

# TAKE PRIDE

an address on

James Wilson et al. and the Land of Illinois

being, in part,

An Answer to a Question Propounded by Samuel H. Beer

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by  
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## TAKE PRIDE

A little obsession can be a useful thing. In research, it may carry one past long stretches of boredom into the rapids of real interest, where everything seems to connect with one's chosen subject. If one truly understands a blade of grass, one understands the world. That formulation originated with Alfred North Whitehead. I have no claim to it. But it is logically accurate.

My personal obsession, for some time, has been James Wilson, the almost invisible founding father of the United States. In part, but only in part, this is a speech on "James Wilson, et al., and the Land of Illinois."

James Wilson as an obsession has been my personal albatross. I would inflict him on friends, and on casual acquaintances, by asking them to choose something from the American Revolutionary Era, anything, and I would try to prove that any item so chosen can not be fully understood without knowing that James Wilson created it, influenced it, or was otherwise powerfully related to it.

I would easily lead my victim to name one of the major items in the history of the American Revolution. James Wilson's role as the principal designer of the United States Constitution, as the man who secured passage of the Declaration of Independence, as the first Justice of the United States Supreme Court to declare the supremacy of the written Constitution---long before John Marshall had even joined the Court---or some other aspect of the great man's life, would be recited by me. My captive audience usually deemed that I had done more than enough to pass my own self-imposed test.

Or maybe I told how it was Wilson and not Hamilton who set up the real first national bank in the United States, or something else which would provide the bridge for me to try to get one more person to appreciate our very own Lycurgus, to take pride in our Pericles, to take pride in the man who invented American Democracy.

It just seemed terribly wrong that fame should still be denied to one who had wanted it so badly, and who deserved it so much.

Twelve years ago I presented this club with a general oral portrait, "One Founding Father, Invisible..," and I will try not to repeat myself. And I will also try to avoid the tale of Mercy Otis Warren and the Jeffersonians, and how they managed to write Wilson out of our history books, quite deliberately, a paper which some of you heard under the title of "Mercy's Revenge."

Obsession does not always lead to the correct answers right away. Sometime ago I was walking down Wabash Avenue in this city, on my way to crossing the Chicago River, toward an address on Illinois Street. I found myself gazing at the three-man statue of George Washington, Robert Morris and Haym Solomon. I remembered that Morris and Solomon were both clients and close business associates of James Wilson, in finance, in banking, and , at least in Morris' case, in the great game of the big land companies which dominated American investments until the 1790s.

I remembered George Washington sending his favorite nephew all the way from Virginia to Philadelphia to study law under James Wilson. And I remembered Washington leaning on James Wilson for legal and political support to help in putting down the Whiskey Rebellion, and Tom Jefferson's secret flash of hatred against Justice Wilson for Wilson's part in doing so.

In the midst of such musings, I found myself thinking of the names of our streets in that particular area. Why was there an Illinois Street? Why was there a Wabash Avenue? Randolph Street probably referred to Governor Edmund Randolph of Virginia, who was the President of the Continental Congress of these United States immediately preceding President Washington. Someone may have forgotten that Governor Randolph had attended the Constitutional Convention, but had opposed the constitution itself. That's Clark Street over there, which presumably refers to George Rogers Clark, of that same era. And across the river, Rush street presumably refers to James Wilson's friend and fellow signer, Dr. Benjamin Rush.

James Wilson had been President of something called the Illinois-Wabash Companies. Did all this have something, anything, to do with Wilson? A quick bit of investigation cast doubt on some of that speculation. It turned out that around 1835 these Chicago streets were in fact named to reflect Illinois history, thereby breaking an older tradition of how streets were to be named. But maybe Wabash Avenue had nothing to do with the Illinois-Wabash Company, of which James Wilson had been President.

I suddenly realized that I really didn't know what, if anything, James Wilson had to do with Illinois. Even more important, I didn't know what Illinois had to do with the Revolutionary War, if anything. So for me a new mental chase had opened up; the mind was up and running.

We the people of what was to become Illinois had been Indians. We had been French, and after the French & Indian Wars, we were British. And if we crossed our present boundary at its Southwest Corner, we could have entered Spain, or at least New Spain, which claimed control of the river. There would come a time when New

Madrid tried to tempt new immigrants in Illinois to cross that river and to re-settle on the Spanish side.

We were to be Connecticut, if Connecticut would have its way. We were to be Pennsylvanians if that Commonwealth was in the right.

For a long while, no one gave up on any of their claims. We were the frontier, we were the West, and everyone wanted a piece of us.

Some Virginia settlers convinced Governor Patrick Henry to recognize them as the Kentucky Colony of Virginia, under the leadership of a young man of twenty-four, named George Rogers Clark. In 1777, Clark decided that the best defense against raids by Britain's indian allies was offense. He secured secret permission from Henry to invade British forts in what is now Illinois. Clark succeeded with almost no losses, in part because some former settlers of what had so recently been French decided that these American invaders were preferable to the hated Brits. And maybe it had something to do with James Wilson as well. Doesn't everything?

