

The Christian Natural Law Tradition and James Wilson's *Lectures on Law*

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One unresolved question in the scholarship on James Wilson concerns the relationship between his natural-law jurisprudence and Christianity. This article breaks new ground in the debate by focusing on contested aspects of Wilson's Lectures on Law and integrating insights from recent scholarship in historical theology to demonstrate the continuity of Wilson's lectures with the Christian natural law tradition. By critically reframing our discussion of Wilson, this article contributes to our understanding of the foundations of American politics and deepens our knowledge of the complex relationship between religion and philosophy in early American political thought.

By any measure, James Wilson (1742-1798) had an outsized influence on the American founding. A Scottish émigré who was one of only six men to sign both the Declaration of Independence and the U.S. Constitution, Wilson went on to play a major role in the ratification debates in Pennsylvania and to serve on the United States Supreme Court as an associate justice from 1789 until his death in 1798. Although Wilson has been a relatively neglected figure among the major founders, scholars have over the last several decades explored Wilson's contributions to the drafting of the Constitution (Ewald 2008; Zink 2009 and 2014; Zink and Schwarze 2018), particularly Article II (DiClerico 1987; Fritch 1987; Hoxie 1987; Ketcham 1987; McCarthy 1987), as well as to the early development of American jurisprudence (Knapp 2014) and political theory (Velásquez 1996; Peel 2018). One question that has remained at the periphery of the scholarship on James Wilson concerns the relationship between his natural-law jurisprudence and Christianity. The conventional view sees Wilson as a representative proponent of classical Christian natural law (McCloskey 1967; Seed 1978; Hall 1997), but another, more recent, body of scholarship seeks to recast Wilson as a modern rationalist who broke in critical ways from the

Christian tradition (Pangle 1988; Hills 1989; Velásquez 1996; Frazer 2012). This article brings the question of the relationship between Christianity and Wilson’s natural-law jurisprudence back to the fore and integrates insights from recent scholarship in historical theology to critically reframe our discussion of Wilson and American founding thought and to demonstrate the continuity of Wilson’s *Lectures on Law* with the Christian natural law tradition.

This essay focuses in particular on Wilson’s teaching about the relationship between reason and revelation, on the one hand, and the relationship between reason and the moral sense, on the other – two concepts fraught with controversy in the scholarship on American political thought. In the sections below, I first frame the discussion of Wilson in light of recent work on founding era political theology. I then introduce James Wilson’s *Lectures on Law* before analyzing Wilson’s arguments about the relationship between reason and revelation, and reason and the moral sense, in light of the classical theological ethics of the Reformed tradition in which Wilson was raised and educated. Finally, I conclude that Wilson’s natural-law jurisprudence is consistent with the broader Christian natural-law tradition, stretching from the Medieval period into one of the dominant strands of sixteenth and seventeenth century Protestant theology.

Religion and the American Founding Era

Scholarship on the American founding has come to “recognize religiosity as central to any plausible account of the intellectual origins of the American Revolution” (Mullins 2017, 14). The precise character of that religiosity is the subject of ongoing dispute, with scholars debating the relative weight and priority to give to Protestant Christianity or deism, or perhaps even some hybrid between the two (see, e.g., Shain 1994; Stewart 2014; Frazer 2012). Looming large over this scholarly dispute is the question of eighteenth-century Christianity’s relationship to natural

theology, an investigation of God's existence and attributes from observation and experience apart from divine revelation in Scripture with attention to God's role in grounding natural moral norms. Natural theology's distinction between truths known prior to revelation through *a priori* and *a posteriori* reasoning, and truths known by direct revelation of God in Scripture, was common enough in the founding era that the Presbyterian clergyman John Witherspoon, President of the College of New Jersey and signer of the Declaration of Independence, began his lectures on moral philosophy by defining the subject as "an inquiry into the nature and grounds of moral obligation by reason, as distinct from revelation" (Witherspoon 1912, 1).

Thomas West rightly notes that the distinction between reason and revelation "does not necessarily imply a conflict" (West 2017, 83; see also Lutz 1987, 165). Yet many scholars influenced by the eminent twentieth-century political theorist Leo Strauss disagree and see the two traditions of biblical and natural theology as contradictory and mutually exclusive. To the extent that the revolutionary-era clergy and statesmen were appealing to truths known by reason, they were, according to some prominent interpretations of the American founding, abandoning the religious and theological tenets of orthodox Protestant Christianity (see, e.g., Zuckert 2004; Pangle 1988 and 2004; Mansfield 2011; Frazer 2012, all discussed below). Michael Zuckert goes so far as to suggest that the Bible and the Declaration offer discordant and mutually exclusive "narratives of the nature and destiny of humanity" (Zuckert 2004, 26). By eschewing reliance on biblical revelation, Zuckert contends, the Declaration and the liberal tradition it represents raise reason to a place of primacy over revelation and asserts reason's self-sufficiency in moral and political philosophy (Zuckert 2004, 46).

This common interpretive frame ignores the positive reception and incorporation of the Christian natural-law tradition in the theology of the early Reformers and their successors. In the

Christian natural-law tradition most associated with Thomas Aquinas, God establishes the natural moral law by his eternal law (S.T. I-II, Q. 91). Through natural reason prior to revelation, human beings can know the first principles of the natural moral law and some truths about God. These natural truths, according to Aquinas, are not opposed to revelation but are rather preambles to faith in revelation, “for faith presupposes natural knowledge, even as grace presupposes nature, and perfection supposes something that can be perfected” (S.T. I-II, Q. 2.). In the classical Christian tradition, revelation builds upon, and goes beyond, the truths known to reason without contradicting them.

As John Witte, Jr., notes, however, some “conservative Calvinists and other Protestants” have framed the relationship between reason and revelation and as a result see modern discourse on natural “human rights as a part and product of dangerous Catholic natural law theories that Calvinists have always purportedly rejected” (Witte 2007, 23). Owing largely to the twentieth-century Swiss Reformed theologian Karl Barth’s wholesale rejection of natural theology, many Reformed theologians in the twentieth century did see natural theology and its cognate concepts of natural law and natural rights as inconsistent with Reformed Christianity (Grabill 2006, 3).

