

ORATION

by

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It was one of the glories of Rome in the best days of the Republic that the Via Appia and the Via Sacra were lined with monuments of Consuls, Senators and Dictators—men who had “done the State some service”—which to the reflective mind spoke more eloquently of the worth of citizenship than Pompey’s Pillar or Trajan’s Arch in later Imperial days.

In obedience to a similar impulse to honor the illustrious dead, we have assembled to commemorate a man who in his lifetime was in the public eye as the architect of great works which lie at the foundations of our government and which are worthy to be held in remembrance; for he was one who left to posterity the precious legacies of great trusts worthily discharged, of opportunities for usefulness well improved, and contributions to our national jurisprudence which time has disclosed to be of greater value and purer ray than three generations of his countrymen even suspected. It is well that we should pause in these busy days to glance at our historic past and exhume the noble proportions of a great character who did so much to shape our institutions while they were still in the mould.

It was a wise saying of an ancient worthy in the law, “*Melius est petere fontes, quam sectari rivulos:*” it is better to seek the fountains than to follow the rivulets. This spirit of inquiry, this principle of investigation, which lies at the basis of scientific knowledge, is as true of constitutional or institutional study as it is of administrative jurisprudence, which searches for precedents as establishing a rule of action, and leads the explorer up the stream of authority to its source. Hence it is that we

dwell with delight upon the memories of the fathers, and recall with reverence their words and acts. It is not merely filial piety which prompts us to turn our faces to the past, nor is it simply curiosity to learn the thoughts of the men of old and thus gratify an avarice for knowledge; it is largely because our system of government requires in its adaptation to the affairs of to-day an intimate acquaintance with the conditions which gave birth to statements of eternal truths, so that statesmen meeting in council

"May know the seasons, when to take
Occasion by the hand, and make
The bounds of freedom wider yet
By shaping some august decree."

It is by a wilderness of single instances, a codeless myriad of precedents, that we master what the poet in his frenzy called "the lawless science of our law," forgetting that he had elsewhere written, that "freedom slowly broadens down from precedent to precedent." It is by recalling to the youth of the present, as well as to middle and venerable age, the language and deeds of the builders of our nation, that we can best insure the perpetuity of our institutions, for American Liberty is a golden chain binding generation to generation and stretching link by link from the receding past to the opening future.

Our task to-day is a dual one; to inter the bones of one long resting in distant soil beneath a sod which has yearned for him for one hundred and eight years, and to realize in vivid form and state in precise fashion the debt that Americans owe to one who was foremost among the Founders of the Republic. We pay a debt of tardy justice, but we pay it in full, with interest upon interest, without thought of usury or of the statute of limitations. With hearts full of gratitude for the pious act of our sister State of North Carolina in yielding up our honored dead and for her unviolated trust in guarding his remains so long, it happens that in following the bier of James

Wilson from the lonely burial-ground at Edenton to the shores of the Delaware and from the river bank to Independence Hall and thence to this sacred place, we have retraced the walks and traversed the very streets and entered the very buildings once familiar to his eyes and sanctified for all time by his labors and those of his associates.

Happy, thrice happy are we of this day who are privileged to conduct such a sacred rite!

James Wilson was a native of Scotland, of respectable parentage, born on the fourteenth day of September, 1742, and classically educated at St. Andrew's, and subsequently at the Universities of Glasgow and Edinburgh. He was the pupil of Hume, Ferguson, Adam Smith, Hugh Blair and William Robertson, and profited by their teaching in history, political economy, rhetoric and logic. He came to these shores in June of 1765, in his twenty-third year, landing in New York three months before the Stamp Act was passed, and later, coming to Philadelphia, entered the law office of John Dickinson, his senior by some ten years, and enjoyed the discussions and instruction of that eminent publicist. He soon became a tutor in the old Academy, the foundation of the University of Pennsylvania, then situate on Fourth Street below Mulberry, now Arch Street, within a stone's throw of this sacred edifice. Soon after his admission to the bar, and practicing for ten years at Reading and Carlisle and then returning to Philadelphia, he entered with zeal upon studies of Blackstone, Burlamaqui, Montesquieu, Bacon, Coke, the Reports of Raymond, Salkeld and others, and distinguished himself by tracing a line of constitutional distinction between those cases in which the Colonies ought and those in which they ought not to acknowledge the power of Parliament over them. His conclusion was as bold as it was original and startling, for he asserted that the Colonies were subject only to the Crown and in no degree to Parliament, a position in opposition to the views of the British leaders and far in advance of the Colonies themselves, but based firmly