Just off the Eastern edge of what is now Illinois lies Vincennes. At one point this was called Wabash, and at one time it was spelled O-U-A-B-A-C-H-E, "Ouabache/" That town was and is located on the Wabash River. The Wabash, like the Mississippi, is a boundary of what is now Illinois. Vincennes is just across the river, in what is now Indiana, but in those days it would also have been referred to as Illinois. The people at Fort Sackville---Vincennes--- decided to declare themselves for the rebel side. Clark and his men then moved to capture the British forts at Kaskaskia and Cahokia on the other side, the western side, of what is now Illinois. They capture both

Forts. Kaskaskia, which is later to become the Capitol of Illinois, is captured without the loss of a single life.

Meanwhile, the British sent troops to try to recapture Vincennes. They were moving down from British Headquarters at Detroit, under the leadership of a much-hated opponent of the American revolutionaries, Britain's Lieutenant Governor Henry Hamilton. This Hamilton was known to our side as the man who fought his war on a body-count basis. He rewarded his indian allies on a cash basis, paying only for each proof of a kill. He paid by the scalp, and because of those bloody scalps, the revolutionaries came to call him "the hair-trader."

Clark gets wind of Hamilton's move. That winter, with a force of about 150 volunteers, sixty of whom were clearly French, Clark conducts a forced march across flooded plains and frozen lands, all the way across what is now the Southern part of our state, from Cahokia to Vincennes. In some histories, that journey is considered one of the most remarkable military feats ever accomplished. Clark manages to reach Vincennes in time to successfully re-take the Fort.

Clark's remarkable string of military victories earns him the title of "Conqueror of the Northwest." If Virginia hadn't started to worry about its own military safety, and had provided Clark with the supplies and permissions he sought, he would apparently have tried to take out the British position in Detroit. He thought he could do it with 500 men. Henry tried to order Clark back to help defend the Virginia homeland.

But for some purposes, Clark's successful battle for Fort Sackville at Vincennes was more than enough.

All the way back East, for George Washington, Vincennes

served as the great military victory which Washington needed to wave under the noses of the French. So it turns out that one of the most important military theaters of the Revolutionary War was in what is now Illinois.

That's the story that gets into some of our history books. It accounts for Clark Street being the name for Chicago's principal North-South artery during much of the 19<sup>th</sup> Century. The name of Clark Street has remained untouched, except for a brief flirtation with a new monicker, Carl Sandburg Terrace, in the 1950s.

The story of George Rogers Clark, as is true for so many of the heroes of the first war between Britain and the United States, does not end happily for Clark himself. He had been born as the child of a prosperous father in Jefferson's home county of Albemarle, Virginia. Clark had been educated alongside James Madison. George Clark's younger brother William is the Clark of the Lewis & Clark Expeditions.

George Rogers Clark will in later life be accused of alcoholism, and be blamed for the military failures of others, but the picture of this young man in his 20s (which is when all his successes occurred) is one of incredible charisma and of great brilliance. When he appeared before a group of Indian chiefs in Cahokia, in 1778, he is reported as saying: "I carry in my right hand war, and peace in my left...Here is a bloody belt and a white one. Take which you please." Having financed his military expeditions out of his own assets and largely by borrowing, and being unable to get some of his promised rewards from post-war Virginia, Clark is forced to strip himself of all assets in order to try to avoid his creditors. He ends up with little more than the pension he is ultimately granted.

Long before he reaches that point, Clark proposed to the

French that if only they would give him a military commission, and economic backing, he would gather some of his old mates, who were apparently ready to follow him again, together with new volunteers, for an expedition down the Mississippi to free up American trade on the Mississippi, but also to take over the outposts of New Spain, and to capture New Orleans. It seems clear that he was fully ready to make the attempt. The French provide the command, together with an appropriate title, but George Washington stops Clark by threatening felony prosecution if he breaks United States neutrality vis-a-vis Spain. Citizen Genet is sent home, and Clark's final attempt at military glory was prevented.

Much of this is relatively well-known history, even if most of us, as Illinoisans, have never heard it. But what happens if we plug James Wilson into the story?

While I have found no historian who seems to have noticed the connection, the principal Forts seized by Clark had already been the site of lengthy dealings and negotiations with the local Indians. There had been substantial land purchases from them, and substantial sums paid, by the Illinois-Wabash Land Company, the predecessors of which were operating out of Pennsylvania.

James Wilson officially led this organization after 1780, as President of the joint Company. His client Bernard Gratz had already served as Secretary, and his client Robert Morris had already held shares. The company claimed to own what may have been 60,000,000 acres, most of which were in what is now Illinois.

As we shall see shortly, Wilson will be claiming title to some of these Illinois lands based on Indian deeds out of Kaskaskia to the Illinois Land Company, dated 1773, when we were all supposedly British and his deeds were on file in Kaskaskia. Clark "captured"



Kaskaskia in 1778, five years later. Wilson also claims Illinois lands based on Indian deeds out of Vincennes in 1775. Clark recaptured Vincennes from the British in 1779, four years later. So it's not surprising that Wilson in 1783, in the U.S. Congress, publicly scoffed at Virginia's claims to Illinois.

At the time of Clark's ventures, some of Clark's captured towns were about fifty percent Indian, and the white settlers seem to have considered themselves French. The Indians, it was said, had always been faithful allies of the French. We'll get back to Mr. Wilson in a bit.

The popular image of George Rogers Clark as "Conqueror of the Old Northwest" helped lead to American attempts to secure recognition of our control of this territory in the peace negotiations with Great Britain.

