

Golden Letters: James Wilson, the Declaration of Independence, and the Sussex Declaration

DANIELLE ALLEN AND EMILY SNEFF*

ABSTRACT

James Wilson probably commissioned of the Sussex Declaration, a ceremonial parchment manuscript of the Declaration of Independence produced in the U.S. and dating to the 1780s. We explicate Wilson's nationalism with a view to accounting for the full significance of the parchment. On this parchment, the names of the signatories are presented in such a fashion as to obscure their states of origin. The document supports the position that the new nation rested on the authority of a single national people rather than on the authority of federated states and may have been the text that Wilson used when he read the Declaration of Independence at the Constitutional Convention to make his argument about popular sovereignty.

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* Danielle Allen (Cambridge, MA) is James Bryant Conant University Professor at Harvard University and Director of Harvard's Edmond J. Safra Center for Ethics. She is the author of many books, including *Our Declaration: A Reading of the Declaration of Independence in Defense of Equality*. Emily Sneff (Williamsburg, VA) is a doctoral student at the College of William and Mary. Her scholarly work focuses on early American print and material culture, and she was research manager of the Declaration Resources Project at Harvard University from 2015-2018. We thank the West Sussex Record Office in Chichester, including Wendy Walker, Jenny Mason, Simon Hopkins, and Frances Lansley (who passed away in 2016). We also thank Olivia Goldberg for research assistance. For their expert opinions and guidance, we thank William Allen, Jonathan Clark, William Ewald, Eric Foner, David Gants, Jack Goldsmith, Edward Gray, Benjamin Irvin, Jane Kamensky, Alex Kidson, Benjamin Lyons, James McClure, Eric Nelson, Catherine Nicholson, Mary Beth Norton, Mark Philp, Steven Pincus, Mary Lynn Ritzenthaler, William Speck (who passed away in 2017), Patrick Spero, and Gordon Wood. All errors are our own. © 2019, Danielle Allen and Emily Sneff.

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INTRODUCTION

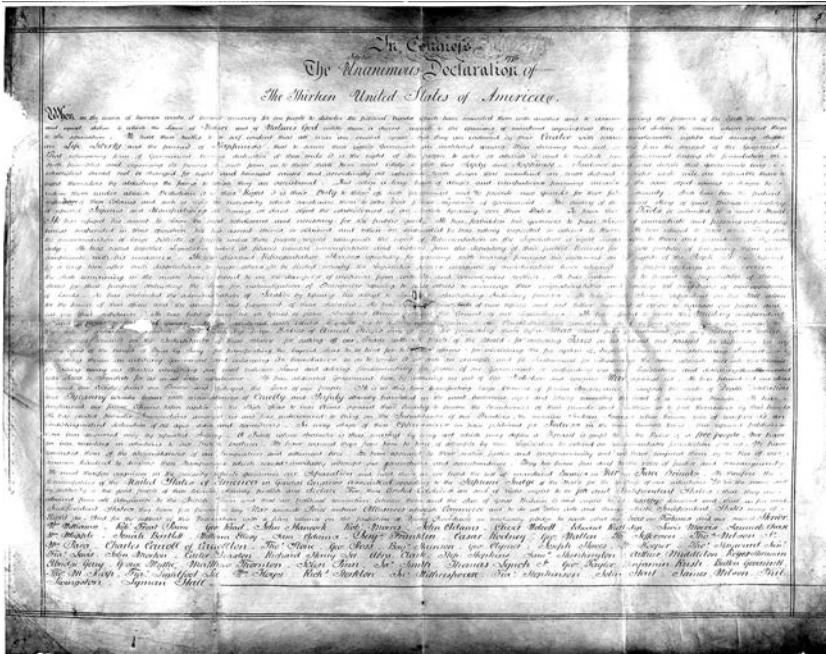
In our paper *The Sussex Declaration*, we describe, analyze, and date to the 1780s a previously unknown parchment manuscript of the Declaration of Independence, housed at the West Sussex Record Office in the United Kingdom and now known as the Sussex Declaration (figure 1).¹ At 24” x 30.5” this parchment is on the same ornamental scale as the only other known contemporary manuscript of the Declaration of Independence on parchment, the engrossed parchment at the National Archives in Washington, D.C. (the “Matlack Declaration”), which was signed by the delegates to Continental Congress. In contrast, the Sussex Declaration lists the signatories with all the names written in the hand of a single clerk. Most importantly, the Sussex Declaration departs from all other eighteenth century preparations of the Declaration in dispensing with state-by-state groupings for the list of signatories; indeed, the only nineteenth century edition that also dispenses with state-by-state groupings derives from the Sussex Declaration.² This detail is the single-most anomalous feature of the Sussex Declaration.

It is possible that the Sussex Declaration was held by Charles Lennox, Third Duke of Richmond, whose county seat is in Sussex, England. The Duke of Richmond was known as the “Radical Duke” for his support of the Americans during the Revolution. The parchment manuscript was deposited at the West Sussex Record Office along with other papers from the Dukes of Richmond’s law firm. The parchment is, however, American, and given its dating it is most likely to have been produced in New York or Philadelphia. The parchment may have been moved to England in the 1780s or 1790s, when the Third Duke could have received it. It is also possible that the parchment moved to England only after 1836, as an engraving was made of it, or an identical text, in Boston in that year. The preparation of this parchment manuscript is of high quality and the clerk employed a fine, mercantile hand. The large, legible text appears to have been prepared for display. But who commissioned this parchment and to what end?

1. Danielle Allen & Emily Sneff, *The Sussex Declaration: Dating the Parchment Manuscript of the Declaration of Independence Held at the West Sussex Record Office (Chichester, UK)* 112 PAPERS BIBLIOGRAPHIC SOC’Y AM. 357, 357–403 (2018).

2. This is the 1836 miniature engraved in Boston by L.H. Bridgham. See Allen & Sneff, *supra* note 1, at 357–403.

FIGURE 1. Sussex Declaration³



In this paper, we take up these questions.⁴ We argue that the likeliest candidate to have commissioned the parchment manuscript is James Wilson. Federalist, Supreme Court Justice, property speculator, and debtor, Wilson was one of only six men to sign both the Declaration of Independence and the Constitution. As we will show, Wilson did more than any other founder to activate the Declaration of Independence as foundational to the ideological origins of the new nation. No other figure in the early days of the democratic-republic, not even Thomas Jefferson or John Adams, relied as much on the Declaration of Independence as a support for the articulation of his political views. This should perhaps not be surprising since Wilson was the first person to draft a text that can be seen as a precursor to the Declaration of Independence. His *Considerations on the Nature and Extent of the Legislative Authority of the British Parliament*, originally written in 1768, but published in 1774, stands alongside John Adams' January 1776 *Proclamation [by the General Court of the colony of Massachusetts Bay,]* and

3. Sussex Declaration, obverse. (on file with West Sussex Record Office, Add. MSS. 8981).
 4. We leave to a separate paper the question of how the parchment travelled to England.

George Mason's May 1776 *Virginia Declaration of Rights* for Virginia's new constitution as a trial run for the language that eventuated in the all-important sentence beginning "We hold these truths to be self-evident."⁵ Notably, Wilson was the *only* founder to make the text of the Declaration central to his political work on domestic politics in the 1780s and 1790s.⁶ His reliance on the Declaration followed a concentrated period of study in state archives that he undertook in 1785 and 1786. We argue that the parchment is likely to have been commissioned by Wilson during the period of this archival work and as support for his persistent argument that the new nation rested on the authority of a unitary national people, not a federation of states. If our analysis is correct, then we will not only have identified the commissioner of the Sussex Declaration and the context of its use, but we will also have secured a more specific dating for the parchment to the years 1785–1787.

This analysis extends the important argument made by William Ewald about Wilson's significance to the constitutional moment and to the ideological origins of the new Constitution.⁷ Wilson had perhaps an even greater influence than Madison on core tenets of the document. In sum, this paper squarely addresses what Bernard Bailyn calls the third phase of the ideological history of the American Revolution. He describes that phase thus, and it is necessary to quote at length:

The third phase—the writing, debating, ratifying, and amending of the national constitution—resembles the second phase in that it was constructive and concentrated on constitution writing; many of the ideas that had been developed in the writing and discussion of the state constitutions were applied to the national constitution and further refined and developed. But in its essence this phase was distinct. For in the 1780's, under the pressure of rising social tensions, economic confusion pointing to the possible collapse of public credit, frustration in international affairs, and the threat of dissolution of the weak Confederation, the central task was reversed. Now the goal of the initiators of change was the creation, not the destruction, of national power—the

5. JAMES WILSON, CONSIDERATIONS ON THE NATURE AND EXTENT OF THE LEGISLATIVE AUTHORITY OF THE BRITISH PARLIAMENT in 2 COLLECTED WORKS OF JAMES WILSON 1, 21–33 (Kermit L. Hall & Mark David Hall eds., 2007) (1774), <http://oll.libertyfund.org/titles/wilson-collected-works-of-james-wilson-2-vols> [<https://perma.cc/BF6C-XURW>]; JOHN ADAMS, BY THE GREAT AND GENERAL COURT OF THE COLONY OF MASSACHUSETTS-BAY. A PROCLAMATION (1776), <https://www.masshist.org/database/964> [<https://perma.cc/JU85-KAL6>]; see also Danielle Allen, *John Adams' and Our Declaration*, HOUGHTON LIB. (June 2, 2017) <http://houghton75.org/2017/06/02/danielle-allen-john-adams-and-our-declaration/> [<https://perma.cc/FY95-EZSR>]; Va. Declaration of Rights (1776), https://avalon.law.yale.edu/18th_century/virginia.asp [<https://perma.cc/N22Q-NREQ>].

6. John Jay invoked the Declaration in his work in foreign affairs and also echoed Wilson's arguments in his own contribution as Chief Justice from the bench in *Chisolm v. Georgia*. Thanks to Benjamin Lyons for this point.

7. William Ewald, *James Wilson and the Drafting of the Constitution*, 10 U. PA. J. CONST. L. 901 (2008).

construction of what could properly be seen, and feared, as a *Machtstaat*, a central national power that involved armed force, the aggressive management of international relations, and, potentially at least, the regulation of vital aspects of everyday life by a government dominant over all other, lesser governments. The background experiences of constitution writing in the states were informative—they were constantly referred to in the Philadelphia convention and in the ratifying debates—but the central issue of 1787–88 was different in its nature from the main issues in the forming of the state governments, and diametrically opposite to the goals of the pre-Revolutionary years. Yet the pre-Revolutionary ideology was fundamental to all their beliefs. How could it be reconciled with present needs?⁸

As we detail in what follows, Wilson, the Scottish gentleman-lawyer from Philadelphia, sought an answer for this question in his writing on the subject of the Bank of North America and in his contributions both to congressional debates and debates in the Constitutional Convention. In all these texts, as we will show, he reconciled the anti-tyrannical pre-Revolutionary ideology with the need to justify a stronger central government by means of a distinctive interpretation of the Declaration of Independence, an interpretation that is supported among variants of the text only by the Sussex Declaration. Before we turn to a detailed analysis of the development of Wilson's use of the Declaration of Independence in the 1780s and his work with state archives in 1785 and 1786, we will begin with a cursory review of the life of the Declaration itself during the two decades following 1776.

I. THE AFTERLIFE OF THE DECLARATION OF INDEPENDENCE

The immediate afterlife of the Declaration of Independence, during the Revolution and the years following, was that of a legal artifact. In the young republic, it had no ceremonial presence. Wilson would, in 1786, argue for shifting attention in a ceremonial direction, but his was a solitary voice.⁹

After the Declaration was unanimously voted up on July 4, 1776, printed in broadside form by John Dunlap for distribution to foreign governments and the military, engrossed on parchment by the clerk Timothy Matlack, signed by the delegates in August 1776, and printed again in January 1777 in broadside form, this time by Mary Katherine Goddard, for the archives of each state, the Matlack Declaration was then stored with Congressional papers under the care of the Secretary of Congress. The Declaration was, of course, disseminated throughout the colonies in newspapers, other broadsides, and some books in 1776, and was

8. BERNARD BAILYN, *THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION* 324–25 (1967).

9. Wilson proposed hanging a ceremonial text of the Declaration in the Bank of North America in a pseudonymous text published in 1786. Philo-Spec, *Letter to Messrs. Hall and Sellers*, PA. GAZETTE, Dec. 6, 1786 (*See infra* Appendix 1).

read aloud in churches and at town hall meetings.¹⁰ In Massachusetts, the Commonwealth government legislated that every town should read the Declaration aloud and record having done so in their minutes. In January 1777, Robert Aitken also produced the second volume of the *Journals of Continental Congress*, for 1776, which included the text of the Declaration.¹¹ The new Delaware, Pennsylvania, Vermont and New York constitutions all drew on pieces of the Declaration; New Jersey's legislature proposed amendments to the Articles of Confederation drawing on its language.¹² Yet after this flurry of activity, the document largely disappeared from view. One can find newspaper accounts of Fourth of July celebrations in the years immediately following 1776, including lists of toasts made, but the text of the Declaration is quoted in none of these.¹³ The event of declaring independence was celebrated, but not the words themselves. Similarly, when Alexander Hamilton invoked the Declaration of Independence in an early judicial review case in New York, *Rutgers v. Waddington* (1784), he discussed the Declaration as a controlling legal act but did not invoke its language.¹⁴ We have no evidence of any use being made of the original papers of Congress until 1782, when Thomas Paine was given access to the archives for the purposes of writing a history of the Revolution, which he never completed.

