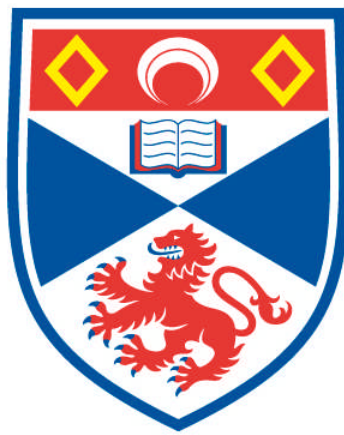


**FROM THE ROMAN REPUBLIC TO THE AMERICAN REVOLUTION:  
READINGS OF CICERO IN THE POLITICAL THOUGHT OF  
JAMES WILSON**

**Laurie Ann Wilson**

**A Thesis Submitted for the Degree of PhD  
at the  
University of St Andrews**



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**From the Roman Republic to the American Revolution:  
Readings of Cicero in the Political Thought of James Wilson**

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Doctorate of Philosophy (Ph.D.) Thesis

Schools of Classics and International Relations  
University of St. Andrews  
28<sup>th</sup> September 2009



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## **Abstract**

As a classical scholar and prominent founding father, James Wilson was at once statesman, judge, and political thinker, who read Cicero as an example worthy of emulation and as a philosopher whose theory could be applied to his own age. Classical reception studies have focused on questions of liberty, civic virtue, and constitutionalism in the American founding, and historians have also noted Wilson's importance in American history and thought. Wilson's direct engagement with Cicero's works, however, and their significance in the formulation of his own philosophy has been long overlooked.

My thesis argues that Wilson's viewpoint was largely based on his readings of Cicero and can only be properly understood within this context. In the first two chapters of my thesis I demonstrate that Wilson not only possessed a wide-ranging knowledge of the classics in general, but also that he borrowed from Cicero's writings and directly engaged with the texts themselves. Building upon this foundation, chapters three and four examine Cicero's perspective on popular sovereignty and civic virtue, situate Wilson's interpretations within contemporary discussions of Roman politics, and analyse the main ways in which he adapts Cicero's arguments to his own era. Wilson retains a broader faith in the common people than seen in Cicero's opinions, and he abstracts from Cicero a doctrine of sovereignty as an indivisible principle that is absent in the text; nevertheless, Cicero's conception of a legitimate state and his insistence on the role of the people provided the foundation for Wilson's thought and ultimately for his legitimization of the American Revolution. At the same time, like Cicero, Wilson views the stability of the state as resting in the personal virtue of the individual. While his enlightenment philosophy imparts optimism to his conception of the good citizen, his definition of virtue closely follows that of Cicero. As the final chapter of my thesis concludes, their individual interpretations of these theories of popular consent and virtue were instrumental in forming Cicero's and Wilson's justifications of civil disobedience.

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*Soli Deo Gloria.*

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## **Abbreviations**

Names of ancient authors and works are abbreviated following the usage of the *Oxford Classical Dictionary*.

All translations, unless otherwise noted, are my own.



## Introduction

The central premise of constitutionalism is to promote a rule of law rather than anarchy or despotism; thus, it seeks to maintain the balance between right and power that provides stability in a world of shifting ideologies and political unrest.<sup>1</sup> In this way, the fundamental topics of constitutionalism, such as the effects of different forms of government, the balance between strong laws and institutions and the liberty of the people, and the relation between ideologies, custom, and written law, directly engage with the complex problems we currently face. Present troubles, such as unstable governments and the violation of law by rogue actors, pose one of the greatest dangers to society and demonstrate the importance of political philosophies. As the United States fails in the attempt to export democratic ideals and confronts the question of whether it is in fact possible to rebuild or implement democracy in middle-eastern nations, the necessity of considering the principles of constitutional government becomes more evident.

In this context, the rapid decline in the study of the classics over the past century appears insignificant and unconnected to current international affairs. Not long ago, the belief that the classics served primarily in providing practical instruction in political and domestic life aided their study and supplied an unchallenged argument for their relevance.<sup>2</sup> Nevertheless, while we no longer read the ancient texts as a simple answer to modern day inquiries, they remain of primary importance in evaluating the implications of past political theories and understanding how they continue to affect the present.<sup>3</sup>

Therefore, in this thesis, I offer a focused examination of how two statesmen and political theorists addressed the essential questions of popular sovereignty and civic virtue at times when the fate of their own societies hung in the balance. The texts of Cicero at the end of the Roman Republic and the legal lectures of James Wilson at the founding of the United States provide a glimpse into two key moments in the history of political thought.

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<sup>1</sup> McIlwain (1958) 21-22, 136-137; cf. Pangle (1988) 7.

<sup>2</sup> Winterer (2002) 16-20, 133, 138 on the ideological shift in the study of classicism.

<sup>3</sup> Sirico (2009) 392-393.

In the construction of his own legal doctrines, Wilson looked to the authority of the classical texts and particularly to Cicero to justify his theories. In addressing the direct connection between these two authors, I hope to demonstrate that in this narrow topic, as in the larger field of political thought, it is only by understanding where we have come from that we can make sense of where we currently stand.

## **1. Reception studies and the American founding**

Despite disagreement over the precise nature of the classical influence in early American thought and questions regarding the direct employment of texts, the obtaining of quotations from intermediary sources, and the degree of classical knowledge this use represents, previous scholarship has established the prominent place of classical literature in the philosophy and discourse of the American Founding.<sup>4</sup> As a result of an education centred on the Greek and Roman texts and a culture that relied on the authority of the ancients in the fashioning of governmental structures and political ideals, the Founding Fathers shared a similar intellectual experience. This universal language of the classics became an inseparable part of their writings and debates.

In understanding the founders' use of the classical texts, two important facts must be noted. First, it is significant to note that the reception of the classics in the American colonies was not wholly unique. Despite the individual viewpoints and circumstances governing the founders' readings of the classics, they were drawing on a long-standing tradition of political thought that utilised the classical texts.<sup>5</sup> In particular, the English and Scottish authors whose works were widely-read in the colonies not only received a similar education in the classical texts and languages but frequently cited the classics, examined and praised the institutions of the Roman Republic as a model of government, and looked to classical heroes as examples of political success and civic virtue.<sup>6</sup>

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<sup>4</sup> Richard (2008) and Malamud (2009) represent two of the more recent studies supporting this position.

<sup>5</sup> See Millar (2002), especially chapters three and four, on the influence of the Roman Republic from the political thought of the Middle Ages into Seventeenth-Century England.

<sup>6</sup> Ayres (1997) 2-4, 12-13, 47, 51, 55-60; cf. Sher (2006) 503-504 on the influence of the Scottish Enlightenment authors in early America.

The second factor of importance is the reality of other interrelated threads forming the fabric of American political thought. The classics were not the only sources used by the founders. The period of the American Revolution was characterised by a number of diverse and even competing philosophies that became integrated into one overarching tradition.<sup>7</sup>

Within this broad sphere of scholarship, this thesis analyses the ways in which one prominent leader in the American founding interacted with the writings of Cicero in a way that shaped his identity and political philosophy. Originally trained as a student in the classics and intended for the ministry, Wilson became one of the foremost lawyers in the American colonies and an active statesman during the formation of the new republic, signing the Declaration of Independence, assisting James Madison in writing the Constitution, and playing a prominent role in the Federal Convention. Later, he would become the first professor of law at the University of Pennsylvania and a justice on the first Supreme Court. In light of Wilson's career as a statesman and politician, it is not surprising that Cicero stands as a central figure in Wilson's life and thought. Modern scholars draw attention to the union of philosophy and politics in Cicero's life,<sup>8</sup> and for Wilson this association held personal relevance. Despite his strong propensity for scholarship, he was not content to confine himself to academics and sought a broader field in which to exercise his talents.<sup>9</sup> Making a conscious comparison between himself and Cicero, Wilson looked to this ancient Roman as an example of one who devoted himself to the state, who successfully combined the duties of both an active and contemplative life, and whose political theories provided a practical source of guidance.

A problem often encountered in classical reception studies of the American founding is that these studies often generalise terms and do not clearly differentiate between the individual founders or between the precise classical texts they studied. Despite his praise of Carl Richard's *The Founders and the Classics*, James McLachlan makes the justified criticism that Richard fails to adequately define the "founders" or fix his argument within a specified historical context.<sup>10</sup> This same tendency occurs not

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<sup>7</sup> For a helpful summary, see Rossiter (1963) 64-75 on the chapter "The Sources of Political Thought". Cf. Agresto, (1977) 481.

<sup>8</sup> Powell, J. G. F. (1995) 2; cf. Lintott (2008) 423-424.

<sup>9</sup> McCloskey (1967) 9.

<sup>10</sup> McLachlan (1995) 201.

only among scholars defending a direct correlation between the classics and early American political theory, but also appears among those who argue that the classics were primarily a specious show of classical knowledge. In his work *The Ideological Origins of the American Revolution*, for instance, Bernard Bailyn provides examples of founders who drew diversely from the political and literary traditions preceding them; nevertheless, he also makes some sweeping assumptions about the “founders” as a whole. Some generalisations must be made in these types of studies, particularly since many of the founders were united by a similar ideology and a comparative education in the classics. Nonetheless, among the individual founders there was a significant variation in their degree of classical knowledge, their approach to the texts, and their opinions regarding the various classical authors and their works. Thomas Jefferson’s declared affinity for the tenets of Epicureanism and John Adams’s typification of the virtues of the Stoic sage are two such examples.<sup>11</sup> In this thesis, therefore, I aim to focus on Wilson’s unique relation to the Ciceronian texts.

At the same time, it is necessary to briefly contextualise Wilson’s place among his contemporaries as well as to note the universal regard that marked the founders’ opinion of Cicero. During the American Revolution and the framing of the Constitution, the founders’ conception of ancient Rome served as the supreme model of a republic that ensured both liberty and security, and they extolled her citizens as examples of patriotic devotion, virtue, and industry.<sup>12</sup> Viewing themselves and their place in history in light of these classical exemplars, the founders saw their struggle for freedom and their construction of a new republic as an opportunity to match the deeds of their ancient counterparts and even surpass them in forming a more lasting and prosperous state.<sup>13</sup>

For a group of men who had a great respect for the classical authors, several aspects of Cicero’s life held special appeal. The republicanism of the American colonies adopted Cicero’s emphasis on virtue, higher law, and devotion to the state and the common good, and employed these principles in the development of theories of independence and resistance.<sup>14</sup> Educated men such as Wilson made specific use of

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<sup>11</sup> MacKendrick (1977) 101-102.

<sup>12</sup> Reinhold (1984) 101; cf. Richard (2008) 97; Malamud (2009) 12.

<sup>13</sup> Richard (2008) 128; Malamud (2009) 3. Cf. Ayres (1997) 14 on a similar viewpoint in Great Britain, which admired the deeds and institutions of Greece and Rome, but also aimed at surpassing them.

<sup>14</sup> Skinner (1978) 1:54-55; Wood, G. S. (1969) 100-103; Nicgorski (1984) 564.

Cicero's texts and political philosophy; in particular the glorified image of Cicero as a patriot who sacrificed himself in an attempt to preserve the liberty of the republic against tyranny captured the American imagination. In a letter to Adams, for instance, Jefferson describes Cicero's letters as the "purest effusions of an exalted patriot".<sup>15</sup> Other classical heroes provided similar examples of patriotism, such as Cincinnatus, who sought the good of his country rather than personal gain or private ambition.<sup>16</sup> At Valley Forge, Washington ordered a performance of Joseph Addison's *Cato*, as a source of inspiration for the weary troops, while Patrick Henry and Nathan Hale also quoted from the play in their speeches.<sup>17</sup> Nonetheless, Cicero occupied the first position in the American consciousness.<sup>18</sup>

Cicero's years as an advocate and his texts on oratory provided practical examples for young attorneys, and his philosophical writings provided a theoretical justification for the separation from Great Britain. In addition, his political career and consulship marked him as a great statesman. In exalting Cicero as a model of sacrificial patriotism, the colonials considered Caesar and Antony as archenemies of Cicero and the Republic, which they viewed as representing the principles of personal and political liberty.<sup>19</sup> Although based on a biased perspective of the events of Cicero's life, the colonial mindset regarded Cicero's suppression of the Catilinarian conspiracy, his eventual condemnation of Caesar's tyranny, and his final conflict with Antony as emblematic of their own struggle against Great Britain. The example Antonius introduces in *de Oratore* 2.31.134 of Opimius killing Gracchus in defiance of statute but by the order of the Senate and to preserve the state, not only holds relevance for Cicero's own complaint against Clodius for engineering his exile, but also prompts the same question the American colonists believed themselves to be considering: whether one can be justified in protecting the state even if it entails acting against the laws. In a similar manner, they couched their decision to separate from Great Britain in terms of law and justice, arguing that they upheld the tradition of liberty against those who threatened it.

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<sup>15</sup> Cappon (1959) 549.

<sup>16</sup> Richard (2008) 125-126.

<sup>17</sup> Malamud (2009) 9-10; Richard (2008) 151.

<sup>18</sup> Winterer (2002) 25.

<sup>19</sup> Richard (2008) 156. Cf. Malamud (2009) 17-18 on a helpful comparison between the American view of Caesar and the more equivocal position he held in European history.

Wilson's use of this reasoning mirrors Cicero's own attempt to employ history and legal philosophy as a justification of his political courses of action. Like the other founders, Wilson accepted Cicero as an authority and his writings as a source of practical instruction, although at times he critiqued Cicero's theory and position. While Wilson's approach to the classics is similar to the analysis offered by other founders, however, two key points should be made regarding his unique relation to his contemporaries.

First, even among the classically educated of the founders, Wilson's high degree of learning and scholarship set him apart. The significant part he played in the debates at the Constitutional Convention attest to his knowledge, oratorical powers, and the convincing force of his arguments.<sup>20</sup> At that time, as well as in later years, many would consider him the foremost of the founders in the intellectual powers he brought to bear on the legal and theoretical aspects of the new constitution.<sup>21</sup>

The second main way Wilson stands out as unique among the founders is the difficulty in wholly aligning him with any single political position. Despite his *Considerations on the Nature and Extent of the Legislative Authority of the British Parliament*, one of the earliest statements denying the legislative authority of Parliament over the colonies, he was accused by many of opposing the American cause because of his initial reluctance to sign the Declaration of Independence. In reality, this hesitation was founded not only upon his unwillingness to exceed the powers entrusted to him as a delegate of the Pennsylvania assembly, but also upon his fear that anarchy would result if independence was declared before another stable form of government was instituted to take its place.<sup>22</sup>

Wilson's position during the adoption of the Constitution also provoked criticism from those on both sides of the political line. His affinity with conservatives in Pennsylvania led many to accuse him of being an aristocrat, while his firm stance in favour of the Constitution caused him to differ from the Anti-Federalists.<sup>23</sup> At the same time, unlike many of the other founders and even more so than Jefferson, he retained an

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<sup>20</sup> Alexander (1906) 3.

<sup>21</sup> Tansill (2005) 101 on William Pierce's praise of Wilson. Cf. Obering (1938) 8; cf. Alexander (1906) 8, 10 on the high commendation Wilson received from James Bryce, author of the *American Commonwealth*, and from John Marshall Harlan, former senior Justice of the United States Supreme Court, who also affirmed the principal intellectual place Wilson held among the founders.

<sup>22</sup> Seed (1978) 11-14; Smith (1956) 83, 89.

<sup>23</sup> Bennett (1928) 49; Seed (1978) 127.

unwavering faith in the people and viewed them as the practical foundation of every form of government.<sup>24</sup> In the debates at the Constitutional Convention, he consistently endorsed a more popular control of government than that advocated by his contemporaries. Throughout his career, Wilson thus joined a wholehearted belief in the people with a desire for a strong consolidated government.

## 2. Method and texts

Delivered after the passing of the Constitution in 1787, Wilson's *Law Lectures*, although frequently forgotten in studies of the American founding, represent the reflections on constitutional theory as imparted by one whose historical knowledge and legal understanding was unparalleled among his contemporaries.<sup>25</sup> Furthermore, similar to Cicero's purpose in *de Officiis*, they epitomize Wilson's desire to record and preserve the legacy he imparted to the United States. By passing on to later generations of American leaders a systematic account of the legal philosophy upholding the Constitution, he also aimed at inspiring them to uphold the principles on which he believed the continuance, success, and prosperity of the new nation depended.

A brief summary of the lectures assists in establishing how Wilson's use of Cicero fits within the context of his work as a whole. The legal lectures were published in 1804 by Bird Wilson, six years after his father's death in 1798. Although Wilson had intended them for publication, his attention was interrupted by the task of codifying the laws of Pennsylvania, and he never finished editing the lectures. When acting as editor, the younger Wilson separated them into sections and chapters but retained the original unpolished lectures without removing any repetitions or altering the didactic form of address.<sup>26</sup> In part, the unrevised form of the lectures accounts for the minor errors that occur in Wilson's citations and may also be the reason why his works have not reached

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<sup>24</sup> Alexander (1906) 2-4; Bennett (1928) 47. Konkle (c.1900) 158-159 on the distinction between Wilson's and John Adam's views of the people.

<sup>25</sup> Smith (1956) 341. This view of Wilson's jurisprudence and its continuing relevance was affirmed by Simon Baldwin, former professor of law at Yale University and president of the American Bar Association, who said that Wilson was "the real founder of what is distinctive in our American jurisprudence" [Alexander (1906) 10].

<sup>26</sup> Wilson, B. (1804) iii-iv, xiv. In my system of footnoting, I have used (Wilson, B.) when referring to Bird Wilson, reserving (Wilson) for the works of James Wilson.

a wider audience. The artificial chapters Bird Wilson imposed lend organisation and continuity; however, the structure of the work would be apparent even without the titled sections and it is clear that Wilson himself followed this plan of progression throughout the lectures. This assumption is supported by Wilson's statements in his preliminary address giving the plan of his lectures, when he outlines the topics and direction of the course.<sup>27</sup>

Wilson prepared three courses of lectures in 1790, after he was appointed the first professor of law in the College of Philadelphia. During the winter of 1790-1791, Wilson gave the first set of lessons. In the introductory lecture, Wilson explained the purpose of the course, emphasised the essential role a legal education holds in a democracy, and provided a brief overview of what he considered the fundamental principles of law and government. Significantly, in a manner similar to Cicero in *de Legibus*, Wilson purposely began not by examining specific legal codes or even the United States Constitution, but rather by focusing on the theoretical basis of law. In his opinion, although knowledge of the intricate details of law are highly useful for any attorney, legislator, or citizen, the true and necessary study of law involves first and foremost a comprehension of the philosophy of law itself.<sup>28</sup>

Wilson devoted the whole first set of lessons, therefore, to expounding these principles. After the first introductory chapter, he examined the essence of law, different types of law, and the doctrine of sovereignty. This chapter, entitled 'Of the General Principles of Law and Obligation,' established the foundation of Wilson's legal theory and served as the starting point for the rest of the work. Chapters III-V then addressed the categories of the law of nature, the law of nations, and municipal law, while chapters VI-IX dealt with humans as individuals, as members of society, as members of a confederation, and as members of a universal commonwealth. The final four chapters study more disparate issues in a slightly less ordered fashion; here, Wilson looked at the nature of government, the relation between the British constitution and that of the United States, and the common law; finally, he concluded the course with presenting an elaborate theory of evidence.

The second two sets of lectures were written for the following winter session from 1791-1792; however, the course was interrupted in April of 1792 when the

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<sup>27</sup> Wilson (1804) 1:45-50.

<sup>28</sup> *Ibid.* 1:14-15, 43-44.



College of Philadelphia and the University of Pennsylvania were joined. Although Wilson was at once given a professorship of law, the session was not completed, and shortly afterward he turned instead to revising the laws of his state.<sup>29</sup>

The second set marks a clear division with Wilson's earlier set of lectures. Having completed his study on the nature of law, Wilson commenced the new term with an evaluation of the specific statutes and governmental forms created by the constitutions of Pennsylvania and the United States. Notably, Wilson did not hesitate to critique the recent federal constitution, and in several important particulars he commended the state of Pennsylvania as according more fully with the principles of republican freedom.<sup>30</sup> Chapters I-III dealt with the legislative, executive, and judicial departments. In chapter IV, Wilson discussed the proper role of the courts, and then went on in chapters V-IX to address different aspects of the courts and the individuals associated with them: judges, juries, sheriffs and coroners, counsellors and attorneys, and constables. He then ended with three respective chapters on corporations, citizens and aliens, and the natural rights of the individual.

Compared to the other two sections, the third set of lectures is disproportionately small and is concerned solely with crimes and punishments. Since it comes last and Wilson was disrupted by being summoned to his other duties, it is likely that he never delivered this set of lectures. Nonetheless, it adds an essential final element to the lectures. In these lectures, Wilson addressed the nature of crimes, the purpose and appropriateness of punishments, and ways law can be used to prevent and punish crimes. As a whole, in studying the infringement of rights rather than their positive aspect, the third section sheds light on many of the statements Wilson made in earlier sections and enables readers to perceive what Wilson considered the practical application of the common law.

Following the trend in Wilson's lectures, my analysis in this thesis also focuses primarily on *de Officiis*, together with an emphasis on *de Republica* and *de Legibus*. The significance of these texts lies not only in Wilson's frequent citation of them, but also in their relation to Cicero's own life. Composed within the period that

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<sup>29</sup> Wilson, B. (1804) iii-iv.

<sup>30</sup> Wilson (1804) 2:144, 191-192 on the distinctions Wilson draws between the Pennsylvania Constitution and the United States Constitution in their provisions for the election of senators and in the ability they afford the president to appoint officers.

encompassed Caesar's assumption of power and eventual demise, his own exile and return, and his final efforts to uphold the Republic against the machinations of Antony, these works reflect Cicero's consideration of the questions of civic virtue, resistance to written law, and the best form of government at a time when his perspective was profoundly shaped by the course of events.

In approaching the Ciceronian texts, I have chosen to use the texts as extant at the time Wilson was reading them. In order to gain a greater understanding of Wilson's own interpretations and translations, therefore, even in my own examination of Cicero's theory and position, I have used the 1692 edition of Cicero's works, edited by Gruter, Wilhelm, and Gronovius, and the main copy available in the library at the University of St. Andrews when Wilson was a student. When divergences occur with current editions, however, I have noted them, a method which also aids in distinguishing between the times when Wilson incorrectly cited the Ciceronian texts and when he was merely following the old editions. The one exception to this rule is *de Republica*, for which I have employed the Teubner edition of 1992 since the main portion of its extant text comes from Angelo Mai's discovery of the script in 1819 under a manuscript containing Augustine's commentary on the Psalms.<sup>31</sup> Consequently, Appendix A contains the text and fragments of *de Republica* extant at the time of Wilson's lectures. In Appendix B, I have listed the different works available in the eleven volume set of Cicero's texts. Since this thesis aims at providing a comprehensive picture of Ciceronian reception in Wilson's writings, the antiquated spelling and punctuation of both Wilson's own quotations and his translations of Cicero have been left intact.

In order to establish that Cicero's works not only formed a significant portion of the writings Wilson referenced in his lectures, but also that they helped to shape Wilson's political theory and interpretation of law, it is necessary to take a comprehensive view of how Wilson slants the Ciceronian texts to fit within his own political discourse. As Stanley Idzerda recognises in his review of *Classical Traditions in Early America*,<sup>32</sup> to seriously study the effect of the classics in the ideology of the Founding Fathers, one cannot merely accumulate and compile data of the classical references in their writings but must also be able to evaluate their perspectives in

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<sup>31</sup> For the history of the text, see Zetzel (1998) 33-34. Cf. Ziegler (1992) v.

<sup>32</sup> This work, edited by John Eadie and published in 1976, contains chapters by noted authors like John Eadie, Meyer Reinhold, and J.G.A. Pocock among others.

comparison with a careful analysis of the classical traditions, viewpoints, and texts.<sup>33</sup> In the introduction to the book itself, John Eadie levels a basic criticism against scholars like Richard Gummere whose method of measuring the affect of the classical tradition is by “agglutinative procedure”.<sup>34</sup> Nevertheless, as scholars acknowledge, this type of documentation is still a vital part of identifying classical lines of thought in early American writings. Thus far, research on Wilson’s works has failed to accomplish adequately either the task of noting the classical quotations or of placing them within the context of his legal theory. For instance, although in the most recent study on Wilson, Mark David Hall provides a penetrating and detailed account of Wilson’s political philosophy, he neglects to mention the fundamental role of the Ciceronian texts in Wilson’s writings. In accounting for the influence of classical republicanism in Wilson’s works, Hall makes generalisations about the classical tradition of thought, but does not mention the classical texts and authors that played a role in the development of Wilson’s legal theory.<sup>35</sup>

Therefore, this thesis has a two part objective: first, to establish the evidential basis for Wilson’s knowledge of the Ciceronian texts and his direct engagement with them, and second, to compare his approach with that of Cicero by examining several fundamental ways in which Wilson employed the texts in order to support his own philosophy. Undoubtedly, Wilson’s thought must be taken as a whole. The influence of many previous thinkers is evident in his work and it is impossible neatly to compartmentalise each contributing factor. Nonetheless, Wilson’s direct involvement with Cicero is still evident throughout his writings, even as he reads the texts through the filter of his predecessors and interprets them as relevant supports for his personal views. Chapters one and two present the factual proof necessary for my first objective, with chapter one demonstrating that the classical languages and texts were an essential part of Wilson’s education and teaching, and chapter two analysing Wilson’s use and translations of Cicero in his *Law Lectures*.

After laying this foundation, the second objective of placing Wilson’s use of the texts within the broader context of Cicero’s work can be addressed. Scholars have rightly pointed to popular sovereignty as the essential feature characterising Wilson’s

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<sup>33</sup> Idzerda (1978) 582.

<sup>34</sup> Eadie (1976) x.

<sup>35</sup> Hall (1997) 186-192.

political thought,<sup>36</sup> and civic virtue was the foundation on which it rested. In the formulation of both these doctrines, Wilson attempted with greater and lesser success to derive authority from Cicero's works, claiming that they essentially aligned with his own perspective. Consequently, chapters three and four respectively investigate the relation of Cicero's thought to popular sovereignty and his conception of the good citizen, in conjunction with an examination of Wilson's position on both these topics and of his slant on the Ciceronian texts. Building upon this analysis, chapter five explores the issue of resistance to written law, specifically looking at how their individual interpretations of the concepts of civic virtue and popular sovereignty allowed both Cicero and Wilson to construct a justification of civil disobedience that supported their decisions of public policy. Ultimately, as these final chapters demonstrate, despite his divergences from Cicero's own viewpoint, Wilson's readings of Cicero formed an essential and determinative part of his political thought.

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<sup>36</sup> Konkle (c.1900) 421. Cf. Manin (1995) 154; Seed (1978) 7-9.

## Chapter 1: Wilson and the classical tradition

*His mind, while he spoke, was one blaze of light. Not a word ever fell from his lips out of time, or out of place, nor could a word be taken from or added to his speeches without injuring them.*

Benjamin Rush's description of James Wilson, *Autobiography*

There has been a vast array of scholarship already undertaken on the general reception of the classics in the American founding. Since Richard Gummere's groundbreaking effort beginning in the early 20<sup>th</sup> century to trace the classical lines of influence in early American thought, both classicists and historians have tried to pinpoint the diverse components that contributed to the American tradition and have argued for conflicting views. The many classical quotations and their apparent significance throughout the founding era have been alternatively dismissed as mere "window dressing" or highlighted as having exerted a "powerful and lasting effect on western culture".<sup>1</sup> The debate has been particularly intense in regard to the impact of the classical texts and whether they were mediated directly or indirectly through the English Whig political writings. At the same time, scholars have sought to draw attention to the historical awareness imparted by the classical texts and the ways in which early American writers exploited their potent symbolism.<sup>2</sup> What is not questioned, however, is the need to explore further the classical backgrounds of prominent Americans and the various and complicated functions of the classics in the founding of the United States.<sup>3</sup>

While later chapters study Wilson's precise uses of the Ciceronian texts and their role in his political thought and writings, it is first necessary to demonstrate that Wilson possessed an ample knowledge of Cicero's works and had direct access to the texts he employs in his lectures, not citing them merely through an intermediary source. Although it is generally accepted that the classics formed a vital part of the founders' education,<sup>4</sup> Wilson's classical background and training have not been the subject of scrutiny. Through the years, many scholars have asserted that the origins of Wilson's thought can be traced to such thinkers as Aristotle, Thomas Aquinas, Thomas Reid, and

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<sup>1</sup> Bailyn (1967) 24; Wood, G. S. (2003) 88.

<sup>2</sup> Pocock (1976) 256, 260.

<sup>3</sup> Reinhold (1984) 19-20; Reinhold (1976) 35; Brooks (2009) xxxiii; cf. Reinhold (1976) 8-48 on a general history of scholarship in this area. The nature of the classical tradition in America, although always acknowledged, has been strongly contested, and while I cannot attempt to bring resolution to the issue, I agree with Richard that many scholars, in emphasising the founders' interaction with the Whig tradition, have failed to sufficiently address the classical reading of the founders [Richard (1994) 5].

<sup>4</sup> Richard (1994) 12-38; Winterer (2002) 10-15.

other natural law philosophers.<sup>5</sup> Singularly, however, none of these studies have discussed Wilson's connection with Cicero or his reliance on Cicero's texts. This chapter, therefore, establishes that the classics and particularly the Ciceronian texts were fundamental in Wilson's education, and it serves as an essential support to the claim of the following chapter that the texts played a direct role in Wilson's writing and political thought.

## 1. Early education and teaching

While aspects of Wilson's precise involvement with the classics are open to dispute, it is undeniable that his knowledge of classical texts in general and of Cicero's works in particular goes far beyond a mere acquaintance with their topics and content. Wilson was born in 1742 on a farm near St. Andrews, Scotland. Even during his years at a classical grammar school near the small Scottish town of Cupar, Wilson is said to have shown "proof of a fine genius a prompt capacity for learning and a steady application".<sup>6</sup> This description of his talents and study habits is confirmed by the fact that Wilson received two bursaries during his time at the University of St. Andrews, one a general Foundation bursar in 1757 and the second a Table bursar from St. Mary's College in 1762.<sup>7</sup>

Although he originally entered the University of St. Andrews as a student of the United College in 1757 and took the usual classes required during the four years of a degree course, in 1761 Wilson enrolled as a student of Divinity in St. Mary's College

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<sup>5</sup> None of the main studies on Wilson's thought address his reliance on Cicero. Despite Wilson's dependence on Ciceronian texts throughout his development of natural law theory, O'Donnell (1937) fails to mention their prominence in her study of Wilson's philosophy of natural law. Delahanty (1969) seeks to place Wilson squarely within the Aristotelian tradition of thought. Obering (1938) follows a similar approach and contends that Wilson's legal philosophy was heavily based on the thought of Thomas Aquinas and also influenced by such natural law theorists as Richard Hooker. In direct contrast, Powell maintains that the attempt to place Wilson in the Aristotelian and Thomistic tradition is "overly optimistic" and argues instead that the philosophical foundation for the thought of James Wilson should ultimately be traced to Thomas Reid and other Scottish philosophers from the school of moral sense [Powell, F. D. (1951) 364-365]. In his discussion of Wilson's conception of natural law and rights, Pascal argues that Wilson derived his theories from the inspiration of Francis Hutcheson's *A System of Moral Philosophy* (1755) [Pascal (1991) 61-91]. While Pascal is clearly correct in identifying the similarities between these two writers, his analysis of Wilson's thought also overlooks the importance of the classical tradition.

<sup>6</sup> Annan (1805).

<sup>7</sup> *Minutes* (1736-1903); *Minutes* (1530-1962).

and seemed likely to fulfil his parents' long-held intention for their eldest son to enter the church.<sup>8</sup> Upon his father's death, however, Wilson left St. Andrews to serve as a private tutor in a "gentleman's house" and never returned to the study of divinity.<sup>9</sup> In contrast, his preoccupation with classical education and the classics themselves continued.

The *Library Receipt Book of Professors and Students* recording the books Wilson borrowed from the university library from the period 1757-1759 clearly attests to his preference for the classics. Indeed, despite his status as a divinity student, he checked out only one theological work.<sup>10</sup> Other works Wilson checked out include various essays, a biography, and fictional works.<sup>11</sup> However, the majority of the books Wilson borrowed from the library, even during his years at St. Mary's College, were either Greek and Latin texts or historical works on classical antiquity.<sup>12</sup>

Although the *Library Receipt Book* demonstrates that Wilson centred his reading around classical texts during his university education, there is no evidence that he actually checked out any of Cicero's works. This does not prove, however, that he did not read them. In fact, the library catalogues from the years Wilson attended the university show that the Ciceronian texts formed an important subset of the classical works available at that time. The holdings not only include biographies on Cicero, but also every extant Ciceronian text of the time, available in a number of different editions.<sup>13</sup>

The course of study Wilson would have followed also confirms his reading of Cicero and his study of the classical languages. Even as late as 1845, those who received bursaries from the United College or who sought a degree in the Arts were required to pursue the traditional course of study that centred exclusively upon Latin and Greek for the first session and then moved on to Latin, Greek, Logic and

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<sup>8</sup> Smart (2004) 953.

<sup>9</sup> Annan (1805).

<sup>10</sup> This was the *Sermons* by John Tillotson, an Archbishop of Canterbury and an influential writer who stressed the practical side of Presbyterianism rather than its theological aspect.

<sup>11</sup> Swift's works, the *Life of the Earl of Crawford*, and a volume of plays were among these books.

<sup>12</sup> *Library Receipt Book* (1752-1759) 143, 198. Strikingly, the list of books Wilson checked out is disproportionately small compared to the lists of other students from these years. It is unlikely, however, that these are the only works he read, especially since the bursaries he received bear witness to the careful attention he paid his studies.

<sup>13</sup> *A Catalogue of Books* (1744) 1, 7, 15, 18, 21, 28, 36; *Reports* (1738-1788) 10, 15, 38; *A Catalogue of the Books* (1734-1763) 2, 46, 48, 52, 87, 109, 112, 114, 129, 146. The disparate page numbers occur because the handwritten catalogues are not organised according to author or category.

Mathematics.<sup>14</sup> Cicero's works formed a key component of the curriculum at the University of St. Andrews, as the reports of professors in later years attest. Required classes of Latin and Greek, the use of Cicero's works, and exercises like the translation of English passages into Latin, all helped form the central part of the students' course of study.<sup>15</sup> For instance, in his report to the university commissioners, Dr. John Hunter stated that texts from Horace, Virgil's *Georgics* and *Aeneid*, Juvenal's *Satires*, Livy's *History*, and Cicero's orations formed the curriculum of his Latin classes, while Dr. Thomas Gillespie said that his students "were in the habit of giving in Exercises in Latin prose and Latin verse" and "translations of English passages into Latin prose".<sup>16</sup>

The Ciceronian works in the University of St. Andrews Library also reveal that Wilson had access to essentially the same corpus of Ciceronian texts as is currently in print. One main edition of Cicero's complete works available in the library at that time was the eleven volume set published in 1692 under the complete title *Marci Tullii Ciceronis Opera Quae Extant Omnia ex MSS, Codicibus emendata, Studio atque industria Jani Gulielmii et Jani Gruteri, additiis eorum notis integris: nunc denuo recognita ab Jacobo Gronovio*. As the library catalogues from 1738-1788 and 1826 attest, the precise edition currently in the special collections library was also present during Wilson's period of study and is not one of the rare editions of Cicero donated to the library after Wilson's departure.<sup>17</sup> This edition contains essentially the same Ciceronian corpus as currently in print, with *de Republica* as the one main discrepancy.<sup>18</sup> Aside from some minor changes, however, the fragments of book VI, however, as well as the entire *Somnium Scipionis*, are the same as the text as it is extant today, albeit with a different system of numbering than that used in current editions of the text.<sup>19</sup> Undoubtedly, the absence of *de Republica* as now extant represents a critical

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<sup>14</sup> *Report of the St. Andrews University Commissioners* (1845) viii-ix.

<sup>15</sup> *Evidence Oral and Documentary* (1837) 38-42 on the report of Dr. J. Hunter, Professor of Humanity in the United College; 50-56 on the report of Dr. T. Gillespie, Professor of Humanity in the United College; 56-57 on the report of Professor A. Alexander, Professor of Greek in the United College; 144-149 on the report of Professor T. Duncan, Professor of Mathematics in the United College; 407 on the Provisional Resolutions of the Commissions including mention of the Latin and Greek curriculum.

<sup>16</sup> *Ibid.* 39, 52.

<sup>17</sup> *Reports* (1738-1788) 38 and *Catalogus* (1826) 120. *Catalogus* lists the edition as printed in 1792; however, this is a misprint, as evidenced by the pressmark L. 7. 18., which references the 1692 edition. *Reports* correctly lists the date as 1692, as does the *Author Catalogue* (c.1980).

<sup>18</sup> See Appendix A.

<sup>19</sup> The Teubner edition not only has the modern system of numbering, but also includes the older system which counts the *Somnium Scipionis* as an individual work.



gap in Wilson's ability to analyse Cicero's political thought. Although Wilson had the fragments from 1.25.39 on a commonwealth as a "thing of the people", from 2.42.69 and 2.44.70 on the necessary role of justice in a state, and from 2.5.1.1-2 on the importance of custom,<sup>20</sup> the broader context of these quotations would have proved useful in the construction of his arguments and his interpretation of Cicero's work, particularly those passages where Cicero examines the simple and mixed forms of government (1.26.41-1.45.69) and the progression of the Roman state (2.1.1-2.39.66). Significantly, Wilson still attempts to apply the fragments of *de Republica* to his discussion on a mixed form of government, saying that Cicero "*seems* to have indulged a fond speculative opinion, that a government formed of the three kinds, properly blended and tempered, would, of all, be the best constituted".<sup>21</sup> From his careful effort to modify the force of Cicero's opinion, it is plain that Wilson recognises the lack of context and the limitations he faces when quoting from this text.

Later, as a teacher of Latin at the College of Philadelphia, Wilson would still have had access to similar editions, if not the same ones. Even after the Revolution, the colonists' editions of the classics were almost exclusively limited to British and European imports.<sup>22</sup> Additionally, the accessibility of Cicero's texts also lends support to the case that Wilson was more familiar with the Ciceronian texts than even his specific quotations and references demonstrate. This is further confirmed by times when Wilson quotes from different Ciceronian works than he used in the law lectures, showing a greater knowledge of Cicero than he reveals in those works alone. For instance, in his essay on the *History of Property*, Wilson provides two appropriate and direct quotations from *de Finibus Bonorum et Malorum* 3.20.67 and *pro Sexto Roscio Amerino* 18.50-51: two sources he does not mention by name in the course of his lectures.<sup>23</sup>

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<sup>20</sup> As the 1692 edition reveals, these fragments were obtained from August. *De civ. D.* 2.21 (see Appendix A, pp. 197 and 199). The fragment from Cic. *Rep.* 1.25.39, however, is included in book III, likely because *De civ. D.* 2.21 indicates that the quotation comes after Laelius's defense of justice, when Scipio renews his exposition on the definitions of a people and a commonwealth.

<sup>21</sup> Wilson (1804) 1:416 (emphasis added).

<sup>22</sup> Reinhold (1984) 29.

<sup>23</sup> Wilson (1804) 3:183, 190. Wilson includes the translated quotation from Cic. *Fin.* in his discussion of common possessions, that: "A publick theatre is common to all the citizens; but the seat which each occupies may, during the entertainment, be denominated his own". The Latin text, which Wilson does not provide reads: *Sed quem ad modum, theatrum cum commune sit, recte tamen dici potest eius esse eum locum quem quisque occupat.* Wilson's use of the passage from Cic. *Rosc. Am.* includes both the Latin and the English translation: *Ab aratro arcescebantur, qui consules fierent...apud maiores nostros, summi*

During his work as a private tutor in Scotland, Wilson undoubtedly gained practical experience in teaching the classics which aided him in the position of tutor in the Latin department at the College of Pennsylvania soon after his emigration to the American colonies in 1766. While there, he attained the highest marks yet achieved in an examination on the classics, for which the trustees of the college awarded him an honorary Master of Arts degree, “in consideration of his merit and his having had a regular education in the universities of Scotland”.<sup>24</sup> However, Wilson shortly resigned from his position at the College in order to commence his legal studies under John Dickinson.<sup>25</sup>

This affinity for Latin and for the studies of Rome rather than of Greece is a consistent feature throughout Wilson’s education and teaching. For instance, despite his frequent quotations from Latin authors, Wilson only twice references Thucydides through the intermediary authors Samuel Pufendorf and Hugo Grotius.<sup>26</sup> While this is symptomatic of the founders’ general focus on Latin texts over Greek ones,<sup>27</sup> it is worth noting since Thucydides still formed an essential part of the reading matter of founders like John Adams and Thomas Jefferson.<sup>28</sup> Still, references and works from the Greek period figure in Wilson’s lectures. In his introduction he praises the achievements and excellence of the Greek theories of government.<sup>29</sup> Later, in his discussion of juridical practices, he especially praises what he considers to be the key features of Solon’s system, such as being tried by a jury of one’s peers and submitting only to the laws endorsed by the community as a whole.<sup>30</sup> Consistently throughout his lectures, he

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*virī, clarissimique homines, qui omni tempore ad gubernacula reipublicae sedere debebant, tamen in agris quoque colendis aliquantum operae temporisque consumserint* (“Our consuls were called from the plough. Those illustrious characters, who have been best qualified to manage the reins of government with dignity and success, dedicated a part of their time and of their labour to the cultivation of their landed estates”). In this quotation, the 1692 edition is consistent with the quotation as Wilson presents it; one alteration appears in the Teubner edition, which is the use of *consumpserint* for *consumserint*.

<sup>24</sup> Konkle (c.1900) 27.

<sup>25</sup> Bauer (1952) 44.

<sup>26</sup> Wilson (1804) 1:70, 366. In the first instance, Wilson cites the reference as coming from Thucyd. 5.105. The second quotation is taken from Thucyd. 1.85.2; for this reference in Grotius, which Wilson only cites by footnoting the author and page numbers, see Grotius (2005) 1123-1124.

<sup>27</sup> Winterer (2002) 19; cf. Ayres (1997) 4 on a similar focus in English political thought.

<sup>28</sup> Cappon (1959) 291, 295.

<sup>29</sup> Wilson (1804) 1:4.

<sup>30</sup> *Ibid.* 2:317-318. On this point, Wilson references John Gillies’s *The History of Ancient Greece, Its Colonies and Conquests* (London: 1786); however, while he cites this source in order to reference the continuing influence of Solon’s laws in Europe, Wilson also would have been aware of other sources containing information on Solon’s laws, such as Cic. *Leg.* 2.25.64-2.26.66, a work he cites elsewhere in his lectures.

affords Greece and especially Athens a significant place as the initiator of many of the Roman traditions of law and liberty.<sup>31</sup> Nonetheless, in his discussions on law he places a still greater emphasis on Rome, particularly commending the period of the Republic as a time when the liberties of the people were most secure.<sup>32</sup> Even during his university career at St. Andrews, this tendency to focus on Rome evinces itself. Out of a total of twelve books checked out from 1758-1759, a full half are volumes from Charles Rollin's *Roman History* and Nathaniel Hooke's *Roman History*, both published only decades before Wilson's time at St. Andrews. Other multi-volume works by Latin writers like Justinian, Suetonius, and Horace also appear on the complete list.<sup>33</sup> Significantly, the same sources he studied at university continued to shape his perspectives of the ancient world, appearing in the legal lectures he gave three decades later. Rollins is an obvious example, with Wilson employing his *Ancient History* and *Roman History* as authorities in support of his interpretations of the classical period.<sup>34</sup>

During his legal study under John Dickinson, Wilson did not lay aside the classical texts. Dickinson himself was a noted scholar, not only in law, having spent four years of study in the Middle Temple of the English Inns of Court, but also in the classical languages and texts.<sup>35</sup> Wilson did not concur with all of Dickinson's views. For instance, Wilson later insisted in the law lectures that liberty continued even though diminished under the Roman Empire, while Dickinson believed Roman liberty was extinguished at the end of the Republic.<sup>36</sup> Nevertheless, Wilson clearly identified with Dickinson, whose later writings wove together both classical and legal ideas in a

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<sup>31</sup> *Ibid.* 2:10-14. In addition to Livy 3.31, 3.34, Wilson also references Nathaniel Bacon's *An Historical and Political Discourse of the Laws and Government of England* (1672) and John Pettingal's *An Inquiry into the Use and Practice of Juries* (1769), contrasting the different historical viewpoints of these two authors.

<sup>32</sup> *Ibid.* 1:100.

<sup>33</sup> *Library Receipt Book* (1752-1759) 143, 198. This edition of Suetonius consisted of *XII Caesares or The Lives of the Twelve First Roman Emperors*, containing the Latin and an English translation by John Clarke (1732). The two-volume edition of Horace's *Works* that Wilson checked out from the library consisted of the *Odes*, *Epodes*, *Satires*, *Epistles*, *Carmen Saeculare*, and *Ars Poetica* in the Latin with an English translation by David Watson (1760). I was unable to trace this precise edition of Justinian in the library catalogues; however, the *Institutiones* do appear in the catalogues from the years when Wilson was a student; *Reports* (1738-1788) 37; *A Catalogue of Books* (1744) 8.

<sup>34</sup> Wilson (1804) 1:388, 2:477. Cf. Gribbin (1972) 611-622 on the popularity of Charles Rollin's historical works and their wide spread influence in the American colonies. Noticeably, however, Wilson's first contact with these works occurred before his emigration.

<sup>35</sup> Gummere (1963) 108; cf. McLaughlin (1932) 126; Wolf (1976) 79.

<sup>36</sup> Wilson (1804) 1:16; cf. 2:43. Cf. Richard (1994) 88 on Dickinson's position.

masterful justification of colonial liberties and earned him the title “Penman of the Revolution”.<sup>37</sup>

Many of the founders, in keeping with the tradition of British scholars, kept commonplace books that were essentially journals of their readings and which functioned as a means of categorising notes, recording their thoughts, and retaining important quotations.<sup>38</sup> In Wilson’s commonplace book, which contains his handwritten legal definitions and notes from the legal works of prominent English scholars like William Bohun and Sir Edward Coke, Wilson departs from his usual small script documenting legal minutiae to inscribe the translation of Cicero’s words from *de Oratore* 1.15.64-65 in large letters across the top of the page, “Orator: The man who deserves that awful name must be one who upon all occasions shall be able to deliver what he has to say, accurately, perspicuously, gracefully and readily with a certain dignity of action”.<sup>39</sup> The Latin text of this translation, which Wilson does not include, reads as follows: *is orator erit, mea sententia, hoc tam gravi dignus nomine, qui, quaecumque res inciderit, quae sit dictione explicanda, prudenter, et composite, et ornate, et memoriter dicat, cum quadam etiam actionis dignitate*. As is evident, Wilson is clearly abbreviating the quotation according to what he deems the sense of Cicero’s words rather than providing a strict word-for-word translation. He goes on to add a selection of abbreviated quotations also cited as coming from *de Oratore*: “That part of the philosophy which regards the life and morals of mankind must be completely understood by an orator. No man unless he be a philosopher can be an orator”.<sup>40</sup> The way in which Wilson sets Cicero’s quotation apart from the rest of his notes reveals the significance he places on it. Clearly, as he later emphasises in his law lectures, Wilson accepted the definition of the orator given by Cicero and saw the study of law as comprehending more than mere legal knowledge, but also eloquence, philosophy, and a thorough understanding of basic principles and all that “appertains to justice”.<sup>41</sup>

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<sup>37</sup> Gummere (1956) 81-88 on Dickinson’s background and writings. Dickinson, however, unlike Wilson, never took his arguments as far as declaring himself in favour of revolution. Cf. Sanderson (1828) 275 on an early comparison between Wilson and Dickinson.

<sup>38</sup> Dacome (2004) 603-604 on the British practice of using commonplace books and their significance; cf. Richard (1994) 24-25.

<sup>39</sup> Wilson (1766) 29.

<sup>40</sup> *Ibid.* Wilson also adds several other quotations from *de Oratore* along the same lines that I have not included here.

<sup>41</sup> *Ibid.* (1804) 2:414; cf. 1:42-44.

Thus, Cicero's works were important for Wilson not only in the construction of his legal and political theories but also in the realities of his speeches and practical exertions in the courts. In his merging of classical and legal texts, Wilson was following a long tradition. The Ciceronian texts had been studied for centuries by English schoolboys who later as prominent jurists would appeal to them in justification of their own common law theories.<sup>42</sup> One instance is Sir Edward Coke, whose *Institutes of the Laws of England* (1628-1644) and *Reports of Divers Resolutions and Judgements of Cases in Law* (1658) Wilson repeatedly quotes in his law lectures.<sup>43</sup> One cannot survey English case law without coming across references from Cicero and other classical authors,<sup>44</sup> and even Wilson once quotes *de Republica* 3.22.33 through the intermediary source of a case before the Court of King's Bench: *non erit alia lex Romae, alia Athenis; alia nunc, alia posthac; sed et apud omnes gentes et omni tempore, una eademque lex obtinebit*.<sup>45</sup> Juridical practice, therefore, as well as the general attitude of the time furthered this reading of classical texts as part of a legal education. As a young and ambitious lawyer in the American colonies, Wilson was well aware that he would need to be conversant not only with the cases and jurists of English common law, but also with the classical authors.<sup>46</sup>

After his admission to the bar in 1767, Wilson rapidly achieved a prominent place in the Pennsylvanian courts, combining eloquence with legal knowledge and becoming one of the foremost and successful lawyers in Pennsylvania.<sup>47</sup> At the same time, Wilson continued to write on political topics and in 1769 finished his pamphlet *Considerations on the Nature and Extent of the Legislative Authority of the British Parliament*, which he withheld from publication until 1774. This effort of Wilson and of other American writers to frame the arguments of independence into a legal and

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<sup>42</sup> Boyer (2003) 14-17.

<sup>43</sup> Sheppard (2003) 557, 569, 576, 584, 873, 903, 1063 on several main examples of Coke's citations of Cicero.

<sup>44</sup> Hargrave (1791-1792) 25, 85 on citations from Cicero, Varro, and Tacitus in English law.

<sup>45</sup> Wilson (1804) 1:375. Wilson is citing here from a case from Sir James Burrow's *Reports of Cases Adjudged in the Court of King's Bench* (1766-1780); however, the quotation is incorrectly cited. The text in the 1692 edition reads: *nec erit alia lex Romae, alia Athenis, alia nunc, alia posthac, sed et omnes gentes et omni tempore una lex et sempiterna et immortalis continebit*. The Teubner edition coincides with this, apart from the use of *inmutabilis* in place of *immortalis*.

<sup>46</sup> Wood, G. S. (1993) 346.

<sup>47</sup> Konkle (c.1900) 72.

political doctrine<sup>48</sup>, separated from mere passion and couched in the same concepts frequently used by their political opponents in Great Britain, received commendation from no less a personage than the eminent jurist, William Murray, Earl of Mansfield. While he did not concur with Wilson's political doctrine of representation and instead argued along the same lines as William Blackstone, Lord Mansfield acknowledged that this legal doctrine as expressed by "one of the most able American writers" left no possibility of balancing the authority of Parliament with that of the colonies.<sup>49</sup> Thus, both before and after the revolution, in his speeches and writings, and particularly in the main role he played in the Constitutional Convention and the framing of the United States Constitution, Wilson succeeded in justifying the theories of the revolution and the later institution of American government in a series of carefully defined political concepts.<sup>50</sup>

His *Law Lectures* of 1790-92 provide the most comprehensive account of Wilson's classical training joined with his endeavour to express in a systematic political doctrine the ideology behind the newly formed government. His appointment as the first professor of law at the College of Philadelphia in 1790 was heralded by the Philadelphia Gazette, which commended both his "extensive law information" and "profound political knowledge", while his introductory lecture was attended by luminaries like George Washington, John Adams, Thomas Jefferson, and Alexander Hamilton.<sup>51</sup> Since that time, scholars specialising in Wilson's writings have recommended his lectures as an indispensable source for understanding his constitutional philosophy and the place of the United States in the history of popular governments.<sup>52</sup>

Of greater importance for this thesis, however, are the ways in which Wilson employs the classics in the formation of his political doctrines. His proficiency in the classics is not only supported by the commendation he received at the College of

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<sup>48</sup> See Jensen (2003) 256-276 on Thomas Jefferson's 'A Summary View of the Rights of British America', written in 1774. Although at this point both Jefferson and Wilson had not made the final and decisive step of arguing for separation from Great Britain, their arguments helped provide the theoretical basis for the signing of the Declaration of Independence on 4 July 1776.

<sup>49</sup> Konkle (c.1900) 106-7. Cf. Wright (1931) 84; Rossiter (1953) 340 on concurring views of Wilson's *Considerations* and its clear and proficient expression of legal principle.

<sup>50</sup> See Bailyn (1967) 219 on the ideological shift in 1769 from dealing with specific issues like taxation to the construction of an overarching political theory.

<sup>51</sup> Konkle (c.1900) 627.

<sup>52</sup> Andrews (1896) x; Seed (1978) 150; Konkle (c.1900) 642, 664.

Philadelphia but also appears to be recognised by his contemporaries. For instance, in a speech given in 1824 before the Bar of Philadelphia, Wilson Rawle specifically mentioned Wilson's training in the classics, while Dr. Benjamin Rush, another signatory of the Declaration of Independence, spoke of him as a "profound and accurate scholar".<sup>53</sup> William Pierce, in his *Character Sketches of Delegates to the Federal Convention* considered him "among the foremost in legal and political knowledge" and notes that "Government seems to have been his peculiar Study, all the political institutions of the World he knows in detail, and can trace the cause and effects of every revolution from the earliest stages of the Grecian commonwealth down to the present time."<sup>54</sup> Even in the wide divergence of opinions among modern scholars regarding the true depth of classical knowledge possessed by the founders, Wilson's reading and expertise in dealing with the classical texts and languages is almost invariably acknowledged.<sup>55</sup> In such a context, therefore, research on Wilson's use of classical quotations and their function in his writings is essential for gaining a full appreciation of his legal and political thought. Thus, having established that Wilson's background and education equipped him to deal both directly and accurately with the classical texts, it is now possible to specifically address the approach to the classics that Wilson takes in his lectures.

## 2. Use of classical texts in the *Law Lectures*

Two main issues of methodology should be considered concerning the attempt in this thesis to demonstrate that Wilson possessed first-hand knowledge of the Ciceronian texts and directly borrowed from them in his works. The first, and the easiest to address, regards his proficiency in Latin and Greek, since English translations of the ancient texts were widely available to the founders.<sup>56</sup> Even John Clarke's editions of the works of Justinian and Suetonius (1732) and David Watson's edition of Horace

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<sup>53</sup> Alexander (1907) 105-106; Rush (1948) 150.

<sup>54</sup> Farrand (1966) 3:91-92.

<sup>55</sup> McCloskey (1967) 50-51; Reinhold (1984) 31, 102; Wolf (1976) 79; Richard (1994) 24, 65; Gummere (1963) 174; McLaughlin (1932) 84.

<sup>56</sup> Winterer (2002) 38-40. Cf. Richard (1994) 203, 206, 220 on Thomas Paine's reading of translations of Latin texts and on Benjamin Franklin's use and publication of such translations.

(1760) that Wilson checked out at the University of St. Andrews provided English translations alongside the Latin text.<sup>57</sup> Nonetheless, as we have seen, a high level of proficiency in the classical languages was an everyday part of both the grammar school and university education of Wilson's time and expected of any student. Additionally, as the following chapter demonstrates, Wilson's own translations of Ciceronian passages further highlight his skill in dealing with the Latin language. Wilson's use of Greek is much less frequent. Although he occasionally uses Greek phrases and explains them,<sup>58</sup> his legal lectures do not contain extended passages in Greek, a striking contrast with his employment and engagement with the Latin texts. This feature is consistent with the tendency of his time to employ Latin quotations in writings more often than Greek ones.<sup>59</sup> Still, despite his obvious predilection for Latin and particularly for the Ciceronian texts, Wilson's knowledge of Greek texts and his appeals to Greek political forms also surface in his writings.

Clearly, Wilson's approach to such questions as sovereignty, citizenship, natural law, and the rights of the individual cannot be analysed without recognising the pervading influence of the classics. His background and education inevitably shaped his later constructions of legal theory, as the constant appearance of classical citations in his discussions on law illustrate. Some of the references are arguably the off-hand quotations of a scholar long immersed in classical texts or are employed as literary devices, directly affecting neither the flow nor substance of his arguments. Such, for instance, are the frequent Latin tags that Wilson appears to be citing from memory and does not attribute to any author.<sup>60</sup> Also in this category are the quotations from the *Metamorphoses* 1.92-93 and 2.13-14, which Wilson does not footnote and only references as Ovid.<sup>61</sup> In these cases, Wilson's approach to the classical authors is no different than his approach to later authors, whom he quotes in order to improve the literary quality of his work. For instance, quotations from Milton's *Paradise Lost*, Pope's *Essay on Man* and *An Essay on Criticism*, Shakespeare's *Richard II*, and

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<sup>57</sup> *Library Receipt Book* (1752-1759) 143, 198. Cf. Winterer (2002) 38-39 on the use of John Clarke's texts in the American colonies.

<sup>58</sup> Wilson (1804) 1:370; 2:7, 11, 17, 118.

<sup>59</sup> Wolf (1976) 78.

<sup>60</sup> Wilson (1804) 1:280, 302, 364; 2:74, 94, 96, 306, 351, 356, 400, 443, 451, 492; 3:46.

<sup>61</sup> *Ibid.* 1:352; 2:299.



Addison's *Cato*, all appear in his works without the title or even the author being mentioned.<sup>62</sup>

Wilson's writing style reveals his awareness of the difference between what functions as evidence and authoritative power for his claims and what provides mere literary embellishment. In contrast to the previous examples, his usual practice when quoting from classical works as a buttress for his own arguments is to provide an accurate footnote and to expressly note the times when he is citing them indirectly through a secondary source. Thus, Wilson points out that he is quoting Livy, Plutarch, and Thucydides through the intermediate work of Samuel Pufendorf's *Of the Law of Nature and Nations*,<sup>63</sup> that he is quoting Thucydides, Hesiod, and Aristotle through Hugo Grotius' *Of the Law of War and Peace*,<sup>64</sup> that he is indirectly citing Plato through Henry Dagge's *Considerations on Criminal Law*,<sup>65</sup> and that he is citing portions of the Latin texts of Ulpian and Augustine through Jacques Pierre Brissot de Warville's *Bibliothèque philosophique du législateur, du politique, du jurisconsulte*.<sup>66</sup> As is evident from these examples, Wilson's system of footnoting provides a clear differentiation between the times when he is referencing a work first-hand and when he is using an intermediate source.

While his discourse on law concentrates on the common legal authorities of the time, particularly revolving around Sir William Blackstone's *Commentaries on the Laws of England* (1765-1769), as well as relying heavily on *An Historical and Political Discourse of the Laws and Government of England* (1672) by Nathaniel Bacon, the *Institutio Legalis* (1708-1709) by William Bohun, *The Principles of Natural and Political Law* (1763) by Jean Jacques Burlamaqui, *Of the Law of War and Peace* (1625) by Hugo Grotius, *Of the Law of Nature and Nations* (1672) by Samuel von Pufendorf, and works by Thomas Reid, John Locke, and David Hume, Wilson invariably returns to

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<sup>62</sup> *Ibid.* 1:35, 342, 412; 2:468, 469.

<sup>63</sup> *Ibid.* 1:70-71. Wilson references the classical quotations as coming from Thucyd. 5.105, Livy, and Plut. in Pelop.

<sup>64</sup> *Ibid.* 1:366, 391; 2:260. For the reference from Thucydides, see n. 26 above. The quotation from Hesiod is from Theog. 83-103; for this reference in Grotius, which Wilson only cites by footnoting the author and page numbers, see Grotius (2005) 273 n. 53. As in the previous two instances, when citing Aristotle, Wilson only includes the reference to Grotius; in this case, Grotius does not include the classical reference either, but merely states it as coming from Aristotle [see Grotius (2005) 876-877].

<sup>65</sup> Wilson (1804) 3:12. In his work, Dagge does not provide a reference to the quotation from Plato, and Wilson has merely translated the quotation from the Latin as included by Dagge [see Dagge (1774) 203].

<sup>66</sup> *Ibid.* 3:158. In his footnote, Wilson does not reference the classical texts and only includes the references to Warville's work.

Greek and Rome. As later chapters examine in greater detail, he centres his legal philosophy on their traditions, reiterating throughout his lectures that the Saxon legal system and the United States Constitution are based on fundamental principles of law and government first established in these periods.<sup>67</sup>

Additionally, in his discussions on ancient history and government, he constantly references a wide range of classical works and provides explanations of classical terms and etymology. Wilson accepts some passages from Homer's *Iliad* as a true reflection of ancient political culture.<sup>68</sup> Several other relevant details are drawn from Caesar's *de Bello Gallico* and Pliny the Younger's *Epistulae*,<sup>69</sup> but aside from the number of ancient historians he consults, the three classical sources Wilson primarily cites as authorities on ancient law are Livy, Tacitus, and Justinian.

From the four times he directly references Livy, it would appear that Wilson is consulting the Latin text of *ab Urbe Condita*, since he also includes sections of the Latin alongside his English explanations of the historical narrative. He includes Livy's description of the Roman laws from 3.34 as "*immensus aliarum super alias acervatarum legum cumulus*" (an innumerable heap of law piled one above another), and makes use of his appellation from 8.23 of the Roman attitude "*debellare superbos*" (to subdue the arrogant).<sup>70</sup>

Even in comparison to the more modern authors cited by Wilson, Tacitus is one of his most quoted sources. Wilson references the *Agricola*, *Annales*, and the *Germania*, which prove to be essential sources in his attempt to trace a line of continuity from the legal philosophies of Greek and Rome to the founding of the United States. Based on Tacitus' histories, he claims that two different strands came together in the establishment of Roman legal theories and practices in Great Britain: first, that which came from the direct implementation of Roman law in the British settlements begun during the reign of Claudius, and secondly, that which came through Caesar's conquests in Germania and the institution of Roman law in the new provinces that in

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<sup>67</sup> See below, p. 89ff.

