Concerning Baconianism: Howe, “Scottish Enlightenment,” 576-77; Andreas Rahmatian, *Lord Kames: Legal and Social Theorist* (Edinburgh: Edinburgh University Press, 2016), 331-32.

⁴⁶ Fleischacker, “Impact on America,” 333. Concerning debate within Scottish Enlightenment see: Christian Maurer, “Self-interest and Sociability,” in *The Oxford Handbook of British Philosophy in the Eighteenth Century*, ed. James Harris (Oxford: Oxford University Press, 2013), 291-92.

⁴⁷ Gordon Wood, *Radicalism*, 239-40. See also: Zink, “Liberty and Law,” 447; Velasquez, “Rethinking America’ Modernity,” 195-96 & 215-16; Gordon Wood, *A History*, 103; Fleischacker, “Impact on America,” 323-24.

⁴⁸ Fleischacker, “Impact on America,” 316; Howe, “Scottish Enlightenment,” 579.

⁴⁹ Leavelle, “Wilson and Scottish Metaphysics,” 396.

⁵⁰ Howe, “Scottish Enlightenment,” 584. See also: Gordon Wood, *Creation*, 8.

grand scale, many of these theories were not only theoretically incompatible, but written to refute each other. This raises important opportunities for debate over the influence on the Founders' thinking generally, and particularly as it concerns understanding the ideas of an individual Founder, such as James Wilson.

The scholarship on Wilson has presented him as a significant but neglected voice in these grand narratives. It also recognises the Scottish Enlightenment's influence on Wilson and identifies him as an example of the Scottish Enlightenment's influence on the American Founding. However, this scholarship also presents him, like his peers, as pragmatic and eclectic, resulting in some debate and different perspectives on the degree and location of specific influences.

Much of the scholarship concerning Wilson begins with a statement that acknowledges his neglect.⁵¹ Understandably, this neglect has resulted in a scholarly focus on rehabilitating Wilson's legacy, which is exemplified in Pedersen's "The Lost Founder: James Wilson in American Memory". In this article Pedersen attempts to demonstrate Wilson's significance and documents his ongoing neglect.⁵² While Wilson's significance is not debated, his degree of influence is, as it concerns the Constitutional Convention, the ratification debates, and his Majority Opinion on the *Chisholm v. GA* case.

Concerning the Constitutional Convention many argue Wilson was highly influential. For instance, Pedersen argues that Wilson is more worthy of the title: "Father of the US Constitution" than Madison.⁵³ Alternatively, Knapp argues that: "James Wilson had little verifiable influence at the Federal Convention".⁵⁴ However, Knapp does concede that Wilson's efforts *could* have moved the whole

⁵¹ For examples see: Ewald, "Scottish Enlightenment," 1054; Velasquez, "Rethinking America's Modernity," 193; Conrad, "Common-Law," 186-87; Conrad, "Wilson, James"; Clagett "Scottish Background," 154; Hassel, "James Wilson," 21.

⁵² Pedersen, "Lost Founder". For a similar example see: Hassel, "James Wilson".

⁵³ Pedersen, "Lost Founder," 333. Similar suggestions, see: Christopher S. Yoo, "James Wilson as the architect of the American Presidency," *Georgetown Journal of Law & Public Policy* 17, no. 1 (2019); Ewald, "Drafting," 925; Hassel, "James Wilson," 23-24.

⁵⁴ Knapp, "Law's Revolution," 284.

convention in a decidedly more democratic direction, but this kind of influence is not verifiable.⁵⁵

In the Ratification Debates, there is some debate over Gordon Wood and Maier's similar arguments that Wilson's Revolution Principle became the foundation of Federalist thought.⁵⁶ However, Knapp questions how sincere the other Federalists were in their support and use of Wilson's principle.⁵⁷ But, Knapp does concede that Wilson's style appealed to the people and, thus, "did have real consequences going forward."⁵⁸

There is also debate over whether Wilson's Majority Opinion on the *Chisholm v. GA* case was repudiated by the Eleventh Amendment. Arthur Wilmarth Jr. expresses the general view within the legal discipline that the Eleventh Amendment did repudiate Wilson's Majority Opinion.⁵⁹ However, Knapp and Randy Barnett argue that the purposefully specific language of the Amendment did not repudiate: "the underlying principles of sovereignty enunciated in Wilson's opinion."⁶⁰ Furthermore, Akhil Reed Amar argues that the resulting case law is "incoherent", and Ian Bartrum describes it as "riddled with exceptions, rationalizations, and transparent fictions".⁶¹

There have been attempts in Wilson scholarship to use his work to inform these comprehensive narratives and present politics. Some scholarly works do so by asserting Wilson's place in the broader narrative.⁶² Bartrum, Bailyn, Maier, Pedersen, and Hassel suggest that Wilson's speeches and particularly his State House Yard Speech were more broadly influential than the well-known *Federalist*

⁵⁵ Knapp, "Law's Revolution," 207-08, & 299.

⁵⁶ Gordon Wood, *Creation*, 530; Maier, *Ratification*, 110; Pedersen, "Lost Founder," 270-71, & 322.

⁵⁷ Knapp, "Law's Revolution," 304. Concerning the Federalist's use of language: Knapp, "Law's Revolution," 230. See also: Amar, "Of Sovereignty and Federalism," 1437.

⁵⁸ Knapp, "Law's Revolution," 286.

⁵⁹ Wilmarth, "Elusive Foundations," 183.

⁶⁰ Knapp, "Law's Revolution," 289. Barnett, "Chisholm V. Georgia". Concerning the specificity of language argument in Barnett, see: Barnett, "Chisholm V. Georgia," 1751, & 1755.

⁶¹ Respectively: Amar, "Of Sovereignty and Federalism," 1480; & Bartrum, "Moral Foundations," 296.

⁶² Pedersen, "Lost Founder". See also: Hassel, "James Wilson"; Alexander, "Wilson Doctrine"; Ewald, "Drafting".

Papers, while Amar states that they were “equally influential”.⁶³ Ewald and Knapp also argue that Wilson’s Lectures were more systematic and provide a more objective view of the Constitution than the politically motivated *Federalist Papers*.⁶⁴ Some scholars also use Wilson to explore Knapp’s argument that: “Too little recent scholarship [...] adequately spotlights the intellectual variations among the Constitution’s partisans during the ratification debates.”⁶⁵

Scholars also utilise Wilson to call into question some of these comprehensive narratives. Knapp suggests that Gordon Wood fails to recognise that Wilson did not fit his general description of the Federalists as aristocrats.⁶⁶ Similarly, Amar uses Wilson’s conception of popular sovereignty to argue that the US Constitution does not represent an aristocratic counter-revolution, but “was instead the most participatory and majoritarian event the planet had ever seen”.⁶⁷

The possibility of Wilson’s rehabilitated legacy to impact present politics in the United States has also been argued and suggested by some scholars. For instance, Amar develops Wilson’s position to argue that the people themselves can amend their Constitution outside the Article V rules via a simple national majority.⁶⁸ George Dennison also suggests that Wilson represents a forgotten: “progressive ideology which fostered one important strand in the variegated fabric of American constitutional thought.”⁶⁹ Similarly, Zink suggests that Wilson highlights “an appealing facet of American political thought”, for modern reformers, which Pedersen states more explicitly as his hope for rehabilitating Wilson’s legacy.⁷⁰

⁶³ Bartrum, “Moral Foundations,” 256-257; Maier, *Ratification*, 80-81; Pedersen, “Lost Founder,” 270; Hassel, “James Wilson,” 25.

⁶⁴ Ewald, “Drafting,” 901-02, 913-14, 925, & 927-28; Knapp, “Law’s Revolution,” 252.

⁶⁵ Knapp, “Law’s Revolution,” 195. See also: Edling, *In Favour of Government*, 7; Heyburn, “Morris and Wilson,” 196; Ewald, “Scottish Enlightenment,” 1054.

⁶⁶ Knapp, “Law’s Revolution,” 304.

⁶⁷ Amar, “Consent of the Governed,” 496.

⁶⁸ Specifically, see: Amar, “Consent of the Governed,” 506-508. See also: Knapp, “Law’s Revolution,” 243; Bartrum, “Moral Foundations,” 280.

⁶⁹ Dennison, “Revolution Principle,” 157.

⁷⁰ Zink, “Liberty and Law,” 453. Concerning Pederson’s hope see: Pedersen, “Lost Founder,” 335-36.

The general concepts that are regularly a part, if not the focus of scholarly works on Wilson, include those related to his general democratic position and to a lesser extent his conception of the relationship between society and government. There is general agreement on Wilson's broad and substantial advocacy of democracy.⁷¹ However, Seed does dedicate an article to the subject ("The Democratic Ideas of James Wilson: A Reappraisal"), concluding that Wilson was an earnest intellectual democrat.⁷² This question partially arises because in his own time Wilson was suspected of aristocratic intentions, although the scholarship presents these suspicions as unfounded.⁷³

In order to explain Wilson's democratic position many scholars discuss what is often described as Wilson's consent theory, conception of popular sovereignty, and his Revolution Principle.⁷⁴ These major concepts overlap each other, because Wilson's Revolution Principle rests on his conception of popular sovereignty and principle of consent, which Dennison helpfully discusses.⁷⁵ He presents the idea that Wilson's conception of the Revolution Principle was a progressive, peaceful, and continuous revolution in governance, which Knapp also argues in his article "Law's Revolutionary: James Wilson and the Birth of American Jurisprudence".⁷⁶

⁷¹ Knapp, "Law's Revolution," 190-91 & 299; Bartrum, "Moral Foundations," 231; Charles Smith, *James Wilson*, 230; Seed, *James Wilson*, 16, 22, & 82; Pedersen, "Lost Founder," 270.

⁷² Seed, "Democratic Ideas of James Wilson: A Reappraisal," *Bulletin of the British Association for American Studies* 10, no. 10 (1965): 19-20. See also: Knapp, "Law's Revolution," 191-92.

⁷³ Knapp, "Law's Revolution," 190 & 235; Maier, *Ratification*, 77; Ewald, "Drafting," 907-08; Seed, "Democratic Ideas," 3 & 14; Pedersen, "Lost Founder," 265 & 280.

⁷⁴ Democratic position generally: Shannon C. Stimson, "A Jury of the Country: Common Sense Philosophy and the Jurisprudence of James Wilson," in *Scotland and America in the Age of Enlightenment*, ed. Richard B. Sher & Jeffrey R. Smitten (Edinburgh: Edinburgh University Press, 1990); Seed, "Democratic Ideas"; Leavelle, "Wilson and Scottish Metaphysics"; Bayer, "Common Sense Republic"; Knapp, "Law's Revolution". In terms of popular sovereignty: Bartrum, "Moral Foundations"; Knapp, "Law's Revolution"; Robinson, "Wilson's Theory of Rights"; Zink, "Bill of Rights"; Wilmarth, "Elusive Foundations"; Conrad, "Common-Law". In terms of Consent theory: Conrad, "Common-Law"; Knapp, "Law's Revolution"; Bayer, "Common Sense Republic" Amar, "Consent of the Governed". Revolution Principle: Dennison, "Revolution Principle"; Knapp, "Law's Revolution".

⁷⁵ Dennison, "Revolution Principle," 174.

⁷⁶ Specifically see: Dennison, "Revolution Principle," 182; Knapp, "Law's Revolution," 191, 283, & 305.

These concepts are normally analysed in relation to certain political ideas expressed by Wilson, such as his conception of juries, judicial review, position on suffrage, representation in terms of democratic accountability, and the legal affirmation of popular sovereignty in his Majority Opinion in the *Chisholm v. GA* case.⁷⁷ For example, several scholars discuss Wilson's conception that juries are sovereign, being representatives of the people, and are thus able to decide the law of a case, not merely the facts.⁷⁸ This, according to Knapp, makes the jury the conduit for the people to change and improve the law, and thus, exemplifies Wilson's Revolution Principle in practice, which Wilmarth and Zink recognise conceptually, but do not make explicit.⁷⁹ Shannon Stimson, Zink, and Stephen Conrad recognise that Wilson saw this progress in law and governance coming through the collective reasoning of all the members of society.⁸⁰ Conrad, Knapp, Wilmarth, and Dennison all recognise that Wilson saw the common law as exemplifying his Revolution Principle's function through collective reasoning.⁸¹

Similarly, Wilson's conception of the relationship between government and society is often discussed in relation to his conceptions of how government can and should improve society. Conrad states that: "Wilson insisted that the improvement of both private and public life, social and economic, was a central task of government, and that the single most important end of government must

⁷⁷ Juries: Knapp, "Law's Revolution," 275-76; Stimson, "Jury of the Country"; Bartrum, "Moral Foundations," 232; Bayer, "Common Sense Republic," 198. Judicial Review: Knapp, "Law's Revolution"; Wilmarth, "Elusive Foundations"; Stimson, "Jury of the Country". Suffrage: Leavelle, "Wilson and Scottish Metaphysics," 405; Pedersen, "Lost Founder," 276. Representation: Yoo, "Architect," 55, 69, 74, 76. Popular sovereignty in the *Chisholm* case: Barnett, "Chisholm V. Georgia"; Wilmarth, "Elusive Foundations," 176-84; Amar, "Of Sovereignty and Federalism," 1467-84; Robinson, "Wilson's Theory of Rights," 175-78; Knapp, "Law's Revolution," 287-89; Bartrum, "Moral Foundations," 288-91.

⁷⁸ Jury as sovereign and democratic representative see: Bartrum, "Moral Foundations," 282-84; Knapp, "Law's Revolution," 270-78; Wilmarth, "Elusive Foundations," 161-62; Stimson, "Jury of the Country".

⁷⁹ Specifically see Knapp, "Law's Revolution," 196 & 280-83; Wilmarth, "Elusive Foundations," 117.

⁸⁰ Stimson, "Jury of the Country," 198; Zink, "Bill of Rights," 263; Conrad, "Polite Foundations," 385.

⁸¹ Conrad, "Common-Law"; Knapp, "Law's Revolution," 197; Wilmarth, "Elusive Foundations," 161; Dennison, "Revolution Principle," 178.

be the cultivation of the human mind.”⁸² Wilmarth and Zink argue that Wilson sees government improving society primarily through education and particularly citizens' roles as jurors and electors with Zink adding the written US Constitution as educational material.⁸³ According to Zink and Wilmarth, Wilson believed this social improvement would benefit government by making individual rights more secure.⁸⁴

A further point of general recognition of Wilson's importance is that Wilson believed that the United States represented a new or novel theory of government that he was attempting to explain in his Lectures on Law.⁸⁵ This creation of a new theory of government is interrelated with scholars' recognitions of Wilson's explicit opposition to Blackstone, and particularly his argument that law requires a superior to authorise it.⁸⁶ This raises the further question: What tradition or thinker influenced Wilson's unique and novel political positions and underlying theory of governance?

Unsurprisingly, for answers, scholars generally look to Wilson's Scottish context and particularly his fellow Scot, Reid. The scholarly interest in the influence of the Scottish Enlightenment on Wilson can be seen in titles such as Ewald's "James Wilson and the Scottish Enlightenment".⁸⁷ Robinson also presents Wilson as an exemplar of the influence of the Scottish Enlightenment on the American founding.⁸⁸

Despite Howe's warning against pairing a particular Scots thinker with an American Founder, many scholars recognise, in varying degrees, the influence of

⁸² Conrad, "Wilson, James".

⁸³ Wilmarth, "Elusive Foundations," 192; Zink, "Bill of Rights," 259, & 262-63; Zink, "Liberty and Law," 453-54.

⁸⁴ Zink, "Liberty and Law," 453-454; Wilmarth, "Elusive Foundations," 192.

⁸⁵ Knapp, "Law's Revolution," 306-07; Bartrum, "Moral Foundations," 275; Wilmarth, "Elusive Foundations," 117, 153, & 156; Conrad, "Wilson, James"; Conrad, "Polite Foundations," 369-370; Dennison, "Revolution Principle," 186-189.

⁸⁶ Knapp, "Law's Revolution"; Conrad, "Common-Law," 197-201; Bayer, "Common Sense Republic," 199 & 204-205; Bartrum, "Moral Foundations," 292; May, *Enlightenment in America*, 207.

⁸⁷ Ewald, "Scottish Enlightenment". For a further example, see: Leavelle, "James Wilson and the Relation of the Scottish Metaphysics to American Political Thought".

⁸⁸ Robinson, "Scottish Enlightenment," 174-78.

Thomas Reid or Common Sense Philosophy on Wilson's thinking.⁸⁹ Stimson boldly states that: "The contribution of any other thinker on Wilson suffers by comparison to the number and centrality of Reidian arguments interwoven into Wilson's own texts."⁹⁰ Robinson similarly argues: "That Wilson read Thomas Reid, assiduously, there is no doubt, for where he does not quote Reid directly he paraphrases him closely."⁹¹

Reid's influence on Wilson is noted specifically in Wilson's use of Reid's philosophy as a foundation for his legal science, the reason for his democratic position, and a means to reject David Hume's (1711-1776) scepticism. Scholars recognise that Wilson held that the foundation of the science of law and governance rested on the science of man, and as Robinson argues, Wilson believed that Reid had successfully prepared this foundation in his philosophy, requiring no further effort from him.⁹² In this foundation (the science of man), scholars, including Conrad and Roberta Bayer, recognise that Wilson follows Reid in rejecting the sceptical theories associated with Hume, Locke, and Hobbes.⁹³ Bayer and Knapp connect this Reidian foundation to Wilson's democratic position in the clearest terms, although it is also recognised by several other scholars.⁹⁴

⁸⁹ Robinson, "Scottish Enlightenment"; Robinson, "Wilson's Theory of Rights"; Stimson, "Jury of the Country"; Bartrum, "Moral Foundations"; Leavelle, "Wilson and Scottish Metaphysics"; Knapp, "Law's Revolution"; Wilmarth, "Elusive Foundations"; Kermit Hall, "introduction"; Conrad, "Common-Law"; Conrad, "Polite Foundations"; May, *Enlightenment in America*; Ewald, "Drafting"; Zink, "Bill of Rights"; Velasquez, "Rethinking America's Modernity".

⁹⁰ Stimson, "Jury of the Country," 198.

⁹¹ Robinson, "Wilson's Theory of Rights," 296.

⁹² Robinson, "Wilson's Theory of Rights," 290. See also: Knapp, "Law's Revolution," 255 & 265; Wilmarth, "Elusive Foundations," 117.

⁹³ Conrad, "Polite Foundation," 375-76; Bayer, "Common Sense Republic," 194. See also: Leavelle, "Wilson and Scottish Metaphysics," 399; Knapp, "Law's Revolution," 265-66; May, *Enlightenment in America*, 207; Robinson, "Wilson's Theory of Rights," 290-91; Stimson, "Jury of the Country," 198; Redekop, "Reid's Influence," 327.

⁹⁴ Bayer, "Common Sense Republic," 201 & 205; Knapp, "Law's Revolution," 266-68. Concerning the human capacity for democracy see: Bartrum, "Moral Foundations," 232, 278-79, & 300; Pedersen, "Lost Founder," 261-62; Leavelle, "Wilson and Scottish Metaphysics," 405; Wilmarth, "Elusive Foundations," 117 & 150-51; Stimson, "Jury of the Country," 196-198; Robinson, "Wilson's Theory of Rights," 296-97; Zink, "Bill of Rights," 262.

Wilmarth and Conrad also argue that Wilson hoped that the common ability to identify moral first principles through the moral sense and common sense, found in Reid's conception of human nature, would eventually lead to a consensus that would in turn lead to further improvements in the law.⁹⁵ Bartrum goes further, arguing that Wilson held that private citizens have a superior access to moral first principles, being uncorrupted by politics, and thus, must be kept sovereign to guide and safeguard good government.⁹⁶

Scholars also recognise other influences on Wilson, independently and in conjunction with Reid and/ or the Scottish Enlightenment. For instance, Bederman regularly references Wilson's use of classical sources and presents him as one of the best classicists among the Founding Generation.⁹⁷ However, his claims are not exclusive, and his monograph concerns the classical influence generally. Similarly, in his monograph on Henry Home, Lord Kames (1588-1679), Andreas Rahmatian states that: "Wilson's philosophical influence was the Common Sense philosophy of Thomas Reid, and his legal influence was to a considerable extent Lord Kames, Reid's mentor at one time."⁹⁸ Bayer too argues that: "Wilson offered a philosophy of law based upon the epistemology of Reid and the metaphysics of Hooker".⁹⁹

This can also be seen in a few specific aspects and concepts in Wilson's political theory, including his Newtonian and Baconian conception of first principles and the common law, his Revolution Principle, and his conception of Natural Law. Some scholars recognise that Wilson sees himself as following Newton and Bacon, particularly in his conception of first principles and the common law as an experimental science.¹⁰⁰ Conrad particularly argues that Wilson understood Bacon via Reid, and that Wilson used this understanding to argue against Blackstone.¹⁰¹

⁹⁵ Wilmarth, "Elusive Foundations," 150-51 & 192. See also: Conrad, "Polite Foundations," 385.

⁹⁶ Bartrum, "Moral Foundations".

⁹⁷ Bederman. *Classical Foundations*, 228.

⁹⁸ Rahmatian, *Lord Kames*, 329.

⁹⁹ Bayer, "Common Sense Republic," 190-91.

¹⁰⁰ Conrad, "Common-Law"; Conrad, "Polite Foundations"; Wilmarth, "Elusive Foundations," 150-151, & 161; Rahmatian, *Lord Kames*, 330-32.

¹⁰¹ Conrad, "Common-Law", 201-04, & 219.

There are multiple perspectives on the origins of and influences on Wilson's Revolution Principle. Amar, Wilmarth, and Bartrum argue that Wilson used Locke's consent theory to develop his own theory of consent, going beyond Locke in his expression of it in his Revolution Principle.¹⁰² Bartrum argues that "Scottish moral sentimentalism", which he associates with Reid, provided Wilson with the: "the intellectual bridge between Lockean social contract theory and the American conception of popular sovereignty."¹⁰³ Alternatively, Wills argues that Wilson's conception, that popular sovereignty could not be alienated from the people, comes from Rousseau and, similarly, that Wilson's Revolution Principle goes beyond Rousseau.¹⁰⁴

There are also a variety of perspectives concerning the origins of Wilson's moral sense. Bartrum ties Wilson's conception of the moral sense primarily to Reid, stating that Reid: "as much as any sentimentalist, seems to have influenced James Wilson".¹⁰⁵ Alternatively, Bayer states that: "it is a serious question whether Wilson's thought is more dependent upon Thomas Reid or Francis Hutcheson in his treatment of the moral or common sense", while White identifies Francis Hutcheson (1694-1746) alone as the source of Wilson's moral sense.¹⁰⁶ However, Eduardo Velasquez makes the strongest argument against a predominant Reidian alignment, claiming that: "Wilson makes no distinctions among the various Scottish philosophers and thus ignores the important differences regarding the content of the moral sense."¹⁰⁷

Connecting Wilson's conception of the moral sense to Hutcheson is unsurprising given the concept is often associated with him.¹⁰⁸ However, some scholarship indicates that this connection to Hutcheson and Velasquez's argument of an indistinct Scottish moral sense are potentially problematic. Bartrum argues

¹⁰² Amar, "Consent of the Governed," 476; Wilmarth, "Elusive Foundations," 119 & 151-52; Bartrum, "Moral Foundations," 254.

¹⁰³ Bartrum, "Moral Foundations," 251. See also: Wilmarth, "Elusive Foundations," 151-52.

¹⁰⁴ Specifically, see: Wills, "New Meaning for Sovereignty," 104-05.

¹⁰⁵ Bartrum, "Moral Foundations," 251.

¹⁰⁶ Bayer, "Moral Foundations," 193; White, *Philosophy of the Revolution*, 133.

¹⁰⁷ Velasquez, "Rethinking America's Modernity," 197.

¹⁰⁸ Peter J. E. Kail, "Moral Judgment," in *The Oxford Handbook of British Philosophy in the Eighteenth Century*, ed. James Harris, 319-23.

that unlike Hutcheson's benevolence and other theories that identify "one master moral principle", Reid identifies many irreducible moral first principles.¹⁰⁹ Harro Maas goes into greater detail, arguing that the difference between them concerns whether the judgment of the moral sense produces the moral sentiment, as in the case of Reid, or the judgment follows the emotional response, as in Hutcheson's theory.¹¹⁰ According to Maas, Reid believed that Hutcheson's theory presented humans as acting upon "instincts rather than reason", making Hutcheson's moral theory "indistinguishable from the selfish system, in which we [humans] acted mechanically upon our passions."¹¹¹ Furthermore, Antti Lepisto points out that the different Scottish conceptions of the moral sense were: "never meant to be compatible with one another."¹¹² Thus, if Wilson's moral sense is indistinguishably Scottish, then his use of this concept and his theory are possibly internally logically incoherent and problematic.

Tied to this debate, there are different opinions concerning what Wilson holds is the efficient cause of moral obligation. Velasquez makes the most forceful claim that: "Wilson locates the efficient cause of moral obligation in the will of God."¹¹³ Alternatively, Knapp argues that Wilson holds that it resides in a feeling, which Bartrum explains are produced by the moral faculty, tying this position to Reid in the process. Other scholars also provide a more ambiguous position pointing to God given faculties as the efficient cause of moral obligation.

There is also a debate over Wilson's conception of natural law generally. Velasquez argues that Wilson is primarily influenced by Locke, Hume, Hobbes, and the modern natural law tradition. This is the primary focus of his article, "Rethinking America's Modernity: Natural Law, Natural Rights and the Character of James Wilson's Liberal Republicanism". Velasquez argues that Wilson's conception of natural law, like Locke, Hume, and Hobbes, is modern, being grounded in "human passions, not least the ubiquitous passion for self-

¹⁰⁹ Bartrum, "Moral Foundations," 251.

¹¹⁰ Harro Maas, "Where Mechanism Ends: Thomas Reid on the Moral and the Animal Oeconoy," *History of Political Economy* 35, no. suppl. 1 (2003): 345.

¹¹¹ Maas, "Where Mechanism Ends," 345.

¹¹² Lepisto, *Common-Sense Conservatism*, 38.

¹¹³ Velasquez, "Rethinking America's Modernity," 198. See also: Wilmarth, "Elusive Foundations," 147. There he claims that Wilson's theory of law "was explicitly based on the supreme authority of God."

preservation”, and that he supplements this with accounts of “human ‘sociability’”, drawn from the Scottish Enlightenment.¹¹⁴ His argument rests in part upon his conception of Wilson’s moral sense and on linking Wilson to Hume in his understanding of how humans determine ultimate ends.¹¹⁵ It also resonates with the standard view of the Scottish Enlightenment’s influence on Founders stated earlier. Zink also asserts this position by referring to Velasquez.¹¹⁶ Wilmarth takes up this position as well, but views the Scottish Enlightenment and common sense as playing more than a merely supplemental role.¹¹⁷

However, Robinson argues that: “Whatever might be said of Wilson’s theory of natural rights, it would be a most eccentric reading of his works to believe that the theory is grounded in some unexamined Lockean political philosophy”, explaining that what is: “Equally clear is Wilson’s rejection of Hume’s approach to the same issues.”¹¹⁸ Bayer also argues that Wilson: “opposed the skeptical epistemology of John Locke (1632- 1704) and David Hume (1711-1776) in order to argue for philosophical realism and for classical natural law.”¹¹⁹ Instead, Bayer argues that Wilson understood the classical natural law tradition through Richard Hooker (1554-1600), while White argues it came from Jean-Jacques Burlamaqui (1694-1748), and Bederman notes that (in his lecture on natural law in his *Lectures on Law*) Wilson “relied heavily on Cicero’s writings”.¹²⁰

While the literature generally recognises the importance of the Scottish Enlightenment and specifically Reid’s influence on Wilson, as Velasquez’s position exemplifies, there is some marked disagreement concerning this. Furthermore, the literature connecting Wilson and Reid fails to fully elucidate the extent and significance of Wilson’s adherence to Reid, which I will illustrate and begin to remedy in this thesis. This will include explicating the Reidian nature of Wilson’s conception of the moral sense, common sense, the determination of ultimate ends, first principles, natural human sociability, the nature and naturalness of

¹¹⁴ Velasquez, “Rethinking America’s Modernity,” 193.

¹¹⁵ Velasquez, “Rethinking America’s Modernity,” 195-202.

¹¹⁶ Zink, “Bill of Rights,” 255.

¹¹⁷ Wilmarth, “Elusive Foundations”.

¹¹⁸ Respectively: Robinson, “Wilson’s Theory of Rights,” 290 & 296.

¹¹⁹ Bayer, “Common Sense Republic,” 189.

¹²⁰ Bayer, “Common Sense Republic,” 189; White, *Philosophy of the Revolution*, 134; Bederman, *Classical Foundations*, 154-55.

society and justice, and with them Wilson's conception of natural law. It will also include illustrating Wilson's Reidian rejection of scepticism. However, this is by no means to claim that this thesis will fully reveal the extent or significance of Wilson's adherence, or to claim that Reid is the only influence on Wilson.

What this thesis will argue is that, developing our understanding of Wilson's adherence to and development of Reid, will provide a fuller and deeper understanding of Wilson's Democratic Political Theory and contributions. This will also inform the existing Wilson scholarship, particularly as it concerns the origins of his moral sense and Revolution Principle, as well as arguments that align Wilson with Locke, Hume, Hobbes, and the modern tradition generally. This understanding will develop the existing scholarship on Wilson's Revolution Principle, including its role as the foundation of the US Constitution and Wilson's science of law and governance.

In turn I will use the existing scholarship concerning Wilson's influence on the development of the US Constitution to insert this fuller understanding of his theory and contributions into the historical record. Doing so will supplement and challenge the existing scholarship concerning the development of the US Constitution. Particularly, I will argue that Gordon Wood's thesis cannot account for Wilson and is thus inadequate, and at best a misleading overgeneralisation. Furthermore, I will argue that Wilson's example raises similar questions concerning the predominance of Locke's influence on the Founders and developing from this the consensus concerning the Scottish Enlightenment's influence on the Founders as primarily softening and socialising Locke's theory. Finally, I will also develop the suggestions in the existing literature by illustrating how rehabilitating Wilson's legacy could be used to inform and address current political issues in the United States, in part by supporting progressive reforms.

2.2 - Methodology: Recovering Intended and Extended Meaning

The nature of the guiding and supplementary questions of this thesis as well as the development of the US Constitution lend themselves to an intellectual history methodology. However, the methodology of intellectual history is characterised

by a debate between a number of different schools of thought or approaches.¹²¹ Many scholars also note the interdisciplinary nature of intellectual history projects, which further complicates this debate, at times making it difficult to draw clear disciplinary boundaries between it and particularly the history of philosophy.¹²² The focus of these debates concerns what methodological approaches, evidence, and arguments produce works of history. The existence of these debates and different approaches requires an explication of the methodological approach or combination of approaches used in a work of intellectual history, which is often unique to the specific demands of the project being undertaken.¹²³

The guiding questions and the underlying requirements of this thesis raise three methodological questions:

1. What counts as the meaning of a text and how is meaning recovered?
2. What is influence and how can it be identified and used to aid in recovering and understanding the meaning of a text?
3. How can intellectual history significantly and appropriately inform existing scholarship and the present?

I have found Blau's scholarly work on methodology particularly helpful in recognising and addressing these methodological demands. Generally, Blau's

¹²¹ Brian Young, "Introduction," in *A Companion to Intellectual History*, ed. Whatmore & Young, (West Sussex: John Wiley & Sons, 2016), 1; Collini, "Identity of Intellectual History," 11; Cesare Cuttica, "Intellectual History in the Modern University," in *A Companion to Intellectual History*, ed. Whatmore & Young, 41-42; Markku Hyrkkänen, "All History is, More or Less, Intellectual History: R. G. Collingwood's Contribution to the Theory and Methodology of Intellectual History," *Intellectual History Review* 19, no. 2 (2009): 262; William W. Fisher III, "Texts and Contexts: The Application to American Legal History of the Methodologies of Intellectual History," *Stanford Law Review* 49, no. 5 (1997): 1085-1087; Adrian Blau, "History of Political Thought as Detective-Work," *History of European Ideas* 41, no. 8 (2015).

¹²² Young, "Introduction," 1; Collini, "Identity of Intellectual History," 15-16; Cuttica, "Modern University," 38-39; Blau, "Detective-Work," 1192; Blau, "How (Not) to use the History of Political Thought for Contemporary Purposes," *American Journal of Political Science* 65, no. 2 (2021): 359-60.

¹²³ Unique methodological demands of different projects: Hyrkkänen, "Intellectual History," 252. See also: William Fisher, "Texts and Contexts". Combination of approaches: Blau, "Extended Meaning and Understanding in the History of Ideas" *History and Theory* 58, no. 3 (2019): 359. See also: William Fisher, "Texts and Contexts," 1088.

perspective proves useful in his recognition of the overly abstract nature of the current methodological debate and that strict adherence to one methodological approach can bias intellectual historians, leaving them blind to pertinent evidence.¹²⁴ He addresses this issue by focusing on the practical techniques that textual interpreters generally share.¹²⁵

Specifically, Blau argues that in order to recover the historical meaning of a text and understand it, intellectual historians at times need to think philosophically (exemplified in his concept of extended meaning).¹²⁶ This greatly aids in addressing the methodological demands of this thesis and will be a focus of this section. However, while this thesis will at times use philosophical analysis, as Blau advocates, it remains primarily a work of intellectual history in its use of this analysis to recover the historical meaning of Wilson's text, understanding its place and role in history, and its potential in the present, as opposed to being focused on discovering philosophical truth as in the history of philosophy.¹²⁷ This thesis also has further interdisciplinary elements beyond this philosophical analysis. These elements include interactions with constitutional law, political theory, and contemporary politics used to illustrate the significant potential of Wilson's contributions to inform the present. Robert Frodeman argues that this focus on addressing a contemporary problem is itself a key characteristic of

¹²⁴ Overly abstract: Blau, "Interpreting Texts," in *Methods in Analytical Political Theory*, ed. Adrian Blau (Cambridge: Cambridge University Press, 2017), 244; Blau, "Detective-Work," 1178-79, & 1193; Blau, "Extended Meaning," 343. See also: William Fisher, "Texts and Contexts," 1087.

¹²⁴ Blau, "Interpreting Texts," 244 & 263; Blau, "Detective-Work," 1179 & 1188.

¹²⁵ Blau, "Extended Meaning," 343; Blau, "Detective-Work," 1178-79; Blau, "Interpreting Texts," 244.

¹²⁶ Blau, "Extended Meaning". See also: Blau, "Meanings and Understandings in the History of Ideas," *Journal of the Philosophy of History* 14, no. 2 (2020): 255. Rosen also proposes this idea in his methodology: Michael Rosen, "The History of Ideas as Philosophy and History," *History of Political Thought* 32, no. 4 (2011): 692-93.

¹²⁷ Leo Catana, "Intellectual History and the History of Philosophy: Their Genesis and Current Relationship", in *A Companion to Intellectual History*, ed. Whatmore & Young (West Sussex: John Wiley & Sons, 2016), 136; Rosen, "Philosophy and History," 692-93.

interdisciplinarity generally.¹²⁸ Similarly, Blau recognises that interdisciplinary elements such as these are a normal part of many intellectual history projects.¹²⁹

In many ways, Blau's methodology is a development and critique of Skinner and the Cambridge School. Skinner's article on methodology ("Meaning and Understanding in the History of Ideas" (1969)), is widely recognised as pivotal in these methodological debates and the development of the Cambridge School, which includes scholars such as J.G.A. Pocock and John Dunn.¹³⁰ Blau, along with many other scholars, recognise Skinner and his work as the exemplar of intellectual history.¹³¹

Skinner's "Meaning and Understanding" was largely a critique of what was at the time the orthodox methodology. He argued that historians read their present biases into historical texts, creating mythologies not histories. According to Skinner, the orthodox methodology viewed concepts as eternal ideas used to answer perennial philosophical questions that exist outside of history, leading them to describe and judge historical texts by contemporary criteria and

¹²⁸ Robert Frodeman, *Sustainable Knowledge: A Theory of Interdisciplinarity* (Basingstoke: Palgrave Macmillan, 2013), 3.

¹²⁹ Blau, "Contemporary Purposes," 359-360; Blau, "Detective-Work," 1192.

¹³⁰ Quentin Skinner, "Meaning and Understanding in the History of Ideas," *History and Theory* 8, no. 1 (1969); For the significance of 'Meaning and Understanding': Richard Whatmore, "Quentin Skinner and the Relevance of Intellectual History," in *A Companion to Intellectual History*, ed. Whatmore & Young (West Sussex: John Wiley & Sons, 2016); Rafael Major, "The Cambridge School and Leo Strauss: Texts and Context of American Political Science," *Political Research Quarterly* 58, no. 3 (2005); Blau, "Extended Meaning," 345. Concerning The Cambridge School see: Kenneth Sheppard, "J. G. A. Pocock as an Intellectual Historian," in *A Companion to Intellectual History*, ed. Whatmore & Young (West Sussex: John Wiley & Sons, 2016), 114; Whatmore, "Skinner," 97-99; Edward Baring, "Intellectual History and Poststructuralism," in *A Companion to Intellectual History*, ed. Whatmore & Young (West Sussex: John Wiley & Sons, 2016), 50; Keith Tribe, "Intellectual History as Begriffsgeschichte," in *A Companion to Intellectual History*, ed. Whatmore & Young (West Sussex: John Wiley & Sons, 2016), 63; Catana, "Intellectual History," 138-39; Major, "Cambridge School"; Samuel James, "J.G.A. Pocock and the idea of the 'Cambridge School' in the history of political thought," *History of European Ideas* 45, no 1 (2019).

¹³¹ Blau, "Meanings and Understandings," 234. See also: Whatmore, "Skinner," 97 & 103; Duncan Kelly, "Intellectual History and the History of Political Thought," in *A Companion to Intellectual History*, ed. Whatmore & Young (West Sussex: John Wiley & Sons, 2016), 145.

doctrines, and not by what the author meant or even within the context of what they could have meant.¹³²

In opposition to this perspective, Skinner asserted the need to locate a text within its historical context, to ascertain the author's intended meaning, which he asserted as the primary objective of intellectual history.¹³³ For Skinner this historical context is primarily linguistic and conceptual, which provides the possible meanings of different terms, concepts, and underlying assumptions available to a historical figure.¹³⁴ This kind of historical context is needed because terms, and the concepts they identify, change in meaning and connotation over time as well as in reference to how they are used and who is using them.¹³⁵ It is also necessary, according to Skinner, because even more fundamentally the underlying assumptions and beliefs of a society, revealed in their linguistic practice, change as well.¹³⁶

Determining the historical meaning of a text can be aided by recognising what is often called influence, which can be understood as a specific kind of context, although Skinner is suspicious of the idea of influence generally.¹³⁷ This

¹³² Skinner, "Meaning and Understanding," 4, 5, 7 & 24; Whatmore, "Skinner," 100-01, & 106; Major, "Cambridge School," 478-79. Other scholars associated with the Sussex University critiques this teleological or Whiggish view of history as well, see: Cuttica, "Modern University," 41-42.

¹³³ Skinner, "Meaning and Understanding"; Whatmore, "Skinner," 99; Catana, "Intellectual History," 133; Rosen, "Philosophy and History," 705-707; Hyrkkänen, "Intellectual History," 256; Major, "Cambridge School," 481-82; William Fisher, "Texts and Contexts," 1068; Blau, "Extended Meaning," 343-45 & 352-355; Blau, "Meanings and Understandings," 232-33; Blau, "Detective-Work," 1191-92. See also concerning the Cambridge School general focus on intention (including critiques of it): Sheppard, "Pocock," 115; Baring, "Poststructuralism," 50-52; Tribe, "Begriffsgeschichte," 63.

¹³⁴ Skinner, "Meaning and Understanding," 48-49. Whatmore, "Skinner," 99; Blau, "Interpreting Texts," 247; William Fisher, "Texts and Contexts," 1068.

¹³⁵ Skinner, "Meaning and Understanding," 30, 36-37, & 47; Jacob Soll, "Intellectual History and the History of the Book," in *A Companion to Intellectual History*, ed. Whatmore & Young (West Sussex: John Wiley & Sons, 2016), 73; Rosen, "Philosophy and History," 698; William Fisher, "Texts and Contexts," 1068; James, "'Cambridge School,'" 484.

¹³⁶ Skinner, "Meaning and Understanding," 25-38, & 49. See also: Whatmore, "Skinner," 99; Catana, "Intellectual History," 133; Rosen, "Philosophy and History," 705-06; Major, "Cambridge School," 482; William Fisher, "Texts and Contexts," 1068; Blau, "Interpreting Texts," 246-47.

¹³⁷ Skinner, "Meaning and Understanding," 25-26.

suspicion appears to come from his issues with the existing orthodox methodology.¹³⁸ To summarise Skinner's argument: regarding the history of ideas as a progressive march towards the inevitable present that utilises eternal concepts to address perennial philosophical questions, leads historians to find an unbroken chain of continual influence that does not exist.¹³⁹ Against this conception, Skinner argues that three criteria must be met to identify actual historical influence: 1. "a genuine similarity between the doctrines"; 2. That the author "could not have found the relevant doctrine in any [other] writer"; and 3. "the probability of the similarity being random should be very low".¹⁴⁰

In his more recent work, according to Blau, Skinner prefers to use the term "genealogy" to denote similarities between historical figures' concepts, doctrines, and arguments.¹⁴¹ However, Skinner's conception of context appears to be similar to the idea of influence. The difference between the two ideas appears to be one of specificity, with the determination of influence being an attempt to identify, from the available conceptual and linguistic materials, those that an author has engaged with or utilised.

Recovering an author's intended meaning and these genealogical similarities, according to Skinner, often reveals different historical understandings or conceptualisations of ideas, terms, and doctrines than those used today. According to Blau, Skinner holds that this historical perspective can be used to illuminate: "how things were different, and how things could— perhaps should— still be different."¹⁴² Pocock also sees this historical perspective as a means to broaden contemporary understanding of ideas, emphasising that this perspective produces an archipelago of histories or a multifaceted conception of an historical event or concept that allows for debate, discourse, and mutual understanding in the present.¹⁴³ Thus, Skinner and Pocock see great value in studying non-canonical

¹³⁸ Skinner, "Meaning and Understanding," 25-26.

¹³⁹ Skinner, "Meaning and Understanding," 25-27.

¹⁴⁰ Skinner, "Meaning and Understanding," 26.

¹⁴¹ Blau, "Interpreting Texts," 249-50.

¹⁴² Blau, "Contemporary Purposes" 364. See also: Whatmore, "Skinner," 106-07.

¹⁴³ Sheppard, "Pocock," 119-23.

and forgotten texts to expand our understanding of historical events and concepts, and with them, possibilities in the present.¹⁴⁴

However, some scholars, including Blau, note that Skinner does not always practise what he preaches.¹⁴⁵ Even Skinner in recent years has acknowledged some of these instances and spoken critically of his own original publication, "Meaning and Understanding".¹⁴⁶ Central critiques of Skinner, made by other scholars, include practising philosophical analysis and his use of anachronistic labels that present a teleological conception of history in his scholarly work.¹⁴⁷ However, according to Blau, Skinner's use of philosophical analysis is the "secret" to his success and makes his practice far "richer" than his methodological writings.¹⁴⁸ It also points to Blau's central critique of Skinner's methodological scholarship.

Blau recognises that Skinner appropriately highlighted the need to think historically. However, he argues that Skinner over emphasises intentionality and historical thinking, while neglecting the need to think philosophically, which Skinner uses so successfully in his practice.¹⁴⁹ Blau argues that intentionality is a state of mind, which cannot be observed directly, but only inferred with varying degrees of confidence.¹⁵⁰ Thus, he holds that, while inferring an author's intentions can be useful, "*equating* intentions and intended meaning seems too strong."¹⁵¹ He further explains that historians often need "to use textual consistency to make inferences about intended meanings."¹⁵² This entails for example, identifying an author's philosophical position or commitment in one part of the text and using it to understand the meaning of another passage. This process

¹⁴⁴ Whatmore, "Skinner," 98-99. See also: Tribe, "Begriffsgeschichte," 63.

¹⁴⁵ Blau, "Meanings and Understandings," 232-233, 248-49, & 250; Blau, "Detective-Work," 1179; Blau, "Interpreting Texts," 251 & 256; Whatmore, "Skinner," 109; David Burchell, "Citizenship and Culture," in *A Companion to Intellectual History*, ed. Whatmore & Young (West Sussex: John Wiley & Sons, 2016), 317.

¹⁴⁶ Whatmore, "Skinner," 100 & 106

¹⁴⁷ Whatmore, "Skinner," 109.

¹⁴⁸ Blau, "Extended Meaning," 356. See also: Blau, "Detective-Work," 1179.

¹⁴⁹ Blau, "Extended Meaning," 351, 354-56, & 358; Blau, "Meanings and Understandings," 250 & 255.

¹⁵⁰ Blau, "Extended Meaning," 352 & 354. See also: Blau, "Interpreting Texts," 259-62; Blau, "Meanings and Understandings," 236-37.

¹⁵¹ Blau, "Extended Meaning," 354 (emphasis added).

¹⁵² Blau, "Extended Meaning," 355.

leads to Blau's main point: *"to the extent that we want to recover how authors themselves understood the terms they used, we usually need to think philosophically, even if only in a fairly mild way."*¹⁵³ He argues that this point: "undermines any strict divide between thinking philosophically and thinking historically".¹⁵⁴ This presents intended meaning as not limited to an author's intentions, but includes what a passage meant within its textual and historical contexts, requiring a historian to think philosophically to in part draw the necessary inferences.¹⁵⁵ This is a task which Blau holds historians are more than capable of, asserting that: "historians can be very adept philosophers, and sometimes must be".¹⁵⁶

This need for historians to think philosophically (in response to what Blau sees as a glaring and problematic gap in the methodological literature) is the central focus of much of Blau's scholarly work on methodology.¹⁵⁷ This focus is epitomised in Blau's theorising of the concept of extended meaning. Blau defines this term as simply the logical implications or consequences (intended and unintended) of an author's arguments and positions, which can include how effective and/ or consistent these arguments are, and what an author's arguments equate or amount to, or commit an author to, in historical and even modern terms, including retrospective historical significance.¹⁵⁸ Recovering extended meaning is an appropriate aim for intellectual history according to Blau, who argues this practice is already prevalent in the discipline, including Skinner's work.¹⁵⁹

As introduced above, Blau holds that thinking philosophically, or more specifically recovering extended meaning, can aid and is often required for

¹⁵³ Blau, "Extended Meaning," 355 (emphasis original).

¹⁵⁴ Blau, "Extended Meaning," 355.

¹⁵⁵ Blau, "Extended Meaning," 355.

¹⁵⁶ Blau, "Extended Meaning," 357.

¹⁵⁷ Blau, "Interpreting Texts," 243; Blau, "Extended Meaning," 352 & 357. See also: Blau, "Detective-Work," 1178-1179.

¹⁵⁸ Blau, "Extended Meaning," 342-44, 356, & 358; Blau, "Meanings and Understandings," 233, 239-240, 244-245, & 251.

¹⁵⁹ Prevalence of practice: Blau, "Meanings and Understandings," 233 & 252; Blau, "Extended Meaning," 352. Extended meaning in Skinner's practice: Blau, "Understandings and Meanings," 232-234, 248, & 250; Blau, "Extended Meaning," 349; Blau, "Detective-Work," 1189.

recovering intended meaning.¹⁶⁰ For instance, this thesis will show that Wilson explicitly adheres to Reid's third criterion for testing first principles. It will then explain that what he does in his Lectures amounts to adapting Reid's test to mark a sovereign individual's consent as the only human authority in the law through implicit consent embodied in the common law's basis in custom. This extended meaning reveals the further implication or extended meaning, which is that Wilson is testing and identifying this principle of consent as a Reidian first principle. Recognising this extended meaning helps explain and understand his intended meaning in his use of terms such as "foundational" or "inalienable right" to describe this principle in his contributions to the development of the US Constitution and Lectures on Law.

Blau also argues that intended meaning is useful and should be used for recovering the extended meaning of a passage.¹⁶¹ For instance, in Wilson's discussion of ultimate ends he paraphrases Hume's *Enquiry Concerning Human Understanding* (1748) almost exactly, which Eduardo Velasquez notes and uses to align Wilson with Hume.¹⁶² However, this fails to account for Wilson's explicit *rejection* of Humean scepticism, and other textual and contextual evidence used to infer the intended meaning of Wilson's text, including the fact that Reid quotes and agrees with most of the passage in question.¹⁶³ Thus, using this context to recover the intended meaning of this passage elucidates that the extended meaning of this passage is unlikely to be a pairing of Wilson and Hume, but more likely points to an inconsistency in Wilson's position that possibly reveals the motivational direction of his argument. This use of intended meaning to determine extended meaning is exemplified in the guiding and supplemental questions of this thesis. For example, determining Wilson's potential significances in the present

¹⁶⁰ Blau, "Extended Meaning," 342-46, & 352-58; Blau, "Meanings and Understandings," 255; Blau, "Interpreting Texts," 251-52.

¹⁶¹ Blau, "Extended Meaning," 348.

¹⁶² Velasquez's statement of his general alignment argument: Velasquez, "Rethinking America's Modernity," 193 & 196-97. Velasquez's discussion of the determination of ultimate ends, see: Velasquez, "Rethinking America's Modernity," 200-02. Wilson splits the quote with the majority in: *WJW*, 1:135; & paraphrased version of the rest see: *WJW*, 1:136. This will be discussed in: Section, 3.3.

¹⁶³ *AP*, 359-60.

(through judging his philosophical similitude with Reid) falls within Blau's conception of extended meaning, but requires recovering intended meaning.

These examples also illustrate how important historical context (particularly Reid's philosophy) is for recovering both kinds of meaning, pointing to how useful identifying influence (as a kind of specific context) can be in this process. However, while Blau's discussion of the use of contexts is helpful, he does not discuss the concept of influence directly in much depth.¹⁶⁴ Thus, I have looked to Markku Hyrkkänen's application of R. G. Collingwood's logic of questions and answers to develop the concept.¹⁶⁵ He argues that influence can be understood in terms of an author using another historical figure's solution or argument to address a particular and often similar question they are confronted with.¹⁶⁶

However, I would add to this concept the idea of negative influence. This concept describes instances where an author sees another text as presenting or creating a problem. This is exemplified in Reid's statements that he would have never thought of questioning the received philosophy—and thus, develop his own philosophy—if it had not been for Hume's work. Reid saw Hume's work as bringing the Theory of Ideas to its logical conclusion, which Reid believed revealed the danger it posed to human knowledge and society.¹⁶⁷

Alternatively, I prefer to refer to the standard positive use of the term 'influence', described by Hyrkkänen, as an author's adherence to another historical figure's theory or concept because it highlights the author's agency in utilising the existing concept. Furthermore, I think it is helpful to identify that adherence often carries with it an element of what I call development. Development could be as simple as the reapplication of an argument or concept by a historical figure to address their problems or a new discipline, which I often

¹⁶⁴ Blau, "Interpreting Texts"; Blau, "Detective-Work"; Blau, "Meanings and Understandings".

¹⁶⁵ Hyrkkänen, "Intellectual History".

¹⁶⁶ Hyrkkänen, "Intellectual History," 254.

¹⁶⁷ Thomas Reid, "Dedication: To the Right Honourable James, Earl of Findlater and Seafield, Chancellor of the University of Old Aberdeen," in *Inq.*, 3. See also: Ralph Jessop, *Carlyle and Scottish Thought* (Basingstoke: Macmillian Press, 1997), 55-57; Philip de Bary, *Thomas Reid and Scepticism: His Reliabilist Response* (London: Routledge, 2002), 3.

refer to through the term “translation”. However, it could also include reconstructing another historical figure’s arguments or making implicit arguments in that author’s work explicit in their own. This could be understood as something akin to what today is called the history of philosophy. However, this kind of adherence requires a foundation of more explicit examples that meet Skinner’s criteria. It also requires recovering the meaning of the influencing text on its own terms as well as the adhering author’s understanding of the meaning of that text.¹⁶⁸

Thus, this thesis involves attempting to judge the extent of Wilson’s adherence to and development of Reid, by determining how well this adherence meets Skinner’s criteria, the breadth and similitude of examples, and how useful they are in recovering and understanding the meaning of Wilson’s contributions. Judging how similar or close Wilson’s philosophical arguments and positions are to Reid is again a form of extended meaning. For instance, judging how similar Wilson’s conception of the moral sense is to Reid’s is an example of extended meaning. Furthermore, an understanding of Reid’s philosophy in its own right, is necessary and will be primarily presented through the use of contemporary Reid scholarship. However, Wilson’s understanding of Reid is also necessary and will be elucidated by analysing the extended meaning of passages in which he implicitly and explicitly refers to Reid.

This thesis will argue that the extent of Wilson’s adherence is significant by utilising existing Wilson scholarship and the more concrete and explicit examples of adherence located in the appendixes to illustrate how Skinner’s criteria have been met. The appendixes also serve to illustrate the general breadth of Wilson’s adherence as well as a textual similitude. This foundation will then be used to identify and argue for more specific complex forms of adherence and development that further reveal their philosophical similarities concerning certain concepts and arguments. The important role of both forms of adherence in Wilson’s underlying political theory will then be identified in order to illustrate their usefulness for understanding and recovering the meaning of Wilson’s contributions, and thus, the significant extent of his adherence to Reid.

¹⁶⁸ Blau, “Meanings and Understandings,” 252-53.

While Wilson's adherence to Reid greatly aids in understanding Wilson's Democratic Political Theory and contributions, it provides only one context and source of evidence for understanding the meaning of his texts. As Blau argues, the key to accurately recovering the intended and extended meaning of a text is gathering and taking into account four kinds of evidence: "textual, contextual, philosophical and motivational", and to do so from as many sources and contexts as possible.¹⁶⁹ This evidence, according to Blau, is then used to develop hypotheses concerning the possible interpretations of a text and then to test them against the gathered evidence and the existing scholarship to see which interpretations have the greatest support. He calls this process triangulation and regards Skinner as the best practitioner of it.¹⁷⁰

Blau explains this process of recovering the meaning of a text through an analogy with detective work.¹⁷¹ However, while enlightening, I find Michael Rosen's conception of "reverse engineering" and Hyrkkänen's description and development of Karsten Stueber's concept of "reenactive empathy" more useful analogies.¹⁷² These analogies constellate the process of recovering how and why an author constructed their arguments and theories. This concept highlights that part of the meaning of a text is found in how an author's arguments and concepts fit together, function, and embody or impart their purpose.¹⁷³ This conception aids in thinking about philosophical and motivational evidence, as well as Blau's conception of extended meaning.

I find an analogy with experimental archaeology also fitting. While the term might share similarities with Michel Foucault's archaeology analogy, focused on uncovering structures or epistemes in opposition to authorship and intention, it is conceptually different.¹⁷⁴ Experimental archaeology attempts to understand how a historical artifact was made, for what purpose, and how it was used by working

¹⁶⁹ Blau, "Detective-Work," 1190. See also: Blau, "Interpreting Texts," 262.

¹⁷⁰ Triangulation specifically: Blau, "Detective-Work," 1187 & 1192; Blau, "Interpreting Texts," 263. Use of hypotheses: Blau, "Detective-Work," 1181-1185, & 1188-89.

¹⁷¹ Blau, "Detective-Work".

¹⁷² Rosen, "Philosophy and History," 699; Hyrkkänen, "Intellectual History," 257-58.

¹⁷³ Rosen, "Philosophy and History," 699, & 715.

¹⁷⁴ Michael Drolet, "Michel Foucault and the Genealogy of Power and Knowledge," in *A Companion to Intellectual History*, ed. Whatmore & Young (West Sussex: John Wiley & Sons, 2016).

with the materials, techniques, and demands present in the artifact's historical context.

For instance, in this thesis this perspective (when coupled with Collingwood's logic of questions and answers applied to context generally), regards the Scottish Enlightenment and Reid specifically, as providing Wilson with many raw materials and techniques. This thesis then examines how Wilson used these materials and techniques to address the demands, problems, and questions presented by the historical context of the development of the US Constitution as well as the Scottish Enlightenment and British Political Theory. For instance, in the example above, Wilson is utilising Reid's technique for testing first principles to test and identify consent as a first principle of law and governance. He does this in opposition to what he calls the Theory of Superiority in order to address disputes over the concept of sovereignty, which were central to the development of the US Constitution.

Furthermore, while gathering as much evidence from as many sources and contexts as possible is ideal, there are human limitations. Blau recognises this, advocating for a collectivist conception of triangulation and the development of academic knowledge.¹⁷⁵ Thus, as this example illustrates, this thesis will focus on Wilson's adherence to Reid because of its extensive utility for understanding Wilson's contributions.

This process of experimental archaeology is greatly facilitated by Wilson's *Lectures on Law*, which he wrote after the ratification of the US Constitution. As stated earlier, Blau argues that utilising textual consistency is often necessary for recovering intended and extend meaning. This practice views other sections of a text or other texts by the same author as textual and philosophical evidence to be used in the process of triangulation.¹⁷⁶ These *Lectures* (significant in their own right) are particularly appropriate for this use, given Wilson's consistency. Moreover, they are especially useful for this process because they function as a systematic and theoretical reflection by Wilson on the system of governance and law that he believed he had helped create through the ratification of the US

¹⁷⁵ Blau, "Interpreting Texts," 261-63; Blau, "Detective-Work," 1180, 1185, & 1192.

¹⁷⁶ Blau, "Extended Meaning," 355.

Constitution.¹⁷⁷ The self-reflective nature of Wilson’s Lectures also allows for the possibility that his thinking developed through his participation in the development of the US Constitution.

The textual and philosophical evidence that Wilson’s Lectures provide can be generally described as a theoretical and systematic presentation of his Democratic Political Theory. This includes the Revolution Principle’s place and function in the US Constitution, the federal system of governance it created, and American jurisprudence. This textual and philosophical evidence often includes the explicit and implicit philosophical and theoretical explanations, justifications, and influences (particularly of Reid) that stand behind or are implied by Wilson’s arguments in the Constitutional Convention, ratification debates, and his work as a Justice of the Supreme Court. Thus, this philosophical and textual evidence, once gathered, greatly facilitates the recovery of the intended meaning of Wilson’s contributions and helps us better understand them.

The recovered meaning of Wilson’s contributions in turn often illustrates Wilson’s understanding of the practical implications of his theory, aiding in further understanding his Democratic Political theory. For instance, in the example above, Wilson’s Reidian justification of his principle of consent, in his Lectures, helps us understand and recover the meaning of his radically extensive expression of it in his Revolution Principle in the ratification debates.

Recovering and understanding the broader and deeper meaning of a text through the use of extended meaning, produces possibilities for informing the present and, in the case of this thesis, determines the significance of Wilson’s contributions. Blau also provides advice and arguments concerning this subject. He generally agrees with Skinner’s perspective, as noted earlier, and recognises that history is particularly adept at: “expanding our perspectives and for challenging explanations and evaluations.”¹⁷⁸ William Fisher III goes slightly deeper into this subject, agreeing that history broadens our perspective and adds

¹⁷⁷ Consistency: Seed, *James Wilson*, 16. Systematic and self-reflective nature of Wilson’s Lectures: Knapp, “Law’s Revolution,” 194; Dennison, “Revolution Principle,” 176; Leavelle, “Wilson and Scottish Metaphysics,” 395-96; Conrad, “Common-Law,” 194; Barnett, “Chisholm V. Georgia,” 1734.

¹⁷⁸ Blau, “Contemporary Purposes,” 364.

that it helps reveal the contingency of the present by illustrating that historical events could have turned out differently.¹⁷⁹ Rosen takes these arguments a step further and ponders whether intellectual historians could function as “iconoclasts”, which resonates with Blau’s further thoughts on the subject and aspects of this thesis.¹⁸⁰

Blau states that intellectual history or the history of political thought can inform the present in four ways: “questioning authority, questioning existing answers, asking new questions, and offering new answers.”¹⁸¹ He recognises that identifying genealogies and asking anachronistic questions can accomplish some of these tasks. Genealogies according to Blau can be used to question existing answers, such as Skinner’s analysis of liberty that exposes the narrowness of the modern understanding of the concept.¹⁸² Blau also argues, in opposition to Skinner’s stated position, that asking anachronistic questions and practising what he calls “anachronistic conceptual redescription”, can help recover intended meaning, can be helpful for historians, and is necessary for any arguments concerning conceptual development or conceptual originality.¹⁸³

These anachronistic questions and comparisons can be particularly useful in challenging authority. Blau suggests that contemporary free market capitalists’ use of Adam Smith as an authority for their position provides an example of this. He explains that if they fail to address Adam Smith’s critiques of the free market in their own arguments or doctrines, they are susceptible to historical challenges.¹⁸⁴ Anachronistic conceptual redescription is a further possibility that comes from these anachronistic comparisons, which Blau describes as the recognition that an author’s concept or argument amounts to a modern doctrine or theory.¹⁸⁵ I prefer to describe instances of this as points of compatibility because it implies that a concept or argument amounts to, supports, or shares

¹⁷⁹ William Fisher, “Texts and Contexts,” 1097-98.

¹⁸⁰ Rosen, “Philosophy and History,” 716.

¹⁸¹ Blau, “Contemporary Purposes,” 363.

¹⁸² Blau, “Contemporary Purposes,” 360 & 364; Blau, “Interpreting Texts,” 250.

¹⁸³ Blau, “Extended Meaning,” 351-52 & 359; Blau, “Interpreting Texts,” 250; Blau, “Contemporary Purposes,” 363-64

¹⁸⁴ Blau, “Contemporary Purposes,” 364. See also: Blau, “Extended Meaning,” 351.

¹⁸⁵ Blau, “Extended Meaning,” 350-52.

similarities with aspects of a contemporary doctrine or theory without implying that an author intended to articulate, support, or adhere to it.

It is this ability to challenge authority and question existing answers that resonates most strongly with Rosen's suggestion of the intellectual historian as iconoclast. It also represents the greatest potential for this thesis to inform the present, and thereby, elucidate the significance of Wilson's neglected contributions.

In particular, the significance of Wilson's contributions will be determined and illustrated by first judging how effectively they call into question existing scholarship and to what extent the addition of Wilson's facet of this historical event broadens our perspective and understanding of it. This significance will also be judged by how effectively it challenges the regressive Founders' Intent Political Ideology and Originalism. And, finally, it will be determined by how viable an alternative path Wilson's contributions and texts present.

This historical challenge of the Founders' Intent Political Ideology and Originalism is possible because (to a greater extent than Blau's Adam Smith example), they rely on historical authority, utilising the history of the early American Republic as the foundational authority for their arguments and positions. They do so by identifying the intended or original meaning of the US Constitution in something akin to Skinner's method, but without his methodological rigour. Furthermore, in this process, Originalism and more so the Founders' Intent Political Ideology often conflate extended meaning, in terms of a reasonable inference or compatibility with a contemporary concept, with the historical or intended meaning of a text. This mistakenly identified meaning is then used to determine the original meaning of the US Constitution. This is methodologically unsound and misleadingly anachronistic.

Nevertheless, their use of this history as authoritative allows Wilson to be used as an authoritative, effective, and potentially persuasive counterexample, critiquing Originalism and the Founders' Intent Political Ideology externally, and more poignantly from within their methodological and epistemological framework. This will be done in part by revealing Wilson's compatibility with the opposing progressive and reform positions. However, I will be clear that illustrating these compatibilities and how Wilson could potentially address modern

issues are forms of extended meaning, which will allow me to use them to formulate arguments against Originalism and the Founders' Intent Ideology, while avoiding their anachronistic methodological error of misleadingly conflating the two. Making this differentiation between extended and intended meaning will also reveal this methodological flaw or oversight in this methodology and ideology.

Distinguishing between intended and extended meaning in these compatibility arguments also allows them to be used to provide a deeper or extended understanding of Wilson's work in accordance with Blau's arguments, while again avoiding misleading anachronisms. This understanding can inform scholarship in other disciplines, such as philosophy, law, or political theory, and even popular politics. In this sense, these points of compatibility will also be used in the final element of determining Wilson's significance, which is illustrating the potential viability of Wilson's Democratic Political Theory to function as an alternative path forward.

