James Wilson and the Sovereignty of the People in the Philadelphia Convention of 1787

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JAMES WILSON AND THE SOVEREIGNTY OF
THE PEOPLE IN THE PHILADELPHIA
CONVENTION OF 1787

BY
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CHAPTER I

INTRODUCTION

Since the earliest days of American colonial history, the colonies acquiesced in Parliament's right to legislate for them in matters pertaining to the regulation of trade. Later, when England changed its policy and resorted to taxation, then they protested. The colonies sent petition after petition to Westminster against legislation which was outrageous to the man in the New World who considered himself a subject of His Majesty, but equal to anyone in England.

During fifteen bitter years, the colonists had become increasingly resentful of unjust treatment at the hands of their mother country. In 1761 the Writs of Assistance were issued. These were general search warrants designed to enforce the various revenue measures. Four years later the Stamp Act was passed requiring revenue stamps on all newspapers, pamphlets, licenses, and many commercial and legal documents.¹ In the same year (1765) the Quartering Act was passed, which ordered the colonists to furnish lodging and supplies for British troops when colonial

barracks were inadequate.

In 1766 the Stamp Act was repealed as a result of colonial protest, but the Declaratory Act affirmed the right of Parliament "to tax the Colonies for any reason whatsoever." The following year Parliament passed the Townshend Act which imposed duties on glass, lead, painter's colors, tea and paper. In that same year (1767) the New York assembly was suspended for refusing to comply with the Quartering Act.

The "Boston Tea-Party" came about as a protest against the Tea Act of 1773. The colonists, disguised as Indians, boarded the ships of the East India Company and dumped the tea into Boston harbor. The British retaliated in 1774 with the four "Intolerable Acts." The first of these was the Boston Port Bill, which closed the port until the colonists should pay for the tea. Then there was the Massachusetts Government Act which practically abrogated the charter of 1691 by forbidding the Boston town meeting to assemble without the Governor's permission. The Administration of Justice Act followed, permitting a change of venue to any English possession for trial of British officials charged with murder in suppressing riots in the Colonies. Finally there was a new Quartering Act compelling the people of

2. Commager, 63. See also Pickering, Statutes, XXVII, 505.
Massachusetts to supply lodging and food for British soldiers.

As a result of the Intolerable Acts, the First Continental Congress assembled at Philadelphia on September 5, 1774, to organize a united resistance. The Congress rejected a plan submitted by Joseph Galloway of Pennsylvania for a permanent legislature for the Colonies with power to combine with Parliament in legislating for Americans, and instead adopted the Suffolk Resolves. This was an endorsement of the action taken by Suffolk County, Massachusetts, declaring the Intolerable Acts void, and urging the training of militia to protect the Colonies. The Congress then sent Great Britain a Declaration of Rights and Grievances, demanding a return to the status of 1763. An organization called the Association was formed, which included an agreement to boycott both import and export trade with England, and a plan was outlined to carry out the agreement. Finally the Congress drafted the Miscellaneous Papers, which included a petition to the King of England, an address to the province of Quebec, and an appeal to the people of England for a redress of the American colonists' grievances.

When these petitions, as well as excellent presentations of the colonist's case by such men as the younger Pitt and Edmund Burke failed to move Parliament, Americans were made painfully aware that Westminster regarded them as little more than commodities to be exploited. In "blood and iron"
only could they answer. In April, 1775, the armed conflict
between General Gage's soldiers and the patriots of Lexington
and Concord took place. The militia from the New England
states besiegéd by Gage's army in Boston, and asked assistance
from the Second Continental Congress which had opened in
Philadelphia on May 10. On May 31 the troops around Boston
were adopted as the American Continental army, and on June
20, George Washington was informed of his appointment as
Commander-in-chief. 3 The Battle of Bunker Hill, a pyrrhic
victory for the British, took place on June 17, and on July 3,
Washington arrived to take command at Cambridge, Massachusetts.

Though it may seem strange to us today, a full year
was allowed to elapse before Congress decided to declare the
Colonies independent of Great Britain. There were racial,
religious, cultural, and especially, economic ties which
bound different colonies in different ways to the mother
country, and there was also the possibility that a general
anarchy or a military despotism might supplant British author-
ity. However, in the early months of 1776 many state legis-
latures instructed their delegates to work and vote for in-
dependence.

1774-1789, II, Government Printing Office, Washington, D.C.,
1905, 100
On February 13, 1776, one James Wilson, delegate from Pennsylvania, prepared an Address to the Inhabitants of the Colonies, intended, as he told James Madison of Virginia, "to lead the public mind into the idea of independence." 4 We are told by Julian Boyd that the attitude of his constituents determined him not to publish it, but it has been preserved for us, and is considered by Randolph Adams as "the product of a mind usually temperate, but unusually acute," and as "an example of an American mentality which has been driven just as far as it could be driven." 5 This Wilson was a man who had consistently maintained that some agreement could be worked out with Westminster, and that there would be no need of a breaking-off with Great Britain, but by February, 1776, the direction that events were taking was evident. He concluded his Address with ...

...Though an independent Empire is not our Wish; it may - let your Oppressors attend - it may be the Fate of our countrymen and ourselves... We are desirous to continue subjects: But we are determined to continue Freemen... we shall keep our eyes constantly and steadily fixed upon the Grand Object of the Union of the Colonies - THE

4. Ford, 146.
RE-ESTABLISHMENT AND SECURITY OF THEIR CONSTITUTIONAL RIGHTS. Every measure that we employ shall be directed to the attainment of this great End: ... If any such measure should, against our principal Intention, draw the Colonies into Engagements that may suspend or dissolve their Union with their fellow-subjects in Great Britain, we shall lament the Effect; But shall hold ourselves justified in adopting the Measure. That the Colonies may continue connected... is our second Wish: Our first is - THAT AMERICA MAY BE FREE.8

On June 7, 1776, Richard Henry Lee of Virginia made a motion in Congress that ...

Resolved that these United Colonies are, and of right ought to be, free and independent States, that they are absolved from all allegiance to the British Crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved. That it is expedient forthwith to take the most effectual measures for forming foreign Alliances. That a plan of confederation be prepared and transmitted to the respective Colonies for their consideration and approbation.7

The motion was seconded by John Adams, and after some discussion, a committee of independence was appointed to draft a declaration. On the committee were Thomas Jefferson of Virginia, Benjamin Franklin of Pennsylvania, Roger Sherman of Connecticut, and Robert R. Livingston of New

6. Adams, 105, 120, 121. (Wilson's italics)
7. Ford, V. 425. n.2. "This resolution in the writing of Richard Henry Lee, is in the Papers of the Continental Congress, No. 23, folio 11."
York. The declaration, largely the work of Jefferson, was voted on July 2, and adopted on July 4, 1776.
CHAPTER II

THE PROBLEM

The point of the foregoing introduction is simply this, that the American colonists always considered themselves as free as any of His Majesty's subjects in England. They were a free people. Later, with the surrender of Cornwallis at Yorktown, or rather with the Treaty of Paris (1783), they became a sovereign people.

With the end of the war, however, the common cause, the common danger which had bound the Colonies together, no longer existed. The United States was a sovereign nation, but "the people recently freed from a sovereign King were suspicious of any other sovereign, and were unwilling to delegate any of their own now sovereign functions."¹ There was bound to be trouble, and there would be a great deal of difficulty before they would learn that "their sovereignty could be maintained only through a central government with strength and solidity."² As Alexis de Tocqueville has put it...

...As long as the war with the mother

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2. Ibid., 213.
country lasted, the principle of union was kept alive by necessity; and although the laws which constituted it were defective, the common tie subsisted in spite of their imperfections. But no sooner was peace concluded than the faults of this legislation became manifest, and the state seemed to be suddenly dissolved.

Because of jealousy between the states, the government was endangered on at least five counts. In the first place anything like profitable inter-state commerce was hampered by state tariff barriers. Then the various states, led by Rhode Island, courted inflation by issuing quantities of paper money. Thirdly the payment of the national debt incurred by the war was rendered difficult, since no state which had discharged its financial obligations would submit to a tax to pay debts owed by other states. Furthermore there can be no doubt that the narrow-minded state legislatures, and the state courts that depended largely on these legislatures, acted very foolishly at times, and even when acting wisely, were too feeble to sanction their own decrees. According to a most competent British writer of our time, "if a case before the state courts raised the point whether a state constitution or statute was inconsistent with the Federal Constitution or a statute of Congress, it was their duty to decide it like any other point of law." But their

decision could not be safely accepted as final, because, "being themselves the offspring of, and amenable to the state governments, they would naturally tend to uphold state laws against the Federal Constitution or statutes." Finally, perhaps the greatest danger of all lay in the fact that Great Britain was waiting expectantly for general anarchy to erupt among the states that would enable the forces of His Majesty to return and accomplish what they had failed to achieve earlier.

It should have been plain even to the most superficial observer that the Articles of Confederation were impotent. The fact was shamefully obvious to men of clear vision. An authority on the subject tells us that "it was difficult, after the strain of war had gone, to feel acutely the reality of America and the dependence of its members upon one another; and as the days went by disorganization rather than integration seemed to be gathering headway," so that, as we are told, "the more serious patriots and watchers of the night feared for the safety of their country." We have seen the blunders of the various states, and we know that these states could defy or ignore Congress as they chose, for under the Articles" there was no strong

Executive or Judicial power. There was nothing for Congress to do but to admit its helplessness, for it found itself in a sorry plight.

"A deliberative body ordering another independent deliberative body what laws to make" is an anomaly," says Bancroft, yet it is an accurate picture of the Continental Congress trying to direct the legislatures of thirteen different states. The improbability of any harmony was heightened by the vast territory of the thirteen states as well as by the primitive means of communication in those days; by the different times that the various legislatures held their meetings, and especially by a general conflict of "interests, passions, hesitancies and wills of thirteen legislatures, independent of each other and uncontrolled by a common head."

There were bound to be conflict, and the contention between Maryland and Virginia over the navigation of the Chesapeake Bay and Potomac River turned out to be of greater significance than anyone could have imagined at the time. In March, 1785, committees from both states met at Mt. Vernon to discuss the matter. "But if two states could consult upon

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7. Ibid., 266.
matters of mutual interest," asks Doctor McLaughlin, "why not more than two?" Consequently representatives from New York, New Jersey, Pennsylvania, Delaware were invited to Annapolis, Maryland, on September 11, 1786 to "remedy defects of the Federal Government." The most noteworthy item of the convention held at Annapolis was Alexander Hamilton's decision to "meet in Philadelphia on the second Monday in May next, to take into consideration the situation of the United States" and to amend the Articles of Confederation as far as is necessary "to render the constitution of the Federal Government adequate to the exigencies of the Union; etc." Eager nationalists worked long days during the months that followed the autumn meeting at Annapolis, and as May 1787 drew near there was more than a faint glimmer of hope in their hearts.