<sup>68</sup> Wilson (1804) 2:118, 288. These are from Hom. *Il.* 2.547 (in regard to the role of the Athenian people) and 18.497-502 (in regard to the designated place in the city for settling disputes).

<sup>69</sup> *Ibid.* 2:7, 401. The references are to Caes. *BGall.* 6.13 (in regard to the laws of the Druids) and Plin. *Ep.* 6.2 (in regard to the time limits set for the speeches of advocates). In both of these instances, Wilson includes both the Latin quotation and his own translation. He makes a minor incorrection in citing the first reference, however, which actually comes from Caes. *BGall.* 6.14.

<sup>70</sup> *Ibid.* 2:177; 1:366. Cf. Wilson (1804) 2:13, 15 where Wilson references *ab Urbe Condita* 3.31 and 3.34 as explanations of the context but does not include the Latin.

turn influenced the common law of the ancient Saxons.<sup>71</sup> Wilson also employs Tacitus in his discussions on Roman law and the legal practices of other ancient confederations, and in total, directly references Tacitus's texts fourteen times in his lectures.<sup>72</sup> In a full half of these instances, Wilson includes Latin passages or phrases without English translations.<sup>73</sup> This use of the Latin text not only reflects Wilson's own understanding of the Latin but also his expectation that his readers would be able to translate for themselves. While they may not have been fluent, at least a basic mastery of Latin would be required in order to read his works.

Comparisons to Roman law drawn from the *Corpus Iuris Civilis* also point to the continuing effect of Roman legal theory both in the political theories of Wilson's time and particularly in his own thought. For Wilson, the benefits of Roman law and the liberty it conferred did not end with the death of the Republic. Although he places the origin of popular consent and its highest point of realization in the age of the Roman Republic, he views the fundamental element of consent to law as continuing even under the Empire. While Cicero is Wilson's main classical source in explaining and justifying this principle, for its later progression and its importance in the Empire he turns to Justinian, who becomes a primary source of authority. Wilson appeals to the two divisions of unwritten law and written law spoken of in *Institutiones* 1.2.3 and 1.2.10, and sees this ancient division as upholding a type of customary law which derives its legitimacy from the willing consent of the people.<sup>74</sup> He includes the Latin passage from *Institutiones* 1.2.9, "*Sine scripto ius venit, quod usus approbavit; nam diuturni mores, consensu utentium comprobati, legem imitantur*" and translates it as "The unwritten law supervenes upon the approbation of usage; for long customs, approved by the consent of those who use them, acquire the qualities of a law".<sup>75</sup> This translation emphasises the prime importance he places on law that slowly acquires authority and actually becomes

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<sup>71</sup> *Ibid.* 2:21, 32, 321 on the discussion of these topics with reference to Tac. *Agr.* 21, *Germ.* 12, *Ann.* 12. Cf. Wilson (1804) 2:11, 17-22, 26-27 on a more general exposition of his thought on this issue.

<sup>72</sup> *Ibid.* 1:330 on the quotation from Tac. *Germ.* 12; 1:331 on *Germ.* 38, 39; 1:390 on *Germ.* 11; 1:391 on *Germ.* 12; 1:416 on *Ann.* 4.33; 2:21 on *Agr.* 21; 2:32 on *Germ.* 12; 2:21 on *Ann.* 12; 2:128 on *Germ.* 11; 2:177 on *Ann.* 3.25; 2:245 on *Germ.* 12; 2:478 on *Germ.* 18; 3:31 on *Germ.* 21; 3:143 on *Germ.* 21.

<sup>73</sup> *Ibid.* 1:330, 390, 391; 2:128, 177; 3:31, 143.

<sup>74</sup> *Ibid.* 2:16-17.

<sup>75</sup> *Ibid.* 2:17. Wilson's text of *Institutiones* 1.2.9 differs from that of modern versions; Birks (1987) 2 on Paul Krueger's text which reads: *Ex non scripto ius venit, quod usus comprobavit. nam diuturni mores consensu utentium comprobati legem imitantur*. However, this is due to changes in the text rather than to a misquotation on Wilson's part; cf. Justinian (1730) 9 on a text of Wilson's time which is consistent with his own quotation of the text.

law as the people consent to it. At two points in his lectures, Wilson also uses different parts of the well-known passage from *Digesta* 1.3.32<sup>76</sup> to reinforce his point that the consent of the people both makes and unmakes law. As he translates it:

Confirmed custom is deservedly considered as a law. For since written laws bind us for no other reason than because they are received by the judgement of the people; those laws, which the people have approved, without writing, are also justly obligatory on all. For where is the difference, whether the people declare their will by their suffrage, or by their conduct? This kind of law is said to be established by manners ... On strong grounds this rule is received, that laws may be abrogated, not only by the express declaration of the legislature, but, through desuetude, by the tacit consent of all.<sup>77</sup>

While this brief look at Wilson's use of other classical authors may at first appear to have little bearing on his use of Cicero, in fact, it helps to establish not only his overall familiarity and interaction with the classical languages and texts, but shows how he used them in formulating his political ideology. As will be seen, Wilson's general use of classical texts provides a framework to consider his approach to Cicero, who appears as a more pervasive and extensive source in Wilson's lectures than any other ancient authors.

The classics, therefore, formed an inseparable part of Wilson's studies and teachings on law. As an attorney, and later as a politician, framer of public policy, and professor of legal theory, Wilson's early education and background in the classics proved to be one of the main influences shaping his legal and political viewpoints. Regardless of the varied ways he interprets the ancient works to fit the discourse of his day, a point that becomes the focus of later chapters, the fact remains that Wilson persistently resorts to the classics and directly borrows from their contents. Their authority supported his personal constructions of law and government and thus ultimately affected the legal framework and future of the United States.

The second main issue of methodology that must be addressed in this study is more central to my analysis. In endeavouring to establish that Wilson's legal theory reveals a more direct link with classical authors than has been generally recognised, the

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<sup>76</sup> Cf. Mommsen (1920) 34 on the Latin text, which Wilson does not include: *Inveterata consuetudo pro lege non immerito custoditur, et hoc est ius quod dicitur moribus constitutum. nam cum ipsae leges nulla alia ex causa nos teneant, quam quod iudicio populi receptae sunt, merito et ea, quae sine ullo scripto populus probavit, tenebunt omnes: nam quid interest suffragio populus voluntatem suam declaret an rebus ipsis et factis? quare rectissime etiam illud receptum est, ut leges non solum suffragio legis latoris, sed etiam tacito consensu omnium per desuetudinem abrogentur.*

<sup>77</sup> Wilson (1804) 1:64; 2:39. Jill Harries's help was appreciated in identifying these two quotations, which Wilson did not fully reference. Cf. Wilson (1804) 2:91; 1:315 on two other references to *Institutiones* 1.2.12 and *Digesta* 49.15.

question unavoidably arises of whether he was receiving and quoting classical opinions from the classics themselves or largely through the works of intermediary sources. I suggest that Wilson's educational background and overall use of the classical texts defend the former reading and that the specific Ciceronian quotations he employs add a much greater credibility to this claim, as becomes evident by examining the quotations themselves and the translations he provides.<sup>78</sup>

### **3. Approach to Cicero**

Although Wilson continually bases his arguments upon comparisons drawn from ancient history and cites a number of different classical authors, his use of Cicero stands out as unparalleled. Not only does he provide long blocked quotations from Cicero's texts and cite them more directly and frequently than any other classical writings, but he also reveals a comprehensive mastery of the Ciceronian corpus as a whole. Instead of focusing on a specific work by a classical author, as he often does, Wilson borrows from a wide range of Cicero's works, treating them as authoritative sources and using them to generate the amount of discussion he usually reserves for more modern authors like Pufendorf or Reid. When citing Cicero, Wilson often discusses the surrounding context, the textual understanding of the passage itself, and the degree to which he follows the viewpoint being presented. Cicero, therefore, becomes foundational to Wilson's lectures, not merely as a rhetorical tool or as a superficial appeal to the authority of the ancients, but as an essential part of the construction and justification of Wilson's legal thought. Chapter two explores in detail the specific Ciceronian quotations Wilson provides in his writings, but a short examination of Wilson's overall perspective of Cicero himself and how it compares with that of his contemporaries helps to place Wilson's use of Cicero within the cultural and political viewpoints of the period.

In regard to the American Founding, Cicero's texts were of the first importance. The writings of the founders reveal a strong self-consciousness of their place in history and of their interaction with the classical texts, and they turned with particular fondness

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<sup>78</sup> See below, p. 35ff.

and consistency to Cicero, affording him the highest place of honour among the classical authors.<sup>79</sup> While their readings were often selective and the information they possessed about the ancient world was limited, their progressive view of history caused them to constantly apply their knowledge of the classics in practical ways.<sup>80</sup> While they felt a need to identify themselves as part of the classical tradition and in many ways accorded the ancient texts a much greater practical value than that placed on them by modern scholars, the founders saw themselves as evolving beyond the limits reached by their predecessors and as having attained to an advanced position in history and to greater insights into the workings of political science. As Alexander Hamilton proclaims in *Federalist Paper Number 9*, “The efficacy of various principles is now well understood, which were either not known at all, or imperfectly known to the ancients.”<sup>81</sup>

This general approach of many American founders to the classical texts holds true for Wilson’s perspective of Cicero; although, as has been seen, the classical knowledge he possessed was superior to that of most of his contemporaries. His estimation of Cicero echoes the popular sentiments of his day in praising the authoritative and literary worth of his texts. In particular, Wilson’s individual regard for Cicero appears to be based on his ability to join together both practical law and philosophy, a combination which Wilson himself strives to attain.<sup>82</sup> He describes Cicero as one who had been “consul of Rome” and had “kings for his clients”,<sup>83</sup> as an “exquisite judge of human nature and of law”,<sup>84</sup> “that eloquent philosopher”,<sup>85</sup> a man of “most extensive abilities”<sup>86</sup> and as one who “knew so well how to illustrate law by philosophy”.<sup>87</sup> More than once, Wilson describes general passages and metaphors in

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<sup>79</sup> Reinhold (1984) 98, 150; Mullett (1939) 100-101; cf. Richard (1994) 62, 224 on a brief look at Cicero in the writings of other founders like John Adams and Noah Webster.

<sup>80</sup> Reinhold (1984) 24, 39, 175. Even in asserting the founders possessed a limited knowledge of classical texts and often read them only through a practical lens, Reinhold admits that Wilson’s understanding of the classics was both thorough and exceptional [Reinhold (1984) 102].

<sup>81</sup> Willis (1982) 38. Cf. Willis (1982) 42 on James Madison’s statement in *Federalist Paper Number 10* that, “The valuable improvements made by the American Constitutions on the popular models, both ancient and modern, cannot certainly be too much admired.”

<sup>82</sup> Wilson (1804) 2:411.

<sup>83</sup> *Ibid.* 1:32.

<sup>84</sup> *Ibid.* 2:157.

<sup>85</sup> *Ibid.* 1:141.

<sup>86</sup> *Ibid.* 1:30.

<sup>87</sup> *Ibid.* 1:300.

Cicero's works as "beautiful",<sup>88</sup> and he views Cicero's analysis of natural law as "fine and just",<sup>89</sup> and his conception of the universal brotherhood of humankind as "beautiful and energetick".<sup>90</sup> Finally, in speaking of individual texts, Wilson mentions Cicero's "excellent book de oratore",<sup>91</sup> and expressly singles out *de Officiis* as a "work which does honour to the human understanding and the human heart".<sup>92</sup> Nevertheless, Wilson still cautions against a complete and careless acceptance of Cicero's philosophy, saying that "His philosophical performances are read, and ought to be read, with very considerable grains of allowance; the beauties of his oratory have been the subjects of universal and uninterrupted admiration."<sup>93</sup>

Political science as an evolving process toward perfection is a repeated theme in Wilson's lectures.<sup>94</sup> However, although he believes humankind has progressed in knowledge since ancient times, Wilson accepts the authority of Cicero's theories. At times, he even separates Cicero from other classical authors on the basis of his political insight and views him as a voice of reason urging advanced principles of political theory. For instance, when speaking of ancient nations and their international policies, Wilson condemns their oft-held views that they were under no obligations to other nations unless bound by an agreement or treaty. He sees Cicero's advocacy of the principles of a universal brotherhood as standing in contrast to these notions.<sup>95</sup>

Another time, when discussing ancient perspectives on the mixed form of government, Wilson mentions that history has proven the merit of Cicero's theory of the mixed form as described in *de Republica*, which Tacitus rejects as "visionary" in book four of the *Annales*.<sup>96</sup> At this point Wilson is paraphrasing from a passage in Blackstone's *Commentaries*,<sup>97</sup> which he uncharacteristically does not actually footnote or even mention. Neither Blackstone nor Wilson includes the precise citation, which comes from *Annales* 4.33; however, Blackstone is correct in his recognition that

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<sup>88</sup> *Ibid.* 1:72, 304.

<sup>89</sup> *Ibid.* 2:493.

<sup>90</sup> *Ibid.* 1:173.

<sup>91</sup> *Ibid.* 2:81.

<sup>92</sup> *Ibid.* 2:476.

<sup>93</sup> *Ibid.* 2:80.

<sup>94</sup> See below, p. 90.

<sup>95</sup> Wilson (1804) 1:173.

<sup>96</sup> *Ibid.* 1:416. In book two of *de Republica*, Cicero provides an account of the development of the Roman mixed form of government, consisting of a balance of authority between consuls, senate, and people.

<sup>97</sup> Blackstone (1979) 1:50.

although Tacitus does not mention Cicero by name, he is referring to *de Republica* in this passage:

*Cunctas nationes et urbes populus aut primores aut singuli regunt: delecta ex iis et conflata rei publicae forma laudari facilius quam evenire, vel, si evenit, haud diuturna esse potest.*

All nations and cities are ruled either by the people or the nobles or a single man: the form of a state selected and composed from these parts is more easily praised than brought into being, or if it is brought into being, it is by no means able to endure.<sup>98</sup>

Wilson's analysis of this classical text not only follows Blackstone's didactic view of history, but also adopts a similar textual approach. In typical fashion, Wilson accepts the statements as reflecting the viewpoint of the author without considering underlying motivations, such as whether Tacitus' political position and the state of affairs in the Empire influenced both his dismissal of the mixed form as illusionary and his perspective on the salvation of the state being necessarily dependent on the command of one man.

From his use of Tacitus' quotation and similar references, it is clear that Wilson is cognisant of Blackstone's frequent use of the Ciceronian texts. Wilson constantly references Blackstone, the one author who receives his full attention throughout the course of the lectures, as a source of comparison with his own legal and political theories. Whether or not Wilson deserved the appellation of the "American Blackstone" given him in early biographies<sup>99</sup> is not a point to be addressed here. However, in the lectures given to the law students at the University of Pennsylvania, Wilson was undoubtedly attempting to construct a meticulous survey of the legal theory and practice underlying the American system, in conscious hopes of his work becoming for the newly formed United States what the *Commentaries* were to English law. Although Blackstone's own attempt at legal practice proved of little success, like Wilson, he is an example of a practical lawyer and an academic; initially, he began the *Commentaries* as a set of Oxford lectures in 1743.<sup>100</sup>

Both Blackstone and Wilson draw on the Ciceronian tradition. At one point, in referencing one of Blackstone's quotations, Wilson dryly remarks that "the high

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<sup>98</sup> Martin and Woodman (1989) 136 on the analysis of this passage and its textual connections with *de Republica*.

<sup>99</sup> Konkle (c.1900) 642; Bauer (1952) 54.

<sup>100</sup> Katz (1979) iii-iv.



authority of Cicero is also produced upon this occasion”.<sup>101</sup> In a conscious imitation of Blackstone’s introduction in the *Commentaries*, Wilson also begins his preface by telling students that as a boy Cicero was instructed in the laws of the Twelve Tables “*ut necessarium carmen*”.<sup>102</sup> However, apart from this quotation and the one previously mentioned, the Ciceronian quotations chosen by Wilson are different from those that Blackstone selects.<sup>103</sup> Some similarity is only to be expected from the popularity of the texts themselves and from the same classical and legal tradition in which both men were educated, but ultimately, the use of widely disparate quotations in itself supports that Wilson was turning directly to the Ciceronian texts in constructing his legal analysis.

While Wilson’s high regard for Cicero is unquestionably sincere, his use of the Ciceronian texts was also a means of gaining credibility in the eyes of his audience. As is evident from Blackstone’s use of Cicero, Wilson’s dependence on the Ciceronian corpus is not only consonant with his American contemporaries, but also characteristic of a much wider sphere. The *History of the Life of Marcus Tullius Cicero* (1741), by English scholar Conyers Middleton, was popular on both sides of the Atlantic, and along with Cicero’s own works, was used by opposition writers in support of republican opinions.<sup>104</sup> The popularity of the Ciceronian texts in the university library of Wilson’s time also attests to this trend, and several of the most worn volumes in the 1692 edition are those Wilson cites from most frequently, such as *de Officiis*, *de Legibus*, *de Natura Deorum*, *de Amicitia* and *de Senectute*.

The view of Cicero put forward in Wilson’s lectures corresponds with that of his contemporaries. Colley Cibber’s *The Character and Conduct of Cicero* (1747), also available in the library during Wilson’s years as a student, speaks of Cicero in such laudatory terms as “the determined, that intrepid Hero” whose death was “a sacrifice to liberty and virtue”, but also condemns his “vanity”, his “ductile love of fame”, and his

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<sup>101</sup> Wilson (1804) 3:39.

<sup>102</sup> *Ibid.* 1:ix. Cf. Blackstone (1979) 1:6 on his inclusion of the phrase “as a *carmen nessarium*”. The original quotation from Cic. *Leg.* 2.23.59, reads: *ut carmen necessarium*, indicating that Wilson may have written the phrase from memory without checking the original quotation.

<sup>103</sup> Many of the same texts are quoted by both authors, including *Leg.*, *Rep.*, *De Or.*, and *Off.*, but they also draw on separate Ciceronian texts. At twenty-three different points in his *Commentaries*, Blackstone makes reference to Cicero and cites from *de Leg.*, *Brut.*, *Dom.*, *Rep.*, *Att.*, *ad Brut.*, *Phil.*, *Mur.*, *Fin.*, *Off.*, *De Or.*, *QRosc.*, *Clu.*, and *Mil.*; see Blackstone (1979) 1:6, 13, 46, 50, 90, 118, 150, 346, 452; 2:4; 3:1, 49, 116, 117, 315, 366, 436; 4:16, 31, 138, 181, 203, 375.

<sup>104</sup> Wood, G. S. (1993) 100-103.

“frailty”.<sup>105</sup> Wilson’s estimation of Cicero’s character reveals itself along similar lines when, despite his frequent commendation of Cicero, Wilson still laments his flaw of vanity.<sup>106</sup>

In conclusion, it is obvious that Wilson’s interest in the Ciceronian texts, his tendency to quote them, and even his general approach to Cicero were influenced by the mindset and popular conceptions of his time. Every author, however, will inevitably read the classical texts through the interpretations of his predecessors and contemporaries. Nevertheless, as the evidence supports, in referencing Cicero’s works, Wilson turned to them directly. In his opinion, Cicero was not an infallible source but a respected authority whose political insights enabled him to better interpret the events of his time. It is against this background that we now turn to the specific Ciceronian quotations and their role in the formation of Wilson’s political ideology.

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<sup>105</sup> Cibber (1747) 2, 20, 159, 255.

<sup>106</sup> Wilson (1804) 1:30.

## Chapter 2: Wilson's interaction with the Ciceronian texts

ἀνδρῶν γὰρ ἐπιφανῶν πᾶσα γῆ τάφος, καὶ οὐ στηλῶν μόνον ἐν τῇ οἰκείᾳ σημαίνει ἐπιγραφή,  
ἀλλὰ καὶ ἐν τῇ μὴ προσηκούσῃ ἄγραφος μνήμη παρ' ἐκάστῳ τῆς γνώμης μᾶλλον ἢ τοῦ ἔργου  
ἐνδιδαιτᾶται.

Thucydides, *Pericles' Funeral Oration*

Building on the evidence given in the last chapter, which established Wilson's classical education and familiarity with the ancient authors and texts, this second chapter now looks specifically at Wilson's use of Cicero in his *Law Lectures*. In order to provide a comprehensive view of Cicero's place within the lectures, it addresses every mention of Cicero that occurs in Wilson's work. The first section of the chapter examines indirect references and allusions. The second section focuses solely on the direct quotations, analysing Wilson's translations when they are provided and placing his translations within the context of his own ideology, which reveals his unique slant on Cicero.

This chapter further establishes Wilson's direct engagement with Cicero's works, by investigating the specific quotations and Wilson's translations. Furthermore, it also illustrates his proficiency in Latin and his thorough knowledge of the Ciceronian corpus. In considering Wilson's quotations of Cicero, I have employed the 1692 edition of Cicero's texts and then compared it with modern editions. Oftentimes, instances that would initially appear as errors in Wilson's quotations are merely places where modern editions have made changes. The general approach of this chapter, therefore, attempts to prove beyond question the centrality of the Ciceronian texts in Wilson's writings and political philosophy.

On this basis, later chapters expound on Wilson's particular theories of popular sovereignty, civic virtue, and civil disobedience, and examine the ways in which they relate to Cicero's own thought. Some slight overlap occurs, however, since a brief explanation of Wilson's thought accompanies the analysis of this chapter and provides a context for his use and translations of Cicero.

### 1. Indirect uses of Cicero

While the footnoted quotations of Cicero's work that appear in Wilson's lectures provide the surest and easiest method of identifying his use of Cicero, his frequent

indirect references also aid in this effort. Although many of the references appear insignificant alone, when taken together they help to form an overall understanding of Wilson's broad acquaintance with Cicero's texts and of the direct Ciceronian influence on his thought. This section, therefore, looks at the three main ways Wilson indirectly acknowledges Cicero: his use of references and allusions, his phraseology, and his second-hand quotations. All of these instances not only reveal the pervading effect of Wilson's training as a classical scholar, but also demonstrate that he was not merely employing quotations and themes that already existed in the language and writing of the educated class of his time.<sup>1</sup>

### 1.1. References and allusions

Wilson sprinkles classical allusions and Latin phrases copiously throughout his work, often without attributing them to a specific writer. While many of these have some bearing upon his arguments, Wilson sometimes employs them for stylistic purposes without textual background. Four Ciceronian references appearing in his *Law Lectures* appear to evince similar traits, since Wilson assigns the quotations to Cicero but does not provide either a footnote or a reference to a particular work. Nonetheless, these instances reveal Wilson's close interaction with Cicero's works.

The first allusion appears in Wilson's discussion of what he considers the spurious theory of natural superiority, which many political theorists use to justify the right or power of rulers over their subjects. While he believes that superior talents and virtue should be required in a leader, Wilson also maintains that they do not grant the ruler a legitimate right to authority or mean that others must be subject to him.<sup>2</sup>

Although some theorists used Cicero in support of such an argument, Wilson disagrees with their interpretation:

Because Cicero, by a beautiful metaphor, describes the government of the other powers of the mind as assigned, by nature, to the understanding; does it follow that, in strict propriety of reasoning, the right of legislation is annexed, without any assignment, to superiour excellence?<sup>3</sup>

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<sup>1</sup> Cf. Bailyn (1967) 24-26; McLachlan (1976) 81-82; Kennedy (1976) 126-127 on the view that the classical quotations used by the founders were frequently superficial and often gained through intermediary sources rather than from a direct readings of the texts; cf. Mullett (1939) 93 on the founders' use of secondary sources for gaining classical knowledge.

<sup>2</sup> Wilson (1804) 1:71.

<sup>3</sup> *Ibid.* 1:72.

In the context of Wilson's spoken lecture, it would undoubtedly have been clear to his students that he was paraphrasing an argument described by Pufendorf in *Of the Law of Nature and Nations* (1672), a work that frequently appears in this lecture. Due to the unedited version of the written lecture, however, the allusion to Cicero is unclear since Wilson cites neither the specific Ciceronian passage nor the reference to Pufendorf.<sup>4</sup> By referencing Cicero at this point, Wilson is warning students not to make wrong inferences from Cicero's text. This allusion, therefore, points to Wilson's attempt to further his personal reading of the text and to demonstrate that the Ciceronian passage should not be applied to common misperceptions regarding political sovereignty. This aim is made even more apparent in the very next paragraph, when Wilson addresses how misleading interpretations of Aristotle have been advanced to support the same theory.

The second allusion that appears as a quotation from the *pro Cluentio* 53.146 deserves special attention since it figures on the title page of the lectures and functions as an introductory statement of Wilson's underlying philosophy. To a great extent, the lectures serve as a commentary structured upon the abridged form of this quotation that Wilson presents as: *Lex fundamentum est libertatis, qua fruimur. Legum omnes servimus, ut liberi esse possimus.*<sup>5</sup> While the quotation undoubtedly shows his reliance on Cicero, one could suppose that Wilson is merely employing it as a rhetorical flourish at the beginning of his work as an eloquent and emotional appeal drawn from a law-court speech. However, twice more in his lectures, Wilson revisits the quotation and incorporates it into his own arguments.<sup>6</sup>

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<sup>4</sup> Cf. Pufendorf (2005) 66 on the quotation from Cicero, which comes from *Tusc.* 3.5.11: *Itaque nihil melius, quam quod est in consuetudine sermonis Latini, cum exisse ex potestate dicimus eos, qui effrenati feruntur aut libidine aut iracundia ... qui igitur exisse ex potestate dicuntur, idcirco dicuntur, quia non sunt in potestate mentis, cui regnum totius animi a natura tributum est* (Therefore nothing is better, than that which is commonly expressed in Latin conversation, when we say that those who in an unbridled state have been carried off by lust or anger have laid aside their power to control themselves ... they, therefore, who we say have lost control of themselves, they have been thus declared, because they are not ruled by reason, to which the ruling power of the entire soul has been assigned by nature). Pufendorf also disagrees with the idea that superiority grants the power to dictate obedience; however, he does not specifically criticise the interpretation of the Ciceronian quotation that advances this theory. The Teubner edition contains two variations: "*ecfrenati*" and "*quia non sint*".

<sup>5</sup> "The law is the foundation of liberty, which we enjoy. We are all servants of the law, so that we may be free." As at many other points in the lectures, Wilson does not provide a translation but assumes his readers will translate the quotation for themselves.

<sup>6</sup> Wilson (1804) 1:100; 3:71.

In the first instance, he quotes an extended section of the Latin paragraph and includes the citation.<sup>7</sup> The second time, he mentions the passage in his reiteration of the principles that liberty and law cannot be separated, that all forms of government exist for the sake of the individuals who create them, and that any thoughtless or needless act of the legislature usurps the individual's right to liberty and is thus an act of tyranny.<sup>8</sup> In this context, Wilson once again evokes Cicero's words, placing them at the centre of his legal theory: "'Legum'—I repeat it—'servi sumus, ut *liberi* esse possimus'".<sup>9</sup>

In this reference, as well as in the introductory quotation, Wilson only includes a brief and highly abridged form of the original Latin quotation, which reads:

*Hoc enim vinculum est huius dignitatis, qua fruimur in republica, hoc fundamentum libertatis, hic fons aequitatis: mens, et animus, et consilium, et sententia civitatis, posita est in legibus. Ut corpora nostra sine mente: sic civitas sine lege, suis partibus, ut nervis ac sanguine, et membris, uti non potest. Legum ministri magistratus: legum interpretes, iudices: legum denique idcirco omnes servi sumus, ut liberi esse possimus.*<sup>10</sup>

As is evident from the three times he employs this quotation, Wilson uses different portions of it at various times in his lectures. However, his main purpose is best seen in his condensed version of the quotation, which accentuates the fundamental argument he makes in his introduction and recasts in different forms throughout his lectures: that law and liberty are inseparable concepts and a proper understanding of liberty is essential to the science of law. Although the shortened form of the quotation does not alter the meaning of the passage itself, Wilson's repeated emphasis on this one passage causes Cicero to be read within the context of Wilson's own legal theories.

In the end, it is clear that the passage from the *pro Cluentio* is not the mere reference of a scholar and a gentleman but is foundational to Wilson's argument and reveals his direct involvement with the text. In contrast, the final two short quotations from Wilson's work that only allude to Cicero provide literary and authoritative support for his points but are not crucial to them. Nevertheless, they also point to Wilson's proficiency in employing the classical texts.

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<sup>7</sup> See below, p. 52.

<sup>8</sup> Wilson (1804) 3:70.

<sup>9</sup> *Ibid.* 3:71, quoting Cic. *Clu.* 53.146.

<sup>10</sup> The Teubner edition renders the phrase "*ut nervis ac sanguine*" as "*ut nervis et sanguine*." The translation which Wilson does not employ can be read as: "For this [law] is the bond of this distinction which we enjoy in the republic, this is the foundation of our liberty, the source of justice. The mind and the spirit and the deliberation and the judgement of the state are placed in the laws. As our bodies without mind, so is the state without law, unable to make use of its parts as muscles and blood and limbs. The magistrates as agents of the law; the judges as interpreters of the law; finally therefore we are all servants of the law, so that we may be free."

The first is from *de Legibus* 1.5.17, where Cicero states, *natura enim iuris explicanda nobis est eaque ab hominis repetenda natura* (for we must set forth the nature of justice and this must be retraced in the nature of man). Wilson's mention of the passage occurs in his discussion of the indispensable role of metaphysics in the study of law, when says that he concurs with Cicero's opinion that *natura juris a natura hominis repetenda est*.<sup>11</sup>

The second allusion is drawn from *Orator* 4.34, which comments, *Quid tam difficile quam in plurimorum controversiis diiudicandis ab omnibus diligere? Consequeris tamen, ut eos ipsos quos contra statuas aequos placatosque dimittas*.<sup>12</sup> In Wilson's lecture, part of this quotation appears merely in a footnote. He highlights the merits of just and legal judges, who in making the right verdict are also able to gain public confidence and to remove any possible source of criticism even from those they ruled against. Brutus figures as a positive example of this type of judge, for as Wilson remarks, "*Etiam quos contra statuit, aequos placatosque demisit*; says Cicero of Brutus."<sup>13</sup>

Both of these quotations, while they could possibly be general quotations known to all educated men of Wilson's time, more likely point to Wilson's own knowledge of the classics. In these instances, Wilson has employed quotations having a specific and limited application and has shortened and even altered the Latin in order to better illustrate his points without making grammatical or linguistic errors; furthermore, the fact that he does not cite the references may be the result of quoting from memory. Overall, the context and format of the quotations point to an author well-acquainted with Cicero's work.

## 1.2. Similarities in phraseology

At various times, when constructing his philosophical arguments, Wilson's phraseology closely corresponds to Cicero's style and concepts. Since he does not even mention Cicero in these instances, it is possible that they are simply expressions prevalent at that

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<sup>11</sup> Wilson (1804) 1:227.

<sup>12</sup> "What is so difficult as to please everyone in settling a great number of controversies? Nevertheless, you achieve it, so that you send away precisely those who have been ruled against contented and kindly disposed."

<sup>13</sup> Wilson (1804) 1:405. "Even those he rules against, he sends away contented and kindly disposed."

time or commonplace themes repeatedly occurring in the history of political thought. Conversely, however, certain stylistic and philosophical similarities between the two authors could indicate that Cicero exerts a more pervasive influence in Wilson's thought than he himself perhaps even fully realised. Such parallels undoubtedly would exist in the writings of a scholar who had intently read the Ciceronian works.

While no decisive conclusion can be made, these examples merit consideration along with the other evidence presented in this chapter. In a study of this nature, to pass them over without note would hinder the effort to present a complete picture of the Ciceronian influence in Wilson's works. Therefore, I will at least point out three of the more obvious instances where Wilson appears to be imitating Cicero.

In attempting to demonstrate the universality of what he terms moral perceptions, Wilson states, "Robbery and theft are indulged by no society: from a society even of robbers, they are strictly excluded."<sup>14</sup> In *de Officiis* 2.11.40, when discussing the justice that is admired and exists among all men, Cicero employs the same analogy, saying that even a robber must relinquish his place in a band of thieves if he steals or robs from a comrade, for even robbers yield themselves to their own laws (*Nam qui eorum cuiquam, qui una latrocinantur, furatur aliquid aut eripit, is sibi ne in latrocinio quidem relinquit locum ... quin etiam leges latronum esse dicuntur, quibus pareant, quas observent*). It is significant that Wilson applies the same example to illustrate an argument similar to the one Cicero is making; moreover, Wilson's wording is consistent with *de Officiis*, a work that he directly quotes from five other times in his lectures.<sup>15</sup>

A second case of comparison with Cicero occurs in Wilson's chapter on evidence and its relation to the human mind. Wilson comments that: "Nature should always be consulted. We are safe, when we imitate her in her various, as well as when we imitate her in her uniform appearances. By following her as our guide, we can trace evidence to the following fourteen distinct sources."<sup>16</sup> This terminology resembles sentiments frequently expressed by Cicero, like *naturam optimam bene vivendi ducem* (nature is the best guide for living well) from *de Amicitia* 5.19, a treatise from which

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<sup>14</sup> *Ibid.* 1:293.

<sup>15</sup> *Ibid.* 1:173-174 on his quotations from Cic. *Off.* 3.5.25 and 3.6.28; 1:299 on *Off.* 1.7.22; 1:364 on *Off.* 1.11.34; 1:391 on *Off.* 2.12.41-42; 2:493 on *Off.* 1.17.54.

<sup>16</sup> *Ibid.* 2:74-75.



Wilson draws other references as well.<sup>17</sup> Another similar example appears in *de Legibus* 1.6.20 when Cicero says that *repetam stirpem iuris a natura, qua duce nobis omnis est disputatio explicanda* (I will retrace the origin of justice from nature, through whose leadership we must unfold the whole discussion) and Atticus replies with *et quidem ista duce errari nullo pacto potest* (and indeed with that guide it is not possible to err in any way).<sup>18</sup> Once again, Wilson's argument strongly approximates a Ciceronian work that he quotes in his lectures and that he has certainly studied at length.<sup>19</sup>

A final example presents a general philosophical position, which although not exclusive to Cicero, is certainly an ever-present theme throughout his works. Before embarking on his series of lectures, Wilson instructs his students to study not only the practicalities of law but also its purpose and underlying principles, and to trace specific statutes to their philosophical origins. Finally, he encourages them to emulate the examples of men like Bacon, Bolingbroke, and Kaimes, "all distinguished by the accomplishments of an active as well as those of a contemplative life".<sup>20</sup> In this single statement, Cicero's subtle influence is discerned. Wilson clearly accepted Cicero's belief in the need to combine study and statesmanship, and would also likely have accepted Cicero's account of himself as embodying this standard.<sup>21</sup>

### 1.3. Second-hand quotations

In a number of cases Wilson quotes Cicero through a secondary source. Although such cases would initially appear to indicate that Wilson is not influenced directly by Cicero's works and legal philosophy, these instances actually serve to establish the claim in two significant ways.

Firstly, the use of indirect quotations confirms Wilson's methodology and his practice of citing the intermediate author from whom he derives an original passage. Wilson applies the same technique with Cicero that he does when referencing other

<sup>17</sup> *Ibid.* 1:70 on his quotation from Cic. *Amic.* 5.19; 1:300 on *Amic.* 23.87-88.

<sup>18</sup> Cf. Cic. *Off.* 1.28.100.

<sup>19</sup> Wilson (1804) 1:ix on Cic. *Leg.* 2.23.59; 1:118 on *Leg.* 2.4.8; 1:385 on *Leg.* 3.1.3; 2:170 on *Leg.* 3.17.39; 2:490 on *Leg.* 3.1.3.

<sup>20</sup> *Ibid.* 1:44.

<sup>21</sup> Cic. *Off.* 1.1.3

classical authors through secondary sources. At seven different points in the *Law Lectures*, Wilson uses four sources to refer to Cicero: William Blackstone, John Pettingal, Edward Gibbon, and an opinion from English case law.<sup>22</sup> Apart from the one exception of the quotation drawn from Blackstone, where Wilson critiques Blackstone's analysis of the Ciceronian text, he does not mention Cicero in the footnotes. Instead, in the other six examples, even if they refer to a work of Cicero's with which Wilson is undoubtedly familiar and which he may even use in other contexts, he cites only the secondary author.

Four of the seven instances come from Pettingal's *An Inquiry into the Use and Practice of Juries* (1769). In all of these, Wilson is using the secondary source in order to examine practical facets of the Roman judicial system. In three of them, Pettingal alludes to the Milo case and to the Roman practice of permitting both sides in a legal dispute to challenge a specific number of those balloted as members of the jury.<sup>23</sup> In the final instance, Pettingal comments on the custom of marking the time of an advocate's speech by drips of water.<sup>24</sup> Although these examples demonstrate Wilson's trust in the historical accuracy of the facts reported by Cicero, it is clear that he does not feel the need to include the original texts and is content merely to cite Pettingal's account of them.

The next instance where Wilson references Cicero through an intermediary source is in the context of the case adjudicated by Lord Mansfield. In this case, Mansfield appeals to the law of nations in order to justify an interpretation of international maritime law, and a brief albeit highly modified and unreferenced Latin passage from Cicero's *de Republica* is cited.<sup>25</sup> In this instance, since the secondary source corresponds with his own understanding of the law of nations, Wilson cites only the law court opinion.

In the quotation from Gibbon, like those from Pettingal and English case law, Wilson is not analysing Cicero's philosophical arguments or legal theory. Wilson gives

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<sup>22</sup> Wilson (1804) 1:375 on the quotation from Sir James Burrow's *Reports of Cases Adjudged in the Court of King's Bench* (London, 1766-1780). Wilson (1804) 2:19 on the quotation from Gibbon (1901) 457. Wilson (1804) 2:320-321, 2:401, 3:167 on the four quotations from Pettingal's *An Inquiry into the Use and Practice of Juries* (London, 1769). Wilson (1804) 3:39 on the quotation from Blackstone (1779) 4:375.

<sup>23</sup> *Ibid.* 2:320-321; 3:167.

<sup>24</sup> *Ibid.* 2:401.

<sup>25</sup> *Ibid.* 1:375. The Ciceronian passage itself is not referenced, but it is derived from *Rep.* 3.22.33.

a brief history of the concept of unwritten law in Roman jurisprudence and the mode of its alleged transference to Great Britain. He mentions Cicero only in passing, pointing to Gibbon's opinion that "the jurisprudence of Rome was adorned and enriched by the exquisite genius of Cicero, which, like the touch of Midas, converts every object into gold".<sup>26</sup> Notably, however, Wilson ends the quotation before Gibbon begins to disapprove of Cicero's specific viewpoints, some of which Wilson himself defends in his lectures.<sup>27</sup>

As is evident in these six examples, by citing the intermediate authors rather than the original texts Wilson is able to offer secondary perspectives that concur with his own interpretations of Cicero, his time, and his works. He chooses the secondary opinions with the same care that he later employs when quoting directly from Cicero.

Only once does Wilson footnote both the original Ciceronian text as well as the secondary source.<sup>28</sup> Even in this instance, he makes it clear in the lecture that he is referencing the precise quotation used by Blackstone. Unlike the other examples of secondary sources, Wilson directly addresses Blackstone's interpretation of the text, analyses Cicero's meaning, and offers a slightly qualified evaluation of Cicero's statement in its broader context. Then, he concludes by criticising both Blackstone and Cicero and contrasting their perspectives with his own legal theory. By footnoting the primary and secondary sources, Wilson directs his readers' attention to both passages and enables them to consider his own arguments within the framework of the ancient and modern authors.

The way in which Wilson employs Blackstone in conjunction with the Ciceronian passage has important ramifications for the argument that Cicero had a direct affect upon Wilson's legal theory. Not only does this example point to the meticulousness of Wilson's system of referencing, but it also introduces the second main point of this section; namely, that even when Wilson cites Cicero second-hand, he is familiar with the original source and context of the passages being quoted, and that he

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<sup>26</sup> *Ibid.* 2:19.

<sup>27</sup> After his description of Cicero's doctrines including those of a universal commonwealth of gods and men and of a law of nature prescribed by reason, Gibbon says it is possible to see "how firmly Cicero believed in the specious doctrines which he has adorned"; Gibbon (1901) 457 n. 56. These ideas, however, were foundational to Wilson's political theory [Wilson (1804) 1:119, 127, 141].

<sup>28</sup> Wilson (1804) 3:39.

shows himself adept both at handling the classical texts themselves and of weighing them against the interpretations of later scholars.

The quotation from Blackstone arises in Wilson's discussion of punishments and forfeitures in the third set of the law lectures. For Wilson, the law of forfeiture in Great Britain demonstrates how a self-evident law, such as the principle that the innocent should not be punished along with the guilty, can be bent and infringed by those desirous of gain. Since it punishes the children who ought to receive the inheritance of their parents, Wilson would discard such laws as contrary to "reason and humanity",<sup>29</sup> and with combined wit and sarcasm he condemns Blackstone's efforts to justify them.

Blackstone bases his argument regarding the practicality and natural justice of the law of forfeiture upon a quotation from *Epistulae ad Brutum* 1.12, where Cicero writes, "*nec vero me fugit, quam sit acerbum, parentum scelera filiorum poenis lui; sed hoc praeclare legibus comparatum est, ut caritas liberorum amiciores parentes reipublicae redderet*".<sup>30</sup> In this letter, Cicero replies to a plea of Brutus. Since his brother-in-law, M. Lepidus had been declared a public enemy of the state, Brutus was afraid that his nephews might be denied their inheritance and implored Cicero to act on their behalf.<sup>31</sup> Cicero, however, wrote back justifying the sentence he and the rest of the senate had passed against Lepidus.

In his response to Blackstone, Wilson begins by qualifying the context in his effort to demonstrate that Cicero's statement should not be taken as strongly as Blackstone would have his readers suppose. Instead, Wilson notes that Cicero is defending the vote he made in the senate and argues that the letter should be read as an appeal to Brutus in which Cicero assumes more the position of a "culprit" than a "judge".<sup>32</sup>

Wilson's familiarity with the context is further supported by his use of Brutus' letter to Cicero on the same subject, which Blackstone does not mention. Even if Cicero was only anxiously attempting to justify the senate's course of action to Brutus,

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<sup>29</sup> *Ibid.* 3:37.

<sup>30</sup> Blackstone (1979) 4:375. The translation which Blackstone does not provide may be rendered: "Truly it does not escape me, how harsh it is for the sons to suffer punishment for the crimes of their parents; but this has been rightly provided by the laws, so that affection for their children may cause the fathers to be loyal to the state." The Teubner edition contains two variations: "*parentum*" and "*parentis*".

<sup>31</sup> Cf. Tyrrell and Purser (1899) 244-246 n. 1ff. on the background and personal circumstances of these letters.

<sup>32</sup> Wilson (1804) 3:39.

Wilson still believes his utilitarian argument supporting the confiscation of the property of the condemned still must be rejected. He says that the law should not allow the crime of an individual to unjustly victimise the children and their meritorious and patriotic relatives. Then, to justify his own view of the subject, Wilson employs Brutus' letter to Cicero, when in the name of his friendship he asks Cicero to consider him as standing in place of their father, saying that "*contra patrem Lepidum Brutus avunculus*".<sup>33</sup> Regardless of the individual bias that causes Wilson to defend his own reading of the passage, his method of analysis demonstrates his concern with interpreting Cicero's quotations in light of Cicero's other writings and their historical context.

Wilson's reasoning throughout this section strongly reveals his experience as a academic as well as his command of the Ciceronian corpus. Despite his disapproval of the law of forfeiture, he maintains a high respect and approbation of Cicero, condemning the legal principle rather than Cicero himself and even feeling the need to validate his departure from Cicero's opinions. He clearly agrees with the view of Cicero presented by Blackstone, who prefaced his argument by saying that it was supported by the "beautiful sentiment of Cicero".<sup>34</sup> Immediately afterward, Wilson answers, "Amicus Cicero—sed magis amica veritas. For the high authority of Cicero, I certainly entertain a proportionate degree of respect, but implicit deference should be paid to none".<sup>35</sup> Thus, as a scholar, Wilson plays with his knowledge of the Latin language and with common Ciceronian themes. His own Latin phrase recalls Cicero's arguments in *de Amicitia*, a work he quotes elsewhere, that in friendship one must entertain a higher regard for speaking the truth than for preserving peace through the indulgence of another's faults.<sup>36</sup> Additionally, Wilson's statement as a whole evokes the position Cicero himself so often takes in admitting the deference and admiration he has for the opinions of his predecessors, but refusing to wholly align himself with any

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<sup>33</sup> *Ibid.* 3:40. Although Wilson does not include any reference to the specific letter or footnote the Ciceronian source, it is taken from Cic. *Ad Brut.* 1.13: where Brutus asks, *aut ego matri ac sorori puerisque illis praestaturus sum, si nihil valuerit apud te reliquumque senatum contra patrem Lepidum Brutus avunculus?* (what help will I be able to offer my mother and my sister and those boys, if you and the rest of the senate will not let their uncle Brutus count against their father Lepidus?). Additionally, Wilson's expectation that his readers will possess at least a general knowledge of Latin is evident in that he does not include English translations, either for Cicero's statement or for his own.

<sup>34</sup> Blackstone (1979) 4:375.

<sup>35</sup> Wilson (1804) 3:39.

<sup>36</sup> Cic. *Amic.* 24.89. Jill Harries's help was appreciated in identifying that Wilson was referring to this work.

particular one. Thus, even in showing himself willing to disagree with Cicero, Wilson echoes a common Ciceronian sentiment and turns Cicero's words back on him, admiring Cicero at the same time he departs from him.

Wilson's interpretations of Cicero are inevitably influenced by the readings offered by his predecessors and contemporaries, such as the ones he cites here. This, however, is true of any author and especially of a scholar as widely read as Wilson; nevertheless, the essential point that can be drawn from the examination of his second-hand citations is that Wilson is directly borrowing from Cicero's works and presenting his individual analysis and interpretation of them. As the following section further demonstrates, Wilson quotes frequently from Cicero himself, employing a wide selection of Ciceronian texts and diverse passages to support his legal theories.

## **2. Direct Ciceronian quotations**

The purpose of this section is to examine the direct Ciceronian quotations in the *Law Lectures* in order to further establish the arguments that Cicero forms a foundational part of Wilson's writings and that Wilson directly consulted Cicero's works rather than receiving and employing his texts through intermediary sources. Although the indirect quotations and references in Wilson's writings indicate a strong Ciceronian influence, the direct quotations offer more observable and conclusive evidence in support of this claim. This section includes all the passages that Wilson attributes to Cicero and quotes in his lectures, accurately citing the specific work and subsection. Although some of the examples mentioned in the previous section as indirect quotations could perhaps be considered direct quotations since they may provide a correct Latin quotation and some indication of the work from which they are derived, for the sake of clarity and accuracy I have only counted a quotation as direct when Wilson explicitly footnotes it.

As will be seen throughout this section, three key observations arise from a close scrutiny of the direct quotations. The first relates to Wilson's command of the Ciceronian corpus, the second to his method of citation, and the third to his proficiency in translating the Latin passages.

The first observation is that Wilson's understanding of the Ciceronian texts and his ease in providing context and application are evident throughout the lectures. He quotes from a wide range and from diverse parts of Cicero's works. In the preface and introduction to the lectures, Wilson provides three direct quotations from *de Legibus* 2.23.59, *de Oratore* 1.45.199, and *Brutus* 58.211.<sup>37</sup>

In the first set of lectures, there are a total of seventeen quotations from the *pro Cluentio* 53.146, *de Natura Deorum* 1.44.124, *de Legibus* 2.4.8, *de Natura Deorum* 1.16.43, *de Republica* 3.22.33, *de Amicitia* 5.19, *de Officiis* 3.5.25-3.6.28, *de Officiis* 1.7.22, *de Amicitia* 23.87-88, *de Republica* 6.13.13, *pro Balbo* 13.31, *de Officiis* 1.11.34, *de Legibus* 3.1.3, *de Officiis* 2.12.41-42, *de Republica* 2.23.41, *pro Caecina* 26.74-75, and *de Oratore* 3.50.195.<sup>38</sup>

In the second set of lectures, there are five direct quotations. The first is a quotation from the combined texts of *de Legibus* 3.17.39 and *de Lege Agraria* 2.2.4.<sup>39</sup> The others come from *de Officiis* 1.17.54, *de Legibus* 3.1.3, *de Officiis* 1.17.54, and the *pro Milone* 4.10-11.<sup>40</sup> Although Wilson cites the same section of *de Officiis* twice in this set of lectures, he quotes different portions of it in the text and reminds readers of his earlier citation of this work.

In the third set of lectures, there are five quotations from *pro Domo* 41.109, *in Verrem* 5.62.162, *in Verrem* 5.63.163, *in Verrem* 5.66.170, and *pro Sulla* 28.78.<sup>41</sup>

As these statistics demonstrate, a total of thirty direct quotations appear in the lectures, coming from the fifteen different Ciceronian texts of *de Legibus*, *de Oratore*, *Brutus*, *pro Cluentio*, *de Natura Deorum*, *de Republica*, *de Amicitia*, *de Officiis*, *pro Balbo*, *pro Caecina*, *de Lege Agraria*, *pro Milone*, *pro Domo*, *in Verrem*, and *pro Sulla*. Wilson quotes from seven of these texts at least twice, with six quotations coming from *de Officiis*, five from *de Legibus*, three from *de Republica*, two from *de Oratore*, two from *de Natura Deorum*, two from *de Amicitia*, and three from *in Verrem*.<sup>42</sup>

<sup>37</sup> Wilson (1804) 1:ix, 32, 39.

<sup>38</sup> These appear consecutively in Wilson (1804) 1:100, 111, 118, 119, 141, 173-174, 299, 300, 304, 314-315, 364, 385, 391, 416; 2:46-47, 81.

<sup>39</sup> Wilson (1804) 2:170.

<sup>40</sup> These appear consecutively in Wilson (1804) 2:476, 490, 493, 496.

<sup>41</sup> These appear consecutively in Wilson (1804) 3:61, 157, 157-158.

<sup>42</sup> At a first glance at this paragraph, it would appear that the figures are not accurate, since adding the total number of quotations given to the number of works presented would bring the total number of direct quotations up to thirty-one quotations rather than thirty. However, this is because I counted the *de Lege Agraria* as being a separate Ciceronian work, but as forming a single quotation with *de Legibus*.

As the chapter and page range of Wilson's works reveals, the Ciceronian quotations are spread throughout his lectures. Additionally, the indirect quotations and references to Cicero previously mentioned greatly increase the variety and distribution of quotations in the lectures. Another important point to consider is that the major sections of the lectures where Wilson does not quote Cicero are chapters dealing with modern governments and particularly the British and American constitutions.

Wilson concentrates on *de Officiis*, *de Republica*, and *de Legibus*, Cicero's well-known texts dealing with issues of political theory, and he applies them to the major themes of his lectures. He also draws from different parts of the works, including quotations from all three books of *de Officiis* and from two books of *de Legibus*, while the three quotations from *de Republica* are all taken from different books. Although these were well-known and respected texts at that time, Wilson clearly possessed a first-hand acquaintance with their contents.

In regard to the other Ciceronian works Wilson quotes, and especially in regard to some of the minor speeches, the question could be raised whether he gained his citations through the use of indexes rather than actually reading the entire text. The Ciceronian editions of Wilson's time did contain a comprehensive index of topics, albeit entirely in Latin and therefore assuming mastery of the language in order for a reader to use them effectively. For instance, the entire last volume of the 1692 edition is composed of indexes, including one of the particular words and subjects occurring in Cicero's writings. To a great extent, this establishes that the Ciceronian corpus was in common usage, forming an important part of the expected classical reading for the students of Wilson's time. As both a student and later as a professor of the classics, Wilson would undoubtedly have familiarised himself with Cicero's writings. Nevertheless, it is impossible to prove whether he actually read all of Cicero's texts or the degree to which he studied them, and he could have employed indexes when preparing his lectures and in researching Cicero's viewpoints on law. As will be seen through his use of direct quotations, however, many of the quotations do not have the specific applicability that would warrant their appearance on the index lists, such as the quotations Wilson uses in his discussion on education. Additionally, in the overall scope of his lectures, Wilson does not merely quote a number of Ciceronian texts on a specific topic and then move on to address other issues; instead, he often employs



quotations to illustrate minor points. Throughout his writing, his citations show his knowledge of the surrounding context, and he frequently comments on the authority of the sentiment expressed, its modern applicability, or on Cicero himself.

The second key observation arising from a consideration of the direct quotations regards Wilson's methods of citation. In all the examples included as direct quotations, Wilson quotes either the Latin itself or provides an English translation, in addition to including a footnoted citation to Cicero's text. Even when Wilson stretches a translation to the fullest possible limits to make feasible a broad reading of a Ciceronian passage, he follows a meticulous and exact system of referencing. The only variation contemporary readers will find between the older Ciceronian editions cited by Wilson and their modern counterparts are those in the text of *de Republica*. Because of its much more fragmentary nature, Wilson only mentions the book from which he draws the quotation.<sup>43</sup> He also cites the *Somnium Scipionis* as a separate work from the *de Republica* or, as he once refers to it, the *Fragments of de Republica*.<sup>44</sup>

Out of the total of thirty direct quotations from Cicero that appear in the law lectures, when Wilson includes not only a quotation but also a footnoted citation to Cicero's texts, only three of the references are incomplete.<sup>45</sup> The first two of these refer to Cicero's "treatise on the nature and offices of friendship" and to his "book of offices", and the footnotes themselves only give a number for the different subsections of the text.<sup>46</sup> The last one cites the whole of the *pro Milone* without giving notice of a particular section.<sup>47</sup> Although the partial references may point to a momentary lack of thoroughness, they are more likely the result of the unrevised nature of the lectures, and the footnotes still direct readers to the specific text. The first two, especially, reveal Wilson's assumption that his readers will possess at least a general knowledge of the different Ciceronian works.

The third observation concerning the direct quotations is that the translations, or at least the majority of them, are Wilson's own. His familiarity with the texts and ability to manipulate the language to fit his individual readings are constantly

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<sup>43</sup> Wilson (1804) 1:141, 416.

<sup>44</sup> *Ibid.* 1:304, 416. This is consistent with the 1692 edition, which lists the *Somnium Scipionis* separately from the fragments of *de Republica* (see Appendix A).

<sup>45</sup> These are the passages from Cic. *Amic.* 5.19, Cic. *Mil.* 4.10-11, and Cic. *Off.* 1.17.54, which appear in Wilson (1804) 1:170; 2:476, 496.

<sup>46</sup> Wilson (1804) 1:170; 2:476.

<sup>47</sup> *Ibid.* 2:496.

demonstrated by his tendency to analyse the context of a passage, to defend his own translation and interpretation, and to truncate the original Latin passages and their English equivalents, thus making them more succinct and applicable to his contentions.

As will be seen, these three observations are borne out by Wilson's direct quotations of the texts. The overall pattern of Wilson's dependence on Cicero becomes clear by tracing the course of Wilson's lectures and considering each quotation, the framework in which he quotes it, and the perspective he attempts to advance through its use. Therefore, this section is divided into the subsections of Wilson's lectures so that each quotation can be analysed in the context in which it appears.

## **2.1. Introduction and preface to the *Law Lectures***

In the brief preface to the *Lectures on Law*, Wilson quotes from *de Legibus* 2.23.59, when Cicero says that Roman youth were once required to learn the Twelve Tables "*ut necessarium carmen*" (as a necessary song).<sup>48</sup> Wilson employs this Latin phrase in order to stress the importance of young people cultivating knowledge and attachment to the laws of their nation. This emphasis on the proper education of citizens becomes an underlying theme throughout the lectures, since he continually returns to the inability of a people to govern themselves and their state without an understanding of its laws and customs and a desire to uphold them. Since he believes that free governments throughout history have been upheld by citizens who knew the law and actively participated in their civic duties,<sup>49</sup> Wilson commends men like Tiberius Coruncanius, the two Scevolaes, and Cato, saying, "In the most shining periods of the Roman republic, men of the first distinction made the science of law their publick profession, and taught it openly in their houses as in so many schools".<sup>50</sup> The fundamental aim of Wilson's law lectures is to imitate the example of these distinguished jurists of the Roman Republic by helping to produce citizens who are ready and able to become political leaders and to responsibly exercise their political obligations.

In his *Introductory Lecture*, Wilson draws twice more from Cicero to reinforce different aspects of this topic. The first instance is from *de Oratore* 1.45.199, when

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<sup>48</sup> *Ibid.* 1:ix.

<sup>49</sup> *Ibid.* 1:42.

<sup>50</sup> *Ibid.* 1:31-32.

Cicero recommends the study and teaching of law as a pursuit of “honour and ornament”.<sup>51</sup> The second instance occurs in an extended discussion on the role of women in society and the need for them to be cognizant of their nation’s laws and social customs and to be able to communicate them pleasingly and effectively. Here, Cicero’s tale of Cornelia is related from *Brutus* 58.211 (or *de Claris Oratoribus*, as the work is designated by Wilson and by the editions of his time), and Wilson dwells on the influence her example and conversation had on the future of her sons. His footnote directs readers to the Latin quotation: *Legimus epistolas Corneliae, matris Gracchorum: apparet filios non tam in gremio educatos, quam in sermone matris*. In the text itself, however, he provides the straightforward translation, “I have read the letters of Cornelia, the mother of the Gracchi; and it appears, that her sons were not so much nourished by the milk, as formed by the style of their mother”.<sup>52</sup>

Therefore, in these instances, as in others, Wilson appeals to Cicero’s authority in order to support the basic premises of his legal philosophy. He employs three diverse sources to clarify and reinforce his individual perspective on the nature and uses of education. The three quotations he chooses show his knowledge of the texts, since he does not quote the most obvious Ciceronian references but clearly selects the ones he feels are the most appropriate to his argument.

## 2.2. The first set of the *Law Lectures*

A full seventeen of the direct quotations from Cicero are cited in the first set of lectures; these quotations consist of four from *de Officiis*, three from *de Republica*, two from *de Legibus*, two from *de Natura Deorum*, two from *de Amicitia*, one from *de Oratore*, one from *pro Cluentio*, one from *pro Balbo*, and one from *pro Caecina*.<sup>53</sup> As customary throughout the rest of his work, Wilson draws from the various genres of Cicero’s texts, quoting from a wide range of dialogues and speeches. Although direct quotations from Cicero do not appear in every chapter, they are well distributed and Wilson also scatters many indirect references and non-footnoted short quotations throughout these chapters.

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<sup>51</sup> *Ibid.* 1:32. In this instance, Wilson includes the specific Latin phrase in the footnote: *decus et ornamentum*.

<sup>52</sup> *Ibid.* 1:39.

<sup>53</sup> See above, p. 35 for the specific Ciceronian references and the corresponding page numbers in Wilson’s lectures.

Nevertheless, while he quotes Cicero on a number of diverse subjects, Wilson still clearly employs Cicero's work to emphasise particular themes. In the first set of lectures, especially, when dealing with the abstract theory and principles of law, he frequently uses Cicero's political treatises to support his theory of obedience and obligation, as well as his views on natural and customary law, on the duties and rights of a citizen, and on the role of an individual with respect to those in his own society and to the people of other nations.

The only direct quotation from *pro Cluentio* 53.146 occurs in Chapter II, where Wilson considers the different definitions and subdivisions of law that have been offered by political theorists throughout history, and where he argues that the principle of consent is the fundamental basis for any proper understanding of law. Similar to many others of his period, Wilson believes that it is not only possible but essential to unite the seemingly competing notions of the liberty of the individual with adherence and devotion to the laws. Despite his frequent reliance on classical norms and authority, the primary reason he gives for the ability of the United States to surpass the glory of the ancients is because its character is marked by "the love of liberty, and the love of law".<sup>54</sup> Ultimately, for Wilson, no true distinction can be preserved between the two, since both together encompass the "science of law".<sup>55</sup> Highly critical of Blackstone, Pufendorf, Hobbes, Grotius, Tacitus, and others, for introducing the doctrine of superiority into law and thereby alienating both liberty and consent, Wilson turns instead to Cicero and the Roman Republic for his exemplars.

Customary law holds the highest position in Wilson's legal philosophy, since it is based on experience, consent, and common approbation, and therefore joins both law and liberty.<sup>56</sup> Through the course of his lectures, Wilson attempts to establish a line of historical and scholarly authority: he begins with the customs of the Roman Republic, traces the theory of consent through to the time of the *Corpus Iuris Civilis*, the Magna Charta and English common law, and finally argues that it finds its fullest expression in the American colonies and the Constitution.

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<sup>54</sup> Wilson (1804) 1:5.

<sup>55</sup> *Ibid.* 1:9.

<sup>56</sup> *Ibid.* 1:64.

In his effort to prove that the Roman understanding of customary law provides the necessary basis for liberty, Wilson appeals to the quotation from *pro Cluentio* 53.146:

*Mens, et animus, et consilium, et sententia civitatis posita est in legibus. Ut corpora nostra sine mente; sic civitas sine lege, suis partibus, ut nervis, ac sanguine, et membris, uti non potest. Legum ministri, magistratus; legum interpretes, iudices: legum denique idcirco omnes servi sumus, ut liberi esse possimus.*

The mind and the spirit and the deliberation and the purposes of the state are located in the laws. As our bodies without mind, thus is the state without law, unable to make use of its parts as muscles and blood and limbs. The magistrates as agents of the law; the judges as interpreters of the law; finally therefore we are all servants of the law, so that we may be free.

Although Wilson only includes this direct Latin quotation in a footnote and does not provide a translation, he is harkening back to the truncated form of the quotation he inscribed on the title page of his work.<sup>57</sup> Clearly, Wilson carefully chose this passage, believing that Cicero's statement supports the different angles of his argument on law, liberty, and consent.<sup>58</sup> The quotation is highly rhetorical, since Cicero is defending Aulus Cluentius Habitus in the law courts and fashioning a one-sided theory of law without expanding on its implications. Nonetheless, Wilson accurately draws his fundamental principles of law from the passage: that law is essential to the existence of a state, that it ensures liberty, and that it is upheld by the common consent and willing obedience of the people.

