

The Political Thought of James Wilson

Tomiro HASHIMOTO

Department of Humanities
(Received September 10, 1977)

James Wilson is one of the political figures who have scarcely been studied even in the United States of America, in spite of his important role before and after the American Revolution. His transformation from the position favorable to the British Crown as the axis of the Empire into that supporting Independence was representative of the main current of thoughts among the contemporary intellectuals. He was influential next to James Madison in the Constitutional Convention of 1787, arguing for the Federalistic point of view. After his appointment to the justiceship of the Supreme Court he collaborated with John Jay in establishing political authority through the judicial process, which might foresee the development of the judicial nationalism by John Marshall and Joseph Story in the first half of the nineteenth century.

I. Introduction

This paper is a study of the political thought of James Wilson. It examines his general concept of the frame of government, his justification for the American separation from Great Britain, and his interpretation of the Federal Constitution of the United States. The works of his own which are used in my analyzing these themes are limited to those which were written between 1774 and 1791. This is because I wish to make clear the characteristics of his political thought by contrasting his political assertion on the eve of the American Revolution with one through the period of framing a new government.

What induces me to take up the above-mentioned theme is nothing but the historically peculiar fact of the American Revolution that the revolutionary radicals of 1774~1776 who started it, also saw it through to a point...that point in 1787, when younger generation took over to put a capstone on the edifice. No other history of modern revolutions, major or minor, shows a successful combination of the subversion of a government and the re-establishment of a new order. Thomas Paine was quite right when he

put down: "The independence of America considered merely as a separation from England, would have been a matter but of little importance, had it not been accompanied by a revolution in the principles and practice of governments."

James Wilson (1742~1798) emigrated from Scotland at the age of twenty-three and soon rose to prominence as a leader of the Pennsylvanian bar association. He was a pamphleteer and political leader playing an important role in the Convention for the province of Pennsylvania, in the Continental Congress, and in the Constitutional Convention. Later, he served as an Associate Justice of the United States Supreme Court (1789~1798). One may say that James Wilson was one of the leading figures who were engaged in both the destruction of the political ties with the Old World and the construction of laws and orders on the new soil.¹⁾

II. Wilson on the Eve of the Revolution

James Wilson recollected and said in his "Lectures on Law": "There are some great eras, when important and very perceptible alterations take place in the situation of men and things." Wilson and his contem-

Notes

1) Thomas Paine, quoted in Gordon Wood, *The Creation of the American Republic, 1776-1787*, p. 594.

porary Americans were going through one of the very eras when they excitedly discussed the relationship between Great Britain and her colonies in North America. Though it may be impossible to fix precisely the state of American opinion at any given time, Clinton Rossiter tried to classify the Americans' historical relation to the British empire into the following seven stages: (1) Complete subjection and virtual representation... the recognition of full power and authority of the King in Parliament over the colonies in all cases whatsoever; (2) Representation in Parliament... the proposal that the colonies be represented in some proportion to their number and estates, in the British Parliament; (3) Internal taxation (excise taxes) and external taxation (custom duties)... the attempt to draw a line between parliamentary power and provincial power; (4) The distinction between taxation for revenue and taxation for regulation of trade; (5) Denial of taxation or a doctrine of home rule that admitted legislation only for concerns clearly imperial in nature; (6) A dominion theory of the British empire... a theory of imperial organization, or the union of the colonies and England "in one head and common Sovereign"; (7) The Declaration of Independence... the dominion theory plus a natural law theory.²⁾

Two months after the enactment of what the Americans called the Coercive Acts, and half a month before the first Continental Congress, did James Wilson write "Considerations on the Nature and Extent of the Legislative Authority of the British Parliament". The Coercive Acts seemed to fix a decisive line in the development of the American causes for independence, in the sense that from the day that unhappy laws were passed, the question between England and the thirteen colonies became the question of power: who would rule, or who would have the right of final determination? All other questions of

taxation, custom duties, and things like that faded into background. An emphasis clearly passed to the concern with political power proper.

