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Justice James Wilson: Leading Constitutional  
Architect

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It was altogether fitting that James Wilson, second in importance only to James Madison as an architect of the Constitution, would be nominated by President George Washington to the original Supreme Court. From this position, Justice James Wilson could defend the Constitution, which he had done so much to shape and define.

As it turned out, Wilson's leading role as a delegate to the Constitutional Convention was his greatest achievement, the high point of his life. Not that such influence is without cause for celebration. Hardly. It's rather that many of Wilson's admirers somehow expected more from one of the most brilliant legal minds of his generation. A Supreme Court docket with a paucity of cases in the early years, however, deprived him of writing many influential opinions that would have enhanced his reputation and imparted, perhaps, an indelible mark on the development of the Constitution to match his imprint on its drafting.

Instead, the deeply learned scholar, nicknamed "Professor," was content to influence and educate the nation with a series of lectures on the Constitution in 1791 that affirmed the first-rate insights of his legal and rhetorical analyses of English oppression of colonial Americans in the pre-revolutionary era.

Wilson was born September 14, 1742, in rural Scotland, near St. Andrews. With university training

under his belt at the peak of the Scottish Enlightenment, a school of thought that worked considerable influence on our nation's founding principles, Wilson emigrated to America when he was 23 years old. He read law in Philadelphia under the tutelage of John Dickinson, who was widely hailed as one of the top lawyers and legal educators in his time. Wilson's brilliance led quickly to fame and fortune. His success in court, combined with his withering critiques of the assertion of parliamentary authority in the colonies, led to political and social prominence.

In 1775, Wilson was elected to the Second Continental Congress. Although not an early advocate of independence from England, given his interest in reconciliation with the Crown, he signed the Declaration of Independence and soon became an ardent supporter of a strong national government that could replace the weak and inefficient government under the Articles of Confederation.

As a delegate from Pennsylvania, he spoke in the Constitutional Convention frequently, and with authority. His contributions to the fundamentals of American Constitutionalism were conspicuous in the areas of separation of powers, judicial review, the presidency, and the doctrine of popular sovereignty. He didn't win all his battles. For instance, he favored direct democracy and direct election of the Senate and the presidency.

Along with other heavyweights in the Convention, Wilson approved of judicial review, which he conceived as the principal means of enforcing constitutional limitations and the rule of law. Critical to the implementation of the rule of law, Wilson explained to his colleagues, was subordination of the president to the law and his amenability to the judicial process.

Wilson dashed any flirtation with the concept of presidential prerogative, which he found utterly incompatible with the principles of republicanism. The president, unlike the English monarch, would have no authority to violate or set aside the law in the face of an emergency.

As a proponent of the rule of law, he believed that the president should enjoy "no privileges not enjoyed by all other citizens." With Alexander Hamilton and James Madison, moreover, he repudiated the idea that the president should possess unilateral authority to declare or otherwise initiate war on behalf of the American people. In the Pennsylvania Ratifying Convention, Wilson declared that "the system is designed to prevent one man from hurrying us into war." Delegates to the Convention unanimously agreed that only Congress should possess authority to commence military hostilities.

Wilson had hoped to be named Chief Justice and, in fact, is known to have asked Washington to nominate him for the post. Washington, however, preferred John Jay to lead the inaugural Court. He was bypassed in 1795 and again in 1796. Wilson's haughty demeanor may have impaired his aspirations. During his nine-year tenure on the Court, Wilson wrote about two dozen opinions, which totaled only 20 pages in the official reports.

In his most notable opinion, *Chisholm v. Georgia* (1793), he dismissed Georgia's claim of state sovereignty and exalted popular sovereignty, which set forth an essential cornerstone of American constitutional and political thought.

Wilson's restless, brilliant mind featured a vaulting ambition. Having successfully led a movement in 1790 to replace the Pennsylvania State Constitution of 1776 with one that reflected his constitutional

theories, he hoped, in vain, to be appointed to codify his state's laws and those of the nation. His lengthy, influential Lectures on Law, delivered in 1790-1791, reflected his appointment as a Professor in the College of Philadelphia and his vision of American law and constitutionalism.

Like others in the founding generation—Thomas Paine and Robert Morris, for example—Wilson was plagued by financial setbacks. He was forced to flee creditors and was twice sentenced to debtor's prison. He largely abdicated his duties on the Court in the final two years of his life, as he attempted to elude creditors. He died on August 21, 1798, a broken man. History, however, will remember his enduring contributions to the creation of the American Constitution.