We should not mistakenly equate the modern epistemological rejection of natural law and natural rights by Reformed theologians such as Barth with the broader Reformed tradition stretching back to the sixteenth century, however. If we begin with the premise that the Protestantism is fundamentally hostile to natural theology and natural law, we will conclude that the prevalent idiomatic appeals to nature (e.g., law of nature, natural rights, nature’s God, moral sense, and related concepts) among the American founders marks a significant shift away from Protestant Christianity and toward an Enlightenment-era natural theology that is hostile to

Christianity's historic theological commitments. As John T. McNeil noted in an article published during the period of Barth's ascendancy, however,

There is no real discontinuity between the teaching of the Reformers and that of their predecessors with respect to natural law The Assumption of some contemporary theologians that natural law has no place in the company of Reformation theology cannot be allowed to govern historical inquiry or to lead us to ignore, minimize, or evacuate of reality, the positive utterances on natural law scattered through the works of the Reformers (McNeil 1946, 168).

A growing body of revisionist scholarship has built on McNeil's work to demonstrate that the Christian natural-law tradition, associated primarily with Roman Catholicism today, remained unbroken in the theology of the early Reformers and their successors (McNeil 1946; Grabill 2006; Witte 2007; VanDrunen 2010; Moots 2010; Herdt 2014; Wolfe 2018). This recent scholarship on historical theology, in turn, has implications for how political theorists interpret the significance of key theological concepts employed by the American founders.

Political scientists have not yet fully integrated these insights about the history of Protestant, and particularly Reformed, theological ethics into interpretations of American political thought. As Stephen Wolfe observes, much of the work on "early American political thought has assumed premises about Reformed theology that are simply not true, and this has been happening for decades" (Wolfe 2018, 518). There is in particular a need for subtle reinterpretations of the theological ideas of those who made significant contributions to the movement for independence and the creation of new political institutions in the young republic. In this vein, it is an opportune time to revisit some of the prevailing scholarly interpretations of James Wilson's *Lectures on Law*, which have been recast as paradigmatic of the founding era's allegedly rationalist, heterodox natural theology.

James Wilson's *Lectures on Law*

As a sitting member of the first Supreme Court, Wilson was invited by the College of Philadelphia to present a series of lectures on the foundations of American law. According to a contemporaneous article published in a Pennsylvania newspaper, the audience for the first lecture, delivered December 15, 1790, included “the President of the United States, with his lady—also the Vice-President, and both houses of Congress, the President and both houses of the Legislature of Pennsylvania, together with a great number of ladies and gentlemen . . .” (Hall 2004b, 64 and Conrad 1985, 374). After the initial lecture, Wilson taught 15 students for whom he delivered a total of fifty-eight lectures, which were edited and published posthumously by his son, Bird Wilson, in 1804 (see Wilson 1804).

Wilson aspired to be the American Blackstone, and he hoped his lectures would occupy the place in American legal education as Blackstone’s *Commentaries on the Laws of England* had during the colonial era (Hall 2007, 401 and Hall 2004, 65). They are quite consciously foundational to the study of law and address broad questions of moral, political, and legal philosophy. Because of his influence in the founding era and his systematic approach to philosophy and jurisprudence, Wilson’s *Lectures on Law* are a valuable window into early American political thought. More to the point, the lectures deal with first principles rather than legal precedent and they present a vision of law that “is not the secularized natural law of some eighteenth century rationalists” (McCloskey 1967, 38). Indeed, “throughout his works, and particularly in his law lectures, Wilson clearly, consistently, and systematically appealed to the Christian natural law tradition” (Hall 2004a, 183 and 189).

Some scholars, however, contest this interpretation of Wilson as a representative of the Christian natural law tradition (see, e.g., Velásquez 1996; cf. Zink 2009, 443-4 and Zink 2014, 254). In *The Spirit of Modern Republicanism*, political theorist Thomas Pangle discards the

conventional view that “the thought of the Founders must be viewed as a *continuation* of Christian and especially Calvinist thinking” and provocatively suggests through a series of leading questions that some of the most influential founders—“Franklin, Madison, Jefferson, Wilson, and Hamilton”—were engaged in a project “to exploit and transform Christianity in the direction of a liberal rationalism[.]” “Does their ‘Christianity’ not look more plausible to us,” he asks, “only because they succeeded so well in their project of changing the heart and soul of Christianity?” (Pangle 1988, 21).¹ Read in light of Pangle’s subsequent book, *Political Philosophy and the God of Abraham*, the suggestion clearly is that some of the principal American founders were “comrades-in-arms” with Thomas Hobbes and John Locke, who engaged “in a titanic strategy of propaganda, whereby Holy Writ” was “reconceived and in a sense rewritten so as to be subsumed in a vast secular cultural revolution” (Pangle 2004, 6). According to Pangle, the “deepest goal of this vast cultural experiment” was “the erosion of humanity’s awareness of and testimony to precisely that core of the biblical revelation that manifestly chastises reason’s pretensions to self-sufficiency, and that demands the transcendence and subordination of the concern for worldly prosperity and security” (Pangle 2004, 6-7).

A root assumption in Pangle’s analysis is the incompatibility and irreconcilability of political philosophy and political theology, reason and revelation, and, ultimately, the God of Nature and the God of Abraham. Other prominent scholars, including many students of Leo Strauss, have brought similar philosophic assumptions to their study of the American founding. In perhaps the starkest juxtaposition, the natural philosophy of the Enlightenment – including not only its natural theology but its theory of natural justice and natural rights – is necessarily

¹ Pangle here directs his readers to Manent, who states bluntly that “it was in service of a political project, the radical discrediting of the Church’s political claims, that numerous men who nurtured this project used Machiavelli to guide their thought and action” (Manent 1987, 12).

subversive of orthodox Christianity's commitment to divine revelation, which is a great impediment to Lockean liberalism. "Revelation in its nature, and not merely by its abuse," Harvey Mansfield maintained in an essay on Thomas Jefferson, "is opposed to the equality of men" (Mansfield 2011, 54-55). Walter Berns insisted, along similar lines as a summary of Mansfield's position, that "any revealed religion is incompatible with modern natural right" (1976, 22).

Read in this light, then, Wilson's teachings in his lectures become subtly subversive of the Christian natural-law tradition. "The various efforts to categorize James Wilson's religion," Frazer contends, "epitomize the need for the label theistic rationalist" (Frazer 2012, 166). The theistic rationalist, according to Frazer, is one who elevates reason, first, to make it equal to revelation, and then, next, to make it the judge of revelation. If Thomas Aquinas thought philosophy was the handmaiden of theology, the theistic rationalist reverses that priority and makes theology the handmaiden of philosophy. Wilson, as Frazer notes, taught that "Reason and conscience can do much; but still they stand in need of support and assistance [from revelation]" (Wilson 2007, 520). This is significant, according to Frazer, because "Scripture was called upon by Wilson to support and assist reason – not the reverse. For him, 'the Scriptures support, confirm, and corroborate, but do not supersede the operations of reason and the moral sense.' That is the theistic rationalist position" (Frazer 2012, 187).