John Adams, negotiating in Paris, on April 16, 1783, had no doubt that part of his job was to protect American claims to Illinois and Ohio. He even tried to keep open a possible claim on Louisiana. To do so, in John Adams' eyes, was a simple matter of integrity on his part:

"If I would've given up the Fisheries and Illinois and Louisiana and Ohio, I might have had Gold snuff Boxes, Clippings at the Opera, I don't mean from the Girls, millions of Paragraphs in the Newspapers in praise of me, Visits from the Great, Dinners Wealth Power Splendor, Pictures Busts statues, and every Thing which a vain heart, and mine is much too vain, could desire."

Britain finally did agree that the United States would get Illinois. The new line for the United States would be drawn down the Mississippi.

But to James Monroe, looking at the Western Territory three years after that quote from Adams, on January 19, 1786, we weren't worth very much:

“ A great part of the territory is miserably poor, especially that near lakes Michigan and Erie and that upon the Mississippi and Illinois consists of extensive plains which have not had from appearances and will not have a single bush on them, for ages. The Districts therefore within which these fall will perhaps never contain a sufficient number of inhabitants to entitle them to membership in the Confederacy, and in the meantime the people who may settle within them will be governed by the resolutions of Congress in which they will not be represented. In many instances I observed above, their interests will be opposed to ours.”

In Monroe's eyes, Illinois was simply not fertile land. Clearly, the plough had not yet broken the plains. For many ages, those who wanted to work the land chose areas rich with trees, and went to work chopping down the trees and cutting out the stumps and the bushes. It took trees to signal that the land was rich. An absence of trees and bushes was taken to mean that no seeds could grow. The idea that, once the ground could be broken up by adequate iron, this area would turn out to be one of the most fertile places in the world—well, that was just not conceivable.

George Washington, writing to Jefferson the very next year, on May 30, 1787, thought our piece of the country had some value, but for other purposes.

“The country about the Illinois and Wabash (Rivers

which nearly reach the Lakes in their Course) has been long considered as the most abundant in furs.”

Washington saw these same rivers as part of a transportation net for the acquisition and marketing of furs by means of the rivers together with the Great Lakes, a network which would stretch from the capital of Virginia into the fur country, but beginning with rivers like the James River, near Richmond.

That did not mean that Washington wanted the area that is today Illinois developed. He had already made it very clear in 1783, long before his presidency, that development of Illinois was exactly what he did not want to see:

“To suffer a wide extended country to be over run with Land Jobbers, Speculators, and Monopolizers or even with scattered settlers is, in my opinion, inconsistent with that wisdom and policy which our true interest dictates, or that an enlightened people ought to adopt, and, besides, is pregnant of disputes both with the savages and among ourselves, the evils of which are easier to be conceived than described; and for what? To aggrandize a few avaricious men to the prejudice of many, and the embarrassment of Government.”

He wanted “a clear line of demarcation between the two peoples.” He seems to have modified this position later, but at the time he saw the Indians as being on one side of a line, and his kind on the other. He wanted to make it a felony to settle or survey beyond that line. And on the non-Indian side of the line “the door would be open, and the terms known for everyone to obtain what is reasonable and proper for himself upon legal and constitutional ground.”

What Washington seems to have wanted was just one or two states to the east of the present State of Illinois. This would be, in his opinion, enough to “fulfill all the public engagements” and in addition allow for “a large population by Emigrants.” He didn’t want these new people wandering over half a million acres. He didn’t want to see “settling, or rather over spreading the Western country.... by a parcel of Banditti, who will bid defiance to all authority.” And he feared that they might ensure a renewal of hostilities with the Indians.

Which brings us to Mr. Jefferson, whose view of the area encompassed by the present State of Illinois may be the most interesting of all. By January of 1785, Jefferson was considering the addition of sixteen new states, all East of the Mississippi. In a draft map, never publicly released, he even assigned some tentative names to ten of them. The southern-most portion of Illinois together with a bit of Indiana was labeled Polypotamia. The middle portion of Illinois, again with a bit of middle Indiana was labeled Illinoia. Northern Illinois with the addition of a chunk of Northern Indiana and a small slice of Southern Wisconsin was given the unforgettable name of Assenisipia. Let me repeat that, and spell it. A-S-S-E-N-I-S-I-P-I-A. ASSENISIPIA.

Jefferson clearly did not share George Washington’s hesitancy toward the rapid expansion of the number of states, and all indications are that he accepted the idea that the new states would be fully equal to the original ones.

Jefferson himself was never an investor in any of the great land companies. He clearly feared possible injury to his reputation by such investments.

Some of the emigrants who were brought over from Western

Europe with the aid of extravagant promises by the worst of the speculators faced horrendous situations. Wilson had dreamed of pre-prepared land, agricultural tools ready to hand, loan monies to help the newbies get started. The reality of the tremendous flow of new settlers that he helped produce was something else entirely.

It is not clear that James Wilson ever visited Illinois. He may, perhaps, be viewed as an absentee landlord. There is a brief mention that one of his sons died at Kaskaskia, Illinois, but I have been unable to pin down any underlying facts.

James Wilson's role with respect to Illinois was two-fold. As a lawyer, he represented the merchants of Philadelphia who were either trading with the Indians, or supplying those who did so. They were to a considerable extent Jewish, and included the Graetz brothers. Apparently, trust was built up over time between the indian tribes of southern Illinois and these merchants and their representatives.