Alexis de Tocqueville considers Congress' admission of its own inadequacy to cope with the problems of its day, as one of the truly great points in the history of our land. He seems to imply that it is the very summit of American achievement. "If America ever approached (for however brief a time) that lofty pinnacle of glory to which the proud imagination of its inhabitants is wont to point," he writes, "it

9. Transil. 39, n.1 "From the original in the Library of Congress."
10. Ibid.: 43
was at this solemn moment, when the national power abdicated, as it were, its authority.\textsuperscript{12} To de Tocqueville the War of Independence does not seem so surprising in comparison with this act of the Continental Congress, and after some thought we are inclined to agree with him, for if there was one thing that stood out pre-eminently in the founders of our country, it was that the great majority of them were men possessed of more than an ordinary amount of downright common sense.

But if the Constitution of the United States came into being without bloodshed, it was certainly the product of a bitter struggle. Some have called it an economic class struggle, and to a certain extent they are correct, but no one can doubt that it was a duel to the death between "those who thought nationally and those who thought provincially," between the proponents of two diametrically opposed convictions, "one, of a strong National Government acting directly on men; the other of a weak confederated league merely suggesting action to the states."\textsuperscript{13}

It is clear to us today that the sovereignty that the individual states assumed was largely a figment of some men's minds. It was theoretical rather than practical, for

\textsuperscript{12} de Tocqueville, 113
It would be utterly absurd to have thirteen different states regulating commerce and making treaties with foreign countries, and certainly it is plain how confusing it would be to have thirteen different kinds of money in circulation. The states might call themselves sovereign, they might even write it on paper, but the fact remained that there could be only "one ultimate source of political power in America, and that was a united people." \[14\] Therefore as May 1787 approached, two "musts" appeared on the agenda of those who had diagnosed the disease that threatened to end the life of our nation. In the first place the national government must be strong, but its source must be the people. Secondly the government must be over individual men, and be as independent as possible of state governments. The remarkable thing about it all is that, in such an important crisis, there were so many men who had made the correct diagnosis and were resolved upon the operation that was imperative. \[15\] One such man was certainly James Wilson, delegate from Pennsylvania, who would say three years later in his lectures to his law students that "it is highly necessary that those who are to protect the rights, and to perform the duties of the commonwealth should be men of\[...


proper principles, talents and characters." He concluded that it was equally necessary that those who appoint the leaders should be able "in some degree at least, to distinguish and select those men, whose principles, talents and characters are proper. As we see him fight for these very principles in the Philadelphia Convention, we will realize that, when he delivered this lecture, he was not dwelling in the realm of pure theory.

James Wilson was born on September 14, 1742, at Caskerdo, near Saint Andrews, Scotland. He studied at the University of Saint Andrews, Glasgow and Edinburgh from 1757 to 1765. Leaving Scotland for America, he arrived in New York "in the midst of the Stamp Act disturbances" and on February 1766 was given an honorary Master's degree by the College of Philadelphia which was later to become the University of Pennsylvania. He entered the law office of John Dickinson and was admitted to the bar in 1767. The duties of lecturer at the College of Philadelphia claimed him in 1773, and less than a year later he was nominated, but not elected, to the First Continental Congress. He then published a pamphlet entitled,

Considerations on the Nature and Extent of the Legislative Authority of the British Parliament which was distributed to the members of the Congress. It was ascribed to Franklin by Rivington's *New York Gazeteer* and was widely read both in England and America as an able statement of the extreme American position. For Americans this pamphlet was overshadowed by the Declaration of Independence, but its statement that "all the different members of the British Empire are DISTINCT STATES, INDEPENDENT OF EACH OTHER, BUT CONNECTED UNDER THE SAME SOVEREIGN" is a prophecy as well as an able argument for the British Commonwealth of Nations.

On May 1, 1775 he was elected to the Second Continental Congress, and although he never published his Address to the Inhabitants of the Colonies, he was one of three out of seven Pennsylvania delegates to vote for independence when Richard Henry Lee raised the question on June 2, 1776. He was out of Congress from the autumn of 1777 till 1782 for political reasons, but in 1787, with more than a little experience on important Congressional committees behind him, he was elected to represent Pennsylvania at the Philadelphia Convention along with Benjamin Franklin, Gouverneur Morris.

18. Ibid., 327. See also Ch. III, p.18, n.8. of this thesis.
19. Adams, 81. cf. Supra 4, n.4. (Wilson's italics)
Thomas Mifflin, Robert Morris, George Clymer, Thomas Fitzsimons, and Jared Ingersoll. Julian Boyd has called Wilson's part in the convention "his greatest achievement in public life." According to Doctor Boyd, no one at the convention, save possibly Madison, could equal Wilson's knowledge of political economy, "none grasped more firmly the central problem of dual sovereignty, and none was more far-sighted in his vision of the future greatness of the United States." It will be the purpose of this study to show how James Wilson, in the Philadelphia Convention of 1787, safeguarded the sovereignty of the American people.

21. Tansill, 85
22. Boyd, 329
CHAPTER III

JAMES WILSON AND HIS DOCTRINE

So many competent men have joined Boyd in praising Wilson, that we believe that James Wilson has not received due recognition as a great political thinker, nor as one of the truly great men among the founders of our country. Certainly he has not enjoyed the publicity of Franklin and Jefferson. There are today, however, scholars who have come to appreciate his true worth. Doctor Andrew McLaughlin, a noted student and teacher of American Constitutional History, considered Wilson worthy of a place above all but one or two in the Philadelphia Convention. The same authority said that the Pennsylvanian should be numbered among the four men who "bore the burden in the heat of the day -- who fought with desperate and magnificent energy in the greatest controversy of the convention."¹

Wilson was regarded by William Pierce of Georgia, who was present at the Convention, as ranking above all "in legal and political knowledge."² Professor Elliot affirmed that Wilson, more than anyone else at the convention, had a firm grasp of the question that had to be settled, namely that of

"union of independence." Supreme Court Justice John M. Harlan said the "the history of that momentous period could not be written without referring to James Wilson and the distinguished position he occupied." Another Professor of Political Science, Father Moorhouse F. X. Millar, S.J., tells his readers that Americans know all too little about Wilson. An eminent historian, Doctor Randolph Adams, claims that the more he reads of Wilson, the more he marvels that Wilson has not received the recognition given to other men who helped to found our government.

We cannot help but wonder why it is that he has received such scant recognition for the great work that he has done. A cue is given us by Pierce, a member of the convention already cited, who tells us that Wilson appealed to his hearers, not because of a pleasing personality, but because of his forceful logic. It has also been conjectured that he was probably a man who did not make friends easily, and a man who

was altogether uncompromising in his opinion. It is quite possible, too, that his display of exhaustive learning made him obnoxious to many. Be the reasons what they may, it seems quite clear today that, in the distribution of acclaim, Wilson has been treated rather shabbily.

Here an examination of his political ideas is in place. As a matter of fact, it is quite encouraging in our day of Dictators, to find our government striving to live up to the high ideals incorporated in Wilson's down-to-earth philosophy.

In the first place it is clear that he was convinced of the sovereignty of the people. In his Address to the Inhabitants of the Colonies, he assumed that "all Power was originally in the people -- that all the powers of government are derived from them -- that all Power, which they have not disposed of, still continues theirs." In his pamphlet (August 17, 1774) on the Legislative Authority of the British Parliament, he said that all men are by nature free and equal; that no one has a right to any authority over another without the latter's consent; and finally, that all lawful government is founded on the consent of those who are subject to it. Later in that same pamphlet he says that the "first maxims of

jurisprudence (must be) ever kept in view -- THAT ALL POWER IS DERIVED FROM THE PEOPLE -- THAT THEIR HAPPINESS IS THE END OF GOVERNMENT. 8

Not only are Wilson's words clear, but a commentator tells us that characteristic of Wilson at the time of the American Revolution was his insistence that power came primarily from the people, that the people alone were sovereign. 9

We ask how this doctrine came to be accepted by Wilson. We know that he matriculated at the University of Glasgow while Adam Smith was its rector, and here he was in an intellectual atmosphere where the current theory of mercantilism was being undermined. It is quite probable that under Smith the young Scot learned to think in terms of continents, and of individual people, rather than the preservation, at all costs, of the economy of the British Empire. 10

Though he must have been influenced considerably by the learned men with whom he associated during his formative years, for he was only twenty-three years of age when he came

8. Adams, 106, 49, 55 (Wilson's italics). cf. Supra p. 14, n. 18. See also Harlan, 483. "...in 1774, when thirty-two years of age, in a pamphlet relating to the legislative authority of the British Parliament, and which attracted wide attention, Wilson disclosed the broad ground on which his political faith rested, by declaring that all men - not some men, not men of any particular race or color, but all men are by nature equal and free." 9. Ibid., 15 10. Ibid., 5
to America, it is safer to say that his political ideas were derived from the works that he had studied, especially those of Richard Hooker and John Locke. It is generally conceded that the founders of our country based their argumentation on the political philosophy of John Locke, and the excerpts from Wilson's speeches given above appear to be a summation of Locke's "compact theory." Then the question must arise whether Wilson followed Locke to the extent of holding that men in a state of nature remain so "until by their own consents," they make themselves members of some political society.

His pamphlet on the Legislative Authority of the British Parliament, insisting that all men are by nature free and equal, and that no one has a right to any authority over another without the latter's consent, seems to indicate that he did subscribe to Locke even to that extent.

Yet it is possible that Wilson's idea of the

11. William A. Dunning. *A History of Political Theories from Rousseau to Spencer.* The Macmillan Co., New York, 1933, 91, 92, 93. On page 92 Professor Dunning says that the "...state of nature conceived by the Americans, was that of John Locke, and had in it no suggestion of Rousseau's 'bon sauvage'." John Locke, *Of Civil Government, Two Treatises.* Everyman's Library, E.P. Dutton & Co., Inc., New York, 1936, 134, 135, 164, 165. "Men being, as has been said, by nature all free, equal, and independent, no one can be put out of this estate and subjected to the political power of another without his own consent..."