Wilson's assertion that the Scriptures do not supersede the operations of reason and moral sense is not tantamount to an assertion that reason is ever in conflict with revelation, however. Wilson is explicit that reason and revelation "flow, in different channels, from the same adorable source. It is indeed preposterous to separate them from each other" (Hall 2007, 509). According to Wilson, there is no conflict between reason and revelation, and therefore it

makes little sense to ask which one wins out in a conflict. Based on his framing assumption, Frazer mistakenly attributes to Wilson a subversive elevation of reason over revelation. Yet Wilson insisted that reason, revelation, and the moral sense are in harmony. As other commentators have noted, Wilson's understanding of reason and revelation had more in common with classical Christian sources than it did with the teachings of modern rationalists (see, e.g., Oberling 1938; Seed 1978).

Pangle errs in a different direction, homing in on Wilson's emphasis on conscience as a moral sense and attributing to Wilson a kind of Hobbesian elevation of passion over reason. "[D]espite his repeated invocations of 'the judicious Hooker' . . . as well as other spokesmen for the Thomistic or Stoic traditions, Wilson's conception of the natural law proves to differ fundamentally from that of the ancient and medieval rationalists" (Pangle 1988, 122). Although reason has a role in correcting the moral sense and judging matters of fact, Pangle maintains in his interpretation of Wilson, the "ultimate ends or first principles are 'self-evident'—but to 'sentiment, to 'feeling,' rather than to reason" (Pangle 1988, 122; cf. Velásquez 1996, 195-6). As Pangle suggests elsewhere, Wilson's arguments look plausible to us now only because he and his heretical comrades-in-arms so successfully carried out the Enlightenment project of subverting Christianity from within (Pangle 1988, 21). Both of these interpretations rest on misconceptions about early modern Christian theology, especially in the Reformed tradition. A closer look tells a different story and demonstrates Wilson's continuity with those traditions that he allegedly subverted, at least with respect to reason, revelation, and the moral sense.

Calvin and the Twofold Knowledge of God

As John Witte has chronicled in detail, Calvin "developed a detailed theory of moral laws and duties that foreshadowed a whole range of later Calvinist natural law and natural rights

theories” (Witte 2007, 3). Wilson, the son of a “strict Calvinist, who destined his son for a ministry in the Church of Scotland,” labored from an early age in the intellectual milieu of Calvinism even though he did rely directly on Calvin in his *Lectures* (Ewald 2008, 902). When it came to law, the authorities Wilson invoked comprised an eclectic group of authors who ranged from ancients such as Cicero to moderns such as Pufendorf, with a frequent reliance on Thomas Reid and Richard Hooker. Even so, it is helpful to preface Wilson’s lectures with a brief survey Calvin’s treatment of natural theology and natural law to underscore the continuity between the classical Christian tradition and Wilson’s arguments about the natural knowledge of God, the pervasive order in the universe known to reason, conscience as a source of moral knowledge, the natural basis of moral obligation, the symbiotic relationship of reason and revelation, and the legitimate role for reason in the realm of civic affairs. Calvin, of course, is not the only or even the most influential Reformed theologian to appeal to the Christian natural-law tradition. As Grabill has recently demonstrated, contemporaneous and subsequent Reformers such as Peter Martyr Vermigli (1499 – 1562), Jerome Zanchi (1516 – 1590), Johannes Althusius (1557 – 1638), and Francis Turretin (1623 – 1687) “developed increasingly sophisticated and comprehensive formulations of natural law that they situated in the wider context of the grand moral tradition with Aristotle, Cicero, Augustine, Aquinas, Scotus, and many others” (Grabill 2006, 16). It is now clear there is no need to posit a break between the founders and Reformed theology on account of their reliance on natural theology or natural law. There may be other reasons to do so – on account of some of the founders’ Unitarianism, for example – but the frequent public appeal to laws of nature’s God accessible to human reason is not one of them.

Crucial to the Reformed engagement with the natural-law tradition is the doctrine of *duplex cognitio dei*, or the twofold knowledge of God (see, e.g., Grabill 2006, 71-73). Calvin

opens his *Institutes of the Christian Religion* with just this distinction. We know God through reason as the Creator, the French theologian and reformer tell us, whereas we know God through revelation as the Redeemer. Although Calvin did not set about to write a systematic treatise on natural law, he adopts the basic categories of the scholastic natural-law tradition as he describes this twofold knowledge of God. On the basis of reason, prior to God's revelatory self-disclosure, mankind has access to knowledge of God as Creator, and on the basis of our knowledge of God the Creator we also have knowledge of basic moral obligations. Our knowledge of the natural moral law comes both through direct rational apprehension and the intellectual habit of conscience. "God has provided the soul of man with intellect, by which he might discern good from evil, just from unjust," Calvin writes in the first book of the *Institutes* (Calvin 1846, 1.15.8). Calvin similarly observes in the second book that "no man is devoid of the light of reason" (Calvin 1846, 2.2.13).

For Calvin, reason and revelation work symbiotically to affirm and clarify our moral duties, although Scripture "removes the obscurity of the law of nature, and also, by shaking off our lethargy, makes a more lively and permanent impression on our minds" (Calvin 1846, 2.8.1). In his commentary on Psalm 119:52, in which the Psalmist talks of Yahweh's everlasting ordinances, Calvin asks, "Why does he say that the law of God has been from everlasting?" He responds that it "may to some extent be accounted for from the righteousness here mentioned not being of recent growth, but truly everlasting, because the written law is just an attestation of the law of nature, through means of which God recalls to our memory that which he has previously engraved on our hearts" (Calvin 1949, 4:38). Grabill provides a helpful summary and analysis of the key points we find implicit in Calvin's treatment of the natural knowledge of God the Creator. Implicit in mankind's knowledge of God the Creator is knowledge of the natural moral

law embedded in Creation and known to the intellect prior to revelation. Through various natural means, including moral conscience, humanity's *sensus divinitatis*, the apparent absurdity of men being the source of their own existence, and as a rational inference to the best explanation for the apparent order and design of the world, Calvin tells us, human beings have knowledge of God the Creator (cf. Grabill 2006, 77-86). The practical effect of this knowledge, after the fall, is to leave men without excuse for moral failure and to bring before their minds a recognition of their alienation from God.