Here are two good examples illustrating this transition of emphasis. First, John Dickinson, rejecting taxation for revenue as unconstitutional, said in 1767, "The [British] parliament unquestionably possesses a legal authority to regulate the trade of Great Britain and all her colonies. Such an authority is essential to the relation between a mother country and her colonies; and necessary for the common good of all." On the other hand, to James Wilson in 1774, "no question can be more important... than this— does the legislative authority of the British parliament extend over them [the colonies]?"³⁾ Secondly, Dickinson stated in the same letter, "We are but parts of a whole; and therefore there must exist a power somewhere to preside and preserve the connexion in due order. This power is lodged in the Parliament...". But John Adams opposed once and for all to the Dickinson's view, asserting that "We are not then a part of the British kingdom, realm, or state; and therefore the supreme power of the kingdom, realm or state is not... the supreme power of us."³⁾

It seems that the political thinkers of the period were not concerned with the development of abstract questions about the nature of the state, but with the direct issues confronting them, and the shifting of the grounds of the discussion as it proceeded was primarily a response to the successive situations produced by action on either side of the Atlantic Ocean.

When we seek to examine the eighteenth-century's political discussion, Gordon Wood suggests to us a useful frame of reference: "the Crown's prerogatives, the bundle of rights and powers adhering in the King's authority to rule, set against the rights and liberties of the people, or the ruled, represented in

2) James Wilson, quoted, *ibid*, Clinton Rossiter, *The Political Thought of the American Revolution* (New York: Harcourt, Brace & World, 1963), pp. 18-33; also on the transformation of revolutionary thinking, Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, Mass.: Harvard Univ. Press, 1967), pp. 210-227.

3) Dickinson, No. XI, "Letters from a Pennsylvania Farmer", in Max Beloff ed., *The Debates on the American Revolution, 1761-1783* (London: Nicholas Kaye, 1949), pp. 125-6; Wilson, Robert G. McClosky ed., *The Works of James Wilson* (Cambridge, Mass., Harvard Univ. Press, 1967), vol. II, p. 722; Adams, "Novanglus", in George A. Peek, Jr. ed., *The Political Writings of John Adams: Representative Selections* (Indianapolis: Bobbs-Merrill, 1954), p. 44.

the House of Commons.”⁴⁾

We are now, with the above-mentioned frame of reference, in a position to read James Wilson's elaborate “Considerations on the Authority of Parliament” (August, 1774) and then listen to his eloquent “Speech in the Pennsylvania Convention” (January, 1775), both of which dealt with impending issues on the eve of the Revolution.

Wilson begins his “Considerations” with putting full confidence in both the British system of government and the people there:

The British nation are generous: they love to enjoy freedom... Oppression is not a plant of the British soil... it is reasonable to hope, that they will approve of our conduct, and bestow their loudest applauses on our congenial ardour for liberty.

We may say that this is Wilson's invariably fundamental attitude towards the mother country throughout the period. He entertains warm affection and deep respect for the principles of the post-1688 British constitution, or, justice and freedom of the English people, to which the Americans also are entitled by supreme laws of nature. But these rights and liberties are not only secured by natural law but also granted by the historical charters to the colonies, as John Adams wrote in “Novanglus”.⁵⁾

Whence Wilson's confidence in the British constitution? There was a single political tradition of opposition to arbitrary government which had gone back to the political struggles of the seventeenth century. In Great Britain it had come to serve as the foundation for a theory of parliamentary sovereignty. The dominant problem of the seventeenth century had been one of the relationship between the executive branch of government— the king—and the representative branch— the parliament. But as long as the king remained king in parliament, parliamentary sovereignty could be thought of as sovereignty of king in parliament. This is what the British parliament (=legislature) was. In this system of government, authority of the king, who made up only one third of the parliament, was naturally limited. Then where

could be found the limitations, if in all limited monarchies the power of preserving the limitations must be placed somewhere? According to Wilson, the power should reside in neither the clergy nor barons.

But after the representatives of the commons began to sit in a separate house; to be considered as a distinct branch of the legislature; and, as such, to be invested with separate and independent powers and privileges; then the constitution assumed a very different appearance.

The House of Commons was expected to play an important role of checking authority and power of the crown because “the crown will take advantage of every opportunity of extending its prerogative in opposition to the privileges of the people.” And the House surely must be able to do so, because its members knew well the true interests of the people, from among whom they were chosen, and because they were sensitive enough to know in what case king's prerogative— “a discretionary power of acting where the laws were silent”— was approved to exercise.⁶⁾

We can see in this argument the way of political thinking in the eighteenth century, which was suggested by Wood. Wilson, as a typical contemporary, thought that the first principle of salutary government must consist in the balance between any two parties which are legally concurrent. From his point of view, the British constitution seems to be close to an ideal model, because it “is formed in such a manner, that the house of commons are able as well as willing to protect and defend the liberties intrusted to their care.” The House of commons, as one of the two parties in British government, must be “the source of that mild but powerful influence, which the commons of Great Britain possess over the crown.”⁷⁾

The commons of Great Britain thus, have a great right in government and a considerable share in the legislature through the House of commons. Their power and right originate in the power of elections of their representatives. It is this power of elections that has justly been esteemed as the strong bulwark of the English liberties, resulting in the fact that

4) Wood, op. cit., p. 19.