Wilson's second role was that of entrepreneur. This was the era of the great land companies. You will remember that Wilson was committed to this mechanism as a means of rapid development of the new country by attracting poor emigrants from Western Europe through land and incentives acquired through European capital. Wilson helped set up land companies to acquire some land from the indians of what was to become Illinois and Indiana. Buying land from the indians was the general practice in the United States at that time, despite competing claims from various states and nations, and even though various states and nations, by decree or otherwise, attempted to forbid the acquisition of land from the indians by anyone other than the state.

The first academic students of the effect of law on the Indians, such as Felix Cohen, were struck by the attempted fairness of these purchases. The revisionists saw the purchases as essentially unfair. The most recent scholarship suggests that the ultimate decision by the Supreme Court (long after Wilson's death) to deny the validity of direct sale by conquered native populations to any willing buyer other than the nation-state was a mistake in both law and morality. And just to add to the general confusion, there was a point when Congressman James Wilson helped report out a bill that would have barred private purchasers who did not have government permission from making purchases from the Indians. This would seem to have been a position contradictory to his own commercial interests. Wilson may have thought that this would be a good policy for the future, and for other people, and would not affect what had already been done.

In at least one recent peer-reviewed article, it has been suggested that Wilson's purchases serve as a model of how purchases from the Indians should have been conducted; that is to say, in full public view, at a safeguarded and government-controlled site, with sworn translators, adequate witnesses, and a permanent record of proceedings. The Illinois-Wabash Company's agent was also reported to have kept all spiritous liquors away from these doings.

As we have already noted, John Marshall's Supreme Court ruled against Wilson's Indian grants, in a decision that Marshall himself seems to have come to regret. But that judicial decision came long after Wilson's death. Until August 21, 1798. Wilson was still living, or rather---to be more accurate---dying, in hope.

Wilson's death also came before, but only shortly before, the United States Supreme Court finally ruled on the cause of the Yazoo

land claimants, and Wilson had some Yazoo claims. These were not purchases from the Indians, but rather purchases that found their origin in grants from the State of Georgia, arising out of Georgia's claims to the land extending westward to the Mississippi, some of which ran up the Yazoo River. Wilson has long been rumored to have been involved in original bribery of the Georgia legislature, but the latest learning seems to suggest that he was not, and that the greatest fraud of all was perpetrated by those politicians who tried to undo the original Georgia grants as against bonafide purchasers, long after a second group of Georgia legislators had destroyed most of the relevant records in public bonfires. The Yazoo claimants did ultimately collect some money, based on a Supreme Court decision, but Wilson was long dead.

On January 13, 1797, Wilson is still alive, and he re-submits a petition to the United States Congress to recognize four of the tracts claimed by the Joint Illinois-Wabash Land Company, based on specific Indian deeds, covering parts of Illinois and present-day Indiana, but mostly Illinois. Wilson also had a piece of the Indiana Land Company, but that's an entirely different story.

In that winter of our national discontent, the country is in the midst of a great depression. There had been a bubble based on a belief that the prices of land and houses could only go up. The land values that were spun up by the great land companies have now plummeted. There is a terrible credit crunch, perhaps precipitated by the French warfare with the Netherlands, which cut off the Dutch loans on which some of these companies had expected to rely. In a period of a month and a half during 1798, 150 companies fail, and 64 merchants and speculators are jailed. The crash of 1792 had deepened.

William Duer of New York had served with Wilson in the

Continental Congress and was one of the first of Wilson's partners in land deals. Duer had been a signer of the Articles of Confederation. Buried in the Duer papers at the New York Public Library is material indicating that some of the earliest Wilson land ventures took place, with Duer, in French-controlled land.

Shortly before the dark times of the 1790s, William Duer and Robert Morris were considered to be two of the richest men in America. In 1792, Duer had become one of the centers of the great crash, in part because of his role as a speculator and short-seller. For a while he was also central to Alexander Hamilton's attempt to intervene in the economy on behalf of the Federal government. Efforts to save Duer fail, and Duer is sentenced to debtor's prison. While temporarily out on parole, he will die on April 18, 1799. By then, Wilson will be eight months dead.

Wilson himself is arrested and thrown into debtor's prison in 1797, but is bailed out, a Supreme Court Justice who is effectively dodging the bailiffs, in part by moving to Edenton, North Carolina. There he settles into a local tavern. He spends much of his time reading novels, which sort of horrified Dr. Benjamin Rush, who may have forgotten that Wilson was once a Professor of English Literature. He dies on August 21, 1798, and is buried in an unmarked grave.

But Wilson's last Memorial, his last petition to Congress, was presented in January of 1797, twenty months before his death. Wilson submitted this Memorial as President of the Joint Illinois and Wabash Land Companies, together with three named co-petitioners, who were designated as Agents of the companies. One of these was Robert Morris. It is essentially a re-submission of an earlier instrument, but times had changed.



Robert Morris records his belief that the financial pressures on Morris himself in that period were, in part, being increased by public knowledge of Wilson's own difficulties. In February of 1798, just thirteen months later, Robert Morris himself is to enter debtor's prison. You may remember that George Washington, who had retired to Virginia, will come to that debtor's prison in Philadelphia, and eat a meal there, with Robert Morris, in that prison.