12. Locke, 124.

sovereignty of the people was in reality closer to that of Saint Robert Bellarmine, who held that political rule is so natural and necessary to the human race that it cannot be withdrawn without destroying human nature itself. "The nature of man is such that he is a social animal," says Bellarmine, and consequently "it depends on the consent of the people to decide whether kings or consuls, or other magistrates are to be established in authority over them." He held that the power to rule comes from God in specific instances, but through the medium of human wisdom and choice, as do all other things which pertain to the law of nations.¹⁴

The disjunction is clear that either man, according to Bellarmine, is a social being, and, in keeping with his nature, must organize into society, or, with Locke, he is an autonomous creature, who cannot "be subjected to the political power of another without his own consent."¹⁵ It is one thing to say that man, who by nature must organize into a political society, has the right to choose his own rulers, but it is quite another thing to say that man does not have to organize into society unless he feels like doing so. Wilson held that all men are by nature equal and free, and that no one has a

¹⁵. Locke, 164.
right to any authority over another without the latter's consent, and that consequently all lawful government is founded on the consent of those who are subject to it. 16 This seems to indicate clearly that Wilson followed Locke. It seems that both Wilson and Locke largely derived their ideas on the nature of man and his liberty from the writings of Richard Hooker, for both men quote freely from "the judicious Hooker" to support their arguments. 17 However, in an illuminating study of Wilson's philosophy of law, Doctor William F. Obering, S.J., points out that Wilson and Hooker held very similar views on the nature of man, his natural rights, and his position in society, while in the same work Locke is criticized for his anti-social concept of man's liberty. 18 Obering says that "we note at once his (Wilson's) opposition to the anti-social concept of Locke," and then he quotes Locke as saying that "the natural liberty of man is to be free from any superior power on earth, and not to be under the legislative authority of any man, but to have only the law of nature for his rule." 19

16. Adams, 49
18. William F. Obering, S.J. The Philosophy of Law of James Wilson, Catholic University of America, Washington, D.C., 1936, 96. "We note at once his (Wilson's) opposition to the anti-social concept of Locke..."
19. Obering, 96. n.32 quotes Locke (Two Treatises on Govt) Bk II, 21).
But by the law of nature Locke could not have meant what we mean by a concept of the natural law, for Locke "can distinguish good and evil only by the pleasure and pain which certain actions draw upon us by the positive will of the law-giver." 20 We feel that Obering is entirely justified in noting the difference between Locke's and Wilson's doctrine, for while Locke, whose theory of cognition will not admit that we can know more than nominal essences, must content himself with pleasure and pain as a norm of morality, Wilson proves the existence of the natural law in man from the testimony of conscience, which clearly indicates that we acknowledge our subjection to the moral law of a Superior Being. "If we enter into ourselves and view with attention what passes in our own breasts, we shall find that what at first appeared probable, is proved, on closer examination, to be certain; that God has not left Himself without a witness, nor us without a guide." 21 Wilson, in lectures to his Law students in 1790, defined the moral law as that law which God has made for man in his present state, and promulgated by reason and the moral sense. This law, he says, has undergone several subdivisions, and is known by different appellations, "according to the different

20. Ibid., 62. n.17
ways in which it has been promulgated, and the different objects which it respects." He then distinguishes the laws of nature, or physical laws, from the natural law. The laws of nature are blind forces tending necessarily and uniformly to an end, whereas the natural law is a moral bond between a personal God and a human person, endowed with a free will, who knows the end of his actions and freely tends to that end. Since this natural law is founded on the unchanging nature of man, it "has an essential fitness for all mankind and binds them without distinction," and not only is it universal in obligation but also in its promulgation, that is in the knowledge which all men have of it. While there may be mistakes in applying the principles of right and wrong, Wilson tells his students that nature's impression on the hearts of men has been universally acknowledged, and by no art can it be obliterated. Blaming the errors of the savages on misapplication of correct principles, and on corrupt institutions forced on them by tyrants, Wilson insists that a universal effect, namely that mankind has always known that it should do good and avoid evil, must have a universal cause, and that cause is the "intuitive preception of things distinguished by the name of common sense."}

22. Ibid., 92. see also Adams, 255.
Virtue is the business of all men, he tells us in another passage, and its first principles are written on their hearts in characters so legible, 'that no man can pretend ignorance of them, or of his obligation to practise them.' Finally, the natural law is immutable, for it is founded in the nature of men and things. Such immutability, says Wilson, has nothing in it repugnant to the supreme power of an all-perfect Being. Since God is 'under the glorious necessity of not contradicting Himself, He who is the author of man's nature, cannot but command what is necessarily agreeable to this nature, and forbid what is contrary to it. Far from limiting His perfections, this necessity adds to their external character, and points out their excellency.' Such doctrine is called 'simon-pure scholasticism' by Obering, and we agree that it could hardly have come from the pen of John Locke, though Wilson did follow Locke's "compact theory" with regard to civil authority.

Doctor Obering refers to the foregoing doctrine of Wilson in a scholarly article entitled An American Philosophy of the State. He goes beyond the little we have mentioned about Wilson's doctrine on the natural law, and shows how Wilson held that civil law is the obligatory complement of the divine moral law, that it is binding in conscience and

25. Ibid., 111, see also Adams, 276.
26. Ibid., 124, see also Adams, 288, 289.
that its authority rests ultimately on divine law. Furthermore natural rights are only a corollary of natural duty since they are the necessary means for the fulfillment of such duties, and finally Obering gives us Wilson's definition of the principal object of government, namely, to acquire by means of a human establishment "a new security for the possession or 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."27

The lectures from which the foregoing points were taken, were delivered by Wilson between the years 1790 - 1792, that is from three to five years after the Philadelphia convention. Obering tells us that the lectures were begun with a warning against "political writers...almost without exception," and that before he proceeded to develop this system which "point for point reveals striking parallels with scholastic political philosophy." Wilson promised to give the future lawyers a philosophy of law consistent with the principles of the recently established national government.28 Relying on this promise, and realizing that James Wilson had a better grasp than anyone, save Madison and possibly Jefferson, of the

28. Obering, Amer. Phil. of State, 44.
essentials that have made the United States Constitution the marvel that it is, there seems to be a good case for those who argue that the best elements in American government rest on the sound basis of scholastic philosophy. Certainly Doctor Oering is not alone in recognizing the similarity of doctrine as propounded by Wilson and the scholastics, for Father Moorhouse F.X. Millar, in a preface to a study made by one of his students, points out the "remarkable identity in principle" between Wilson's social, political and legal philosophy, and that of Suarez, Bellarmine and Saint Thomas Aquinas. 29

But be Wilson's ideas what they may, the important fact remains, as far as our study is concerned, that he held, in common with Locke and the Scholastics, that authority resides in the people, and that it is delegated to lawful rulers by consent of the governed. We might say that he added something of his own inasmuch as he propounded the novel idea of a dual sovereignty; a rule of a strong central government over competent state governments, somewhat analogous to the rule of Great Britain over its various dominions. 30 This idea of a Federal government, embracing all the people of the various states, but not dependent on those states, was something new and complex. We are told that while other men grasped certain

30. Adams, 10
aspects of the new set-up, none possessed so comprehensive a view as did Wilson of the "state above states, state embracing states, yet not composed of those states so much as of the people within them, who were regarded as forming a single nation." 31

Finally, it is noteworthy that Wilson thought in terms of broad, essential ideas, but had little or no facility with form and mechanism. Minor details he could not see, and at times, while he held tenaciously to his general idea, he would admit that for the present he could think of no workable way for putting his theory into practice. 32 His mind seemed almost instinctively to seize the essential and pass over the trivial "without friction or confusion." For this reason he was singularly equipped by nature for the work of the convention, since the Constitution of the United States is not an "instrument of detail, but wisely general, enumerating powers but not defining them, recognizing the necessary basis of a national government and the suitable rights of the states." 33 We are not surprised then, that Wilson, in the convention, held out for a popular election of President and Congress, nor are we amazed that he should insist on proportional representation

31. Elliott, 55, 56.
and demand a strong central government. Finally, we now understand why he wanted a single Executive possessing the veto power, yet an Executive whose responsibility to the people was safeguarded by the possibility of impeachment.
CHAPTER IV
PREVIEW OF THE CONVENTION

It is well at this point to give the reader an introduction to the men who would from time to time oppose or support the arguments of Wilson, as well as a brief explanation of the Virginia plan and the New Jersey plan, often referred to as the Paterson plan since it was introduced and championed by William Paterson of New Jersey. In this way we should cover most of the main characters of the convention and summarize the primary issues on the agenda.

For the most part, the notes of William Pierce of Georgia will furnish us with sketches of the friends and opponents of Wilson, but we also have Carl Van Doren's latest work, entitled The Great Rehearsal, to assist us with an appreciation of the work of Pierce. Previous to his arrival in Philadelphia for the convention, Pierce had been in New York, "serving his state in Congress." Currently a well-to-do merchant in Savannah, Pierce had been an artillery officer in the Revolution, and aside from these two facts, little else is known of him.

Since George Washington had very little to say about the questions that concern us, we need only mention in passing

that he came to Philadelphia as a delegate from Virginia and was unanimously chosen to preside over the convention. The great General was too renowned for Pierce to feel the need of saying much about him. Since we have already recorded a certain amount of Pierce's praise of Wilson, we may proceed to the one man who may possibly have surpassed Wilson in his effort to bring liberty and freedom to the American people through the new Constitution. That man was James Madison, Wilson's strongest ally in the fight. For Madison, Pierce has nothing but praise. This Virginian, he tells us, is a perfect blend of politician and scholar, a man whose greatness is universally acknowledged. "In the management of every question, he took the lead in the convention, and tho' he cannot be called an orator, he is a most agreeable, eloquent, and convincing speaker." Madison had, perhaps, a more accurate knowledge of our nation's affairs than anyone else in the Union. Universally considered one of the ablest members of Congress, he was looked upon as a perfect gentlemen, modest, even-tempered, "easy and unreserved" among his acquaintances.

Is it more than a coincidence that Roger Sherman, who is to play the "villain" in our drama to some extent, should be called by Pierce the oddest-shaped character that he had.

2. Van Doren, 37
3. Tansill, 106
ever met, awkward, unmeaning, and unaccountably strange in his manner. Though his train of thought was regular, deep and comprehensive, his vulgarity in public speech, together with his New England accent, was offensive to the southern gentleman, who considered "everything that is connected with him grotesque and laughable." Sherman rose from the bench of a shoemaker to the position of a judge in Connecticut, where he discharged his office with honor and credit to himself, and with benefit to the community. Sherman's colleague, Oliver Ellsworth, also sat on the bench. At 37 years of age, he was a judge of the supreme court in Connecticut. Of deep understanding and copious learning, he was most attentive to duty and eloquent in debate, being especially good at retort. 4

Next we come to Alexander Hamilton of New York, who although he plays a comparatively minor role in our study, yet his general importance warrants some treatment of him. Pierce tells us that "he unites a clear judgement and the ornaments of fancy," and since he is both engaging and convincing in his speech, the "Head and Heart concur in approving him." Though his voice is too feeble to make him a really great orator, he is, nevertheless, a finished scholar, and after a thorough study of his subject, he always brings forward ideas charged with interest to his listeners. While his manner in

4. Ibid., 97, 98.
general seems to be a bit stiff and vain for a man of 33, yet his words held the attention of any audience.5

We cannot overlook Wilson's colleagues in the Pennsylvania delegation, especially Benjamin Franklin. Pierce considered him the greatest philosopher of the age. After inquiring to some extent into Franklin's Deism, we are inclined to think that the age must have been barren of philosophers, for his studied resistance to a closer examination of the relationship of the Supreme Being of his Deism to Jesus Christ, his model of manhood, makes us question his sincere pursuit of the truth. Perhaps Pierce means Franklin was the greatest scientist or the greatest inventor of his age, for elaborating on his statement, he tells us that "the very heavens obey him and the Clouds yield up their lightning to be imprisoned in his rod." Let posterity judge Franklin's worth as a politician, says Pierce, for he certainly does not shine as a speaker, nor does he seem to let politics engage his attention. Yet Pierce considers him an extraordinary man, inasmuch as he "tells a story in a style more engaging than anyone (Pierce) had ever heard."6 We are posterity, and we may say that Franklin was a far greater politician than scientist or philosopher, and so Pierce, the contemporary has misjudged the man. By the time

5. Ibid., 98, 99.
6. Ibid., 100.
the Philadelphia convention opened, the 82 year old Franklin had indeed seen his day, and it is generally agreed that he contributed little in the way of thought, yet his consummate tact and uncanny ability in handling a situation saved the convention from disaster on more than one occasion.