5) Wilson, p. 722; Adams, op. cit., p. 48.

6) Wilson, pp. 730, 726.

7) Wilson, pp. 729, 731.

British laws have ever provided the freedom of elections with tender care. In order to render people's elections effective for the protection of their liberties, Great Britain took such measures as the qualifications of electors and elected, frequent elections of parliaments, the fixation of a parliamentary period of time (no longer than three years), and so on and so forth.⁸⁾

On the other hand, why are the commons of Great Britain bound by acts of the parliament? Where is a binding power of the parliament? It resides in neither the prerogative of the king nor the House of Lords, but in the House of Commons, and authority of the House of Commons flows from the trust vested upon its members by the collective body of the commons of Great Britain. Then, the Americans may well draw a political analogy that the colonies be not bound by the legislative authority of the British parliament, because they send by no means any representatives of their own to the mother country. This is a ground on which Wilson repudiated the "absurd principle of virtual representation." He questions:

Can the Americans remove unfaithful members at every new election? Can members, whom the Americans do not elect; with whom the Americans are not connected in interest; whom the Americans cannot remove; over whom the Americans have no influence— can such members be styled, with any propriety, the magistrates of the Americans?

An answer must be given absolutely in negative. A number of historical cases prove the undeniable principle that "parliamentary authority is derived solely from representation". This is the Wilson's counterpart of John Adams' assertion that England, America, Ireland, the East Indies and West India Islands—each of them should have representative members of its own in the House of Commons in proportion to its population.⁹⁾

We are now led to Wilson's radical view of law:

the view that a binding power of law is flowed from the continuous assent of the subjects of law: the view "that the only reason why a free and independent man was bound by human laws was this— that he bound himself." To the Americans of 1776, liberty meant freedom under laws of their own making. Though Lord Camden said in 1766 that he could not give his assent to any bill for taxing the American colonies while they remained unrepresented, Wilson went so far, far beyond Camden, as to say that acts of the British parliament did not extend over the entire field of the American affairs, including taxation. He shared this conviction with Thomas Jefferson.

Then, what else other than English laws can be a tie between the mother country and her colonies? After thinking about notions of dependence on the mother country, after the fashion of Bacon, Wilson acknowledged a relation of subjects to their king as the only relation of America to Great Britain a dependence on the crown as the only dependence. The Americans owe allegiance, obedience and loyalty to the king of Great Britain. To put it in another way, as John Adams did, "we owe allegiance to the person of his majesty—allegiance is due universally... to the person of the king, not to his crown; to his natural, not his politic capacity..."¹⁰⁾

According to Wilson, the king (or the person of the king) of England derives allegiance from his subjects on the one hand, and the subjects receive protection from their king on the other. Because either side takes advantages from, and owes obligations to each other, their relation is reciprocal. It is these reciprocal bonds of protection and allegiance that have ever been cherished on both seashores of the Atlantic since the first settlement.

The connexion and harmony between Great Britain and us, which it is her interest and ours mutually to cultivate, and on which her prosperity, as well as ours, so materially depends, will be better preserved by the operation of the legal preroga-

8) On vicious practices of the Long Parliament, and on desirableness of frequent elections of Parliament, the same argument as Wilson's can be seen in Adams, "Thoughts on Government", op. cit., pp. 87, 89.

9) Wilson, pp. 732-3; Adams, "Novanglus", op. cit., p. 40.

10) On Wilson's view of law, Bailyn, op. cit., p. 174; Camden, "Speech on American Taxation", in Beloff, op. cit., p. 123; Thomas Jefferson, "A Summary View of the Rights of British America", in Merrill D. Peterson ed., *The Portable Thomas Jefferson* (New York: Viking Press, 1975), p. 9.