In essence this thesis is working to recover the intended meaning of Wilson's contributions, including through his Lectures, by recognising and understanding their extended meaning and contexts (specifically in Wilson's adherence to Reid). Then, utilising this understanding, I attempt to judge the significance of Wilson's neglected contribution, or, to put this another way, reveal part of their extended meaning. This historical endeavour requires thinking philosophically, and also with clarity, which utilising and distinguishing between intended and extended meaning provides.

However, following Pocock's example, it is important to note that Wilson provides just one facet of or perspective on the narrative of the development of the US Constitution.¹⁸⁶ Similarly, Reid and the Scottish Enlightenment are facets of the story behind Wilson's Democratic Political Theory. For, as Blau reminds us, no one can claim to recover the entire meaning of a text and that a text's intended meaning can only be approached, but never claimed conclusively.¹⁸⁷ To which I would add: nor can scholarly or academic work entirely capture the place and role of a text in its historical context. This highlights a further job of the intellectual

¹⁸⁶ Sheppard, "Pocock," 119-23.

¹⁸⁷ Blau, "Interpreting texts," 259-62; Blau, "Extended Meaning," 352; Blau, "Detective-Work," 1180; Blau, "Meanings and Understandings," 236-237, 240, & 249.

historian, which is to attempt to locate their particular facet of the story among those that have already been presented. And furthermore, make space for other facets to be added by identifying where they might be located, and thus, aid in the collective work of understanding the past. However, what this thesis will argue is that these are especially significant facets of the story of the development of the US Constitution and Wilson's Democratic Political Theory because they broaden and reinform our perspective on them and in doing so question scholarship and challenge contemporary authority.

Chapter 3 – Wilson’s Reception of Scottish Enlightenment Philosophy

Wilson’s Scottish education exposed him directly to the Scottish Enlightenment and possibly some of its leading figures. However, this context also exposed him to several other intellectual traditions, including some from which the Scottish Enlightenment had developed. A brief glance at the index in Wilson’s *Collected Works* indicates that Wilson was as eclectic as his peers, referencing theorists from the classical period, such as Cicero (106-43BC), to the more modern Samuel Pufendorf (1632-1694).¹ Bartrum also recognises that he: “undoubtedly passed through the work of Locke, Shaftesbury, Hutcheson, Hume, and Reid, among others.”² However, given Wilson’s education and experience of the Scottish Enlightenment he was likely more familiar with the Scottish theoretical and philosophical debates than his American peers. Due to this experience, Wilson was possibly more discerning in his choices than Howe’s general description of the Founders implies. This possibility is made more likely given Bederman’s praise of Wilson’s critical approach to the classics.³

3.1 - James Wilson’s Eclecticism

What does come to light from reading Wilson’s work is that, while he engages with a plethora of sources and historical examples concerning practical and theoretical positions, he does so critically. He rejects and argues against a number of theorists and theories, while utilising others as points of authority or historical examples. But, importantly, he regularly and consistently agrees with Reid’s assessment of

¹ Respectively, Cicero and Pufendorf: “Index,” in *Collected Works of James Wilson*, ed. by Kermit Hall and Mark Hall, 2:1223-24 & 2:1251-52.

² Bartrum, “Moral Foundations,” 258.

³ Bederman, *Classical Foundations*, 42, 44, & 228.

these theories and authorities. Furthermore, Wilson was rarely content to let things rest on authority, often formulating theoretical or philosophical arguments that support his use of an authority or rejection of a theory. It is in these arguments that Wilson regularly adheres to and develops Reid's philosophy. While Wilson does not do this in every case, he does so often enough that it constitutes a tendency that helps reveal the significant extent of Wilson's adherence to Reid.

However, practical political issues concerning the structure of government institutions is an exception to this tendency, which is unsurprising, given that Reid was writing about the philosophy of mind, not political theory. However, even concerning such issues, Wilson's adherence to Reid helps us understand his position better. For instance, in the ratification debates Wilson argues for the benefits of a bicameral legislature in reference to Montesquieu.⁴ And, in his Lectures, Wilson provides the examples of Athens, Sparta, and Rome as proof of the benefits of a bicameral legislature.⁵ However, Stimson also argues that Wilson favoured a bicameral legislature because it created a crucial further opportunity for discourse and collective reasoning, explaining that this preference and position stems from Wilson's adherence to Reid.⁶

This tendency of Wilson using Reid's philosophy to underpin and formulate his arguments becomes clearer when looking at Wilson's more theoretical principles of government. For instance, concerning Wilson's democratic position he uses Tacitus (56-c.120) and John Millar (1735-1801) to hold up the Germanic tribes as examples of democracy.⁷ Similarly, Wilson uses Homer's "appellation of the PEOPLE of Athens" in his Majority Opinion *Chisholm v. GA*.⁸ He does so to illustrate that the use of the term "the PEOPLE of the *United States*" in the preamble, meant that, like the Athenians, the people of the United States ruled themselves, not a king.⁹ Bederman explains that Wilson utilises several other classical references to support his assertion of popular sovereignty in his *Chisholm*

⁴ *DHRC*, 2:474.

⁵ *WJW*, 1:396-97.

⁶ Stimson, "Jury of the Country," 205.

⁷ *WJW*, 1:330.

⁸ *Chisholm v. Georgia*, 419 U.S. 453 (1793), 463 (emphasis original).

⁹ *Chisholm v. Georgia*, 463 (emphasis original). See also: Bederman, *Classical Foundations*, 185.

v. GA Opinion.¹⁰ However, a number of scholars also attribute Wilson's support for democratic governance and popular sovereignty to Wilson's Reidian foundation of Common Sense Philosophy.¹¹

Furthermore, Wilson provides an indication of this tendency in his arguments concerning his consent principle. Wilson listed Hooker, Hugo Grotius (1583-1645), Jean Barbeyrac (1674-1744), Dr Thomas Rutherford (1712-1771), and Anthony Ashley Cooper, Earl of Shaftesbury (1671-1713) as stating or supporting the conception of rule by the consent of the governed.¹² He concluded the argument by stating his principle of consent: "I hope I have evinced, from authority and from reason, from precedent and from principle, that *consent* is the sole obligatory principle of human government and human laws."¹³ Thus, these natural law theorists and jurists stand as precedence and authority, but Wilson also justifies his position by reason and principle, and does so by utilising Reid's philosophy.¹⁴

A more complex aspect to this tendency involves points where Reid and Wilson appear to be drawing on similar sources. This can be seen in Wilson's use of Cicero as an authority for his conception of human sociability.¹⁵ Similarly, Haakonssen and James Harris, in the "Editors' Introduction" to *Thomas Reid: Essays on the Active Powers of Man*, state that Cicero was among the philosophers that Reid saw as: "particularly valuable".¹⁶ An example of this is where Wilson quotes Cicero at length to argue that "we are not intended solely for ourselves", but that humans should contribute to the support and improvement of society.¹⁷ Reid also provides a similar sentiment without reference to Cicero, stating: "No

¹⁰ Bederman, *Classical Foundations*, 20, 182-86.

¹¹ Bartrum, "Moral Foundations," 232, 278-79, & 300; Bayer, "Common Sense Republic," 201 & 205; Knapp, "Law's Revolution," 266-68; Pedersen, "Lost Founder," 261-62; Leavelle, "Wilson and Scottish Metaphysics," 405; Wilmarth, "Elusive Foundations," 117; Stimson, "Jury of the Country," 196-198; Robinson, "Wilson's Theory of Rights," 296-97; Zink, "Bill of Rights," 262.

¹² Concerning Hooker, Grotius, Barbeyrac, & Dr Rutherford see: *WJW*, 1:220. Concerning Shaftesbury, see: *WJW*, 1:102.

¹³ *WJW*, 1:221 (emphasis original).

¹⁴ This will be discussed in detail in: Section, 4.1.

¹⁵ *WJW*, 1:170, 1:173-74, & 1:299.

¹⁶ Haakonssen & James Harris, "Editors' Introduction," in *AP*, ix.

¹⁷ *WJW*, 1:299.

man is born for himself only” and again that as a member of society a person should do: “as much good as he can, and as little hurt” to that society.¹⁸ They both appear to be drawing on the same source, although in several places Wilson uses similar language to Reid and develops a number of Reid's ideas on society.¹⁹

There are also several theorists whom Wilson rejected, who were primarily adherents to what he calls the Theory of Ideas and the Theory of Superiority. Wilson gets the term “Theory of Ideas”, or “Ideal Theory”, from Reid and unsurprisingly utilises Reid's philosophy to argue against it.²⁰ Wilson, paraphrasing several passages from Reid, traces the development of this tradition back to Plato, identifying Rene Descartes (1596-1650), Locke, Hume, Bishop George Berkley (1685-1753), David Hartley (1705-1757), and Joseph Priestley (1733-1804) as adherents to this theory.²¹ Wilson also argues against what he calls the Theory of Superiority, which includes: Pufendorf, Blackstone, Hobbes, and Bishop Robert Sanderson (1587-1663).²² Both the Theory of Ideas and the Theory of Superiority shape Wilson's Democratic Political Theory as negative influences. As Dennison explains concerning the Theory of Superiority: “Wilson used Blackstone as a foil throughout his lectures.”²³

These are just a few examples, and other influences will be indicated as the thesis unfolds. However, even Wilson's engagement with such a broad array of sources resonates with Reid. As Haakonssen states, in the “Preface” to *Thomas Reid: Essays on the Intellectual Powers of Man*: “Reid engages in such detail with a large number of other thinkers that a full annotation of his references would drown out his own text.”²⁴ It seems likely that Wilson utilised many of these sources and particularly the classical ones as the common language of the

¹⁸ *AP*, 274.

¹⁹ See: “Social Operations/ Benevolent Affections” and “Society”, in Appendix A. I will discuss this in more detail in: Sections, 7.2-4.

²⁰ For one example see: *WJW*, 2:72-73. Compare with: *IP*, 450. See also: Conrad, “Polite Foundation,” 375-76; Bayer, “Common Sense Republic,” 194; Leavelle, “Wilson and Scottish Metaphysics,” 399; Knapp, “Law's Revolution,” 265-66. I will discuss this further in: Section, 4.1.

²¹ *WJW*, 1:67-68, & 1:658-60. Corresponding passages in Reid, see: *Inq.*, 19-20, 23, 75-76, & 207.

²² *WJW*, 1:69.

²³ Dennison, “Revolution Principle,” 179.

²⁴ Haakonssen, “Preface,” in *IP*, vii.

Founding Generation, as Bederman argues, and as a means of persuasion, as Nevins suggests.²⁵ This is not to say that these sources did not influence Wilson's thinking, they certainly did, and even the negative influences provided a dialogical partner against which Wilson could further develop his ideas. However, it appears that Wilson often and consistently used Reid to formulate his theoretical arguments, attempted refutations, and his Democratic Political Theory generally.

This position is supported by the general, yet underdeveloped, recognition of the importance of Reid to Wilson in the scholarly treatments of Wilson's theory.²⁶ I have endeavoured to rectify this in part through my appendixes, which identify Wilson's close paraphrases and direct quotations of Reid. These are effectively Wilson's translation of Reid's philosophy into the discipline of political theory and law, and hence, constitute part of the extended meaning of Wilson's theory. Alternatively, Wilson's direct references to and citations of Reid's philosophy comprise part of the intended meaning of those aspects of Wilson's theory as well. Furthermore, the sheer number of instances of textual quotations and paraphrases of Reid (detailed in the appendixes), attests to the extent and breadth of Wilson's adherence to Reid's philosophy. Scholars such as Stimson and Robinson have noted this as well, but to my knowledge, Wilson's various uses of Reid's texts, have yet to be compiled in their entirety.

Furthermore, comparing Wilson's biographical timeline with the publication dates of Reid's works, indicates that Reid had a lasting influence on Wilson's thinking.²⁷ Reid's *Inquiry*, published in 1764, was the only work of Reid's in circulation before Wilson's departure from Scotland in 1765, while the *Intellectual Powers* (1785) and *Active Powers* (1789), were published after Wilson's arrival in North America.²⁸ Wilson, writing and giving his lectures between

²⁵ Bederman, *Classical Foundations*, 44; Nevins, *Politics of Selfishness*, 6.

²⁶ See: Section, 2.1.

²⁷ Ewald, "Scottish Enlightenment," 1110; Knapp, "Law's Revolution," 265; Bartrum, "Moral Foundations," 258-59, & 277; Pedersen, "Lost Founder," 261; Bayer, "Common Sense Republic," 190-91; Leavelle, "Wilson and Scottish Metaphysics," 396; Robinson, "Wilson's Theory of Rights," 292 & 296-97; Stimson, "Jury of the Country," 198; Clagett, "Scottish Background".

²⁸ Brookes, "Preface," vi. see also: Alexander Campbell Fraser, *Thomas Reid*, (Edinburgh: Oliphant, Anderson & Ferrier, 1898), 56 & 104. Wilson's emigration: Conrad, "Wilson, James"; Kermit Hall, "Introduction," 1:xvi. Concerning Wilson's continued reading of Reid's work, see: Ewald, "Scottish Enlightenment," 1110.

1790 and 1792, quoted all three of Reid's published works.²⁹ Wilson even praised Reid in his Majority Opinion in the *Chisholm v. GA* case in 1793, nearly thirty years after he left Scotland, where he was almost certainly first exposed to Reid's philosophy.³⁰

I am not claiming that my appendixes provide a complete list of Wilson's uses of Reid's work, but rather that they are *sufficient* to illustrate Wilson's broad and extensive adherence to Reid, something that meets and even exceeds Skinner's criteria for influence.³¹ Therefore, I will focus on Wilson's adherence to Reid, while pointing up instances in which Wilson is referring to other thinkers and traditions. However, this focus on Wilson's adherence to Reid will reveal how useful its formulation and analysis is for understanding Wilson's theory and contributions to the development of the US Constitution.

3.2 - Thomas Reid: The Philosophy of the Human Mind

Reid's philosophy is a rich, broad, and complex subject, providing Wilson with a wealth of concepts and arguments to draw from, reapply, and develop. As Mass explains: "Reid typically developed his own ideas into a coherent view in juxtaposition to ideas to which he took exception."³² Philip de Bary also asserts that Reid's published works: "would never have come into being, had not Hume first written his *Treatise of Human Nature*."³³ Reid recognises this in the dedication to the *Inquiry*, explaining that he: "never thought of calling in question

²⁹ See: Appendix A. Wilson lecturing on law at the College of Pennsylvania: Ewald, "Drafting," 913-14; Knapp, "Law's Revolution," 252; Bartrum, "Moral Foundations," 275-76; Zink, "Liberty and Law," 443; Conrad, "Common-Law," 189; Leavelle, "Wilson and Scottish Metaphysics," 395; Conrad, "Wilson, James"; Kermit Hall, "Introduction," 1:xx; Mark Hall, "Bibliographical," 1:401.

³⁰ *Chisholm v. Georgia*, 453-54.

³¹ Skinner's criteria: 1. The similarity between the concepts. 2. That the author could not have found the concept in another author. And 3. The similarities are unlikely to have occurred by chance. See: Section: 2.1.

³² Maas, "Where Mechanism Ends," 338.

³³ De Bary, *Thomas Reid and Scepticism*, 3. See also: Leavelle, "Wilson and Scottish Metaphysics," 396.

the principles commonly received with regard to the human understanding, until the *Treatise of Human Nature* was published in the year 1739.”³⁴

However, it is important to note that the Theory of Ideas was the received philosophy at the time. As Nicholas Wolterstorff argues: “Reid was the first to have had the philosophical imagination to liberate himself sufficiently to develop a significant alternative”, and as C. B. Bow states, it was: “a viable alternative”.³⁵ These statements portray Reid as challenging and moving beyond the received philosophical tradition, which implicitly places his philosophy in a rather progressive light.

Reid viewed the Theory of Ideas as not only wrong, but dangerous for humanity, couching his discussion of it in apocalyptic language.³⁶ For example, Reid describes the consequences of Hume’s *Treatise* as having: “drowned all [the material and spiritual world] in one universal deluge.”³⁷ Furthermore, he poetically intimates the insidious and deceptive nature of the Ideal Theory by analogising it with: “the Trojan horse”, in so far as it carried inside of it: “death and destruction to all science and common sense”.³⁸

However, this apocalyptic language may seem out of place in a philosophical text. But as Ralph Jessop poignantly observes, for Reid, scepticism

³⁴ Reid, “Dedication,” 3. See also: Reid, “Letters to Dr. James Gregory,” in *The Works of Thomas Reid Now Fully Collected, with Selections from His Unpublished Letters / Preface, Notes and Supplementary Dissertations by Sir William Hamilton; Prefixed, Stewart’s Account of the Life and Writings of Reid with Notes by the Editor*, ed. William Hamilton, 6th ed. (Edinburgh: Maclachlan & Stewart, 1863), 1:88b.

³⁵ Respectively: Wolterstorff, *Thomas Reid and the Story of Epistemology* (Cambridge: Cambridge University Press, 2001), 24; & C. B. Bow, ‘Introduction’, in *Common Sense in the Scottish Enlightenment*, ed. C. B. Bow (Oxford: Oxford University Press, 2018), 2. See also: de Bary, *Reid and Scepticism*, 25; Knud Haakonssen, “Introduction,” in *Thomas Reid on Practical Ethics: Lectures and Papers on Natural Religion, Self-Government, Natural Jurisprudence, and the Law of Nations*, ed. Knud Haakonssen (University Park, Penn: Pennsylvania State University Press, 2007), xi-xii; Gordon Graham, “The Significance of Reid’s Practical Ethics,” in *Reid on Ethics*, ed. Roeser, 223; Diamond, *Common Sense and Improvement: Thomas Reid as Social Theorist* (Frankfurt am Main: Peter Lang, 1998), 233.

³⁶ Jessop, *Carlyle and Scottish Thought*, 55-57.

³⁷ *Inq.*, 23.

³⁸ *Inq.*, 75-76.

did not just present a theoretical or academic threat to knowledge, but had real world consequences:

Philosophy for Reid was not simply a speculative pursuit for the élite few or a chamber exercise for the solitary individual—philosophical texts, even those that fall ‘*dead-born*’ from the press, become public documents which can profoundly influence the course of human activity. With a pastoral care for the well-being of ‘the publick’, Reid was concerned that the theory of Ideas (or Ideal theory as he preferred to call it) had the power to influence the many and lead them astray.³⁹

Thus, Reid attempted to refute this dangerous theory and develop an alternative path for philosophy to take, which would improve knowledge and humanity, in part by safeguarding them from this threat or what he describes as a wrong turn in philosophy.⁴⁰

Reid's attempted refutation of what he calls the Theory of Ideas is a *reductio ad absurdum* argument.⁴¹ Accordingly, Reid argues that when the received theory presented by Descartes and Locke was taken to its extreme, as it was by Hume and Berkley, it leads to a conclusion, which Reid states is: “justly ridiculous, even to those who cannot detect the fallacy of it.”⁴² Thus, Reid investigates the foundation of the theory in order to discover the error that led to such absurdities.⁴³

Reid identifies the problem as an unsupported hypothesis that he expresses thus: “That nothing is perceived but what is in the mind which perceives it: That we do not really perceive things that are external, but only certain images and pictures of them imprinted upon the mind, which are called *impressions* and *ideas*.”⁴⁴ In essence, this hypothesis, according to Reid, denies the human ability

³⁹ Jessop, *Carlyle and Scottish Thought*, 56-57 (emphasis original).

⁴⁰ *Inq.*, 23

⁴¹ Louise Marcil-Lacoste, *Claude Buffier and Thomas Reid: Two Common-Sense Philosophers* (Kingstone: McGill-Queen's University Press, 1982), 150. See also: Brookes, “Introduction,” in *Inq.*, xvii.

⁴² *Inq.*, 21. See also: *Inq.*, 16-24; John Greco, “Reid's Reply to the Skeptic,” in *The Cambridge Companion to Thomas Reid*, ed. Cuneo & Woudenberg.

⁴³ Reid, “Dedication,” 4-5.

⁴⁴ Reid, “Dedication,” 4 (emphasis original).

to know anything beyond their own consciousness, making science and empiricism an impracticable pursuit, not to mention society.⁴⁵

The Ideal Theory does so in part by denying self-evident propositions that Reid calls Common Sense First Principles. Reid argues that the denial of such principles would cause an infinite regress in reasoning because there is no foundational self-evident principle on which to end a proof.⁴⁶ Thus, according to Reid, the Theory of Ideas is absurd and self-undermining because, if true, it would imply that science, reasoning, knowledge of the external world, and interactions with and in the external world are impossible.⁴⁷

In his attempted refutation, Reid argues that there is no good reason to assent to this theory. As scholars explain, Reid held there is simply no evidence to support this hypothesis, and even if it is correct, as Wolterstorff asserts, for Reid the Theory of Ideas: “offers no explanation whatsoever”.⁴⁸ As John Greco explains Reid is referring to Newton’s rules or criteria that a theory must be both true and sufficient to explain a natural phenomenon, and argues that: “According to Reid, the theory of ideas fails both tests.”⁴⁹ As Reid stated the only support he could find for this Theory of Ideas was: “The authority of philosophers.”⁵⁰

Reid explains that this unsupported hypothesis developed out of an inappropriate analogy between the mind and body, advocating dualism instead. As Terence Cuneo explains: “The Humean mind is the Newtonian universe writ small”.⁵¹ Reid viewed Hume’s conception of the human mind as incorrect because the mind and body are two different kinds of entity, or as we might now say, they

⁴⁵ Reid, “Dedication,” 4-5. See also: De Bary, *Reid and Scepticism*, 3; & Eric Lundestad, “The Skeptic and the Madman: the proto-pragmatism of Thomas Reid.” *Journal of Scottish Philosophy* 4, no. 2 (2006): 126.

⁴⁶ *IP*, 454-55.

⁴⁷ Reid, “Dedication,” 4-5; De Bary, “Reid and Scepticism,” 3; Greco, “Reid’s Reply,” 152.

⁴⁸ Wolterstorff, *Reid and Epistemology*, 48. See also: Wolterstorff, *Reid and Epistemology*, 46; Greco, “Reid’s Reply,” 138 & 141.

⁴⁹ Greco, “Reid’s Reply,” 138. See also: *IP*, 51.

⁵⁰ *IP*, 142.

⁵¹ Terence Cuneo & Rene van Woudenberg, “Introduction,” in *The Cambridge Companion to Thomas Reid*, ed. Cuneo & Woudenberg, 6.

are ontologically different.⁵² According to Jessop, Reid embraces this dualism as “as a fact of human existence”, presenting him as what Jessop calls (*pace* Sir William Hamilton) a *natural dualist*.⁵³ Thus, Reid claimed that utilising an analogy between mind and body, ignoring this fact of human existence, is: “the most fruitful source of error with regard to the operations of our minds”.⁵⁴ Therefore, for Reid, the Ideal Theory's reliance on this inappropriate analogy led to its erroneous unsupported hypothesis.⁵⁵

Furthermore, the errors in the Ideal Theory, according to Reid, are rooted in the inconsistent veneration of reason as the only non-fallacious source of belief.⁵⁶ He argues that: “the votaries of this Philosophy, from a natural prejudice in her favour, have endeavoured to extend her jurisdiction beyond its just limits”.⁵⁷ For Reid, philosophers' attempts to demonstrate or prove first principles, such as the reliability of perception, is a primary example of them misusing reason or improperly extending reason's jurisdiction.⁵⁸ This is because, according to Reid, by definition, first principles “do not admit to direct proof”, and thus, any attempt at a rational proof will be unsatisfactory and weak.⁵⁹ As Reid explains, this unsatisfactory proof in turn will lead to doubt and eventually denial, as it did with Berkley and Hume.⁶⁰

⁵² *Inq.*, 176; *IP*, 20-21; Giovanni B. Grandi, “The Extension of Color Sensations: Reid, Stewart, and Fearn,” *Canadian Journal of Philosophy* 41, no. S1 (2014): 71; Haakonssen, “Introduction,” Xxxvi - xxxvii; Cuneo & Woudenberg, “Introduction,” 6; Callergard, *An Essay on Thomas Reid's Philosophy of Science* (Stockholm: US-AB, 2006), 59; Maas, “Where Mechanism Ends”; Jessop, *Carlyle and Scottish Thought*, 58-59.

⁵³ Jessop, *Carlyle and Scottish Thought*, 67. See also: Jessop, *Carlyle and Scottish Thought*, 60.

⁵⁴ *IP*, 54. See also: Jessop, *Carlyle and Scottish Thought*, 58-59; Rebecca Copenhaver, “Is Thomas Reid a Mysterian?” *Journal of the History of Philosophy* 44, no. 3 (2006): 463; Maas, “Where Mechanism Ends,” 345-46.

⁵⁵ Haakonssen, “Introduction,” Xxxvi - xxxvii; Jessop, *Carlyle and Scottish Thought*, 58-59; Cuneo & Woudenberg, “Introduction,” 6; Callergard, *Reid's Philosophy of Science*, 58-59.

⁵⁶ Greco, “Reid's Reply,” 150-53. See also: de Bary, *Reid and Scepticism*, 23; Wolterstorff, *Reid and Epistemology*, 216.

⁵⁷ *Inq.*, 19. See also: Greco, “Reid's Reply,” 149 & 153.

⁵⁸ *IP*, 41. See also: *Inq.*, 19; Greco, “Reid's Reply,” 149 & 153.

⁵⁹ *IP*, 39.

⁶⁰ *IP*, 41.

In opposition to the Theory of Ideas, Reid argues this position is inconsistent and works to illustrate that the other sources of belief listed in his first principles are non-fallacious and generally reliable. For example, Reid does this with his fifth First Principle of Contingent Truths that concerns the reliability of perception through the external senses.⁶¹ Reid points out that holding one faculty or operation of the mind as self-evident (such as reason in the case of the Theory of Ideas), while questioning the validity of others (such as perception or memory), is an inconsistent premise.⁶² Reid also presents evidence that the senses are generally reliable even though they may err, illustrating, in de Bary's words that: "although the prosecuting sceptic can show that first principles are not immune to all *conceivable* doubt, he cannot put them beyond *reasonable* doubt."⁶³ In doing so, Reid shifts the burden of proof onto the sceptic, arguing that we must trust our senses, just as these philosophers trust reason, until good evidence is provided that they are fallacious.⁶⁴ According to Greco, Reid's identification of "many natural, nonfallacious, original sources of belief", other than reason, which Reid lists in his first principles, presents him as a broad foundationalist.⁶⁵

While Reid is a dualist, he does not hold that the mind is beyond scientific inquiry, but implies that the Ideal Theory indicates a misuse of Bacon and Newton's work. According to Rebecca Copenhaver, for Reid, the immateriality of the mind did not place it "outside the sphere of science", because it: "is *natural* and thus a fitting subject for scientific enquiry."⁶⁶ However, because the mind is different to the material world, and thus requires a different science, according to Robert Callergard, Reid held that it: "may need additional rules, principles, or advice, suited to its specific kind of phenomena."⁶⁷

⁶¹ Reid states this principle thus: "those things do really exist which we distinctly perceive by our senses, and are what we perceive them to be." *IP*, 476, See also: *IP*, 476-77.

⁶² Greco, "Reid's Reply," 149, & 153; *Inq.*, 168-69; *IP*, 463.

⁶³ De Bary, *Reid and Scepticism*, 31 (emphasis original). See also: Wolterstorff, *Reid and Epistemology*, 32.

⁶⁴ Greco, "Reid's Reply," 152-54; de Bary, *Reid and Scepticism* 31; Harris, "Reid on Hume on Justice," in *Reid on Ethics*, ed. Sabine Roeser (Basingstoke: Palgrave Macmillan, 2010), 205.

⁶⁵ Greco, "Reid's Reply," 154.

⁶⁶ Respectively: Copenhaver, "Reid a Mysterian?" 452 & 465 (emphasis original).

⁶⁷ Callergard, *Reid's Philosophy of Science*, 55.

Reid admired and was deeply familiar with Newton and Bacon's work and methodology.⁶⁸ He also had significant experience in a broad array of subjects in natural philosophy.⁶⁹ Reid used this broad experience to adapt, refine, and revise Newton and Bacon's method for his philosophy of the mind.⁷⁰ As Haakonssen states, Reid aligned himself not just with "Newton and natural philosophy, but Linnaeus, Buffon, and natural history."⁷¹ Callergard also recognises that Reid's philosophy of the mind resembles "botany and chemistry", more than "classical mechanics".⁷² He further explains that Reid held that: "Rather than reduction of phenomena to general laws, prediction, and explanation, the science of the mind is concerned with identification, classification, and analysis of compounds into simples."⁷³ Thus, Reid is attempting in his own words to provide: "an anatomy of the mind", pointing up the organic dimension of his naturalism.⁷⁴

Reid held the real lesson of Newton's first principles was not his first principles of what today we call physics, as the Ideal Theory held, but the importance of laying down sound first principles in a science. Reid believed that the establishment of and agreement on proper first principles would: "contribute greatly to the stability of human knowledge, and consequently to the improvement of it".⁷⁵ This is the case because Reid views the development of human knowledge as a collective endeavour, created through dialogue, with each generation adding and developing what came before, pointing to Newton's

⁶⁸ *IP*, 457; *Inq.*, 11-12. see also: Paul Wood, "Thomas Reid and the Culture of Science," in *The Cambridge Companion to Thomas Reid*, ed. Cuneo & Woudenberg; Alan Wade Davenport, "Reid's Indebtedness to Bacon in Thomas Reid and His Contemporaries," *The Monist* 70, no. 4 (1987); Callergard, *Reid's Philosophy of Science*; Cuneo & Woudenberg, "Introduction," 17; Broadie, "Reid in Context," in *The Cambridge Companion to Thomas Reid*, ed. Cuneo & Woudenberg, 40-41; Copenhaver, "Reid a Mysterion?" 450-51; Haakonssen, "Theory of Justice," 196-97.

⁶⁹ Paul Wood, "Culture of Science," 61-68.

⁷⁰ Paul Wood, "Culture of Science," 57-58; Callergard, *Reid's Philosophy of Science*, 8; Steffen Ducheyne, "Reid's Adaptation and Radicalization of Newton's Natural Philosophy," *History of European Ideas* 32, no. 2 (2006); Cuneo & Woudenberg, "Introduction," 17; Broadie, "Reid in Context," 40-41.

⁷¹ Knud Haakonssen, "identity of the Scottish Enlightenment," 273.

⁷² Callergard, *Reid's Philosophy of Science*, 60.

⁷³ Callergard, *Reid's Philosophy of Science*, 60.

⁷⁴ *Inq.*, 12.

⁷⁵ *IP*, 457. See also: Callergard, *Reid's Philosophy of Science*, 9-13.

development of Galileo Galilei (1564-1642) as an example.⁷⁶ Or, in Reid's poetic metaphor, later thinkers could be expected to "trace" the "thread" further through the "labyrinth".⁷⁷

Rudiger Schreyer states this more explicitly, arguing that according to Reid: "the progress of society would be impossible without the transmission of knowledge from one individual to the other and from one generation to the next: progress is largely due to the knowledge accumulated during the history of mankind."⁷⁸ Shared first principles are necessary for this process because, as Reid argues: "before men can reason together, they must agree in first principles".⁷⁹ This reveals Reid's collective and dialectic conception of human knowledge that relies on human sociability and a shared foundation of first principles.

Reid, following Newton and Bacon, held that these principles, or the anatomy of the mind, could be discovered through the proper application of the inductive method through reflection on and observations of our shared experience of the human condition.⁸⁰ Reid describes induction as tracing "particular facts and observations to general rules, and to apply such general rules to account for other effects, or to direct us in the production of them," which humans use to function in everyday life and by which only: "any real discovery in philosophy can be made."⁸¹

According to Reid, it is the faculty of common sense, as the first "degree of reason", that provides the human capacity to recognise and judge these general rules, first principles, or "things self-evident" as it concerns the anatomy of the human mind.⁸² Since first principles are, by definition, unprovable, reason, in the second degree, which is what we commonly think of as reasoning, is not employed

⁷⁶ Newton Galileo example: *Inq.*, 218. See also: Rudiger Schreyer, "Pray What language did your Wild Couple Speak, When First they Met?"—Language and the Science of Man in the Scottish Enlightenment," in *The "Science of Man" in the Scottish Enlightenment: Hume, Reid and Their Contemporaries*, ed. Jones Peter (Edinburgh: Edinburgh University Press, 1989), 150.

⁷⁷ *Inq.*, 15.

⁷⁸ Schreyer, "Language and Scottish Enlightenment," 150.

⁷⁹ *IP*, 39. See also: Callergard, *Reid's Philosophy of Science*, 12-13.

⁸⁰ *IP*, 56; *Inq.*, 11-12; Marcil-Lacoste, *Two Common-Sense Philosophers*, 144.

⁸¹ *Inq.*, 11-12.

⁸² *IP*, 433. see also: *IP*, 426; Marcil-Lacoste, *Two Common-Sense Philosophers*, 120.

in their discovery.⁸³ Instead, their judgment is the “sole province of common sense”.⁸⁴ Therefore, according to Reid, in the discovery and discussion of Common Sense First Principles: “the learned and the unlearned, the philosopher and the day-labourer, are upon a level,” because all humans possess this capacity, meaning all that is required is: “a sound mind free from prejudice”.⁸⁵

However, as the Theory of Ideas exemplifies, disagreements on these first principles can arise, and as Reid notes, self-reflection on the operations of one's own mind can be difficult.⁸⁶ Therefore, Reid identifies a “subservient” means to study the mind as well as five tests to determine and discuss, but not directly prove, first principles.⁸⁷

Reid presents the structure of language as one of these subservient means and as an example of his third test of first principles. The structure of language can function in this role because, according to Reid: “Language is the express image and picture of human thoughts”.⁸⁸ Language is also, according to Reid: “the effect of habit and custom”, describing “custom” and “use” as “the arbiter of language”.⁸⁹ Therefore, according to Reid, what is common in the structure of language: “indicates an uniformity of opinion in those things upon which that structure is grounded.”⁹⁰ Thus, from Reid's perspective, the structure of language provides evidence (in terms of his third test of first principles) of: “the consent of ages and nations”, upon our shared experience of the human condition, and therefore, can be used as a data set from which to test and identify a first principle.⁹¹

⁸³ *IP*, 39 & 452.

⁸⁴ *IP*, 433. See also: *IP*, 452-53.

⁸⁵ *IP*, 461.

⁸⁶ *IP*, 41 & 59-64.

⁸⁷ *IP*, 56 & 463-467.

⁸⁸ *IP*, 466.

⁸⁹ Respectively: *Inq.*, 59; *IP*, 296, 304, & 35. See also: Copenhaver, “Reid a Mysterian?” 463-64.

⁹⁰ *IP*, 466.

⁹¹ *IP*, 464. See also: *IP*, 465-67; Laurent Jaffro, “Language and Thought,” in *The Oxford Handbook of British Philosophy in the Eighteenth Century*, ed. James A. Harris (Oxford: Oxford University Press, 2013), 143; Roger Gallie, *Thomas Reid and the “Way of Ideas”*, (London: Kluwer Academic, 1989), 12; Stephen K. Land, *The Philosophy of Language in Britain: Major Theories from Hobbes to Thomas Reid* (New York: AMS Press, 1986), 225.

De Bary helpfully explains that Reid's first principles are characterized in the scholarly discourse as: "(a) primarily, principles of truth, (b) 'principles of evidence right from the start', (c) principles of reliability, and (d) as logical preconditions for any rational activity, akin to Kant's categories."⁹² Several authors argue, as Patrick Rysiew does, that: "we need first to take seriously Reid's calling these principles '*axioms*'", which he explains are defined by Webster's dictionary as: "fundamental or universal principles or rules."⁹³ Some scholars present them as regulatory laws with Louise Marcil-Lacoste taking the claim furthest, stating that: "When properly used, the inductive-introspective method shows that the human mind judges in accordance with *a priori* principles."⁹⁴

Reid explains how these principles function and provide information across the epistemological gap between the mind and material world of his dualism, through the language of signs, characterising Reid's epistemology as semiotic.⁹⁵ As Eric Skopec simply explains, Reid: "reduced all knowledge to recognizing signs established by nature."⁹⁶ As de Bary accurately states, language is: "the paradigmatic system of signs", and thus, Reid holds that there is an appropriate analogy between language and perception as two systems of signs.⁹⁷ This language allowed Reid to describe what "Experience teaches us", that mind and body are connected in perception, without attempting to explain how physical sensation

⁹² De Bary, *Reid and Scepticism*, 34.

⁹³ Patrick Rysiew, "Reid and Epistemic Naturalism," *The Philosophical Quarterly* 52, no. 209 (2002): 449 (emphasis original). See also: de Bary, *Reid and Scepticism*, 35; Wolterstorff, *Reid and Epistemology*, 231; Marcil-Lacoste, *Two Common-Sense Philosophers*, 117-19.

⁹⁴ Marcil-Lacoste, *Two Common-Sense Philosophers*, 119 (emphasis original). See also: Wolterstorff, *Reid and Epistemology*, 231; Copenhaver, "Reid a Mysterian?" 453; de Bary, *Reid and Scepticism*, 35 -36.

⁹⁵ *Inq.*, 58-59, 165-67, & 175-78. For the apparent origin of the label "semiotic epistemology", see: Bernard E. Rollin, "Thomas Reid and the Semiotics of Perception," *The Monist* 61, no. 2 (1978). See also: Jessop, *Carlyle and Scottish Thought*, 91.

⁹⁶ Eric Skopec, "Thomas Reid's Rhetorical Theory: A Manuscript Report," *Communication Monographs* 45, no. 3 (1978): 261. See also: *Inq.*, 58-61; Copenhaver, "Is Reid a Mysterian?" 463; Dale Jacquette, "Thomas Reid on Natural Signs, Natural Principles, and the Existence of the External World," *The Review of Metaphysics* 57, no. 2 (2003): 295; Diamond, *Common Sense and Improvement*, 320-21.

⁹⁷ De Bary, *Reid and Scepticism*, 52. See also: *Inq.*, 58-59 & 190-91; Copenhaver, "Reid a Mysterion?" 463-64; De Bary, *Reid and Scepticism*, 53; Jessop, *Carlyle and Scottish Thought*, 91.

becomes conscious perception.⁹⁸ This is necessary because, according to Reid, explaining any efficient cause of natural phenomena is beyond human understanding.⁹⁹ Thus, Reid admits his ignorance, depicting perception as a: “link of that mysterious chain, which connects the material world with the intellectual”, and choosing to describe it in semiotic terminology.¹⁰⁰

Reid's moral philosophy is grounded in his epistemology and similarly presented in opposition to theories Reid believed led to moral scepticism.¹⁰¹ As Haakonssen argues, Reid held that: “the refutation of epistemological scepticism [is] fundamental to the criticism of moral scepticism”.¹⁰² Furthermore, according to Harris, Reid feared that if moral scepticism, and particularly that of Hobbes, was embraced by a large enough portion of society, it would place humanity: “immediately on a road that leads quickly and directly to Hobbesianism.”¹⁰³ This Hobbesianism, to paraphrase Reid, is a war without end.¹⁰⁴ Reid took particular issue with three aspects of moral scepticism: the doctrine of necessity or determinism; the defining of justice as an artificial virtue; and the denial of natural human sociability and the naturalness of society.

Determinism or the doctrine of necessity, according to Reid, denies free will and instead argues that the will is *necessitated* by motives or in response to stimuli, like a machine where input “X” necessarily yields output “Y”.¹⁰⁵ According to Maas, in agreement with Haakonssen's assertion above, Reid saw Hume's

⁹⁸ *Inq.*, 176.

⁹⁹ *Inq.*, 176-77; *AP*, 35-37; Diamond, *Common Sense and Improvement*, 320-21; Copenhaver, “Reid a Mysterian?” 451-52; Copenhaver, “A Realism for Reid: Mediated But Direct,” *British Journal for the History of Philosophy* 12, no. 1 (2004): 63; Wolterstorff, *Reid and Epistemology*, 256; Ducheyne, “Reid's Adaptation,” 175-76; Jessop, *Carlyle and Scottish Thought*, 95-96.

¹⁰⁰ *IP*, 71. Diamond, *Common Sense and Improvement*, 320-21; Copenhaver, “Realism for Reid,” 63; Jessop, *Carlyle and Scottish Thought*, 95-96; Wolterstorff, *Reid and Epistemology*, 256.

¹⁰¹ Douglas McDermid, “Thomas Reid on Moral Liberty and Common Sense,” *British Journal of the History of Philosophy* 7, no. 2 (1999): 286.

¹⁰² Haakonssen, “Introduction,” xxiv.

¹⁰³ James Harris, “Reid on Hume,” 219. See also: *AP*, 334-35; Jessop, *Carlyle and Scottish Thought*, 57.

¹⁰⁴ *AP*, 334-35.

¹⁰⁵ *AP*, 197-98, & 223.

materialisation of the mind as leading to this doctrine.¹⁰⁶ As Reid himself stated, the doctrine of necessity was materialism's: "undoubted consequence."¹⁰⁷ Reid argued that this mechanistic understanding of human agency would undermine moral accountability as well as denying or threatening, a long-established moral terminology, and hence morality itself, religion, and civil government.¹⁰⁸ Instead, according to Peter Diamond: "Reid effectively considered man as an efficient cause", where humans are the cause of the determination of their will.¹⁰⁹ Recognising humans as causes properly, effectively negated arguments that Reid's conception of liberty would create an infinite regress of wills.¹¹⁰ Reid asserts this position of freewill or liberty as his 6th First Principle of Contingent Truths.¹¹¹

Reid also took issue with defining justice as an artificial virtue, or merely an emotional response. Reid understands Hume as arguing that justice is an artificial virtue because it requires society for its expression.¹¹² However, while Reid agrees that justice requires society for its expression, he notes that Hume accepts gratitude as a natural virtue, which also requires society and a conception of justice.¹¹³ It requires a conception of justice because, according to Wolterstorff, Reid (building on the Justinian tradition) defines justice as: "rendering to a person what is due the person", and gratitude recognises receiving more than one is due.¹¹⁴

¹⁰⁶ Maas, "Where Mechanism Ends," 347. See also: Haakonssen, "Introduction," Xxxvi - xxxvii; Copenhaver, "Reid a Mysterian?" 463-64.

¹⁰⁷ AP, 267.

¹⁰⁸ AP, 239-40. See also: Maas, "Where Mechanism Ends," 347; AP, 223.

¹⁰⁹ Diamond, *Common Sense and Improvement*, 271.

¹¹⁰ AP, 223; Timothy O'Connor, "Thomas Reid on Free Agency," *Journal of the History of Philosophy* 32, no. 4 (1994); James Van Cleve, *Problems from Reid* (New York: Oxford University Press, 2015), 433; Haakonssen, *Law and Moral Philosophy*, 190; Thomas Reid, *The Works of Thomas Reid Now Fully Collected*, ed. William Hamilton, 2:599n.

¹¹¹ AP, 478-79.

¹¹² AP, 303-05.

¹¹³ AP, 305-06 & 309.

¹¹⁴ Wolterstorff, "Reid on Justice," in *Reid on Ethics*, ed. Roeser, 195. Concerning the Justinian tradition, see: AP, 67n. See also: AP, 309-10; Lewis Powell & Gideon Yaffe, "Reid on Favors, Injuries, and the Natural Virtue of Justice," in *Thomas Reid on Mind, Knowledge, and Value*, ed. Rebecca Copenhaver & Todd Buras, 1st ed. (Oxford: Oxford University Press, 2015).

Furthermore, Reid takes issue with other philosophers' descriptions of the faculty that recognises justice, which is often referred to as the moral sense. Reid holds the moral sense is justly named, but that philosophers have problematically and inappropriately removed judgment from the office of the senses generally and with them the moral sense particularly.¹¹⁵ Reid's fear is that this would present moral judgment "as no real judgment, but merely a feeling".¹¹⁶ The consequence of this position, according to Reid, is that the principles of morals would have: "no other foundation but an arbitrary structure and fabric in the constitution of the human mind", that could change with an agent's mood.¹¹⁷

Alternatively, Reid argues that the moral sense is an intellectual power that judges right from wrong as well as the first principles of morals, which he holds are the foundation of "natural jurisprudence" and the "law of nations".¹¹⁸ Reid describes the moral sense through an analogy with the external senses, with the important caveat that the judgments of the moral sense produce sentiments (as opposed to being judgments based on sensations as in the external senses).¹¹⁹ Also, similarly to the external senses, Reid holds that the moral sense functions semiotically.¹²⁰ As Copenhaver explains, for Reid: "The relevant human conduct is a *sign* of a moral property."¹²¹ Reid further argues that these judgments and the sentiments they produce are meant to guide human behaviour, making the moral

¹¹⁵ AP, 175-77 & 351-53.

¹¹⁶ AP, 361. See also: Kail, "Moral Judgment," 330.

¹¹⁷ AP, 362. See also: Mass, "Where Mechanism Ends," 345.

¹¹⁸ AP, 195. See also: IP, 494 & 551; AP, 175-77, 180, & 195. Copenhaver, "Reid on the Moral Sense," *Canadian Journal of Philosophy* 41, no. S1 (2014); Diamond, *Common Sense and Improvement*, 287 & 315; Maas, "Where Mechanism Ends," 345; Cuneo, "Signs of Value: Reid on the Evidential Role of Feelings in Moral Judgement," *The British Journal for the History of Philosophy* 14 no.1 (2006); Keith Lehrer, *Thomas Reid* (London: Routledge, 1989), 221-26; Lehrer, "Reid, the Moral Faculty, and First Principle," in *Reid on Ethics*, ed. Roeser; Wolterstorff, "Reid on Justice," 190-92.

¹¹⁹ Sentiment as a product of judgment, see: AP, 348-53. See also: Copenhaver, "Moral Sense," 93-95; Haakonssen, "Introduction," xlv; Cuneo, "Signs of Value," 69-74; Bartrum, "Moral Foundations," 253-4; Lehrer, *Thomas Reid*, 226; Maas, "Where Mechanism Ends," 345; Kail, "Moral Judgment," 330. Analogy with external senses, see: AP, 175-77. See also: Copenhaver, "Moral Sense," 95, & 98-99; Diamond, *Common Sense and Improvement*, 307; Lehrer, *Thomas Reid*, 221; Kail, "Moral Judgment," 330.

¹²⁰ AP, 296-97; IP, 504.

¹²¹ Copenhaver, "Moral Sense," 95 (emphasis original). See also: Henning Jensen, "Common Sense and Common Language in Thomas Reid's Ethical Theory," *The Monist* 61, no. 2 (1978): 300-01; Cuneo, "Signs of Value," 71-72.

sense an active power or a rational principle of action as well as an intellectual one.¹²² Part of the remit of the moral sense is aiding in determining ultimate ends and choosing between them.¹²³

Reid holds that because humans are able to self-govern and judge right from wrong, they are morally accountable for their actions.¹²⁴ As noted above, Reid holds that liberty or freewill is necessary for self-government, and he uses the human ability to prosecute a certain end or the ability to intentionally cause a certain effect as evidence of this capacity.¹²⁵ Reid describes this ability as an active power, which includes the: “understanding which will necessarily implies”.¹²⁶ Reid describes this understanding in his discussion of the rational principles of action as belonging to “the rational part of our nature”.¹²⁷ However, he does seem to imply that this is the faculty of common sense as the first degree of reason, which denominates humans as “reasonable creatures” and “makes a man capable of managing his own affairs, and answerable for his conduct towards others.”¹²⁸

Furthermore, Reid holds that the rational principles of action, including the moral sense, are the only principles that can “reasonably induce a man to regulate all his actions according to a certain general rule or law”, making them capable of “political” and “moral” government.¹²⁹ For Reid, this ability to self-govern is essential for moral accountability, but he also argues that without the moral sense to judge the rightness or wrongness of an action, a person cannot be a moral agent.¹³⁰ Thus, for Reid, the ability to self-govern through liberty and

¹²² AP, 190-93, 353, & 361-63. See also: Maas, “Where Mechanism Ends,” 345; Kail, “Moral Judgment,” 330; Bartrum, “Moral Foundations,” 253-4.

¹²³ AP, 153-54, & 359-62. Kail, “Moral Judgment,” 330.

¹²⁴ Diamond, *Common Sense and Improvement*, 271-72 & 277; Kail, “Moral Judgment,” 330; AP, 98, 174, 189-90, & 226.

¹²⁵ AP, 168-69 & 240-43. See also: Diamond, *Common Sense and Improvement*, 269-77.

¹²⁶ AP, 29. See also: AP, 174 & 226. See also: Copenhaver, “Reid a Mysterian?” 454.

¹²⁷ AP, 168-69. See also: Kail, “Moral Judgment,” 330; Diamond, *Common-sense and Improvement*, 277. Requiring understanding: AP, 152.

¹²⁸ IP, 433.

¹²⁹ AP, 168.

¹³⁰ AP, 169 & 177. Diamond, *Common Sense and Improvement*, 271-72 & 277.

understanding, and the ability to judge moral qualities in agents, actions, and ends, makes humans “moral and accountable agents.”¹³¹

Moreover, in Reid's moral philosophy, it is the moral sense, not a deity, that justifies moral obligation, and thus, obligation to natural law. There is some debate on this subject with Haakonssen presenting Reid as a providential naturalist.¹³² However, Diamond clarifies this, agreeing that while Reid saw the universe as providentially ordered, he:

did not justify the moral principles of common sense by appeal to God.

To assume so neglects the rational component of his moral theory.¹³³

Rysiew further develops this concept, explaining that Reid's allusions to God play “an *explanatory* role”, but God is not used in “any *justificatory* role”.¹³⁴ While Reid sees the moral sense as a creation of God, he holds that the sentiments produced by the judgment of the moral sense condemn and punish a moral agent, even if she “had no account to make to a superior being.”¹³⁵ Thus, for Reid, the moral sense recognises the natural law as an intellectual power and provides the agent's obligation to it as an active power through the sentiments it produces.

The denial of human sociability by modern philosophers such as Hobbes is another point of contention for Reid that he addresses with his own conception of society as a defining aspect of the human condition.¹³⁶ Reid argues that some philosophers have attempted to reduce human nature and particularly “social affections” to what Reid interprets as the selfishness of an exclusive pursuit of self-interest.¹³⁷ He dismisses this argument, stating that: “We cannot live without

¹³¹ *IP*, 551. See also: *AP*, 236-40.

¹³² Haakonssen, *Law and Moral Philosophy*, 182.

¹³³ Diamond, *Common Sense and Improvement*, 258. See also: Diamond, *Common Sense and Improvement*, 246.

¹³⁴ Rysiew, “Reid and Epistemic Naturalism,” 439 (emphasis original). See also: Gallie, *Thomas Reid*, 243; Christian Daru, “Written on the Heart: On the Grounds of Moral Obligation in Natural Law Theory,” *International Journal of Philosophy and Theology* 78, no. 3 (2017): 210.

¹³⁵ *AP*, 158. See also: *AP*, 185, 191-92; *IP*, 551-52.

¹³⁶ Copenhaver, “Reid on Language and the Culture of the Mind,” *Australasian Journal of Philosophy* 99, no. 2 (2021): 220; Maas, “Where Mechanism Ends,” 356; Diamond, *Common Sense and Improvement*, 279-80; Maurer, “Self-Interest and Sociability,” 310; James Harris, “Reid on Hume,” 219; Jessop, *Carlyle and Scottish Thought*, 57.

¹³⁷ *IP*, 69. See also: Maas, “Where Mechanism Ends,” 356.

the society of men; and it would be impossible to live in society, if men were not disposed to do much of that good to men, and but little of that hurt, which it is in their power to do.”¹³⁸

According to Reid, humans are disposed to this social behaviour due to the “benevolent affections”, which make society possible.¹³⁹ They include such affections as those of parents for children and the affection for one’s community, which Reid calls the “public spirit”.¹⁴⁰ According to Reid these affections: “furnish the most irresistible proof, that the Author of our nature intended that we should live in society”.¹⁴¹ For Reid humans are naturally sociable and society is natural to them.¹⁴²

Reid also sees justice as essential for the functioning and existence of society, and thus, also illustrates that humans are naturally sociable.¹⁴³ As Diamond explains, Reid holds that: “Contracts and promises [...] are social acts of mind upon which society and the rule of law depend.”¹⁴⁴ As indicated earlier, Reid argues (similarly to justice generally), that promises must be natural or else they would not have come into existence or continued to be used.¹⁴⁵ He further argues that since justice requires society to be expressed, justice further illustrates that: “man is evidently made for living in society”, because otherwise, in Reid’s words, it would be like giving an animal “good eyes, but without the power of opening their eyelids.”¹⁴⁶ From this, it appears that the logical implication or extended

¹³⁸ AP, 111. See also: Diamond, *Common Sense and Improvement*, 279-80.

¹³⁹ AP, 121. See also: AP, 106-11 & 123; Diamond, *Common Sense and Improvement*, 279-80; Maurer, “Self-Interest and Sociability,” 310.

¹⁴⁰ Public spirit, see: AP, 119-20. Parental affections, see: AP, 111-14.

¹⁴¹ AP, 121.

¹⁴² AP, 211-23, 334, 339; Copenhaver, “Reid on Language,” 220.

¹⁴³ AP, 327-28, 334-35, & 339. See also: Diamond, *Common Sense and Improvement*, 315.

¹⁴⁴ Diamond, *Common Sense and Improvement*, 329. See also: AP, 334.

¹⁴⁵ AP, 334. See also: Lehrer, *Thomas Reid*, 253.

¹⁴⁶ AP, 334. Justice requires society to be expressed: Gideon Yaffe, “Promises, Social Acts, and Reid’s First Argument for Moral Liberty,” *Journal of the History of Philosophy* 45, no. 2 (2007): 283 & 287; Haakonssen, “Introduction,” lxiv. Justice/ promises as necessary for society: Haakonssen, *Law and Moral Philosophy*, 205; Haakonssen, “Introduction,” lix; Diamond, *Common Sense and Improvement*, 315, 329, & 333-35.

meaning of Reid's position is that it amounts to viewing society and justice as natural, interdependent, and thus, coeval.

However, the justice that Reid believes society requires is more extensive than his peers.¹⁴⁷ According to Haakonssen, Reid, unlike his peers, does not believe that society: "can exist merely on the basis of the protection of perfect rights", or what may be called strict or '*mere*' justice.¹⁴⁸ Traditionally perfect rights were defined as legally enforceable and imperfect rights were not.¹⁴⁹ In opposition to this traditional view, according to Haakonssen, Reid defined perfect rights as: "rights matched by negatively defined duties—for example, duties not to injure—while imperfect rights are matched by positive duties to render some good."¹⁵⁰ Or as Reid also describes imperfect rights: "the claims of charity and humanity".¹⁵¹ Reid advances a number of arguments as to why they should be included in justice.¹⁵² Thus, being part of justice and necessary for society, Reid argues, according to Haakonssen, that it is the: "task of government to protect both perfect and imperfect rights by legally enforcing their corresponding duties."¹⁵³ This presents Reid as holding a far more extensive conception of justice and, correspondingly, of government's jurisdiction, than his peers.

Reid sees humans as naturally sociable and life in society as their natural condition. However, Reid takes this a step further by describing society as the "soil" in which "The faculties of man unfold themselves".¹⁵⁴ This organic terminology of development characterises Reid's naturalism, which can be seen in his description of the faculties of the human mind as "seeds" that grow, mature, or develop.¹⁵⁵ For example, Reid explains that a human's: "judgment of moral

¹⁴⁷ AP, 285-86, 288-89, & 313-25.

¹⁴⁸ Haakonssen, *Natural Law and Moral Philosophy*, 205. See also: Haakonssen, "Theory of Rights," 203-04; Diamond, *Common Sense and Improvement*, 333-34.

¹⁴⁹ AP, 288-89; Haakonssen, "Introduction," Lix; Daru, "Written on the Heart," 201-03.

¹⁵⁰ Haakonssen, "Introduction," Lix. See also: Diamond, *Common Sense and Improvement*, 333-34; Daru, "Written on the Heart," 202-3.

¹⁵¹ AP, 285.

¹⁵² AP, 288-89; Haakonssen, "Introduction," Lix.

¹⁵³ Haakonssen, *Law and Moral Philosophy*, 205. See also: Diamond, *Common Sense and Improvement*, 333-34.

¹⁵⁴ AP, 187. See also: Copenhaver, "Reid on Language," 221.

¹⁵⁵ AP, 187. Concerning "seeds", see: *Inq.*, 13; AP, 279 & 280; & Copenhaver, "Reid on Language", 220. Concerning Reid's implied conception that the faculty of common

conduct, as well as their judgment of truth, advances by insensible degrees, like the corn and the grass.”¹⁵⁶ Moreover, according to Reid, it is society that germinates and nurtures these faculties, claiming that if a person could be born and raised outside of society, she would not show signs: “either of moral judgment, or of the power of reasoning.”¹⁵⁷

However, Reid does not see society merely as a prerequisite, but as a cultivating force for improving human capacities. Continuing with the organic analogy, Reid holds that society “like soil and culture in plants, may produce great changes to the better or worse”, in human faculties.¹⁵⁸ Copenhaver points to language created through social interaction as the key to this cultivating power.¹⁵⁹ She argues that Reid held that humans’: “sophisticated cognitive abilities” are “not merely formed in, but incorporate, a public social environment.”¹⁶⁰ Thus, society is a defining characteristic of the human condition for Reid in its role in germinating, nurturing, and cultivating human faculties.¹⁶¹

This begins to reveal the complexity of Reid’s philosophy. Wilson’s particular interpretation of it will develop this picture, making many of these points more explicit. However, though Wilson’s interpretation of Reid presents only one understanding of Reid’s work, it is one that importantly permeates his Democratic Political Theory, and thus aids our understanding of it.

sense matures found in the terms: “adult” and “ripeness”, see respectively: *IP*, 453; & *AP*, 152. See also: *AP*, 186.

¹⁵⁶ *AP*, 186.

¹⁵⁷ *AP*, 279. Copenhaver, “Reid on Language,” 218 & 220.

¹⁵⁸ *AP*, 187. See also: Copenhaver, “Reid on Language,” 212-13.

¹⁵⁹ Copenhaver, “Reid on Language”.

¹⁶⁰ Copenhaver, “Reid on language,” 214.

¹⁶¹ Copenhaver, “Reid on Language”. See also: Diamond, *Common Sense and Improvement*.

3.3 - Wilson's Natural Law Theory and Reidian Conception of Human Nature

The foundation of Wilson's Democratic Political Theory is his conception of human nature and his natural law theory.¹⁶² Natural Law theory focuses on the virtue of justice as the basis of law (making it legally enforceable) because justice provides the order necessary for the existence of society.¹⁶³ This theory was widely accepted, taught, and practised in Scotland during the Scottish Enlightenment.¹⁶⁴ Hence, Wilson was almost certainly exposed to natural law theory during his studies at university. Following the Scottish Tradition, Wilson saw the natural law as foundational for a theory of law and government because, as Bartrum explains: "The just rule of law, in Wilson's thought, is one that manifests the rule of nature's law as nearly as is possible in human political institutions."¹⁶⁵

Wilson held that a conception of human nature was also a necessary part of the foundation of a legal theory as well as important for natural law. In what Conrad claims is a reference to Cicero, Wilson explicitly stated this foundational role, thus: "In truth, law can never attain either the extent or the elevation of science, unless it be raised upon the science of man."¹⁶⁶ Wilson also cites his triumvirate, "Bacon, Bolingbroke, Kaimes (sic) [Henry Home, Lord Kames]", as advocating that "the philosophy of the human mind" is one of the necessary "'vantage grounds'" for anyone aiming to be "a master in the science of law."¹⁶⁷

Wilson also stated that the natural law is founded on: "the constitution and state of man", making it universally obligatory for humanity and within their

¹⁶² Wilmarth, "Elusive Foundations," 117; Robinson, "Wilson's Theory of Rights," 290; Knapp, "Law's Revolution," 255 & 265; Conrad, "Common-Law," 203-04.

¹⁶³ Haakonssen, "Theory of Justice," 203. See also: Haakonssen, "Identity of the Scottish Enlightenment," 260; Haakonssen, *law and moral philosophy*, 6-7; Haakonssen, "Theory of Justice," 196.

¹⁶⁴ Cairns, "Scottish Enlightenment," 221; AP, 283; Haakonssen, "Natural Law," 21.

¹⁶⁵ Bartrum, "Moral Foundations," 280-81. See also: Bayer, "Common Sense Republic," 201.

¹⁶⁶ WJW, 1:230. Concerning Wilson reference to Cicero, see: WJW, 1:227; Conrad, "Common-Law," 203-04.

¹⁶⁷ WJW, 1:227. See also: Rahmatian, *Lord Kames*, 329, & 332-33.

capacity to comprehend.¹⁶⁸ Wilson references Cicero as an authority for these claims.¹⁶⁹ However, there is a broad (although underdeveloped) recognition in the literature concerning Wilson, that it is Reid's conception of human nature that he primarily chooses and utilises in his conception of natural law and as the foundation for his Democratic Political Theory.¹⁷⁰ As Robinson boldly asserts: "Wilson has no need for philosophical originality here, for, as he is eager to note, the necessary work has already been accomplished by Dr. Thomas Reid."¹⁷¹ This Reidian foundation provided Wilson with a sociable and morally accountable conception of humanity, being able to access the natural law and govern themselves. Significantly, in Wilson's hands, this foundational Reidian conception of human nature enabled him to present common individuals as capable of democracy and, moreover, sovereign in his political theory.

Much of Wilson's discussion of the philosophy of the human mind occurs in his lecture "Of Man, as an Individual", where he states the reason for this discussion and his choice of Reid's philosophy. Wilson explains that:

A system of human nature is not expected from this chair. [...] But it comes directly within our plan, to consider it so far as to have just conceptions of man in two most important characters, as an author, and as a subject of law; as accountable for his own conduct, as capable of directing the conduct both of himself and of others.¹⁷²

As Conrad notes, Wilson: "relied heavily on Reidian Common Sense" throughout this lecture.¹⁷³

Wilson makes this clear in his denouncement of the Theory of Ideas, in which he implores his audience, students and readers alike, to instead follow Reid's philosophy. He does so through a paraphrase of Reid's allusion to John Milton's (1608-74) *Paradise Lost*:

¹⁶⁸ WJW, 1:141.

¹⁶⁹ WJW, 1:227.

¹⁷⁰ Knapp, "Law's Revolution," 255; Wilmarth, "Elusive Foundations," 117; Stimson, "Jury of the Country," 198; Bartrum, "Moral Foundations," 251; Bayer, "Common Sense Republic," 190-91.

¹⁷¹ Robinson, "Wilson's Theory of Rights," 290.

¹⁷² WJW, 1:232.

¹⁷³ Conrad, "Common Law," 206.

Is this the daughter of light? Is this the parent of wisdom and knowledge? No. This is not she. This is a fallen kind, whose rays are merely sufficient to shed a "darkness visible" upon the human powers; and to disturb the security and ease enjoyed by those, who have not become apostates to the pride of science. Such degenerate philosophy let us abandon: let us renounce its instruction: let us embrace the philosophy which dwells with common sense.¹⁷⁴

Wilson has thus stated in these quotations that he is adhering to Reid's conception of human nature and translating it into political philosophy, to serve as the foundation of his Democratic Political Theory. Furthermore, he claims that doing so will reveal that humans are capable of being both subjects and authors of the law.

Unpacking how Wilson's stated adherence to Reid's conception of human nature specifically informs his natural law theory will provide a better understanding of it. Explicating this adherence and formulating how it informs Wilson's natural law theory are forms of extended meaning. Furthermore, this extended meaning and the improved understanding it provides will help determine within which natural law tradition Wilson's theory best fits, informing the scholarly debate on this subject.