As Eric Slauter has argued, the only people to make immediate use of the Declaration for further political purposes were abolitionists.¹⁵ African-American Prince Hall, in Boston, drew on the language of the Declaration in putting a

10. John Holt printed the Declaration of Independence as a separate sheet in *The New-York Journal* on July 11, 1776 "to oblige a number of our Customers, who intend to separate it from the rest of the paper, and fix it up, in open view, in their Houses, as a mark of their approbation of the INDEPENDENT SPIRIT of their Representatives." John Holt, *A Declaration by the Representatives of the United States of America in General Congress Assembled*, N.Y.J., July 11, 1776.

11. 2 JOURNALS OF THE CONTINENTAL CONGRESS 1774–1789 (Gaillard Hunt ed., William S. Hein & Co. 2007) (1904–1937).

12. For New York ("in the name and by the authority of the good people," as well as the full text of the Declaration), see N.Y. CONST. (Apr. 20, 1777), https://avalon.law.yale.edu/18th_century/ny01.asp [<https://perma.cc/UKX2-QGS8>]. For Delaware, Pennsylvania, and Vermont ("to do all other acts and things which Independent States may of right do"), see John Mikhail, *The Necessary and Proper Clauses*, 102 GEO. L.J., 1045 (2014). For New Jersey ("In the memorable Act of Congress, declaring the United Colonies free and independent States, it is emphatically mentioned, as one of the Causes of Separation"), THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION, 87 (Jonathan Elliot ed., 1836).

13. See, e.g., PA. EVENING POST, July 3, 1777; BOSTON-GAZETTE, & COUNTRY J., July 6, 1778; PA. PACKET, July 4, 1778 (supplement); PA. GAZETTE, July 7, 1779; PA. J., July 7, 1781; PA. GAZETTE, July 10, 1782; CONN. J., July 18, 1782; PA. EVENING POST, & PUB. ADVERTISER, July 5, 1783; PA. GAZETTE, July 9, 1783; PA. EVENING HERALD & AM. MONITOR, July 6, 1785; PA. HERALD, & GEN. ADVERTISER, July 14, 1787; PA. J., July 14, 1787.

14. HENRY B. DAWSON, THE CASE OF ELIZABETH RUTGERS VERSUS JOSHUA WADDINGTON: DETERMINED IN THE MAYOR'S COURT IN THE CITY OF NEW YORK (Morrisania, N.Y., Bradstreet Press 1866), <https://archive.org/details/caseofelizabthr00rutg> [<https://perma.cc/V5U6-5W5A>].

15. ERIC SLAUTER, THE DECLARATION OF INDEPENDENCE AND THE NEW NATION 27–28 (2009).

petition for abolition to the Commonwealth government in January of 1777.¹⁶ The decisions of Vermont and Massachusetts to abolish slavery, accomplished by 1781, referenced the opening sentences of the Declaration. But in neither of these cases was the Declaration extensively quoted; rather the quotations were glancing—a few words or a phrase.¹⁷ Pennsylvania’s 1780 “Act for the Gradual Abolition of Slavery” echoed ideas in the Declaration without echoing phrases.¹⁸

Indeed, publication of the text in the years from 1777 through 1790 was almost exclusively legal, beginning with the *Journals of the Continental Congress* printed by Robert Aitken as well as John Dunlap. In 1781, Congress ordered Francis Bailey to print a volume of state constitutions, the Declaration of Independence and the newly ratified Articles of Confederation.¹⁹ This launched a new tradition of producing compendia of the fundamental laws of the land.²⁰ All

16. “The petition of A Great Number of Blackes detained in a State of Slavery in the Bowels of a free & christian Country Humbly shuwith that your Petitioners Apprehend that They have in Common with all other men a Natural and Unaliable Right to that freedom which the Grat-Parent of the Unavese hath Bestowed equalley on all menkind and which they have Never forfeuted by Any Compact or Agreement whatever – but thay wher Unjustly Dragged by the hand of cruel Power from their Derest frinds and sum of them Even torn from the Embraces of their tender Parents—from A popolous Plasant And plentiful cuntry And in Violation of Laws of Nature and off Nations And in defiance of all the tender feelings of humanity Brough hear Either to Be sold Like Beast of Burthen & Like them Condemnd to Slavery for Life – among A People Profesing the [mild?] Religion of Jesus A people Not Insensible of the Secrets of Rationable Being Nor without spirit to Resent the unjust endeavours of others to Reduce them to A state of Bondage and Subjection” Prince Hall, Petition for Freedom to the Massachusetts Council and the House of Representatives, (Jan. 13, 1777) (on file with the Massachusetts Historical Society), <http://www.masshist.org/database/557> [<https://perma.cc/CGW2-X8FG>].

17. See MASS. CONST. art. I. (“All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.”); VT. CONST. pmbl. (1777), https://avalon.law.yale.edu/18th_century/vt01.asp [<https://perma.cc/GC6A-YAR2>] (“WHEREAS, all government ought to be instituted and supported, for the security and protection of the community, as such, and to enable the individuals who compose it, to enjoy their natural rights, and the other blessings which the Author of existence has bestowed upon man; and whenever those great ends of government are not obtained, the people have a right, by common consent, to change it, and take such measures as to them may appear necessary to promote their safety and happiness.”); *id.* at art. I. (“THAT all men are born equally free and independent, and have certain natural, inherent and unalienable rights, amongst which are the enjoying and defending life and liberty; acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety. Therefore, no male person, born in this country, or brought from over sea, ought to be holden by law, to serve any person, as a servant, slave or apprentice, after he arrives to the age of twenty-one Years, nor female, in like manner, after she arrives to the age of eighteen years, unless they are bound by their own consent, after they arrive to such age, or bound by law, for the payment of debts, damages, fines, costs, or the like.”).

18. Act for the Gradual Abolition of Slavery (Mar. 1, 1780), in DIGEST OF THE LAWS OF PENNSYLVANIA 740 (John Purdon ed., 5th ed. 1837), http://avalon.law.yale.edu/18th_century/pennst01.asp [<https://perma.cc/VU95-DNTL>].

19. THE CONSTITUTIONS OF THE SEVERAL INDEPENDENT STATES OF AMERICA; THE DECLARATION OF INDEPENDENCE; THE ARTICLES OF CONFEDERATION BETWEEN THE SAID STATES; THE TREATIES BETWEEN HIS MOST CHRISTIAN MAJESTY AND THE UNITED STATES OF AMERICA (Philadelphia, Francis Bailey 1781).

20. Bailey published a volume of the laws of Pennsylvania in 1782, by order of the Pennsylvania Assembly, which also included the Declaration. FRANCIS BAILEY THE ACTS OF THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA (1782). Over several editions in the 1780s, Samuel Loudon printed *The Constitution of the State of New-York* and included the Declaration. Other volumes of state

of these texts were utilitarian, not ornamental; their purpose was simply dissemination of the law.

Only in 1786, at the tenth anniversary of independence, did Americans begin to look to the Declaration in a modestly ceremonial fashion. In this year, Dunlap began to print the Declaration in his newspaper on or around July 4 on a nearly annual basis. Also in 1786, in a newspaper article, James Wilson conjured up a vision of a version of the Declaration of Independence with golden lettering hanging on the walls of the Bank of North America.²¹ His vision for the ceremonial use of the Declaration was by far the most elaborate to emerge that year, and it is not clear that his compatriots took up his call. Eighteen months later, on July 4, 1788, when the young democratic-republic celebrated both its twelfth anniversary and the recent crossing of the nine state threshold for ratification of the new Constitution, Philadelphia sponsored a mammoth parade and public festival. Newspapers described the “grand federal procession” in immense detail, with descriptions of each float and even detail about the food and drink provisioned to the crowd.²² The parade included a float on which the text of the Constitution was borne aloft.²³ No similar treatment is recorded as having been given to the Declaration. Indeed, there are no explicit mentions of that text in the written descriptions of this Fourth of July event.

Wilson, however, ensured that the Declaration’s tones were felt. He was the orator for the evening and in his words, we hear echoes of the Declaration.²⁴ The Declaration asserted that “a decent respect to the opinions of mankind” required the colonists to declare the “causes which impel[led] them to the separation.”²⁵ In his remarks, Wilson said about the Constitution:

constitutions inclusive of the Declaration include Elisha Babcock’s 1786 *Acts and Laws of the State of Connecticut* and Adams and Nourse’s 1789 *Perpetual Laws of the Commonwealth of Massachusetts*. Volumes similar to Bailey’s 1781 *Constitutions of the Several Independent States* were also printed in Boston by Norman and Bowen in 1785 and by Oswald in New York in 1786.

21. “The walls, instead of being adorned with pictures and maps, were hung with the ordinances of public bodies—at the upper end of the hall was the *bill of rights*, and *frame of government*, and *declaration of independence*. I could not but observe, that that part of the latter, which assigned the abolition of our charters as a reason for dissolving our connection with Great-Britain, was written in golden letters.” James Wilson, PA. GAZETTE (Dec. 6, 1786) (*See infra* Appendix 1).

22. 4 THE AMERICAN MUSEUM, OR REPOSITORY OF ANCIENT AND MODERN FUGITIVE PIECES, &C. PROSE AND POETICAL 57 (Mathew Carey ed., 1788), <https://archive.org/details/americanmuseumor04care> [<https://perma.cc/9K78-FU9R>]; *see id.* at 57–78 (for account of procession), 58 (for description of Constitution).

23. “The honourable chief-justice M’Kean, the hon. judge Atlee, the honourable judge Rush (in their robes of office) in a lofty, ornamental car, in the form of a large eagle, drawn by six horses, bearing the constitution, framed, and fixed on a staff, crowned with the cap of liberty. The words, ‘*the people*,’ in gold letters, on the staff, immediately under the constitution.” *Id.* at 59. Given Wilson’s vision of gold lettering on the Declaration and his commitment to the concept of “the people,” one is tempted to infer his influence behind the design of this float.

24. James Wilson, Oration Delivered on the Fourth of July 1788, at the Procession Formed at Philadelphia to Celebrate the adoption of the Constitution of the United States, in 1 COLLECTED WORKS OF JAMES WILSON 285 (Kermit L. Hall & Mark David Hall eds., 2007).

25. THE DECLARATION OF INDEPENDENCE (U.S. 1776)

“A decent respect for those who have accepted it, will lead us to presume that it is worthy of their acceptance.”²⁶ As we will see, his routine argument about the Declaration of Independence was that it grounded a new polity on the authority of a unitary people. In this speech, he declared: “All the derivative movements of government must spring from the original movement of the people at large. If to this they give a sufficient force and a just direction, all the others will be governed by its controlling power.”²⁷ And he concluded his peroration on the keystone of the Declaration’s own architecture: “Happy country! May thy happiness be perpetual!”²⁸ He had internalized the text of the Declaration of Independence by 1788 and made it simply a part of his ordinary vocabulary and cadences.

Yet Wilson, for all his influence on the Constitutional Convention, as detailed effectively by Ewald, did not shift the broader public tendency to treat the Declaration as legal, not iconic. Even after the ratification of the Constitution, the non-ceremonial, utilitarian treatment of the Declaration perdured. From 1785 on, the Matlack parchment of the Declaration of Independence was in New York City, in the care of Charles Thomson, Secretary of the Congress. During these years, the engrossed and signed parchment was not available to printers in Philadelphia for consultation. Nor were the official documents generally accessible even to those in New York. As we have seen, Thomas Paine accessed the archives. So did Wilson, as we will detail below. And, in 1784, Congress passed a resolution granting access to a Dr. William Gordon to do research in the papers of Congress’s Secretary.²⁹ But with the ratification of the Constitution and the removal of the government from New York to Philadelphia in 1790, the new government opened up the archives, offering broader support of efforts to produce authoritative versions of the country’s founding legal instruments. The printers to the federal government in New York, Childs and Swaine, considered relocation of their business to Philadelphia, but decided against it; therefore, new printers were needed for the routine business of disseminating new acts and laws. In 1791, printers scrambled for access, petitioning Secretary of State Thomas Jefferson for a chance to review the original documents.³⁰ In making a

26. Wilson, *supra* note 24, at 287.

27. *Id.* at 293.