So when Wilson filed this Petition of January, 1797, this mini-lecture on his deeds and on the indians of Illinois, neither he nor Morris was yet in jail. These two inventors of national banking, our greatest financiers, were still seeking a federal rescue package.

It is in that context that we should read Wilson's petition to the Congress lecturing the Congress about Illinois and its indians. The petition tells the Congress that if they will recognize these deeds the United States can keep three-fourths of their value; the land company asks for quarter. And the unspoken sub-text tells the Congress that by doing so they will rescue both the principal financier of the revolution, and the principal architect of the United State Constitution. And what is also not quite spelled out is the full shock of the claim. Wilson is laying claim to being President of a company that controls what most understand to be tens of millions of acres in Illinois, and a small part of what will later be called Indiana. Some contemporaries believed that the area affected was larger than Britain itself, and maybe it was.

Of the two tracts in the deed which Wilson's company had negotiated over many days in Kaskaskia, one of the tracts is relatively clear. It is a substantial body of land at the Southern tip of Illinois, where the Mississippi and Ohio (which is to say Wabash) Rivers meet. The other tract presents a problem because the map

doesn't seem to match the deed. The legal description of this second tract seems to have some mistakes, which a Court might or might not be willing to correct. The map shows a course running up the Mississippi to the Illinois and up the Illinois to what shows on the map as Chicago Creek. Chicago Creek is sketched as having four branches. The map's boundary line continues from that branching almost due East, while the legal description goes North. But as Wilson pointed out to Congress, a legal description which defines identifiable spots as boundary points may sometimes prevail over measurements of distance and compass directions. Here's a small part of that deed's language without the measurements of distance, and you can try to guess whether it was meant to include the land under the Casino Club on this side of the River, or the land under the Cliff Dwellers on the other side, or just some other land elsewhere in Illinois, perhaps far south of here, or whether it never meant anything at all. The deed reads in part:

“up the Mississippi.... to the mouth of the Illinois...., thence up the Illinois by its several courses, in Chicagou or Garlick Creek, thence nearly a Northerly course in a direct line, to a certain place being remarkable for being the ground on which a battle was fought between the Pewaria and Renard Indians....”

Without beginning to identify some of the places cited in the deed, it is not clear that it adequately described an identifiable piece of land. Wilson argued that even if it wasn't, his titles to the other tracts were still good.

The last time Wilson's Petition was presented, a committee of the House of Representatives had recommended passage, but the Bill died in the Senate. This time the Petition is not accepted at all. Congress has chosen not to bail out the land companies or their

leaders. Wilson argued that that left everything in limbo, because since the legislature couldn't pass ex post facto laws, and couldn't impair existing contracts, the determination of land titles would have to wait until the courts, some day, could deal with them. More than three decades later, the Supreme Court did so, by establishing that conquered aborigines who sold land to individuals could give no title. Some contemporary legal scholarship considers that to have been a very bad decision. The company's successors were unhappy; Wilson couldn't care because he was long dead; and Wilson's heirs had long ago walked away from anything having to do with Wilson's land dealings.

In 1800, two years after Wilson's death, the Congress passed a national bankruptcy act, which allowed Robert Morris to go free, broken in health and spirit, penniless, living at the mercy of Gouverneur Morris, who provided former United States Senator Robert Morris with a home. Robert Morris died a free man in 1806. Congress repeals those same Bankruptcy Acts in 1803, perhaps because they had performed what some believe was their principal purpose, that of freeing Robert Morris.

In the middle of the Nineteenth Century, America's debtor's prisons themselves were abolished. But debtor's prisons are still the law today in places like Abu Dhabi, which has recently been a boom area.

Up to this point, you aren't listening to the speech that I planned to give, at all. I have only managed to demonstrate that my obsession with Wilson recently led me down the path of attempting to understand the history of the Land of Illinois during the Revolutionary Period. Some days ago I tore up the earlier drafts of this speech, and you deserve to know why. Last month, on April 7th, Professor Samuel Beer died. This speech had originally been

designed for him. The best of the world's newspapers provided suitable obituaries. The Economist ran a full-page story, the only death which they formally noticed that week. They labeled him "Academic Superstar." In my day, Beer had not yet become chairman of the Department of Government at Harvard, a post he was later to hold for many years. But he did co-teach the basic course on government which everyone in that undergraduate Department was required to take. It was taught in a big lecture hall. If Beer ever mentioned the name James Wilson at that time, I have no recollection of it.

As a College student in the Department of Government, I was assigned a tutor for a possible Senior honors thesis. My tutor was a young graduate student name Stanley Rothman. Rothman was many years away from becoming President of the American Sociology Association, or Director of the Center for the Study of Social and Political Change at Smith College.

Stanley Rothman's own tutor for his own PhD thesis was Samuel Beer.

Back in the early 1950s, when I was an undergraduate, Harvard was something of a hotbed for the James Wilson infection, but as far as I can remember, I had not yet caught the disease at all. I had heard of a bright young man in the Department, Robert McCloskey, but did not know that he was at work in assembling the latest edition of Wilson's works. His edition would include extensive annotations, and a brilliant introduction. I did not know that Charles Page Smith was also around and about, at work on a PhD thesis which was to become the basis for the first full-length hardback biography of Wilson. At other universities there were other scholars at work. The intervening years have produced

dozens of Wilson studies.