11) Wilson, pp. 742-3; Adams, "Novanglus", op. cit., p. 46.

tives of the crown, than by the extension of an unlimited authority by parliament.¹²⁾

We can tell from the preceding arguments that what Wilson had in mind was Americans' dominion status within the British empire — a reorganization of the British empire which is similar to that of the British Commonwealth prior to the Second World War. A colony's only connection with Great Britain would be the king himself, who would conduct foreign relations and regulate the imperial trade among the dominions; but the Parliament must keep hands off the colonies. Wilson was convinced of traditional liberties of the English subjects. Should occasion arise, Wilson would have joined "the fervent prayer of all British America", with Jefferson, "to sacrifice every thing which reason can ask to the restoration of the tranquility for which all must wish", and "to establish fraternal love and harmony through the whole empire".¹³⁾

A little less than half a year passed. In January, 1775, Wilson delivered a "Speech in the Pennsylvania Convention". Wilson's appreciation of the British constitution did not change. He continued to regard the government of Britain as a structurally non-arbitrary one. The idea still remained alive that contract binds a king as well as his subjects; liberty is, by the constitution, of equal stability, of equal antiquity, and of equal authority with prerogative; obligations of the king and those of the subjects are reciprocal. As long as these principles had been good, loyalty of the Americans had ever appeared in the true form of loyalty, that is to say, in obeying their sovereign to establish and secure the royal power and dignity.

Are we enemies to the power of the crown? No, sir: we are its best friends... we ascribe to it [majesty] perfection, almost divine. We say, that the king can do no wrong: we say, that to do wrong is the property, not of power, but of weakness.¹⁴⁾

But a parliament can not be infallible, nor exempt

from corruption. Wilson and his fellow Americans certainly felt oppression in the successive severe proceedings by the Parliament against the colonies, in spite of the fact that the colonists had not violated the laws or the constitution. The following words are an illustration of how the Americans felt and of how their mother country responded to it: the former observed, "our petition [an humble and dutiful petition to the king], though we were told [that] it was a decent one, and that His Majesty had been pleased to receive it graciously, and to promise laying it before his Parliament, was huddled into both Houses among a bundle of American papers, and there neglected." The latter said (in the Lords and Commons), on the other hand, that "a rebellion at that time actually existed within the province of Massachusetts-Bay... encouraged by unlawful combinations and engagements..."¹⁵⁾

Now that the king is supposed not to do wrong, where is the source of oppression? It seemed to Wilson that those detestable proceedings must have been caused by the interested and partial ministers of the king. They must have abused his majesty's confidence and accused the Americans of an alleged rebellion. Wilson, therefore, advised his fellow men to make a distinction between his majesty and his ministers, by teaching them "to consider all the blessings of government as flowing from the throne, and every instance of oppression as proceeding... from the ministers." America's resistance against the ministerial tyranny must be justified as lawful and constitutional on the ground of both the letter and the spirit of the British constitution. But if the king unfortunately forgets his character and dignity, then:

The distinction between him and his ministers has been lost; but they have not been raised to his situation: he has sunk to theirs.¹⁶⁾

But, however inevitable the movement towards American independence may look in the light of the later events, independence was not the result generally

12) Wilson, pp. 742-6.

13) Jefferson, op. cit., p. 21.

14) Wilson, pp. 753-4, 757.

15) Dickinson and Jefferson, "Declaration of Causes of Taking Up Arms", in Samuel E. Morison ed., *Sources and Documents illustrating the American Revolution 1764-1788* (New York: Oxford Univ. Press, 1975), 2nd. ed., pp. 141-2.

16) Wilson, p. 758; On ministerial tyranny and its consequences, Dickinson and Jefferson, "Declaration of Causes of Taking Up Arms", *ibid.*, p. 144.

expected, far less generally desired. The fact is that the colonists were roused to anger by the insult and to take up arms, and that their opposition was virtuous one to the illegal attempts of their governors. It seems to me that more than any eloquences uttered by political thinkers of those days, we weigh the following recollections of an old farmer who never saw one of those stamps, never drank a drop of tea, never heard of Sidney or Locke:

"Young man, what we meant in going for those redcoats was this: We always had governed ourselves, and we always meant to. They didn't mean we should."¹⁷⁾

The Revolution was fought in order to preserve the chartered liberties which the Americans already had as colonists, not to obtain new and untested freedom. And we recognize a surprising similarity of the idea of liberty across the Atlantic ocean: a liberty connected with order and virtue. It is an outstanding characteristic of political thinking of English-speaking statesmen, which presents a sharp contrast with French-speaking ones. It must be the origin of the bond and continuity between England and America.¹⁸⁾

III. Wilson in the Creative Period

The Revolution was successfully carried out. The coming task of the Americans, after the conclusion of the Peace Treaty of Paris in 1783, was the creation of new domestic order. What kind of system of government James Wilson had in mind for the new born United States, I examine by his four papers written in the years 1787-90.¹⁹⁾