According to Grabill, the hallmark of Calvin's natural-law rhetoric, when compared to its scholastic precursors, is that after the fall he emphasizes conscience rather than reason as the primary mode of knowing moral duty "to accord more fully with Reformation teaching on the epistemological consequences of sin and the opaqueness associated with the natural knowledge of God" (Grabill 2006, 74; cf. 90). Mankind has, according to Calvin, a universal knowledge of the natural moral law, promulgated by God the Creator, but this knowledge is neither efficacious for reconciling us to God nor fully epistemically reliable. Still, no one may plead ignorance of God or his law, according to Calvin. Because our post-lapsarian will is not capable of living in full accord with the natural moral law, however, knowledge of the moral law cannot reconcile us to God although it might lead us to live a life that is progressively more virtuous. This is a crucial point that seems to have been lost in post-Barthian scholarship. The limited value of natural theology is why we stand in need of further, supernatural knowledge of God the Redeemer.

Even though natural theology is neither efficacious for salvation nor fully epistemically reliable, Calvin does emphasize the limited sufficiency of this knowledge in "earthly things" including "matters of policy and economy, all mechanical arts and liberal studies" (Calvin 1846,

2.2.13). Civic life is one of those spheres for which the knowledge we have by reason (including knowledge of God the Creator) can guide us to some extent. As Calvin insisted,

the view to be taken is this: Since man is by nature a social animal, he is disposed, from natural instinct, to cherish and preserve society; and accordingly we see that the minds of all men have impressions of civil order and honesty. Hence it is that every individual understands how human societies must be regulated by laws, and also is able to comprehend the principles of those laws. Hence the universal agreement in regard to such subjects, both among nations and individuals, the seeds of them being implanted in the breasts of all without a teacher or lawgiver. The truth of this fact is not affected by the wars and dissensions which immediately arise, while some, such as thieves and robbers, would invert the rules of justice, loosen the bonds of law, and give free scope to their lust; and while others (a vice of most frequent occurrence) deem that to be unjust which is elsewhere regarded as just, and, on the contrary, hold that to be praiseworthy which is elsewhere forbidden. For such persons do not hate the laws from not knowing that they are good and sacred, but, inflamed with headlong passion, quarrel with what is clearly reasonable, and licentiously hate what their mind and understanding approve. Quarrels of this latter kind do not destroy the primary idea of justice. For while men dispute with each other as to particular enactments, their ideas of equity agree in substance. This, no doubt, proves the weakness of the human mind, which, even when it seems on the right path, halts and hesitates. Still, however, it is true, that some principle of civil order is impressed on all. And this is ample proof, that, in regard to the constitution of the present life, no man is devoid of the light of reason (1846, 2.2.13).

More the point of Wilson's lectures, Calvin maintained in his discussion of civil government that there can be a legitimate diversity of constitutional forms based on circumstances, "provided they all alike aim at equity as their end" (Calvin 1846, 4.20.16). The content of equity or justice, "as it is natural" according to Calvin, is "nothing else than a testimony of natural law, and of that conscience which God has engraved upon the minds of men," and the "whole of this equity of which we of which we now speak is prescribed in it. Hence it alone ought to be the aim, the rule, and the end of all laws" (Calvin 1846, 4.20.16; cf. Grabill 2006, 91). In other words, our knowledge of the natural moral law – unreliable as it may be in matters of salvation and determining the manner in which we must render worship to God –

can offer guidance for public affairs and natural equity is in fact the goal, rule, and limit of civil laws, which aim at natural justice.

The point of highlighting the positive role of natural law in Calvin's *Institutes* is not to discount the way other aspects of his theology and anthropology, particularly his account of the epistemological consequences of the biblical doctrine of the fall, might limit the reach of natural law in human affairs. As J. Budziszewski notes, some modern followers of Calvin acknowledge that he emphasized natural law in discussions of morality and politics but that "considering what he believed about sin, he shouldn't have" (2013, 255). Still, it remains that the natural law tradition was an uncontroversial inheritance in the writings of several prominent Protestant reformers, including Calvin.

Hooker and Reid

Consistent as they are with the writings of John Calvin on natural law, Wilson's lectures exhibit a direct and deep engagement with the sixteenth-century English theologian and priest Richard Hooker, who was for Wilson a more direct mediation of theological and philosophical ideas than any other Reformation-era theologian. Repeatedly praising him as "sagacious, "judicious" and "excellent," Wilson directly cited Hooker more than a dozen times in his lectures. Hooker – in whose writings C.S. Lewis claimed to have found the "fullest and most beautiful expression" of the natural-law tradition (Lewis 1954, 49) – offered a classical exposition of natural law in the first book of his *Laws of Ecclesiastical Polity*. Wilson followed Hooker's broad classification of law nearly verbatim. Indeed, it was from Hooker that Wilson got his very conception of law (Wilson 2007, 468), which he deployed to criticize William

Blackstone's definition of law that includes power as both its necessary and sufficient attribute (Wilson 2007, 471).

Scholars are divided about how exactly to classify Hooker in the context of the broader Reformation, but they do agree that Hooker was an influential voice for reform in the English church who was in continuity with the broader pre-Reformation natural-law tradition (see Voak 2003 and Littlejohn & Kindred-Barnes 2017). Perhaps the only authority that might be said to rival Hooker in influence on Wilson's lectures is Thomas Reid, an eighteenth-century Scottish parish minister and successor to Adam Smith's chair at Glasgow, who was associated with the school of moral sense philosophy. Wilson cited Reid nearly twenty times in his lectures and included a whole passage verbatim from Reid's *Essay on Intellectual Power* (see Hall 2004, 68). Wilson described Reid as "ingenious," "enlightened," and "candid," and turned to him in particular for questions of moral epistemology. There are throughout Wilson's lectures the imprints of Reid's teachings about self-evident principles, necessary truths, the importance of moral education, the correlation of duty and right, and the possibility of moral progress.