Wilson's other noteworthy colleague from Pennsylvania was Gouverneur Morris, whom Pierce characterizes as a genius who combines every kind of talent, thereby rendering himself conspicuously outstanding in debate. Yet in spite of his ability as an actor and speaker, he is often inconsistent and seldom pursues a straight line of reasoning. Morris had once been a learned and well-informed lawyer, but had deserted the profession to join forces with his namesake, Robert Morris, as a merchant.7

The first of the Delaware contingent to be considered is John Dickinson, who was known in the period before the Revolution for his "Farmer's Letters." Pierce refers to him as a scholar and a man possessing extensive information, who was, nevertheless, greatly overrated as an orator. Pierce had been urged by others to pay the greatest attention to Dickinson whenever he spoke, but found him quite disappointing. "With an affected air of wisdom he labors to produce a trifle," says Pierce, comparing Dickinson's incorrect

7. Ibid., 101, 102.
language and discordant gestures to expiring flames that show themselves and die out, leaving a bad impression on the listeners. However the 55 year old Quaker is a good writer, and Pierce predicts that he would be considered one of the most important characters in the United States. We, who are wise after the fact, may be pardoned for noting that once again Pierce is wrong as a prognosticator, for Dickinson's star had reached its zenith with the publication of his "Farmer's Letters." 8

The other two Delaware men who concern us are given but brief mention. Gunning Bedford, Jr., is described as a lawyer of some note, with a bold and commanding manner, though possessed of a warm and impetuous temper, precipitate in his judgment, and also, Pierce adds, quite corpulent for his 32 years. George Read, a capable judge and lawyer, is, nevertheless hard to put up with as a speaker. His voice is so feeble and his articulation so poor that real patience is required to listen to him. While he is a sickly man, he is nevertheless known to possess an excellent character, and is well-liked by all who know him. Luther Martin, the 34 year old Attorney General for the state of Maryland, is referred to as well-informed, but so prolix in speech that he wearies the audience that has to hear him. 9

8. Ibid., 102.
9. Ibid., 102, 103.
Rufus King and Elbridge Gerry represented Massachusetts. King was a student of the classics and a capable lawyer, who had served three years in the Continental Congress previous to 1787, and enjoyed the whole-hearted confidence and approval of those who worked with him. A handsome man in his early thirties, his speech is strong and expressive, his arguments clear and convincing. Pierce would rank him with the "luminaries" of the period. Gerry is known for his integrity as well as for the precious quality of perseverance. With a great deal of self-confidence, he delves into his subject in minute detail, yet his speech is hesitating and laborious. He is no match for King in the realm of sound argument, but his patent sincerity and patriotism wins the audience. Gerry is a merchant and well-to-do property owner in private life, and if Pierce could have foreseen the future, he would undoubtedly have told us how Gerry would go to France ten years later with Charles Pinckney and John Marshall for the negotiations with Talleyrand which have come to be known as the X Y Z affair.¹⁰

Next in line are the proponents of the New Jersey plan, William Paterson and David Brearley. Paterson is a man "whose power breaks in upon you and creates wonder and astonishment." A 34 year old man of slight stature, he is also

¹⁰. Ibid., 96, 97.
a scholar, a lawyer and orator, definitely capable, yet of a modest disposition that inclines everyone toward him. "He is very happy in the time and manner of engaging in debate, and never speaks unless he understands his subject well." Brearley, while a judge of the New Jersey supreme court, is neither a brilliant thinker nor is he a first-rate orator. Yet he is a man of solid character, ranking high in the esteem of his constituents with every virtue to recommend him.  

In addition to Washington and Madison, the two great Virginians already mentioned, there are two others from the Old Dominion who figure prominently in our dramatis personae. They are Edmund Randolph and Colonel George Mason. Randolph was at that time Governor of Virginia, a young man of 32, a polished gentleman with all the equipment desired for the scholar and the statesman. Randolph would introduce the Virginia plan into the convention, and it might well be called the Randolph plan for it was largely his brain child. It would be Randolph in opposition to Wilson on the question of the single Executive, the Virginian believing, for some reason or other, that we would be better off with three Presidents in office at the same time. His colleague, Mason, was an experienced politician, and, at the age of 60, was, nevertheless, a strong physical specimen, who possessed a clear intellect.

11. Ibid., 99, 100.
and commanded a wealth of information.12

Hugh Williamson of North Carolina will enter a later chapter to interrogate Wilson about his ideas on an Executive council, and also to introduce a motion for veto power for the President alone. The motion will be seconded by Wilson, and will signify Wilson's willingness to drop his crusade for a joint veto by the President and Judiciary. Williamson, we are told, is an attentive listener with a large amount of good humor and pleasantry. A man of manifest good manners, he was lacking, however, in the gifts that make a good speaker. Williamson's colleague, William Davie, would make a motion in favor of impeachment of the President which Wilson would support. Davie was a quiet man whose opinion was always respected, and at the age of 30, he was Williamson's junior by 18 years. John Rutledge, a chancellor of the state of South Carolina, had gained a distinguished reputation at the beginning of the Revolution, and by 1787 had come to be a wealthy man as well as an able orator, yet Pierce thought his speech too rapid to be called agreeable. Pierce Butler of South Carolina, though neither politician nor orator, enjoyed the reputation of a virtuous character, and was a member of one of the state's wealthiest families.

12. Ibid., 104, 105.
Finally we come to the problem of distinguishing Charles Pinckney and Charles Cotesworth Pinckney. Both are from South Carolina, and both are referred to in Madison's notes as "Pinckney of South Carolina." This ambiguous person will appear once or twice in later chapters, arguing both for and against measures proposed by Wilson, yet we do not think the role in our cast important enough to warrant an extensive search into his identity. Pierce distinguishes them for us, to some extent, telling us that Charles Cotesworth Pinckney was a high-ranking officer in the Continental army during the Revolution, and made an enviable reputation for himself as a soldier. Well-educated southern gentleman and learned barrister though he was, he seemed to Pierce little more than mediocre as a speaker. 13

The other Charles Pinckney was a young man of 24, Charles Cotesworth's junior by 16 years, who, for his age, had an amazing knowledge of what we would call today the social sciences. Government, History, Philosophy and Law were his meat and drink. He had demonstrated his worth as a member of Congress, and had the knack of serious application and industriousness that surpassed most of the older men. "He speaks with neatness and perspicuity," says Pierce, "and treats every subject fully without running into prolixity." 14

13. Ibid., 107.
When this preview of the convention was conceived, we thought that we might line the men up in order, depending upon their siding with or against the views of James Wilson in the convention. Since Wilson was a staunch supporter of the Virginia plan, such a line-up appeared feasible; yet on closer examination we have found that the various delegates were not altogether consistent, and frequently one man would defend the Randolph plan on one point and attack it on another. Even Randolph himself would support the plural Executive as proposed in the Paterson plan. Similarly the same man would be found to support Wilson in one case, but bitterly oppose him in another. Consequently a digest of the Virginia and New Jersey plans will have to serve as a guide to the issues before the house, and we think that the main points of these two plans are adequate to illustrate the status quoestionis of the gathering.

Randolph introduced the Virginia plan into the convention on May 29, 1787, and it was taken as a basis of the work to be done. Picturing the situation that existed under the articles of Confederation, Randolph pointed out the need of an essential change in its make-up. Especially significant were his words that "the federal government could not defend itself against the incroachments from the states," and "it (presumably the Articles, says Dr. McLaughlin) was not even paramount to the state constitutions, ratified as it was by
many (sic) of the states."\(^\text{15}\) McLaughlin can find no other interpretation for this statement than that the Virginia delegation was convinced that the new scheme of union must be based on a constitution which, as far as it went, was to be superior to the state constitutions.\(^\text{16}\) In general the Virginia plan declared the need of correcting and enlarging the articles of Confederation, and announced that "the rights of suffrage in the national legislature ought to be proportional to the Quotas of contribution, or to the number of free inhabitants ..." It provided for a bicameral legislature, the members of the first branch to be elected by the people, and the second branch to be chosen by the first, out of a number of persons nominated by the state legislatures. It also provided for a national executive and judiciary, as well as a council of revision made up of the Executive and a convenient number of the Judiciary.\(^\text{16}\) In short, the plan would offer amendments to the existing system, but the new government would stand on the will of the people rather than on the authority of state governments. This plan, which would give the national government power to do whatever the states were incompetent to do, was in the minds of the more clear-sighted delegates anxious

16. Ibid., 155, 156.
for a satisfactory union, the answer to the main problem.

Finally it may be said that the Randolph plan contained three definite answers to the problem. In the first place it would give the national legislature power to negative state laws; secondly it could "call forth the force of the union against any member of the union failing to fulfill its duty under the articles thereof," and lastly the "Legislative, Executive and Judiciary powers within the states ought to be bound by oath to the support the articles of the union."17

The Virginia plan had furnished much-needed guidance during the all-important first two weeks of the convention, but as time went by, it became clear to some delegates that the plan threatened harm to the interests of certain states. On June 15, William Paterson offered the convention a set of resolutions which he wished to substitute for these of Mr. Randolph, and this has come to be known as the Paterson plan, or New Jersey plan, though the delegates from Delaware, Connecticut, New York, and even Luther Martin of Maryland had a hand in them.

The motives for the various states' opposition to the Virginia plan were not identical. Delaware, for instance, had been under the administration of Pennsylvania until 1776.

17. Ibid., 157. see also Tansill, 116, 117, 118, 119.
and "being so new to statehood, it was determined to remain a state. Being so small, it was afraid of being swallowed up." Maryland's opposition, on the other hand, was due to Luther Martin's stubbornness because of what he considered a threat to the individual states. Consequently Maryland's vote was divided on every question.18

According to the New Jersey plan, there were but few changes in the Articles that would affect the sovereignty of the separate states. It would grant Congress the power to levy import duties and stamp taxes, and to regulate trade with foreign nations, but it would leave offenders to be tried in the court of the state where the offense was committed, with the right of appeal to the United States judiciary. There should be an executive authority of more than one person, and to this point Randolph himself would subscribe, though James Wilson would hold out for the single executive. This plural executive, however, would be removable on application of the majority of state executives, and would be ineligible for a second term. The judiciary, consisting of one supreme tribunal, would be appointed by the executive to hold office during good behavior. All acts of Congress as well as treaties would be the supreme law of the existing states insofar as those acts related to the states or their citizens.