It may be helpful to point out, in advance, the fact that Wilson's post-revolutionary political thought

was being shaped in the form of a reaction to the British constitution for which he might even have given two cheers. As we have just seen, Wilson did not lose respect for the English system of mixed government even immediately before the Revolution—the check-and-balance function between the prerogatives of the king, or powers inherent in the king's authority on the one hand and the rights of the people, or liberties reserved in the hands of the House of Commons. But now, Wilson went far beyond democracy in the English sense, soaring up to the sacred precinct of American and complete democracy—people's sovereignty and actual and total representation. It is precisely on this point that we may recognize the changing thought of James Wilson.

The United States of 1783, through Wilson's eyes, consisted of mutually different thirteen governments extending over the vast land, on which a diversity of things produced a corresponding diversity of sentiments. The United States seemed to have four alternatives: (1) a single and centralized government (2) a rejection of any plan of union or association (3) two or more confederacies (4) a federal republic. Once Wilson took into consideration the peculiarly American problem of the relation of the extent of the country to the kind of government, however, the idea of a confederate republic occurred to him. The United States under such a system, as A. Hamilton put it, would enjoy both the vigor and decision of a wide spreading monarchy and the freedom and beneficence of a contracted republic. Such a government was thought to be fitted for the United States who was to expand in the future, and the Constitutional Convention would

17) Samuel E. Morison, *The Oxford History of the American People* (New York: Oxford Univ. Press, 1965), p. 213.

18) On the nature of liberty, Dickinson: "The cause of liberty is a cause of too much dignity to be sullied by turbulence and tumult. It ought to be maintained in a manner suitable to her nature... prudence, justice, modesty, bravery, humanity, and magnanimity."—"Farmer's letter III", in Morison ed., *Sources and Documents*, op. cit., p. 43; Wilson: "The spirit of liberty was slow to act... she acted with the calmness and decent dignity suited to her character."-pp. 747-8; Edmund Burke: "The distinguishing part of our constitution is its liberty. To preserve that liberty inviolate, seems the particular duty and proper trust of a member of the House of Commons. But... the only liberty I mean, is a liberty connected with order; that not only exists along with order and virtue, but which cannot exist at all without them."—"The Speech at his Arrival at Bristol", in Burke, *Speeches and letters on American Affairs* (Everyman's Library), p. 66.

19) On Wilson in both the Constitutional Convention and the Pennsylvania Ratifying Convention, I owe much to Wood, op. cit.

be justified in proposing that program.²⁰⁾

What would make a confederate republic possible, then? Here must be introduced by Wilson two great ideas: the ideas of sovereignty of the people at large, and of actual representation.

According to Wilson some general principles of government dictate that there necessarily exists in every government a power, from which there is no appeal, which, for that reason, is supreme and absolute. Blackstone, for example, thought that sovereignty was lodged in the British parliament under the name of parliamentary sovereignty. What the Parliament told just constituted the British constitution. Consequently, in Great Britain the "constitution" was the whole sum of charters, statutes, declarations, traditions, habits and general attitudes by which the government was administered. It would have been a contradiction in terms to say that an act of the Parliament was unconstitutional. James Wilson himself had acknowledged, in 1774, a representational explanation of parliamentary sovereignty by saying that "The king is bound, because he assented to them [the laws of parliament]. The lords are bound, because they voted for them. The representatives of the commons, for the same reason, bind themselves, and those whom they represent."²¹⁾

Wilson in 1787, however, did not stop there. He proudly declared:

The truth is, that, in our governments, the supreme, absolute, and uncontrollable power remains in the people. As our constitutions are superior to our legislatures; so the people are superior to our constitutions... 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.

We cannot see here a tripartite mixed government which consists of the king with prerogatives, the lords with privileges, and the representatives of the

commons. Instead we see what may be called an empire of the common people—a solemn declaration of people's sovereignty: all governments originate from the great capital people, or "a whole people... performing an act of sovereignty, original and unlimited!". In the United States, political importance was given first to the people, then to a constitution, and finally to a form of government. The English order of political importance was completely reversed. We also see in this declaration the changed image of a constitution. The constitution in the American sense became a constitution by which a court could test legislation, "a written document or even an unwritten but deliberately contrived design of government and a specification of rights beyond the power of ordinary legislation to alter". And an American constitution had to be framed by a special Constitutional Convention set up by the people only for that purpose and be enacted by their direct participation as in the case of the Massachusetts Constitution of 1780. Actually Wilson, leading the Pennsylvania Ratifying Convention in 1787, said that the ratifying conventions were meeting,

"under... this great truth... that in the United States the people retain the supreme power."