upon the English Constitution as later studies have confirmed it to be. Rising steadily in distinction at the bar, he added to his professional duties a professorship of English Literature in the College of Philadelphia, acted as chairman of a Committee of Observation and Correspondence, called into being by the Boston Port Bill, became the author of a paper on "The Legislative Authority of Parliament," and sustained in a notable speech the right of Massachusetts to resist any change in her Constitution or Charter not agreed to by her Legislative Assembly. In June of 1775 he became a member of the Continental Congress and retained his place through reëlection, so that the glory of being one of the Signers of the Declaration of Independence was his. His attitude towards this decisive step, during the days when Richard Henry Lee's resolution was under debate, while firm and unmistakable, was marked by caution and conservatism. The criticism to which he was then subjected, which has in some degree survived to this day, can be best answered, as it then was, in the language of his fellow members of Congress, John Hancock, Thomas Jefferson, John Adams, Samuel Adams, Robert Morris and seventeen others, all names upon the Roll of Immortals. I quote from an original unpublished manuscript in the Library of Congress:

"WHEREAS, It has been represented to the Congress that reports have been circulated concerning Mr. Wilson, one of the Delegates of Pennsylvania, to the Disadvantage of his Publick Character and that Misrepresentations have been made for his Conduct in Congress,

"We the Subscribers Members of Congress do therefore certify, that in a late Debate in this House upon a Proposition to declare these Colonies free and independent States Mr. Wilson after having stated the Progress of the Dispute between Great Britain and the Colonies, declared it to be his opinion that the Colonies would stand justified before God and the World in declaring an absolute Separation from Great Britain forever; and that he believed a Majority of the People of Pennsylvania were in Favour of Independence, but that the Sence of the Assembly (the only representative Body then existing in the Province) as delivered to him by their Instructions, was against the Proposition; that he wished the question to be postponed, because he had Reason to believe the People of Pennsylvania would soon have an Opportunity of expressing their Sentiments upon this point and he thought the People ought to have an Opportunity given them to Signify their opinion in a regular Way upon a Matter of such Importance—and because the Delegates of other Colonies were bound by Instructions to disagree to the Proposition and he thought it right

that the Constituents of these Delegates should also have an Opportunity of Deliberation on said Proposition, and communicating their Opinions thereon to their respective Representatives in Congress—The Question was resumed and debated the Day but one after Mr. Wilson delivered these Sentiments, when the Instructions of the Assembly referred to were altered and new Instructions given to the Delegates of Pennsylvania. Mr. Wilson then observ'd that being unrestrained, if the Question was put he should vote for it; but he still wished a Determination on it to be postponed for a short time until the Deputies of the People of Pennsylvania who were to meet should give their explicit Opinion upon this Point so important and interesting to themselves and their Posterity; and also urged the Propriety of postponing the Question for the Purpose of giving the Constituents of several Colonies an Opportunity of removing their respective instructions, whereby unanimity would probably be obtained."

This is truly a remarkable document. It is proof positive of the importance attached to the position assumed by Wilson, of the character of the assault upon him, and also of the anxiety of his fellow members to put him in a true position before the public. I can recall no other instance where members of any body felt called upon to join in a solemn certificate explanatory of the action of a colleague who had, of course, opportunities to speak for himself.