Whatever their other differences, the Christian natural-law tradition provided a common touchstone for Calvin, Hooker and Reid; each emphasized a prominent place for reason in civic affairs and appealed in public life primarily to God as Creator rather than God as Redeemer. What commentators have sometimes called our "civil religion" – the set of propositions about the deity that infuse our civic realm and undergird our founding creed – has historically been framed in terms of natural theology. Only rarely have American public officials made reference to Jesus or a Trinitarian conception of God in public documents and orations, and this is consistent with the early Reformers' insistence that civic life ought to take its bearings from our natural knowledge of God the Creator rather than the supernatural knowledge necessary for the

attainment of true righteousness, spiritual regeneration, and future blessedness. The doctrine of the twofold knowledge of God in Reformed theology gives Christian theological warrant for a civil religion rooted in natural theology and makes it possible to include as fellow citizens and full participants in public life those who do not know God as Redeemer. It is this knowledge of God, known by reason as the Creator, that Wilson invokes in his *Lectures on Law*, and in which he grounds moral obligation to conform to the natural law.

James Wilson and the Natural Law

Wilson, a sitting Supreme Court Justice and signer of the Declaration and the Constitution, delivered his first lecture in front of George and Martha Washington, John Adams, both houses of Congress and both houses of the state legislature, proclaiming that the “science of law should, in some measure, and in some degree, be the study of every free citizen, and of every free man” (Wilson 2007, 435). The promise of his lectures was to treat comprehensively the science of law, and he began in his first substantive lecture, without only his 15 pupils assembled, to describe the built-in design of the world as we experience it. “Order, proportion, and fitness pervade the universe,” Wilson declared. “Around us, we see; within us, we feel; above us, we admire a rule, from which a deviation cannot, or should not, or will not be made” (Wilson 2007, 464). This order, Wilson insisted, applies to God Himself, the “great and incomprehensible Author, and Preserver, and Ruler of all things,” the one who “himself works not without an eternal decree” (Wilson 2007, 464).

In his first substantive treatment of the science of law, then, Wilson broached an important philosophical debate about God and ethics. Medieval scholastics, as well as some of Wilson’s contemporaries, debated whether moral obligation originates in the reason of God or

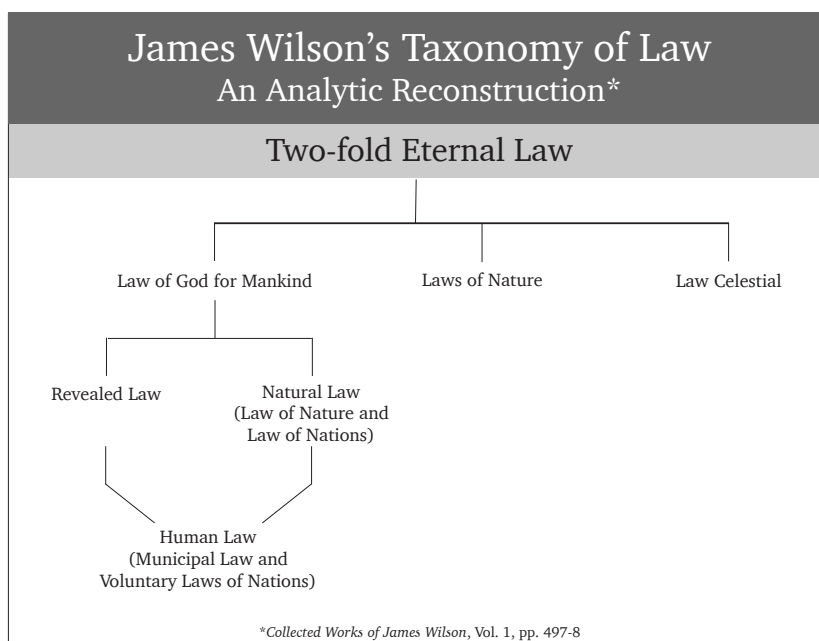
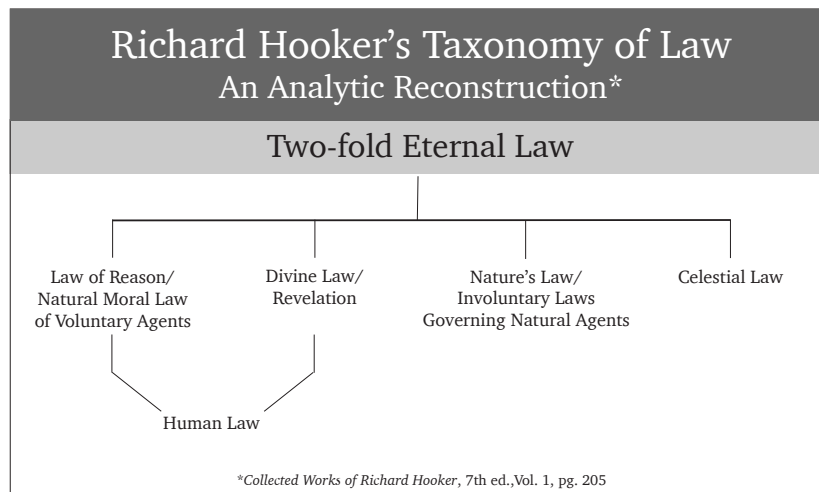
the will of God or some combination of the two. The stakes for this abstract question are high. On the one hand, if moral obligation originates in God's reason alone, then we seem to allow a disunity in God's nature that submits God to a law he did not create. If, on the other hand, moral obligation originates in God's will, then the content of ethics seems to be both arbitrary (i.e., lacking a reason) and rooted in power as the sufficient cause of God's authority. A middle way is to recognize the unity of power and goodness in the divine nature such that God is subject to a law that he voluntarily imposed on himself. In the formulation of Richard Hooker, "[t]hey err therefore who think that of the will of God to do this or that there is no reason besides his will" (Hooker 1888, 1.2.5). Yet even so "the freedom of the will of God [is not in any way] abated, let or hindered, by means of this; because the imposition of this law upon himself is his own free and voluntary act" (Hooker 1888, 1.2.6). This is the path Wilson takes when he insists that "from almighty power infinite goodness can never be disjoined" (Wilson 2007, 503). Leveled partly as a critique of Blackstone's definition of law as a "rule of action, which is prescribed by some superiour, and which the inferiour is bound to obey," Wilson's insistence on the unity of divine power and goodness is an insistence on goodness and reason being part of the very definition of law. Power might be necessary, but it is not sufficient, to establish and promulgate authoritative law. By analogy this applies to human law as well, which finds its limits in the eternal law that emanates from the divine nature itself.