Four direct quotations from *de Natura Deorum* 1.44.124, *de Legibus* 2.4.8, *de Natura Deorum* 1.16.43, and *de Republica* 3.22.33 appear in Chapter III, 'Of the Law of Nature'. Although Wilson appeals to Cicero's philosophical treatises, he also aligns himself with the Scottish philosopher Thomas Reid and with others who endorsed the theory that the first principles of knowledge can only be perceived by the dictates of common sense. Certain self-evident moral principles are innate in all humankind. Making a distinction between reason and common sense, Wilson emphasises that, "the *ultimate* ends of human actions, can never, in any case, be accounted for by reason".<sup>59</sup>

Still, Cicero's writings continue to play an important role in the chapter. Wilson uses the quotation from *de Natura Deorum* 1.16.43 to support his argument that "morality, like mathematicks, has its intuitive truths, without which we cannot make a

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<sup>57</sup> See above, p. 37.

<sup>58</sup> Wilson (1804) 1:100.

<sup>59</sup> *Ibid.* 1:135.

single step in our reasonings upon the subject”.<sup>60</sup> Once again, Wilson makes no mention of Cicero in the text, but relies on his judgements as giving credence and authority to his own. In the footnote, he gives only the Latin quotation:

*Quae est gens, aut quod genus hominum, quod non habeat sine doctrina anticipationem quandam, id est, anticeptam animo rei quandam informationem, sine qua nec intelligi quidquam, nec quaeri, nec disputari potest.*

What nation is there or what kind of men, which do not have, without instruction, a certain preconception, that is, certain information received beforehand concerning the spirit of a thing; without this information nothing is able to be understood, nor to be inquired into, nor to be discussed.<sup>61</sup>

In using this quotation, either Wilson does not appear to view himself as departing from Cicero’s understanding of knowledge and reason, or uncharacteristically, he does not comment on any divergence from the author he is citing. However, whatever disagreement might exist between himself and Cicero is glossed over by the subtleties of his translation. By two key omissions, Wilson significantly edits the quotation, obviously with the intent of sharpening his argument and forestalling possible discussion over his contextual use of the passage. The original quotation, both in the 1692 edition and in the Teubner, reads differently:

*Quae est enim gens, aut quod genus hominum, quod non habeat sine doctrina anticipationem quandam [deorum? Quam appellat πρόληψιν Epicurus,] id est, anteceptam animo rei quandam informationem, sine qua nec intelligi quidquam, nec quaeri, nec disputari potest.*<sup>62</sup>

As the bracketed part reveals, Wilson removes any mention of the gods or of Epicurus. Undeniably, the quotation, even in its complete form, refers to some type of preconceived information which humankind possesses by a type of intuition. So far, then, Wilson’s interpretation appears consistent with the sense of the entire passage. Nevertheless, while he does not technically alter the meaning of the passage by omitting the one word *deorum*, Wilson broadens the interpretation so that it now covers the full range of principles he wishes to designate as self-evident truths. Thus, he opens the quotation to a much wider application than the speaker in the dialogue intended.

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<sup>60</sup> *Ibid.* 1:119.

<sup>61</sup> *Ibid.* 1:119.

<sup>62</sup> The brackets are added to show the words Wilson omits in his Latin quotation. The English translation of the whole may be read as follows: “What nation is there or what kind of men, which does not have, without instruction, a certain preconception of the gods? Epicurus calls this preconception ‘prolepsis’, that is, certain information received beforehand concerning the spirit of a thing; without this information nothing is able to be understood, nor to be inquired into, nor to be discussed.”

The second omission is that of Epicurus and the Greek term *prolepsis*, which the philosopher uses to refer to these preconceived notions of the gods. At first glance, this exclusion would appear to remove a potential source of confusion or unnecessary information from the quotation. However, while it is impossible to pinpoint Wilson's precise motivations and while this specific statement by Gaius Velleius is in fact corroborated by his opponent in the dialogue, Quintus Lucilius Balbus, the truncated form of the quotation allows Wilson to sidestep any possible discussion of whether it is appropriate to base his argument on the teachings of the Epicureans. This is particularly relevant since Wilson uses the quotation to support the existence of self-evident moral truths which he ultimately argues are codified in the law of nature, as given to humankind by the "bountiful Governour of the universe".<sup>63</sup> As Wilson was undoubtedly aware, his perception of this Creator or Divinity stands in direct opposition to the view of the gods offered by Velleius and the Epicureans. Thus, his knowledge of both the context and the philosophical issues raised in the text is demonstrated through his seemingly small omission, which allows him to remove potential issues of conflict.

Wilson's method of manipulating the texts through his translations is also seen in his use of the quotation from *de Natura Deorum* 1.44.124. Much like Plato and Cicero, Wilson bases the prooemium to law on the existence of a supernatural deity.<sup>64</sup> Furthermore, he believes that humankind is obliged to obey the supreme law only because of God's "almighty power" and "infinite goodness".<sup>65</sup> Without these essential qualities, Wilson says that the judgement of Epicurus would be correct, for if the idea that the gods "were absolutely indifferent to the happiness and interests of men—was admitted for a moment; the inference would unquestionably be—that they were not entitled to human obedience".<sup>66</sup> At this point, Wilson footnotes the passage from *de Natura Deorum* that he has merely paraphrased in the text. This time, though, he does not alter or condense the Latin quotation:

*Epicurus re tollit, oratione relinquit deos. Deinde, si maxime talis est Deus, ut nulla gratia, nulla hominum caritate teneatur: valeat. Quid enim dicam, propitius sit?*<sup>67</sup>

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<sup>63</sup> Wilson (1804) 1:105.

<sup>64</sup> *Ibid.* 1:106; cf. Cic. *Leg.* 2.7.16; Cic. *Rep.* 2.14.27; Pl. *Leg.* 10.887b-c, 10.889e-10.890a.

<sup>65</sup> Wilson (1804) 1:111.

<sup>66</sup> *Ibid.*

<sup>67</sup> "Epicurus destroys the gods, though allowing them to remain in speech. Then, if there is a god of such great excellence, so that he has no kindness or affection for men: farewell to him. For what else will I say, may he be gracious?"

In this instance, Wilson's use of the passage as a literary and philosophical support for his argument does not bend the text itself. His allusion to Epicurus, however, reveals his awareness of Epicurus's view of the gods.<sup>68</sup> From this context, it is clear that when using the passage mentioned earlier, Wilson knew that Velleius was advocating the Epicurean viewpoint. By removing several words from the quotation, Wilson avoided the appearance that he was accepting Velleius' overall position.

The other two quotations in Chapter III also address self-evident truths, but more particularly as they apply to law. In regard to the law of nature and of moral obligation, Wilson points to the two fundamental principles of *principium essendi* (the principle of existence) and *principium cognoscendi* (the principle of knowing that existence). He argues that through their moral sense, people are able to recognise that the law of nature is the same as the law given by God. As Wilson states, "what is the efficient cause of moral obligation?—I give it this answer—the will of God. This is the supreme law".<sup>69</sup> A footnote in the text directs readers to the Latin quotation from *de Legibus* 2.4.8, where Marcus Cicero says, *principem legem illam et ultimam, mentem esse dicebant, omnia ratione aut cogentis, aut vetantis dei* (that first and ultimate law, they were designating to be the mind of god by reason either compelling or prohibiting all things).<sup>70</sup> Thus, without qualification or expanding on the passage, Wilson equates his conception of the law of nature with the supreme law mentioned by Cicero.

The final quotation he gives in the chapter reinforces the connection with Cicero's understanding of supreme law. In this section, Wilson advances a theory of the universal and beneficial qualities of natural law. In his opinion, this directly corresponds to the philosophy of law given by Cicero in *de Republica* 3.22.33. Unlike the other three quotations in this chapter, Wilson only gives the reference in the footnote. In the text, he translates a long part of this well-known passage into English, saying:

This law, or right reason, as Cicero calls it, is thus beautifully described by that eloquent philosopher. "It is indeed a true law," says he, "conformable to nature, diffused among all men, unchangeable, eternal. By its commands, it calls men to their duty: by its prohibitions, it deters them from vice. To diminish, to alter, much more to abolish this

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<sup>68</sup> Wilson clearly accepts Cicero's description of Epicureanism and its tenets regarding the gods at face value. Cicero's own account in this passage, however, at least appears to be a fair assessment of their teachings on the gods' indifference toward humankind [Pease (1955) 14, 16-17]. Cf. Obbink (1989) 202-215 on ancient accusations calling Epicurus an atheist.

<sup>69</sup> Wilson (1804) 1:118.

<sup>70</sup> *Ibid.* n. q.



law, is a vain attempt. Neither by the senate, nor by the people, can its powerful obligation be dissolved. It requires no interpreter or commentator. It is not one law at Rome, another at Athens; one law now, another hereafter: it is the same eternal and immutable law, given at all times and to all nations: for God, who is its author and promulgator, is always the sole master and sovereign of mankind”.<sup>71</sup>

The Latin does not appear in the text or the footnote, but although Wilson omits a few sentences, they are clearly passed over only for the sake of succinctness, while both the linguistic style and free-flowing version attest to Wilson’s ease in translation. Wilson does not elaborate on these two quotations from *de Legibus* and *de Republica*, perhaps because he takes their meaning for granted and considers the quotations themselves sufficiently straightforward in establishing his arguments. Nonetheless, they help provide the fundamental basis for his conception of law and reflect on how he interprets later Ciceronian quotations.

Chapter IV, ‘Of the Law of Nations’, includes two direct quotations, with Wilson giving his English translations in the text and citing the sources in the footnotes. For Wilson, the law of nations is still a subsection of the law of nature. Therefore, although only applicable to states, it also is divinely inspired and applies equally to all nations. Since the law of nations lays obligations upon a state in regard to both its foreign and domestic conduct, throughout the chapter Wilson carefully outlines these various duties.

When discussing the universal goodwill and even the affection that he believes should characterise the relations between nations, Wilson criticises the philosophers who have denied or neglected these principles. In contrast, he praises Cicero’s *de Amicitia* for its support of them. Notably, though, Wilson selects only a small portion of the paragraph from *de Amicitia* 5.19-20 and does not include the Latin this time:

*Sic enim mihi perspicere videor, ita natos esse nos, ut inter omnes esset societas quaedam, maior autem, ut quisque proxime accederet. Itaque cives potiores quam peregrini, et propinqui quam alieni. cum his enim amicitiam natura ipsa peperit, sed ea non satis habet firmitatis.*

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<sup>71</sup> The Latin text in the 1692 edition reads: *est quidem vera lex, recta ratio, naturae congruens, diffusa in omnes, constans, sempiterna, quae vocet ad officium iubendo, vetando a fraude deterreat, quae tamen neque probos frustra iubet, aut vetat, nec improbos iubendo, aut vetando movet. Huic legi nec obrogari fas est, neque derogari ex hac aliquid licet, neque tota abrogari potest. Nec vero aut per senatum, aut per populum solvi hac lege possumus. Neque est quaerendus explanator, aut interpret eius alius: nec erit alia lex Romae, alia Athenis, alia nunc, alia posthac; sed et omnes gentes, et omni tempore una lex, et sempiterna, et immortalis continebit; unusque erit communis quasi magister, et imperator omnium Deus ille, legis huius inventor, disceptator, lator.* The only variations in the Teubner edition are seen in its rendering of these phrases: “diffusa in omnis”, “derogari aliquid ex hac licet”, “aut interpret Sextus Aelius”, and “sempiterna et inmutabilis”.

For thus it appears plain to me, we are so born, that among all there is a certain fellowship, also that this becomes greater indeed, the closer one comes. Therefore fellow citizens are more important than foreigners, and neighbours than strangers; for with these nature itself produces friendship, but it is a type of friendship that does not possess endurance.<sup>72</sup>

In the latter part of this passage, omitted by Wilson, Cicero continues his argument, establishing a distinction between the type of friendship that exists merely by nature and proximity and that of true friendship, which always includes *benevolentia* and *caritas*. Instead, Wilson only quotes the first part of the paragraph, saying:

To the same purpose is the sentiment of Cicero, in his beautiful treatise on the nature and offices of friendship. "In tracing the social laws of nature", says he, "it seems evident, that man, by the frame of his moral constitution, is supposed to consider himself as standing in some degree of social relation to the whole species in general; and that this principle acts with more or less vigour, according to the distance at which he is placed with respect to any particular community or individual of his kind".

Wilson's tendency to draw out what he considers the sense of a quotation and to provide a rendition rather than a literal word-for-word translation fully reveals itself in this passage. He omits the entire last half of the Latin sentence and completely passes over Cicero's focus on the closeness of friendship in contrast to the relations we have with relatives, fellow-citizens, or foreigners. His translation serves the purpose he intended, however, and emphasises the common bond between all men, regardless of their propinquity or shared virtues. By maintaining a loose adherence to the Latin and glossing Cicero's original quotation, Wilson is able to provide his own interpretation through the use of weighted vocabulary. His close engagement with the Ciceronian text in this passage, and his ability to enlist Ciceronian thought in support of his own argument, warrants an examination into the particular parts of his English translation. Appealing to Cicero's authority as a writer, Wilson adapts the quotation to coincide with his own philosophy.

The first significant example of this occurs in his inclusion of the statement, "in tracing the social laws of nature". Wilson appears to be referring back to the conclusion of the previous paragraph of *de Amicitia* 5.19, which deals with the Stoic concept of the "good man" and says in regard to virtuous men that, *quia sequantur, quantum homines possunt, naturam optimam bene vivendi ducem* (because so much as they are able, men follow nature, the best guide to living). At this point, Wilson comes closest to changing

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<sup>72</sup> The minor variations in the Teubner edition are seen in the phrases: "*quisque proxume*", and "*peregrine, propinqui*".

the text, but as the division in his full translation shows, he seems to be employing this merely as an introductory preface to provide background for the main part of his translation and still includes some sense of the passage in his translation.

Wilson glosses *ita natos esse nos* (we are so born) to give the interpretation “that man, by the frame of his moral constitution, is supposed to consider himself”. In his use of such ethically weighted terms of “moral” and “supposed” he adds a new dimension of moral responsibility to the passage, broadening it so that the human desire for sociality includes more than the mere physical instincts of nature. The interpretation also allows him to give a philosophical twist to the quotation that makes it compatible with the Ciceronian quotations on law given in Chapter III. Just as Wilson used *de Legibus* and *de Republica*, so he also employs *de Amicitia* to advance his understanding of natural law as possessing a type of moral authority.

For the second part of the phrase, *ut inter omnis esset societas quaedam* (that among all there is a certain fellowship), Wilson gives the translation “as standing in some degree of social relation to the whole species in general”. Certainly, the sense of Cicero’s quotation implies at least some degree of general affinity among all men, but Wilson reads it as implying the stronger idea of a social relation rather than a mere commonality. Wilson renders the last part of the sentence *maior autem, ut quisque proxime accederet* (also that this becomes greater as one approaches nearer) as “this principle acts with more or less vigour, according to the distance at which he is placed”. While this is not a strict translation, it demonstrates Wilson’s adeptness at accurately capturing the sense of the Latin quotation without falling into stylistic awkwardness.

Wilson only includes the first half of the concluding sentence of the passage, rendering *Itaque cives potiores quam peregrini, propinqui quam alieni* (therefore fellow citizens are more important than strangers, and neighbours than foreigners) as “with respect to any particular community or individual of his kind”. In this instance, particularly, Wilson puts forward his sense of the quotation, not an exact translation of the actual words, and he loses the Ciceronian contrasts between fellow-citizens and strangers and between relatives and foreigners. Despite the gloss he gives the passage, Wilson is not attempting to deliberately mislead readers through his translations. As will be seen from the Ciceronian quotations that appear in later chapters and Wilson’s

use of them to emphasise the theme of a common goodwill that should exist among all men, Wilson clearly believes himself to be consistent with Cicero's own meaning.

The education Wilson received undoubtedly served to affirm his propensity to translate according to sense rather than to provide a strict word-for-word rendering of a passage. As scholars progressed in their skill, they would have been encouraged to translate Latin passages into eloquent and understandable English. Wilson's system is characterised by a close scrutiny of the texts he quotes and by detailed explanations of why his own theories either coincide or depart from the arguments presented, and despite his frequent praise of Cicero's work, he is also willing to criticise him.<sup>73</sup> At the same time, Wilson's method of translation allows him to incorporate his own individual readings of Cicero into the translations themselves, and thus, to create new meanings for his students and later generations of readers.

The other translation in this chapter, taken from *de Officiis* 3.5.25 and 3.6.28 and comprising the longest Ciceronian quotation in Wilson's lectures, continues the theme of human fellowship. Although Wilson includes the whole as one long extended quotation, as he points out in the footnote citation, it is in fact composed of two separate quotations. The translations, while in clear-flowing English, are more literal this time, but Wilson also truncates more of the original text. It is evident, however, that Wilson is not merely scanning *de Officiis* and seizing upon apparently applicable quotations; rather, he demonstrates a comprehension of the surrounding context, since the parts he excludes do not twist the sense of the passage, as is seen from the original Latin quotation of *de Officiis* 3.5.25:

*Itemque magis est secundum naturam, pro omnibus gentibus, si fieri possit, conservandis aut iuvandis maximos labores, molestiasque suscipere [imitantem Herculem illum, quem hominum fama beneficiorum memor in concilio coelestium collocavit,] quam vivere in solitudine, non modo sine ullis molestiis, sed etiam in maximis voluptatibus abundantem omnibus copiis, ut excellas etiam pulchritudine et viribus. Quocirca optimo quisque et splendidissimo ingenio longe illam vitam huic anteponit.*<sup>74</sup>

Likewise, it is more according to nature, [to imitate that Hercules, whom the tradition of men grateful for his kindnesses placed in the assembly of the gods,] to undertake the greatest labours and troubles for the purpose of preserving or aiding all nations, if it could be done, than to live in solitude not only without any troubles but even in the greatest pleasures to abound in all wealth, when even excelling in beauty and strength. Wherefore each person having the best and most splendid character by far prefers that former life to the latter.

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<sup>73</sup> Wilson (1804) 3:40.

<sup>74</sup> The Teubner edition contains one divergence, as seen in its rendering of the phrase: "*in concilio caelestium conlocavit*".

Wilson uses this passage in order to further establish his theory of the universal brotherhood of all mankind:

How beautiful and energetick are the sentiments of Cicero on this subject. "It is more consonant to nature," that is, as he said a little before, to the law of nations, "to undertake the greatest labours, and to undergo the severest trouble, for the preservation and advantage of all nations, if such a thing could be accomplished, than to live in solitary repose, not only without pain, but surrounded with all the allurements of pleasure and wealth. Every one of a good and great mind, would prefer the first greatly before the second situation in life".<sup>75</sup>

Aside from omitting the example of Hercules, Wilson provides a stricter word-for-word translation than in the previous Ciceronian quotation. However, two significant features stand out in Wilson's translation. The first regards Wilson's own brief comment at the beginning, when he connects Cicero's argument with the law of nations and thus adds an important implication to the passage. Cicero was speaking earlier in *de Officiis* about the specific laws of different nations, and frequently in his works, he speaks of a law that is valid for all men and of universal ties between them. The question arises, however, whether Wilson is interpreting the text through his own perspective of the law of nations and adding a new understanding to the phrase as he attempts to place the law of nations within the philosophical subset of the moral law of nature.

The second item of importance is the omission of Hercules. In part, Wilson likely removed the example in order to shorten the quotation and make the argument more pointed without distorting it. At the same time, the exclusion also helps to make the concept of universal goodwill appear in greater accord with practical reality. Cicero presents this life of dedicated service to all mankind as a potential ideal but not necessarily as an achievable task, unless by one possessing the heroic qualities of a Hercules. Wilson, by contrast, in full agreement with the enlightenment philosophy of his day, seizes upon this principle not only as a possibility but as a moral obligation enjoined upon the nations. As he states immediately before introducing Cicero's quotation: "The voice of nature, intelligible and persuasive, has been heard by nations that are civilized: at last it is acknowledged that all men are brothers: the happy time is, we hope, approaching, when the acknowledgment will be substantiated by a uniform corresponding conduct."<sup>76</sup>

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<sup>75</sup> Wilson (1804) 1:173-174.

<sup>76</sup> *Ibid.* 1:173.

Immediately after this Ciceronian quotation, Wilson glides into the next quotation from *de Officiis* 3.6.28, marking the separation only by a new set of quotation marks. In the intervening paragraphs, Cicero makes the point that what is useful or advantageous for the individual ought to be applied equally to all; however, the absence of this passage does not change the meaning of the translation or affect Wilson's argument.

In the second quotation, unlike the preceding one, Cicero directly addresses not only the general commonality that exists between men, but also adds elements of goodwill and moral authority. Wilson does not provide the Latin text in his lectures:

*Nam illud quidem absurdum est, quod quidam dicunt, parenti se aut fratri nihil detracturos, commodi sui causa: aliam rationem esse civium reliquorum: hi sibi nihil iuris, et nullam societatem communis utilitatis causa, statuunt esse cum civibus: quae sententia omnem societatem distrahit civitatis. Qui autem civium rationem dicunt habendam externorum negant: hi dirimunt communem humani generis societatem: qua sublata, beneficentia, liberalitas, bonitas, iustitia funditus tollitur: [quae qui tollunt, etiam adversus deos immortales impii iudicandi sunt. ab iis enim constitutam inter homines societatem evertunt: cuius societatis artissimum vinculum est magis arbitrari esse contra naturam, hominem homini detrahare, sui commodi causa, quam omnia incommoda subire vel externa, vel corporis, vel etiam ipsius animi, quae vacent iustitia.] Haec enim una virtus, omnium est domina, et regina virtutum.<sup>77</sup>*

For that is indeed is absurd, what some are saying, that no one should rob a parent or brother for the sake of one's own benefit, but that a different reckoning is owed to fellow-citizens. These people think that there is for themselves no binding law, no common society for the sake of usefulness with their fellow-citizens. This opinion tears apart all fellowship in the state. Those moreover who say that a rule should be had for fellow-citizens but deny that it applies to foreigners, they dissolve the common society of the human race; which having been removed, kindness, liberality, goodness, and justice are utterly destroyed; [those who destroy these things, they ought also to be judged impious against the immortal gods. For they overturn the society appointed by the gods among men, and the closest bond of this society rests in the fact that it is more against the nature of humankind to rob from men for the sake of their own advantage than to undergo all disasters, either those to his belongings or to his body or even to his own soul, which are free from injustice;] for this one virtue is mistress and queen of all the virtues.

Likely conscious of the length of his quotations, Wilson omits several sentences of the paragraph in his own translation:

It is highly absurd to say, as some have said, that no one ought to injure a parent or a brother, for the sake of his own advantage; but that another rule may be observed concerning the rest of the citizens; such persons determine that there is no law, no bonds of society among the citizens, for the common benefit of the commonwealth. This sentiment tends to dissolve the union of the state. Others, again, admit that a social regard is to be paid to the citizens, but deny that this regard ought to be extended in

<sup>77</sup> The following alterations appear in the Teubner edition: “*detracturos sui commodi causa*”, “*iuris, nullam societatem*”, “*negant ii dirimunt*”. A greater difference occurs at the end of the quotation, since the Teubner edition does not contain the phrase “*quae vacent iustitia*”, and it renders the first part of the next sentence as “*iustitia enim una virtus*”; cf. Gruter, Wilhelm, and Gronovius (1692) 4050 n. 23 on the inclusion of “*quae vacent iustitia*”.

favour of foreigners: such persons would destroy the common society of the human race; and if this common society were destroyed, the destruction would involve, in it, the fate also of beneficence, liberality, goodness, justice. Which last virtue is the mistress and queen of all other virtues.

By including this second quotation from *de Officiis* immediately after the first, Wilson is able to establish his argument that the law of nations is based on an ethical mandate. Notably, in contrast to Wilson, Cicero does not command positive actions of goodwill toward citizens of other nations but only condemns negative ones. For Wilson, the moral obligations owed to one nation by another are not merely to refrain from harm, but also to provide assistance to those needing aid. As he states, “nations are not only forbidden to do evil; they are commanded to do good to one another”.<sup>78</sup> This may perhaps account for Wilson’s inclusion of the first quotation from *de Officiis*, which mentions the need to preserve and aid all men. In the context of the first quotation, however, the example applied to Hercules as an individual, while by mixing the two quotations, Wilson applies Cicero’s opinions to relations between states. Moreover, such a sentiment of positive goodwill is not present in the second quotation.

Once again, Wilson provides a straightforward translation. The only difference made by shortening the quotation is that Wilson has left out any mention of the fellowship that is broken with the gods when an individual acts unjustly toward another. This omission does not change the sense of the paragraph although it does help shift the focus of the quotation more towards Wilson’s emphasis in this chapter on the self-evident truths in nature.

The way Wilson employs and connects these two quotations to form a united whole reveals his careful selection of the specific parts of the Ciceronian quotations that will aid in strengthening his arguments. He removes the parts that detract from this purpose, consciously interpreting Cicero’s texts so that they fit more directly and concisely with the points he advances in the lectures.

In Chapter VII, ‘Of Man, as a Member of Society’, Wilson draws from *de Amicitia* and *de Officiis*, the same two sources he used in Chapter IV, but he quotes from different sections of the works to support his points on the social relations between individuals. Wilson’s marked preference for Cicero over any other classical author is illustrated not only in the frequent references to his work, but in the extended quotations

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<sup>78</sup> Wilson (1804) 1:166.

he constantly employs in this chapter and throughout the rest of the first set of lectures. Even on common political themes like the human tendency toward society and companionship, where Wilson could have turned to the writings of a number of classical and modern theorists, he constantly looks to Cicero as a chief authority. In a number of these longer quotations, Wilson gives only an English translation and then footnotes the citation of the Ciceronian work.

Like many of the other direct Ciceronian quotations, the translations Wilson provides from *de Officiis* 1.7.22 and *de Amicitia* 23.87-88 help to show that Wilson borrowed from various sections of the Ciceronian sources and attest to his high level of literary and stylistic ability in translating the passages. Since both of them bear on the topic of civic virtue, they are addressed in detail in chapter four.<sup>79</sup> Nevertheless, it is valuable to at least mention them here. Both quotations help to further Wilson's enlightenment theory that human beings are constantly progressing toward perfection and to refute those philosophers who claim that humankind's need and desire for society arises from the inevitable wars, tyranny, and selfishness that exist among men. The first quotation from *de Officiis* appears in Wilson's discussion on the happiness, enjoyment, and pleasure that result from strengthening the bonds of society.<sup>80</sup> On the very next page, Wilson introduces the *de Amicitia* quotation, which also supports his optimistic view of human nature and sociability.<sup>81</sup>

The other two Ciceronian quotations in this chapter from *de Republica* 6.13.13 and *pro Balbo* 13.31 deal with the liberty that humans possess even when they are within a state of civil society. The way in which Wilson contextualises and analyses the *de Republica* quotation is especially significant. It establishes that when translating the quotations, Wilson considers not only the specific vocabulary he employs, but also how it reflects on the interpretation he gives to the passage and whether it is consistent with Cicero's meaning. In Wilson's opinion, political philosophers have often erred in blurring the distinction between civil society and civil government. Partially in order to justify his later arguments in Chapter X that changes of government are not detrimental to society, he defines civil society as that *state* which exists by consent previous to any

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<sup>79</sup> See below, pp. 164-166.

<sup>80</sup> Wilson (1804) 1:299.

<sup>81</sup> *Ibid.* 1:300.



formation of government or to the writing of a constitution.<sup>82</sup> Wilson then turns to *de Republica* 6.13.13 to validate these arguments, saying that:

It is in this sense that Cicero seems to use it, in the following beautiful passage.  
“Nothing, which is exhibited on our globe, is more acceptable to that divinity, which governs the whole universe, than those communities and assemblages of men, which, lawfully associated,—iure sociati—are denominated states”.<sup>83</sup>

Wilson gives a strictly literal translation, although he does not provide the Latin text:

*nihil est enim illi principi Deo, qui omnem hunc mundum regit, quod quidem in terris fiat, acceptius, quam concilia coetusque hominum, iure sociati, quae civitates appellantur.*

For nothing that indeed happens in the lands is more pleasing to that leading god, who rules the whole universe, than the councils and assemblies of men united in law, which are called states.<sup>84</sup>

His individual gloss of the passage is given in his introductory comment, where he equates his understanding of a civil society with that of Cicero. Since the elder Scipio Africanus makes this statement in the context of speaking of the city of Rome and of the wars with Carthage, it is not an obvious conclusion that he is speaking of some type of society existing without governmental forms. Wilson shows himself to be aware of this difficulty. Still desiring to appeal to Ciceronian authority and make it correspond with his political theory, he attempts to meet the problem in two different ways. First, he softens the force of his argument by saying that this is the sense Cicero “seems” to be implying in the passage. Next, he leaves the Latin phrase *iure sociati* untouched, but also includes his translation of it as “lawfully associated”. Clearly, Wilson is not afraid that his translation will be questioned; rather, his action emphasises the part of the quotation he believes will justify his reading. By treating *iure* as an adverb, he is able to more easily convey the idea that states are associated before civil government has been established. Thus, he is not afraid to point out his personal reading, but makes an obvious effort to show his readers how the English vocabulary he chooses in the translation process affects the interpretation of the passage as a whole. Furthermore, in light of his strong focus on the customary laws of the Roman Republic, his viewpoint on the passage is more easily understood, since he sees this time as one in which custom and consent were more highly esteemed than governmental structures.

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<sup>82</sup> *Ibid.* 1:303-4; cf. 1:383-384 on the stability that can exist in a society even when its form of government is altered. Under this definition, the American colonies would have existed as a state previous to the revolution and the writing of the Constitution.

<sup>83</sup> *Ibid.* 1:304.

<sup>84</sup> The only difference in the Teubner edition is that it omits “*hunc*” in the phrase “*omnem hunc mundum regit*”.

The quotation from *pro Balbo* 13.31 shows the diversity of Wilson's quotations, since he does not quote exclusively from the philosophical treatises, but considers Cicero's law court speeches as well. In this part of his lectures, Wilson criticises modern nations like Great Britain that have laws restricting emigration. In his endeavour to prove a natural right to choose and even to renounce one's citizenship, he turns not only to Locke, but also to Justinian's *Digesta* and finally to Cicero:

"O glorious regulations!" says Cicero, "originally established for us by our ancestors of Roman name; that no one of us should be obliged to belong to more than one society, since a dissimilitude of societies must produce a proportioned variety of laws; that no one, contrary to his inclination, should be deprived of his right of citizenship; and that no one, contrary to his inclinations, should be obliged to continue in that relation. The power of retaining and of renouncing our rights of citizenship, is the most stable foundation of our liberties".<sup>85</sup>

The Latin text, which Wilson does not include here, reveals that his translation accurately captures the sense of the original while still retaining the stylistic features marking it as his own.

*O iura praeclara, atque divinitus iam inde a principio Romani nominis a maioribus nostris comparata! ne quis nostrum plus quam unius civitatis esse possit: (dissimilitudo enim civitatum, varietatem iuris habeat necesse est) ne quis invitatus civitate mutetur: neve in civitate maneat invitatus. Haec sunt enim fundamenta firmissima nostrae libertatis, sui quemque iuris et retinendi, et dimittendi esse dominum.*

O illustrious laws and by divine inspiration now thenceforth established by our ancestors from the beginning of the name of Rome, that none of us can be part of more than one state (for a difference of state must of necessity have a variety of law), that none against his will can be moved from the state nor against his will must remain in the state! For this is the most firm foundation of our liberty, that each one has the power of retaining and dissolving his right of citizenship.

By means of this quotation, Wilson makes a direct comparison between the laws of the Roman Republic and those of the American states. In practical matters as well as in theoretical principles, he relies upon the historical example of Rome and uses Cicero's reasoning to support his own legal theory that the United States is warranted in establishing laws to protect the natural liberty of free emigration.

Wilson cites only one direct quotation in Chapter IX, 'Of Man, as a Member of the Great Commonwealth of Nations'. In this instance, as in the previous quotation, Wilson gives a literal translation of a passage that has a practical application. While the following argument is an obvious one, he still prefers to consult the sentiments of Cicero and quotes from *de Officiis* 1.11.34:

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<sup>85</sup> Wilson (1804) 1:314-315.

“There are two kinds of disputation”, says Cicero, “one, by argument and reason; the other, by violence and force. To determine controversies by the former belongs to man; by the latter, to the brutes. To the latter we ought never to have recourse, but when all hopes of success by the former are proved to be unavailing”.<sup>86</sup>

In addition to providing a strict translation of the passage, Wilson employs it in precisely the same context as Cicero does in *de Officiis*, which speaks of disagreements between nations and the need to declare war only after the means of diplomacy have failed. Once again, therefore, Wilson’s quotation reveals his understanding of the context of Cicero’s work as a whole.

Finally, in Chapter X, ‘Of Government’, Wilson returns to the same three political works of Cicero he focuses on throughout the course of his lectures, referencing *de Legibus* 3.1.3, *de Officiis* 2.12.41-42, and *de Republica* 2.23.41. The first only appears in a footnote to Wilson’s discussion on the rules and government that are indispensable in preserving the “peace and order of society” and that must be obeyed in order for a society to progress and improve. As Wilson quotes, *sine imperio, nec domus ulla, nec civitas, nec gens, nec hominum universum genus stare, nec rerum natura omnis, nec ipse mundus potest* (without governing power, neither any house, nor state, nor nation, nor the whole race of men is able to remain, neither all the nature of things nor the world itself).<sup>87</sup> Notably, Wilson employs the Ciceronian texts not only to justify his theories of consent and of the right to alter one’s government, but also to emphasise the need for permanence and obedience to the laws.

Initially, the quotation from *de Officiis* appears to be a strict translation, serving only to provide the historical background for Wilson’s brief overview of the history of monarchy, which he believes is the oldest of the three simple forms of government. However, by the subtle use of weighted language, Wilson once again interprets the concluding sentence of the quotation in such a way as to reinforce his conception of the law of nature. Wilson does not include the Latin text:

*Mihi quidem non apud Medos solum, ut ait Herodotus, sed etiam apud maiores nostros, iustitiae fruendae causa videntur olim bene morati reges constituti. Nam cum premeretur*

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<sup>86</sup> *Ibid.* 1:364. Wilson does not include the Latin text: *Nam cum sint duo genera decertandi; unum per disceputationem, alterum per vim: cumque illud proprium sit hominis, hoc beluarum: confugiendum est ad posterius, si uti non licet superiore.*

<sup>87</sup> *Ibid.* 1:385. Wilson includes the Latin without an English translation. In the second set of lectures, Wilson returns to this quotation, this time only quoting *sine imperio, nulla domus stare potest* [Wilson (1804) 2:490]. In this instance, Wilson clearly altered the beginning in order to make the quotation shorter and easy to read. The Teubner edition renders one phrase slightly different: “*imperium; sine quo nec domus*”.

*inops multitudo ab iis, qui maiores opes habebant: ad unum aliquem confugiebant, virtute praestantem; qui cum prohiberet iniuria tenuiores, aequitate constituenda summos cum infimis pari iure retinebat. [Eademque constituendarum legum fuit causa, quae regum. Ius enim semper quaesitum est aequabile. Neque enim aliter esset ius.] id si ab uno iusto, et bono viro consequerentur, eo erant contenti. cum id minus contingeret, leges sunt inventae, quae cum omnibus semper una, atque eadem voce loquerentur.*<sup>88</sup>

Wilson's rendition of the passage omits several sentences, but as can be seen, until that point he provides a literal translation of the quotation:

"In my opinion", says Cicero, "it was not among the Medes only, as Herodotus informs us; but it was among our own ancestors likewise, that kings of good character were chosen, in order that the administration of justice might be enjoyed. For when the poor were oppressed by the rich, they fled for relief to some one, preeminent in virtue, who would protect the weak from injustice, and would dispense equal law to the high and to the low. If they could obtain this from the mouth of one just and good man, they were satisfied; but, as they were often disappointed in this reasonable demand, they had, afterwards, recourse to general law, which spoke one language to all".<sup>89</sup>

The two absent sentences should be translated: "and the cause of appointing laws was likewise the cause of appointing kings. For law has always been sought in equal things; for otherwise there is no law." Since they do not affect the sense of the passage, it is likely that Wilson omits them only because of length and to maintain the flow of his argument. However, he does conspicuously include the final sentence *Id si ab uno iusto et bono viro consequerentur, erant eo contenti; cum id minus contingeret, leges sunt inventae, quae cum omnibus semper una atque eadem voce loquerentur* (If from one just and good man they achieved it, they were therefore content; when this did not happen, laws were invented, which would always speak to all in one and the same voice).

Although the topic of the law of nature does not appear in this quotation or even in Wilson's discussion of monarchy, he still translates the quotation so that it is consistent with the interpretation of natural law he expounds in his other chapters. In the passage, Cicero apparently focuses on the creation of laws that apply to all classes of a specific nation. Wilson's translation, on the other hand, implies that the law already exists as a separate entity; namely, that it is a law that human beings can appeal to if the governmental form or ruler in place does not dispense equal law and justice, rather than a law that they themselves establish. Since they have "chosen" kings in order to dispense justice, Wilson concludes that they may also resist those kings if justice is not

<sup>88</sup> Three variances occur in the Teubner edition: "*premeretur in otio multitudo*", the placing of "*est*" after "*semper*" rather than after "*quaesitum*", and "*erant eo contenti*"; cf. Gruter, Wilhelm, and Gronovius (1692) 4022 n. 63 on the use of "*inops*" instead of "*in otio*".

<sup>89</sup> Wilson (1804) 1:391.

upheld. Therefore, Wilson's translation reveals that even when using a Ciceronian text in a limited context, he is still aware of the broader implications his translation will have for his work as a whole and for his interpretation of Ciceronian thought. This is further supported by his care in interpreting the final quotation he employs in the chapter. Knowing that he lacks the surrounding context of *de Republica* 2.23.41, Wilson refrains from unilaterally stating the intent of the passage.<sup>90</sup> As seen, however, even as he attempts to convey the correct meaning of Cicero's work, Wilson interprets the texts in light of his own theories.<sup>91</sup>

### 2.3. The second and third sets of the *Law Lectures*

As noted in the introduction, the final two sets of the lectures focus largely on statutory matters. Although examples taken from Greece and particularly from Rome continue to play a role in Wilson's analysis, most of his citations come from various laws and contemporary legal thinkers. Nevertheless, references from a range of Cicero's texts figure in these sections as well and attest to Wilson's comprehensive knowledge of the Ciceronian corpus.

In the second set of lectures, when Wilson is addressing the constitutional provisions of the United States and of Pennsylvania, he quotes Cicero five times.<sup>92</sup> The first quotation from the combined texts of *de Legibus* 3.17.39 and *de Lege Agraria* 2.2.4 occurs in Wilson's discussion of the institution of the secret ballot in Rome, which he says Cicero designates as "the silent assertor of liberty".<sup>93</sup> Significantly, Wilson references both *de Legibus* and *de Lege Agraria* on this point, although *de Lege Agraria* most closely approximates Wilson's quotation, when Cicero mentions the ballot as *vindicem tacitae libertatis* (the protector of silent liberty). Wilson's use of this reference in conjunction with that from *de Legibus*, which in a similar phraseology

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<sup>90</sup> See above, p. 17.

<sup>91</sup> Two final Ciceronian quotations also occur in this set of lectures. Wilson quotes in the first instance from *Caecin.* 26.74-75 in Chapter XII 'Of the Common Law', and in the second from *de Or.* 3.50.195 in Chapter XIII, 'Of the Nature and Philosophy of Evidence'. Since these quotations figure prominently in later discussions, I have addressed Wilson's translations of them there (see below, pp. 158 and 187).

<sup>92</sup> See above, p. 47 for the specific Ciceronian references and the corresponding page numbers in Wilson's lectures. See above, p. 67 on the complete quotation from Cic. *Leg.* 3.1.3, which Wilson only offers in a truncated form in this set of lectures and which I have therefore confined to the discussion above. The final Ciceronian quotation in this set of lectures comes from Cic. *Mil.* 4.10-11; however, because of its significance in a later discussion, I have addressed it in that context (see below, p. 106).

<sup>93</sup> Wilson (1804) 170.

speaks of the ballot as *vindicem libertatis*, points to his familiarity with the Ciceronian texts and his practice of comparing them with one another. In different contexts and depending on his audience, Cicero commonly invokes both the language of the elite and the language of the common people. By citing both a speech and a treatise from Cicero on this point, Wilson points to two separate times in which Cicero mentions the secret ballot: the first instance a speech where Cicero attempts to gain the favour of the people and to place himself on their side in opposition to the *nobilitas*,<sup>94</sup> and the second instance when Cicero speaks more from the side of the *optimates*.

The second Ciceronian quotation in this set of lectures occurs in Wilson's brief discussion of the importance of marriage in society.<sup>95</sup> At this point, he includes only the Latin text from *de Officiis* 1.17.54: *Prima societas in ipso coniugio est* (the first bond of partnership is in marriage itself). Later, he returns to this passage, once again quoting only the Latin text.<sup>96</sup> This time, however, he employs a different sentence from the passage, which focuses on the family unit as the foundation of a community: *id autem est principium urbis, et quasi seminarium reipublicae* (this moreover is the basis of the city and as it were the nursery of the state). Wilson recognises that he is referring to the general passage again and even draws the reader's attention to the fact.

Wilson's use of Cicero within the context of American statute law points to the connection he saw as existing between his own time and that of the ancients. Despite his awareness of the differences in culture and government, he still believed in a general similarity with the legal principles of Cicero's time and with the institutions the laws were designed to support.<sup>97</sup> This same perspective governs the way Wilson employs the five Ciceronian quotations in the third set of lectures and applies them to statute laws regarding crimes and punishments.<sup>98</sup>

This short set of lectures deal with the practical rather than the theoretical aspect of Wilson's writings, a fact which is reflected in the quotations he chooses. In all of these instances, Wilson quotes only the Latin and provides no translations, perhaps

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<sup>94</sup> Jonkers (1963) 58.

<sup>95</sup> Wilson (1804) 2:476.

<sup>96</sup> Wilson (1804) 2:493.

<sup>97</sup> See Winterer (2002) 151 on the widely-held belief in eighteenth-century America that the classics provided an ancient mirror or template in their application to modern times.

<sup>98</sup> See above, p. 47 for the specific Ciceronian references and the corresponding page numbers in Wilson's lectures.

because in using these quotations as examples of a general principle, he is less concerned with the various shades of meaning that could be drawn from the Latin texts.

The first quotation from *pro Domo* 41.109 appears in Wilson's description of punishments for robbery and his affirmation of the principle that "a man's house is his castle": *Quid enim sanctius, quid omni religione munitius, quam domus uniuscuiusque civium?* (for what is more inviolable, what is more fortified by every sanctity than the home of each citizen).<sup>99</sup> Later, when commending the laws of Pennsylvania which state that "a man cannot be compelled to give evidence against himself, Wilson turns to Cicero's *in Verrem*.<sup>100</sup> Because he believes the speech effectively illustrates Cicero's eloquence in support of a righteous cause, Wilson includes three quotations from 5.62.162, 5.63.163, and 5.66.170, putting them together in a single paragraph:

*Caedebatur virgis in medio foro Messanae civis Romanus, iudices; cum interea nullus gemitus, nulla vox alia istius miseri, inter dolorem crepitumque plagarum, audebatur, nisi haec, civis Romanus sum.*<sup>101</sup>

A Roman citizen, O judges, was beaten with rods in the middle of the forum of Messina; meanwhile at the time no moan, no other sound was heard from that unfortunate man during the pain and crack of the blows, except for this, "I am a Roman citizen."

*O nomen dulce libertatis! O ius eximium nostrae civitatis! O lex Porcia, legesque Semproniae! O graviter desiderata, et aliquando reddita plebi Romanae tribunicia potestas! Hucine tandem omnia reciderunt, ut civis Romanus, in provincia populi Romani, in oppido foederatorum, ab eo qui beneficio populi Romani fasces et secures haberet, deligatus in foro virgis caederetur? Quid, cum ignes ardentisque laminae caeterique cruciatus admovebantur?*<sup>102</sup>

O the sweet name of liberty! O the excellent justice of our citizenship! O the law of Porcius, and the laws of Sepronius! O the tribunate power of the Roman people keenly longed for and finally restored to them! Have things finally fallen so far, that a Roman citizen, in a province of the Roman people, in a town of those allied to Rome, could be bound and beaten in the marketplace by one who held his rods and authority by the favour of the Roman people? What, when the fire and the glowing metal plates and the other instruments of torture were brought near?

*Non fuit his omnibus iste contentus. Spectet, inquit, patriam: in conspectu legum libertatisque moriatur.*

Not satisfied by all these things. "Let him see his native land", he says, "let him die in sight of its law and liberty".

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<sup>99</sup> Wilson (1804) 3:61. Wilson employs "*enim*" in the phrase which is rendered by both the 1692 and Teubner editions as "*quid est sanctius*".

<sup>100</sup> *Ibid.* 155.

<sup>101</sup> One variation occurs in the Teubner edition, in the phrase "*alia illius miseri*". While Wilson is correctly following the 1692 text at this point, he incorrectly writes "*audebatur*", which both the 1692 and Teubner editions render as "*audiebatur*."

<sup>102</sup> In the Teubner edition, the phrase occurs as "*hucine tandem haec omnia reciderunt*"; Wilson, however, correctly follows the 1692 text.

Interpreting the passage as a critique of the use of torture against a Roman citizen, Wilson considers it an equally applicable condemnation of the torture against slaves permitted in the Roman legal system.<sup>103</sup> At this point, Wilson argues that Cicero himself recognised the futility of such a practice and quotes from *pro Sulla* 28.78 in support of this argument:

*Quaestiones nobis servorum, ac tormenta accusator minitatur; in quibus quanquam nihil periculi suspicamur, tamen illa tormenta gubernat dolor, moderatur natura cuiusque tum animi tum corporis; regit quaesitor, flectit libido, corrumpit spes, infirmat metus, ut in tot rerum angustiis nihil veritati loci relinquatur.*<sup>104</sup>

The prosecutor threatens us with the questioning and torturing of slaves; in which although we suspect no danger; nevertheless pain governs that torture, the nature of both mind and body controls it, the quaestor directs it, desire shapes it, hope perverts it, fear annuls it, so that in so many difficulties no place is left for the truth.

In this analysis of *in Verrem* and *pro Sulla*, Wilson interprets Cicero by referencing his different texts. As evident from these quotations, the final two sets of Wilson's lectures bear witness to his thorough understanding of the Ciceronian texts, as he not only employs quotations from disparate speeches and treatises, but also compares them with one another.

As has been demonstrated in this chapter, Wilson shows precision, aptitude, and awareness in translating and applying Cicero's texts throughout the course of his lectures. The detailed examination of this chapter, therefore, establishes that Wilson relied on the Ciceronian texts and directly consulted them in the formation of his legal and political thought. On this foundation, the following chapters analyse Wilson's use of Cicero within the specific context of his theories of popular sovereignty, the good citizen, and resistance to written law.

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<sup>103</sup> Wilson (1804) 157.

<sup>104</sup> Two variations occur in the Teubner edition as "*accusator ac tormenta*", "*cuiusque cum animi*". Wilson also employs "*quanquam*", which is rendered "*quamquam*" in the 1692 and Teubner editions.



### **Chapter 3: The legal doctrine of popular sovereignty**

*Who, or what, is a sovereignty? What is his or its sovereignty? On this subject, the errors and the mazes are endless and inexplicable.*

James Wilson, *Chisholm v. Georgia*, 1793

By establishing the direct influence of Cicero on Wilson's ideas and investigating Wilson's use of a wide range of Ciceronian quotations, the previous chapter has provided the necessary background for the analysis included in the next three chapters of this thesis. In the following two chapters, I consider the topics of popular sovereignty and civic virtue within the context of Cicero's and Wilson's thought and in relation to contemporary readings of Cicero's works. This chapter, devoted to the theme of popular sovereignty, focuses less on Cicero than on Wilson, who more strongly emphasised the importance of popular consent. Chapter four, on the subject of the good citizen, addresses Cicero's views more thoroughly than Wilson's, since the concept of civic virtue is more central to Cicero's thought. Finally, chapter five explores the way both men uniquely utilise their philosophical ideas to justify civil disobedience, with Wilson relying chiefly on his understanding of popular sovereignty, and Cicero relying predominantly on his theory of civic virtue. As the following chapters will demonstrate, the relation between Cicero's and Wilson's positions on these topics is nuanced, presenting a degree of similarity but not complete agreement; often, for instance, Wilson draws unique conclusions from Cicero's arguments while remaining true to the logical progression of Cicero's thought. The relation between Cicero's and Wilson's theories begins in this chapter with a discussion of popular sovereignty.

While the issue of sovereignty has far-reaching implications and continues to play a fundamental role in political queries and debates in both the international and domestic arenas, the complexities mentioned in the statement at the head of this chapter have not been disentangled with the passing of time. In such a context, Wilson's conception of the doctrine of popular sovereignty is vital in understanding the ideology and policies of the American nation. Because of the primacy of this topic in Wilson's own writings as well as its significance in interpretations of American law and in modern politics, recent scholarship has endeavoured to analyse the role of popular sovereignty in Wilson's thought and to chart its origins. As Wood notes, the American

Revolution itself turned upon this issue of sovereignty, a concept discussed in the “theoretical terms of political science”, and of all the founders, Wilson took this doctrine further than any other in both theory and practice.<sup>1</sup>

In modern times, the phrase “popular sovereignty” has come to indicate the people as the ultimate authority in determining matters of law and government.<sup>2</sup> Thus, although neither Cicero nor Wilson uses this precise term in his writings, this phrase is useful when comparing Cicero’s and Wilson’s perceptions of the people’s role in governing the state. Wilson most nearly approaches the term when he identifies the people as the source of the state’s sovereignty, saying that the one great principle of law and government is that “the supreme or sovereign power of the society resides in the citizens at large”.<sup>3</sup>

The classics form an essential part of Wilson’s argument in favour of popular sovereignty. At the same time, it is universally acknowledged that, like the other founders, Wilson’s thought was drawn eclectically from various schools and political thinkers.<sup>4</sup> For instance, scholars have drawn attention to the prominent influence of the Scottish School of Common Sense on Wilson’s writings.<sup>5</sup> Additionally, many of Wilson’s views regarding popular sovereignty are reminiscent of statements such as Locke’s declaration that the people are only bound to obey laws made by those possessing the “Consent and Appointment of the People”.<sup>6</sup> Nevertheless, despite the diverse elements contributing to his philosophy, Wilson sought to build his conception of popular sovereignty squarely upon a classical foundation, rooting its legitimacy and arguments for its practical worth and sustainability in the ancient past and especially in his reading of the Roman Republic.

Beginning with a consideration of the relation of Cicero’s thought to popular sovereignty, this chapter explores whether there is a connection between Cicero’s philosophy and the doctrine as Wilson expressed it. While Cicero’s texts can be read as

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<sup>1</sup> Wood, G. S. (1969) 530-531, 345. This coincides with the earlier viewpoint given by McCloskey (1967) 5-6, when he states that the doctrine of popular sovereignty has proved to be the “essential feature of the American national experiment” and that Wilson based his proposals for the new national government more fully on this foundation than the others of his day; cf. Read (2000) 89, 91; Wilmarth (2003) 144.

<sup>2</sup> Laski (1919) 202.

<sup>3</sup> Wilson (1804) 1:17.

<sup>4</sup> See above, p. 14 n. 5.

<sup>5</sup> For a helpful account of the influence of the Scottish School of Common Sense and particularly of Thomas Reid in Wilson’s thought, see Seed (1978) 17; McCloskey (1967) 14-16; Hall (1997) 68-71.

<sup>6</sup> Locke, *Second Treatise*, 19.212.19-25.

an affirmation of popular consent, they do not put forward a specific doctrine of popular sovereignty. Wilson, however, attempts to legitimize his view by reference to Cicero's principle of popular consent, but diverges from Cicero's views in both theory and practice by defining sovereignty as an indivisible principle residing wholly and at all times with the people.

## 1. Relation of Cicero's thought to popular sovereignty

Since the question of popular sovereignty is framed in contemporary terms, it is more difficult to analyse Cicero's perspective than Wilson's. Although it is helpful to note elements of popular consent in Cicero's writings and philosophy, care must be taken not to instil a modern viewpoint into the analysis, as the terminology of popular sovereignty is laden with modern connotations and was never employed by Cicero. Additionally, while Wilson's lectures focus primarily on the function of government in protecting the liberty of the people, Cicero's treatises centre upon different questions, such as the best form of state in *de Republica*, the best laws in *de Legibus*, or the role of the statesman orator in *de Oratore*. Thus, although many of Wilson's themes overlap with the issues addressed by Cicero, popular sovereignty as such never appears as the central consideration in Cicero's writings.

Still, the consent of the people forms an important theme not only in Cicero's speeches but also in his philosophical treatises. For instance, in Scipio's history of the Roman constitution, he recounts that the people willingly and freely obeyed Romulus.<sup>7</sup> Repeatedly, Scipio emphasises that the people gave their consent to the rule of the monarchs.<sup>8</sup> Even when mentioning Servius Tullius, whom he designates as the first to achieve power *iniussu populi* (unbidden by the people), Scipio takes care to note that he later ruled *voluntate atque concessu civium* (with the favour and permission of the citizens).<sup>9</sup> Hence, in Cicero's view of history, the people must consent at least theoretically to the form of government imposed on them. Even if these passages are read only to indicate belief in a necessary fiction, they still affirm the people's role in

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<sup>7</sup> Cic. *Rep.* 2.2.4

<sup>8</sup> *Ibid.* 2.13.25 and 2.20.35.

<sup>9</sup> *Ibid.* 2.21.37-38.

the governing process. Consent, therefore, functions as a necessary principle of law and government in Cicero's writings.

At the same time, in attempting to answer the question of whether popular sovereignty had a place in Cicero's texts, a necessary distinction must be made between his presentation of the Roman Republic and the actual reality. The degree of popular participation and the role of the people in the Roman Republic has been the subject of much debate. The picture of Republican politics, portrayed by authors such as Gelzer and Syme, as a controlled system in which a small oligarchy extinguished any practical exercise of popular sovereignty has been ably challenged.<sup>10</sup> Millar's work, for instance, has demonstrated that in the popular assemblies, and particularly in the *comitia tributa*, the people played a role not only in consenting to the government but also in the process of passing legislation.<sup>11</sup> He concludes that the *populus Romanus*, as represented by these voting assemblies, was at least formally "the sovereign body in the Republican constitution".<sup>12</sup> Nevertheless, the precise nature of citizen representation is impossible to determine,<sup>13</sup> and an obvious danger of labelling the late Republic as either an aristocracy or democracy lies in ignoring the nuanced nature of Roman politics and in obscuring the different elements of the constitution.<sup>14</sup>

Regardless of the precise nature of Roman politics, Cicero's perspective of popular consent does not equate with a modern understanding of popular sovereignty. As *de Republica* and *de Legibus* reveal, in actual practice Cicero views the liberty and consent of the common people as consistent with senatorial authority and guidance. Indeed, while Cicero's definition of a legitimate *res publica* excludes both tyranny and mob rule, it would appear that in theory the *res publica* could continue to exist under a monarch and still be considered a *res populi*. An example of Cicero's conception of power and consent working together is the form of the dictatorship, which allowed for untrammelled authority and sovereignty, but only with the people's prior consent. For

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<sup>10</sup> Gelzer (1969) 52-53, 139. Syme aptly sums up this position when he describes Roman politics as being a struggle between elite members of the aristocracy and says that both the early and late Republic existed as a "*res publica populi Romani*" only in name [Syme (2002) 11-12].

<sup>11</sup> See Millar (2002) 18-22 for an overview of the makeup and functions of the assemblies.

<sup>12</sup> Millar (1998) 4; cf. 17-19 on the role of the assemblies; 34, 48 on the participation of citizens outside Rome; 205-210 on his conclusion that the Roman Republic should be considered a type of democracy. In support of this view, see also McIlwain (1958) 46, 62; cf. Lintott (1999) 200, which states that "the powers of the Roman assembly, taken in isolation, would support an interpretation of Rome as some type of democracy, and the institution of the tribunate would give this view a further dimension".

<sup>13</sup> Millar (1998) 210, 225.

<sup>14</sup> Lintott (1999) 191; North (1990) 284-286; Connolly (2007) 30.

Cicero, popular approval can exist together with the influence and leadership of an individual or an elite class.

Even in noting the consent of the people in *de Republica*, Scipio's account highlights the guiding role of the leading men or *patres* in the early Republic.<sup>15</sup> As he recounts the history of Rome's development, Scipio describes how the people gain greater liberties but not the complete power of the state. Although it was granted by the people (*cedente populo*), the greatest power in the state remained in the possession of the senate.<sup>16</sup> Even after the establishment of the tribunate, which was intended to diminish the power of the senate, Scipio says that the senate's authority and influence rightly remained supreme, since it was by its arms and counsel that the state was protected.<sup>17</sup> One of the principles Cicero appears to support in this historical survey is expressed by Scipio when he describes the centuriate assembly: *quod semper in re publica tenendum est, ne plurimum valeant plurimi* (that which always ought to exist in the state, that the greatest number not have the greatest power).<sup>18</sup> Indeed, Scipio praises the ability of those leaders *qui modica libertate populo data facilius tenuit auctoritatem principum* (who in giving the people a small amount of liberty preserved more easily the authority of the leading men).<sup>19</sup> Present in *de Republica*, therefore, is the theory that the best men should rule, albeit with the consent of the people.<sup>20</sup> As will be demonstrated, Scipio's statement contrasts with Wilson's belief that the majority in a state should possess the greatest power and the ability to legislate for the rest, provided they exercise this authority within the bounds of natural law and justice.<sup>21</sup>

A viewpoint similar to Scipio's notion of leadership continues in *de Legibus*, where Cicero explains more clearly the type of political liberty he wishes the people to possess. Once again, he views the approval of the people as a necessary condition for laws, but believes the leaders should counsel the people on the best course of action.<sup>22</sup> His argument in book III, deliberately framed as Dyck says "so as to win over optimate

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<sup>15</sup> Cic. *Rep.* 2.12.23-2.13.25.

<sup>16</sup> *Ibid.* 2.32.56; cf. 2.36.61.

<sup>17</sup> *Ibid.* 2.34.59.

<sup>18</sup> *Ibid.* 2.22.39

<sup>19</sup> *Ibid.* 2.31.55

<sup>20</sup> Lintott (2008) 234.

<sup>21</sup> For Wilson's view, see below p. 182.

<sup>22</sup> Cic. *Leg.* 2.5.11.

sentiment”,<sup>23</sup> depicts popular institutions like the tribunate as granting a measure of liberty to the people so as to ensure the *auctoritas* of the nobles.<sup>24</sup> The strongest expression of this sentiment occurs during the discussion of the ideal set of laws for the Republic, when Cicero says that *quam ob rem lege nostra libertatis species datur, auctoritas bonorum retinetur, contentionis causa tollitur* (accordingly our law gives an appearance of freedom, retains the authority of the nobles, and removes the cause of contention).<sup>25</sup> Thus, despite the admission that political power (*potestas*) resides in the people while influence (*auctoritas*) remains in the senate,<sup>26</sup> in this treatise Cicero ascribes the highest wisdom and governing ability to the senate. As Brunt notes, “even in his conception of the Roman system the liberty of the people and the authority of the senate are countervailing forces, which must be balanced in such a way as to content the people but permit the senate to preponderate”.<sup>27</sup>

Nevertheless, two related concepts in *de Republica* and *de Legibus*, regarding what constitutes a people and what constitutes a state, although not directly drawn from the principle of popular consent, still support a reading of popular sovereignty in Cicero’s texts. He indirectly answers the first question as to what constitutes a people through Scipio’s speech in *de Republica* 1.25.39:

*Res publica res populi, populus autem non omnis hominum coetus quoquo modo congregatus, sed coetus multitudinis iuris consensu et utilitatis communione sociatus.*

The commonwealth is the property of the people; however the people is not every association of men, congregated in any manner whatsoever, but rather the association of the multitude agreeing in justice and united by a community of mutual advantage.

In speaking of the people as the foundation of the government, Scipio is clearly including both high and low, both senators and plebeians, within the whole community of Roman citizens. By employing *sociatus* within his definition of the *res publica*, he invokes the Roman understanding of good faith and partnership and incorporates the ideology of a voluntary association based on consent into his construct of the state

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<sup>23</sup> Dyck (2004) 504.

<sup>24</sup> Cic. *Leg.* 3.10.25.

<sup>25</sup> *Ibid.* 3.17.39.

<sup>26</sup> *Ibid.* 3.12.28.

<sup>27</sup> Brunt (1988) 326; cf. 55, 324-327 on a fuller analysis of Cicero’s position. Cf. How (1930) 32; Ferrary (1995) 63; Wirszubski (1950) 18, 30, 43; Keyes (1921) 321: although affirming the power of the people, these scholars also note the primary role of the senate in Roman politics and Cicero’s affinity for this system.

itself.<sup>28</sup> Compared to previous political thinkers, the language Cicero employs is innovative in its approach, inasmuch as it appeals to explicitly Roman conceptions of law and property. In this sense, therefore, the quotation could indicate that Cicero views the whole Roman people as the owners of the government and as possessing the sovereign power over the state in a manner similar to Wilson's interpretation.

The passage above not only functions as the definition of a people but also of the state itself. As Schofield notes, it provides a "criterion of legitimacy" unknown in previous philosophical thought.<sup>29</sup> A *res publica* that ceases to fulfil these outlined requirements becomes not an unjust state, but, as Scipio later describes it in *de Republica* 3.31.43, actually ceases to be a state: *ergo ubi tyrannus est, ibi non vitiosam ... sed, ut nunc ratio cogit, dicendum est plane nullam esse rem publicam* (therefore where there is a tyrant, there it is not a depraved state ... as reason now proves, clearly it must not be called a state at all). Cicero applies the same understanding to the unjust laws in *de Legibus*, which cease to even bear the name of law.<sup>30</sup> In some cases, resistance to the fallacious state or laws may even be required in order to preserve the actual state. For example, Scipio praises Lucius Brutus who by overthrowing a tyrant not only restored the *libertas* of the people, but *totam rem publicam sustinuit* (upheld the entire state).<sup>31</sup> When describing the tyranny of the decemvirs, Laelius affirms Scipio's argument that a commonwealth in the hands of a faction cannot even be considered a *res publica*, saying that when the people overthrew the decemvirs they merely regained possession of the state: *Populi nulla res erat, immo vero id populus egit, ut rem suam recuperaret* (There was no property of the people, in truth the people acted so as to regain their own).<sup>32</sup> Thus, part of a people's liberty includes their ability to live under just rule and law, for as Cicero makes clear, when the community of justice is destroyed, then so is the liberty of the people, and they can rightly act to recover their liberty and the state.