This attitude of Wilson, in the tumult of excitement following the publication of the Declaration, cost him his seat, and for a time exiled him from the councils of the nation. It was characteristic, however, and displayed then, as was displayed twice thereafter, his anxiety to build all public acts upon the properly-expressed will of the people, and thus secure a sanction both authoritative and permanent.

In the meantime he rose to the leadership of the bar and appeared in cases of the utmost moment. He argued the great case of the claim of Pennsylvania to the rich and vast region which now contains the cities of Scranton, Wilkes-Barre, Pittston, Shamokin, Bradford, Meadville, and Franklin, and snatched our northern tier from the hands of Connecticut.

He appeared as counsel against the claimant in the case of the sloop "Active," involving a notable collision between the Continental Congress and the State Court of Admiralty, giving rise to a discussion which was not

settled until after the adoption of the Constitution of the United States and its final interpretation by Chief Justice Marshall in the case of *The United States v. Peters*. He argued in support of the charter granted by Congress to the Bank of North America, and anticipated the doctrine of contract announced by Webster and sustained by John Marshall in the Dartmouth College case. He held the commission of Louis XVI. as Avocat General for the French Kingdom, and represented the monarch in all claims arising out of the French alliance and the American Revolution. His career at the Bar is best described in the language of William Rawle, the elder, a cotemporary witness, who long after Wilson's death writes of him "in the splendor of his talents and the fulness of his powers."

"Classically educated, and in the outset employed as a tutor in a public seminary, his subsequent success in a narrow circle of country courts, encouraged him to embark in the storm which after the departure of the British troops agitated the forum of Philadelphia.

"The adherents to the royal cause were the necessary subjects of prosecution, and popular prejudice seemed to bar the avenues of justice.

"But Wilson, and Lewis, and George Ross, never shrunk from such contests, and if their efforts frequently failed, it was not from want of pains or fear of danger.

"Other questions of the highest moment also became the daily subjects of forensic discussion, questions for which previous study no doubt had qualified them, but with which no previous practice had familiarized them.

"In respect to them, Wilson soon became conspicuous. The views which he took were luminous and comprehensive. His knowledge and information always appeared adequate to the highest subject, and justly administered to the particular aspect in which it was presented. His person and manner were dignified, his voice powerful, though not melodious, his cadences judiciously, though somewhat artificially regulated.

"His discourse was generally of a reasonable length, but did not affect conciseness nor minuteness; he struck at the great features of the case, and neither wearied his hearers by a verbose prolongation nor disappointed them by an abrupt conclusion.

"But his manner was rather imposing than persuasive, his habitual effort seemed to be to subdue without conciliating, and the impression left was more like that of submission to a stern than a humane conqueror."

But it was not his eminence at the bar nor his influence as a member of the Continental Congress which constitutes his chief distinction. His imperishable claim to the gratitude of posterity must rest upon his work as a

member of the Federal Convention, and his exposition of the true theory of the Constitution, when, at a later date, he became an Associate Justice of the Supreme Court of the United States.

It is a common error to regard the Congress of 1776 as the most illustrious body of men that ever assembled upon this Continent, particularly as Lord Chatham declared that since the days of Thucydides no such body of men had assembled in history. The truth is, however, that in point of ability, and with a strict regard to the value and importance of the work accomplished, the Federal Convention which met in the State House in May, 1787, was a far abler body and performed work requiring the exercise of talents of an infinitely higher order. It is no idle boast to declare that the Constitution of the United States was unique in origin, without a prototype in design, and that it will preserve for all time the precious fruits of freedom and self-government. Its authors combined a rare union of the best talents, information, patriotism, probity and public influence which the country afforded. Of the members of the Federal Convention thirty-nine had seen active service in the Continental Congress; seven were signers of the Declaration of Independence; thirty-one were lawyers by profession, of whom four had studied in the Inner Temple, and one at Oxford under Blackstone; ten had served as judges in their own States, of whom four were still upon the bench; one had been a judge of the old Federal Court of Appeals in Cases of Capture; seven had been chosen to serve as judges in courts specially constituted to determine controversies between the States as to territory and boundary under the power conferred on Congress by the Ninth Article of the Confederation; eight had assisted in framing the Constitutions of their respective States; three had aided in the codification or revision of their own State laws; eight had served as governors of States; five had been present at the Annapolis Convention; and three were universally recognized as oracles upon questions of government as well as of public and international law.

