

James Wilson and The Ancient Constitution

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ABSTRACT

The historiography of the medieval period became an ideological battleground in the seventeenth and eighteenth centuries. Whigs located in the remote Saxon past an “ancient constitution” of liberty, in which elected monarchs merely executed laws approved by their independent subjects in a primeval parliament. This republican idyll, they believed, was then tragically interrupted by the Norman Conquest of 1066, which introduced feudal tenures and, consequently, serfdom and absolute monarchy. Royalist historians, in contrast, insisted that the House of Commons had not existed in any form until the high medieval period. They likewise rejected the Whig conceit that feudalism was pathological because it amounted to monarchical absolutism. On the contrary, they claimed that the distinctive pathology of feudalism was its tendency to strengthen the barons at the expense of the king. Almost all American defenders of executive power in the 1770s and 1780s embraced this second, Royalist understanding of English history and integrated it into their political and constitutional theories. James Wilson, however, did not. His surprising, continuing allegiance to Whig historiography reflects a fundamental philosophical disagreement with his allies over the question of representation.

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INTRODUCTION

We have long been taught to regard the American Revolution as a fundamentally Whig enterprise.¹ American opposition leaders, on this account, saw

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1. See generally BERNARD BAILYN, *THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION*, (rev. ed. 1992); GORDON WOOD, *THE CREATION OF THE AMERICAN REPUBLIC, 1776–1787* (1969);

themselves as intellectual heirs of the English opposition, or “Country” tradition, whose great preoccupation was a terror of Crown power and executive corruption. They took up arms against a tyrannical King bent on their enslavement and a supine Parliament composed of his “creatures.” They saw the events of the 1760s and 1770s refracted through the prism of “the Whig canon,” which “formed the authoritative literature of this culture” and accounts for “the singular cultural and intellectual homogeneity of the Founding Fathers and their generation.”²

I have argued recently in favor of a rather different view of what animated the Revolution.³ Many patriots of the late 1760s and early 1770s, I suggest, abandoned the Whig political tradition in favor of an avowedly Royalist conception of the English constitution and its relation to empire. These theorists developed the view that Parliament possessed no jurisdiction whatsoever over British North America; the colonies, they now claimed, were connected to Britain solely through “the person and prerogative of the king.”⁴ But the late eighteenth-century British monarchy was in no position to function as the “pervading” and “superintending” power of the empire. The constitutional settlement that followed the Glorious Revolution had definitively subjected the King to Parliament, drastically curtailing his prerogatives and recasting him as a pure “executive.” Those powers of state that legally remained with the Crown were no longer wielded by the person of the King, but rather by ministers who were required to command a parliamentary majority (and who themselves sat in one of the two Houses). Patriots were effectively proposing to turn back the clock on the English constitution by over a hundred years—to separate the King from his Parliament and his British ministers, and to restore ancient prerogatives of the Crown that had been extinguished by the Whig ascendancy (chiefly the royal “negative,” or veto). These figures wanted more monarchy, not less. They likewise championed a strongly anti-Whig narrative of English constitutional decline, according to which it was the *erosion* of monarchical power in the wake of the parliamentary revolutions that had corrupted the balanced constitution of Great Britain.

This turn to the royal prerogative, I further claim, proved to be a crucial moment of intellectual formation for the theorists in question. Despite the coming of independence and the abolition of the kingly office in America, those patriots who had most aggressively developed and propagated the neo-Stuart defense of prerogative power during the imperial crisis never changed their minds. They continued to argue for the next two decades that sweeping prerogatives in a single chief magistrate were not only compatible with the liberties of citizens and

J.G.A. POCOCK, *THE MACHIAVELLIAN MOMENT: FLORENTINE POLITICAL THOUGHT AND THE ATLANTIC REPUBLICAN TRADITION* (1975).

2. POCOCK, *THE MACHIAVELLIAN MOMENT*, *supra* note 1, at 507.

3. *See generally* ERIC NELSON, *THE ROYALIST REVOLUTION: MONARCHY AND THE AMERICAN FOUNDING* (2014).

4. ALEXANDER HAMILTON, *THE FARMER REFUTED: OR, A MORE IMPARTIAL AND COMPREHENSIVE VIEW OF THE DISPUTE BETWEEN GREAT-BRITAIN AND THE COLONIES* 16 (1775).

subjects, but in fact necessary for the preservation of free states. They emerged as fierce critics of the overwhelmingly Whig state constitutions adopted during the first year of the Revolutionary War, and ultimately presided over a broad resurgence of Royalist constitutionalism in the late 1770s and 1780s. Their great triumph came at the Philadelphia Convention of 1787, when delegates agreed to invest the new President of the United States with many of the same prerogative powers that these “patriot Royalists” had unsuccessfully urged George III to revive fifteen years earlier.

One of the most committed and significant of these theorists was James Wilson. It was Wilson who declared at the Constitutional Convention that, during the Revolution, “the people of America did not oppose the British King but the parliament—the opposition was not against an Unity but a corrupt multitude.”⁵ The colonists, on this view, had rebelled against a “corrupt multitude,” not a monarch. They had sought protection for their liberties in the prerogatives of the Crown, not in the wisdom of popular assemblies. Wilson concluded that the creation of a powerful, prerogative-wielding chief magistrate—one armed with an “absolute negative,” as well as undiluted authority to make all executive and judicial appointments, without any interference from the new Senate—would represent, not a repudiation of the patriot cause, but rather its consummation.⁶ As Rufus King later explained, he and his allies in the Convention favored a strong executive because they “were born the subjects of a King, and were accustomed to subscribe ourselves ‘His Majesty’s most faithful subjects;’ and began the quarrel which ended in the Revolution, not against the King, but against his parliament.”⁷

Yet, while Wilson made common cause with other prominent defenders of a powerful chief magistracy during the debates over ratification—most importantly, John Adams and Alexander Hamilton—his political theory was quite different from theirs. Indeed, it was quite different from anyone else’s. This idiosyncrasy is perhaps most clearly on display in his several discussions of medieval English history. Recall that the historiography of the medieval period, and of feudalism in particular, had become an ideological battleground in the seventeenth and eighteenth centuries. Whigs located in the remote Saxon past an “ancient constitution” of balanced, free government, in which elected monarchs merely executed laws approved by their independent, landowning subjects in a primeval parliament. This republican idyll, they believed, was then tragically interrupted by the Norman Conquest of 1066, which introduced feudal tenures and, consequently, serfdom and absolute monarchy.⁸ The great constitutional

5. 1 RECORDS OF THE FEDERAL CONVENTION OF 1787, at 65 (Max Farrand ed., 1911) [hereinafter FARRAND’S RECORDS].

6. 1 FARRAND’S RECORDS, *supra* note 5, at 98, 119; 2 *id.* at 185, 426.

7. NELSON, *supra* note 3, at 2.

8. An alternative Whig view identified the ancient constitution with a pristine form of feudalism itself, in which the peerage had been ascendant and the king’s authority radically circumscribed. *See, e.g.*, POCOCK, THE MACHIAVELLIAN MOMENT, *supra* note 1, at 416–20 (discussing Henry Neville).

watersheds of English medieval and early-modern history—chief among them the Magna Carta—were celebrated in the Whig canon for restraining the power of the Crown and thereby reconfirming the ancient liberties enjoyed by Englishmen before the arrival of the Conqueror.⁹

There was, however, a second and very different eighteenth-century understanding of the feudal past—one that derived instead from the seventeenth-century Royalist historiography of Sir Henry Spelman and Robert Brady.¹⁰ This rival tradition denied the existence of a pre-feudal constitution of liberty. Its exponents insisted that Parliament was a fundamentally feudal institution and that the House of Commons had not existed in any form until the high medieval period. Just as importantly for our purposes, these historians rejected the Whig conceit that feudalism was pathological because it amounted to monarchical absolutism. On the contrary, they argued, the distinctive pathology of feudalism was its tendency to weaken the King in favor of “Factionous barons,” who (in Brady’s words) “when they had secured their own Liberties, rather made use of them to oppress, than relieve their tenants and neighbours.”¹¹ And the Magna Carta itself could only properly be understood as an episode in this disturbing narrative of creeping aristocratic hegemony and perilous royal retreat—yet another encroachment by “incorrigible Norman rebels against their own Norman princes.”¹²

John Adams and Alexander Hamilton, along with the other major defenders of executive power, embraced this second, Royalist understanding of English history in the 1770s and 1780s and integrated it comprehensively into their political and constitutional theories. Wilson, in contrast, did not. His surprising, continuing allegiance to Whig historiography reflects (or so I shall argue) a fundamental philosophical disagreement with his allies over the question of representation.

I. TWO VIEWS OF FEUDAL POLITICS

There is no serious dispute that, before the constitutional convulsions of the later 1760s and 1770s, Whig ideology and historiography dominated political discourse in British America.¹³ Indeed, for an impeccably orthodox statement of the Whig theory of feudalism and the ancient constitution, we need look no further than John Adams’s own early *Dissertation on the Canon and Feudal Law*.¹⁴

9. See J.G.A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century* (1957).

10. *Id.* at 91–123, 182–228.

11. Robert Brady, *A Complete History of England, from the First Entrance of the Romans under the Conduct of Julius Caesar, unto the End of the Reign of King Henry III*, at B1^r (London, 1685).

12. *Id.* at B2^r.

13. See generally Eric Nelson, *Barons Wars, under Other Names: Feudalism, Royalism, and the American Founding*, 43 *HIST. EUR. IDEAS* 198 (2016).