When Beer was 81, in 1993, he had published a great work entitled: “To Make a Nation/ The Rediscovery of American Federalism.” In that book, James Wilson, the democratic theorist, was set forth as the crowning creator among the founders of American political theory.

Two years ago, there was a political science convention here in Chicago. Rothman and I often have dinner when he is in town, and this time he asked that Sam Beer join us.

I don’t believe I had ever spoke to Sam Beer at any time until two years ago, when he was 95, despite the fact that our political activities ran parallel, and even though for some years we were both extremely active in the same political organization. His mind was still a razor.

It was dinner for five, graced by the charming and brilliant wives who accompanied Beer and myself. The talk around that table lasted for some hours. When it turned from politics and reminiscence to the subject of James Wilson, it did not slow down.

During the course of that dinner, Beer raised several questions. Among others, he wondered why Wilson had disappeared from history in the first place. I answered that I thought I knew something of the how and why, and explained that I had given a paper on that subject to something called the Chicago Literary Club, and that it was entitled “Mercy’s Revenge.” I refused to summarize it, but offered to send it to him. Sometime later I received a comment: “enlightening and hilarious,” which felt like the best grade I will ever have received.

That same night, Beer also raised another question: “After all these years, why is it that the present generation still doesn’t get it?” That was the question which I originally planned to begin to answer tonight, but news of Beer’s death, and an obsessive attempt to understand Wilson’s odd connection with Illinois, managed to derail me. In the brief time I have left, I want to take a stab at answering Professor Beer’s last question.

First, there are at least a few people who don’t have much sense of practical politics. They don’t get it. There are people who argue that the United States Constitution treats slaves as less than human, because for voting purposes the slave states were credited with having only three-fifths of a person for every slave. People who make this argument demonstrate that they are unable to think a political problem through. In adopting a pre-existing formula for taxation, Wilson was ensuring that the slave states would have less political power in the national legislature in dealing with any problem. If slaves had been treated in the same manner as others in that particular clause, the slave states would have been given the dangerous gift of a greater number of votes.

{Of course, the Constitution doesn’t use the word slave. Seemingly, Wilson didn’t want to pollute the document with that word, so he went to great lengths to create a formula which refers only to “all other persons.”}

Second, Wilson’s successful political maneuvering was sometimes embedded in local politics sufficiently complex that the details of his advance planning go unnoticed. For example, Wilson succeeded in adding a New Yorker, Gouverneur Morris, to the Pennsylvania delegation. Since voting was to be by state, no one seems to have objected, or even seems to have noticed. But Gouverneur Morris was powerful in debate, and creative in thought,

and could prove useful in securing ratification by popular vote in New York. This New York Morris is generally credited as having been the third most important delegate to that Constitutional Convention, when viewed as a participant, but the anti-federalists of the day recognized him as one of Wilson's myrmidons.

Third, Wilson was a master magician of political misdirection, and he succeeds in misdirecting scholars and others to this day. For example, when he agreed that Congress would not be able to do away with the Middle Passage, the Slave Ships, for another twenty years, he was setting up what some lawyers would call "a negative pregnant." By phrasing the item in the negative, he made it easier to survive political attack on the clause itself, and the delay itself helped make the reform somewhat more politically acceptable.

Later, the clause also served to reduce the effectiveness of legal arguments that Congress did not have the power to deal with other aspects of slavery. At the Pennsylvania ratification convention, Wilson even bragged publicly that he had laid the basis for abolition. At least one recent study has, rather foolishly, questioned whether he really meant it.

Fourth, Wilson's solutions were sometimes so elegant and so simple, that they could easily be overlooked. He laid the groundwork for church-state separation in his drafting of the Constitution, and he did it knowingly and brilliantly.

Please remember that this discussion is not a reference to the Bill of Rights, but to the Constitution itself.

Some of those who opposed ratification did understand that the new Constitution opened up political participation even to "the Turk, the Jew and the infidel," and used this argument in seeking to

prevent ratification. This one item demands a closer look.

In our audience tonight is Richard Mateles, who has called my attention to a letter which his great-great-great-[many greats] grandfather, Jonas Phillips, wrote on September 7, 1787, and addressed to the President and Members of the Convention.

Phillips says in his letter that he is a Jew, and points out that the Pennsylvania constitution of 1776 set forth several points that most of us would now recognize as separation of church and state. But Phillips pointed out that that same Pennsylvania Constitution turned around and ignored its own Bill of Rights, by denying Jews “any publick office or place of government.” It did so by requiring an oath of office which included the words “I do acknowledge the scriptures of the old and New testament to be given by a devine inspiration...” This was an oath which no Jew could take, and (although Jonas Phillips didn’t mention it) no Quaker could do so either, because there was no allowance for affirmation. Jonas Phillips asked the Convention to leave out those words, which was the right kind of an idea, even if it was the wrong solution.

It is eleven days before the close of the Convention, and Wilson may already have dealt with the question, but Phillips’ letter may also have helped focus Wilson’s mind on this same question, whether he was dealing with the new national constitution or with a proposed new Pennsylvania constitution. He worked on this same problem in two separate constitutional conventions, one for the nation and one for his state, whose two-party system had long been torn up by bitter constitutional debates.