Determining which tradition Wilson's theory most closely conforms to, requires understanding what characteristics or criteria are used to identify the classical and modern natural law theory. The classical tradition is marked by a number of criteria, which include: 1) understanding human nature in terms of capacities, faculties, and ultimate ends; 2) that these characteristics of human nature distinguish humans from animals; 3) that justice is conceived of in terms of morality; and 4) that a deity plays a necessary role in obligation to the natural law.¹⁷⁵ Alternatively, the modern natural law tradition, associated with Locke,

¹⁷⁴ *WJW*, 1:256. Compare with: *Inq.*, 18. Concerning Milton's *Paradise Lost* see: John Milton, *Paradise Lost*, ed. Alastair Fowler (London: Longman, 1971), 1.63.

¹⁷⁵ 1. Capacities, see: John Finnis, "A Grand Tour of Legal Theory," in *Collected Essays: Philosophy of Law* (Oxford: Oxford University Press, 2011), 4:98. 2. Differentiating from animals, see: Finnis, "Grand Tour," 4:95. 3. Justice in moral terms, see: Finnis, "Grand Tour," 4:103; Mehmet Ruhi Demiray, "Natural Law Theory, Legal Positivism, and Normativity of Law," in *The European Legacy* 20, no. 8 (2015): 809; Finnis,

Hobbes, and Hume, is marked by: 1) rejecting the necessary role of a deity and 2) the utilisation of the state of nature to explain the development of society and civil government in terms of the desire for self-preservation.¹⁷⁶ However, given these criteria, my analysis will reveal that Wilson's theory constitutes an alternative modern natural law theory that develops and departs from the classical tradition in opposition to particularly Hobbes and Hume's formulation of the modern tradition.

Wilson made his opposition to Hume and Hobbes clear, using apocalyptic language, similar to Reid, to explicitly reject their similar morally sceptical and asocial conceptions of humanity, as not only incorrect, but dangerous. Wilson and Reid both saw Hume and Hobbes' conceptions of human nature as leading to a Hobbesian state of nature, not as an adequate explanation for how humans formed society and developed out of Hobbes' state of nature.¹⁷⁷

This concern leads Wilson to state his opposition to Hobbes and Hume's conceptions of human nature in stark terms:

Some philosophers, [...] have alleged, that society is not natural, but is only adventitious to us; that it is the mere consequence of direful necessity; that, by nature, men are wolves to men; not wolves to wolves; for between them union and society have a place; but as wolves to sheep, destroyers and devourers.¹⁷⁸

"Introduction," in *Philosophy of Law*, 4:8-9. 4. Necessary role of a deity, see: Demiray, "Natural Law Theory," 810; Bayer, "Common Sense Republic," 190; Velasquez, "Rethinking America's Modernity," 195-96.

¹⁷⁶ 1. Rejecting the necessary role of a deity: Demiray, "Natural Law Theory," 810; Bayer, "Common Sense Republic," 190; Velasquez, "Rethinking America's Modernity," 195-96. 2. Using the state of nature see: Velasquez, "Rethinking America's Modernity," 205-06 & 216; Zink, "Liberty and Law," 443. See also: Knapp, "Law's Revolution," 264-65; Bartrum, "Moral Foundations," 279. Wilmarth, "Elusive Foundations," 151.

¹⁷⁷ Concerning Wilson, see: Conrad, "Polite Foundation," 375-76; Bayer, "Common Sense Republic," 194; Leavelle, "Wilson and Scottish Metaphysics," 399; Knapp, "Law's Revolution," 265-66. Concerning Reid, see: Jessop, *Carlyle and Scottish Thought*, 57; James Harris, "Reid on Hume," 219; de Bary, *Reid and Scepticism*, 3; Diamond, *Common Sense and Improvement*, 277-80.

¹⁷⁸ *WJW*, 1:285.

This passage resonates with Reid's position that Hume and Hobbes' description of human nature, if correct, would produce a "war of every man against every man", which could never end in peace, not the society Reid saw around him.¹⁷⁹

According to Wilson, utilising Reid's exact words, the issue lies in philosophers' attempts to "reduce all our social affections to certain modifications of selflove (sic)."¹⁸⁰ Wilson argues that this leads to a picture of humanity where: "the only natural principles of man are selfishness, and an insatiable desire of tyranny and dominion", which would not produce a functioning society.¹⁸¹ They are both similarly arguing that Hume and Hobbes' conception of human nature would inevitably lead to war and destruction—not the formation of human societies.

Thus, like Reid, Wilson argued that because society does exist, this theory is incorrect, describing it as: "totally repugnant to all human sentiment, and all human experience."¹⁸² Wilson, aligning with Reid, instead held that "Society is necessary as well as natural to us", believing that society could not have come into being without natural human sociability and doubting whether the human species could "be preserved" without it.¹⁸³ These points of resonance with and adherence to Reid are part of the extended meaning and context of Wilson's theory, which help explain his intentional choice of Reid's philosophy, and through it, why he rejects Hume and Hobbes' asocial conceptions of human nature.

Wilson also saw justice as necessary and interdependent with society, making Reid's position on the matter more explicit. This interdependence in Wilson's theory helps illustrate, in my judgment, why he rejected Hume and Hobbes' moral scepticism. It appears that for Wilson, it is particularly their denial of a natural sense of justice in humanity that identifies their conception of human nature as asocial. This diagnosis, coupled with Wilson's conception of the

¹⁷⁹ *AP*, 334. See also: James Harris, "Reid on Hume," 219; Jessop, *Carlyle and Scottish Thought*, 57; de Bary, *Reid and Scepticism*, 3; Diamond, *Common Sense and Improvement*, 277.

¹⁸⁰ *WJW*, 1:289. Compare with: *IP*, 69.

¹⁸¹ *WJW*, 1:285.

¹⁸² *WJW*, 1:286.

¹⁸³ Respectively: *WJW*, 1:296 & 1:166. Compare with: *AP*, 110-11 & 339. See also: Leavelle, "Wilson and Scottish Metaphysics," 402.

interdependence of justice and society, suggests that Wilson's fear was that, if believed by enough of the population, this morally sceptical theory would have a devastating impact on society.

At the beginning of his lecture on natural law Wilson paints a bleak picture of humanity without justice:

Without laws, what would be the state of society? The more ingenious and artful the twolegged (sic) animal, man, is, the more dangerous he would become to his equals: his ingenuity would degenerate into cunning; and his art would be employed for the purposes of malice. He would be deprived of all the benefits and pleasures of peaceful and social life: he would become a prey to all the distractions of licentiousness and war.¹⁸⁴

Wilson's use of apocalyptic language in this quotation appears to be his attempt to elicit an emotional response in his audience to warn them, suggesting that he held Hume and Hobbes' theory was not only inaccurate, but dangerous.

Wilson goes on to make explicit what appears to be Reid's implicit argument concerning the coequality and interdependence of justice and society, by arguing that:

Veracity, and its corresponding quality, confidence, show this, in a very striking point of view. If we were intended for solitude, those qualities could have neither operation nor use. On the other hand, without those qualities, society could not be supported. Without the latter, the former would be useless: without the former, the latter would be dangerous. Without confidence in promises, for instance, we must, in the greatest part of our conduct, proceed entirely upon the calculations of chance: but there could be no confidence in promises, if there was no principle, from which their performance might be reasonably expected.¹⁸⁵

¹⁸⁴ *WJW*, 1:114.

¹⁸⁵ *WJW*, 1:292. Compare with: *AP*, 333-35.

These quotations reveal that Wilson saw an innate sense of justice as necessary for and interdependent with society, and thus, this sense of justice indicated: “in the strongest manner, our designation for society.”¹⁸⁶

For Wilson, the idea that a sense of justice was not natural to humans was incorrect, again because it did not align with the observable evidence that society exists. This is the case because for Wilson justice is interdependent with society. Thus, denying this innate sense of justice is denying a component of human nature that is necessary for society's existence, meaning that if society exists so must this innate sense of justice.

However, in my interpretation, a reasonable inference from or extended meaning of Wilson's apocalyptic language is that he believed, like Reid, that Hume and Hobbes' theory could potentially distort this sense of justice. Their theories could potentially convince people that they were naturally, exclusively selfish, and justice was simply a human construct instituted to aid in survival, leading them to ignore it. The distorting of this sense would in turn jeopardise society, because in Wilson's Reidian thinking, the functioning and ordering of society depends on justice. Thus, Wilson rejected Hume and Hobbes' conceptions of humanity in the state of nature as incorrect and dangerous. Instead, he developed Reid's conception of human nature in his own theory of natural law complete with an alternative conception of the state of nature.

In Wilson's conception of human nature, individuals are morally accountable because they possess liberty, understanding, and the moral sense, making them subjects of natural law. This position comes to light through formulating its extended meaning, in that it amounts to Reid's conception of humans as moral and accountable beings. Wilson states his conception of liberty in nearly the same terms as Reid's 6th First Principle of Contingent Truths: “Our actions and the determinations of our will are generally accompanied with liberty.”¹⁸⁷ Wilson further recognises, similarly to Reid's conception of active power, that a free action requires the physical power to produce it and the will

¹⁸⁶ *WJW*, 1:292. Compare with: *AP*, 327-28, 334-35, & 339. See also: Diamond, *Common Sense and Improvement*, 315; Section, 3.2.

¹⁸⁷ *WJW*, 1:254. Compare with: *IP*, 478.

to determine the action.¹⁸⁸ Specifically, he holds, like Reid, that it is the determination of the will that constitutes the moral cause of the action.¹⁸⁹

For Wilson, liberty also requires some level of understanding. He quotes Reid (though replacing the term ‘act’ with ‘energy’), to assert that: “there can be no energy of the will, which is not accompanied with some act of the understanding.”¹⁹⁰ Wilson also defines Common Sense as the first degree of reason and the only one most humans possess in an extensive nearly exact quotation of Reid.¹⁹¹ Within this quotation Wilson describes common sense as the faculty that: “makes a man capable of managing his own affairs, and answerable for his conduct towards others.”¹⁹² This suggests that for Wilson as well, it is common sense that provides the level of understanding necessary for liberty.

According to Wilson, liberty makes humans able to govern themselves, distinguishing them from animals. He states that, while animals merely react to stimuli, humans: “have faculties, which enable us to trace the connexion between actions and their effects; [...] which we employ, to carry into execution the effects which we intend.”¹⁹³ Wilson’s description of humans as causes resonates with Reid’s discussion of the human power to deliberately intend and pursue a certain end, as well as his conception of induction’s role in daily life.¹⁹⁴ Thus, according to Wilson, liberty is a faculty and “a first and selfevident [...] principle”, by which: “we have some degree of command over ourselves: by this faculty we become capable of conforming to a rule: possessed of this faculty, we are accountable for our conduct.”¹⁹⁵ For Wilson, liberty is the ability to self-govern in accordance with a rule or law, making humans capable of both self-governance and being held to account for their conduct.

¹⁸⁸ *WJW*, 1:253. Compare with *AP*, 203 & 226. See also: *AP*, 29; & Copenhaver, “Reid a Mysterian?” 464.

¹⁸⁹ *WJW*, 1:253. Compare with *AP*, 200.

¹⁹⁰ *WJW*, 1:233. Compare with: *IP*, 65.

¹⁹¹ *WJW*, 1:257-58. Compare with: *IP*, 433.

¹⁹² *WJW*, 1:258. Compare with: *IP*, 433.

¹⁹³ *WJW*, 1:61-62.

¹⁹⁴ Concerning intending an end see: *AP*, 168-69. Concerning induction’s role in daily life: *Inq.*, 11-12. Compare with: *WJW*, 2:43-44. See also: Section, 3.2.

¹⁹⁵ Respectively: *WJW*, 1:255 & 1:254.

However, it is the moral sense according to Wilson that is the efficient cause of moral obligation. It thus makes humans morally accountable for their conduct as subjects of natural law, further differentiating them from animals.¹⁹⁶ To describe how this faculty fulfils this role, Wilson looks to Reid's conception of the moral sense in its function and purview, rejecting other theories in the process.

To first establish that the moral sense does indeed exist, Wilson uses Reid's understanding of the structure of language in accordance with his third test of first principles. After explaining how Reid's concept and test functions, Wilson asserts that: "All languages, therefore, suppose a moral sense", because they all have modes of speech or means to discuss good and ill as it concerns actions and an individual's character.¹⁹⁷ Accordingly, having tested the moral sense, Wilson lists it as his fourth source of evidence alongside many of Reid's other first principles, which function as the foundation for his theory of evidence.¹⁹⁸

Wilson also identifies and rejects other conceptions of the moral sense, which directly conflicts with Velasquez's argument that Wilson does not distinguish between them.¹⁹⁹ Wilson explains that:

Many systems of this kind have appeared, calculated merely to flatter the mind. According to some writers, man is entirely selfish; according to others, universal benevolence is the highest aim of his nature. One founds morality upon sympathy solely: another exclusively upon utility.²⁰⁰

This appears to dismiss the specific conceptions of human morality presented by Hobbes, Hutcheson, Adam Smith, and Hume, through reference to what Wilson understands as their singular guiding principles.²⁰¹ Furthermore, he dismisses the

¹⁹⁶ *WJW*, 1:136-37. Compare with: *AP*, 186-95.

¹⁹⁷ *WJW*, 1:123; & *AP*, 350-51. See also Bayer, "Common Sense Republic," 197.

¹⁹⁸ *WJW*, 2:75. See also: Appendix C.

¹⁹⁹ Velasquez, "Rethinking America's Modernity," 197.

²⁰⁰ *WJW*, 1:234.

²⁰¹ Concerning these terms being associated with these philosophers' moral theories see: Kail, "Moral Judgment"; Adam Smith, "The Theory of Moral Sentiments," in *The Glasgow Edition of the Works and Correspondence of Adam Smith*, ed. D.D. Raphael & A. Macfie, vol. 1, 1st ed. (Oxford: Oxford University Press, 1976), 1:265-342; *AP*, 302.

reductivism of one master principle generally in his statement that: “the variety of human nature is not so easily comprehended or reached.”²⁰²

Having rejected these other conceptions, Wilson defines his moral sense in Reidian terms. Wilson uses the appellation “moral perception” to refer to the moral sense, explaining, almost in Reid’s exact words, that:

By that power, we have conceptions of merit and demerit, of duty and moral obligation. By that power, we perceive some things in human conduct to be right, and others to be wrong.²⁰³

Closely paraphrasing Reid, Wilson also presents the moral sense as responsible for recognising the first principles of morals: “Our knowledge of moral philosophy, of natural jurisprudence, of the law of nations, must ultimately depend, for its first principles, on the evidence and information of the moral sense.”²⁰⁴ Wilson also utilises another substantial quotation of Reid to explain that without this power: “we should not be moral and accountable beings.”²⁰⁵ Thus, Wilson’s moral sense, like Reid’s, provides access to natural law and the conception of justice as the rule by which humans should govern themselves, identifying it as an intellectual power, as in Reid’s philosophy.²⁰⁶ Moreover, this power to recognise natural law, right from wrong, and moral obligation—the moral sense—in concert with liberty, makes humans accountable to the natural law and others.

Wilson explains that the moral sense functions similarly to the external senses in a semiotic fashion, following Reid’s conception and explanation.²⁰⁷ Wilson, quoting and paraphrasing Reid closely, holds that if it is admitted that the

²⁰² *WJW*, 1:234. See also: Bartrum, “Moral Foundations,” 251; Kail, “Moral Judgment”.

²⁰³ *WJW*, 1:120. Compare with: *AP*, 180.

²⁰⁴ *WJW*, 2:82-83. Compare with: *AP*, 195.

²⁰⁵ *WJW*, 1:125. Compare with: *IP*, 551. See also: Robinson, “Wilson’s Theory of Rights,” 296.

²⁰⁶ Wilson states that the moral sense is “intellectual and active” in what amounts to a summary of Reid’s “Observations concerning Conscience,” see: *WJW*, 1:137. Compare with *AP*, 186-95. Concerning the moral sense as an active and intellectual power, see: *AP*, 193. Reid’s conception of the moral sense as an intellectual power, see also: section, 3.2.

²⁰⁷ Concerning the analogy with the external sense, see: *WJW*, 2:82. Compare with: *AP*, 176-77.

external senses “judge as well as inform”, then, (quoting Reid directly) the: “moral faculty may, without impropriety, be called the *moral sense*.”²⁰⁸

Furthermore, Wilson holds that the moral sense functions semiotically, in so far as, actions function as signs of the moral character of an agent. In adherence to Reid's position on this subject, Wilson states that:

It is no less a part, nor is it a less important part, of our constitution, that we are enabled and determined to judge of the powers and characters of men, from the signs of them, which appear in their discourse and conduct, than it is that we are enabled and determined to judge, by our external senses, concerning the various corporeal objects, which we have occasion to view and consider.²⁰⁹

This helps to explain Wilson's use of the term “moral perception” and again illustrates his adherence to Reid's conception of the moral sense, as specifically a faculty of judgment.

Differentiating his conception of the moral sense from Hutcheson (and clearly aligning it with Reid), Wilson believes that this judgment produces sentiments.²¹⁰ After discussing the role of judgment in the moral sense and other faculties, Wilson states that: “in most of them, our judgment is accompanied by feeling.”²¹¹ This: “Judgment accompanied by feeling forms that complex operation of the mind, which is denominated sentiment.”²¹² This definition, by Wilson, is the same as Reid's: “For the word *sentiment*, in the English language, never, as I conceive, signifies mere feeling, but judgment accompanied with feeling.”²¹³ As Maas was seen to explain, it is this point that differentiates Reid from Hutcheson, and as these examples illustrate, the reasonable inference or

²⁰⁸ *WJW*, 1:136-37 (emphasis original). Compare with: *AP*, 176. Reid's version includes the words “I think” before the word “without”. Concerning the role of judgment in the senses for Reid see: *AP*, 353.

²⁰⁹ *WJW*, 2:84-85. Compare with: *IP*, 504.

²¹⁰ See: Section, 2.1.

²¹¹ *WJW*, 1:102. Wilson also explains in a nearly direct quote of Reid that: “When we exercise our moral powers concerning our own actions or those of others, we judge as well as feel.” See: *WJW*, 1:108. Compare with *AP*, 348-49.

²¹² *WJW*, 2:108.

²¹³ *AP*, 353 (emphasis original).

extended meaning that we may discern is that Wilson adheres to Reid's position on the matter.²¹⁴

According to Wilson, these sentiments also make the moral sense an active as well as an intellectual power, just as they do in Reid's philosophy.²¹⁵ As Wilson explains, the moral sense "punishes", and "rewards", and: "reason alone is not sufficient to produce any moral approbation or blame", that without the requisite "*sentiment*", humans would "feel the same indifference towards the means" as well as the different ends.²¹⁶ This leads Wilson to assert, transcribing Reid, that the moral sense or conscience is: "evidently intended, by nature, to be the immediate guide and director of our conduct, after we arrive at the years of understanding".²¹⁷

Thus, in my judgment, Wilson's moral sense is not Hutchesonian or an amalgamation of Scottish moral sense theories, but Reidian. This extended meaning can be seen in Wilson's moral sense's semiotic function and its description as an "intellectual and active" power or faculty that recognises moral first principles and judges moral qualities, producing sentiments meant to guide human behaviour. Moreover, this extended meaning can be seen in Wilson's numerous direct and nearly direct quotations of Reid concerning the moral sense, which are laid out in Appendix A, and illustrate that Wilson's adherence to Reid's conception of the moral sense was intentional.²¹⁸ This strongly suggests that it is part of the intended meaning of these texts.

However, Wilson does not refer to Reid explicitly concerning the moral sense, making it unclear as to whether he intended his depiction of the moral sense to be understood as Reidian. This means that to claim, that the Reidian nature of Wilson's moral sense is part of his depiction of the moral sense's intended meaning, is potentially misleading. Wilson appears less concerned with

²¹⁴ Maas, "Where Mechanism Ends," 345. See also: Kail, "Moral Judgment," 330. Concerning Wilson's adherence to the concept that the moral sense produces sentiments, see: Bartrum, "Moral Foundations," 278.

²¹⁵ The moral sense as intellectual and active, see: *WJW*, 1:137. Compare with: *AP*, 193.

²¹⁶ *WJW*, 1:133-34 (emphasis original). Compare with: *AP*, 192. See also: Cuneo, "Signs of Value," 82; Bartrum, "Moral Foundations," 253-54.

²¹⁷ *WJW*, 1:137. Compare with: *AP*, 190-91. (In this particular quotation Reid uses conscience instead of moral sense).

²¹⁸ See "Moral Sense" in Appendix A.

identifying a philosophical authority for his position and more concerned with the function of the moral sense and the role it played in his natural law theory and Democratic Political Theory. However, recognising, what is in my judgment of the evidence, Wilson's intentional adherence to Reid's conception of the moral sense, greatly aids in understanding its function in his natural law theory and political theory.

Of particular importance to Wilson is the role the moral sense plays as the efficient cause of moral obligation in his natural law theory because of its capacity to make moral judgments that produce sentiments. Wilson begins the discussion on the subject by asking directly: "what is the efficient cause of moral obligation—of the eminent distinction between right and wrong?"²¹⁹ In addressing this question Wilson does refer to a deity, but elsewhere explains, similarly to Reid, that: "the scriptures support, confirm, and corroborate, but do not supercede (sic) the operations of reason and the moral sense."²²⁰ So, while Wilson begins his discussion in reference to God, he eventually admits that:

I can only say, I *feel* that such is my duty. Here investigation must stop; reasoning can go no farther. The science of morals, as well as other sciences, is founded on truths, that cannot be discovered or proved by reasoning.²²¹

As Knapp recognises, for Wilson, this feeling is the: "basic locus for producing obligation".²²²

However, it is important to be clear that this feeling amounts to a Reidian sentiment produced by the judgment of the moral sense. Wilson, just after his admittance quoted above, provides clarifying evidence to this end in a nearly direct quotation of Reid, where he explains that:

If a person was not possessed of the feeling before mentioned; it would not be in the power of arguments, to give him any conception of the distinction between right and wrong. These terms would be to him

²¹⁹ WJW, 1:118.

²²⁰ WJW, 1:139. Compare with: AP, 270 & 280.

²²¹ WJW, 1:119 (emphasis original).

²²² Knapp, "Law's Revolution," 265. See also: Bartrum, "Moral Foundations," 278; Wilmarth, "Elusive Foundations," 149-51; May, *Enlightenment in America*, 348-49.

equally unintelligible, as the term *colour* to one who was born and has continued blind. But that there is, in human nature, such a moral principle, has been felt and acknowledged in all ages and nations.²²³

Bartrum also appears to agree with this position and particularly Wilson's adherence to Reid on the subject. He argues that: "Wilson shared [...] Reid's [...] epistemological commitment to an inherent moral sense and the feelings or affections—and thus the obligations—it produces."²²⁴ Thus, in my interpretation, for Wilson the efficient cause of moral obligation is the sentiments produced by the judgments of his Reidian moral faculty, which as Knapp explains: "humanized and thereby republicanized divine law [...] rendering it practically consensual."²²⁵

The moral sense also plays a role in determining the ultimate ends of the human constitution in Wilson's conception of human nature. Velasquez argues that Wilson adheres to Hume's conception of how ultimate ends are determined as part of his larger argument for aligning Wilson with the modern natural law tradition, which he associates with Hume, Locke, and Hobbes.²²⁶ Velasquez's evidence is a few short passages in Wilson's work that he claims are quotations of Hume.²²⁷ While his observation is accurate, it is incomplete. He fails to note that Reid also refers to the same passage from Hume, agreeing with most, but importantly not all of it.

Reid helpfully breaks this passage into four numbered propositions, as follows:

1. There must be ultimate ends of action, beyond which it is absurd to ask a reason of acting.
2. The ultimate ends of human actions can never be accounted for by reason;
3. but recommend themselves entirely to the sentiments and affections of mankind, without any dependence on the intellectual faculties.
4. As virtue is an end, and is desirable on its

²²³ *WJW*, 1:119 (emphasis original). Compare with: *AP*, 178.

²²⁴ Bartrum, "Moral Foundations," 278.

²²⁵ Knapp, "Law's Revolution," 268.

²²⁶ Velasquez's statement of his general alignment argument: Velasquez, "Rethinking America's Modernity," 193 & 196-97. See also: Zink, "Bill of Rights," 255. Velasquez's discussion of the determination of ultimate ends, see: Velasquez, "Rethinking America's Modernity," 200-02.

²²⁷ Velasquez's use of the passage: Velasquez, "Rethinking America's Modernity," 202.

own account, without fee or reward, merely for the immediate satisfaction it conveys; it is requisite, that there should be some sentiment which it touches, some internal taste or feeling, or whatever you please to call it, which distinguishes moral good and evil, and which embraces the one and rejects the other.²²⁸

Reid agrees with many of these propositions in varying degrees, as does Wilson. This includes the concept that virtue is an ultimate end, which Reid describes as one of his rational principles of action, and that ultimate ends recommend themselves to the natural affections of human beings.²²⁹

Reid's general contention is that:

Mr Hume, think[s] that it is no part of the office of reason to determine the ends we ought to pursue, or the preference due to one end above another. This, he thinks, is not the office of reason, but of taste or feeling.²³⁰

More specifically Reid takes issue with Hume's third proposition that denies any role of the intellectual faculties in the determination of ultimate ends. This is because Reid holds that the moral sense is an intellectual power that judges between good and evil, producing sentiments that lead humans to embrace one and reject the other, identifying virtue as an ultimate end.²³¹ Thus, Reid's major issue is Hume's exclusion of the moral sense from the list of aspects of the human constitution that provide and determine ultimate ends.

Wilson agrees with Reid's critique of Hume's propositions, which constitutes part of the extended meaning of these passages. He similarly holds that reason: "decides the preferences of one end over another."²³² Furthermore, quoting Reid almost directly (only adding "or moral sense"), Wilson agrees that

²²⁸ AP, 359-60. Wilson splits the quote with the majority on: *WJW*, 1:135; & paraphrased version of the rest on *WJW*, 1:136. David Hume, *An Enquiry Concerning the Principles of Morals*, ed. D. Fate Norton, M. A. Stewart, & T. L. Beauchamp (Oxford: Oxford University Press, 2014), Appendix 1.18-20.

²²⁹ Concerning virtue as an ultimate end, see: *WJW*, 1:136; & AP, 361. Natural affections recognise ultimate ends, see: *WJW*, 1:135-36; & AP, 360-61.

²³⁰ AP, 153.

²³¹ AP, 360-62.

²³² *WJW*, 1:126. Compare with: AP, 152-53.

the: “conscience or moral sense determines the end, which he [a person] ought to pursue”.²³³ Importantly, as discussed earlier, in agreement with Reid, Wilson identifies the moral sense as an intellectual power, thus in this passage he is explicitly stating that an intellectual power is involved in the determination of ultimate ends.²³⁴ Wilson further suggests this in his adaptation of the fourth proposition. In his quotation, Wilson changes the word “feeling” to “sense”, appearing to imply that it is the moral sense that makes virtue desirable in its own right, and thus, an ultimate end, just as Reid does.²³⁵ This Reidian understanding of Hume’s passage is unsurprising given Conrad’s observation that: “Wilson acknowledged, he was chiefly indebted for his understanding of Hume’s ingenious epistemology to Hume’s fellow Scottish philosopher Thomas Reid.”²³⁶

However, Wilson quotes the third proposition in its entirety, thus: “They [ultimate ends] recommend themselves entirely to the sentiments and affections of men, without dependence on the intellectual faculties.”²³⁷ But this is surprising, not only because Wilson generally adheres to Reid and rejects Hume and his theory as endeavouring “to destroy all true liberty and sound philosophy”, but also because he has identified the moral sense as an intellectual power and states that it determines ultimate ends.²³⁸ This is problematic because Wilson’s assertion that the intellectual faculty of the moral sense determines ultimate ends is logically incompatible with his quotation of Hume’s third proposition, which states that the intellectual faculties play no role in determining ultimate ends. Therefore, in my judgment the extended meaning of Wilson’s quotation of Hume’s third proposition appears to be that it is both internally inconsistent and dissonant with his general adherence to Reid and rejection of Hume.

However, this analysis has further revealed that the extended meaning that can be drawn from this evidence is that, excepting this inconsistent assertion by Wilson, he generally adheres to Reid’s conception of how ultimate ends are

²³³ *WJW*, 1:127. Compare with: *IP*, 552-53. See also: Knapp, “Law’s Revolution,” 266.

²³⁴ *WJW*, 1:137.

²³⁵ *WJW*, 1:136.

²³⁶ Conrad, “Polite Foundation,” 376.

²³⁷ *WJW*, 1:135.

²³⁸ *WJW*, 1:67. General rejection of Hume see: Robinson, “Wilson’s Theory of Rights,” 296; Conrad, “Polite Foundation,” 375-76; Bayer, “Common Sense Republic,” 194; Leavelle, “Wilson and Scottish Metaphysics,” 399; Knapp, “Law’s Revolution,” 265-66.

determined. This adherence and the internal inconsistency of this passage strongly indicates that Wilson's quotation of this Humean proposition is almost certainly not, as Velasquez argues, evidence of Wilson's alignment with Hume. One quotation that is inconsistent with Wilson's other positions does not constitute evidence for identifying an influence. Moreover, Velasquez's argument does not recognise the extensive nature of Wilson's adherence to Reid. This appears to have led him to overlook Reid's analysis of this passage from Hume, Wilson's general Reidian inspired rejection of Hume, as well as Wilson's Reidian conception of the moral sense's role in determining ultimate ends. Wilson's use of this quotation of Hume possibly suggests several things, but a significant and predominant alignment of Wilson with Hume is not one of them.

One thing that this inconsistency possibly reveals is that Wilson identified an issue with Reid's conception of the moral sense that arose in translating or applying it to the theory of law and governance in opposition to the Theory of Superiority. Reid's fear is that Hume's argument that morality is merely a feeling, presents morality as nothing more than "an arbitrary structure and fabric in the constitution of the human mind".²³⁹ Thus, Reid argues against Hume's position by highlighting the rational and intellectual aspects of the moral sense to defend morality as something real and objective.²⁴⁰

Alternatively, Wilson is arguing against the concept that: "Reason [...] is the first rule of man, the first principle of morality, and the immediate cause of all primitive obligation", because it supports the Theory of Superiority, which Wilson vehemently rejects.²⁴¹ Wilson's concern is that this concept of the role of reason in morality and obligation supports the concept of a superiority in "excellence of nature" because as Wilson and Reid both note, a large part of the population: "have not the means of cultivating the power of reasoning to any high degree."²⁴² According to the Theory of Superiority, if such naturally excellent individuals

²³⁹ *AP*, 362.

²⁴⁰ *AP*, 361-62.

²⁴¹ *WJW*, 1:116.

²⁴² Respectively: *WJW*, 1:109; & *WJW*, 1:126. Compare the latter with: *IP*, 554.

exist, in this case in terms of superior reasoning capacities, they would have the right to prescribe obligatory laws to others.²⁴³

From this the reasonable inference or extended meaning appears to be that Wilson fears that if he over emphasises the rational and intellectual aspects of the moral sense, it could be used to support the existence of such natural superiors, justifying the Theory of Superiority and undermining his advocacy of democracy. Wilson could have avoided this problem by emphasising the moral sense's rational aspects in terms similar to his and Reid's identification of the faculty of common sense as the first degree of reason.²⁴⁴ However, he does not, and this inconsistency remains in his work and part of its extended meaning. Thus, it seems likely that Wilson's fear led him to overcompensate and use Hume's third proposition, although it could also simply be an oversight.

However, putting this inconsistency to one side, Wilson also uses his Reidian conception of human nature to ground and formulate his conception of the state of nature, and in doing so, present his conception of human sovereignty. The use of the concept of the state of nature is identified with the modern natural law tradition. However, Wilson presents his conception of the state of nature and how civil society developed out of it as an alternative, in direct opposition to the theories of others, including Hobbes'.

Wilson describes his own state of nature in opposition to these theories, thus:

According to these philosophers, the only natural principles of man are selfishness, and an insatiable desire of tyranny and dominion. Their conclusion is, that a state of nature, instead of being a state of kindness, society, and peace, is a state of selfishness, discord, and war.²⁴⁵

²⁴³ *WJW*, 1:109-11.

²⁴⁴ *WJW*, 1:257-58. Compare with: *IP*, 433.

²⁴⁵ *WJW*, 1:285-86.

Wilson, as Bartrum explains: “argued forcefully for an optimistic state of nature, in which nearly all humans possess the essential moral qualities and act accordingly.”²⁴⁶

Concerning justice or morality, Wilson states explicitly that humans, possessing a moral sense, are subject to the natural law. Wilson describes the state of nature as a state of natural liberty, arguing that: “The laws of nature are the measure and the rule; they ascertain the limits and the extent of natural liberty.”²⁴⁷ Furthermore, concerning the naturalness of society, Wilson asserts: “We have already seen, that society may exist without civil government”, and continues to argue that:

if we would think and reason with accuracy on the subject, we shall necessarily be led to consider, [...] the formation of society as preexistent (sic) to the formation of those regulations, by which the society mean, that their conduct should be influenced and directed.²⁴⁸

Thus, Wilson's state of nature is sociable, kind, and peaceful because Wilson holds that society, human sociability, and justice are all natural, amounting to Reid's position on the subject. This extended meaning can be seen particularly in Wilson's grounding of this position in what equates to Reid's conception of the moral sense and benevolent affections.

Wilson's conception of how this state of nature developed into civil society is also opposed to the modern natural law tradition. Velasquez explains that adherents to the modern tradition, identifying Locke and Hobbes particularly, held that it was the desire of self-preservation (or in Wilson's conception, human selfishness) that was the driving force behind the development of civil society.²⁴⁹ As can be seen in these quotations above and the earlier discussion concerning human sociability, Wilson rejects this modern hypothesis concerning the formation of civil society and the conception of human nature, on which it is predicated.

²⁴⁶ Bartrum, “Moral Foundations,” 278.

²⁴⁷ *WJW*, 1:310.

²⁴⁸ *WJW*, 1:383.

²⁴⁹ For Velasquez's position, see: Velasquez, “Rethinking America's Modernity,” 205 & 215. Wilson's description, see: *WJW*, 1:285-86. See also: Bayer, “Common Sense Republic,” 190-91.

Contrasting with this modern hypothesis, Wilson argues that in: “the first establishment of civil government, it is probable, that the maintenance of publick peace and the promotion of publick happiness were the ends originally proposed by the people”.²⁵⁰ Reid does make a brief remark on this subject, attributing the development of civil society to the benevolent affection of parents for children, although Wilson does not mention it. However, their views are not incompatible, one discussing the motivating aspect of human nature and the other the motivating goals. More importantly, Wilson’s motivating goals of peace and happiness are very different from the modern tradition’s self-interest or self-preservation, constituting an important extended meaning.

Wilson develops his conception of the state of nature further through an analogy with the society of nations and in doing so provides his conception of sovereignty. This analogy is appropriate because Wilson holds that natural law: “when applied to states or political societies, receives a new name, that of the law of nations”, to which states are equally subject as: “moral persons, who live together in a natural society, under the law of nations.”²⁵¹

To this sociable and moral understanding of the state of nature, Wilson adds liberty and equality:

Those, who unite in society, lived, before their union, in a state of nature: a state of nature is a state of equality and liberty. That liberty and that equality, belonging to the individuals, before the union, belong, after the union, to the society, which those individuals compose.²⁵²

Velasquez also recognises this analogy in Wilson’s Lectures, explaining that: “Wilson defers his discussion of the most important characteristics of the natural law to this section ‘Of the Law of Nations’ because he uses the ‘international system’—whose salient feature is the absence of a sovereign—as a metaphor for the state of nature.”²⁵³

²⁵⁰ *WJW*, 1:388.

²⁵¹ Respectively: *WJW*, 1:145 & 1:360.

²⁵² *WJW*, 1:259.

²⁵³ Velasquez, “Rethinking America’s Modernity,” 206.

However, while Velasquez's recognition of this analogy or metaphor is accurate, his conception of the role and location of a sovereign is not. Velasquez appears to overlook Wilson's further utilisation and development of this analogy in his lecture: "Of Man, As a Member of the Great Commonwealth of Nations". In that lecture, far from being absent from this analogy, Wilson, referring to Emer de Vattel (1714-1767), describes what defines a sovereign. Wilson explains that each nation in this natural society is sovereign because of its ability to: "govern itself by its own authority."²⁵⁴ If this analogy holds, then the logical implication (and thus extended meaning) is that human sovereignty is defined by this same ability to govern oneself by one's own authority.

Thus, the salient feature of what Velasquez calls the "international system" or Wilson calls the "society of nations" is that it is a society of free and equal sovereigns under natural law.²⁵⁵ As discussed earlier, Wilson adhered to Reid's philosophy in presenting humans as able to govern themselves, and thus, they are moral and accountable beings because they possess the requisite liberty and understanding. Consequently, given Wilson's definition of sovereignty, it appears that Wilson effectively defines individual humans as sovereign, based upon his Reidian conception of humans as able to self-govern. This extended meaning certainly helps explain why Wilson asserts that humans are sovereign, which is a key concept in his theory, and one he often asserted throughout his contributions to the development of the US Constitution.²⁵⁶

Zink, following Velasquez, is not inaccurate in his statement that: "Wilson's view of political life is grounded in an account of the origins of politics".²⁵⁷ However, what is now clear is that Wilson's vision of the state of nature is very different to that of Hobbes and Hume, which Velasquez associates with the Modern tradition. Instead of Hobbes' bleak picture, Wilson conceives of the state of nature as a sociable community of free and equal sovereigns, living in relative peace under the natural law. Furthermore, this state of nature did not give birth to civil society out of a selfish desire for self-preservation, which Velasquez

²⁵⁴ *WJW*, 1:360.

²⁵⁵ *WJW*, 1:165, 1:360, 1:361, 1:362, & 1:374.

²⁵⁶ See: Sections, 4.1, 4.3, 5.1, 5.3, 6.1-3, & 7.4.

²⁵⁷ Zink, "Liberty and Law," 443. See also: Velasquez, "Rethinking America's Modernity," 216.

presents as characterising the modern natural law tradition and particularly Locke and Hobbes' position. Rather, Wilson proposes the maintenance of the existing peace and promotion of happiness as the motivation for the formation of civil society.

Given this evidence it is now possible to attempt to categorise Wilson's natural law theory, although its categorisation is not a simple affair because it fits a number of criteria from both traditions. For instance, Wilson's use of the term "state of nature", is a mark of the modern tradition. However, as illustrated, Wilson's conception of the state of nature is radically different from—and thus directly opposes—particularly Hobbes' state of nature. Furthermore, in my judgment, Wilson's position does not align with Velasquez's description of the modern tradition's conception of how civil society developed out of the state nature.

This is further complicated by Wilson's Reidian conception of human nature because it aligns him with three criteria of the classical tradition, in so far as he: 1.) defines human nature in terms of capacities, particularly liberty, common sense, and the moral sense; 2.) these capacities distinguish humans from animals; and, 3.) he presents justice in moral terms via the moral sense's ability to recognise moral first principles as the foundation of the natural law. However, also through his adherence to Reid, Wilson defines the moral sense, not a deity, as the efficient cause of moral obligation, marking his departure from the classical tradition and again aligning Wilson with the modern tradition. While Wilson's adherence to and development of Reid has been clear throughout this discussion, he does not appear to fit neatly within either category proposed by the existing scholarship. Therefore, I instead propose that Wilson's natural law theory is best understood through its Reidian foundation as an alternative modern natural law theory that develops and departs from the classical tradition and does so in opposition to many of the received examples of the modern tradition.

This alternative conception of the modern natural law tradition and the Reidian conception of human nature on which it rests, also lays the foundation for Wilson's proposal of presenting humans as both subjects and authors of the law. The human ability to be subject to the law comes through their ability to self-govern in accordance with a rule seen above, while their obligation to natural law

comes through their ability to perceive it through the moral sense. However, humanity's ability to author law is more complicated.

Wilmarth argues that "Scottish Enlightenment theories of moral sense and common sense [...] convinced Wilson that every citizen in republican society could understand his rights and civic duties".²⁵⁸ All that was required for this capacity, according to Wilson, was a proper education, participation in the democratic process, and the moral sense, leaving Wilson with: "a highly optimistic view of the people's capacity for social harmony and self-government."²⁵⁹ As seen earlier, Knapp goes into slightly more detail, arguing that Wilson has republicanised or democratised the natural law through his location of the efficient cause of moral obligation in the moral sense.²⁶⁰ Bayer's position builds on this, explaining that Wilson holds that near universal access to the natural law through the moral sense makes individuals sovereign, which is central to Wilson's democratic position.²⁶¹ Bartrum goes further, arguing that the common people, uncorrupted by politics and power, have the clearest access to the natural law via the moral sense, and thus, must remain sovereign in order to safeguard good governance.²⁶² This is because Wilson perceives good governance as that which most faithfully realises natural law.²⁶³

While these arguments concerning the human capacity for democracy or the ability to author law are accurate, they are incomplete. These positions fail to explicitly recognise that Wilson's conception of human sovereignty and the capacity for democracy, depends on a fuller account of human capacities and human nature. Moreover, these positions fail to explain that Wilson not only believes that the people are capable of democracy, but that democracy is the only legitimate form of government.

These gaps are pointed up particularly by the extended meaning of Wilson's conception of human sovereignty, or sovereignty principle, as the Reidian ability

²⁵⁸ Wilmarth, "Elusive Foundations," 117.

²⁵⁹ Wilmarth, "Elusive Foundations," 117.

²⁶⁰ Knapp, "Law's Revolution," 268.

²⁶¹ Bayer, "Common Sense Republic," 201. See also: Pedersen, "Lost Founder," 261-62. Robinson, "Wilson's Theory of Rights," 296-97.

²⁶² Bartrum, "Moral Foundations," 281 & 297-304.

²⁶³ Bartrum, "Moral Foundations," 281.

to self-govern. This only becomes clearer through understanding Wilson's principle of consent, its grounding in human sovereignty, and their intertwined expression in the Revolution Principle.²⁶⁴ Thus, these points will continue to illustrate, that recognising and analysing Wilson's adherence to and development of Reid's philosophy is especially valuable for understanding Wilson's Democratic Political Theory.

²⁶⁴ See: Sections, 4.1 & 5.1.

Chapter 4 – Wilson’s Democratic Political Theory in Drafting the US Constitution

Wilson entered the Constitutional Convention highly respected by his peers and went on to play an active and central role in the debates that would eventually produce the US Constitution.¹ These debates were complex. They were not marked by a general consensus, and, as might be expected, even allies held different conceptions of government and human nature. Wilson specifically has been noted as differing from several of his allies on these subjects. Heyburn explains that Gouverneur Morris and James Wilson held opposing views on the nature of government, even though they regularly voted together in the Constitutional Convention.² Ewald also argues, concerning Madison and Wilson, that: “even when the two delegates voted the same way, they often did so for very different reasons.”³

Knapp suggests the difference between Madison and Wilson, is partly rooted in their opposing conceptions of human nature with Wilson looking to Reid’s philosophy and having none of Madison’s Humean “pessimism regarding human nature”.⁴ Knapp further suggests that part of Madison’s pessimism possibly included his agreement with Hume’s argument that: “government based on personal consent of its citizens could not exist as anything other than a fiction.”⁵ These points support and explain Knapp’s general observation that: “Wilson gainsaid every proposal that put middlemen [...] between the people themselves

¹ See: Section, 1.2.

² Heyburn, “Morris and Wilson,” 196.

³ Ewald, “Scottish Enlightenment,” 1054.

⁴ Knapp, “Law’s Revolution,” 221. See also: Knapp, “Law’s Revolution,” 217-21.

Concerning Madison adherence to Hume, see: Knapp, “Law’s Revolution,” 257-58; Fleischacker, “Impact on America,” 318.

⁵ Knapp, “Law’s Revolution,” 258.

and their new national government”, which he explains: “distinguished him from virtually every other man in attendance, particularly Madison.”⁶

Thus, in order to better understand Wilson's position and how it differs from Madison's, it is important to analyse Wilson's adherence to Reid, particularly as it concerns his principle of consent. As I will argue, it is his consent principle that underpins, and thus helps explain Wilson's positions and arguments in the Constitutional Convention, including his differences with Madison.

4.1 - Wilson's Reidian Context: Sovereign consent not superiority

Wilson's consent principle directly opposed the received legal theory of Blackstone, which Wilson identifies as the exemplar of what he labels the Theory of Superiority.⁷ He also explains that Blackstone likely adopted these ideas from Pufendorf, who Wilson identifies as the modern source of this received doctrine.⁸ Wilson used this label because this theory is grounded in the concept that a superior is required to authorise human positive law.

Wilson thus undertook the task of arguing against Blackstone and the Theory of Superiority to clear the ground in order to establish his own principle of consent as the proper foundation for government. These arguments against the Theory of Superiority resonate with, what is effectively, Wilson's translation of Reid's attempted refutation of the Ideal Theory in metaphysics into political philosophy. Formulating this translation and how his arguments against the Theory of Superiority resonate with it, these extended meanings provide a clearer understanding of Wilson's conception of governments and law, and begin to reveal the relationship between his principles of sovereignty and consent.

Wilson was clearly familiar with the critical techniques that comprised Reid's attempted refutation. He dedicates a large portion of his lecture: “Of Man, as an Individual” to arguing against the Theory of Ideas, transcribing much of it

⁶ Knapp, “Law's Revolution,” 206.

⁷ *WJW*, 1:67-69.

⁸ *WJW*, 1:69.

directly from Reid’s philosophy and referring to Reid explicitly.⁹ At the end of his Reidian argument against the Theory of Ideas, Wilson restates his earlier declaration, linking this theory with the Theory of Superiority as dangers to humanity and the law:

Despotism, by an artful use of ‘superiority’ in politics; and scepticism, by an artful use of ‘ideas’ in metaphysics (sic), have endeavoured—and their endeavours have frequently been attended with too much success—to destroy all true liberty and sound philosophy. By their baneful effects, the science of man and the science of government have been poisoned to their very fountains. But those destroyers of others have met, or must meet, with their own destruction.¹⁰

For Wilson, just as these theories threatened human knowledge, science, and governance, they could be subjected to similar critiques. This led Wilson to similar conclusions to Reid, primarily that this theory did not meet Newton’s truth or sufficiency criteria, instead relying on its authority as the received theory, and moreover that it was dehumanising, self-undermining, and thus, absurd. However, revealing this understanding requires first formulating Wilson’s translation of Reid’s attempted refutation of the Ideal Theory.

Wilson, like Reid, argued that the Theory of Ideas’ conclusions are absurd because they: “would finally lead to the total subversion of all human knowledge.”¹¹ He also similarly identified the unsupported hypothesis that impressions and ideas are required for perception as the underlying error of the Ideal Theory.¹² According to Wilson, the philosophers who proposed this theory: “have adopted the more easy, but the less certain mode of process by hypothesis and analogy”, and moreover have failed to prove their hypothesis.¹³

⁹ See: “Scepticism/ Causes of Error,” in Appendix A; Conrad, “Common-Law,” 206.

¹⁰ *WJW*, 1:67 & 1:272. Context that illustrates this is referencing the Theory of Ideas and Theory of Superiority see: *WJW*, 1:66-69 & 1:236-74. For resonance compare with: *Inq.*, 19. See also: Bayer, “Common Sense Republic,” 199.

¹¹ *WJW*, 1:239. Compare with: *Inq.*, 33-34. See also: *WJW*, 1:263-64. Compare with: Reid, “Dedication,” 4-5.

¹² *WJW*, 1:264. Compare with: Reid, “Dedication,” 4.

¹³ *WJW*, 1:230.

As Wilson argues, when the foundations of this theory: “were examined by an architect of uncommon discernment and skill; no such things as the ideas of the moderns, or species of the ancients were to be discovered there.”¹⁴ Wilson makes it clear in the following sentence, that this architect is nonother than: “the enlightened and candid Dr. Reid”.¹⁵ Wilson continues, claiming that “unless it [this hypothesis] be proved, it should not be believed.”¹⁶ He is arguing, adhering explicitly to Reid, that there is no supporting evidence for this hypothesis.¹⁷ Thus, in my judgment, Wilson followed Reid’s argument that the Theory of Ideas fails Newton’s truth and sufficiency criteria, shifting the burden of proof onto the adherents of the Ideal Theory.¹⁸

Furthermore, Wilson is committed to Reid’s dualism and his warning to not, in Wilson’s words, search: “to discover what cannot be known”.¹⁹ What cannot be known in this case, according to Wilson, is: “the connexion which subsists between the soul and the body”, even using Reid’s analogy to describe perception as: “a principal link of that mysterious chain”.²⁰

Stating his position in Reid’s words, these attempts to explain the unknowable and prove first principles (such as Reid’s first principle concerning perception), were rooted in these philosophers’ extension of reason’s: “jurisdiction beyond its just limits”.²¹ Wilson explicitly stated that these philosophers have done so by holding that: “reason is the supreme arbitress of human knowledge”, and thus, it: “can establish first principles”.²² First principles are “self-evident” and “undemonstrable (sic)”, according to Wilson.²³ Thus, he argues, paraphrasing Reid closely, that first principles, the dictates of common sense: “disdain its [reason’s] trial; they claim not its aid; they dread not its

¹⁴ WJW, 1:262.

¹⁵ WJW, 1:263.

¹⁶ WJW, 1:265.

¹⁷ For Reid’s similar arguments, see: Section, 3.2.

¹⁸ WJW, 1:260-72.

¹⁹ WJW, 1:238.

²⁰ Respectively, WJW, 1:238 & 1:240.

²¹ WJW, 1:274. Compare with: *Inq.*, 19. See also: *IP*, 41. Reid’s fifth First Principle of Contingent Truths discusses the reliability of perception. See: *IP*, 476; Section, 3.2.

²² WJW, 1:255-56.

²³ WJW, 1:255.

attacks.”²⁴ In Wilson’s opinion, the Ideal Theory’s position not only denies the nature of first principles, but is inconsistent because it admits reason as a first principle without proof, while demanding other first principles be proven by reason.²⁵ Following Reid, Wilson argues against this position, stating: “He that made one, made all. If we are to suspect all; we ought to believe nothing.”²⁶

Furthermore, Wilson sees this attempt to prove first principles as particularly problematic because it undermines human knowledge and the Theory of Ideas itself. Wilson explains that Descartes’ attempt to prove his own existence in order to secure it as a first principle, actually led Hume to deny it because he found Descartes’ proof wanting.²⁷ Wilson’s position resonates with Reid’s own recognition of how attempting to prove first principles led to doubting and then denying them. Wilson, like Reid, recognises that: “without first principles, there can be neither reason nor reasoning”, because: “if every truth would admit of proof, proof would extend to infinity”.²⁸ Thus, Wilson holds that first principles are the necessary foundation for reasoning and human knowledge, and that by denying and undermining them, the Theory of Ideas has undermined its own arbitress of knowledge: discursive reason or the second degree of reason.²⁹

In my judgment, these points of resonance, adherence, and Wilson’s explicit references to Reid, reveal that an extended meaning of Wilson’s arguments is that these arguments are effectively a translation of Reid’s attempted refutation of the Theory of Ideas. This evidence, particularly Wilson’s explicit references to Reid, strongly indicates that this translation was intentional, although it is unclear from the text whether or not Wilson specifically *intended* that his arguments should be understood as such. However, at this time in America, Reid’s philosophy was primarily used to refute Hume’s scepticism, making it very likely that these arguments would be understood as something akin

²⁴ WJW, 1:274. Compare with: *Inq.*, 19.

²⁵ WJW, 1:265.

²⁶ WJW, 1:254. Compare with: *AP*, 229.

²⁷ WJW, 1:276-77.

²⁸ WJW, 1:257. Compare with: *IP*, 454-55.

²⁹ WJW, 1:256-257, 1:260, & 1:273.

to a translation of Reid, by his contemporary audience.³⁰ Thus, this extended meaning and contextual evidence strongly suggest that this interpretation was also Wilson's intended meaning, in Blau's more extensive conception of the term.

Moreover, elucidating this extended meaning helps reveal that Wilson held that the Theory of Ideas provides no evidence or explanation, failing Newton's sufficiency and truth tests. Furthermore, Wilson viewed the attempt by the philosophers of the Ideal theory to better secure first principles through the inappropriate use of reason, undermined those principles and with them reason and thus, the Theory of Ideas itself. Importantly, illuminating these positions through this extended meaning allows us to explicate their resonance with Wilson's arguments against the Theory of Superiority, as an extended meaning of these arguments, which reveals a deeper understanding of them.

In language that resonates with his Reidian critiques of the Theory of Ideas, Wilson states that the Theory of Superiority's claim that human law requires a superior to be authorised and obligatory is "unnecessary, unfounded, and dangerous".³¹ He is clear that this human authority to create obligatory laws is different to the authority of natural law, which humans are obligated to via the moral sense.³² Furthermore, Wilson identifies two distinct forms of this theory that differ in their conception of how a superior is constituted, noting with some astonishment that Blackstone does not even attempt to address the subject.³³

One form of the Theory of Superiority conceives of a super being constituted naturally in the form of individuals possessing either superior strength or intelligence. The second form claims that a superior sovereign government is constituted collectively through a contract or covenant in which the people consent to submit to the government.³⁴ Similar to Wilson's Reidian arguments against the Theory of Ideas, Wilson is attempting to demonstrate that the Theory

³⁰ Fleischacker, "Impact on America," 329; May, *Enlightenment in America*, 344; Redekop, "Reid's Influence," 327-29; Diamond, "Witherspoon," 117-22. See also: Section, 2.1.

³¹ *WJW*, 1:99.

³² *WJW*, 1:212.

³³ *WJW*, 1:84.

³⁴ *WJW*, 1:85-87.

of Superiority, in both of its forms: fails to supply proof or a sufficient explanation; is self-undermining, and thus, absurd; and has dehumanising implications.

If the theory of a natural superior is correct, Wilson believes there should be: “indisputable marks distinguishing these superiors from those placed under them, as those which distinguish men from the brutes.”³⁵ Wilson sees this theory as simply an intellectualisation of Hobbes’ theory where might (or in this case intellectual superiority) makes right.³⁶ Wilson expresses his doubts concerning the existence of these naturally superior individuals by paraphrasing Richard Rumbald (1622-1685): “He could not conceive that the Almighty intended, that the greatest part of mankind should come into the world with saddles on their backs and bridles in their mouths, and that a few should come ready booted and spurred to ride the rest to death.”³⁷ Even though Wilson recognises that this theory’s roots stretch back to the classical period, he holds that there is no evidence to support these claims, and that: “when viewed from the proper point of sight, [they] appear, indeed, absurd and ridiculous.”³⁸

Wilson is equally sceptical about the formation of a superior through collective means, holding that this notion fails to offer a true or sufficient explanation for how such a superior is created. Wilson presents Pufendorf as the exemplar of this particular form of the Theory of Superiority.³⁹

However, this concept of the collective formation of a superior also resonates with Locke’s contract theory, though Wilson does not state Locke explicitly as an adherent to the Theory of Superiority. In Locke’s theory a government is formed and entrusted with the sovereign power through the people’s consent. Wilson likely does not list Locke as an adherent to this theory because he recognises that in Locke’s theory there remains “inherent in the people, a supreme power to alter the legislative”. However, Wilson also

³⁵ WJW, 1:74.

³⁶ WJW, 1:70-74.

³⁷ WJW, 1:74-75. It appears Wilson is referring to Richard Rumbold and is using a different variation of the spelling, See: Robin Clifton, “Rumbold, Richard (c. 1622-1685), conspirator,” in *Oxford Dictionary of National Biography*, <https://www.oxforddnb.com/view/10.1093/ref:odnb/9780198614128.001.0001/odnb-9780198614128-e-24269>.

³⁸ WJW, 1:75. Concerning roots in the classical period see: WJW, 1:71-74.

³⁹ WJW, 1:85-88.

recognises, continuing to quote Locke, that in Locke's theory this supreme power only "devolves to those, who gave it [the people]", when the government forfeits its supreme sovereign power by abusing the people's trust.⁴⁰ This expression of Locke's revolution principle, crucially suggests that sovereignty is predominantly vested in the government and only devolves to the people in exceptional circumstances of corruption or tyranny.

Moreover, Wilson states explicitly that he believed that all political theorists "on the other side of the Atlantic" held that sovereignty is vested in the British Parliament.⁴¹ Thus, Locke is not listed as an official adherent to the Theory of Superiority, having not stated a superior "as a necessary part of the definition of law".⁴² However, his contract theory does purport to form a sovereign government in a similar manner to Wilson's description of how a superior is constituted in Pufendorf's theory. It is difficult to determine if Wilson meant to imply this in these particular passages, making this similarity part of these passages' extended meaning. However, Wilson does make his general position on contract theories clear in the ratification debates: he rejects them.⁴³

To begin his argument against the collective formation of a superior government, Wilson asks a leading question: "Can any person or power, appointed by human authority, be superior to those by whom he is appointed, and so form a necessary and essential part in the definition of a law?"⁴⁴ Wilson is insinuating that this concept of an authorising contract to create a superior does not make logical sense since: "we have no clear conception how the parts can become greater than the whole; nor how authority, that is derived, can become superior to that authority, from which the derivation is made."⁴⁵ Wilson further argued that even if a society attempted to form a superior through a contractual law it would require a previous superior to authorise it. He did so by asking: what came first, the law that constituted the superior or the superior that is required to authorise

⁴⁰ *WJW*, 1:18.

⁴¹ *DHRC*, 2:471.

⁴² Bedri Gencer, "Sovereignty and the Separation of Powers in John Locke," *The European Legacy* 15, no. 3 (2010): 330-31.

⁴³ See: Section, 5.3.

⁴⁴ *WJW*, 1:83.

⁴⁵ *WJW*, 1:85.

the law?⁴⁶ For Wilson, it is: “difficult—perhaps we may, say impossible—to account for the institution of a superiour (sic) by human *authority*”, because even the concept of a superior created through a consensual contract is logically incoherent.⁴⁷

Furthermore, Wilson argues that the Superiority thesis poses a threat to the law itself because it undermines the very concept or principle it was attempting to secure, and itself, in the process. This resonates with Wilson’s argument that the Ideal Theory attempted to secure first principles, through the over extension of reason, which undermined them and human knowledge. It does so, particularly with Wilson’s argument that the Theory of Superiority undermined the very human authority it was meant to secure, through the unsupported hypothesis that law requires a superior to authorise it. Wilson makes this point explicitly:

The idea of superiority, it was probably thought, would strengthen the obligation of human laws. When traced minutely and accurately, we find, that it would destroy their very existence. If no human law can be made without a superior; no human law can ever be made.⁴⁸

For Wilson, this presents the theory of superiority as logically incoherent on a grander scale, whereby it undermines the very conception of law and itself in the process, identifying it as absurd. Thus, it appears, from Wilson’s perspective, this iteration of the Theory of Superiority simply fails to provide a sufficient explanation for how a superior is formed.

According to Wilson this absurd and yet broadly received Theory of Superiority has only persisted due to the philosophical error, which Bacon labels the *idola theatri*. Wilson does not reference Bacon or his source of error directly, making this an example of extended meaning. However, he does directly quote and cite Reid in stating what amounts to the *idola theatri*. Wilson explains that this absurd theory has persisted in part because children are naturally guided by authority before they can reason and that doctrines implicitly received during this developmental period (as received theories normally are), tend to enjoy a bias in

⁴⁶ WJW, 1:85.

⁴⁷ WJW, 1:85 (emphasis original).

⁴⁸ WJW, 1:215.

the mind that covers their absurdities.⁴⁹ From this, it appears that Wilson is implying that the Theory of Superiority is based upon a philosophical error and that it has only persisted and holds authority because it is the received theory, not because of any theoretical merit or evidence.

However, from Wilson's perspective this theory is not only incorrect, but dehumanising. While the dehumanising nature of the Theory of Superiority is evident concerning a natural superior in Wilson's horse and rider analogy, he also explicitly states that the formation of a superior via contract is also dehumanising. For Wilson, such a contract entails the people willingly subjugating themselves to a sovereign dictator:

Shall we, for a moment, suppose all this to be done? What is left to the people? Nothing. What are they? Slaves. What will be their portion? That of the beasts—instinct, compliance, and punishment. So true it is, that in the attempt to make one person more than man, millions must be made less.⁵⁰

In my interpretation, for Wilson, this is the people willingly giving up their inherent capacity to govern themselves, making them less than human, and subjecting themselves to possible tyranny and oppression.

However, this passage also suggests that Locke's contract theory is open to a similar critique. While Locke's contract does not explicitly form a superior, it does form a sovereign government, as Pufendorf's "contract" or "covenant" does.⁵¹ As Wilson affirmatively acknowledges in the ratification debates, Blackstone's standing articulation of sovereignty as "the supreme, absolute, and uncontrollable power", does not allow for two sovereign powers.⁵² Therefore, the logical implication or extended meaning is that to form a sovereign government through a Lockean contract requires the people to give up their sovereignty and subjugate themselves; to willingly make themselves less.⁵³

⁴⁹ *WJW*, 1:223-24. Compare with: *Inq.*, 195; & *IP*, 462-63.

⁵⁰ *WJW*, 1:88.

⁵¹ *WJW*, 1:87.

⁵² Wilson's use of Blackstone's articulation of sovereignty, see: *DSSC*, 2:432; Knapp, "Law's Revolution," 231-32. Sovereignty cannot be divided, see: *DHRC*, 2:471.

⁵³ *DHRC*, 2:471.

According to George Dennison, even Locke's revolution principle (which claims that sovereignty is devolved to the people when a government abuses their trust), is a: "physical right of the majority to seize power and lay anew the foundations for government; revolutions succeeded because of the superior might of the physical majority."⁵⁴ In Locke's revolution principle it is physical might, violently exercised, through which the people realise and recover their sovereignty. In this light, part of the extended meaning of Locke's contract theory appears to be its resonance with the concept of a natural superior found in Hobbes' political theory that claims superior might makes right.⁵⁵ As Wilson stated explicitly, the right of force can be opposed by the same right, and that: "Bare force, far from producing an obligation to obey, produces an obligation to resist."⁵⁶ Thus, in my judgment, power and particularly physical force cannot be the basis of rights, governments, or laws in Wilson's theory, nor in his Revolution Principle.

This helps identify just how much distance there is between Wilson and Locke (complementing his rejection of Locke as part of the Theory of Ideas). Furthermore, formulating this distance, or extended meaning, begins to explain Wilson's assertion in the ratification debates that, in the US Constitution there is no contract, compact, or covenant to be found.⁵⁷ However, the following two questions still remain: where does human authority to create law reside? And, how, in Wilson's opinion, does the Theory of Superiority undermine all human authority in the law?

For Wilson, it is because humans are naturally free (or sovereign) and equal that consent is the only possible human authority in law and that the Theory of Superiority undermines all human authority in the law.⁵⁸ He argues this through a theoretical discussion between two people concerning what human authority can obligate a sovereign individual, using the concept of a promise to make his point. In his example, Wilson states that it is the agent's promise that obligates her to

⁵⁴ Dennison, "Revolution Principle," 175. See also: Amar, "Consent of the Governed," 463-64.

⁵⁵ *WJW*, 1:69.

⁵⁶ *WJW*, 1:71.

⁵⁷ *DHRC*, 2:555. See also: *DHRC*, 2:556. See also: Section, 5.3.

⁵⁸ *WJW*, 1:211-13.

behave in a certain manner, which he importantly notes: "originated from consent; for if it was the abortion of compulsion [...] [she is] not bound to consider it as [her] act and deed."⁵⁹ Wilson is clear that being compelled to make a promise by an exterior superior human force is an example of human power, not authority, because all humans are equal.⁶⁰

Thus, this consent to behave in a certain way, or to make a promise, is based on the agent's freedom or liberty. Wilson asserts that liberty necessarily requires understanding and makes humans able to conform to a rule or be susceptible to government by law.⁶¹ The extended meaning is that this amounts to Wilson's conception of the human ability to self-govern, which defines sovereignty in Wilson's thought. Thus, in my interpretation of Wilson's theory, it is because the agent is sovereign that they are capable of authorising and being held to account for any promise they make and consequently they are capable of authorising and being held to account to the law through their consent.