14. John Adams, *Dissertation on the Canon and Feudal Law* (1765), reprinted in *The Political Writings of John Adams* 3 (George W. Carey ed., 2001). For a lucid account of the diffusion of the “ancient constitution” idiom in 1760s British America, see John Phillip Reid, *The Ancient Constitution and the Origins of Anglo-American Liberty* (2005). For an additional

Feudalism, Adams announces in that essay, was “originally formed, perhaps, for the necessary defence of a barbarous people against the inroads and invasions of her neighboring nations, yet for the same purposes of tyranny, cruelty, and lust, which had dictated the canon law, it was soon adopted by almost all the princes of Europe, and wrought into the constitutions of their government.”¹⁵ Adams goes on to explain the system’s genesis and characteristic features:

It was originally a code of laws for a vast army in a perpetual encampment. The general was invested with the sovereign propriety of all the lands within the territory. Of him, as his servants and vassals, the first rank of his great officers held the lands; and in the same manner the other subordinate officers held of them; and all ranks and degrees held their lands by a variety of duties and services, all tending to bind the chains the faster on every order of mankind. In this manner the common people were held together in herds and clans in a state of servile dependence on their lords, bound, even by the tenure of their lands, to follow them, whenever they commanded, to their wars, and in a state of total ignorance of every thing divine and human, excepting the use of arms and the culture of their lands.¹⁶

“The feudal law,” brought to England by one of those “princes of Europe” in 1066, had established an absolute monarchy, in which the king was the “sovereign proprietor” of all land. This tyrannical regime, as Adams explained in a contemporaneous essay, had displaced the pristine constitution of liberty that had “prevailed in Britain from an immense antiquity”—at the center of which had stood “the house of commons,” an inheritance from “Saxon times.”¹⁷ The new feudal monarch’s position was then tragically buttressed by “all that dark ribaldry of hereditary, indefeasible right—the Lord’s anointed—and the divine, miraculous original of government, with which the priesthood had enveloped the feudal monarch in clouds and mysteries, and from whence they had deduced the most

account, see TREVOR COLBOURN, *THE LAMP OF EXPERIENCE: WHIG HISTORY AND THE INTELLECTUAL ORIGINS OF THE AMERICAN REVOLUTION* (3rd ed., Liberty Fund 1998). My suggestion, elaborated below, is that many patriot writers later came to reject this cluster of ideas. It is noteworthy that only a very small number of Reid’s and Colbourn’s examples of American endorsements of the Whig account of feudalism date from after 1770.

15. ADAMS, *DISSERTATION ON THE CANON AND FEUDAL LAW*, *supra* note 14, at 6.

16. *Id.* It is interesting to note, however, that Adams takes this account of feudalism as ‘a code of laws for a vast army in a perpetual encampment’ directly from William Robertson, whose basic posture is deeply anti-Whig. 1 WILLIAM ROBERTSON, *HISTORY OF SCOTLAND* 12–13 (London, Cadell and Davies 1759) (“A feudal kingdom was properly the encampment of a great army.”). Robertson’s central claim (possibly derived from Adam Smith’s lectures) was that, while the notion of the feudal monarch as sovereign proprietor of all lands might tempt us to “pronounce him a powerful, nay an absolute Monarch,” in fact “no conclusion . . . would be more rash, or worse founded. The genius of the feudal government was purely aristocratical.” *Id.* at 12. Adams neglects this aspect of Robertson’s narrative in the *Dissertation*, but, several years later, would take it far more seriously.

17. JOHN ADAMS, *The Earl of Clarendon to William Pym*, *BOSTON GAZETTE*, Jan. 27, 1766, in 3 *THE WORKS OF JOHN ADAMS* 482 (Boston, Little, Brown and Co. 1851).

mischievous of all doctrines, that of passive obedience and non-resistance.”¹⁸

From time to time, the liberties of subjects as free landowners were heroically reaffirmed in the face of this tyranny of “arbitrary kings and cruel priests,” as in the case of “the transactions at Running Mede, (the meadow, near Windsor, where Magna Charta was signed)” and eventually “the people grew more and more sensible of the wrong that was done them by these systems, more and more impatient under it, and determined at all hazards to rid themselves of it.”¹⁹ The fateful confrontation between liberty and feudal absolutism arrived at long last “under the execrable race of the Stuarts,” when “the struggle between the people and the confederacy aforesaid of temporal and spiritual tyranny, became formidable, violent, and bloody.”²⁰ “It was this great struggle,” Adams declares, “that peopled America. It was not religion alone, as is commonly supposed; but it was a love of universal liberty, and a hatred, a dread, a horror, of the infernal confederacy [between popery and absolutism] before described, that projected, conducted, and accomplished the settlement of America.” The first emigrants to New England were driven into the wilderness by their loathing of “all the base services and servile dependencies of the feudal system,” and their latter-day descendants were determined to keep faith with this crusading Whiggery.²¹

But American writers were by no means unaware of the Royalist alternative to this historiographical tradition—the new feudal history of Spelman and Brady—because it had found committed advocates among Scottish historians of the later eighteenth century.²² Virtually all educated Americans of the Revolutionary period were familiar, for example, with David Hume’s *The History of England*,²³ which gleefully denied the antiquity of the House of Commons and announced that the dynamics of “feudal governments” created “so strong a bias towards aristocracy, that the royal authority was extremely eclipsed in all the European states.”²⁴ The fact that “according to the principles of feudal law, the king was the supreme lord of the landed property” was, for Hume, little more than a misleading

18. ADAMS, DISSERTATION ON THE CANON AND FEUDAL LAW, *supra* note 14, at 10.

19. *Id.* at 7, 17–18.

20. *Id.* at 7. Adams’s account here strongly resembles that of James Otis, written the previous year. See JAMES OTIS, THE RIGHTS OF THE BRITISH COLONIES ASSERTED AND PROVED, in 1 PAMPHLETS OF THE AMERICAN REVOLUTION 441 (Bernard Bailyn ed. 1965).

21. ADAMS, DISSERTATION ON THE CANON AND FEUDAL LAW, *supra* note 14, at 10.

22. For the influence of Brady and Spelman on Scottish historians, see R.J. SMITH, THE GOTHIC BEQUEST: MEDIEVAL INSTITUTIONS IN BRITISH THOUGHT, 1688–1863, at 71–96 (1987).

23. See, e.g., MARK G. SPENCER, DAVID HUME AND EIGHTEENTH-CENTURY AMERICA (2005).

24. 1 DAVID HUME, THE HISTORY OF ENGLAND 466 (Indianapolis, Liberty Fund 1983) (1778); see *also id.* at 464 (“it is agreed, that the commons were no part of the great council, till some ages after the conquest”). For a dissenting Scottish view, also well-known to American theorists, see HENRY HOME, LORD KAMES, ESSAYS UPON SEVERAL SUBJECTS CONCERNING BRITISH ANTIQUITIES (3d ed. 1763). Kames argued that feudalism tended to increase the “power and authority” of the king. *Id.* at 17. The question of whether Hume, Robertson, and Smith are themselves meaningfully classified as Whigs is, of course, a very old one. Duncan Forbes suggested in a classic essay that they subscribed to a “scientific” variant of Whiggism, which allowed them to reject the pieties of ancient constitutionalism and other central Whig commitments without thereby becoming Tories. Duncan Forbes, “Scientific” Whiggism: Adam Smith and John Millar, 7 CAMBRIDGE J. 643 (1954). I take no position on the issue here. Suffice it

formality.²⁵ “Instead of dreading the growth of monarchical power” under feudalism, he insisted, “we might rather expect, that the community would every where crumble into so many independent baronies, and lose the political union, by which they were cemented” (he cites Brady directly on this point).²⁶ Indeed, in elective monarchies,

the event was commonly answerable to this expectation; and the barons, gaining ground on every vacancy of the throne, raised themselves almost to a state of sovereignty, and sacrificed to their power both the rights of the crown and the liberties of the people. But hereditary monarchies had a principle of authority, which was not so easily subverted; and there were several causes, which still maintained a degree of influence in the hands of the sovereign.²⁷

One of these “several causes” for the survival of monarchical authority in hereditary feudal systems deserves particular mention: the mutually supporting alliance between King and people. “The people,” in Hume’s account, “had still a stronger interest to desire the grandeur of the sovereign; and the king, being the legal magistrate, who suffered by every internal convulsion or oppression, and who regarded the great nobles as his immediate rivals, assumed the salutary office of general guardian or protector of the commons.”²⁸ King and commons, in other words, shared a common foe: the rapacious peers of the realm. The people looked to the monarch for protection against the predations of their immediate lords, and the King sought to raise up the people as a counterweight to his aristocratic rivals. This alliance emerges in Hume’s *History* as the distinguishing feature of feudal politics. It was during the reign of Edward I, who “considered the great barons both as immediate rivals of the crown, and oppressors of the people” and therefore sought to advance the “inferior orders of the state,” that “the third estate, that

to say that, if Hume and Smith were Whigs of any sort, they clearly were not radical or ‘old’ Whigs of the kind that American patriots are supposed to have been.

25. 1 HUME, *supra* note 24, at 461.