All of them, whether lawyers or civilians, had witnessed the practical operation of our institutions under the Crown of England and the Articles of Confederation, and had enjoyed the best opportunities of observing the merits and defects of both systems.

The average age of the members of the Convention was forty-three years, ranging from the patriarch, Franklin, at the age of eighty-one, to Nicholas Gilman, at the age of twenty-five. Roger Sherman, William Livingston, George Mason, William Samuel Johnson were upwards of sixty years of age. John Dickinson was fifty-five, while James Madison was but thirty-three and Alexander Hamilton but thirty years of age. James Wilson was in his prime at the age of forty-seven, and in any estimate of intellectual, constructive and original force, Madison and Hamilton alone are to be compared with him. Hamilton was weakened in the Convention by the withdrawal of his colleagues, Yates and Lansing, and his conspicuous service to the Constitution was rendered in the ratifying convention of the State of New York, and in his papers contributed to the *Federalist*, rather than in the shaping of material in the Federal Convention itself. Madison, while a profound student and industrious with his pen, was author in large part of what was known as "The Virginia plan," but was no debater and was unequal to the tasks of strenuous discussion upon the floor.

Wilson served as one of the Committee on Detail, and suggested many features of the present Constitution. He was a strenuous advocate of a government by the people, and was one of the sturdiest supporters of every feature of a National Government. He desired that the various branches of the new government should be thoroughly independent of each other. While willing to preserve state governments, he sought to guard the General Government against the encroachments of the States. He contrasted the plans introduced by Mr. Randolph, of Virginia, and Mr. Paterson, of New Jersey, and his able analysis did much to clear the atmosphere of discussion. He pointed out the advantages of a National

Government over one purely federative, and showed that the individuality and sovereignty of the States was not incompatible with a General Government. He wished the Executive to consist of but one person, and proposed that the President should be chosen by electors elected by the people. He wished him armed with an absolute veto, and to serve for a long term, subject to a provision for impeachment. He opposed a proposition to have him removable by Congress on the application of the States, and objected to an Executive Council. He urged that Senators as well as Representatives should be chosen by the people, and opposed an equal vote of the States in the Senate, but proposed one Senator for every one hundred thousand people; and he also objected to the Senate being united in the power of appointment. He advocated a proportional representation of the States in Congress, and suggested the number of free men and three-fifths of the slaves as bases of representation. He advocated the same proportion of representation in both Houses, and favored annual elections for members of the lower house. He disapproved of the exclusive origination of money bills by Representatives, and objected to residence as a qualification of a member. He desired a provision that the contracts of the Confederation should be fulfilled, and advocated a guaranty to the States of republican institutions. He opposed a proposition to allow the States to appoint the national officers, and doubted whether the writ of habeas corpus should ever be suspended. He contended for an absolute prohibition upon the States relative to paper money, and also for a provision prohibiting the passing of laws impairing the obligation of contracts.

The main features of his contentions were to base the government upon popular suffrage, so that the source of governmental authority should be drawn directly from the great body of the people. While failing in securing the election of Senators by the people, in persuading the Convention to establish what is known as district representation he made it possible for the government to be-

come what it is now in truth and in fact, a National Government, and furnished a bond of union so full of prehensile strength and tenacity of grasp as to convert a loose confederacy into a highly-developed form of consolidated power. In this respect he performed a service as notable as Oliver Ellsworth subsequently did when drafting the Judiciary Act of 24th of September, 1789, the famous twenty-fifth section of which, giving force and effect to the appellate jurisdiction of the Supreme Court of the United States, constitutes one of the most precious links in the chain of union.