18. Van Doren, 84.
and the executive could "call forth the power of the Confederated states" against any offending state or against any body of men in any state. Provision should be made for admission of new states, and the rule of naturalization should be the same in every state.19

We have already mentioned that the New Jersey plan was championed by William Paterson, and that James Wilson tenaciously upheld the Virginia plan. The heated debate that took place on June 9 between these two stalwarts provided one of the most dramatic episodes of the convention. Let us proceed, therefore, to Philadelphia, and follow Wilson in his effort to defend the sovereignty of the American people.

19. Van Doren, 89.
CHAPTER V

ELECTION OF PRESIDENT AND CONGRESS

On the floor of the Philadelphia Convention, Wilson contended in season and out of season that the people of America should be the solid basis on which the structure of the new government should rest. Consequently he insisted that the Executive, as well as both Houses of the Legislature, be elected by the people. The Convention opened on Monday, May 14th, 1787. Little more than two weeks passed when the question was raised about the manner in which the Executive should be appointed. Wilson was the first to speak on the question, and he declared himself in favor of election by the people "at least in theory," but he admitted that, at that time, he had no specific plan to offer that would not appear "chimerical." He did urge, however, that experience had proved, especially in New York and Massachusetts, that an election of the first magistrate by the people was both "convenient and successful."2

Roger Sherman of Connecticut objected that an Executive who was independent of the legislature could be nothing but a tyrant, and therefore he opposed Wilson with the motion

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2. Ibid., 134.
that the legislature appoint the President, but at this point Wilson seems to have drawn a red herring across the path of discussion by moving that the Executive's term of office should not exceed three years. Before anyone had a chance to second the motion, Pinckney of South Carolina declared himself in favor of a seven year term of office. Then, just as Pinckney had spoken before anyone had seconded Wilson, so Roger Sherman entered the discussion before Pinckney's motion was seconded. Sherman supported Wilson in this instance, urging a three year term for the President, and declared himself strongly opposed to the doctrine of rotation, since it kept the most qualified men from office. A supporter of Pinckney was immediately found in George Mason of Virginia, who demanded at least seven years for the Presidency, but he was quick to add his disapproval of re-eligibility, claiming that it would lead to a "false complaisance on the side of the legislature towards unfit characters." while prohibiting it would eliminate any temptation on the part of the Executive to intrigue with Congress for re-appointment. A fourth speaker was Bedford of Delaware, who deplored the pitiable state of the country if the President "did not have the qualifications ascribed to him, or should lose them after his appointment," and asked for

3. Ibid., 134.
a triennial Presidential election and for ineligibility after a period of nine years. The four speakers consumed so much time in discussing this proposal and voting against it, that Wilson was able to prepare a new attack in favor of election by the people. He desired to have both branches of the legislature derived from the people, and the Executive also, and he wanted no intervention from the state legislatures, so that, as far as possible, Congress and the President would be independent of each other and of the individual states.

The leader of the opposition continued to be Roger Sherman of Connecticut. On Tuesday, July 17, Wilson took the floor to summarize and answer the two arguments that carried the greatest weight against his own proposal. The first of these was the comparison Sherman made with the election of the first magistrate in Poland, where confusion, anarchy, and a general upheaval attended the election. Wilson pointed out that circumstances in Poland and America were "totally dissimilar," since the wealthy Polish nobles would appear, each with his own little army, and threaten one another as well as every voter present. Another difference that Wilson pointed out was that the Polish elections were held in one place, which was not the case in America. The second argument that had been urged was that a majority of the people would never concur in

4. Ibid., 134.
5. Ibid., 135.
the election of the President. To this the Pennsylvanian responded that a concurrence of the majority was not a necessary principle of election nor was it required as such in any of the states. But allowing the objection all its force, it may be obviated by the expedient used in Massachusetts where the legislature, by a majority of voices, decides in case a majority of the people do not concur in favor of one of the candidates.6 He concluded with his big objection against appointment of the President by Congress, namely that in that case the Executive would be too dependent to stand as mediator between the intrigue of the Representatives and the interests and liberties of the people.7

Like Gouverneur Morris, his colleague from Pennsylvania, a few agreed with Wilson and urged that his motion be passed, but the majority, in the quaint language of Madison's notes, passed it "in the negative." Another opportunity to urge the point presented itself on July 19. Under consideration was the motion to render the Executive ineligible for a second term of office. Rufus King of Massachusetts argued against such ineligibility, and in his speech, he said that in such cases the people at large would choose wisely. But since he was one of the proponents of the theory that the people would never concur in favor of any one man, he compromised with

6. Ibid., 393.
7. Ibid., 393.
Wilson to the extent of favoring a group of electors chosen by the people to appoint the President. When William Paterson of New Jersey followed with the suggestion that the Executive be appointed by electors chosen by the states in a ratio which would allow one elector to the smallest, and three to the largest states, Wilson could not resist the sardonic remark that it seemed to be the unanimous sense that the Executive should not be appointed by the legislature, unless he rendered ineligible for a second term, and that he "perceived with pleasure that the idea was gaining ground, of an election immediately or immediately by the people."

It was at this point that James Madison of Virginia came to the aid of Wilson with a cogent argument. If, in a free government, the Legislative, Executive, and Judiciary powers are to be separately exercised, declared Madison, they are also to be independently exercised. The Executive, even more than the Judiciary, should be independent of the legislature, which would be impossible if he were to be appointed to office by Congress and a coalition of President and Congress would be "immediately and certainly dangerous to public liberty." Consequently the President should be drawn from some source and held by some tenure that would keep him free with regard to the national legislature. An appointment of the President by Congress would certainly open the way for

8. Ibid., 412.
many underhanded dealings, and there was no reason for exposing the Executive to temptation if another adequate means of appointing him could be found. This other adequate means could be found in the people at large, for the people could only know and vote for a person so capable that he would have come to the general attention and esteem of all. Madison saw only one difficulty here, namely that due to the negro population the South could then have little influence on the election, yet the substitution of electors would obviate this difficulty and in general would be liable to the fewest objections. 9

July 24 gave Wilson yet another chance to oppose the appointing of the President by Congress, and this time he found that the number of his backers had increased. He told the convention that his opinion remained unchanged that "we ought to resort to the people for the election." 10 But on September 4, he was willing to admit that the election of the Executive was "the most difficult question on which we all have to decide." 11 It was on that day that a special committee of eleven men, to whom sundry resolutions had been referred on August 31st, brought in its report. Of the nine resolutions agreed to by this report, we are concerned chiefly with

9. Ibid., 412.
10. Ibid., 448.
11. Ibid., 664.
resolution four (4), which reads:

After the word 'Excellency' in sect. I, art. II to be inserted. 'He shall hold his office during the term of four years, and together with the vice-President, chosen for the same term, be elected in the following manner, viz. Each state shall appoint in such manner as its Legislature may direct, a number of electors equal to the whole numbers of Senators and members of the House of Representatives to which the State may be entitled in the Legislature. The Electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves; and they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify and transmit to the seat of the Gen'l Government, directed to the President of the Senate - The President of the Senate shall in that House open all the certificates; and the votes shall be then and there counted. The Person having the greatest number of votes shall be the President, if such number be a majority of that of the electors; and if there be more than one who have such majority, and have an equal number of votes, then the Senate shall immediately choose by ballot one of them for President; but if no person have a majority, then from the five highest on the list, the Senate shall choose by ballot the President. And in every case after the choice of the President, the person having the greatest number of votes shall be vice-President; but if there should remain two or more who have equal votes, the Senate shall choose from them the vice-President.12

It is hardly to our purpose to compare this resolution with Article II, section I, of the finished Constitution of the

12. Ibid., 660.
United States, though such a comparison might prove instructive. Suffice it to recount that James Wilson thought the plan a valuable improvement on the plan to appoint the President by the legislature. He not only admitted that the election of the President is a difficult question, but also confessed that "he had never made up an opinion on it entirely to his own satisfaction."13 One cannot help thinking that it was this part of the Constitution that he was referring to later on, when he told the citizens of Philadelphia that "there are some parts of it, which, if my wish had prevailed, would certainly have been altered."14

As we have said, it was not only the President that he wished to be elected by the people, but also both Houses of the legislature. Let us briefly follow him in his campaign to insure such election of the members of the House of Representatives. On May 31, 1787, about two weeks after the convention had opened, he used the metaphor of erecting the "Federal pyramid," which is so often quoted in connection with the part played by him in the convention. In his speech he insisted that the most numerous branch of the legislature should come directly from the people, and that if we wished to raise the federal pyramid to a considerable altitude, it would have to

13. Ibid., 664.
14. Adams, 159
be given as broad a basis as possible, for no government, especially no republican government, could long exist without the confidence of the people. He urged that all conflict between the general and local governments should be obviated as far as possible, and that it was wrong to increase the weight of the state legislators by making them the electors of the national legislature. He further declared that "on examination it would be found that the opposition to federal measures had proceeded much more from the officers of the states than from the people at large." 15

Here again Madison entered the debate and supported Wilson, saying that it was essential to free government that at least one branch of the national legislature be chosen by a popular election. Madison held that the House of Representatives, the Executive and the Judiciary should be elected by the people. He observed that in some states one branch was composed of a body of men already removed from the people by electors. This was going far enough, he thought. For if the one branch of the legislature, especially of the national legislature, were elected by the state legislature, and if the second branch were in turn elected by the first branch, and the Executive elected by both branches of Congress, it is plain that there would be no such thing as government by the people, especially since

15. Tansill, 126.
further subordinate appointments would be made by the Executive. 16

Elbridge Gerry of Massachusetts, however, could not agree with Madison, and cautioned against taking maxims too freely from the British constitution and applying them to our country in which the situation was quite different. Gerry would offer no objection to an election by the people, if by such an election was meant that the people might nominate a certain number from whom the state legislature should choose, but he called upon experience to witness that state legislatures drawn immediately from the people, did not really possess the people's confidence. Though such an argument seems groundless to us, Pierce Butler of South Carolina supported Gerry, calling election by the people impractical. Wilson and Madison prevailed, however, by a vote of 6 to 2. He reasoned that since the citizens of the states were less concerned with who exercised power over them than with how well this power was exercised, any real opposition to the measures of the federal government would come rather from the state governments than from the citizens of the states. After all it would be the state officers who would be the losers of power. He also felt sure that the people would be more

16. Ibid., 126.
attached to the national government than to the state government as being "more important in itself and more flattering to their pride." On Wednesday, June 6, when Charles Pinckney of South Carolina moved "that the first branch of the national legislature be elected by the state legislature, and not by the people," and the motion had been seconded by John Rutledge, also of South Carolina, Wilson opposed the motion, stating that he wished for vigor in the new government, and he was quick to add that that vigor should "flow immediately from the legitimate source of all authority," the people. The government ought to possess, he said, not only the force, but also the "mind and sense" of the people, and the legislature should be "the most exact transcript of the whole society." He pointed out that the only reason for representation is the impossibility of the people acting collectively. To the objection that popular elections gave bad men the opportunity to intrigue themselves into office, Wilson replied that there was little danger of improper elections if made by large districts.17

Roger Sherman was once again the adversary. If they wished to abolish the state governments, said Sherman, then elections ought to be made by the people, but if state governments were to continue in harmony with the national government, 17

17. Ibid., 160.
elections to the latter should be made by the former. He thought that election of the state legislature by the people was sufficient reason for calling our government a democracy, and by enjoying such a right, the people were sufficiently participating in the national government. Admitting that wars, treaties, and foreign commerce should be entrusted to the national government, all other powers could be best handled by the states as far as Sherman was concerned.