26. *See id.* at 464. Hume’s historical narrative is similar in some respects to that developed by “Court” Whigs under Walpole. Lord Hervey, for example, had at least hinted at a Brady-esque rejection of the ancient constitution of liberty, and had likewise stressed the absolutism of the Tudors (and of Elizabeth in particular)—thereby refuting the old Whig charge that tyranny arrived with the Stuarts. But Hervey’s narrative is also quite different from Hume’s. He regards all of English history before 1688 as a fairly undifferentiated epoch of tyranny (the Stuarts too, on his account, were an “unhappy and undeserving Race,” whose reigns amounted to “one continued Series of Folly and Injustice,” and he does not associate feudalism with a distinctive *kind* of tyranny (i.e. baronial)). LORD JOHN HERVEY, ANCIENT AND MODERN LIBERTY STATED AND COMPARED 29 (1734). Most importantly, his account contains no hint of the view that there is a natural alliance in favor of liberty between king and people against the nobles. *See generally id.* A more important antecedent of Hume (and one from whom he paraphrased freely on the question of feudal history) was the Jacobite Thomas Carte’s A GENERAL HISTORY OF ENGLAND (1747–1755). Carte’s narrative, in turn, was profoundly indebted to Brady. For a lucid account of Hume’s historiographical background, see JAMES HARRIS, HUME: AN INTELLECTUAL BIOGRAPHY 308–325 (2015).

27. 1 HUME, *supra* note 24, at 464.

28. *Id.*

of the commons” finally received a share in government.²⁹ And, once in Parliament, their deputies “instead of checking and controuling the authority of the king [] were naturally induced to adhere to him, as the great fountain of law and justice, and to support him against the power of the aristocracy.”³⁰

This narrative became even more ideologically freighted in the hands of Hume’s close friend, Adam Smith.³¹ Smith first turned systematically to the question of feudal history in his *Lectures on Jurisprudence* at Glasgow University. But his most extensive and influential discussion of the topic appears in *The Wealth of Nations*.³² The central passage in this account deserves to be quoted at length:

It must be remembered, that, in those [feudal] days, the sovereign of perhaps no country in Europe was able to protect, through the whole extent of his dominions, the weaker part of his subjects from the oppression of the great lords. Those whom the law could not protect, and who were not strong enough to defend themselves, were obliged either to have recourse to the protection of some great lord, and in order to obtain it, to become either his slaves or vassals; or to enter into a league of mutual defence for the common protection of one another. The inhabitants of cities and burghs, considered as single individuals, had no power to defend themselves; but by entering into a league of mutual defence with their neighbours, they were capable of making no contemptible resistance. The lords despised the burghers, whom they considered not only as a different order, but as a parcel of emancipated slaves, almost of a different species from themselves. The wealth of the burghers never failed to provoke their envy and indignation, and they plundered them upon every occasion without mercy or remorse. The burghers naturally hated and feared the lords. The king hated and feared them too; but though, perhaps, he might despise, he had no reason either to hate or fear the burghers. Mutual interest, therefore, disposed them to support the king, and the king to support them against the

29. 2 HUME, *supra* note 24, at 75, 109.

30. *Id.* at 109. On Hume’s view of the alliance between king and people, see, most recently, ANDREW SABL, HUME’S POLITICS: COORDINATION AND CRISIS IN THE HISTORY OF ENGLAND 100–03 (2012). See also HARRIS, *supra* note 26, at 392–97.

31. A second influential endorsement of Hume’s general view came in WILLIAM ROBERTSON, THE HISTORY OF THE REIGN OF THE EMPEROR CHARLES V 13–17, 33–36 (London, W. & W. Strahan 1769). Robertson’s account may well have been indebted to Smith’s Edinburgh lectures (and it was anticipated in important respects by Robertson’s own *History of Scotland*). It clearly inspired Josiah Tucker’s discussion of feudalism in A TREATISE CONCERNING CIVIL GOVERNMENT (London, T. Cadell 1781). Tucker, like Robertson, emphasized the importance of the crusades as a precipitating cause of the rise of cities, *id.* at 309–19, and he was excoriated by Whig opponents for “attempting to debase the people” by exaggerating “the oppressions of the feudal aristocracy” and “endeavor[ing] to demonstrate that the military tenants were the only freemen of the realm, and that the citizens of the Buroughs originated at the late period from the indulgent avarice of the Norman monarchs.” See JAMES IBBETSON, A DISSERTATION ON THE NATIONAL ASSEMBLIES UNDER THE SAXON AND NORMAN GOVERNMENTS 33 (London, 1781), quoted in REID, *supra* note 14, at 64.

32. 1 ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS, 19–23 (R.H. Campbell et al. eds., Liberty Fund 1981) (1776).

lords. They were the enemies of his enemies, and it was his interest to render them as secure and independent of those enemies as he could.³³

Acting on the basis of this “mutual interest” shared with the common people, the English feudal monarchs granted the burghers

magistrates of their own, the privilege of making bye-laws for their own government, that of building walls for their own defence, and that of reducing all their inhabitants under a sort of military discipline, he gave them all the means of security and independency of the barons which it was in his power to bestow.³⁴

Indeed, Smith adds that “the princes who lived upon the worst terms with their barons, seem accordingly to have been the most liberal in grants of this kind to their burghs. King John of England, for example, appears to have been a most munificent benefactor to his towns.”³⁵ Here the hated King John—whom even Hume had pilloried as a tyrant, “destructive to his people”³⁶—appears as a (self-interested) champion of the commons. Magna Carta, on this revisionist account, was fundamentally a baronial assault on the alliance between King and people. It has value in historical retrospect only because the abuses that it made possible ultimately prompted the people to cement their alliance with the monarch, thus laying the foundations for the establishment of a new “system of liberty.”

Smith’s final verdict on feudalism is therefore straightforward. While the introduction of feudal tenures may have been intended

to strengthen the authority of the king, and to weaken that of the great proprietors, it could not do either sufficiently for establishing order and good government among the inhabitants of the country; because it could not alter sufficiently that state of property and manners from which the disorders arose.³⁷

“The authority of government,” Smith adds in a crucial turn of phrase, “still continued to be, as before, too weak in the head, and too strong in the inferior members; and the excessive strength of the inferior members was the cause of the weakness of the head.”³⁸ As a result,

after the institution of feudal subordination, the king was as incapable of restraining the violence of the great lords as before. They still continued to make war according to their own discretion, almost continually upon one

33. *Id.* at 401–02.

34. *Id.* at 402.

35. *Id.*

36. HUME, *supra* note 24, at 452.

37. *Id.* at 417.

38. *Id.* at 418.

another, and very frequently upon the king; and the open country still continued to be a scene of violence, rapine, and disorder.³⁹

This period is therefore most properly described, not as an age of royal absolutism, but rather as “the times of feudal anarchy.”⁴⁰

II. ROYALIST HISTORIOGRAPHY IN AMERICA

Adam Smith’s name does not appear in the surviving notes from the Constitutional Convention, nor is he mentioned in *The Federalist* or in the minutes of the debates over ratification in the various state conventions. Some scholars conclude from this fact that Smith’s ideas played no appreciable role in these debates.⁴¹ But Smith was not absent from the contest over ratification, and it was precisely his commitment to monarchical power and the Royalist account of feudal history that endeared him to defenders of the new executive branch and strong central government. Alexander Hamilton, for one, dedicated much of his speech in the New York ratifying convention to the following description of “the antient feudal governments:”

It has been proved, that the members of republics have been, and ever will be, stronger than the head. Let us attend to one general historical example. In the antient feudal governments of Europe . . . the authority of the kings was limited, and that of the barons considerably independent The history of the feudal wars exhibits little more than a series of successful encroachments on the prerogatives of monarchy I may be told, that in some instances the barons were overcome: But how did this happen? Sir, they took advantage of the depression of the royal authority, and the establishment of their own power, to oppress and tyrannise over their vassals. As commerce enlarged, and as wealth and civilization increased, the people began to feel their own weight and consequence: They grew tired of their oppressions; united their strength with that of the prince; and threw off the yoke of aristocracy.⁴²

39. *Id.*

40. *Id.* at 386. Writing several years before Smith (although possibly influenced by his Edinburgh lectures of 1748–1750), William Robertson referred to “the universal anarchy” of feudalism. ROBERTSON, *supra* note 15, at 16. Hume, for his part, had seen within this form of political life “a mixture of . . . order and anarchy, stability and revolution.” 1 HUME, *supra* note 24, at 456. Gibbon likewise later referred to the “feudal anarchy of Europe” and “the days of feudal anarchy.” See 7 EDWARD GIBBON, *THE HISTORY OF THE DECLINE AND FALL OF THE ROMAN EMPIRE*, 323, 361 (J.B. Bury ed., Fred de Fau & Co. 1906) (1776). Chapter 53, in which this phrase appears, was not published until 1788. For Robertson’s debts to Smith, see Nicholas Phillipson, *Providence and Progress: An Introduction to the Historical Thought of William Robertson*, in WILLIAM ROBERTSON AND THE EXPANSION OF EMPIRE 55–73 (Stewart J. Brown ed., 1997).

41. For the tendency of the secondary literature to assume that Smith played virtually no role in American political argument in the 1780s, see the historiographical summary in Samuel Fleischaker, *Adam Smith’s Reception Among the American Founders, 1776–1790*, 59 WM. & MARY Q. 897–924 (2002).

42. 2 DEBATES IN THE SEVERAL STATES CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 353–54 (Jonathan Elliot ed., 1836).

This quotation constitutes a straightforward recapitulation of Smith's account.⁴³ When Hamilton invokes feudalism to illustrate the principle that "the members . . . have been, and ever will be, stronger than the head," he is quoting directly Smith's insistence that, under feudalism, authority was always "too weak in the head, and too strong in the inferior members." And his description of baronial abuses, and the eventual alliance between King and people to which it gave rise, likewise comes recognizably from *The Wealth of Nations*.

