



# *Flawed Founder*

James Wilson signed the Declaration of Independence and was a key architect of the US Constitution, helped found Penn Law School, and served as one of the first justices of the Supreme Court. He was also a reckless land-speculator—jailed more than once for debt—who died a fugitive.

BY DENNIS DRABELLE

Should a judge decide a case involving a law that he or she previously worked on as a legislator? The answer is obvious: of course not. What about a case calling for interpretation of the constitution that the judge had a hand in drafting? Same result, except perhaps all the more so: the judge should disqualify—or, as lawyers say, “recuse”—herself.

But these are modern-day answers. Back at the dawn of the American republic, no one seemed to mind when a man served in the Continental Congress; signed the Declaration of Independence; played a central role in the writing, debating, and selling of the Constitution; took a seat on the brand-new US Supreme Court; and then helped decide cases that clarified provisions of the same Constitution. That man, who also taught Latin and law at an early incarnation of Penn called the College of Philadelphia, was James Wilson. But if eyebrows failed to go up when Justice Wilson interpreted the document to which he had so heavily contributed, the same cannot be said of his off-the-bench addiction to land-speculation. An examination of Wilson’s career—from Founding Father to fugitive from justice—sheds light on both a complex figure and a volatile phase of American history.

**Born in 1742 on a farm near St. Andrews, Scotland,** young James Wilson was so bright that his parents made sacrifices to send him to school. After preparatory studies that included Latin and Greek, he attended St. Andrews University and its divinity school, St. Mary’s College. He was on track to be a clergyman in the Church of Scotland until the death of his father called for a change of plans. Rather than trudge back to the farm, however, Wilson studied accounting. Supported by loans from his family, he sailed to America in 1765, joining an exodus of promising young Scots with limited prospects in their homeland and small chance of succeeding in England unless they had connections there.

Wilson alighted in Philadelphia, where he put his knowledge of the Classics to work for him by tutoring at the College; he made such a good impression that he was awarded an

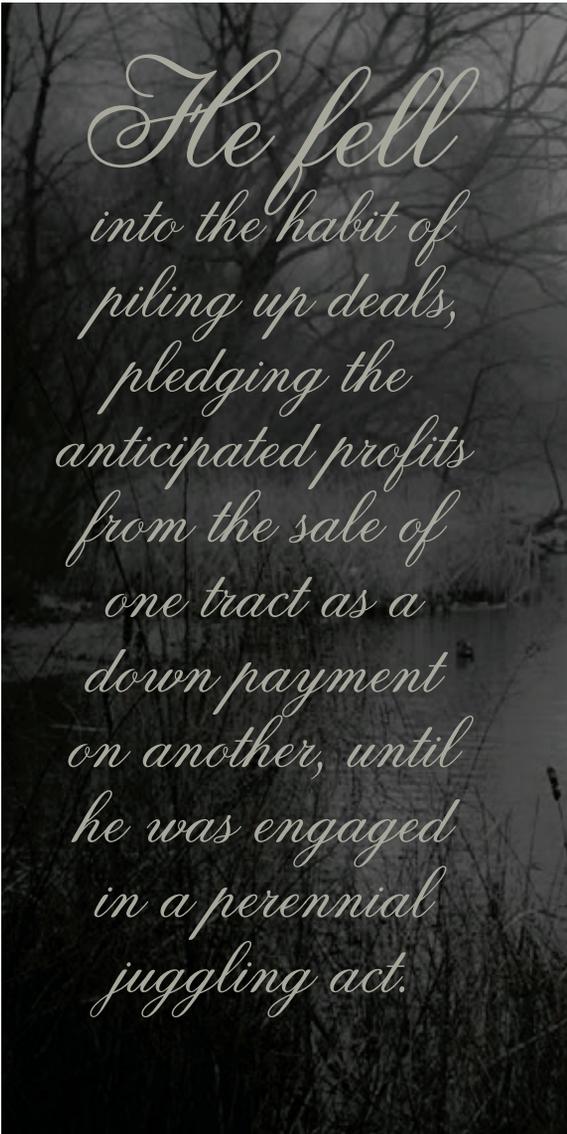
honorary Master’s Degree. Fired with worldly ambition, however, he quit tutoring to read law with the eminent John Dickinson. In 1767, after only a year of legal studies, Wilson set up practice in Pennsylvania, first in Reading and later in Carlisle. There was plenty of work to be had in sorting out land claims on the frontier, and Wilson was soon investing in real estate himself. He fell into the habit of piling up deals, pledging the anticipated profits from the sale of one tract as a down payment on another, until he was engaged in a perennial juggling act.