This reading of popular sovereignty in Cicero's texts relies on the essential distinction between the *populus* as a constitutional part of the mixed government and the *populus* as the whole body of citizens and the owners of the state. Asmis, for

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<sup>28</sup> Harries (2006) 23, 232.

<sup>29</sup> Schofield (1995) 64.

<sup>30</sup> Cic. *Leg.* 2.5.13-2.6.14.

<sup>31</sup> Cic. *Rep.* 2.25.46.

<sup>32</sup> *Ibid.* 3.32.44.

instance, interprets *de Republica* as upholding popular sovereignty and differentiates between the people in their governing capacity and the people in their role as the sovereign possessors of the state.<sup>33</sup> This distinction is certainly the perspective Wilson offers in his interpretation of the Roman Republic and in his own conception of popular sovereignty. While such an interpretation of Cicero's texts would support a stronger connection with Wilson's thought, it is not clear that Cicero himself expressly makes this distinction.

Generally, Cicero speaks of the people in their constitutional role. Even in *de Republica*, he places more emphasis on the people as part of the mixed constitution than upon the people as the whole body of citizens. When used in this sense, the people clearly do not possess sovereignty. Instead, each division of the Roman constitution has some degree of authority. As Polybius says, it was impossible to state whether the system was an aristocracy, democracy, or monarchy, since the mixed constitution ensured that *Ἦν μὲν δὴ τρία μέρη τὰ κρατοῦντα τῆς πολιτείας* (there were three parts with authority over the state).<sup>34</sup> Sovereignty, therefore, does not lie with any single element. Instead, as Polybius or Cicero perceived it, the stability of the constitution lies in the division of power or sovereignty among the three parts.

Consent, however, is offered by the people as a whole, including both senate and plebeians. In this sense, Cicero appears to distinguish between the people in their narrow constitutional role in the voting assemblies, and the people as encompassing all citizens. Although Cicero would never desire the people in the narrower sense to possess sovereign authority, his definition of a people united in justice refers to the people as a whole and, in terms of ownership, suggests that they possess the state. Nevertheless, this ownership coexists with a constitutional system in which a division is made between different groups of "the people". When Cicero speaks of the people's role in choosing kings and giving consent to their leaders, he does not present a doctrine of popular sovereignty but rather one of popular consent, nor does he uphold the principle that all citizens equally possess the sovereign power in the state.

Obviously, whether or not elements of popular sovereignty can be identified in Cicero's texts depends on how sovereignty is defined. Cicero speaks not only of

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<sup>33</sup> Asmis (2004) 589.

<sup>34</sup> Polyb. 6.11.11.



popular consent as a necessary precondition of laws, but also of popular ownership of the state, and of the need for laws to promote the interests of the community and to preserve justice. Since Cicero never uses the term sovereignty, however, and since modern interpretations colour the term's meaning, reading a doctrine of popular sovereignty into the Ciceronian texts can overlook the nuances of Cicero's position and can present an interpretation that emphasises the people's authority too strongly. In contrast to Cicero's perspective, Wilson views the people as completely separate from the mixed government of the executive, legislative, and judicial branches. He considers laws and institutions as established by the will of the majority, and maintains that the people possess the power to grant or withdraw their consent at all times.

## **2. Wilson's doctrine of popular sovereignty**

In itself, the fact that Wilson chooses to quote Cicero with the purpose of substantiating his favourite theories of popular sovereignty and civic virtue attests to his selective reading of Cicero within the context of the dominant discussions of his time. He translates Cicerion quotations in such a way as to accommodate his own conception of the topics, connecting popular sovereignty with resistance, and reading Cicero within his own personal and political context. While he was undoubtedly cognisant of the great difference of time and culture separating him from classical thought, and at least on occasion consciously refrained from a sweeping applicaton of classical models to the political structures of his time,<sup>35</sup> his intention of reading Cicero for the sake of supporting his own theories often leads him not only to invest terms like *lex*, *libertas*, and *populus* with his own connotations, but also at times to take Cicero's arguments farther than the text warrants as he attempts to follow them to what he deems their logical conclusions.

This tendency is evident in Wilson's discussion of popular sovereignty and in his attempt to locate its historical origins in the Roman Republic. As he describes it, the history of consent, especially as evidenced through the usage and acceptance of customary law, is the history of popular sovereignty. He interprets Cicero's quotations

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<sup>35</sup> Reinhold (1984) 106 for a significant example of Wilson's hesitation in too broadly applying classical examples to his own time.

within the light of this reading of the Roman Republic, a reading informed by various classical and contemporary sources. In this section, therefore, I examine how Wilson employs popular sovereignty as the cornerstone of his political ideology and how he weaves it into the Roman tradition.

At the outset, one must bear in mind that Wilson's notion of popular sovereignty is essentially a practical doctrine. In its fundamental application, he believes popular sovereignty gives the people the right to alter or abolish not only legislation but also their form of government. Initially employed as the rationale for revolution, this theory continued to operate as the underlying principle and justification of the political decisions he made throughout his life, from his proposals in the Constitutional Convention debates to his written opinions in the Supreme Court and his spoken lectures to young students of law.<sup>36</sup> Wilson himself acknowledged the primary position he accorded this doctrine, saying in the *Law Lectures* that, "All human laws should be founded on the consent of those who obey them. This great principle I shall, in the course of these lectures, have occasion to follow in a thousand agreeable directions".<sup>37</sup>

Wilson's attempt to put together a systematic legal theory validating the separation from Great Britain is representative of the American Revolution as a whole, a movement unique in the deliberation and political dialogue that preceded and initiated it. His interpretation of law is inextricably linked to the need to justify the American Revolution, a theme he consciously brings to the forefront of his writing. The social, political, and ideological tensions leading to the Revolution were peaking during Wilson's period of study under John Dickinson and his early years of legal practice. Inevitably, Wilson was preoccupied with the questions of the rights of the colonists and their legal position in regard to the mother country, while his personal background and education predisposed him toward a positive view of American independence.<sup>38</sup>

Already, in 1769, Wilson was exploring these issues in his pamphlet *Considerations on the Nature and Extent of the Legislative Authority of the British Parliament*; because he thought it too early to publish such opinions, however, the pamphlet did not appear in print until 1774, virtually on the eve of the Revolution. In it,

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<sup>36</sup> Konkle (c.1900) 67 on how Wilson's theory of popular sovereignty directed his thought and must be considered the "foundation of his political philosophy".

<sup>37</sup> Wilson (1804) 1:200.

<sup>38</sup> Kirk (2003) 212 on the democratic and popular basis of the Scottish universities as a subtle backdrop to Wilson's thinking on popular sovereignty.

he bases his argument that Great Britain has absolutely no legislative authority over the colonies on the premise that “all men are, by nature, equal and free: no one has a right to any authority over another without his consent: all lawful government is founded on the consent of those who are subject to it”.<sup>39</sup> Beyond appealing to nature, Wilson seeks to legitimise the revolution by saying that the colonies only desire to maintain the same principles of liberty that govern the history, hearts, and constitution of the British nation.<sup>40</sup>

By establishing consent as the basis of law, Wilson accepts that the power of changing and removing either laws or a governmental system is fully within the people’s rights. He grounds even this principle, however, in custom. Like Cicero, he desires to maintain long-accepted legal traditions, but he makes consent and the will of the people the guiding principles of that heritage. As will be seen, his view of history rests on the belief that the same tradition that guided Roman law also enabled the American colonies to revolt from the oppression of Great Britain.

Wilson’s opinions gained force after the Revolution. During the Constitutional Convention debates, he continued his outspoken advocacy for popular authority. Here, in the formation of the specific provisions and phraseology of the Constitution, his doctrine of popular sovereignty directs his discussion. The members of both branches of the national legislature, he argues, should be drawn from the direct election of the people, because “on the great foundation of the people all Government ought to rest”.<sup>41</sup> In his opinion, even the presidency must in some way be dependent on election by the people, either directly or indirectly.<sup>42</sup> More than any other founder present, he constantly returns to the necessary role of the people as the voice and mind behind the new government. According to James Madison, Wilson desired “vigour in the government but he wished that vigorous authority to flow immediately from the legitimate source of all authority. The government ought to possess not only the *force* but the *mind or sense* of the people at large.”<sup>43</sup>

These same sentiments appear in the legal opinions given from the Supreme Court, where Wilson was appointed as one of the first associate justices. In *Chisholm v.*

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<sup>39</sup> Wilson (1804) 3:205-206.

<sup>40</sup> *Ibid.* 3:203-204.

<sup>41</sup> Farrand (1966) 1:57; cf. 1:49, 405.

<sup>42</sup> *Ibid.* 1:68-69; 2:56.

<sup>43</sup> *Ibid.* 1:132 (the italics exist in the original quotation, although I have edited the abbreviations).

*Georgia*, which dealt with the question of whether a citizen of South Carolina could bring a charge against the state of Georgia or if as a sovereign entity the state was independent of the federal courts, Wilson's statements closely coincide with those he expressed in the Constitutional Convention. Although repeatedly maintaining that the individual states were necessary to the continuance and well-being of the union, he also denied them a sovereign status, saying, "Can we forget for whom we are forming a Government? Is it for *men*, or for the imaginary beings called *States*?"<sup>44</sup> In addition, Wilson argues that states as artificial beings cannot be deemed sovereign. On the contrary, the only sound and legitimate basis of jurisprudence is the people's consent: "laws derived from the pure source of equality and justice must be founded on the consent of those, whose obedience they require. The sovereign, when traced to his source, must be found in the man."<sup>45</sup> Hence, Wilson located the people as the source of sovereignty and consistently sought to apply his theoretical doctrine to the practical questions he faced in law and politics.

Although not all of Wilson's proposals in the Constitutional Convention were accepted, and the judgement of *Chisholm v. Georgia* (1793) was promptly overturned by the 11<sup>th</sup> Amendment to the Constitution, his doctrine of popular sovereignty became firmly entrenched in the American mindset. In his *Law Lectures*, Wilson continues to rest his interpretation of law on these underlying themes of popular sovereignty and consent. Here, however, he takes a more thoughtful and thorough approach, analysing these topics with the rigour and care of an academic and seeking to base his conceptions upon classical principles of jurisprudence.

While he affirms the sovereignty of the people, Wilson defends the authority of the laws and of long-standing tradition. At the centre of Wilson's thought is his endeavour to reframe his justification of revolution as devotion to law, where loyalty to an inherited legal tradition calls for resistance to the current state of affairs. At this point, then, it is necessary to examine the intertwined threads of customary law and popular consent that form the basis of Wilson's legal philosophy.

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<sup>44</sup> *Ibid.* 1:483.

<sup>45</sup> *Chisholm v. Georgia*, 2 U.S. 419 (1793), concurring opinion.

## 2.1. Consent as the first principle of law

Wilson hesitates to provide a decisive definition of law. Fully aware of the limitations and errors unavoidable in the definitions given by previous thinkers, he prefers not to add another to the list.<sup>46</sup> Nevertheless, for law in its most basic sense, he offers the simple explanation that it “is a rule prescribed”.<sup>47</sup> Law, therefore, dictates specific directions for people to follow and has the force to compel obedience. After providing this definition, Wilson moves on to explore the origins of the authority on which such prescription rests.

Throughout the course of his lectures, Wilson impresses on his students that all laws created and prescribed by any group or individual derive their legitimacy and authority from the consent of a sovereign people. In his introductory lecture, he states that the origin of sovereignty is found “in the free and independent man. This truth, so simple and natural, and yet so neglected or despised, may be appreciated as the first and fundamental principle in the science of government.”<sup>48</sup> Law, as Wilson so strongly phrases it, cannot be purchased at the cost of a subjection that makes people no better than slaves or beasts who must obey without question.<sup>49</sup> In his opinion, laws and governmental institutions are based solely upon the consent of the people and are established in order to secure and enhance their liberty.

Wilson constantly maintains this strong connection between law and liberty. As previously mentioned, he views the science of law as necessarily incorporating the study of liberty.<sup>50</sup> To a great extent, this fundamental premise governing the whole of his political philosophy comes from the distinction he draws between civil government and civil society, which is a voluntary agreement based upon consent.<sup>51</sup> By separating the two, Wilson is able to argue that changes in government do not destroy civil society itself. The civil government and laws afterward erected by a civil society or state are those which will best promote the happiness and prosperity of the people, and primarily, those which will protect their natural rights.<sup>52</sup>

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<sup>46</sup> Wilson (1804) 1:60.

<sup>47</sup> *Ibid.* 1:63.

<sup>48</sup> *Ibid.* 1:25.

<sup>49</sup> *Ibid.* 1:88.

<sup>50</sup> See above, p. 52.

<sup>51</sup> Wilson (1804) 1:303-305. See above, pp. 64-65 on Wilson’s use of Cicero in support of this doctrine.

<sup>52</sup> *Ibid.* 2:454.

While Wilson believes a society can possibly function without government, he sees laws and institutions as necessary in order for society to improve and prosper and for the people to possess complete liberty.<sup>53</sup> In the context of Wilson's thought, the people do not forfeit their liberties in submitting to the governance and power of lawful authority, because it rests by definition on consent.

If a government ceases to protect the rights of a people, essentially those rights of property, character, liberty, and safety, Wilson believes it also ceases to be a government of the "legitimate kind".<sup>54</sup> He takes issue with Burke and Blackstone, whom he interprets as saying that people must give up their natural liberty in order to secure the protections and benefits of government.<sup>55</sup> In contrast, while he recognises Blackstone's distinction between natural and civil liberties, Wilson argues that the natural liberty of an individual actually ought to increase under a just and wise government.<sup>56</sup> Wilson's conception of natural rights is inextricably twined to his theory of natural law,<sup>57</sup> and because he views natural law as prohibiting selfish or injurious behaviour, he argues that such actions have absolutely no connection with natural liberty.<sup>58</sup> Hence, he views the diminution of natural liberty that takes place under a civil government as incidental when compared with the greater safeguards for natural liberty that government can ensure.

Since the establishment of laws should increase rights rather than lead to their surrender, Wilson places strict limits on the legislature. The only laws that should be instituted are those which will measurably serve the public good, since every "wanton, or causeless, or unnecessary act of authority, exerted, or authorized, or encouraged by the legislature over the citizens, is wrong, and unjustifiable, and tyrannical".<sup>59</sup> Always

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<sup>53</sup> *Ibid.* 1:384-385. On Wilson's use of Cicero to support this theory, see above p. 67.

<sup>54</sup> *Ibid.* 2:466.

<sup>55</sup> *Ibid.* 2:454-457.

<sup>56</sup> *Ibid.* 2:458.

<sup>57</sup> *Ibid.* 1:310. Hall also recognises that natural law serves as the basis for Wilson's understanding of natural rights, and he makes it one of the central points in his study of Wilson's thought [Hall (1997) 46, 105].

<sup>58</sup> Wilson (1804) 2:457; cf. 2:457-458 where Wilson goes on to explain, "In a state of natural liberty, every one is allowed to act according to his own inclination, provided he transgress not those limits, which are assigned to him by the law of nature: in a state of civil liberty, he is allowed to act according to his inclination, provided he transgress not those limits, which are assigned to him by the municipal law. True it is, that, by the municipal law, some things may be prohibited, which are not prohibited by the law of nature: but equally true it is, that under a government which is wise and good, every citizen will gain more liberty than he can lose by these prohibitions. "

<sup>59</sup> *Ibid.* 3:70.

the practical legislator as well as the abstract academic, Wilson understands that pure political theories do not immediately devolve into easy, packaged realities. As he admits, the frequent making and changing of laws often becomes the great bane of democratic legislatures.<sup>60</sup> Nonetheless, the fact that useless or even harmful legislation may result from the people choosing their own laws does not justify the removal of that right.

In practical terms, the principle of consent in the United States is carried out through the medium of the people's elected representatives, who for specific times and under specific conditions are appointed to make the laws, execute them, and administer justice under them.<sup>61</sup> Although Wilson supported representation, he would not deny that direct democratic voting also upholds the doctrine of consent. He locates the origin of this principle in several of the Greek states and the early Roman Republic and praises them for upholding it, but still acknowledges that in larger and more modern nations this model is no longer viable in practice.<sup>62</sup>

The theory of representation, Wilson argues, appears to have been unknown in ancient times and has not been fully implemented in even the modern European nations.<sup>63</sup> He views Republican Rome as defending the principle of consent, since the "sovereign power, the *dominium eminens*, as it is called by the civilians, always resided in the collective body of the people", but he also believes that Rome failed to maintain this principle in all its practical workings.<sup>64</sup> Similarly, the British system also failed to protect popular sovereignty, since the colonists were not able to participate in government by forming and adopting the specific laws that ruled them.

Representation, as Wilson portrays it, ought to be fully distributed in every part of the government.<sup>65</sup> Additionally, legitimate representation must follow two practical rules: first, the representatives must act as the people themselves would if they possessed the same information, and second, an equal number of representatives must act for an equal number of constituents.<sup>66</sup> Under Wilson's definition, Great Britain failed to adequately support the principle of representation in its legislative branch, and

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<sup>60</sup> *Ibid.* 2:177.

<sup>61</sup> *Ibid.* 1:190.

<sup>62</sup> *Ibid.* 2:128.

<sup>63</sup> *Ibid.* 1:429.

<sup>64</sup> *Ibid.* 1:210.

<sup>65</sup> *Ibid.* 1:430.

<sup>66</sup> *Ibid.* 1:128-129.

did not even attempt to do so in its executive and judicial branches. In contrast, by implementing representation more fully and consistently than in Rome or Great Britain, the United States Constitution is more dependent on the people's consent. As Wilson notes, the Constitution, in every part, rests "on the great democratical principle of a representation of the people".<sup>67</sup>

In its practical implications, Wilson's theory of representation rests uneasily with Blackstone's definition of law as a prescribed rule the people are always bound to obey; for Wilson, whether in election, legislation, or the intervening periods, representation serves as a type of continual consent always afforded by the people and ever within their power to withdraw.<sup>68</sup> Clearly, Wilson's theory of representation coexists with a range of perplexities, which he is far from solving. Such questions include whether representation can be deemed a sufficient substitute for direct consent, how far a representative may act upon his own views, and what difference exists between representation in matters of election and matters of law. Practically, Wilson desires representation to reflect the will of the majority as directly as possible. Therefore, when arguing in the Constitutional Convention for direct election of both branches of the legislature, Wilson notes, "Election is the exercise of *original* sovereignty in the people—but if by representatives, it is only *relative* sovereignty."<sup>69</sup> As previously noted, however, Wilson believed the indirect mode of representation still protected the consent of the people.

Ultimately, Wilson's doctrine of popular sovereignty rests on the principles that liberty is only secured when the people have given their consent to the laws and institutions by which they are governed and that this liberty must remain solely and continuously in their hands. Consent and the consequent protection of liberty, however, may be manifested in various forms:

[T]he sole legitimate principle of obedience to human laws is human consent. This consent may be authenticated in different ways: in its different stages of existence, it may assume different names—approbation—ratification—experience: but in all its different shapes—under all its different appellations, it may easily be resolved into this proposition, simple, natural, and just—All human laws should be founded on the consent of those, who obey them.<sup>70</sup>

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<sup>67</sup> *Ibid.* 2:123; cf. 1:429-430 for Wilson's belief that the United States' system of representation constitutes a key progression of the science of government not only beyond the classical legal systems but also beyond the modern European states, as well.

<sup>68</sup> Bailyn (1967) 174.

<sup>69</sup> Farrand (1966) 1:365.

<sup>70</sup> Wilson (1804) 1:200.



Central to Wilson's lectures is his account of how this principle of consent appears throughout history in the laws of different nations.

## **2.2. Wilson's history of popular sovereignty**

A specific reading of history provides Wilson with the necessary tools for substantiating his view of popular sovereignty. In a pattern similar to Cicero's method in *de Republica* 2.1.1-2.37.63 when recounting the history of the Roman constitution, Wilson takes a real constitution and shows how it evolved through history to become the perfect model. Although Wilson's understanding of the role of the people and the liberty they possess differs from Cicero's account of the *libertas* gained by the *populus* during the development of the Roman state, like Cicero, Wilson appeals to history as he seeks to demonstrate that his state possesses the best possible constitution. For Wilson, the principles enshrined in the United States Constitution are the most perfect embodiment of the ancient classical traditions originating in the Greek states and especially in the early Roman Republic. Unlike modern political scholars, the founders did not clearly differentiate between the diverse traditions they received from classical, British, or other sources, but viewed them all as forming one "tradition of liberty".<sup>71</sup> By tracing his ideology of consent throughout history, Wilson not only attempts to legitimise his theory, but also to demonstrate that the colonies have upheld a proper interpretation of law and have become the true heirs of this tradition.

Although Wilson did not have access to the historical account of the Roman constitution given in book II of *de Republica*, he was aware that he was following Cicero's approach. He quotes from Gibbon's *Decline and Fall of the Roman Empire* as a secondary authority that also attests to Cicero's method, saying that Cicero "for the use of his republic, formed a system of laws. In this system, he expatiates on the wisdom and excellency of the Roman constitution."<sup>72</sup> In the same manner, Wilson does not describe a merely theoretical constitution. He notes that while the ancient laws and governments provide examples worthy of study, he intends to appeal to the "constant

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<sup>71</sup> Richard (1994) 9, 82-83; cf. Wood, G. S. (1969) 7-8.

<sup>72</sup> Wilson (1804) 2:19.

standard” of the laws and institutions of the United States.<sup>73</sup> Still, while he views the United States as the prime example to follow and as the nation where the principles of liberty exist in the fullest form yet known in history, he believes the science of government and politics is yet in its beginnings.<sup>74</sup> Thus, Wilson’s conviction that the United States has implemented the “best” and “purest” form of government in a way that achieves the greatest “point of perfection hitherto unattained”, does not mean that he views it as complete.<sup>75</sup> Even in making this argument, he continues to follow a reading of Cicero’s *de Republica* which portrays the constitution of the Roman Republic as the best possible form of government rather than as an abstract and philosophical ideal.<sup>76</sup>

Ultimately, Wilson believes the science of government will evolve and progress to an even greater height of knowledge and general prosperity.<sup>77</sup> The pessimism and apprehension regarding the fate of liberty that Bailyn notes in the mindset of the colonists is absent from Wilson’s writings.<sup>78</sup> Although Wilson does not view the institutions, government, and constitution of any nation as indestructible, he remains convinced that the laws and constitution of the United States will continue to progress indefinitely despite minor alterations. As Read recognises, Wilson’s stance was fundamentally different from that of Madison and Jefferson, who were constantly preoccupied with the power struggles that could potentially overthrow the individual freedoms of the people and the proper balance of government.<sup>79</sup> While Wilson warns that despotism and false notions of government threaten and often overturn the principles of liberty,<sup>80</sup> his study of history, far from causing him anxiety, actually gives him confidence that the freedoms of humankind and the knowledge of just laws and governmental institutions will continually advance toward perfection.<sup>81</sup>

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<sup>73</sup> *Ibid.* 2:255.

<sup>74</sup> *Ibid.* 1:23; cf. 1:26, 30, 191.

<sup>75</sup> *Ibid.* 1:417.

<sup>76</sup> *Cic. Rep.* 2.30.52. Cf. *Cic. Leg.* 2.10.23, 3.5.12 on Cicero’s designation of the Roman constitution as the best possible. Cf. Powell, J. G. F. (2001) 26-27 for a similar reading of the text.

<sup>77</sup> Wilson (1804) 1:384.

<sup>78</sup> Bailyn (1967) 79.

<sup>79</sup> Read (2000) 114-115. Read even goes so far as to question the applicability of Wilson’s views of law, saying that the optimism of Wilson’s writing perhaps indicates that he did not fully understand the “selfish and violent tendencies at work in American life”.

<sup>80</sup> Wilson (1804) 1:272.

<sup>81</sup> *Ibid.* 1:412.

Consent is the key factor in Wilson's designation of progress. He constantly evaluates ancient and modern governments by the degree to which they upheld the consent and thereby the sovereignty of the people. In his estimation, the more the pure and long-standing consent of the people is reflected in their governmental institutions, procedures, and laws, the more the science of politics is advanced.

Wilson fixes the earliest origins of popular sovereignty in some of the Greek city-states, which voted in direct assembly and which Wilson refers to as "commonwealths" and as "small republics".<sup>82</sup> Citing from book one of Homer's *Iliad*, where the Athenian government is designated as the *Δῆμος*,<sup>83</sup> Wilson points to such references as proof of the consent of the Athenian people, who are considered free because they would only be "governed by laws which they themselves made".<sup>84</sup> He later reiterates this theme, and even while acknowledging the diverse provisions of Athenian laws and institutions, he argues that their great unifying principle and the reason for their success was that a citizen was "bound only by laws to which he had given his consent".<sup>85</sup>

His information on Greece is largely derived from secondary sources. In referring to specific aspects of its government, he draws from John Gillies's *The History of Ancient Greece*, Richard Burn's *Ecclesiastical Law*, John Pettingal's *An Inquiry into the Use and Practice of Juries*, and the works of John Selden.<sup>86</sup> Dealing briefly with the history of Greece, Wilson focuses more on the Roman Republic, devoting the greater part of his discussions to this period and viewing it as an essential step in the transmission of the law of consent to the ancient Saxons.

Livy is his primary source in contending that the laws and customs of Greece were incorporated into Roman law. Wilson looks to the account given in book III of *ab Urbe Condita*, where Livy speaks of the Roman deputation sent to Athens in order to study their laws, customs, and institutions.<sup>87</sup> In this version, the Athenian laws and constitution, as originally established by Solon and then improved on by later Athenian

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<sup>82</sup> *Ibid.* 1:4, 6; 2:128.

<sup>83</sup> *Ibid.* 2:118. The reference, which is correctly given by Wilson, is from Hom. *Il.* 2.547. On this point, Wilson also includes a second reference to Potter's *Antiquities of Greece*, which makes the same argument based on the text from Homer, but which does not include the specific citation to the text [Potter (1706) 12].

<sup>84</sup> Wilson (1804) 2:120.

<sup>85</sup> *Ibid.* 2:317; cf. 2:13, 318.

<sup>86</sup> *Ibid.* 2:111-112, 119, 318-319.

<sup>87</sup> *Ibid.* 2:13-15; Livy 3.31-34.

leaders, were brought for consideration before the Roman people. Regardless of the reliability of Livy's narrative, its focus on the liberty of the whole Roman population, both plebs and nobility, in adapting and accepting their system of laws played a key part in the formation of Wilson's view of the Roman Republic. Wilson's personal legal ideology is particularly evident in his discussion of Livy. He draws special attention to Livy's insistence that the laws were amended to fit the circumstances and manners of the Romans and that they protected the interests of the whole Roman people by being "equal and impartial to the high and to the low".<sup>88</sup> Most particularly, Wilson emphasises that the Twelve Tables and the ensuing laws of the Republic were based on the principle that "the Roman people should have no laws, but such as were ratified as well as ordered by the consent of all".<sup>89</sup>

Wilson then proceeds to trace the underlying thread of consent through the Roman system. He sees even the written statutes as operating under the people's consent and claims that in their earliest periods the people directly voted as an assembled body.<sup>90</sup> Even during the period of the Roman monarchs, Wilson argues that the people still possessed the sovereign power of choosing their rulers. Although he did not have access to the passages in book II of *de Republica* where Cicero touches on the role of the people under the monarchs, Wilson applies part of the passage he translates from *de Officiis* 2.12.41-42 to this argument:

It was among our own ancestors likewise, that kings of good character were chosen, in order that the administration of justice might be enjoyed. For when the poor were oppressed by the rich, they fled for relief to some one, preeminent in virtue, who would protect the weak from injustice, and would dispense equal law to the high and to the low. If they could obtain this from the mouth of one just and good man, they were satisfied; but, as they were often disappointed in this reasonable demand, they had, afterwards, recourse to general law, which spoke one language to all.<sup>91</sup>

As is noticeable from his translation of "were chosen" for *constituti*, Wilson reads the passage as evidence that the people were consenting to this rulership in order to maintain justice, and he uses it to support his view of popular sovereignty. Additionally, by referencing this passage he highlights the equality enjoyed not only by the elite but also by the weak (*tenuiores*) and low (*infimi*). Wilson, therefore, argues for

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<sup>88</sup> *Ibid.* 2:14-15.

<sup>89</sup> *Ibid.* 2:15. This quotation from Wilson is also directly drawn and translated from Livy's account, which states *eas leges habiturum populum Romanum, quas consensus omnium non iussisse latas magis quam tulisse videri posset* (3.34.5-6).

<sup>90</sup> Wilson (1804) 2:128.

<sup>91</sup> *Ibid.* 1:391. See above, pp. 67-68 for the more detailed examination of this passage and the Latin text.

two fundamental principles at work in Rome's history: first, that both the higher and lower classes of Roman society possessed the sovereign right of consent as well as equality before the law, and second, that if they were denied that right, they had recourse to a legal solution that would rectify the situation.

Wilson also draws attention to several provisions of the Roman constitution, which he believes uphold the principle of consent. First, in outlining his understanding of the Roman system, Wilson details the precautions taken by the magistrate in forming a bill and the approval then required by the senate, and he finally concludes that a law had to be accepted in the "comitia" where members of the assembly and even private citizens could speak before the law was voted on by the centuries.<sup>92</sup> Second, when mentioning the people or the citizen body of Rome, Wilson includes both patricians and plebeians; furthermore, he claims that one of the main reasons for the transition from giving votes "viva voce" to the implementation of the silent ballot was in order to protect the influence of the lower orders.<sup>93</sup> This, he says, is why Cicero refers to the secret ballot in *de Lege Agraria* 2.2.4 and in *de Legibus* 3.17.39 as "the silent assertor of liberty".<sup>94</sup>

An essential part of Wilson's understanding of Roman law and its preservation of the principle of consent centers on the existence of unwritten or customary law in Rome. Although Wilson's efforts as a statesman were primarily concerned with written law, he still affords a profound and even greater respect to unwritten law, which he views as a manifest testimony of popular sovereignty. For Wilson, the presence of customary law in a nation bears witness to the prominence placed on the people's consent. Because the people choose to place themselves under its commands, "customary law" not only protects liberty but is also the most pragmatic and effectual type of law.<sup>95</sup> As he concludes, "a customary law carries with it the most unquestionable proofs of freedom in the country".<sup>96</sup> Thus, consent is best viewed through the medium of unwritten or customary law.

Because it is based upon popular consent, the phrase "customary law" symbolises for Wilson the fundamental principles that he believes should characterise

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<sup>92</sup> *Ibid.* 2:168-169.

<sup>93</sup> *Ibid.* 2:170.

<sup>94</sup> *Ibid.* 2:170. For the more detailed discussion of this passage, see above, pp. 69-70.

<sup>95</sup> *Ibid.* 1:64.

<sup>96</sup> *Ibid.* 1:207.

all laws. Customary law refers not to precise statutes, but rather to an abstract concept of law itself. Thus, Wilson does not attach the term customary law to the specific laws of Rome or any other nation. Despite the differences in their governmental institutions and statutes, the commonality uniting the nations he commends is their whole-hearted acceptance and reliance on customary law. As he notes in reference to customary law, “Among the earliest, among the freest, among the most improved nations of the world, we find a species of law prevailing, which carried, in its bosom, internal evidence of consent”.<sup>97</sup>

The ability to frame unwritten customary law, therefore, in addition to the right to vote on written laws, was the means by which Rome protected the people’s liberty and consent. Believing that the greatest periods of freedom and happiness in the Roman Republic were those when customary law was highly esteemed, Wilson states that at such times, “it was thought immaterial whether a law received the sanction of the people by their formal suffrage, or by the uniform course of their conduct and manners. Thus did Romans speak and reason while they enjoyed the blessings of liberty.”<sup>98</sup>

Many of the Founders saw the commencement of the Roman Empire as a sign of liberty’s complete destruction.<sup>99</sup> Wilson, however, presents a more moderate view of the period under the emperors. Although the form of government was corrupted by the institution of the monarchy, Wilson asserts that the ideals of the Roman Republic, with its observance of customary law and its respect for the approval of the people, still continued under the Roman Empire.<sup>100</sup> Indeed, he traces the principles of unwritten law and consent up to the time of Justinian and the *Corpus Iuris Civilis*, citing the definition of law offered in *Digesta* as “a general convention of the citizens” and believing that *Institutiones* affirms his view that the Romans placed as much obligatory force on customary law as they did on written law.<sup>101</sup> In actual practice, the government of the

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<sup>97</sup> *Ibid.* 1:100.

<sup>98</sup> *Ibid.* 2:15-16.

<sup>99</sup> Cf. Richard (1994) 84 on this prevailing view among the founders of the tyranny that began under the Roman Empire; cf. 88-89 on specific examples from the writings of Thomas Jefferson, John Dickenson, and Samuel Adams, who describe the corrupt and despotic periods in Roman history under the emperors.

<sup>100</sup> Wilson (1804) 2:16; cf. 1:100, 2.24.

<sup>101</sup> Cf. Wilson (1804) 1:101 on the quotation from *Digesta*, for which he does not provide a specific reference or footnote. It is likely translated from *Digesta* 1.3.2, which quotes Demosthenes’ definition of law as τοῦτό ἐστι νόμος, ὃ πάντας ἀνθρώπους προσήκει πείθεσθαι διὰ πολλά, καὶ μάλιστα ὅτι πᾶς ἐστι νόμος εὖρημα μὲν καὶ δῶρον θεοῦ, δόγμα δὲ ἀνθρώπων φρονίμων, ἐπανόρθωμα δὲ τῶν ἐκουσίων καὶ ἀκουσίων ἀμαρτημάτων, πόλεως δὲ συνθήκη κοινή, καὶ ἥν ἅπασι προσήκει ζῆν τοῖς ἐν τῇ πόλει (Law is that which all people ought to obey, for many reasons but especially because every law is an invention and a gift of

Roman Empire is clearly not an example of popular sovereignty. Nevertheless, Wilson's belief in the theoretical importance of tradition and popular consent in the late Roman Empire is not unfounded. As Harries notes, inseparable from the autocracy of the late Roman imperial system was the "insistence that the legitimacy of government depended on the consent of everybody, the 'consensus universorum'".<sup>102</sup>

By means of these arguments, Wilson defends the tradition of consent and customary law operating in the Empire and then attempts to explain its progress to Great Britain and its integration into Saxon law. At this point, Wilson's use of the term "common law" becomes prominent. Both customary law and common law are inseparable from his theory of consent. At times, he even equates the two terms, describing common law as that "founded on long and general custom", and then asking, "On what can long and general custom be founded? Unquestionably, on nothing else, but free and voluntary *consent*."<sup>103</sup> Like customary law, he defines common law as unwritten law, but says that it can have written expressions:

We have mentioned the common law, as a law which is unwritten. When we assign to it this character, we mean not that it is merely oral, and transmitted from age to age merely by tradition. It has its monuments in writing; and its written monuments are accurate and authentick. But though, in many cases, its *evidence* rests, yet, in all cases, its *authority* rests not, on those written monuments. Its authority rests on reception, approbation, custom, long and established. The same principles, which establish it, change, enlarge, improve, and repeal it. These operations, however, are, for the most part, gradual and imperceptible, partial and successive in a long tract of time. It is the characteristick of a system of common law, that it be accommodated to the circumstances, the exigencies, and the conveniencies of the people, by whom it is appointed. Now, as these circumstances, and exigencies, and conveniencies insensibly change; a proportioned change, in time and in degree, must take place in the accommodated system. But though the system suffer these partial and successive alterations, yet it continues materially and substantially the same.<sup>104</sup>

This quotation provides an essential overview of Wilson's conception of the common law. Four main points appear the paragraph: first, the common law is unwritten and orally passed on to successive generations; second, it has written reflections that testify to its authority; third, the actual authority of the common law finds its source in the people, who have the ability to accept or reject it. Finally, the people have the ability to change the common law over time, but even as they change it, the common law remains essentially the same. Thus, the common law may be confirmed through written means,

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God, and an ordinance of wise men for correcting both voluntary and involuntary faults, a common agreement of the city, and in accordance with which it befits all those in the city to live).

<sup>102</sup> Harries (1999) 58; cf. Millar (2002) 63.

<sup>103</sup> Wilson (1804) 1:206-207.

<sup>104</sup> *Ibid.* 2:37-38.

such as judicial decisions or actual statutes, but its binding authority rests on custom and therefore on the consent of the people.

Significantly, Wilson's blurring of the distinction between customary law and common law aids him in applying the appellation of "common law" to the legal systems of different countries throughout history. Since he has defined the laws of Greece and Rome as frequently based on the consent of the people and on customary or unwritten law, Wilson also believes the term "common law" applies to their laws, and he is not alone in his definitions of these terms. At one point, he looks for support of his method to Sir Henry Finch's legal treatise, *Laws, or a Discourse Thereof*, written in 1627, which draws attention to Euripides' and Plato's designation of the laws of Greece as "common laws": "It opens the original and first beginning of the common law: it shows the antiquity of the name; it teaches common law to be nothing else but common reason—that refined reason, which is generally received by the consent of all."<sup>105</sup>

This interchanging of the concepts of customary law and common law occurs periodically throughout Wilson's account, and especially in Chapter XII, 'On the Common Law'. For instance, he states that Roman customs were confirmed by common consent,<sup>106</sup> that the term common law need not apply only to the laws of England since the Greek city states also had recourse to such law,<sup>107</sup> that the Lycians were ruled entirely by customs rather than written laws, and that the ancient Britons were governed not by written laws but by the "customary laws of the Druids".<sup>108</sup> In this context of English law, he uses the two terms in close proximity, reaffirming that unwritten laws protect liberty and declaring that "the common law of England is a customary law".<sup>109</sup> Although Wilson particularly views the time until the Norman Conquest as a period marked by adherence to law based on custom and consent,<sup>110</sup> he even sees the days under the early British parliament as a time when the people followed customary law and freely bound themselves to laws of their own choosing.<sup>111</sup>

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<sup>105</sup> *Ibid.* 2:4. See Finch (1759) 74-75 for the longer commentary on the passage from Plato that Wilson has truncated.

<sup>106</sup> Wilson (1804) 1:63-64.

<sup>107</sup> *Ibid.* 2:4.

<sup>108</sup> *Ibid.* 1:99.

<sup>109</sup> *Ibid.* 1:100.

<sup>110</sup> *Ibid.* 2:28.

<sup>111</sup> *Ibid.* 1:207-208.



His summary of the “history of the common law” draws together the various threads of consent and custom into one united tradition of liberty:

We have seen its rise taking place, by slow degrees, in ages very remote, and in nations very different from one another. We have seen it, in its converging progress, run into one uniform system, mellowed by time and improved by experience. In every period of its existence, we find imprinted on it the most distinct and legible characters of a customary law—a law produced, extended, translated, adopted, and moulded by practice and consent.<sup>112</sup>

Thus, Wilson frequently uses the term “common law” to designate an overarching theory of law based on the consent of the people. In an abstract sense, Wilson essentially views common law as a heritage of unwritten law, expressing the general will and social values of a civil community, gaining obligatory force through established tradition and consent, and proving through long usage its ability to promote not only the prosperity and wellbeing of the community as a whole but also the individual freedom and happiness of its members. In his philosophical portrayal of the common law, Wilson makes little distinction between the laws of different nations, focusing rather on the unity they share in upholding the principle of popular consent, and viewing both customary and common law as distinct in this general sense from the statutes of an individual nation

Nevertheless, while Wilson frequently uses the term “common law” as a concept distinct from the customs of a particular state, he is also aware of the written expressions guiding interpretation of the common law and of its specific application to the laws of Great Britain. While he realises the judicial basis undergirding English common law, he is not concerned with analysing the finer points of the common law until his final practical lectures. A reader of Wilson’s lectures, therefore, must be cognisant of the separate meanings Wilson associates with these terms in their different contexts.

Wilson’s frequent equation of common law and customary law do not result from his own lack of knowledge, but rather are the result of his attempt to connect the laws of England with the customary law tradition of Rome. His legal studies under John Dickinson as well as his own writings attest to his thorough knowledge of English

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<sup>112</sup> *Ibid.* 2:28. Cf. Pocock (1975) 340-341 on the English ideology of common law as immemorial custom and the responsibility of each citizen to preserve and refine it.

common law and to his understanding of its history and legal scholars.<sup>113</sup> Clearly, he recognised the distinct application of the term “common law” as it applied to the specific laws and judicial decisions of England, and when using the term “common law” to refer to English statutes and judicial decisions, he avoids employing the term “customary law”, which he appeals to only in the lectures where he examines the nature of law and the philosophy which should govern its use. Wilson’s care is especially evident in the third part of his lectures, where he addresses the rules governing the definitions and punishments for specific crimes. Although he incessantly refers to the statutes as derived from English common law and assumes they are established by consent, Wilson never mentions customary law. Drawing on his extensive knowledge of English law, Wilson summarises the practical role and extent of the common law by turning to Sir Matthew Hale, Chief Justice of the King’s Bench in 1671 and an esteemed writer on English law and jurisprudence. He quotes from Hale’s *History and Analysis of the Common Law of England*, saying that the common law not only regulates and directs the proceedings of the courts, but has further effects:

It guides the course of descents and successions to real estates, and limits their extent and qualifications: it appoints the forms and solemnities of acquiring, of securing, and of transferring property: it prescribes the manner and the obligation of contracts: it establishes the rules, by which contracts, wills, deeds, and even acts of parliament are interpreted.<sup>114</sup>

In speaking of the specific laws adopted by the United States from English common law, Wilson also exclusively uses the term “common law”. For instance, he follows such a practice when he explains how the language of the common law relates to property, and when he explores the use of evidence, the relations between nations, and how the United States Constitution has applied the common law to trials.<sup>115</sup> Therefore, although he never clearly distinguishes between customary and common law, the contexts in which he uses the term common law bear witness to his appreciation of its various shades of meaning.

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<sup>113</sup> Throughout his lectures, Wilson repeatedly examines the opinions of English law cases and scholars. For a modern scholar’s view, see Read (2000) 113 on Wilson’s acquaintance with the English tradition of common law liberties.

<sup>114</sup> Wilson (1804) 1:204-205.

<sup>115</sup> Cf. Wilson (1804) 1:50 on the common law divisions of property; 2:378 on the credibility of evidence used in court; 1:374 on the common law as applying to relations between states; 1:373 on how the national constitution has employed common law principles in its management of trials, prosecutions, and punishments.

Although Wilson's understanding of the English legal tradition and his interpretations of the writings of common law scholars are beyond the limits of this discussion, it is important to recognise that Wilson's presentation of English common law is essentially different than that propounded by Blackstone. For Blackstone, the common law is a purely British construct. It is "that ancient collection of unwritten maxims and customs" which has "subsisted immemorially in this kingdom".<sup>116</sup> The common law, as he presents it, can never be separated from its judicial foundation, since the courts are the "depository of the laws" and their decisions are the "principal and most authoritative evidence, that can be given, of the existence of such a custom as shall form a part of the common law".<sup>117</sup>

Unlike Blackstone, Wilson desires to legitimise his conception of law by locating it in the classical past and supporting it with the authority of the ancient authors, particularly Cicero. Although Blackstone, like earlier common law theorists and like Wilson himself, frequently cites Cicero and admits that some aspects of the common law have connections with Roman law, he views the common law as distinctively British and completely separate from the Roman tradition of civil law.<sup>118</sup> In his opinion, one should not venerate Roman laws and customs "unless we can also prefer the despotic monarchy of Rome and Byzantium" to the "free constitution of Britain".<sup>119</sup> As Blackstone describes it, the English common law developed as a free system, independent of the civil laws of Europe, which he connects with the Roman Empire and Justinian.<sup>120</sup> Wilson, by contrast, presents a much more optimistic and positive view of the freedom of the Roman system and of Roman legal philosophy, and he uses the Roman tradition to support his doctrine of popular sovereignty and consent.<sup>121</sup> Ironically, he attempts to employ Blackstone's arguments in support of his

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<sup>116</sup> Blackstone (1979) 1:17.

<sup>117</sup> *Ibid.* 1:69.

<sup>118</sup> Cf. Blackstone (1979) 1:35, 64, where he admits that some principles of the English common law are traceable to Roman law.

<sup>119</sup> Blackstone (1979) 1:5; cf. 1:73.

<sup>120</sup> Blackstone returns to this theme more than once; for instance, see 1:17-19, 67, 80-82. Cf. Vinogradoff (1968) 97-118 on the influence of Roman law in England; cf. Stein (1999) 56-57, 86-88 on the reception of Roman law in England and Scotland; cf. Stein (1963) 212-216 on the influence of Roman law in Scotland; cf. Ayres (1997) 5 on the tendency to esteem the common law tradition as contrasted with the laws of Justinian.

<sup>121</sup> Cf. Wilson (1804) 2:33 on his argument that Roman jurisprudence operated in England long before the *Digesta* of Justinian was discovered at Amalfi. On this point, although he does not note it, Wilson makes an obvious divergence from Blackstone's account of the *Digesta* and its ensuing influence [Blackstone (1979) 1:17-18].

own case, saying that even Blackstone admits that the common law was founded upon custom and the consent of the people.<sup>122</sup>

In his second set of lectures, Wilson attempts to broaden the understanding of common law not only as it functions as a type of customary law but also as it relates to the English judicial system. After finishing his explanations on the philosophy of law and moving on to address the law as applied to judges in the United States courts, Wilson introduces a more practical and concrete understanding of the common law. The common law, whether of England or of the United States, was expressed primarily through written interpretations that acquired a specific and binding force through judicial decisions. Although Wilson does not indicate that he is referencing Blackstone, he quotes directly from the *Commentaries* to say that “judicial decisions are the principal and most authentick evidence, which can be given, of the existence of such a custom as is entitled to form a part of the common law”.<sup>123</sup> Although Wilson laments their lack of system, he says that English case law decisions, collected over the centuries, and reported by great judges like Lord Coke, Mr. Peere Williams, and Sir James Burrow represent the “precious materials of the common law. These are the authentick experiments, on which a sound system of legal philosophy must be formed.”<sup>124</sup> Wilson views the provisions of common law as operating in a similar manner in the United States within the framework of judicial decisions, written law, and particularly the Constitution.

The connection between unwritten customary law and its written expressions or “written monuments”<sup>125</sup> is undoubtedly complex, partly due to various understandings of a “constitution”. In his presentation of the common law, Wilson attempts to maintain a unity between the authority of the common law and that of written laws and constitutions, while recognising the competing definitions of a constitution. Many British thinkers, he observes, understand their constitution to be the whole system of laws, customs, and institutions of their nation, and others define it in a more limited sense as the balanced form of their government.<sup>126</sup> While he tends to employ the latter

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<sup>122</sup> Wilson (1804) 1:208.

<sup>123</sup> *Ibid.* 2:303. Cf. Blackstone (1979) 1:69.

<sup>124</sup> Wilson (1804) 2:411.

<sup>125</sup> *Ibid.* 2:38.

<sup>126</sup> *Ibid.* 1:427-429. Cf. Wood, G. S. (2006) 610-611 on the American development of the idea of a written constitution and how it differed from Great Britain.

meaning of a constitution, Wilson still holds to the theory that the basis and framework for these written laws and governmental forms is the common law. For instance, in the *Preface* to his lectures, he emphasises that the written statutes of a state only exist in order to supplement and aid the common law.<sup>127</sup> Since it contains the general principles of law, the common law serves as a commentary and an explanation for written statutes, which are applied only when the common law itself is imperfect or inapplicable.<sup>128</sup> Therefore, while the people can express their view formally through elections and direct access to the law-making process, an informal mechanism also exists in the mechanism of the law itself, as the common law and the interpretations of the courts guide the application of prescribed statutes.<sup>129</sup>

Because of the close relationship between common law and written statutes, when addressing the progression of political science throughout history, and more particularly, the evolution of the common law, Wilson describes the unwritten principles of the common law as often overlapping with written law or even forming part of the governmental structure itself. In his explanation of the process in which unwritten customs become inscribed in statute, Wilson makes a direct contrast between the laws dictated by a superior and those accepted on the basis of long-established custom. He personifies the voice of customary law as humbly petitioning for acceptance and saying, “I never intruded upon you: I was invited upon trial: this trial has been had: you have long known me: you have long approved me: shall I now obtain an establishment in your family?”.<sup>130</sup> For Wilson, therefore, the consent that is a necessary condition for law is best gained when a nation inscribes customs in the catalogue of its written statutes.

At the same time, custom also exists alongside of written law. On this topic, Wilson refers to the Twelve Tables. As a form of written law consented to by the people, the Twelve Tables formed the basis for all the later laws of Rome, and particularly for the *responsa prudentum* or the “commentaries of lawyers”, which

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<sup>127</sup> Wilson (1804) 1:vi.

<sup>128</sup> *Ibid.* 1:vi-vii.

<sup>129</sup> On this point, Wilson faces a similar philosophical contradiction to that encountered by the great proponents of English common law. Cf. Pocock (1972) 255 on how the belief that written documents and statements of the common law were expressions of “an immemorial *ius non scriptum*” rested in an uneasy alliance with the fact that different readings of these documents inevitably resulted in various and diverse interpretations.

<sup>130</sup> Wilson (1804) 1:207.

Wilson designates as the *ius non scriptum* in contradistinction to the written laws of Rome.<sup>131</sup> He describes the Twelve Tables as the “foundation of that immense fabrick of jurisprudence, which has extended the influence and the glory of Rome, far beyond the limits and existence of the Roman power”.<sup>132</sup> The written Constitution of the United States, with its delineations of the powers and limitations of the branches of government provides a similar framework for ensuring the popular consent of the people. Like the Twelve Tables, Wilson views the Constitution as protecting custom and popular consent and serving as an overall framework for written law.

The use of custom played an entirely different role in the Roman legal system of Cicero’s time, and precedent served not as an absolute authority but as an important means of argumentation in the courts. In this way, the popular consent of the people as represented by the *iudices* was constantly maintained. For Wilson, however, the decisions of previous judicial cases would serve as binding on later rulings. Still, although through different means, Wilson’s view of popular sovereignty seeks to ensure that perpetual consent guides both the law and its interpretation.

In reading Wilson’s lectures, his audience cannot be forgotten. Wilson’s understanding of custom and written law have a direct application for his students. The Law College of Philadelphia began through the initiation of students preparing for or already engaged in legal practice, who desired to acquire a thorough understanding and instruction in law.<sup>133</sup> In speaking to students who desired to present their cases in court, Wilson continually instructs them not to restrict their studies to the intricacies of written statutes. Instead, he wants them to view law not as a mere occupation for private advantage but as an act of civic participation.<sup>134</sup> Wilson continues his portrayal of the ideal and truly successful lawyer by taking a highly Ciceronian approach. At one point, he indirectly cites the Latin text of Cicero’s *de Oratore* 1.55.236 through the intermediary source of Lord Kaimes of Edinburgh, thus employing both classical and contemporary sources to condemn the type of lawyer who is nothing *nisi leguleius quidam cautus, et acutus praeco actionum, cantor formularum, auceps syllabarum* (except a certain pettifogging lawyer, wary and sharp, a crier of legal suits, a singer of

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<sup>131</sup> Wilson (1804) 2:15.

<sup>132</sup> *Ibid.* 2:15.

<sup>133</sup> Konkle (c.1900) 620.

<sup>134</sup> Wilson (1804) 1:42-44.

formulas, a catcher of syllables).<sup>135</sup> The true lawyer, as Wilson presents him, is one who understands the key principles of law,<sup>136</sup> refrains from using mysterious or professionalised language,<sup>137</sup> and emulates those lawyers and judges who were “distinguished by the accomplishments of an active, as well as a contemplative life”.<sup>138</sup>

If a lawyer is to achieve this standard, he must first comprehend the underlying principles of law and particularly the common law, which Wilson regards as a more important object of study than the niceties of legislative statutes. In applying the decisions of previous cases to current ones, a lawyer must not only employ his knowledge of written statutes but must also know how the common law guides their interpretation in accordance with natural justice and equity.<sup>139</sup> The lawyer, therefore, uses common law as the interpreter of statutory law when arguing cases. Whether his application of the common law is the correct interpretation must necessarily depend on its acceptance or rejection by the court.

In contrast to the concerns of the Anti-Federalists, such as those expressed by the anonymous author of the ‘Centinel’,<sup>140</sup> Wilson does not worry about the possibility of the courts abusing their powers of interpretation. Along with prominent Federalists, he argues that separating the judicial branch of the government will help ensure liberty.<sup>141</sup> Most importantly, however, Wilson’s apparent nonchalance toward the possibility of judicial tyranny can be traced back to his doctrine of popular consent. The sovereign power of law residing in the people at large gives them the moral right to change or alter law, while the newly-established constitution ensures that those rights are protected.<sup>142</sup> The remedy for judicial oppression is built into the system itself. Flexibility and the perpetual continuance of popular interpretation of the common law are still maintained. If a court should attempt to establish a binding precedent based on an interpretation of common law that defies popular custom, the people are able to reverse it and to impose their own interpretation.

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<sup>135</sup> *Ibid.* 1:43.

<sup>136</sup> *Ibid.* 1:14.

<sup>137</sup> *Ibid.* 1:10.

<sup>138</sup> *Ibid.* 1:44.

<sup>139</sup> *Ibid.* 2:407, 411.

<sup>140</sup> Ketcham (1986) 232-233; cf. 246 on the views expressed in the Pennsylvania Minority.

<sup>141</sup> Wilson (1804) 1:405-408. Cf. Willis (1982) 394 on Hamilton’s argument in *Federalist Paper Number 78*.

<sup>142</sup> Wilson (1804) 1:417-422. In this respect, Wilson believes that the United States has surpassed Great Britain, which fails to fully protect the principle of popular consent.

Thus, the consent of the people continues to function as the underlying foundation of Wilson's political philosophy. Through popular consent, Wilson argues, the colonies fully possess the right either to accept or to discard the provisions of the common law inherited from Great Britain. Although he conceives of the colonies as remaining under the rules of the English common law and benefiting by their adoption, and he later praises the United States Constitution for accepting and following the maxims of the common law, Wilson remains convinced that England could not legitimately force the colonies to abide by all the laws of parliament.<sup>143</sup> Instead, since the "rules of the common law are introduced by experience and custom; so they may be withdrawn by discontinuance and disuse".<sup>144</sup> On this basis, those parts of the common law which proved inapplicable or unhelpful to the circumstances of the colonies could be rightfully rejected. In short, common law provisions, founded as they are upon custom and popular consent, may be used or abandoned in accordance with their usefulness and general acceptance in a civil society. Although he commends the colonies for applying the common law more fully than even their British contemporaries,<sup>145</sup> Wilson also maintain that it was fully within their authority to reject it simply by disuse.<sup>146</sup> In jettisoning a common law statute, one can still retain the fundamental principle of the common law, which is "consent given after long, approved, and uninterrupted experience".<sup>147</sup>

For Wilson, therefore, the doctrine of popular sovereignty rests on the basis of consent. Since custom "necessarily carries with it intrinsick evidence of consent", popular sovereignty is not only evidenced through the direction legislation and votes of the people, but is especially revealed through unwritten customary law and statutory laws based upon the common law.<sup>148</sup> Furthermore, the consent of the people is both indivisible and continuous, remaining at all times in their power to grant or to withdraw; therefore, popular sovereignty implies not only the right to consent to the establishment of laws and governmental forms, but also to do away with them.

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<sup>143</sup> Cf. Wilson (1804) 2:48-55 on his account of the history and governance of English law in the colonies.

<sup>144</sup> Wilson (1804) 2:53.

<sup>145</sup> *Ibid.* 2:29.

<sup>146</sup> *Ibid.* 2:53.

<sup>147</sup> *Ibid.* 1:200.

<sup>148</sup> *Ibid.* 1:204-205.



In Wilson's opinion, Blackstone and other English writers who accepted the supreme authority of the legislative branch of government acted inconsistently with the principles governing Britain's original laws and institutions; accordingly, Wilson argues that in separating from Great Britain the American colonies were reverting back to the spirit of the Magna Charta and to a far older and more established legal tradition of consent.<sup>149</sup> Thus, he supports his justification of the American Revolution with legal terminology and a specific interpretation of law. This "common-law interpretation of history", which views the unwritten laws of time and experience as providing the highest legal authority in the present, forms an inherent part of Wilson's perspective.<sup>150</sup> By locating the origins of the common law in the "customary laws" of Rome, he is able to justify the American Revolution not only in the discourse of the English tradition but also in the language of the classics. Thus, Wilson forms a conception of popular sovereignty that bears directly upon the practical politics of his time and that legitimises the course of action taken by the American colonies.

### 3. Wilson's slant on Cicero

As seen in the previous section, Wilson believes Republican Rome functioned as a democracy, although in a less complete form than that perfected in the Constitution and representative system of the United States. Primarily, he supports this perspective not from Cicero, but from Livy, whom he quotes in order to establish his argument that the Roman people were sovereign in ratifying and consenting to the laws by which they were governed.<sup>151</sup> Other contemporary sources and histories on Rome also influenced his overall perspective of the laws and customs of the Roman Republic. Although Wilson primarily derives this historical view apart from Cicero, he nevertheless reads Cicero as concurring with this picture of the Roman Republic and uses Ciceronian quotations to reinforce his belief that the Roman source of sovereignty rested in the people.

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<sup>149</sup> *Ibid.* 2:44.

<sup>150</sup> Pocock (1957) 51; cf. 33-35 on the common law mindset and tradition; cf. Zetzel (2001) 85 on the similarity between Cicero's account of the formation of the Roman constitution in *de Republica* and the English understanding of the superiority and authority of common law.

<sup>151</sup> See above, pp. 91-92.

Many of the Ciceronian quotations Wilson employs refer to a natural or higher law, such as those from *de Natura Deorum*, *de Republica*, and *de Legibus*, and he uses them to support his interpretation of an outside standard that all humankind should obey.<sup>152</sup> To support his contention that Cicero's philosophy upholds the right of the people to consent to and change their laws, he uses a few key quotations. The first quotation is that from *de Officiis* 2.12.41-42, which Wilson translates as saying that the early kings were chosen by the people; thus, he reads it as denoting a type of popular sovereignty even under the monarchy where the people had a direct role in the government and were the final authority, especially because if they were "disappointed in this reasonable demand" of requiring just kings with good character, they had "recourse to general law, which spoke one language to all".<sup>153</sup> At this point, Wilson's translation reflects the inseparable connection he draws between higher law and resistance. While he links these concepts together in his readings of Cicero, garnering support for his conclusion that a people may resist unjust written laws or governments which violate the principles of natural law, Wilson is undoubtedly influenced by the more modern strands of political thought that developed and emphasised such theories.<sup>154</sup>

The other two quotations Wilson uses to strengthen his perception that the laws and philosophy of the Roman Republic protected the principles of democracy come from Cicero's judicial speeches. In Wilson's examination of the natural rights of individuals, although he does not provide an English translation, he footnotes the *pro Milone* 4.10-11:

*Est igitur, iudices, haec non scripta, sed nata lex; quam non didicimus, accepimus, legimus; verum ex natura ipsa arripuimus, hausimus, expressimus; ad quam non docti, sed facti, non instituti, sed imbuti sumus; ut si vita nostra in aliquas insidias, si in vim, si in tela aut latronum aut inimicorum incidisset, omnis honesta ratio esset expediendae*

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<sup>152</sup> See above, pp. 53-56.

<sup>153</sup> Wilson (1804) 1:391. This passage forms an important part of several of Wilson's key arguments; therefore, I have referenced it in both the general discussion of Wilson's use of Cicero in chapter two (see above, pp. 67-68) as well as in the section of Wilson's history of popular sovereignty (see above, pp. 92-93).

<sup>154</sup> Cf. Skinner (1978) 2:338-348 for a helpful overview of the formulation of theories of popular sovereignty and resistance in Scotland. Wilson's reliance on the works of theorists like Pufendorf, Locke, Reid, and others for his natural law theories has also been noted (see above, p. 74 n. 5). The use of Cicero in arguments for higher law and resistance also occurs in writings likely unknown by Wilson, such as Jacob Heyndrix's argument in 1582 that the Netherlands were justified in resisting Philip II of Spain. See Gelderen (1993) 173, 177, 185, 224 for Heyndrix's treatise on *Political Education*, which employs the same quotation from *Off.* 2.12.41-42 and argues that *de Officiis* as a whole supports the justice of their cause.

*salutis: silent enim leges inter arma; nec se expectari iubent, cum ei qui expectare velit, ante iniusta poena luenda sit, quam iusta repetenda.*<sup>155</sup>

This is therefore, O judges, a law not written but born; which we have not learnt, received, or read, but in truth which we have absorbed, drunk, and wrung from nature herself; a law which we were not taught but to which we were made, not in which we were trained but which was ingrained; that if our life should have fallen into any traps, into violence, into the weapons either of robbers or enemies, every method of procuring safety would be honourable: for laws are silent when one is attacked; they do not command that one wait for their assistance, since he who wishes to await the laws, will first pay an unjust penalty, before he may claim a just recompense.

In the context of the speech, Cicero is distorting the facts and attempting to portray Milo's murder of Clodius as an act of self-defence.<sup>156</sup> His argument that the natural law of self-defence permits a man to protect his own life, however, is still valid: since the written laws cannot restore an undeserved loss of life, a man has the right to defend himself in situations where physical violence is threatened. While applying Cicero's reasoning primarily to the defence of life, Wilson broadens its application to include other rights he believes are guaranteed by nature, such as liberty, property, and the right to choose the laws by which one is governed, and he views the preservation of such rights as permitted by natural law even when one must defend those rights against a political authority.<sup>157</sup> Therefore, he regards the protection of life as only one expression of the natural *lex* mentioned by Cicero in this quotation. Wilson would not view himself as incorrectly reading Cicero, however, since he views the quotation as relating to other Ciceronian passages that he cites in his lectures, such as *de Republica* 3.22.33, which speaks of an unwritten and eternal *lex* governing all nations.