Furthermore, Wilson holds that the necessary consequence of this realisation is that:

if a man can be bound by any human authority, it must be by himself.

A farther consequence necessarily is, that if he cannot bind himself, there is an end of all human authority, and of all human laws.⁶²

This is the case because human superiors (natural or created through collective means), do not exist. According to Wilson, humans are naturally free (or sovereign) and equal, and thus, no human has authority over another to obligate them to behave in a certain way.⁶³ This means as Wilson says if a human cannot bind or obligate themselves by their own sovereign authority, no other human authority exists by which they can be bound. Therefore, in my interpretation, Wilson holds that because humans are sovereign it is only their consent that can authorise human laws.

⁵⁹ *WJW*, 1:213.

⁶⁰ *WJW*, 1:213.

⁶¹ See: Section, 3.3; & *WJW*, 1:254.

⁶² *WJW*, 1:215.

⁶³ *WJW*, 1:215.

A further logical implication or extended meaning of Wilson's realisation is that if a human cannot obligate herself to behave in a certain way, by definition, she cannot govern herself, and thus, cannot be held accountable for her actions or to a law. In other words, she is not sovereign nor a morally accountable being. This illustrates that if the law required a superior it would demand of humans what is beyond their capacity, undermining any human authority in law, including that of a superior, leaving only coercive power in its place. Thus, if the law required a superior to authorise it, the law would be tyrannical and degrade human nature. It would also make the very conception of law itself absurd because, as indicated earlier, Wilson conceives of law as being grounded in authority, particularly that derived from the sovereign people's consent, not power. In my judgment, this helps further explain Wilson's conclusion to his argument that the requirement of a superior: "would destroy their [human laws] very existence", and why he argued so vehemently against this theory.⁶⁴

Moreover, given my understanding of Wilson's consent principle, the further consequence of this principle, or part of its extended meaning, is that the people retain their sovereignty under it, in theory and practice, after the formation of a government. This further highlights the distance between Wilson and Locke's contract theory and the violent devolution of sovereignty back to the people found in his Revolution Principle. This is the case, because, in adhering to Wilson's definition of sovereignty, the people are collectively governing themselves by their own authority, provided through their consent. This implies that this consent is *continually* required to authorise the sovereign people's self-governance. Furthermore, this reveals the extended meaning that Wilson is committed to the position that, either humans are sovereign and continue so, being governed by their consent, or they are not sovereign and the very conception of any human authority in the law and even the law itself is absurd.

This extended meaning illustrates the intertwined nature of Wilson's principles of consent and sovereignty, which will become even more pronounced and clearer in Wilson's radical expression of his consent principle in his Revolution Principle. However, even solely based on the principle of consent laid out above, Wilson arrives at the important conclusion that humans not only can author laws,

⁶⁴ WJW, 1:215.

but that they must consent to these laws—participating in their creation or authorship—for them to hold authority. And he does so in part by rejecting the Theory of Superiority through arguments that resonate with his translation of Reid's attempted refutation of the Ideal Theory. Recognising these extended meanings provides a deeper understanding of how and why Wilson attempted to refute this received theory and so adamantly asserted his principle of consent.

Therefore, in my interpretation, Wilson rejects the received wisdom of the Theory of Superiority, arguing that it fails to provide an accurate or sufficient explanation for how a superior is identified or constituted. Instead, he asserts consent as the only human authority in law and grounds it in his conception of human sovereignty based on his Reidian understanding of human nature. According to Wilson, because humans are born free, equal, and sovereign, his example concerning promises illustrates that: "Consent is the sole principle, on which any claim, in consequence of human authority, can be made upon one man by another."⁶⁵ It is thus "the consent of those whose obedience the law requires", which is "the true origin of the obligation of human laws."⁶⁶

While Wilson holds that this principle stands on precedence, referring to Hooker, Grotius, Barbeyrac, Dr Rutherford, and Shaftesbury, he also argues it stands on reason and principle.⁶⁷ A substantial portion of these arguments from reason and principle include his rejection of the Theory of Superiority, which, as I have revealed, resonates with his Reidian rejection of the Ideal Theory. Recognising this resonance or extended meaning helps illuminate how and possibly why Wilson was attempting to refute this received theory and establish his own principle of consent as well as potentially how his audience understood these arguments. The deeper understanding this extended meaning provides will aid explicating Wilson's positions and arguments in the Constitutional Convention.

⁶⁵ WJW, 1:212.

⁶⁶ WJW, 1:99.

⁶⁷ WJW, 1:220-21.

4.2 - Historical Problems: Democracy, mixed government, and sovereign states

The Articles of Confederation government had shepherded the colonies through the Revolution to independence, but the troubles of the 1780s demonstrated that it was wholly inept at governing due to structural weaknesses and a lack of necessary key powers.⁶⁸ The credit of the United States was abysmal; the country could no longer borrow money.⁶⁹ The states were not upholding their agreements to provide the promised revenue because they too were struggling under debts incurred during the war.⁷⁰ The turmoil during the early 1780s dissolved the utopian vision many had of what America would be like after independence.⁷¹ At this time there was also a continuing fear of re-conquest by European colonial powers, which further highlighted the need for a stronger union.⁷² These factors led to the Constitutional Convention being called to repair the Articles of Confederation and start to solve the problems facing the thirteen states by creating a stronger and better functioning union.

However, the convention quickly agreed the Articles of Confederation were beyond repair and instead began framing an entirely new constitution.⁷³ This was a political convention, characterised by debate, competing interests, and compromise. It included debates concerning the nature and viability of democracy and competing theories of governance.

These debates were couched within the overarching goal of creating a functional government that not only addressed their own previous mistakes, but also avoided those of classical republics and with it their respective degeneration into one form of tyranny or another.⁷⁴ As Bederman asserts: “If any classical theme

⁶⁸ Gordon Wood, *Creation*, 395, 411, 464, 467, & 475; Gordon Wood, *A History*, 139; Charles Smith, *James Wilson*, 215; Bederman, *Classical Foundations*, 108.

⁶⁹ Gordon Wood, *Creation*, 464; Gordon Wood, *A History*, 148.

⁷⁰ Gordon Wood, *Creation*, 464.

⁷¹ Gordon Wood, *Creation*, 395 & 411; Gordon Wood, *A History*, 139.

⁷² Totten, “Security,” 78; Edling, *In Favour of Government*, 221; Bederman, *Classical Foundations*, 85.

⁷³ “Constitutional Convention,” in *Britannica Academic*, <https://academic.eb.com>.

⁷⁴ Bederman, *Classical Foundations*, 190; Gordon Wood, *Creation*, 6.

resonated with the Framers it was the fear of tyranny.”⁷⁵ He argues that the Founders studied the ancient republics to determine the errors that led to their downfall, so as not to repeat them.⁷⁶ One lesson from the classical world was that any of the pure forms of government, monarchy, aristocracy, or democracy: “inexorably must degenerate into their evil triplets - tyranny, oligarchy and ochlocracy (mob rule)”.⁷⁷ For many the solution was the theory of mixed government, which also had roots that stretched back to antiquity.⁷⁸

The theory of mixed government was at the time a widely held and accepted part of the western political tradition.⁷⁹ As Christopher Yoo explains: “The theory of mixed government envisioned a society constituted of three elements—monarchy, aristocracy, and democracy—and sought to blend each of these groups into every function of government.”⁸⁰ The goal according to Yoo, was to maintain: “a dynamic tension between the different social classes, with the upper classes receiving particular favor.”⁸¹ Bederman argues that this idea of mixed government would eventually lead to the concept of the separation of powers.⁸² However, Yoo argues that: “Mixed government is [...] based on principles that are quite different from those underlying the separation of powers and indeed conflicts with it to a considerable extent.”⁸³ Madison and Hamilton are regularly recognised as adherents to the theory of mixed government.⁸⁴ Hamilton even states in the convention that the mixed government of Britain: “was the best in the world: and that he doubted much whether any thing short of it would do in America.”⁸⁵

⁷⁵ Bederman, *Classical Foundations*, 190.

⁷⁶ Bederman, *Classical Foundations*, 111.

⁷⁷ Bederman, *Classical Foundations*, 61.

⁷⁸ Gordon Wood, *Creation*, 197 & 202; Bederman, *Classical Foundations*, 61.

⁷⁹ Bederman, *Classical Foundations*, 74; Wood, *Creation*, 197 & 202.

⁸⁰ Yoo, “Architect,” 71. See also: Amar, “Of Sovereignty and Federalism,” 1432.

⁸¹ Yoo, “Architect,” 71.

⁸² Bederman, *Classical Foundations*, 51 & 83.

⁸³ Yoo, “Architect,” 72.

⁸⁴ Concerning Madison's adherence to the theory of mixed government see: Yoo, “Architect,” 69-74; Bederman, *Classical Foundations*, 76; Knapp, “Law's Revolution,” 219-20. Concerning Hamilton see: Seed, *James Wilson*, 180.

⁸⁵ Max Ferrand, ed., *The Records of the Federal Convention of 1787*, 3 vols. (New Haven: Yale University Press, 1911), 1:288. Hereinafter cited as: *Federal Convention*.

From this classical and mixed government perspective the problem confronting these newly independent confederated states was an “‘excess of democracy’”.⁸⁶ Knapp explains that democracy was: “a word and concept that in the minds of most constitutional reformers in 1787 had become associated with anarchy, mob rule, and the destruction of property rights.”⁸⁷ Gordon Wood argues that the constitutional reformers believed that their experience of independent self-government had demonstrated that the people: “were incapable of supporting republican government.”⁸⁸ Madison and Hamilton, with their negative view of human nature, appear to support this position, fearing that the United States was in danger of ochlocracy.⁸⁹ For instance, Seed presents Hamilton as arguing that: while democracy was an important part of the mix, he also held that in the United States it was: “essential to dilute democracy with strong elements of monarchism and aristocracy.”⁹⁰ Evidence such as this has undoubtedly led Gordon Wood to claim that the Constitution was framed: “as a means of correcting not only the weakness of the Articles but also the democratic despotism and the internal political abuses of the states.”⁹¹

This also raises the further issue of the states and what their place would be in the new constitutional order. As Gordon Wood’s assertion suggests, some of the members of the convention were intentionally trying to erode the power of the states, if not eradicate them.⁹² Opposing them were representatives from small states who were concerned that if the states were not represented equally, their voices and interests would be ignored and dismissed.⁹³

⁸⁶ Bartrum, “Moral Foundations,” 262. See also: Gordon Wood, *Creation*, 409-13; Gordon Wood, *A History*, 152; Knapp, “Law’s Revolution,” 212-19; Edling, *In Favour of Government*, 3.

⁸⁷ Knapp, “Law’s Revolution,” 210.

⁸⁸ Gordon Wood, *Creation*, 475.

⁸⁹ Knapp, “Law’s Revolution,” 212-21; Bederman, *Classical Foundations*, 93; Wilmarth, “Elusive Foundations,” 160-61; Eidlberg, *American Constitution*, 146; Yoo, “Architect,” 69-71.

⁹⁰ Seed, *James Wilson*, 180. See also: Knapp, “Law’s Revolution,” 219-20.

⁹¹ Gordon Wood, *A History*, 152.

⁹² Gordon Wood, *A History*, 140 & 149-53; Gordon Wood, *Creation*, 467 & 471; George Van Cleve, “Anti-Federalists’ Toughest Challenge,” 529; Cornell, *Other Founders*, 101.

⁹³ Eidlberg, *American Constitution*, 171; Knapp, “Law’s Revolution,” 203; Bartrum, “Moral Foundations,” 265-66; John J. Patrick, Richard M. Pious, and Donald A. Ritchie. “Great Compromise,” in *The Oxford Guide to the United States Government*, (Oxford:

This led to what is known as the “Great Compromise of 1787” that afforded equal representation to the states in the Senate and proportional representation of the people in the House of Representatives.⁹⁴ According to Yoo: “The Senate was the key institution to Madison’s vision for the federal government.”⁹⁵ And, while Madison did not favour equal representation of the states, the result was close enough.⁹⁶ Even with equal representation of the states, Bederman still accurately describes the senate as being: “clearly modeled on a classical paradigm of a deliberative body, as a necessary component of mixed government.”⁹⁷

Gordon Wood’s claim that the US Constitution was an aristocratic counter revolution does not seem unfounded when looking at this context and particularly with a focus on Madison and Hamilton.⁹⁸ From this perspective the goal was not only to strengthen the weak and fatally flawed Articles of Confederation, but restore the proper balance to the government by checking the excessive democracy that had grown up in the states. It seems that the Senate particularly was meant to accomplish this goal, with Madison appearing to hold that it was sufficient to the task. However, Wilson’s diagnosis and response to these problems; his conception of these institutions; and what principles he believed the Constitution rested on, paint a very different picture.

4.3 - Wilson an Advocate for Democracy: Responses, solutions, and arguments

While Wilson was often allied with Hamilton and Madison on practical structural positions, he did so for very different reasons and based on different if not

Oxford University Press, 1993),

<https://www.oxfordreference.com/view/10.1093/acref/9780195142730.001.0001/acref-9780195142730-e-385>.

⁹⁴ Patrick, Pious, and Ritchie. “Great Compromise”.

⁹⁵ Yoo, “Architect,” 70.

⁹⁶ Yoo, “Architect,” 70; Bederman, *Classical Foundations*, 118-19.

⁹⁷ Bederman, *Classical Foundations*, 144.

⁹⁸ Concerning the aristocratic positions held by Federalists, including diagnosis of the excess of democracy see: Bartrum, “Moral Foundations,” 262; Maier, *Ratification*, 68; Knapp, “Law’s Revolution,” 211-15; 219-21; Eidelberg, *American Constitution*, 19-20 & 57; Edling, *In Favour of Government*, 3-4; Gordon Wood, *A History*, 140.

diametrically opposed principles. In my judgment, Wilson largely viewed and addressed these problems and debates that arose in the Constitutional Convention through his consent principle, which is incompatible with the theory of mixed government held by his peers.

From Wilson's perspective the problem with the Articles of Confederation was its lack of power and improper representation. The problem was a lack of democracy, not an excess. This position comes to light in Wilson's response to the question of the role of the states in the new constitutional order and particularly his arguments in the debates concerning representation in the Senate, which led to the Great Compromise. It is further developed in his arguments concerning the Presidency and the popular ratification of the Constitution. These examples reveal that Wilson's conception of representation is founded on his principle of consent, which unifies these positions. This also explains Knapp's general observation of Wilson's consistently democratic position, which differentiates him from Madison. Wilson's perspective places these debates and institution in a very different light than Gordon Wood's interpretation of the US Constitution as: "intrinsically an aristocratic document designed to check the democratic tendencies of the period".⁹⁹

Wilson rejects the idea of mixed government as simply impracticable in the United States. At the outset of the convention, according to Madison's notes, Wilson: "repeated that he was not governed by the British Model which was inapplicable to the situation of this Country; the extent of which was so great, and the manners so republican, that nothing but a great confederated Republic would do for it."¹⁰⁰ The British system was a mixed constitution and the logical implication or extended meaning is that Wilson was also rejecting the theory of mixed government in this statement.

This puts Wilson directly at odds with Hamilton and his praise of the British Government. Furthermore, Yoo argues this position differentiated Wilson from

⁹⁹ Gordon Wood, *Creation*, 513. See also for divide between aristocratic and democratic: Gordon Wood, *Creation*, 503, 513 & 516; Maier, *Ratification*, 68. Wilson providing a counter perspective to Gordon Wood's thesis, see: Knapp, "Law's Revolution," 304.

¹⁰⁰ *Federal Convention*, 1:66.

Madison as well, explaining that: "In the debate between the separation of powers and the Madisonian vision of mixed government, Wilson came down squarely on the side of the former."¹⁰¹ Wilson from the outset of these debates was working from a different conception of government, which led him to see the institutions and structures being debated in a different light.

On the question of the states, it appears Wilson was not trying to undermine them, as Gordon Wood argues others at the convention were. However, Wilson also did not seem terribly concerned about diminishing their authority or attached to their continuance. As Knapp explains: "At the Federal Convention, Wilson's former law mentor John Dickinson accused him of seeking to annihilate the states and Wilson did not unequivocally deny it."¹⁰² However, Wilson did not want them eradicated or eviscerated as he recognised others at the convention did.¹⁰³ Instead, citing Alfred the Great, Persia, and Rome, Wilson was "tenacious of the idea of preserving the [State Governments]", as Madison records in his convention notes, because as Wilson argued: "All large Governments must be subdivided into lesser jurisdictions."¹⁰⁴ This could have been political manoeuvring by Wilson, but his arguments concerning equal representation of the states reveals a much more likely and principled reason for his rejection of the Great Compromise.

Wilson did not share Madison's vision of a mixed government, nor was he focused on the amount of power the states would retain. Rather, Wilson's problem with representing the states equally in the Senate, was that it ran counter to his theory of consent as it concerned democratic representation.¹⁰⁵ To those advocating for the equal representation of the states, Wilson presents a leading analogy: "We have been told that each State being sovereign, all are equal. So each man is naturally a sovereign over himself, and all men are therefore naturally equal."¹⁰⁶ This presents Wilson's analogy between the state of nature and the society of nations (as well as the Reidian grounding of Wilson's principle of consent) in terms of sovereignty, further supporting my earlier interpretation of

¹⁰¹ Yoo, "Architect," 73.

¹⁰² Knapp, "Law's Revolution," 203. See also: *Federal Convention*, 1:153-54.

¹⁰³ *Federal Convention*, 1:300 & 1:322.

¹⁰⁴ *Federal Convention*, 1:322-33.

¹⁰⁵ Yoo, "Architect," 73-74.

¹⁰⁶ *Federal Convention*, 1:180.

both.¹⁰⁷ Moreover, this statement implies the question: Whose sovereignty should the members of the convention respect and recognise through representation, the states or the people?

Wilson's general answer to this is that: "all authority was derived from the people, equal numbers of people ought to have an equal no [number] of representatives."¹⁰⁸ This answer's extended meaning is that it implies two of Wilson's positions. First, it recognises that Wilson holds it is the sovereign people that are the source of all political authority, and hence, should be represented not the states. And second, it presents Wilson's consent theory. It does so, because if people are free, equal, and sovereign, and thus the law requires their consent to authorise it, then the logical implication is that each person must have an equal voice through representation in order to give or withhold that consent.

This interpretation can be seen more clearly in Wilson's advocacy of direct democracy and his view that representation is at best a necessary evil. Wilson states explicitly in the convention that: "Representation is made necessary only because it is impossible for the people to act collectively."¹⁰⁹ He develops and clarifies this point in the debates over reforming the Pennsylvania State Constitution, where he faced almost the same dilemma concerning the Senate as in the Constitutional Convention. In those debates Wilson stated that: "It will be cheerfully admitted, that all power is originally in the people: the consequence, unavoidable, is, that power ought to be exercised personally by the people, when this can be done without inconvenience and without disadvantage."¹¹⁰ Thus, in my interpretation, the most faithful realisation of the principle of consent, in Wilson's opinion, is direct democracy, but he recognises that it is simply impossible to gather all the people in one place to discuss, debate and decide, especially in a nation the size of the United States.¹¹¹

Instead, Wilson argued for democratic representation. Furthermore, he forcefully argued that this representation should be proportional and that these

¹⁰⁷ See: Section, 3.3.

¹⁰⁸ *Federal Convention*, 1:179.

¹⁰⁹ *Federal Convention*, 1:132-33.

¹¹⁰ Wilson, SCS, 3:332.

¹¹¹ Knapp, "Law's Revolution," 217.

representative bodies should operate in accordance with simple majority rule. These positions conform and adhere to Wilson's consent principle. This extended meaning helps explain them and why Wilson held them. Particularly, Wilson argued for this proportional representation in both houses and the direct elections of Senators in a similar manner to Representatives in the convention.¹¹² He did so in opposition to those members attempting to form a more aristocratic Senate to balance the mix of governments as well as represent the states.¹¹³

To make his argument, Wilson begins by describing how his opponents' proposal would function in practice, potentially leading to tyrannical consequences. Addressing his opponents, Wilson explained that their proposal would mean that:

Seven States will control six: seven States, according to the estimates that had been used, composed 24/90 of the whole people. It would be in the power then of less than 1/3 to overrule 2/3 whenever a question should happen to divide the states in that manner. Can we forget for whom we are forming a Government? Is it for *men*, or for the imaginary beings called *States*?¹¹⁴

Wilson then goes on to make the consequences of this minority rule clear to his fellow delegates:

It is a part of the definition of this species of Govt. or rather of tyranny, that the smaller number governs the greater. It is true that a majority of States in the 2d. branch can not carry a law agst. [against] a majority of the people in the 1st. But this removes half only of the objection. Bad Governts [governments] are of two sorts. 1. that which does too little. 2. That which does too much: that which fails thro' weakness; and that which destroys thro' oppression. Under which of these evils do

¹¹² *Federal Convention*, 1:405-06. See also: Bartrum, "Moral Foundations," 261-66; Seed, "Democratic Ideas," 5 & 7-8; Hassel, "James Wilson," 23-24; Knapp, "Law's Revolution," 206 & 218; Pedersen, "Lost Founder," 272; Seed, *James Wilson*, 47

¹¹³ Bartrum, "Moral Foundations," 262 & 266; Knapp, "Law's Revolution," 206. *Federal Convention*, 1:397-404, 1:410-12, & 1:414-15.

¹¹⁴ *Federal Convention*, 1:482-83 (emphasis original).

the U. States at present groan? Under the weakness and inefficiency of its Govern^t.¹¹⁵

Wilson is attacking the disproportionate Senate on both theoretical and practical grounds with his characterisation of this plan as tyrannical, resonating with the classical framing of the debate and possibly taking aback his peers.

The theoretical grounds of Wilson's attack are two-fold, relating to his principle of consent and its foundation in human sovereignty. As noted above, proportional representation provides each individual sovereign an equal voice, allowing for them to express their consent. As Yoo explains, Wilson: "opposed the Great Compromise not because it undercut Madison's vision of the Senate as a repository of wisdom and stability, but because it abandoned the principles of equal representation."¹¹⁶ The other aspect of Wilson's theoretical opposition is implied in Wilson's question concerning whether the government they were forming was meant for the people or the states. This, like Wilson's analogy between the states and the people discussed above, is asking: Whose sovereignty is this government meant to respect and represent; the real naturally sovereign human beings or the artificial states constructed by them?¹¹⁷

The practical ground of Wilson's argument was that the Articles of Confederation cannot govern effectively because it does not adhere to proportional representation, but rather represents the states equally. Wilson pointed to this practical example, arguing: "Shall we effect the cure by establishing an equality of votes as is proposed? No: this very equality carries us directly to Congress: to the system which it is our duty to rectify."¹¹⁸ Developing the importance of proportional representation, Wilson stated that: "A vice in the Representation, like an error in the first concoction, must be followed by disease, convulsions, and finally death itself."¹¹⁹ This error is what Wilson believed effectually killed the Articles of Confederation.

¹¹⁵ *Federal Convention*, 1:483-84.

¹¹⁶ Yoo, "Architect," 74.

¹¹⁷ Yoo, "Architect," 74.

¹¹⁸ *Federal Convention*, 2:10.

¹¹⁹ *Federal Convention*, 2:10.

Wilson held this position so firmly that he was willing to break the union over it, asserting that: "If the minority of the people of America refuse to coalesce with the majority on just and proper principles, if a separation must take place, it could never happen on better grounds."¹²⁰ Wilson's position on the paramount importance of proportional representation (and through it his adherence to and the importance of his principle of consent), is thus clearly expressed in this powerful statement.

Wilson also argued against the requirement of a super majority on similar grounds as proportional representation.¹²¹ Essentially, a super majority would allow a minority to tyrannise the majority by preventing good government through its ability to block the passage of legislation, which is one of Wilson's two definitions of tyranny seen above. Alternatively, simple majority rule is inherently equitable. As Amar explains:

simple majority rule has unique mathematical properties. It is the only workable voting rule that treats all voters and all policy proposals equally.¹²²

This reveals the extended meaning that it is the equality of simple majority rule that conforms with Wilson's theory of consent, again by respecting the equality and sovereignty of the people.

It appears that because it does so, Wilson similarly held that this was another issue worth breaking the union over. He asserted in similar terms, as recorded by Madison, that:

Mr Wilson wished the requisition of two thirds to be struck out altogether. If the majority cannot be trusted, it was a proof, as observed by Mr Ghorum, that we were not fit for one Society.¹²³

These positions and Wilson's willingness to end the nascent American experiment before it really began, illustrates how important these two positions, which in my

¹²⁰ *Federal Convention*, 1:482.

¹²¹ A super majority is the requirement of anything more than 51% of the vote.

¹²² Amar, "Consent of the Governed," 503.

¹²³ *Federal Convention*, 2:547-48.

judgment are grounded in his principle of consent, were to Wilson, and thus, his consent principle.

However, Wilson did not break the union over these positions, even though he lost the battle on proportional representation in the Senate when the Great Compromise was agreed to as well as the debate over simple majority rule. Interestingly, Wilson did make something of a parting shot in the debate, stating that: “The Justice of the general principle of proportional representation has not in argument at least been yet contradicted.”¹²⁴ This illustrates and helps explain Yoo’s argument, that Wilson was: “the only delegate to favor proportional representation as a matter of justice.”¹²⁵ While Wilson’s conception of the Senate was not chosen by the convention, his arguments have illustrated, in my judgment, his commitment to his principle and how it informed and justified his conception of proper representation.

Furthermore, it has illustrated that Wilson’s underlying principles and conception of government starkly contrasted with Madison and Hamilton, particularly as it concerns the structure and nature of the legislature. While Madison was hoping to realise his ideal of a properly balanced mixed government, Wilson envisioned a very different ideal legislature:

He [Wilson] wished for vigor in the Govt. but he wished that vigorous authority to flow immediately from the legitimate source of all authority. The Govt ought to possess not only 1st. the *force* but 2ndly. the *mind or sense* of the people at large. The Legislature ought to be the most exact transcript of the whole Society.¹²⁶

Wilson’s hope was that through proportional representation and simple majority rule this ideal government could be realised, approaching direct democracy as closely as possible, and thus, in my interpretation, most faithfully conforming and adhering to his consent principle.

While Wilson’s hopes for the Senate were dashed by the Great Compromise, he asserted his consent principle with greater success in the debates concerning

¹²⁴ *Federal Convention*, 2:10.

¹²⁵ Yoo, “Architect,” 73.

¹²⁶ *Federal Convention*, 1:132 (emphasis original).

the executive and the means of ratifying the document. Yoo argues that Wilson was the primary architect of the presidency, pointing to its unitary nature and election via the Electoral College.¹²⁷ Furthermore, he argues that Wilson advocated for a unitary executive because it allowed for democratic accountability, which multiple executives would interfere with by blurring who was in fact responsible for certain decisions.¹²⁸ Yoo further explains that, when forced to choose between democratic accountability and the principle of the separation of powers by the ongoing debate, Wilson chose democratic accountability as the more important principle.¹²⁹ This is unsurprising given that Wilson's principle of consent necessarily requires democratic accountability, being an example of the people rescinding or reaffirming their consent. This identifies the extended meaning that Wilson's support for democratic accountability is rooted in his consent principle.

This democratic accountability is possible because of the Electoral College, which is something of a technical solution and a compromise to make the election of the president as democratic as possible. Wilson made his ideal position clear: the executive should be appointed "by the people", in opposition to a proposal that the executive should: "be chosen by the National Legislature".¹³⁰ Col. Mason agreed with Wilson's democratic argument, but thought: "it impracticable. He wishes however that Mr. W(ilson) might have time to digest it into his own form."¹³¹ Mason's concern appears to be with the logistics required for a national popular vote. Wilson took the opportunity and returned the next day with what would become the Electoral College after some debate.¹³² This presents the agreed upon Electoral College as a mixture of both a technical fix and a compromise with the more aristocratically minded members of the convention.¹³³

¹²⁷ Yoo, "Architect".

¹²⁸ Yoo, "Architect," 55, 69, & 76.

¹²⁹ Yoo, "Architect," 76.

¹³⁰ *Federal Convention*, 1:69. See also: Kermit Hall, "Introduction," 1:xv.

¹³¹ *Federal Convention*, 1:69.

¹³² *Federal Convention*, 1:69. See also: Yoo, "Architect," 67-68 & 74.

¹³³ Electoral College as technical solution, see: Seed, *James Wilson*, 64. Electoral College as compromise for aristocratic elements in the convention, see: Pedersen, "Lost Founder," 319; Seed, "Democratic Ideas," 10; Bederman, *Classical Foundations*, 206.

Yoo describes Wilson’s advocacy for the direct election of the president as his: “greatest labor in support of direct democracy”.¹³⁴ Here, Yoo appears to be referring to a direct democratic franchise as opposed to filtered elections such as the Senate, where Senators were elected by the state legislatures. It appears reasonable to infer, or the extended meaning is, that this support again appears to be rooted in Wilson’s loyalty to his principle, which requires the consent of the governed to authorise law and government. And, in the case of the executive and legislative branches of the government, Wilson held that the people’s consent should be expressed as directly as possible through democratic means. While the Electoral College was not as direct as Wilson would have liked, it was far more democratic than the other proposals (such as the Federal Legislature electing the president) and was able to garner a majority of votes in the convention.¹³⁵

The people’s consent was also necessary to ratify, and thus, authorise the newly framed constitution, according to Wilson. He asserted the point clearly in the convention arguing: “We must [...] in this case go to the original powers of Society”.¹³⁶ In this debate Wilson further developed and explained this point and with it the nature and power of the convention as the people’s representatives, stating: “With regard to the *power of the Convention*, he conceived himself authorized to *conclude nothing*, but to be at liberty to *propose any thing*.”¹³⁷ In Wilson’s conception the convention is working as the people’s agent to make suggestions to them (like the political version of a financial planner). The people can then either ratify the proposal or reject it, exercising their sovereignty by giving or withholding their consent through a vote. This is what Simon Gilhooley describes as the: “two-step model of constitutional creation” and William Partlett explains, in stating that:

The people only delegate *part* of their sovereign power to a convention—in this case, the power to *propose* a constitution. They

¹³⁴ Yoo, “Architect,” 74.

¹³⁵ Pedersen, “Lost Founder,” 269-70 & 319. See also: *Federal Convention*, 1:68-69; Yoo, “Architect,” 68 & 74; Bederman, *Classical Foundations*, 204.

¹³⁶ *Federal Convention*, 2:469.

¹³⁷ *Federal Convention*, 1:253 (emphasis original).

reserve the remainder of their sovereign power to ratify or reject the constitutional draft proposed by the constitutional convention.¹³⁸

Popular ratification clearly exemplifies Wilson's consent principle (forming part of its extended meaning), and explicitly recognises the people's sovereignty, explaining Wilson's advocacy for this position and illustrating his consistent adherence to this foundational principle. This was and still is a radically democratic position that Wilson successfully advocated for and would use as evidence in the ratification debates for his most radical expression of his principle of consent: the Revolution Principle.¹³⁹

All of these positions are united in Wilson's attempt to create a constitutional order based upon his principle of consent, explaining his fierce advocacy for democracy noted by a number of scholars, as discussed earlier. In my interpretation, the danger facing the United States, according to Wilson, was not ochlocracy, but a weak government and improper representation rooted in a dearth of democracy. Thus, in his ideal constitutional order, Wilson held that the people were not only the initial source of authority, but the continuing source of authority via democratic means that in turn would provide a check upon tyranny as well.¹⁴⁰

Yoo suggests this in his statement above, which identified democratic accountability as the more important principle for Wilson in creating the presidency.¹⁴¹ Wilson made this point explicitly in response to similar questions in the debates over reforming the Pennsylvania State Constitution:

The great desideratum in politicks (sic) is, to form a government, that will, at the same time, deserve the seemingly opposite epithets—efficient and free. I am sanguine enough to think that this can be done. But, I think, it can be done only by forming a popular government. To render government efficient, powers must be given liberally: to render

¹³⁸ Respectively: Gilhooley, "Framers Themselves," 63; & William Partlett, "The American Tradition of Constituent Power," *International Journal of Constitutional Law* 15, no. 4 (2017): 957 (emphasis original).

¹³⁹ The radically democratic nature of this position, see: Amar, "Consent of the Governed," 496; Bederman, *Classical Foundations*, 100.

¹⁴⁰ Bartrum, "Moral Foundations," 268; Seed, "Democratic Ideas," 10.

¹⁴¹ Yoo, "Architect," 76.

it free as well as efficient, those powers must be drawn from the people, as directly and as immediately as possible. Every degree of removal is attended with a corresponding degree of danger.¹⁴²

For Wilson, democracy (recognising the people's sovereign authority and capacity to govern themselves), not a mixed government, was the solution to the problems of the Articles of Confederation.

Thus, Wilson did not want middle-men as Knapp observed because they would inhibit the consent principle, possibly negating the authority of the government and the laws it would create. He also advocated for as direct a form of representation as was possible because he wished to avoid the errors of the weak and ineffective Articles of Confederation, while also preventing the fledgling United States from sliding into tyranny.

Wilson's loyalty to his consent principle put him at odds with Madison and Hamilton on a theoretical level even though they were allied on a number of practical structural questions. Madison and Hamilton's adherence to the theory of mixed government and their distrust of the people is simply not compatible with Wilson's democratic positions based on his theory of consent. This extended meaning, in my judgment, points to the interpretation that from Wilson's perspective a mixed government negated or at least did not fully respect the sovereignty and requisite consent necessary to authorise government. Alternatively, it appears that from Madison and Hamilton's point of view the level of democracy Wilson was advocating, would lead to mob rule. However, ultimately, they all went on to advocate for ratifying the Constitution, which suggests that they viewed the proposed Constitution as aligning, to a sufficiently close extent, with their theoretical positions.

This in turn means that they interpreted or understood the meaning of the Constitution, and the principles in which it was grounded, from different incompatible theoretical vantage points. This substantial difference begins to reveal the complexity of these debates and that the Constitution was a product of compromise, not a coherent and unified statement of intent. However, the incompatibility of their positions raises the question: Who was right? The answer

¹⁴² Wilson, SCS, 3:333-34.

to this question, and determining if such an answer even exists, will also help determine the accuracy of Gordon Wood's assertion that the US Constitution was essentially an aristocratic document.¹⁴³

Scholars have attempted to answer this question in part by trying to determine how much influence different members had in the convention, and which debates they won. From this perspective, Wilson witnessed his position and consent principle being adhered to in the direct election of Representatives in the House, although this was not a contentious issue. His advocacy was also largely successful in the structure and election of the executive, and significantly in the people's ratification of the Constitution. However, the Senate was a clear loss for Wilson, who would eventually be vindicated to some extent by the Seventeenth Amendment's provision for the direct election of Senators.¹⁴⁴ Alternatively, Madison did succeed in creating a Senate that resembled a component of mixed government, although not his ideal, being a compromise with those advocating for a role of the states in the new constitutional order.¹⁴⁵

From this perspective the proposed Constitution appears to be the offspring of a marriage of convenience between Madison and Wilson in response to those advocating for a place for the states in the new constitution. Nevertheless, even from this perspective, Gordon Wood's assertion (that the Constitution is "an aristocratic document designed to check the democratic tendencies of the period") appears to be an overstatement given Wilson's fervent support for his consent principle, leading to his democratic understanding or interpretation of the proposed Constitution.

Furthermore, this suggests that the ratification debates are the correct place to look in order to determine which parent's or author's vision of the Constitution it most resembles, because the difference between them mainly concerns their *interpretation* of the Constitution. This suggestion is further supported by Gordon Wood's argument that: "Only as debates over the Constitution unfolded and the pieces fell into place did the Federalists themselves become conscious of just how revolutionary and how unique the new system they

¹⁴³ Gordon Wood, *Creation*, 513.

¹⁴⁴ U.S. Const. amend. XVII. See also: Pederson, "Lost Founder," 279 & 334.

¹⁴⁵ Bederman, *Classical Foundations*, 118-19.

had created was.”¹⁴⁶ It was in these debates that Federalists in response to the critiques of the Anti-federalists would work out what the Constitution meant or could mean.

Furthermore, Wilson’s advocacy for the popular ratification of the Constitution meant that it was up to the people to *conclude* what the Constitution meant, and if they would consent to and authorise that meaning. This concept is recognised in an inappropriately narrow sense by at least one iteration of Originalism.¹⁴⁷ Moreover, it was through the ratification debates that the meaning of the Constitution would be publicly explained, debated, and formulated. This provides a better understanding of what Wilson and Madison believed they had created, or their interpretation of the Constitution, and to what the people believed they were consenting.

It is in the ratification debates that Wilson used the popular ratification of the Constitution and the words “We the People” (that he helped write in the committee of detail) with great success.¹⁴⁸ This suggests that Ewald’s suspicion may indeed be correct, that Wilson: “may have walked away from the Convention having gotten more of what he initially wanted than did his more famous colleagues.”¹⁴⁹ Exploring this possibility and how Wilson leveraged popular ratification and the preamble in the ratification debates will only cast further doubt on Gordon Wood’s thesis that the Constitution and the Federalists are primarily distinguished by their aristocratic bent.

¹⁴⁶ Gordon Wood, *Creation*, 564.

¹⁴⁷ Lofgren, “Original Intent?” 118, 122-23, 128-29, & 143. See also: Bunker, “Originalism 2.0,” 332; Gilhooley, “Framers Themselves,” 63.

¹⁴⁸ Knapp, “Law’s Revolution,” 208 & 209. See: Sections, 5.3-4.

¹⁴⁹ Ewald, “Drafting,” 925.

Chapter 5 — Wilson's Democratic Political Theory in Ratifying the US Constitution

Wilson's successful advocacy of the popular ratification of the proposed Constitution meant it was up to the people at large to decide the fate of the document. This led to debates across all the states over what the proposed Constitution meant, implied, or could mean. The drafting of this document involved a great deal of debate and compromise between its contributors (commonly known as the Framers), but now it was open to critique by the people at large.

This was an exponential increase in the level of complexity surrounding the meaning of the Constitution, given the number additional voices, issues, and responses. While the Federalists were understandably not keen to open the document to further adjustments and amendments, these debates provided an opportunity for the Federalists to formulate, explain, and defend the constitution they had created. Wilson embraced this opportunity enthusiastically.¹ This enthusiasm suggests that Ewald was correct in his suspicion that Wilson got more of what he wanted in the debates at the Constitutional Convention than his peers.

There were a number of concerns that confronted the proposed Constitution, although the two major critiques were a lack of an enumeration of rights and the problem of divided sovereignty. The problem of divided sovereignty was essentially the question in the Constitutional Convention concerning what would become of the States, presented in more theoretical terms. The critique centred on the question: Which government would be sovereign, the Federal or the States? Wilson addressed these two concerns and others by arguing that his Revolution Principle is effectively the foundational principle of the US Constitution, using and referring to it as a panacea.

¹ Ewald, "Drafting," 925; Knapp, "Law's Revolution," 204.

Wilson's Revolution Principle is a radical expression of his principle of consent and is similarly grounded in his Reidian conception of sovereignty, which he states in his Lectures thus:

the supreme or sovereign power of the society resides in the citizens at large; and that, therefore, they always retain the right of abolishing, altering, or amending their constitution, at whatever time, and in whatever manner, they shall deem it expedient.²

Our understanding of the radically extensive applicability of Wilson's Revolution Principle is enhanced by understanding how it is grounded in Reid's philosophy or, in methodological terms, comprises part of its extended meaning. This understanding is crucial because of the significance of this principle in Wilson's thought and contributions, and because it provides further substantial evidence against Gordon Wood's thesis.

5.1 - The Revolution Principle: Testing Wilson's Reidian first principle of governance

This significant extended meaning is that Wilson develops Reid's third test of first principles to identify and test his Revolution Principle as a first principle. Particularly, Wilson adapts or translates this test for the science of law and governance by using the common law in place of the structure of language in Reid's third test of true first principles, appearing to hold that they are similar enough to allow for this substitution.

This test functions in a similar manner to peer review, in which the more people who agree the greater the authority of the item under review. However, it goes further by requiring that a principle must garner near universal agreement by humanity across generations and nations, for it to be considered a true first principle.³ Reid holds that evidence of this near universal agreement can be found in the structure of language. For instance, Reid argues that: "in all languages men

² *WJW*, 1:17.

³ *IP*, 464-67.

have expressed thinking, reasoning, willing, loving, hating, by personal verbs”.⁴ And, that this, constitutes evidence of the universal agreement of humanity that Reid’s second First Principle of Contingent Truths: “the thoughts of which I am conscious, are the thoughts of a being which I call *myself*”, is a true first principle.⁵ Similarly, Wilson asserts that the moral sense exists because all languages have modes of speech for expressing moral judgment.⁶

Conrad appears to be the only other scholar to note Wilson’s use of Reid in his understanding of the common law, pointing to Wilson’s conception of induction.⁷ Conrad argues that:

This “uninterrupted” pre-eminence at *law* [the common law] was, for Wilson, a historical fact; but much more important, it was a datum exemplifying an essential principle that transcended any of the accidental eventualities of politics or jurisprudence. This was the essential common-law principle itself.⁸

However, Conrad does not recognise the similarity with Reid’s method of testing first principles against the structure of language. Recognising this similarity or extended meaning reveals that Wilson, having identified consent as a foundational principle in the science of law, goes on to test it as a first principle.⁹ Marking consent as a Reidian first principle, for Wilson, locates it in the human constitution, which helps explain why he explicitly states it as an inalienable right in his radical expression of it in his Revolution Principle.

Wilson’s Revolution Principle, being an expression of his principle of consent, is also grounded in and intertwined with his Reidian conception of sovereignty. These principles of consent and sovereignty are intertwined in so far as the people’s consent is required because they are sovereign, and hence, the requirement of the people’s consent assumes and perpetuates their sovereignty.¹⁰ This is also the case in Wilson’s expression of consent in the Revolution Principle.

⁴ *IP*, 473.

⁵ *IP*, 472 (emphasis original).

⁶ See: Section, 3.3.

⁷ Conrad, “Common-Law,” 201-07.

⁸ Conrad, “Common-Law,” 201 (emphasis original).

⁹ Consent as a foundational principle in the science of law, see: Section, 4.1.

¹⁰ See: Section, 4.1.

Dennison similarly identifies the Revolution Principle as an implication of recognising the people's sovereignty, explaining that: "The people, because of their inherent sovereignty and because all governments must rest on consent, could change constitutions whenever and however they pleased."¹¹

Furthermore, Wilson refers to the intertwined principles of consent and human sovereignty, as well as the Revolution Principle (as an expression of them) as first principles in their own right. For instance, Wilson stated his consent principle as "the true origin of the obligation of human laws", just after explaining: "how important it is, carefully and patiently to examine a first principle".¹² Concerning human sovereignty Wilson explained that: "The dread and redoubtable sovereign, when traced to his ultimate genuine source, has been found, as he ought to have been, in the free and independent man", describing this as: "the first and fundamental principle in the science of government."¹³ Furthermore, Wilson described his Revolution Principle as: "the *vital* principle".¹⁴

First principles, according to Wilson in adherence to Reid, are self-evident to humans with common understanding, or the faculty of common sense, and are, by definition, unprovable via discursive reasoning.¹⁵ Wilson, using Reid's words, explains that the faculty of common sense, which allows a human to function in common life by providing the common understanding necessary, also enables him: "to discover self-evident truths concerning matters, of which he has distinct apprehension."¹⁶ However, Wilson recognised that disagreements can arise even concerning self-evident truths.¹⁷ Such a disagreement was at the heart of his contention with the Theory of Superiority and assertion of his principle of consent.¹⁸ Thus, Wilson continues to follow Reid by developing Reid's test (not

¹¹ Dennison, "Revolution Principle," 174.

¹² *WJW*, 1:99.

¹³ *WJW*, 1:25.

¹⁴ *WJW*, 1:17 (emphasis original).

¹⁵ Common sense judging first principles: *WJW*, 1:257. Compare with: *IP*, 433. First principles cannot be proven or demonstrated by reason: *WJW*, 1:274-75. Compare with: *IP*, 39.

¹⁶ *WJW*, 2:109. Compare with: *IP*, 426.

¹⁷ *WJW*, 1:275. Compare with: *IP*, 41.

¹⁸ Wilson's assertion that the Theory of Superiority is founded on unsound first principles: *WJW*, 1:20-25 & 1:98-99.

proof) of first principles to identify consent, which assumes and is grounded in human sovereignty, as a Reidian first principle.

Wilson explained to his audience how true first principles can be tested by paraphrasing Reid's third test of first principles:

The evidence arising from authority, as well as that arising from testimony, other circumstances being equal, becomes strong in proportion to the number of those, on whose voice it rests. An opinion generally received in all countries and all ages, acquires such an accumulation of authority in its favour, as to entitle it to the character of a first principle of human knowledge.¹⁹

As noted earlier, these generally received opinions are recorded and can be tested against the structure of language.²⁰ Or, as Wilson stated, paraphrasing Reid: "The universality of an opinion or sentiment may be evinced by the structure of language."²¹

According to Wilson, the structure of language serves this function, for the same reasons that Reid argued. First, like Reid, Wilson believed that: "language is the picture of human thoughts; and, from this faithful picture, we may draw certain conclusions concerning the original."²² Wilson also held like Reid that "languages were not invented by philosophers", but instead: "they were contrived by men in general".²³ Reid also understood language as "the effect of habit and custom", describing "custom" and "use" as "the arbiter of language", which Wilson adheres to as well, explaining in his Lectures that "custom" is "the arbitress of language".²⁴

This is to say that, like Reid, Wilson held that language is continually shaped or arbitrated by those who use it to accurately express their thoughts. Because of this, those language users are understood by Wilson (adhering to Reid) to implicitly

¹⁹ *WJW*, 1:97-98. Compare with: *IP*, 464-66.

²⁰ See: Sections, 3.2-3.

²¹ *WJW*, 1:122. Compare with: *IP*, 466.

²² *WJW*, 1:123. Compare with: *IP*, 466.

²³ *WJW*, 1:122. Compare with; *IP*, 194 & 539.

²⁴ Respectively: *Inq.*, 58; *IP*, 296 & 304; & *WJW*, 1:172. See also: Copenhaver, "Reid a Mysterian?" 463-64.

consent or agree to the modes of speech that comprise the structure of language through their continued use of them. Consequently, language users are also agreeing or consenting to the concepts that can be inferred from these modes of speech or are implicit in them. This is the case because if language users did not agree that these concepts were correct, they would not have created these modes of speech or continued to use them.

Hence, a concept that can be inferred from the structure of all languages illustrates near universal agreement among humanity that that concept is correct. Or, as Wilson concluded, following Reid: "The inference is satisfactory, that where all languages make a distinction, there must be a similar distinction in the universal opinion or sentiment."²⁵ This presents the structure of language as something akin to a dataset of near universal agreement on certain conceptions and propositions that can be used to test and infer first principles.²⁶ Wilson used this concept (directly quoting Reid) to identify a number of powers of the mind by their corresponding modes or forms of speech.²⁷ Thus, the extended meaning appears to be that Wilson was clearly familiar with Reid's method and adhered to Reid's concept that the structure of language contains the implicit consent or agreement of language users.

Wilson's conception of the common law is very similar to the structure of language because it is also based on and propagated via custom, and thus, contains the people's consent concerning the law. This extended meaning can begin to be seen in Wilson's explanation that: "A custom, that has been long and generally observed, necessarily carries with it intrinsick (sic) evidence of consent."²⁸ According to Wilson, this concept of consent can be found in the common law in: "The same principles, which establish it, change, enlarge, improve, and repeal it", which he holds are: "reception, approbation, custom, long and established."²⁹ In Wilson's understanding of the common law, if the people did not agree with a certain law, that law, having lost the people's consent, would no longer be propagated as part of the common law. Alternatively, if a law continues to be

²⁵ *WJW*, 1:122-23. Compare with: *IP*, 56.

²⁶ See: Section, 3.2.

²⁷ *WJW*, 1:232. Compare with *IP*, 56.

²⁸ *WJW*, 1:205.

²⁹ *WJW*, 2:38. See also: *WJW*, 1:99-100.

used and propagated as part of the common law, Wilson believed that this was because the people agreed with this law and in doing so implicitly consented to it.

This presents the common law as a dataset of agreement or consent on certain concepts and propositions concerning the law. As Wilson explicitly states, the common law: “contains the common dictates of nature, refined by wisdom and experience”.³⁰ The extended meaning is that this characteristic of the common law is analogous to Wilson and Reid’s similar conceptions of the structure of language as a repository of near universal agreement on propositions concerning the common experience of the human condition. Thus, in my judgment, Wilson held that because the common law, like the structure of language, represents the people’s general agreement on what is true concerning the law, the common law can also, like the structure of language, be used as a dataset to test and infer first principles.

Hence, Wilson agrees with Blackstone that: “the common law of England is a customary law”³¹, but as Conrad explains: “Despite Blackstone’s acknowledgment that ‘custom’ bears ‘internal evidence’ of ‘voluntary consent,’ Wilson surmised that Blackstone was not at all concerned with inquiring into the meaning of ‘custom’ beyond its significance as *precedent*; thus, Blackstone had no regard to or for custom as an institution of *social* authority.”³² This makes the common law to Wilson more than mere precedence (as Blackstone would have it), but rather a repository of general human agreement on concepts and propositions concerning law.

Wilson also attempted to illustrate that the common law, like the structure of language, stretches across ages and nations, and is not simply an English tradition, further presenting it as an appropriate substitute in Reid’s third test. Wilson traced this conception of customary law all the way back to the Greeks. He claims that: “The term *common law* is not confined to the law of England”, citing Euripides and Plato’s mentions of the common law as well as the history of the British Isles back to the Britons as having been: “constantly governed by the

³⁰ WJW, 2:43.

³¹ WJW, 1:100.

³² Conrad, “Common-Law,” 202 (emphasis original).

same customs, by which it is governed at present.”³³ Furthermore, Wilson identified consent as the foundation of the common law in a quotation of Justinian, which he translated thus: “The unwritten law supervenes upon the approbation of usage; for long customs, approved by the consent of those who use them, acquire the qualities of a law.”³⁴

This description of the common law as an institution that stretches across ages and nations, presents the common law as sharing another important characteristic with the structure of language. This further suggests the extended meaning, that Wilson is substituting the common law for the structure of language to adapt Reid's third test, so it can be used in political theory to test and infer first principles of governance.

However, unlike the structure of language, which Reid and Wilson saw as evidence of universal agreement on individual first principles through the intrinsic consent of custom, Wilson identified *the consent* itself as the first principle marked by the common law. Wilson explained that what is common across all the traditions and iterations of common law is that: “their obligatory force arises not from any consideration of that kind [its historical lineage], but from their free and voluntary reception in the kingdom.”³⁵ Wilson explained further that: “In the introduction, in the extension, in the continuance of customary law, we find the operations of consent universally predominant.”³⁶

It is the way in which common law is promulgated that Wilson found particularly helpful in elucidating that: “the law has been introduced by common *consent*; and that this consent rests upon the most solid basis—experience as well as opinion.”³⁷ Thus, it is the consent, through which it is continually adapted, refined, and most importantly authorised, that Wilson sees as the principle to be

³³ Respectively: *WJW*, 2:4 & 5 (emphasis original). Wilson's international history of the common law, see: *WJW*, 2:3-63.

³⁴ *WJW*, 2:17. Concerning the Greek common law, see: Bederman, *Classical Foundations*, 160.

³⁵ *WJW*, 2:6.

³⁶ *WJW*, 1:100.

³⁷ *WJW*, 1:64.

drawn from the datum of the common law. This principle, Wilson believes: “points to the strongest characteristic (sic) of liberty, as well as of law.”³⁸

Furthermore, Wilson stated explicitly that general principles can be inferred from the common law by referring to Bacon through a close paraphrase of Reid:

In all sciences, says my Lord Bacon, they are the soundest, that keep close to particulars. Indeed a science appears to be best formed into a system, by a number of instances drawn from observation and experience, and reduced gradually into general rules; still subject, however, to the successive improvements, which future observation or experience may suggest to be proper. The natural progress of the human mind, in the acquisition of knowledge, is from particular facts to general principles. This progress is familiar to all in the business of life; it is the only one, by which real discoveries have been made in philosophy; and it is the one, which has directed and superintended the instauration of the common law. In this view, common law, like natural philosophy, when properly studied, is a science founded on experiment.³⁹

It appears from this quotation that Wilson viewed the individual legal cases that comprise the common law as experiments that provide facts and observations from which general principles can be inferred.

Thus, Conrad accurately recognises that Wilson “took his Baconianism” via Reid and saw the common law functioning as a dataset that particularly exemplified the “essential common-law principle”.⁴⁰ Wilson stated this essential principle explicitly as being: “consent given after long, approved, and uninterrupted experience.”⁴¹ Therefore, in my interpretation, Wilson is inferring the principle of consent from the evidence provided by the common law in much

³⁸ WJW, 1:64.

³⁹ WJW, 2:43-44. Compare with: *Inq.* 11-12.

⁴⁰ Respectively: Conrad, “Common-Law,” 203 & 201.

⁴¹ WJW, 1:200. See also: Conrad, “Common-Law,” 201-02.

the same way that he saw Reid inferring first principles from the evidence of the modes of speech that comprise the structure of language.

Thus, as I have illustrated, Conrad correctly argues that Wilson understood the common law as providing data, from which consent could be inferred as the foundational authorising principle of the common law.⁴² However, Conrad does not fully elucidate the extended meaning, which, as I have illustrated, is that Wilson was claiming that he inferred his principle of consent (as the foundation of his Revolution Principle) from the dataset of the common law *through* his translation of Reid's third test of first principles into his political theory. Recognising this, reveals that Wilson was identifying and testing consent as the foundational authorising first principle of law and governments generally.

It is important to note that Wilson does not explicitly assert that there is any analogy between the structure of language and the common law nor that he is using it to translate Reid's third test of first principles. Hence, recognising this analogy and translation constitutes part of the extended meaning of Wilson's theory. Nevertheless, it is implicit in Wilson's theory. This can be seen in his description and use of the common law in a manner analogous to the structure of language in terms of its function in Reid's third test of first principles. Particularly, this implicit analogy and translation is revealed in Wilson's description of the common law as being arbitrated by custom, implying consent and agreement; stretching across ages and nations; and containing the dictates of nature. It is also evident in Wilson's use of the common law, as a data set of agreement across ages and nations, to infer his principle of consent.

These points reveal the clear and significant similarity between Wilson's use and conception of the common law and Reid's conception of the structure of language and use of it in his third test of first principles. Moreover, Wilson was clearly familiar with Reid's conception and use of the structure of language in this manner. Therefore, in my judgment, this evidence strongly indicates that Wilson's description and use of the common law should be understood as Wilson substituting the common law for the structure of language in Reid's third test of first principles, effectively translating it into political theory. And, importantly,

⁴² Conrad, "Common-Law," 201-3.

that he is doing so in order to test and identify “consent” as a first principle of governance.

Recognising Wilson’s development of Reid on this point is important because it helps explain the radical extent of Wilson’s Revolution Principle as an expression of his principle of consent. As I have explained, Wilson’s conception of human sovereignty is based on what he believes are facts or first principles of human nature (liberty, common sense, and the moral sense) which necessitates the people’s consent to be governed by laws.⁴³ And, that because the people’s consent is required, the people, by Wilson’s definition, retain their original sovereignty after forming a government.⁴⁴ Thus, it is evident that Wilson argued that consent is also a first principle, and that as such, it is located within the human constitution, which justifies—and thus explains—his recognition of it as a universal inalienable right of humanity, particularly as expressed in terms of his Revolution Principle.

This explicitly extends the requirement of the people’s consent from the formation of a government and the establishment of a system of government, to the continuation of a government and a system of government. As Wilson explained in the ratification debate in Pennsylvania: “the people are superiour (sic) to our constitutions”, possessing, “over our constitutions, control in *act*, as well as in right.”⁴⁵ In his Lectures Wilson presents what he appears to understand as a logical implication:

By the voluntary act of the individuals forming the nation, the nation was called into existence: they who bind, can also untie: by the voluntary act, therefore, of the individuals forming the nation, the nation may be reduced to its original nothing.⁴⁶

The context of this quotation is Wilson’s discussion of the differences between the law of nature and law of nations as it concerns the question of suicide. However, this quotation makes quite clear that it is within the power of the people to abolish their nation, which logically implies their government and constitution as well.

⁴³ See: Sections, 3.3 & 4.1.

⁴⁴ See: Section, 4.1.

⁴⁵ *DSSC*, 2:432 (emphasis original).

⁴⁶ *WJW*, 1:157. See also: *WJW*, 1:418; *DHRC*, 2:383.

Moreover, Wilson presents this power as part of the law of nations, implying that it is a *natural* right.

Thus, according to Wilson, the people exercising their sovereign power to form a nation, best illustrates that that sovereign power is original to them and that they retain it in perpetuity. In the ratification debates, Wilson also drew out the necessary implications of this retained power, stating that: "The consequence is, that the people may change the constitutions, whenever and however they please. This is a right, of which no positive institution can ever deprive them."⁴⁷

From Wilson's perspective the act of popular ratification is an important demonstration of the people's sovereign power to create a government, which carries with it the implication that those who had the power to create the government have the power to change or unmake it. In essence, Wilson's Revolution Principle explicitly moved consent beyond a one-time agreement to laws, the establishment of a system of government, or individual governments, to a continuing consent of the people whereby they could change or abolish any or all of these components of governance. In my interpretation, this perpetual consent is required, according to Wilson, because the people are perpetually sovereign over their government as a first principle, or fact, grounded in the common experience of the human condition, and thus, an inalienable right.

This aids in explaining Knapp's argument that Wilson saw and presented his Revolution Principle as: "an immutable, self-evident first principle", and as markedly different to Locke's contract theory and his Revolution Principle.⁴⁸ Wilson admits that "Locke seems to be the only one that pointed towards even the theory of this great truth", that sovereignty *remains* in the people.⁴⁹ However, Wilson's statement implies that not only did Locke not arrive at this truth, but that Wilson is distancing his theory and Revolution Principle from Locke's. Locke's theory held that the people gave up their sovereignty to form a government through a contract.⁵⁰ Given this, Locke's revolution principle required a breach of this contract to devolve sovereignty back to the people, which the people could

⁴⁷ DSSC, 2:432.

⁴⁸ Knapp, "Law's Revolution," 244.

⁴⁹ DHRC, 2:472.

⁵⁰ Amar, "Consent of the Governed," 463-64; Dennison, "Revolution Principle," 175.

use to realise a revolution in governance. However, this revolution could only be actualised through armed revolt, because Locke's principle is grounded in the physical might of the majority.⁵¹

Starkly contrasting with this, Wilson argues that the people could exercise their sovereign inalienable right to radically change their constitution and with it any aspect of their governance *at any time and for any reason* through *peaceful* democratic means. As Wilson noted in his Lectures, he held that: "A majority of society is sufficient for this purpose".⁵² Amar recognises this as well and argues at length in his article, "The Consent of the Governed: Constitutional Amendment outside Article V", that a simple majority in Wilson's interpretation of the Constitution and even in the present is sufficient to legally change or abolish the Constitution.⁵³ Thus, Wilson's Revolution Principle inscribes revolution into law and governance, effectively democratising, legalising, and civilising it.⁵⁴ The Revolution Principle does so by recognising that the people possess the inalienable as well as legal right and power to democratically affect a radical revolution, rendering revolution peaceful and progressive, and making armed revolt obsolete.

Furthermore, Wilson explains that because the government of the United States is founded on the Revolution Principle it is the inverse of British Government. In Britain the British Parliament was understood as sovereign either in terms of Locke's contract theory or the more severe Theory of Superiority presented by Pufendorf and Blackstone.⁵⁵ Wilson explained in his Lectures that: "Here [the US], the people are masters of the government; there [Great Britain], the government is master of the people."⁵⁶ He clarifies this later in his lecture comparing the constitutions of United States and Great Britain. There Wilson explains one important difference between the constitutions is that in the United

⁵¹ Denison, "Revolution Principle," 175; Amar, "Consent of the Governed," 463-64; John Dunn, *The Political Thought of John Locke: An Historical Account of the Argument of the 'Two Treatises of Government'* (Cambridge: Cambridge University Press, 1969), 177-182.

⁵² *WJW*, 1:418.

⁵³ Particularly see: Amar, "Consent of the governed," 457-58. See also: Knapp, "Law's Revolution," 233 & 243-44; Section, 4.1.

⁵⁴ Knapp, "Law's Revolution," 305-07; Amar, "Consent of the Governed," 464 & 476; Dennison, "Revolution Principle," 174.

⁵⁵ *WJW*, 1:426. See also: *DHRC*, 2:471-72. See also: Section, 4.1.

⁵⁶ *WJW*, 1:426.

States: "The supreme power is in them", the people, and even after a government is formed and in operation, "the supreme power still remains" with the people.⁵⁷ Thus, Wilson is clear: in the United States it is the people who are sovereign and remain so, not a government as in Britain, as proposed by Pufendorf, Blackstone, and Locke in varying degrees.

Therefore, in my interpretation, part of the extended meaning of Wilson's conception of government and Revolution Principle is that they are substantially different from Locke's. Wilson's Revolution Principle does not require armed revolt premised on the physical might of the majority, nor the pretext of a broken contract because he does not conceive of government as sovereign nor constituted via a contract as Locke does. Instead, Wilson's Revolution Principle is the inverse. It functions through peaceful democratic means because it is grounded on the people's perpetual sovereignty, or mastery over their government, exercised through their consent to maintain, change, or replace any aspect of their governance at will, as their inalienable and legal right.

However, Wills also argues that Wilson's Revolution Principle: "was the teaching of Rousseau, who said the people could not alienate their sovereignty even to the social contract itself".⁵⁸ He further admits that Wilson took the idea of sovereignty further than Rousseau.⁵⁹ Wills' observations are plausible, although they do not explain the extensiveness of Wilson's principle nor how Wilson developed it beyond Rousseau's conception of sovereignty. Even if Wills is correct, Wilson's use and development of Reid's philosophy would still explain how Wilson grounded and justified his Revolution Principle, and with it, the Revolution Principle's extensiveness. This would still explain how Wilson developed the conception of sovereignty beyond Rousseau as Wills observes. Thus, Wills' proposition, whether correct or overstated, does not change the central and foundational role of Wilson's use and development of Reid's philosophy to identify, justify, and ground his Revolution Principle.

⁵⁷ WJW, 1:439. Concerning Wilson's description of the people as sovereign see also: *Federal Convention*, 1:180; DHRC 2:472, 2:473, 2:497, & 2:559; *Chisholm v. Georgia*, 454 & 458; WJW, 1:17, 1:21, 1:25, & 1:418.

⁵⁸ Wills, "New Meaning for Sovereignty," 105.

⁵⁹ Wills, "New Meaning for Sovereignty," 104.

Thus, in my interpretation, this is *Wilson's* Revolution Principle, but it is deeply inflected with Reid's philosophy. This deep inflection is a significant part of its extended meaning. It can be seen in Wilson grounding his conception of popular sovereignty in Reid's conception of the human capacity for self-government and establishing his conception of consent as a first principle through a translation and adaptation of Reid's third test of first principles. This extended meaning helps explain the Revolution Principle's radically extensive nature and Wilson's conception of it as an inalienable right because it is the expression of these two intertwined first principles that are grounded in the human constitution or the common dictates of nature.

The extensive nature of this principle and its differentiation from Locke's contract theory will only become more apparent in looking at how Wilson used it to answer almost any critique brought against the US Constitution. This will further illustrate the central and foundational role of Wilson's Reidian Revolution Principle in his Democratic Political Theory and his interpretation of what would become the US Constitution.

5.2 - Obstacles to Ratification: Critiques and interpretations of the proposed Constitution

In the simplest terms, the debate over the Constitution was between the Federalists who supported the ratification of the proposed Constitution and the Anti-federalists who critiqued it to varying degrees.⁶⁰ As noted, there have been several attempts to characterise these two groups, with Gordon Wood proposing that it was largely a debate between aristocratic Federalist and democratic Anti-Federalists.⁶¹

However, this was a highly complex and broad debate as intimated in my introduction chapter 1.⁶² It ranged through the pages of newspapers and pamphlets as well as the official conventions called in each state to discuss and

⁶⁰ Maier, *Ratification*, xv & 92-95; Heyburn, "Morris and Wilson," 170; Edling, *In Favour of Government*, 9.