Where Wilson did follow Blackstone was in his account of God's one paternal precept. Blackstone had written that the deity's one precept to man is that he "should pursue his own true and substantial happiness" (Blackstone 1893, 41). Wilson similarly described God's one paternal precept as: "Let man pursue his happiness and perfection" (Wilson 2007, 523). For both Blackstone and Wilson, the natural law is the way human beings learn how to pursue their

happiness and perfection. In contrast to the “brute creation, [who] act not from design,” Wilson observed, human beings deliberate rationally about various courses of action and then “propose an end,” that is, a reason for action in light of a desired good (Wilson 2007, 468). Animals are still moved to their natural end or purpose, but they are not moved through rational deliberation. The law that governs the animal world is sub-rational and operates at the level of appetite, passion, and instinct. Human beings are rational animals, hybrids between beasts and gods. In being subject to the laws of physics and involuntary biological processes, human beings share much in common with the beasts. What separates humanity from the animal world, however, is knowing and being subject to the natural moral law.

The moral law, known by reason, is a law we can choose to obey or disobey. It is indeed only in the domain of freedom, as Hadley Arkes says, that rational moral judgments make sense at all (Arkes 2010, 63). This framework helps make sense of the taxonomy of law that Wilson takes, unmodified in its fundamentals, from Hooker. According to Wilson, there is a twofold eternal law that governs God himself and governs each of his creatures according to their natures. The law that governs creation can be subdivided into three main categories, the first of which concerns the laws governing “angels and the spirits of the just made perfect” (Wilson 2007, 497-8). About this law, Wilson has little to say except that it pertains to an eschatological state of perfection and beatitude that is nonetheless governed by law and known, even if through a glass darkly, by dint of revelation. The second category concerns laws “by which the inanimate and irrational parts of the creation are governed” (Wilson 2007, 497). Although these are sometimes called the laws of nature, they are not moral laws but rather are “general and fixed rules, according to which all the phenomena of the material universe are produced and regulated” (Wilson 2007, 497). Finally, there is the moral law for humanity, a law we may choose to obey

or disobey. This law is known to us as the law of nature (as applied to individuals) or the law of nations (as applied to societies of men), when it is promulgated by reason and the moral sense; when it is promulgated through Scripture it is known as the revealed law (Wilson 2007, 498). The moral law, finding a twofold witness in nature and revelation, provides the foundational axioms of human law or positive law, the body of specific laws and regulations posited in any particular community. The positive law, Wilson told his students, could be further divided into domestic, municipal law and international positive law or what he calls the voluntary law of nations.



As Wilson understood it, natural law is *law*. It is that part of the law of God for mankind known by reason and the moral sense. Its first principles are “engraven by God on the hearts of men” and “in this manner, [God] is the promulgator as well as the author of the natural law”

(Wilson 2007, 470). Robert McCloskey noted in his introduction to Wilson's collected works that Wilson's conception of natural law was "not the secularized natural law of some eighteenth-century rationalists nor is it merely a morally indifferent rule of necessity like the 'laws' of motion. It is God's ordainment, and it imposes duties on men and states" (McCloskey 1967, 38; cf. Obering 1938, 50). Consistent with his prior discussion of the defining characteristics of law, Wilson insisted that the authority of the natural law to impose moral obligation did not come from God's superior physical strength alone, however. God's power and goodness are connected in the "incomprehensible Archetype," according to Wilson (Wilson 2007, 503). God's one paternal precept is that we pursue our own happiness or flourishing, and law directs us to this proper end for our own good.

Do we have to obey the natural moral law? In one sense, of course, we do not. The natural law, known by reason and the moral sense, discloses our duty in the domain of freedom where we have a choice to obey or disobey. Unavoidable necessity is not a moral category. Alternatively, however, we might ask whether we have good reasons to obey God's one paternal precept. Should we pursue our own happiness? Why? To avoid an infinite regress, Wilson replies simply, "I can only say, I *feel* that such is my duty. Here investigation must stop; reasoning can go no farther" (Wilson 2007, 508). This is one of the places Pangle and others detect a crucial departure from the classical natural-law tradition, seeing in Wilson's emotive language an upending of the classical relationship between reason and sentiment (Pangle 1988, 122; see also Velasquez 1996, 199 and Knapp 2014, 268). However, the use of the term *feel* is equivocal and could refer to moral axioms known to either to sentiment or to reason, and there is evidence Wilson meant the latter rather than the former. Some of Wilson's contemporaries associated with the Scottish school of moral sense philosophy such as David Hume, Adam

Smith, and Thomas Reid, for example, debated whether we acquire knowledge of moral obligations through sentiment or through reason. As Hall observes, Wilson followed Reid's argument that reason rather than sentiment apprehends the first principles of the moral law (Hall 1997, 68-72). Indeed, Reid "contended that the first principles of morality are known through common sense, which is a degree of reason" (Hall 1997, 71).

Although the word *feel* has an emotive connotation in its usage today, the Oxford English Dictionary offers as one definition, "mental perception or apprehension; understanding, comprehension; knowledge" (OED, 2nd ed., 1989). Noting that this is a chiefly Scottish and now obsolete meaning, the OED entry arguably describes how Reid, Wilson, and some of their contemporaries employed the word *feel* to indicate the way in which foundational moral axioms are known to the intellect by intuition. In context, this is similar to Alexander Hamilton's discussion of moral axioms in *Federalist* no. 23. "IN DISQUISITIONS of every kind," Hamilton wrote,

there are certain primary truths, or first principles, upon which all subsequent reasonings must depend. These contain an internal evidence which, antecedent to all reflection or combination, commands the assent of the mind. Where it produces not this effect, it must proceed either from some defect or disorder in the organs of perception, or from the influence of some strong interest, or passion, or prejudice. Of this nature are the maxims in geometry, that "the whole is greater than its part; things equal to the same are equal to one another; two straight lines cannot enclose a space; and all right angles are equal to each other." Of the same nature are these other maxims in ethics and politics, that there cannot be an effect without a cause; that the means ought to be proportioned to the end; that every power ought to be commensurate with its object; that there ought to be no limitation of a power destined to effect a purpose which is itself incapable of limitation. And there are other truths in the two latter sciences which, if they cannot pretend to rank in the class of axioms, are yet such direct inferences from them, and so obvious in themselves, and so agreeable to the natural and unsophisticated dictates of common-sense, that they challenge the assent of a sound and unbiased mind, with a degree of force and conviction almost equally irresistible.

According to Hamilton, there are certain primary truths that simply command the assent of the mind and are agreeable to the “natural and unsophisticated dictates of common-sense,” which is another way of saying, like Wilson, that the first principles of the natural law are known through reason and the moral sense.

