

St. John's Law Review

Volume 13
Number 1 *Volume 13, November 1938, Number*
1

Article 37

The Philosophy of Law of James Wilson (Book Review)

Thomas P. Murphy

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

This Book Review is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

THE PHILOSOPHY OF LAW OF JAMES WILSON. By William F. Obering. Washington: Catholic University Press, 1938, pp. x, 324.

In this day of fierce controversy and bitter debate over political, social and economic institutions, many of us are impelled to study the fundamental principles upon which our political system is based. Even in our own country there are those who believe that our experiment in democracy has proved a failure, that the modern age has developed so rapidly that our political institutions are incapable of dealing successfully with the complex problems of modern life. The fascists vie with the communists in their efforts to convince the people that nothing less than a complete abandonment of our fundamental philosophy of government can bring about any effective solution of our many perplexing problems.

In view of this critical situation it is well for us to make a study of our political origins. Dr. Obering has contributed this most interesting monograph on "The Philosophy of Law of James Wilson, Associate Justice of the United States Supreme Court, 1789-1798" as the first of a proposed series of "Philosophical Studies" under the auspices of the American Catholic Philosophical Association. The recent attempts to bring about the reorganization of the United States Supreme Court have stimulated a widespread interest in any work involving a consideration of the fundamental American philosophy of law. This publication is such a work.

The name of James Wilson does not loom large in most of our histories of the United States. I daresay the average high school boy or even the college student would be hard put to it to identify the man if the question were asked him in one of the currently popular radio question bees. Perhaps even Mr. Fadiman might have to pay out some money if he were to ask the board of experts on the "Information, Please" program about James Wilson. Yet even a cursory reading of Dr. Obering's book will convince one that James Wilson's place in the important beginnings of the history of the United States Supreme Court deserves far more attention than it has usually been accorded. Our author says in his introduction:

"It has been denied that the Founding Fathers had a philosophy of law and government; and it has been claimed that the constitution they gave and embodied in a scheme of government which has stood the test of a century and a half, like Topsy 'just growed.' It has been asserted that they had such a philosophy which they derived from Jean Jacques Rousseau or from John Locke and the Puritans; and the claim has been substantiated by citing merely verbal coincidences without any suspicion of the wide divergence and even contradiction of meaning that underly these verbal similarities.

"The present study seeks to give an accurate and documented synthesis of the philosophy of law or jurisprudence held and brilliantly defended by an unquestioned leader of American political thought and action in the days that witnessed the struggle for our freedom and the foundation of our national government—James Wilson."

After giving a brief sketch of Justice Wilson's early career, the author points out that he was a signer of the Declaration of Independence and "that he was one of only six of the 'signers' who retained their political reputation long enough to sign the Constitution of the United States." The eminent James Bryce wrote, "Few men in that great generation to which Wilson belonged equalled him." Justice Harlan said that Wilson "was recognized as the most learned man of the constitutional convention." Dr. Randolph G. Adams, however, believes that the one estimate which is worth more than all the others put together 'is that of Max Farrand,

" * * * whose 'Records of the Federal Convention' leaves nothing more to be said, and whose 'Framing of the Constitution' epitomizes his years of research in that field. He gives first place among the actors at the Convention to James Madison, as others have done. Why should not posterity heed Doctor Farrand when he continues 'Second to Madison, and almost on a par with him, was James Wilson?' * * * Personally, I have often been inclined to rank Wilson above Madison."

"Justice Wilson," says Dr. Obering, "has the unique distinction of being the only American statesman and jurist who signed the Declaration of Independence, the Constitution of the United States, and a remarkable decision of the Supreme Court interpreting the Constitution, 'Chisholm's Executors v. Georgia.' For in September, 1789, he was appointed by Washington one of our first Associate Justices, a position he held until his death at Edenton, North Carolina, the twenty-eighth of August, 1798."

With this brief biographical sketch to give the reader a point of orientation for the philosophical discussions which form the major part of the work, the learned author proceeds to trace Justice Wilson's contributions to our fundamental American philosophy of jurisprudence. These legal principles are expounded in Justice Wilson's decisions on the bench as well as in his lectures on law delivered in the College of Philadelphia, 1790-1791. In April, 1792, the College of Philadelphia was merged with the University of Pennsylvania, and Justice Wilson was appointed to the Chair of Law, but never fulfilled its duties.

In the course of a brief review it is impossible to give an adequate idea of the intensely interesting discussion of basic principles which Dr. Obering has prepared. The chapter headings are as follows:

- Chapter I. The Science of Man and the Law
- Chapter II. The Moral Basis of Law, the Natural Law
- Chapter III. The Moral Basis of Law, Natural Rights
- Chapter IV. Civil and Criminal Law
- Chapter V. The Law of Nations, International Law
- Chapter VI. The State as a Natural Institution
- Chapter VII. Juridical Defense of the Revolution
- Chapter VIII. Constitutional Government

The work is plentifully annotated and a fine bibliography is included.

One of the most interesting chapters, in view of recent happenings in Europe, is that on International Law. Perhaps for the reader who is not a

deep student of metaphysics, some passages will prove rather difficult reading. However, for the most part, the matter will prove of intense interest to the student of law who sees in his beloved profession not merely the means of satisfying his material needs in as painless a way as possible, but who regards it as one of the great fields of knowledge by means of which we may help "to secure the blessings of liberty to ourselves and our posterity."

THOMAS P. MURPHY.*

THE RISE OF A NEW FEDERALISM; FEDERAL-STATE CO-OPERATION IN THE UNITED STATES. By Jane Perry Clark. New York: Columbia University Press, 1938, pp. xviii, 347.

The "New Federalism" of which the author writes is a type of governmental co-operation which "will invite the federal government to use state agencies for the performance of federal functions under federal control with the help of a state civil service with high standards." A federal government, the author states, has within it inherent difficulties involving problems and functions common both to the state and to the federal government. The control of narcotics is a problem about which both the states and the federal government are concerned as are also the problems of unemployment compensation and child labor in industry. Some problems which were originally only state-wide and which the states attempted to control by state-wide laws rapidly became national in scope and the federal government has now come to look upon their control as a distinctly federal function. Such is the problem of the railroads and of flood control.

While in the past our governments, both state and federal, have attacked various governmental problems individually and with varying degrees of success, co-operation between the two would seem to be the ideal toward which each should strive in order to avoid duplication and possible conflict in their work. The author states that co-operation can be used (1) to co-ordinate the use of federal and state resources, (2) to eliminate duplications in activity, (3) to cut down the expenses, (4) to accomplish work which would not otherwise be carried out, (5) to make the wheels of government in the federal system move more smoothly.

The types of co-operation now in use between the federal and state governments range from the haphazard and totally unplanned type, as the informal conferences between the police officers of the two governments in the apprehension of a criminal, to the legally binding contracts and agreements for the construction of Boulder Dam. Between these two there are countless other methods whereby co-operation is obtained between the two governments. Informal agreements or understandings are used, as, for example, in the naturalization of aliens in California, the federal authorities accepting a diploma from a California state or local school as evidence of literacy. One of the most fre-

* Professor of English, St. John's University School of Pharmacy.