He showed enough lawyerly promise, however, to be allowed to court an heiress, Rachel Bird, whose parents presided over their estate, Birdsboro, along the Schuylkill River. After some resistance, Rachel said yes. Marrying in 1771, the couple settled in Carlisle, where they had the first three of their six children. In a surviving portrait, Wilson is posed with his head turned so as to leave space between his eyes and his spectacles—an effect that seems to accentuate the sitter’s reputation for braininess. Charm was not one of his gifts, but in his day he had few rivals for erudition. As an observer at the Constitutional Convention was to note of Wilson, “All the political institutions of the World he knows in detail, and can trace the causes and effects of every revolution from the earliest stages of the Grecian commonwealth down to the present time.”

Wilson shot up to prominence just as American colonists’ long-simmering resentment of British tyranny was coming to a boil. He entered politics in 1774 as a delegate to the Provincial Convention called in response to the Coercive Acts and other Parliamentary insults. Dickinson wrote the convention’s report, which assailed Parliament and urged fellow colonists not to forfeit the liberties they were entitled to as Englishmen. Wilson took a stronger line in an essay he’d been working on for some time, “Considerations on the Nature and Extent of the Legislative Authority of the British Parliament.” Applying Lockean principles, Wilson argued that Parliament had no authority whatever over the colonies because

they had never consented to be governed by that body.

In a flight of rhetoric, Wilson invoked his personal history: “Do those, who embark, freemen, in Great-Britain, disembark, slaves, in America? ... Is this the return made us for leaving our friends and our country—for braving the danger of the deep—for planting a wilderness, inhabited only by savage men and savage beasts—for extending the dominion of the British Crown—for increasing the trade of British merchants—for augmenting the rents of the British landlords—for heightening the wages of the British artificers?” Americans owed Britain nothing more than loyalty to the king, Wilson went on; otherwise, they should be left in charge of themselves. In the words of his biographer, Charles Page Smith, Wilson meant this rousing essay to be “his card of entry into the higher circle of colonial leaders.”



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And a high card it was. John Adams, no fan of Dickinson's, praised Wilson as a young man "whose fortitude, rectitude, and abilities too, greatly outshine his master's." Two years later, Wilson was elected (by the colonial legislature) to be one of Pennsylvania's representatives to the second Continental Congress. In the interim, however, American politics had evolved in such a way that he now found himself in the moderate camp, not quite ready to take the step urged by the impatient Adams: a clean break with the mother country. Wilson feared that, unless well prepared for, independence might lead to the dissolution of all government, leaving Americans "instantly in a state of nature." (It bears pointing out that a state of nature might have meant curtains for Wilson's burgeoning land empire.) When radicals accused him of disloyalty, his fellow delegates drew up a *Defense of Wilson*

to reassure the populace. On July 4, 1776, Wilson signed the Declaration of Independence; Adams later admitted that the foot-dragging by Wilson and others might actually have been a boon, giving the people time to catch up with their fiery leaders.

The post-Declaration Congress had knotty problems to work on, and Wilson attacked several of these. For example, he threw out a challenge to those small colonies, such as Rhode Island and Delaware, which sought to counter the outsized influence wielded by more populous ones: "I defy the wit of man to invent a possible case or to suggest any one thing on earth which shall be for the interests of Virginia, Pennsylvania and Massachusetts, and which shall not be also for the interests of the other states." (He eventually changed his mind on this point.) Like Adams, Wilson favored a strong central government and opposed the notion that "all sovereign power was

in the States separately." These were among many issues left unresolved, however, while Congress concentrated on waging the Revolutionary War. Meanwhile, Wilson had lost support back home. Angered by his opposition to the commonwealth's new constitution, radicals in the Pennsylvania Assembly unseated him.

Wilson used the respite to refurbish his law practice. It was time to move from provincial Carlisle to Philadelphia, where he found a niche as a defense attorney in treason cases. Although he didn't get all his clients off, he gained expertise that served him well a decade later, when the subject of treason came up in the national constitutional debates. Arguing that treason trials "have often been the most tremendous Engines of despotic Power or of legislative Tyranny," Wilson was instrumental in adding the requirement that to prove a charge of treason you must have two witnesses to an overt act.



Wilson helped launch Penn's law school with a series of lectures on training American lawyers. George Washington was among the attendees at his opening talk.