⁶¹ See: Section, 2.1.

⁶² See: Section, 1.2.

debate what the Constitution meant, what its consequences would be, and whether it should be ratified.⁶³ While these debates were often specific to the concerns of local communities in the different states, there were some general similarities in the critiques and problems raised against the proposed Constitution.

There was a general concern among the Anti-federalists that the Constitution was an aristocratic scheme put forward by the Federalists, including Wilson, which lends some support to Gordon Wood's claim.⁶⁴ The Anti-Federalists pointed to the Senate and their understanding of the theory of mixed government as evidence of the Federalists' aristocratic plans.⁶⁵ The resemblance of the proposed Constitution to a mixed government raised fears or at least arguments that the Federalists were attempting to implement something akin to an aristocracy and a monarchy required for such a system to function. Bederman explains that: "the Antifederalist forces would ruthlessly exploit the classical rhetoric and exemplars of mixed government as a way to portray the Constitution as a vehicle for imposing an oligarchy on the country."⁶⁶ Bederman illustrates his argument by pointing to John Adams' use of this classical rhetoric as leading to accusations that he was: "a secret advocate of hereditary monarchy and a landed aristocracy."⁶⁷

Madison's arguments in the Federalist Papers did not dampen, but likely exacerbated these fears. As Knapp explains, Madison reinvented the idea of republicanism, arguing in Federalist 63 that the Constitution would create the: "first authentic republic by effectuating through representation in an extended sphere the '*total exclusion of the people in their collective capacity from any share*' in the national government."⁶⁸ According to Knapp, Madison, looking to the theory of mixed government, was concerned with illustrating that the proposed

⁶³ For a detailed account of this complex debate, see: Maier, *Ratification*.

⁶⁴ Cornell, *Other Founders*, 28, 42, 100, 119, & 229; Gordon Wood, *Creation*, 488; Bederman, *Classical Foundations*, 75-76, & 139.

⁶⁵ Bederman, *Classical Foundations*, 75-76.

⁶⁶ Bederman, *Classical Foundations*, 76.

⁶⁷ Bederman, *Classical Foundations*, 76.

⁶⁸ Knapp, "Law's Revolution," 214 (emphasis original). Madison's reinvention of republicanism, see: Knapp, "Law's Revolution," 218; James Madison, "No. 63: The Senate Continued," in *The Federalist Papers* (New York: Open Road Integrated Media, 2020).

Constitution could: “meet the threat of democratic tyranny through various structural mechanisms”, in essence through excluding the people by pitting: “liberty *against* itself in order to save liberty *from* itself.”⁶⁹ Madison believed that the people could not be trusted to govern themselves effectively in a manner that secured their liberties.⁷⁰

In his interpretation, Madison held that the Constitution presented a mechanism to exclude the people and filter possible representatives, allowing only the best sort to rise to positions of power, and thus, save the people from themselves by securing their liberties beyond their reach.⁷¹ Madison’s reinvention of republicanism through the theory of mixed government contained more than a hint of aristocratic proclivities. Madison’s position suggests that the Anti-Federalists’ fears and concerns were not entirely unfounded, nor is Gordon Wood’s thesis. However, Madison was not the only Federalist participating in these debates, nor was his interpretation the only one available to the people to choose from.

This fear was heightened by the extensive powers proposed to be given to the Federal government, which raised two central problems that threatened to prevent the ratification of the Constitution.⁷² The first and most important was the problem of divided sovereignty, which Gordon Wood describes as the: “the most powerful obstacle to the acceptance of the new Constitution”, and one that placed the debate in abstract theoretical terms.⁷³ The second was the lack of a bill of rights that made the Constitution look like an attempt to remove the people’s liberty, at worst, or a grievous oversight at best.⁷⁴ Both problems were

⁶⁹ Knapp, “Law’s Revolution,” 220 (emphasis original).

⁷⁰ Knapp, “Law’s Revolution,” 216-217, & 220.

⁷¹ Knapp, “Law’s Revolution,” 215-217, 220, & 302; Bederman, *Classical Foundations*, 90-92.

⁷² Edling, *In Favour of Government*, 9 & 219; Gilhooley, “Founders Themselves,” 78; Cornell, *Other Founders*, 28 & 229; Gordon Wood, *Creation*, 472 & 537; Bederman, *Classical Foundations*, 45-46; Wilmarth, “Elusive Foundations,” 181; Lynch, *Negotiating the Constitution*, 4.

⁷³ Gordon Wood, *Creation*, 529. See also: Gordon Wood, *Creation*, 527-31. Concerning theoretical terms see: Gordon Wood, *Creation*, 345 & 354.

⁷⁴ Zink, “Bill of Rights,” 261-62; Gordon Wood, *Creation*, 537 & 543; Hassel, “James Wilson,” 24, Wilmarth, “Elusive Foundations,” 170 & 174; Levy, *Framers’ Constitution*, 153-54, & 157; Cornell, *Other Founders*, 28.

based upon understanding the Constitution in terms of a contract theory of government and likely Locke's specifically.

The problem of divided sovereignty, according to Bailyn, was that: "Everyone knew that two or more sovereign governments could not coexist in the same territory: sovereignty in its nature was absolute and exclusive."⁷⁵ As Amar explains, the general view in the 1780s was that: "Divided sovereignty was seen as a logical contradiction, a 'solecism.'"⁷⁶ This raised the question: Which government would be sovereign, the state governments or the newly created federal government? This aroused the general American fear of centralised power that made the proposed Constitution appear to be a plot to create a consolidated national government, effectively annihilating the states.⁷⁷ Gordon Wood explains that: "What gave substance to this Antifederalist claim that the proposed federal government would inevitably end in a consolidation was the conventional eighteenth-century theory of legislative sovereignty."⁷⁸ In essence, this fear was based on understanding the proposed Constitution in terms of Locke's contract theory. From this perspective the people believed that they would be consenting to a contract that would institute a sovereign national government at the expense of the states and possibly the people's liberty.

Madison attempted to address this problem by asserting that sovereignty could indeed be divided. As Amar explains, as far as he can tell: "Madison was the only figure who believed", that sovereignty could be divided with the majority seeing it as contradiction in terms.⁷⁹ It appears that Madison's attempted solution did not gain much support. It seems likely that it was at best confusing to his audience and at worst smacked of an aristocratic plot to consolidate the states under a national government.

⁷⁵ Bailyn, *Begin the World Anew*, 115. See also: *DHRC*, 2:471; Gordon Wood, *Creation*, 528; Amar, "Consent of the Governed," 507.

⁷⁶ Amar, "Consent of the Governed," 507.

⁷⁷ Gordon Wood, *Creation*, 527-531; Gordon Wood, *A History*, 151; Edling, *In Favour of Government*, 9 & 219; Gilhooly, "Founders Themselves," 78; Cornell, *Other Founders*, 28 & 229; Bederman, *Classical Foundations*, 45-46, Wilmarth, "Elusive Foundations," 181; Lynch, *Negotiating the Constitution*, 4; *DHRC*, 2:559-60.

⁷⁸ Gordon Wood, *Creation*, 527.

⁷⁹ Amar, "Consent of the Governed," 507.

The lack of a bill of rights in the proposed Constitution also provoked concerns among the Anti-federalists. They worried that the new federal government, after consolidating the states, would run roughshod over their liberties with its extensive powers and no bill of rights to safeguard the people's liberty.⁸⁰ The concept that an enumeration of rights was needed was again based upon Locke's and most contract theories in general. From this perspective a bill of rights is necessary to limit the sovereign government's authority in order to protect the people's liberties.⁸¹

In response, the Federalists, including Madison, followed Wilson's lead on this subject.⁸² They similarly argued that the Constitution was an enumeration of powers, and that a bill of rights would imply that the Constitution was instead forming a sovereign government as the people feared.⁸³ The concern was that this implication would provide a pretext for the government to claim more powers than it was initially given.⁸⁴ Wilson's position on the bill of rights goes into more depth than this response and goes beyond it.⁸⁵ Nevertheless, this illustrates the problem that a lack of a bill of rights posed to the ratification of the Constitution and that it was rooted in viewing the Constitution through the lens of Locke's contract theory.

Thus, the proposed Constitution confronted a difficult road, and its ratification was far from certain. It would seem also that its meaning, what it would entail, and what it would look like in practice, was being worked out collectively in the process of the debate as Gordon Wood was seen earlier to suggest.⁸⁶ The major points of contention concerned the theoretical problem of

⁸⁰ Zink, "Bill of Rights," 257, & 261-262; Knapp, "Law's Revolution," 204; Wilmarth, "Elusive Foundations," 170 & 173-175; Hassel, "James Wilson," 24.

⁸¹ Zink, "Bill of Rights," 256.

⁸² Knapp, "Law's Revolution," 241; Gordon Wood, *Creation*, 539.

⁸³ Zink, "Bill of rights," 256; Knapp, "Law's Revolution," 242-43; Wilmarth, "Elusive Foundations," 171-72; Gordon Wood, *Creation*, 539.

⁸⁴ Knapp, "Law's Revolution," 204, & 241-43; Zink, "Bill of Rights," 253; Conrad, "Common-Law," 217-18; Amar, "Of Sovereignty and Freedom," 1490; Wilmarth, "Elusive Foundations," 170-72.

⁸⁵ Zink, "Bill of Rights," 258; Knapp, "Law's Revolution," 242-43.

⁸⁶ Gordon Wood, *Creation*, 564. See also: Section, 4.3.

divided sovereignty and the lack of a bill of rights. Both problems arose from understanding the proposed Constitution in terms of Locke's contract theory.

Underlying these problems was the collective anxiety that the Constitution was an aristocratic scheme. To many it looked too similar to an example of mixed government and had too much power, threatening the sovereignty and existence of the states. Madison's arguments did little to address these fears and possibly exacerbated them, which to some degree supports Gordon Wood's claim that the Federalists are properly distinguished by their aristocratic bent. However, Wilson's responses to these central problems and fears, as a leading Federalist, presents a very different understanding of the proposed Constitution.

5.3 - The Revolution Principle in the Ratification Debates: Wilson's panacea

Wilson was not immune to the general suspicion that the Federalists were harbouring aristocratic proclivities, despite his consistent and ardent support of democracy in the Constitutional Convention.⁸⁷ The records of the convention were kept secret, leaving the people ignorant of Wilson's advocacy of democracy.⁸⁸ It would not be until the debates over reforming the Pennsylvania State Constitution that Wilson would fully overcome these suspicions by breaking with his former Federalist allies to side with former Anti-federalists to support a proportional and directly elected Senate for the state of Pennsylvania.⁸⁹ Counter to the people's suspicions, Knapp explains: "Wilson had an unwavering belief in the virtues of popular self-government", and that: "a close examination of Wilson's speeches and writings reveals a singular democratic radicalism lying at the heart of his constitutionalism and jurisprudence".⁹⁰

⁸⁷ Knapp, "Law's Revolution," 190; Ewald, "Drafting," 907-08; Seed, "Democratic Ideas," 3 & 14; Cornell, *Other Founders*, 41-42; Pederson, "Lost Founder," 282-83.

⁸⁸ Ewald, "Scottish Enlightenment," 1110-11; Ewald, "Drafting," 915; Levy, *Framers' Constitution*, 1; Pederson, "Lost Founder," 287.

⁸⁹ Seed, "Democratic Ideas," 17-18; Knapp, "Law's Revolution," 252; Wilmarth, "Elusive Foundations," 154; Charles Smith, *James Wilson*, 303.

⁹⁰ Respectively: Knapp, "Law's Revolution," 191 & 190.

At the heart of Wilson's constitutionalism is his Reidian radically democratic Revolution Principle, which he presents explicitly and repeatedly in the ratification debates. Knapp also recognises this explaining that: "[Wilson] almost always worked his way back round to this fundamental point, what became the centerpiece of his constitutional theory: the people's revolutionary right to alter or abolish their government or constitution at any moment, for any reason."⁹¹ Indeed, for Wilson, his Revolution Principle was a "*panacea*" for all the obstacles and concerns that confronted the proposed Constitution.⁹²

From Wilson's perspective the Revolution Principle addressed the problem of divided sovereignty, the lack of a bill of rights, and the fear that the proposed Constitution was a contract that would create a sovereign mixed government at the expense of the states' sovereignty. It could address these problems because Wilson significantly believed and boldly asserted that it was the foundational principle of the proposed Constitution, locating it in the Preamble and the requirement of popular ratification.

In the Pennsylvania Ratifying Convention, called to decide whether the proposed Constitution should be consented to and authorised, Wilson addressed the Anti-federalists' fears that the proposed Constitution would form a mixed government. There Wilson asserted of the proposed Constitution, that: "In its principle, it is purely democratical (sic)."⁹³ A few paragraphs earlier in his speech Wilson defined: "a republic or a democracy" as a form of government where: "the people at large *retain* the supreme power, and act either collectively or by representation."⁹⁴

While Wilson acknowledged that this Constitution looks similar to a mixed government, such as the "British government", it was not.⁹⁵ Instead, Wilson argued that what he calls the democratic principle is, in this Constitution: "applied in different forms, in order to obtain the advantages, and exclude the

⁹¹ Knapp, "Law's Revolution," 243. See also: Dennison, "Revolution Principle," 174.

⁹² DSSC, 2:433 (emphasis original).

⁹³ DSSC, 2:434. See also: DHRC, 2:497.

⁹⁴ DSSC, 2:433 (emphasis original). Wilson also referenced Montesquieu's similar definition of Republican government: DHRC, 2:497.

⁹⁵ DSSC, 2:434.

inconveniences, of the simple modes of government.”⁹⁶ As Gordon Wood explains: Wilson’s principle “made nonsense of the age-old theory of mixed or balanced government in which monarchy, aristocracy, and democracy were set against one another.”⁹⁷ This further resonates with Yoo’s argument that Wilson clearly adhered to and conceived of the Constitution in terms of the doctrine of the separation of powers and not Madison’s mixed government theory.⁹⁸

Wilson did not let this assertion rest simply on his word and argued that this democratic principle was located in the Preamble and the requirement of popular ratification. He made it clear that this principle was in fact his Revolution Principle. Shortly after his declarations concerning the democratic nature of the proposed Constitution stated above, Wilson asserted that the: “the leading principle in the politics, and that which pervades the American constitutions, is, that the supreme power resides with the people”.⁹⁹ Referencing the Preamble of the Constitution, Wilson continued, asserting that this principle pervades the Constitution, explaining that:

It is announced in their [the people’s] name, it receives its political existence from their authority—they ordain and establish. What is the necessary consequence? Those who ordain and establish have the power, if they think proper, to repeal and annul.¹⁰⁰

According to Wilson this foundational principle, which permeates the American constitutions, is also stated at the outset of the proposed national Constitution. It recognised that the people retained their sovereign power, which they used to establish the Constitution (alluding to the requirement of popular ratification), meaning that they could also use that power to change or repeal the Constitution at will.

It is particularly the requirement of popular ratification that for Wilson located his principle in the Constitution and realises it because it was the Revolution Principle in practice. Wilson explained it is: “By their [the people’s]

⁹⁶ *DSSC*, 2:434.

⁹⁷ Gordon Wood, *A History*, 162.

⁹⁸ See: Section, 4.3.

⁹⁹ *DHRC*, 2:383.

¹⁰⁰ *DHRC*, 2:383.

FIAT”, that the Constitution will become of “value and authority” or not.¹⁰¹ It is the people’s consent that gives the document its authority or denies it. Moreover, in this instance, if the people do ratify the proposed Constitution they would be at once repealing one constitution and instituting another. Thus, in my interpretation, to Wilson’s gratification, popular ratification would be a demonstration of the radical extent of the Revolution Principle: that the people retained their sovereign power over their government in practice as well as in theory.¹⁰²

However, while Wilson asserted the democratic nature of the proposed Constitution and its radically democratic principle, he did admit that the Senate was a less than ideal compromise. He agreed with his opposition that the powers were not distributed entirely appropriately in the Senate, appearing to imply that it does resonate a little too closely with a mixed government.¹⁰³ While Wilson was clear in the Constitutional Convention that he disagreed with the Senate’s mode of representation, in the Pennsylvania Ratifying Convention he only suggested this by explaining that the Senate required a more “*immediate* degree of responsibility”.¹⁰⁴ However, he also explained to the Pennsylvania Ratifying Convention that: “Though the Senate was not a favorite (sic) of mine, as to some of its powers, yet it was a favorite (sic) with a majority in the Union; and we must submit to that majority, or we must break up the Union.”¹⁰⁵ In something approaching irony, Wilson’s support for majority rule led him to support the majority’s decision not to practise strict majority rule and the less than ideal Senate generally.

However, Wilson possibly believed or hoped that through his Revolution Principle the issues with the Senate might be rectified. Addressing the Pennsylvania Ratifying Convention, he made this general possibility clear:

The truth is, that, in our governments, the supreme, absolute, and uncontrollable power *remains* in the people. As our constitutions are

¹⁰¹ *DHRC*, 2:484 (emphasis original).

¹⁰² Amar, “Consent of the Governed,” 474.

¹⁰³ *DHRC*, 2:479-80 & 2:489-92.

¹⁰⁴ *DHRC*, 2:491-92 (emphasis original).

¹⁰⁵ *DHRC*, 2:480.

superiour to our legislatures, so the people are superiour to our constitutions. Indeed, the superiority, in this last instance, is much greater; for the people possess, over our constitutions, control in *act*, as well as in right.¹⁰⁶

He furthermore made it clear that this is an inalienable right of which “no positive institution can ever deprive them”, as seen earlier.¹⁰⁷ This principle made revolution peaceful and progressive, according to Wilson, which he believed led to “improving the knowledge of government, and increasing the happiness of society and mankind.”¹⁰⁸

Wilson appears to imply his hope, that the Revolution Principle will be used to rectify the issues with the Senate, when he states that the Senate is not perfect: “But this will not be *always* the case.”¹⁰⁹ It is difficult to tell if this hope was exactly what Wilson was implying. He had to tread a fine line between transparency, concerning his own issues with the proposed Senate, and the rhetoric of advocacy. However, his general hopes for the Senate were partially realised in the Seventeenth Amendment that made senators more directly responsible to their constituents.¹¹⁰

The Revolution Principle also addressed the issue of the lack of an enumeration of rights, according to Wilson. He asserted that such an enumeration would: “be not only unnecessary, but preposterous and dangerous.”¹¹¹ Wilson argued this point by comparing different forms or theories of governance:

There are two kinds of government; that where the general power is intended to be given to the legislature, and that where the powers are particularly enumerated. In the last case, the implied result is, that nothing more is intended to be given, than what is so enumerated, unless it results from the nature of the government itself. On the other hand, when general legislative powers are given, then the people part

¹⁰⁶ *DSSC*, 2:432 (emphasis original).

¹⁰⁷ *DSSC*, 2:432.

¹⁰⁸ *DSSC*, 2:433.

¹⁰⁹ *DHRC*, 2:492 (emphasis original).

¹¹⁰ U.S. Const. Amend. XVII.

¹¹¹ *DHRC*, 2:388.

with their authority, and on the gentleman's principle of government, retain nothing. But in a government like the proposed one, there can be no necessity for a bill of rights. For, on my principle, the people never part with their power.¹¹²

Continuing his argument, Wilson explained that: "The consequence is, that an imperfect enumeration would throw all implied power into the scale of the government; and the rights of the people would be rendered incomplete."¹¹³

Wilson's argument was that in a government founded upon his Revolution Principle a bill of rights is unnecessary and contrary to that principle.¹¹⁴ According to Wilson, adding an enumeration of rights would imply that the government created by the Constitution, would be of the opposite kind in his comparison in the quotation above. It would intimate that the people had parted with their sovereign authority, providing the government pretext for assuming more power than delegated to it.¹¹⁵ Instead, under a government based upon his Revolution Principle, Wilson believed that to any suggestion of a bill of rights, the sovereign people can simply respond: "We reserve the right to do what we please."¹¹⁶

Wilson's most forceful and consistent assertion of his Revolution Principle was in response to the problem of divided sovereignty and the underlying fear that the states would lose their sovereignty and be consolidated into the national government.¹¹⁷ Appearing to expect the question, Wilson stated in the convention: "The secret is now disclosed, [...] that the boasted state sovereignties will under this system be disrobed of part of their power."¹¹⁸ Wilson also recognised and agreed with the underlying theoretical problem of divided sovereignty that this

¹¹² DHRC, 2:470. See also: DHRC, 2:387-89.

¹¹³ DHRC, 2:388.

¹¹⁴ Knapp, "Law's Revolution," 241-43; Zink, "Bill of Rights," 255-57; Levy, *Framers' Constitution*, 153-54; Gordon Wood, *Creation*, 539-40.

¹¹⁵ Zink, "Bill of Rights," 253, & 256-57; Knapp, "Law's Revolution," 241-43; Levy, *Framers' Constitution*, 153-54 & 196; Wilmarth, "Elusive Foundations," 171-72.

¹¹⁶ DHRC, 2:389.

¹¹⁷ DHRC, 2:559-60.

¹¹⁸ DHRC, 2:448.

concern revealed, stating that: "We are told, that there cannot be two sovereign powers, and that a subordinate sovereignty is no sovereignty."¹¹⁹

Wilson challenged his opponents, asking: "Upon what principle is it contended that the sovereign power resides in the state governments?" Under the proposed Constitution, Wilson argued: "the sovereignty resides in the people; they have not parted with it".¹²⁰ Further questioning his rivals in the convention, Wilson turned the issue of sovereignty directly on to his opponents, asking: "How comes it, sir, that these state governments dictate to their superiors, to the majesty of the people?"¹²¹ Wilson's question and Revolution Principle had turned his opponent's argument on its head.¹²²

Wilson had painted his opponents as attempting to deprive the people of their inalienable power and right through assuming state sovereignty. At the same time, he presented the proposed Constitution as the great observer and guardian of the people's sovereignty, precisely because it was based on his Revolution Principle.

As Knapp explains this was: "a breathtaking intellectual innovation—Wilson suggested that the states did not and would not possess any sovereignty to swallow up", because as often noted, sovereignty perpetually resides with the people.¹²³ Wilson's innovation addressed the fear that the states would lose their sovereignty by answering that neither the federal nor the state governments would be sovereign. Instead, Wilson asserted that sovereignty would remain whole and undivided in the people at large. Thus, Wilson had used his Revolution Principle to address the underlying concern for the states' sovereignty and, moreover, effectively negated the problem of divided sovereignty.

¹¹⁹ *DHRC*, 2:471. See also: Bailyn, *Begin the World Anew*, 115. See Also: Amar, "Consent of the Governed," 507.

¹²⁰ *DHRC*, 2:448.

¹²¹ *DHRC*, 2:449. See also: Gordon Wood, *Creation*, 530.

¹²² Gordon Wood, *Creation*, 530. See also: Knapp, "Law's Revolution," 226-230; Seed, "Democratic Ideas," 11.

¹²³ Knapp, "Law's Revolution," 223-24. See also: Wilmarth, "Elusive Foundations," 156; 178; Maier, *Ratification*, 113; Bartrum, "Moral Foundations," 270-71; Knapp, "Law's Revolution," 228-29; Seed, *James Wilson*, 97-98.

Furthermore, Wilson explained that this principle allowed for the co-existence and overlapping jurisdictions of the state and federal governments that characterises the US Federal System. In Wilson's understanding of the Constitution, the people, because they remain sovereign, can, through their consent: "distribute one portion of power to the more contracted circle, called state governments; they can also furnish another proportion to the government of the United States."¹²⁴ Thus, the Revolution Principle, in Wilson's hands, also provided a theoretical justification and solution that made sense of the overlapping jurisdictions of the federal and state governments in what would become the US Federal System.

Implied in, or an extended meaning of, this argument and others that Wilson made using his Revolution Principle, is that the government is the inferior agent of the people. He made this point more explicitly in an apparent reference to his rhetorical question from the Constitutional Convention that essentially asked: whose sovereignty should be respected and represented, the people or the states? After asking in the Pennsylvania Ratifying Convention for what end are governments made, Wilson answered: "They are all intended for man; and our natural character and natural rights are certainly to take place, in preference to all artificial refinements that human wisdom can devise."¹²⁵ And, as we will see, Wilson does so again as a Justice of the Supreme Court, describing government as: "the *inferior* contrivance of *man*".¹²⁶ In my judgment, from Wilson's perspective the Revolution Principle recognised that the people are naturally superior to their creation: the government, which was made and meant to be their agent or tool.¹²⁷

This breath-taking innovation seems to have confused Wilson's peers. They appear to have been working from a conception of government based on Locke's contract theory and Blackstone's commentaries. This appears to have forced Wilson to restate his Revolution Principle numerous times and explain that he is presenting a different theory of governance. To this end, in the ratification debates, Wilson reapplied Blackstone's articulation of parliamentary sovereignty:

¹²⁴ *DHRC*, 2:449.

¹²⁵ *DHRC*, 2:494.

¹²⁶ *Chisholm v. Georgia*, 455 (emphasis original). See also: Knapp, "Law's Revolution," 288; Robinson, "Wilson's Theory of Rights," 295.

¹²⁷ Dennison, "Revolution Principle," 176-77.

“the supreme, absolute, and uncontrollable power”, to the people, clearly identifying them, not the government, as sovereign in the north American states.¹²⁸ In doing so, in my judgment, Wilson was indicating that this was a different theory of governance based on different principles than the received understanding with which his peers were familiar.

The concept that the US Constitution is predicated on a contract, like Locke's theory proposes, was stated directly in the Pennsylvania Ratifying Convention.¹²⁹ This allowed Wilson the opportunity to explicitly address the issue and again explain that this Constitution was based on a different principle:

This, Mr. President, is not a government founded upon compact; it is founded upon the power of the people. They express in their name and their authority—“*We, the people, do ordain and establish,*” etc.; from their ratification alone, it is to take its constitutional authenticity; without that, it is no more than *tabula rasa*.¹³⁰

Wilson again restated his Revolution Principle and located it in the preamble and the act of ratification by the people, and in doing so explicitly declared that this Constitution was not based upon any contract theory. According to Wilson, the problem with a contract theory is that it requires “the mutual consent of both parties” to change the Constitution, putting the people on a level with their agents, the government, and “destroy[ing] the means of improvement.”¹³¹ Given that Locke and Rousseau's theories were both predicated on the concept of a contract, they are logically included in Wilson's rejection of contract theories generally.

Therefore, in my judgment, this statement is a clear break with Locke and Rousseau by Wilson. Their contract theories are not the basis of the US Constitution, nor its foundational Revolution Principle. This is corroborated and better explained by the extended meaning that highlights the differences between Wilson's theory and particularly Locke's seen earlier.¹³² Instead, the US

¹²⁸ *DHRC*, 2:471-72. See also: Knapp, “Law's Revolution,” 231-32.

¹²⁹ *DHRC*, 2:554-55.

¹³⁰ *DHRC*, 2:555 (emphasis original). See also: *DHRC*, 2:556.

¹³¹ Respectively: *DHRC*, 2:555 & 2:556.

¹³² See: Sections, 4.1 & 5.1.

Constitution and the Revolution Principle represented a new theory of governance.

Wilson stated his Revolution Principle repeatedly in the Pennsylvania Ratifying Convention.¹³³ Possibly, attempting to find common ground and strengthen his argument, Wilson referenced the Declaration of Independence to illustrate that his Revolution Principle is: “the inherent and unalienable right of the people”.¹³⁴ Throughout the debates Wilson spoke of this principle as already a regular part of governance in practice in the states, commencing with their independence. However, for his peers it seems to have been a new concept and one that opposed the received political tradition of Blackstone and Locke that they were familiar with, and thus required numerous explanations. As Wilson lamented in the Pennsylvania Ratifying Convention: “It was a matter of surprise to see the great leading principle of this system still so very much misunderstood.”¹³⁵

This was said near the end of the Pennsylvania Ratifying Convention, and one can almost hear Wilson’s exasperated tone as he explained his Revolution Principle once more in the same morning session. There he stated explicitly that the Revolution Principle is the foundation of the proposed Constitution: “On the principle on which I found my arguments, and that is, the principle of this Constitution, the supreme power resides in the people.”¹³⁶ In Wilson’s interpretation of the Constitution his Revolution Principle is its radically democratic foundation and permeates every part of the government, which he presented and used as a panacea to address the major arguments against the proposed Constitution.¹³⁷

¹³³ *DSSC*, 2:432; *DHRC*, 2:448-49, 2:471-73, 2:479, 2:494, 2:555, & 2:559.

¹³⁴ *DHRC*, 2:472.

¹³⁵ *DHRC*, 2:554.

¹³⁶ *DHRC*, 2:559.

¹³⁷ *DHRC*, 2:493-94 & 2:559.

5.4 - Ratifying Wilson's Democratic Interpretation of the Constitution

Wilson grounded, developed, and tested this Revolution Principle through Reid's philosophy. He viewed it as not only the foundational principle of the proposed Constitution, but rooted in human nature, and thus, the foundation of the theory and practice of governance. This is a truly extensive degree of democracy that regards government as the tool of the superior sovereign people who can change it at will through their consent. In my judgment, this concept coloured Wilson's entire understanding of the Constitution, placing it in a very different light than Madison's conception of the same document.

Wilson was presenting a new theory of governance, and the debates would have to run their course to see if the people would accept it or not. This again raises the question as to whose interpretation of the proposed Constitution garnered more support, or was 'correct', and with it, questions the accuracy of Gordon Wood's conclusion that the Federalists and their proposed Constitution were primarily aristocratic.

The ability of Wilson's Revolution Principle to solve the problem of divided sovereignty and its broad appeal identifies Wilson as an intellectual leader of the Federalists in the ratification debates at least equal with Madison. As Gordon Wood was seen to argue earlier, the problem of divided sovereignty was the greatest barrier to ratification and as Knapp noted, Wilson's use of his Revolution Principle to solve it was a substantial and significant theoretical innovation. Knapp explains further that: "As an intellectual matter, only James Wilson could cleanly navigate a way out of the problem in 1787."¹³⁸ Gordon Wood states this sentiment to an even greater degree, asserting that:

It was left to James Wilson in the Pennsylvania Ratifying Convention to deal most effectively with the Antifederalist conception of sovereignty. More boldly and more fully than anyone else, Wilson developed the argument that would eventually become the basis of the Federalist thinking.¹³⁹

¹³⁸ Knapp, "Law's Revolution," 226.

¹³⁹ Gordon Wood, *Creation*, 530.

Maier also argues that Wilson's principle: "provided nothing less than an intellectual foundation for American federalism."¹⁴⁰ Thus, it was left to Wilson, not Madison, to deal with this theoretical problem, which he did with great success.

In solving this problem, Wilson, in my judgment, provided a theoretically and logically coherent explanation for how the Federal government and state governments could coexist with overlapping jurisdictions. This extended meaning is corroborated by Gordon Wood's explanation that:

Only by making the people themselves, and not their representatives in any legislature, the final, illimitable, and incessant wielders of all power, could the Federalists explain their emerging doctrine of federalism, where, contrary to prevailing thought of the eighteenth century, both the state and federal legislatures were equally representative of the people at the same time.¹⁴¹

This presents Wilson's Revolution Principle as the theoretically implied foundation of the US Constitution, or part of its extended meaning, because it was the only principle on which the federal system could be coherently explained and logically operate under, as Gordon Wood himself asserts.

The theoretical merit of Wilson's solution appears to have led many Federalists to take it up in their own arguments to varying degrees, making it the foundation of Federalist thought in a practical manner as well. Gordon Wood also describes this broad support, explaining that: "Although no Federalist grasped and wielded 'this leading principle' of the Constitution with more authority than Wilson, others in the ratification debates were inevitably led to invoke the same principle."¹⁴²

However, as Knapp explains, many Federalists were careful in how they expressed Wilson's principle by asserting that all power is derived from the people, while sidestepping the question of sovereignty and the people's retention

¹⁴⁰ Maier, *Ratification*, 110. Concerning the Federalists possibly dishonest or inaccurate use of Wilson's Principle see: Knapp, "Law's Revolution," 230.

¹⁴¹ Gordon Wood, *Creation*, 545. See also: Bailyn, *Begin the World Anew*, 115; Wilmarth, "Elusive Foundations," 157; Gordon Wood, *A History*, 160-61.

¹⁴² Gordon Wood, *Creation*, 531. See also: Wilmarth, "Elusive Foundations," 145.

of their original power.¹⁴³ And, as Knapp continues to explain, the: “Federalist writers understood the distinction well.”¹⁴⁴ It appears these Federalists saw the popularity and theoretical merit of Wilson’s principle and interpretation, but were unwilling to fully commit to explicitly stating that the people retained their sovereignty under the new Constitution. However, Knapp also admits that Wilson’s style appealed: “to the people during the ratification debates—if not as ‘sovereign’ then as the original ‘fountain’ of all political power, and even when disingenuous—did have real consequences going forward.”¹⁴⁵

Thus, in my judgment, Wilson’s principle provided the only theoretically coherent explanation of the Federal System that the Constitution would create, and it was broadly used by the Federalists and received among the people. This strongly suggests that the people voted to authorise Wilson’s interpretation of the Constitution, at least as it concerned the Revolution Principle as its foundation and the answer to the problem of divided sovereignty.

This is further supported by Wilson’s broad influence in the ratification debates generally. Beyond other Federalists taking up Wilson’s solution to the problem of divided sovereignty, Wilson was also a national figure in his own right with his work being widely distributed across the states. As Maier argues, Wilson’s State House Yard Speech was: “a landmark in the ratification debate”, explaining that: “it was reprinted in every state except perhaps Delaware, which probably received copies enough from nearby Philadelphia.”¹⁴⁶ As A. Robinson Hassell explains, Wilson’s speech was highly respected and it was George Washington who: “ordered reprints for distribution in Virginia to assist Madison and others in that state’s contested ratification process.”¹⁴⁷ While Wilson did not make his most radical claims in this speech, his arguments from the Pennsylvania Ratifying Convention were published in the surrounding papers and distributed to other Federalists.¹⁴⁸ Furthermore, it was Wilson’s work that would come to the aid of

¹⁴³ Knapp, “Law’s Revolution,” 230-31.

¹⁴⁴ Knapp, “Law’s Revolution,” 230.

¹⁴⁵ Knapp, “Law’s Revolution,” 286.

¹⁴⁶ Maier, *Ratification*, 80-81. See also: Bartrum, “Moral Foundations,” 256-7.

¹⁴⁷ Hassel, “James Wilson,” 25. See also: Pedersen, “Lost Founder,” 270.

¹⁴⁸ Maier, *Ratification*, 100-101; Charles Smith, *James Wilson*, 286.

Madison and would be distributed nationally, being a significant exception to the otherwise generally local debates.

The people's acceptance of Wilson's solution is also evinced in how the political culture of the people of the states had changed, particularly as it concerned the term 'democracy'. Wilson's principle meshes well with Gordon Wood's recognition that by 1790 democracy was no longer a technical political term in America, but had become:

the civic faith of the United States to which all Americans must unquestionably adhere. The emergence of this rambunctious middling democracy was the most significant consequence of the American Revolution.¹⁴⁹

Furthermore, Amar argues that at that time in American history the concept of majority rule popular sovereignty "went without saying".¹⁵⁰

Wilson's arguments and understanding of the American states appears to strongly agree with Amar's statements and suggest that Gordon Wood's date could be pushed back a few decades. This can be seen in Wilson's references to the Declaration of Independence and the constitutions of the states as supporting and adhering to his Revolution Principle. In my judgment, it appears that Wilson held that his Revolution Principle provided the intellectual basis for and explicitly stated the foundational principle of the existing American governments, with the history of the previous decades standing as evidence.

Alternatively, Madison's interpretation of the Constitution did not fare as well, nor was it as broadly distributed. As Maier argues, the *Federalist Papers* were local in their influence.¹⁵¹ Furthermore, Amar argues that Madison's solution to the problem of divided sovereignty was not taken up by others because:

they understood—as did Wilson and Davis, for example—that "divided" or "mixed" popular sovereignty was no popular sovereignty. A fundamental principle for republican government was that the majority

¹⁴⁹ Gordon Wood, *A history*, 166.

¹⁵⁰ Amar, "Consent of the Governed," 482, 484, & 487.

¹⁵¹ Maier, *Ratification*, 85. See also: Pedersen, "Lost Founder," 270-71.

should rule, and divided sovereignty betrayed that fundamental principle.¹⁵²

Thus, it appears that neither Madison's solution to the problem of divided sovereignty nor his reinvention of republicanism that excluded the people from government to protect their liberties gained traction with the people. Madison also provided a "*mea culpa* for his advocacy of mixed government", in his records of the Constitutional Convention that were published posthumously, suggesting that he even realised that his vision had not won out in the debates.¹⁵³

Furthermore, Edling proposes that the Federalists where united in their argument: "for a national government with the ability to act", not in concerns over the creation of barriers to limit government.¹⁵⁴ As Edling continues to explain, this made Madison's view of Federalism seem "strangely out of tune with the basic thrust of the Federalist argument."¹⁵⁵ On the other hand, Wilson's vision of his Revolution Principle leading to a free and effective government, seems in harmony with this Federalist goal.

However, this still leaves the specific issues of the Bill of Rights and the Senate to address. Wilson's arguments against an enumeration of rights were clearly unsuccessful given the first ten amendments to the US Constitution, although Madison followed Wilson's lead on this point, meaning he too lost this battle. However, Wilmarth argues that the Ninth Amendment was meant to address "Wilson's warning about the possible danger of a bill of rights", and Amar argues that: "Strictly speaking, the Tenth Amendment affirms the sovereignty of the People, not the sovereignty of state governments".¹⁵⁶ Thus, this does not appear to be an intentional repudiation of Wilson's interpretation or amount to one. Instead, in my judgment, the ratification of the Bill of Rights more likely illustrates the continuing characteristic American fear of centralised power and possibly some confusion concerning Wilson's new theory of governance. More clearly this simply illustrates that the Constitution was shaped through

¹⁵² Amar, "Consent of the Governed," 507.

¹⁵³ Bederman, *Classical Foundations*, 76 (emphasis original).

¹⁵⁴ Edling, *In Favour of Government*, 7.

¹⁵⁵ Edling, *In Favour of Government*, 7.

¹⁵⁶ Respectively: Wilmarth, "Elusive Foundations," 175; & Amar, "Of Sovereignty and Federalism," 1492.

compromise and debate, and was thus not necessarily theoretically or logically coherent or consistent.

The Senate is also problematic because it appears juxtaposed against Wilson's interpretation of the Constitution. The executive and to a greater extent the House of Representatives fit well within Wilson's interpretation of the US Constitution as being founded on and permeated by his Revolution Principle, but not the Senate. His arguments in the Constitutional Convention and implied in his statements in the Pennsylvania Ratifying Convention, illustrate that he would have preferred the Senate was more directly linked to the people through direct election and proportional representation.

However, this again is not a repudiation of Wilson's Revolution Principle as the foundation of the US Constitution. As Wilson himself admitted and exemplified, the people can consent to a government that does not respect simple majority rule and their sovereignty equally, although they importantly retain the sovereign right to change that government and rule. This again illustrates that the US Constitution is not a theoretical document written by one author, but a political one shaped by multiple participants who did not even agree on the theory of governance within which they were working. This leaves the Senate appearing logically and theoretically inconsistent with the rest of the document when seen from Wilson's perspective, but does not negate that the Revolution Principle is the foundational principle of the Constitution.

Thus, in my judgment, based upon extensive explanation and argumentation, it was not Madison's divided sovereignty, but rather Wilson's Revolution Principle that was broadly received as the solution to the problem of divided sovereignty. While the Bill of Rights would be passed, it recognised Wilson's warnings and as Amar was seen to argue it upheld the people's sovereignty. The Senate too, while discordant with Wilson's principle, does not deny it as the foundation of the proposed Constitution. Furthermore, the Revolution Principle as the Foundation of the Constitution stands as the only interpretation that could make theoretical sense of the federal system that would be created by the Constitution.

Therefore, despite the complexity of the Constitution derived from its development, this evidence strongly indicates that, while not always fully

understood or adhered to, Wilson's Revolution Principle was broadly acknowledged at the time as the proposed Constitution's foundation. This means that while Madison may have gotten close to the Senate he wanted, Wilson was able to establish nothing less than the foundational principle of the US Constitution. It appears that Wilson got quite a bit more of what he wanted in the Constitutional Convention than his peers, or at least Madison, and his contributions clearly constitute a significant strand of the American political tradition.

Gordon Wood recognises and makes many of the arguments that comprise this evidence in his formidable and extensive historical works. However, this evidence, when presented from Wilson's perspective, undermines Gordon Wood's central thesis that the Federalists and the Constitution were primarily aristocratic in nature. As Knapp also argues:

Wood fails to recognize [...] that one Federalist to whom he cites with great frequency and from whose electrifying speeches so much of that "popular and democratic rhetoric" derived, did not fit the description Wood categorically applies to the "Federalist persuasion": James Wilson.¹⁵⁷

However, it appears more appropriate to say that Gordon Wood ignores the radically democratic nature of Wilson's arguments and understanding of the Constitution or does not believe they were genuine.¹⁵⁸

Gordon Wood's thesis appears to be largely based on the traditional assumption that Madison exemplified the Federalist position, which Edling and other scholars strongly question.¹⁵⁹ Furthermore, this assumption ignores the complexity of the development of the Constitution, the stark differences between Madison and Wilson's interpretations, and that the people and even other elite Federalists recognised Wilson's radically democratic Revolution Principle as the foundation of the Constitution. The differences between Madison and Wilson, as well as the general complexity of the development of the Constitution, make any

¹⁵⁷ Knapp, "Law's Revolution," 304.

¹⁵⁸ Dennison, "Revolution Principle," 182-85.

¹⁵⁹ Edling, *In Favour of Government*, 3 & 7. See also: Clagett, "Scottish Background," 155; Bartrum, "Moral Foundations," 256-57 & 259; Pedersen, "Lost Founder," 258, 268-69, 326, & 333.

generalisations about the Federalists and the meaning or purpose of the Constitution, difficult at best. Thus, while Gordon Wood's observation may be accurate in reference to Madison and some other elite Federalists, given the radically democratic nature of Wilson's contributions as a leading Federalist, they constitute an inaccurate and misleading over-generalisation.¹⁶⁰

Instead, recovering my interpretation of Wilson's contributions presents the US Constitution as rooted in and founded on a radically extensive conception of democracy and at least portions of the Federalists as far more democratically inclined. According to Wilson, this radically democratic and foundational Revolution Principle was proclaimed in the Preamble, implied in popular ratification, and located in the human constitution. From Wilson's perspective the Constitution was founded on and permeated by his Revolution Principle and its ratification would not only make it the law of the land, but realise it in practice.¹⁶¹

The popular ratification of the Constitution in essence proved Wilson's theory because, by their democratic consent, the people had abolished one government, the Articles of Confederation, and had created a new Federal Government of the United States.¹⁶² Or, in Amar's words, in the popular ratification of the US Constitution: "the legal word was made flesh".¹⁶³ Thus, as Amar further argues, the popular ratification of the US Constitution: "was not some antidemocratic, Thermidorian counterrevolution, akin to a coup d'etat, but was instead the most participatory and majoritarian event the planet had ever seen (and lawful to boot)."¹⁶⁴ The people had democratically exercised and demonstrated the sovereign power that Wilson had argued in theory they possessed and retained. However, it was yet to be seen how the Constitution would function and be interpreted in practice under the pressure of practical concerns and necessities as well as politics.

¹⁶⁰ Dennison, "Revolution Principle," 183-85.

¹⁶¹ *DSSC*, 2:432-33.

¹⁶² Dennison, "Revolution Principle," 174; *DSSC*, 2:432-33.

¹⁶³ Amar, "Consent of the Governed," 474.

¹⁶⁴ Amar, "Consent of the Governed," 496.

Chapter 6 – Wilson’s Democratic Political Theory in the Judicial Interpretation of the US Constitution

After the Constitution was ratified on June 21, 1788, its meaning continued to develop and be formulated through the Supreme Courts’ interpretation of it, in response to the legal and political challenges that come with governing. Wilson played a central role in this continuing development of the Constitution as one of the original Justices of the first Supreme Court appointed by then President George Washington.¹ At this point Wilson was one of the four Associate Justices, but his great ambition was to be named Chief Justice of the Supreme Court.² However, this position still meant that it would be Wilson’s duty to authoritatively interpret the new Constitution as it related to specific legal cases.³ At this time Justices also functioned as judges in Federal trials, providing further opportunities for Wilson to set precedence concerning federal jurisprudence in practice.

In both facets of Wilson’s position as a Justice he would continue to assert his Revolution Principle. In his role as official interpreter of the Constitution, Wilson asserted that the Revolution Principle was the foundation of the US Constitution in his Majority Opinion concerning the *Chisholm v. GA* case. However,

¹ Zink, “Liberty and Law,” 443; Conrad, “Common-Law,” 187; Conrad, “Polite Foundation,” 359-60; Conrad, “Wilson, James”; Rosenfeld, *Common sense*, 176; Bartrum, “Moral Foundations,” 275; Knapp, “Law’s Revolution,” 252; Zink, “Bill of Rights,” 253; Hassell, “James Wilson,” 21; Pedersen, “Lost Founder,” 294; Bayer, “Common Sense Republic,” 188; Wilmarth, “Elusive Foundations,” 116; Seed, *James Wilson*, 141 & 150; Fleischacker, “Impact on America,” 317; Clagett, “Scottish Background,” 154; Alexander, “Wilson Doctrine,” 972; Leavelle, “Wilson and Scottish Metaphysics,” 395; Kermit Hall, “Introduction,” 1:xx; Heyburn, “Morris and Wilson,” 171.

² Pedersen, “Lost Founder,” 271; Knapp, “Law’s Revolution,” 252; Charles Smith, *James Wilson*, 306 & 373; Seed, *James Wilson*, 141.

³ Levy, *Framers’ Constitution*, ix; Wilmarth, “Elusive Foundations,” 116 & 191-92; Lynch, *Negotiating the Constitution*, 227; William J. Brennan Jr., “Constitution of the United States: Contemporary Ratification,” in *Interpreting the Constitution*, ed. Rakove, 33.

his Opinion was challenged by the Eleventh Amendment, which modern legal scholars assume repudiated it.⁴ As a judge in Federal cases Wilson would also explain and respect his Revolution Principle in Henfield's case as it concerned the sovereignty of the jury.

The intended or historical meaning of Wilson's writings on trial by jury are clear. For him, it was the preeminent democratic institution within which the people could regularly exercise their sovereignty over the law and government, and therefore, trial by jury was the great protector of the people's liberties. However, Wilson saw this institution as threatened by the Theory of Ideas and required a firmer Reidian foundation for it to continue to fulfil its role as his Revolution Principle in practice.

6.1 - Trial by Jury: A democratic institution with a Reidian foundation

Wilson saw the institution of trial by jury, which he often waxed poetic about in his Lectures, as particularly threatened by Locke's expression of the Theory of Ideas because it was generally received in the legal tradition. Reid's philosophy provided an alternative firm foundation for this institution that Wilson held would better ground the jury's right to judge the facts and law of the case. This extended meaning can be inferred from recognising how Wilson uses Reid's philosophy to illustrate that the ordinary people who comprised the jury were indeed capable of this duty and extensive jurisdiction. This capacity, when coupled with Wilson's conception of the jury as a democratic representation of the people, reveals the extended meaning that trial by jury is grounded in and a realisation of his Revolution Principle, even to the extent of respecting the consent of the equally sovereign defendant.

A legal or criminal trial depends on determining the facts of the event in question and judging them with reference to the law. Determining the facts of the case depends on evidence, which requires, as Wilson recognised, humans to be able to accurately perceive the external world and other basic assumptions

⁴ Wilmarth, "Elusive Foundations," 183; Bartrum, "Moral Foundations," 296; Conrad, "Wilson, James".

concerning the common experience of the human condition.⁵ This is particularly the case in trial by jury because the concept relies on the assumption that ordinary human beings share the ability to accurately perceive and judge evidence, and thus, determine the facts of a case. As Bayer explains: “Wilson observed that the courtroom relies entirely upon common sense knowledge.”⁶ Thus, any theory that calls into question this common human ability is a potential threat to this institution.

Wilson identified the Theory of Ideas as just such a theory, laying out its deleterious effects on trial by jury. Wilson saw the Theory of Ideas as leading to epistemological scepticism, as realised by Hume.⁷ But such scepticism would implicitly undermine a jury’s capacity to decide even the facts of a criminal case. However, Wilson notes that Hume’s theory carries another dangerous implication for the law. Hume had reduced consciousness to a “bundle or collection of different perceptions”, which called into question the very concept of individual human identity.⁸

Wilson, closely paraphrasing Reid, explained this danger with a particular focus on the consequences for a criminal court:

We have hitherto been apt, perhaps, with unphilosophick (sic) credulity, to imagine, that thought supposed a thinker; and that treason implied a traitor. But correct philosophy, it seems, discovers, that all this is a mistake; for that there may be treason without a traitor, laws without a legislator, punishment without a sufferer. If, in these cases, the *ideas* are the traitor, the legislator, the sufferer; the author of this discovery ought to inform us, whether ideas can converse together; whether they can possess rights, or be under obligations; whether they can make promises, enter into covenants, fulfil, or break them; whether, if they break them, damages can be recovered for the breach. If one set of ideas make a covenant; if another successive set—for be it

⁵ *WJW*, 1:227-28 & 2:65-77.

⁶ Bayer, “Common Sense Republic,” 198.

⁷ See: Sections, 3.3 & 4.1.

⁸ Wilson’s footnote indicates that he is referencing Hume’s *Treatise of Human Nature* in this quotation, see *WJW*, 1:259. Compare with: *IP*, 473.

remembered they are all in succession—break the covenant; and if a third successive set are punished for breaking it; how can we discover justice to form any part of this system?⁹

As Wilson writes after this close paraphrase of Reid's words: "These professional questions naturally suggest themselves", implying the extended meaning that Reid's work brought these potential consequences of Hume's sceptical theory for the law and justice to Wilson's attention.¹⁰ While an extreme example, this highlights Wilson's recognition that philosophical theories can influence institutions that directly impact society and individuals' lives, such as trial by jury and the very conception of law.

Locke's theory (with its sceptical implications) had already infiltrated the received theory of evidence in the legal tradition, which for Wilson made it particularly dangerous, given his understanding of this potential for philosophical theories to affect institutions.¹¹ Wilson was concerned that using Locke's theory as the foundation of the theory of evidence would potentially lead to doubting the external senses and memory in the court of law:

It is nevertheless, true, that, in our law books, the general principles of evidence, so far as any notice is taken of general principles on this subject, are referred, for their sole support, to the theory of Mr. Locke. This will appear obvious to any one who is acquainted with that theory, and peruses the first pages of my Lord Chief Baron Gilbert's Treatise upon Evidence. This unfolds the reason why I have employed so much pains to expose and remove the sandy and unsound foundation, on which the principles of the law of evidence have been placed.¹²

If the theory of evidence continued to rely on Locke's philosophy, Wilson feared that it would eventually erode the ability to bring, rely upon, and judge evidence, effectively undermining the possibility of a criminal trial and particularly one by a jury.

⁹ *WJW*, 1:260-61. Compare with: *Inq.*, 35.

¹⁰ *WJW*, 1:261.

¹¹ Robinson, "Wilson's Theory of Rights," 290-91.

¹² *WJW*, 2:74. See also: Bayer, "Common Sense Republic," 198.

Wilson's further concern was that the legal discipline, if it continued on this road, would arrive at the same conclusions that Hume had in philosophy, making Wilson's extreme example above a more likely possibility, and thus, a grave danger. Some might view Wilson's fear as hyperbolic given the theoretical nature of the Theory of Ideas. However, this points up, that Wilson, akin to Reid, saw epistemological theories as relevant to practice, with potentially dire circumstances. And, particularly when those theories were already informing practice.

To replace this sandy and unsound foundation, Wilson looked to Reid's philosophy. Indeed, Wilson repurposes nearly all of Reid's Common Sense First Principles in his own enumeration of his Sources of Evidence, which are the foundational principles of his theory of evidence.¹³ Wilson used Reid's almost exact words (at times referencing Reid in footnotes) to describe and explain these sources of evidence, as can be seen in Appendix C. However, Wilson does not do this transparently, hence I will not claim that this is part of the intended meaning of Wilson's Sources of Evidence. Nevertheless, his Sources of Evidence amount to a translation of Reid's first principles to the science of law, and thus, constitute part of their extended meaning. This is an example of Wilson's intentional choice to use Reid's philosophy as the foundation of his Democratic Political Theory, which helps explain why Wilson chose Reid's philosophy as a foundation and the significant role it played in his Democratic Political Theory.

One reason that is readily apparent is (as Bayer was seen to state earlier), that a criminal trial relies on common sense knowledge, primarily the reliability of evidence and the ability to judge it.¹⁴ This can readily be seen in Wilson's inclusion of Reid's first principles concerning the reliability of the external senses, human testimony, memory, and judgment, which he describes (referencing Reid in a footnote) as "commensurate with what is sometimes called common sense".¹⁵

However, Importantly, among these sources of evidence, Wilson also includes the moral sense, which provides another reason for Wilson's use of Reid's

¹³ Appendix C.

¹⁴ *WJW*, 2:65-66.

¹⁵ *WJW*, 2:107. Compare with: *IP*, 427. Concerning the other first principles see: *WJW*, 2:75-76; Appendix C.

philosophy as a foundation.¹⁶ Wilson's Reidian moral sense significantly provides ordinary humans access to the natural law to ordinary humans (effectively democratising it), making them, in their role as jurors, capable of: "decid[ing] the *law* as well as the fact", of a criminal case.¹⁷ Thus, Wilson's Reidian moral sense provided not only the capacity to author law directly, through their consent expressed via democratic representation, but also to judge and override its enforcement in isolated criminal trials.

Wilson combined this capacity with his conception of trial by jury in terms of democratic representation. This presented the jury's ability to decide the law of a case as a sovereign right in terms of the Revolution Principle and as a means of authorising the jury's verdict through consent. Identifying trial by jury as a democratic institution, Wilson regarded the jurors as representatives of the sovereign people, or as Wilson describes it, the jury is: "an abstract, as it has been called, of the citizens at large".¹⁸ The implication of this is that the defendant and plaintive, being members of society, are also represented by the jury, and therefore, theoretically consent to their own judgment as expressed by their representatives.¹⁹ This means, according to Wilson, that: "No jury can pass upon him, except that upon which he puts himself."²⁰ Therefore, trial by jury, in Wilson's conception of it, functions in accordance with his principle of consent. This made the institution of trial by jury a bulwark that protected the people's liberties, according to Wilson, describing it as the institution that defined the "Grecians" and "Saxons" as: "a free people, because they were a law to themselves."²¹

However, Wilson's conception of the jury and its purview ran counter to aspects of the received British and American legal tradition. As Knapp explains, according to Chief Justice Holt, the idea is absurd: "that the same person should be party and Judge in the same case, for it is manifest contradiction."²²

¹⁶ Concerning the moral sense see: *WJW*, 2:81-83.

¹⁷ *WJW*, 2:372. (emphasis added). See also: *WJW*, 2:387. Democratising natural law see: Section, 3.3; Knapp, "Law's Revolution," 268.

¹⁸ *WJW*, 2:374. See also: *WJW*, 2:315.

¹⁹ Bartrum, "Moral Foundations," 283-84; Knapp, "Law's Revolution," 282.

²⁰ *WJW*, 2:329. See also: Bartrum, "Moral Foundations," 283.

²¹ *WJW*, 2:322.

²² Knapp, "Law's Revolution," 282.

Furthermore, Wilson recognised that the idea of juries judging the law of a case was a matter of contention in British legal precedence. He recognised that many judges and jurists opposed the idea, but identified Lord Coke as a supporting precedence on the subject.²³ Despite the oppositional precedence, Wilson clearly described trial by jury as functioning in accordance with his principle of consent as a democratic institution.

Wilson did not let the matter rely simply on legal precedence and argued that it was the jury's right to judge the law of the case based upon his Revolution Principle. Working from Wilson's conception that the government is an agent of the people with enumerated powers, he argued that the people had not delegated their sovereign prerogative to decide the law and the exceptions to it in a criminal case.²⁴ Instead, Wilson asserted that: "this authority remains with the people at large."²⁵ The people express this sovereign power over the law through their representatives, the jury.²⁶ This presents trial by jury as grounded in and another realisation of Wilson's Revolution Principle in practice. Knapp also recognises this deeper or extended understanding of trial by jury, explaining that: "Wilson conceived the jury trial as actualizing the 'revolution principle' within American legal culture."²⁷ However, from Wilson's perspective it might be more appropriate to say that he did not 'give' this power, as Knapp puts it—instead, consistent with the Revolution Principle, he *recognised* the people's sovereign authority in their representatives, the jury.²⁸

Wilson praised trial by jury as a democratic institution grounded in his Revolution Principle that provided the people the opportunity to directly and regularly exercise the Revolution Principle. According to Knapp, this conception of the sovereignty of juries led Wilson to praise them: "as the cornerstone of a properly republicanized legal system."²⁹ In Wilson's opinion, democracy was not confined merely to voting; the sovereign people were required to fulfil their

²³ WJW, 2:369.

²⁴ Bartrum, "Moral Foundations," 284.

²⁵ WJW, 2:385.

²⁶ Knapp, "Law's Revolution," 280-82.

²⁷ Knapp, "Law's Revolution," 196. See also: Knapp, "Law's Revolution," 281.

²⁸ Knapp, "Law's Revolution," 282.

²⁹ Knapp, "Law's Revolution," 283.

sovereign duty by playing an active role in governance. As Stimson explains, in reference to Wilson's adherence to Reid's epistemology: "The jury is Wilson's model of political participation and democratic epistemology in action."³⁰ Trial by jury exemplified this role and duty.

This meant, as Wilson proudly explained to his audience, that:

To every citizen of the United States, this law is not only a rule of conduct, but may be a rule of decision. As judges and as jurors, the administration of this law is, in many important instances, committed to their care.³¹

This duty and sovereign right made the citizens of the United States free people, being a law unto themselves, because trial by jury prohibited laws from being enforced upon them without their consent.³²

The citizens' capacity and authority to wield this extensive jurisdiction is grounded in Wilson's Reidian conception of human nature. Recognising and formulating this extended meaning helps to better explain Wilson's conception of trial by jury, why he held it, and why he chose Reid's philosophy as the foundation for his Democratic Political Theory. Resonating with Stimson's argument above, Knapp argues that Wilson used Reid's philosophy to: "prove all Americans, once and for all, worthy and capable of *ruling themselves*", and to: "advance his larger vision of a non-coercive, consent-based legal system in which ordinary Americans took an active and personal share."³³ Therefore, in my interpretation, epitomising his vision of democratic participation as a means for the people to defend their liberty (grounded in Wilson's Reidian understanding of human nature), trial by jury is Wilson's Revolution Principle in practice.³⁴

³⁰ Stimson, "Jury of the Country," 202.

³¹ WJW, 1:380.

³² Bartrum, "Moral Foundations," 284.

³³ Knapp, "Law's Revolution," 268 (emphasis original). See also: Bartrum, "Moral Foundations," 234 & 278.

³⁴ Knapp, "Law's Revolution," 196, 281, & 291.

6.2 - Henfield's Case: The Revolution Principle in practice and legal precedence

Wilson would record his conception of jury sovereignty in federal legal precedence in his guidance to the jury of Henfield's case.³⁵ The case arose in federal court and Wilson, while riding the federal circuit, would preside over it along with Justice Iredell and District Judge Peters.³⁶ The case concerned an American, Gideon Henfield, who had helped a French privateer capture a British ship, making the verdict of the case a diplomatic nightmare.³⁷

The case was tried in 1793 at which point the British and French were at war, but the United States had declared its neutrality in these ongoing hostilities.³⁸ However, this was not long after the French had come to the aid of the former British colonies to help them win their independence. Hence feelings of gratitude and hostility were still fresh in many Americans' hearts and minds.³⁹ Henfield's actions amounted to an international incident that threatened to drag the now United States into this conflict between European powers.⁴⁰ Such an eventuality was exactly what President Washington and others in the Federal government were desperately attempting to avoid.⁴¹

Wilson recognised the stakes were high and made sure that the jury did as well. He impressed on them in his guidance that: "Upon your verdict the interests of four millions of your fellow-citizens may be said to depend."⁴² However, Wilson

³⁵ *Henfield's Case*, 11 F. Cas. 1099 (C.C.D. Pa. 1793) (No. 6360).

³⁶ Wilmarth, "Elusive Foundations," 185.

³⁷ Knapp, "Law's Revolution," 289-90; Charles Smith, *James Wilson*, 363; Wilmarth, "Elusive Foundations," 186.

³⁸ Scott Ingram, "Replacing the 'Sword of War' with the 'Scales of Justice': Henfield's Case and the Origins of Lawfare in the United States," *Journal of National Security Law & Policy* 9 (2017): 483-484. *Henfield's Case*, 11 F. Cas. At 1120. Wilmarth, "Elusive Foundations," 184-86.

³⁹ Charles Smith, *James Wilson*, 363 & 368. Ingram, "Origins of Lawfare," 483-84.

⁴⁰ Ingram, "Origins of Lawfare," 483-84.

⁴¹ Ingram, 483-84; Charles Smith, *James Wilson*, 368.

⁴² *Henfield's Case*, 11 F. Cas. At 1119.

also explained that despite these consequences it was the jury's duty to: "do only what is right."⁴³

The evidence was clear given the testimony in the trial and so was the law on this matter.⁴⁴ According to Wilson, Henfield had violated the law of nations, which bound Henfield: "to keep the peace in regard to all nations with whom we are at peace."⁴⁵ Furthermore, Henfield had violated a treaty of the United States, which under the newly ratified Constitution, as Wilson reminded the jurors, is: "part of the supreme law of the land."⁴⁶ As far as Wilson was concerned, given the facts of the case, the law was unambiguous: Henfield was guilty.

In explaining the law to the jurors Wilson had fulfilled his duty as judge in accordance with his own conception of trial by jury.⁴⁷ As Wilson explained in his Lectures: "it is incumbent on the judges to inform the jury concerning the law; and it is incumbent on the jury to pay much regard to the information, which they receive from the judges."⁴⁸ Wilson had done this, explaining the relevant treaties and the law of nations as well as explaining to the jury the grave consequences surrounding this case. He also reminded the jurors that their duty, like that of judges, was to not decide as they please, but in accordance with the law.⁴⁹

However, Wilson went further in his role as a judge, explaining his conception of trial by jury, including that it was the jury's sovereign right and duty to decide the law of the case as well. Wilson stated to the jury that: "The questions of law coming into joint consideration with the facts, it is the duty of the court to explain the law to the jury, and give it to them in direction."⁵⁰ It was thus left to the jury, according to Wilson as the presiding judge, to decide the law of the case. The jury ignored Wilson's guidance concerning the law and Henfield's guilt, but did demonstrate their understanding of his conception of trial by jury and their prerogative to decide the law by returning a not guilty verdict.⁵¹ As

⁴³ *Henfield's Case*, 11 F. Cas. At 1119.

⁴⁴ *Henfield's Case*, 11 F. Cas. At 1120. See also: Wilmarth, "Elusive Foundations," 186.

⁴⁵ *Henfield's Case*, 11 F. Cas. At 1120.

⁴⁶ *Henfield's Case*, 11 F. Cas. At 1120.

⁴⁷ Wilmarth, "Elusive Foundations," 162-63.

⁴⁸ *WJW*, 2:372.

⁴⁹ Wilmarth, "Elusive Foundations," 186.

⁵⁰ *Henfield's Case*, 11 F. Cas. At 1120.

⁵¹ Wilmarth, "Elusive Foundations," 186; Charles Smith, *James Wilson*, 364.