At this point, I must un-confuse you a bit. All of you were taught that there is no bill of rights in the original United States Constitution; that we get our rights from the first ten amendments. If you are a scholar, you may even have been taught that Wilson



opposed any bill of rights. Actually, what Wilson did was to bury some rights in our basic document. It seems clear to me that he also wanted to keep discussion of other basic rights out of the way of the ratification decision, precisely because his theory of basic rights (in areas like speech and press and the people's right to know, and protections against gender discrimination and capital punishment) went far beyond what he thought he could sell all of the American people at that time. And it also seems clear to me that he did not believe in government by simplistic popular referendum, because that didn't fit into his political theories either. But the rights he did enumerate in the constitution itself are very clear, even if we usually overlook where they are to be found in our basic documents.

The right to Trial by Jury is in the U. S. Constitution itself, not in the Bill of Rights. Same for no ex post facto laws, and no Bills of Attainder (a legislature can't punish by legislative act alone), and no Corruption of the Blood (which is to say children can't be punished for what one of their parents did), no Forfeiture, and no Articles of Nobility, and All citizens of any one state are entitled to the privileges and immunities of citizens of any other state. If charged with a crime occurring in the United States, you have a right to be tried in the place where the alleged crime occurred. If accused of treason, if someone calls you traitor, you can use the defense that the prosecution needs two witnesses to an overt act. These are, to a considerable extent, Rights of individuals against the State. And Wilson, and some of his fellow delegates, dreamed of a system where an independent judiciary, protected by life-time appointments, would be available to enforce such individual rights against the state.

To deal with the problem of religious rights which Jonas Phillips spotlighted, Wilson provided a rather fascinating ambiguity. Here's what the Constitution says:

“The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several states, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.”

“Under the United States?” Wilson seems to be trying to give this provision the greatest reach he can possibly provide, leaving it for the Supreme Court to deal with final interpretation. And he intended to sit on that Court if he possibly could. In any event, he also dealt with the same problem in Pennsylvania, directly. when he led the revision of that state’s constitution shortly afterwards.

But for the office of President, Wilson took one additional step. He wrote the words of the oath itself into the Constitution, leaving out any of the then traditional affirmations of faith in a creator, leaving out reference to any bible, and allowing for affirmation rather than oath. He had provided an example of an oath or affirmation so constructed that both sets of his controversial clients, Jews and Quakers, could finally hold public office. Today, more than ten percent of our national legislators and Supreme Court Justices are Jews or Quakers.

Why don’t they get it? There is another answer I could have given Professor Beer. Wilson understood that political success is in part dependent on judging what is politically do-able at any particular time. Understanding this may be the rarest trait of all. The founders have been criticized for not doing away with slavery instantaneously, but this kind of criticism is manifestly absurd. The first organized attempts to counter slavery were led by reformers who seem to have understood, almost universally, that the first target of opportunity was to attack the Middle Passage. The first

real attempt to deal with slavery on an organized basis was established in Britain on May 22, 1787 under the name of the "Committee for the Abolition of the Slave Trade." Our own Constitutional Convention begins in June of that same year. The Quakers who co-opted the great abolitionist Granville Sharp as their Anglican spokesman, understood that the best point to begin with was to attack the slave ships, and not just slavery itself. The very next year saw much publicity for the horrors of the slave ships. In setting the crucial date that constitutionalized the power to end the slave trade, the twenty-year mark proved prescient and do-able. Britain's Abolition of the Slave Trade Act was passed in 1807. Our counter-part was also passed in 1807, to become effective in 1808. Thomas Jefferson signed the Bill as President. Wilson understood how to make progress. Not everybody does, even with the benefit of hindsight.

The antepenultimate answer to why the present generation still doesn't get it is that it is just not very easy to view as a hero any man who laid claim to the ownership of tens of millions of acres of American land, but who died broke. Some have tried to clamber over the mountain of charges made against him in the areas of possible land fraud. Answering all of the charges is just too great a job for almost any person, or group of people, to begin to deal with. There are people who try, but it is difficult to prove a negative.

The penultimate answer is that we are so fully steeped within a world that has accepted Wilson's answers to the basic questions of political structure that we can not longer easily conceive of any alternative. We now believe in democracy, which was Wilson's own term for our system. We think that government by an executive committee is a mistake. We believe in a single executive. We think that giving more votes to the rich than to the poor is silly. We think that judges should be able to over-ride legislatures sometimes when

they pick on individuals unfairly. On the American side of the Atlantic, we think that doing so in the name of a written constitution is a good thing. We think there should be appeals so that a second judge can second-guess a first judge, at least on the rules. We think that a federal system that assigns different power systems to two different sets of apparatus, both to states and to a national government, is a good thing. We think the people should elect a President. We think the people should elect their congressmen. We think all men should be equal and free.

We are no longer able to conceive of our world in anything other than Wilsonian terms. Almost everything Wilson taught us is now so obvious that the ideas themselves seem unimportant as ideas because they are so obvious. We have been convinced. We believe.

Even Wilson's underlying clockwork mechanism of balance of powers has achieved grudging acceptance, even though we have not learned to call it "reciprocal control," the phrase that Wilson once employed, but which Madison's notes overlooked.

Some of Wilson's ideas on international arbitration (which he initiated and exercised) have, of course, not yet been widely adopted. As usual, we sometimes seem to be evolving in directions he would have welcomed.