Madison would again come on the scene to second Wilson, but another Virginian spoke first. He was Colonel George Mason. With an adequate statement of the vital issue confronting the convention, he pointed out that under the Articles of Confederation, Congress represented the states rather than the people of the states, and the acts of Congress operated on the states rather than on individuals. They had convened, however, precisely in order to rectify that abuse. Under the new government the people were to be represented; consequently they should be allowed to choose their representatives. Like Wilson, Mason was convinced that there was a better chance for proper elections by the people if divided into sufficiently large districts, rather than by the state legislatures.18

Madison followed Mason and once more urged that a

18. Ibid., 161.
popular election of at least one branch of the legislature was essential to a free government, and explained that if held under proper regulations, such an election would secure better representatives than would appointment by the state legislature, and it would attain the further good of avoiding too great an agency of the state governments in the general government. He protested that Roger Sherman, in his previous speech, had missed the point entirely, and concluded that it was incumbent on the convention to remedy "all the ills which have been experienced." 19

John Dickinson of Delaware joined forces with Wilson and Madison, declaring that the combination of the state governments with the national government was "as politic as it was unavoidable." He demanded that at least one branch of the legislature be elected by the people, and after a brief eulogy of the British constitution, claimed that our Senate should be put through such a process of refining "as will assimilate it as near as may be to the House of Lords of England." While Dickinson demanded a strong central government, he admitted that a "considerable agency in the system" should be left to the states. 20

An extreme point of view was exhibited by George Read, Dickinson's colleague from Delaware, who desired that

19. Ibid., 162.
20. Ibid., 163.
the national government should completely swallow up all the states, and prophesied that it would soon do so. This was an extreme view to which Wilson would never subscribe. After William Pierce of Georgia and Charles Pinckney of South Carolina had offered their views on the matter, Wilson said that he would not have spoken again so soon, had it not been for Read's insisting that state governments ought to be abandoned. Wilson was eager to make it clear that he did not agree with such an extreme position, for he could see no incompatibility between that national and state governments provided that the latter "were restrained to certain local purposes." Wilson, however, called on history to show that the general government has always been destroyed by the usurpations of the units composing it. Success was with Wilson at this point, for Pinckney's motion to elect the Senate by the state legislatures was defeated by a vote of 8 to 3.

On the 21st of June, Pinckney of South Carolina moved the previous resolution and Luther Martin of Maryland seconded the motion. Four speakers were to give their opinions on the measure before Wilson reasserted his conviction that the election of the House of Representatives by the people is not merely the cornerstone, but the very foundation of the whole building. The first of the speakers was Alexander

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21. Ibid., 164.
22. Ibid., 165.
23. Ibid., 252.
Hamilton of New York, who objected to Pinckney's motion on the score that transferring the election from the people to the state legislature would vitiate the purpose of the whole convention by increasing state influence, which, in Hamilton's estimation, could not be checked too carefully. George Mason spoke next, affirming that election by the people was a necessity, for it was part of the democratic principle which must actuate at least one part of the government despite some inconvenience. It is, according to Mason, the only security for the rights of the people. Even Sherman admitted that he was willing to let things stand as they had been voted, though he would have preferred election by the state legislatures. The lone dissenter was John Rutledge of South Carolina, who could see little difference between a mediate and immediate election by the people, since "it is the same thing to act by oneself as to act by another;" and an election by the legislature would be more refined than an election by the people, and more likely to correspond with the mind of the whole community. It was then that Wilson said that the state legislatures were "not actuated by the sentiment of the people; (but have) an official sentiment opposed to that of the Genl Govt and perhaps to that of the people themselves;" consequently the difference between a mediate and immediate election was worthy of
notice.

So anxious was Wilson to make the House of Representatives an "effectual representation of the people at large," that he fought for an annual election of that body. He claimed that "this frequency was most familiar and pleasing to the people," and would be no more inconvenient to them than the triennial elections, since people in every state have annual elections with which the election of national representatives might be made to coincide.25

If Wilson battled tirelessly for the election of the President and lower House by the people, he worked no less diligently that they should elect the members of the Senate. As early as May 31, he made it clear that he would oppose both a nomination to the Senate as well as election to the House of Representative by the state legislature. Admitting that he was not prepared with a specific proposition, he insisted that both branches of the legislature be chosen by the people. He threw out as a suggestion the method of choosing the senate of New York, namely, unite several election districts for one branch, in choosing members of the other branch.26

On the 7th of June he explained that if one branch of

24. Ibid., 253.
25. Ibid., 255.
26. Ibid., 128.
the new government should be chosen by the state legislatures while the other was elected by the people, the two would rest on different foundations, with consequent dissensions arising between them. Finally, on June 25, in taking a stand for electing the Senate by the people, he declared that when he considered "the amazing extent of the country -- the immense population which is to fill it, the influence the government we are to form will have, not only on the present generation and their multiplied posterity, but on the whole globe" he was lost in the magnitude of the object. He considered "the project of Henry IV" a mere "picture in miniature" of the great portrait yet to be exhibited.

With this he reiterated his opposition to the election of Senators by the state legislature, and called attention to the twofold relation in which the people would stand, first as citizens of the United States, and then as citizens of their particular state. The federal government was meant for them in their first capacity, and the state government in their second.

27. Ibid., 168.
28. Ibid., 274. See also Harlan, 499. "...perhaps the hopes of free men everywhere depend upon the right of the national government to exercise the powers belonging to it under the Constitution. And the right becomes more important as our nation expands in population and territory...Our nation will be, if it has not already become, the most powerful factor in all movements that affect the peace of the world and the rights of man." (Given in 1900) cf. Supra p. 16 n.33.
"Both governments," he insisted, "were derived from the people - both meant for the people - both therefore ought to be regulated on the same principles." He added the caution that in forming the new federal government we should prescind as much as possible from the state governments, because the election of Senators by the state legislatures could only introduce and foster local interests and prejudices, since the federal government should not be merely an assemblage of states, but a union of individuals for certain political purposes. The individuals, therefore, not the states, ought to be represented in the government. 29

He concluded with a plea for proportional representation, for the conviction seemed to burn within him that it was the only sure way to achieve the goal of a people's government. On at least ten occasions during the course of the convention, Wilson found himself arguing and begging for proportional representation.

29. Ibid., 275.
CHAPTER VI

PROPORTIONAL REPRESENTATION

On Saturday, June 9, Wilson came to grips with William Paterson of New Jersey. Paterson, who had previously taken little part in the discussion, now, according to Van Doren, "skillfully chose his time to attack the Virginia plan at its most controversial point." It was Paterson who introduced the motion to resume discussion of the rule of suffrage in the national legislature. His colleague from New Jersey, David Brearley, had seconded the motion and praised the Articles of Confederation for deciding that each sovereign state should have one vote. Admitting that the substitution of a ratio seemed fair enough on the surface, he declared that on deeper examination it would be found to be both unjust and unfair. He enumerated the many large states and compared them to smaller states like his own. Affirming that he was both astonished and alarmed when the proposition for destroying the equality of votes was advanced, he claimed that the only true remedy was to spread out a map of the United States and divide the territory into thirteen equal parts.

The stage was now set for Paterson, who objected to proportional representation as striking at the very existence

1. Van Doren, 72.
of the smaller states. He doubted the people's ability to think for themselves as Americans and not merely as individuals, and would admit neither the assumption that national government should operate directly on the people, nor its conclusion that the people should be allowed to elect their representatives. Alluding to Wilson's hint that the larger states might be forced to unite by themselves if the smaller states refused to concur, Paterson said that they might unite if they pleased, but they could not compel others to do likewise. He promised that New Jersey would never unite under a plan of proportional representation, and that he would do everything in his power to defeat the plan both in Philadelphia and back in New Jersey. Wilson then voiced his principle that all authority comes from the people, and from this premise, he concluded that equal numbers of people should have equal numbers of representatives. Sarcastically he inquired whether a citizen of Pennsylvania was not the equal of a citizen of New Jersey, or whether "$150 of the former (are required) to balance 50 of the latter?" He then grew indignant and threatened that, if New Jersey would not confederate according to the plan before the House, then Pennsylvania would join the union under no other plan. To the argument that each state is sovereign, and therefore all are

2. Ibid., 183.
equal, he replied that each man is naturally sovereign over himself, and all men are, therefore naturally equal. "Can he retain this equality when he becomes a member of a civil government? He can not. As little can a sovereign state, when it becomes a member of a federal government." If New Jersey will not part with her sovereignty, it is vain to talk of government. Van Doren reminds us that we have only the words taken down by Madison and others to go by in our reconstruction of the scene, and that they are only the gist of what Wilson and Paterson really said. But "there is fire in their brevity; sharp conflict in their counter-defiances. There was a new excitement in the room when the question was postponed and the house adjourned till Monday the 11th."

On June 11, Wilson joined King of Massachusetts in a motion "that the right of suffrage in the first branch ought not to be according to the rule established in the Articles of Confederation, but according to some equitable ratio or representation." After this motion was carried, he moved, and the move was seconded by Pinckney of South Carolina, to add the following:

...in proportion to the whole number of white and other free Citizens and inhabitants of every age, sex, and

3. Ibid., 184
4. Van Doren, 75
5. Ibid., 185.
condition including those bound to servitude for a term of years, and three fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes, in each state.6

The motion was agreed to by a majority of nine to two.