"Under its operation, we can sit as calmly, and deliberate as coolly in order to change a constitution, as legislature can sit and deliberate under the power of a constitution in order to alter or amend a law.

On the American scene, an unequivocal line of demarcation drawn between an ordinary legislature and a Constitutional Convention was to respond to the distinction between laws and a constitution as a higher or fundamental law. This thought formed a striking contrast to the English notion of constitution, because "The English constitution... could not be any sort of a fundamental law... For Englishmen... the terms constitutional and unconstitutional, mean legal and illegal." This American distinction could not have

20) Wilson, pp. 760-7; In Wilson's "Speech on Nov. 26, 1787", the words "federal" and "confederate" were interchangeable, referring to some way of drawing together sovereign states, as distinguished from "national". More details in Max Farrand, *The Framing of the Constitution of the United States* (New Haven; Yale Univ. Press, 1972), pp. 69, 73, 127.; Daniel Boorstin, *The Americans: the National Experience* (New York: Vintage, 1965), p. 415.; Madison, *The Federalist papers*, No. 39 in Clinton Rossiter ed., pp. 245-6; Hamilton, No. 9, pp. 71-6.

21) Wilson, p. 732; Bailyn, op. cit., pp. 66-7, 198-201.

come into existence without the idea of sovereignty of the people at large.²²⁾

The next question was how this almighty power of the people at large was to be exercised or what institutions could put people's will into operation. The answer has been given by virtue of the idea of actual representation. A democracy on the basis of people's sovereignty should not take a form of a pure [direct] democracy, as Madison put it, not only because it could not work on a large territory or among a great deal of population, but because it would lead to "spectacles of turbulence and contention." As Madison meant by a republic "a government in which the scheme of representation takes place," so Wilson said:

...the doctrine of representation in government was altogether unknown to the ancients. Now the knowledge and practice of this doctrine is, in my opinion, essential to every system, that can possess the qualities of freedom, wisdom, and energy.

He was convinced that the introduction of this doctrine was an epochmaking improvement in the science and practice of government gloriously reserved to the United States, because perfect representation of the people at large had not been the sole principle of any government in the Old World. Although Great Britain might be proud of the admission of the doctrine, her practice was not so perfect as what Wilson and Madison suggested. As a matter of fact, neither the executive power of, nor the judges of Great Britain were founded on representation. Even in the legislature representation was not enough. Before the American Revolution,

the doctrine and exercise of authority by representation was confined in Pennsylvania, as in England, to one branch of one of the great powers, into which we have seen government divided: and over even that branch a double negative was held suspended by two powers, neither of them professing to derive their authority from the people.²³⁾

The Americans on the contrary, would set up

the almost whole structure of government from top to bottom on actual and perfect representation. Wilson answered to the question of what the right of suffrage was, as follows:

[The right of suffrage] is a right to choose, in large and respectable assemblies, all the legislative, and many of the executive officers of the government.

Thus all governmental officers, not to speak of the members of the legislature, even the executive and judicial ones, were supposed to become the agent of the sovereign people, with the result of the destruction of virtual representation and parliamentary sovereignty. That was the reason why Wilson considered representation as "the chain of communication between the people and those to whom they have committed the exercise of the powers of government", that chain of communication as "most interesting... and most momentous...", and the right of suffrage as "a rich mine of intelligence and patriotism".²⁴⁾

For the same reason, Wilson clearly preferred, in 1789, election by the people directly, rather than through electors, when the motion that the latter type of election be employed in electing senators was presented before the Convention of Pennsylvania. He was afraid that both a trust between the people and their representatives and a responsibility of the latter to the former would be weakened by indirect election, and asserted that the supposition of the constitution of Pennsylvania should be the right of immediate representation in the legislature.²⁵⁾

Wilson had said in 1787 that "this principle... that the supreme power resides in the people; and that they never part with it. It may be called the "panacea in politicks." Now, we seem to be justified in adding to that principle the idea and practice of representation which we have just seen, and in saying that these two doctrines have been crystallized into the general framework of the Constitution of the United States. Eventually, "a new science of politics" needed "for a new world" has been worked out. Wilson emphasized more than once that in that scheme, unlike the British constitution which had tried