The provenance of Hamilton's account becomes even more evident when he adapts the same material for inclusion in what we have come to know as *Federalist No. 17*. Here too his primary interest is in establishing that, in confederated governments, the center ought to fear the periphery, not the periphery the center:

Though the ancient feudal systems were not, strictly speaking, confederacies, yet they partook of the nature of that species of association. There was a common head, chieftain, or sovereign, whose authority extended over the whole nation; and a number of subordinate vassals, or feudatories, who had large portions of land allotted to them, and numerous trains of *inferior* vassals or retainers, who occupied and cultivated that land upon the tenure of fealty or obedience, to the persons of whom they held it. Each principal vassal was a kind of sovereign, within his particular demesnes. The consequences of this situation were a continual opposition to authority of the sovereign, and frequent wars between the great barons or chief feudatories themselves. The power of the head of the nation was commonly too weak, either to preserve the public peace, or to protect the people against the oppressions of their immediate lords. This period of European affairs is emphatically styled by historians, the times of feudal anarchy.⁴⁴

It was Smith who dubbed the feudal period "the times of feudal anarchy."⁴⁵ Hamilton continues by observing that "in general, the power of the barons triumphed over that of the prince; and in many instances his dominion was entirely

43. For the claim that Hamilton wrote an early commentary on *The Wealth of Nations*, see CLINTON ROSSITER, *ALEXANDER HAMILTON AND THE CONSTITUTION* 306 n.26 (1964). The evidence for this claim is a comment of John Church Hamilton's that, while serving in the Continental Congress in 1783, his father wrote "an extended commentary upon [Smith's] *Wealth of Nations*, which is not preserved." 2 J.C. HAMILTON, *HISTORY OF THE REPUBLIC OF THE UNITED STATES, AS TRACED IN THE WRITINGS OF ALEXANDER HAMILTON AND HIS CONTEMPORARIES* 514 (Philadelphia, 1857–1864). Hamilton *filis* cites as his source the French linguist Pierre-Étienne du Ponceau, who served as the Baron von Steuben's secretary during the Revolutionary War and then settled in Philadelphia.

44. THE FEDERALIST NO. 17, at 120–21 (Alexander Hamilton) (Clinton Rossiter ed., Mentor Book 1961).

45. The claim that "each principal vassal was a kind of sovereign, within his particular demesnes" likely adapts Hume's observation that "a great baron . . . considered himself as a kind of sovereign within his territory." HUME, *supra* note 23, at 485. What we have here is apparently a pastiche of the two sources. Note, however, that Smith himself adapted precisely the same remark: "In those disorderly times, every great landlord was a sort of petty prince. His tenants were his subjects." 3 WEALTH OF NATIONS, *supra* note 31, at 2.

thrown off, and the great fiefs were erected into independent principalities or States.”⁴⁶ And, as he explains in *Federalist No. 84*, the “Magna Charta” was merely one such encroachment on royal power, “obtained by the barons, sword in hand, from King John.”⁴⁷ At long last, when “the monarch finally prevailed over his vassals, his success was chiefly owing to the tyranny of those vassals over their dependents. The barons, or nobles, equally the enemies of the sovereign and the oppressors of the common people, were dreaded and detested by both; till mutual danger and mutual interest effected a union between them fatal to the power of the aristocracy.”⁴⁸ Quoting Smith again, Hamilton insists that it was the “mutual interest” of King and people—both of whom “detested and dreaded” (or “hated and feared”) the nobles—that produced the crucial alliance of modern politics.⁴⁹

Interestingly, Hamilton’s co-author James Madison seems to have been similarly attracted to this Royalist account of feudal government during the ratification debates.⁵⁰ Only weeks after the conclusion of the Philadelphia Convention, he wrote to Jefferson that the new Constitution

presents the aspect rather of a feudal system of republics, if such a phrase may be used, than of a Confederacy of independent States. And what has been the progress and event of the feudal Constitutions? In all of them a continual struggle between the head and the inferior members, until a final victory has been

46. THE FEDERALIST NO. 17, *supra* note 44, at 121. Hamilton adds that, in this period, “when the sovereign happened to be a man of vigorous and warlike temper and of superior abilities, he would acquire a personal weight and influence, which answered, for the time, the purpose of a more regular authority.” This comment also adapts a remark by Hume: “where [the king] was possessed of personal vigour and abilities (for his situation required these advantages) he was commonly able to preserve his authority, and maintain his station as head of the community, and the chief fountain of law and justice.” Compare Adams: “When the prince was an able statesman and warrior, he was able to preserve order; but when he was weak and indolent, it was common for two or three barons in conjunction to make war upon him” 1 JOHN ADAMS, A DEFENCE OF THE CONSTITUTIONS OF GOVERNMENT OF THE UNITED STATES OF AMERICA 75 (London, 1787–1788) [hereinafter ADAMS, DEFENCE].

47. THE FEDERALIST NO. 84, at 513 (Alexander Hamilton) (Clinton Rossiter ed., Mentor Book 1961). Hamilton may have taken this phrase from Hume, who writes that, immediately after the signing of Magna Carta, “those generous barons, who first extorted these concessions, still held their swords in their hands.” 1 HUME, *supra* note 23, at 445–46.

48. *Id.* at 121.

49. Hamilton’s invocations of the feudal past had evolved a distinctly Royalist flavor by the mid-1770s. In *The Farmer Refuted*, he cited the *de jure* character of feudal tenures—according to which the king was “in a legal sense, original proprietor, or lord paramount of all the lands of England”—in order to defend the claim that, “[the king] must have been the original proprietor of all the lands in America, and was, therefore, authorized to dispose of them in what manner he thought proper.” HAMILTON, *supra* note 4, at 26. His position was therefore more extreme than Adams’s at this stage: the latter had merely argued that *if* anyone in England had a valid claim to the land of America, it could only have been the king, and not Parliament. Hamilton accepts that the king does *in fact* have such a claim. *Id.* Like the other disciples of Spelman and Brady, he draws Royalist conclusions both from the feudal monarch’s juridical strength *and* from his empirical weakness.

50. As early as 1783, Madison listed *The Wealth of Nations* among the items he felt ought to be included in the new congressional library. See Fleischaker, *supra* note 38, at 901.

gained in some instances by one, in others, by the other of them.⁵¹

Developing this line of thought in *Federalist No. 45*, Madison observed that, “in the feudal system . . . notwithstanding the want of proper sympathy in every instance between the local sovereigns and the people, and the sympathy in some instances between the general sovereign and the latter, it usually happened that the local sovereigns prevailed in the rivalry for encroachments.”⁵²

To be sure, Madison presented a less strident case than Hamilton’s. On Madison’s account, the monarch and the people only shared “sympathy” and interests “in some instances,” and the nobles prevailed “usually” rather than invariably. But the basic picture of the governing dynamics is the same. Indeed, Madison stated forthrightly that, “had no external dangers enforced internal harmony and subordination, and particularly, had the local sovereigns possessed the affections of the people, the great kingdoms in Europe would at this time consist of as many independent princes as there were formerly feudatory barons.”⁵³

But it was, ironically, John Adams who became the second great American champion of the Royalist account of feudal history. Adams had abandoned the Whiggery of the *Dissertation on the Canon and Feudal Law* by the early 1770s, as he pivoted to make the case in favor of the royal prerogative and against any parliamentary jurisdiction over the colonies. In 1773, he endorsed the claim that Norman feudalism was, in truth, a state of “anarchy and confusion,” rather than royal tyranny,⁵⁴ and momentarily denied the antiquity of the House of Commons and, with it, the conceit of an ancient Saxon constitution of liberty.⁵⁵ “Our Saxon ancestors,” he now reported, “carried with them, wherever they went, the customs, maxims, and manners of the feudal system,” and even “when they intermingled with the ancient Britons,” they never “disengag’d themselves from the whole.”⁵⁶ On this revised account, the Norman Conquest did not introduce feudalism *de novo* into Britain to replace a weak, elective monarchy among freeholders. Rather, feudalism was substantially present in Britain before 1066, and “the power of the king in the Saxon period” was “absolute enough.” Indeed, the Anglo-Saxon monarchs “retained a vast variety of the *regalia principis* of the

51. Letter from James Madison to Thomas Jefferson (Oct. 24, 1787), in 5 THE WRITINGS OF JAMES MADISON 24–25 (Gaillard Hunt ed., 1904) (1790). I am grateful to Jack Rakove for calling this passage to my attention.

52. THE FEDERALIST NO. 17, *supra* note 41, at 290.

53. *Id.*

54. Spelman himself had stressed that, while the specific character of English “hereditary and perpetual” feudal tenures had its origin in 1066, “*Feuds and Tenures* and the Feudal law it self, took their original from the Germans and Northern Nations”—and thus long predated the Conquest. SIR HENRY SPELMAN, RELIQUIAE SPELMANNIANAE: THE POSTHUMOUS WORKS OF SIR HENRY SPELMAN KT. 2–4 (Edmund Gibson ed., London, 1698).

55. He thereby repudiated a position that he was still taking publicly as late as March 1772. See John Adams, Notes for an Oration at Braintree, Spring 1772, in 2 THE ADAMS PAPERS: DIARY AND AUTOBIOGRAPHY OF JOHN ADAMS 56 (L.H. Butterfield ed., 1961).