28. *Id.* at 293.

29. 27 JOURNALS, *supra* note 11, at 427–28, <https://memory.loc.gov/ammem/amlaw/lwjc.html> [<https://perma.cc/C2T2-MSGM>].

30. Letter from Thomas Jefferson to Congress (Feb. 5, 1791), in 19 THE PAPERS OF THOMAS JEFFERSON, 251–52 (Julian P. Boyd ed., 1974), <https://founders.archives.gov/documents/Jefferson/01-19-02-0028> [<https://perma.cc/M2FL-UW5U>]; Letter from Childs & Swaine to Thomas Jefferson (Jan. 27, 1791), in 19 THE PAPERS OF THOMAS JEFFERSON, 115–16 (Julian P. Boyd ed., 1974), <https://founders.archives.gov/documents/Jefferson/01-19-02-0006> [<https://perma.cc/ADQ4-ZS67>] (“The late application of Mr. Brown to Congress which has been referred to you, induces us respectfully to state, That sometime in December last, we commenced the publication of a new or Second edition of the Acts of Congress passed at the first session; that this publication is nearly completed, and that another, smaller edition, is considerably advanced upon; that it is our intention to publish like editions of the Acts, Treaties &c. of the Second Session, and so to continue for the present and all future Sessions like

recommendation to Congress to open the archives to the printers, Jefferson explained the labor involved in producing authoritative texts of the founding instruments, the importance of providing access, and the value of a private-public partnership as a mode for doing so. The passage is of such importance for our understanding of the textual tradition of the Declaration that it is worth quoting at length:

The Secretary of State [Thomas Jefferson] observes, that there exists, at present, but a single edition of the laws of the United States, to wit, the one printed by Childs and Swaine: that this edition is authentic, the proof-sheets thereof having been carefully collated by sworn clerks, with the original rolls, in his office, and rendered literally conformable therewith. That the first volume of this edition can now rarely be found, the copies originally printed, being mostly disposed of. That it is desirable that copies of the laws should be so multiplied throughout the States, and in such cheap forms, as that every citizen of the United States, may be able to procure them. That it is important also, that such publications be rendered authentic, by a collation of the proof-sheets with the original rolls, by sworn clerks, when they are printed at the seat of government, or in its neighbourhood, and by a collation of the whole work, when printed at a distance, and a certified correction of its typographical errors annexed to each volume. That this, however, if done at the public expence, would occasion an inconvenient augmentation of the number of clerks, as the act of collation requires the presence of three clerks, one to hold the roll, a second a printed copy already authenticated, and a third the proof-sheet. That it would be more reasonable, that persons of confidence should be employed at the expence of the editor, to be named and sworn as clerks, for the special occasion. That, in this way, he is of opinion, it will be advantageous to the public to permit, that the laws to be printed by the Memorialist, be collated with, and corrected by the original rolls, and that a certificate thereof, by the Secretary of State, be annexed to the edition.³¹

From this passage, we learn several important things. First, the *Journals of the Continental Congress* from 1777 were no longer relevant as the basic source for the law of the land. They had been displaced by the need for compendia that included the Constitution and a growing number of state constitutions. Second, as of 1791, Jefferson's view was that the basic state documents had not, as of yet, been adequately disseminated. The result of the commercial interest of the Philadelphia and New York printers in gaining the federal government's new business and disseminating the Constitution is that three different compendia

publications as they shall become necessary:—From whence we beg leave to submit, how far the result of any decision on Mr. Brown's case may include ours, or others similar thereto, or establish any particular or exclusive indulgence in his favor. Being with every sentiment of the most perfect regard and esteem, Sir, Your most obedt. and very hble. Servts.”)

31. Letter from Thomas Jefferson to Congress, *supra* note 30.

were published in 1791, all of which included the Declaration of Independence. John Dunlap also took advantage of the new openness to check and correct his list of signatories in advance of his 1793 annual Fourth of July newspaper printing of the Declaration.³² None of these texts was ornamental or ceremonial. The goal in this phase was to produce authoritative editions worthy of broad dissemination.

From this brief history of the life of the Declaration of Independence, several facts appear. In the 1770s and 1780s, the Declaration was treated as primarily a legal document, not a ceremonial text. Most Americans did not have any access to the text itself in the first fifteen years after Independence. Members of Congress and members of some state assemblies would have had access to the text in their compendia of laws, but even for them, securing those texts would have been a matter of some difficulty. By the late 1780s, there do not appear to have been many copies of the Declaration in circulation.

We have to understand Wilson's own work in the Congressional archives against this backdrop. Over the course of the summer of 1785, as he prepared his important pamphlet, *Considerations on the Bank of North America*, and through the spring of 1786, Wilson made multiple requests of Charles Thomson, Secretary of Congress, for access to the state papers. In July 1785, he sought documents pertaining to the 1781 appointment of Robert Morris as the Superintendent of Finance.³³ In September of 1785, Thomson delivered to Wilson: "a sett of the Journals of Congress from the year 1774 to the 25th August 1785 (77 & 80 excepted)."³⁴ It is striking that Wilson, who had by then served in Congress for more than three years (noncontinuously: 1775–1777, 1783, and 1785–1786), would have needed to special order these journals, which did include a text of the Declaration. This reveals how limited access was to archival material. Then, in May 1786, just after Wilson had left New York and Congress for the final time, Thomson wrote to ask him what he had done with the copy of *Sheridan's Account of the Revolution in Sweden*, which he had apparently

32. He appended this note to his printing: "In several former publications of the declaration of Independence, the list of names was taken from the *Journals of the House of Representatives of the Commonwealth of Pennsylvania Vol I.* wherein there appears to have been a material omission in the list of names, by leaving out that of *Thomas McKean*, our present Chief Justice of the State of Pennsylvania. In order to prevent any further misrepresentation on that head, we have searched for the *Original Instrument* in the office of the Secretary of State for the United States, and there found *Mr. McKean's* name amongst the signers to that great and glorious Record! We now give the list of names from the original parchment." John Dunlap, DUNLAP & CLAYPOOLE'S AM. DAILY ADVERTISER, July 4, 1793.

33. Letter from Charles Thomson to James Wilson (July 11, 1785), in 22 LETTERS OF DELEGATES TO CONGRESS (Paul H. Smith et al. eds., 1976–2000), [https://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field\(DOCID+@lit\(dg022420\)\)](https://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field(DOCID+@lit(dg022420))) [<https://perma.cc/9H9S-UTBS>].

34. Charles Thomson's Memorandum Book (Sep. 16, 1785), in 22 LETTERS OF DELEGATES, *supra* note 33, [https://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field\(DOCID+@lit\(dg022539\)\)](https://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field(DOCID+@lit(dg022539))) [<https://perma.cc/A9ME-TK9V>].

borrowed.³⁵ Thomson also wrote, “I received your Note of Saturday last and thank you for your care in forwarding the box,” indicating that just before he left New York, Wilson returned something to Congress’ secretary; what it was we do not know.³⁶ Yet it is precisely in this period of time that Wilson expressly introduced the Declaration into his political arguments for the first time. It was one of the documents that he was studying. As we will see momentarily, he was not willing to rely exclusively on the text of the Declaration published in the *Congressional Journals*.

In the 1770s and 1780s, then, the afterlife of the Declaration was primarily legal, although it also received some archival use. James Wilson was a rare voice in also proposing that it receive ceremonial treatment, which he did, as we have seen, by conjuring up in a newspaper article a vision of the text embossed with golden letters and hanging in the halls of the Bank of North America.

II. JAMES WILSON’S POLITICAL PHILOSOPHY, 1774–1783

Wilson was well-educated, especially in the texts of the Scottish Enlightenment. He had studied at St Andrews before he came to America in 1765 at the age of twenty-one. In Philadelphia, he quickly formed connections to John Dickinson and Benjamin Franklin, both of whom in various ways provided him with further intellectual mentorship. Wilson gained attention at the age of thirty-two for a 1774 pamphlet, *Considerations on the Nature and Extent of the Legislative Authority of the British Parliament*, in which he argued that Parliament did not have authority to legislate for the colonies.³⁷ By the time he served in the Constitutional Convention, he was recognized as the most learned man there, more learned even than Madison, nine years his junior.³⁸

Like Thomas Jefferson, who admired his 1774 pamphlet, Wilson was one of the youngest members of Continental Congress as that body deliberated upon the subject of independence in 1776. He sought to slow down the vote for independence and was willing to serve as a lawyer for a set of Philadelphia loyalists who were charged with treason.³⁹ In addition, he opposed the proposal for a unicameral constitution for Pennsylvania.⁴⁰ These features of his biography have led to a commonplace view of Wilson as one of the wealthy, conservative participants in the Revolution. In fact, as Ewald shows, this portrays Wilson erroneously, even in relation to these specific events.⁴¹ At this point, he was already deploying one

35. Letter from Charles Thomson to James Wilson (May 31, 1786), in 23 LETTERS OF DELEGATES, *supra* note 32, [https://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field\(DOCID+@lit\(dg023275\)\)](https://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field(DOCID+@lit(dg023275))) [<https://perma.cc/DJS7-JAYU>].

36. *Id.*

37. *Supra* note 5.

38. Ewald, *supra* note 7, at 912.

39. For vote for independence, see CHARLES SMITH, JAMES WILSON: FOUNDING FATHER, 1742–1798, at 78–89 (1956). For lawyer for loyalists, see Ewald, *supra* note 6, at 906–07.

40. SMITH, *supra* note 39, at 109.

41. Ewald, *supra* note 7, at 926–27 n.57.

of the most forward-looking philosophies of any of the participants in Congressional debates. As would become clear by the end of the Constitutional Convention, Wilson steadily and consistently “pinned his hopes on popular sovereignty, on a consistent principle of one-person-one-vote, and on a functional separation of competencies between the various actors in the [c]onstitutional scheme.”⁴² The Philadelphia delegation was dangerously close to voting against independence; Wilson delayed, seeking room to maneuver to bring them round.⁴³ The unicameral legislature without an executive failed to separate competencies. Wilson had a vision not only of the desirability of independence but also of the arrangements of political powers that would be necessary to erect a stable government in the wake of independence. This clarity of vision about how to build stable political institutions is what emerges most powerfully from the record of his efforts in the 1780s.

Although the delegates to Continental Congress began work on the Articles of Confederation simultaneously to their drafting of the Declaration in the summer of 1776, they were not able to achieve ratification until March 1781. By the time the Articles were ratified, the document’s authority was tenuous, with voices already raised for a revision. The challenges of financing the war had quickly brought a number of economic and political issues to a head and surfaced the weaknesses of the institutional design of the Articles. Alexander Hamilton made the most strenuous early pitch for having a constitutional convention in September 1780, and he was followed in this by the New York state legislature as early as 1782, which called for a “general convention of the States,” heaping criticism on the financial affairs of the new nation.⁴⁴

The core of the problem was that the Articles of Confederation gave the federal government no independent source of revenue. Congress and Washington, at the head of the army, had to rely on contributions from the states. Yet states, too, were ineffective in raising taxes and inconsistent in paying their contributions to the confederation. The government’s basic ability to pay and feed its army and to raise supplies for the war effort was in question throughout the war. Moreover, trade deficits generated a shortage of specie (gold and silver), which spurred states to increase their printing of paper money, thereby driving runaway inflation: “The amount of flour that one hundred pounds in paper currency could buy

42. *Id.* at 1007.

43. An account certified by other members of Congress details Wilson’s position: “that he believed a Majority of the People of Pennsylvania were in Favour of Independance, but that the Sense of the Assembly (the only representative Body then existing in the Province) as delivered to him by their Instructions was against the Proposition, that he wished the Question to be postponed, because he has Reason to believe the People of Pennsylvania would soon have an Opportunity of expressing their Sentiments upon this Point, and he thought the People ought to have an Opportunity given them to Signify their opinion in a regular Way upon a Matter of such Importance” *James Wilson’s Conduct in Congress* (Jun. 20, 1776), in 4 LETTERS OF DELEGATES, *supra* note 33, [https://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field\(DOCID+@lit\(dg004206\)\)](https://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field(DOCID+@lit(dg004206))) [<https://perma.cc/S2LT-CK5Z>].

44. THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION (John P. Kaminski et al. eds., 2009), <https://rotunda.upress.virginia.edu/founders/RNCN> [<https://perma.cc/6PDK-SP6T>].

dropped from 143.3 hundredweight in 1776 to 83.8 in 1777, 63.2 in 1778, 6.67 in 1779, 1.15 in 1780, and .71 in 1781.”⁴⁵ The economic challenges affected the war effort and political stability, of course, but also commercial activity and the prospect of domestic prosperity. As Silas Deane wrote to James Wilson in 1780, Congress’s “chronic inability to put its financial affairs in order had . . . shaken all faith in the integrity and character of America.”⁴⁶

Like Hamilton, Wilson was very concerned by this state of affairs. Well-read in Scottish political economy, he sought to help the young country develop a banking system to secure public credit.⁴⁷ Shortly after the loss of Charleston, South Carolina, to the British in May 1780, Wilson, Thomas Willing, and Robert Morris rolled out a plan for the Bank of Pennsylvania.⁴⁸ In July, the bank opened its doors, almost fully subscribed, with both subscribers and the bank committing that all funds taken in by the bank would support the war effort. The bank was relevant not merely as a provider of capital; its backers saw it as an instrument for improving fiscal policy generally. In the Pennsylvania Assembly in November 1780, Wilson argued for the introduction of three taxes: a tax on real and personal estates, an import tax, and an excise tax.⁴⁹ These, Wilson argued, would enable Pennsylvania to pay its war debt, and now there was a bank that could put such revenue to work in the economy. The Assembly rejected Wilson’s arguments, but his effort gives us a window into his early political thinking. He recognized public revenue as necessary to stabilize the new government and sought from 1780 onward to build a stable system of taxation, compatible with a government resting on popular sovereignty. There are also traces of evolution in his thought over the course of this work on the Bank of Pennsylvania. When Wilson drafted his 1780 plan for the Bank of Pennsylvania, in his introduction he initially referred to “republican governments” but then changed that to “democratic.”⁵⁰

Immediately upon the heels of erecting the Bank of Pennsylvania, Wilson, Morris, Hamilton, and others turned toward the building the Bank of North America. Robert Morris, the Superintendent of Finance for the United States, submitted a plan in 1781, and Congress approved it quickly, chartering the Bank formally in December, a few months after the short-lived Bank of Pennsylvania had closed. Incorporated in Pennsylvania, the new national Bank opened its doors in 1782, and Congress resolved that,

45. THOMAS M. DOERFLINGER, *A VIGOROUS SPIRIT OF ENTERPRISE: MERCHANTS AND ECONOMIC DEVELOPMENT IN REVOLUTIONARY PHILADELPHIA* 200 (1986).

46. SMITH, *supra* note 39, at 141.

47. As an example of Wilson’s learning, take the following record from the Congress of the Confederation: “Mr. Wilson was against the motion of Mr. Rutledge; observed that *no instance occurred in the British history of finance* in which distinct appropriations had been made to distinct debts already contracted . . .” *February 19, 1783*, in 5 *DEBATES IN THE SEVERAL STATE CONVENTIONS*, *supra* note 12, <https://memory.loc.gov/ammem/amlaw/lwed.html> [<https://perma.cc/Q6X4-S378>] (emphasis added).

48. SMITH, *supra* note 39, at 142–44.

49. *Id.* at 144.

50. *Id.* at 142.

[N]o other bank or bankers shall be established or permitted within the said states respectively during the war . . . notes hereafter to be issued by the said bank, payable on demand, shall be receivable in payment of all taxes, duties and debts due, or that may become due or payable to the United States.⁵¹

Aiming to shore up the finances of the thirteen-state confederation, leading politicians moved quickly to link up the Bank and the tax system in the states. In December 1781, Massachusetts passed a law that all notes or bills issued from the bank would be receivable in the payments of taxes, debts, and duties. In January 1782, Rhode Island legislated that it would be a felony to counterfeit Bank of North America notes. In the same month, Connecticut enacted a tax that would be payable in money or notes issued by the directors of the national bank. In March, Pennsylvania also passed an act for preventing and punishing the counterfeiting of Bank of North America notes.⁵² Thus a national monetary structure began to come into existence, and the Bank stepped into the role of *de facto* central bank.

The Federalists who backed the new Bank of North America, however, had powerful adversaries. The effort to shore up national finances with a national bank and its bank notes introduced further stresses. The benefits accrued largely to the merchant class on the coasts. As coastal merchants sought repayment of debts from farmers, who themselves still had insufficient access to currency, the economic challenges polarized the political community. The more radical Western farmers became powerful antagonists of the Bank, in a set of dynamics that would lead eventually to the Paper Money Riot in New Hampshire in 1786 and to Shay's Rebellion in Massachusetts in 1786–1787. The bank had been in existence scarcely a year when, in 1783, a group of Philadelphians, seeking to break the Bank's monopoly, sought to launch a new Bank of Pennsylvania.⁵³ In addition, the efforts of each state to raise funds on its own behalf as part of the effort to deal with war-debt was leading to a tariff war among them. The provisions of the Articles of Confederation that were intended to forestall such a thing were giving way to the press of necessity.

The *Journal of the Continental Congress* for January through March 1783, just before the signing of the Paris Treaty, reveals a set of extraordinary debates about the finances of the new nation, and their great instability. As members of Congress tried to find revenue and determine which creditors to pay—soldiers or states that had incurred expenses for the war—their arguments previewed those that would define the Constitutional Convention four years later. How could states that were geographically more distant from Congress and thus had not been able to tap into the public coffers during the war receive fair recompense? And,

51. 20 JOURNALS, *supra* note 11, at 547.

52. See generally JAMES WILSON, CONSIDERATIONS ON THE BANK OF NORTH AMERICA, *reprinted in* 1 COLLECTED WORKS OF JAMES WILSON 60, 66 (Kermit L. Hall et al. eds., 2007) (1798).

53. SMITH, *supra* note 39.

of course, none could be compensated if none had contributed. This generated another set of questions. How should the responsibility to fill the national purse be allocated? Should there be an assessment of the value of the land in each state as a way of measuring what they should contribute? Should their populations be counted? If so, how should enslaved people be treated? What authority did the national government have anyway to draw tax revenue from the states?

Wilson stepped into this mix with arguments on behalf of the authority of the national government and on behalf of equity (but no more than equity) for the states. Wilson was the most radical, proposing a national tax and offering specifics: “Mr. Wilson proposed that returns of the quantity of land & of the number of inhabitants in the respective States sd. be obtained, and a rule deduced from the combination of these data.”⁵⁴ On January 27, 1783, he argued:

Some more effectual mode of drawing forth the resources of the Country was necessary. That in particular it was necessary that such funds should be established as would enable Congress to fulfill those engagements which they had been enabled to enter into. It was essential he contended that those to whom were delegated the power of making war & peace should in some way or other have the means of effectuating these objects; that as Congress had been under the necessity of contracting a large debt justice required that such funds should be placed in their hands as would discharge it; that such funds were also necessary for carrying on the war; and as Congress found themselves in their present situation destitute both of the faculty of paying debts already contracted, and of providing for future exigencies, it was their duty to lay that situation before their constituents; and at least to come to an *éclaircissement* on the subject, he remarked that the establish. of certain funds for paying wd. set afloat the public paper; adding that a public debt resting on general funds would operate as a cement to the confederacy, and might contribute to prolong its existence, after the foreign danger ceased to counteract its tendency to dissolution. He concluded with moving that it be Resold. “That it is the opinion of Congress that complete justice cannot be done to the Creditors of the United States, nor the restoration of public credit be effected, nor the future exigencies of the war provided for, but by the establishment of general funds to be collected by Congress.”⁵⁵

The final two words of Wilson’s resolution, “by Congress,” occasioned great controversy. They proposed a role for the central government—the direct collection of taxes—that few other members of Congress at that time were willing to countenance. The debate would have driven home to Wilson the degree to which his focus on strengthening a central government diverged from the preferences of his colleagues to defer to the power of the state governments. On the following day, he made this point explicit, arguing “that the power given to Congress by

54. 24 JOURNALS, *supra* note 11, at 855.

55. *Id.* at 867–68.

that Act was too little, not too formidable, that there was more of a centrifugal than centripetal force in the States and that the funding of a common debt in the manner proposed would produce a salutary invigoration and cement of the Union."⁵⁶ When an amended version of Wilson's resolution finally passed on the 29th, the phrase, "by Congress," had fallen out.

As Congress sought to operationalize what they did vote for—namely, "the establishment of permanent and adequate funds on taxes or duties which shall operate generally and on the whole in just proportion throughout the United States"—the difficulties continued, and so did the arguments.⁵⁷ Finally, on March 27, Wilson provided a capsule account of his basic view:

Mr. Wilson said he had always considered this Country with respect to the war as forming one community; and that the States which by their remoteness from Congs, had been obliged to incur expences for their defence without previous sanction, ought to be placed on the same footing with those which had obtained this security; but he could not agree to put them on a better which wd. be the case if their expenses should be sanctioned in the lump; he proposed therefore that these expences sd. be limited to such as had been incurred in a necessary defence; and of which the object in each case should be approved by Congress.⁵⁸

In saying that he had "always considered this Country with respect to the war as forming one community," Wilson was thinking back to his experience as a signatory to the Declaration of Independence. Not thirteen states, but "one community" had entered the war, in his view. This seminal element of his political thought evolved and grew over the next few years until it became the centerpiece of his contribution to the Constitutional Convention.

III. THE DECLARATION AND WILSON'S POLITICAL PHILOSOPHY, 1783–1793

Wilson would repeat the phrase, "one community," in advocating for the Constitution during the Pennsylvania ratification debates in December 1787, four and a half years after his use of the phrase during the congressional debates over taxation. When the phrase came back in 1787, however, it rested on a much more fully worked out view to which the Declaration of Independence is central. He argued:

I consider the people of the United States as forming one great community; and I consider the people of the different states as forming communities, again, on a lesser scale . . . I view the states as made for the people, as well as by them, and not the people as made for the states; the people, therefore, have a right, whilst enjoying the undeniable powers of society, to form either a

56. *Id.* at 871.

57. *Id.* at 127.

58. *Id.* at 947.

general government, or state governments, in what manner they please, or to accommodate them to one another, and by this means preserve them all. This, I say, is the inherent and unalienable right of the people; and as an illustration of it, I beg to read a few words from the Declaration of Independence, made by the representatives of the United States, and recognized by the whole Union.

“We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and institute new government, laying its foundation on such principles, and organizing its powers in such forms, as to them shall seem most likely to effect their safety and happiness.” This is the broad basis on which our independence was placed: on the same certain and solid foundation this system is erected.⁵⁹

How did Wilson get from his simple formulation in 1783, a formulation that seems little more than an expression of personal memory and attitude, to this well-worked theoretical account in 1787? It would appear that his journey into the archives in 1785 made the critical difference.

During the summer of 1785, Congress was not functioning effectively. Frequently, it had too few delegates for a quorum, and the debates continued over the financial difficulties. After the 1783 taxation debates, matters had grown still trickier. The Federalists, recognizing the linkages between the war debt, the challenges of political economy, and their institutional structure kept the issue of amending the Articles of Confederation on the agenda. The possibility was mooted in Congress in early 1783. But by September 1783, the anti-Federalists had gained the upper hand and the issue was tabled. As 1783 came to a close, in their frustration with the turn of public opinion against them, political leaders advocating on behalf of the Bank of North America for a taxation system and for a convention intensified a campaign of pamphlets, letters, and newspaper articles. Their adversaries also intensified the battle. In March 1785, for instance, radicals secured passage in the Pennsylvania Assembly of a law “authorizing issuance of bills of credit” to be printed on paper, and “at this news the Bank of North America responded that it was not inclined to receive such irresponsible paper.”⁶⁰ The bank’s adversaries also began advocating revocation of its charter. The controversy surrounding the Bank consumed Wilson’s attention during the summer of 1785. As lawyer for the Bank, he spent the summer preparing to advocate on its behalf in the Pennsylvania Assembly. This is the period in which he requested from Charles Thomson the documents about Robert Morris and the set of *Journals of the Continental Congress*. In September, Wilson spoke in the Pennsylvania Assembly for a day and a half on behalf of the Bank and also, in its

59. 5 DEBATES IN THE SEVERAL STATE CONVENTIONS, *supra* note 12, at 456–57.

60. SMITH, *supra* note 39, at 140.

defense, published one of his most significant texts, *Considerations of the Bank of North America* (as a supplement of the *Pennsylvania Gazette*).⁶¹ He was unsuccessful in his advocacy and the Bank's charter was revoked, upending public confidence in the Bank and its viability in the near term.⁶² This in turn precipitated an agreement among nine states to meet in Annapolis in a year's time to debate the question of whether to hold a constitutional convention.

