

## James Wilson and the Law of Liberty

By Charles Thomas Dennis, Ph.D.

*July 14, 2014*

**T**he present state that America finds herself in, to even the most casual observer, reflective of cultural chaos. To the more astute it represents the consequence of rejecting the sage thinking of her forefathers. Culture being portrayed as a petulant, rebellious, undisciplined adolescent child, forever demanding and never obedient; wayward and lost, desperately in need of help—even when presented with the way to recovery—remains obstinate. The child must be saved, for in the final analysis it is a child of ignorance. Fed on lies and deceit presented as truth, it languishes in intellectual decline and spiritual decay. It is with this understanding that a brief introduction to the liberating teachings of Justice James Wilson is presented.

James Wilson had the distinct honor of being one of only six men to sign both the Declaration of Independence and the Constitution of the United States. In addition, he was appointed by President George Washington as one of the six Justices on the inaugural Supreme Court (serving from 1789-1798). To this day, the Law School in the University of Pennsylvania traces its beginning to Justice Wilson's *Lectures on Law*, which were delivered between 1790 and 1792.

In these *Lectures* Justice Wilson presented the sentiments of the Founders and Framers on the foundation of law itself that is fundamental to American Constitutional Jurisprudence. It is the only rational understanding of the basic principle of law upon which tyranny can never find a suitable anchor; the only understanding of law that produces liberty.

Wilson was considered to be one of the most brilliant legal minds of his day and was second only to James Madison as an architect of the Constitution. He was elected to the Committee of Five on Detail for the drafting of the Constitution of the United States. In 1900, Supreme Court Justice John Marshall Harlan (1833-1911), said of James Wilson, as a member of the Constitutional Convention:

He was recognized as the most learned member of that notable body. Webster said that justice was the great interest of man on earth. Of justice as illustrated by the science of the law Wilson had been an earnest devotee from his early manhood. In the highest and best sense he was a great lawyer. Still more, he had become a master in the science of government. He was therefore preeminently qualified to take part in laying the foundations of institutions under which the rights of man would be secure against the assaults of power. What a privilege it was to look upon that convention of patriots and statesmen—the wisest

assemblage of public servants that ever convened at any time in the history of the world.<sup>1</sup>

Justice and law should be the continual concern of all Americans, in order to maintain the liberties past down to us by our forefathers. A brief review of Justice Wilson's instruction on law should be invaluable to all those who love liberty. We begin with Wilson's delineation of law:

Of law there are different kinds. All, however, may be arranged in two different classes. 1. Divine. 2. Human laws. The descriptive epithets employed denote, that the former have God, the latter, man, for their author.

The laws of God may be divided into the following species:

I. That law, the book of which we are neither able nor worthy to open. Of this law, the author and observer is God. He is a law to Himself, as well as to all created things. This law we may name the "law eternal."

II. That law, which is made for angels and the spirits of the just made perfect. This may be called the "law celestial." This law, and the glorious state for which it is adapted, we see, at present, but darkly and as through a glass: but hereafter we shall see even as we are seen; and shall know even as we are known. From the wisdom and the goodness of the adorable Author and Preserver of the universe, we are justified in concluding, that the celestial and perfect state is governed, as all other things are, by His established laws. What those laws are, it is not yet given us to know; but on one truth we may rely with sure and certain confidence—those laws are wise and good. For another truth we have infallible authority—those laws are strictly obeyed: "In heaven His Will is done."

III. That law, by which the irrational and inanimate parts of the creation are governed. The great Creator of all things has established general and fixed rules, according to which all the phenomena of the material universe are produced and regulated. These rules are usually denominated laws of nature. The science, which has those laws for its object, is distinguished by the name of natural philosophy. It is sometimes called, the philosophy of body. Of this science, there are numerous branches.

IV. That law, which God has made for man in his present state; that law, which is communicated to us by reason and conscience, the divine monitors within us, and by the sacred oracles, the divine monitors without us. This law has undergone several subdivisions, and has been known by distinct appellations, according to the different ways in which it has been promulgated, and the different objects which it respects.

As promulgated by reason and the moral sense, it has been called natural; as promulgated by the Holy Scriptures, it has been called revealed law.

As addressed to men, it has been denominated the law of nature; as addressed to political societies, it has been denominated the law of nations.

But it should always be remembered, that this law, natural or revealed, made for men or for nations, flows from the same divine source: it is the law of God.

Nature, or, to speak more properly, the Author of nature, has done much for us; but it is His gracious appointment and Will, that we should also do much for ourselves. *What we do, indeed, must be founded on what He has done; and the deficiencies of our laws must be supplied by the perfections of His. Human law must rest its authority, ultimately, upon the authority of that law, which is divine.*<sup>2</sup> (Emphasis added)

Wilson's delineation of law is a superb overview. The last two sentences present three points of particular and relevant interest.

1. Whatever man does must have as its foundation the works of God. This obviously presupposes that God does indeed exist. 2. That man's laws, by the fact that he is fallible, have deficiencies and as such *must*, where necessary, be brought into agreement with God's moral law (as this was to what Wilson referred). 3. As such, all human laws carry legitimate authority only when they do not violate God's moral law. This is called *the law of nature* or "natural law." Why this is the case with man in relation to his Creator, Wilson explained: "That our Creator has a supreme right to prescribe a law for our conduct, and that we are under the most perfect obligation to obey that law, are truths established on the clearest and most solid principles."<sup>3</sup> He continued:

To be without law is not agreeable to our nature; because, if we were without law, we should find many of our talents and powers hanging upon us like useless encumbrances. Why should we be illuminated by reason, were we only made to obey the impulse of irrational instinct? Why should we have the power of deliberating, and of balancing our determinations, if we were made to yield implicitly and unavoidably to the influence of the first impressions? Of what service to us would reflection be, if, after reflection, we were to be carried away irresistibly by the force of blind and impetuous appetites?