56. Letter from John Adams to the Printers of the *Boston Gazette*, Feb. 1, 1773, in 3 THE WORKS OF JOHN ADAMS, *supra* note 16, at 545.

feudal system, from whence most branches of the present prerogatives of our kings are derived.”⁵⁷ The notion of a primeval parliament was, accordingly, mere fancy. The odd king “in ancient time had, in some few instances, condescended to take the advice of his *wittenagemote*, or assembly of wise men,” on matters of state, but this assembly had nothing to do with the commons—and, in any event, “examples of royal condescension could form no established rule.”⁵⁸

By the time Adams turned to draft the Massachusetts constitution in 1779, he had evolved a distinctive rationale for his Royalist commitments.⁵⁹ The great danger in any mixed regime, he now believed, came from the aristocracy. “We have so many Men of Wealth, of ambitious Spirits, of Intrigue, of Luxury and Corruption,” Adams fretted, “that incessant Factions will disturb our Peace” unless a powerful chief executive is given the power to check them.⁶⁰ Writing to Jefferson in December 1787, he reiterated the point: “You are afraid of the one—I, of the few. We agree perfectly that the many should have a full fair and perfect Representation.—You are Apprehensive of Monarchy; I, of Aristocracy.”⁶¹ Adams accordingly insisted on quarantining the wealthy few in a legislative chamber of their own (ideally one possessing far less power than the Senate the Framers agreed to in Philadelphia), thus preventing them from dominating the

57. *Id.*

58. Letter from John Adams to the Printers of the *Boston Gazette*, Feb. 15, 1773, in 3 THE WORKS OF JOHN ADAMS, *supra* note 16, at 563. This fact is pointed out in COLBOURN, *supra* note 14, at 112. Interestingly, in his *Discourses on Davila* (1791), Adams adopted a more moderate position on the antiquity of the Commons: “the people,” he now claimed, had played a role in the constitution of “the Franks, as well as Saxons and other German nations”—but that role was not concretely delineated. *Reprinted* in 6 THE WORKS OF JOHN ADAMS, *supra* note 16, at 228.

59. See NELSON, *supra* note 3, at 47–48, 173–74, 181–83, 216–18. Several scholars have argued that Adams’s political thought underwent a fundamental shift in the 1780s. On this view, the later Adams jettisoned the orthodox republicanism of the early 1770s in favor of a reactionary and idiosyncratic sort of conservatism. See JOHN R. HOWE, *THE CHANGING POLITICAL THOUGHT OF JOHN ADAMS* (1966); WOOD, *supra* note 1, at 567–92; Joyce Appelby, *The New Republican Synthesis and the Changing Political Thought of John Adams*, 25 AM. Q. 578 (1973). Mercy Otis Warren offered an early version of this charge when she stated in 1805 that while Adams was abroad serving as ambassador to Great Britain, “he became so enamored with the British constitution, and the government, manners, and laws of the nation, that a partiality for monarchy appeared, which was inconsistent with his former professions of republicanism.” 3 MERCY OTIS WARREN, *HISTORY OF THE RISE, PROGRESS, AND TERMINATION OF THE AMERICAN REVOLUTION* 392 (Boston, Manning & Loring 1805). Adams himself vehemently denied that his political and constitutional theory—particularly his views on monarchy—had changed in any appreciable way during this period. See Letter from John Adams to Mercy Otis Warren (July 11, 1807), in *CORRESPONDENCE OF JOHN ADAMS AND MERCY OTIS WARREN RELATING TO HER HISTORY OF THE AMERICAN REVOLUTION* 324–26 (Charles Francis Adams ed., 1878), and I am inclined to agree with him on this point. While his political perspective changed dramatically in the early 1770s (along with that of most other patriots), I detect no subsequent shift in his fundamental constitutional ideas.

60. Letter from John Adams to Elbridge Gerry (Nov. 4, 1779), in 8 PAPERS OF JOHN ADAMS 276 (Gregg Lint et al. eds., Belknap Press 1989).

61. Letters from John Adams to Thomas Jefferson (Dec. 6, 1787), in *THE ADAMS–JEFFERSON LETTERS: THE COMPLETE CORRESPONDENCE BETWEEN THOMAS JEFFERSON AND ABIGAIL AND JOHN ADAMS* 213 (Lester J. Cappan ed., 1959).

popular chamber.⁶² The “many” would then find their crucial support against the encroachments of the aristocratic house in the prerogatives of the chief magistrate:

[I]t is the true policy of the common people to place the whole executive power in one man, to make him a distinct order in the state, from whence arises an inevitable jealousy between him and the gentlemen; this forces him to become a father and protector of the common people, and to endeavor always to humble every proud, aspiring senator, or other officer in the state, who is in danger of acquiring an influence too great for the law, or the spirit of the constitution.⁶³

Or, as he more pithily summarized, “no people, no king, and no king, no people,” thus inverting—or rather subverting—Montesquieu’s famous dictum “point de monarche, point de noblesse; point de noblesse, point de monarche.”⁶⁴

Adams found his warrant for this monarchical political sociology in the very same Royalist account of feudal government that Hamilton deployed (it is, indeed, extremely difficult to determine which of the two got there first). In his *Defence of the Constitutions of Government of the United States*, he explains that, while monarchy in all governments “denominated feudal, was in theory, and pretension, absolute,” in fact,

[i]n every feudal country, where the people had not the sense and spirit to make themselves of importance, the barons became an aristocracy, incessantly encroaching upon the crown; and, under pretense of limiting its authority, they took away from it one prerogative after another, until it was reduced to the state of a mere doge of Venice, or avoyer of Berne; until the kings, by incorporating cities and granting privileges to the people, set them up against the nobles, and obtained by their means standing armies, sufficient to control both nobles and commons.⁶⁵

Wholly repudiating his youthful embrace of the Whig account of feudal absolutism, Adams faithfully reproduced the rival account in all of its particulars:

62. 3 ADAMS, DEFENCE, *supra* note 43, at 299. Compare JEAN-LOUIS DE LOLME, THE CONSTITUTION OF ENGLAND 210–11 (London, 1775). Adams was therefore a quite specific kind of anti-aristocratic theorist. He did not propose to abolish the constitutional role of the aristocracy, let alone to eliminate the aristocracy itself. The latter project he took to be straightforwardly impossible, and the former undesirable (on the grounds that ‘natural aristocrats’ must be constitutionally sequestered in their own chamber—and, once quarantined in this way, could serve a valuable balancing function). His position was, rather, that the aristocracy was the most dangerous (albeit necessary) element of any mixed regime. For a clear statement, see Letter from John Adams to Thomas Jefferson (Nov. 15, 1813), in ADAMS-JEFFERSON LETTERS, *supra* note 61, at 397–402. See also Luke Mayville, *Fear of the Few: John Adams and the Power Elite*, 47 POLITY 5 (2015).

63. 3 ADAMS, DEFENCE, *supra* note 46, at 460.

64. 1 ADAMS, DEFENCE, *supra* note 46, at 87; see also Montesquieu, *De l’esprit des lois*, II.4.

65. 1 ADAMS, DEFENCE, *supra* note 46, at 75; see also Robertson *supra* note 16, at 35.

feudal baronial tyranny is finally supplanted when monarchs become patrons of the commons and builders of their cities.⁶⁶ He now freely praises “Robertson, Hume and Gibbon” for their “admirable accounts of the feudal institutions and their consequences.”⁶⁷ But his distinctive pairing of Berne and Venice may indicate a debt to *The Wealth of Nations* as well (Adams owned a copy of the 1778 edition and, in 1790, wrote to his son John Quincy that he ought to read “Adam Smith &c both his *Theory of Moral Sentiments* and his *Wealth of Nations*”).⁶⁸ Smith’s similar invocation of these two city-states is one page removed from his claim about the “mutual interest” of king and people under feudalism.⁶⁹ In any event, Adams agrees that the pathology of feudalism is that it yields “a king without authority, a body of nobles in a state of uncontrolled anarchy; and a peasantry

66. For a lucid account of the shift in Adams’s view of feudal history, see Darren Staloff, *John Adams and the Enlightenment*, in *A COMPANION TO JOHN ADAMS AND JOHN QUINCY ADAMS* 36–50 (David Waldstreicher ed., 2013). Staloff, however, regards Adams’s pro-monarchical position as an artifact of the 1780s, whereas I see it as continuous with his views of the early 1770s.

67. 1 ADAMS, DEFENCE, *supra* note 46, at xxvi. Gibbon too had emphatically denied the existence of an ancient Saxon constitution of liberty: ‘It has been pretended that this republic of kings was moderated by a general council and a supreme magistrate. But such an artificial scheme of policy is repugnant to the rude and turbulent spirit of the Saxons: their laws are silent, and their imperfect annals afford only a dark and bloody prospect of intestine discord.’ See 6 GIBBON, *supra* note 40, at 272.

68. Letter from John Adams to John Quincy Adams (Feb. 19, 1790), in *THE ADAMS PAPERS* 133 (C. James Taylor et al. eds., 2009), <https://founders.archives.gov/documents/Adams/04-09-02-0070> [<https://perma.cc/B2SC-KVR3>]. Adams quotes Smith’s *Theory of Moral Sentiments* in his *Discourses on Davila*, but nowhere directly cites *The Wealth of Nations*. See 6 WORKS OF JOHN ADAMS, 257–62. He did, however, later refer to “the great works . . . of Adam Smith,” 10 *id.* at 385, whereas he frequently heaped criticism on Hume (despite his explicit endorsement of Hume’s account of feudalism)—not least for sugaring over “the crimes of the Stuarts” 10 *id.* at 288. Adams’s enthusiastic embrace of Royalist constitutional theory did not prevent him from excoriating the Stuart monarchs for their embrace of “the Roman superstition” and other errors. See *THE POLITICAL WRITINGS OF JOHN ADAMS*, *supra* note 14, at 26–28. He differed in this respect from other “patriot Royalists.”