But if Wilson's political efforts were unsuccessful in the short-term, his intellectual labors had earned him a significant leap forward in his own formulations. The Declaration of Independence entered his arguments at this point as a core text. It provided the answer to the question of why Congress should be seen as having the authority to charter a Bank and to tax; the Declaration was issued on the basis of the authority of the people, not on the basis of the authority of states. Consequently, the powers assigned to Congress via that instrument were not merely a delegation of state authority but were the independent powers of Congress, deriving from that body's foundation on a footing of popular sovereignty. Thus, Wilson argued:

To many purposes, the United States are to be considered as one undivided, independent nation; and as possessed of all the rights, and powers, and properties, by the law of nations incident to such.

Whenever an object occurs, to the direction of which no particular state is competent, the management of it must, of necessity, belong to the United States in congress assembled. There are many objects of this extended nature. The purchase, the sale, the defence, and the government of lands and countries, not within any state, are all included under this description. An institution for circulating paper, and establishing its credit over the whole United States, is naturally ranged in the same class.

The act of independence was made before the articles of confederation. This act declares, that "*these United Colonies,*" (not enumerating them separately) "are free and independent states; and that, as free and independent states, *they* have full power to do *all* acts and things which independent states may, of right, do."

The confederation was not intended to weaken or abridge the powers and rights to which the United States were previously entitled. It was not intended to transfer any of those powers or rights to the particular states, or any of them. If, therefore, the power now in question was vested in the United States before the confederation; it continues vested in them still. The confederation clothed the United States with many, though, perhaps, not with sufficient powers: but of none did it disrobe them.⁶³

61. LAWRENCE LEWIS, JR., HISTORY OF THE BANK OF NORTH AMERICA, THE FIRST BANK CHARTERED IN THE UNITED STATES 66 (1882).

62. See SMITH, *supra* note 39, at 155 ("The effect on the Bank seemed to confirm the worst fears of its adherents. Stock which had been above par almost from the first, fell below at once, and cash resources shrank from a high of \$59,570,000 to \$37,000,000 early in 1786.")

63. Wilson, *supra* note 52.

FIGURE 2. List of Signers in Aitken's Journals of the Continental Congress, two pages⁶⁴

JULY, 1776.	245	246	JOURNALS OF CONGRESS.
<p>judge of the world for the rectitude of our intentions, do, in the name, and by authority of the good people of these colonies, solemnly publish and declare, That these United Colonies are, and of right ought to be, FREE AND INDEPENDENT STATES; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great-Britain, is, and ought to be, totally dissolved; and that as FREE AND INDEPENDENT STATES, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which INDEPENDENT STATES may of right do. And for the support of this declaration, with a firm reliance on the protection of DIVINE PROVIDENCE, we mutually pledge to each other our lives, our fortunes, and our sacred honour.</p> <p>The foregoing declaration was by order of Congress engrossed and signed by the following members:</p> <p style="text-align: center;">JOHN HANCOCK.</p> <p>NEW-HAMPSHIRE, { <i>Josiah Bartlett,</i> <i>William Whipple,</i> <i>Matthew Thornton.</i></p> <p>MASSACHUSETTS-BAY, { <i>Samuel Adams,</i> <i>John Adams,</i> <i>Robert Treat Paine,</i> <i>Elbridge Gerry.</i></p> <p>RHODE-ISLAND, &c. { <i>Stephen Hopkins,</i> <i>William Ellery.</i></p> <p>CONNECTICUT. { <i>Roger Sherman,</i> <i>Samuel Huntington,</i> <i>William Williams,</i> <i>Oliveer Wolcott.</i></p> <p>NEW-YORK. { <i>William Floyd,</i> <i>Philip Livingston,</i> <i>Francis Lewis,</i> <i>Lewis Morris.</i></p>	<p>NEW-JERSEY. { <i>Richard Stockton,</i> <i>John Witherspoon,</i> <i>Francis Hopkinson,</i> <i>John Hart,</i> <i>Abraham Clark.</i></p> <p>PENNSYLVANIA. { <i>Robert Morris,</i> <i>Benjamin Rush,</i> <i>Benjamin Franklin,</i> <i>John Morton,</i> <i>George Clymer,</i> <i>James Smith,</i> <i>George Taylor,</i> <i>James Wilson,</i> <i>George Ross.</i></p> <p>DELAWARE. { <i>Cesar Rodney,</i> <i>George Read.</i></p> <p>MARYLAND. { <i>Samuel Chase,</i> <i>William Paca,</i> <i>Thomas Stone,</i> <i>Charles Carroll, of Carrollton.</i></p> <p>VIRGINIA. { <i>George Wythe,</i> <i>Richard Henry Lee,</i> <i>Thomas Jefferson,</i> <i>Benjamin Harrison,</i> <i>Thomas Nelson, jun.</i> <i>Francis Lightfoot Lee,</i> <i>Carter Braxton.</i></p> <p>NORTH-CAROLINA. { <i>William Hooper,</i> <i>Joseph Hewes,</i> <i>John Penn.</i></p> <p>SOUTH-CAROLINA. { <i>Edward Rutledge,</i> <i>Thomas Heyward, jun.</i> <i>Thomas Lynch, jun.</i> <i>Arthur Middleton.</i></p> <p>GEORGIA. { <i>Button Gwinnett,</i> <i>Lyman Hall,</i> <i>George Walton.</i></p>		

Wilson's argument is clever and elegant. Here, he displayed the fine legal mind that earned him much admiration among his contemporaries. In brief, he argued that the Declaration preceded the Articles and as such already established a governance structure. More specifically, the governance structure established by the Declaration was fully collective. It assigned the powers of an independent state to the unity of the states, to "they," as a composite whole, not to "particular states, or any [subset] of them." He placed emphasis on the pronoun used in the final declaratory statement in the Declaration ("they"). He also provided one other detail in support of his argument, namely, the absence of any enumeration of the colonies-turned-states in the Declaration. He made the point via a

64. List of Signers in Aitken's Journals of the Continental Congress, 2 JOURNALS OF THE CONTINENTAL CONGRESS 1774-1789 (Gaillard Hunt ed., William S. Hein & Co. 2007) (1904-1937) (on file with St. George Tucker Collection, Special Collections Research Center, Swem Library, College of William & Mary).

parenthetical when he said, “[t]his act declares, that ‘*these United Colonies,*’ (not enumerating them separately) are free and independent states.” In other words, because the states were not enumerated in the Declaration, as they were in fact in the Articles of Confederation, we are to understand the instruments as doing two different things. The Declaration established a foundation for a new polity, not a delegated authority composed of authorizations from several states. This is an extraordinary moment in Wilson’s argument that has not yet been recognized for what it is, a radical attempt to guide the interpretation of the Declaration of Independence and its ideological and jurisprudential significance.

When Wilson ordered a set of the *Journals of the Continental Congress* and used them to review the text of the Declaration of Independence, he would have found a document with a conclusion as reproduced in [Figure 2](#).

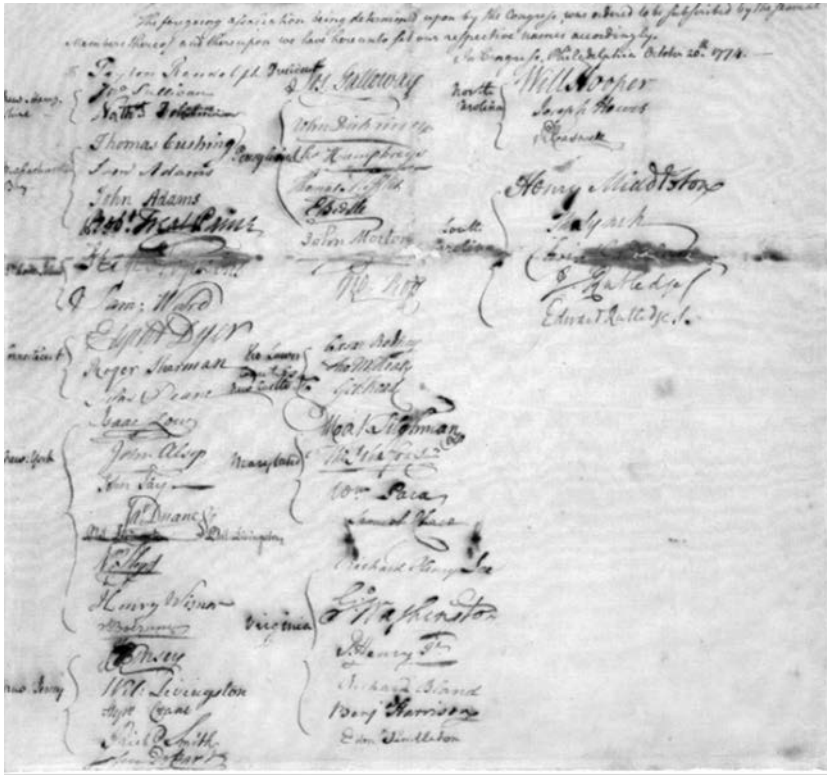
The list of signatories is plainly organized by state groupings of delegates. In short, the *Journals of the Continental Congress* can hardly be said to present a Declaration of Independence in which the states are not enumerated, even if that enumeration does not appear in the text itself. What is Wilson up to when he asserts that the states were not enumerated in the Declaration?

In fact, the *Journals of the Continental Congress* misrepresent the approach that the delegates to the Continental Congress in 1776 took to the signing of the Declaration. As Benjamin Irvin has argued, the early Americans who served in the Continental Congress gave significant attention to even the smallest details of procedure.⁶⁵ This care carried all the way through to procedures for signing governmental documents, procedures that were invested with meaning. For instance, the Constitutional Convention closed with a debate, on September 15 and 17, 1787, about whether and how the participants in that Convention should sign the document they were about to submit to Congress.⁶⁶ The question raised by figures like Benjamin Franklin and the three men who did not sign the Constitution—George Mason, Elbridge Gerry and Edmond Randolph—was whether the signatures would represent each signer’s individual view or only the view of his state delegation.

The importance to the textual tradition of how documents like the Declaration were signed has been overlooked by historians and textual scholars alike, but it is of great significance. In the Revolutionary era, beginning with Congress’ earliest resolutions and declarations (for instance, the 1774 Articles of Association and the 1775 Olive Branch Petition), delegates to Congress signed resolutions as members of their colony or state’s delegation, proceeding geographically from north to south; representatives from New Hampshire signed first, those from

65. BENJAMIN H. IRVIN, *CLOTHED IN ROBES OF SOVEREIGNTY: THE CONTINENTAL CONGRESS AND THE PEOPLE OUT OF DOORS* 8–12, 130–131 (2011).

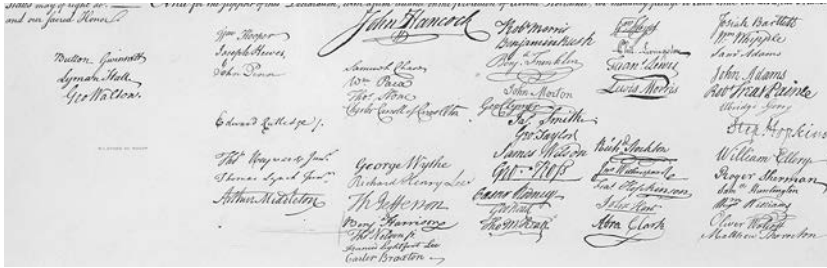
66. On Saturday September 15, Daniel Carroll of Maryland also raised the question of how the Constitution should be presented to Congress and the people, and he asked whether there should be an address given that “the people had been accustomed to such on great occasions, and would expect it on this.” *Saturday Sept 15th 1787*, in 2 *THE RECORDS OF THE FEDERAL CONVENTION OF 1787*, at 623 (Max Farrand ed., 1911) [hereinafter *FARRAND’S RECORDS*]. Wilson did give such an address, the “State House Yard Speech,” on October 6, 1787, in Philadelphia.

FIGURE 3. Signatures on Articles of Association⁶⁷

Georgia, last. They generally ordered those names in a single column (running from New Hampshire to Georgia) or in multiple columns (New Hampshire in the top left, Georgia in the bottom right). Clerks or delegates, depending on the document, also wrote out the name of the colony or state beside the group of names belonging to each delegation. Printers followed this procedure as well (a vertical or left-to-right order of the colonies or states, listed north to south, with labels for each group of names).

Delegates made an exception to this procedure on only four occasions, all of heightened political significance: the signings of the 1775 Oath of Secrecy, the 1776 Declaration of Independence, the 1778 Articles of Confederation, and the 1787 U.S. Constitution. In all four of these cases, the delegates to Congress signed not left to right, but right to left. Moreover, in two cases, the Oath of Secrecy and the Declaration of Independence, the signers omitted the use of col

67. Articles of Association (1774), detail of page 3 (on file with National Archives), <https://catalog.archives.gov/id/6277397> [<https://perma.cc/LT58-H6LN>].

FIGURE 4. Signatures on Stone engraving⁶⁸

ony and state labels. The visual effect, especially in the latter two cases, reduces the salience of the colony or state groupings and places the emphasis on the individual names.