There is nothing about this particular way of framing the issue that stands in tension with the theological tradition of Reformed Protestantism. As Grabill notes when introducing the section of the *Institutes* devoted to conscience, “Calvin teaches that natural law is discovered by the use of reason and conscience working in tandem” (2006, 93). When Calvin discussed the biblical concept of conscience, he both used the emotive term *feeling* and clearly associated the faculty of conscience with moral knowledge known to the intellect. “The definition [of conscience] must be sought in the etymology of the word,” Calvin insisted, alluding to the Latin *conscientia* meaning the “holding of knowledge in common” (OED, 2nd ed., 1989).

For as men, when they apprehend the knowledge of things by the mind and intellect, are said to know, and hence arises the term knowledge or *science*, so when they have a sense of the divine justice added as a witness which allows them not to conceal their sins, but drags them forward as culprits to the bar of God, that sense is called *conscience*. For it stands as it were between God and man, not suffering man to suppress what he knows in himself; but following him on even to conviction” (Calvin 1846, 3.19.15).

Note that while Calvin clearly associated moral knowledge with the intellect, he describes conscience as a partner of reason, an internal monitor of conscience that makes it difficult to suppress moral knowledge out of self-interest. The point is not that Wilson was following Calvin specifically, but that the arguments Wilson makes about the moral sense develop out of a tradition that has roots in Christianity and Christian natural-law philosophy.

In his *Commentary on Romans*, Calvin offers further thoughts on conscience and concludes that we have certain knowledge of at least one foundational moral axiom: “that one

action is good and worthy of being followed, while another is to be shunned with horror” (Calvin 1961, 49; cf. Grabill 2006, 94). Similarly, Thomas Aquinas offers as the first precept of the natural law that “good is to be done and pursued, and evil is to be avoided” (*S.T.*, I-II, 94.2). Following in exactly this vein, Wilson insists that the “science of morals, as well as other science, is founded on truths, that cannot be discovered or proved by reasoning” (Wilson 2007, 508), but for a man ignorant of the categories of right and wrong the “terms would be to him equally unintelligible, as the term *colour* to one who was born and has continued blind” (Wilson 2007, 509). Before the enterprise of moral reasoning can get off the ground, we must first recognize as an “intuitive truth” that some actions are right and others wrong (Wilson 2007, 508). Determining *which* actions are right or wrong is the task of moral reasoning, informed by the natural moral law (watered by the two streams of reason and conscience) and the law revealed in the Bible – “by our conscience, by our reason, and by the Holy Scriptures” (Wilson 2007, 509).

According to Wilson, revelation refines and exalts, but does not contradict, the moral knowledge known and discovered through conscience and reason. The Bible, he observed, presupposes “a knowledge of the principles of morality” and is “addressed to rational and moral agents, capable of previously knowing the rights of man, and the tendencies of actions; of approving what is good, and disapproving what is evil” (Wilson 2007, 522). For some commentators, there is something untoward in Wilson’s formulation. As we have seen above, Frazer attributes the role Wilson gives to reason, as a source of knowledge standing alongside revelation, as a departure from Protestant Christianity, something he labels “theistic rationalism” (Frazer 2012, 186-87). In Pangle’s analysis, Wilson is less a rationalist than a sentimentalist, who roots knowledge ultimately in sentiment or feeling rather than reason (Pangle 1988, 122). If we

widen our focus a bit, however, and read Wilson in light of his intellectual influences, chiefly Hooker and Reid, and also place him within the larger Reformed Protestant tradition that exhibited a disproportionate influence on American religious life, we see that his arguments are well within the Christian natural-law tradition stretching from before the Reformation into the late eighteenth century.

Thomas West correctly notes that many in the founding era saw no contradiction either between reason and revelation or between the God of Nature and the God of Revelation (West 2017, 82-3). He does, however, suggest that reason alone cannot disclose to us our moral obligations. “How do we know that God has issued moral commandments that we are obliged to obey?” West asks. “Christians and Jews can answer that question by appealing to the Bible, but the laws of nature and of nature’s God are supposed to be discoverable by reason alone” (West 2017, 86). West’s suggestion is that reason cannot in fact disclose moral obligation, and as a result many in the founding era connected natural law to the will of God rhetorically to impute to the natural law a morally obligatory force. Nonetheless, he insists, the “idea that natural law comes as a commandment from God is not so much an argument as an unsupported assertion” (West 2017, 87). In contrast, West maintains a very limited conception of what reason can disclose, narrowing it to hypothetical imperatives and the existence of a God of Nature tantamount to the first principle that animates the world and is discoverable through reason’s observations and inferences from nature (West 2017, 82). “The laws of nature,” he writes, “founded in reason’s judgment of what is useful for human life and happiness, become morally obligatory only when they take on a juridical or legal character” – which they do not as disclosed by reason unaided by revelation, according to West – and “[t]hus the founders presented rational

arguments regarding the usefulness of natural rights while supporting teachings like divine will and the moral sense to give their arguments moral weight” (West 2017, 95).

The above discussion of the doctrine of the *duplex cognitio dei*, however, makes clear that for Calvin as well as Hooker, Reid, and Wilson, the existence of God the Creator (who stands outside his creation and thus is not tantamount to the animating first principle of nature) is among those truths understood by reason prior to revelation, and it is the God the Creator (known by reason) who provides the basis of moral obligation. As Wilson notes, Revelation is itself addressed to “moral and rational agents” who already have knowledge of the principles of morality. Moral knowledge may be refined by revelation but it does not originate with revelation. Even so, what exactly gives moral norms their binding or obligatory force? The “precise state of the question,” Wilson told his students, is “what is the efficient cause of moral obligation—of the eminent distinction between right and wrong?” (Wilson 2007, 507) Wilson clearly answers that the efficient cause of moral obligation – i.e., the cause that brings moral obligation into being – is “the will of God. This is the supreme law. His just and full right of imposing laws, and our duty in obeying them, are the sources of our moral obligations” (Wilson 2007, 508). Our duty to obey the will of God, Wilson further contends, is itself enjoined by conscience and felt or intuited as an axiom, one of those truths “that cannot be discovered or proved by reasoning” (Wilson 2007, 508). Further our intuited sense of obligation to obey the will of God derives at least in part from God’s goodness and not merely his superiour physical strength.