Knapp similarly observes: “in at least one respect that historians and legal scholars have overlooked, the Henfield jurors seem to have done exactly what Wilson had told them they could do: they decided ‘both law and fact.’”⁵² In my judgment, this was another example, like popular ratification, of the people demonstrating Wilson’s Revolution Principle in practice.

However, it came with possibly severe international ramifications for the United States, and thus, political consequences for Wilson personally. President Washington attempted to address the diplomatic fallout by having Wilson’s instructions to the jury published to make it clear that the not guilty verdict was not indicative of his or the federal government’s position.⁵³ As Charles Smith explains: “Nations were left to draw their own conclusions from this example of democracy at work—where the settled policy of the government and the proclamation of the President himself were thwarted by twelve private citizens.”⁵⁴

On a personal level, this verdict might have contributed to stymying Wilson’s ambition to be named Chief Justice.⁵⁵ This, like Wilson siding with Anti-federalists in revising the Pennsylvania Constitution, made Wilson a less than reliable Federalist in political terms while his rapidly deteriorating financial situation was additionally hampering his ambitions.⁵⁶ However, despite these circumstances and potential consequences for the country and his own aspirations, Wilson again demonstrated his unwavering adherence to his Revolution Principle and respected the jury’s verdict and with it the people’s sovereignty.⁵⁷

Through his guidance and the jury’s verdict, Wilson’s conception of the jury, as sovereign representatives of the people, and (according to his Revolution Principle), thus able to decide to uphold or overrule the law, was established in American legal precedence. As Knapp also argues: “The *Henfield* jury [...] exercised the same power that Wilson had acknowledged the American jury did

⁵² Knapp, “Law’s Revolution,” 291.

⁵³ Charles Smith, *James Wilson*, 364.

⁵⁴ Charles Smith, *James Wilson*, 364.

⁵⁵ Wilmarth, “Elusive Foundations,” 176-77.

⁵⁶ Seed, *James Wilson*, 141; Knapp, “Law’s Revolution,” 252; Pedersen, “Lost Founders,” 271; Charles Smith, *James Wilson*, 306 & 373.

⁵⁷ Knapp, “James Wilson,” 291; Charles Smith, *James Wilson*, 364.

and must have to effectuate the revolution principle within American legal culture—the ‘power to overrule the directions of the judges.’”⁵⁸ Henfield’s case had demonstrated that trial by jury was grounded in Wilson’s principle and functioned as a forum for the people to exercise it.

Again, Wilson’s Revolution Principle had moved from theory to practice as it concerned the enforcement of the law and in doing so became part of legal precedence. However, as Knapp explains, since then it has been purposefully ignored and marginalised with attempts to repudiate it, although it has never been successfully snuffed out.⁵⁹ According to Knapp, if jurors are aware of their sovereign right and possess the necessary courage, they can still put Wilson’s Revolution Principle into practice.⁶⁰

6.3 - Chisholm v. Georgia: The Revolution Principle as constitutional law

The Chisholm v. Georgia case was the first major case to come before the Supreme Court and possibly to Wilson’s delight it centred on the question of sovereignty.⁶¹ Wilson’s Majority Opinion as Bartrum explains: “stands as perhaps the capstone in his larger structural account of popular sovereignty.”⁶² Wilson’s arguments throughout the decision are grounded in his Revolution Principle and his understanding of it as the foundational principle of the US Constitution, recording and authorising his interpretation of the Constitution as part of constitutional law precedence. However, the Chisholm case is rarely taught, even in American law schools, much less in history courses.⁶³ The Eleventh Amendment, which is regarded as repudiating Wilson’s decision is one reason for its absences, although

⁵⁸ Knapp, “Law’s Revolution,” 291 (emphasis original).

⁵⁹ Knapp, “Law’s Revolution,” 292-96.

⁶⁰ Knapp, “Law’s Revolution,” 294-95.

⁶¹ Knapp, “Law’s Revolution,” 289; Barnett, “Chisholm V. Georgia,” 1729; Wilmarth, “Elusive Foundations,” 176; Bartrum, “Moral Foundations,” 233; Alexander, “Wilson Doctrine,” 981; Robinson, “Wilson’s Theory of Rights,” 293.

⁶² Bartrum, “Moral Foundations,” 296. See also: Seed, *James Wilson*, 141.

⁶³ Barnett, “Chisholm V. Georgia,” 1729 & 1737; Knapp, “Law’s Revolution,” 289.

Barnett suggests that another reason is that the implications of Wilson's opinion are: "simply too radical."⁶⁴

The case began as an attempt to recuperate the debt incurred by Georgia during the Revolutionary War. The South Carolina businessman, to whom the state of Georgia owed the debt, had died, but his executor, Alexander Chisholm, sued on his estate's behalf.⁶⁵ Georgia's response in polite terms was to claim sovereign immunity, although Robinson notes that: "Advanced against the plaintiff was the proposition that he was not even competent to serve a summons on Georgia's governor and attorney general."⁶⁶ However, the state of Georgia was served a summons and its representative would appear before the Supreme Court to argue Georgia's claim of sovereign immunity. In essence, this case was the litigation of the general question of state sovereignty that had been the great obstacle to the ratification of the Constitution and the subject of so much debate and Wilson's arguments.⁶⁷ In the Supreme Court the result was a four to one decision against Georgia's claim with Wilson's argument in his Opinion centring on the people's retained sovereignty over the government, the foundation of his Revolution Principle.⁶⁸

In his written opinion, Wilson begins his argument by identifying that judging Georgia's claim requires determining the meaning of the words "States and sovereigns".⁶⁹ He commences his explanation on the subject by naming Reid directly and quoting his explanation as to how language can conform to a prevailing system of thought: "like a coat that fits the man for whom it was

⁶⁴ Barnett, "Chisholm V. Georgia," 1758. See also: Barnett, "Chisholm V. Georgia," 1729 & 1746; Knapp, "Law's Revolution," 289.

⁶⁵ Robinson, "Wilson's Theory of Rights," 293.

⁶⁶ Robinson, "Wilson's Theory of Rights," 293. Concerning Georgia's claim of sovereign immunity see: Knapp, "Law's Revolution," 288; Bartrum, "Moral Foundations," 293; Wilmarth, "Elusive Foundations," 176-79; Amar, "Of Sovereignty and Federalism," 1466-67; Barnett, "Chisholm V. Georgia," 1746; Bederman, *Classical Foundations*, 182-83.

⁶⁷ Wilmarth, "Elusive Foundations," 176.

⁶⁸ Robinson, "Wilson's Theory of Rights," 293; Wilmarth, "Elusive Foundations," 176; Seed, *James Wilson*, 147; Barnett, "Chisholm V. Georgia," 1746; Knapp, "Law's Revolution," 288-89; Bederman, *Classical Foundations*, 182-83.

⁶⁹ *Chisholm v. Georgia*, 454. See also: Robinson, "Wilson's Theory of Rights," 294.

made", causing ellipses in knowledge and preventing innovation.⁷⁰ While Reid was describing metaphysics, Wilson used the example to explain that the same thing was occurring in the science of governance, and particularly as it concerned the definition of "state" and "sovereign".⁷¹ In his parsing of these words, Wilson identified that Georgia's claims were rooted in European feudalism and Blackstone's conception of parliamentary sovereignty; ideas with which he took great exception and believed had no place in the new American system of governance.⁷²

Commencing with the term 'state', Wilson explained that it is an "artificial person" created by human beings, and thus, inferior to them.⁷³ Wilson explained that: "A *State*; useful and valuable as the contrivance is, is the *inferior* contrivance of *man*; and from his *native* dignity derives all its *acquired* importance."⁷⁴ An extended meaning of this argument is that it is consonant with Wilson's arguments in the ratification debates that the people are naturally superior to their invention or creation the government.⁷⁵ As Knapp explains, Wilson held that:

To purport to endow a state, that "inferior contrivance of man," with sovereignty insulted and degraded the dignity of "the man." These principles by themselves rendered Georgia's claim of sovereign immunity misplaced and resolved the case.⁷⁶

However, Wilson did recognise that other states, such as Britain, place sovereignty in their governments, and thus, took the opportunity to identify the location of the sovereign in the government of the United States.

⁷⁰ *Chisholm v. Georgia*, 454. Compare with: *Inq.*, 14. Wilson identifying and praising Reid, see: *Chisholm v. Georgia*, 453-54 See also: Robinson, "Wilson's Theory of Rights," 294; Bartrum, "Moral Foundations," 289.

⁷¹ Robinson, "Wilson's Theory of Rights," 294; Bartrum, "Moral Foundations," 289.

⁷² *Chisholm v. Georgia*, 457-58 & 461-62. See also: Bartrum, "Moral Foundations," 291-93; Seed, *James Wilson*, 144; Willmarth, "Elusive Foundations," 179.

⁷³ *Chisholm v. Georgia*, 462-63. See also: *Chisholm v. Georgia*, 461.

⁷⁴ *Chisholm v. Georgia*, 455 (emphasis original).

⁷⁵ See: Section, 5.3.

⁷⁶ Knapp, "Law's Revolution," 288. See also, Robinson, "Wilson's Theory of Rights," 295.

Continuing with the term ‘sovereign’, Wilson concluded that: “To the Constitution of the *United States* the Term SOVEREIGN, is totally unknown.”⁷⁷ However, he explained that it could have been appropriately stated in the Preamble: “They *might* have announced themselves “SOVEREIGN” people of the *United States*: But serenely conscious of the *fact*, they avoided the *ostentatious declaration*.”⁷⁸ He strengthened this argument by referencing Homer’s: “peculiar appellation the PEOPLE of *Athens*” as contrasting to the other nations of Greece, which were listed under their “*Kings or Princes*”.⁷⁹ This example illustrated, according to Wilson, that like Homer’s reference to the people of Athens, the Constitution commences by stating: “The PEOPLE of the *United States*”, indicating that the people and not a king or government are sovereign.⁸⁰ Like the ratification debates Wilson again identified the people as sovereign and argued that this principle was enumerated in the Preamble of the Constitution.⁸¹

Wilson also argued explicitly that the people did not give up their sovereignty to a state or to the Federal government when they ratified the Constitution, stating the United States is founded on a different principle to that of Britain, namely his Revolution Principle. Alluding to the recently ratified Constitution’s demand that each state should have a republican form of government, Wilson once again defined such a government as one in which: “the Supreme Power resides in the body of the people.”⁸² In doing so, Wilson implied that either the form of Georgia’s state government is not republican, and thus, in violation of the Constitution, or Georgia’s state government is republican and not sovereign. He did so by demonstrating that, by definition, the concept of state sovereign immunity is incompatible with a republican form of government.⁸³ This argument and definition has the further logical implication or extended meaning that, according to Wilson, under the US Constitution neither the state

⁷⁷ *Chisholm v. Georgia*, 454 (emphasis original).

⁷⁸ *Chisholm v. Georgia*, 454 (emphasis original).

⁷⁹ *Chisholm v. Georgia*, 463 (emphasis original).

⁸⁰ *Chisholm v. Georgia*, 463 (emphasis original). See also: Bederman, *Classical Foundations*, 185; U.S. Const. Pmbl.

⁸¹ See section, 5.3.

⁸² *Chisholm v. Georgia*, 457.

⁸³ *Chisholm v. Georgia*, 457. See also: Barnett, “Chisholm V. Georgia,” 1746; Bartrum, “Moral Foundations,” 291.

governments, nor the federal government (also being republican in its form), were sovereign. Instead, according to Wilson's definition, the people at large were and would continue to be sovereign under the US Constitution—Wilson's Revolution Principle.

Wilson made this position more explicitly as it concerned the Federal government by asserting that the people: "did *not* surrender the Supreme or Sovereign Power to that State [the United States]; but, *as to the purposes of the Union*, retained it to themselves."⁸⁴ Wilson has now claimed explicitly that the people of the United States retained their sovereignty after the ratification of the Constitution and the formation of the Federal and State governments. He continued to explain that this is the case because the US Constitution is founded on different principles than the principle of superiority espoused by Blackstone.⁸⁵

These principles are the intertwined principles of consent and sovereignty that comprise his Revolution Principle. Wilson stated this explicitly in his opinion:

laws derived from the pure source of equality and justice must be founded on the CONSENT of those, whose obedience they require. The *sovereign*, when traced to his source, must be found in the *man*.⁸⁶

Thus, Wilson has argued in his Majority Opinion as he did repeatedly in the ratification debates, that under the US Constitution neither the Federal government nor the states (including Georgia specifically) were sovereign. This argument draws out the logical implication of Wilson's Revolution Principle, in terms of its constituent principles of sovereignty and consent. The implication is Wilson's assertion that these governments were all inferior agents of the sovereign people dependent on their consent.⁸⁷

Therefore, in my interpretation, in accordance with the Revolution Principle and his understanding of it as the foundation of the Constitution, Wilson rejected Georgia's claim of sovereign immunity. In the process Wilson had restated many of his arguments from the ratification debates. Wilson's consistent

⁸⁴ *Chisholm v. Georgia*, 457 (emphasis original).

⁸⁵ *Chisholm v. Georgia*, 458. See also: Wilmarth, "Elusive Foundations," 179.

⁸⁶ *Chisholm v. Georgia*, 458 (emphasis original).

⁸⁷ Concerning governments as agents of the people in the *Chisholm* opinion see: *Chisholm v. Georgia*, 455 & 462-63.

repetition of these arguments and his assertion that the Revolution Principle is the foundation of the US Constitution across these contexts, and in his Lectures on Law, strongly indicate that they are Wilson's genuinely. However, there is one important difference between Wilson's statements in the context of his Majority Opinion and the ratification debates as well as his Lectures. By asserting these arguments as a Justice of the Supreme Court in a Majority Opinion, Wilson had codified them as part of constitutional law precedence.

6.4 - The Eleventh Amendment: Wilson's Revolution Principle on trial

Wilson's authoritative interpretation was met by dismay and panic among politicians and the people. Wilmarth explains that in response to the Court's decision: "newspaper essays and resolutions of state legislatures declared that Chisholm would lead to the destruction of state governments, the consolidation of the nation under the federal government's arbitrary power, and the subversion of the people's liberties."⁸⁸ However, Barnett argues in his article specifically on the Chisholm case, that: "The terms of the public debate over Chisholm focused primarily on the 'suability' of states, not on their 'sovereignty.'"⁸⁹ This more specific concern resonates with the historical context seen earlier that identified that one of the failures of the Articles of Confederation (that had only recently been replaced) was the failure to pay debts, meaning that Chisholm was likely not alone in his claim. These fears and uproar led to a quick response in the form of the ratification of the Eleventh Amendment by the congress and the states, raising the question: Was Wilson's opinion repudiated by it?⁹⁰

The Eleventh Amendment states that: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."⁹¹ Wilmarth claims that: "there is no

⁸⁸ Wilmarth, "Elusive Foundations," 183. See also: Amar, "Of Sovereignty and Federalism," 1473; Seed, *James Wilson*, 147.

⁸⁹ Barnett, "Chisholm V. Georgia," 1755. See also: Charles Smith, *James Wilson*, 359.

⁹⁰ Wilmarth, "Elusive Foundations," 183. See also: Amar, "Of Sovereignty and Federalism," 1473.

⁹¹ U.S. Const. amend. XI.

dispute that the Amendment overruled the majority decision in *Chisholm*.⁹² However, a response is not a repudiation. Barnett and Amar provide convincing arguments that: “the narrowly worded amendment left the broad reasoning of the Court intact.”⁹³

Barnett argues that the interpretation that the Eleventh Amendment repudiated the *Chisholm* decision is a modern, not a historical, one: “dating back to the 1890 case of *Hans v. Louisiana*”.⁹⁴ This was over one hundred years after the Constitution had been ratified, while the *Chisholm* decision was made merely five years after ratification, by a four to one margin, and by those intimately involved in the Constitution’s drafting and ratification.⁹⁵ Moreover, as Barnett explains later, Chief Justice John Marshall also recognised that the *Chisholm* case was correctly decided until the introduction of the Eleventh Amendment.⁹⁶ This received modern interpretation holds that the Eleventh Amendment was intended to repudiate the majority decision and re-establish the original intended meaning of the Constitution wherein the State and Federal governments were to some extent sovereign, and hence, could claim sovereign immunity.⁹⁷ However, this contextual evidence and timeline suggest otherwise.⁹⁸ Or as Amar bluntly states: “All of this is, in a word, nonsense”.⁹⁹

Amar further supports his blunt indictment, by pointing to the resulting case law as proof that this modern interpretation of the Eleventh Amendment is illogical and incoherent. He states that: “It is no wonder the Court’s Eleventh Amendment case law is incoherent; in law, as in logic, anything can be derived from a contradiction.”¹⁰⁰

⁹² Wilmarth, “Elusive Foundations,” 183. See also: Bartrum, “Moral Foundations,” 296; Conrad, “Wilson, James”.

⁹³ Barnett, “*Chisholm V. Georgia*,” 1754. See also: Amar, “Of Sovereignty and Federalism,” 1473-74.

⁹⁴ Barnett, “*Chisholm V. Georgia*,” 1740.

⁹⁵ Barnett, “*Chisholm V. Georgia*,” 1744-46, & 1756-1757.

⁹⁶ Barnett, “*Chisholm V. Georgia*,” 1744-45.

⁹⁷ Barnett, “*Chisholm V. Georgia*,” 1744-45.

⁹⁸ Barnett, “*Chisholm V. Georgia*,” 1744-45.

⁹⁹ Amar, “Of Sovereignty and Federalism,” 1473.

¹⁰⁰ Amar, “Of Sovereignty and Federalism,” 1480. See also: Bartrum, “Moral Foundations,” 296.

The contradiction that Amar is speaking of is the same one that Wilson identified in his Opinion on the Chisholm case:

Is it congruous, that, with regard to *such* purposes, any man or body of men, any person natural or artificial, should be permitted to claim successfully an entire exemption from the jurisdiction of the national Government? Would not such claims, crowned with success, be repugnant to our very existence as a nation?¹⁰¹

The concept of state sovereign immunity, according to Amar, denies the concept that government is under law, undermining the very conception of the Constitution as a grant of powers, and instead presents it as: “the British theory of governmental supremacy that was anathema to the framers.”¹⁰²

Thus, this modern interpretation of the Eleventh Amendment from Amar’s perspective is “wholly antithetical to the Constitution’s organizing principle of popular sovereignty”, and is therefore nonsense, which is demonstrated by the resulting “ad hoc mish- mash” Eleventh Amendment case law.¹⁰³ Put another way, this interpretation is incorrect and the case law surrounding it is incoherent because it denies or at least ignores that Wilson’s Revolution Principle is the foundation of the US Constitution.

Given that this interpretation contradicts the foundation of Federalist thought (Wilson’s Revolution Principle), it raises further doubts about its historical accuracy, because the passage of the Eleventh Amendment required Federalist support in congress. While Wilmarth notes that Wilson’s decision was overturned by the Eleventh Amendment, he also asserts that it was at: “the core of Federalist jurisprudence.”¹⁰⁴ Furthermore, Wilson was a leading Federalist, as was Chief Justice John Jay, who also stated, in his own official Opinion, that the idea of state sovereign immunity was antithetical to a republican form of government.¹⁰⁵

¹⁰¹ *Chisholm V. Georgia*, 465 (emphasis original).

¹⁰² Amar, “Of Sovereignty and Federalism,” 1480.

¹⁰³ Respectively: Amar, “Of Sovereignty and Federalism,” 1466 & 1480.

¹⁰⁴ Wilmarth, “Elusive Foundations,” 187.

¹⁰⁵ Barnett, “Chisholm V. Georgia,” 1746. John Jay leading federalist see: Bederman, *Classical Foundations*, 183-84; Robert A. Ferguson, “The Forgotten Publius,” *Early American Literature* 34, no. 3 (1999); Jerald A. Combs, “Jay, John,” in *The Oxford Encyclopedia of American Political and Legal History*. (Oxford: Oxford University Press,

Thus, as Amar argues, if the modern interpretation is correct: "it is amazing that the Amendment was supported by so many Federalists, without whose support the Amendment could not have succeeded, willing to dismantle so much of what they had worked so hard so recently to erect."¹⁰⁶ This contextual evidence brings further doubt on the conception that this modern interpretation even approaches the historical or intended meaning of this Amendment or the Constitution.

According to several scholars, this is further illustrated in the narrow scope and language of the Amendment itself. Knapp observes that: "while the Eleventh Amendment prohibited suits against states by out-of-state citizens, its text neither recognized the states as sovereigns nor otherwise clearly repudiated the underlying principles of sovereignty enunciated in Wilson's opinion."¹⁰⁷ Indeed, a quick glance at the Eleventh Amendment, quoted above, reveals that the term 'sovereignty' or the concept of state sovereign immunity are nowhere to be found in it. As Barnett pointedly explains: "The narrowly drafted words of the Eleventh Amendment were adopted by Congress in the face of the Court's open denial of state sovereignty, especially in the opinions of Justice Wilson and Chief Justice Jay."¹⁰⁸ The Amendment simply does not address the concept of sovereignty that was so clearly and forcefully asserted by the Court. This almost certainly could not have been a mere oversight.

After a number of other more technical textual arguments, this leads Barnett to conclude that: "The narrow and technical language of the Eleventh Amendment could not reasonably have been understood either as a repudiation of the grand and magisterial idea that 'We the People' are sovereign or as establishing the power of the English monarchy as the model of state government authority."¹⁰⁹ This strongly indicates that the Eleventh Amendment was not intended to be a repudiation of the general assertion in Wilson's opinion or understood to be at the time. Thus, despite its adherents' claims to the contrary,

2012), <https://www-oxfordreference-com.ezproxy.lib.gla.ac.uk/view/10.1093/acref/9780199754618.001.0001/acref-9780199754618-e-0283>.

¹⁰⁶ Amar, "Of Sovereignty and Federalism," 1484.

¹⁰⁷ Knapp, "Law's Revolution," 289. See also: Barnett, "Chisholm V. Georgia," 1751 & 1755.

¹⁰⁸ Barnett, "Chisholm V. Georgia," 1754.

¹⁰⁹ Barnett, "Chisholm V. Georgia," 1756.

the modern interpretation of the historical or intended meaning of the Eleventh Amendment and the corresponding conception of sovereignty it locates, in the original or intended meaning of the US Constitution, are almost certainly incorrect.

Instead, Barnett and Amar both hold to a narrow reading of the Amendment that fits the text and historical context far better than the modern interpretation.¹¹⁰ This interpretation holds that the Amendment simply prohibits suits against states by out-of-state citizens and foreign nationals as it explicitly states. This reading resonates with the general fear at the time concerning the amount of outstanding debt held by the states. From this perspective the text seems quite clear as does its purpose as a means of protecting the states still struggling under large debts incurred during the Revolutionary War.

Thus, as Barnett and Amar convincingly argue, at the time this Amendment was ratified it was almost certainly not intended to be or understood as a repudiation of Wilson's assertion of his Revolution Principle in his Majority Opinion. Rather this textual and historical evidence, in my judgment, strongly indicates that the Eleventh Amendment was intended to be a narrow prohibition. This in turn, strongly signals that at the time of the Eleventh Amendment's ratification, Wilson's general interpretation was broadly seen as correct, which further highlights it as a significant historical understanding of the US Constitution.

This calls into question the modern Court's interpretation of the Eleventh Amendment and raises further questions concerning its neglect both in legal practice and education in the United States.¹¹¹ The neglect of the Chisholm case and Wilson's Opinion is justified through the received assumption that the Eleventh Amendment repudiated the Chisholm decision. However, as illustrated above, this appears to be an unfounded assumption and as Bartrum notes (resonating with Amar's bolder assertions) the case law surrounding this Amendment is: "so riddled with exceptions, rationalizations, and transparent fictions as to appear every bit the Ptolemaic foil to Wilson's simple Copernican

¹¹⁰ Barnett, "Chisholm V. Georgia," 1756; & Amar, "Of Sovereignty and Federalism," 1473-74. See also: Charles Smith, *James Wilson*, 359.

¹¹¹ Barnett, "Chisholm V. Georgia," 1729-30 & 1758; Knapp, "Law's Revolution," 289.

insight.”¹¹² It appears this modern interpretation does not persist because of its strong theoretical or legal merit, nor does it pose a strong challenge to Wilson's original Opinion.

Instead, Barnett, as seen earlier, suggests that Wilson's Opinion (and the Chisholm case generally) are neglected because Wilson's Majority Opinion is: “too radical in its implications.”¹¹³ These radical implications amount to the extensive level of democracy that Wilson's Majority Opinion and particularly the Revolution Principle propose, which Knapp also recognises and describes as: “arguably anarchical”.¹¹⁴ In my judgment, this illustrates that again Wilson asserted his radically democratic interpretation of the Constitution, which at the time was generally accepted, and has since been exceedingly neglected. In this instance, it holds the further authority of constitutional law precedence that challenges the dubious modern interpretation of the Eleventh Amendment.

In both Chisholm's case and Henfield's, Wilson asserted his radically democratic interpretation of the US Constitution, which while receiving mixed receptions and having been obfuscated by later case law, further unravel Gordon Wood's thesis. Wilmarth explains that Wilson's ideas: “articulated in Chisholm and Henfield's Case were at the core of Federalist jurisprudence.”¹¹⁵ These were Federalist ideas, which is further illustrated by the similarities between Chief Justice Jay's Opinion on the Chisholm case and Wilson's.¹¹⁶ Henfield's case did cause something of an international incident, but the verdict was respected even by President Washington who merely provided other countries an explanation, leaving them to decide for themselves. In Chisholm's case it has been illustrated at length that, at the time, the Eleventh Amendment was almost certainly not seen as a repudiation of Wilson's Opinion. Thus, while they both were met with mixed receptions, the core concepts articulated by Wilson in Henfield's case and Chisholm's were illustrated to be generally respected and accepted. In this sense, the Eleventh Amendment has functioned like a test that has further highlighted

¹¹² Bartrum, “Moral Foundations,” 296.

¹¹³ Barnett, “Chisholm V. Georgia,” 1729. See also: Knapp, “Law's Revolution,” 289.

¹¹⁴ Knapp, “Law's Revolution,” 300.

¹¹⁵ Wilmarth, “Elusive Foundations,” 187.

¹¹⁶ Barnett, “Chisholm V. Georgia,” 1734, 1746, 1754-57.

that Wilson's Revolution Principle, particularly the popular sovereignty aspect of it, was recognised as the foundation of the US Constitution at the time.

These are two radically democratic decisions that were written by Wilson (a Federalist), supported by other Federalists such as Chief Justice Jay, and generally accepted as correct at the time. They, therefore, stand as further stark evidence against Gordon Wood's thesis that the Federalists and US Constitution should be understood as primarily aristocratic in nature. Gordon Wood's thesis is at best an overgeneralisation focused on Madison that simply cannot be maintained when an honest account is taken of Wilson's significant and radically democratic contributions to the development of the US Constitution. Furthermore, the support of Wilson's opinion by elite Federalists both on the Supreme Court and in Congress raises further doubts as to whether Gordon Wood's description is even applicable to these elite Federalists from which his generalisation is apparently drawn.

This also further illustrates that Wilson's radically democratic contributions and with them his Democratic Political Theory, grounded in and developed through Reid's philosophy, hold several levels of authority within the American legal and political tradition. Wilson's assertion of his Democratic Political Theory in the Constitutional Convention and the ratification debates secure it as a strand of the American political tradition. The strong support Wilson's Revolution Principle received, as the foundation of the US Constitution, illustrates that it was likely the principal interpretation of the Constitution as ratified, if one can be conclusively determined. This alone makes it a significant central strand of the American political tradition.

It was then codified into Federal Law as it concerned the sovereignty of juries and constitutional law precedence as it concerned the people's sovereign superiority over their governments by *Henfield's* and *Chisholm's* cases respectively. Furthermore, the incoherence of the Eleventh Amendment case law further supports the theoretical merits of Wilson's Revolution Principle as the only foundation that could make sense of the US Constitution and the federal system it created. Therefore, Wilson's contributions to the development of the US Constitution, which represent a historical understanding of it, are substantial and significant. They have (or ought to have) a high degree of authority within the

American legal and political traditions. This is particularly the case concerning Wilson's assertion of the Revolution Principle as the foundation of the US Constitution.

Therefore, while this historical event can be presented from a variety of perspectives and the specifics of the US Constitution may be variously interpreted, neglecting or ignoring Wilson's role and the Revolution Principle is a grave oversight. As Pedersen explains, this oversight is not unique to Gordon Wood's work, but is systemic in both the scholarly discourse and in the popular American understanding of this historical event.¹¹⁷ The radically democratic nature of Wilson's contributions dramatically and significantly re-inform our understanding of the historical development of the Constitution and the document itself. As will be discussed in my concluding chapter 8, Wilson holds further potential to significantly inform the current political debate in the United States as well, illustrating that neglecting Wilson is something of an ongoing national tragedy, or as Pederson puts it: "a disservice not only to him [Wilson], but to the American People and the government that serves them."¹¹⁸

¹¹⁷ Pedersen argues this at length, see: Pederson, "Lost Founder".

¹¹⁸ Pedersen, "Lost Founder," 260.

Chapter 7 – Wilson’s Democratic Political Theory in Teaching Constitutional Law

Wilson made a further contribution in his Lectures on Law that further challenges modern conceptions of the US Constitution and the history of its development. While Wilson was a Justice of the Supreme Court he wrote his Lectures on Law as a systematic account of the new theory and system of government he believed he had helped realise through his contributions to the development of the US Constitution.¹ As Bartrum argues: “Wilson undoubtedly relished the opportunity to compose and deliver lectures on what he believed was a wholly new entry in the annals of systemic legal theory: the structures of American popular sovereignty and the rule of law.”² These lectures were meant to train a new generation of lawyers and judges in this new theory with his initial focus on the fifteen students attending his lectures.³ However, Wilson also intended these lectures to be published and read by the citizens at large.⁴ In part he hoped that it would become “the definitive treatise on American law”, which along with his aspiration to be named Chief Justice would help him achieve his great ambition of being “remembered as America’s Blackstone”.⁵ This hope also had altruistic motives for Wilson who believed the science of law and governance should be studied: “by every free citizen”, so they could effectively participate in governance and improve it.⁶

¹ Dennison, “Revolution Principle,” 176; Knapp, “Law’s Revolution,” 194; Leavelle, “Wilson and Scottish Metaphysics,” 395-96; Conrad, “Common-Law,” 194; Barnett, “Chisholm V. Georgia,” 1734.

² Bartrum, “Moral Foundations,” 275.

³ Bayer, “Common Sense Republic,” 191; Mark Hall, “Bibliographical,” 1:401. See also: *WJW*, 1:13, 1:25-28, & 1:41-42.

⁴ Bird Wilson, “Preface,” in *WJW*, 1:iv.

⁵ Mark Hall, “Bibliographical,” 1:401. See also: Pedersen, “Lost Founder,” 285; Kermit Hall, “Introduction,” 1:xiii-xiv.

⁶ *WJW*, 1:9. See also: Zink, “Liberty and Law,” 451.

Wilson's Lectures have proven to be significant, but they did not lead to the legacy he desired. The lectures were given at the College of Philadelphia with President Washington, his wife, the Vice President, and both houses of Congress attending the introductory lecture.⁷ Such an audience speaks to the stature of Wilson and his Lectures. However, he would never finish delivering them to his students, likely due to the demands of being a Justice and his failing business endeavours.⁸ His early death prevented him from publishing them, leaving his son to accomplish the task for him in 1804.⁹ However, as Bartrum argues, this "does not detract, [...] from the thoughtfulness and erudition of the written Lectures, which remain a rich resource".¹⁰ Moreover, as Knapp asserts, Wilson's Lectures stand as the first: "sustained attempt by a native jurist in American history to reflect systematically on the nature of American law as distinct from its English counterpart, Wilson's law lectures gave birth to American jurisprudence as such."¹¹ While these Lectures have largely been neglected along with Wilson generally, they are significant. They are a helpful source for understanding Wilson's interpretation of the US Constitution, and particularly the philosophy in which it was grounded.¹²

In his Lectures, Wilson identified the Revolution Principle, along with its constituent parts, the principles of consent and sovereignty, as the foundation of a new theory of governance that had been realised by the ratification of US Constitution.¹³ However, Wilson's Lectures also present a fuller and more

⁷ Hall, "Bibliographical," 1:403; Wilmarth, "Elusive Foundations," 145; Seed, *James Wilson*, 150; Knapp, "Law's Revolution," 252-53. Wilson references this "*fair audience*" in his introductory lecture, see: *WJW*, 1:3.

⁸ Charles Smith, *James Wilson*, 346; Bartrum, "Moral Foundations," 276; Pedersen, "Lost Founder," 289; Conrad, "James Wilson".

⁹ Mark Hall, "Bibliographical," 1:401; Kermit Hall, "Introduction," 1:xvii; Pedersen, "Lost Founder," 289; Charles Smith, *James Wilson*, 392; Seed, *James Wilson*, 178-79.

¹⁰ Bartrum, "Moral Foundations," 276.

¹¹ Knapp, "Law's Revolution," 194. Concerning the thoughtful nature and only sustained reflection by a founder on the Constitution see: Bartrum, "Moral Foundations," 275-77; Leavelle, "Wilson and Scottish Metaphysics," 395-96; Conrad, "Common-Law," 194; Barnett, "Chisholm V. Georgia," 1734.

¹² See: Sections, 3.3, 4.1, 4.3, 5.1, 5.3, & 6.1-3.

¹³ Concerning Wilson's belief that he was creating a new system of governance see: Wilmarth, "Elusive Foundations," 117, 153, & 156; Bartrum, "Moral Foundations," 275; Knapp, "Law's Revolution," 306-07; Conrad, "Wilson, James"; Conrad, "Polite Foundations," 369-370; Dennison, "Revolution Principle," 186-89.

systematic expression of his broader Democratic Political Theory. This significantly includes his vision for how the government of the United States would function based upon his Revolution Principle. This reveals Wilson's vision or hope that, based upon his theory, the ratification of the US Constitution would commence a continual peaceful revolution in the theory and practice of governance.¹⁴

The nature of this revolution and how it functions is best understood through formulating extended meaning. Doing so will reveal that this revolution is realised through the government pursuing what Wilson believed was its proper end: the improvement of society. This proper end is what I call Wilson's social end of government. This will also include bringing to light that Wilson saw society as cultivating humans and that he is committed to the idea that an improved society would improve the citizens. These improved citizens could then improve their government through the Revolution Principle.¹⁵ Furthermore, he believed the Revolution Principle or more generally self-governance would also educate and improve the citizens, again leading to the improvement of government, which I describe as the social function of his Revolution Principle. This reciprocal or dialectic aspect of Wilson's theory helps explain his hoped for revolution as well as illuminating and exemplifying the progressive nature of Wilson's Democratic Political Theory.

Again, this conception or hope is, in my judgment, a development of Reid's philosophy and particularly his understanding of society and the social development of knowledge. Recognising these Reidian roots reveals Wilson's vision and illuminates its truly progressive nature.¹⁶

¹⁴ Dennison, "Revolution Principle," 182; Knapp, "Law's Revolution," 254, 281, & 305.

¹⁵ Dennison, "Revolution Principle," 189.

¹⁶ Dennison, "Revolution Principle," 157.

7.1 - Revolution in the Science of Governance: Founded on first principles

Wilson, adhering to Reid, held that the development of knowledge in a science and generally required proper first principles. For Wilson, like Reid, this was the real lesson of Newton and Bacon that had led to the scientific revolution in natural philosophy. In my judgment, this evidence helps reveal the extended meaning that Wilson recognised and imitated Reid's work of clearing the ground of unfounded theories, such as the Theory of Superiority, and testing and identifying new principles, such as his consent principle, to lay the necessary foundation for a new science.¹⁷

This endeavour was necessary because Wilson held that, like the philosophy of the human mind, according to Reid, the science of government too: "seems yet to be almost in its state of infancy."¹⁸ Wilson made this statement in the Pennsylvania Ratifying Convention, although it was in his Lectures that he attempted to address this problem by laying out his new Democratic Political Theory, which he believed was embodied in the US Constitution. Akin to Reid's conception of the role of first principles, Wilson thought that it laid a foundation that would provide the necessary stability for the social development of knowledge, resulting in great improvements in the science of government and law.¹⁹

Wilson made his aim of revolutionising the science of government apparent in his introductory lecture. There he warns against following the received authority of Blackstone blindly and asserted that: "error should be exposed, in order to be avoided."²⁰ This has already been done to a certain extent by the United States, according to Wilson, who tells his audience that: "the principles of our constitutions and governments and laws are materially *better* than the principles of the constitution and government and laws of England."²¹ Wilson followed this assertion by stating his Revolution Principle in full as the "*vital*

¹⁷ See: Sections, 4.1 & 5.1.

¹⁸ DSSC, 2:422. Compare with: *Inq.*, 18.

¹⁹ For Reid's position, see: Section, 3.2.

²⁰ WJW, 1:23.

²¹ WJW, 1:17 (emphasis original).

principle” that made the governments and laws of the United States different and superior to those of England.²² Just after stating by name and defining his Revolution Principle as well as his critiques of Blackstone, Wilson stated clearly that: “It already appears, that, with regard to the very first principles of government, we set out from different points of departure.”²³ From the outset of his Lectures Wilson asserted that Blackstone’s conception of superiority is an error that needs to be avoided and that the United States was founded on new and better principles.²⁴

While the Revolution Principle’s standing and radical extent, as a Reidian first principle, have already been discussed, it also serves an important role in the development of the science of government. After stating his choice of Reid’s philosophy as the foundation for his Democratic Political Theory in his lecture: “Of Man, as an Individual”, Wilson began to describe it, using cited and uncited quotations and paraphrases of Reid.²⁵ This outline of Reid’s philosophy includes extensive discussions concerning first principles and their important role in all sciences.²⁶

It is particularly the laying down of proper first principles that Wilson identifies as essential for developing the science of governance. Wilson saw this science as being in a low or perpetually immature state, similar to Reid’s description of the philosophy of the human mind.²⁷ Like Reid, Wilson identifies the lack of proper, stable, and agreed upon first principles as the key failure that was inhibiting the progress or maturation of this science. This failure concerning first principles led each successive system to start from scratch, not developing from the previous work done. Reid states this somewhat poetically in the *Inquiry*, while Wilson simply explains to his audience that: “Systems have been formed upon systems, all fleeting, because all unfounded.”²⁸ The solution to this problem, according to Wilson, was to follow Newton and Bacon’s example, which he

²² WJW, 1:17 (emphasis original).

²³ WJW, 1:21.

²⁴ May, *Enlightenment in America*, 207. See also: Bartrum, “Moral Foundations,” 292; Knapp, “Law’s Revolution,” 253-54, 264, & 298; Conrad, “Common-Law,” 203-04.

²⁵ WJW, 1:256-81. See also: Appendix A.

²⁶ WJW, 1:256-58 & 1:273-81. See also “First Principles/ Methodology” in Appendix A.

²⁷ DSSC, 2:422. Compare with: *Inq.*, 16.

²⁸ WJW, 1:24.

understood through Reid as presenting the testing and identification of first principles as the means to create a stable agreed upon foundation on which a science can develop.

This can be seen quite clearly in Wilson's nearly transcribed quotation of Reid (only adding an extra sentence of praise for Sir Isaac Newton):

Till within these two hundred years, natural philosophy was in the same fluctuating state with the other sciences. Every new system pulled up the old one by the roots. The great Lord Bacon first marked out the only foundation, on which natural philosophy could be built. His celebrated successour (sic), Sir Isaac Newton, gave the first and noblest examples of that chaste induction, of which his guide in the principles of science could only delineate the theory. He reduced the principles of Lord Bacon into a few axioms, which he calls "regulae philosophandi".²⁹

First principles according to both have allowed the sciences such as mathematics and natural philosophy to develop and mature, being no longer "subjected to alteration in the plan", according to Wilson, or "subject to revolutions", according to Reid.³⁰

Thus, an extended meaning is that, Wilson's interpretation and translation of Reid's understanding of the chief lesson of Newton and Bacon for addressing the immature state of a science, crucially involved establishing first principles for the science of governance. Wilson made his intended meaning clearer in stating that the specific means of preventing the perpetual creation of new theories of governance was to recognise sovereignty's location in "the free and independent man" as the "first and fundamental principle in the science of government."³¹ Therefore, in my judgment, Wilson's was adhering to Reid's understanding of Newton and Bacon to address this problem in the science of governance by laying a secure foundation of first principles in his intertwined principles of consent and sovereignty and their expression in the Revolution Principles.³²

²⁹ *WJW*, 1:279-80. Compare with: *IP*, 457.

³⁰ Respectively: *WJW*, 1:280; & *IP*, 457.

³¹ *WJW*, 1:25.

³² Wilmarth, "Elusive Foundations," 150 & 161; Conrad, "Common-Law," 203-4; Callergard, *Reid's Philosophy of Science*, 8.

According to Wilson, properly identified and tested First principles aid in the development of a science by playing a necessary and stabilising role, because all reasoning in a science must be able to be drawn back to them. Wilson used Reid's almost exact words to state this explicitly: "In every other science, as well as in mathematicks, there are some common principles, upon which all reasonings in that science are grounded and into which they may be resolved."³³ Again, quoting Reid almost exactly, Wilson argued that indeed: "all knowledge, obtained by reasoning, must be built on first principles."³⁴ This is the case because, according to Reid, there would be no self-evident principle on which to end the proof, or as Wilson stated more concisely: "if every truth would admit of proof, proof would extend to infinity".³⁵ Wilson concludes, again resonating with Reid's philosophy, that: "to make nothing selfevident (sic), is to take away all possibility of knowing any thing".³⁶

Thus, first principles stand as a necessary foundation for human knowledge and particularly scientific knowledge that supports the reasoning or claims in that science. However, this foundational role comes with the necessary consequence implied in Wilson's earlier statements that if a system is founded on erroneous principles all the reasoning or knowledge built upon that foundation must be discarded. Therefore, the development of a science in Wilson's thinking requires the stability that only proper first principles can provide.

It is also necessary that first principles are shared for the development of science because of Wilson's Reidian conception of the social development of knowledge. This is the case because Reid held that shared first principles are necessary for meaningful communication. Reid saw the development of knowledge as an intergenerational dialectic affair.³⁷ Wilson stated this relatively implicit conception in Reid, explicitly in his Lectures:

Indeed, what we call human reason, in general, is not so much the knowledge, or experience, or information of any one man, as the

³³ WJW, 1:275. Compare with: *IP*, 40.

³⁴ WJW, 1:278. Compare with: *IP*, 454.

³⁵ WJW, 1:257. Compare with: *IP*, 455. See also: Section, 3.2.

³⁶ WJW, 1:256-57. For instance, compare with: *Inq.*, 21.

³⁷ See: Section, 3.2.

knowledge, and experience, and information of many, arising from lights mutually and successively communicated and improved.³⁸

Wilson and Reid similarly recognise that knowledge is developed dialectically among peers and across generations. This requires the ability to communicate meaningfully, generally and about a certain science or subject with other intelligent beings. Thus, knowledge is developed socially, according to both Wilson and Reid.

It is shared first principles that make this social development of knowledge possible. Wilson quoted Reid directly on this subject, telling his audience that: "Before men can argue together, they must agree in such principles; for it is impossible for two to reason, but from principles held by them in common."³⁹ Using much of Reid's exact language on the subject, Wilson further explained to his audience that these principles are in science "called *axioms*" and referring to them as first principles.⁴⁰ Earlier in his Lectures, Wilson also made this concept clear by utilising Reid's analogy of attempting to explain "the term *colour*", through reasoned argument: "to one who was born and has continued blind."⁴¹ Thus, Wilson held that securing proper first principles and forming a consensus on them was essential to the social development of human knowledge, which comes to light through the extended meaning that he did so in adherence to Reid.

Therefore, in my judgment Wilson intended his identification and testing of first principles for the science of governance to be understood as commencing his Reidian conception of a necessary Newtonian revolution in that science, which would lead to its development. However, Wilson was not the first to attempt this, by his own admission. He recognised that: "it was the study of the works of Lord Bacon, that first inspired Grotius".⁴² Yet, Grotius was not successful in this attempt, according to Wilson, because he did not: "set[...] out on right and solid principles."⁴³ In my judgment, Wilson believed he had corrected this error through

³⁸ WJW, 2:46.

³⁹ WJW, 1:274-75. Compare with: *IP*, 39.

⁴⁰ WJW, 1:275 (emphasis original). Compare with: *IP*, 39-40, & 452.

⁴¹ WJW, 1:119 (emphasis original). Compare with: *AP*, 178. See also: *IP*, 551-52.

⁴² WJW, 1:148.

⁴³ WJW, 1:148.

his adherence to Reid in his establishment of proper first principles, from which he drew the rest of his Democratic Political Theory.⁴⁴

Wilson hoped that a consensus would form around his first principles of governance, and Reid's philosophy that underpinned his theory of governance, providing the means and stability necessary for the development of the science of governance.⁴⁵ As Wilmarth explains, Wilson looked forward: "to an age in which the science of morals would be 'founded upon first principles, as upon a rock,' in the same manner that Sir Francis Bacon and Sir Isaac Newton had established universally accepted 'axioms' of mathematics and physics."⁴⁶ Furthermore, according to Conrad, based on his adherence to the principles of common sense, Wilson believed that a society with a republican culture or sensibilities could potentially realise his hope of near universal agreement on quasi-Newtonian first principles of "moral and civic science".⁴⁷ Conrad argues further that Wilson believed such an agreement would lead to a unified will among the people based on the knowledge created on the stable foundation of these first principles.⁴⁸ This would make for effective and efficient self-government. However, Wilson had a grander vision of the reciprocal improvement of society and government based upon his conception of the interdependence of knowledge and society. This interdependence further reveals Wilson's Reidian conception of the social development of knowledge and the cultivating power of society.

7.2 - Products of Society: Government improving individuals, knowledge, and society

Society played an important role in Wilson's Lectures and Democratic Political Theory. Accordingly, he devotes an entire lecture to "Of Man, as a Member of Society". As discussed in chapter 3, Wilson clearly adhered to Reid's conception that society is natural to human beings and that humans are naturally sociable

⁴⁴ WJW, 1:200.

⁴⁵ WJW, 1:280. Compare with: *IP*, 457-58.

⁴⁶ Wilmarth, "Elusive Foundations," 150.

⁴⁷ Conrad, "Polite Foundations," 385.

⁴⁸ Conrad, "Polite Foundations," 385.

because of the benevolent affections.⁴⁹ This included the conception that society was necessary for the preservation of the species, which, as we will see, Wilson saw as particularly the case in the social development of knowledge.

Further formulating Wilson's adherence to Reid as an extended meaning, helps explain Wilson's understanding of government as a product of the social development of human knowledge and his social end of government: the improvement of society. Specifically, this extended meaning includes recognising Wilson's commitment to Reid's conception of the cultivating power of society and the organic and developmental terminology that characterises Reid's naturalism. It also includes, recognising that Wilson followed Reid in identifying the interdependence between society and human faculties, particularly the moral sense. The concept of interdependence has already been seen to a certain extent in Wilson's summary of Reid's recognition of the interdependent relationship between justice and society.⁵⁰ However, this understanding of the concept of cultivating power of society and the relationship between society and human faculties, reveals the logical implication, or further extended meaning, that society and knowledge are also interdependent in Wilson's thought.

The moral sense, while an innate natural faculty, is also, according to Wilson: "capable of culture and improvement by habit, and by frequent and extensive exercise."⁵¹ This resonates with Reid's own description of the moral sense and other human faculties as seeds whose progress or maturation: "depends very much upon their being duly cultivated and properly exercised."⁵² Wilson also takes up Reid's organic metaphor of seeds and nearly his exact words on this subject, explaining that:

These same savages have in them the seeds of the logician, the man of taste, the orator, the statesman, the man of virtue, and the saint.

These seeds are planted in their minds by nature, though, for want of

⁴⁹ See: Section, 3.3.

⁵⁰ See: Section, 3.3.

⁵¹ *WJW*, 1:124.

⁵² *AP*, 187.

culture and exercise, they lie unnoticed, and are hardly perceived by themselves or by others.⁵³

From Wilson's Reidian perspective, human faculties, though natural, are susceptible to improvement through exercise, education, and habit, and moreover appear to require this proper culture to be realised in individual human minds.

In his Lectures, the implications or extended meaning of Wilson's statements and positions resonate with Reid's general conception of society's cultivating power and Copenhaver's identification of language specifically.⁵⁴ To begin, Wilson recognised that interaction with "other social and intelligent beings" (or in other words society), was necessary for the acquisition of language, and without it a person would be: "as mute as the irrational animals that surround him."⁵⁵ Wilson explains that language is the means by which humans communicate knowledge as well listing a number of other social interactions such as promises, which he labelled: "social intellectual operations", which adheres to Reid's terminology.⁵⁶

Quoting Reid directly, Wilson asserted that to express these social operations of the mind is "the primary and the direct intention of language."⁵⁷ As Diamond explains concerning Reid's philosophy, the expression of these social operations in language: "is essential to their existence", and on them: "society and the rule of law depend".⁵⁸ Resonating closely with this, Wilson asserted that: "in consequence of language, we are united by political societies, government, and laws".⁵⁹ Thus, it appears that Wilson, like Reid, saw language as an essential component of the social operations of the mind, and thus, necessary for society and the rule of law, while language also requires society to exist. The extended

⁵³ WJW, 1:131. Compare with *Inq.*, 13.

⁵⁴ See: Section, 3.2.

⁵⁵ WJW, 1:290. Compare with: *IP*, 69.

⁵⁶ WJW, 1:289. Compare with: *IP*, 69. Concerning languages role in the social operations of the mind see: WJW, 2:83-84. Compare with: *Inq.*, 51-52; & *IP*, 69.

⁵⁷ WJW, 1:290. Compare with: *IP*, 69.

⁵⁸ Diamond, *Common Sense and Improvement*, 329. See also: Yaffe, "Promises, Social Acts," 283-84; & Schreyer, "Language and Scottish Enlightenment," 159.

⁵⁹ WJW, 1:290.

meaning or logical implication of this is that language and society are interdependent.

Furthermore, Wilson identified language as the means by which society cultivates humanity. Wilson indicates this in his statement that: "by means of language, we are raised from a situation, in which we should be as rude and as savage as the beasts of the woods."⁶⁰ From Wilson's perspective, it seems that language, as the means of expressing and realising the interactions and operations that constitute society, also cultivates humans and their intellectual powers. This can be seen particularly clearly in Wilson's statements (seen above) concerning the development of knowledge through communication across the generations. Thus, in my judgment, for Wilson, language embodies the cultivating power of society to improve individuals and their faculties beyond their otherwise savage state.

This carries with it a further apparent implication that improved individuals would also constitute an improved society that more effectively cultivates and improves humanity. Reid's organic analogy implies, from this Wilsonian perspective, that an improved society, will improve the individuals growing and developing within it, which would in turn further improve society. This hope appears to be the necessary implication or extended meaning of Wilson's theory. As Wilmarth argues: "Wilson was convinced that the improvement of each citizen's mind was closely linked to the improvement of society."⁶¹

Thus, in my judgment, Wilson's interpretation of Reid's concept is that, society cultivates and can improve individuals and society; being constituted by those individuals, society is in turn improved by their improvement. This implies the potential for a progressive feedback loop of reciprocal improvement between the individual and society. This concept becomes clearer in Wilson's conception of the interdependence of society and knowledge that reveals the human ability to develop and accumulate knowledge through language as the social trait responsible for the survival and success of the species.

⁶⁰ *WJW*, 1:290. Compare with: *IP*, 69. This resonates particularly with Copenhaver's analysis of the role of language in the cultivating power of society, see: Copenhaver, "Reid on Language".

⁶¹ Wilmarth, "Elusive Foundations," 158.

Society requires a certain level of knowledge to function, which is implied, in Wilson's use of Reid's definition of common sense and the social operations of the mind. Wilson used Reid's exact words to define common sense as the first degree of reason and explain that it is: "this degree of reason, and this only, which makes a man capable of managing his own affairs, and answerable for his conduct towards others."⁶² This definition implies that without this degree of reason that enables humans to self-govern, society could not function because the humans that constituted it could not manage their affairs or their interactions with one another.⁶³ That society requires the individuals that constitute it to possess a certain level of understanding is also implied in Wilson and Reid's shared term "social *intellectual* powers".⁶⁴ Wilson points up this implication through a paraphrase of Reid, stating that these social intellectual operations: "imply necessarily a society with other beings, social as well as intelligent."⁶⁵ In my judgment, for Wilson, the existence of the social operations of the mind, and therefore human society, necessarily assumes and requires that there are other beings that possess a certain level of understanding and knowledge, which Wilson, like Reid, appears to locate in the faculty of common sense.

Furthermore, Wilson also holds that the development of knowledge requires society, and particularly language, identifying it as a crucial human ability for the continuing existence of human society and the species. In his Lectures, Wilson used the fictional character of Robinson Crusoe to elucidate the importance of society and the knowledge it produces for human survival. Wilson explained that: "the foundation of Robinson Crusoe's future subsistence" was found in what he saved from the shipwreck, which Wilson labelled: "productions of society."⁶⁶ These tools were both material and intellectual creations derived from knowledge accumulated and transmitted through society across the generations. In Wilson's thought, it is the human ability to collaborate and more generally form societies that produces human knowledge, allowing humanity to survive and become the

⁶² WJW, 1:258. Compare with: *IP*, 433. See also: Section, 3.3.

⁶³ Diamond, *Common Sense and Improvement*, 277.

⁶⁴ WJW, 1:289. Compare with: *IP*, 69 (emphasis added).

⁶⁵ WJW, 1:288. Compare with: *IP*, 69. See also: Yaffe, "Promises, Social Acts," 282-84; Jaffro, "Language and Thought," 143.

⁶⁶ WJW, 1:297.

dominant species on the planet.⁶⁷ This resonates with Schreyer's explanation of Reid's conception that the human ability to develop and accumulate knowledge was largely responsible for the progress of society.⁶⁸ However, Wilson stated this more explicitly and appears to go beyond Reid in describing this knowledge as a product of society and its central role in the human species' success.

Thus, from Wilson's perspective, the development of human knowledge is inherently social, being a product of society, while society and its progress depend on knowledge and the ability to develop it. These two intended meanings amount to the extended meaning that knowledge and society are interdependent in Wilson's theory. Moreover, it reveals their intertwined reciprocal progress where the development of knowledge leads to progress in society, while an improved society better cultivates individuals and provides a better environment for further advances in knowledge.

According to Wilson, government is one such important product or invention of society.⁶⁹ Hence, while Wilson described government as an inferior creation of humans in his Chisholm Opinion and his Lectures, he also waxed poetic about it.⁷⁰ In his Chisholm Opinion, Wilson translated Cicero's praise of government as: "more acceptable to that divinity, which governs the whole universe", than anything else "exhibited upon our globe".⁷¹ Wilson's praise stemmed from his assertion that governments were and are instituted "for the security and improvement" of society.⁷² Wilson's praise of government and its end also resonates with Reid's claim that: "The government of men is undoubtedly one of the noblest exertions of human power", and that its proper end is: "to make the society happy, which can only be done by making them good and virtuous."⁷³ However, Wilson stated explicitly (making the intended meaning clear) that this social end is *the* end of

⁶⁷ WJW, 1:298-99.

⁶⁸ Schreyer, "Language and Scottish Enlightenment," 150.

⁶⁹ Dennison, "Revolution Principle," 176-77.

⁷⁰ *Chisholm v. Georgia*, 455; WJW, 1:35 & 1:157.

⁷¹ *Chisholm v. Georgia*, 455.

⁷² WJW, 1:303.

⁷³ AP, 148.

government, asserting in his introductory lecture that: “To protect and to improve the social life, is, as we have seen, the end of government and law.”⁷⁴

In my judgment, government, pursuing this appropriate social end, is the pinnacle achievement of human knowledge from Wilson’s perspective because of his conception of the intertwined progress of knowledge and society. From this Reidian vantage point, Wilson’s social end of government presents governments as a means to protect and improve the very conditions that produced them: society, leading to further progress in knowledge. For Wilson, this would certainly include the republican culture or sensibilities of a society and with it his hope of unanimity on first principles.⁷⁵ This would further provide an improved environment and the stability for further developments in knowledge as well as improving the individuals involved in its development.⁷⁶

7.3 - Wilson’s Social End of Government: An extensive jurisdiction

However, not everyone agreed with Wilson’s social end of government. While it appears the logical conclusion of his description of the formation of government and understanding of society, it was not self-evident to Wilson’s peers or part of the received wisdom of the time. For instance, Wilson inverts Barbeyrac’s analogy by describing government as “the scaffolding of society”, meant to protect and improve it, to directly oppose Barbeyrac’s initial claim that the contrary was true.⁷⁷ Furthermore, in the Constitutional Convention, Wilson: “could not agree that property was the sole or the primary object of Govern[ment]. [government] & Society. The cultivation & improvement of the human mind was the most noble object.”⁷⁸ Similarly in his introductory lecture, just before he made the argument that government should work to improve society, not merely preserve peace, Wilson stated that “Property, highly deserving of security, is, however, not an end, but a means.”⁷⁹ He did not pursue this line of argument in the Constitutional

⁷⁴ WJW, 1:37.

⁷⁵ Conrad, “Polite Foundations”.

⁷⁶ Conrad, “Polite Foundations,” 385.

⁷⁷ WJW, 1:35. Concerning Barbeyrac see: WJW, 1:77-78.

⁷⁸ *Federal Convention*, 1:605. See also: Wilmarth, “Elusive Foundations,” 158.

⁷⁹ WJW, 1:30. See also: Wilmarth, “Elusive Foundations,” 158-59.

Convention or the ratification debates, which is understandable given these debates concerned the structure of government and not necessarily its appropriate end.

However, in his Lectures Wilson does present positions, which help explain his claim (somewhat unique among his peers) that this social end of government is the appropriate end of government, and its realisation is a mark of legitimate government. These positions include Wilson's identification of the improvement of society as an ultimate end of human nature, written in the human constitution, marked by happiness, and a duty prescribed by natural law. Understanding these positions is greatly aided by recognising part of their extended meaning, which is that they adhere to or resonate with Reid's philosophy. Furthermore, while these positions, as I will argue, are part of the historical or intended meaning of Wilson's theory, as is his social end of government, he does not explicitly connect these positions. However, disclosing this connection, another part of their extended meaning, reveals and helps explain Wilson's social end in greater detail, the consistency of his theory, and why he held and asserted this position as opposed to his peers' focus on property rights.

Wilson not only looks to Reid concerning how ultimate ends are determined, but he also adheres to Reid's conception of what those ultimate ends are and how they are marked or identified.⁸⁰ As I have argued, Wilson, like Reid, held that the sentiments produced by the moral sense determine ultimate ends, particularly presenting virtue as an ultimate end desirable in its own right.⁸¹ Furthermore, I noted that Wilson and Reid also both agree with Hume that ultimate ends recommend themselves to or are recognised by the natural human affections.⁸² These ultimate ends are written in the human constitution, such as thirst, the desire for good health, or the benevolent affections, which importantly make humans naturally social.⁸³ Building on this, I will now illustrate that Wilson and

⁸⁰ For the discussion concerning Wilson's Reidian conception of the determination of ultimate ends, see: Section, 3.3.

⁸¹ See: Section, 3.3.

⁸² See: Section, 3.3.

⁸³ For instance, see: *WJW*, 1:135-36; & *AP*, 360-61.

Reid both present happiness, in their own manner, as a mark of appropriate ultimate ends.

In a statement that sounds somewhat like the Westminster Catechism of faith's description of the chief end of man, Reid wrote: "moral excellence is the true worth and glory of a man, so the knowledge of our duty is to every man, in every station of life, the most important of all knowledge."⁸⁴ Whether it was meant to allude to this concept or not, this statement from Reid is fairly clear that this is an ultimate end written in the human constitution, being located in the moral sense. Fulfilling this duty or "*the testimony of a good conscience*", according to Reid, produces: "the purest, the most noble and valuable of all human enjoyments."⁸⁵ As Keith Lehrer recognises, according to Reid: "Our happiness depends on striving after virtue."⁸⁶ Thus, for Reid, the ultimate end of virtue or a moral life, comprised in doing one's duty and written within the human constitution, is marked by happiness.

Wilson also adhered to the conception that a clear conscience is an ultimate end and stated more explicitly that ultimate ends generally are marked by happiness. This can be seen in Wilson's explanation:

Whatever promotes the greatest happiness of the whole, is congenial to the principles of utility and sociability: and whatever unites in it all the foregoing properties, must be agreeable to the will of God: for, as has been said once, and as ought to be said again, his will is graciously comprised in this one paternal precept—Let man pursue his happiness and perfection.⁸⁷

Happiness is a mark of the divine will or the ultimate ends that the deity wove into the human constitution. Wilson held that what produced "the purest and the noblest of human enjoyments", was (the same as Reid): "The testimony of a good conscience".⁸⁸ Thus, it appears from this direct quotation of Reid that Lehrer's words are similarly applicable to Wilson. Therefore, Wilson too saw the ultimate

⁸⁴ *AP*, 271. See also: *AP*, 166.

⁸⁵ *AP*, 183 (emphasis original). Compare with: *WJW*, 1:133.

⁸⁶ Lehrer, *Thomas Reid*, 219.

⁸⁷ *WJW*, 1:140.

⁸⁸ *WJW*, 1:133. Compare with: *AP*, 183.

end of virtue (or more broadly a morally good life) as being marked or identified by happiness.

Wilson, also similarly to Reid, identified life in society as an ultimate end recognised by the benevolent affections that locate natural sociability in the human constitution and marked by its ability to produce happiness.⁸⁹ Reid claimed the benevolent affections, which make humans naturally social are, “next to a good conscience”, what produce “the capital part of human happiness.”⁹⁰ Wilson similarly claimed that: “Our social affections and operations acquire still greater importance, in another point of view: they promote and are necessary to our happiness.”⁹¹ For both Reid and Wilson, society is marked by and essential to human happiness. Thus, Wilson and Reid both similarly hold that society is an ultimate end, recognised by the benevolent affections, and marked by happiness. The importance of this ultimate end is highlighted by the lengths to which Wilson and Reid go, to argue that sociability is an inherent part of the human constitution and the essential role of society for humanity.

The very concept of an ultimate end carries with it the concept of pursuing it or in other words developing or progressing towards it. This can be seen in Wilson's ‘paternal precept’ above, which states that humans should pursue happiness and their *perfection*. Reid stated this as a fact of the human condition, explaining that: “The extent of human power is perfectly suited to the state of man, as a state of improvement and discipline.”⁹² Wilson similarly identified this as a characteristic of the human condition in more positive terms, stating that: “It is the glorious destiny of man to be always progressive.”⁹³

Wilson further claimed that progress itself produces happiness and, analogising the human condition with society, explained that it too is: “in a progressive state, moving on towards perfection.”⁹⁴ Wilson even added to what amounts to Reid's list of benevolent affections: “we feel delight in the agreeable

⁸⁹ Concerning natural human sociability, see: Section, 3.3.

⁹⁰ *AP*, 109.

⁹¹ *WJW*, 1:299-300.

⁹² *AP*, 45. See also: *AP*, 43-45.

⁹³ *WJW*, 1:142.

⁹⁴ *WJW*, 1:30. Concerning progress producing happiness, see: *WJW*, 1:142. See also: Wilmarth, “Elusive Foundations,” 158-59; Zink, “Bill of Rights,” 259.

conception of the improvement and happiness of mankind.”⁹⁵ Thus, in my judgment, for Wilson, the human condition and society are characterised by progress or development, which is a necessary part of these ultimate ends, being recognised by Wilson’s additional benevolent affection and marked by progress’ production of happiness.

Hence, an extended meaning is that Wilson’s social end of government amounts to the collective realisation of this individual ultimate end. This helps explain Wilson’s conception of his social end as the motivation for the original invention of government, noted above, and why he so confidently asserts it in his theory. Thus, in my interpretation of it, this evidence reveals that in Wilson’s Democratic Political Theory, government is meant and was originally instituted to aid individuals in collectively pursuing their ultimate ends.