Two-and-a-half months passed before the same question engaged Wilson's attention once more. On the 23rd of August, Hugh Williamson of North Carolina attacked the power of the federal government to negative state laws, only to meet with Wilson's splendid oratory and sound logic. The power to negative state laws was, in his opinion, the "keystone wanted to compleat the wide arch of government we are raising." To the argument that self-defense was needed by the states, he retorted "federal liberty is to states, what civil liberty is to private individuals. And States are not more unwilling to purchase it, by the necessary concession of their political sovereignty, than the savage is to purchase civil liberty by the surrender of his personal sovereignty," enjoyed by him in the state of nature.7

In conclusion he reminded the convention that it was its job to correct the abuses of the Articles, and that one glaring vice in the present set-up was the lack of "effectual

6. Ibid., 189
7. Ibid., 176.
control of the whole over its parts." He assured his listeners that there was little danger that the whole would unnecessarily sacrifice a part, but if the part is given opportunity to sacrifice the whole, "will not the general interest be continually sacrificed to local interests?" 8

John Dickinson of Delaware supported Wilson and the power of Congress to negative state laws, for he felt that it was impossible to define the proper and improper use of the negative, and that either the states must be put in danger of being submerged by the federal government or the latter by the former. To leave the power doubtful was certain to open another "spring of discord," and Dickinson was for "shutting as many as possible." 9 His colleague from Delaware, Gunning Bedford, Jr., stressed the serious danger to the small states if the national government were given too much power. Mentioning the rivalries in commerce, manufactures, and other interests, he reasserted Delaware's disadvantage under proportional representation, and now, he pleaded, if the national government can negative state laws, "Will not these larger states crush the smaller ones whenever they stand in the way of their ambitious or interested views?" 10

Addressing himself especially to Bedford, Madison

8. Ibid., 177.
9. Ibid., 177.
10. Ibid., 177.
asked what the consequences of a dissolution of the Union would be to a state like Delaware and this seemed likely if no effective remedy could be found for the present system. "If the large states possess avarice and ambition, would the small states be any more secure when all control of the Natl Govt is withdrawn?" Pierce Butler of South Carolina followed Madison and expressed himself vehemently against the negative as cutting off all hope of justice to the "distant states." The motion for the absolute negative of state laws was defeated by a vote of 7 to 3.\(^{11}\)

A long speech full of facts and figures was delivered by Wilson on Saturday the 30th of June. He began by expressing his surprise that a motion should even be made for allowing each state an equal vote in the Senate, after the principal of proportional representation had been established for the lower House.\(^{12}\) He pointed out to the author of the motion, Mr. Ellsworth of Connecticut, that the votes of the previous day "against the just principle of representation, were as 22 to 90 of the people of America." The question was whether less than \(\frac{1}{4}\) of the United States should withdraw themselves from the Union, or should more than \(\frac{3}{4}\) renounce "the inherent, indisputable, and inalienable rights of men, in favor of the artificial systems of states?" Rhetoric was

\(^{11}\) Ibid., 178.
\(^{12}\) Ibid., 306.
added to Wilson's display of figures. To his statement that, should Ellsworth's plan prevail, it would be in the power of less than 1/3 to overrule 2/3 whenever a question should divide the states, he appended the impassioned queries:

Can we forget for whom we are forming a government? Is it for men or for the imaginary beings called states? Will our honest constituents be satisfied with metaphysical distinctions? Will they, ought they to be satisfied with being told that the one third compose the greater number of states? The rule of suffrage ought on every principle be the same in the 2d as in the 1st branch. If the government be not laid on this foundation, it can be neither solid nor lasting. Any other principle will be local, confined & temporary.13

Before concluding his peroration, he made it clear that the weakness of the Articles of Confederation lay in the fact that they rendered the government inefficient, and that it was the purpose of the present convention to remedy just such a weakness, but if Ellsworth's motion were agreed to, it would leave the United States "fettered as heretofore; with the additional mortification of seeing the good purposes of ye fair representation of the people in the 1st branch defeated in the 2d."14

The question was argued hotly back and forth, and later Wilson admitted that if the smallest states be allowed

13. Ibid., 307.
14. Ibid., 308.
one Senator, with the other states represented in proportion, the Senate would certainly be overcrowded. He said that he was planning for the future, when even the smallest states would include at least "100,000 souls." As a temporary compromise, however, he threw out the suggestion that the large states be given one Senator for each 100,000 persons, and one vote be given the states not yet possessing that number.

If Wilson was willing to compromise, he was by no means willing to let anyone take undue advantage of him. On July 7, when the opposition was pressing hard to limit each state to one vote in the Senate, the man from Pennsylvania replied to Roger Sherman's petition for conciliation, that Sherman's conciliation pertained rather to the representatives than to the people themselves. Such conciliation could be of little consequence unless it insured harmony among the people, and the foundations for such harmony must "be laid in justice and right," that is to say in proportional representation.

The vote went against Wilson in this incident, but the question came up again one week later, July 14, and he pleaded with the convention to reconsider the measure. "What hopes will our constituents entertain," he demanded, "when they find that the essential principles of justice have been violated?

16. Ibid., 312.
17. Ibid., 340.
at the very outset. To him the question was of "such critical importance, that every opportunity ought to be allowed for collecting and discussing the mind of the convention on it." Before the meeting adjourned he asked to be allowed a final word. He began to compare an error in the question of representation to a mistake in the first concoction of a medicine, which must be followed by disease, convulsions, and death. If the matter at hand were such, he continued, that a mistake in the present might be amended in time, he would not fight so hard for his point; but an error in the very beginning would be fatal. He claimed that the justice of the general principle of proportional representation had not yet been disproved, yet they were departing from this principle by giving an equal vote in the Senate to each state. He conceded that they should go to great lengths to preserve the states, but he could not follow the logic of the men who insisted that an equality of votes in the Senate was essential to their preservation.

Other questions with regard to representation arose, and Wilson made his views clear upon them without the generous outpouring of words, statistics, and metaphors that

18. Ibid., 375.
19. Ibid., 376.
20. Ibid., 381.
characterized his fight for proportional representation. One such question was whether or not wealth might not be an excellent basis for representation, since the western states might not be able to send representatives proportional to their numbers. He merely said that he thought wealth an "impractical rule" to go by. Another question was whether or not negroes should be included in the representation. With the flair for dilemma and disjunction that must have made him obnoxious to many, he asked, "Are they admitted as citizens? then why not on an equality with white citizens? Are they admitted as property? then why not other property admitted into the computation?" He was against the including of negroes in the representation, but he later made it known that "less umbrage would be taken" against their admission if they were also included in the rule of taxation.

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21. Ibid., 356.
22. Ibid., 361.
23. Ibid., 365.
CHAPTER VII

STRONG CENTRAL GOVERNMENT

Time and again during the convention, Wilson insisted that the representatives present had been commissioned by the people of the United States to remedy the weakness and inefficiency of the government as it stood under the Articles of Confederation. If there was one conviction that burned within him, it was this, that the people could best be served, and the United States best preserved by a strong central government. As an eminent professor of American Constitutional History tells us, the great need of that time was the recognition of the fact that there was an American people; that there must be one government rising from them and over them; that state selfishness and greed, the bane of the old order, must be checked by making the new government sufficient unto itself. In other words, there must a national state broad in its foundations, with an adequate means of expressing its sovereign will. "It was because Wilson saw all this with clearness that his work in the convention was of the highest order. He had no patience with half-measures or mild palliatives. In the discussion of every detail he bore the fundamentals in mind."2

1. Ibid., 177, 185, 308.
We are not surprised, therefore, to see Wilson enunciate and follow the policy that the "United Colonies" were free and independent states, "not individually, but unitedly" and hence it could not be argued that because the Colonies became independent of Great Britain, they likewise became independent of each other. 3 He assured the convention on June 19, that he did not intend that a national government should swallow up the state governments, but he insisted that the federal legislature be independent of, and have supremacy over all state legislatures. 4

One way in which the federal legislature might exercise that independence and supremacy would be through the power to negative state laws. On June 8, when such a question was before the House, Wilson approved of such power for the federal legislature, but rejected as impractical the suggestion that particular cases be defined in which the negative could be used. Could it not be safely left to the discretion of the national government? He recalled the jealousy and ambition that had characterized the various state governments. "Each endeavoured to cut a slice from the common loaf," he explained, "till at length the confederation became frittered down to the impotent condition in which it now stands." 5 Earlier in the

3. Tansill, 239.
4. Ibid., 237, 258.
5. Ibid., 176.
same speech he had propounded the Lockian doctrine, or better still, Wilson's own improvement on it, that it was much more required by the federal government. "It will be better to prevent the passage of an improper law, than to declare it void when it is passed." 6

Further he held that the new states should not be allowed to interfere with private contracts, and when Rufus King of Massachusetts introduced a motion to that effect, Wilson heartily endorsed it, though his fellow Pennsylvanian, Gouverneur Morris, thoroughly disapproved of the measure. 7

Despite his vigor in furthering measures to insure the supremacy of the United States government over the individual state governments, he insisted on maintaining the well-being of the state, and urged that each state be guaranteed a "republican constitution & its existing laws" in order to secure it against "dangerous commotions, insurrections, and rebellions." 8 In the early days of the convention he affirmed that he could see no incompatibility between the national and state governments provided that the latter were "restrained to certain local purposes," nor could he see any probability of the states being devoured by the federal government. Quite the contrary was the case, as far as he could see, "in all

6. Ibid., 604.
7. Ibid., 628.
8. Ibid., 407.
confederated systems ancient and modern;...the Generality being destroyed gradually by the parts composing it."9

Once again on the 21st of June he repeated that the federal government would not be a menace to the states. He pointed out that any combination on the part of the larger states against the rights of other states would "produce a general alarm" among the other members of the national legislature, which in turn, would quickly spread the word to the various state legislatures and to the people all over the nation. His prepossessing fear, voiced time and again, was that in spite of every precaution, the national government would be in perpetual danger of encroachments from the state governments.10

This fear, founded on experience and a knowledge of history, not to mention a penetrating insight into human nature, goaded him on to a thorough crusade for the strong central government. Perhaps he best expressed this fear, this knowledge, and this insight in a lengthy speech delivered on Wednesday, the 20th of June, which concludes...

...A jealousy will exist between the state legislatures and the general legislature, and the members of the former will have views and feelings very distinct in this respect from their constituents. A private citizen of a state is indifferent whether power be exercised by the general or state legislatures, provided it be exercised most for his happiness. His representative has

9. Ibid., 165. (June 6, 1787)
10. Ibid., 250.
an interest in its being exercised by the body to which he belongs. He will therefore view the National legislature with the eye of a jealous rival.