The final quotation employed by Wilson in the context of popular sovereignty is the oft-repeated statement from *pro Cluentio* 53.146: "law is fundamental to liberty ... we are all servants of the law, so that we may be free".<sup>158</sup> This opinion, Wilson believes, reveals "internal evidence of consent",<sup>159</sup> since the people are agreeing together to obey the laws; liberty can only exist with obedience, but this submission to

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<sup>155</sup> Wilson (1804) 2:496. Wilson's Latin text differs in two instances from the 1692 edition, which employs "*expectari*" and "*expectare*" rather than "*expectari*" and "*expectare*".

<sup>156</sup> Cf. Lintott (2008) 33-34, 119-120 for a brief examination of Cicero's manipulation of the facts of the case.

<sup>157</sup> Wilson (1804) 2:496. Cf. Wright (1931) 281-285 on the centrality of natural law in Wilson's philosophy and in his method of applying it to public policies; cf. Hamburger (1993) 908-909, 922-929 on the view in the American founding that natural rights were subject to natural law. For more bibliography on the general subject of natural law and Cicero's influence in its formation, see below, p. 163 n. 245.

<sup>158</sup> For the whole of this quotation and Wilson's contextualisation of it, see above, p. 38.

<sup>159</sup> Wilson (1804) 1:100.

the law also indicates the people's position of freedom in consenting to it. In the *pro Cluentio*, Cicero urges the jurors to decide on the basis of law and not on preconceived judgements formed from the accusation that in a previous case Cluentius falsely accused his father-in-law of murder and bribed the jury. In this context, Cicero's main purpose is not to present a philosophical argument or an examination of the precise purpose and function of law. Rather, he is employing a rhetorical strategy by focusing his audience's attention on the sanctity of law and attempting to sway their opinion of the case. Wilson's repeated use of this quotation for a didactic purpose within the framework of his lectures and within his study of political thought overemphasises Cicero's rhetorical topos. Nonetheless, Wilson pinpoints the subtle correlation made between law and true liberty in the *pro Cluentio*.<sup>160</sup> While he does not distinguish between Cicero's various approaches in his philosophical and rhetorical works, Wilson identifies aspects of popular sovereignty in the speeches and uses Ciceronian concepts and phraseology for his own purposes.

Wilson draws a final conclusion from the *pro Cluentio* passage that is unsubstantiated by the text. Attempting to respond to Pufendorf, who criticises the Romans for describing their laws as "common agreements",<sup>161</sup> Wilson appeals to Cicero's statements in the *pro Cluentio* for confirmation of his argument that custom not only invests law with the power of compelling obedience but also serves as evidence of popular sovereignty. While Wilson's view is not necessarily inconsistent with Cicero's philosophy, Wilson is using the quotation from the *pro Cluentio* in a context of customary law, whereas in the actual case Cicero was referring solely to written law.

Although he attempts to connect his history of customary and common law with Cicero's texts, on this point Wilson is clearly departing on his own philosophical trail and constructing an angle on law founded not upon Cicero but upon his own view of custom and consent. Nevertheless, while Wilson's connection of common law and customary law is not based on Cicero's writings, Cicero does place a special significance on unwritten law. For instance, in his early *de Inventione*, Cicero

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<sup>160</sup> Cf. Wirszubski (1950) 7 on the implied distinction the *pro Cluentio* makes between *libertas* and *licentia*, with liberty being enjoyable only under law. Wilson takes a similar position throughout his lectures; indeed, his whole theory of popular sovereignty is limited by the view that the people are only free to act in accordance with virtue and justice.

<sup>161</sup> Wilson (1804) 1:100; cf. 1:199.

emphasises that an advocate can argue in opposition to written *lex* if an action is in accordance with the principles of justice and equity, because no law can require an *inutilem* (inexpedient) or *iniquam* (unjust) act; moreover, an effort to follow the intent of the law may even require an individual to disregard written statutes.<sup>162</sup>

Cicero's general understanding of law also points to the weight he accords unwritten law. Although he avoids providing a precise definition of law, in *Topica* 5.28, Cicero offers a definition of the law's divisions that supports the joint authority of both written law and unwritten tradition, since the *ius civile* consists of *legibus, senatus consultis, rebus iudicatis, iuris peritorum auctoritate, edictis magistratuum, more, aequitate* (written statutes, senatorial decrees, judicial decisions, the opinions of experts in the law, the edicts of magistrates, custom, and equity). Even when arguing the *pro Cluentio*, Cicero tells the jury they should take into account not only *lex*, but also *religio, aequitas* and *fides*,<sup>163</sup> thereby reminding the people of their responsibility to set aside prejudice and to uphold the written laws and the unwritten traditions of justice accepted by the community as a whole. Thus, the language of the courtroom reveals the public need for decisions to be justified not only through written law but through principles based on ancient custom and equity. As Harries notes, "in a given theoretical case, arguments could be advanced for written law, on the one hand, and, on the other, the case for proportional fairness, or *aequitas*. Knowing law was furthered complicated by a third element, custom, or *consuetudo*."<sup>164</sup>

Unwritten law in the Roman Republic, therefore, attests to the role of popular consent, especially since the people, as represented through the *iudices*, could constantly reinterpret the law in light of unwritten custom and equity. Although this regard for customary law is not equivalent to Wilson's conception of popular sovereignty, it shows the importance Cicero placed on public consent.

For Wilson, however, popular sovereignty meant not only consent but a direct involvement in the state and an authority over its laws and forms of government.

Unlike Cicero's distinction between the people as an entity of the mixed government

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<sup>162</sup> Cic. *Inv.* 2.47.138, 2.48.141. As an example of deduction or syllogistic reasoning, Cicero retells the story of Epaminondas, the Theban general, who won a great victory through neglect of the written statutes (*Inv.* 1.33.55-56, 1.38.68-69). Although Cicero is using this as an example rather than actually arguing the point, it demonstrates the pattern of argumentation that could take place in the courts.

<sup>163</sup> Cic. *Clu.* 50.159

<sup>164</sup> Harries (2006) 152.

and the people as the whole body of citizens, Wilson unites the two. Viewing the people as separate from the mixed form of government and as continuously holding sovereign power to alter the government or its laws, in practical terms Wilson maintains that the majority should have the greatest influence in the state.

Thus, even if Cicero views the senate's role as advising and guiding the people rather than as possessing the real power behind legislation, Wilson's philosophy still diverges from the aristocratic tendency of Cicero's thought. While Cicero appeals to the elite to pilot the Republic through the dangers besetting it, Wilson appeals to the citizen body. Although a firm supporter of the consolidated national government and one of the main writers of the Constitution, Wilson's trust in the common man resembled the sentiments of the Anti-Federalists, who believed civic virtue and local representation would be sufficient to prevent the evils of factions and to retain the unity of the states.<sup>165</sup>

Broadening Cicero's conception of popular consent, Wilson abandons the view of an elite body of citizens governing the people. Instead, he makes no distinction between the elite and the common citizens, and rather than fearing the dangerous impulse of this class of citizens, he trusts in their virtue and their ability to govern themselves.<sup>166</sup> On one level, the similarity with Cicero still remains, since Wilson also believes that the people should choose from among themselves men to govern them who are most excellent in education and experience, and that these representatives must serve as examples to the rest in knowledge and character. Additionally, Wilson admits that a proper deference to individuals possessing wisdom and authority is necessary in a stable society.<sup>167</sup> Nonetheless, Wilson looks to all citizens to hold the leaders accountable rather than looking to the representatives to direct the citizens.<sup>168</sup> He asserts that, in contrast to the British constitution, which upholds the institution of the

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<sup>165</sup> Cf. Ketcham (1986) 270-280 for these anti-federalist views expressed by 'Brutus'; cf. 208 for Patrick Henry's speech before the Virginia Ratifying Convention; cf. Wood, G. S. (2003) 90-91 on the general Anti-Federalist position.

<sup>166</sup> Wilson did uphold the franchises of the respective states and supported the provision in the federal constitution allowing the states to determine their own voting qualifications [Wilson (1804) 2:131]. In this sense, therefore, a type of qualified majority exists in the system, although in many cases, the qualifications of an elector did not even include a property requirement but were simply based on paying the tax. Regardless of the system itself, however, in theory Wilson does not differentiate between classes.

<sup>167</sup> Wilson (1804) 2:303.

<sup>168</sup> *Ibid.* 1:436. Cf. Pocock (1975) 519 on the similar viewpoint in English politics that emphasised the virtue of the people rather than that of their representatives, who were in danger of becoming corrupted while in office by the lure of power and ambition.

nobility in order to promote public virtue and to form a barrier between king and people, the United States has no “separate orders of men”.<sup>169</sup> Although Wilson believed the most virtuous and gifted should be elected, a perspective which Manin labels a “défense de l’aristocratie naturelle” entailing that “les représentants ne seraient pas *comme* leurs électeurs et ne devaient pas l’être”,<sup>170</sup> Wilson looked to a educated and virtuous public who would desire, praise, and perceive these qualities in those they elected from among themselves. Based on the premise that all citizens are equal in their nature and in their rights, he argues that the discretion of the citizens may be trusted in their choice of representatives and maintains that those endowed with governing powers must be a “faithful echo of the voice of the people”.<sup>171</sup>

Fundamentally, Wilson’s perspective was shaped by the specific form of tyranny he perceived in the colonial states—not the despotism of a king or individual, but that of an elite nobility, namely Parliament. This view is reflected in his readings of Cicero, which apply Cicero’s denunciations of tyranny and calls for freedom to the circumstances of his own age. Cicero, however, is concerned not with the tyranny of the senate but with that of a dictator such as Caesar or Antony. While he says in *de Republica* that an aristocracy can result in tyranny,<sup>172</sup> thus qualifying it as an illegitimate form of a state, the situation serving as the subtle backdrop to his final writings is his desire to uphold the authority of the senate against the tyranny of an individual.

Still, Cicero views the destruction of the tyrant as essential in upholding the liberty of the people. In a letter to Atticus on 27 April 44 B.C., he notes that tyranny still exists in the Republic and regrets that the Ides of March *libertatem populo Romano non dederunt* (did not impart liberty to the Roman people).<sup>173</sup> Again, in his appeal to Brutus in December 44, Cicero beseeches him to take action and to free the Republic from tyranny on behalf of the *senatus populusque Romanus*.<sup>174</sup> A final instance occurs in the *Second Philippic*, when in a grand storm of eloquence, he recalls his former defence of the *res publica* and professes himself willing to die if by so doing the

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<sup>169</sup> Wilson (1804) 1:435.

<sup>170</sup> Manin (1995) 155; cf. Mansfield (1991) 115, 131-132 on the view that representation combines the benefits of democracy and aristocracy.

<sup>171</sup> Wilson (1804) 1:433; cf. 1:108, 441.

<sup>172</sup> Cic. *Rep.* 1.28.44

<sup>173</sup> *Ibid.* *Att.* 14.14.

<sup>174</sup> *Ibid.* *Fam.* 11.5.

*populum Romanum liberum reliquam* (the Roman people may remain free).<sup>175</sup> Thus, the theme persists throughout his writings that he is heeding the voice of the *populus Romanus* and acting on their behalf to restore freedom to them and to the Republic. While Cicero is likely exploiting the language of popular sovereignty and in actuality desires a return to senatorial authority,<sup>176</sup> he still affirms the necessary role of the people. Liberty, as he understands it, is compatible with both the freedom of the people and with the guiding influence of the senate and ultimately consists in the protection of both.<sup>177</sup>

For Wilson, however, consent serves as the basis of sovereignty, an indivisible principle continually residing in the people and allowing them the freedom to alter or abolish their government. In a sense, Cicero's struggle against the tyranny of Antony could be more properly compared with the attempt of the English barons to limit monarchical power at Runnymede. Wilson, on the other hand, views himself as striving against Parliament in order to limit the power of the aristocracy and to place all sovereignty in the possession of the people. Although he still advocates a mixed constitution, the people are separate from this division of government and the sovereignty they possess cannot be divided. The mixed constitution, therefore, balances only the governmental powers of the executive, legislative, and judicial branches, while the people remain distinct from the government. Even in assigning powers to those in the government, the people possess the "sovereign power", which is expressed through the written constitution.<sup>178</sup> Since sovereignty remains solely with the people, they may act at any time to change the law or to remove any of the powers previously entrusted to the government.<sup>179</sup> Wood rightly notes that Wilson's innovative theory of sovereignty extended further than that offered by earlier political thinkers: not content with arguing that "all governmental power was *derived* from the people", Wilson went a step further and insisted that "all governmental power was only a temporary and limited agency of the people – out, so to speak, on a short-term, always revocable, loan".<sup>180</sup> Thus,

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<sup>175</sup> *Ibid. Phil.* 2.46.118-119.

<sup>176</sup> Lintott (2008) 377; Brunt (1988) 330-331.

<sup>177</sup> Cf. Cic. *Sest.* 65.137 on Cicero's view of the senate as the *custos*, *praeses*, and *propugnator* of the Republic and of its role in protecting and increasing the liberty of the people.

<sup>178</sup> Wilson (1804) 1:417-418; cf. 1:82-83, 185, 439.

<sup>179</sup> *Ibid.* 1:25, 160, 190.

<sup>180</sup> Wood, G. S. (2006) 621-622.



Wilson's more modern conception of sovereignty cannot be applied accurately to the Ciceronian texts.

In terms of the larger picture, two main points appear regarding the way Wilson slants Cicero's principle of popular consent. First, although Wilson's view of the democratic nature of the Roman Republic assumes a greater involvement and authority in political affairs than that presented by Cicero, this view is not without support. Wilson's selection and application of Cicero's quotations overemphasises the democratic element of his position and overlooks its aristocratic tendencies; nevertheless, he aptly employs the discourse of popular consent from the Ciceronian texts.

At the same time as he uses Cicero to support his arguments for popular consent, Wilson recognises that he is developing broader applications of Cicero's principle. Although Wilson is able to divine from the fragments of *de Republica* that Cicero endorsed a mixed constitution as the best type of government, he says that in the United States the principle of popular sovereignty has been more perfectly achieved through the benefits of a written constitution and the theory of representation.<sup>181</sup> Wilson's approach to the classical texts, therefore, is governed by this conscious attempt to derive principles from them that he can adapt and apply to the political structures of his own time. Drawing on the concepts of freedom, tyranny, and popular consent used by Cicero, Wilson deliberately conceptualises them within his own framework of thought.

The second main point regarding Wilson's slant on Cicero is that while Cicero does not link popular sovereignty and revolution, Wilson does link these two concepts in an attempt to follow what he conceives to be the logical outcome of Cicero's arguments. Though speculative, it is worthwhile to note that Wilson could have constructed a more solid case for popular sovereignty in Cicero's works if he had not lacked the portions of *de Republica* now available. Although the fragment of *de Republica* 1.25.39 containing the definition of a *res publica* and a *populus* was transmitted through Augustine's *de Civitate Dei*, Wilson lacked the surrounding context. On both a legal and philosophical basis, it is possible to read *de Republica* as promoting a distinction between legitimate and illegitimate rule, and the definitions it provides of a people and of a state would appear to imply that if a state or its laws

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<sup>181</sup> Wilson (1804) 1:416-417, 429.

ceased to be just, an individual may act to place the state upon a legitimate basis once again. It would have been a simple step for Wilson to apply this notion of legitimacy in defence of the American Revolution. Significantly, although he lacked much of *de Republica*, Wilson skilfully employed the quotations he did possess from this text, along with others from Cicero's works, to support his conclusion that the existence of a higher law of reason allows for the preservation of true law and justice even to the point of revolution. While he takes the argument further than the texts warrant, his very attempt to construct a legal justification of civil disobedience is an imitation of Cicero's own approach.

Although Wilson consistently applied his doctrine of popular sovereignty to his practical decisions, whether as a lawyer or a judge, he did not believe the will of the people could be accepted as the absolute law. In his conception of popular sovereignty, the people are not only placed in a position of authority that allows them to change and alter the laws whenever they see fit, but they are also circumscribed by a defined set of moral and political duties. The individual citizen is bound to obey the laws he has chosen, not only because he desires to protect the common interests and thereby to preserve the state, but primarily because of a personal obligation to observe the principles of virtue and justice. As will be seen in chapter four, Wilson's perception of civic virtue is more consistent with a Ciceronian viewpoint than his attempt to base his doctrine of popular sovereignty on the authority of Cicero's texts.

## Chapter 4: The good citizen as the foundation of the state

*The chief task of philosophy in all ages has consisted precisely in finding the connection that necessarily exists between personal and common interests.*

Leo Tolstoy, *Anna Karenina*

Cicero's conception of the good citizen functions as a necessary backdrop to Wilson's doctrine of popular sovereignty. On a basic level, some degree of civic virtue must inevitably supplement a trust in popular sovereignty, since without virtue the state will inevitably degenerate into a democracy characterised by lawlessness, ruled only by the *effrenatam insolentia multitudinem* (the arrogance of the unbridled mob).<sup>1</sup> Although Wilson accepts the checks and balances promoted by the Federalists as a means of ensuring both virtue in leaders and permanence in political institutions,<sup>2</sup> he chiefly depends on the people themselves to maintain a stable form of government. In the *Law Lectures*, Wilson employs Cicero's understanding of the good citizen as a fundamental support to his own theory of popular sovereignty and primarily relies on quotations from *de Officiis* in his exposition of civic virtue. While Wilson spends significantly less time addressing civic virtue than popular consent and does not provide an extensive analysis of Cicero's quotations, the text of *de Officiis* offers a comprehensive account of the *civis bonus* and the necessary connection Cicero draws between individual virtue and the stability of the state. Therefore, the main part of this chapter focuses on Cicero's development of the *civis bonus* from *de Officiis*, and then it progresses to Wilson's view of civic virtue and his slant on Cicero.

### 1. Cicero's conception of the good citizen in *de Officiis*

In *de Officiis*, Cicero offers a focused analysis of the good citizen as distinct from the purely political statesman of his earlier treatises. At times in his other treatises, Cicero's idealisation of the statesman orator who willingly takes the helm of the state and directs it in peace and turmoil overlaps with the duties he ascribes to the individual citizen. What separates the description of the statesman given in earlier treatises from

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<sup>1</sup> Cic. *Rep.* 1.42.65.

<sup>2</sup> Wilson (1804) 1:393.

that of *de Officiis* is the innovative and binding connection Cicero makes between private virtue and active statesmanship, between the good man and the good citizen. This section explores Cicero's conception of the good citizen and demonstrates its centrality in his effort to reshape the political culture of the Republic. The ethical duties of daily existence thus become not only an integral part of the state but in fact the very basis of the Republic.

### 1.1. Context of *de Officiis*

Cicero composed his final philosophical treatise in autumn 44 B.C. The detailed correspondence he maintained throughout the months of uncertainty after the assassination of Julius Caesar in March reveals Antony's bid for power, the failing attempt to restore the Republic, and Cicero's own indecision. Originally full of optimism that Caesar's death would assure the future of the Republic, Cicero began to realise that the Ides of March did not fulfil their hopes and that *vivit tyrannis, tyrannus occidit* (the tyranny lives, though the tyrant is dead).<sup>3</sup> While he agreed with Antony's confirmation of Caesar's *acta* in the senate meeting on 17 March, it was only on the basis of peace and tranquillity.<sup>4</sup> Indeed, Cicero looked upon it as a political concession that Antony had subsequently abused to increase his own authority.<sup>5</sup> As he writes to Atticus, *quae enim Caesar numquam neque fecisset neque passus esset, ea nunc ex falsis eius commentariis proferuntur* (for policies which Caesar would never have composed nor allowed are now being produced from his falsified notebooks).<sup>6</sup>

However, under the current circumstances and while Antony was consul, it appeared that little could be accomplished, and Cicero was concerned about his own safety, the possible threat of civil war, and the lack of confidence they could place in the young Octavian.<sup>7</sup> Additionally, he had received conflicting reports of his son's progress in Athens, where Marcus was pursuing his studies, and Cicero desired to see him.<sup>8</sup> En route to Athens where he planned to visit Marcus, Cicero received news of the senate

<sup>3</sup> Cic. *Att.* 14.9.2; cf. 14.12.1, 14.14.3.

<sup>4</sup> Cic. *Phil.* 1.16.

<sup>5</sup> Cic. *Fam.* 12.1.1-2

<sup>6</sup> Cic. *Att.* 14.13.6; cf. *Phil.* 2.39.100; *Off.* 2.7.23.

<sup>7</sup> Cic. *Att.* 14.12.2, 14.13.2 and 4, 14.22.2, 15.10.1, 15.12.2, 15.18.2.

<sup>8</sup> *Ibid.* 14.16.3, 15.16.1

meeting scheduled for 1 September at which it was hoped that Antony would yield to the authority of the senate, and he returned to Rome.<sup>9</sup>

He writes to Atticus from his estate at Puteoli near the end of October 44, not only sending him the recently completed text of the *Second Philippic* but also mentioning *de Officiis* for the first time, saying that he is composing a marvellous work on the subject of *καθῆκον* addressed to his son.<sup>10</sup> In another letter to Atticus, dated 5 November, Cicero writes that he has finished the first two books of *de Officiis*, and plans to finish the third after he receives a copy of Posidonius' book dealing with the apparent conflict between moral duty and expediency.<sup>11</sup> At the same time, he was in correspondence with Octavian, who was urging him to return to Rome and take an active role.<sup>12</sup> The final mention of *de Officiis* occurs in a letter to Atticus later in November, where he further defends his translation of *καθῆκον* as "*officium*".<sup>13</sup> By 9 December, he had returned to Rome, as is attested in a letter to Brutus, in which he declares his own commitment to the Republic and entreats Brutus to liberate it from tyrannical rule for the sake of the *senatus populusque Romanus*.<sup>14</sup> Thus, *de Officiis* was likely finished only a year before Cicero's death in December 43 and in the midst of much political doubt and turmoil. These circumstances and his relation to public events inevitably led to a hasty writing of the work and prevented him from an attempt at careful revision.<sup>15</sup>

*De Officiis* reflects Cicero's position in regard to the political situation in which he finds himself. For a time, due to political necessity, he had acquiesced with Caesar's rule and policies,<sup>16</sup> but now in *de Officiis*, Cicero freely condemns his tyranny, policies, and destruction of law and justice.<sup>17</sup> Since his initial display of approval on the Ides of March, Cicero recognised that his joy at Caesar's death could not be recalled. In a letter to Atticus, he notes with concern that if civil war should arise, it will not be possible as

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<sup>9</sup> *Ibid.* 16.7.1-2.

<sup>10</sup> *Ibid.* 15.13.1, 6.

<sup>11</sup> *Ibid.* 16.11.4

<sup>12</sup> *Ibid.* 16.11.6

<sup>13</sup> *Ibid.* 16.14.3

<sup>14</sup> *Cic. Fam.* 11.5.1.

<sup>15</sup> Dyck (1996) 9.

<sup>16</sup> *Cic. Fam.* 4.4.4. Cf. *Cic. Att.* 11.7.3-5, 11.8.2, 12.51.2; cf. Shackleton Bailey (1971) 186-200 on Cicero's life under Caesar.

<sup>17</sup> *Cic. Off.* 1.8.26, 2.7.23, 2.24.84, 3.21.82-84. Cicero's bitterness against Publius Clodius is not forgotten in his personal attacks (2.17.58).

previously, to take neither the one side nor the other.<sup>18</sup> Although Caesar's legacy remained an issue of fierce debate in Roman politics, Cicero knew that he could not retract the view that Caesar's reign was a tyranny and his murder was justified on behalf of the Republic. Thus, at this time of political ambiguity and fluctuation, while writing *de Officiis* and the virulent *Second Philippic*, Cicero was forming a determined denunciation of Caesar and taking an irreconcilable stand against Antony. Despite Caesar's death, the Republic and senatorial authority were not reinstated. In contrast to the theme of strengthening the Republic that Cicero emphasises in earlier philosophical treatises like *de Republica*, he now frequently laments the loss of the old political system,<sup>19</sup> but portrays himself as working for its restoration.

On occasion throughout the text, an apparent contradiction appears in Cicero's approach as he depicts himself both as writing in retirement but also engaged in active service for the state. He feels the decline in his position and influence, saying that he consoles himself with writing philosophy since he is deprived of public duties (*rei publicae muneribus*) and is exiled from the senate and the forum.<sup>20</sup> Nevertheless, Cicero is not willing to divorce himself from politics and depicts himself as one with the qualifications and willingness to re-enter public life and to guide the state. In the end, despite his common complaints about his inability to engage in oratory and statecraft, Cicero believes he still has an active service to perform. Indeed, he believes that he is currently fulfilling that duty, since he would be in Athens giving instructions to his son Marcus, were it not that *me e medio cursu clara voce patria revocasset* (with a loud voice my country recalled me from the midst of my travels).<sup>21</sup> Thus, although he wryly mentions to Atticus that writing is his only occupation,<sup>22</sup> *de Officiis* and his other works become an aspect of the centre role he is taking in the political arena, as the struggle for the senate and the destiny of the Republic are determined.<sup>23</sup> This portrayal of himself as serving the state in retirement not only justifies his past inactivity under Caesar, but also assists in defining his political image and preparing for future engagement in politics.

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<sup>18</sup> Cic. *Att.* 14.13.2.

<sup>19</sup> Cic. *Off.* 1.11.35, 2.8.29, 2.8.29, 3.1.4.

<sup>20</sup> *Ibid.* 2.2.6, 3.1.2.

<sup>21</sup> *Ibid.* 3.33.121.

<sup>22</sup> Cic. *Att.* 16.11.3.

<sup>23</sup> Steel (2004) 137 on the role of the philosophical treatises "as an aspect of, and not a substitute for, political activity"; cf. Douglas (1965) 136.

## 1.2. Purpose of *de Officiis*

From the beginning, Cicero intended *de Officiis* as an address to his son Marcus.<sup>24</sup> He had received no news from Herodes, one of Marcus' teachers, and a letter from his tutor Leonides gave Cicero matter for additional concern; he wrote to Atticus that *non est fidentis hoc testimonium sed potius timentis* (this is not evidence of confidence but rather of fear).<sup>25</sup> Later reports, such as a letter from Gaius Trebonius, noted better progress,<sup>26</sup> but did not dispel Cicero's anxiety. Thus, *de Officiis* presents the advice Cicero desired to give in person.

Throughout the spring of 44 B.C., Cicero's paternal care for Marcus is evident in his constant discussions with Atticus about providing him with funds;<sup>27</sup> despite apprehensions concerning his son's diligence, Cicero desires him to be supplied and upon hearing of satisfactory progress wants to indulge him.<sup>28</sup> Although he couches his message in the form of a philosophical treatise, Cicero's fatherly voice is constantly present throughout *de Officiis*, and he refers to his son's career, study, teachers, and philosophical position. As his only surviving child, Marcus represents the dignity of the family name; therefore, Cicero's designation of his son as *mi Cicero* serves both as a affectionate reminder of this fact and as an exhortation to make the most of the opportunities that have been afforded him and to advance his own reputation in accordance with the distinguished name and legacy his father has handed down to him.<sup>29</sup>

This concern for the family name and Cicero's identification with it also appear in other contexts, such as his letter to his brother Quintus. Written in December 60 B.C., the epistle seeks to advise Quintus as he begins the third year of his governorship of Asia. While much of the letter concerns matters of provincial government and personal recommendations pertinent only to Quintus, like the necessity of guarding his temper,<sup>30</sup> similar to *de Officiis*, Cicero also elaborates on the themes of seeking *gloria* for the family name as well as for oneself and basing it upon deeds that will be praised

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<sup>24</sup> Cic. *Att.* 15.13.6, 16.11.4.

<sup>25</sup> *Ibid.* 14.16.5.

<sup>26</sup> Cic. *Fam.* 12.16.

<sup>27</sup> Cic. *Att.* 14.17.5, 14.20.3, 15.15.4.

<sup>28</sup> *Ibid.* 15.17.2.

<sup>29</sup> Cic. *Off.* 2.13.44, 3.2.5-6.

<sup>30</sup> Cic. *QFr.* 1.13.37.

by later generations.<sup>31</sup> Undoubtedly intending this letter to be made public to a broader audience, Cicero also weaves in references to his own labours on behalf of the state and thus bolsters his political image. Many of these same concerns appear in *de Officiis*, as Cicero employs his writing to serve more than one purpose. Nonetheless, as a philosophical treatise that combines praise of his own past and present deeds on behalf of the state and calls Marcus to follow in his footsteps, *de Officiis* fulfils a unique purpose among Cicero's texts.

Firstly, Cicero's evident awareness of his age, and his desire to record and pass on his political legacy to the coming generation are motivating factors in the background of *de Officiis*. Only a few months before, he was writing his essay *de Senectute*,<sup>32</sup> and as he remarks once to Atticus, old age is causing him to become bitter and irritable; since he has lived, *viderint iuvenes* (the young men must see to it).<sup>33</sup> Such reflections on the closing of his own political career and on the coming generation are echoed again in *de Officiis*, when he recalls his past efforts and honours, and hopes that Marcus will imitate and live up to them.<sup>34</sup> Yet while his first and ostensible purpose is to encourage Marcus in his studies and to restrain him from squandering the time and resources entrusted to him,<sup>35</sup> he is also addressing a broader audience. Especially, Cicero aims to advise the rising generation of young men who will be seeking to gain *gloria* through political and military offices.<sup>36</sup>

The apparent acknowledgement on Cicero's part that his own time is ending and that, as is evident in his exhortations to Brutus,<sup>37</sup> he looks instead to the boldness and energy of the young men to accomplish much for the Republic is nevertheless accompanied by a need to declare his own achievements and his worth as a mentor and counsellor. The theme of *gloria* was already in his thoughts. A few months previous he completed his text, no longer extant, of *de Gloria*.<sup>38</sup> This concern with *gloria* and his personal legacy continues to manifest itself throughout *de Officiis* as he explains his

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<sup>31</sup> *Ibid.* 1.15.43-44. Note the obvious comparison with his words to Marcus in *Off.* 2.13.44.

<sup>32</sup> *Cic. Att.* 16.3.1.

<sup>33</sup> *Ibid.* 14.21.3.

<sup>34</sup> *Cic. Off.* 3.2.6.

<sup>35</sup> *Ibid.* 3.2.6.

<sup>36</sup> *Cic. Off.* 2.13.45; cf. 3.2.6.

<sup>37</sup> *Cic. Fam.* 11.5.2.

<sup>38</sup> *Cic. Att.* 15.27.2, 16.2.6.



conception of a lasting glory based on actual deeds,<sup>39</sup> boasts of his past accomplishments to his son, and portrays himself as a hero of the Republic in contrast to the negative example of Caesar and others.<sup>40</sup> As he tells Marcus in reference to his suppression of the Catilinarian conspiracy, it is right for him to boast (*glorior*) about his triumph of rescuing the Republic from great peril since *ad quem et hereditas huius gloriae et factorum imitatio pertinet* (to you remains both the inheritance of this glory and the responsibility of imitating these deeds).<sup>41</sup>

Even as he emphasises his past triumphs, however, he still views his political philosophy and guidance as essential to the life of the Republic. For instance, he suggests that if his advice had been followed when Caesar and Pompey were at odds, the destruction of the Republic may have been prevented.<sup>42</sup> And as previously noted, he ends the work by declaring to Marcus that he is once again devoting his efforts to restoring the state. Thus, his exhortations to his son to follow his own example are also intended to serve as a written legacy that puts his actions in the specific context in which he desires others to view them. He justifies his course of conduct, praises his past successes, reminds those who are favourable to him of what he has accomplished on behalf of the state, and urges them to model their actions and political philosophy after his example. Indeed, as Long remarks, *de Officiis* can justly be viewed as “Cicero’s political testament”.<sup>43</sup>

The form Cicero uses adds a second unique element to *de Officiis* and conforms to the interpretation of the work as a political legacy. Instead of employing a dialogue form, he uses a didactic yet personal, first-person approach and voices a decided opinion on the various moral questions under consideration. This approach stands in marked contrast to the dialogue style he commonly employs, which allows for more ambiguity and for presenting different points of view without an authoritative conclusion in a manner conducive to the philosophy of the New Academy.<sup>44</sup> In *de*

<sup>39</sup> See especially Cic. *Off.* 1.19.65, 1.25.83, 2.12.43.

<sup>40</sup> One key example of this occurs in *Off.* 3.21.83, when Cicero says that Caesar gained the title “Father of the Country” through his destruction of the laws and liberty of the Republic. He thus makes an implicit contrast with how he gained the same title through the preservation of the state.

<sup>41</sup> Cic. *Off.* 1.22.78.

<sup>42</sup> *Ibid.* 1.11.35.

<sup>43</sup> Long (2006) 308; Dyck (1996) 30, 36; Wood, N. (1988) 69.

<sup>44</sup> Fox (2000) 267-268.

*Officiis*, therefore, Cicero willingly abandons the potential for opposing viewpoints and identifies himself with the political and ethical position he offers throughout the work.

While he could have conveyed his advice by letter as he did to Quintus and still have accomplished his aim of reaching a wider public audience, Cicero formulates it as a philosophical treatise. At first glance, this may appear an unusual form of imparting advice, but on closer scrutiny, it can be seen that it distinctively fits his purpose. Cicero views it as applying particularly to his son's studies and wishes to demonstrate his own proficiency in philosophical subjects.<sup>45</sup> Furthermore, he wishes Marcus to progress on the basis of his own judgement and initiative,<sup>46</sup> and therefore instead of merely telling his son to conduct himself in a specific manner, he provides him with an explanation and justification for doing so. As he says, of all the teachings of the philosophers, those on *officium* have the greatest application to life.<sup>47</sup>

Beyond their relevance to Marcus, however, the teachings on duties also relate to the issues Cicero himself was dealing with at the time. Although it addresses questions of moral duty, *de Officiis* is primarily concerned with their political implications and is structured around Roman realities. Atticus, in fact, objected to Cicero's rendering of *καθήκον* as *officium*; although Cicero himself had no doubt about the appropriateness and merely asked if Atticus had a better suggestion.<sup>48</sup> The question appears to remain unanswered, for Cicero returns to it in a later letter, asking why Atticus does not consider it suited to a discourse on the state, since *nonne dicimus* "*consulum officium, senatus officium?*" (do we not speak of the duties of consuls, of the senate?).<sup>49</sup> While it is not clear what Atticus' specific objection was, it seems at least to suggest uncertainty about the Roman political context in which Cicero was applying a term laden with Stoic conceptions.<sup>50</sup> Regardless, it is plain that as Cicero considered the duties of a citizen toward the state and other members of the community, he also sought to provide a rationale for his individual actions and politics.<sup>51</sup>

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<sup>45</sup> Cic. *Off.* 1.1.1, 1.2.4.

<sup>46</sup> *Ibid.* 1.1.2.

<sup>47</sup> *Ibid.* 1.2.4, 3.2.5.

<sup>48</sup> Cic. *Att.* 16.11.4.

<sup>49</sup> *Ibid.* 16.14.3. The Teubner edition renders the phrase differently, including an extra example: *nonne dicimus* "*consulum officium, senatus officium, imperatoris officium?*" (do we not speak of the duties of consuls, of the senate, of an emperor?).

<sup>50</sup> Dyck (1996) 6-7.

<sup>51</sup> Long (2006) 324 on the striking parallels between the *Philippics* and *de Officiis*, with *de Officiis* as its "appropriate philosophical accompaniment"; cf. Atkins (2000) 513.

The political ambiguity of the time increased the difficulty of discussing *officium* or καθήκον, best rendered in English as “appropriate action”.<sup>52</sup> Due to the downfall of the Republic and the accompanying political uncertainties, the relationship between the individual and the state becomes more complex. Cicero is no longer able to urge the same active role of public service upon Marcus and the other young men of the day that he has advocated in the past. Although one can achieve glory through a military career, Marcus’ own military service under Pompey was cut short with the end of the Republic.<sup>53</sup> In Cicero’s opinion, even the oratory of the law courts, which once presented young men with great opportunities for distinguishing themselves and advancing on the *cursus honorum*, has declined amid the political turmoil of recent events.<sup>54</sup>

However, these facts do not diminish one’s responsibility to the state. The *officium* required may not be defined in the same way, but if anything it becomes even more pressing in times when peril threatens or has even overthrown the Republic. As Cicero maintains, the greatest *officium* is still that which is owed to one’s country<sup>55</sup> and a life of active public service will be sought by the best and most noble natures.<sup>56</sup> Furthermore, although he feels that *rem vero publicam penitus amisimus* (in truth we have thoroughly lost the republic),<sup>57</sup> Cicero preserves an optimistic expectation that it can be regained, saying that *quamvis enim demersae sint leges alicuius opibus, quamvis timefacta libertas, emergunt tamen haec aliquando* (for however much the laws have been overcome by someone’s power, however much liberty has been alarmed, nevertheless they arise again somehow).<sup>58</sup> Such a restoration would inevitably require great dedication in the young men he addresses; an *officium* that is willing to face dangers and to risk both glory and the favour of others for the sake of the state.<sup>59</sup>

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<sup>52</sup> Sellars (2006) 120; Atkins (2000) 505; R.W. Sharples (1996) 105.

<sup>53</sup> Cic. *Off.* 2.13.45.

<sup>54</sup> *Ibid.* 2.19.67, 3.1.2-3.

<sup>55</sup> *Ibid.* 1.17.58.

<sup>56</sup> *Ibid.* 3.5.25.

<sup>57</sup> *Ibid.* 2.8.29.

<sup>58</sup> *Ibid.* 2.7.24.

<sup>59</sup> *Ibid.* 1.24.83.

Throughout *de Officiis*, therefore, Cicero labours to identify the practical moral duties required of all men and to explain their relationship to politics.<sup>60</sup> On the one hand, he endeavours to uphold his long held belief that active service to the state is a necessary path to virtue and greatness. Unless prohibited by outward circumstances or lack of personal abilities, one is obligated to enter public office and actively seek to manage and benefit the state.<sup>61</sup> At the same time, as Cicero notes in his own case, one cannot exercise *consilium* or *auctoritas* when the state is controlled by a despotic power.<sup>62</sup> This new tension unfolding itself in *de Officiis* allows for a greater discussion of the role of the individual citizen, as Cicero takes a more lenient position toward a life of philosophical retirement than he has done in the past and acknowledges that a man can achieve honour through individual observance of moral duties as well as through public office. Thus, although limited by Cicero's perception of a citizen as a Roman male of the governing class, the *officium* of the *vir bonus* and its relation to the *civis bonus* becomes the overarching theme of the text.

### 1.3. Structure and Philosophical Approach

Despite the clear lack of revision, the general outline of *de Officiis* remains focused on Cicero's intent of expounding the subject of practical moral duties.<sup>63</sup> The structure, as he explains, is purposely borrowed from an earlier work on duties by Panaetius, the Stoic philosopher from Rhodes.<sup>64</sup> In his first three books, Panaetius discussed the questions of whether a thing is *honestum* or *turpe*, and then whether it is *utile* or *inutile*; however, although he lived thirty years after writing this text on duty, he never completed his plan of a final book dealing with questions regarding an apparent clash between the morally good and the expedient.<sup>65</sup> While he considers Panaetius' work the most thorough of any written on the topic of moral duties, Cicero believes Panaetius failed to adequately address the issue. Not only is it necessary to deal with the question

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<sup>60</sup> Brunt (1986) 12 on the fact that although Cicero clearly desired to obtain public approval and justification for his actions, his desire to perceive and fulfill his *officium* cannot be ruled out as a motivating factor of his conduct.

<sup>61</sup> Cic. *Off.* 1.21.72.

<sup>62</sup> *Ibid.* 2.1.2.

<sup>63</sup> *Ibid.* 1.2.7.

<sup>64</sup> *Ibid.* 3.2.7; Cic. *Att.* 16.11.4.

<sup>65</sup> Cic. *Off.* 3.2.7-8.

left unanswered by Panaetius, but sometimes, Cicero insists, a conflict may arise as to which of two moral duties should be performed or which of two expediencies should be chosen.<sup>66</sup>

In the initial and longest volume of his text, Cicero addresses the first issue on moral duties raised by Panaetius; namely, that of *honestum* and of the four cardinal virtues, which are the sources of all that is honourable or morally good.<sup>67</sup> He is less concerned with wisdom, briefly mentioning its importance as it applies to *cognitio veri* (knowledge of the truth).<sup>68</sup> The main part of the volume addresses the division of the remaining three virtues, which he says must support those things by which the practical activity of life is sustained.<sup>69</sup> Thus, Cicero is not concerned with the precise nature of virtue, as he was in *de Finibus Bonorum et Malorum*, but with raising the question of how the virtues apply to everyday life and to the preservation of *societas*.<sup>70</sup>

Although Cicero uses Panaetius as the main source for *de Officiis* and references his arguments to vindicate the logic of his own propositions, Cicero says he is following his personal interpretation, altering and going beyond Panaetius' teaching.<sup>71</sup> While many scholars have scrutinised Cicero's portrayal of the Hellenistic schools, the derivation of his ideas from them, and the precise nature of his position among them, a resolution of this highly debated topic is not necessary to examining his position in *de Officiis*. Rather than slavishly copying the work of Panaetius, Cicero subordinates it to his own purposes, using it to support his message and to promote a specific image of himself.

First and foremost, *de Officiis* is concerned with the Roman politics of Cicero's time.<sup>72</sup> Even in the first volume, Cicero addresses the questions of *officia* while

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<sup>66</sup> *Ibid.* 1.3.10; cf. 1.43.152, 1.45.161, 2.25.88.

<sup>67</sup> *Ibid.* 1.5.15. Cicero's division of the virtues is more complex than the common designation of the virtues as *sapientia*, *iustitia*, *fortitudo*, and *temperantia*. The second virtue, for instance, which Cicero never specifically names, consists of both *iustitia* and *beneficentia* or *liberalitas* (*Off.* 1.7.20). Cicero's system allows him to focus on the practical application of each virtue and apply it to his Roman audience; however, for reasons of clarity and because it does not materially affect the examination of the good citizen in *de Officiis*, I have chosen to use the common designation of each virtue. Cf. Schofield (2009) 207 on Panaetius' reshaping of the cardinal virtues.

<sup>68</sup> *Cic. Off.* 1.6.18-19.

<sup>69</sup> *Ibid.* 1.5.17.

<sup>70</sup> *Ibid.* 1.3.7, 1.5.17.

<sup>71</sup> *Ibid.* 2.17.60, 3.2.7 3.7.34.

<sup>72</sup> Long (2006) 308, 312, 321 on the viewpoint that while Cicero borrows from Panaetius, his focus is not on Greek philosophy but rather on Roman values and their relation to "actual and potential Roman statesmen"; cf. MacKendrick (1989) 255.

employing specifically Roman terms and examples, situating his discussion of the virtues within this context. For instance, he refers to Antony's destruction of the state,<sup>73</sup> Caesar's lust for power and robbery of private property,<sup>74</sup> and Cato's suicide.<sup>75</sup> In marked contrast, he shows how he has fulfilled the requirements of *officia* and preserved the state through his counsel and diligence.<sup>76</sup> Thus, as Dyck notes, Cicero's philosophical approach in *de Officiis* is dictated by his endeavour to provide a programme for "reforming the political culture at Rome".<sup>77</sup>

Nevertheless, any examination of *de Officiis* must at least briefly address the philosophical schools, and an overview of Cicero's explanation of his position helps to illuminate his conception of the good citizen. To a degree, his careful use of Panaetius for his own purposes accounts for his frequent mention and acceptance of Stoic philosophy. Especially, Panaetius' interpretation of Stoicism and his practical approach to politics and ethics as well as his connection with the Scipio family would have appealed to Cicero and harmonised with his own approach in *de Officiis*.<sup>78</sup> He acknowledges his debt to Stoicism and says that his arguments on moral duty are consistent with its teachings.<sup>79</sup> For instance, in addition to commending the Stoic definitions and etymology of the virtues, Cicero also upholds the necessity of humanity's collaboration for the purposes of mutual aid as well as the need to follow nature as a guide.<sup>80</sup> Still, in a manner similar to his use of Panaetius, Cicero plainly states his intent to deviate from Stoicism when he feels it is necessary to his argument.<sup>81</sup>

For Cicero, Stoicism does not present the only possible way of approaching ethics. The one premise he absolutely adheres to is that the moral good or the honourable is either the only thing worth seeking for its own sake or at least the thing most worth seeking for its own sake.<sup>82</sup> Hence, he believes the subject of moral duties can be addressed fully and adequately not only by the Stoics, but also by the Academics

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<sup>73</sup> Cic. *Off.* 1.17.57.

<sup>74</sup> *Ibid.* 1.8.26, 1.14.43.

<sup>75</sup> *Ibid.* 1.31.112.

<sup>76</sup> *Ibid.* 1.22.77.

<sup>77</sup> Dyck (1996) 31.

<sup>78</sup> Griffin (1991) xx; Dyck (1996) 18, 354.

<sup>79</sup> Cic. *Off.* 3.4.20.

<sup>80</sup> *Ibid.* 1.7.22-23, 1.29.62, 1.40.142.

<sup>81</sup> *Ibid.* 1.2.6.

<sup>82</sup> *Ibid.* 3.7.33.

and the Peripatetics.<sup>83</sup> Since the Stoics, in contrast to the Old Academy and the Peripatetics, consider the moral good as the only good to be sought rather than the best of preferred goods, Cicero thinks it is the simplest position to defend and thus assumes it for the sake of ease and clarity in constructing his theories.<sup>84</sup> Epicureanism, since it divides expediency and virtue into two separate categories, is the only philosophical school that Cicero uncompromisingly rejects, saying that it is fundamentally irreconcilable with any assertion of moral duties.<sup>85</sup> He even concludes the text with a final discussion of how virtue must be sought for its own sake if it is to be sought at all; otherwise, virtue turns into mere expediency and therefore ceases to be virtue.<sup>86</sup>

In regard to his own position, Cicero aligns himself with the New Academy and attempts to prove its compatibility with the bold and categorical statements he makes throughout his work.<sup>87</sup> As he says in defence of his consistency, the New Academy allows him to adopt the viewpoint that appears the most probable and thus allows him to adopt doctrines from the various schools.<sup>88</sup> This predilection for the New Academy can perhaps be viewed as another instance of Cicero's desire to reserve the right to follow his own course and not wholly embrace a specific philosophical school. This dislike of dogmatism frequently reoccurs in his writings; even in his early days as a student of oratory, he stated his intention to borrow from previous thinkers without unthinkingly adopting a particular viewpoint.<sup>89</sup>

The second volume also proceeds along the structure employed by Panaetius. Cicero takes up the topic of the expedient or *utile*, and seeks to prove that one can properly pursue *gloria* and its accompanying "expediencies" such as wealth, praise, influence, and friendship without violating *honestum* or its component part *iustitia*. In fact, he insists that it is only by means of justice that one can acquire the secondary advantages.<sup>90</sup> Even as he unites moral goodness and expediency, Cicero attempts to demonstrate that what undermines moral goodness by masking itself as expediency proves ultimately inexpedient. For instance, generosity shown to the wealthy rather

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<sup>83</sup> *Ibid.* 1.2.6.

<sup>84</sup> *Ibid.* 3.4.20; cf. Dyck (1996) 37.

<sup>85</sup> *Cic. Off.* 3.33.16; cf. 1.2.5.

<sup>86</sup> *Ibid.* 3.33.118.

<sup>87</sup> *Ibid.* 2.2.7-8. Cf. Wood, N. (1988) 47-48, 58-61 on the New Academy and Cicero's affinity to this school of thought; cf. Douglas (1965) 142-144; Long (1995) 39-42; McKeon (2009) 26-31.

<sup>88</sup> *Cic. Off.* 3.4.20.

<sup>89</sup> *Cic. Inv.* 2.2.10.

<sup>90</sup> *Cic. Off.* 2.10.38, 2.20.71.

than to the poor can actually produce less loyalty, since the rich tend to forget or only lightly value the favours shown them.<sup>91</sup> In the end, he tries, with some measure of success, to prove that “expediencies” gained through the destruction of justice rebound to one’s hurt.

By crafting an ideology with practical applications for politics, Cicero is able to offer advice of particular pertinence to the younger generation of Romans who desire to succeed in their careers. As part of the exposition on gaining *gloria*, Cicero includes a discussion of specific policies such as the protection of property rights for the elite and the dangers of passing agrarian laws or abolishing debts,<sup>92</sup> thereby putting forward his conservative viewpoints and attempting to justify their validity.

The final volume culminates with Cicero’s analysis of the apparent conflict between expediency and virtue and his effort to show the constant agreement between the two. At this point, he has finished with the outline of Panaetius’ text and declares that he is now proceeding on his own since he cannot recommend any other works on the topic.<sup>93</sup> Earlier, he had written to Atticus, saying that he intended to examine a book by Posidonius and a *κεφάλαια* (analysis) of it that dealt with the apparent conflict between moral right and expediency.<sup>94</sup> Apparently, he either never received the book or perhaps found it unsatisfactory, since he says Posidonius only mentions the topic briefly in his *commentariis*.<sup>95</sup>

Possibly because of the difficulty of completely reconciling *honestum* and *utile*, the third volume has a more disorganised structure than the first two. Nonetheless, it represents Cicero’s desire to show how a philosophical adherence to moral duties reveals itself in practice, even though the link between abstract moral theory and its application may not be easily determinable. In particular, he raises the question of how *officia* apply to the common interest and to actions between individual members of the

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<sup>91</sup> *Ibid.* 2.20.70.

<sup>92</sup> *Ibid.* 2.22.78, 2.24.84.

<sup>93</sup> *Ibid.* 3.7.34.

<sup>94</sup> *Cic. Att.* 16.11.4.

<sup>95</sup> *Cic. Off.* 3.2.8. In a later letter to Atticus, Cicero says that he did receive a *ὑπόμνημα* (commentary) from Athenodorus, whose *κεφάλαια* he had earlier requested (*Cic. Att.* 16.14.4). Over time, differing perspectives have emerged on the question of Cicero’s sources. Dougan and Henry (1905) xxv on the view that Cicero had Posidonius’ book; in contrast, cf. Wood, N. (1988) 69. Ultimately, it is best to recognise that the question remains indeterminate [Kid (2004) 188]. However, while it is unclear what sources Cicero possessed, the evidence suggests he had access to at least one Greek source, if not more [Dyck (1996) 484].



community. When focusing on specific situations, he not only looks at the moral duties but also at the civil laws that apply to these cases. In his opinion, individuals can properly pursue their own best interests provided they do not violate the twin rules of justice: to do no harm to another and to preserve the common interest. Otherwise, Cicero concludes, *societas* will disintegrate. By introducing *societas* into the discussion, a term referring to a partnership or association and relating to *bona fides* (good faith), Cicero imparts a legal as well as a philosophical connotation to *officium*. In the language of a legal agreement, this *societas* or partnership between all the citizens binds the state together and ensures the mutual advantage of all.<sup>96</sup> Preserving *societas* and the state is Cicero's ultimate goal, and the individual citizen who follows the principles of *officium* protects both.

#### 1.4. Examination of the Good Citizen

In his earlier treatises, Cicero was already emphasising the importance of the individual citizen to the continuance of the Republic. Although only fragments remain of the fifth book of *de Republica*, it is clear that in addressing the subject of the *optimus civis*, he was focusing on the indissoluble connection between the citizen and the laws of the state.<sup>97</sup> The only form of government Scipio designates as equitable and stable is the one combining the three forms of government—by king, nobles, and people.<sup>98</sup> The mixed constitution, however, despite its primary importance in maintaining a balanced state, cannot be maintained without the active commitment of its leading citizens, as Cicero explains in *de Republica* 5.1.1:

*Nam neque viri, nisi ita morata civitas fuisset, neque mores, nisi hi viri prae fuissent, aut fundare aut tam diu tenere potuissent tantam et tam fusa lateque imperantem rem publicam.*

For neither men, unless a state is thus endowed with customs, nor customs, unless these are given power by men, could either have been able to establish or for so long to preserve such a great republic whose command is so extensive and broad.

Although the topic of *de Republica* is the best possible form of state, Cicero's conclusion is that Rome already possesses this type of state.<sup>99</sup> His diagnosis of what

<sup>96</sup> Asmis (2004) 580, 598; cf. Harries (2006) 23.

<sup>97</sup> Atkins (2000) 495.

<sup>98</sup> Cic. *Rep.* 1.45.69.

<sup>99</sup> *Ibid.* 1.21.34, 1.56.70, 2.16.30.

Rome needs at this crucial point in her history is not a new constitution but rather virtuous leaders who by following in the political legacy of their forefathers will ensure the state's continued protection and welfare.<sup>100</sup> Accordingly, in *de Officiis* Cicero expounds on the moral virtues within the context of Roman political life, and he seeks to inculcate in Marcus and others a conviction that adherence to these virtues, as he defines them, will bring glory both to themselves and to the Republic.

Despite Cicero's emphasis on political involvement and duties owed to the state, his concept of the state does not absorb the individual. The tension between individual and communal interests is one of the key themes of *de Officiis*, but a marked strand of individualism still pervades the work.<sup>101</sup> In fact, Cicero focuses primarily on the individual in *de Officiis*—specifically on the well-being of each individual and the *officium* he must perform, not only in public affairs but also in private relations with others.

#### 1.4.1. The concept of *officia*

*Officia* refers to the responsibilities or obligations of individuals in regard to their role and to their relationships with others and the state.<sup>102</sup> While *καθήκον* does not necessarily carry moral overtones, in *de Officiis* Cicero gives *officium* a moral connotation by including in its definition an inseparable bond with virtue and *honestum*. The four cardinal virtues, he explains, are the sources of all that is *honestum*.<sup>103</sup> He identifies *honestas* (the state of being honourable), a term closely connected to one's position in the public sphere, as the proper aim of every individual.<sup>104</sup> By cherishing and carrying out the principles of moral duty (*officium*), one achieves *honestum*, while neglecting them is *turpitude* or base.<sup>105</sup> Hence, *officium* should not be viewed as a virtue in itself; instead, by living in accordance with the virtues and properly applying them in regard to one's role, circumstances, and situation, an individual fulfills his *officia* and attains a praiseworthy and honourable life.

<sup>100</sup> Powell, J. G. F. (1994) 27. Zetzel (2001) 86 supports this interpretation of the importance of the individual citizen in *de Republica*, noting that “for Cicero, the individual citizen was of crucial importance, and central to the design of his work” and drawing attention to Cicero's “strong belief in the power of individuals to preserve and even to improve the *res publica*”; cf. Zetzel (1998) 23.

<sup>101</sup> Wood, N. (1988) 68.

<sup>102</sup> Griffin (1991) xlv.

<sup>103</sup> Cic. *Off.* 1.5.15.

<sup>104</sup> Dyck (1996) 69 on the relationship between *honestas* and public standing.

<sup>105</sup> Cic. *Off.* 1.2.4.

Cicero's introductory statement on the extent of *officium* is particularly important to his conception of the good citizen. Although *de Officiis* analyses the topic of *officium* within a political context, Cicero is careful to note that it applies equally to a private context as well:

*nulla enim vitae pars neque publicis, neque privatis, neque forensibus, neque domesticis in rebus, neque si tecum agas quid, neque si cum altero contrahas, vacare officio potest.*<sup>106</sup>

For no part of life is without duty, neither in public or private matters, nor in affairs in the courts or in the household, whether you are acting in matters that concern yourself or in things that concern another.

Thus, in his opinion, *officium* and the application of virtue it implies, encompasses every area of public and private life. In *de Amicitia*, which he was writing at the same time as *de Officiis*, Cicero again emphasises this point, arguing that the same ethical principles govern both public and private friendship.<sup>107</sup> Regardless of station or situation, each individual is morally bound to live according to virtue as a standard of all conduct.

While Cicero sustains this emphasis on private and public virtue throughout the text, to conclude that he equates civic with individual virtue would be an oversimplification.<sup>108</sup> Instead, it is more accurate to say that he views *officium* as including both the relationship toward the state and toward the individual, but as dictating different applications toward each. Although he has chosen to address an audience of elite Romans desirous of succeeding in the political arena, Cicero does not limit his understanding of *officium* to that context; on the contrary, he believes his discussion of duty applies primarily to the arrangement of ordinary life.<sup>109</sup> As Dyck comments on this passage, “*vita communis*, though it includes politics, goes beyond it and encompasses the activities of one who enriches the community”.<sup>110</sup>

Even as he insists that each person should aim for *honestum* in both public and private life, Cicero allows that in practice the virtues may widely differ depending on such factors as an individual's age, vocation, abilities, or even temperament. This point is especially relevant in his discussion of the fourth virtue of *decorum*. In addition,

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<sup>106</sup> *Ibid.* 1.2.4.

<sup>107</sup> Lintott (2008) 365; cf. 364 on Cicero's dismissal of Epicureanism and its belief that expediency should govern the rules of friendship.

<sup>108</sup> For such an analysis, see Moore (2005) 60-62.

<sup>109</sup> Cic. *Off.* 1.3.7.

<sup>110</sup> Dyck (1996) 77.

circumstances often change the exercise of virtue. For instance, although *officium* demands the fulfilment of a promise, the *vir bonus* will not keep a promise to another's hurt.<sup>111</sup> Similarly, although virtue forbids slaying a fellowman, one may honourably kill a tyrant—a theory enabling Cicero to justify the murder of Caesar.<sup>112</sup>

From considering *officia* as duties incumbent on all citizens but changeable in their application to everyday life, Cicero naturally moves to reflecting on the moral duty of an individual apart from the state. Whereas in *de Oratore* and *de Republica*, Cicero focused solely on the leader of the state and the primary duty of service owed to the commonwealth, he now not only examines the rights of an individual, particularly those of property, but also acknowledges that an individual can live honourably and attain a worthy position in life apart from an active role in politics.<sup>113</sup> As he says, even in the *vita otiosa* (life of retirement) men of noble spirit have investigated important matters and engaged in great undertakings while limiting themselves to their own concerns.<sup>114</sup>

Clearly, then, non-political roles can still be consistent with *honestum*. The issue to consider regarding a life of retirement is whether one is thereby neglecting the duty owed to the state, which is of the foremost importance in Cicero's hierarchy of *officia*.<sup>115</sup> Unless a man has a valid reason such as outward circumstances or lack of talent for not engaging in active political service, Cicero insists he should devote himself to his country.<sup>116</sup> As in his previous texts, Cicero criticises those philosophers who become occupied with theoretical speculations to the neglect of public duties, charging them with committing the crime of passive injustice.<sup>117</sup> Accordingly, the private individual, in order to be a *civis bonus*, must seek to uphold the tranquillity and honour of the state.<sup>118</sup> Ultimately, however, despite Cicero's insistence on the connection between public service and *honestum*, *de Officiis* offers a broader understanding of virtue than that which appears in *de Republica*. So long as one serves

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<sup>111</sup> Cic. *Off.* 1.10.31.

<sup>112</sup> *Ibid.* 3.4.19.

<sup>113</sup> *Ibid.* 1.33.121.

<sup>114</sup> *Ibid.* 1.26.92.

<sup>115</sup> *Ibid.* 1.17.58, 1.45.160.

<sup>116</sup> *Ibid.* 1.21.72.

<sup>117</sup> *Ibid.* . 1.9.28.

<sup>118</sup> *Ibid.* 1.34.124.

humanity and does not live wholly in pursuit of self-interest, political leadership is not a necessary condition of *honestum* or of the *civis bonus*.<sup>119</sup>

Despite its extensive discussion of virtue, *de Officiis* falls far short of being a philosophical discourse on universal ethics. While the virtues defining a good citizen and a good man are not necessarily tied to politics and apply by definition to all, Cicero narrows the scope of his text to the Roman elite. Although he touches briefly on the *officia* required of aliens, saying they should avoid politics altogether, he does not address the *officia* of women, slaves, or those employed in what he considers vulgar occupations. Nor does he consider the different classes of Roman citizens. He writes to Roman youth aiming to become statesmen, and his aim is to give political advice and expound on the *officia* they should perform. Unfortunately, then, the broader implications of Cicero's arguments are left unexplored, as he analyses the concept of the *civis bonus* in the limited field of the governing class rather than extending his topic to the whole of Roman citizenship.<sup>120</sup>

Cicero's limited focus creates an interesting dilemma in his perception of virtue. On the one hand, he argues for a universal standard of virtue achievable by all and describes such a mutual conception of the virtues as the necessary foundation of the state; however, at the same time, his ideal presupposes an elite culture with the ability to shape popular conception of the virtues. Nonetheless, the very nature of *officium*, as he defines it throughout *de Officiis*, inevitably puts all humankind on an equal standing, since the ability to perceive what is *honestum* and to apply it in given situations is instinctively present in all through *natura* and *ratio*.<sup>121</sup> In this regard, his viewpoint in *de Officiis* only renews his earlier assertion in *de Legibus* that all are constituted by nature to share a sense of justice.<sup>122</sup> Significantly, in his development of reason and natural law, Cicero purposely affords them a universal position rather than confining knowledge of them to the elite.<sup>123</sup> Not only are the virtues perceivable by all, but they are likewise required of all, both leaders and people. In stressing the universal application of this standard of virtue, Cicero seeks to unite all members of the community in supporting the law by which they are governed. For him, it is this

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<sup>119</sup> *Ibid.* 1.44.156.

<sup>120</sup> Griffin (1991) xxv.

<sup>121</sup> Cic. *Off.* 1.4.11-14.

<sup>122</sup> Cic. *Leg.* 1.12.33.