Compare the signatures on the Articles of Association (Figure 3) to those on the Declaration of Independence (Figure 4).

We can confirm that the unusual pattern used for signing the Declaration escaped the notice of its contemporary readers who were used to reading from left to right. The first publisher to reproduce the list of the Declaration's signatories was Mary Katherine Goddard. In printing the names for her 1777 broadside, she or an assistant read the signatures on the Matlack Declaration from left to right. The result was a signatory list with the state-groups in the following geographically non-contiguous order from top left to bottom right: Georgia, North Carolina, South Carolina, Maryland, Virginia, Pennsylvania, Delaware, New York, New Jersey, New Hampshire, Massachusetts Bay, Rhode Island, Connecticut (see Figure 5; compare to Figure 4).⁶⁹ The signing order on the Matlack parchment was not transparent to Goddard or her assistant. As a result, and contrary to tradition, they jumbled the north to south order. This confirms that the signing method used on the Matlack Declaration unsettled the developing routinization of state-by-state thinking. Although Goddard misread the signing order of the Declaration, the practice of reading signatory lists as groups of states rather than as sets of individuals was sufficiently entrenched that, in her printing, she reintroduced the conventional state name labels that the Matlack Declaration had conspicuously left off. The signing method used for the Oath of Secrecy and the Matlack Declaration sought to displace the standard state-by-state basis for authorizing a text but did so ineffectively.

68. William J. Stone, Engraving of Declaration of Independence, detail (1823), <https://www.archives.gov/founding-docs/downloads> [<https://perma.cc/66HA-KX24>].

69. John Carter, John Dunlap, and Frederick Green copied Goddard's order for the signatories in 1777, as did Zechariah Fowle in 1780. Thereafter the tradition settled into the correct order, beginning with New Hampshire and ending with Georgia.

FIGURE 5. Signatures on Goddard broadside⁷⁰

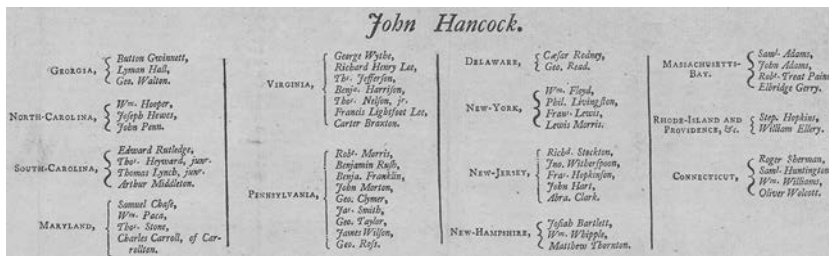
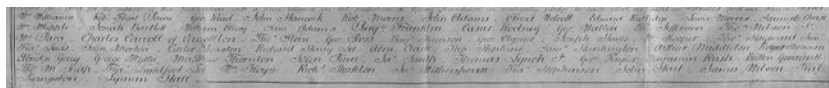


FIGURE 6. List of Signatories on Sussex Declaration⁷¹



Wilson had signed the Declaration. He had a memory about that moment. As we have seen, in March 1783, “Mr. Wilson said he had always considered this Country with respect to the war as forming one community.” Yet here he was, having received a set of the authorized *Journals of the Continental Congress*, facing an official text that seemed to refute his memory. How did Wilson transition from discovering that the *Journals* contradicted his memory to confidently publishing the argument that the signers had treated the states as a single collective, “not enumerating them separately”?

We propose that he returned to the Matlack Declaration, confirmed his memory that, indeed, the states were not formally labeled on that document, and then commissioned the Sussex Declaration, on which not only are the states unlabeled but even the state groupings are done away with.

The Sussex Declaration is the only text from the 1770–1780s that unambiguously supports the view that the states were not enumerated on the Declaration of Independence. While Wilson’s argument was picked up by Charles Cotesworth Pinckney in the South Carolina ratification debates, Wilson originated the argument and, to the best of our knowledge, only he and Pinckney made it.⁷² Nor did

70. Mary Katharine Goddard, Broadside of Declaration of Independence, detail (1777) (on file with Manuscripts and Archives Division, The New York Public Library), <http://digitalcollections.nyp.org/items/8c6f98e60-3afb-0133-586f-00505686d14e> [<https://perma.cc/WPW3-AQYA>].

71. Sussex Declaration, detail (on file with West Sussex Record Office Add. MSS. 8981).

72. In the South Carolina ratification debates, Wilson’s political ally, Charles Cotesworth Pinckney, made parallel arguments. In January 1788, in South Carolina’s convention, Pinckney proclaimed: “The separate independence and individual sovereignty of the several states were never thought of by the

Wilson leave his claim about the non-enumeration of the states here. From September 1785 through December 1787, he extended it into the full form that we see employed in the Pennsylvania Ratification Debates. In December 1786, he published his vision of seeing a gilt version of the Declaration of Independence hanging on the walls of the Bank of North America.⁷³ In March 1787, shortly before the Constitutional Convention, Wilson and his allies, among them Thomas Paine, succeeded at last in securing the re-chartering of the Bank of North America in Pennsylvania. In short, as Wilson sought to find an explanation for how Congress could be authorized to tax directly, he found the answer in the Declaration of Independence, and the capacity of a unitary people to authorize a sovereign with the powers of a free and independent state. Thus he welded together the revolutionary ideology that gave the people the *right to overthrow* a despot with a constructive project in which the people also had the *right to constitute and to authorize* a sovereign with recognizable sovereign powers.

Wilson would articulate these views again in his *Lectures on Law* of 1791 and 1792, and in the important Supreme Court decision *Chisholm v. Georgia*, of 1793. That decision represents the culmination of an argument that built, grew, and consolidated over the course of a decade. It is, once again, worth quoting:

The Revolution, or rather the Declaration of Independence, found the people already united for general purposes, and at the same time providing for their more domestic concerns by State conventions, and other temporary arrangements. From the Crown of Great Britain, the sovereignty of their country passed to the people of it; and it was then not an uncommon opinion, that the unappropriated lands, which belonged to that Crown, passed not to the people of the Colony or States within whose limits they were situated, but to the whole people; on whatever principles this opinion rested, it did not give way to the other, and thirteen sovereignties were considered as emerged from the principles of the Revolution, combined with local convenience and considerations; the people nevertheless continued to consider themselves, in a national point of view, as one people; and they continued without interruption to manage their national concerns accordingly; afterwards, in the hurry of the war, and in the warmth of mutual confidence, they made a Confederation of the States, the basis of a general government. Experience disappointed the expectations they had formed from it; and then the people, in their collective and national capacity, established the present Constitution. It is remarkable that in establishing it, the people exercised their own rights, and their own proper sovereignty, and conscious of the plenitude of it, they declared with becoming

enlightened band of patriots who framed this Declaration; the several states are not even mentioned by name in any part of it, as if it was intended to impress this maxim on America, that our freedom and independence arose from our union, and that without it we could neither be free nor independent.” *Debates in the Legislature and in Convention of the State of South Carolina, on the Adoption of the Federal Constitution*, in 4 THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 253, 301 (Jonathan Elliot ed., 1836), [https://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field\(DOCID+@lit\(ed0045\)\)](https://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field(DOCID+@lit(ed0045))) [<https://perma.cc/G72J-VG9D>].

73. See *infra* Appendix 1.

dignity, “We the people of the United States, do ordain and establish this Constitution.” Here we see the people acting as sovereigns of the whole country; and in the language of sovereignty, establishing a Constitution by which it was their will, that the State governments should be bound, and to which the State Constitutions should be made to conform. Every State Constitution is a compact made by and between the citizens of a State to govern themselves in a certain manner; and the Constitution of the United States is likewise a compact made by the people of the United States to govern themselves as to general objects, in a certain manner. By this great compact however, many prerogatives were transferred to the national Government, such as those of making war and peace, contracting alliances, coining money, &c. &c.⁷⁴

IV. JAMES WILSON, THE CONSTITUTIONAL CONVENTION, AND THE DECLARATION OF INDEPENDENCE

Wilson is commonly credited with having coined the phrase, “We, the people.” Indeed, as both William Ewald and John Mikhail have argued, Wilson labored intently on the Committee on Detail during the Constitutional Convention to ward off efforts to enumerate the states in favor of the idea of “We, the people.”⁷⁵ The core intellectual contribution that Wilson prepared even in advance of the Convention was the view that the Declaration of Independence had erected the new polity on the basis of popular sovereignty and that this was key to understanding the relationship between the federal and state governments. Madison, in a letter to Jefferson, described just this idea as the “ground-work” that was a necessary prelude to the institutional work of the Convention.⁷⁶ The participants in the pre-convention discussions were the Virginia delegates, the Pennsylvania delegates, including Wilson, and some members of the South Carolina delegation. John Rutledge, of South Carolina, lodged with Wilson. Although Rutledge and Wilson had great disagreements on the Committee on Detail, especially over slavery, Wilson appears to have had a great influence on the South Carolina delegation. Via Charles Cotesworth Pinckney, their delegation carried home to South Carolina Wilson’s argument that the Declaration nowhere enumerated the states.⁷⁷

74. *Chisholm v. Georgia*, 2 U.S. (2 Dall.) 419, 470–71 (1793).

75. See Mikhail, *supra* note 12, at 1126; Ewald, *supra* note 6, at 988.

76. Letter from James Madison to Thomas Jefferson (Oct. 24, 1787), in 10 THE PAPERS OF JAMES MADISON 205, 205–20 (Robert A. Rutland et al. eds., 1977), <https://founders.archives.gov/documents/Madison/01-10-02-0151> [<https://perma.cc/J9AX-RS7E>] [hereinafter MADISON PAPERS].

77. Pinckney argued: “[T]he several states are not even mentioned by name in any part of it, as if it was intended to impress this maxim on America, that our freedom and independence arose from our union, and that without it we could neither be free nor independent.” Debates in the Legislature and in Convention of the State of South Carolina, on the Adoption of the Federal Constitution, in 4 DEBATES IN THE SEVERAL STATE CONVENTIONS, *supra* note 12, at 253, 301, [https://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field\(DOCID+@lit\(ed0045\)\)](https://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field(DOCID+@lit(ed0045))) [<https://perma.cc/G72J-VG9D>]. See also Ewald, *supra* note 7, at 995 (discussing the disagreements between Rutledge and Wilson).

The Convention was due to start May 14th, but did not achieve a quorum until May 25th. During those eleven days, as Madison would later report to Jefferson, the early arrivals worked out core principles:

It was generally agreed that the objects of the Union could not be secured by any system founded on the principle of a confederation of Sovereign States. A voluntary observance of the federal law by all the members could never be hoped for. A compulsive one could evidently never be reduced to practice, and if it could, involved equal calamities to the innocent & the guilty, the necessity of a military force both obnoxious & dangerous, and in general, a scene resembling much more a civil war, than the administration of a regular Government.

Hence was embraced the alternative of a Government which instead of operating, on the States, should operate without their intervention on the individuals composing them: and hence the change in the principle and proportion of representation.

This ground-work being laid, the great objects which presented themselves were 1. to unite a proper energy in the Executive and a proper stability in the Legislative departments, with the essential characters of Republican Government. 2. to draw a line of demarkation which would give to the General Government every power requisite for general purposes, and leave to the States every power which might be most beneficially administered by them. 3. to provide for the different interests of different parts of the Union. 4. to adjust the clashing pretensions of the large and small States. Each of these objects was pregnant with difficulties. The whole of them together formed a task more difficult than can be well conceived by those who were not concerned in the execution of it. Adding to these considerations the natural diversity of human opinions on all new and complicated subjects, it is impossible to consider the degree of concord which ultimately prevailed as less than a miracle.⁷⁸

As Ewald has shown, Madison and Wilson generally aided and abetted each other throughout the course of the convention, despite having somewhat different underlying views about the proper course to follow.⁷⁹ Wilson never veered from his commitments to popular sovereignty, one-man-one vote, and a unitary and separate executive. Madison was less firmly committed to popular sovereignty, himself seeking to secure a strong senate that could counter whatever popular power might be lodged in other branches. And so it was ultimately Wilson who did the work of driving home the proposition agreed upon by the early arrivals, namely that they should pursue “a Government which instead of operating, on the States, should operate without their intervention on the individuals composing them”⁸⁰

78. Letter from James Madison to Thomas Jefferson (Oct. 24, 1787), in 10 JAMES MADISON, *supra* note 76, at 205, 206–07 (emphasis added).

