

On Evidence

By Hadley Arkes
Monday, 11 October 2010

James Wilson, one of the most formidable minds among the American Founders, was born in Scotland in 1742 and landed in America in 1765, at the time of the crisis over the Stamp Act. By that point he had already been to the university at St. Andrews. And there he would absorb deeply the writings of Thomas Reid and the school that marked the “Scottish Enlightenment.” The references to Reid would later form a critical thread in Wilson’s elegant *Lectures on the Law*, woven in with references in Greek. He was, at that time, a member of the first Supreme Court, and in these lectures he truly took his students back to “first things,” to the first principles of political life and a regime of law.

Wilson understood, along with Aristotle, that only a certain kind of creature was fitted by nature for political life, the life marked by the presence of law. Law was binding; it created an obligation to obey. But only one kind of creature could understand what it meant to bear an obligation. Whether it was an obligation to keep a promise or a contract, it meant a willingness to honor a rule, or respect an agreement, even if one did not find it congenial or convenient. Only one kind of creature could frame propositions, articulate “principles,” and give and understand reasons over matters of right and wrong.

In his lecture on “Evidence,” Wilson began to unfold for us nothing less than a democratic “epistemology.” For he managed to show, layer by layer, what had to be understood by that ordinary man, that biped who conjugated verbs, who put himself under the rule of law. Laws often required trials, with accusers and defendants, and verdicts would depend on “evidence.” But what was “evident” in turn depended on what that ordinary man was able to understand.

Wilson drew us back to a sense of “natural” knowledge and natural language. Wherever humans are, they can tell the difference between the looks of approval, joy, approbation, and the looks of disapproval, anger, threat. It became plausible to ask: When the actor Robert Blake heard that his wife had been murdered, had his face reflected shock, despair – or indifference? There was an interesting disposition on the part of humans to testify to what they had seen and heard – and to speak the truth. We stop to ask directions, and it’s almost always the case that the people offering the directions tell the truth. They may misdirect us, but they almost never betray a malicious willingness to mislead.

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