Wilson also identifies the concept of his social end of government as a moral duty or first principle of morals, and thus, part of natural law. Wilson, like Reid, held that the moral sense judges the first principles of morals, which stand as the foundation of natural law and natural jurisprudence.⁹⁶ Reid’s third first principle of morals states that:

No man is born for himself only. Every man, therefore, ought to consider himself as a member of the common society of mankind [...] and to do as much good as he can, and as little hurt to the societies of which he is a part.⁹⁷

While Wilson did not state the principle explicitly as a first principle, he did explain that: “sociability, or the care of maintaining society properly, is the fountain of obligation and right [...] From this principle the inference is drawn, that every one is born, not for himself alone, but for the whole of human kind.”⁹⁸ Later in his Lectures, Wilson also stated that “The love of mankind is an important duty and an exalted virtue.”⁹⁹ These statements clearly resonate with Reid. However, in his Lectures, Wilson refers to Johann Gottlieb Heineccius (1681-

⁹⁵ *WJW*, 1:294. See also: Appendix B.

⁹⁶ See: Section, 3.3.

⁹⁷ *AP*, 274.

⁹⁸ *WJW*, 1:117.

⁹⁹ *WJW*, 1:168.

1741), Grotius, and Pufendorf in his footnotes for the first quotation above and follows the second a few paragraphs later by translating Cicero's words on the same subject.¹⁰⁰ Almost certainly, Wilson and Reid were drawing on similar sources and traditions.¹⁰¹ However, Wilson's philosophical underpinning for this principle relies heavily on Reid's conception of the benevolent affections and ultimate ends.

Wilson's resonance with Reid on this subject becomes clearer in his Reidian conception of imperfect rights as part of natural law, and thus, within the explicit jurisdiction and duty of government. Reid's understanding of imperfect rights or the "duties of charity and humanity" as rights and corresponding duties to render some good to another, is what distinguishes him from his peers.¹⁰² What particularly set Reid's theory apart was his conception of the duties of humanity as necessary for society, part of justice, and thus, part of natural law. This meant they could and should be recognised and enforced through law.

Wilson's adherence to this concept forms part of its extended meaning and can be seen in his statements concerning the law of nations. For Wilson, the law of nations is the natural law applied to nations, and thus, the general principles are equally applicable to individuals.¹⁰³ Given this, Wilson stated clearly that imperfect rights and their corresponding duties are part of natural law, explaining that:

nations are not only forbidden to do evil; they are also commanded to do good to one another. The duties of humanity are incumbent upon nations as well as upon individuals.¹⁰⁴

Given that Wilson held that government was meant to realise the natural law as closely as possible, this commits Wilson to the position that legislation, which

¹⁰⁰ *WJW*, 1:117n. Concerning Cicero see: *WJW*, 1:170.

¹⁰¹ See: Section, 3.1.

¹⁰² *AP*, 289. Concerning imperfect rights as a distinguishing mark of Reid's natural law, see: Haakonssen, *Law and Moral Philosophy*, 205. Reid's conception of imperfect rights, see also: Diamond, *Common Sense and Improvement*, 333-34; Lehrer, *Thomas Reid*, 239. See also: Section, 3.2.

¹⁰³ See: Section, 3.3.

¹⁰⁴ *WJW*, 1:166.

recognises and enforces the duties of humanity, is well within the jurisdiction of government.¹⁰⁵

Wilson takes this position for granted and extends it in his statement that: “Of municipal law, the rights and the duties of benevolence are sometimes, though rarely, the objects. When they are so, they will receive the pleasing and the merited attention.”¹⁰⁶ Thus, in my judgment, Wilson’s duties of humanity or benevolence, like Reid’s, are part of natural law. This explains why Wilson assumes that they are within a government’s jurisdiction to enforce, and why he advocates that governments should make them the object of legislation and receive merited recognition for doing so.

Reid’s response to one of Hume’s examples reveals the radical lengths to which these rights and corresponding duties extend in Reid’s conception of them. Moreover, it helps illustrate that Wilson’s own conception of these duties resonates with and goes beyond Reid’s stated position. Hume’s example concerns a society that has fallen into extreme want and portions of bread are given out equally to every individual, regardless of their private means.¹⁰⁷ Hume claimed this would constitute a “suspension of the strict laws of justice.”¹⁰⁸ However, Reid held that it is: “so far from being criminal or injurious, that justice requires it; and surely that cannot be a suspension of the laws of justice”.¹⁰⁹ As Reid explained in general terms: “justice, I think, as well as charity, requires, that the necessities of those who, by the providence of GOD, are disabled from supplying themselves, should be supplied from what might otherwise be stored for future wants.”¹¹⁰ In this circumstance both specific and general, Reid proposed that a radical prioritisation of imperfect rights over property rights was what justice required.

Wilson took this a step further stating that: “One nation ought to give to another, not only the assistance necessary to its preservation, but that also which is necessary to its perfection, whenever it is wanted, and whenever, consistently

¹⁰⁵ Discussion concerning government’s duty to realise the natural law, see: Section, 3.3.

¹⁰⁶ *WJW*, 2:467. Compare with: *AP*, 289.

¹⁰⁷ *AP*, 320-21.

¹⁰⁸ *AP*, 320.

¹⁰⁹ *AP*, 320.

¹¹⁰ *AP*, 319 (emphasis original).

with other superiour (sic) duties, it can be given.”¹¹¹ As noted before, this is equally incumbent upon individuals as part of the natural law. Hence, while Wilson does not define what those other superior duties are, this goes beyond Reid's example of dire necessity and extends it to helping another nation or individual realise their own perfection or potential. Put another way, natural law prescribes that individuals and nations should aid each other in improving towards their ultimate ends. Therefore, in my interpretation, Wilson's social end of government (understood as aiding in the pursuit of the ultimate ends of individual and social improvement) is prescribed by natural law as a duty of humanity.

This helps explain why Wilson assumes his social end is within the jurisdiction of government and moreover asserts it as *the* end of government, and thus, its duty. This position is radically progressive in its extent, both in the conception of the duties of humanity and a government's duty and jurisdiction to realise them, both domestically and even in foreign policy.

This is further revealed in Wilson's conception of social progress in terms of the extension of the people's rights as a legitimating mark of government. As Zink notes: “Indeed, the enhancement of individual liberty remains central to Wilson's project of improving society”.¹¹² As Wilson himself stated: “Government, in my humble opinion, should be formed to secure and to *enlarge* the exercise of the natural rights of its members; and every government, which has not this in view, as its principal object, is not a government of the legitimate kind.”¹¹³ This extension of rights includes (but is not limited to) the imperfect rights as part of natural law. Hence, In Wilson's opinion, the extension of these rights, including imperfect rights, must therefore be included within the jurisdiction and duty of government. Thus, Wilson's social end of government, understood as the government taking up the duties of humanity, in part by recognising the corresponding imperfect rights of the people, is a legitimating mark of government in his Democratic Political Theory.

¹¹¹ *WJW*, 1:167.

¹¹² Zink, “Bill of Rights,” 259.

¹¹³ *WJW*, 2:466 (Emphasis added). See also: *WJW*, 2:456; Wilmarth, “Elusive Foundations,” 192.

Furthermore, the improvement of individuals and society would certainly be better realised through a number of other specific duties of humanity. Thus, the further logical implication or extended meaning is that, as a duty of humanity itself, anything that aided in the improvement of society could be categorised as a derivative duty and recognised as a right. Hence, a government pursuing Wilson's social end of improving society would almost certainly identify and take up other specific duties of humanity and recognise the corresponding rights, which would further illustrate its legitimacy and be within its authority.

Therefore, in my interpretation of Wilson's Democratic Political Theory, informed by my analysis of its extended meaning, including Wilson's adherence to Reid, the duty to improve society is an ultimate end for individuals and *the* end of government. It is a moral principle, and part of natural law, written in the human constitution. It is what motivated humans to form governments, and a mark of legitimate governance. From Wilson's perspective, government was the people's tool to realise their ultimate ends and fulfil their duties of humanity, and thus, it possessed an extensive jurisdiction to realise his social end of government.¹¹⁴

7.4 - Wilson's Vision of Democracy: A continuous revolution of reciprocal improvement

Wilson's social end of government also reveals that government is a different kind of product of society, in that it holds the power, jurisdiction, and duty to dramatically affect society in Wilson's conception it. Furthermore, Wilson saw the invention of government as necessary for supporting society, like scaffolding, because of humans' "fallen state", resonating with Reid's conception of humans as imperfect and capable of improvement.¹¹⁵ Emphasising this point, Wilson explained in his introductory lecture that: "if society could be built and kept entire without government, the scaffolding might be thrown down, without the least inconvenience or cause of regret."¹¹⁶ Given Wilson's conception of human

¹¹⁴ Dennison, "Revolution Principle," 176-77.

¹¹⁵ *WJW*, 1:35.

¹¹⁶ *WJW*, 1:35.

nature, it is uncertain whether he believed such an eventuality was possible. However, he did see great potential in improving individuals and society through education both by and through government, and particularly a government founded on his Revolution Principle. In his Democratic Political Theory, Wilson saw the Revolution Principle as greatly aiding in this improvement and increasing its potential extent by commencing a continuous progressive revolution in governance and society through the reciprocal improvement of both.

This potential for reciprocal improvement and how it functions in Wilson's theory is revealed and better understood through formulating the logical implications or extended meaning drawn from analysing the interaction between his social end of government and his Revolution Principle. The Revolution Principle explicitly recognised that government was the product of society, and moreover, that the people or society retained the right to alter or improve it. Furthermore, a government pursuing its proper social end will improve society, resulting in improved individuals and knowledge, who, by exercising the Revolution Principle, can improve their government. This improved government would be better able to pursue its social end, and so on, effectively adding government to the existing feedback loop between society, individuals, and knowledge. Therefore, the addition of the Revolution Principle to Wilson's social end of government would commence the reciprocal improvement of society, the science or knowledge of government, and the practice of government. In my judgment, this reciprocal improvement explains Wilson's concept of a continuous revolution in law, which was the grand vision or hope of Wilson's Democratic Political Theory laid out in his Lectures on Law, which reveals and epitomises his theory's progressive nature.¹¹⁷

Furthermore, Wilson believed that the United States had realised his theory in practice and through it his grand progressive hope and vision. Wilson's assertion of his Revolution Principle as the foundation of the US Constitution has been illustrated at length. However, he intimates his social end in reference to the Revolution Principle and in language that resonates with the Preamble of the Constitution in the Pennsylvania Ratifying Convention: "the sovereignty resides in

¹¹⁷ Wilson's vision of continuous revolution in law, see: Knapp, "Law's Revolution," 281 & 305-07; Dennison, "Revolution Principle," 182.

the people; they have not parted with it; they have only dispensed such portions of power as were conceived necessary for the public welfare.”¹¹⁸ His social end is also implied in his recurring statement in both the Constitutional Convention and ratification debates that governments are instituted for the people. Furthermore, as noted earlier, Wilson stated his social end of government in his introductory lecture in front of the then presiding federal government, illustrating that Wilson almost certainly believed that the end of the government of the United States was indeed the protection and improvement of society.

This vision is revealed in and helps explain Wilson’s rejection of any contract theory as the foundation of the Constitution. Wilson stated in the Pennsylvania Ratifying Convention that:

The people, possessing that authority will continue to exercise it by amending and improving their own work. This Constitution may be found to have defects in it; hence amendments may become necessary; but the idea of a government founded on contract destroys the means of improvement.¹¹⁹

He also stated in his Lectures that the people have the: “right to mould, to preserve, to improve, to refine, and to finish it [the Constitution] as they please.”¹²⁰

Thus, in my judgment, the Revolution Principle was explicitly meant to be used by the people to improve their constitution and government in Wilson’s Democratic Political Theory and interpretation of the US Constitution. In this function it would allow for Wilson’s envisioned progress and development of government and society. Alternatively, Locke’s theory negated this possibility, requiring a breach of contract and armed revolution to change the government—a further reason Wilson broke with it.

Wilson’s vision of reciprocal improvement focused on the social development of knowledge, which was dependent on and aided by society and proper first principles. Particularly liberty, recognised in law and culture, was

¹¹⁸ *DHRC*, 2:448.

¹¹⁹ *DHRC*, 2:556.

¹²⁰ *WJW*, 1:418.

regarded by Wilson as greatly aiding in the development of knowledge generally. He stated this concept and his hope to his audience thus:

Where liberty prevails, the arts and sciences lift up their heads and flourish. Where the arts and sciences flourish, political and moral improvements will likewise be made. All will receive from each, and each will receive from all, mutual support and assistance: mutually supported and assisted, all may be carried to a degree of perfection hitherto unknown; perhaps, hitherto not believed.¹²¹

Thus, in my interpretation, Wilson held that a government founded on proper first principles of liberty, diffused throughout society, would commence and allow for such improvement in knowledge generally and in the science of governance particularly. As this knowledge increased, the people could apply it to make the political improvements Wilson mentions above—particularly those in the practice of governance—through the liberty found in the Revolution Principle.

While Wilson was hopeful and idealistic, he was not naïve, recognising that this reciprocal relationship between government and society could lead to corruption and degradation as well. Just after stating that the seeds of potential are planted in the human mind and require culture and exercise to be realised, Wilson explained that history demonstrates that “some nations [...] have been rendered barbarous and depraved by institutions.”¹²² Clearly, Wilson held that government and social institutions generally could influence society; his social end of government is predicated on this concept. However, he also recognised that governments could also do so to the detriment and corruption of society and the people.

Wilson was also confronted with the possibility that a corrupt degenerate society could corrupt the government in the Pennsylvania Ratifying Convention. There he responded by explaining that the writers of the Constitution did not believe the people would elect “an *association of demons*”, but he also explains that if they did:

¹²¹ WJW, :142-43.

¹²² WJW, 1:131.

the fault will not be in Congress, but in the people or states themselves. I have mentioned oftener than once, that for a people wanting to themselves, there is no remedy.¹²³

Wilson saw this possibility as unlikely because, as Bartrum argues, Wilson saw politics as the great corrupting force, which the people at large were less subject to than politicians, and thus, less likely to be corrupted.¹²⁴

Bartrum continues, explaining that because of this there should be means or routes to reform the government and that: “those avenues should lead back to the most reliable source of moral knowledge—and the true fount of legitimate political power—the ordinary, independent citizen.”¹²⁵ Thus, given these dangers, from Wilson’s perspective it was important to found a government on proper first principles, which recognised that the people retain their sovereign power. This meant those less likely to be corrupted, the people at large, could not only improve their government, but could also prevent or correct corruption if it occurred, protecting their society and liberty in the process.¹²⁶

Given the central role of the social development of knowledge in Wilson’s vision of reciprocal improvement, he unsurprisingly saw education as a means of addressing these negative potentials and realising the full potential of the feedback loop between government and society. This position also resonates with Reid’s brief statements on governance. Reid had high hopes for the potential beneficial effects of “the discipline of laws and government”, believing that it was not easy to conceive “to what pitch the happiness of human society, and the improvement of the species, might be carried”, by them.¹²⁷ Consequently, Reid held that: “it must be the principal care of the state to make good citizens by proper education, and proper instruction and discipline.”¹²⁸ Because of this Reid held that those prescribing what he calls the: “medicine of the mind” or those

¹²³ *DHRC*, 2:515 (emphasis original).

¹²⁴ Bartrum, “Moral Foundations,” 281.

¹²⁵ Bartrum, “Moral Foundations,” 281.

¹²⁶ Dennison, “Revolution Principle,” 174.

¹²⁷ *AP*, 44.

¹²⁸ *AP*, 148.

involved with government: "should know the nature of man, and how he is to be trained and governed."¹²⁹

This language of discipline and training has a somewhat authoritarian tone that is discordant with Wilson's radically democratic conception of government. However, Haakonssen explains that these "distinctly authoritarian overtones", were common among the Scottish thinkers of the time, alternatively they could also come from a paternal conception of education in which Reid would have been immersed as a professor and minister.¹³⁰

Nevertheless, these authoritarian tones, real or perceived, raise the spectre of the *idola theatri*, which is one of Bacon's sources of error.¹³¹ This error occurs when a person holds a prejudice in favour of a certain theory or concept because it was inculcated at an early age.¹³² A corrupt government could possibly use education to exploit this source of error to their favour and the detriment of the people. Wilson and Reid were both familiar with the *idola theatri*, holding that it contributed to the persistence of the Ideal Theory with Wilson seeing it as also playing a similar role in the Theory of Superiority.¹³³

Part of the extended meaning of Wilson's conception of the government's role in education, is that while resonating with Reid's, it goes beyond it in scope. Furthermore, Wilson's conception of radically democratic self-governance works to avoid the potentially authoritarian tones of Reid and with them the *idola theatri*. Wilson makes this explicit in his Lectures:

Happiness is the centre, to which men and nations are attracted: it is, therefore, the duty of a nation to consult its happiness. In order to do this, it is necessary that the nation be instructed to search for happiness where happiness is to be found. The impressions that are made first, sink deepest; they frequently continue through life. That seed, which is sown in the tender minds of youth, will produce abundance of good, or abundance of evil. The education of youth, therefore, is of prime

¹²⁹ AP, 148.

¹³⁰ Haakonssen, "Identity of the Scottish Enlightenment," 277.

¹³¹ See: Section, 4.1.

¹³² See: Section, 4.1.

¹³³ See: Section, 4.1.

importance to the happiness of the state. The arts, the sciences, philosophy, virtue, and religion, all contribute to the happiness, all, therefore, ought to receive the encouragement, of the nation. In this manner, publick (sic) and private felicity will go hand in hand, and mutually assist each other in progress.¹³⁴

Here Wilson recognises both the potential of the *idola theatri* and presents a far broader education remit than Reid. Furthermore, the breadth of Wilson's educational programme complements his earlier statements concerning how different forms of knowledge would mutually support one another. Given that conception, a broader education would lead to greater levels of improvement in knowledge, society, and government. Using the terminology of the previous section, this is the government helping the people, individually and collectively, to realise their appropriate ultimate ends that produce happiness.

Wilson's conception of education is also broader than Reid's in terms of who he believed should be educated, because of his Revolution Principle. Like Reid, Wilson held that those involved in government should study human nature, which is implied in his question: "how, unless we study and know our nature, shall we make laws fit for it, and calculated to improve it?"¹³⁵ However, while this is hypothetically addressed to his students who would be future lawyers, judges, and statesman, Wilson held that all citizens would be involved in government, and thus, would require such an education in human nature. This is further implied in the quotation above, although it becomes clearest in Wilson's advocacy for citizens to be educated in law and governance for the same purpose.

In Wilson's opinion, the study of law was essential to citizens of a free country, their duty, and provides the greatest potential improvement. Wilson asserts that: "The knowledge of those rational principles on which the law is founded, ought, especially in a free government, to be diffused over the whole community."¹³⁶ This is the case because, according to Wilson: "[T]he weight of the government of the United States [...] rests on the shoulders of the people",

¹³⁴ WJW, 1:164-65.

¹³⁵ WJW, 1:232-33.

¹³⁶ WJW, 1:10. See also: WJW, 1:9.

and thus citizens should employ all the time and means they could: "to learn that part, which it is incumbent on him to act."¹³⁷

It is in this legal education that Wilson saw the great potential of improvement, musing that: "If a practical knowledge and a just sense of these rights and these duties were diffused among the citizens, and properly impressed upon their hearts and minds; how great, how beneficial, how lasting would be their fruits!"¹³⁸ Thus, because the people govern themselves, citizens must be educated in human nature and the science of law and governance, which Wilson also believes will lead to great improvements in society and government. Furthermore, the logical implication or extended meaning is that it will be the people deciding how to educate themselves through government, which provides protections from a government potentially exploiting the *idola theatri*.

In my interpretation, Wilson is translating and fleshing out Reid's concept, and in doing so goes well beyond Reid's statements by resting his hope in the people and their ability and right to govern themselves, viewing it as a means of education and improvement.¹³⁹ Wilson's general hope for improvement through self-government resonates with Diamond's argument that for Reid: "Perhaps the most important fact of human nature relative to our capacity for improvement in all its spheres is our power of self-government."¹⁴⁰ However, Reid's conception of self-government is more individualistic, while Wilson expands this to a collective level via his conception of government being founded upon his Revolution Principle. He also further develops it in his conception that governments can educate the people in human nature through their example, constitution, laws, and institutions, particularly those where the people participate in self-government as electors and jurors. In Wilson's opinion, the actual practice of self-governance is educational for citizens.

The benevolent affection which Wilson called the "esprit du corps" and Reid the "*public spirit*", provides a specific example of how and why Wilson

¹³⁷ WJW, 1:11.

¹³⁸ WJW, 1:154.

¹³⁹ Wilmarth, "Elusive Foundations," 117.

¹⁴⁰ Diamond, *Common Sense and Improvement*, 233.

believed governments could and should educate their citizens in human nature.¹⁴¹ The *esprit du corps* is the concern a person feels for their community, which Wilson and Reid both similarly see as essential to civil society, but also potentially dangerous.¹⁴² Reid, in general terms, recognised that: “It sometimes kindles or inflames animosities between communities”, that leads to disregarding justice and “wars between nations”, for inconsequential reasons that lead to their destruction.¹⁴³ Wilson gave several examples of the negative potentials of this benevolent affection, referencing common experience such as sport and the historical example of the “Blues and Greens in the Hippodrome of Constantinople”.¹⁴⁴

Wilson further recognised that people, and presumably those in government, would actively attempt to narrow this affection to a narrow segment of the population, such as an individual state within the broader union.¹⁴⁵ However, Wilson also saw the potential for this benevolent affection to be extended and improved into what he calls moral abstraction, defining it as: “the love of mankind” and describing it as: “an important duty and an exalted virtue.”¹⁴⁶ Given these dangers and the potential for improvement, Wilson held that: “This enlarged and elevated virtue ought to be cultivated by nations with peculiar assiduity and ardour.”¹⁴⁷

Wilson held that the *esprit du corps* could be developed into moral abstraction through education, which governments could and should provide through their example and suffrage. Wilson arrived at the term ‘moral abstraction’ and attempted to define it through a constellation of revealing terms, which include: “*philanthropy*”, “*patriotism*”, ““passion for the commonweal””, “devotion to the publick (sic)”, and explaining that: “of the man who possesses this virtue, we generally describe him, by a metaphor, a ‘citizen of the world,’”

¹⁴¹ Respectively: *WJW*, 1:353-54; & *AP*, 119 (emphasis original). See also: *WJW*, 1:162 & 1:168-69.

¹⁴² *WJW*, 1:353-54; & *AP*, 120.

¹⁴³ *AP*, 120.

¹⁴⁴ *WJW*, 1:354. See also: *WJW*, 1:353-54.

¹⁴⁵ *WJW*, 1:354-55.

¹⁴⁶ *WJW*, 1:168.

¹⁴⁷ *WJW*, 1:172.

as well as describing it as: "a cardinal virtue in the United States."¹⁴⁸ These terms point to Wilson's concept that the natural human affection and concern for one's local community should ideally be extended to include the entire human race.

Wilson believed that governments could aid in this development by teaching their citizens to first: "distinguish between its real and its pretend friends."¹⁴⁹ Governments in Wilson's opinion should also encourage this development by: "exhibiting a glorious example in her constitution, in her laws, in the administration of her constitution and laws".¹⁵⁰ However, it was particularly participation in democracy that Wilson held was an excellent means of developing moral abstraction.¹⁵¹

This can be seen particularly clearly in Wilson's argument for the direct election of Senators in the debates concerning the reform of the Pennsylvania Constitution. There Wilson argued that the power to elect one's representatives: "surely, must have a powerful tendency to open, to enlighten, to enlarge, and to exalt the mind."¹⁵² This improvement will occur because: "The man who enjoys the right of suffrage on the extensive scale which we have marked, will naturally turn his attention to the contemplation of publick (sic) men and publick (sic) measures."¹⁵³ This contemplation will in turn lead to dialogue and conversation, which Wilson, along with Reid, believed was the means by which knowledge is formed and obtained.¹⁵⁴ This conversation will, according to Wilson, form in the citizens: "a uniform, a strong, and a lively sensibility to the interests of his country."¹⁵⁵ Democracy would thus enlarge the citizens' perspectives and encourage the kind of conversations that would lead to the development of individual and collective knowledge.

¹⁴⁸ Philanthropy and patriotism see: *WJW*, 1:171 (emphasis original). Commonweal, public devotion, and cardinal virtue, see: *WJW*, 1:357. Citizen of the world, see: *WJW*, 1:171.

¹⁴⁹ *WJW*, 1:162.

¹⁵⁰ *WJW*, 1:172.

¹⁵¹ Yoo, "Architect," 73.

¹⁵² Wilson, *SCS*, 3:325. See also: Yoo, "Architect," 73.

¹⁵³ Wilson, *SCS*, 3:326.

¹⁵⁴ Wilson, *SCS*, 3:326-27.

¹⁵⁵ Wilson, *SCS*, 3:327.

This enlarged perspective and understanding, Wilson held would also develop moral abstraction:

It is undeniably this—that the rights of suffrage, properly understood, properly valued, properly cultivated, and properly exercised, is a rich mine of intelligence and patriotism—that it is an abundant source of the most rational, the most improving, and the most endearing connexion among citizens—and that it is a most powerful, and, at the same time, a most pleasing bond of union between the citizens, and those whom they select for the different offices and departments of government.¹⁵⁶

For Wilson, democracy would educate citizens in the broader concerns of the other communities that constitute the larger union, aiding in the collective development of knowledge, and with it the development of patriotism into true patriotism or moral abstraction. Therefore, democracy as a form of self-governance is a means of educating and improving citizens and society, who can then also use their democratic right to improve government and law. Thus, in my judgment, democracy exemplifies the social function of Wilson’s Revolution Principle and his progressive feedback loop of reciprocal improvement.

This can also be seen in Wilson’s conception of trial by jury as a means of educating citizens in the law, improving citizens and their collective knowledge, as well as providing the means of improving government and law. This institution, according to Wilson, informs citizens of: “All the operations of government, and of its ministers and officers”.¹⁵⁷ Furthermore, because the jury has the right and duty to exercise the Revolution Principle and judge the law, trial by jury also functions as a: “a great channel of communication, between those who make and administer the laws, and those for whom the laws are made and administered.”¹⁵⁸ Wilson sees these two aspects of trial by jury creating, what I am calling a positive feedback loop.

¹⁵⁶ Wilson, SCS, 3:328-29.

¹⁵⁷ *WJW*, 2:366.

¹⁵⁸ *WJW*, 2:366. See also: Section, 6.1.

Wilson explicitly stated this concept of reciprocal improvement, which I have been formulating and explaining largely as an extended meaning above, in 1791 in his charge to a grand jury:

Permit me to suggest another method, by which our valuable code of criminal laws may be still increased in its value. Inform and practically convince every one within your respective spheres of action and intercourse, that, as excellent laws improve the virtue of the citizens, so the virtue of the citizens has a reciprocal and benign energy in heightening the excellence of the law.¹⁵⁹

Thus, according to Wilson, trial by jury educated citizens in their rights and duties in practice, improving the individual citizens and collective knowledge. As a participatory democratic institution, it also provided a conduit for the people to exercise the Revolution Principle and apply the knowledge they had obtained to improve and correct law and government. Therefore, Wilson's conception of trial by jury explicitly reveals the social function of his Revolution Principle and epitomises it. In my judgment, this is Wilson explicitly stating that radically democratic participatory self-governance results in the continual reciprocal improvement of government and society.

Trial by jury is thus explicitly identified by Wilson as an example of where and how this reciprocal improvement functions, which I interpret as being the same concept at work in Wilson's conception of democratic representation. Furthermore, in both democratic representation and trial by jury, self-governance functions as a kind of practical education that improves citizens by informing them and broadening their perspectives. The reasonable inference or extended meaning is that this conception of self-governance as practical education connects these examples with Wilson's comments on education generally. Thus, I interpret this as Wilson viewing the development of knowledge generally as the means through which this reciprocal improvement occurs.

In my judgment, this reciprocal improvement of society, individuals, and government through democratic self-government and the development of

¹⁵⁹ James Wilson, "A Charge Delivered to the Grand Jury in the Circuit Court of the United States, for the District of Virginia, in May, 1791," in *WJW*, 3:393.

knowledge, epitomises the progressive nature of Wilson’s theory. This feedback loop is grounded in the understanding that humans are equal, sovereign, and capable of self-government. As seen in the quotation above, it is the people at large that improve the law with their “benign energy”, elevating its excellence, and reciprocally, elevating and improving their own virtue or character through it.

This is a dignified vision of humanity as sovereign and capable. It views the people’s participation in governance as necessary, valuable, and insightful, producing improvements in law and governance as well as in society, culture, and knowledge. Furthermore, it recognises the importance and value of society in its role in cultivating individuals, in so far as society’s improvement is the focus of Wilson’s revolution in governance. Thus, Wilson’s vision of reciprocal improvement is clearly progressive in its focus on improvement. However, an extended meaning of this vision is that it also resonates or is compatible with more modern connotations of “progressive” in its egalitarian foundation, its recognition of society’s value, and its acknowledgement of human dignity.

Wilson believed that in ratifying the US Constitution, the United States had commenced this continual peaceful progressive revolution in governance. In my interpretation, Wilson saw this as the case because the US Constitution was founded on his Revolution Principle, and that this would create a positive feedback loop of reciprocal improvement. Given that the society was sufficiently republican, Wilson saw the liberty provided by the Revolution Principle and its social function as leading to and providing the first principles necessary for the development of knowledge. Wilson also asserted that one of the primary purposes of the Revolution Principle was to allow the people to improve their government. Hence, it is reasonable to assume that the people would use the knowledge they gained through education and particularly the practice of self-governance to make these improvements to their government. These improvements in governance and laws would improve the citizens, particularly if their object or aim was Wilson’s social end of government. Furthermore, the Revolution Principle also enabled the United States to avoid many of the potential dangers listed above (exploitation of the *idola theatri*, government corruption, and the ability of a corrupt government to degrade society). Thus, in my interpretation, Wilson’s Revolution Principle was

at the heart of his Democratic Political Theory, his interpretation of the US Constitution, and his hope for a continuous progressive revolution in the science and practice of government.

Significantly, Wilson believed that the Revolution Principle's location in the Constitution would also make this revolution peaceful, stable, and continuous by making it legal and providing avenues for it to be expressed. In my judgment, this and Wilson's focus on the development of knowledge, characterises his revolution in the science and practice of government as something more akin to the industrial or technological revolutions of recent history than the American Revolutionary War. This further distances Wilson's theory from Locke's. Locke's contract theory could not produce this continual peaceful revolution, in large part because, as Wilson asserted, contract theories effectively arrested the reciprocal improvement that sustains and characterises Wilson's envisioned progressive revolution in the knowledge and practice of government. In my judgment, it appears to do so because improvement can only be realised by both the government and people agreeing to alter the contract, or a violent revolution in response to a breach of contract. However, it appears to me that in his comments in the ratification debates Wilson sees the first option as unlikely, while the human cost of the second is understandably prohibitive.¹⁶⁰

Accordingly, Wilson's Lectures were meant to systematically present this new Democratic Political Theory as the explanation of the US Constitution as well as the US Federal System and the particularly American Jurisprudence it created.¹⁶¹ Hence, publishing them was meant to aid and support this revolution by educating the citizens in this new theory and particularly its first principles, so the people could better govern and improve themselves by improving their tool for this end: the government.

Several scholars have recognised Wilson's vision of a continuous revolution in governance based upon his Revolution Principle as well as his conception of the

¹⁶⁰ *DHRC*, 2:555 & 2:556.

¹⁶¹ Knapp, "Law's Revolution," 194; Bartrum, "Moral Foundations," 232-33 & 275-77; Leavelle, "Wilson and Scottish Metaphysics," 395-96; Conrad, "Common-Law," 194; Barnett, "Chisholm V. Georgia," 1734.

role of government in improving society, and the power of collective reasoning.¹⁶² However, the connection between these three, which Wilson's adherence to and development of Reid helps reveal and explain, has not been fully recognised. In my judgment, Wilson's hoped for revolution is grounded in his Reidian conception of the Revolution Principle as a first principle, the natural law authorisation of his social end of government, the social development of knowledge, and the cultivating role of society. These concepts, acting in concert, elucidate the overarching social function of his Democratic Political Theory in the practical benefit of Wilson's social end of government and the social function of his Revolution Principle: the improvement of government through peaceful democratic means.

Thus, in my judgment, Wilson's adherence to and development of Reid, reveals that he believed this revolution would be realised through radically extensive democratic self-governance (found in the Revolution Principle), appropriately focused on his social end of government. The result would be the social function of his principle—the reciprocal improvement of government and society. However, in Reidian fashion, Wilson was clear that the culmination or the ultimate end of this peaceful progressive revolution is the improvement of society. This conception of revolution and its culmination, reveal the truly progressive nature of Wilson's Democratic Political Theory. This in turn points to the potential significance of Wilson's contributions to the development of the US Constitution, not only for reinforming scholarship, but also addressing the present political situation in the United States, revealing the continuing tragedy of their neglect.

¹⁶² See: Section, 2.1.

Chapter 8 — Conclusion: Rehabilitating Wilson's Democratic Political Theory

In the previous chapters I have shown that Wilson's neglected contributions to the development of the US Constitution are radically democratic and progressive in nature. And, furthermore, that they represent a significant, but often ignored, marginalised, and misunderstood, strand of the American political tradition and historical understanding of the US Constitution that is also part of legal precedence. I have argued that this general neglect, particularly concerning the place and significant role of Wilson's Revolution Principle in the history of the development of the US Constitution is a grave oversight.

I have done so (in reference to the first half of the guiding question of this thesis) by illustrating how recovering Wilson's theory and contributions dramatically challenges existing scholarly conceptions of this historical event and the federalists particularly. This has also simultaneously broadened and clarified our perspective on this historical event by further revealing the heterogeneous nature of the US Constitution's development through formulating Wilson's underlying philosophical commitments and political theory that differentiate him from other Federalists and particularly Madison. As I have shown, much of this has come to light through answering the supplementary question of this thesis by analysing and formulating Wilson's adherence to and development of Reid's philosophy—revealing its significant extent.

Primarily, answering the first half of the guiding question of this thesis has focused on how the radically democratic nature of Wilson's contributions as a leading Federalist, casts serious doubt on Gordon Wood's assertion of the aristocratic bent of the Federalists and the US Constitution. However, Wilson's break with Locke also calls into question the scholarship concerning the influences on the US Constitution. Furthermore, contrasting Wilson with other Federalists also raises a further methodological question: How appropriate and helpful is

discussing the intended meaning of a political document like the US Constitution? These points will be reviewed and explored further below. This in turn will aid in determining if rehabilitating Wilson's neglected contributions can *potentially* help address the current political crisis in the United States, the second half of this thesis' guiding question.

8.1 - Revealing Inconsistencies in the Scholarship: Wilson's informative example

This thesis has shown that Wilson's Democratic Political Theory is grounded in and deeply inflected by Reid's philosophy, and that this significantly helps us to understand Wilson's political theory and his contributions to the development of the US Constitution. I did this by establishing Wilson's extensive and significant adherence to and development of Reid's philosophy as part of the intended meaning and my formulation of the extended meaning of aspects of Wilson's Democratic Political Theory. Recovering these meanings helped elucidate and explain several key concepts in Wilson's theory. In turn, this improved understanding helped reveal the radically democratic and progressive nature of Wilson's Democratic Political Theory.

I showed that, recognising Wilson's intentional choice to use Reid's philosophy as a foundation and his adherence to Reid's conception of human nature brings to light that Wilson's natural law theory is best understood as an alternative modern natural law theory.¹ It further explains, as Knapp, Bartrum, Wilmarth, and Bayer also argue, why Wilson held that humans were capable of self-governance, particularly as electors and jurors.² However, crucially, I showed that Wilson's adherence to Reid's understanding of the human ability to self-govern amounted to his definition of sovereignty and helps explain Wilson's assertion of perpetual human sovereignty in his Democratic Political Theory.³

¹ See: Section, 3.3.

² See: Sections, 3.3 & 6.1.

³ See: Section, 3.3.

Furthermore, I illustrated that Wilson adapted or translated Reid's third test of first principles to the science of governance to test consent as a first principle.⁴ This extended meaning significantly helps us understand his radically extensive expression of his consent principle in the Revolution Principle, describing it as a first principle and an inalienable right. In my interpretation this further reveals why Wilson viewed self-governance as the only legitimate form of government.

Additionally, Knapp, Bartrum, Zink, Dennison, Wilmarth, and Conrad recognise that Wilson sees himself as revolutionising the science of governance or presenting a new theory of governance.⁵ However, I have illustrated that the extended meaning found in Wilson's Reidian establishing of first principles, when coupled with his Reidian rejection of the Ideal Theory and its resonance with his arguments against the Theory of Superiority, explains how Wilson is attempting to ground and construct his new Democratic Political Theory.⁶ I have argued this reveals that Wilson (based on his interpretation of Reid's understanding of Newton and Bacon) saw himself as attempting to commence a Newtonian revolution in the science of government.⁷

While Knapp and Dennison recognise that Wilson saw this revolution as continuous and peaceful, I showed that formulating extended meaning generally and specifically Wilson's adherence to and development of Reid, elucidates how Wilson saw it functioning through reciprocal improvement.⁸ This in turn highlights its progressive nature and that of his theory generally. This extended meaning comprises the logical implications of connecting Wilson's explicit statements that government can and should improve society with his other explicit statements that the people can and should improve their government through the Revolution Principle. In my judgment, these positions amount to a progressive feedback loop of reciprocal improvement, which he identifies explicitly in the institution of trial by jury.

⁴ See: Section, 5.1.

⁵ Suggested as well by: Charles Smith, *James Wilson*, 317-19; Gordon Wood, *Creation*, 535.

⁶ See: Sections, 4.1, 5.1, & 7.1.

⁷ See: Section, 7.1.

⁸ See: Sections, 7.2-4.

How and why Wilson holds and formulates both these positions and what connects them is, as I have argued, better understood through Wilson's development of a number of Reid's concepts. These reveal that part of the extended meaning of Wilson's social end of government is that he also sees it as an ultimate end of humanity and part of natural law. The Reidian concept of the cultivating power of society, the role of first principles in the development of knowledge, and social development of knowledge, also helped bring to light Wilson's conception of the social development of knowledge as the means through which this reciprocal improvement and revolution occurs. In my interpretation, this reciprocal improvement through the development of knowledge, characterises Wilson's revolution in the science and practice of government, presenting it as something closer to what we would think of in modern terms as an information or technological revolution.

Thus, recognising Wilson's extensive adherence to and development of Reid's philosophy is crucial for an in-depth understanding of these significant aspects of Wilson's theory and his theory as a coherent whole. Moreover, formulating this adherence helps reveal and explain the radically democratic and progressive nature of Wilson's theory, where government is conceived of as a powerfully beneficent tool, wielded and shaped by the people to improve society. Therefore, the extensive and significant nature of Wilson's adherence to and development of Reid's philosophy reveals that he is best understood as a Reidian political theorist.

My formulation of Wilson's theory as extensively adhering to and developing Reid's philosophy, inherently opposes Velasquez, Zink, and to a lesser extent Wilmarth's claims that Wilson was aligned with Locke, Hobbes, Hume, and the modern natural law tradition generally. I showed that Velasquez's claims, that Wilson took indiscriminately from Scottish conceptions of the moral sense in the formulation of his own and that Wilson aligns with Hume on the subject of ultimate ends, are inaccurate.⁹ Furthermore, while Wilson certainly drew on other sources (as I have indicated in this thesis), I showed that he clearly followed Reid in rejecting Locke and Hume as adherents to the Ideal Theory, which he presents as

⁹ See: Section, 3.3.

a threat to trial by jury and the very conception of justice.¹⁰ I also argued that Wilson rejected Hume and Hobbes' conception of humanity and the state of nature, and identified Hobbes as an adherent to the Theory of Superiority.¹¹ This came into greater focus through recognising the extended meaning that Wilson developed or translated Reid's arguments in his rejection of the Theory of Superiority.

This rejection of the Theory of Superiority also helped bring to light the differences between Wilson's Democratic Political Theory and Locke's contract theory. This extended meaning in turn aided in explaining why Wilson asserted that there was no contract or compact to be found in the US Constitution, including a Lockean one.¹² This evidence has led me to argue, in agreement with Robinson and Bayer, that an alignment of Wilson with Locke, Hume, and Hobbes, primarily proposed by Velasquez, is implausible.

Building on this contention, I also argued that interpreting Wilson's Revolution Principle as a development of Locke's revolution principle, as Amar, Wilmarth, and Bartrum do, is incorrect and misleading. Such interpretations do not account for the distance between Wilson and Locke's theories of government, nor Wilson's break with Locke's contract theory in the ratification debates.¹³ Moreover, these interpretations fail to recognise what amount to stark and important differences between Wilson and Locke's revolution principles.¹⁴ Locke's revolution principle requires a breach of contract, is based on the physical might of the majority, and is realised through violence.¹⁵ Alternatively, Wilson's is an inalienable right, realised through democratic means, and is not contractually constrained—it can be exercised at any time and for any reason. Therefore, I have concluded, based on this evidence that, while Locke might have pointed the way (paraphrasing Wilson), Wilson's Revolution Principle is not Lockean. Rather, in my

¹⁰ See: Sections, 3.3 & 6.1.

¹¹ See: Section, 3.3 & 4.1.

¹² See: Sections, 5.3.

¹³ See: Sections, 4.1, 5.1, & 5.3.

¹⁴ See: Sections, 4.1 & 5.1.

¹⁵ Amar, "Consent of the Governed," 463-64.

interpretation, the evidence illustrates that Wilson's Revolution Principle is better understood as being deeply inflected by Reid's philosophy.¹⁶

Of greater significance to existing scholarship on the development of the US Constitution is Wilson's assertion that his theory had been realised and this revolution commenced by the ratification of the US Constitution. While Wilson lays out and explains his Democratic Political Theory in his Lectures, he does so as a systematic explanation of the US Constitution and American Jurisprudence. Furthermore, Wilson developed and asserted this new Democratic Political Theory throughout his contributions to framing, ratifying, and authoritatively interpreting the US Constitution.

Wilson's place in this historical event was significant. Adhering to the conception that I have labelled his principle of consent, Wilson advocated in the Constitutional Convention for proportional representation, simple majority rule, and for as direct a form of democracy as possible. While Wilson's arguments did not prevail in the debates over the Senate, they were partially realised in the Electoral College as a logistical solution to the infeasibility of a national popular vote given the limitation of eighteenth-century technology and the size of the country.¹⁷ More significantly, Wilson's argument for the popular ratification of the US Constitution was successful. Wilson used the requirement of popular ratification and the words of the Preamble as a leading Federalist to argue in the ratification debate that his radically democratic Revolution Principle was the foundation of the US Constitution.¹⁸

In Wilson's hands, this principle was, as he described it, a panacea to the challenges raised against the proposed Constitution. Significantly, he used it to answer the pivotal problem of divided sovereignty and make theoretical sense of the US Federal System.¹⁹ As I have illustrated through existing scholarship, there is good reason to believe that Wilson's interpretation of the Constitution was more influential and widely held by the people than Madison's.²⁰ This was Wilson's

¹⁶ See: Section, 5.1.

¹⁷ See: Section, 4.3.

¹⁸ See: Section, 5.3.

¹⁹ See: Sections, 5.3-4.

²⁰ See: Section, 5.4.

greatest contribution to the development of the Constitution and most significant assertion of his Democratic Political theory, particularly its foundation: the Revolution Principle. However, as a Justice of the Supreme Court, Wilson also presented his Democratic Political Theory as the proper and now authoritative interpretation of the US Constitution in the Chisholm case and Henfield's case.²¹

All of these examples and his Lectures identify Wilson's Democratic Political Theory as a significant historical understanding of the US Constitution, which firmly locates it within the American political tradition. Moreover, his major role in the ratification debates presents Wilson's theory as a dominant strand in that tradition. Furthermore, Wilson's opinion in the Chisholm case situates his theory and particularly his Revolution Principle in constitutional law precedence, although the modern interpretation of the Eleventh Amendment has obfuscated this (inappropriately as argued), contributing to the marginalisation of Wilson's theory.²² Similarly, Wilson's guidance in Henfield's case locates his theory in federal law precedence. These cases provide a level of authority that further elevates the importance of Wilson's theory within the American political tradition.

Given the importance and significance of Wilson's political theory, it calls into question the received wisdom of existing scholarship concerning the development of the US Constitution and the American political tradition. Locke was clearly a significant influence on the Founding generation, but to assert, as Nevins and other scholars do, that the US Constitution was *solely* or *primarily* Lockean and understood as such at the time, is excessively reductive and misleading.²³ The Lockean proposition within much scholarship cannot account for Wilson's Revolution Principle, its role in the ratification debates, foundational place in Federalist thought, nor does it take account of Wilson's public rejection of contract theories (and with them Locke's), in the Pennsylvania Ratifying Convention. This proposition ignores and continues to obfuscate Wilson's significant historical understanding that helped shape, and thus, helps explain the development of the US Constitution. This neglect perpetuates the pervasiveness

²¹ See: Sections, 6.2-4.

²² See: Sections, 6.3-4.

²³ Nevins, *Politics of Selfishness*, 8. See also: Asadi, "Founding Fathers"; Jerome Huyler, *Locke in America*.

of Locke's theory in the American political subconscious that Nevins identifies as a dire problem facing the United States, revealing the dangers of continuing to ignore Wilson's theory.²⁴

This in turn presents Wilson's Democratic Political Theory and contributions as calling into question the accuracy of the general description of the Scottish Enlightenment's influence on the Founders as primarily a means of socialising Locke's theory. Wilson's break with Locke starkly contrasts with this understanding of the Scottish Enlightenment's influence on the Founders. While he was not the only Founder to emigrate from Scotland, Wilson represents a significant embodiment of the Scottish Enlightenment influence on the founding. This is further emphasised by his extensive adherence to and development of the philosophy of his fellow Scot, Reid.

This is not to say that the Scottish Enlightenment was not used by a number of Founders to socialise or soften Locke's theory. However, it does raise the question: To what extent can this characteristic be generalised from, given its inability to account for such a central figure and example as Wilson? Therefore, Wilson's theory and contributions provide substantial evidence that, independently of Locke, the Scottish Enlightenment had a profound influence, which warrants further research.

Furthermore, Wilson's Democratic Political Theory and his contributions to the development of the US Constitution challenge Gordon Wood's thesis. As Everett Sawyer III argues, most historians have concluded that: "Wood's approach had underestimated the complexity, conflict, and contingency present in the Founding Era."²⁵ However, as I have shown (particularly in chapters 4 to 6), Gordon Wood's account of the Federalists' alleged aristocratic proclivities and the US Constitution, as their attempt at a counter revolution, ignores the radically democratic nature of Wilson's contributions.²⁶ Wilson's radically Democratic Political Theory therefore presents a major challenge to Gordon Wood's thesis, revealing it to be at best a misleading over-generalisation.

²⁴ Nevins, *Politics of Selfishness*, 210-11.

²⁵ Sawyer, "History and Originalism," 854.

²⁶ Knapp suggests this as well, see: Knapp, "Law's Revolution," 304.

Significantly, this highlights that, even though it is often treated as such, the US Constitution is not an academic thesis nor a political treatise with a focus on coherence. Instead, the Constitution is a political document collectively written, interpreted, and ratified (or authorised) through debate and compromise by individuals holding a wide range of positions and conceptions about the nature of government and human beings. This understanding of the Constitution raises two related methodological questions: Does one single intended meaning of the document exist (in Skinnerian terms)? And, relative to it and the deficiencies of Gordon Wood's approach: What questions and kinds of meanings are appropriate for historians to pursue and discuss concerning political documents such as the US Constitution?

Given the complexity and disagreement between authors on something as fundamental as the theory of government, in which their positions were grounded, it appears unlikely that a strict historical assessment of the intended meaning of the Constitution is possible.²⁷ For instance, the framed constitution seems to be the result of a marriage of convenience between Madison and Wilson. However, Wilson's interpretation of it (or what might be called his intended meaning concerning it) is based on his Democratic Political Theory, which is incompatible with Madison's, grounded as it is in the theory of mixed government and Locke's contract theory. Both realised certain designs they had for the plan of government, but rarely without compromise. This is important information and useful for revealing how the Constitution was drafted and understood.

However, can either Madison or Wilson's interpretation, with any propriety to the definition of the word "intend", be called *the* authorial intended meaning of the document? I think not. And this concerns only two delegates (out of the fifty-five present), who are largely recognised as allies in the Convention. Instead, I recommend that it would be clearer to describe these as Wilson and Madison's contributions to, interpretations of, or intentions *for* the Constitution. They represent two historical meanings and understandings of the constitutions, among a host of others, but neither constitute *the* authorial intended meaning of it.

²⁷ Knapp, "Law's Revolution," 285; Brennan, "Contemporary Ratification," 25; Bunker, "Originalism 2.0," 332; Levy, *Framers' Constitution*, 398; Paul Finkelman, "Intentions Of The Framers," 398.

The concept of and search for “the intended meaning” of the US Constitution is further destabilised by the popular ratification of the Constitution where its meaning was debated in public in thirteen different states by the people at large who authorised the document based upon their understanding of it.²⁸ In these debates, Madison and Wilson again put forward substantially different interpretations. However, there is strong evidence to support the idea that Wilson's Revolution Principle was understood and broadly accepted as the pre-eminent foundation of the US Constitution, central to Federalist thought. But, does this constitute authorial intended meaning? And, if so, does this intended meaning take precedence over the Framers' intended meaning?

To the first question, again I answer no. I do so, in part because I agree with Knapp's argument that there is “No clean answer to the question”: “Whose rendition of constitutional meaning prevailed at ratification?”²⁹ Wilson and Madison's contributions to the ratification debates appear to again be better described as historical interpretations or understandings of the meaning of the Constitution that in turn inform and help recover the people's historical understanding of the Constitution.

Currently in the United States, the second question is a political, not a historical, one. However, it reveals the flaws in the historiographical attempt to determine the authorial meaning of a political document such as the US Constitution. Historically, both the Framers' and Ratifiers' multifaceted understandings of the Constitution provide valuable insights. Regarding and understanding them separately and in relation to one another provides further insights that help reveal these different perspectives or meanings of the document. This paints a fuller and more accurate picture of the historical event and the role and interaction of these ideas and concepts in it.

Alternatively, identifying the authorial intended meaning requires generalisations and simplifications that blur and conceal these variations and the insights that could be drawn from them. In this sense, determining which is *the* authorial intended meaning (that of the Ratifiers or the Framers, Madison or Wilson), is misleadingly reductive and distracting, obfuscating far more than it

²⁸ Bunker, “Originalism 2.0,” 332.

²⁹ Knapp, “Law's Revolution,” 285.

could potentially reveal. Thus, treating a collectively written political document as an academic work or political treatise, appears misguided and the question of determining *the* authorial intended meaning of the US Constitution particularly seems unhelpful at best.³⁰

Instead, it seems better to adopt Pocock's archipelago conception of historiography, through which Wilson's contributions could be seen as an island in the Federalist region of the larger archipelago of the historical meanings and understandings of the US Constitution. Thus, the recovery and rehabilitation of his work, may be thought of as akin to discovering a large and extensive island of egalitarian democratic grasslands and rolling hills, in a region that was formerly thought of as consisting only in a tight grouping of islands characterised by hierarchical aristocratic mountains.

This potentially reshapes our entire understanding and perspective of the region and how we describe it. And, while it might require redrawing the boundaries of existing islands and their relation to one another, it does not negate those other islands' existence. Wilson's contributions represent one very significant island or historical meaning, but importantly it does so as *a* meaning or interpretation, not *the* intended meaning of the US Constitution. However, part of their significance is that Wilson's contributions help reveal that the other Founders and Framers' interpretations similarly constitute *a* meaning, not *the* intended meaning of the US Constitution. Thus, from this perspective, I have attempted to provide good grounds for maintaining that Wilson's contributions need to be much more substantially acknowledged in ways that will redraw the map of the historical meanings and understandings of the Constitution.

This endeavour is greatly assisted by Blau's advocacy of collaboration and his concept of extended meaning. This mapping of historical meanings and understandings in terms of size, strength, or extent, individually and in relation to one another, requires clarity, particularly concerning how far a generalisation can be drawn. This is not only ethical, but also practical because the task of locating meanings within and in relation to others is necessarily collaborative,

³⁰ Brennan, "Contemporary Ratification," 25.

requiring clarity about the borders and relative position of different historical meanings.

Extended meaning aids in this process by explaining the relation between different islands, which could be thought of in this mapping analogy as sociological or cultural characteristics. For instance, Madison's divided sovereignty was seen as theoretically incoherent with the contemporaneous definition of sovereignty, while Wilson adhered to this definition and used it to make theoretical sense of the federal system. As several scholars argue, this led the people and Federalists to adhere to Wilson's interpretation, or inhabit his island, as opposed to Madison's.

Furthermore, this perspective and the use of extended meaning in this thesis suggests several avenues for future research. These include delving deeper into what might be metaphorically called the 'trade route' or 'cultural exchange' between Wilson and Reid, particularly looking at the conception of property rights and the need to reassess the current description of the relationship between the Scottish Enlightenment and the US Founding. As it concerns the meaning of the US Constitution and the Founders, it also opens up the possibility that other Founders resonate with Wilson and Reid, such as Thomas Paine. In essence, it warrants and aims to encourage further scrutiny of the 'map' of the historical meanings and understandings of the US Constitution and exploration in search of yet undiscovered 'trade routes', geographical characteristics, and possibly even islands.

This thesis also has further implications for other disciplines in the present, which further highlights its potential as well as its limitations. This thesis' limitations include the dearth of information on Wilson's early life in Scotland. New discoveries in this area could reveal further insights. Another limitation is that while I have pointed out other influences on Wilson, I was not able to explore them in detail. This was necessitated by the specific focus on Wilson's adherence to Reid, which was required to elucidate these key aspects of Wilson's theory. Another limitation is that, while I shall attempt to outline some of the ways in which Wilson could significantly inform the present, realising this potential is beyond the scope of this thesis, requiring for example lawyers, political theorists, and activists.

8.2 - The American Political Crisis: The Founders' Intent and epistemological division

This thesis and its methodological perspective also open up the possibility of rehabilitating Wilson's neglected contributions and theory to address the current political crisis in the United States. For, determining the authorial intended meaning of the Constitution is one of the major points that constellate the current political crisis in the United States, which has become epistemological and existential in its scope. As Sawyer, referring to Gordon Wood's seminal work, argues: "Originalism, in fact, emerged as an important theory of constitutional interpretation in the 1970s because of developments in professional historiography."³¹ It is difficult to tell whether it was an unintentional or politically motivated misunderstanding of historiography's focus on intended meaning, but the search for the authorial intended meaning has come to dominate Supreme Court rulings and pervade American political rhetoric.

Originalism claims that the US Constitution should be interpreted strictly in accordance with its original or intended meaning. This interpretation requires Justices to apply the eighteenth-century text to answer modern legal decisions, which is a form of extended meaning. However, intended meaning, and this form of extended meaning, are often problematically and anachronistically conflated in Originalism.³² This often takes the form of a claim that a concept found in the eighteenth-century text is what I would describe as compatible with a modern concept or political position. However, instead of identifying this as a compatibility and not historical meaning, Originalists read this modern concept into the original intended meaning of the US Constitution, and, having anachronistically located it there, proceed to use it as authority in legal decisions.

Furthermore, despite this and the numerous and continuing critiques and warnings of historians and legal scholars (which include references to the impracticability of discovering the intended meaning of the Constitution), this method has seeped into and come to pervade popular American political

³¹ Sawyer, "History and Originalism," 848. Concerning Gordon Wood see: Sawyer, "History and Originalism," 853-54, & 856.

³² Originalism conflating intended and extended meaning, see: Section, 2.2.

rhetoric.³³ This can be seen through simply Googling the term “Founders’ Intent” followed by any current political debate, or simply by watching American news programmes.

In popular American politics the concept of Originalism has become what I label the Founders’ Intent Political Ideology. Within this context, the concept of Originalism appears to have coalesced with the Neo-conservative reinvention of Scottish Moral Sentimentalism and a pervasively Lockean understanding of politics in the American zeitgeist. In the process this ideology has come to see the intended meaning of the Constitution as decisive in modern political policy decisions and the authority for defining what is ‘American’.³⁴ An extreme and identifiable example of this and the Founders’ Intent Political Ideology can be seen in the Tea Party movement.³⁵

The Founders’ Intent Political Ideology’s process of defining what is American, to an even greater extent than Originalism, problematically conflates intended and extended meaning. Like Originalism, proponents of the Founders’ Intent Political Ideology anachronistically present a modern political position or concept’s compatibility with a Founder’s or eighteenth-century text’s historical meaning as its intended meaning and the original meaning of the US Constitution. This is an attempt to confer an historical authority onto a contemporary political position or ideology, ignoring the differences and anachronism of doing so, in order to elevate its position as being beyond scrutiny and decisive in political decisions. Thus, while I hold that identifying such compatibilities can be enlightening in scholarship and even in popular politics, if they are appropriately identified as such, the Founders’ Intent Political Ideology ignores the crucial distinction between intended and extended meaning.

This ideology—reacting with the tribalisation of society and economic issues that government has continually failed to meaningfully address—has led to the development of a socio-epistemological divide in the United States, expressed in political terms. In this divide, one side adheres to and argues in terms of the Founders’ Intent Political Ideology. However, in recent years, fuelled by

³³ Goldstein, “Tea Party,” 831.

³⁴ Goldstein, “Tea Party,” 828-31.

³⁵ Goldstein, “Tea Party,” 850-51.

continuing social and economic issues, as well as inflammatory rhetoric by politicians (such as now former President Trump), this ideology has been radicalised, becoming more authoritarian and even fascist.³⁶ This has only deepened the divide. This divide now constitutes nothing short of an existential crisis for the United States, to which, according to President Joe Biden, the attempted insurrection on January 6, 2021, testifies.³⁷

The Founders' Intent aspect of the story begins with Edwin Meese's speech to the American Bar Association in 1985 where he introduced Originalism as: "A jurisprudence that seeks fidelity to the Constitution—a jurisprudence of original intention".³⁸ He claimed Originalism would "depoliticize the law" and respect the people's sovereignty, in opposition to the perceived liberal activism of the Warren court and its interpretative methodology: the "Living Constitution".³⁹ Meese's Originalism was a fidelity to the intentions of the Framers, those who drafted the Constitution, which Matthew Bunker labels: "Old Originalism".⁴⁰ This met with a number of critiques, including what Bunker describes as the "anachronism critique", and the "dissensus critique" that pushed it through two further iterations.⁴¹

³⁶ Eric Loneragan & Mark Blyth, *Angrynomics* (Chelsea: Agenda Publishing, 2020), 116; Jason Stanley, "America is Now in Fascism's Legal Phase," *The Guardian*, December 22, 2021, <https://www.theguardian.com/world/2021/dec/22/america-fascism-legal-phase>; Zack Beauchamp, "How Does This End?" *Vox*, January 3, 2022, <https://www.vox.com/policy-and-politics/22814025/democracy-trump-january-6-capitol-riot-election-violence>; Lutz, "Talking About Civil War"; Solender, "Armed Rebellion".

³⁷ Zach Beauchamp, "How Does This End?"; Rebecca Beitsch, "Biden: 'The insurrection was an existential crisis'," *The Hill*, April 28, 2021, <https://thehill.com/policy/national-security/550865-biden-the-insurrection-was-an-existential-crisis/>; Reeves & Smyth, "Coming Civil War"; Taylor, "Insurrectionists American Revolution".

³⁸ Meese, "Interpreting the Constitution," 19. See also: Bunker, "Originalism 2.0," 331; Rakove, "Introduction," in *Interpreting the Constitution*, ed. Rakove, 3; Rakove, "Mr. Meese," 180.

³⁹ Meese, "Interpreting the Constitution," 19. Originalism as a response to the Warren Court, see: Bunker, "Originalism 2.0," 329; McDowell, *Language of Law*, 3; Rakove, "Mr. Meese," 180; Johnathan O'Neill, *Originalism in American Law and Politics: A Constitutional History* (London: The Johns Hopkins University Press, 2005), 42; Meese, "Interpreting the Constitution," 18.

⁴⁰ Bunker, "Originalism 2.0," 331.

⁴¹ Respectively: Bunker, "Originalism 2.0," 333 & 332.

The anachronism critique pointed out the overwhelming historical evidence that the Framers themselves did not think that their intentions should be authoritative, or even taken into account when interpreting the Constitution.⁴² In response, Originalism relocated original intention from the Framers to those who ratified the Constitution, which exacerbated the existing problem identified by the dissensus critique.⁴³ Similar to my methodological recommendation above, this critique points out the numerous competing historical understandings of the Constitution, presenting the search for the intended meaning of the Constitution as an impracticable and impetuous endeavour.⁴⁴ This has led to the formation of what Bunker calls “New Originalism”.⁴⁵

New Originalism, according to Bunker, purports to create and use: “a hypothetical observer who synthesizes these views in his (and, of course, it would have been ‘he’ in the late eighteenth century) own mind to come up with the most reasonable interpretation.”⁴⁶ The reasonable observations of this hypothetical observer supposedly constitute the original public meaning of the Constitution.⁴⁷ This appears at best to be blatant sophistry meant to avoid capitulation on the theoretical argument.⁴⁸ However, even if proposed honestly, this method has overwhelming methodological problems, including the establishment of satisfactory criteria for determining: firstly, genuinely relevant or informative sources; and secondly, what constitutes a *reasonable* interpretation within the eighteenth-century American context.⁴⁹ Nevertheless, this methodology in one form or another has persisted with Bailyn recognising a

⁴² Bunker, “Originalism 2.0,” 333. See also: Lynch, *Negotiating the Constitution*, 6-7; Jefferson Powell, “Original Understanding,” 87; Levy, *Framers’ Constitution*, 1; Finkelman, “Intentions of the Framers,” 353.

⁴³ Sawyer, “History and Originalism,” 856.

⁴⁴ Bunker, “Originalism 2.0,” 332; Eidelberg, *American Constitution*, 28; Levy, *Framers’ Constitution*, 11; Finkelman, “Intentions of the Framers,” 356-58 & 370; Rakove, “Introduction,” 5-6; Brennan, “Contemporary Ratification,” 25; Heyburn, “Morris and Wilson,” 196-97; Sawyer, “History and Originalism,” 854.

⁴⁵ Bunker, “Originalism 2.0,” 337.

⁴⁶ Bunker, “Originalism 2.0,” 338.

⁴⁷ Bunker, “Originalism 2.0,” 337.

⁴⁸ Bunker, “Originalism 2.0,” 353-54.

⁴⁹ Bunker, “Originalism 2.0,” 338-42.

corresponding exponential increase of citations of the Founders in Supreme Court decisions in the decades following Originalism's introduction.⁵⁰

While Meese claimed in his initial speech that Originalism was not meant to produce “political results”, it is a conservative method.⁵¹ The political motivations of Originalism seem clear from its introduction by Reagan's conservative administration and in response to the perceived liberalism of the Warren Court.⁵² Its results make this even clearer. Originalism has effectively arrested political progress by requiring the nearly impossible task of amending the Constitution to realise any progressive reforms.

However, Originalism is also inherently conservative and has become increasingly regressive with the introduction of New Originalism. This can be seen in Originalism's general assertion that the Constitution should be interpreted in line with eighteenth-century legal and political terminology and conceptions, its *intended meaning*.⁵³ This is even more pronounced, dangerous, and increasingly regressive in New Originalism. Bunker explains that under this iteration of Originalism, Justice Thomas believed it was appropriate to cite eighteenth-century parenting practices in his decision.⁵⁴ Thus, now the Constitution should not only be interpreted in accordance with a fictitious eighteenth-century observer's “reasonable” understanding of the Constitution in legal terms, but in eighteenth-century social norms as well. Originalism's requirements almost inevitably lead to conservative decisions, while the practice of attempting to interpret the law, and thus, govern the people of today, in accordance with two-hundred-year-old concepts and customs is, by definition, conservative, if not outright regressive.