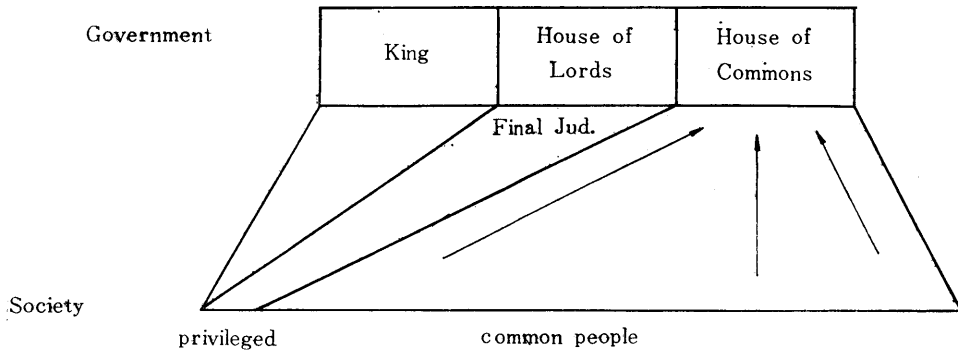
22) Wilson, p. 770; Bailyn, op. cit., pp. 66-7; Wood, op. cit., pp. 535, 260-1.

23) Madison, *The Federalist*, No. 10 in Rossiter ed., op. cit., p. 81; Wilson, pp. 763, 786.

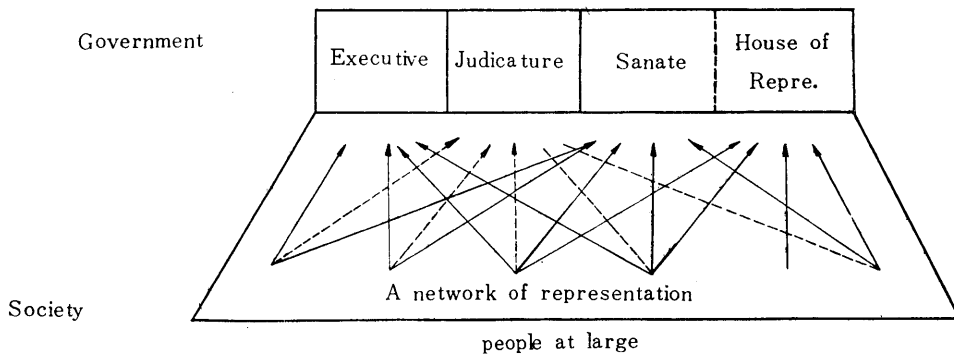
24) Wilson, pp. 786-7, 791, 789.

25) Wilson, p. 783.

Great Britain



The United States of America



in vain to balance the three different forms of government, "the legislative, executive and judicial powers are kept nearly independent and distinct", and "all authority of every kind is derived by representation from the PEOPLE and the DEMOCRATIC principle is carried into every part of the government."

We are now in a position to make up the following figures of the pyramid of government:

James Wilson believed that the American pyramid, a well designed republican body politic, would necessarily enjoy its broad, strong and deep foundations at the bottom, and its good "balance of governmental functionaries without social connections" at the altitude.²⁶⁾

IV. In Place of a Conclusion

Independence did not create a single nation state in the modern European sense, but thirteen separate states. As Boorstin puts it, "from the point of view of...European political thought, America was not merely an anachronism; it was an impossibility." But, though the Articles of Confederation remained literally confederate, "what is remarkable is not that a strong central government was not immediately organized, but that any appeared at all". The framers of the Constitution were giving the term "federal" a new meaning, "national", and the United States at the outset of the nineteenth century became "a hybrid

26) Wilson p. 771; Wilson, quoted in Wood, op. cit., pp. 550, 603-4.

country, half national and half federal [confederate]". In short, we may recognize a slow but constant current toward nationalization or centralization throughout the period of the last quarter of the eighteenth century. James Wilson is counted as one of the eloquent and consistent spokesmen for such a current. In spite of the fact that neither "nation" nor "national" appeared anywhere in the Constitution, did Wilson use "a national bank" for the Bank of North America already in a paper of 1785, and "a national government" in a speech of 1790, as Madison did in 1787.²⁷⁾

Wilson, in championing a charter of incorporation to be granted to the Bank of North America, and referring to the second and fifth articles of Confederation, explained to the legislature of Pennsylvania what he thought of the relation of each state to the whole of the United States.

The United States have general rights, general powers, and general obligations, not derived from any particular states, nor from all the particular states, taken separately; but resulting from the union of the whole...