79. Ewald, *supra* note 7.

80. Letter from James Madison to Thomas Jefferson (Oct. 24, 1787), in 10 JAMES MADISON, *supra* note 76, at 207.

The key moments came starting on June 8th. On that day, Wilson argued:

If we mean to establish a national Govt. the States must submit themselves as individuals—the lawful Government must be supreme—either the Genl. or the State Government must be supreme—We must remember the language with wh. we began the Revolution, it was this, Virginia is no more, Massachusetts is no more—we are one in name, let us be one in Truth & Fact⁸¹

Here, again, Wilson seems to use the language of memory, harkening back to his experience as a signer of the Declaration of Independence. He conjures up an earlier moment when delegates first transitioned from being representatives of separate colonies to being representatives of a new, unified entity.

In fact, however, Wilson was not sharing his own memories from the signing of the Declaration but was recalling a speech for which he was not even present. On September 6, 1774, the first day of substantive business in the First Continental Congress, then meeting in Carpenters' Hall, Patrick Henry said this, as reported in John Adams' notes:

Government is dissolved. Fleets and Armies and the present State of Things shew that Government is dissolved. Where are your Land Marks? your Boundaries of Colonies. We are in a State of Nature, Sir. I did propose that a Scale should be laid down. That Part of N. America which was once Mass. Bay, and that Part which was once Virginia, ought to be considered as having a Weight The Distinctions between Virginians, Pennsylvanians, New Yorkers and New Englanders, are no more. I am not a Virginian, but an American.⁸²

As Benjamin Irvin writes, “Two pieces of textual evidence suggest that Wilson was recalling this exact quotation: first, the internal parallels (the recitation of states and the phrase ‘no more’), and second, Wilson’s characterization of the language as that ‘with wh. we began the Revolution.’ Henry’s assertion literally constituted the first recorded speech of the First Continental Congress.”⁸³ Yet Wilson did not attend the First Continental Congress. His June 8 speech, then, captures not his own memory, but rather something he must have read or heard.

Wilson’s argument occasioned strenuous rebuttals, and the debate continued for weeks. It reached an important climax on June 19, when Wilson responded to arguments by Luther Martin:

Mr. Martin, said he considered that the separation from G. B. placed the 13 States in a state of nature towards each other; that they would have remained in that state till this time, but for the confederation; that they entered into the

81. *King Friday, June 8, 1787*, in 1 FARRAND’S RECORDS, *supra* note 66, at 172.

82. John Adams’ Notes of Debates, in 1 LETTERS, *supra* note 33, at 27–28.

83. E-mail from Benjamin Irvin to Danielle Allen (Apr. 19, 2017) (on file with author).

confederation on the footing of equality; that they met now to amend it on the same footing, and that he could never accede to a plan that would introduce an inequality and lay 10 States at the mercy of Va. Massts. and Penna.

Mr. Wilson, could not admit the doctrine that when the Colonies became independent of G. Britain, they became independent also of each other. He read the declaration of Independence, observing thereon that the *United Colonies* were declared to be free & independent States; and inferring that they were independent, not *Individually* but *Unitedly* and that they were confederated as they were independent, States.⁸⁴

This important passage has not occasioned much scrutiny by scholars. It is, however, worth careful attention. First, and most importantly, it gives us good reason to think that Wilson read the whole Declaration aloud. This is the claim made in the record (“he read the declaration of Independence”). Moreover, the passage that Wilson comments on after finishing his reading is the conclusion to the Declaration, its final sentences. In other words, in his reading, he reached the end of the Declaration. Presuming that he started at the beginning, which he did in the Pennsylvania ratification debates, we can infer that he read, in effect, the whole of the short text. In his commentary following the reading, he once again touched upon a distinction between the Declaration of Independence (which did not enumerate the states) and the Articles of Confederation (which did). This is the distinction Wilson is underscoring when he says that the colonies achieved independence “unitedly,” without being “independent of each other.” The contrast is to their decision to “confederate” as “independent states.” They used one founding idea for their argument for independence; a distinct founding idea for their decision to form the Articles of Confederation. Wilson’s point is that the principle of independence for a single, unified nation rested on a different basis than did the principle of confederacy that clarified relations among states.⁸⁵

Second, this passage provokes the question of which text Wilson used for his reading. He hadn’t led off the day’s discussions but had introduced the Declaration at a point in the debate when it was germane. Perhaps he planned to read the text that day and so would simply have found an opportunity to do so; perhaps he simply had it among his papers, realized it had become relevant, and

84. 1 FARRAND’S RECORDS, *supra* note 66, at 324 (emphasis in original).

85. Andrew Jackson would increase the precision of just this argument in 1832 in his proclamation respecting the nullifying laws of South Carolina: “In our colonial state, although dependent on another power, we very early considered ourselves as connected by common interest with each other. Leagues were formed for common defense, and before the Declaration of Independence, we were known in our aggregate character as the United Colonies of America. That decisive and important step was taken jointly. We declared ourselves a nation by a joint, not by several acts; and when the terms of our confederation were reduced to form, it was in that of a solemn league of several States, by which they agreed that they would, collectively, form one nation, for the purpose of conducting some certain domestic concerns, and all foreign relations. In the instrument forming that Union, is found an article which declares that ‘every State shall abide by the determinations of Congress on all questions which by that Confederation should be submitted to them.’” Proclamation No. 26, Respecting the Nullifying Laws of South Carolina (Dec. 10, 1832), *reprinted in* 11 Stat. 771 (1859).

decided to read it. There is no way of knowing whether he planned this performance in advance or whether it simply unfolded on the spur of the moment, but it is safe to assume that he would not have read from any of the available printed texts. Since all of the printed texts with signatories applied state labels to the list of signatories, Wilson's use of any one of those texts would have undermined the argument he was making about the Declaration having grounded the new polity on the authority of the people and not the states. Nor could he have used the Matlack Declaration, which was still in New York with Congress. In fact, in contrast to the Second Continental Congress, the delegates at the Constitutional Convention were very poorly provisioned with documents and library materials.⁸⁶ Thus, the only known text that both would have supported his argument and could have been available to him at the Convention is the Sussex Declaration.⁸⁷

But even with this performative moment, Wilson was not done. He brought his argument to its poetical height twelve days later on June 30th.

Can we forget for whom we are forming a Government? Is it for men, or for the imaginary beings called States? Will our honest Constituents be satisfied with metaphysical distinctions? Will they, ought they to be satisfied with being told that the one third, compose the greater number of States. The rule of suffrage ought on every principle to be the same in the 2d. as in the 1st. branch. If the Government be not laid on this foundation, it can be neither solid nor lasting, any other principle will be local, confined & temporary It is all a mere illusion of names. We talk of States, till we forget what they are composed of Bad Governrs. are of two sorts. 1. that which does too little. 2. that which does too much: that 'which fails thro' weakness; and that which

86. The books and papers of Congress were in New York and it was only on July 7 that the Library Company of Philadelphia made its collections available to the participants in the Convention in the form of a resolve in Farrand's records: "Resolved That the librarian furnish the gentlemen who compose the Convention now sitting with such books as they may desire during their continuance at Philadelphia, taking receipts for same. By order of the directors, W: Rawle Secretary." 1 FARRAND'S RECORDS, *supra* note 66, at 548. Other evidence also suggests that the post-war period had reduced access to books and papers. In January 1783, for example, "it was urged, as indispensable, that Congress should have at all times at command such authors on the law of nations, treaties, negotiations, &c., as would render their proceedings in such cases conformable to propriety It was further observed, that no time ought to be lost in collecting every book and tract which related to American antiquities and the affairs of the United States, since many of the most valuable of these were every day becoming extinct" *Thursday, January 23, in 5 DEBATES IN THE SEVERAL STATE CONVENTIONS*, *supra* note 12, at 27. Perhaps in response to arguments such as this, the New York Society Library, which had suspended operations from 1774–1788, initiated its re-opening in December of 1788, a process that it began with a newspaper advertisement in the *Daily Advertiser* of December 15–20, 1788, "requesting that the Library's proprietors meet on the following Saturday to choose trustees and to 'consult on measures for the speedy re-establishment of that useful institution.'" Personal communication from Carolyn Waters, Head Librarian, New York Society Library, June 18, 2018 (on file with author).

87. Some have inquired as to whether he might have had a 1776 newspaper printing without the signatories, but it seems unlikely that a ten year old newspaper would at that point have been the text most likely to be used as a working paper. We have little to no evidence that the newspaper printings of the Declaration continued in general use or circulation after their initial publication.

destroys thro' oppression. Under which of these evils do the U. States at present groan? under the weakness and inefficiency of its Govern. To remedy this weakness we have been sent to this Convention.⁸⁸

The Sussex Declaration, we suggest, was an instrument prepared by Wilson to help his colleagues remember that they were forming a government for men, not for the imaginary beings called States. He was interested not merely in the substance of the text but also in the performative moments it might occasion. The finely prepared parchment would have suitably served both of his purposes for his reuse of the Declaration of Independence in the context of the Convention.

CONCLUSION

In the years 1780–1793, Wilson did more than any other Founder to establish that the basis of the new government lay in popular sovereignty, not in the sovereignty of the thirteen states.⁸⁹ He worked toward this end by advocating for the establishment of the Bank of Pennsylvania, for the original establishment and then re-instatement of the Bank of North America, for a constitutional convention, and for a constitution based on the principle of popular sovereignty both at the Convention and in the ratification process. He also carried on the work of ensuring the supremacy of the national government over the states as a Supreme Court Justice, deciding the important 1793 case *Chisholm v. Georgia* in favor of the federal government. Up until 1785, he made this argument without reference to the Declaration of Independence. From 1785 forward, the Declaration provided the fundamental basis of Wilson's argument.

As one of only six men to sign both the Declaration and the Constitution, Wilson brought an active memory of the former experience into his thinking about the latter. No other American, in any context, in the years from 1776 to 1793—not in urban centers, nor in smaller towns—worked as consistently and assiduously as Wilson to place the Declaration of Independence at the heart of the new nation's self-understanding. He did more than any other founder to activate the Declaration of Independence as foundational to the ideological and legal origins of the new nation. Once we see how studiously Wilson engaged the Declaration of Independence, the argumentative use to which he put it, and his aspirations for its performative, ceremonial value, we have a clear context for understanding the commissioning and use of the Sussex Declaration. In this context, and only in this context, the document's anomalies make perfect sense.⁹⁰

88. 1 FARRAND'S RECORDS, *supra* note 66, at 482–83.

89. See Ewald, *supra* note 7.

90. In the course of working on the Sussex parchment we considered several alternative hypotheses: (1) The Sussex Declaration was produced as a working document, at a point when print copies were in insufficient supply, similarly to when Thomas Paine's *Common Sense* had sold-out and was written out in manuscript by readers for continued circulation, (2) the Sussex Declaration was produced in America but sent to the Duke of Richmond in the years between 1781 and 1783 when Richmond, Lord Camden, and the Earl of Shelburne were engaged in fierce debates about how to respond to America's declaration

The strong likelihood that James Wilson commissioned the parchment manuscript as a prop for his political arguments means, too, that we can provide the Sussex Declaration with a more precise date than that with which we began. We propose that it dates not merely to the 1780s but to the two years between July 1785, when Wilson began his archival work and re-discovered the Declaration, and June 1787, when he read the text of the Declaration of Independence at the Constitutional Convention.

of independence, and thus it would not have been available to Wilson; (3) towns throughout the United States held annual celebrations of the Fourth of July. One of these towns might have commissioned this parchment; (4) the Sussex Declaration was produced as a school exercise. However, each of these hypotheses can be refuted. With regard to (1), we have a handful of manuscripts produced in that fashion. They were all produced in 1776, and on letter paper in an ordinary hand, not engrossed formally on a large-scale parchment. Regarding (2), there was little to no access to the archives prior to 1782, and while the Duke of Richmond read the text of the Declaration in Parliament in 1778, there is no record of his having done so later. Nor would he have needed another text of the Declaration by that point in time. Regarding (3), the handwriting on the parchment does not employ the long-s in the body of the text. This was a sign of being part of a fashion vanguard. There is no evidence that this stylistic marker had reached locations outside of major urban centers by the 1780s. Regarding (4), the expense, scale, and significance of the project, entailing as it did direct access to the Matlack parchment, defeat the proposal that it might have resulted from a school exercise. For the argument that the Sussex Declaration depends on the clerk having had direct access to the Matlack parchment, please see Allen and Sneff, *supra* note 1.

APPENDIX 1. JAMES WILSON AS “PHILO-SPEC”

On December 6, 1786, the following article, published under the pseudonym “Philo-Spec,” appeared in the *Pennsylvania Gazette*:⁹¹

Messrs. HALL and SELLERS,

THE best institutions, like the best men, have many and very bitter enemies—No form of government, no code of laws, no state of manners, no system of either philosophy or religion, can ever prevent it. The moralist may regret the fact, and the divine may condemn the passions which give it birth; but while envy, ambition, resentment, and interest, have so fast a hold of the human heart, a PAUL may preach, and HERACLITUS water, without ever being able to reform or even to correct.