His most complicated theoretical constructs are worthy of the discussions they are beginning to evoke, but these learned papers cannot affect the more popular aspects of Wilson's reputation. Some of us cannot begin to stand outside of the world we live in, setting the mind apart from the system which he envisioned, in order to comprehend how he helped bring us to where we are, or to where we are going. Many will never get it.

The final answer to Professor Beer's question is the simplest and most painful of all. It seems that nothing that any of the scholars could have done, or that any of us can do, would serve to insert James Wilson into that pantheon which popular history maintains for our national heroes. Popular history just doesn't work that way.

Parson Weems with his cherry-tree-chopping Washington was almost the first man in line with a biography of Boy George. Sometimes the early-bird historian provides wormy history in a rather permanent form.

Popular history, once its first mold has been set, turns out to be what physicists used to call a perfectly plastic body. You can pummel it, you can dice it, you can pour it out and re-mold it, but it eventually returns to its original shape.

And if that isn't true of everything and everyone, it is certainly true of James Wilson, because—and this is the real point—it has already been proven that the greatest public relations stunt in history didn't change Wilson's popular reputation.

One of the principal victims of James Wilson obsession was the man who proved it. His name was Burton Alva Konkle, a Philadelphia lawyer and a Swarthmore historian, and his is the last story I will tell tonight.

Burton Alva Konkle began his campaign for restoration and repair of Wilson's reputation with an address to the Historical Society of Pennsylvania in the Spring of 1906. President Theodore Roosevelt chimed in shortly afterwards. In Pennsylvania, it was reported that "a considerable portion of his speech at the dedication

of the new state Capitol was devoted to a narration of the services of James Wilson.”

Next, a group of James Wilson obsessives set themselves up as a James Wilson Memorial Committee, which helped orchestrate a most remarkable series of events. It began on Sunday, November 18, 1906. That morning a US Navy warship, the *Dubuque*, left Philadelphia bearing an empty casket which had been donated by the St. Andrew’s Society. It was guarded by a detachment of United States Marines, an honor flag already draped over the casket. The following morning, the ship arrived in Norfolk Virginia.

Meanwhile, in Edenton, North Carolina, James Wilson was being disinterred from his unmarked grave. Among those present at the grave-site were the Chief Justice of North Carolina. The Sons of the American Revolution and The Society of the Cincinnati supplied an honor guard.. A formal request for the remains from the Commonwealth of Pennsylvania, addressed to the State of North Carolina, was read. The Lieutenant Governor of North Carolina responded. Wilson’s corpse was dressed in a Marine uniform, and escorted to the *Dubuque*. There was a gun salute. All the flags of all the ships in that harbor were hung at half-mast.

When the *Dubuque* arrived at harbor in Pennsylvania, boats moved out to meet it. There was another gun-salute. We are told that foreign ships in that harbor dipped their flags. The Governor of Pennsylvania was waiting for Wilson’s body, and the bells of Philadelphia rang out to greet it. Wilson’s coffin was carried by the assigned Navy officers to the East Room of Independence Hall, in the very building in which Wilson had helped shape the Declaration of Independence and the Constitution, and where he had signed them both. Philadelphia’s First City Troop, whose predecessors had saved his life from the blood-thirsty mob, was in fancy uniform.

Philadelphia policemen were also present in uniform. For about two-and-a-half hours some of the people of Philadelphia walked past the catafalque. Now came a funeral march to services at the church beside the new grave. Chief Justice Melville Fuller was in the line of march, together with two other Justices, Edward White, later to become Chief Justice, and Oliver Wendell Holmes. When they got to Christ Church, the Justices were seated in the same pew in which George Washington had regularly sat. The speakers included the Dean of the College of Pennsylvania which Wilson had helped found, and where he had taught. President Roosevelt was elsewhere, but in October of that same year, Roosevelt was to say “I cannot do better than base my theory of governmental action on the words and deeds of one of Pennsylvania’s greatest sons, James Wilson.” This quote was picked up by one of the leaders of the Memorial Service, Lucien Alexander, for an article later that same year for the widely-read North American Review. In the following year, Alexander published a four-part series in The Green Bag, which was then a popular monthly magazine for America’s lawyers, under the title “James Wilson, Nation-Builder”

In Christ Church, on the day of re-burial, the man whom T.R. had defeated for President of the United States, Alton B. Parker, spoke as President of the American Bar Association. So also did the Attorney General of Pennsylvania, and the Attorney General of the United States. Andrew Carnegie gave an oration.

The American Law Register which had been edited by John Marshall Harlan, another fan of James Wilson, published the principal addresses from the Memorial Services in 1907. In September of that same year, the Law Academy printed a pamphlet which was claimed to be the first full-length portrait of Wilson.

None of it was enough. Once again, the name of James Wilson

began to sink back into semi-obscurity. Even the re-interment ceremony was largely forgotten. Just about half-a-century later, the first full-length, hardback biography was published by Page Smith, who referred only to Wilson's grave in Edenton, apparently overlooking the entire ceremony of re-burial.

And that you see is the real answer why the current generation still doesn't get it. Making history can be easy, or it can be hard. But re-writing history, once it has taken its first real form, may be impossible.

It has been said that every Athenian took pride in Pericles. Maybe that was true.

We should all take pride in James Wilson, and maybe it's OK to be a little obsessive about it, but don't expect to have much company in doing so.