Around the same time as Originalism was being introduced in the Supreme Court, Neo-conservatives were reshaping Scottish Moral Sentimentalism into a

⁵⁰ Bailyn, *Begin the World Anew*, 104.

⁵¹ Meese, “Interpreting the Constitution,” 19. See also: Goldstein, “Tea Party,” 853-56.

⁵² Bunker, “Originalism 2.0,” 329; Rakove, “Mr. Meese,” 180; O'Neill, *Originalism in American Law*, 42, 101, & 188. This is also suggested in originalist arguments: Meese, “Interpreting the Constitution,” 18; McDowell, *Language of Law*, 3.

⁵³ O'Neil, *Originalism in American Law*, 101 & 188.

⁵⁴ Bunker, “Originalism 2.0,” 344.

weapon for the 'Culture Wars' of the 1980s and 90s.⁵⁵ According to Lipisto, the Culture War was a: "battle to define 'Americanness'" and the Neo-conservatives presented it as one: "between the elites and the ordinary people".⁵⁶ Resonating with Originalism, the Neo-conservative movement was a response to the cultural upheaval of the 1960s counterculture and rise of the New Left, particularly as manifested in liberal academic 'elites' and social reformers.⁵⁷ As Lepisto also explains, it exploited the uncertainty of the economic crisis of the 1970s that left people questioning and doubting "ideas and intellectual authority".⁵⁸ Its goal was to remoralise the United States in order to recreate the post-World War II cultural hegemony in the United States.⁵⁹

Lepisto describes the development of this movement in great detail in his monograph: *The Rise of Common-Sense Conservatism*. There he explains that Neo-conservatives reshaped Scottish Moral Sentimentalism, taking indiscriminately from Hume, Adam Smith, and Hutcheson, ignoring their differences, incompatibilities, and statements concerning the need to educate the moral sentiments.⁶⁰ According to Lepisto, Neo-conservatives used this reshaped theory to develop a new epistemology that presented the raw moral emotions of the white middle and working class as the true source of moral wisdom that defined what is "American" in culture and politics.⁶¹ For instance, Neo-conservatives used this concept to argue that there was a moral consensus among real Americans against welfare and big government, and for harsher criminal punishment and free market capitalism.⁶²

⁵⁵ Lepisto, *Common-Sense Conservatism*, 1 & 3.

⁵⁶ Respectively: Lepisto, *Common-Sense Conservatism*, 4 & 83. See also: Lepisto, *Common-Sense Conservatism*, 52-60.

⁵⁷ Lepisto, *Common-Sense Conservatism*, 1-3.

⁵⁸ Lepisto, *Common-Sense Conservatism*, 33.

⁵⁹ Lepisto, *Common-Sense Conservatism*, 4, 175, 180-81

⁶⁰ Lepisto, *Common-Sense Conservatism*, 3, 13, 34-38, 42, 48, 56, & 65-66 & 185.

⁶¹ Lepisto, *Common-Sense Conservatism*, 3, 4, 6-7, 14, 15, 18, 26-28, 52-53, 56, 60-61, 80, 106, 122-24, 128-28, & 181.

⁶² Building a moral consensus: Lepisto, *Common-Sense Conservatism*, 15 & 106.

Welfare: Lepisto, *Common-Sense Conservatism*, 74, 106-07, 110, 127-28, 133-34, 149.

Big government: Lepisto, *Common-Sense Conservatism*, 80, & 174-79. Crime and

punishment: Lepisto, *Common-Sense Conservatism*, 112, 136-41, 149, & 151-52.

Capitalism: Lepisto, *Common-Sense Conservatism*, 33-34, 39-40, 44-45, & 178-79.

According to Neo-conservatives, these moral emotions were all that was needed to make informed political decisions and all that should be adhered to in policy decisions, not the research of amoral and un-American academic elites.⁶³ In defining these “ordinary people” as the source of truth concerning morality and Americanness to the exclusion of academics and minorities, the Neo-conservative reinvention of Scottish Moral Sentimentalism was an inherently exclusionary, undemocratic, and explicitly anti-intellectual populism taken up by the Republican Party.⁶⁴

It appears that both Originalism and the Neo-conservative movement found fertile soil in the pervasively Lockean zeitgeist and predominant conservative American political ideology. Matthew Grossman and David Hopkins explain that Americans tend to simultaneously hold the opposing positions of a general conservative political ideology and preferences for left-of-centre policies.⁶⁵ As Nevins argues, the values being conserved in American political ideology are actually Locke’s traditional liberalism.⁶⁶

Nevins continues to argue that the unconscious pervasion of Locke’s theory has effectively arrested political progress in the United States and led to an anti-social and anti-intellectual culture in the United States.⁶⁷ This has effectively stopped political discussions about the common good. It has also presented individual personal experience as “true knowledge”, hindering meaningful political dialogue generally and resonating with the Neo-conservative elevation and veneration of the epistemological value of raw moral emotions.⁶⁸ In this Lockean culture, Nevins further argues that citizens find fulfilment “through the acquisition of property”, and are apprehensive about government, distrusting it as: “vulnerable to dissolution and disruption, particularly when subjected to

⁶³ Lepisto, *Common-Sense Conservativism*, 5-6, 60-61, 44-45, 53, 55-57, 59, 78-79, 82-83, 85, 117, 122, 126, & 181.

⁶⁴ Lepisto, *Common-Sense Conservativism*, 183. See also: Lepisto, *Common-Sense Conservativism*, 4, 5, 7, 14, 15, 28-29, 44, 51-53, 55, 57, 80-82, 108, 117, 126, 180-83

⁶⁵ Matthew Grossman & David A. Hopkins, *Asymmetric Politics: Ideological Republicans and Group Interest Democrats* (New York, NY: Oxford University Press, 2016), 23-24.

⁶⁶ Nevins, *Politics of Selfishness*, 9-10.

⁶⁷ Nevins, *Politics of Selfishness*, 191, 197, & 210-11.

⁶⁸ Nevins, *Politics of Selfishness*, 197. See also: Nevins, *Politics of Selfishness*, 191.

outside stresses.”⁶⁹ This also resonates with the Neo-conservative distrust of big government, opposition to welfare, and support for capitalism.

Originalism, Neo-conservatism, and this pervasive Lockean ideology, all further resonate with the Tea Party movement as an extreme and identifiable expression of the Founders' Intent Political Ideology. This movement, similar to the Neo-conservative one, commenced in response to the Democratic candidate Barak Obama being elected President as well as the 2008 financial crisis to which government failed to respond to in a meaningful way.⁷⁰ As the name implies and Goldstein explains: “The Tea Party movement's constitutional rhetoric is built around a narrative of a golden age of the nation's founding, in which the nation's fundamental principles were established fully formed and eternal by the Founders and embodied in the Constitution.”⁷¹

This resonates strongly with Originalism, but simplifies it by mythologising the Constitution and applying it directly to cultural questions by claiming this mythical Constitution is: “at the core of our national identity.”⁷² As Goldstein explains, the Tea Party uses the principles found in their mythical Constitution to present: “a narrow conception of what America is, what ideas are American, and who is truly American.”⁷³ This again resonates strongly with the Neo-conservative campaign to define Americanness. However, the Tea Party's goal is significantly more regressive. In my judgment this is apparent in that, while the Neo-conservatives were attempting to recreate the 1950s, the Tea Party's aim is to save America by returning to these founding eighteenth-century American principles and adhering to them dogmatically.⁷⁴

Furthermore, in my judgment, the Tea Party's founding American principles correspond closely to those of Neo-conservatives. Goldstein identifies the Tea Party's principles as the: “interlocking principles—individual liberty, limited

⁶⁹ Respectively: Nevins, *Politics of Selfishness*, 193 & 196. See also: Grossman and Hopkins, *Asymmetric Politics*, 26.

⁷⁰ Response to election of President Barak Obama: Goldstein, “Tea Party,” 832-33. Economic: Loneragan & Blyth, *Angrynomics*, 85.

⁷¹ Goldstein, “Tea Party,” 831.

⁷² Goldstein, “Tea Party,” 835. See also: Bunker, “Originalism 2.0,” 354.

⁷³ Goldstein, “Tea Party,” 831.

⁷⁴ Goldstein, “Tea Party,” 828-29, 832-33, & 836-37.

government, and free markets—which they identify as core constitutional principles”, resonating with the Neo-conservatives’ opposition to big government and support of capitalism.⁷⁵ Another central founding constitutional principle according to the Tea Party, Goldstein explains, is the “fundamental prohibition against ‘collectivist’ measures”.⁷⁶ This too echoes the Neo-conservative opposition to welfare and their ‘American’ principle of personal responsibility as well as Lockean individualism and its ellipses of the common good.

The Tea party also similarly rejects alternative political views and the academy as unreliable sources of information. They demonise such ideas as un-American foreign propaganda, describing them as tantamount to an invasion.⁷⁷ However, the Tea Party goes further than the Neo-conservatives in their anti-democratic position by stating it explicitly. They hold that the United States is not a democracy, but instead insist on referring to it as a republic.⁷⁸ This appears to be potentially grounded in Madison’s reinvention of republicanism. It is also an oddly paradoxical position where a popular political movement is advocating for less say in how they are governed.⁷⁹

While the Tea Party has faded from the public eye, the Founders’ Intent Political Ideology that it exemplified and shaped, only appears to have become more mainstream. Examples of this can be seen in the conservative response to calls for universal healthcare and to reform the Electoral College. Cheryl K. Chumley passionately articulates this Founders’ Intent argument against universal healthcare (in the form of Medicare for All) in the *Washington Times*:

America was founded on principles of limited government and individual freedom, where rights come from God, not government.

Then came the left’s message—first from Hillary-care back in the 1990s, then from Obamacare, which eventually passed—that health care is a right, a basic human right, and slash went the Constitution.

⁷⁵ Goldstein, “Tea Party,” 845.

⁷⁶ Goldstein, “Tea Party,” 846. See also: Goldstein, “Tea Party,” 842.

⁷⁷ Goldstein, “Tea Party,” 836, 840, 842, 847-48, & 857.

⁷⁸ Goldstein, “Tea Party,” 857 & 861-62.

⁷⁹ Goldstein, “Tea Party,” 857 & 861-62.

Now comes Medicare for All, as Sen. Bernie Sanders is pushing, and once again, just like its precursors, it's about as un-American as policy can come. But doesn't it sound great?⁸⁰

Similarly, concerning the Electoral College, Frank Gunter argues in *The Hill*: "Why do these very different groups want to modify or abolish the Electoral College? Because it is fundamentally undemocratic. But it was deliberately created that way."⁸¹ Both directly reference the Founders' intentions as clear decisive arguments against reform and do so in widely respected publications.

The Founders' Intent Political Ideology can be seen further in the rhetoric of the former President Donald Trump, which Lepisto strongly suggests is rooted in Neo-conservative populism. The former President's slogan "Make America Great Again", appears to refer to this mythic golden age of the Tea Party or at least has been understood as such by his supporters.⁸² Lepisto further claims that the former President continued the Neo-conservative campaign of explaining to the people: "why they were right and to 'the intellectuals' why they were wrong."⁸³ And, furthermore, he did so by identifying the 'real Americans' to the exclusion of segments of the population deemed immoral and not truly American.⁸⁴ This included the rejection of academics and leftist 'elites' as well as historic sources of reliable information through his espousal of "alternative facts", such as news outlets, that the former President consistently berated as "Fake News".⁸⁵

⁸⁰ Cheryl K. Chumley, "No, no, No - Health Care is not a Right," *Washington Times*, May 9, 2017, <https://www.washingtontimes.com/news/2017/may/9/no-no-no-health-care-is-not-a-right/>.

⁸¹ Frank R. Gunter, "The Electoral College is Not Democratic — Nor Should it be," *The Hill*, May 23, 2020, <https://thehill.com/opinion/campaign/498512-the-electoral-college-is-not-democratic-nor-should-it-be>.

⁸² Robyn Autry, "Trump's '1776 Commission' Tried to Rewrite U.S. History. Biden had Other Ideas," *NBC News*, January 21, 2021, <https://www.nbcnews.com/think/opinion/trump-s-1776-commission-tried-rewrite-u-s-history-biden-ncna1255086>; "When was America Great?" *The Daily Show with Trevor Noah*, <https://www.youtube.com/watch?v=uVQvWwHM5kM>.

⁸³ Lepisto, *Common-Sense Conservativism*, 182.

⁸⁴ Lepisto, *Common-Sense Conservativism*, 182-83.

⁸⁵ Lepisto, *Common-Sense Conservativism*, 14, 82, & 182-184; Lonergan & Blyth, *Angrynomics*, 25; Danielle Kurtzleben, "With 'Fake News,' Trump Moves From Alternative Facts to Alternative Language," *NPR*, February 17, 2017, <https://www.npr.org/2017/02/17/515630467/with-fake-news-trump-moves-from>

Eric Lonergan and Mark Blyth provide an economic perspective on the rise of this right-wing populism, including former President Trump’s version of it, in their book: *Angrynomics*. There they describe how the ineffective measures taken by governments to address economic issues that were exacerbated by the 2008 financial crisis led to public moral outrage stemming from real grievances and what they describe as tribal anger.⁸⁶ They define tribal anger or rage as: “a primitive emotion, one that puts aside our moral compass in the name of action and to close ranks for protection against some other group.”⁸⁷ They further explain that this tribal anger was manipulated by media to increase ratings and by politicians to increase votes by motivating their base.⁸⁸ This anger again has been directed in the United States at the “coastal elites” including academics, politicians, and experts who failed to prevent or respond to the ongoing reverberations of the economic crisis.⁸⁹

This tribal anger has been manipulated through and accompanied by what David Roberts calls “tribal epistemology”, resulting in the formation of a socio-epistemological divide in the United States rooted in Neo-conservative sentimentalist epistemology and expressed in terms of the Founders’ Intent.⁹⁰ David Roberts describes the current situation, thus: “The US is experiencing a deep epistemic breach, a split not just in what we value or want, but in who we trust, how we come to know things, and what we believe we know—what we believe exists, is true, has happened and is happening.”⁹¹ Furthermore, he argues that this epistemic divide has developed out of the: “US conservative movement’s rejection of the mainstream institutions devoted to gathering and disseminating knowledge (journalism, science, the academy)”, which, as seen above, Lepisto argued became a central feature of the Neo-conservative ideology.⁹² It also

alternative-facts-to-alternative-language?t=1649708247804; Georg Lofflmann, “‘Enemies of the People’: Donald Trump and the Security Imaginary of America First,” *The British Journal of Politics and International Relations*, special issue (2021).

⁸⁶ Lonergan & Blyth, *Angrynomics*, 6, 26, 29, 30, 39, 43-44, 48-49, 61, & 85-86.

⁸⁷ Lonergan & Blyth, *Angrynomics*, 8.

⁸⁸ Lonergan & Blyth, *Angrynomics*, 9, 22, 24-27, 29, 61, 116, & 161.

⁸⁹ Lonergan & Blyth, *Angrynomics*, 7, 9, 25, 37, 43-44, 48-49, 53, & 56.

⁹⁰ David Roberts, “Tribal Epistemology”. See also: Clark & Winegard, “Tribalism”; Lepisteo, *Common-Sense Conservatism*, 14, 18, & 82.

⁹¹ David Roberts, “Epistemic Crisis”.

⁹² David Roberts, “Epistemic Crisis”. Lepisto, *Common-Sense Conservatism*, 82-83.

resonates with Nevins' identification of Lockean anti-intellectualism and the Tea Party's rejection of information from any source outside the tribe as foreign propaganda as well as former President Trump's inflammatory rhetoric.

This epistemic break between Neo-conservative sentimentalist epistemology and institutions historically responsible for discovering, validating, and disseminating knowledge has been further reinforced by the rise of right-wing news media outlets. These media outlets have no pretence of neutrality and have created an epistemic echo chamber.⁹³ The left too has responded with the development of a less centralised media eco-system and its own echo chambers. It has become nearly impossible for people to discuss across this epistemic divide with attempts creating a feeling of greater distance and difference between the participants.⁹⁴ Yochai Benkler, Robert Faris, and Hal Roberts recognise the serious danger this creates: "Echo chambers ringing with false news make democracies ungovernable."⁹⁵

It appears these fears were almost realised on January 6, 2021, in part by insurrectionists goaded on by politicians and media personalities manipulating their anger with demonstrably false claims and the rhetoric of the Founders' Intent Political Ideology.⁹⁶ These people were told and believed that the election (and with it their country) was being stolen from them, the true Americans, by foreign powers and the corrupt immoral Democrats with their un-American

⁹³ David Roberts, "Epistemic Crisis"; Coleman, "Can't Touch this"; David Roberts, "Tribal Epistemology"; Yochai Benkler, Robert Faris, and Hal Roberts, *Network Propaganda: Manipulation, Disinformation, and Radicalization in American Politics* (New York, NY: Oxford University Press, 2018); Thomas J. Froehlich, "A Disinformation-Misinformation Ecology: The Case of Trump," in *Fake News is Bad News - Hoaxes, Half-truths and the Nature of Today's Journalism*, ed. Jan Visnovsky & Jana Radosinska (London: IntechOpen, 2021).

⁹⁴ Coleman, "Can't Touch this,"; "Discuss Politics," *Pew Research Center*. See also: Botti, "America's political divide"; West, "Divided Politics"; Seib, "Nation Divided".

⁹⁵ Benkler, Faris, & Hal Roberts, *Network Propaganda*, 5.

⁹⁶ Autry, "1776 Commission"; Justin Lane, "Why the Alt-Right Believes Another American Revolution is Comin," *The Conversation*, January 14, 2021, <https://theconversation.com/why-the-alt-right-believes-another-american-revolution-is-coming-153093>; Froehlich, "Disinformation-Misinformation Ecology"; Sam Cabral, "Capitol riots: Did Trump's Words at Rally Incite Violence?" *BBC*, February 14, 2021, <https://www.bbc.com/news/world-us-canada-55640437>; Justin Hendrix, "The Big Lie is a Reality," *Just Security*, February 23, 2022, <https://www.justsecurity.org/80324/the-big-lie-is-a-reality/>; Lofflemann, "Enemies of the People".

political ideas and positions.⁹⁷ In their tribal epistemology, these forces were conspiring to destroy the United States, and they responded with violence, carrying Revolutionary War era flags and referencing their mythologised version of the US Constitution.⁹⁸ This dangerous rhetoric has not diminished since this failed attempt to overturn American democracy, but has persisted in its own epistemic echo chamber, bringing with it the possibility of violence, civil war, and a more successful attempt to extinguish American democracy.⁹⁹

8.3 - A Wilsonian Response to the Current Political Situation

This political crisis resonates with Wilson's warnings and his contributions provide a potential means of illustrating the incoherence of Originalism and Founders' Intent Political Ideology, and a historical critique of Neo-conservatism. However, this clearly was not Wilson's intention. Nevertheless, applying Wilson's theory and contributions to the development of the US Constitution, effectively extending their meaning beyond their historical context, provides valuable and potentially significant insights.

One such insight is that Wilson's Reidian conception of society and its relationship to government suggests that the atomisation and tribalisation of American society, or the narrowing of the *esprit de corps*, provided the opportunity for this epistemological divide to form and in turn further atomise society. It did so, because in Wilson and Reid's similar views, first principles or a shared epistemological framework (in this case concerning the Constitution, what is American, and even what is real) are necessary for meaningful communication. This in turn is necessary for democratic governance based on dialogue, debate, and compromise. This extended meaning suggests that Wilson and Reid could

⁹⁷ Cabral, "Incite Violence?"; Hendrix, "Big Lie"; Lofflemann, "Enemies of the People".

⁹⁸ Autry, "1776 Commission"; Lane, "Another American Revolution"; Taylor, "Insurrectionists American Revolution"; Cohen, "January 6".

⁹⁹ Zach Beauchamp, "How does this end?"; Reeves & Smyth, "Coming Civil War"; Lutz, "Talking About Civil War"; Solender, "Armed Rebellion"; David Smith, "Is the US Really Heading for a Second Civil War?" *The Guardian*, January 9, 2022, <https://www.theguardian.com/us-news/2022/jan/09/is-the-us-really-heading-for-a-second-civil-war>; Fisher, Flynn, Contera, & Leonnig. "The four-hour insurrection".

provide a deeper understanding of the problem. However, while Wilson's Democratic Political Theory could be used to better understand this divide and critique Originalism and the Founders' Intent Political Ideology, potentially helping repair the atomisation of American society and its epistemological divide, it cannot directly address this epistemic breach.

This critique is possible because within the epistemological framework of every iteration of Originalism and the Founders' Intent Political Ideology, Wilson and his Democratic Political Theory are authoritative, given Wilson's extensive participation in the Constitutional Convention and his national role in the ratification debates. Furthermore, if Justice Thomas can cite parenting practices from the eighteenth-century in a Supreme Court opinion under New Originalism, then certainly Wilson's Lectures (not to mention his more direct contributions) should carry significant weight.

As it concerns the Neo-conservative reshaping of Scottish Moral Sentimentalism, Wilson's own Scottish credentials and reliance on the Scottish moral philosophy of Reid, provide the ability to use Wilson's contributions to critique and expose it. This functions similarly to Blau's Adam Smith example, in so far as Neo-conservative thought references this historical authority.¹⁰⁰ However, in Originalism and the Founders' Intent Political Ideology the potential of Wilson's authority to critique these views is far greater, given their explicit use of this history as the central authority for their method and ideology.

This potential can be seen in the ability of Wilson's example to develop and extend the existing critiques of Originalism. While Wilson's example does add to the dissensus critique, this critique has only managed to push Originalism through a number of iterations that appear to be only becoming more detached from history and more methodologically dubious. To paraphrase Sawyer, Originalism will not be ignored away and requires serious engagement as well as, in my opinion, critique from within its epistemological framework.¹⁰¹

There is more promise in Wilson's theory's potential to develop the anachronism critique. This potential resides in a methodological critique of

¹⁰⁰ See: Section, 2.2.

¹⁰¹ Sawyer, "History and Originalism," 859.

Originalism implied in Wilson’s theory as part of its extended meaning. This *methodological* anachronism critique develops the anachronism critique beyond the existing focus on the Framers’ explicit rejection of their intentions having any authority in interpreting the Constitution. It does so by providing an Originalist argument that the very concept and method of Originalism, in all its iterations, contradicts the fundamental principles of the US Constitution.

Originalism seems to be predicated on a Lockean conception of the US Constitution as a sovereign contract and/ or that the ratification of it authorised a sovereign meaning or interpretation of the Constitution.¹⁰² Wilson’s theory explicitly states that there is no contract to be found in the US Constitution and that it is the people that remain sovereign over their Constitution. Thus, Originalism is predicated on a theory of government that Wilson explicitly denied was part of the US Constitution. Moreover, it is a conception of the Constitution that directly opposes Wilson’s Revolution Principle by locating sovereignty in the Constitution. This goes against not only a Framers’ intentions but also a position that held broad support in the ratification debates and is part of constitutional law precedence, even if it has been ignored in recent times. In this sense, Originalism fails to adhere to its own methodology in part by, in Wilsonian terms, setting off from the wrong principles.

Originalism in its practice also denies Wilson’s principle of consent, which authorises law and government. This can be seen implicitly in Wilson’s Reidian identification of consent as a first principle based on his conception of the common law as exemplifying, authorised by, and functioning through the implicit consent found in custom. For Wilson, this implicit consent meant that the common law was continually refined and improved through experience informed by progress in culture and knowledge.¹⁰³ According to Wilson, the common law: “acquires strength in its progress”, continuously revealing “new beauties and new truths” throughout the ages.¹⁰⁴

¹⁰² Sawyer, “History and Originalism,” 856; Lofgren, “Original Intent?” 118, 122-23, 128-29, & 143; Bunker, “Originalism 2.0,” 332; Gilhooley, “Framers Themselves,” 63; O’Neil, *Originalism in American Law*, 1-2.

¹⁰³ *WJW*, 1:64, 1:99-100 & 1:205-07, & 2:43-45; Dennison, “Revolution Principle,” 174; Knapp, “Law’s Revolution,” 254 & 306-07.

¹⁰⁴ *WJW*, 1:206.

It is not a large logical step to infer that Wilson likely believed the interpretation of the Constitution could and should change with these new truths. Truths that would be discovered through the people's experience of self-governance under the Constitution and the general progress of society and knowledge, even requiring it to retain its legitimacy. Or in other words, this is almost exactly what Edward Purcell Jr. defines as the "Living Constitution" method: "a written constitution must adapt to changing times and that the principles of democracy allow, or even require, that the Constitution's broad and abstract terms reflect the changing values of the American people."¹⁰⁵ It would appear from this compatibility, or extended meaning, that Originalism's competitor, the "Living Constitution" method, has a stronger Originalist claim than Originalism.

Moreover, Originalism inherently recognises the implicit consent of custom in its attempts to determine the original or intended meaning of the Constitution as well as the people's sovereign right to determine the meaning of the Constitution. The last two iterations of this method attempt to analyse and sort through historical evidence, including the legal and social customs of the time, to determine which interpretation the people authorised or would be regarded as 'reasonable' by a hypothetical eighteenth-century observer. This assumes that the people had the right to consent to a different interpretation. However, Originalism denies this possibility and level of sovereignty over the interpretation of the Constitution to future generations by calcifying its meaning in eighteenth-century legal and social custom. In these terms Originalism is inconsistent in its conception and recognition of sovereignty.

More significantly, by respecting the consent of those long dead, Originalism effectively inhibits and denies the implicit consent of those whose obedience the law requires today. This presents Originalism as effectively a tyranny of the past over the present that defies Wilson's consent principle and its expression in his Revolution Principle. Furthermore, Wilson's Revolution Principle has a strong Originalist claim to be the foundational principle of the Constitution.

¹⁰⁵ Purcell, "Constitution, and Legal Positivism," 1458-59. See also: Mitchell N. Berman, "Our Principled Constitution," *University of Pennsylvania Law Review* 166, no. 6 (2018); McDowell, *Language of Law*, 3.

Thus, this method defies the foundational principle of the very Constitution it claims to protect, interpret, and revere. This illustrates the incoherence of this methodology and that, by denying the expression of implicit consent through changes in custom, it possibly jeopardises the legitimacy of the Constitution's authority.

Furthermore, as Zink argues, Wilson feared that this circumscription of the people's sovereignty could be realised in practice by obfuscating: "the right of each generation to define and redefine individual rights over time in accordance with improvements in human understanding."¹⁰⁶ In essence, the people, being ignorant that they possessed such a sovereign right, would be unable or at least unlikely to exercise it, effectively negating it. Zink discusses this in terms of a bill of rights specifically. However, extending this meaning, it seems equally applicable to the people's right to interpret and reinterpret their constitution, potentially (and possibly especially) through the implicit changes in custom or culture.

It appears that Originalism is realising Wilson's fear by not just obfuscating but denying the people that right and possibility. Meese in his speech stated this was the virtue of Originalism; that it would prevent the Constitution from becoming: "an empty vessel into which each generation may pour its passion and prejudice".¹⁰⁷ However, this appears to be exactly what Wilson had in mind.

In my interpretation, part of the extended meaning of Wilson's theory is that the act of each generation making the Constitution their own is what authorises law and government, and moreover their duty and right in accordance with the Revolution Principle.¹⁰⁸ This position and the Revolution Principle's role as the foundation of the US Constitution has authority within each iteration of Originalism and yet is denied and opposed by the very nature of the method itself. Therefore, recovering and rehabilitating Wilson's neglected contributions illustrates that Originalism is unconstitutional in its denial of the foundational principle of the US Constitution, according to its own methodology, illustrating its utter incoherence. Furthermore, this presents Originalism as a threat to the

¹⁰⁶ Zink, "Bill of Rights," 261.

¹⁰⁷ Meese, "Interpreting the Constitution," 18.

¹⁰⁸ Dennison, "Revolution Principle," 189.

people's sovereignty and rights as well as the legitimacy of the US Constitution and US Government's authority.

Wilson's Democratic Political Theory and adherence to Reid also helps illuminate the incoherence of the Neo-conservative reinvention of Scottish Moral Sentimentalism. Lepisto presents several historical critiques of Neo-conservative sentimentalism that Reid and Wilson can support and develop. For instance, Reid's argument against Hume is equally applicable to the Neo-conservatives. As Reid argued, if morality is simply grounded in emotions, as Neo-conservatives hold, then morality is: "an arbitrary structure and fabric in the constitution of the human mind".¹⁰⁹ In essence, from a Reidian perspective the Neo-conservative endeavour to claim moral authority for their position by reducing morality to emotions, undermines the very possibility of moral authority.¹¹⁰

More significantly, the Neo-conservative conception of the uneducated moral sense, as sufficient for responsible democratic participation is simply incompatible with Wilson's theory. In methodological terms, the Neo-conservatives are making an extended meaning claim. However, as Lepisto notes the Neo-conservative writers ignored Hume and Adam Smith's passages about the need to educate these moral emotions, or, in methodological terms, the intended meaning on which the Neo-conservatives' extended meaning claim is made.¹¹¹ Correspondingly, Wilson and Reid also both similarly assert that the moral sense can be greatly improved or corrupted, and thus, advocating for its education and exercise. This further illustrates the Neo-conservative depiction of the extended meaning of Scottish Moral Philosophy's conception of the moral sense is not representative of and not compatible with important members of that tradition, and is thus, inaccurate.

Furthermore, Wilson's theory sheds further doubt on the Neo-conservative extended meaning in so far as it is an attempt to translate Scottish Moral Philosophy into American political theory. While the moral sense is central to Wilson's theory, it is only a starting point and the common ground that makes citizens capable of democracy and improvement. Wilson insists that effective

¹⁰⁹ AP, 361-62.

¹¹⁰ See: Section, 3.2.

¹¹¹ Lepisto, *Common-Sense Conservatism*, 38-39, 41-42, & 48.

democratic participation requires citizens to be educated by institutions or themselves, and therefore, asserts it as a central and necessary duty of every citizen and the state. The moral sense provides the capacity, according to Wilson, but that capacity needs to be realised and improved through education for a functioning democracy. Wilson's position, which is a translation of Reid's Scottish Moral Philosophy into American political theory, is simply not compatible with the Neo-conservative elevation of raw moral emotion and rejection of education and intellectuals. Thus, extending the meaning of Wilson's theory, by juxtaposing it, as a significant strand of the American political tradition, against the Neo-conservative reinvention of Scottish Moral Sentimentalism to define Americanness, makes the Neo-conservative position appear ironically un-American and dubious at best.

This can be seen to an even greater extent by comparing the Tea Party's reimagined Neo-conservative principles with Wilson's Democratic Political theory. For instance, social programmes such as welfare and Medicare for All run afoul of their individualism and anti-collectivist prohibition as well as exemplifying 'big government' extending beyond its just limits. However, as illustrated at length, Wilson held that *the* end of government was to protect and improve the social life and it had an extensive jurisdiction to realise this end.¹¹² It would appear from this that extending the meaning of Wilson's Democratic Political Theory to the present, reveals that it would certainly allow and moreover laud the people collectively using government to improve society through programmes such as Medicare for All.

Furthermore, it would appear that Senator Bernard Sanders' declaration that health care is a human right is something of a fulfilment of Wilson's theory.¹¹³ As noted, Wilson held that extending rights was the sign of a legitimate government and, as Zink was seen to argue earlier, a task for each new generation to work out in accordance with the development of human knowledge. Thus, declaring health care as a right in the Constitution would appear to be a realisation of Wilson's vision of reciprocal progress and a mark of the government's

¹¹² See: Section, 7.3.

¹¹³ Friends of Bernie Sanders, "Issues: Health Care as a Human Right - Medicare for all," Berniesanders.com, April 11, 2022, <https://berniesanders.com/issues/medicare-for-all/>

legitimacy. More simply, Wilson's theory is clear: the people have a sovereign authority over the Constitution to change it however and whenever they like. Thus, in my interpretation, it would seem that a programme, such as Medicare for All, far from being against the Founders' intent or beyond government's proper jurisdiction is a realisation of one significant Founders' theory.

The Tea Party's anti-democratic position is clearly incompatible with Wilson's contributions and particularly the location of his Revolution Principle at the foundation of the US Constitution. Wilson's statements are clear, such a position was antithetical to the US Constitution and the existence of the United States as a nation.¹¹⁴ Thus, if Wilson's intended meaning is accounted for, the Tea Party's anti-democratic interpretation of the intended meaning of the US Constitution is not accurate. Calls to reform the Electoral College provide an illustrative example of how Wilson's contributions could potentially be used to argue against this anti-democratic position and for democratic reform in specific debates.

Recent history has witnessed the Electoral College's undemocratic potential with two out of the four last presidents losing the popular vote with one, far from isolated, headline stating that: "The Electoral College Is the Greatest Threat to Our Democracy".¹¹⁵ Those adhering to the Founders' Intent Political Ideology claim its undemocratic nature and outcomes are exactly as they should be, being in accord with the Founders' intent. However, Wilson advocated for a direct popular election of the president and was intimately involved in creating the Electoral College as a compromise and from his perspective a logistical solution. From this evidence it is reasonable to infer (making this an extended meaning), that the current results of the Electoral College were not Wilson's

¹¹⁴ See: Section, 5.3.

¹¹⁵ Jamelle Bouie, "The Electoral College Is the Greatest Threat to Our Democracy," *The New York Times*, April 14, 2019, <https://www.nytimes.com/2019/02/28/opinion/the-electoral-college.html>. See also: Richard Dawkins, "Richard Dawkins: Electoral College Is Viciously, Unnecessarily Undemocratic," *Time*, June 6, 2016, <https://time.com/4354908/richard-dawkins-electoral-college/>; Andrew Prokopandrew, "Why the Electoral College is the Absolute Worst, Explained," *Vox*, December 19, 2016, <https://www.vox.com/policy-and-politics/2016/11/7/12315574/electoral-college-explained-presidential-elections-2016>; Tara Law, "These Presidents Won the Electoral College — But Not the Popular Vote," *Time*, May 15, 2019, <https://time.com/5579161/presidents-elected-electoral-college/>.

intention as a designer of the institution and a Framers of the Constitution. Hence, Wilson's contributions could be used with equal (and possibly greater) force within the Founders' Intent Political Ideology's epistemological framework to argue for reforming the Electoral College. Similarly, Wilson's contributions could be used to support a number of other democratic reforms, including changing the Senate.¹¹⁶

These examples begin to show how Wilson's contributions and Democratic Political Theory stand as an authoritative counter example within the Tea Party's own epistemological framework. It illustrates that the Tea Party's principles are far from self-evidently 'American'. They also provide a critique of the Neo-conservative reinvention of Scottish moral sentimentalism as similarly flawed and from a Wilsonian perspective un-American. The methodological anachronism critique further illustrates the utter incoherence and what could be called the "un-Americanness" or "unconstitutionality" of Originalism as a method and correspondingly of the Founders' Intent Political Ideology. In essence, if Originalism and the Founders' Intent Political Ideology are adhered to objectively and consistently, they must take Wilson's Democratic Political Theory into account, which reveals their political position and method are incoherent and antithetical to the foundation of the US Constitution.

While recovering and rehabilitating Wilson's contributions and Democratic Political Theory reveal the incoherence and 'un-Americanness' of Originalism and the Founders' Intent Political Ideology, it is uncertain how effective these arguments would be in practice. The greatest potential effect would be on Originalism because it has to maintain the façade of a coherent methodology to persist as an authoritative and respected means of constitutional interpretation. These critiques also do provide a potential means of speaking and arguing for reforms across the current epistemological gap that could be persuasive because they are couched within the Founders' Intent and Originalist epistemological framework. However, more likely they would ironically be rejected as foreign propaganda disseminated by immoral and un-American elites.¹¹⁷ This becomes

¹¹⁶ Call to reform the Senate: Jonathan M. Ladd, "The Senate is a much bigger problem than the Electoral College," *Vox*, April 9, 2019, <https://www.vox.com/mischiefs-of-faction/2019/4/9/18300749/senate-problem-electoral-college>.

¹¹⁷ Goldstein, "Tea Party," 852.

more likely as the socio-epistemological divide deepens with such arguments likely being rejected simply because they do not originate from within the tribe or conform to the existing ideology of the tribe. As Hannah Arendt suggests in her *The Origins of Totalitarianism*, it is not enough for historians to simply point out that the historical basis for such political ideologies are fictitious and mythical.¹¹⁸

8.4 - A Potential Wilsonian Foundation for an Alternative Path Forward

In light of Arendt's words, I believe that historians can do something more than identify mythologies parading as history. Historians can also assert the actual history and highlight the aspects of it that support the existing, and the formation of alternative, humane ideologies that respect and uphold the dignity of all people. This is potentially impactful because identities, ideologies, and theories are rarely effectively argued out of existence, more often they are replaced or diminish in power with the rise of competing ideas and narratives. I am of the opinion that Wilson's Democratic Political Theory provides just such an opportunity because, as Dennison argues, Wilson was: "the preeminent spokesman for a new, progressive ideology which fostered one important strand in the variegated fabric of American constitutional thought."¹¹⁹

A number of scholars have suggested the potential of rehabilitating Wilson's legacy to support modern progressive reforms. Pedersen articulates this possibility in more detail: "Were today's reformers [...] to know that the Father of America's Constitution espoused views in his time that align neatly with theirs today, they—like some of the most revered reformers in American History—could invoke this Founder to move the country forwards".¹²⁰ I agree with Pedersen's claim and have introduced some of these possibilities concerning healthcare reform and the Electoral College above. However, I believe the greatest possibility in rehabilitating Wilson's Democratic Political Theory is in its potential as a

¹¹⁸ Hannah Arendt, *The Origins of Totalitarianism* (Milton Keynes: Penguin Random House UK, 2017), 8.

¹¹⁹ Dennison, "Revolution Principle," 157.

¹²⁰ Pedersen, "Lost Founder," 335-36.

foundation for an alternative progressive American political ideology and a means to reassert the “Living Constitution” method of constitutional interpretation.

This alternative ideology and methodology could challenge and compete with the general conservative pervasively Lockean American political thought, especially as it is currently expressed in the regressive Founders’ Intent Political Ideology and Originalism. This could diminish their authority and even begin to replace them. It is this potential means of addressing the current political crisis that reveals the full extent of the significance of Wilson’s neglected contributions.

As noted in the previous section, Wilson’s theory resonates strongly with Purcell’s definition of the “Living Constitution” method. However, Wilson’s theory’s support for this method and its potential to realise reforms is increased in recognising its compatibility with an iteration of this method that Mitchell Berman calls “Principled Positivism”, which he describes thus:

Constitutional rules are determined by the interactions of our constitutional principles. In turn, constitutional principles are grounded in social and psychological facts—facts about what persons who make up the legal community say and do and believe. Principles exist in virtue of being “taken up” in certain ways by certain people.¹²¹

This resonates strongly with Wilson’s Reidian conception of first principles, and indeed, appears to be predicated on something akin to Wilson’s conception of custom as legitimating and authorising implicit consent. This may not have been Wilson’s intention, but again, extending the meaning of Wilson’s contributions to the present provides a means to make an Originalist argument for its competitor, in this case, Principled Positivism.

However, Wilson’s contributions also reveal Principled Positivism as more coherent with the US Constitution and the US Federal System it created through its compatibility with Wilson’s Revolution Principle. Wilson’s principle has a strong claim as a constitutional principle in this method through Wilson’s understanding of it as located in the human constitution as a Reidian first principle, and thus, an inalienable right. Moreover, extending the meaning of the Revolution Principle, it

¹²¹ Berman, “Our Principled Constitution”.

appears to amount to the democratic principle in which this method is grounded. Furthermore, as illuminated by Wilson's arguments that locate it in the Preamble and as realised in the act of popular ratification, this principle appears to be located in what might be called Wilson's interpretation of the extended meaning of the Constitution as well. These points appear to mark Wilson's Revolution Principle as a constitutional principle and a foundational one at that.

Furthermore, as discussed in chapter 5 Wilson's Revolution Principle was the only interpretation, in my judgment, that could make theoretical sense of the US Federal System. Thus, Principled Positivism's extended meaning in terms of its compatibility with and moreover its apparent grounding in Wilson's Revolution Principle, present it as theoretically coherent with the Constitution and the US Federal System, unlike Originalism. Therefore, Wilson's contributions help further support this method by presenting it as a strong, viable, and coherent alternative to Originalism. Furthermore, if this support was successful, both the assertion of Principled Positivism and Wilson's Revolution Principle could be used to realise progressive and democratic reforms.

However, the greater potential for Wilson's theory is as a foundation for an alternative progressive American political ideology. This potential comes through Wilson's theory's compatibility with democratic socialism, or Progressivism (as it is normally called in the United States), its conception of human nature, and its flexible nature.

The compatibility of Wilson's Democratic Political Theory with democratic socialism or Progressivism, or one of its extended meanings, can largely be seen in his social end of government and his vision of democratic governance. Particularly this can be seen in what Simon Blackburn describes as the more general concerns of socialism: "people's equal rights to various benefits (health, education)" as well as with the "democratic means" to address these concerns that distinguishes democratic socialism from socialism more generally.¹²² This

¹²² Respectively: Simon Blackburn, "Socialism," in *The Oxford Dictionary of Philosophy* (Oxford: Oxford University Press, 2016), <https://www.oxfordreference.com/view/10.1093/acref/9780198735304.001.0001/acref-9780198735304-e-2894>; & Garrett W. Brown, Iain McLean, and Alistair McMillan, 'Democratic Socialism', in *A Concise Oxford Dictionary of Politics and International Relations* (Oxford: Oxford University Press, 2018),

compatibility as it concerns healthcare in terms of Medicare for All was outlined earlier, while Wilson's theoretical support for government's role in educating citizens was illustrated at length in chapter 7. However, more significantly, the general conception that governments should improve society through democratic means appears remarkably aligned with Wilson's conception of democratic government as a tool of the people to improve society.

This is the extended, not historical, meaning of Wilson's work, and thus, I am not claiming that Wilson was a democratic socialist or American progressive. However, their striking compatibility presents American Progressivism and democratic socialism as compatible with a significant strand of the American political tradition. This compatibility is significant given the general American aversion to the term 'socialism', democratic or otherwise, created by constant conservative fear mongering and rejection of it as un-American.

In this sense, Wilson's theory's compatibility with these ideologies is also significant in its potential usefulness. It could potentially help protect Progressivism and democratic socialism from this fear mongering and simply being dismissed as un-American. This could aid in overcoming the general American aversion to these labels and allow for substantive discussion. Put another way, this compatibility imputes Wilson's Founder's credentials onto these ideologies, 'sanctifying' them as American, and thus, legitimating them in American political discourse.

A Wilsonian foundation further provides an equitable, sociable, and dignified conception of humanity. Wilson's Reidian conception of human nature, in terms of liberty, common sense, and the moral sense presents humans as sovereign; capable of individual and collective self-governance that up-lifts human dignity. Unlike the Neo-conservative reinvention of Scottish Moral Sentimentalism, it avoids regressing into anti-intellectualism. In Wilson's theory these human faculties are a starting point meant to assert the common human capacity for self-governance and with it their equal sovereignty, requiring cultivation and education to develop and improve them. Moreover, Wilson held

the human capacity to act collectively, particularly in the social development of knowledge, as an indispensable and defining aspect of the human constitution and the great power and virtue of the species. Furthermore, the development of Wilson's conception of moral abstraction would avoid the exclusionary potential that Lepisto and Sophia Rosenfeld argue have historically accompanied the use of common sense and moral sense theories in politics as in the Neo-conservative example.¹²³

Potentially the most important part of Wilson's theory that makes it an ideal potential foundation for an alternative ideology is its focus on collective progress that renders it flexible, adaptable, and inclusive. As I outlined in chapter 7, in my interpretation, Wilson's vision of American democracy is focused on continuous progressive reciprocal improvement, primarily through the development of knowledge. An ideology based on such a foundation could not only include new knowledge, but must adapt to account for such developments in knowledge. For instance, if an economic or political institution was shown to have become detrimental to society, then this theory would require that it be reformed or replaced.

There are only a few limits to this flexibility; primarily Wilson's first principles of governance, being his Revolution Principle and its constituent parts consent and sovereignty; his social end of government; and progress through the improvement of knowledge. This flexible foundation leaves great licence for including new concepts, ideas, and specific political interests within an ideology grounded on it, which would provide further structure for them and cohesion among them.

This potential Wilsonian foundation would potentially allow the American left and Progressives to compete with and challenge the persistent American conservative ideology and its current expression in the Founders' Intent Political Ideology in a number of important ways. Most significantly, it would provide the space and structure for the American left to collectively and inclusively develop a cohesive and coherent ideology and conception of Americanness. Currently the American left is characterised as a loose coalition of disparate special interest

¹²³ Lepisto, *Common-Sense Conservatism*, 186.

groups, lacking a unifying ideology or American identity. Furthermore, parts of the American left became anti-American in response to this regressive ideology's monopoly on defining Americanness.¹²⁴ Developing this alternative progressive political ideology and inclusive conception of Americanness, to which those elements of the left could assent, would aid in unifying the easily fractured left by providing something around which they could coalesce.

This unification would in turn allow for a coherent and unified message, providing rhetorical force to their position and presenting it as viable alternative. Furthermore, Wilson's Founder's credentials (as described above) would 'sanctify' it as American and immunise it from the monotonous refrain of "un-American". Doing so, would provide a clear choice between the starkly contrasted options and their visions. This could possibly alleviate Locke's theory's grip on the American political subconscious by revealing its existence through the presentation of other possibilities, and potentially even replace it, which Nevins argues is necessary for any progress in American politics. At the very least, a well formulated and articulated alternative progressive American political ideology, safe from being simply dismissed as un-American, would allow for an actual debate on political ideology and American identity in the United States.

Furthermore, Wilson's theory could provide an invigorating and emboldening force to the possible future adherents to this alternative progressive American political ideology as well as the American left and Progressives of the present. In part this comes through the ability of Wilson's contributions and this ideology to highlight a different understanding of the history of America and revive a long, but often forgotten and marginalised strand of the American political tradition. From this Wilsonian perspective, the story of America is one of continuing progressive attempts (at times interrupted by regressive forces like the Founders Intent Political Ideology) to extend the promises and rights of the Founding documents to an increasingly larger segment of society and build on them. It is the story of continually attempting to improve, to progress, to create a more perfect union.

This story of progress and Wilson's theory would allow Americans to recognise the sins of the nation by seeing them as something that needs to be

¹²⁴ Lepisto, *Common-Sense Conservatism*, 28; Goldstein, "Tea Party," 847.

addressed and an opportunity to improve. Such a perspective could diminish the potentially demoralising effect of and current resistance to coming to terms with such issues. It further up-lifts human dignity, capacity, and particularly the power and value of collective action, which is sorely needed to address several national and global issues, such as the economic issues that have given rise to this violent epistemological tribalism and the existential climate crisis.

However, most clearly it could empower ordinary Americans with the knowledge that it is their sovereign right and duty to use and improve government to improve society. Particularly, this knowledge could come through Principled Positivism that would teach this concept in its method and practice, just as Originalism has had the opposite effect. This could change the way Americans see their government and in turn how America is governed. Rehabilitating Wilson's neglected contributions could potentially transform the American government into the powerfully beneficent tool of the people Wilson envisioned, enabling the people to use it to address the grave issues facing society and humanity today, and leading to a better tomorrow.

I recognise how idealistic this appears, but it reveals the truly significant potential of rehabilitating Wilson's neglected Democratic Political Theory to address the current and possibly catastrophic existential political crisis in the United States. This significant potential may be realised in and through the ability of Wilson's neglected contributions to the development of the US Constitution to inform the existing scholarship. Thus, it also underscores the tragedy that is Wilson's ongoing neglect in the existing scholarship and correspondingly in American political consciousness. Stopping this continuing tragedy by realising the potential of Wilson's theory is of course far beyond the scope of this thesis. These suggestions require other scholars, lawyers, politicians, and media created for popular consumption to further develop and realise them. However, this thesis does present Wilson's Democratic Political Theory, as an alternative path that was not taken, but still could be with great potential benefit to the United States and her people. Wilson's progressive and peaceful reciprocal revolutions in government and society through knowledge could still be commenced, leading to a more humane, collaborative, and just future rooted and grounded in Wilson, Reid, and Scotland.

Appendix A -Textual Alignment

Degrees of Alignment

DQC - a Direct Quote of Reid Cited or referenced in the text or a footnote

DQUC - a Direct Quote of Reid that is Uncited

NDQC - a quotation cited in a footnote with some variation in the text

NDQ - a Nearly Direct uncited Quote of Reid only changing a few words

CP - a Close Paraphrase of Reid that reuses many of Reid's phrases

P - a Paraphrase of Reid's work

MQP - Multiple Quotations or Paraphrases from a variety of locations in Reid's work and located in one section of Wilson's and vica versa

S - a Summary of Reid's position or conception

R - Resonance between the conception expressed in both Reid and Wilson

Abbreviations

(V1) - Volume 1 of Wilson's *Works* (1804)

(V2) - Volume 2 of Wilson's *Works* (1804)

Inq - Reid, *An Inquiry into the Human Mind on the Principles of Common Sense*

IP - Reid, *Essays on the Intellectual Powers of Man*

AP - Reid, *Essays on the Active Powers of Man*

Common Sense

Wilson	Reid	Degree of Alignment
(V1) 250	IP 424	NDQ
(V1) 257	IP 433	NDQ
(V1) 257	IP 433	NDQ
(V1) 257-58	IP 433	NDQ
(V2) 107	IP 427	CP
(V2) 109	IP 426	NDQ
(V2) 109	IP 426	NDQ

First Principles/ Methodology

Wilson	Reid	Degree of Alignment
(V1) 119	IP 40	CP
(V1) 119	Inq. 71-72	R
(V1) 229-30	Inq. 11	CP
(V1) 231	IP 56	P
(V1) 231	IP 59	NDQ
(V1) 234	Inq. 210-11	CP
(V1) 234	Inq. 211	P
(V1) 244	Inq 27	CP
(V1) 244	IP 470	CP
(V1) 244	IP 470	CP
(V1) 256-57	IP 455	CP
(V1) 275	IP 39	MQ/CP
(V1) 275	IP 39	DQUC
(V1) 275	IP 40	NDQ
(V1) 275	IP 41	DQUC
(V1) 278	IP 454	CP
(V1) 278	IP 455	NDQ
(V1) 278	AP 178	NDQ
(V1) 278	AP 178-79	MQ/S
(V1) 279	IP 455	MQ/NDQ
(V1) 279-80	IP 457	NDQ
(V1) 280	IP 458	CP
(V2) 43-44	Inq. 11-12	CP
(V2) 77	AP 176	NDQ
(V2) 82	AP 176	NDQ
(V2) 97	IP 465	CP
(V2) 103-04	Inq. 204	NDQ/CP

Improvement/ Progress

Wilson	Reid	Degree of Alignment
(V1) 55	AP 45	R
(V1) 142	AP 339	P

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(V1) 142-43	AP 43-44	MQ/R
(V1) 154	AP 44	P
(V1) 232-33	AP 148	R

Judgment/ Evidence

Wilson	Reid	Degree of Alignment
(V1) 227	IP 228	CP
(V1) 228	IP 229	P
(V1)	IP 229	NDQ
(V1) 249-50	IP 406	MQ/CP
(V1) 250	IP 406	CP
(V1) 250	IP 410	NDQ
(V1) 250	IP 411	MQ/CP
(V1) 250	IP 411	CP
(V1) 250	IP 542	CP
(V1) 250	IP 412	NDQ
(v1) 251	IP 542	CP
(V1) 251	IP 542	NDQ
(V1) 251	IP 542	NDQ
(V1) 251	IP 543	CP
(V1) 252	IP 557-58	MQ/CP
(V2) 68	IP 228-29	MQ/CP
(V2) 68	IP 227	P
(V2) 106	IP 408	NDQC
(V2) 106	IP 408	DQC
(V2) 107	AP 176	DQC
(V2) 107	IP 409	CP/NDQ
(V2) 107	IP 411	NDQ
(V2) 108	AP 353	P
(V2) 108	IP 542-43	MQ/CP
(V2) 378	IP 228	MQ/P

Language

Wilson	Reid	Degree of Alignment
453-54	Inq. 14	DQC
(V1) 62	IP 154	P
(V1) 122	IP 45 & 466	MQ/CP
(V1) 122-23	IP 466-67	R
(V1) 123	IP 45 & 466	MQ/NDQ
(V1) 123	IP 56	P
(V1) 123	AP 352	R
(V1) 232	IP 56	P
(V1) 232	IP 56	NDQ
(V1) 236	IP 21	DQUC
(V1) 290	IP 69	NDQ
(V1) 290	IP 50	P
(V1) 291	IP 69-70	CP
(V1) 291-92	IP 70	p
(V2) 83-84	Inq. 51-52	CP
(V2) 87	Inq. 51	CP
(V2) 87	Inq. 52	MQ/CP
(V2) 92-93	Inq. 193	P

Moral Sense

Wilson	Reid	Degree of Alignment
(V1) 117	AP 274	P
(V1) 119	AP 270	CP
(V1) 119	AP 178	MQ/ CP
(V1) 120	AP 180	CP
(V1) 124	AP 186, 187, & 188	MQ/P/S
(V1) 124-25	AP 190-91 & 192	MQ/P
(V1) 125	IP 551	NDQ
(V1) 125	IP 551	CP
(V1) 126	IP 553-54	DQUC
(V1) 126	AP 165	P
(V1) 126	IP 554	NDQ

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(V1) 126	AP 152	CP
(V1) 133	AP 192	R
(V1) 133	AP 183	CP
(V1) 136-37	AP 175	MQ/CP
(V1) 137	AP 176	DQUC
(V1) 137	AP 176	NDQ
(V1) 137	AP 176	DQUC
(V1) 137	AP 186	NDQ
(V1) 137	AP 189	CP
(V1) 137	AP 193	CP
(V1) 137	AP 190-91	DQUC
(V2) 81-82	AP 176 & 180	MQ/CP
(V2) 82	AP 176	NDQ
(V2) 82	AP 176-77	NDQ
(V2) 82-83	AP 195	NDQ/CP
(V2) 108	AP 349	NDQC
(V2) 108	AP 357	CP

Natural Law

Wilson	Reid	Degree of Alignment
(V1) 11	AP 285	R
(V1) 141	AP 287	P
(V1) 166	AP 288-89	P
(V2) 82-83	AP 195	CP
(V2) 467	AP 288-89	P

Perception/ Semiotic Epistemology

Wilson	Reid	Degree of Alignment
(V1) 237	IP 71	P
(V1) 237-38	IP 100-01 & 71	MQ/P
(V1) 240	IP 71	CP
(V1) 240	IP 234 & 410	MQ/S
(V1) 240	IP 235	CP

(V1) 245-46	IP 257	P
(V2) 66	IP 228	CP
(V2) 66	IP 228	p
(V2) 84-85	IP 504	CP/NDQ

Reasoning

Wilson	Reid	Degree of Alignment
(V1) 251	IP 542	NDQ
(V1) 251	IP 543-44	MQ/P
(V1) 251	IP 543	CP
(V1) 251	IP 544	CP
(V1) 251-52	IP 544-45	MQ/CP
(V1) 252	IP 544-45 & 557	MQ/CP

Scepticism/ Causes of Error

Wilson	Reid	Degree of Alignment
(V1) 68	Inq. 75	P
(V1) 68	Inq. 19	MQ
(V1) 223-24	Inq. 195 & IP 462-63	MQ/DQC
(V1) 234	AP 121	MQ/S
(V1) 234-35	Inq. 22	CP
(V1) 238	Inq. 4	P
(V1) 238	Inq. 4-5	CP
(V1) 239	Inq. 71-72	R
(V1) 244	IP 470	DQC
(V1) 244	Inq. 27	DQC
(V1) 254	AP 229	CP
(V1) 256	Inq. 18	CP
(V1) 258	IP 445	MQ/CP
(V1) 259	IP 162	CP
(V1) 260	Inq. 31	P
(V1) 260	Inq. 33	P
(V1) 260-61	Inq. 35	NDQ

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(V1) 262	IP 312	MQ/R/P
(V1) 263-64	Inq. 3-5	DQC
(V1) 265	IP 164	P
(V1) 274	Inq. 19	CP/NDQ
(V1) 274	Inq. 19	NDQ/CP
(V1) 275	IP 513	NDQ
(V1) 276	IP 514	CP
(V1) 278	IP 515	P
(V2) 73	IP 470	NDQC

Science of Politics/ Regularity of Nature

Wilson	Reid	Degree of Alignment
(V2) 72	Inq. 196	CP
(V2) 72	Inq. 196	NDQ
	Inq. 197 & 198 & IP	
(V2) 72	489	MQ/S
(V2) 101	IP 489	CP
(V2) 102	AP 179	CP
(V2) 102	AP 179	CP/NDQ
(V2) 102	AP 179 & IP 489	CP

Self-Government/ Rational Principles of Action/ Ultimate Ends/ Freewill

Wilson	Reid	Degree of Alignment
(V1) 61	AP 5, 168-69, 220-23, & 240	MQ
(V1) 61	AP 5	P
(V1) 61-62	AP 153	P
(V1) 126	AP 153	P
(V1) 126-27	IP 552	P
(V1) 127	IP 552-53	NDQ
(V1) 131	Inq. 13	NDQ
(V1) 135	AP 360	MQ/DQUC

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(V1) 136	AP 361	CP
(V1) 136	AP 168-69	P
(V1) 253	AP 200 & 203	MQ/CP
(V1) 254	IP 478	P
(V2) 66	IP 228	CP

Social Operations/ Benevolent Affections

Wilson	Reid	Degree of Alignment
(V1) 166	AP 109, 110, & 111	MQ/S
(V1) 170	AP 110	P
(V1) 288	IP 68	CP
(V1) 288	IP 68	CP
(V1) 289	IP 69	NDQ
(V1) 289	IP 69	NDQ
(V1) 292	AP 333-34	MQ/P/S
(V1) 293	AP 335	P/S

Society

Wilson	Reid	Degree of Alignment
(V1) 117	AP 274	P
(V1) 166	AP 111	P
(V1) 292	AP 273 & 334	MQ/R/P
(V1) 293	AP 335	P/S
(V1) 294	IP 69 & AP 111 & 121	MQ/P
(V1) 296	AP 121 & 123	MQ/S
(V1) 299-300	AP 109	P/R
(V1) 302	AP 105	P

Miscellaneous

Wilson	Reid	Degree of Alignment	Subject
(V1) 103	AP 225 & 251	MQ/P	[mechanical government of God)
(V1) 139	AP 280	P	(Role of scripture)
(V1) 227-28	Inq. 28, 29, & 227	MQ/S	(Belief - Simple and undefinable)
(V1) 233	IP 64	P	(Mind as active)
(V1) 233	IP 65	CP	(Will and Understanding)
(V1) 236	IP 64	P	(operations of the mind complicated and interconnected)
(V1) 236	IP 21	P	(Mind as active)
(V1) 236-37	Inq. 44	NDQ	(Mind as active)
(V1) 237	Inq. 11	CP	(Complexity of Mind - wisdom of divine architect)
(V1) 239	Inq. 31	P	(simple and original operation of the mind)
(V1) 242	IP 227	NDQ	(Consciousness)
(V1) 242	IP 470	CP	(Consciousness)
(V1) 243	IP 470	CP	(Consciousness)
(V1) 245-46	IP 254 & 256	MQ/CP	(Memory)
(V1) 249	IP 296	NDQ	(Conception)
(V1) 249	Inq. 27	P	(Conception)
(V1) 302	AP 183	CP	(Esteem)
(V2) 303	IP 487	CP	(Human authority in opinion and testimony)

Appendix B - Benevolent Affections

Wilson		Reid	
We have tenderness for the fair sex	(V1) 294	Among the benevolent affections, the passion of love between the sexes cannot be overlooked.	AP 118
we have affection for our children, for our parents, and for our other relations	(V1) 294	The <i>first</i> I mention is that of parents and children, and other near relations.	AP 111
we have attachment to our friends	(V1) 294	Friendship is another benevolent affection.	AP 117
we have a regard for reputation and esteem	(V1) 294	A <i>fourth</i> benevolent affection is, esteem of the wise and the good.	AP 117
we possess gratitude and compassion	(V1) 294	The <i>next</i> benevolent affection I mention is gratitude to benefactors. A <i>third</i> natural benevolent affection is pity and compassion towards the distressed.	AP 114 AP 115

Wilson

Reid

we entertain for our country an animated and vigorous zeal	(V1) 294	The <i>last</i> benevolent affection I shall mention is, what we commonly call <i>public spirit</i> , that is, an affection to any community to which we belong.	AP 119
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we feel delight in the agreeable conception of the improvement and happiness of mankind	(V1) 294	[This is an addition by Wilson, but not incompatible with Reid.]
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Appendix C - First Principles¹

Wilson		Reid	Related Passages
I. It arises from the external senses: and by each of these, distinct information is conveyed to the mind.	(V2) 75	5. Another first principle is, That those things do exist which we distinctly perceive by our senses, and are what we perceive them to be.	IP 476
II. It arises from consciousness; or the internal view of what passes within ourselves.	(V2) 75	<i>First</i> , then, I hold, as a first principle, the existence of everything of which I am conscious.	IP 470
III. It arises from taste; or that power of the human mind, by which we perceive and enjoy the beauties of nature or art.	(V2) 75	4. I think there are axioms, even in matters of taste.	IP 492

¹ Peters, "Wilson's Common Sense," 32-33.

Wilson		Reid		Related Passages
IV. It arises from the moral sense; or faculty of the mind, by which we have the original conceptions of right and wrong in conduct; and the original perceptions, that certain things are right, and that others are wrong.	(V2) 75	5. There are also first principles in morals.	IP 494	AP 180
V. Evidence arises from natural signs: by these we gain knowledge of the minds, and of the various qualities and operations of the mind of other men. Their thoughts, and purposes, and dispositions have their natural signs	(V2) 75	9. Another first principle I take to be, That certain features of the countenance, sounds of the voice, and gestures of the body, indicate certain thoughts and dispositions of mind.	IP 484	Inq. 51-52

Appendix C

Wilson	Reid	Related Passages
<hr/> in the features of the countenance, in the tones of the voice, and in the motions and gestures of the body.		
<hr/> VII. Evidence arises from human testimony in matters of fact.	(V2) 75	<hr/> 10. Another first IP 487 principle appears to me to be, That there is a certain regard due to human testimony in matters of fact, and even to human authority in matters of opinion.
<hr/> VIII. Evidence arises from human authority in matters of opinion.	(V2) 76	<hr/> 10. Another first IP 487 principle appears to me to be, That there is a certain regard due to human testimony in matters of fact, and even to human authority in matters of opinion.
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Wilson		Reid	Related Passages	
IX. Evidence arises from memory, or a reference to something which is past.	(V2) 76	3. Another first principle I take to be, That those things did really happen which I distinctly remember.	IP 474	
X. evidence arises from experience; as when, from facts already known, we make inferences to facts of the <i>same</i> kind, unknown.	(V2) 76	12. The last principle of contingent truths I mention is, That, in the phenomena of nature, what is to be, will probably be like to what has been in similar circumstances.	IP 489	
XII. Evidence arises from judgment; by which I here mean that power of the mind, which decides upon truths that are selfevident.	(V2) 76	7. Another first principle is, That the natural faculties, by which we distinguish truth from error, are not fallacious.	IP 480	
XIII. Evidence arises from reasoning: by reasoning, I here mean that power of the mind, by which, from one truth, we	(V2) 76	7. Another first principle is, That the natural faculties, by which we distinguish truth from error, are not fallacious.	IP 480	IP 542

Appendix C

Wilson	Reid	Related Passages
<p>deduce another, as a conclusion from the first. The evidence, which arises from reasoning, we shall, by and by, see divided into two species-- demonstrative and moral.</p>		
<p>XIV. Evidence arises from calculations concerning chances. This is a particular application of demonstrative to ascertain the precise force of moral reasoning.</p>	(V2) 76	<p>11. There are many events depending upon the will of man, in which there is a self-evident probability, greater or less, according to circumstances.</p>

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