To many purposes, the United States are to be considered as one undivided, independent nation; and as possessed of all the rights, and powers, and properties, by the law of nations incident to such.

In so far as the general rights and powers of the United States were dependent upon "the law of nations", she could not be strong enough to claim to be a single nation state. Just as it was when each colony asserted its own right to govern itself against the central authority in London, as Boorstin puts it,²⁸⁾ that the American Revolution came about, so each state after Independence tried to be a sovereign state under the articles of Confederation. But Wilson's interpretation of the relation of each state to the entire United States in 1785, however, never fails to remind us of his pre-revolutionary theory of America's dominion status within the British empire. It must

have seemed to the Anti-federalists insisting on state sovereignty that Wilson's United States were about to take the place of the former British empire. Was not it because England tried to tighten imperial control that the Revolution came about? We may see here something of an irony of history.

This attitude of Wilson was spurred in the Constitutional Convention of 1787. For example, he championed both proportional representation in the Senate and the congressional veto over state laws, because he believed that they would deny state sovereignty in the Constitution. And he may be properly ranked "the second next to Madison" as one of the leaders speaking for the need for a strong national government. His speech of 1790 is also tinted with the same kind of, but the strengthened degree of tone, where Wilson was proud of federal Pennsylvania and was critical about anti-federal Virginia.²⁹⁾

Wesley Frank Craven refers to James Wilson as "the peculiar character of the new nationalism". According to Craven, "Wilson labored...to demonstrate that the distinguishing feature of the American system of government was the federal principle which had called into existence a new loyalty to the whole of America without requiring the sacrifice of an older loyalty to one's state." How could this federal principle be possible? It seems to me that we can find an answer in Wilson's individualistic and mechanistic view of man and society.³⁰⁾

Wilson flattered himself in his speech of 1789 that:

But there is surely a golden mean in things; and there can be no real incompatibility between the discharge of one's publick and that of his private duty. Let private industry receive the warmest encouragement; for it is the basis of publick happiness.

Both frequent conversations with fellow men on public matters and self-determination of what and how to do never fail to make men sensitive to the interests.

27) Boorstin, op. cit., pp. 397, 405; Bernard Fay, *The American Experiment* (New York: Harcourt, Brace and Company, 1929), p. 49; Wilson, pp. 839, 797, 799; Madison, *The Federalist*, No. 10 in Rossiter ed., op. cit., p. 83.

28) Wilson, p. 829; Boorstin, op. cit., p. 400.

29) Wood, op. cit., p. 525; Farrand, op. cit., pp. 81, 200-1; Wilson, pp. 797, 801.

30) Wesley F. Craven, *The Legend of the Founding Fathers* (Ithaca, New York: Cornell Univ. Press, 1965), pp. 79-80.

of their country. Why cannot "the hope of becoming the object of wellfounded and distinguishing applause" be the dominating energy in human conducts? This hope of applause is nothing but what Adams called "the passion for distinction", "Emulation" or "Ambition". Wilson thought, as Adams did, that through these passions "Pure and genuine patriotism" would come into being. It is, consequently, natural that Wilson went on and said that:

The interests of the individuals, added together, will form precisely the aggregate interest of the whole...³¹⁾

It is surprising how far Wilson stood away from Rousseau.

From the preceding arguments Wilson drew an convincing analogy between the relation of individuals to a state and the relation of states to a union:

The arguments drawn from the political associations of individuals into a state will apply, with equal force and propriety, to a number of states united by a confederacy.

That is to say, just as natural men become citizens

of a civil government by surrendering to it some part of their natural liberty and enjoy civil liberties under it, so separate states become members of a confederate republic by surrendering to it some part of their political independence and enjoy "federal liberty" under it.

...it is necessary to mention another kind of liberty, which has not yet, as far as I know, received a name. I shall distinguish it by appellation of FEDERAL LIBERTY.

This notion of "federal liberty", which was modestly but proudly presented by Wilson, must be his answer to the question raised before, no matter how mechanistic it may look. And it was, for James Wilson, the Constitution of the United States of America which had materialized the two great principles of sovereignty of the people at large and their actual and immediate representation, that was "a bond of union, and not a principle of inveterate alienage, far less of hostility between the several states; certainly and more particularly, between each of them and the United States".³²⁾

31) Wilson, pp. 787-9; Adams, "Discourses on Davila", op. cit., pp. 176-7, 192.

32) Wilson, pp. 830, 767, 797.