Among clients represented by Wilson in these years was Benedict Arnold, still loyal and serving as military governor of Philadelphia, who had purchased an American seaman's claim to prize money resulting from seizure of a British ship. The Admiralty Court of Pennsylvania had awarded the seaman a modest amount, and in his place Arnold was seeking more. The Continental Congress allowed for appeal of state admiralty-court decisions to a board of commissioners, before which Wilson successfully pleaded Arnold's cause. But Pennsylvania refused to recognize the commissioners' authority, a timid Congress declined to back up its own creation, and the case became a symbol of governmental impotence under the Articles of Confederation. (A generation later, by which time Wilson was dead and Arnold disgraced, the original seaman finally got the extra money he thought he deserved.)

While out of office, Wilson stayed politically active by advocating the replacement of Pennsylvania's radically democratic constitution with one that placed more checks on legislative power. For doing so, he became the radicals' whipping boy. In Philadelphia, they rounded up a militia, which on October 4, 1779, marched to the Wilson house at the corner of Walnut and Third Streets. Rachel and the children took shelter with friends, but Wilson and a band of supporters converted the house into a makeshift fort. There they held off their attackers, though not before a defender was killed by a musket ball and four militiamen died of their wounds. Afterward, Wilson lay low for a while at the estate of a friend. By March of the following year, almost everyone was eager to forget the outburst, and a general pardon was granted.

All the while, Wilson continued to speculate in land. His intentions were not wholly self-serving. He saw himself as a middleman in a process that joined surplus European labor and capital with surplus American acreage, to the benefit of all. He wrote a tract in which he laid out a philosophy of land acquisition and ground rules for getting involved. The most arresting of these is "never to be in want of

Money"—advice that Wilson himself couldn't follow. As if he didn't have enough on his plate already, in January of 1783 the Pennsylvania legislature returned him to Congress.

Working with James Madison and Alexander Hamilton, Delegate Wilson took up the subject of taxation. While acknowledging that Americans' experience under British rule had made them allergic to taxes, he argued necessity: unless Congress could rely on a steady source of general revenue, the Revolution might fail. The issue led to endless wrangling, the states continued to resist Congressional requests for money, and Wilson lamented the "imbecility" of the Articles of Confederation. Amid these frustrations, on April 14, 1786, Rachel died.

For the grieving husband, however, a riveting distraction lay ahead. In May of 1787, when a convention gathered in Philadelphia to recommend a new form of central government, Wilson was there representing Pennsylvania. One of the tasks he took on was minor but poignant. A fellow-delegate, 81-year-old Benjamin Franklin, could no longer project well enough to be an effective orator. Whenever Franklin had a prepared statement to make during what became known as the Constitutional Convention, Wilson delivered it for him.

Wilson and Madison enjoyed a distinct advantage as the convention got under way. Almost alone among the delegates, they could draw on a deep knowledge of history and political theory to imagine how a federal system, with power divided among the states and the central government, might work. In *Miracle at Philadelphia*, her classic account of the framing of the Constitution, Catherine Drinker Bowen cites Wilson's "brilliance" and the "telling" speeches he made. To those who objected that the people would never support a strong central government, he retorted: "Why should a national government be unpopular? Will each citizen enjoy under it less liberty or protection? Will a citizen of *Delaware* be degraded by becoming a citizen of the *United States*?" He could also split differences so that the delegates could move on. It was he who proffered the

pragmatic, if morally repugnant, solution that ended a standoff between free and slave states: count each slave as three-fifths of a person in determining how many representatives a state is entitled to in the lower house.

Wilson endorsed the Great Compromise that gave representation based on population to one chamber of the bicameral legislature (the House) and equal representation to the other (the Senate) but lost on a related point: he urged direct popular election of senators, but the convention reserved that power to the state legislatures. (Wilson's posthumous vindication came with the adoption of the Seventeenth Amendment in 1913.) He was named to the five-man Committee of Detail, which compiled the delegates' many tentative decisions into a single draft suitable for debate. Charles Page Smith sums up Wilson's Conventional performance this way: "The Constitution was unmistakably a cooperative venture; no one man was responsible for the final result. But Wilson ... espoused more of those principles which have since become prominent features of American democracy than any other delegate."