I was led to this reflection by casting my eye, the other day, over a paper of Mr. ADDISON, from which I gather two facts—1st, That the bank of England, like that of North-America, had its warm, and even angry opponents; and 2d, That in that enlightened politician and excellent man, it found an able zealous supporter. The paper is itself so excellent, and in many of its circumstances so applicable to our own times, that I must be, you to give it a place in your next Gazette. The alterations from the original, which you will find in the annexed copy, are very few and not at all material—They will, as they ought, bring it more immediately home to ourselves.

I am, &c.
PHILO-SPEC.

IN one of my late rambles, or rather speculations, I looked into the great hall where the bank is kept, and was not a little pleased see to the president, directors and clerks, of that wealthy corporation, ranged in their several stations, according to the parts they act in that just and regular oeconomy. This revived in my memory the many discourses which I had both read and heard concerning the decay of public credit, with the methods of restoring it, and which, in my opinion, have always been defective, because they have been made with an eye to separate interests and party principles.

The thoughts of the day gave my mind employment for the whole night, so that I fell insensibly into a kind of methodical dream, which disposed all my contemplations into a vision or allegory, or what else the reader shall please to call it.

Methought I returned to the great hall, where I had been the morning before; but, to my surprize, instead of the company that I left there, I saw, towards the upper end of the hall, a beautiful virgin seated on a throne of gold. Her name, as they told me, was PUBLIC CREDIT. The walls, instead of being adorned with pictures and maps, were hung with the ordinances of public

91. The pseudonym Philo-Spec was used once in a letter written to the London magazine *The Spectator* in 1711, and used again in *The Gentleman's Magazine* of 1739 in a debate between “Theophilus” and “Philo-Spec” over Milton. We have not found any other uses of the pen name in America or in the 1780s.

bodies—at the upper end of the hall was the *bill of rights, and frame of government, and declaration of independence*. I could not but observe, that that part of the latter, which assigned the abolition of our charters as a reason for dissolving our connection with Great-Britain, was written in golden letters. At the lower end of the hall, and upon both its sides, were a number of public acts and private plans which had been made for the establishment of funds—These pieces of furniture the virgin seemed to regard with unspeakable delight, frequently reading them with great attention, and smiling with secret pleasure as she read—but at the same time shewing infinite uneasiness and concern if any thing approached which might hurt them.—

She appeared indeed infinitely timorous in all her behavior: and whether it was from the delicacy of her constitution, or that she was troubled with vapors, as I was afterwards told by one who was none of her well wishers, she changed colour and started at every thing she heard. She was likewise, as I afterwards found, a greater valetudinarian than any I had ever met with even in her own sex, and subject to such momentary consumptions, that in the twinkling of an eye she would fall away from the most florid complexion, and the most healthful state of body, and wither into a skeleton. Her recoveries were often as sudden as her decays, insomuch that she would revive in a moment out of a wasting distemper into a habit of the highest health and vigor.

I had very soon an opportunity of observing these quick turns and changes in her constitution. There sat at her feet a couple of secretaries, who received every hour letters from all parts of the world, which the one or the other was perpetually reading to her: and according to the news she heard, to which she was exceedingly attentive, she changed colour, and discovered many symptoms of health or sickness. Behind the throne, was a prodigious heap of bags of money, which were piled upon one another so high that they touched the ceiling. The floor on her right hand, and on her left, was covered with vast sums of gold that rose up in pyramids on either side of her. But this I did not so much wonder at when I heard, upon inquiry, that she had the same virtue in her touch, which the poets tell us a Lydian King was formerly possessed of: and that she could convert whatever she pleased into that precious metal.

After a little dizziness and confused hurry of thought, which a man often meets with in a dream, methought the hall was alarmed, the doors flew open, and there entered half a dozen of the most hideous phantoms that I had ever seen, even in a dream, before that time. They came in two and two, and mingled together in a kind of dance. It would be tedious to describe their habits and persons, for which reason I shall only inform my reader, that the first couple were tyranny and ignorance, the second party zeal and anarchy, the third bankruptcy and *a little pale-looking, grinning old man in a red cloak*, whose name I could not learn. In the sleeve of his coat he carried a dagger, which neither his fear nor his cunning could at all times conceal; and a citizen who stood by me whispered into my ear that he saw a sponge in his left hand—The reader will easily suppose, by what has been before said, that the lady on the throne would have been almost frightened to distraction, had she seen but any one of these spectres: what then must have been her condition when she saw them all in a body? She fainted and died away at the sight.

There was a great change in the hill of money bags, and the heaps of money: the former shrinking and falling into so many empty bags, that I now found not above a tenth part of them had been filled with money.

The rest that took up the same space and made the same figure as the bags that were really filled with money, had been blown up with air, and called into my memory the bags which Homer tells us his Hero received as a present from Aeolus. The great heaps of gold on either side of the throne now appeared to be only heaps of paper.

Whilst I was lamenting this sudden desolation that had been made before me, the whole scene vanished—in the room of the frightful spectres there now entered a second dance of apparitions, very agreeably matched together, and made up of very amiable phantoms.

The first pair were Knowledge and Legal-government; the second, Moderation and Public-happiness; the third, Industry and Wealth, *attended by the Genius of Pennsylvania, and a numerous train of Citizens, whose plaudits proclaimed the restoration of public-faith, and the return of private confidence.* At the first entrance the lady revived, the bags swelled to their former bulk, and the heaps of paper changed into pyramids of gold and silver; and for my own part, I was so transported with joy, that I awaked; though, I must confess, I would fain have fallen asleep again to have continued my vision, if I could have done it.

The “original” passage adapted by Philo-Spec was Joseph Addison’s *Allegory of Public Credit*, published in 1711.⁹² Tracking the passages that Philo-Spec changed helps identify the distinctive vocabulary and terminology of the author of the 1786 piece, and this distinctive vocabulary supports an attribution of authorship to James Wilson.

In addition to substituting American for British public documents in the allegory, in the first set of “amiable phantoms,” Philo-Spec made the following adjustments: “tyranny and anarchy” became “tyranny and ignorance”; “bigotry and atheism” became “party zeal and anarchy”; “Genius of a Commonwealth” became “bankruptcy”; and, “[a] young man of about twenty two years of age” became “[a] little pale-looking, grinning old man in a red cloak.” In the second set of “amiable phantoms,” Philo-Spec made the following changes: “Liberty, with Monarchy at her right hand” became “Knowledge and Legal-government”; “Moderation leading in Religion” became “Moderation and Public-happiness”; and, “[a] [p]erson, whom I had never seen, with the Genius of Great Britain” became “Industry and Wealth, attended by the Genius of Pennsylvania and a numerous train of Citizens, whose plaudits proclaimed the restoration of public-faith, and the return of private confidence.”

The phrases “Genius of Great Britain” and “Genius of Pennsylvania” are both distinctive and Wilson uses both elsewhere, referring to the “Genius of the

92. Joseph Addison, *Spectator 3 [Allegory of Public Credit.]*, THE SPECTATOR, Mar. 3, 1711, <http://spenseriens.cath.vt.edu/TextRecord.php?action=GET&textsid=33813> [<https://perma.cc/256N-AHRG>].

British Constitution,” the “Genius and Principles of Pennsylvania,” as well as writing that “[a]mong the ancient Germans, the Genius of confederacy pervaded the whole structure of society,” and that “the immense genius of Henry the Fourth of France . . . received most essential assistance from the genius, no less penetrating and active, of Elizabeth of England.”⁹³ The term, “genius,” appears in his *Collected Works* twenty-eight times, in comparison to twenty-five times in the *Federalist Papers*, a body of work that is roughly the same length. Moreover, where Wilson several times provided specific geographical and historical qualifiers for the concept of genius, including the “genius of Pennsylvania,” as in the Philo-Spec article, the only similar qualifier to appear in the *Federalist Papers* is a single reference to the “genius of America.”⁹⁴

More significantly, in his 1790 Lecture on Law, Wilson returned to the actual words of the allegory, writing in a lengthy passage:

Indeed, the character of this excellent man [Calvert] has been too little known. He was truly the father of his country. *To the legislature of Maryland he often recommended a maxim, which deserves to be written in letters of gold: “By concord a small colony may grow into a great and renowned nation; but, by dissensions, mighty and glorious kingdoms have declined and fallen into nothing.” . . . Will America refuse a temple to her patriots and her heroes? No, she will not. The glorious dome already rises. Its architecture is of the neatest and chastest order: its dimensions are spacious: its proportions are elegant and correct. In its front a number of niches are formed. In some of them statues are placed. On the left hand of the portal, are the names and figures of Warren, Montgomery, Mercer. On the right hand, are the names and figures of Calvert, Penn, Franklin. In the middle, is a niche of larger size, and decorated with peculiar ornaments. On the left side of it, are sculptured the trophies of war: on the right, the more precious emblems of peace. Above it, is represented the rising glory of the United States. It is without a statue and without a name. Beneath it, in letters very legible, are these words—“FOR THE MOST WORTHY.”* *By the enraptured voice of grateful America—with the consenting plaudits of an admiring world, the designation is unanimously made.* Late—very late—may the niche be filled.⁹⁵

The combination of references in this passage to letters written in gold and to the “plaudits” of the general populace ties Wilson’s Lecture on Law to the Philo-Spec essay. “Plaudits” was an uncommon word; it does not appear even once in the *Federalist Papers* but does appear twice in Wilson’s collected papers. This usage in the Lecture on Law is clearly very close to the usage in the *Pennsylvania Gazette* article.

93. COLLECTED WORKS OF JAMES WILSON, *supra* note 5, at 651.

94. THE FEDERALIST NO. 63 (James Madison).

95. James Wilson, Introductory Lecture, *in* COLLECTED WORKS OF JAMES WILSON, *supra* note 5, at 434–35.

Wilson also had a relationship with Hall and Sellers, the publishers of the *Pennsylvania Gazette*. They printed his 1785 pamphlet, *Considerations of the Bank of North America*, and the argument of the Philo-Spec piece extends the arguments of his pamphlet. The *Pennsylvania Gazette* also advertised Wilson's 1790 Lecture on Law, which echoed the language of the Philo-Spec essay.⁹⁶

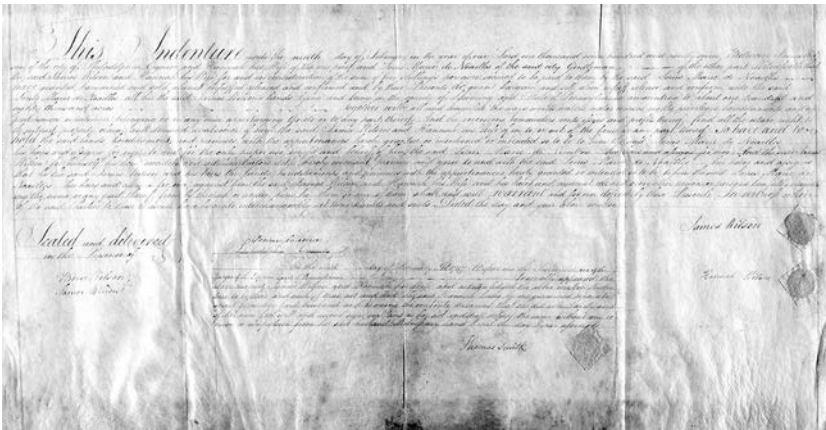
The combination of Wilson's close association with the publishers of the *Pennsylvania Gazette*, the alignment of the argument in the December 6, 1786 *Pennsylvania Gazette* article with Wilson's own political commitment to the Bank of North America, and the similarities in the language in the newspaper article and his collected works support attributing authorship of the "Philo-Spec" piece to James Wilson.

96. Philo-Spec, PA. GAZETTE, Dec. 1, 1790; *see also* Philo-Spec, PA. GAZETTE, December 3, 1790; Philo-Spec, PA. GAZETTE, December 29, 1790.

APPENDIX 2. JAMES WILSON AND PARCHMENT DOCUMENTS

In our article, “The Sussex Declaration,” (*Papers of the Bibliographical Society of America*, fall 2018) we analyze the stylistic features of the Sussex Declaration and trace its styling and the clerk’s hand to a mercantile context and the tradition of property documents. Given Wilson’s work on behalf of the Banks of Pennsylvania and of North America, and his role as a property speculator, he did have access to clerks who prepared documents in this fashion, as is evident from this 1797 property indenture, whose landscape format and lining and styling are similar to those of the Sussex Declaration.

FIGURE 7. James Wilson Property Indenture, February 7, 1797⁹⁷



97. James Wilson Property Indenture (1797) (on file with author, Danielle Allen).