69. 1 WEALTH OF NATIONS, *supra* note 31, at 403. Smith pairs Berne and Venice in his account of what transpired when “the sovereign came to lose the whole of his authority” over the newly-powerful cities. However, if Adams did indeed take these examples from Smith, he either read carelessly or dissented from his source: Smith in fact distinguished Venice from Berne (the history of the former, on his telling, was “somewhat different” from that of the latter and the other Italian republics). Adams’s argument about the rise of cities certainly resembles Smith’s: “the progress of foreign commerce and manufacture,” Smith had argued, along with the incorporation and strengthening of cities by the crown, caused the barons to forfeit their power “to make war according to their own discretion.” 2 WEALTH OF NATIONS, *supra* note 32, at 418–19. But Hume and Robertson both offered similar narratives. The claim about standing armies is also quite Smithian, as is Adams’s later observation that “the people of England alone . . . have enabled their kings to curb the nobility, without giving him a standing army.” 1 ADAMS, DEFENCE, *supra* note 46, at 95. But Smith’s defense of this position appears chiefly in the *Lectures on Jurisprudence*, to which Adams (so far as we know) would not have had access. Here again, it is equally possible that Adams was making use of similar arguments in Hume and Robertson, the latter of whom may well have derived this material from Smith’s Edinburgh lectures. (Robertson was accused early on of having plagiarized Smith’s account of feudal history. Phillipson, *supra* note 40, at 60.). See 3 HUME, *supra* note 24, at 80; 1 ROBERTSON, *supra* note 16, at 95; Cf. JOHN MILLAR, OBSERVATIONS CONCERNING THE DISTINCTION OF RANKS IN SOCIETY 182–83, 190–91 (London, 1771). Note that Adams seems also to have paraphrased Hume’s remark that “where [the king] was possessed of personal vigor and abilities (for his situation required these advantages) he was commonly able to preserve his authority, and maintain his station as head of the community, and the chief fountain of law and justice.” 1 ADAMS, DEFENCE, *supra* note 46, at 75.

groaning under the yoke of feudal despotism.”⁷⁰ Once again, the feudal period is a wilderness of baronial “anarchy” (what Adams also calls “aristocratical anarchy”⁷¹) and the cure is as straightforward as the disease: “A king, meaning a single person vested with the whole executive, is the only remedy for the people, whenever the nobles get the better of them, and are on the scramble for unlimited power.”⁷² Even “an absolute monarch,” Adams insists, “is a less[er] evil than a crowd of lawless lords.”⁷³

This vision of the feudal past suffuses Adams’ correspondence and other writings from the 1790s and beyond. In October of 1790, Samuel Adams opined in a letter to his cousin that, when the people contend for the restoration of their liberties, they rarely succeed entirely.⁷⁴ He then offered an example: “Were the people of England free, after they had obliged King John to concede to them their ancient rights and liberties, and promise to govern them according to the old law of the land?”⁷⁵ Clearly appalled by this Whig characterization of the Magna Carta, the other Adams pounced. “The people,” he fumed, “never did this. There was no people who pretended to any thing. It was the nobles alone. The people pretended to nothing but to be villains, vassals, and retainers to the king or the nobles.”⁷⁶ For Adams, the charter was not an instrument of popular liberty, but of baronial tyranny—indeed, the “people” had no “ancient rights” of government to speak of, because the Saxon constitution imagined by Samuel was a myth. “The English constitution in that period,” he explained in the *Discourses on Davila*, “was not formed. The house of commons was not settled.”⁷⁷

Adams frequently returned to this set of claims in the marginalia with which he filled his copies of contemporary histories. When reading Mary Wollstonecraft’s *Historical and Moral View of the Origin and Progress of the French Revolution*, he came upon the claim that “since the existence of courts, the convenience and comforts of men have been sacrificed to the ostentatious display of pomp and pageantry.”⁷⁸ This, he insisted, was simply to miss the point. In fact, as he scribbled in the margin, “cities have advanced liberty and knowledge by setting up kings to control nobles Since the existence of courts, the barons have been humbled and the people liberated from villinage.”⁷⁹ When Wollstonecraft

70. 1 ADAMS, DEFENCE, *supra* note 46, at 77.

71. JOHN ADAMS, DISCOURSES ON DAVILA, *reprinted* in 6 WORKS OF JOHN ADAMS, *supra* note 17, at 252. Robertson too had used the term ‘anarchy’ to describe feudalism. 1 ROBERTSON, *supra* note 16, at 33–36. Additionally, as we have seen, Adams certainly knew this second source as well.

72. 3 ADAMS, DEFENCE, *supra* note 46, at 457.

73. *Id.*

74. Letter from Samuel Adams to John Adams (Oct. 4, 1790), in FOUR LETTERS: BEING AN INTERESTING CORRESPONDENCE BETWEEN THOSE EMINENTLY DISTINGUISHED CHARACTERS, JOHN ADAMS, LATE PRESIDENT OF THE UNITED STATES, AND SAMUEL ADAMS, LATE GOVERNOR OF MASSACHUSETTS 9 (Boston, Adams & Rhoades 1802).

75. *Id.*

76. *Id.* at 17.

77. ADAMS, DISCOURSES, *supra* note 71, at 398.

78. ZOLTAN HARASZTI, JOHN ADAMS AND THE PROPHETS OF PROGRESS 232 (1952).

79. *Id.* at 232–33.

volunteered that “the education of the heir apparent of a crown must necessarily destroy the common sagacity and feelings of a man,” Adams responded in highly revealing terms:

This is not true. Some thousands of sovereigns in Europe have proved the contrary. But it is the tone to belie princes. Aristocracy is again preparing Barons’ Wars, under other names. The people, I hope, will be gainers by them in the end, but the process is cruel.⁸⁰

For Adams, the antimonarchical program of revolution, in France and elsewhere, invoked the many but, in truth, served only the few—these were “Barons’ Wars, under other names.” He offered a further gloss on this somewhat obscure comment in a 1798 letter: “If French principles and systems [were to] prevail,” he argued, each European nation would become a mere “congregation of soldiers and serfs.”⁸¹ The “officers of the army” would replace “the nobility and the clergy,” and when these proconsuls inevitably “begin to quarrel with one another, five hundred years more of Barons’ wars may succeed.”⁸² Like the original Barons’ Wars of feudal Europe (such as the one that delivered Magna Carta), these could only conceivably benefit the people by means of a “cruel” and dialectical process: the few would be dangerously empowered, leading them to tyrannize over the people; the people would then turn to monarchs to protect them from the “nobles;” and, ultimately, this revived alliance between the one and the many might succeed in making the people “gainers” in the end. But, as Adams insists, it is clearly not a game that one should choose to play.

III. WILSON ON REPRESENTATION AND SAXON LIBERTY

Adams and Hamilton were by no means alone in adopting this discourse. Virtually all of those who fought to expand the royal prerogative in the 1770s (and who later became chief advocates of a powerful presidency in the 1780s) predictably sided with Hume and Smith on the dangers of “lawless lords” and the fictitiousness of the ancient constitution. Charles Pinckney, for example, explained in the Constitutional Convention itself that, during the feudal period, “the crown of Great Britain was obliged to yield to the claims of power which those large possessions enabled [the nobles] to assert.”⁸³ “The Commons,” he continued, “were then too contemptible to form part of the national councils.

80. *Id.* at 190. Adams had referred to Parliament as “the barons of modern times” as early as 1769—although at this stage, he still admired the “ancient barons” who demanded the Magna Carta. See John Adams, Instructions of the Town of Boston to their Representatives, in 3 THE WORKS OF JOHN ADAMS, *supra* note 17, at 508. In his late exchange with John Taylor, he insists that all “demagogues and popular orators” are “a species of feudal barons,” and that “mobs never follow any but aristocrats.” 6 *id.* at 508.

81. Letter from John Adams to the Boston Marine Society (Sept. 7, 1798), in 9 THE WORKS OF JOHN ADAMS, *supra* note 17, at 221.

82. *Id.*

83. 1 FARRAND’S RECORDS, *supra* note 5, at 410.

Many Parliaments were held without their being represented; until, in process of time, under the protection of the crown, and forming distinct communities, they obtained some weight in the British government."⁸⁴ Here we find each distinctive prong of the Royalist attack on Whig historiography: 1) the insistence that feudalism dangerously empowered barons, not the king; 2) a rejection of the antiquity of the House of Commons and, with it, the notion of an ancient Saxon constitution of liberty; and 3) the assertion that the Commons advanced "under the protection of the crown."⁸⁵

But Wilson's conception of the feudal past was far more ambivalent. On the one hand, he agreed with his colleagues that feudalism had established baronial "anarchy," rather than absolutism. "The power of preserving the limitations of monarchy, for the purposes of liberty," he argued in 1774, was not "properly placed in the barons. Domineering and turbulent, they oppressed their vassals, and treated them as slaves; they opposed their prince, and were impatient of every legal restraint."⁸⁶ In the very next paragraph, Wilson likewise appeared to deny the antiquity of the Commons. "During the reigns of the first Norman princes," he observed, the checks on monarchical power were located in the clergy and the nobles alone. "But after the representatives of the commons began to sit in a separate house; to be considered as a distinct branch of the legislature; and, as such, to be invested with separate and independent powers and privileges; then the constitution assumed a very different appearance."⁸⁷ This remark seems to concede that the House of Commons did not exist "time out of mind," as Whig orthodoxy had always insisted. By the 1780s, Wilson was equally prepared to argue, in the vein of Smith, Hamilton, Adams, and Madison, that confederated governments were essentially feudal in character: he noted, for example, that "from the feudal system, which has itself many of the important features of a confederacy, the federal system, which constitutes the empire of Germany, has grown."⁸⁸ And, indeed, Wilson routinely cited as his guide in matters of medieval history "the very learned Spelman," whose "authority in matters of legal antiquity, is unquestionably respectable."⁸⁹

Spelman was not, however, the only authority deployed by Wilson. The latter also routinely invoked "my Lord Coke" and, even more importantly, "the Mirror of Justice, a book said, by Sir Edward Coke, to have been written, in part, at least,

84. Madison's *Notes* on the same speech contain different shades of emphasis and omit the claim that the commons advanced 'under the protection of the Crown.' Madison agrees, however, that Pinckney stressed the degree to which, under feudalism, the power of the nobles 'induced the Monarch to look up to them.' See 1 FARRAND'S RECORDS, *supra* note 5, at 399–400.