In polished form, the new document went to the 13 states for approval. At the Pennsylvania ratifying convention, radicals protested (correctly) that the federal Constitution would undermine the state constitution for which they had fought so hard. Their chief bugbear was Wilson, who led the pro-ratification contingent. In speeches that sometimes lasted for hours, he carefully explained what more conventional minds had a hard time understanding: that sovereignty need not be lodged solely in one place, either giving the central government excessive power or allowing the states to neuter the central government. If, as he was convinced, sovereignty inhered in the people, they could delegate it as they wished, assigning some tasks to the central government and others to the states. The lopsided final vote, 46 in favor of ratification and 23 against, fails to reflect how much effort Wilson put into countering his opponents' arguments throughout the fall of 1787. Indeed, his powers of per-

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suasion almost cost him dearly. At a post-victory rally in Carlisle, he was knocked to the ground; only the timely intervention of a war veteran, who threw himself on top of Wilson, saved him from a severe beating or worse.

Wilson brashly wrote the incoming president, George Washington, to recommend himself for chief justice of the new Supreme Court. Instead, Washington chose John Jay, naming Wilson as one of the five associate justices. When someone questioned even that lesser appointment in light of Wilson's reputation as a reckless speculator, Wilson's fellow-Pennsylvanian Benjamin Rush replied, "But where will you find an American landholder free from embarrassments?"

Ever bustling, the new associate justice helped launch what became Penn Law School with a series of lectures starting in December of 1789. The federal government was then headquartered in Philadelphia, and Wilson gave his opening talk to a stellar audience that included President Washington. Wilson's subject was how to train American lawyers in a uniquely American brand of law, couched in plain language accessible to any educated person. The following spring, he had to cut his lecture program short and shoulder one of a Supreme Court justice's duties at the time: hearing cases on the federal circuits. He remarried (his bride, Hannah Gray, was

younger than his two eldest children) and became a father for the seventh time. On top of all this, he continued to traffic in land.

Although the Court as a whole had little to do during his tenure, one case, *Chisholm v. Georgia* (1793), raised an issue Wilson cared deeply about: can a state plead sovereign immunity to avoid being sued in federal court by a citizen of another state? The Court said no, and in a concurring opinion Wilson pointed out that a greater issue was at stake: "do the people of the United States form a nation?" To him, of course, the answer was a resounding yes—nation-forming was the goal he'd kept uppermost in mind during the Constitutional Convention.

*Chisholm* raised enough of a ruckus among states-rights advocates that two years later it was overruled by the Eleventh Amendment. But the grounds for attacking the decision did not include the allegation that some of the justices who made it were compromised by their political pasts. (Indeed, one way to look at the matter is to consider Wilson the ideal interpreter of a document that bore so many of his fingerprints. Besides, many of the ablest American lawyers had played roles in making the Constitution; it would have been a pity—perhaps even foolish—to preclude them all from having a say in how it worked in practice.)

In recent decades, the adjective "tragic" has been cheapened by being applied to anything more than usually sad. But the last act of Wilson's life was tragic in the original Greek sense: betrayed by flaws in his own character, an illustrious man suffers a dreadful fall from grace. In Wilson's case, the precipitating event was the bursting of the first American land-bubble. His many creditors demanded their money, and by the fall of 1796 Wilson was in desperate straits—so changed, friends noted with dismay, that his powerful mind could find solace only in reading novels!

This was an era in which chronic debtors weren't just bumlbers, but criminals, and Wilson—still a sitting Supreme Court justice—was jailed in Philadelphia. Early in 1797, it happened again, this time in New Jersey. Upon his release, Wilson, who had understandably developed a morbid fear of imprisonment, fled to North Carolina. The slowness of the mails compounded his anxiety. He kept firing off letters to his son Bird, demanding that the young man take this or that step to sort out his father's chaotic affairs, not realizing that conditions had changed in the meantime or how destitute the Wilson family had become. Back in Philadelphia, there was talk of impeachment. When Hannah went south to join her husband in March of 1798, she found him holed up in a room above a tavern. Haggard, depressed, and confused, he clung to the illusion that if he could just round up some cash, his troubles would be over. In July, he came down with malaria. He was recovering and devising new schemes to get out of debt when he had a stroke. On August 21, at age 56, he died.

Wilson was buried in North Carolina, where disgrace hovered over his grave. Not until 1906 were his remains dug up and re-interred at Christ Church in Philadelphia. His shabby end has long overshadowed his accomplishments, but today, as a people who have just run afoul of another real-estate bubble, we can perhaps be more forgiving. ♦

Dennis Drabelle G'66 L'69 is a contributing editor of *The Washington Post Book World*.