Without laws, what would be the state of society? The more ingenious and artful the two-legged 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.<sup>4</sup>

Wilson was very aware that reason and conscience were requisite for understanding the law of nature. However, he realized these human necessities were nonetheless insufficient to the task. As he stated:

Reason and conscience can do much; but still they stand in need of support and assistance. They are useful and excellent monitors: but, at some times, their admonitions are not sufficiently clear; at other times, they are not sufficiently powerful; at all times, their influence is not sufficiently extensive. Great and sublime truths, indeed, would appear to a few; but the world, at large, would be dark and ignorant. The mass of mankind would resemble a chaos, in which a few sparks, that would diffuse a glimmering light, would

serve only to show, in a more striking manner, the thick darkness with which they are surrounded. Their weakness is strengthened, their darkness is illuminated, their influence is enlarged by that heaven-descended science, which has brought life and immortality to light. In compassion to the imperfection of our internal powers, our all-gracious Creator, Preserver, and Ruler has been pleased to discover and enforce His laws, by a revelation given to us immediately and directly from Himself. This revelation is contained in the Holy Scriptures. The moral precepts delivered in the Sacred Oracles form a part of the law of nature, are of the same origin, and of the same obligation operating universally and perpetually.<sup>5</sup>

There should be no misunderstanding the Founders and Framers position on the issue of the law of nature. It is the centerpiece of the doctrine of liberty. As Wilson declared: “Without liberty, law loses its nature and its name, and becomes oppression. Without law, liberty also loses its nature and its name, and becomes licentiousness.”<sup>6</sup> It is acknowledged that the law of nature never changes and is obligatory. Justice Wilson clarified:

The law of nature is immutable; not by the effect of an arbitrary disposition, but because it has its foundation in the nature, constitution, and mutual relations of men and things. While these continue to be the same, it must continue to be the same also. This immutability of nature’s laws has nothing in it repugnant to the supreme power of an all-perfect Being. Since He Himself is the author of our constitution; He cannot but command or forbid such things as are necessarily agreeable or disagreeable to this very constitution. He is under the glorious necessity of not contradicting Himself. This necessity, far from limiting or diminishing His perfections, adds to their external character, and points out their excellency.

The law of nature is universal. For it is true, not only that all men are equally subject to the command of their Maker; but it is true also, that the law of nature, having its foundation in the constitution and state of man, has an essential fitness for all mankind, and binds them, without distinction.<sup>7</sup>

The science of law and the formulation of the Constitution of the United States are inseparable. The masterminds of the Constitution understood that the science of law recognizes an absolute moral component. That is, the moral component ascertained by reason, which must be in harmony with the moral law found in the Holy Scriptures, because both sources emanate from God, whom as Justice Wilson pointed out, “is under the glorious necessity of not contradicting Himself.” Concerning the Constitution, Wilson asked the following rhetorical question:

What was the primary and principal object in the institution of government? Was it—I speak of the primary and principal object—was it to acquire new rights by a human establishment? Or was it, by a human establishment, to acquire a new security for the possession or the recovery of those rights, to the enjoyment or acquisition of which we were previously entitled by the immediate gift, or by the unerring law, of our all-wise and all-beneficent Creator?

The latter, I presume, was the case . . .<sup>8</sup>

America's current cultural collapse is the consequence of a government run amok, conjuring up notions of rights that are indeed "repugnant to the supreme power of an all-perfect Being." The solution to this dilemma is not to be found by parsing phrases in the Constitution, in a manner that allows for such unethical and abhorrent considerations, but in recognizing the true reason for the founding of America's new government. President John Quincy Adams (1767-1848), son of John Adams, and the sixth President of the United States, stated this most eloquently:

Now the virtue which had been infused into the Constitution of the United States, and was to give to its vital existence, the stability and duration to which it was destined, was no other than the concretion of those abstract principles which had been first proclaimed in the Declaration of Independence—namely, the self-evident truths of the natural and unalienable rights of man, of the indefeasible constituent and dissolvent sovereignty of the people, always subordinate to a rule of right and wrong, and always responsible to the Supreme Ruler of the universe for the rightful exercise of that sovereign, constituent, and dissolvent power.<sup>9</sup>

For our Constitutional Republic to withstand tyrannical assaults it is incumbent upon "We the People" to insist that our elected officials return to the principles, which were, as stated by President Adams, "first proclaimed in the Declaration of Independence" There is a truism that should be instilled in the minds of all freedom loving Americans: A nation under God (obedient to His moral law) is a nation that experiences liberty; a nation that refuses to be under God (rebels against His moral law) is a nation that suffers tyranny.

In order liberty to prevail an informed public is essential. ***IRREFUTABLE: Why Christianity Is the Irrevocable Foundation of American Liberty*** is a must read for anyone who desires to see American culture restored to the state the Founders and Framers declared necessary for the guarantee and maintenance of liberty. For more information about ***IRREFUTABLE*** *see endorsements*.

## Home | Articles

### Notes

1. John Marshall Harlan, "James Wilson and the Formation of the Constitution," *The American Law Review* (July-August, 1900): 3-5.
2. Bird Wilson, *The Works of the Honourable James Wilson*, (Philadelphia: Bronson and Chauncey, 1804), 1.103-105. [I have taken the liberty of capitalizing certain words relating to God for clarity and consistency, as well as updating spelling.]
3. Ibid, 108.
4. Ibid, 114.
5. Ibid, 137-138.
6. Ibid, 9.