85. *Id.*

86. JAMES WILSON, CONSIDERATIONS ON THE NATURE AND EXTENT OF THE LEGISLATIVE AUTHORITY OF THE BRITISH PARLIAMENT (1774), *reprinted in* THE WORKS OF JAMES WILSON 721, 730 (Robert McCloskey ed., 1967).

87. *Id.* at 730.

88. *Id.* at 250.

89. *Id.* at 349, 619.

before the conquest.”⁹⁰ This second text, which (as Wilson explains) purports to preserve “a collection of the law, chiefly as it stood before the conquest; and consequently before the feudal system was introduced into England”⁹¹ is now known to include a great deal of spurious material—and had been savagely attacked by the Royalist historians of the seventeenth and eighteenth centuries.⁹² But Wilson eagerly endorsed the *Mirror of Justice*’s exceedingly Whig account of the Saxon constitution of liberty.⁹³ “By some of the most early accounts, which have been transmitted to us concerning Britain,” Wilson writes in his *Lectures on Law*, “we are informed, that ‘the people held the helm of government in their own power’ The people were a free people, governed by laws which they themselves made; and, for this reason, they were denominated free . . . like unto the manner of the Athenians.”⁹⁴ Wilson’s account of this ancient “spirit of liberty” could have come directly from *Cato’s Letters*:

It was this spirit, which dictated the frequent and formidable demands on the Norman princes, for the complete restoration of the Saxon jurisprudence: it was this spirit, which, in magna charta, manifested a strict regard to the rights of the commons, as well as to those of the peerage: it was this spirit, which extracted sweetness from all the bitter contentions between the rival houses of Lancaster and York: it was this spirit, which preserved England from the haughtiness of the Tudors, and from the tyranny of the Stuarts: it was this spirit, which rescued the States of America from the oppressive claims, and from all the mighty efforts made to enforce the oppressive claims, of a British parliament.⁹⁵

The notion that Magna Carta had vindicated the Saxon liberties of the “commons”—including their right to send representatives to Parliament—had, of course, been the *bête noire* of every revisionist historian since Brady.

As for feudalism itself, Wilson bitterly described it in the radical idiom of the “Norman Yoke.” The “degrading” feudal system, he writes in *Chisholm v. Georgia*, replaced Saxon liberty with Norman “tyranny and slavery.”⁹⁶ “The Governors of Cities and Provinces,” he continues,

90. *Id.* at 358; *Chisholm v. Georgia*, 2 U.S. (2 Dall.) 419 (1793).

91. JAMES WILSON, LECTURES ON LAW (1774), reprinted in 2 THE WORKS OF JAMES WILSON, *supra* note 86, at 620.

92. See THEODORE F.T. PLUCKNETT, A CONCISE HISTORY OF THE COMMON LAW 267 (1929). The text was composed c. 1290 and then first published in 1642. Also important to Wilson was NATHANIEL BACON, AN HISTORICALL DISCOURSE OF THE UNIFORMITY OF THE GOVERNMENT OF ENGLAND (London, 1647).

93. Wilson also rejected the argument of John Whitaker that feuds had been introduced into the British Isles before the Norman conquest. See JOHN WHITAKER, HISTORY OF MANCHESTER (London, 1771–1775). For Wilson’s engagement with Whig historiography, see COLBOURN, *supra* note 14, at 144–54.

94. 2 WILSON, LECTURES ON LAW, *supra* note 91, at 400.

95. *Id.* at 357.

96. *Chisholm v. Georgia*, 2 U.S. (2 Dall.) 419 (1793).

usurped equally the property of land, and the administration of justice; and established themselves as proprietary Seigniors over those places, in which they had been only civil magistrates or military officers. By this means, there was introduced into the State a new kind of authority, to which was assigned the appellation of sovereignty. In process of time the feudal system was extended over France, and almost all the other nations of Europe: And every Kingdom became, in fact, a large fief. Into England this system was introduced by the conqueror.⁹⁷

Wilson adds in his *Lectures on Law* that

the feudal system was introduced by a specious and successful maxim The free and allodial proprietors of land were told that they must surrender it to the king, and take back—not merely ‘some,’ but—the whole of it, under some certain provisions, which, it was said, would procure a valuable object—the very object was security—security for their property. What was the result? They received their land back again, indeed; but they received it, loaded with all the oppressive burthens of the feudal servitude—cruel, indeed; so far as the epithet cruel can be applied to matters merely of property.⁹⁸

Why did Wilson, unlike his fellow anti-Whig enthusiasts, remain loyal to this Whig historiography of the ancient constitution in the 1780s and 1790s? The puzzle becomes more complicated when we reflect on Wilson’s background. Born in Scotland, Wilson studied in St Andrews and Glasgow, where the revisionist historiography of Hume and Smith prevailed. Indeed, if, as we now suppose, Wilson studied in Glasgow from 1763 to 1765, he may have attended Smith’s lectures on jurisprudence (the latter vacated his chair in May 1764, replaced by Thomas Reid).⁹⁹ Given his education, why then did Wilson so actively resist the findings of this rival historiographical tradition? The question cannot, of course, be answered definitively. However, I would like to offer a suggestion. Adams and Hamilton grounded their respective defenses of prerogative power in an embrace of the English mixed monarchy—what the former called “the true British constitution”¹⁰⁰ and the latter praised in the Constitutional Convention as “the best [government] in the world.”¹⁰¹ As I have explained at length elsewhere, Adams and Hamilton did so because they shared a theory of representation according to

97. *Id.* at 457–58.

98. *Id.*

99. See Martin Clagett, *James Wilson—His Scottish Background: Corrections and Additions*, 79 PA. HIST. 154, 164–65 (2012). Although, as a student, Wilson apparently took out of the library Rapin’s *History of England*, the orientation of which was a good deal more conventionally Whig. PAUL DE RAPIN, *HISTORY OF ENGLAND 166 (1724–1727)*. See generally William Ewald, *James Wilson and the Scottish Enlightenment*, 12 U. PA. J. CONST. L. 1053.

100. Letter from Abigail Adams to John Quincy Adams (Mar. 20, 1787), in 8 ADAMS FAMILY CORRESPONDENCE 11–13 (Margaret A. Hogan et al. eds., 2005), <http://www.masshist.org/publications/adams-papers/index.php/view/ADMS-04-08-02-0007#sn=0> [<https://perma.cc/3S6Z-ULG2>].

101. 1 FARRAND’S RECORDS, *supra* note 5, at 288.

which hereditary magistrates could “represent” the people, so long as such magistrates had been “authorized” through tacit consent.¹⁰² Adams put the point this way in his *Defence of the Constitutions*:

An hereditary limited monarch is the representative of the whole nation, for the management of the executive power, as much as a house of representatives is, as one branch of the legislature, and as guardian of the public purse; and a house of lords, too, or a standing senate, represents the nation for other purposes, namely, as a watch set upon both the representative and the executive power. The people are the fountain and original of the power of kings and lords, governors and senates, as well as the house of commons, or assembly of representatives. And if the people are sufficiently enlightened to see all the dangers that surround them, they will always be represented by a distinct personage to manage the whole executive power.¹⁰³

Adams and Hamilton therefore saw nothing dissonant in the Royalist historiographical narrative that attributed the rise of a modern “system of liberty” to the momentous alliance between the king and the people.

Wilson, in contrast, had developed a very different understanding of representation. He agreed with Adams and Hamilton that any authorized magistrate could be said to represent the people; he, like Adams and Hamilton, therefore denied the Whig orthodoxy that only a representative assembly could represent the body of the people. But, unlike Adams and Hamilton, he argued that a people could only be said to have authorized a magistrate for whom they themselves have *voted*. It followed, for Wilson, that Great Britain was not, properly speaking, a “free state.”¹⁰⁴ If, as Wilson reasoned in the *Lectures on Law*, “the right of representing is conferred by the act of electing,”¹⁰⁵ then we must conclude that “the principle of representation” is confined to “a narrow corner of the British government.”¹⁰⁶ “The house of commons alone,” he announces, “represents, or is supposed to represent, the people at large.” The King and the lords do not, because neither is elected (a view which left Wilson’s earlier defense of the royal prerogative on very shaky ground indeed).¹⁰⁷ It is this conviction that explains Wilson’s

102. See NELSON, *supra* note 3, at 66–107; Eric Nelson, *Prerogative, Popular Sovereignty, and the American Founding*, in POPULAR SOVEREIGNTY IN HISTORICAL PERSPECTIVE 187 (Richard Bourke & Quentin Skinner eds., 2016).

103. 3 ADAMS, *DEFENCE*, *supra* note 46, at 367–68.

104. See 2 WILSON, *LECTURES ON LAW*, *supra* note 91, at 401.

105. *Id.* at 364.

106. *Id.* at 312.