11. Ibid., 248. cf. n. 76 of this chapter.
CHAPTER VIII
EFFICIENT YET RESPONSIBLE EXECUTIVE

In addition to his unremitting efforts to make the people the basis of the new government by means of a popular election of the President and Congress, by proportional representation and by a powerful national legislature, Wilson brought up a final safeguard of the liberty of the people of the United States in a strong, yet responsible Executive. 1

We have already seen that one of the main advantages to be derived from a popular election of the Executive is to make that branch of government as free as possible from dependence on the states. 2 Once free from the pressure of the state legislatures, to whom some short-sighted members of the convention would have the President owe his appointment to office, the Executive would go a long way toward the efficient discharge of his duties. Wilson, however, saw two other ways to strengthen this most important branch of government. The first was to see to it that the Executive consist of only one person, and the second was to give that person power to negative any laws proposed by Congress. At first he held out for an absolute negative, but later he agreed that a 2/3 or 3/4 majority of Congress might overrule the veto. 3 He also favored

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1. Ibid., 135. cf. supra n.4
2. Ibid., 135.
3. Ibid., 551.
impeachment of the President while in office.\textsuperscript{4}

Wilson's campaign for a single Executive began at the very outset of the convention, on Friday June 1, 1787.\textsuperscript{5} The meeting had scarcely opened when he was on his feet offering the motion, and it was speedily seconded by Pinckney. When Benjamin Franklin then urged each man present to offer his opinion on the matter, Wilson said that a single magistrate would give "most energy, dispatch, and responsibility to the office."\textsuperscript{6} Against those who feared that one man at the head of the government might lead to another monarchy, he denied any parity between the prerogatives of the British monarch and the powers of the proposed Executive office.\textsuperscript{7} But Wilson's argument meant little to John Randolph of Virginia, who resumed the charge that the single Executive was the "foetus of monarchy," and refused to have the "British government as our prototype."\textsuperscript{8}

To this observation, Wilson could only retort that, instead of being the "foetus of monarchy," his suggestion would be the greatest safeguard against tyranny. He then again repudiated the comparison with the British set-up, explaining

\begin{itemize}
\item \textsuperscript{4} Ibid., 421.
\item \textsuperscript{5} Ibid., 131.
\item \textsuperscript{6} Ibid., 132.
\item \textsuperscript{7} Ibid., 132.
\item \textsuperscript{8} Ibid., 132.
\end{itemize}
that, unlike England, the extent of our country was "so great and the manners so republican, that nothing but a confederated republic would do for it."\textsuperscript{9}

Three days later Pinckney opened the meeting with the motion to discuss anew the single Executive. Wilson seconded the motion and began to talk. He attacked Randolph's contention as being levelled not so much against the measure itself as against the popularity of the measure with the people. If Randolph could prove the measure unpopular, Wilson would yield, but Wilson could see "no evidence of the alleged antipathy of the people." Everyone knows that a single magistrate is not a king. And Randolph should remember that even though the thirteen states agree on little else, they all agree on "placing a single magistrate at the head of government."\textsuperscript{10} He would add further that tranquillity, as well as efficiency, demanded one head of the government, for among three equal members he could only predict "uncontroled, continued, and violent animosities, which in their turn would spread through other branches of government to the states and finally to the people in general. Employing a dilemma, he pointed out that if the three members were to have unequal power, then any principle behind opposition to the unity was given up, but if equal power, then

\textsuperscript{9} Ibid., 133.
\textsuperscript{10} Ibid., 145.
making them an odd number would be no remedy. In courts of justice, added Wilson, there are only two sides to a question, but in legislative and executive departments of government, the questions are often many-sided. Each member might espouse his own side and there would be no unity whatsoever.

Roger Sherman then urged the importance of the question, and demanded that it be well thought out before they came to a verdict. He admitted that, as Wilson said, each one of the states was headed by a single magistrate, and he was inclined to agree with Wilson that the same should be the case with regard to the national government; but he thought it worthy of mention that in each state there was also a Council of advisers without which the first magistrate could not act. Sherman thought a Council necessary and pointed to the fact that in England the King has a Council, and while it is appointed by the King himself, its advice is sought and it is a means of gaining the people's confidence. When Hugh Williamson of North Carolina asked Wilson if he would annex a Council for his single Executive, Wilson replied that such a Council "oftener serves to cover than to prevent malpractices."

Elbridge Gerry dealt the death blow to the policy of a triple Executive, comparing it to a general with three heads. The single Executive won out by a vote of 7 to 3.12

11. Ibid., 146.
12. Ibid., 146.
We have already mentioned that Wilson, in the early part of the convention, held out for an absolute negative of legislation for the President. On the same June 4 on which he opposed Randolph for the single Executive, he was on the alert to develop the idea contained in the motion of Elbridge Gerry of Massachusetts "that the national Executive shall have the right to negative any legislative act which shall not be afterwards passed by______parts of each branch of the national Legislature." Wilson said that the motion didn't go far enough, and that an absolute negative was necessary for the President, lest Congress "at any moment sink it (the Presidency) into non-existence." He would suggest an absolute negative to be held jointly by the Executive and Judiciary. He then made a motion, seconded by Alexander Hamilton of New York, to strike out from Gerry's motion the part which read, "viz, wch sl not be afterwds passed unless by______parts of each branch of the National legislature." This would give the Executive the absolute negative.

Wilson and Hamilton did not prevail, due chiefly to the opposition of Benjamin Franklin, for Franklin's stories of the racketeering practiced by a certain Governor of Pennsylvania, who possessed an absolute under the proprietary

13. Ibid., 147. The abbreviations are Madison's.
14. Ibid., 147.
government, were too pointed to be disregarded. Of course Wilson denied that the present situation was comparable to the scene of Franklin's stories, and he scored with the argument that the certain Governor of Pennsylvania under the proprietary govern-

ment had not been elected by the people, as would be the case with the President of the United States, but the vote still went against him. It was more than two months later when Wilson showed the first signs of dropping the fight. On the two previous occasions he had suggested that the Judiciary share in the absolute negative, but on the 15th of August he conceded that the negative need not be absolute, and seconded James Madison's motion that "all acts before they become laws should be submitted both to the Executive and Supreme Judiciary departments, that if either of these should object, 2/3 of each House, if both should object, 3/4 of each House should be necessary" to give the acts the force of law.

If he were willing to admit that the negative need not be absolute, Wilson still would not surrender his demand for some efficacious means of self-defense for the Executive, lest he be swallowed up by Congress. On that same August 15, he exposed the prejudices as springing from the "misapplication of the adage that Parliament was the palladium of liberty."

15. Ibid., 149.
16. Ibid., 548.
He went on to say that "where the Executive was really formidable, King and Tyrant were naturally associated in the minds of the people; not legislature and tyranny. But where the Executive was not formidable, the two last were most properly associated." Later in the day Wilson consented to a "3/4 majority of each House" as a requisite for overruling the veto, seconding a motion to that effect by Hugh Williamson of North Carolina. Since in advancing that same motion, Williamson declared that he preferred to give the veto to the President alone, we may presume that Wilson's seconding the motion is an indication that he was content to give the negative to the President alone, and to drop the fight for a joint negative to be held by the Executive and Judiciary.

Finally we come to the question of whether or not the Executive should be impeachable. Although Wilson wanted his President to be both vigorous and efficient in office, he also wanted him to be responsible to the American people. Therefore on Thursday, July 19, he endorsed the proposal of William Davie of North Carolina, agreeing with Davie's statement that to make the President subject to impeachment while in office was "essential security for the good behavior of the Executive." Later in the discussion when Rufus King of

17. Ibid., 550.
18. Ibid., 550.
19. Ibid., 417.
Massachusetts claimed that the "periodical responsibility to the electors" was sufficient security. Wilson replied that if King's ideas were carried to their logical conclusion, then "the Senators who are to hold their places during the same term with the Executive, ought to be subject to impeachment & removal." Wilson's retort is evasive, to say the least, but it illustrates the point we are trying to make, namely that he was definitely in favor of making the President impeachable. This terminates our study of James Wilson's work in the Philadelphia Convention of 1787.

20. Ibid., 420, 421.
CHAPTER IX
CONCLUSION

Now that we have seen something of the significant part that he played, it remains for us to draw conclusions. What has he accomplished? In general we may say that he was an outstanding exponent of the sovereignty of the people of the United States, or to use a phrase in vogue, he was truly the champion of "democracy." To be more specific, we may first of all credit him with having fought a valiant battle to insure a popular election of the President and Congress. But if the people were to be the foundation of the government, they must at the same time be protected from injustice at the hands of those who would constitute the structure rising over them. No better protection could be given them, Wilson thought, than to make proportional representation the law of the land, and, consequently, he was determined to win such representations for Americans, be the adversaries whomsoever they may.

And if Wilson energetically strove to secure for the people the right to elect their rulers, and to be equally represented in the halls wherein the laws which were to govern them would be enacted, he also exercised a fatherly care over the infant American people by giving them a powerful central government.

Professor McLaughlin does not even hesitate to rank James Wilson ahead of Jefferson, as one who most deeply
appreciated the nature of the democratic state. Moreover, speaking in praise of Wilson, he tells us that "it is certainly no attack on the principle of democracy to recognize the homogeneity of the nation." nor is he unappreciative of the nature of democracy who would "give to a government really emanating from the people, power, dignity and vigor," or who would "give to the governmental machinery efficiency in executing the people's will." In commending Wilson, he goes so far as to say that even the democracy of the Jackson era was foreshadowed by "this Scotch philosopher" in the Philadelphia Convention.

We do not find it hard to agree with this opinion, since everything that Wilson pleaded for at Philadelphia was, as far as we can judge today, essential to democracy, or the sovereignty of the people of the United States. James Wilson's foresight in regard to the need of a strong central government has been commended by Justice Harlan in words which, spoken one-hundred and thirteen years after the convention, sound like those of a reincarnate Wilson, risen to remind the people of the twentieth century that he had foretold the future. Throughout the convention, Wilson had insisted that the central government would be assailed from every side, and, unless it possessed

2. Ibid., 18.
3. Ibid., 18.
4. Harlan, Wilson and the Formation of the Constitution, 498. See also Supra n.54 page 46.
colossal strength, it would find itself as vulnerable as were
the Article of Confederation. Speaking at the turn of the
present century, the Justice points out that certainly the
federal government has been stormed time and again, but, be-
cause of the vision that prevailed over short-sightedness in
1787, it has not been weakened by the attacks levelled against
it. 5

And so we conclude our study with the verdict that a
courageous and clear-sighted statesman at Philadelphia mani-
ifested a firm belief in, and played a major part in creating a
government built on the people of America. In final tribute,
we might say that he, more than anyone else, save possible Madi-
son, envisioned the government that has come down to us, — a
government in which the states, though independent of one
another, are subject to the central authority; a government in
which the individual is at one and the same time a citizen of
his particular state as well as a citizen of the United States.
Thus we have the democracy of James Wilson — the sovereignty of

5. Ibid., 598. "We have all been accustomed to hear of the
tendencies of the general government, by its various de-
partments, to encroach upon the rights of the states. There
are some who never weary of saying that the federal judiciary
continually usurps powers that do not belong to it, and seeks
to impair the rightful authority of the states. The truth
is that the national government has been compelled from its
organization, to struggle for the privilege of existing and
exerting its rightful powers. Every exercise of power by the
United States has been narrowly watched, criticized, and often
without reason, opposed, under the pretense that the states
rights were being destroyed."
the American people expressed in the power to elect the President and Congress, in the right of proportional representation, in the protection of a strong central government, and finally in the possibility of impeaching a strong Executive.
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The thesis submitted by Jeremiah E. Connolly, S.J. has been read and approved by three members of the Department of History.

The final copies have been examined by the director of the thesis and the signature which appears below verifies the fact that any necessary changes have been incorporated, and that the thesis is now given final approval with reference to content, form, and mechanical accuracy.

The thesis is therefore accepted in partial fulfillment of the requirements for the Degree of Master of Arts.

January 18, 1949

Signature of Adviser