Some light might be shed on this by looking to Wilson’s fellow Scotsman, John Witherspoon, who argued in his lectures on moral philosophy that the “nature and will of God is so perfect as to be the true standard of all excellence, natural and moral: and if we are sure of what he is or commands, it would be presumption and folly to reason against it . . . but to say that

God, by his will, might have made the same temper and conduct virtuous and excellent, which we now call vicious, seems to unhinge all our notions of the supreme excellence even of God himself” (Witherspoon 1912, 28). When considering this frequent contention in the founding era that moral obligation is rooted in the will of God, West comments that it is “striking how little evidence is provided for these assertions in the official documents” (West 2017, 86). One explanation for this is that some of the founders such as James Wilson and John Witherspoon simply treated God’s existence as an axiom that neither needs nor admits of rational proof. Wilson implicitly does this in his lectures on law, where he does not offer a proof of God’s existence even as he locates the efficient cause of moral obligation in the will of God. In Witherspoon’s lectures on moral philosophy, just after his discussion of moral obligation, he says similarly that “belief of a divine being is certainly either innate and necessary, or has been handed down from the first man, and can now be well supported by the clearest reason. And our relation to him not only lays the foundation of many moral sentiments and duties, but completes the idea of morality and law, by subjecting us to him, and teaching us to conceive of him, not only as our Maker, preserver and benefactor, but as our righteous governor and supreme judge. As the being and perfections of God are irrefragably established, the obligation of duty must ultimately rest here” (Witherspoon 1912, 32).

To relate this to a contemporary debate in epistemology and theology, it might be the case Wilson and Witherspoon and others thought that knowledge of God’s existence is properly basic, even as some attributes of God are deduced from reflection on the structure of the world and our experience of moral reality (see Plantinga 1981, 46). This arguably is similar to what Thomas Aquinas held when he asserted that the proposition “God exists” is self-evident because the predicate is contained in the subject, but it is not evident to us before we demonstrate some

things about God's essence through both *a priori* and *a posteriori* reasoning (*S.T.*, I-I, Q. 2). This seems also to be what John Witherspoon has in mind, since he suggests both that belief in God might itself be innate and necessary, and also that we can demonstrate through *a priori* and *a posteriori* reasoning that God is the creator of the natural world who exhibits particular natural and moral perfections (Witherspoon 1912, 37-41). The point, again, is that for those founders influenced by Christian theology and the Scottish moral sense school of philosophy, reason and revelation worked together with conscience and experience to establish the goodness and will of God as the efficient cause of moral obligation and the proximate ground of all law, including the recent edifice of the U.S. Constitution. It is certainly the case that some of the American founders broke with orthodox Christianity in significant ways, but appealing to the authority of nature's God or failing to pit revelation over and against reason is not by itself a departure from classical and early modern Christian sources.

Conclusion

In the above analysis of natural law in the thought of Calvin, Hooker, Reid and Wilson, the very concept of law is embedded in a broader natural theology that imparts to us knowledge of moral obligation, something that is consistent with the broader Christian natural law tradition. Calvin, for example, argues that the primary purpose of the natural law after the fall is to impart knowledge of moral culpability, that is knowledge of our failure to perform our moral duty. Further, that knowledge is known by the intellect through the exercise of both reason and conscience. "[T]he very things contained in the two tables [of the Decalogue] are," Calvin writes, "in a manner, dictated to us by that internal law, which, as has been already said, is in a manner written and stamped on every heart. For conscience, instead of allowing us to stifle our

perceptions, and sleep on without interruption, acts as an inward witness and monitor, reminds us of what we owe to God, points out the distinction between good and evil, and thereby convicts us of departure from duty” (Calvin 1846, 2.8.1). The problem, for Reformers such as Calvin, was that this knowledge does nothing to reconcile us to God until it is paired with revealed knowledge of our obligations to God on account of his role as Redeemer. “But man, being immured in the darkness of error, is scarcely able, by means of that natural law, to form any tolerable idea of the worship which is acceptable to God,” Calvin asserts (1846, 2.8.1). Our natural knowledge of God the Creator might offer some guidance for earthly affairs, including politics and government, as Calvin surely thought it did, but it takes supernatural knowledge of God the Redeemer to produce true righteousness and eternal blessedness.

Scholars who argue that James Wilson’s *Lectures on Law* represent a departure from Christianity rest their case on a particular view of Christian theology that sees it as theoretically incompatible with natural theology and the cognate concept of a natural law known to reason and emanating from the eternal law of God. In these accounts, the Reformed tradition emphasizes the total depravity of man and the resultant inability of fallen human reason to ascertain moral truth or truth about God apart from biblical revelation. There is thus no place in Reformed Christianity for natural theology, and consequently no place for the perennial natural-law tradition. To the extent that the pastors who delivered fiery political sermons in defense of the Revolution and the statesman who wrote public documents to steer the ship of state did so by affirming natural-law principles and appealing to natural knowledge of God, then they were betraying their own Christian traditions.

Recent works by Stephen Grabill, John Witte, Glenn Moots, and Stephen Wolfe, among others, have demonstrated, however, that the scholarly trope about the incompatibility of

Christian (and especially Reformed) theology and the natural-law tradition is no longer tenable. Whether or not they have engaged the work of the twentieth-century Swiss Reformed theologian Karl Barth, many modern scholars nonetheless read into their analyses of eighteenth-century Christianity something like Barth's rejection of natural theology and natural law as epistemologically incompatible with divine revelation (see Brunner and Barth, 2002 [1934]). Very few of Barth's Reformed predecessors held these views, however. As Grabill notes, "the older magisterial Protestant tradition (Lutheran and Reformed) not only inherited but passed on the doctrines of *lex naturalis* and *cognitio Dei naturalis*, especially the idea of an implanted knowledge of morality, as noncontroversial legacies of patristic and scholastic thought" (Grabill 2006, 3).

Misunderstandings about the tenets of early modern Christian theology, particularly in the Reformed tradition, have led scholars to label as heterodox or rationalist some of the theological positions espoused during the founding era. Using James Wilson's *Lectures on Law* as a case study, and building on the work of Witte, Grabill, and others, this article has taken a fresh look at two contested motifs of James Wilson's political theology – the compatibility of reason and revelation, and the natural knowledge of moral duties – and concluded that Wilson's *Lectures on Law* demonstrate continuity with, rather than departure from, a dominant strand of early modern Protestant theology that integrated major aspects of the classical Christian natural-law tradition into the new theologies of the sixteenth and seventeenth centuries.

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