107. Wilson tried to make room for an energetic monarchy by arguing that we owe obedience to the king, not because he represents us (he does not, because we have not elected him), but rather because he protects us, and “protection and obedience are the reciprocal bonds, which connect the Prince and his Subjects.” 2 WILSON, *supra* note 86, at 743. Here Wilson offers a straightforwardly Hobbesian characterization of the nature of political obligation—Hobbes famously declared that he had written *Leviathan* “without other designe, than to set before mens eyes the mutuall Relation between Protection and Obedience,” 3 THOMAS HOBBS, *LEVIATHAN* 1141 (Noel Malcolm ed., Oxford 2012) (1651)—but

striking remark that “the practical recognition,” the principle of popular sovereignty, was “reserved for the honor of this country [the new United States].”¹⁰⁸ The people of Great Britain, could not be regarded as sovereign because only one-third of their supreme legislature could claim to represent them. Because a hereditary monarch cannot represent the people, any “original contract” between king and nation must be taken to “exclude, rather than to imply delegated power.”¹⁰⁹ In other words, some share of political authority is *transferred* from the people to the King in Britain, whereas the totality of it is *derived* from the people in the United States.¹¹⁰ Only when all of those entrusted with the making of law are elected by the people can the people be said to be sovereign. And a people that is not sovereign is, by definition, subject to an alien power; such a people is unfree.

This commitment to popular sovereignty explains many of Wilson’s distinctive constitutional commitments—not least the fact that he zealously (and unsuccessfully) advocated for the direct election of both Senators and the President, whereas Adams and Hamilton remained completely undisturbed by the indirect election of these officials.¹¹¹ Wilson’s convictions perhaps also explain his idiosyncratic engagement with the discourse of the ancient constitution. Put simply, Wilson saw in the Saxon constitution a state organized entirely around voting. This view stood in contrast to the subsequent English mixed monarchy lionized by his allies:

The Saxons were called freemen, because they were born free from all yoke of arbitrary power, and from all laws of compulsion, except those which were made by their voluntary consent: for all freemen have votes in making and executing the general laws. The freedom of a Saxon consisted in the three following particulars. 1. In the ownership of what he had. 2. In voting upon any law, by which his person or property could be affected. 3. In possessing a share in that judiciary power, by which the laws were applied.¹¹²

This pristine constitution had also reserved the crucial powers of war and peace to the assemblies of freemen.

he refuses to endorse Hobbes’s conclusion, namely that by accepting the protection of a sovereign I *thereby make him my representative*. It is for this reason that Wilson gets into trouble: if the king is not my representative, then it follows that he does not have the right to speak and act in my name (recall that, on the authorization theory, a representative *just is* someone who has this right). If I am constrained to obey him notwithstanding this fact, then, by definition, I am dependent on an alien will and am therefore unfree.

108. 2 DEBATES IN THE SEVERAL STATES CONVENTIONS, *supra* note 42, at 456.

109. WILSON, LECTURES ON LAW, *supra* note 91, at 317.

110. *Id.* at 311, 317.

111. 1 FARRAND’S RECORDS, *supra* note 5, at 24, 68. See also 2 James Wilson, *Speech on Choosing the Members of the Senate by Electors*, reprinted in THE WORKS OF JAMES WILSON, *supra* note 86, at 781, 781–93; 1 WILSON, LECTURES ON LAW, *supra* note 91, at 411.

112. 1 WILSON, LECTURES ON LAW, *supra* note 91, at 400–01.

As the law is now received in England, the king has the sole prerogative of making war. On this very interesting power, the constitution of the United States renews the principles of government, known in England before the conquest. This indeed . . . be accounted the chief difference between the Anglo-Saxon and the Anglo-Norman government. In the former, the power of making peace and war was invariably possessed by the wittenagemote; and was regarded as inseparable from the allodial condition of its members. In the latter, it was transferred to the sovereign: and this branch of the feudal system, which was accommodated, perhaps, to the depredations and internal commotions prevalent in that rude period, has remained in subsequent ages, when, from a total change of manners, the circumstances, by which it was recommended, have no longer any existence.¹¹³

But Wilson's most fundamental claim is that the executive himself was always elected in Saxon period, and that, accordingly, the "elective," rather than hereditary title of "our first executive magistrate" should be understood to embody "a renewal, in this particular of the ancient English constitution."¹¹⁴ Here we reach the crux of Wilson's disagreement with Adams and Hamilton. Like them, Wilson was a strident supporter of prerogative power in the new executive—he too expected the new president to "stand the mediator between the intrigues & sinister views of the Representatives and the general liberties & interests of the people."¹¹⁵ But he regarded these prerogatives as compatible with American liberty and popular sovereignty only if wielded by an elected magistrate (ideally one chosen by direct election). His view was therefore almost as far from that of Adams and Hamilton as it was from the orthodox Whiggery of his anti-Federalist opponents. The former regarded any tacitly authorized magistrate as a representative of the people (whether elected or not), while the latter insisted that only an assembly that constituted a recognizable "image" of the people could represent them. Wilson, in contrast, argued that election grounded the right of representation, from which it followed that any agency elected by the people could represent them (whether one man, a small group, or a large assembly)—but *only* those who were so elected. The ancient constitution therefore remained for Wilson a potent political idyll, whereas his Federalist allies were unmoved by it.

CONCLUSION

Few Federalists troubled to make clear exactly which theory of authorization undergirded their claim that the new Constitution secured the sovereignty of the people—that is, whether, on their account, the President and Senate would represent the people in virtue of being elected by them in some attenuated sense (Wilson's theory), or in virtue of the fact that Americans would authorize all magistrates, however chosen, to act on their behalf by submitting to the

113. *Id.* at 433–34.

114. *Id.* at 346–57, 436.

115. 1 FARRAND'S RECORDS, *supra* note 5, at 230.

Constitution (Adams's and Hamilton's theory). In the context of the ratification debates, there was no need to address this question, since both theories of authorization delivered the desired result; each established that, pace the orthodox Whiggery of the Anti-Federalists, a single man, or a small group of men, could be said to represent the body of the people. But this strategic ambiguity on the part of the framers would have serious consequences for the future of American political thought. In particular, it would disguise the deep difficulties involved in Wilson's position. These had, however, been diagnosed with remarkable skill by the British pamphleteer (and friend of Bentham's) John Lind after the release of Wilson's *Considerations* in 1774. If it were true of free men, Lind explained,

[t]hat their own personal consent, or the personal consent of their representative is necessary [for legitimate legislation,] . . . it would follow, that no representative could be chosen but by the unanimous consent of every constituent, that no law could pass without the unanimous consent of every representative Yet this principle, pregnant with such fatal consequences, have many of the friends of America chosen as a shield to protect the colonies against the power of the British legislature. This principle has the same extravagance laid down as the corner stone of British freedom.¹¹⁶

In other words, the Wilsonian view that representation requires authorization, and that authorization requires voting, is tantamount to a defense of anarchy. For in every election there are citizens who vote for the losing candidate, and in almost every legislative controversy there are representatives who vote against the eventual law. If it is really the case that one cannot be represented by a magistrate for whom one has not voted, and that one cannot be said to have authorized a law for which one's representative has not voted, then it would appear that there are only two choices: to grant every citizen a veto over the election of representatives, and every representative a veto over the enactment of laws, or to accept that large numbers of citizens in representative democracies will not count as self-governing.¹¹⁷ Neither option is particularly attractive.

116. 1 JOHN LIND, REMARKS ON THE PRINCIPAL ACTS OF THE THIRTEENTH PARLIAMENT OF GREAT BRITAIN 66 (London, Mews Gate 1775).

117. A more complete version of the argument goes as follows: Suppose (1) representation requires authorization; and (2) authorization requires voting. Now, in any given assembly, each citizen has voted for a maximum of one member. Think of the U.S. House of Representatives: you will have voted for a maximum of one out of 435 members (a "maximum," because the one candidate for whom you voted might not have been elected. So very frequently you will have voted for zero members of the legislature). We learn from premise (2) that a maximum of one members of the legislature can be said to have been authorized by you; and from premise (1) that a maximum of one person may be said to represent you. The rest do not. It follows that a legislature can only be said to be acting in accordance with your will if it enacts the preferences of the one member for whom you yourself have voted. And only in such a case can you count as a free man. But this means that, on pain of unfreedom, each individual must be given a veto over the selection of his or her particular representative; and each representative must be given a veto over the acts of the legislature (i.e. that elections and legislative acts must always be unanimous). But this is anarchy, and therefore absurd.

The alternative is to argue that our authorization is conveyed not by voting, but rather by our continuing, tacit consent to be bound by whatever decisions emerge out of the institutional scheme under which we live (a scheme perhaps initially authorized by our forebears at a moment of original contract), whether we agree with these decisions or not, and whether the particular magistrates for whom we ourselves voted happen to support them or not. But if this is the case, then the argument delivers a momentous result: namely, that an unelected monarch might be the representative of the people. For why, on this account, am I more thoroughly “represented” by a majority of legislators for whom I have not voted than I am by a king for whom I have not voted? The authorization argument, despite Wilson’s best efforts, leads ineluctably away from the Saxon paradise.

What if Wilson replied as follows: “I don’t mean to claim that I must have voted for a particular candidate in order to have authorized him; I mean that I must have agreed to the ‘rules of the game’—i.e. to be governed by whichever individuals are chosen to rule by the set of institutions to which I have given my consent, whether I myself voted for them or not.” But then it turns out that you can be said to have authorized to speak and act in your name those for whom you have *not* voted (including hereditary magistrates). These people will count as your representatives. But this was precisely the conclusion that Wilson wished to resist.