The services rendered by Wilson in the Federal Convention were crowned by his opinion in the celebrated case of *Chisholm's Executors v. George*, 2 Dallas, 419, a suit which tested to the utmost the courage of the Judges as well as the principles upon which the Government was based. It is no exaggeration to declare that from the opinion of Mr. Justice Wilson and from the dissenting opinion of Mr. Justice Iredell there has been subsequently evolved the different schools of constitutional lawyers, whose debates have done so much to aid the court in a final exposition of the instrument. Wilson declared:

"This is a case of uncommon magnitude. One of the parties to it is a State; certainly respectable, claiming to be *sovereign*. The question to be determined is, whether this State, so respectable, and whose claim soars so high, is amenable to the jurisdiction of the Supreme Court of the United States? This question, important in itself, will depend on others, more important still; and may, perhaps, be ultimately resolved into one no less radical than this: 'Do the people of the *United States* form a nation?'"

Wilson viewed the cause from every point of sight: first, from the principles of general jurisprudence; second, from the laws and practice of particular states and kingdoms; third, from the law of nations; fourth, from the Constitution of the United States itself; and, marching majestically to his conclusion, he declared that no state could assume a supercilious preëminence above the people who have framed it. He exclaimed:

"With the strictest propriety, therefore, *classical and political*, our national scene opens with the most magnificent object which the

nation could present. 'The people of the United States' are the first personages introduced. Who were those people? They were the citizens of thirteen states, each of which had a separate constitution and government, and all of which were connected together by Articles of Confederation. To the purpose of public strength and facility that confederacy was totally inadequate, and a requisition on the several states terminated its legislative authority: executive or judicial authority it had none. In order, therefore, to form a more perfect union, to establish justice, to insure domestic tranquillity; to provide for the common defense, and to secure the blessings of liberty, those people, among whom were the people of Georgia, ordained and established the present Constitution. By that Constitution legislative power is vested; executive power is vested; judicial power is vested."

Then, planting himself squarely upon the language of the Constitution, he concludes that the judicial power of the United States extended to controversies between a state and citizens of another state, and finally he asks:

"Could the strictest legal language; could even that language which is peculiarly appropriated to an art, deemed by a great master to be one of the most honorable, laudable and profitable things in our law; could this strict and appropriated language describe, with more precise accuracy, the cause now depending before the tribunal? *Causes*, and not parties to causes, are weighed by Justice in her equal scales: on the former *solely* her attention is fixed: to the latter she is, as she is painted, blind."

This opinion, in its essence and in its potentiality, must be regarded as the climax of Federalism. Wilson viewed the Constitution, not as an instrument fashioned to meet the needs of the hour, nor as a weapon to be retempered or reshaped from time to time, but as an organism, a political being, consisting of parts, of which the functions of each were essential to the existence of the whole, and of each of the parts; a whole, of which the parts were reciprocally means and ends; a political entity, of which the parts partook of a common life, with inherent powers, vital though dormant, capable of growth, and with strength to meet emergencies; or slightly to paraphrase Sir William Hamilton's definition of Man, Wilson viewed the Constitution of the United States as a political *intelligence* served by organs. This conception, so familiar to us, when viewed through the illuminating media of construction and events, a conception reached only by the labors of Webster, Pinkney and Binney at the bar,

and Marshall, Miller, Bradley and Field upon the bench, was present to the mind of Wilson more clearly and definitely than to Madison and Hamilton, the only two of his cotemporaries who approached him in penetration and breadth of view. He conceived it, not in a forecast of its present robustness and gigantic form, but in the sense in which Copernicus divined his theory of the planetary system.

In truth, so far as the thoughts of mortals may approach the Divine mind, the architecture of our Constitution, as conceived by the brain of this marvellous man, resembles that of the heavens, where states circle like planets about the Federal Government as a central sun, the source of life, power, harmony and beauty, productive of separate existences and destructive of none, while moving without collision or chaos to the majestic music of Freedom down centuries of time.