

## **For “the Love of Liberty and the Love of Law”: James Wilson’s Lectures as a Manifesto for an American Jurisprudence**

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In the wake of the American Revolution and the ratification of the federal constitution, one of the chief questions facing the Americans was the relationship between law and liberty. In particular, they had to face questions about the nature, source, and content of law in the new nation. The vast bulk of the legal literature they had to rely upon in the late eighteenth century, though, was English, and principally Blackstone. One of the most important questions for Americans, then, was whether they could maintain their independence relying solely on foreign legal materials. James Wilson was the first to take up this question in a sustained way in his Lectures on the Law. Wilson’s Lectures, in fact, laid the groundwork for an indigenous jurisprudence, and what would eventually become a robust treatise tradition in the United States.

Using Blackstone as his foil, Wilson “zealously” advocated a system of jurisprudence built upon the foundation of American social and political norms. Blackstone was unreliable according to Wilson mainly because he failed to understand that a government could be founded upon popular sovereignty. For Wilson, the obligations imposed on citizens by a government founded on the principle of popular sovereignty, made law and the knowledge of law, especially important. But the failure of foreign legal commentators to understand popular sovereignty meant that Americans had to create their own legal literature. Only an indigenous legal literature that fully comprehended the idea of popular sovereignty could secure liberty for Americans. Wilson’s manifesto for an American jurisprudence defined the central task of law writers in the nineteenth century, and is one of his most overlooked contributions to American law. Indeed, it could be said that Wilson was the founder of the American treatise tradition.

## **Tapping Reeve, Nathan Dane, and James Kent: Three Fading Federalists on Marital Unity\***

Tapping Reeve wrote in his treatise on the law of husband and wife, *Baron and Femme* (1816), that husband and wife were not one person in law. His rejection of Blackstone's maxim is not as well-known as it should be. Yet, his position was not idiosyncratic, as it was also adopted by Nathan Dane in his important *General Abridgment and Digest of American Law* (1823). However, James Kent did not follow it in his *Commentaries on American Law* (1826-30). This paper explores whether Dane's agreement with Reeve in rebelling against marital unity was based on their New England background (Reeve lived in Connecticut and Dane in Massachusetts), which Kent (from New York) simply did not share. Reeve, Dane, and Kent were all "Fading Federalists," using their legal expertise and their position as law book writers and law teachers as a way to continue to exert influence lost to them in the political world. They turned to the creation of an American common law as a way to continue to have influence on what America would become. Like Reeve, Dane was involved in various moral campaigns, including the temperance movement, which was an early kind of women's movement. He was also religious like Reeve and against slavery -- according to some, Dane was responsible for the anti-slavery clause in the North West Ordinance. Kent was not interested in these causes or interests and, indeed, considered those who were to be fanatics or zealots. This helps explain why, when he wrote about married women he was inclined to choose the traditional English approach, Coke and Blackstone, over the indigenous position that jurists in New England were cultivating that sought to emphasize the rights of married women.

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Authority and the Individual in Angell and Ames's *Treatise on the Law of Private Corporations, Aggregate*

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In 1832, the same year that Andrew Jackson famously waged war on the Bank of the United States, two Rhode Island lawyers, Joseph Angell and Samuel Ames, published the first American treatise on corporate law. Their *Treatise on the Law of Private Corporations, Aggregate*, reveals some of the ways that the Jacksonian obsession with monopoly and corporate privilege has obscured our view of legal innovations in the law regarding centralized authority and stockholders' rights within the American business corporation. Their publication was vital to the diffusion and ultimate acceptance of those innovations, which were based in the law of agency. The ways in which the treatise of Angell and Ames helped to assuage tensions between individual autonomy and collective authority within the many thousands of corporations being formed in the antebellum United States demand attention.

The bombastic American critics of corporate privilege had very little to say about how membership in corporations was experienced by the many thousands of shareholders in business corporations, about how they came to join and withdraw from such organizations, or the role of judicial and legislative authority in internal corporate workings. Angell and Ames's work, drawn from both British and American cases and often contrasting the two to emphasize the divergence of American law, dealt closely with moments of conflict between corporations and their creditors, debtors, and—more often than has been realized in historical and legal scholarship—their own members. The purposes of their treatise and the rhetorical and (to coin a word) citational strategies used to achieve those ends merit study, both to chart the historical origins of the separation between ownership and control and to better understand the genre of the legal treatise in the early-nineteenth-century United States.