<sup>123</sup> Harries (2002) 56; Vander Waerdt (1994) 4874-5.

collective understanding of “justice, law, and right” that binds the community together.<sup>124</sup>

Clearly, however, general conformity regarding virtue and *officia* cannot always be maintained. Indeed, the third book of *de Officiis* focuses on this problem. As his examination of the views of Diogenes and Antipater demonstrates, even scholars and the *virī boni* do not always agree on how *officia* apply to given situations. Even more concerning is when, as a result of perverse public habits, neither custom nor the written laws forbid behaviour that undermines the bond of *societas* (partnership).<sup>125</sup> In these cases Cicero looks to the statesmen leaders he advises in *de Officiis*. He believes that by retaining the tradition of the *mos maiorum* and by conforming their lives and the laws to the virtues it dictates, the leading citizens will be able to bring the proper interpretation of *officium* back into popular agreement.<sup>126</sup> Ultimately, then, while Cicero relies on an elite definition of virtue, his perception of a legitimate and enduring state is still one where the entire Roman *populus* are agreed on justice (*ius*). For a people cannot exist where *neque esset unum vinculum iuris nec consensus ac societas coetus* (there is no one bond of justice nor a partnership joined in agreement).<sup>127</sup>

Within the community, as a *res populi*, every person has moral obligations, whether statesman or private individual. In Cicero’s estimation, performing *officia* is both necessary and sufficient for the good citizen. As he says in praise of the man who observes his duties toward both others and the state, *talem enim et sentire bonum civem, et dicere solemus* (for such a one we are accustomed to think and speak of as a good citizen).<sup>128</sup>

#### 1.4.2. The spheres of *officia*

As the above quotation demonstrates, Cicero’s view of the good citizen does not differentiate between civic responsibilities and private relationships and behaviour. Unlike several more modern trends in political thought, which differentiate between the good citizen and the good man, in Cicero’s model, the distinction does not even arise.

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<sup>124</sup> Harries (2006) 224.

<sup>125</sup> Cic. *Off.* 3.17.69.

<sup>126</sup> Cic. *Rep.* 2.42.69, 3.3.4-5; cf. Ferrary (1995) 72.

<sup>127</sup> Cic. *Rep.* 3.31.43.

<sup>128</sup> Cic. *Off.* 1.34.124. The Teubner edition renders the phrase slightly different: *talem enim solemus et sentire bonum civem et dicere*.

One cannot exist without the other.<sup>129</sup> In his analysis of how *officia* operate toward other individuals and the state, it becomes clear that if a *civis bonus* ceases to properly fulfil his duties in each sphere of life, he ceases to be a good citizen. Similar to the opinions of Roman juries, which judged not only on the facts of the case, but also on a consideration of a person's character, Cicero offers a broad perception of the *civis bonus* incorporating not only one's relations toward the state, but also one's motives, intent, and behaviour in personal affairs. Although *officia* enter into every human relationship, in Cicero's development of the theory of moral obligations, three main spheres emerge that are particularly relevant to the current discussion: the duties of an individual toward others, toward himself, and toward the state.

Cicero's view of the *officia* owed to other individuals is based on his account of the formation of social and civil communities. The positive view of association presented by Cicero throughout *de Officiis* asserts that humankind joins together through a natural desire for society. While he acknowledges and praises the cooperation that provides not only the enjoyments and requirements of human life but also civilization itself,<sup>130</sup> Cicero asserts that even if an individual was provided with all the necessities and refinements of life, he would still *solitudinem fugeret* (flee from loneliness) and find someone else to ease his solitude.<sup>131</sup> According to the analogy he uses, men are like the honeybees, which first come together because they are social by nature and only then make the honeycomb. In the same way, people join together through social instinct and then aid each other in providing for their mutual wants and desires.<sup>132</sup> Cicero does not mention other conceivable factors for association such as fear or aggression. Although one should not assume too much from this omission, it does indicate his conception of the positive need for fellowship as the primary motivation for association.

This description of association echoes Cicero's account of the state in *de Republica* 1.25.39, when Scipio explains why humankind joins together:

*res publica res populi, populus autem non omnis hominum coetus quoquo modo congregatus, sed coetus multitudinis iuris consensu et utilitatis communione sociatus. eius autem prima causa coeundi est non tam inbecillitas quam naturalis quaedam*

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<sup>129</sup> Wood, N. (1988) 140.

<sup>130</sup> Cic. *Off.* 2.3.12-2.4.15.

<sup>131</sup> *Ibid.* 1.44.158.

<sup>132</sup> *Ibid.* 1.44.157; cf. Cic. *Rep.* 1.25.39, 5.5.7.

*hominum quasi congregatio; non est enim singulare nec solivagum genus hoc, sed ita generatum ut ne in omnium quidem rerum affluentia...*

The commonwealth is the property of the people; however the people is not every association of men, congregated in any manner whatsoever, but rather the association of the multitude agreeing in justice and united by a community of mutual advantage. Moreover, the first cause of this association is not so much weakness as a certain community which is natural to men; for this race of humankind is neither single nor solitary, but is so made that not even in the flowing abundance of all things...

In a sense, this quotation combines the two issues of *de Officiis*: those of moral goodness and expediency. A popular agreement both in regard to right and justice and in regard to what is mutually beneficial is not only necessary for the preservation of the state but also serves as the foundation of its existence and defines its legitimacy. Nevertheless, while Cicero acknowledges the role of self-interest in a community, he regards it as a secondary consideration, and a sanguine view of human kinship and cooperation governs his perception of the state and community. Schofield concurs, saying that by rejecting *imbecillitas* as the basis of association, Cicero is alluding to the debate in Plato's *Republic* over the nature of justice and attempting to establish the position that justice and human association do not originate from a social contract agreed upon by the weak, but from a natural desire for fellowship.<sup>133</sup> This positive perspective is reiterated in *de Legibus* 1.15.43 when Cicero, as the main speaker in the dialogue, asserts that the virtues and justice originate because *natura propensi sumus ad diligendos homines, quod fundamentum iuris est* (we are inclined by nature to love other men, and this is the foundation of justice). With such a statement, Cicero once again seeks to repudiate the view that self-interest and utility are the basis of human association, and to affirm that virtue and fellowship are natural to humankind.<sup>134</sup>

Although Cicero portrays an optimistic view of community in *de Officiis*, he is not indifferent to the negative side of human relations. Humans not only prove to be the greatest possible benefit to each other, but also the greatest curse,<sup>135</sup> since characteristics like ambition for wealth or glory often cause a group or individual to sunder the bond of fellowship. Fundamentally, however, Cicero views the latter state of affairs as a perversion of the natural order of things. While such a distinction may seem slight in theory, it acts as the foundation for his conception of the good citizen as an individual

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<sup>133</sup> Schofield (1995) 71; cf. Asmis (2004) 583-584.

<sup>134</sup> Cf. Dyck (2004) 188.

<sup>135</sup> Cic. *Off.* 2.5.16.



who pursues his own interests without sacrificing the interests of all or neglecting the performance of *officia* toward others. In analysing this relationship between an individual and the community, it is necessary to look at two key terms, *iustitia* and *societas*, used by Cicero to express this concept.

Cicero's examination of *iustitia* provides the clearest picture of the connection he draws between the *vir bonus* and the *civis bonus*. Justice in actions and intent not only defines the good man but also governs his relations with others; hence, a just man will be the one above all others who deserves to be called a good citizen.

As one of the virtues, Cicero defines *iustitia* as a good that must be sought for itself alone. However, he also allows that it can be sought for the lesser goods it brings:

*Omni igitur ratione colenda et retinenda iustitia est tum ipsa propter sese: nam aliter iustitia non esset; tum propter amplificationem honoris et gloriae.*<sup>136</sup>

Justice, therefore, on every account should be fostered and retained for its own sake—for otherwise it is not justice—then for the increasing of honour and glory.

Although he appears to make a significant departure from traditional Stoic philosophy in attempting to demonstrate the practical usefulness of *iustitia* for an ambitious and competitive Roman audience, Cicero is not necessarily maintaining an inherent self-existing value of honour or glory.<sup>137</sup> Instead, when the quotation is taken as a whole and in context, Cicero's purpose becomes evident. He seeks to establish justice as an intrinsic good to be unconditionally sought even if it should necessitate the relinquishment of expedient things like reputation, glory, and praise. Since justice enables a man to willingly sacrifice even life or wealth for the sake of equity, such individuals are admired and called *viri boni*.<sup>138</sup> This quality of justice, however, also causes other men to praise, respect, and look to them to fill positions of leadership in the state. *Iustitia*, therefore, as the passage of *de Officiis* 2.12.14 indicates, must be sought first for its own sake and only afterward for the sake of utility, always provided that one is willing to forgo the pursuit of utility if necessary in order to preserve justice.<sup>139</sup>

In practice, *iustitia* becomes apparent in relations with others. The two principles Cicero connects with justice are firstly, not to harm anyone, and secondly, to

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<sup>136</sup> *Ibid.* 2.12.42. The Teubner differs in its rendering of the phrase: "*iustitia est cum ipsa per sese—nam aliter iustitia non esset*".

<sup>137</sup> Dyck (1996) 422, 354.

<sup>138</sup> Cic. *Off.* 2.11.38.

<sup>139</sup> Cf. Long (2006) 310-311; Cic. *Leg.* 1.15.42-43.

serve the common interests.<sup>140</sup> By combining the negative prohibition with the positive command, Cicero can then apply *iustitia* to every situation of human interaction. Because of its quality in enabling humans both to abstain from harming others and to work together for the common good, Cicero emphasises that it is on the basis of *iustitia* that men are called *boni*.<sup>141</sup>

A good citizen, therefore, must be one who evinces *iustitia*, whether as a ruler who guarantees it for the people, or as an individual who never pursues his own interests to the detriment of another. Even further, the primary task of *iustitia* is the preservation of *societas*. By fulfilling the demands of *iustitia*, individuals promote and preserve the good of the state.

The second key term Cicero uses to express the relationship between the individual and the community is *societas*. In *de Officiis*, *societas* denotes not the modern understanding of society but rather an alliance, partnership, or fellowship. As an advocate, Cicero consciously employs a term which dictated specific legal and social obligations in the partner relationship it established between two parties. He repeatedly uses the term throughout the work, explaining the different ties of *societas* and the *officia* applying to them. Directly connected to his positive view of association is his insistence that the first and most rudimentary bond of *societas* exists between all members of the human race.<sup>142</sup> Closer instances of *societas* exist, however, such as those with one's state, or those between spouses, friends, and members of the same family or community.<sup>143</sup> Different *officia* govern each of these relationships. For instance, the duty required toward a family member is greater than that required toward a foreigner. As Cicero explicitly states, in deeds of *beneficentia*, one must consider whether the specific tie of *societas* warrants such an action.<sup>144</sup>

Instead of conflicting with each other, the fulfilment of *officia* in one area of *societas* will also serve the best interests of the others. In its long history in Roman law, the term essentially signified not a reciprocal transaction but "the pooling of resources (money, property, expertise, or labour, or a combination of them) for a common

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<sup>140</sup> Cic. *Off.* 1.10.31.

<sup>141</sup> *Ibid.* 1.7.20.

<sup>142</sup> *Ibid.* 1.16.50-51.

<sup>143</sup> *Ibid.* 1.17.54-57, 3.17.69.

<sup>144</sup> *Ibid.* 1.14.45.

purpose”.<sup>145</sup> While such intent did not always translate into practice, the partnership required the good faith of both parties in order to function.<sup>146</sup> Thus, when Cicero appeals to the bonds of *societas* between individuals and the republic, he is promoting a positive partnership of interests that ensures the good not only of the community as a whole but also of each individual.

Ultimately, the preservation of all types of *societas* depends upon *iustitia*. The basic bond of justice ties all humankind together and is the *officium* required in every association of *societas*, whether between two members of a family or between members of different nations. Justice, and the underlying promise of good faith it entails, guarantees that a man will fulfil his word, render to others what is due, and never harm another in order to promote his own interests; therefore, any blow to justice also destroys *societas*.<sup>147</sup> As a result of this role in maintaining human fellowship, Cicero names *iustitia* the mistress and queen of the virtues.<sup>148</sup>

When an individual acts unjustly, Cicero considers him to have broken the ties of *societas* and no longer have a claim to its benefits. For this reason, he warns against the dangers of ambition for power and glory, which caused Caesar to forget the demands of *iustitia*.<sup>149</sup> His argument for the legitimate murder of tyrants is based on this theory; since, by their lack of regard for justice, tyrants not only place themselves outside all bonds of *societas* but become destroyers of it.<sup>150</sup>

Thus, the *vir bonus* of *de Officiis* is the individual who seeks to preserve *societas* through justice. Rather than harm another, he will suffer loss to his own person or interests.<sup>151</sup> As previously noted, the legitimacy of the state depends upon the people uniting behind justice. The citizen who is necessary to the state, therefore, is the individual who upholds the principles of *iustitia* in his private and official relationships and who consequently maintains the bonds of *societas*.

Although Cicero gives specific instances, especially in the third book, of what it means to protect the common interests and not to harm another, he focuses primarily on

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<sup>145</sup> Zimmermann (1992) 451; cf. Griffin (1991) xlv.

<sup>146</sup> Crook (1984) 229-231.

<sup>147</sup> Cic. *Off.* 1.5.15, 1.7.23, 3.5.21.

<sup>148</sup> *Ibid.* 3.6.28. Cf. Cic. *Off.* 1.7.20; Cic. *Leg.* 1.10.28, Cic. *Rep.* 2.42.69.

<sup>149</sup> Cic. *Off.* 1.8.26. Cf. Schofield (2009) 207-209 on Cicero's development of *magnitudo animi* and its necessary connection with justice and serving the state.

<sup>150</sup> Cic. *Off.* 3.6.32.

<sup>151</sup> *Ibid.* 3.6.28.

the general principles illustrated by the examples. For Cicero, if an individual truly seeks to protect *societas* and rightly apply *iustitia* in the various situations of life, he is likely performing his *officia* toward others.

Closely linked to Cicero's discussion of the duties one owes another is the second main sphere of moral obligations, that of self-interest or of duties toward oneself. In analysing the interests of the individual, Cicero does not speak of one's *officia* toward oneself in the same way he mentions the *officia* owed to the gods, parents, country, and *hominum societas*. Nevertheless, he does affirm the ability and right of individuals to seek and protect their own interests. According to Cicero, the impulses of self-preservation and of providing for one's necessities and comforts are consistent with nature.<sup>152</sup> Furthermore, when discussing expediency in book two, Cicero describes the diligent accumulation of wealth, the wielding of influence, and the gaining of friends as useful objects of pursuit. Thus, while his focus on the preservation of the common interests would seem to require much personal sacrifice, Cicero does not lose sight of the individual. Despite holding a position patently full of tension, he believes it is possible to secure the interests of both the individual and the community.

In fact, Cicero cannot view the common interest apart from its connection with private self-interest and property, and part of his definition of justice is founded upon the preservation of private property. As mentioned previously, justice consists of two tasks, of which the first is to harm no one. He defines the second task of *iustitia* as dictating that common property is used for the common welfare, while private property is used for one's own welfare.<sup>153</sup> Shortly afterward, he restates the principles of justice, only this time he explains the second task of justice in narrower terms: namely, to preserve the common interests.<sup>154</sup> By first distinguishing between common and private property and then apparently combining the two under *communis utilitas*, Cicero appears to indicate that the common interests are best served when individuals have the ability to also pursue their own goods and interests.

In conjunction with his earlier assertion that society is not founded upon human vulnerability but on a desire for fellowship, Cicero also attempts to defend the theory that laws and governments were established to protect justice and private property.

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<sup>152</sup> *Ibid.* 1.4.11-12.

<sup>153</sup> *Ibid.* 1.7.20.

<sup>154</sup> *Ibid.* 1.10.31.

When mentioning the early kings of Rome, he says the people chose their kings in order to enjoy justice, because they were helpless (*inops*) and desired the protection of a virtuous man to rule over them. While this view may appear to lend support to the argument that justice originated from weakness, Cicero sees a crucial distinction between the premise that the people, from a sense of their own helplessness, created justice, and his own view that the people sought to enforce justice as an already existent standard and in order to produce equity. In *de Officiis* 2.21.73 he makes a similar argument:

*Hanc enim ob causam maxime, ut sua tenerent, res publicae civitatesque constitutae sunt. Nam, etsi duce natura congregabantur homines, tamen spe custodiae rerum suarum urbium praesidia quaerebant.*<sup>155</sup>

For this is the greatest reason for the establishment of states and cities, that men might preserve their own property. For although men assembled by the dictates of nature, yet the protection of cities was sought in the hope of defending that which was their own.

This passage implies a separation between the entity of the people and the state. The state and its laws belong to the people and are established by them for specific purposes; however, the association of the people itself exists separately from the state. In summary, neither the people nor justice derives from weakness; rather, men draw together from a natural desire for fellowship. In Cicero's model, however, once they have come together they seek to constitute specific laws and forms of government that will maintain justice, part of which includes the protection of their own property within that community.

The main thrust of Cicero's attack against policies such as the land and agrarian reforms or the cancelling of debts derives from his conception of justice and self-interest. The importance he places on the interest of the individual is equally weighted with his condemnation of statesmen who attempt to increase their own popularity by impinging on one individual to enrich another. Justice, in Cicero's analysis, should not only prevent one person from robbing another of his property, but should prevent a statesman from doing the same.<sup>156</sup>

Nevertheless, one cannot be wholly driven by self-interest without violating *officium*, which prescribes certain limitations upon it. Most obviously, in the same way that justice enables an individual to protect his own property, it also protects the

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<sup>155</sup> The Teubner edition contains the one variation of "*tenerentur*".

<sup>156</sup> Cic. *Off.* 2.23.84.

interests of others. As Cicero cautions, one may serve his own interests insofar as he is acting *sine alterius iniuria* (without injury to another).<sup>157</sup> Even further, he invokes the Stoic doctrine that men are born for the sake of other men, that each may be able to benefit the others.<sup>158</sup> Hence, Cicero criticises those who avoid inflicting actual *iniuria* but occupy themselves only with increasing their own property; in this way, they have violated the terms of justice: *deserunt enim vitae societatem, quia nihil conferunt in eam studii, nihil operae, nihil facultatum* (for they forsake the fellowship of life, because they add to it none of their zeal, none of their efforts, none of their abilities), a critique severe in its intimation that they have forsaken their *officia* by thus severing the bond of *societas* with their fellowmen.<sup>159</sup>

By affirming the mutual responsibilities of contributing to social life and promoting the common good, the limitations of self-interest provoke certain egalitarian questions left unaddressed by Cicero. The balance between the good of an individual and of the community is itself fraught with tension; however, the greatest qualification Cicero places on the pursuit of self-interest comes from his conception of utility. Throughout *de Officiis*, Cicero employs a dual definition of utility or self-interest, and he constantly struggles to maintain this definition amid apparent contradictions.

Operating simultaneously with his evident definition of self-interest, which includes such things as the accumulation of wealth and the gaining of honour and influence, is the overarching premise he presents at the beginning of *de Officiis*. Asserting his previous proof of this premise in *de Finibus*, Cicero acknowledges that his argument throughout *de Officiis* rests on the assumption that the *summum bonum* is inseparable from virtue and that *honestum* is either the only or the principal thing worth seeking for its own sake.<sup>160</sup> By thus making virtue necessary in the securing of *εὐδαιμονία*,<sup>161</sup> Cicero establishes another sense of utility, widely divergent from his first, and equates virtue with self-interest. As Dyck agrees, this combination of *honestum* and *utilitas* forces Cicero to “give *utilitas* a meaning different from that in ordinary use”.<sup>162</sup>

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<sup>157</sup> *Ibid.* 3.20.42

<sup>158</sup> *Ibid.* 1.7.22.

<sup>159</sup> *Ibid.* 1.9.29.

<sup>160</sup> *Ibid.* 1.2.5-6.

<sup>161</sup> Dyck (1996) 70.

<sup>162</sup> *Ibid.* (2004) 187.

At the same time, Cicero attempts to prove to his readers that virtue, although a good in itself, is also the best way to gain the lesser objects of self-interest, whether property, friends, or glory. Virtue, therefore, becomes both a good in a lasting and moral sense, so that an individual willingly suffers loss of body or property for its sake, and an expedient and temporal good since it benefits the community through mutual helpfulness and aids in achieving other desirable expediencies. Both types of self-interest must be pursued, because the individual who acts only in partial self-interest and tries to gain an expedient good without virtue will ultimately fail of both. Consequently, Cicero states that virtue reveals itself in a proper accumulation of wealth and advantages, but far more in being able to view them with indifference.<sup>163</sup>

An apparent paradox emerges, inasmuch as by placing *honestum* or moral character as the height of utility, those who have ceased to care about their own tangible interests have actually attained to the greatest possible self-interest. Although Cicero encourages individuals to seek the more obvious expediencies, he idealises heroes like Hercules and Regulus, who, while not apathetic about their self-interest were willing to place the common good above it, believing they were attaining *honestum* and convinced that later generations would honour their actions. Therefore, when advocating indifference to self-interest, Cicero actually uses a comparison in which devotion to the *utilitas communis* renders the importance of lesser goods insignificant.<sup>164</sup>

His retelling of the story of Gyges, who by means of a magic ring steals a kingdom, exemplifies the logical outcome of his argument that one's best self-interest comes through pursuing virtue as the supreme good. Unlike Gyges, the *vir bonus* will seek *honestum* even at the risk of his self-interest,<sup>165</sup> counting the loss of body or property insignificant in comparison to the far greater danger of harming his soul and falling into *turpitude*.<sup>166</sup> As he said in *de Legibus*, the *vir bonus* will act justly even if he is alone in the dark.<sup>167</sup> Demoralization is not dependent on punishment or even the shame that would result if others were aware of one's actions.

Therefore, Cicero's dual conception of *utile* attempts to prove the main point of *de Officiis*: specifically, that to live without *honestum* and to fail in *officia* produces

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<sup>163</sup> Cic. *Off.* 1.5.17.

<sup>164</sup> *Ibid.* 3.5.24.

<sup>165</sup> *Ibid.* 3.9.38.

<sup>166</sup> *Ibid.* 3.5.26, 3.8.36.

<sup>167</sup> Cic. *Leg.* 1.14.41; cf. Cic. *Off.* 3.19.77.

self-destruction in two ways, most importantly in the demoralization of one's self, but secondly and in a material sense, in the devastation of the mutual cooperation so necessary to the state and to one's interests. While Cicero views the former motivation as a necessary foundation for his argument, his focus in *de Officiis* is on the latter, because it would hold greater appeal for ambitious Roman statesmen. Cicero does not desire to engage in a mere philosophical discourse; instead, he desires to show that his viewpoint promotes Roman values and the practical politics of expediency. In this context, his insistence on the connection between *iustitia* and *societas* becomes clear: both together enable him to unite his definitions of utility. The *societas hominum coniunctioque* (fellowship and union of men), as Long points out, is "the supreme *utile*, in the language of *Off.*, because it comprehends the particular interests of every individual".<sup>168</sup> The place of honour Cicero affords *iustitia* is based on its expediency and its role in ensuring the benefits of *societas*. Because justice closely touches human relations and is essential to the state's well-being, Cicero can most easily demonstrate the tangible worth of this virtue as opposed to a more theoretical value. The strength of the state lies in this conjoining of self-interest with that of the common interests.

The third main sphere of *officia* addressed in this section, therefore, is that of the moral duties owed to the state. Significantly, in a work set within a political context and dedicated to the analysis of *officia*, Cicero focuses less on political or governmental affairs and more on an enumeration of personal virtue and its effect on other individuals. While he views *honestum* as the foundation for the strength and stability of the state, Cicero is far from advocating it for the sake of the state alone. Once again, the premise that *honestum* must be sought for its own sake provides the philosophical underpinning for his theory of virtue and citizenship; to seek virtue only so that the state may survive would make his argument collapse upon itself.

At the same time, to promote the glory and permanence of the state is an essential part of *officia* and defines both the good man and the good citizen. It is no accident that Cicero names devotion to country first in his comparison of duties and says that love of country compels even the sacrifice of one's life.<sup>169</sup> As Atkins notes, "Cicero sees the *res publica* as the most important *societas*".<sup>170</sup> Current events were

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<sup>168</sup> Long (2006) 327.

<sup>169</sup> Cic. *Off.* 1.17.57-58.

<sup>170</sup> Atkins (1990) 275.



clearly in his mind when he praised Regulus for remaining true to his *officia* by placing the good of the state and the obligations of *iustitia* and *fides* before his own preservation.<sup>171</sup> Similarly, one of his main criticisms against the statesmen of his time is that they pursue their own glory rather than serving the state. As an example, Cicero mentions Antony, who, ignorant of the true path to glory, was unwilling to be an equal among *cives* and instead desired the sole power in the state.<sup>172</sup> He also condemns those who promote agrarian laws for the sole purpose of gaining popularity and influence.<sup>173</sup> As these illustrations demonstrate, *officia* demand that one seek the *utilitas* of the state before the expediencies of self-interest.<sup>174</sup>

Although he tends to support overarching principles with examples of general truth, instead of listing specific political duties, Cicero does name some of the *officia* due to the state. In particular, he expounds on the duties of a statesman who rightly seeks to advance the state in power, territory, and revenue.<sup>175</sup> Notably, although the precise *officia* of a statesman differ from those of a private citizen, the defining characteristic of the *civis bonus*, whether a leader of the state or an individual, is the same.

The task of each citizen is to combine the interests of every individual so that they are compatible with each other. By striving to accomplish this object, a citizen ensures the best interest of the state. At this point, Cicero is developing his political theory from observable facts. Clearly, the strength of the state lies in the degree to which the communality of interests is preserved. Also obvious is the fact that if an individual pursues self-interest at the cost of weakening this bond, he destroys not only the state but eventually his own self-interest, since the stability of the state is what enables him to pursue this end.<sup>176</sup> Based on these premises, Cicero's conclusion is predictable; what is inexpedient for the state can never be expedient for the individual.<sup>177</sup> His test of the true citizen fits within this context. Instead of aiming solely at the achievement of personal interests, a *civis bonus* pursues his interests only insofar as they do not injure the interests of other individuals or the state.

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<sup>171</sup> Cic. *Off.* 3.27.101, 3.29.104-5.

<sup>172</sup> Cic. *Phil.* 1.33-34.

<sup>173</sup> Cic. *Off.* 2.22.79.

<sup>174</sup> Cf. Dyck (1996) 620.

<sup>175</sup> Cic. *Off.* 2.24.85.

<sup>176</sup> Cf. Atkins (1990) 270-271 on the argument Cicero gives for valuing society.

<sup>177</sup> Cic. *Off.* 3.27.101.

In Cicero's opinion, this effort to reconcile interests is the attribute of a great statesman. As he says early in the work, the citizen who is serious, brave, and worthy of ruling the state will renounce self-aggrandizement and instead uphold the state as a whole by looking out for the interests of each individual.<sup>178</sup> This theme is repeated in 2.23.83, when he praises statesmen of the past, saying that *eaque est summa ratio et sapientia boni civis, commoda civium non divellere atque omnes aequitate eadem continere* (and this is the highest reasoning and wisdom of a good citizen, not to sunder the interests of the citizens but to hold them all together by means of justice).<sup>179</sup> In these statements, Cicero invokes a concept similar to one in his earlier treatises. When describing the *rector rei publicae* in *de Orator* and *de Republica*, he is not referring to a political office but is introducing the ideal of an individual who is capable of guiding the state and devoted to her welfare.<sup>180</sup>

In *de Officiis*, however, it becomes even clearer that the concept of the *civis bonus* is not necessarily tied to public office. The task of preserving the solidarity between common and individual interests is just as relevant for a private citizen as for a statesman. Cicero states this strongly in *de Officiis* 3.6.26, when he says that *ergo unum debet esse omnibus propositum, ut eadem sit utilitas unius cuiusque et universorum* (therefore, it ought to be the single purpose for all, to make the interest of each individual and of the whole together the same). Throughout the work, Cicero emphasises that a man of noble character will chose a life of active service to the state; nevertheless, although this choice will likely entail public office, it does not necessarily dictate such an outcome. In so doing, he shifts the focus away from the pursuit of power and position to the real aim that he wishes all good citizens to pursue: to apply justice in all areas of one's conduct and thus to promote the general welfare.

It would not be far wrong to say, therefore, that *de Officiis* is about the role of *honestum* in tying together the entities of the individual and the community and in making their interests coincide. Cicero's ultimate aim is to demonstrate that fulfilling the obligated *officia* toward others and the state is consistent with seeking one's own interests. In his eyes, the *civis bonus* is the individual who recognises the necessity of this endeavour and seeks to realize it more fully. Implicit in this conception of the good

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<sup>178</sup> *Ibid.* 1.25.86.

<sup>179</sup> The Teubner edition contains the one variation of "*omnis*".

<sup>180</sup> Fantham (2004) 317-318; Steel (2004) 70, 76; Ferrary (1995) 53.

citizen, however, is the acknowledgement that conflicts of interest do occur. Although his theory of the congruency between interests is theoretically reasonable, in practice it raises significant difficulties. He spends a large part of *de Officiis* in attempting to answer some of these questions, struggling because of his desire to maintain a consistent philosophical framework while being forced to recognise that the tension never can be completely resolved.

### 1.4.3. Irresolvable tension

In the third book of *de Officiis*, Cicero resumes the topic discontinued by Panaetius, believing that the discussion will only be complete when the apparent irreconcilability between *honestum* and *utilitas* has been explained. While other points of philosophical and logical inconsistency could be noted in *de Officiis*, the tension that Cicero attempts to resolve between self-interest and the interests of others has the most significant bearing on his concept of the good citizen.

The first main area of conflict occurs between one individual's interest and the interest of another. Even if one accepts Cicero's asserted premise that *honestum* and *utilitas* do not conflict, that one's self-interest is best maintained not by the protection of life or the increase of wealth and influence but by adherence to moral duty, questions still remain. Specifically, the issue arises as to why on a practical level the interest of two individuals often appear to clash and as to how one should apply justice in the different situations of life. In other words, when a conflict occurs between my tangible interests and those of another, does *officium* indicate a course of action that not only preserves my self-interest but also fulfils *honestum*? And how does one discover that explicit rule of conduct (or as the courts phrase it, the bright line rule)? These are the issues Cicero attempts to clarify.

As a result of this effort, he becomes more dogmatic in the final book and despite his adherence to the New Academy lays down inflexible solutions to a series of examples illustrating the conflict of interests. For instance, he addresses the extent to which one can conceal faults in an item of sale without committing actual fraud and concludes that an individual violates the principle of justice whenever he conceals a matter that is in another's interest to know.<sup>181</sup> Cicero also praises Quintus Scaevola

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<sup>181</sup> Cic. *Off.* 3.13.57.

because, believing the value of a house to be incorrectly appraised, he paid a much greater price than that demanded by the seller.<sup>182</sup> Many of the moral dilemmas on which Cicero gives his opinion were raised by previous philosophers, such as the list given by Hecaton of Rhodes, which examines questions like whether a drowning man can morally seize the plank of another.<sup>183</sup> Unsurprisingly and yet also disconcertingly, the precise details of each scenario affect the outcome of Cicero's conclusions. Although the different situations relate primarily to Roman life, the tension of interests for which he seeks a universal rule is a difficulty transcending time and culture.

The second main area of tension, which Cicero begins to deal with in the second book, is that between the interests of an individual and those of the community as a whole. A key illustration of this and one particularly relevant to the Roman political situation is the conflict between the interests of the wealthy and powerful citizens and the needs of the poor. On the one hand, as already mentioned, Cicero fiercely defends the property interests of the elite members of society. He acknowledges, however, that those governing the republic ought to consider how to ensure that the people have the necessities of life.<sup>184</sup> As he says in *de Republica*, the moderator of the state aims at the happiness and material well-being of the people.<sup>185</sup> Even further, *officia* demand such behaviour not only from the statesman but also from the private citizen, who should employ his *artes* (skills), *operae* (efforts), and *facultates* (resources) in order to unite human *societas*.<sup>186</sup>

While Cicero's philosophy focuses on preserving the common interests and the various ties of *societas*, he veers wide of a more egalitarian distribution of property such as that sought through the land and agrarian reforms. His focus on the individual interests of the Roman elite, therefore, causes him to neglect apparent implications of the principles he advocates. For instance, whether the personal interests of a member of the elite could potentially clash with those of a slave or the common good of the *plebes* is beyond the field of Cicero's inquiries. On this point, classicists tend to critique

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<sup>182</sup> *Ibid.* 3.15.62.

<sup>183</sup> *Ibid.* 3.23.89-90.

<sup>184</sup> *Ibid.* 2.21.74.

<sup>185</sup> *Cic. Rep.* 5.6.8.

<sup>186</sup> *Cic. Off.* 1.7.22-23.

Cicero's model, noting that while his principle of communal interest is "breathtaking in its implications", he limits it to an extremely narrow application.<sup>187</sup>

Despite his support of private property, Cicero realises that measures opposed to these interests are sometimes necessary. Even in his severe critique of property taxes, he admits that at times they are necessary for the republic;<sup>188</sup> similarly, he condemns the Gracchi grain doles, but says the moderate one enacted by Marcus Octavius was *rei publicae tolerabilis et plebi necessaria* (acceptable for the state and necessary for the common people).<sup>189</sup> Once again, therefore, the conflict of interests demands a clear line for decision-making; yet, even the wise and learned who agree that *officium* should be upheld may view necessity or common interests as dictating antithetical courses of action.

Cicero attempts to explain the apparent dichotomy between the divergent perceptions of what *officium* requires in these different situations by reverting to Platonic notions of virtue. On the philosophical level, he believes that all *viri boni* will agree that *honestum* and *utilitas* do not conflict, that true glory consists in rising above the preferred advantages of life and wealth, and that certain *officia* rank higher than others. Nonetheless, as his examples demonstrate, disagreement still occurs over how to practically apply justice, with the philosophers arguing not that one should act expediently in disregard of *honestum* but instead arguing over what morality demands in a given circumstance.<sup>190</sup> In his effort to solve this dilemma in both theory and practice, Cicero delineates between the perfect wise man and the men that perform wise acts, between true law and justice and the shadows of these principles that are applicable to daily life. In the fundamental passage of *de Officiis* 3.17.69, he draws attention to this distinction:

*Sed nos veri iuris germanaeque iustitiae solidam et expressam effigiem nullam tenemus, umbra et imaginibus utimur. Eas ipsas utinam sequeremur!*

But in truth we retain no solid and distinct image of true law and justice, the shadow and echoes of them are all that we enjoy. If only we would observe the very things!<sup>191</sup>

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<sup>187</sup> Dyck (1996) 530; cf. Long (2006) 329-330; Carter (1972) 34-36.

<sup>188</sup> Cic. *Off.* 2.21.74.

<sup>189</sup> *Ibid.* 2.21.72.

<sup>190</sup> *Ibid.* 3.12.53.

<sup>191</sup> Although the concept is most clearly expressed here, it persists from the beginning of the work: see Cic. *Off.* 1.3.8, 1.15.46, 2.10.35, 3.4.16. On a comparison with the example of the cave given in Plato's *Republic*, cf. Tanner (1972) 111; MacKendrick (1989) 254.

A semblance of justice, of *honestum*, and ultimately, therefore, of *officia* is all that Cicero can offer. On the philosophical level he insists on an absolute standard of virtue, but accepts that differing perceptions of truth will govern the practical sphere. In light of this, people need not expect to attain to the ideal of the *vir bonus*, but instead to live according to *honestum* insofar as they do perceive it.<sup>192</sup>

In this context, motivation and intent become central, with virtue alone protecting the interests of the state. In a world of shifting circumstances where the exact requirement of duty is not always clearly defined, the good citizen must still attempt to uphold the principles of justice by harming no one and preserving the common interests. Cicero's legal knowledge and experience are clearly at work in this theory. From the early *de Inventione*, when he explains how to make a case by manipulating arguments based on either the letter of the law or on the spirit of the law,<sup>193</sup> to his later judicial speeches, Cicero well understood the difference between merely following the written laws compared to following the lawgiver's intent. Such arguments allowed him to defend the act of law-breaking in his suppression of the Catilinarian conspiracy as he sought to protect the state, which he considered his primary *officium*. In *de Officiis*, to reconcile his claims that justice sometimes requires more than the written laws demand but that a solid definition of such duties is not always attainable, Cicero reverts to the argument of intent, based on the notion that above all an individual should seek to fulfil the general principles of justice. In the end, *officium* depends less on following certain rules than on one's intent, with the proper intent being a desire to benefit others and to distribute justice regardless of the consequences.

The good citizen of *de Officiis*, therefore, seeks congruence of interests. Different dangers threaten each individual. In the examples provided by Cicero, the statesman struggles against allowing the desire for popularity and power to guide his decisions, while the individual selling a house wants to conceal defects in order to increase the price. Regardless of the situation, Cicero emphasises that whether statesman or private citizen, each must observe *officia* insofar as they perceive them, not ignoring the tension and conflicts of interests that this effort entails, but seeking the best resolution possible.

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<sup>192</sup> Cic. *Off.* 3.4.17.

<sup>193</sup> Cic. *Inv.* 1.33.55-56, 1.38.69.

Cicero's solution fails, however, to solve the conflict occurring in his conception of the good citizen. On both a philosophical and a practical level, the individual still faces a tension of interests that cannot be eased by the theory that the ideal of justice is only dimly discernible.

The first main problem results from the foundational premise of *de Officiis*, that virtue is the *summum bonum*, which Cicero rigidly asserts is beyond argument. Interestingly, he approaches this premise from the perspective of the New Academy, which cannot help but weaken his argument. By maintaining that all questions can only be decided on the basis of probability,<sup>194</sup> but that the only probable assertion is that moral goodness is worth seeking only for its own sake,<sup>195</sup> Cicero seeks to make his position both probable and certain. This effort to place moral certainty on the philosophical basis of mere probability only increases the difficulty in proving his premise. Raising arguments with the viewpoint of virtue as the greatest good is outside the scope of *de Officiis*, let alone of this chapter; however, the fact remains that even in *de Finibus* this viewpoint is fiercely contested. Yet Cicero recognises that his model of the good citizen can only stand if this presupposition is universally accepted—to the point where one is not only intellectually convinced, but willing to act accordingly and to sacrifice life, wealth, and temporary glory for the sake of *honestum*.

Even beyond the issues of whether such common agreement is possible and how it is to be achieved, the motivation Cicero offers also raises questions. In *de Officiis*, he acknowledges the pull of expediency and argues that it is not incompatible with *honestum*. Aside from the blanket statement that *honestum*, in and of itself, is in one's best interest, one of the most compelling reasons Cicero gives for its pursuit is that of *vera gloria*, which comes not through reputation but through actual deeds and which lasts beyond one's lifetime.<sup>196</sup> However, is the pursuit of lasting glory enough to enable people to view their *officium* as Cicero defines it and to risk their tangible and temporary interests for the sake of long-term honour?

At this point in his own lifetime, Cicero appears willing to take that risk. Concerned with how people viewed his political actions and career, Cicero seeks glory as his lasting legacy. *Gloria* is an important theme in *de Officiis*, especially as it

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<sup>194</sup> Douglas (1965) 143.

<sup>195</sup> Cic. *Off.* 3.7.33.

<sup>196</sup> *Ibid.* 1.19.65, 2.12.43.

reconciles Roman competitiveness with the interests of others. Cicero would not have viewed his childhood motto from Homer “far to excel and to be above the rest”<sup>197</sup> or his lifelong political ambitions as incompatible with the principles he advocates in *de Officiis*, since he considers *gloria* as inseparable from justice and as the proper result of virtuous deeds.<sup>198</sup>

Long remarks that while Cicero demonstrates that a reputation for justice is a precondition of true glory, his attempt to “connect acceptable glory with justice and mass approval fails”.<sup>199</sup> To an extent, such an assessment detracts from the subtlety of Cicero’s approach. Two distinct elements of thought interact in Cicero’s theory of *gloria*. First, he realises without doubt that the true *gloria* resulting from justice will not always be appreciated or meet with popular approval, and this theme consistently appears in his final treatises. In *de Officiis* 1.4.14, he says that *honestum* is praiseworthy even if praised by none. Earlier, in *de Republica* 1.3.4-5, he addresses the fickleness of public approval and the wrongs perpetrated against those who aided the state, and in *de Legibus* 3.11.26 he portrays himself as willing to endure this public scorn and to sacrifice praise in order to save the state. On the other hand, Cicero’s broad interpretation of reason and virtue as natural and perceivable by all demands the conclusion that eventually praiseworthiness will be praised and that *gloria* will in fact be the reward of justice. Even if not in the here and now, the *viri boni* will inevitably recognise and praise one’s *honestas*. Long’s statement that public recognition of true glory cannot be guaranteed is undeniably correct. Many factors could destroy the promise of eventual praise and lasting *gloria*; for instance, not all may share in the belief of what constitutes a praiseworthy action, one’s actions or motives may be misinterpreted, or historical bias may ruin a good reputation. Nevertheless, while Cicero’s conclusion that history reveals true *gloria* is clearly debatable, it is still consistent within his theoretical framework and can be reasonably inferred from his arguments.

A greater difficulty occurs as a result of Cicero’s example of Gyges, which must logically work two ways. The individual who would refrain from wrongdoing even if no one perceived it must also be willing to perform just actions without outside

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<sup>197</sup> Cic. *QFr.* 3.5.4.

<sup>198</sup> Cic. *Off.* 2.12.42-43, 2.20.71.

<sup>199</sup> Long (2006) 323.



recognition or approval. Therefore, according to Cicero's argument, the good citizen must be prepared to fulfil the demands of *officium* not only if it brings no praise but even if it entails the loss of tangible advantages. In such a case, a great tension inevitably exists between the dimly perceived moral self-interest and the obvious loss of tangible self-interests. Even if ultimate *gloria* is certain, the question remains of whether such a hope can motivate an individual to endure temporary suffering. Cicero proves willing to accept it on a personal level, gambling his life in the hope of restoring the republic and gaining lasting glory for his name. His perspective, however, is coloured by Roman values and the culture of his time, which fostered reverence for its past heroes and naturally assumed that history would consider them in the same light. Cicero's conception of the good citizen, therefore, requires a specific view of both history and universal ethics to support it.

Another significant motivation Cicero offers readers in *de Officiis* is the preservation of *societas*. As previously mentioned, a failure in justice also leads to the severing of *societas*, which destroys the state and the advantages accruing to the individual through its existence. As Atkins remarks, in order for Cicero's argument to have an effect, "we must both believe his claims about the binding role of justice, and must also ourselves already care that society should survive".<sup>200</sup> While on a theoretical level most would likely agree with Cicero's connection between the interests of the individual and those of *societas*, much ambiguity still exists on a personal and practical level. The link, for instance, between selling a house for a higher price than its actual value and the breakdown of the state is not immediately apparent. The question remains, therefore, of whether the individual will be sufficiently motivated to refrain from all harm and concealment in the securing of his own interests, particularly if his primary motive in preserving the state is to protect his personal interests.

Two other main problems remain unresolved on the practical level. Firstly, the different perceptions of truth leading to mutually exclusive applications will inescapably produce confusion.<sup>201</sup> In *de Officiis*, Cicero is not concerned with legislating virtue; although the good citizen should follow the written laws of the state, at times Cicero believes that *officium* requires more of an individual than even the laws demand. In the absence, then, of defined rules, he says that living in accordance with

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<sup>200</sup> Atkins (1990) 271.

<sup>201</sup> Dyck (1996) 128.

*honestum* entails practice and experience, and he advises people to consult men of wisdom and learning.<sup>202</sup> However, having already admitted that even the learned frequently disagree, Cicero once again leaves the reader without clear guidance.

The second main problem results from Cicero's insistence that *honestum* is naturally understood. Although virtue may be natural, Cicero admits that even when people perceive the proper course of action, they frequently reject it. Few, he says, will refrain from injuring another if they can do so *impunitate et ignoratione omnium* (without fear of punishment and in secret).<sup>203</sup> Immediately after a series of examples where he condemns concealment in financial transactions, Cicero states that in truth, there are very few times when *simulatio et dissimulatio* (deceit and dissimulation) do not occur.<sup>204</sup> A disconnect appears, therefore, between theory and actuality. As Dyck remarks, this passage contains "an important admission that things are not really as simple as they have so far been represented".<sup>205</sup> Annas attempts to explain this apparent incongruity in Stoic philosophy by saying that "nature is a theoretical term in Stoic ethics: the natural life is the life we would ideally live, and the fact that we do not live that way merely shows that we have been corrupted".<sup>206</sup> However, while this explanation demonstrates that a Stoic conception of nature does not demand universal conformity to an ideal, it does not succeed in providing the state with the good citizens it must have in order to endure.

The inability to change peoples' intent, therefore, is the ultimate dilemma in Cicero's attempt to resolve the tension between diverging interests. While written law and prescribed punishment may succeed in changing behaviour, Cicero desires to change desires, values, and motivations, but he provides no compelling incentive. Although he gives expedient arguments for *honestum*, he also acknowledges that an individual must consider virtue his greatest self-interest in order to gain those expediencies. Thus, he fails to empower individuals to become virtuous and to seek a congruence of interests rather than their own self-interest. It is clearly unlikely that individuals will risk tangible expediencies for the sake of another or of the state unless they will gain some kind of visible advantage in the process.

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<sup>202</sup> Cic. *Off.* 1.18.60, 1.41.147.

<sup>203</sup> *Ibid.* 3.17.72.

<sup>204</sup> *Ibid.* 3.15.64.

<sup>205</sup> Dyck (1996) 575.

<sup>206</sup> Annas (1995) 273.

Similar to his approach in *de Legibus* 3.3.10, when he dictates a law for the senate that “the order shall be free from vice, and shall be a model for all the people”, Cicero describes how the good citizen should behave and what he should value, but he does not explain how to make this good behaviour a reality. Clearly, a governmental measure would prove inadequate, since by definition, the good citizen is not compelled by an outside force. In Cicero’s model, the good citizen is defined not by what the state or others require of him but what he requires of himself; even if no one is watching he will still uphold *honestum*.

Cicero himself still clings to the position that the good citizens who upheld these political values made the Republic strong in the past and will enable it to continue in the future. Unlike Polybius, whose cycle of constitutions emphasises the inevitable decline of Rome,<sup>207</sup> Cicero hopes that the virtue of the leading citizens will renew Roman political culture and ultimately lead to the restoration of the Republic.<sup>208</sup> Nevertheless, the universal tension between self-interests and the interests of others is evident, as well as the effect of this tension on the state. Rahe, in summarising the discussion of natural law and justice in *de Legibus* 1.14.40-15.43, says that “as Cicero pointed out long, long ago, the civility required for the maintenance of civil society can hardly be sustained on a foundation of calculation alone”.<sup>209</sup> While Cicero may be right in perceiving the abyss, however, his solution does not succeed in bridging it.

Any political theory will have areas of unresolved tension and will face difficulty in balancing the interests of the individual with those of the community. True to his own political bent, Cicero views the good citizen as the one who recognises this conflict and the inability to fully perceive the ideal but still embraces an active life of service to the state and forges ahead despite these obstacles rather than pondering them in retirement. Essential to the survival and the stability of the state are these individuals who willingly choose to perform their *officia* and to seek congruence between their own interests and those of their community. Because he viewed the breakdown of the virtues on a practical and individual level as the very thing that tore apart the Republic and threatened to prevent its rebuilding, as exemplified in the overweening ambitions of

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<sup>207</sup> Polyb. 6.9.12-13.

<sup>208</sup> Cic. *Rep.* 3.29.41; cf. 1.45.69. Cf. Powell, J. G. F. (2001) 23-24 on a comparison between Polybius’s and Cicero’s account of the cycle of constitutions.

<sup>209</sup> Rahe (1994) 206.

individuals like Caesar and Antony, Cicero seeks the reformation of Roman political values as the only way to bring about the rebirth of the Republic. By renewing dedication to the *mos maiorum* and to justice, as he has defined it, Cicero believes the Roman state will be provided with the good citizens that will enable it to endure. Although Cicero failed in his final endeavour, the legacy of *de Officiis* was accepted by the American Founding Fathers. Although they sought different ways of attaining their goal, they wholeheartedly endorsed his conclusion that the permanence and strength of the republic are ensured by the virtue of the good citizen and his personal commitment to justice. Wilson, in particular, adopted Cicero's conception of the good citizen and employed it in his own analysis of civic virtue.

## 2. Wilson's conception of the good citizen

The necessary and corresponding side of Wilson's doctrine of popular sovereignty is his strong belief in the duty of citizens to obey the law. Just as they have the freedom to choose the laws, so they must willingly and gladly submit themselves to them. In itself, the very act of consent implies obedience. Once chosen, therefore, even human laws carry with them this obligation.<sup>210</sup> Although he believes citizens have the right to choose their country as well as the laws governing them, Wilson also believes that residing in a state carries with it a type of tacit consent.<sup>211</sup> By entering into a civil society, people voluntarily pledge themselves to abide by the will of the majority and to be answerable to the community for their behaviour.<sup>212</sup>

The national character of the United States, as Wilson claims in his introductory lecture, is "distinguished by the love of liberty, and the love of law".<sup>213</sup> Without this dual foundation of respect and affection not only for liberty but also for the laws of the state, Wilson believes neither liberty nor law can endure. In order for a state to succeed, he warns that "the obedience of the citizens is of a necessity, absolute and supreme".<sup>214</sup>

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<sup>210</sup> Wilson (1804) 1:99.

<sup>211</sup> *Ibid.* 1:317. Cf. Hall (1997) 107 on how this concept of tacit consent lends political stability to a nation governed by Wilson's ideology of liberty.

<sup>212</sup> Wilson (1804) 2:312; cf. 1:310.

<sup>213</sup> *Ibid.* 1:5.

<sup>214</sup> *Ibid.* 2:435.

They can be free only by fulfilling their first and primary duty of submission to the laws of their nation.<sup>215</sup> In this context, it becomes clear why Wilson included the *pro Cluentio* quotation at the beginning of his lectures and continually reiterates its assertion that individuals serve the laws in order that they may be free. On this basis of freedom and obedience, he constructs his system of legal and political thought.

The obligations of obedience, however, entail more than a simple adherence to the law merely for the expediency of the state or in order to preserve individual rights. The people's obedience to the laws they have established is only part of a broader system of duties binding them, which they follow from a sense of moral obligation. Thus, throughout his lectures, Wilson constantly returns to the duty of citizens to submit to certain laws, traditions, and moral imperatives.

Ultimately, Wilson endorses the theory of an overarching natural law that enjoins virtue. In opposition to human laws, which cannot entail obligation, Wilson outlines the notion of divine law: the only supreme law rightly dictated by a superior,<sup>216</sup> the "*principium essendi*" or the "efficient cause of moral obligation".<sup>217</sup> Wilson's theory of natural law cannot be separated from its classical foundation. In maintaining that the will of God is the "supreme law" universally binding all men, Wilson turns directly to *de Legibus* 2.4.8: *principem legem illam et ultimam, mentem esse dicebant, omnia ratione aut cogentis, aut vetantis dei* (they were declaring that first and ultimate law to be the mind of god which by reason either compels or prohibits all things).<sup>218</sup> Thus, while the people are sovereign and cannot be bound by any fellow human being, they are not sovereign in regard to all law. Free from human laws unless they consent, they are universally and perpetually bound by divine law. As he seeks to differentiate, divine law consists both of revealed law as "promulgated by the holy scriptures" and of natural law as "promulgated by reason and the moral sense".<sup>219</sup> Wilson employs the well-known quotation from *de Republica* 3.22.33 in his insistence on the immutability and universality of the law of nature.<sup>220</sup> Natural law, for Wilson, acts as the ultimate

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<sup>215</sup> *Ibid.* 2:436.

<sup>216</sup> *Ibid.* 1:66.

<sup>217</sup> *Ibid.* 1:118.

<sup>218</sup> *Ibid.* 1:118. See above, p. 56 for the context of this quotation.

<sup>219</sup> *Ibid.* 1:104; cf. 1:64. Cf. 1:120, where Wilson states that we can discover the will of God "by our conscience, by our reason, and by the Holy Scriptures".

<sup>220</sup> See above, pp. 56-57 for the whole of this quotation, Wilson's translation of it, and the surrounding context.

sovereignty binding all men and dictating a specific standard of moral virtue that they are obligated to obey.

Wilson does not rely solely on his classical training to provide him with such a construction of natural law. Richard Hooker's *Of the Laws of Ecclesiastical Polity* (1666) and Jean Jacques Burlamaqui's *The Principles of Natural and Political Law* (1747) are two of his most cited works in the chapters on natural law. Nevertheless, Cicero continues to be a primary source even here, and it is evident that Wilson wishes to root his theory in the classical tradition just as fully as in more contemporary sources. In fact, such an endeavour helps to establish one of his main arguments: that not merely the Christian tradition but reason and an innate moral sense in humankind reveal the principles of divine law.

Even in his chapter 'The Nature and Philosophy of Evidence', where he relies almost exclusively on Thomas Reid's doctrine of intuitive truths, Wilson clearly seeks to base his ideology on a classical foundation. Reason and the moral sense, he asserts, convey not only a universal standard of right and wrong or virtue and vice, but also an understanding of truth and beauty.<sup>221</sup> In support of this perspective he translates *de Oratore* 3.50.195:

"Let no one", says Cicero, in his excellent book *de oratore*, "be surprised that the most uncultivated mind can mark and discern these things: since, in everything, the energy of nature is great and incredible. Without education or information, every one, by a certain tacit sense, is enabled to judge and decide concerning what is right or wrong in the arts. If this observation is true with regard to pictures, statues, and other performances, in the knowledge of which they have less assistance from nature; it becomes much more evident and striking with regard to the judgements, which they form concerning words, harmony, and pronunciation: for concerning these there is a common sense implanted in all, of which Nature intended that no one should be entirely devoid."<sup>222</sup>

Thus, Wilson depends on Cicero as well as Reid for his argument that nature or reason communicates to humankind a proper sense of judgement and taste. Significantly, he incorporates Reid's philosophy into his translation of the passage, attempting to bridge a connection between Cicero and the Scottish School of Common Sense and to

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<sup>221</sup> Wilson (1804) 1:136.

<sup>222</sup> *Ibid.* 2:81. Wilson does not include the Latin text, which reads in the 1692 edition: *Illud autem nequis admiretur, quoniam modo haec vulgus imperitorum in audiendo notet; cum in omni genere, tum in hoc ipso magna quaedam est vis, incredibilisque naturae. Omnes enim tacito quodam sensu, sine ulla arte, aut ratione, quae sint in artibus, ac rationibus recta ac prava, diiudicant: idque cum faciunt in picturis, et in signis, et in aliis operibus, ad quorum intelligentiam a natura minus habent instrumenti; tum multo ostendunt magis in verborum, numerorum, vocumque iudicio; quod ea sunt in communibus infixis sensibus, neque earum rerum quemquam funditus natura voluit esse expertem.* The minor variations in the Teubner edition are found in the phrases: "*vulgus imperitorum*", "*ad quorum intelligentiam*", "*sensibus nec*", "*natura esse voluit expertem*".

demonstrate that the contemporary ideas he espouses have a classical tradition. The translations of both phrases *tacito quodam sensu* (by a certain silent perception) and *sunt in communibus infixa sensibus* (they are fixed in the public sensibility), which Wilson renders as “by a certain tacit sense” and “there is a common sense implanted in all”, provide a clear reference to Reid’s statements on the existence of first principles of human knowledge perceived by all.<sup>223</sup> Indeed, Wilson draws directly from Reid at this point, since Reid himself employs the quotation from *de Oratore* in his *Essays on the Intellectual Powers of Man* (1785), although he does not provide a translation of it.<sup>224</sup>

Like Reid, Wilson believes that the values of society are held in common precisely because of this universal moral judgement. Even in criticising those who disagree with such sentiments, Wilson responds not merely to his more modern contemporaries but also to the ancients. The moral sense, he says, while denied by those like Lucretius and Hobbes, is proven by the feelings of “gratitude, or resentment, or pride, or shame” which all experience.<sup>225</sup> These compel a person to “acknowledge a sense of something benevolent, of something unjust, of something, worthy, and of something mean”; ultimately, they demonstrate the existence of the “honourable” and the “dishonourable”.<sup>226</sup>

If such a moral perception exists, it must of logical necessity be universal in its application; therefore, Wilson turns to Cicero’s *de Natura Deorum* 1.16.43 as offering proof that humankind intuitively possesses knowledge of these moral truths.<sup>227</sup> Once he has shown that all humankind can perceive this divine law, whether revealed through scripture or through nature and reason, Wilson links divine and human laws. The statutory laws established and sanctioned by the people derive their obligatory authority from divine law,<sup>228</sup> and the people are bound to exercise their sovereign power according to its principles.<sup>229</sup>

Unsurprisingly, Wilson does not clarify the precise connection between natural law and human laws. McCloskey, for instance, draws attention to this dilemma in the

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<sup>223</sup> Reid (2002) 39-41, 452-453, 551-552. Cf. Haakonssen (1996) 185-186 on Reid’s first principles of human knowledge and 193-195 on the similarity between Reid’s thought and Cicero’s understanding of *officia*.

<sup>224</sup> Reid (2002) 431, 452-453.

<sup>225</sup> Wilson (1804) 1:121.

<sup>226</sup> *Ibid.* 1.121.

<sup>227</sup> See above, p. 54 for the complete quotation and its translation.

<sup>228</sup> Wilson (1804) 1:104-105.

<sup>229</sup> *Ibid.* 1:153.

*Law Lectures* of attempting to reconcile the changes in customary law with the immutable principles of natural or divine law.<sup>230</sup> This tension, however, is not unique to Wilson but is inherent in all natural law theories. Although he is not able to resolve the difficulty, Wilson attempts to bridge it by pointing to the guidance of reason and the moral sense. A legislator seeking to promote the ends of justice and duty will often find the means to procure those ends a matter of doubt and “considerable difficulty,” but will be aided by reason.<sup>231</sup> Therefore, although Wilson asserts the existence of divine principles, he also freely admits that they fail to elucidate “the origin, the nature, the extent of the several rights and duties . . . nor do they specify in what instances one right or duty is entitled to preference over another”.<sup>232</sup> Those inquiries are left to human beings to decide by means of their rational powers.

In a manner similar to Cicero, Wilson focuses on how the moral virtues enjoined by natural law apply to one’s relationships with other individuals and thereby support the common good. The subject of public community and interest forms an important part of Wilson’s discussion on obligations and provides stability for his doctrine of popular sovereignty. Society, Wilson argues, materialises through a natural and positive desire for assistance and affection.<sup>233</sup> In his discussion of the relationship between the individual and the community, Wilson makes the obvious point that by serving the general good, an individual also protects his own self-interests. Believing that nature enjoins an individual’s freedom to “pursue his happiness and perfection”, Wilson also says that, “Whatever promotes the greatest happiness of the whole, is congenial to the principles of utility and sociability.”<sup>234</sup> Developing this idea further, Wilson believes each citizen must be willing to sacrifice individual interest to the interest of the general public whenever they come into an unavoidable and temporary conflict.<sup>235</sup> In practice, Wilson recognises that unless each individual protects the general interest, society itself will crumble into factions and ultimately self-destruct. As he states, “by the will and by the interest of the community, every private will and every

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<sup>230</sup> McCloskey (1967) 41.

<sup>231</sup> Wilson (1804) 1:127. As he practically admits, those who look to revealed divine law for specific instructions in each situation expect more than they will discover [1:139].

<sup>232</sup> *Ibid.* 1:139.

<sup>233</sup> *Ibid.* 1:296-297.

<sup>234</sup> *Ibid.* 1:140; cf. 1:303 on the equating of self-love and the common interests.

<sup>235</sup> *Ibid.* 2:438-439



private interest must be bound and overruled. Unless this maxim is established and observed; it is impossible that civil government could be formed or supported.”<sup>236</sup>

On one level, therefore, the higher law demands a type of public virtue, embraced for the good of the state. In high-flowing rhetoric, Wilson describes how an individual must be “inspired with ardent affection for the publick ... his heart, his head, his hands, his tongue, his pen, his fortune; all he is, and all he has, are devoted to his country’s cause, and to his country’s call”.<sup>237</sup> The preeminent duty of each citizen lies in serving the state and its common good.

In the end, however, the obligatory force of these principles of mutual help and common self-interest does not merely lie in arguments of expediency, which maintain that human society will crumble if they are ignored. Humanity, generosity, and justice, while necessary to the proper functioning of society, are all personal virtues that can only be enjoined by appealing to a source superior to human authority.<sup>238</sup> Although fulfilling or neglecting the demands of virtue has a profound effect on the state and on one’s community, Wilson still insists that “virtue and vice are ends; and are hateful or desirable on their own account”.<sup>239</sup> Nonetheless, when individuals fulfil these obligations and pursue virtue, Wilson believes that legal and political stability will be the certain result.

The same tension inherent in Cicero’s perspective of virtue, however, also exists in Wilson’s philosophy. While all people are equal in their moral obligations and in their ability to perceive them,<sup>240</sup> Wilson acknowledges the difficulty of applying those duties to specific situations. Although he looks to natural law and its prescription of individual virtue to guide the decisions of legislators as well as the practical decisions of daily life, Wilson believes the perception of what virtue demands in each situation has not been given to humankind; instead, people must employ reason in order to apply the higher law rightly.<sup>241</sup>

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<sup>236</sup> *Ibid.* 2:439; cf. 1:353.

<sup>237</sup> *Ibid.* 1:423.

<sup>238</sup> *Ibid.* 1:212-213.

<sup>239</sup> *Ibid.* 1:136. Cf. Wilson (1804) 1:301; *Leg.* 1.18.48-49.

<sup>240</sup> Wilson (1804) 1:118-119. Cf. 1:308 where Wilson broadly generalises and equates his understanding of natural rights and duties with that of the ancients, saying that “With regard to all, there is an equality in rights and in obligations; there is that ‘jus aequum’, that equal law, in which the Romans placed true freedom. The natural rights and duties of man belong equally to all”; cf. 2:470 for a similar statement.

<sup>241</sup> *Ibid.* 1:127.

Beyond the issue of how people correctly apply an ultimate standard of virtue to their individual circumstances is the greater conflict that occurs in the effort to reconcile common and individual interests. While all would likely acknowledge the theoretical necessity of prioritizing the general interest, an individual will likely protect his self-interest when it appears to clash with the common good. The conviction that virtue would serve as the bulwark of the republican form of government, a theory shared by many of the founders, proved increasingly difficult to defend as a principle of actual politics.<sup>242</sup> Wilson, however, expresses no such doubt in his lectures. Much like Cicero, he recognises the tension between his philosophy and its practical application but does not abandon the view that the true safety of the state rests on the personal virtue of each citizen.

### 3. Wilson's slant on Cicero

Despite many variations in how virtue is defined and interpreted, the significance of civic virtue in republican theories of political thought is widely noted.<sup>243</sup> Indeed, it would be difficult to address modern questions of civic identity, sovereignty, and constitutionalism, or to trace their classical origins, without dealing with the issue of virtue. For Wilson, as for many of the founders, virtue functioned as a check on the unlimited power of the people, providing the defining line between the unbridled tyranny of the mob and the right of the people to freely choose the laws which governed them. Although Cicero did not formulate a theory of popular sovereignty by name, his conception of individual virtue and the connection he drew between the stability of the state and the adherence of its leaders to virtue and the *mos maiorum* became an essential part of the foundation on which Wilson constructed his own version of popular sovereignty, relying on Cicero's theory of virtue as the surest means of its success.

For both Cicero and Wilson, virtue is ultimately prescribed by natural law. In his analysis of the classical influence in early American political thought, Kirk defines natural law as “a loosely-knit body of rules of action prescribed by an authority superior

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<sup>242</sup> Agresto (1977) 489-491. Cf. Skinner (1998) 32 n. 103 on republican self-government and the inevitable tension between personal interests and the common good.

<sup>243</sup> Burt (1992) 64-65; Honohan (2002) 148-150, 166.

to the political state” which are “presumed to be derived from divine commandment, from the nature of man, or from the long experience of mankind in community”.<sup>244</sup> Although broader than most, this definition is helpful both in encompassing various interpretations of natural law that have existed in disparate ages and communities and also in explaining the variance between competing ideologies of virtue. Within such a context, virtue consists in obedience to obligations of justice, right, or duty, which may or may not be reflected in the written laws and which derive their legitimacy from a source outside the actual government of the state. Without digressing into an intricate examination of arguments on natural law, it can nevertheless be seen that Kirk’s explanation provides a framework for understanding how republican theorists have viewed virtue as a source of stability within communities and as a limit in democracies against the unrestrained authority of the people.<sup>245</sup>

Cicero’s designation of the state as a *res populi* and of the people as an association based upon justice fits within this framework of natural law by providing an outside source of law and justice that the people are obligated to obey. His definition also eliminates the possibility of mob rule, since a legitimate form of popular rule can exist only when there is a shared moral consensus among the people.<sup>246</sup> On this point, Wilson concurs with Cicero. Even as he supports the ultimate authority of the people as expressed through the will of the majority, Wilson argues that the standard of natural law and the obligations of virtue it places on individuals act as a protection against the unrestrained power of the mob and maintain the balance between liberty and license.<sup>247</sup>

In his *Law Lectures*, Wilson only partially portrays Cicero’s thought, but he recognises the important link between conformity to the public standards of virtue and justice and the stability of a system guaranteeing some level of popular involvement in political affairs. Thus, both classical thinking and modern political philosophy affirm that the virtue of the individual citizen cannot be divorced from the state’s constitution or form of government. While their interpretations of the precise virtues that define the

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<sup>244</sup> Kirk (2003) 109.

<sup>245</sup> Cf. Bix (1996) 223; Hart (1961) 156; cf. Wild (1953) 64 on the definition of natural law as it relates to ethics. Cf. Sellers (1997-1998) 15 on republicanism and its adherence to a Stoic conception of natural law that distinguishes between liberty and license. On the history of natural law theory and different definitions offered of natural law, cf. Rommen (1998) 3-96; Haakonssen (1996) 6-7. On the subject of Cicero’s influence in the development of natural law theories, cf. Bix (1996) 223-228; D’Entrèves (1951) 20-23. For bibliography on Wilson and natural law, see above, p. 107 n. 157.

<sup>246</sup> Schofield (1995) 71-72.

<sup>247</sup> Wilson (1804) 1:9, 11, 108, 114.

*civis bonus* differ in some respects, both Cicero and Wilson emphasise the personal virtue of the citizen as an essential foundation for the particular type of government advocated by each. As will be demonstrated, Wilson closely follows Cicero's conception of civic virtue in three essential ways: in his view of positive association, in his equation of individual and common interests, and in his insistence that virtue must be sought primarily for its own sake.

The first main point of similarity is Wilson's dependence on Cicero's perspective of association. As seen earlier,<sup>248</sup> Cicero centres his theory of individual justice in nature and locates the origins of political society in the natural impulse drawing people into association. In opposition to this perspective, political thinkers who espouse a negative view of association assert that the primary cause of social cohesion lies in the contradistinction between various groups and especially in the fear of danger from external threats.<sup>249</sup> Such, for instance, is the theory Hobbes posits when he argues that civil society originated from fear of others:

It is true that the advantages of this life can be increased with other people's help. But this is much more effectively achieved by Dominion over others than by their help. Hence no one should doubt that, in the absence of fear, men would be avidly attracted to domination than to society. One must therefore lay it down that the origin of large and lasting societies lay not in mutual human benevolence but men's mutual fear.<sup>250</sup>

Contrasting with this perspective, Wilson aligns himself with Cicero's approach by basing his political philosophy on positive association and employing the Ciceronian texts as justification for his belief that individual self-interest can be reconciled with the common good. Using quotations from *de Officiis* and *de Amicitia*, Wilson argues that society is a necessary requirement for human happiness, based on goodwill and fellowship, and furthers the mutual advantages of all. Since Cicero was writing *de Amicitia* around the same time as *de Officiis*, it is not surprising that he frequently dwells on similar themes in the two works. Clearly recognising this connection, Wilson references them together. The quotation from *de Amicitia* 23.87-88 best summarises Wilson's own view that association develops through a mutual desire for fellowship and is necessary for the preservation of human life and happiness:

“If we could suppose ourselves,” says Cicero, who knew so well how to illustrate law by philosophy—“if we could suppose ourselves transported by some divinity into a solitude, replete with all the delicacies which the heart of man could desire, but excluded, at the

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<sup>248</sup> See above, pp. 135-136.

<sup>249</sup> Evrigenis (2008) 1-4.

<sup>250</sup> Hobbes, *On the Citizen* 1.2.

same time, from every possible intercourse with our kind, there is not a person in the world of so unsocial and savage a temper, as to be capable, in these forlorn circumstances, of relishing any enjoyment.” “Nothing”, continues he, “is more true, than what the philosopher Archytas is reported to have said: If a man were to be carried up into heaven, and see the beauties of universal nature displayed before him, he would receive but little pleasure from the wonderful scenes, unless there was some person, to whom he could relate the glories, which he had viewed. Human nature is so constituted, as to be incapable of solitary satisfactions. Man, like those plants which are formed to embrace others, is led, by an instinctive impulse, to recline on those of his own kind.”<sup>251</sup>

In the case of this quotation, Wilson does not provide the Latin text. As can be seen, he follows his own understanding of the text rather than providing a literal word-for-word translation:

*ut aliquis nos deus ex hac hominum frequentia tolleret et in solitudine uspiam collocaret atque ibi suppetitans omnium rerum quas natura desiderat, abundantiam et copiam, hominis omnino adspiciendi potestatem eriperet—quis tam esset ferreus qui eam vitam ferre posset cuique non auferret fructum voluptatum omnium solitudo? Verum ergo illud est, quod a Tarentino Archyta, ut opinor, dici solitum nostros senes commemorare audivi ab aliis senibus auditum: si quis in caelum ascendisset naturamque mundi et pulchritudinem siderum perspexisset, insuavem illam admirationem ei fore, quae iucundissima fuisset, si aliquem cui narraret habuisset. Sic natura solitarium nihil amat semperque ad aliquod tamquam adminiculum annititur, quod in amicissimo quoque dulcissimum est.*<sup>252</sup>

Suppose that some god should lift us away from this place frequented by men and should place us somewhere in solitude, and there supplying us with an abundance and plenty of all things that nature could desire, should snatch from us entirely the power of beholding a fellow-being—who would be a man of such iron, who would be able to endure that life, and from whom the enjoyment of all pleasure would not be snatched away by solitude? True, therefore, is that saying that I have heard related by our old men, which they had heard from other old men, that I believe was accustomed to be said by Archytas of Tarentum: if anyone should ascend into heaven and should observe the nature of the universe and the beauty of the constellations, that marvel would be unpleasant, which would have been most delightful for him if he would have had someone to whom he could relate it. Thus, nature loves nothing solitary and always strives as it were for some support, which is sweetest when found in a very close friend.

Wilson’s slant on the passage is particularly evident in his inclusion of “there is not a person in the world of so unsocial and savage a temper”, a description he actually takes from the previous sentence of the text (not included here) that speaks of Timon of Athens as a man of such a fierce and savage nature that he shunned and hated human society.<sup>253</sup> Wilson also makes the quotation less verbose by excluding the phrase referring to the transmission of Archytas’s proverb, and leaves out the final clause of the paragraph. Clearly, by this last omission, Wilson aimed at disregarding the specific application Cicero makes to friendship and instead to end the quotation on its broader

<sup>251</sup> Wilson (1804) 1:300.

<sup>252</sup> The Teubner edition contains the two minor variations of “*aspiciendi*” and “*adnititur*”.

<sup>253</sup> Cic. *Amic.* 23.87.

application to the necessity of human society. Although he slants the text in order to emphasis this point, Wilson believes he is being consistent with a general reading of Cicero's thought, as evidenced by the other quotation he employs from *de Officiis* 1.7.22, which contains the same themes on the natural inclination of humankind to join together and the benefits resulting from this union:

"There is nothing more certain", says Cicero, "than the excellent maxim of Plato—that we are not intended solely for ourselves; but that our friends and our country claim a portion of our birth. Since, according to the doctrine of the stoicks, the productions of the earth are designed for men, and men are designed for the mutual aid of one another; we should certainly pursue the design of Nature, and promote her benign intention, by contributing our proportion to the general interest, by mutually performing and receiving good offices, and by employing our care, our industry, and even our fortune, in order to strengthen the love and friendship, which should always predominate in human society."<sup>254</sup>

In this quotation as well, Wilson only includes the translation given above without the Latin text:

*Sed quoniam, ut praeclare scriptum est a Platone, non nobis solum nati sumus ortusque nostri partem patria vindicate, partem amici, atque, ut placet Stoicis, quae in terris gignuntur, ad usum hominum omnia creari, homines autem hominum causa esse generatos, ut ipsi inter se aliis alii prodesse possent, in hoc naturam debemus ducem sequi, communes utilitates in medium afferre mutatione officiorum, dando accipiundo, tum artibus, tum opera, tum facultatibus devincire hominum inter homines societatem.*<sup>255</sup>

But since, as has been very famously written by Plato, we are not born only for ourselves, and our country claims a part of our birth, as do our friends; and, as is believed by the Stoics, everything produced in the earth has been created for the use of humankind; men are born for the sake of other men, so that they may mutually be able to benefit one another, in this we ought to follow the guidance of nature, to contribute to the public advantage in the community by an interchange of services, in giving and receiving, to unite closely the fellowship among men by our skills, by our efforts, and by our resources.

In this quotation, which he translates more literally than that from *de Amicitia*, Wilson reinforces the theme of positive association and introduces the topic of obligation into the discussion by supporting the ancient conviction that individuals have a duty to serve not only their own interests, but also to serve their friends and their state.

This point leads to the second essential way in which Wilson's conception of virtue closely follows Cicero's line of reasoning by emphasising the link between common and individual interests. The commitment to individual liberty at the time of the American Revolution should not lead to the view that the founders neglected the

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<sup>254</sup> Wilson (1804) 1:299.

<sup>255</sup> The Teubner edition contains the two minor variations of "*gignantur*" and "*accipiundo*".

importance of social unity.<sup>256</sup> In fact, the willingness to subordinate individual interests to those of the larger community plays as important a role in Wilson's model as it does in Cicero's. For Wilson, virtue manifests itself in devotion to the state, characterised by an active participation in government and devotion to the common good. As has been seen, in order to emphasize that a virtuous citizen seeks a convergence of interests between his own desires and the needs of the community, he employs the argument of *de Officiis* 1.7.22 that according to nature, humankind is meant to strengthen the bonds of mutual help and fellowship. Such is the key denotation Wilson ascribes to the term patriotism. When speaking of the need for citizens to be primarily devoted to the interests of the entire United States and not merely a particular state, he says, "Expanded patriotism is a cardinal virtue in the United States. This cardinal virtue—this 'passion for the commonweal,' superiour to contracted motives or views, will preserve inviolate the connexion of interest between the whole and all its parts".<sup>257</sup>

Thus, the first consideration of the good citizen is the interests of the whole community of which he forms a part, and only in promoting the common good can the security of the state and the well-being of its citizens be preserved. In detailing particular civic duties, Wilson mentions such tasks as voting, serving on juries, and acquiring a thorough knowledge of the laws,<sup>258</sup> but when, in language reminiscent of Cicero, he refers to the general principle of civic duty, he says that an individual is required "to fulfil the engagements, which he has made; and to do no injury".<sup>259</sup> The strength of the state relies upon these types of individuals, who actively seek the good of the whole community and refrain from pursuing self-interest to its detriment. Once again, Wilson turns to the authority of *de Officiis* 3.6.28 to support this claim that the unity and preservation of the state rest on the type of virtuous conduct that refrains from injuring another, saying that self-interest at the expense of the common welfare will "dissolve the union of the state".<sup>260</sup>

In emphasising the necessity of virtue for the good of the state, however, Wilson also makes an essential distinction that follows Cicero's approach in a third main way.

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<sup>256</sup> Wood, G. S. (2003) 90 on the common emphasis in the republicanism of the American Revolution on a "morality of social cohesion" and the necessity of seeking the common welfare of the state.

<sup>257</sup> Wilson (1804) 1:357.

<sup>258</sup> *Ibid.* 1:11-12.

<sup>259</sup> *Ibid.* 2:495.

<sup>260</sup> For the whole of the quotation and Wilson's translation, see above, pp. 62-63.

The strong connection Wilson makes between virtue and the common good may initially appear to be an argument of mere expediency that views virtue as existing for the good of the state and one's community. For Wilson, however, patriotism is more than a public virtue existing for the benefit and continued existence of the state. Thus, in addition to holding similar views of association, Wilson and Cicero locate the good of the state as resting in the personal virtue of the individual, but they explicitly differentiate between virtue as a public necessity and as an individual obligation that must be sought for its own sake. While closely related to civic duty, this theory of virtue originates in justice and derives its source of obligation from outside the actual state. Cicero's depiction of the statesman or politician, imparting the new conception to Roman political thought of the individual "constantly engaged in civilian activity for the good of the state",<sup>261</sup> allows for a broader understanding of the individual citizen and emphasises the importance of one whose actions are essential to the state's well-being.<sup>262</sup> While one's chief *officia* are owed to the state, however, the virtue that promotes civic stability applies equally to personal moral character. As previously stated, Cicero's conception of the virtue of the good citizen is inseparably connected with the principles of justice: to refrain from harming another and to preserve the common interest. Cicero recognises that what virtue demands may at times clash with one's duty toward the state, and he insists that the obligations of moral duty come first, saying that there are some actions so abominable and disgraceful that a wise man will not commit them even to save his country.<sup>263</sup> Hence, moral duty exists apart from the state; an individual is required to fulfil the principles of justice even if such actions should result in the state's downfall.

In his own discussion of civic virtue, Wilson also feels the need to clarify his position. Much like Cicero's address to Marcus and the rising generation of Roman political leaders, in his lectures to law students desiring positions of political and legal prominence in the United States, Wilson focuses on the civic necessity and benefits of virtue but is careful to note that virtue cannot be confined to a political context. While he emphasises that the good of the individual is achieved only through seeking the well-being of all and that such virtue is essential in maintaining the state, Wilson also argues

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<sup>261</sup> Steel (2004) 70; cf. Powell, J. G. F. (1994) 20.

<sup>262</sup> Connolly (2007) 125; Earl (1961) 38-39; Zetzel (2001) 86.

<sup>263</sup> Cic. *Off.* 1.45.159.



that the virtue required of good citizens does not serve a purely civic purpose: it governs not only behaviour in the public sphere but also private actions.

On this point, Wilson makes a conscious break with previous philosophers who tied virtue inextricably to the purpose of supporting the state and civil society. Thus, he excludes the Machiavellian interpretation of virtue, which is not based upon justice and which serves a primarily civic purpose.<sup>264</sup> Machiavelli's conception of *virtù* divorces the moral and cardinal virtues from the behaviour required of a statesman and allows for decisions made on the basis of expediency.<sup>265</sup> Although Wilson never deals specifically with Machiavelli's work, he views Montesquieu as endorsing a similar position and believes he presented virtue as something to be sought for the state rather than for its own sake. Despite essential differences between the political thought of Montesquieu and Machiavelli, by arguing that, "Ce n'est point une vertu morale, ni une vertu chrétienne, c'est la vertu *politique*" characterised by "l'amour de la république",<sup>266</sup> Montesquieu followed Machiavelli's conception of virtue as "an equality of subjection to the republic's laws and of devotion to her good".<sup>267</sup>

At a time when Montesquieu's definition of republican virtue provided a philosophical framework and source of inspiration for many of the founding fathers,<sup>268</sup> Wilson departs from this trend and attempts to discredit the tradition of virtue as promulgated by Montesquieu by reverting instead to a Ciceronian perspective. Instead of citing Montesquieu as an example to be followed, Wilson believes that his conception of virtue actually threatens the security of the new republic.

In his *Law Lectures*, Wilson contends that in the *Spirit of the Laws* Montesquieu abandons justice, reason, and truth since he does not seek them for their own sake. When honour and truth cease to be sought as ends in themselves, Wilson believes that these virtues must inevitably cease to exist. In arguing for a theory of virtue derived from the ultimate standard of natural law, Wilson commends the classical discernment which made the temple of honour "accessible only through the temple of virtue".<sup>269</sup> Justice must be required in personal matters as well as in a civic context, and individual

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<sup>264</sup> Burt (1992) 65-66.

<sup>265</sup> Skinner (2000) 42-45, especially note the contrast Skinner draws between Machiavelli's view and that of Cicero; cf. Skinner (1978) 1:136.

<sup>266</sup> Montesquieu (1950) 9, 94; citations are taken from the forward to the work and section 1.5.2.

<sup>267</sup> Pocock (1975) 491, 463.

<sup>268</sup> Reinhold (1984) 98, 145.

<sup>269</sup> Wilson (1804) 2:471.

virtue must exist not only for the good of the state but also for the good of the individual; otherwise, society will embrace a standard such as Montesquieu's theory of honour, which "fashions the virtues just as it pleases, and extends or limits our duties by its own whimsical taste".<sup>270</sup> A republican government, Wilson maintains, will not desire to obtain a mere appearance of honour which is "vicious in its practice, and, even when right in its practice, vicious in its principle".<sup>271</sup> Thus, virtue, as Wilson understands it, functions as the same set of duties binding both the individual and the citizen. While it may have different applications regarding the specific political duties required of the individual, it equally applies to personal duties.

Following Cicero's argument in *de Officiis*, Wilson believes a virtuous citizen must seek virtue for its own sake or he ceases to be a truly good citizen. It is on this type of virtue that the security of the state rests. In Wilson's model, therefore, if virtue is sought for the good of the state alone, rather than for its own sake, the collapse of virtue itself and consequently that of the state is imminent. In this way, Wilson situates himself within a Ciceronian context, employing the same test of virtue against Montesquieu as Cicero used against his own contemporaries.

While Wilson appeals to Cicero's authority for an ideal of virtue to be sought for its own sake, he also recognises the practical advantages resulting from such virtue. Security of one's person and property, the ability to pursue happiness in the ways best suited to that aim, and the attainment of deserved fame are all proper benefits that attend a virtuous people and a well-ordered state.<sup>272</sup> As he reminds his young law students, the United States is becoming free and prosperous under the new constitution, and as they establish high aims for themselves, they can expect to gain from these advantages.<sup>273</sup>

Additionally, Wilson well understood the complexities of law and politics and the frequent difficulty in applying the ideals of justice and virtue to the daily affairs of life.<sup>274</sup> On these points as well, Cicero's philosophy offered the practical approach to ethics that Wilson found so consonant with his own theories. Following Panaetius' perspective of Stoicism, Cicero emphasised not the impossible model of the perfect

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<sup>270</sup> *Ibid.* 2:471.

<sup>271</sup> *Ibid.* 2:471.

<sup>272</sup> *Ibid.* 1:160, 164-165; cf. 2:466.

<sup>273</sup> *Ibid.* 1:42.

<sup>274</sup> *Ibid.* 1:127-128.

wise man, but an attainable standard.<sup>275</sup> This approach, described by Dyck in his commentary as “idealism tempered with realism”,<sup>276</sup> encapsulated a practical theory of virtue enabling Wilson to support his view of American citizenship.

Despite the similarity between their theories of virtue, however, Wilson makes a significant departure from Cicero by imparting a highly optimistic colouring to his conception of the good citizen—a view resulting from Wilson’s enlightenment philosophy with its impregnable trust in the future advancement of human virtue and liberty. Although he disagreed with the theory that states must inevitably decline and believed that a *res publica* could indefinitely continue if the citizens upheld the institutions and customs handed down to them, Cicero never promulgated a theory of universal peace achievable throughout the world. Nevertheless, Wilson draws on Cicero’s doctrine of the cosmic community shared by humankind and the gods to support his own belief in the good fellowship that will be advanced not only in the United States, but also in interactions with foreign states as their mutual striving for the common interests of all eventually leads to the end of strife and the progress of liberty.<sup>277</sup> Society, as Wilson views it, “is in a progressive state, moving on towards perfection” and to the ultimate cessation of “discord, devastation, and war”.<sup>278</sup> On this point, Wilson’s perspective stands in contrast with those of other founders like Madison, who argued in *Federalist Paper Number 10* that self-love and the competing interests of humankind were more likely to lead to enmity than to cooperation, with decisions made on the basis of self-aggrandizement rather than “with a sole regard to justice and the public good”.<sup>279</sup> Nonetheless, although Wilson is aware that he is drawing new conclusions from the idea of mutual cooperation propounded by the ancients, Wilson says that the advancement of political science has led to new discoveries and the perfecting of human progress,<sup>280</sup> and he sees himself as defending the classical concept of the common society of humankind and advancing it to its logical end.

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<sup>275</sup> Powell, J. G. F. (1995) 24.

<sup>276</sup> Dyck (1996) 43.

<sup>277</sup> Wilson (1804) 1:170-174.

<sup>278</sup> *Ibid.* 1:30, 381.

<sup>279</sup> Willis (1982) 44-45.

<sup>280</sup> Wilson (1804) 1:416-417.

A less significant point of difference occurs in Wilson's democratic application of Cicero's thought. While Cicero acknowledges the need for all citizens to be virtuous, he essentially writes to the educated and experienced elite in *de Officiis*, looking to them to lead the Republic in political leadership and virtue; conversely, Wilson wants the entire populace to become the type of virtuous statesmen recommended by Cicero. Nonetheless, Wilson's theoretical framework is made possible by the broad understanding of virtue articulated by Cicero in *de Officiis*, which centres on a virtue perceivable by all, on an inevitable correspondence between the good man and the good citizen, and on the idea of a statesman who even as a citizen actively works for the good of the state.<sup>281</sup> Wilson remains true to the spirit of Cicero's work, which reiterates the importance of an individual achieving political leadership if possible.<sup>282</sup> Whether an individual succeeds in political leadership is incidental to Wilson's argument, since in observing duties like voting, acquiring a comprehensive knowledge of the law, and maintaining justice in his private behaviour toward others, a citizen fulfils the role of a statesman even if he has not obtained political office. Wilson's more democratic position was undoubtedly bolstered by a more widely educated populace and greater opportunities for individual advancement in the colonies than had existed in Rome; however, Cicero's theory of virtue allowed Wilson to take the notion of the statesman-citizen a step further. While his democratic emphasis overlooks some of the more elitist themes in Cicero's work, he remains true to the sentiment expressed in *de Republica* 2.69, when Scipio speaks of a statesman as one who *splendore animi et vitae suae sicut speculum praebeat civibus* (by the splendour of his mind and life would present himself as a mirror to his fellow citizens). For Wilson, all citizens act as leaders of the state even in their individual capacities, and the virtue of each should act as a mirror to the rest. Thus, despite some slight divergences, Wilson advocates the type of virtue set forth by Cicero and looks to the virtuous citizen of the pattern of *de Officiis* to protect the stability and well-being of the Republic.

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<sup>281</sup> Cf. Wilson (1804) 1:120-121 on the natural ability of all to perceive virtue and justice. The language of this section is also reminiscent of *Off.* 1.4.11-14.

<sup>282</sup> This point was furthered by a conversation with Malcolm Schofield at the Classical Association Conference 4 April 2009.

## Chapter 5: Justified disobedience to written law

*Il n'y a ni guerre étrangère, ni guerre civile; il n'y a que la guerre injuste et la guerre juste ... Chasser le tyran ou chasser l' Anglais, c'est, dans les deux cas, reprendre son territoire. Il vient une heure où protester ne suffit plus; après la philosophie il faut l'action; la vive force achève ce que l'idée a ébauché.*

Victor Hugo, *Les Misérables*

This chapter focuses on civil disobedience, specifically on the way Wilson and Cicero use their theories to legitimize action. In exploring the concept of resistance to government, it is possible to see how the philosophies formulated by these men were shaped by the political circumstances in which they found themselves. In particular, the concepts of popular sovereignty and civic virtue explored in the last two chapters served for these men as a legal justification for resistance to written law and thus for the practical decisions they made as statesmen, with Cicero stressing the duties of a good citizen and Wilson emphasizing the importance of consent. Although each defended civil disobedience in a unique way, they both resorted to a political viewpoint that offered a broader interpretation of law as encompassing not only written word but also an unwritten higher law and tradition.

This final chapter, therefore, examines the practical application of Cicero's and Wilson's thought and demonstrates that they employed their distinctive versions of popular sovereignty and civic virtue to justify civil disobedience and support their personal and political agendas. As will be seen, although Cicero acknowledges the necessity of popular consent, he does not use a lack of consent as a basis for resistance; rather, he derives his doctrine of civil disobedience from the necessity of preserving the state, arguing that an ultimate standard of justice may compel an individual to resist written law. Wilson, who believes the absence of consent in itself justifies the removal of laws or forms of governments, views the Ciceronian texts as a confirmation of his theory, but his ideas actually rely on a more democratic foundation. Despite these differences, however, both Cicero and Wilson turn to customary law and the stability of tradition as an essential means of knowing and applying natural law in a way that allows resistance to occur while still preserving an ordered state and a common respect for law.

## 1. Cicero and resistance

Throughout his lifetime, Cicero consistently used his writings as a means of defending his political decisions and associating himself with the image of statesmanship portrayed in them.<sup>1</sup> This is not to say, however, that he lacked concern for the problems and uncertainties of his time. In his works he genuinely endeavoured to identify and avert the crises threatening the Republic.<sup>2</sup> Both his public image and his effort to preserve the Republic increasingly became centred on the issue of resistance to written law.

As an advocate, Cicero employed various definitions of law and custom as rhetorical strategies tailored to particular situations; in some cases he appealed to law only as it applied to written statutes, and in others he provided a broader definition of law that encompassed an unwritten and higher tradition. As the unknown author of the *Rhetorica ad Herennium* notes, in the performance of arguing against the letter of the law, one can appeal to intent and demonstrate that disobedience to the written law is justified by another law or even by principles of *mos, natura*, or what is *aequus et bonus*.<sup>3</sup> The same tactic appears in Cicero's *de Inventione*, when he explains how arguments of justice and equity may be employed in setting aside written statute.<sup>4</sup>

After his condemnation of the Catilinarian conspirators without a trial, Cicero first faced the necessity of justifying his own actions in legal terms. He appeals not to expediency alone in his suspension of the laws of due process, but also to the safety of the *res publica*, which he represents as the *suprema lex* to which a statesman is bound.<sup>5</sup> His later treatises bear witness to his endeavour to portray his violation of written law as consistent with the highest law of statesmanship.<sup>6</sup> His own exile, which Clodius legally engineered, forced Cicero to consider the issue of law from another angle. In this case, he views the law as wrongly employed to suspend his own civil rights, and therefore regards Clodius as attacking the state by making unjust laws of exile. The situation of the Catilinarian conspirators and his own exile provided Cicero with the need to offer a

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<sup>1</sup> Fox (2000) 269; Steel (2005) 7, 15, 54, 61.

<sup>2</sup> Rawson (1975) 159.

<sup>3</sup> *Rhetorica ad Herennium* 2.10.14.

<sup>4</sup> See above, p. 109.

<sup>5</sup> Cic. *Leg.* 3.3.8.

<sup>6</sup> Cic. *De Or.* 1.1.3; Cic. *Rep.* 1.4.7; Cic. *Off.* 1.22.77.

specific interpretation of law, and thus, in his later treatises, he offers a perspective justifying his actions both to himself and to others.

In allowing for the option of resistance, Cicero broke with previous political philosophy. For example, although it is only a thought experiment, one may consider how Plato would have reacted to the issues facing Cicero. In the *Crito*, Plato addresses the question of how to respond to unjust laws. While acknowledging that the laws have wrongly condemned him, Socrates even rejects the idea of passively resisting the laws by departing from Athens and escaping from their power. Whether the laws have rightly accused him or not, he believes he must submit to their authority, and argues that a private individual has no excuse to oppose a law, even if its application conflicts with justice.<sup>7</sup> Indeed, in his personification of the state, Socrates says that if you cannot persuade her of the rightness of your cause, then you must be prepared *ποιεῖν ἃ ἂν κελεύη, καὶ πάσχειν, ἐάν τι προστάτῃ παθεῖν, ἡσυχίαν ἄγοντα* (to do whatever she commands, and to suffer, whatever she bids you to suffer, keeping silent).<sup>8</sup> Instead of accepting this premise that disobedience to the laws brings about their destruction as well as that of the state, Cicero argues that disobedience is sometimes necessary to protect the people and the state. Hence, Cicero makes a distinction between higher law and written law that permits resistance.<sup>9</sup>

Cicero's approach focuses on the safety of the state as upheld by citizens who fulfil the principles of justice. The themes of motivation and intent in *de Officiis* are essential to this perspective, since in guarding the interests of the state and its citizens, discretion at times may call a good statesman to neglect performance of a written law, even as an individual may fail to keep a promise lest it rebound to the hurt of another. This fits with Cicero's depiction of the citizen-statesman: *tradetque se totum rei publicae neque opes aut potentiam consecrabitur totamque eam sic tuebitur ut omnibus consulat* (and he will surrender his whole self to the republic, and he will pursue neither resources nor political power for himself, and will so watch out for the entire state that he may consult the interests of all).<sup>10</sup> He emphasises the same principle in *de Republica*, asserting that the ultimate end of the statesman is to guarantee the happy

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<sup>7</sup> Pl. *Cri.* 50a-b.

<sup>8</sup> *Ibid.* 51b.

<sup>9</sup> Harries (2006) 57; cf. McIlwain (1958) 35-36.

<sup>10</sup> Cic. *Off.* 1.25.86.

lives of the citizens—lives secure in wealth, rich in resources, great in glory, and respected in virtue.<sup>11</sup> Therefore, just as the *officia* of an individual alter according to the situation and just as he must follow the principles of justice as he can best perceive them in a given instance, even so the statesman must be guided by his primary duty of protecting the safety of the state and the well-being of its citizens. While following the written laws is normally part of this *officia*, as Tanner remarks, the argument of *de Officiis* is that “the conscience of a Wise Man as a good citizen of any society must lead him to prefer and follow the largest good for the largest number as he sees it, whether in so doing he uphold or defy the statutes of his country as then enforced”.<sup>12</sup> This theory enabled Cicero to justify the murder of Caesar: although virtue forbids slaying a fellow man, it is honourable to kill a tyrant in defence of the state.<sup>13</sup> Thus, Cicero’s final writings establish the theory that the virtue of the good citizen may occasionally dictate civil disobedience.

In addition to interpreting the duties of a statesman in this way, *de Officiis* can also be read as affirming the right of the people to possess this type of leader, who will actively seek their good and ensure that justice is upheld. Cicero says in 2.12.41-42 that the people first chose leaders and appointed laws in order that they might have justice (*iustitia*) and equal rights (*ius aequabile*). He adds that before the tyranny of Caesar, the state was governed by those *quibus se ipsa commiserat* (to whom she had entrusted herself).<sup>14</sup> Power, therefore, is assigned to the leaders and to the laws in order to fulfil the specific purpose of ensuring the people’s welfare.<sup>15</sup>

Although Cicero employs these conclusions to justify the murder of a tyrant, he does not carry the application to the point of legitimising revolution. Nonetheless, the idea subtly underlies his argument that if the interests of the *res publica* are not met and justice is overturned, then individuals may reestablish their leaders and laws on a rightful basis, just as when Lucius Brutus as a *privatus* (private citizen) freed the early Romans from the tyrants.<sup>16</sup> Influenced by more personal motives, Cicero’s defence of Sestius follows the same line of reasoning. Portraying Clodius in *pro Sestio* 7.15 as *oti*

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<sup>11</sup> Cic. *Rep.* 5.6.8; cf. 2.29.51.

<sup>12</sup> Tanner (1972) 112.

<sup>13</sup> Cic. *Off.* 3.4.19.

<sup>14</sup> *Ibid.* 2.1.2.

<sup>15</sup> For a similar reading of *de Republica*, see Schofield (1995) 74-76 on the people’s authority in entrusting powers to the state and on their right to have their interests protected.

<sup>16</sup> Cic. *Rep.* 2.25.46.



*et communis salutis inimici* (an enemy of tranquillity and the public safety), Cicero argues that his edicts were contrary to law and to the liberty of the citizens and that Sestius' use of force was a justified defence of the *res publica*.<sup>17</sup>

In his arguments supporting disobedience to written law, therefore, Cicero makes a connection between justice and civil disobedience, arguing that the higher standard of justice not only permits one to engage in an unlawful action but even makes such an action honorable and virtuous. This legitimisation of resistance contrasts with Wilson's approach, which associates popular sovereignty and civil disobedience. Cicero never argues that the removal of popular consent entails resistance. Although he never makes the argument as such, his discussion in *de Republica* appears to imply that no matter what type of government exists, so long as it upholds the interests of the state and rightly dispenses justice, the people should be satisfied.

## **2. Wilson and resistance**

The circumstances of his own time placed a similar burden on Wilson to legitimise the American Revolution and his own part in it. Indeed, one of the main characteristics of the American writers was their thoughtful approach to the issue of revolution and their hesitancy to take action against the mother country unless they could vindicate themselves in legal and political terms.<sup>18</sup> For Wilson, the issue of popular sovereignty and its connection with civil disobedience becomes the guiding theme throughout his lectures on law, and his disagreement or alignment with previous political thinkers is largely based on whether their interpretation of law grants the people the right of resistance. At the heart of his theory of popular sovereignty is the premise that any institution or law made without the people's consent cannot constitute a legitimate authority. Such was the doctrine that provided the American states with the willingness to rebel.<sup>19</sup> While Wilson applied the theory of resistance much more broadly than Cicero by developing it to the point of revolution, he imitated Cicero in framing the

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<sup>17</sup> Cic. *Sest.* 13.30, 38.83; cf. Fantham (2004) 308.

<sup>18</sup> Bailyn (1967) 18, 142.

<sup>19</sup> McLaughlin (1932) 117; Wood, G. S. (1969) 45.

debate in terms of law and justice. Also like Cicero, he found himself compelled on a personal level to construct a theory of higher law that justified civil disobedience.

Central to Wilson's declaration of popular consent is the right of the people to throw off those laws not established by their consent and contrary to the principles of "life, liberty, and the pursuit of happiness".<sup>20</sup> He realises that his theory of consent has serious implications for the stability of laws and governmental forms. Once it is granted that the only moral or obligatory force a government or a system of laws possesses is that which has been granted to it by the people, then a corresponding right of resistance also arises: if the people have not consented, the government is not legitimate and its laws are only bonds of tyranny.<sup>21</sup> When power is opposed to right, it is stripped of every claim to obedience.<sup>22</sup>

Wilson's distinction between right and power rests in turn on a distinction between human law and divine law. Any law created by an individual or a group is still only a law of human creation. Not surprisingly, Wilson rejects the concept of the divine right of kings, and argues on the basis of equality that no man can lawfully compel the obedience of his fellow men. While one is under a moral obligation to obey divine laws, the same does not hold true of laws created by an equal.<sup>23</sup> Throughout history, Wilson observes, two justifications have been given for maintaining authority over others: that people must obey either those who are superior to them in strength or those who are superior in excellence.<sup>24</sup> However, while brute force may for a time compel obedience, it does not entail any legal obligation of obedience. Nor does superior excellence, while it may be esteemed, entitle its possessor to dominate others. Instead, the only way a people can be bound by a human authority and be obligated to obey its decrees is when they have first bound themselves through consent.<sup>25</sup>

Wilson does not hesitate to take the theory of popular sovereignty to its practical and logical conclusion. At the start of his lectures, he even introduces popular sovereignty as the principle of revolution, which means that the people "always retain the right of abolishing, altering, or amending their constitution, at whatever time, and in

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<sup>20</sup> Declaration of Independence, paragraph 2.

<sup>21</sup> Wilson (1804) 1:220.

<sup>22</sup> *Ibid.* 1:458.

<sup>23</sup> *Ibid.* 1:111.

<sup>24</sup> *Ibid.* 1:108-109.

<sup>25</sup> *Ibid.* 1:221; cf. 1:200, 212.

whatever manner, they shall deem it expedient”.<sup>26</sup> On this point, Wilson’s arguments sharply but subtly conflict with Blackstone and other contemporaries of his.

The Declaration of Independence illustrates the way in which Wilson took the theory of popular sovereignty to its logical conclusion. Many political theorists would accept the beginning of the oft-quoted paragraph of the Declaration of Independence regarding the rights of citizens: “to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed”; however the second clause provokes more disagreement:

That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundations on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.<sup>27</sup>

While the first premise is reminiscent of Cicero’s insistence on popular consent and the duty of statesmen to ensure the happiness and well-being of the people,<sup>28</sup> the second premise advances beyond Cicero’s argument by asserting the people’s ultimate right to change their government. Exploring the case of Blackstone demonstrates the divergence among philosophers on this point. Blackstone happily accepted the initial statement but departed from the American perspective of resistance expressed in the paragraph’s conclusion. For this reason, Wilson strongly criticises Blackstone, who admits the right of the people to change their legislature but considers it a purely theoretical notion impossible to implement in practice.<sup>29</sup> By contrast, Wilson argues

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<sup>26</sup> *Ibid.* 1:17.

<sup>27</sup> Declaration of Independence, paragraph 2.

<sup>28</sup> For Cicero’s view on the duty of statesmen, see above p. 148. To a great extent, Cicero’s statements on this point contradict Benjamin Constant’s widely-accepted depiction of Roman liberty as guaranteeing political involvement in government but denying individual rights: “Toutes les actions privées sont soumises à une surveillance sévère. Rien n’est accordé à l’indépendance individuelle, ni sous le rapport des opinions, ni sous celui de l’industrie, ni surtout sous le rapport de la religion” [Constant (1819)]. Cf. Brunt (1988) 298-300 on Constant’s inaccurate perspective of the liberties of the individual citizen during the late Roman Republic.

<sup>29</sup> Wilson (1804) 1:181. The position of English law on this topic is itself a matter of complexity. James Otis and other American colonial leaders appealed to *Bonham’s Case* (1610) in their attempt to justify their actions to their English counterparts. In this case, Sir Edward Coke made the statement that “it appears in our books, that in many cases, the common law will controul acts of parliament, and sometimes adjudge them to be utterly void: for when an act of parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will controul it, and adjudge such act to be void” (8 Co. Rep. 107a, 114a C.P. 1610). Due to its implications for judicial review, this judgement produced a flurry of controversy and has been the subject of a number of differing interpretations. In 1614, Chief Justice Hobart made a similar comment that “even an Act of Parliament, made against natural equity, as to make a man Judge in his own case, is void in itself, for *jura naturae sunt immutabilia*, and they are *leges legum*”, but others like Lord Ellesmere argued that such judgements could not be made by the courts [Berger (1969) 532, 540]. The meaning of Coke’s declaration continues to be

that those possessing the right to originally establish laws and government must also possess the right to alter them.<sup>30</sup>

Although Wilson constantly examines the underlying principles of his theories and attempts to address them both philosophically and practically, he, unlike other political thinkers, does not focus on whether a tyrannical law ceases by definition to be law at all. At one point, he does quote Richard Hooker to say that laws cannot exist without public approval.<sup>31</sup> For Wilson, though, the primary issue is not whether such laws exist in fact or theory, but whether they can compel obedience. In his opinion, since the people always possess the sovereign right of changing or abolishing their government, they also possess the right and even the duty of resisting tyranny. If force is used to compel their obedience and they are not able to resist, then their right is not destroyed but only postponed until an opportune and feasible time.<sup>32</sup>

Clearly, Wilson has the War for Independence in his mind when he outlines his philosophical principles, often drawing connections between his theory of consent and

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an object of discussion. Bailyn, for instance, argues the Coke merely meant that the courts must interpret statutes in accordance with general principles of reason and justice [(1967) 177]. While he accepts that such an understanding is more consistent with English case law, Holdsworth distinguishes between the sovereign power of Parliament to pass general laws and their right to pass laws contravening “those fundamental moral rules which seemed to be a part of that law of nature which natural reason teaches all mankind”; furthermore, he recognises that the underlying issue of sovereignty in the state still remained unresolved after the Revolution of 1688 [(1923) 2:442-444; 6:258]. Regardless of how Coke’s statement ought to be understood, the American interpretation of *Bonham’s Case* identified this fundamental tension in English law regarding sovereignty. For if, as in English law, the right of revolution against a king who acted contrary to certain set and accepted principles was clearly recognised from the beginning [Pollock and Maitland (1968) 181-183], then surely the same principles must equally bind acts of Parliament. Wilson pinpoints this discrepancy, referencing the statements of both Sir Edward Coke and Sir Henry Hobart in his condemnation of Blackstone’s unwillingness to allow the courts to judge acts of Parliament void if inconsonant with natural or divine law [(1804) 1:456-457]. As previously mentioned, the Ciceronian texts hold a prominent position in Coke’s writings (see above, p. 21), and this classical influence appears to be at work in *Bonham’s Case* as well as in the later opinions of those like Hobart. In his analysis of these higher principles and obligations, Wilson also turns directly to Cicero.

<sup>30</sup> Wilson (1804) 1:418-419. In his *Second Treatise of Government*, Locke argues for a viewpoint similar to Wilson’s, and his statements closely resemble the wording of the Declaration of Independence when he speaks of the natural freedoms of humankind (7.87.1-10), of the necessary consent they give the government (8.106.4-8), and of the supreme power the people possess to alter their government (13.149.5-17). Although Wilson clearly concurs with this view and is familiar with Locke’s writings, his citations of Locke do not focus on Locke’s exploration of the people’s right to change their government. Instead, Wilson explores the ways in which Locke’s arguments for the existence of ideas led to scepticism and Locke’s relation to the thought of Berkely, Hume, Hartley, and Priestley [Wilson (1804) 1:67, 258, 265-272]. Possibly, Wilson may have accepted Blackstone’s reading of Locke, which viewed him as providing a merely theoretical argument for resistance not intended for practical application [cf. Wilson (1804) 1:18]; in any case, when building his own case for resistance, Wilson turns to other authors and frequently to the Ciceronian texts. Cf. Pangle (1988) 126 on the influence of Locke’s theory of revolution on the founding fathers and on Wilson; in contrast to this view, cf. Conkin (1974) 22-23.

<sup>31</sup> Wilson (1804) 1:102.

<sup>32</sup> *Ibid.* 1:110.

its applicability to the American colonies. Indeed, he views the competing interpretations of law as the very reason for the war. He argues that the “despotick claims” of Great Britain were founded on the notion that law is the power of a superior against an inferior,<sup>33</sup> while a proper idea of law based on consent was what justified the colonies in their resistance. Carefully, Wilson lays out the argument that as citizens of Great Britain, the colonists should have enjoyed the right of consenting to acts of parliament as well as the duty of obeying them; because they had no representation in that legislative body, they had no consent and no corresponding duty of obedience.<sup>34</sup>

In effect, Wilson accepted the doctrine of sovereignty espoused by many in Great Britain that the king could be held accountable if he refused to yield to higher obligations, but he developed this argument further by applying this principle to Parliament. Such a philosophical step, however, introduced additional complexities and could not conclusively resolve the tangled issue of sovereignty. Two main areas of tension appear in Wilson’s attempt to construct a constitutional system that in its practical workings protects the principle of popular sovereignty

The first area involves the judicial branch and the absence of limits set on its authority to interpret the Constitution. For Wilson, the separate court system and its ability to declare acts of Congress unconstitutional and void acted as a guard against legislative infringement of authority. In practical terms, he looked to the courts to uphold the principle of popular consent by striking down unconstitutional laws of the legislature.<sup>35</sup> While many of the Anti-Federalists vigorously opposed such a powerful supreme court and declared that its authority would degenerate into judicial tyranny,<sup>36</sup> Wilson’s strong reliance on the doctrine of popular consent prevented him from endorsing such fears. In fact, his concern that the legislature might usurp the liberty of the people and his belief that it must be guided by universal principles of reason and justice even led him to consider granting greater authority to the courts. Thus, in the Constitutional Convention, he hinted at the idea, which his colleagues promptly rejected, that the judiciary power should not only be able to declare laws void if they were deemed to be unconstitutional, but also if they were contrary to natural justice:

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<sup>33</sup> *Ibid.* 1:82.

<sup>34</sup> *Ibid.* 2:57.

<sup>35</sup> *Ibid.* 1:462.

<sup>36</sup> Cf. Ketcham (1986) 293-298 on the anti-federalist perspective presented by the anonymous author ‘Brutus’.

“Laws may be unjust, may be unwise, may be dangerous, may be destructive, and yet not be so unconstitutional as to justify the Judges in refusing to give them effect.”<sup>37</sup>

While Wilson’s suggestion was not accepted, it demonstrates his deep-rooted allegiance to a higher law or standard of equity that must bind political leaders as well as citizens. Nevertheless, the power of the Supreme Court to broadly interpret the Constitution and thereby overrule legislative decisions still remains a point of complexity and a source of political strife.

The second main area of tension occurs in the practical provision allowing for majority rule. Notably, Wilson views the divine law that provides the people with the justification to overturn human laws as a restraining force on their actions. An untrammelled democracy is far from what Wilson has in mind. Although the people possess absolute sovereignty in regard to human government, they are not free to act however they choose or to pass any law that suits their fancy. As previously noted, he emphasises that when power is opposed to morality, it ceases to compel obedience. The same is true of the laws passed by a tyrannous majority. Having quarrelled with Blackstone over whether the legislature can compel a law contrary to reason and justice, Wilson cannot deny that the same governing principle must also apply to laws enacted by the people with their full consent.

In terms of practical consent, Wilson equates the will of the people with the majority and recognises that the minority must consent to the original agreement.<sup>38</sup> This assertion, however, does not mean Wilson always believed the majority to be right or that he did not perceive the danger of it tyrannising the minority. An individual or a minority is not swallowed up in the general will: they still possess rights that should be protected. As he clearly states, “on one side, indeed, there stands a single individual: on the other side, perhaps, there stand millions: but right is weighed by principle; it is not estimated by numbers”.<sup>39</sup> Ever a child of the Enlightenment, however, Wilson’s optimism in human progress gave him the hope that these obligations would be fulfilled by future generations of Americans. As the majority fulfilled their moral obligations and upheld justice, the popular right to change and overturn law would be reconciled with the need for legal and political stability.

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<sup>37</sup> Farrand (1966) 2:73.

<sup>38</sup> Wilson (1804) 1:310.

<sup>39</sup> *Ibid.* 2:439.

While Wilson does not give instructions for the proper manner of conducting a revolution, he clearly views the example of the American colonies as a positive one.<sup>40</sup> Furthermore, because his lectures centre on the issues and events of his time, he does not address the details of individual resistance to a tyrannical law. The notion of a single citizen resisting oppression does not naturally enter the scope of his discussion. Nonetheless, Wilson still admits that a private citizen has the right to decide whether to resist a particular law and may indeed be “justified in refusing to obey an unconstitutional act of the legislature”; however, the citizen who disobeys the law must also “abide by the consequences of a wrong judgement”.<sup>41</sup> In the end, therefore, the conscience of each citizen must decide whether a higher standard of justice conflicts with written law.

For Wilson, this question of individual consent to the law is an important one, which he tries to reconcile with his perspective of majority rule. Although democratic institutions cannot demand universal acceptance of every law, the consent of each citizen must still be obtained. If the minority finds that the original compact or its intention has changed, and they no longer desire to live under such a government and laws, they must be free to leave with their effects.<sup>42</sup> While he says that in some circumstances emigration may be restricted, he favours a system of open emigration so that citizens withholding their consent to the nation’s laws and institutions may depart.<sup>43</sup> As evidence for the just and practical application of this right, Wilson notes the example of the *Digesta* of Roman law, which allowed individuals the freedom to choose the state of their citizenship.<sup>44</sup> In support of the strong connection between free emigration and his conceptions of liberty and consent, Wilson also quotes from the *pro Balbo* 13.31, which upholds the “power of retaining and of renouncing our rights of citizenship”.<sup>45</sup>

What Wilson appears to overlook is that his view of majority rule exposes him to the same criticism he brought against Blackstone, who argued that while the people theoretically have the right to change or abolish their legislature, in actual practice the authority of Parliament is supreme. Similarly, Wilson argues that an individual or a

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<sup>40</sup> Cf. Wilson (1804) 1:21 on the example of the United States as proof that the principle of consent is not dangerous, despite its revolutionary nature.

<sup>41</sup> *Ibid.* 1:211.

<sup>42</sup> *Ibid.* 1:418.

<sup>43</sup> *Ibid.* 1:317.

<sup>44</sup> *Ibid.* 1:315.

<sup>45</sup> See above, p. 66 for the whole of this quotation and Wilson’s translation.

minority has the right to disobey an unjust or unconstitutional law, but he provides no practical way for such a law to be overthrown. Thus, while his theory asserts that the majority are bound by abstract principles of justice and duty, the only remedy he provides for a persecuted minority is to depart. In this case, Wilson's doctrine appears to reflect Plato's perspective in the *Crito*, that those who disagree with the laws and government of a country should depart and that if they remain they give their tacit consent to abide by its decisions.<sup>46</sup>

On the general issue of reconciling popular sovereignty with civil liberties, Read criticises Wilson, saying that his idealism prompted him to ignore the actual tensions in political affairs, consequently leading him to reject practical safeguards such as the Bill of Rights.<sup>47</sup> Such an interpretation, however, minimises Wilson's political perspicacity. While undeniably optimistic in his views of human progress, Wilson does not claim to have resolved the complexities of popular sovereignty. Instead, he accepts the reality that if sovereign power is possessed by the people and exercised by the majority, there can be no ultimate check to that authority. Neither governmental institution nor political leader can long prevent the majority from carrying out their will. The first and central question for Wilson is "are men capable of governing *themselves*?" and second, "are they qualified—and are they disposed to *obey themselves*?"<sup>48</sup> If assent is obtained to those questions, there is no other place to turn if the people should act unjustly or unwisely. As Wilson soberly acknowledges before the Pennsylvania Convention, for a people unwilling to govern themselves, "there is no remedy: from their power ... there is no appeal: to their error, there is no superiour principle of correction".<sup>49</sup> Thus, Wilson comprehends the danger of majority rule and acknowledges that there is no human law or governmental protection that can infallibly prevent the majority from abusing its power, but his commitment to popular sovereignty enables him to accept the tension that exists in its practical workings.

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<sup>46</sup> Pl. *Cri.* 51d.

<sup>47</sup> Read (2000) 113-114.

<sup>48</sup> Wilson (1804) 2:435.

<sup>49</sup> *Ibid.* 3:293. In his reply to William Findley on 1 December 1787, Wilson makes a similar comment, saying that, "I have no idea, that a safe system of power, in the government, sufficient to manage the general interest of the United States, could be drawn from any other source, or rested in any other authority than that of the people at large, and I consider this authority as the rock on which this structure will stand.—If this principle is unfounded, the system must fall" [Bailyn (1993) 1:821]. Cf. Wilson (1804) 1:404.



The question still remains of whether the people, as the whole body of free citizens in the state, will be a responsible repository of sovereignty. Wilson's optimism may be as ephemeral as the confidence expressed in *de Clementia* for Nero's regard of the duties of kingship. In Wilson's opinion, however, history has proven that individual liberty and the wisdom of customary law are best preserved by popular authority. Sovereignty, as an indivisible principle, by right belongs to the people and must be granted to them despite possible consequences. Where else can it safely be placed?

### **3. The stability of tradition and customary law**

Although they allowed for resistance to written law, neither Cicero nor Wilson can be regarded as true democrats. Since Wilson leaned more fully on the doctrine of popular consent in justifying resistance, he faced a greater challenge than Cicero in reconciling the tension between popular consent and adherence to higher law. Like the other founders, Wilson was loath to equate the will of the people with the highest law; instead, he circumscribed his doctrine of popular sovereignty by the limits of virtue and justice.<sup>50</sup> He sought to describe this doctrine not so much as a revolutionary principle, but as a devotion to traditional principles of government that proscribed the current system and left them no option but to renounce it. Cicero also appealed to the ancient traditions as a source of stability for his claim that the unwritten laws carried authority and could be used to justify disobedience to written statutes. Both Cicero and Wilson look to principles of right, duty, and justice that do not originate from the written laws but come from an outside source.<sup>51</sup> Confirmed by a tradition of time and usage, these standards not only bind the citizens themselves, but also in a few critical circumstances give them the right to act contrary to the written laws. In this way, stability and accountability coincide to allow the possibility of resistance.

Customary law is Wilson's instrument for resolving the conflict between popular consent and higher law. Trusting in the wisdom and reasoning ability of the

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<sup>50</sup> Wood, G. S. (1969) 67. Conkin, in designating natural law and popular sovereignty as the "two main sources of American constitutionalism", recognises that natural law prevents the will of the people from being the "sole criterion of legitimacy" [(1974) 3, 119-120].

<sup>51</sup> Kirk (2003) 111-113; cf. Conkin (1974) x.

people, he believes that majority rule combined with customary law provides the best practical answer to the question of how one perceives and applies these universal standards.<sup>52</sup> In a sense, Wilson's view of customary law could be described as natural law in its practical workings.

The importance and stability of tradition cannot be overemphasised as a counterpart to Wilson's theory of revolution. Despite his whole-hearted acceptance and defence of the revolutionary principle, Wilson does not desire frequent changes in laws or government. He claims that it is "not a principle of discord, rancour, or war: it is a principle of melioration, contentment, and peace".<sup>53</sup> While he admits some eras may see greater changes in the legal system and in custom itself,<sup>54</sup> Wilson believes that a nation relying on customary law will experience only seldom and slow alterations. By definition, his understanding of customary law implies stability, since it is slowly developed over time, and since its wisdom is proven by time and experience.

The United States Constitution is a necessary accompaniment to Wilson's system of customary law. He believes that this overall framework and form of government will protect the principles of liberty and popular sovereignty and will remain the same even as changing situations require some specific provisions to remain and others to fall away through disuse.<sup>55</sup> Furthermore, Wilson points to the *vis inertiae* that prevents fundamental changes in governments unless warranted by some great necessity, and argues that when the people understand that they may alter the laws, they are less likely to act impulsively or with reckless abandon.<sup>56</sup>

Thus, Wilson does not anticipate any great changes in the United States Constitution or in its system of government. When amendments occur, they will likely be minor and will take place gradually under a constitution and form of government that safeguards the right of the people to make those changes when necessary. A system of customary law both epitomises and attests to those principles most protective of the people's liberty, most in conformance to their will, and most closely aligned with natural law. Ultimately, customary law will continue to operate regardless of interference so long as the principle of consent is held sacrosanct. Even though

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<sup>52</sup> Cf. Hall (1997) 122, 143-144; McCloskey (1967) 39.

<sup>53</sup> Wilson (1804) 1:21.

<sup>54</sup> *Ibid.* 2:40.

<sup>55</sup> *Ibid.* 2:38; cf. 1:417.

<sup>56</sup> *Ibid.* 1:420-421.

temporary errors or the passions of humankind may periodically disrupt the peace of the state, Wilson is confident that a constitution resting on the basis of customary law will in time restore the state to its natural peace and order.<sup>57</sup>

Ultimately, for such a system to function and for both liberty and stability in law to continue, the people themselves must defend the traditions they have received. In focusing on the perfections, knowledge, and reasonableness of customary law and on the necessity for the people to accept and uphold its provisions, Wilson turns again to the ancients. In the high rhetoric reminiscent of classical authors, Wilson explores how the system of laws slowly collected, refined, and established by “our predecessors and ancestors” is not only progressive, just, and strong, but is “our dearest birthright and richest inheritance”.<sup>58</sup> Cicero, Wilson assumes, was referring to just such a system of customary law in the *pro Caecina* 26.74-75:

*Mihi credite: maior haereditas venit, unicuique vestrum, a iure et a legibus, quam ab iis, a quibus bona relictasunt. Nam, ut perveniat ad me fundus, testamento alicuius fieri potest: ut retineam quod meum factum sit, sine iure civili non potest. [Fundus a patre relinqui potest, at usucapio fundi, hoc est finis sollicitudinis ac periculi litium, non a patre relinquitur, sed a legibus. Aquaeductus, haustus, iter, actus a patre: sed rata auctoritas harum rerum omnium a iure civili sumitur.] Quapropter non minus diligenter ea, quae a maioribus accepistis, publica patrimonias iuris, quam privatae rei vestrae, retinere debetis; non solum quod haec iure civili septa sunt; sed etiam quod patrimonium unius incommodo demittitur; ius amitti non potest sine magno incommodo civitatis.*<sup>59</sup>

Believe me: a greater inheritance comes, to each one of you, from justice and the laws, than from those who may leave you wealth. For, a farm may come to me, by the will of anyone this is able to happen: but in order for me to hold fast what is my own, this cannot be without the civil law. [A farm is able to be bequeathed by one’s father, but the acquisition of ownership of the farm, that is, the freedom from anxiety and the danger of a lawsuit, these are not bequeathed by one’s father, but by the laws. The drawing of water or the passage of an aqueduct, this right is obtained from one’s father, but the established title to all of these things is obtained from the civil law.] Wherefore you ought to hold fast the public inheritance of the law which you received from your ancestors no less carefully than the inheritance of your private property; not only because this property is protected by the civil law, but also because while it is disadvantageous to an individual to lose his inheritance, the law is not able to be lost without great disadvantage to the state.

As seen from the bracketed sections of the quotation, Wilson’s translation makes the point more succinct by leaving out the examples Cicero provides:

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<sup>57</sup> *Ibid.* 2:42.

<sup>58</sup> *Ibid.* 1:206.

<sup>59</sup> Wilson renders the first phrase differently than both the Teubner and 1692 editions. The Teubner edition reads: “maior hereditas uni cuique nostrum venit in isdem bonis a iure et a legibus quam ab iis a quibus illa ipsa bona nobis relictasunt”; while the 1692 reads: “maior hereditas venit, unicuique vestrum in iisdem bonis, a iure, et a legibus, quam ab iis, a quibus illa ipsa bona relictasunt”. Wilson is consistent with the 1692 edition for the rest of the quotation, although Teubner renders the phrases: “civili fieri non potest”, “saepa sunt”, “verum etiam quod”, and “incommode dimittetur”.

Believe me, a more inestimable inheritance descends to you from the law, than from those who have left, or may leave you fortunes. A farm may be transmitted to me by the will of any one: but it is by the law alone that I can peacefully hold what is already my own. You ought, therefore, to retain the publick patrimony of the law, which you have received from your ancestors, with no less assiduity than you retain your private estates; not only because these are fenced and protected by the law; but for this further reason, because the loss of a private fortune affects only an individual, whereas the loss of the law would be deeply detrimental to the whole commonwealth.<sup>60</sup>

Wilson's selection of this passage is carefully chosen. In context, Wilson is speaking of customary law and its heritage, but he employs a Ciceronian quotation that not only references customary law, but also clearly refers to the written laws safeguarding property rights. Although he was clearly capable of analysing the various legal terms employed by Cicero such as *ius*, *leges*, and *ius civile*, all of which carried different meanings for their Roman audience, Wilson deliberately translates them all as "law". This conforms to his own overriding practice in this chapter 'On the Common Law', where he attempts to demonstrate the connection between customary law and its written expressions. For Wilson, the two form part of a united legacy of law and liberty. In his view, customary law, founded on experience and on natural justice and reason, forms and interprets written statutes as well as the overall system of law. In this translation, therefore, he may be choosing not to distinguish between the different types of law in order to focus on how they coincide and are jointly maintained.

Wilson also uses this Ciceronian passage to instil and reinforce his conception of individual rights. Similar to Wilson's oft-repeated quotation from the *pro Cluentio*, this quotation conveys the idea that if the people desire to maintain their freedom, they must obey and preserve the law as their common inheritance (*publica patrimonio*). Indeed, the function of the law is to protect rights already existing separately from the law and possessed by the people: "it is by the law alone that I can peacefully hold what is already my own".<sup>61</sup>

This passage from the *pro Caecina* also supports Wilson's perspective of the relationship between individuals and the community or state as a whole. Although he believes that the law exists to protect the liberties of individuals—in this case their property rights—he also emphasises the need for individuals to submit themselves to the general law of the community and even to willingly sacrifice their personal interest when necessary to protect its well-being. Ultimately, the stability and liberty of any

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<sup>60</sup> Wilson (1804) 2:46-47.

<sup>61</sup> *Ibid.* 2:47.

nation depends not only on popular consent in framing law but also in the people's willingness to protect and defend it as a public legacy.

Wilson's application of the quotation from the *pro Caecina* is consistent with Cicero's own use of the argument within its historical context. In admitting that Aebutius' wrongful ejection of Aulus Caecina from his estate was not necessarily condemned by the wording of a statute, Cicero also argues that the act was contrary to the intention of the law and undermined true equity and justice.<sup>62</sup> In the passage cited by Wilson, Cicero skilfully appeals to the whole system of Roman law, as evident in his use of the phrase *ius et leges*. The written statutes, the interpretations of the jurists, and the unwritten legal principles and customs together formed the interconnected tradition of law that Cicero employs in Caecina's defence.<sup>63</sup> The long-standing nature of these laws and customs serve as a basis for Cicero's appeal to their authority. In a manner similar to Wilson's later account of the legal history in the United States, Cicero praises the lawgivers of Rome for imparting a tradition of laws and institutions throughout the ages that could not have resulted from the wisdom of one leader.<sup>64</sup> Like Wilson's belief that the United States possessed the best existing constitution, Cicero believes that Rome's ancient customs have enabled her to achieve the *optimum statum civitatis* (the best form of state).<sup>65</sup>

Even as Wilson trusts in the reliability of customary law, so also Cicero looks to the legal principles of the *ius civile* and to the *mos maiorum* as a means of determining the higher principles of law. On a practical level, despite Cicero's focus on the philosophical origins and the nature of governments and laws, his conservative position leads him to emphasise the necessity of following tradition rather than to explore the radical possibilities of his theories. Although *de Legibus* was never completed, the concluding statement serves as an appropriate reminder of this need to rely on the authority of the ancients. Here, Cicero upholds the usefulness of examining the origins of the *ius naturae*, but adds that with regard to the law of the Roman people we must follow that which has been bequeathed and handed down to us.<sup>66</sup> Even Cotta's remark

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<sup>62</sup> Cic. *Caecin.* 17.49, 18.51-52, 19.55, 25.70.

<sup>63</sup> Harries (2002) 66, 68; cf. Usher (2008) 38-39.

<sup>64</sup> Cic. *Rep.* 2.1.2.

<sup>65</sup> *Ibid.* 1.20.33; cf. 1.22.35, 1.46.70, 2.16.30.

<sup>66</sup> Cic. *Leg.* 3.20.49. Dyck notes that due to the corrupt transmission of this sentence it is impossible to affirm that the discussion would have continued solely along the lines of accepting all previous tradition

at the end of the discussion on the existence of the gods in *de Natura Deorum* is consistent with this position; for, whatever conclusions may be drawn from the debate, he will still be guided by the ancient customs and no *oratio aut docti aut indocti* (eloquence of either the learned or ignorant) will cause him to depart from the religion imparted by ancestral tradition.<sup>67</sup> Thus, although the Ciceronian texts can be read as affirming the power of the people and supporting a theory of resistance, ultimately Cicero still regards the people as bound by the sovereign authority of customary law.<sup>68</sup>

In conclusion, therefore, it has been seen that together with Cicero, Wilson sought to unite the community in sharing a conception of justice and virtue, which both men asserted is principally known and accepted through the medium of custom and tradition. This point, I believe, acts as a necessary complement to the viewpoint of Republican politics put forward by Fergus Millar, to whom I am indebted for his discussions of political power and democratic processes in the Roman Republic. His insightful work, *The Roman Republic in Political Thought*, focuses on significant elements of popular sovereignty and traces this theme through classical and contemporary perspectives of the Roman Republic; nevertheless, by focusing on the Roman system as one “untrammelled by constitutional safeguards” where “the people, and not the law, is the final sovereign”, Millar neglects to mention the important role of custom and how it limited the people’s perception of their power and the exercise of it.<sup>69</sup> The Roman constitution allowed for innovation and new interpretations of custom, which the people, as represented by the juries, could constantly reinterpret; however, the unwritten laws of custom, tradition, and equity operated as a meaningful check upon the exercise of unrestrained power. Although Cicero is referring specifically to written law in the *pro Cluentio*, he recognises that the permanence of the state and the ability to claim the title of a free people exist only through adherence to these popular norms. As he reminds the judges, in sanctioning the laws they also place themselves under them; for, *quoniam omnia commoda nostra, iura, libertatem, salutem denique legibus* *obtinemus, a legibus non recedamus* (since we obtain all our advantages, rights, liberty,

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[(2004) 554]; nonetheless, the overall sense of the sentence still affirms the authority and stability of Roman law

<sup>67</sup> Cic. *Nat. D.* 3.2.5.

<sup>68</sup> Harries (2006) 148.

<sup>69</sup> Millar (2002) 8, 176.

and finally our safety through the laws, let us not diverge from the laws).<sup>70</sup> Supporting this interpretation of the Roman Republic, Zetzel, calls attention to its nature as “a profoundly traditional society, resting on the *mos maiorum* and unwritten law” and compares Cicero’s philosophy with English theorists like Burke who in direct contrast to Locke based the legitimacy of government not upon popular consent but upon “history, precedent, or tradition”.<sup>71</sup> Even in recognising the important role of the *populus* in the late Republic, therefore, the authority of custom must also be noted.

Wilson, carefully taking account of the philosophical strands of thought preceding him, proceeded to bind them into a political theory based on the Ciceronian principles of popular consent and the authority of custom and tradition. As this chapter has demonstrated, although Wilson takes his conclusions further than Cicero by employing his own doctrine of popular sovereignty in support of revolution, he attempts to modify his democratic perspective with a Ciceronian emphasis on the stability of custom, to which even a sovereign people must give heed. In the process of legitimising their political actions through recourse to legal philosophy, both Cicero and Wilson constructed theories that allowed for civil disobedience while still maintaining strong and abiding institutions and a due respect for law and tradition.

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<sup>70</sup> Cic. *Clu.* 57.155.

<sup>71</sup> Zetzel (2001) 86.

## Conclusion

This thesis has sought to fill an evident gap neglected by previous scholarship: namely, the centrality of the classics and specifically Cicero, in Wilson's writings. The first chapter of this thesis demonstrated that as a result of an education based on the classical texts and his own aptitude and strong inclination toward study, Wilson acquired a thorough knowledge of classical works as well as of the writings of his contemporaries. In examining the quotations he employed from Cicero, the second chapter established his direct reliance on the texts. Wilson's translations, the comparisons he makes between different works, and his disagreement with alternative readings of the texts, attest to his understanding not only of the works themselves but also of their context in the wider field of Ciceronian thought.

Chapters three and four analysed the topics of popular sovereignty and civic virtue within the framework of Cicero's and Wilson's political thought, and revealed the primary role of Cicero's texts in the development of Wilson's philosophy. In his effort to utilise Cicero's authority in support of his arguments, Wilson read the quotations within the context of his own time, often broadening their application and drawing conclusions that are not present in the texts. Nevertheless, Wilson's conception of popular sovereignty and its accompanying theory of civic virtue, two key theories on which he constructs the philosophy of his law lectures, reveal a striking correspondence to Cicero's thought. Additionally, while Wilson's interpretations of Cicero's works were influenced by the intermediary authors he also studied, reading Cicero through the filter of their diverse perspectives, his viewpoints of their writings were shaped in turn by his classical readings. He frequently based his commendation or criticism of contemporary authors on their alignment with classical perspectives.

After establishing the relation between Cicero's and Wilson's thought, chapter five looked at the ways in which they applied their philosophy to the events of their respective times and to the decisions they made as statesmen. As he formulated his justification of the American Revolution, Wilson turned to the classics for a conception of law and history that legitimized his position. His very attempt to apply Cicero's texts to the issues he faced as a lawyer and statesman is a final tribute to Wilson's appreciation of Cicero's approach. Practically-minded as a politician, yet also desirous



to achieve congruence between his philosophy and policy choices, Wilson follows Cicero in constructing a specific version of history and tradition to justify his political actions.<sup>1</sup> For Wilson and the other founders, who read the classics as imparting universal principles with application to daily life, the classical past served as an authoritative and motivating source for guidance in the questions that confronted them as individuals and politicians.<sup>2</sup>

Like Cicero, Wilson not only looked to the past for direction, but also pictured himself as a source of advice for future generations. Viewing their texts as a legacy, Cicero and Wilson believed that their perspectives of law and government were essential not only to the lasting stability of their respective states but also to the benefit of other nations. Cicero, for instance, believed that the laws and constitution of Rome would apply to other states as well, saying that *non enim populo Romano, sed omnibus bonis firmisque populis leges damus* (for we are shaping laws not only for the Roman people, but for all good and stable nations).<sup>3</sup> Similarly, Wilson and the other founders were convinced that the laws, institutions, and principles of the American founding would serve as a guiding light to the rest of humankind, an idea still underlining the commonly-held conviction of American politicians that the democratic ideals of the United States should be sold to the rest of the world.<sup>4</sup>

Thus, despite his personal slant, Wilson provides valuable readings of Cicero on issues nearly related to our own time as well as to current topics of Ciceronian scholarship. Since Wilson has exerted a profound but largely unrecognised impact on the political direction and mindset of the United States, his works warrant further scholarship. In particular, it would be valuable to analyse Wilson's understanding of natural law and its relation to foreign and domestic policies, his influence on the writings of his contemporaries and on the specific provisions of the Constitution, and his application of the theories of the Scottish Enlightenment and of the English common law tradition to the colonial experience. Such efforts would provide a more comprehensive picture of early American thought and would shed light on the historical context in which questions of modern politics are still decided and discussed. The

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<sup>1</sup> Oakeshott (2004) 37 on the contrast between those who read history for practical instruction and those who read it merely for factual knowledge.

<sup>2</sup> Burns (1954) 142-144; Richard (2008) 179-180; Pangle (1988) 29.

<sup>3</sup> Cic. *Leg.* 2.14.35.

<sup>4</sup> Burns (1954) 149; Mansfield (1991) 131.

recent publication of a new edition of Wilson's writings points to the growing recognition of his prominent place among the other founders and may evoke new studies of his work and a renewed interest in his political thought.<sup>5</sup>

Although modern political science must confront issues unknown to the founders, the importance of comprehending the ideas that shaped the formation of the United States remains undiminished. By reading history as a means of gaining practical knowledge, both Cicero and Wilson constructed the past in such a way as to justify their own conduct and to provide stability in a time of social and political upheaval. At the same time as they sought a philosophical rationale for their actions, the theories they developed also imparted an impetus and resolve to their later decisions. This interplay between action and thought in their writings, along with their theories of civic virtue and popular sovereignty, are helpful in understanding modern viewpoints, since many of these ideas still play an underlying and often unnoticed role in the foreign and domestic policies of the United States, theories of democracy and civic identity, and the implementation of constitutions.

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<sup>5</sup> Hall and Hall (2007).

## **Appendix A: 1692 text of *de Republica***

This appendix contains the text of *de Republica*, taken from the chapter entitled ‘Marci Tullii Ciceronis Scriptorum Fragmenta, in quibus & Somnium Scipionis’ in Volume X of the Gruter, Wilhelm, and Gronovius edition (1692).<sup>1</sup> As can be seen, it is divided into two main sections. The first section from pages 196-201 contains the fragments of the six books as were then extant, and the second section from pages 202-206 contains the *Somnium Scipionis*.

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<sup>1</sup> See above, p. 16 for the background of this text and its place in the thesis.

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Philo, conceditur alter alteri, & inter vos de insigni nobili rebus controversantur, non conterritis. *Philos. lib. 6.* ] Quae leguntur potest esse insignis voluntas ad molendam, nisi in magnitudine, aut longitudine alienis meritis posita? *Dionysius in Proemio.* ] Confirmandi genera complura.

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## FRAGMENTA M. TULLII CICERONIS, LIBRORUM SEX DE REPUBLICA.

Ex

### M. T. CICERONIS DE REPUBLICA LIBRO I.

*Tullio.* ] Nuntiatum est, venire Lelium, demogue iam esse.

*Nov. Propter.* ] Eam quoque ut sinaverit, propter Tiberium iussit assistere.

*Tullio.* ] Negotii publici expertus.

*Nov. Citius.* ] Quare si placeat, deduc orationem tuam de caelo ad haec citius.

*Dionysio.* ] Quasi alius affirmare rempublicam aut melius non possit, aut omnino non possit.

*Nov. Accusandam.* ] \* expostantque ad exemplum nostrae republicae accomodabo ad eam, si poterit, omnem illam orationem, quae est mihi habendo de optimo civitate fuit.

*Nov. Unde à vestris.* ] Quam cum locis, manique significat, etiammodi consuetudinem testorum, oppidum, vel urbem appellaverit, delictis de finibus, fortissime communi-bus, omnia ergo populus, qui est talis curiae multitudinis, qualis expostul, civitas est: i. omnis civitas, quae est conditio populi, respiciet.

*D. Avertit. epist. 5.* ] \* brevis multitudo diversae aequae, concordia civitas facta erat.

No. v.

# FRAGMENTA.

*Nov. Cynegora.* ] Cognoscere mactandae, inguit, consue-tudinem istam, & traditam, firmoquenque.

*Nov. lib. 19 epist.* ] \* duos Romanos reges esse, quod-nam alter patrem non habet, alter matrem. Nam de sterili matre dicitur. 2. And. Marci pater quoque ignoratur.

*Nov. Dimittit.* ] Tum iustitiam anni consules, tum di-vini populi facit.

*Nov. lib. 19 epist.* ] \* provocacionem ad populum etiam iustitiam fuisse.

*Nov. Hermetus ad horridum.* ] Horum enim severitatem di-dicere habentibus primam civitas.

*Nov. lib. 19 epist.* ] Quam deos dixerent dicimus, & in his ita nominari legimus, apud antiquos magister po-puli vocatus est, quod qui ab illo nominatur, magister equi-tum est.

*Nov. lib. 6 ad Atticum 9.* ] \* Qu. Elvius falsos pronu-tiat.

*Tullio.* ] Ipsi cognito nos delectati.

*Nov. Novus.* ] Quomodo enim iudicatur iste optimas, ut optimam amantem doctrinam, scribit, finit. audio, quando?

*Nov.* ] Sed iussit te credo, tum verò Platonem, So-cratem mortuo, primam in Aegyptum discendi causa, post in-bellam contulisse.

*Nov. Amicus.* ] Tum rinitur, labore, indantia quarete famam viti indolentem, nisi nimis amorem fecerit natura illam recto quo patio.

*Nov. Cynegora.* ] Quae videlicet ille non ex agri confusa, quam cernui, sed ex doctis indicis interpretabatur.

*Nov. Amicus.* ] Sed quoniam plurima bene-ficiis continet patria, & est antiquior parentis, quam is, qui ut sibi, creaverit, magis ei protecto, quam parenti, debe-tur gratia.

*Nov. Propter.* ] Sed ut plurimum, & maximas nos fusi ani-mi, ingenti, consili prima ipsi sibi ad utilitatem figurata.

*Nov. Cynegora.* ] Facillimam quidem in ea republica esse posse concordiam, in qua idem cogitaret omnibus.

*Nov. Firmus.* ] Habent aequalitatem quandam, qua quae dicitur via possent liberi, debendo similitudinem.

*Nov. lib. 6 ad Atticum.* ] Nec tantum Karthago habuisset quam feceritis fere annos sine coactis, & discipulis.

*Nov. Amicus.* ] Quid? tunc cum ei litans, pertrahis illi tradenda dominam amari tui?

*Nov. Amicus.* ] Ergo non probata consilio pullo libelli, *Nov.* *Novus.* ]

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nes, quæ sunt innumerales, inestimabiles, quæ tunc omnia. Ego vero mihi isto animo, mihi ita animato homine miseris dicerem.

Non. *Invenire.* ] Denique ipsa natura non invitaret solam, sed etiam cogeret.

Fronto. ] Populo gratificans & aliena, & sua.

Fronto. ] Nec vero jam meo nomine abstinet.

Non. *Horrendum ab horrida.* ] Sed ut ille, qui navigat, cum subito mare cepit horret, etc.

Macr. *lib. de differenti.* *Græci Latineque cense* ] Libenter tibi, Latini, uti cum desideras, equidem concessero.

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M. TULLII CICERONIS

D E R E P U B L.

L I B. I.

Non. *Exultare.* ] Est igitur quiddam turbulentum in hominibus singulis, quod vel exultat volupare, vel molestia frangitur.

Non. *Præstiduum.* ] Cepit autem, & expectanti, & libidinose, & volubundo in voluptatibus.

Non. *Amisum.* ] Quamquam amando prona ad ludum, & inertiens, semperque ipsa se sollicitans.

Non. *Tamen.* *Græci timidi.* ] 1. Est autem angore, esse miseria assidue, atque abjectas timere, & ignavia.

Non. *Elidere.* ] 2. Ut auriga indocilis e curru trahitur, operitur, eliditur, laetatur.

Non. *Offendere.* ] Scilicet Archyam Tarentinum, qui enim ad villam venisset, & omnia aliter ostendisset.

Non. *utris à tristitia.* ] \* quo auctore, & principe vocatur civitas.

Non. *Meditari.* ] Statuo esse opinione confirmatam rempublicam, quæ ex tribus generibus illis, 3. regali, optimo, & populari constituta modice, nec puniendo irriter animi immem ac feram, nec omnia prætermittendo, licentia civis detestores reddat.

D. Ave. *lib. 2. c. 21. Cris.* ] Ut in scribis, ac fideis, atque etiam ipso, ac vocibus contentus est quidam tenens ex distinctis fontibus, quem præmentatam, ac discrepantem autem eruditè ferre non possunt, istis contentus ex distinctis illam vocem moderatione concors tamen efficiat & congruat: sic ex summis, & infimis, & mediis interiectis ordinibus, ut fontis, mole æta ratione civitas contenta dissimili rum

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# FRAGMENTA

conducit, & quæ harmonia à musicis dicitur in ceteris, ea est in civitate concordia, æræstissimum atque optimam omni in republica vinculum incoluntatis: quæ sine iustitia nullo pacto esse potest.

Non. *Profectum.* ] Iustitia foras spectat, & profecta tota est, atque eminet.

Non. *Explicare.* ] Quæ virtus præter ceteras totam se ad alienas utilitates porrigit, atque explicat.

Non. *Exultare.* ] \* quæ sanguine alitur, atque in omni crudelitate sic existat, ut vix hominum aetioris fuitibus sitetur.

Non. *lib. de div. indagine.* ] Itaque præclara illa institutio Romæ cum ducentos annos & triginta fere firma mansisset.

Non. *Præstiduum.* ] Ac primum agros, quos bello Romanus cepit, divisit virum civibus.

Non. *Perambulare.* ] \* multa que ditiose ovium, & bonum, quod tunc erat res in pecore, & in locorum possessionibus, et quo pecuniosi, & locupletes vocabantur.

Non. *Calumniam.* ] \* ut Carneadi respondente, qui sæpe optimas causas ingenui calumnia ludificanti solebat.

Fronto. ] Neque enim ad mare admovit, quod ei fuit fastidium.

D. Ave. *lib. 2. c. 21. Cris.* ] Nihil est quod adhuc de republica pretem dictum, & quo possum longius progredi, nisi sit confirmatum, non modo saltem esse illud, sine injuria non posse, sed hoc verissimum, sine summa iustitia rempublicam regi non posse.

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D E R E P U B L.

L I B. II.

D. Ave. *lib. 4. contra Pisonem.* ] Homo non ut à matre, sed ut à novæ natura editus est in vitam corpore nudo, & fragili, & infirmo: animo autem anxio ad molestias, humili et timore, molli ad labores, prono ad libidines: in quo tamen iacti tanquam obtutus quidam divinus ignis ingenui, & meritis.

Macr. *lib. 19. epist.* ] Quoniam sumus ab ipsa calce ejus interpellatione revocati.

Lact. *Epistolæ cap. 1.* ] Nullum est jus naturale, itaque omnes amantes ipsa docente natura commoda sua defendunt: & ideo iustitia, si alienis utilitatibus consistat, suas

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negligat, sustinua est dicenda. Quòd si omnes populi, pene quos sit imperium, ipsique Romani, qui orbem totum possidere, iustitiam sequi velint, ac suam causam relicturæ, quod vi & armis occupaverint, ad causas, & egestatem reverterentur, quod si fecerint, iustos dicemus quidem, sed tamen stiles iudicare necesse est, qui, ut aliis profint, sibi nocere continent.

Lacr. *l. 5 c. 16. Epi. c. 1.* ] Bonus vir si habeat serum fugitivum, vel domum insalubrem, ac pestilentem, quæ vitia solus sciat, & ideo proscibat, ut vendat: utrumne proficiatur, fugitivum serum, ac pestilentem domum se vendere, an celabit emptorem? si proficiatur emptori, fugitivum esse: bonus quidem, quia non fallit, sed tamen stiles iudicabitur, quia vel parvo vender, vel omnino non vender, si celaverit, erit quidem sapiens, quia rei confut: sed idem malus, quia fallit. Deinde, si reperiat hominem, qui aut aurum pro orichalco, aut argentum pro plumbo vendat per errorem, atque id emere necessitas cogat: utrum dissimabit, & erit parvo, an potius indicabit? iustus utique dicitur, quia non fecit, sed idem stiles, qui alteri fecerit lucrum, suum damnum, sed facile de damno est: i qui si vita eius in periculum veniet, ut eum aliquando necesse sit, aut occupat, aut mori, quid faciet? Potest hoc evenire, ut naufragio facto juveniat aliquem imbecillum, tabula inhærentem: aut viâo exereit, fugiens repariat aliquem vulnèratum, equo insidentem: utrumne aut illam tabula, aut hunc equo demutabit, ut ipse possit evadere? si voler iustus esse, non faciet, sed idem stiles iudicabitur, qui dum alterius vitæ parci, suam perdet. si faciet, sapiens quidem videbitur, quia sibi consilii: sed & idem malus, quia nocet.

Lacr. *ib. 5 c. 17. j.* ] Quarto, si duo sint, quorum alter optimus vir, equissimus, anima iustitia, singulari fide: alter insigni scelerè & audacia existimetur: & si in eo sit citiore civitas, ut bonum illum virum, sceleratum, facinorosum, nefarium putet: contra autem, qui sit improbilissimus, summa esse probitate ac fide existimet, proque hac opinione omnium civium, bonus ille vir vextetur, rapitur, manus ei denique astringatur, effodiuntur oculi, damnetur, vincatur, moratur, exterminetur, egeat: postremo iure etiam optimo omnibus miserimus esse videatur: contra autem ille improbus laudetur, colatur, ab omnibus diligatur, omnes ad eum honores, omnia imperia, omnes opes, omnes denique copie conferantur: vir denique optimus omnium existimatione, & dignissimus omni fortuna iudicetur: quis tandem erit tam demens, qui dubitet, utrum se esse malit?

NON,

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 NON. *Familiares.* ] Est enim genus iustæ servitutis, cum si sunt alterius, qui ius possint esse, cum autem hi famulantur.

NON. *Insuper mare. Myopar.* ] Nam cum quærentur ex eo, quo sceleris compellis mare haberet, infestum uno myoparone: Eodem, inquit, quo tu orbem terras.

GRÆC. *ib. 1 c. 22.* ] Non gravaret, Lat. nisi & hos velle putarem, & ipse cuperem te quoque aliquam partem huius nostri sermonis attingere: præteritum cum heri dixeris, te nobis etiam superfluum, verum, si id quidem fieri non potest: ne desis, omnes te rogamus.

Lacr. *ib. 6 c. 8.* ] 2 Est quidem vera lex, recta ratio, naturæ congruens, diffusa in omnes, constans, sempiterna, quæ vocet ad officium iubendo, vetando à fraude deterreat, quæ tamen neque probos frustra iubet, aut vetat, nec improbos iubendo, aut vetando moveat. Hinc legi nec obrogari fas est, neque derogari ex hac aliquid licet, neque tota abrogari potest. Nec verò aut per senatum, aut per populum solvi hac lege possumus. Neque est quærendus explanator, aut interpret eius alius: nec erit alia lex Romæ, alia Athenis, alia nunc, alia posthac; sed & omnes gentes, & omni tempore erit communis quasi magister, & imperator omnium Deus ille, legis huius inventor, disceptor, iactor: cui qui non parerit, ipse se fugiet, ac naturam hominis aspernabitur, atque hoc ipso iure maximas poenas, etiam si cetera supplicia, quæ putantur, effugerit.

Lacr. *ib. 5 c. 19.* ] Hinc tu viro quas divitias obicies? quæ impetra? quæ regna? qui ista omnia putas humana, sua bona divina iudicat.

PATRIC. *l. 8.* ] \* quibus assensior, sollicitiam & periculosam iustitiam non esse sapientis.

NON. *Ubi genti. pro alio.* ] Nostra autem populus, sociis defendendis, terrarum iam omnium potius est.

NON. *Largitas.* ] \* Pyrrhi ridetur largitas à consule, aut Samnitium copiarum Cuncto defuerunt.

NON. *Apud.* ] Cuius etiam focum Cato ille noster, cum venerat ad se in Sabinos, ut ex ipso audiebamus, visere solebat, apud quem sedens Samnitium quondam hostium, tum iam clientium suorum dona repudiaverat.

D. A. V. E.

1. Sic legitur in Laetantio, habereque Patricius, quod ignoro cur mutatum sit in *veris*.

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D. Avo. *lib. 22 cap. 6.* ] Nullum l'illum suscipitur à civitate optima, nisi aut pro fide, aut pro salute.

D. Avo. *lib. 22 cap. 4. Cicer.* ] \* quorum non corpora sunt in cœlum elata : neque enim natua pateretur, ut id, quod esset de terra, nisi in terra maneret.

D. Avo. *lib. 22 c. 6. Cicer.* ] Magis est in Romano animandum, quod ceteri, qui dii ex hominibus facti esse dicuntur, minus eruditis hominum sacris fuerant, ut fingendi proclivior esset ratio, cum imperiti facili ad credendum impellerentur. Romuli autem ætatem minus his secensis annis, jam inveteratis literis, atque doctis, omnique illo antiquo ex inculta hominum vita errore sublati, fuisse ceteros.

D. Avo. *ibidem.* ] Ex quo intelligi potest, permultis annis antè Homerum fuisse, quàm Romanum : ut jam doctis hominibus, ac temporibus ipsis eruditis ad fingendum vix quicquam esset loci. antiquitas enim recipit fabulas, fides etiam nonnunquam inordinat. Hæc ætas autem, jam exulta præfectorum, & erudita, omne quod fieri non potest, recipit.

LACRAN. *lib. 5 c. 19.* SENECA *lib. 19 epist.* ] Apud Enniam sic loquitur Africanus.

4 Si fies endo plangas castissimum effunderes cuiquam esse,

Mai soli casti maxima porta patet.

Est verò, inquit, Africane. nam & Herculi eadem ipsa porta patuit.

SENECA. *ibid.* ] Hic est ille fuit, cui nemo citat, neque hostis.

Quicquid pro factis reddere optes pretium.

D. Avo. *lib. 3 c. 15 Cicer.* ] \* tantum est confectus, ut, cum subitò sole oblectato, non comparuisset, deorum in numero collocatus putaretur : quam opinionem nemo unquam mortalis attingi potuit sine extrema virtutis gloria.

D. Avo. *lib. 22 c. 6.* ] Propertæ & istum non crederim inter Deos receptum tali morte, quia fortasse quod erat in Romulo probatum, Romani vulgare noverunt, si hoc & alteri tribueretur.

LACRAN. *lib. 5 c. 19.* ] Vult planè virtus honorem : nec est virtutis ulla alia merces, quam tamen illa accipit facili, ceteri non acerbè, sed si aut ingrati universi, aut invidi multi, aut inimici potentes suis virtutem præmitis spoliant, ne illa se tamen multis idolis oblectat, maximeque suo decori ipsam sustentat.

D. Avo. *lib. 22 c. 6. Cicer.* ] Sed his penis, quas etiam flagitissimi sentiant, egessere, exilio, vinculis, verberibus, claustrum sæpe privati, oblata mortis celsitatis, Civitatis

Dei.

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bus autem mors ipsa pena est : quæ videtur à pena fingulos vindicare, debet enim constituta sic esse civitas, ut æterna sit. Itaque nullus interitus est republicæ naturalis, ut hominis, in quo mors non modo necessaria est, verum etiam optanda per sæpe. Civitas autem cum tollitur, delentur, extinguuntur, imitè est quodammodo, ut magnis parva confestim, ac si omnis hic mundus intereat, ac concidat.

D. Avo. *lib. 2 cap. 21. Cicer.* ] Respublica est, res populi. Populus autem non omnis cœtus multitudinis, sed cœtus iustis consensu, & utilitatis communione sociatus.

D. Avo. *ibidem.* ] Respublica res est populi, cum bene ac iustè geritur, sive ab uno rege, sive à paucis optimatis, sive ab universo populo. cum verò iniustus est, rex, quem tyrannum voco : aut iniusti optimates, quorum consensus factio est : aut iniustus ipse populus, cui nomen usurarum nullum reperto, nisi ut etiam ipsam tyrannum appellem : non iam vitiosa, sed omnino nulla republica est, quoniam non est res populi, cum tyrannus eam, factiore capellat : nec ipse populus jam populus est, si sit iniustus, quoniam non est multumdo iuris consensu, & utilitatis communione sociata.

D. Avo. *lib. 22 c. 21. Cicer.* ] Ubi verò iustitia non est, nec ius potest esse. quod enim iure sit, profecto iustè fit : quod autem sit iniustè, nec iure fieri potest. non enim iura dicenda sunt, vel putanda, iniura hominum constituta, cum illud etiam ipsi ius esse dicant, quod de iustitiæ fonte manavit : falsumque sit, quod à quibdam non rectè sententibus dici solet, id ius esse, quod ei, qui plus potest, utile est.

D. Avo. *lib. 4 contra P. Vellernum.* ] An non ceterimus, optimo cuque dominatum ab ipsa natura, cum summa utilitate infirmorum datum : Cur igitur deus homini, animus imperitæ corpori, ratio libidini, iracundiaque, & ceteris vitiosis ejusdem animi partibus ?

D. Avo. *ibidem.* ] Sed & imperandi, & serviendi sunt diffinitivitates cognoscendæ. Nam, ut animus corpori dicitur imperare, dicitur etiam libidini : sed corpori, ut rex civibus suis, aut parens liberis : libidini autem, ut servis dominus, quod eam coecet, & frangat : sic regum, sic imperatorum, sic magistratum, sic patrum, sic populum imperia civibus, sociisque præstant, ut corporibus animas. domini autem servos ita fatigant, ut optima pars animi, id est, sapientia, ejusdem animi vitiosas, imbecillæque partes, ut libidines, ut iracundias, & perturbationes ceteras.

Nov. *Mercedem.* ] Phœnices primi mercutis, & mercibus suis avartitiam, & magnificentiam, & inespribiles cupiditates omnium rerum supererant in Græciam.

Nov.

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Non. *Confidentia.* ] \* duas sibi res, quo minis in vulgus, & in foro diceret, confidentiam & vocem desinisse.

Non. *Proferre.* ] Sapientia jubet proficere opes, amplificare divitias.

Non. *Periculum.* ] \* sed ut ipsi seu animum periclitentur, seu videant, quid se putent esse fautores.

Non. *Impugnatio.* ] Nunquam viri fortissimi fortitudinis, impugnatu patientia.

Perisc. lib. 6. ] Quid ergo illa sibi vult absurda exceptio, nisi quis Athonem pro monumento vult, funditus efficere?

Non. *Proferre.* ] Non sunt in disputando vasti, non veteratores, non malitiosi.

Ex

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D E R E P U B L I C A

L I B. IV.

Non. *Ubi accusatus pro genitorum.* ] Atque ipsa mens, quae futura videt, praeterita meminit.

Non. *Mitis.* ] Cumque autumno terras ad concipiendas fruges patereceat, hieme ad concitandas compertescit, vere ad effundendas relaxari, estate ac maturitate alias mitigaverit, alias torruerit.

Non. *Astutus.* ] \* eademque soli objecta umbram, noctemque efficiat, cum ad numerum dierum aptam, tum ad laborum quietem.

Lact. *de opib. Div.* ] Nec voluntatem mihi desinisse, nec citam.

D. Ave. lib. 9 cap. 9 *Cicili.* ] Nunquam concitatus, nisi confutendo vix patereceat, probare sua theatris flagitia potuissent.

D. Ave. *ibidem.* ] Quem illa non attingit, vel potius quem non vexavit, cui pepercit? esto: populares homines, improbos in rempublicam, seditiosos, Cicerone: Cicophonem, Hyperbolum laeti. patiamur: etsi hispanos civis a censione melius est, quam a poena notari. Sed Pericles, cum iam suae civitatis maxima auctoritate plurimos annos doni & belli praestitisset, violari verbum, & eos agi in scena, non plus deiecit, quam si Plautus nosse voluisset, aut Nævius, P. & C. Scipioni, aut Caelius M. Catoni maledicere.

D. Ave. 6. ] Noctae contra XII: abijt: cum perparcas res capite sanxissent, in his hanc quoque fanciendam paraverunt, si quis attavisset, siue carmen condidisset, quod isaniam ariet-

# F R A G M E N T A.

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aferret, flagitiumve alteri: praeterea, iudicis enim, ac magistratum disceptionibus legitimis propostam vitam, non potarum ingenis habere debemus, nec probum audire, nisi ea lege, ut responderet licet, & iudicio defenderet.

D. Ave. lib. 2 c. 10 *Cicili.* ] Alcibiades Atheniensis, vir doctissimus, cum adolecens tragicas aditavisset, rempublicam capessivit, & Aristodemum tragicum item actorem, maxims de rebus pacis ac belli legatum ad Philippum Atheniensis saepe miscent.

D. Ave. lib. 2 cap. 12 *Cicili.* ] \* Probris & iniquis poetarum subiectam vitam famamque habere noluerunt, capite etiam punia scandentes, tale carmen condere si quis auderet.

D. Ave. lib. 2 cap. 13 *Cicili.* ] \* Cum artem iudicariam, sciamque totam in probro dicerent, genus id hominum non modo honore civium reliquorum carere, sed etiam tribu mortu notatione censoria voluerunt.

D. Ave. lib. 2 cap. 14 *Cicili.* ] Ad quos cum accessisset clamor, & approbatio populi, quasi magni cuiusdam, & sapientis magistri, quas illi obducunt tenebras? quos invectus? quos inflammant cupiditates?

Non. *Fingere.* ] Ego vero eodem, quo ille Homerum reddunt coronis, & delibutum unguentis, emittit ex ea urbe, quam ipse sibi fingit.

Macrob. lib. 3 c. 3. ] Cumque nihil tam incorruptum esse debet in republica, quam iustitiam, quam sententia: non intelligo, cur, qui ea pecunia corrumpit, poena dignus sit: qui eloquentia, laudem etiam faciat. Mihi quidem hoc plus male facere videtur, qui oratione, quam qui pretio iudicem corrumpit, quod pecunia corrumpere prudentem nemo potest, dicendo potest.

Non. *Impurus & immanis.* ] \* Sed iuventuti noctae minime audiendus. Quippe si ita sensit, ut loquatur, est homo impurus: si aliter, quod malo, oratio est tamen immanis.

Non. *Ignominia.* ] Censoris iudicium nihil fere damnato adest, nisi roborem. Itaque quia omnis ea iudicatio vetatur tantummodo in nomine, animadverso illa ignominia dista est.

Non. *Ubi datus pro accusativa.* ] Nec vero mulieribus praetibus praeparatur, qui apud Graecos creari solet, sed sit censor, qui viros docet moderari uxoriis.

Non. *Tendens.* ] Magnam habet vim disciplina veterandae, carent temere omnes mulieres.

Non. *Fama.* ] \* atque etiam huius erat famosa, ei cognati osculum non ferebant.

Non,



# 4112 M. TULLII CICERONIS

Non. *Clevere*.] Non modò ut Spartæ, rapere ubi pueri, & elepere dicunt.

SERV. ] Apud Grecos opprobrio fuit adoleſcentibus, ſi amatores non haberent.

Non. *Jugum à iſta*.] \* admiror, nec rerum ſolùm, ſed verborum etiam elegantiam, ſi iugant (inquit) benevolorum conſortio, non ſis inimicorum, iugum dicitur.

Non. *Iudà*.] Jurgare igitur lex putat inter ſe vicinos, non litigare.

Non. *Petulantia, Peractus*.] Itaque à petendo petulantia, à proſecundo, id eſt, poſcendo, proſectas nominata eſt.

Non. *Fides*.] Fides enim nomen ipſum mihi videtur habere, cum ſis, quod dicitur.

Non. *Blandimentum*.] In civē excello, atque homine nobili, blanditiā, oſtentationem, ambitionem, notam eſſe levitatis.

Non. *Peritur*.] Nolo enim eandem populum, imperatorem, & portitorem eſſe terrarum: optimū autem & in privatis familiis, & in republica vêtigal duo eſſe partioniam.

Non. *Pecula*.] \* cum adhibent in pecuda paſtores,

Non. *Exſpecta*.] \* quòd inſepultos reliquiſſent eos, quos ex mati, propter vim tempeſtatis, excipere non poiſſent, innocentes necaverint.

Non. *Proprium*.] Ex noſter Plato magis etiam, quàm Lycurgus, omnia proprius jubet eſſe communia, nequils civis propriam, aut ſiam rem uſiam queat dicere.

Non. *da deſt. iud.*] Nec in hac diſſenſione fuiſſeſſe populi cauſam, ſed bonorum.

Non. *Augura*.] \* Cui quidem utinam verè auguraverim.

Non. *Sanctum*.] \* eodēſem terminos hominum curæ, atque vitæ: ſic pontificio iure ſanctitudo ſeparatur.

PRISC. *lib. 15.*] Non enim facile valenti populo reſiſtunt, ſi aut nihil impertias iuris, aut parum.

PRISC. *Carin.*] Brachialia.

PRISC. ] Armentum habeo.

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# FRAGMENTA. 4213

EX

M. TULLII CICERONIS

DE REPUBLICA

L. II. V.

D. A. 10. *lib. 2 c. 21* (*Cic.*) & Non. *quendam lucrum, qui eſt* *ut ſeq. proſert in ſuam.*] Enn.

*Moribus enimque rei ſunt Romanæ, cingiſſe.*

Quem quidem ille veſtiam, vel brevitate, vel vetinate, tamquam ex oraculo mihi quodam eſſe eſſatus videtur. nam neque vini, niſi ita morata civitas fuiſſet, neque mores, niſi hi niſi præſtiſſent, aut fundare, aut tandiu tenere poiſſent intam, & tam longè, hæcque impetantem rēpublicam, hæc ante noſtram memoriam & nos ipſe patris præſtantes viros adhibebat, & veterem morem, ac maiorum inſtituta retinebant excellentes viri, noſtra vêtō ætas cum temporalem ſicut pſtūram accepſſet egregiam, ſed ſam evaſentem veniſſet, non modò cum coloribus iſdem, quibus fuerat, renovare neglexit, ſed ne id quidem curavit, ut ſiam ſaltem ejus, & extrema tamquam lineamenta ſervire, quid enim manet ex antiquis moribus, quibus ille dicitur, ut non modò non, colantur, ſed etiam ignorentur. Nam de viris quid dicam? mores enim ipſi inſectum vitiorum penuria, cujus tanti mali non modò reddenda ratio nobis, ſed etiam tamquam reſ capitis quodammodo dicenda eſt eſt, noſtris enim viris, non eſtū aliquo, reſpublicam vêtō retinens: recipit vêtō ſanctitatem amiffimam.

Cic. *lib. 8 priſt. ad Arſtotelem*.] Ut enim gubernatori curſu ſecundus, medico ſalus, imperatori viſtoria: ſic huic moderatori reiſpublicæ beſta civium vita propoſita eſt, ut opibus ſumma, copiis locuples, gloria ampla, virtute honeſta ſit, hæc enim operis maximi inter homines, atque optimi, illam eſt eſſeſtorem volo.

Dionys. *lib. 1.*] Excellant, Non. *Contempta*.] Quæ virtus fortitudo vocantur, in qua eſt magnitudo animi, mortis, dolorisque magna contentio.

Non. *Immanis*.] Martellus, ut acet & pugnat. Maximus, et confiderans, & lenius.

Non. *ubi nominatiſſimi, vel.*] Sed tamen ut bono partiſſimis colendi, ſedificandi, ratiocinandi quidam uſus, opus eſt.

GEL.

NON. J Quod non modò singulis hominibus, sed potest  
tissimis populis sæpe contingit.

## LIB. V.I.

in plus, quàm multi valent, expendendos ab his, non numerandos puto.

NON. *Macfarre.* ] Ferunt hos laudibus, magnant honoribus.  
D. *Avv. lib. 5 c. 12 Civile.* ] Alendus hic est eleria.

et triumphos arecentibus laureis, sed stabiliora quadam & rutiliora praeiorum genera desiderat. Quae tandem ista sunt?

**D**UM in Africam venissem, M<sup>r</sup> Manlio consuli ad quartam legionem tribuimus (ut fecisset) nihil mihi potius fuit, quam ut A<sup>l</sup>ia fluvium convenirent, regem familie nostrae iudis de causis antificissimum. Ad quem et veni, complexus me (senes collocatus) i-

uto loqueretur, omniaque ejus non facta solum, sed etiam  
ada meminisset. deinde, ut cubitum discessit, et me &

3. *Me & ac via, & qui.*] Ausus sum exprimere quod ajunt à  
legio productum, quoniam sic quoque extaret in Palatino pr.  
etiam molus.

de via, & qui ad multam noctem vigilarem, ardior, quam solebat, somnus complexus est. Hic mihi (credo equidem ex hoc, quod eramus locuti: sit enim fere, ut cogitationes, sermonesque nostri pariant aliquid in somno tale, quale de Homero scribit Ennius, de quo videlicet sapissime vigilans solebat cogitare, & loqui) Africanus se ostendit ea forma, quae mihi ex imagine ejus, quam ex ipso, erat notior, quem ut agnovi, equidem cohortui, sed ille, Ades, inquit, animo, & omite timorem, Scipio, & quae dicam, trade memoris.

2 Videlicet illam urbem, quae patere populo Romano coada per me, renovat pristina bella, nec potest quiescere? (ostendebat autem Karthaginiem de excello, & pleno stellatum, illustri, & claro quodam loco) ad quam tu oppugnandam hunc venis parve miles? hanc hoc bicornio consul evertes, citius cognomen id, tibi per te partum, quod habes adhuc a nobis hereditarium. Cum autem Karthaginiem deleveris, ritum spiritum egeris, censorque fueris, & obieris legatus Aegyptum, Syriam, Asiam, Graeciam, deligere iterum consul abiens, bellumque maximum conficies, & Numaniam excindes. Sed cum eis curu Capitolium invectus, offendes rempublicam perturbatam consiliis nepotis mei. Hic tu, Africane, ostendas oportebit paritatem, lumen animi, ingeni, consiliumque mihi. Sed ejus temporis anticipem video quasi fatorem viam, nam cum aras tua sepienos odes solis anfractus, redinque converterit, duoque hi numeru, quorum uterque plenus, alter altera de causa, habetur, circum naturali summam tibi ita-talem confecerint: in te unum, atque in tuum nomen, se tota converteret civitas: te senatus, te omnes boni, te loci, te Latini intuebantur: tu eis tuus, in quo nitatur civitatis salus; ac ne multa, dictator rempublicam constituas oportet, si impias propinquorum manus effugeris. Hic cum exclamasset Laelius, ingenuissimae ceteri vehementis: le-miter artidens scipio, Quae, inquit, ne me è somno extirpis, & paucum rebus, audire cetera. Sed quò sis, Africane,

3 tum scio prima Academicæ: sed hand id etiam invenisse in membris suis Theodorum Gazam, prodiit loci illius versio. *Græter*. Credo sius est lib. 1 de Invent. cap. 4. *Notum possumus illas artem ut si jam ex latitudine dormire sensu*. Gronov.

4. *Numaniam excindes*.] Sic sane ex MSSis quidam. Sed Victorinus apud Stephanum, Iunias, Hervagius exciderat, Langius exciderat. Sed vidi quoque notavique ex aliis exciderat, quod præfero. *Gronov*.

5. *Et pax sit rebus*.] Testi tacet, non dubito tamen Gruterum quoque in libris vetustis vidisse *et pax sit rebus*: quod mihi & aliis ubique occurrere. Si Manutius in duobus invenit *pax sit rebus* vel *pax res*, erunt illi tales, qui etate ipsius aut paulo ante fuerunt scripti; quale genus exemplar fuit etiam, vnde Maximus planius

facior ad turandum rempublicam, sic habeto: Omnibus, qui patriam conservant, adjuverint, auxerint: certum esse in caelo definitum locum, ubi beati awo sempiterno fruantur. mihi est enim illi principi Deo, qui omnem hunc mundum regit, quod quidem in terris fiat, acceptus, quam consilia, ceterisque hominum, iure sociati, quae civitates appellatur: hanc redtores, & conservatores, hinc profecti, hinc revertantur. Hic ego, estis eram perterritus, non tam metu mortis, quam insidiarum à meis, quævisi tamen, vivere incipit & Paulus pater, & alii, quos nos exstinctos arbitramur. Immo verò, inquit, ii vivunt, qui ex corporum vinculis, tamquam è carcere, evolverunt: veltia veto, quæ dicuntur vita, mors est, quin tu aspicias ad te venientem Paulum patrem. Quem ut vidi, equidem viam lacrimarum profusi. Ille autem me complexus, atque osculans, fere prohibebat. Atque ego ut primum, stem repulsi, loqui posse coepi, Quae, inquam, pater sanctissime, atque optime, quoniam hac est vita, (ut Africanum audio dicere) quid moror in terris? quia huc ad vos venie proptero? Non est ita, inquit ille. 7 Nisi Deus is, cujus hoc templum est omne, quod conficis, istis te corporis custodiis liberaverit, hac tibi aditus parere non potest. homines enim sunt hac lege generati, qui tuerentur illum globum, quem in hoc templo inmedium vides, quæ terra dicitur: huiusque animus datus est ex illis sempiternis ignibus, quæ fidera, & stellas vocatis: quæ globosæ, & rotundæ, divinis animarum mentibus, circuitos suos, orbefque conficiunt celestiarum mirabili. Quare & tibi, Publi, & piis omnibus retinendus est animus in custodia corporis: nec injulsi ejus, à quo ille est vobis datus, ex hominum vita mil-

gran-

das (hoc enim nomen, non Theod. Gazam præferbat liber Medicus) hæc interpretabatur, *ὁ θεὸς ὅς ἐστιν ὁ πᾶσι τοῖς ἀνθρώποις ὁ δὲ θεὸς ὁ πᾶσι τοῖς ἀνθρώποις*. Certe quidquid sit, *τοὺς τοὺς* nullo pacto dederit aut mutari meretur, quoniam id constanti fide approbent omnia sacra. Neque etiam dubitem, si Scipio exclamationibus aut interjectionibus usus esset, quin ipse se somno excitavisset. Præstat itaque colligo ex indubitata fide scriptorum librorum, *et per animam, de his animis cetera*. Vox enim *parum* coarctat, quoniam compendiariorum licet p non intelligeretur. Non potuit validius eos & lenissimæque, oblectare. Olim fuit *his* scriptum, quod suppono in *hinc* mutatum, atque ita existisse videtur. Gronov.

6. *Qui ex corporum vinculis est*.] Palatinus fere, non adeo vocula *est*, pauloque post illud è aditum ipsi à manu posteriore. *Græter*. *hinc*. Et sic credidit citavisse Macrobius lib. 1 cap. 13. Sed Lan-gius edidit *nisi enim Deus*, ut & Sigonius cum Patricio, quomodo & in pluribus MSS. repert. *Gronov*.

8. *At-*

grandum est, ne munus humanum <sup>8</sup> assignatum à Deo defugisse videamini. Sed sic, Scipio, ut avus hic unus, ut ego, qui te genui, iustitiam cole, & pietatem: quæ, cum sit magna in parentibus, & propinquis, tum in patrâ maxima est: ea vita, via est in coelum, & in hunc cœtum eorum, qui jam vixerunt, & corpore laxati, illum incolunt locum, quem vides: erat autem is splendidissimo candore inter flammis <sup>9</sup> dictus elucens, quem vos, ut à Gratis accepistis, orbem lætæ nuncupatis: ex quo omnia mihi contemplantur præclara cœtera, & mirabilia videbantur. erant autem ea stellas, quas nunquam ex hoc loco vidimus: & ex magnitudines omnium, quas esse nunquam suspicari sumus: ex quibus erat illa minima, quæ ultima à cœlo, citina terris, luce lucebat aliena. Stellarum autem globi terræ magnitudinem facile vincebant. Jam ipsa terra ita mihi parva visa est, ut me imperii nostri, <sup>4</sup> quo quasi punctum ejus attingimus, periret. Quam cum magis intuerer, Quidam, inquit Africanus, quousque huius defixa tua mens erit? nonne adspicis, quæ in templa veneris? novem tibi orbibus, vel potius globis, <sup>10</sup> connexa sunt cœnita: quorum unus est cœlestis, extimus, qui reliquis omnibus complectitur, summus ipse Deus, accens, & continens ceteros; in quo infixi sunt illi, qui voluntur, stellarum cursus semperterni: cui subiecti sunt sepeum, qui veritant retro, contrario motu, atque cœlum, ex quibus unum globum possidet illa, quam in terris Saturniam nominant. deinde est hominum generi <sup>11</sup> prospens & salutaris ille fugor, qui dicitur Jovis: tum rutilus, horribilique terris, <sup>12</sup> quem Martium dicitis: deinde subter median ferè regionem Sol obinet, dux, & princeps, & moderator luminum reliquorum, mens mundi, & temperatio, tanta magnitudine, ut et ipsa sua luce illustret, & compleat. hunc ut comites consequantur, Veneris alter, alter Mercurii cursus: in infimoque orbe Luna, radiis solis accenda, convertitur. infra autem jam nihil est, nisi mortale & caducum, præter animos generi humanum, manere deorum dados. supra lunam sunt æterna omnia, nam ea, quæ est media, & nona rellus, neque movetur, & infima est, & in eam feruntur omnia suo nutu pondera.

12.

8. *Assignatum à Deo, defugisse.* J. Palat. *Deo, ipsi defugisse.* Gruterus.

9. *Circus flammæ.* J. Sic & nostri mss. & admittit in contextum P. Victorius. vulgus. *flammas æthereas.* Idem.

10. *Connexa sunt omnia.* J. Sic Palat. pr. & aliorum aliquot membranæ, nec ab eo abhorrebat Aldus Nepos. Idem.

11. *Prospens & salutaris.* Ita & Pal. fac. non *prospers.* Idem.

12. *Quem Martium dicitis.* Haud aliter à suis Guiselmus, quomodo & Fall. quippe vulgati; Martem. Idem.

13. *Quid?*

14. Quæ cum intuerer stupens, ut me recepi, <sup>15</sup> Quid? hic, <sup>5</sup> inquam, quis est, qui complect aures meas tantus, & tam dulcis sonus? Hic est, inquit ille, qui intervallis consunctus impudens, sed tam cum <sup>14</sup> pro rata parte ratione distinctis, impudens, & motu ipsorum orbium constituit: qui acuta cum gravibus temperans, varios æquabiliter concentus efficit. nec enim tantum tanti motus incitari possunt, & natura fert, ut extrema ex altera parte graviter, ex altera autem acutè sonent. Quam ob causam summus ille <sup>15</sup> cœli stellas cursus, cuius converso est concitator, acuto, & excitato movetur sono: gravissimo autem hic lunaris, atque infimus. nam terra, nostra, immobilis manens, ima sede semper hæret, complexa medium mundi locum. Illi autem octo cursus, in quibus eadem vis est, <sup>16</sup> duorum, Mercurii, & Veneris, septem efficiunt distinctos intervallis sonos: qui numerus rerum omnium fere nodus est. quod docti homines nervis imitati, acutè cantibus, aptuere sibi rectum in hunc locum: sicut alii, qui præstantibus ingenis in vita humana divina studia coluerunt. Hoc sonitu opteque aures hominum obsterdunt: nec est ullus hebetior sensus in vobis: sicut tibi Nilus ad illa, quæ Catadupa nominantur, precipit ex altissimis

mon-

13. *Quid? hic inquam quis est &c.* Ita è nostris libri quinque, & invenitur item in suis amanuensis Nepos. Vulgati *quis hic, inquam, quis &c.* Gruter.

14. *Pro rata parte ratione distinctis.* J. Quid quæsto in his verbis possit agnoscere corruptum? Mihi quidem hæc lectio contigit in libro 11 cap. 1 videre. An non egregie dicit, esse quidem hæc intervalla impura, sed non indigere & incondite sic variata, verum distincta pro rata parte, neque id quoque sic obvenisse temere, sed ratione, certe illas raras partes separatas tam accurate, ut ratio & res exigeret? Paulo anteciam ubique inveni *ultima a cœlo*, ut edidit Rob. Stephanus quoque & Iunta. Gruter.

15. *Cœli scilicet cursus.* J. Mss. nostri omnes habent *scilicet*, ut & textus est Aldus de suis tribus; affectuque item legi in Boethii mercurius Suffraganeus perit. publicati *scilicet*, minus lepide. Gruter.

16. *Duum Mercurii & Veneris, septem.* J. Obsecutus sum Palatinum sic habenti, ejusdem alii *Mercurii & Veneris*, quæ & astrocrati, nostris absunt, sed non video eorum haberi debent pro glossa, sine eis enim locus omnibus est obfussumus, nisi astronomis, recentius vulgati præferunt *duorum Mercurii & Veneris modorum*; sed et ostensa vox abest & nostris & Guiselmianis omnibus. Gruter. Quid nobis jam olim de hoc loco placuerit, prae pueri diximus elimali libro 11 cap. 1 Macrobius, ubi hæc verba ponit & declarat, ter eorum poenitet. Nam post in nullo scripto libro casveas invenimus. Fitam ex exemplis collegi I. incolentis hoc adscriptum solution notavimus. [I. Mercurii & Veneris, vel primi & octavi; figuræ & hunc, quantum acutus dicitur alter sonus, ut asplares; & hunc, quia interior est, & idem tamen sonans cum facto in diapason.] Gruter.

Aaaaaaaa

17. *Tur-*

montibus, ea gens, qua illum locum accedit, propter magnitudinem fontis, sensu audienti caret. Hic vero tam acriter totius mundi incelsissima convectione fontis, ut canaces hominum capere non possint: sicut interea solem ad-vertam nequitis, ejusque radis acies vestra, sensuque vincitur. Hæc ego admirans, retracebam tamen oculos ad terram identidem. Tum Africanus, Senio, inquit, te sedem

37. *Partim aetheres, partim etiam aethers.* ] Palat. pr. non agnoscit duas voces primas. Victorius aliique expellere, *partim aethers* solum qui habent *transversos*; à quibus itam codices Petri Danielis & Pavlonis, & Pal. fec. & placuit Gulielmo. *Gruter.*

18. *Exigere gnam.*] Nolli mī. fere omnes *spēare*, nec improben. pro eodem enim ultrapate utrumque auctores claficos. initio et contentis in vocibus membranarum veterum. & vērō *spēare* admittit editio accuratiffimi talorum Petri Viſorij; pro quo alii ſupponere, *ſpectare*. Idem.

19. *Q. decaem.*] Inveni in plurimis MSS. *quem elecam.* Et sane hunc masculinum genere ulam auctorem pater ex sequentibus, quae in eodem continentur, ubi femel quidam e via clapsivarie tribuitur ut etiam scripturam *quod parcam.* In masculino etiam edecce inspicitur Langius, cetera ex MSS. *Genet.*

quis in relictis orientis, aut obeuntis solis ultimis aut aquilonis, affrictive partibus tuam no[n]em audire? quibus amparis, cernis profecto, quantis in angustis vestra gloria se dilatai velit. <sup>1</sup>Ap[er]t[ur]a autem, qua de vobis loquuntur, <sup>2</sup>et quoniam tu dicentur diu? <sup>3</sup>Quin etiam, si cupiat proles illa futurorum hominum decemque laudes unius cuiusque nostrum a patribus acceptas potestates prodere; tamen propter eluviones, extinctione certatim, quas accidere tempore certo necesse est, non modo æternam, sed ne diuturnam quidem gloriam aliqui possimus. <sup>4</sup>Quid autem interest, ab iis, qui postea nascentur, ferream fore de te, cum ab iis nullus fuerit, qui ante nati sunt? qui nec pauciores, & certe meliores fuerunt viri: cum præteritum apud eos ipsos, à quibus audiri nomen nostrum potest, nemo unius anni memoriam consequi possit: homines enim <sup>1</sup>et populi ter annuum tantummodo solum, id est, unius astri reditu meliuntur: <sup>2</sup>et cum autem ad idem, unde semel profecta sunt, <sup>3</sup>et cuncta alia redeunt, <sup>4</sup>et tandemque totius cœli descriptionem longis intervallis retulerint, tum ille verè veritatem annus appellari potest: in quo via dicere audeo, quam multa facula hominum teneantur, namque, ut olim defecere sol hominibus, exstinguque vilis est, cum Romuli animus hæc ipsa in templa penetravit: ita quandoque eodem parte sol, eodemque tempore iterum defecerit, tum signis omnibus ad idem principium, stellisque revocatis, expletem annum habebit. huius quidem annu[m] nonnullam vicissimam partem scito esse conversatam. Quocir-

20. *Quamvis loquerentur.*] Victorius, Iuntas, *Longius quam loquerentur* die, quod praeter alios vidi in Thuanæ codice. Et ceterum Tullianum, ut coactus fuerim revocare. *Gren.*

21. *Papaveris animum* etc. J Sic & notifi manu scripit, conjectit  
Tinnubus *facultatis*, lecutus vellicia fingulum Chirurgo-pho-  
rum, in quibus *bagmestris*: quod vocabim quanyis floccipue-  
bas de temere ppeverim, cum exflectim in Dan. & Psal. m. d. afri-  
meque Scheller aff. felum, ita legi etiam in membranis aliis  
certis Langlants videturque fuisse primitus in Patat. secundo  
cunctis.

22. *Cum tacet ad idem.* J. Premisit Lambinus, *trasse autem esse* &c. *cujus vocis nullum vestigium in mss. ipsique aliquot de ea tacet* in Noctis suis, si non est libris Langii; confidens sanè temeritas, addere demerit clausi auctori quidlibet pro libidine, nedium Ciceroi. *Idem.*

23. *Cuneæ affra redierint eademque.* ] Annotavit Guliel. Iegum Pavil. adhuc red. et eademque. forte, inquit, vi. Idem.

24. *Enactemur totius anni desipationem.*] Non affequetur, unde tam terrena scriptura fele inixerit, quam & Victorius, & Iuntas & Langius & MSSi omnes habent *totius* ex? quod est: necessestium. Itaque recepi. *Grenov.*





## Appendix B: Contents of the 1692 edition

This appendix lists the contents of the eleven-volume set of the Ciceronian texts, edited by Gruter, Wilhelm, and Gronovius (1692). Aside from emendations, the texts accessible to Wilson were essentially the same as the texts as they are currently extant. As already indicated in Appendix A, there is one main exception to this rule, which is the text of *de Republica*.

### Volume I:

- *M. Tullii Ciceronis Historia, per Consules descripta, & in annos LXIV distincta per Franc. Fabricium Marcoduranum.*
- *Rhetoricorum ad C. Herennium libri IV*
- *De Inventione Rhetorica libri II*

### Volume II:

- *De Oratore ad Q. Fratrem libri III*
- *De Claris Oratoribus liber, qui dicitur Brutus*
- *Orator ad Brutum*
- *Topica ad C. Trebatium*
- *Partitiones Oratoriae*
- *De optimo genere Oratorum*

### Volume III:

- *Pro P. Quinctio*
- *Pro Sex. Roscio Amerino*
- *Pro Q. Roscio Comoedo*
- *In C. Verrem septem*
- *Pro M. Fonteio*
- *Pro A. Caecina*

### Volume IV:

- *Pro lege Manilia*
- *Pro A. Cluentio Avito*
- *Pro C. Cornelio, Maiestatis reo*
- *In Toga Candida, contra competitores*
- *Agrariae in P. Servilium Rullum tres*
- *Pro C. Rabirio perduellionis reo, ad Quirites*
- *In L. Catilinam quatuor*
- *Pro L. Murena*
- *Pro L. Flacco*
- *Pro P. Sulla*
- *Pro A. Licinio Archia Poeta*
- *Ad Quirites post reditum suum*
- *Post reditum in Senatu*
- *Pro domo sua ad Pontifices*
- *De Haruspicum responsis in Senatu*
- *Pro Cn. Plancio*

#### Volume V:

- *Pro P. Sextio*
- *In Vatinius*
- *Pro M. Caelio*
- *De Provinciis Consularibus*
- *Pro L. Cornelio Balbo*
- *Pro M. Scauro*
- *In L. Calpurnium Pisonem*
- *Pro T. Annio Milone*
- *Pro C. Rabirio Postumo*
- *Pro M. Marcello*
- *Pro Q. Ligario*
- *Pro rege Deiotaro*
- *In M. Antonium Philippicæ XIV*
- *Declamationes duæ: una C. Sallustii in Ciceronem: altera Ciceronis, illius criminationi respondentis*
- *Ad Populum & Equites Romanos, antequam iret exilium, Ciceroni falso, ut putatur, adscripta*

#### Volume VI:

- *Epistolarum libri XVI, quæ vulgo dicuntur ad Familiares*

#### Volume VII:

- *Epistolarum ad T. Pomponium Atticum libri XVI*
- *Epistolarum ad Brutum liber singularis*
- *Epistolæ ad Brutum, non ita pridem a Germanis repertæ, & editæ*
- *T. Pomponii Attici Vita, per Cornelium Nepotem*

#### Volume VIII:

- *Academicarum Quaestionum libri II*
- *De Finibus Bonorum & Malorum libri V*
- *Tusculanarum Quaestionum libri V*

#### Volume IX:

- *De natura Deorum libri III*
- *De Divinatione libri II*
- *De Fato liber singularis*
- *De Legibus libri III*

#### Volume X:

- *De Officiis libri III*
- *Cato Maior, seu de Senectute*
- *Laelius, vel de Amicitia*
- *Paradoxa Stoicorum sex*
- *Q. Cicero de petitione consulatus, ad M. Tullium Fratrem*
- *Marci Tullii Ciceronis Scriptorum Fragmenta, in quibus &*
- *Somnium Scipionis*
- *Timæus, seu De Universo*
- *Consolatio M. T. Ciceroni adscripta*



Volume XI:

- *Index Graeco-Latinus, continens Graecas dictiones passim occurrentes, & earum interpretationes*
- *Index Rerum & Verborum*
- *Index Eorum ad quos scribit Cicero, & qui ad Ciceronem scribunt aut ad alios in libris epistolarum XVI*
- *Index Eorum, quae occurrunt in notis Gronovii*

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