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Extract from Christopher Brooks' Chisholm to
Alden: James Wilson's Artificial Person in
American Supreme Court History citing Tillman's
A Textualist Defense

Seth Barrett Tillman



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*Chisholm to Alden: James Wilson's "Artificial Person" in
American Constitutional History, 1793-1999*

~~Thesis prepared for~~
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for the Degree of Doctor philosophiæ
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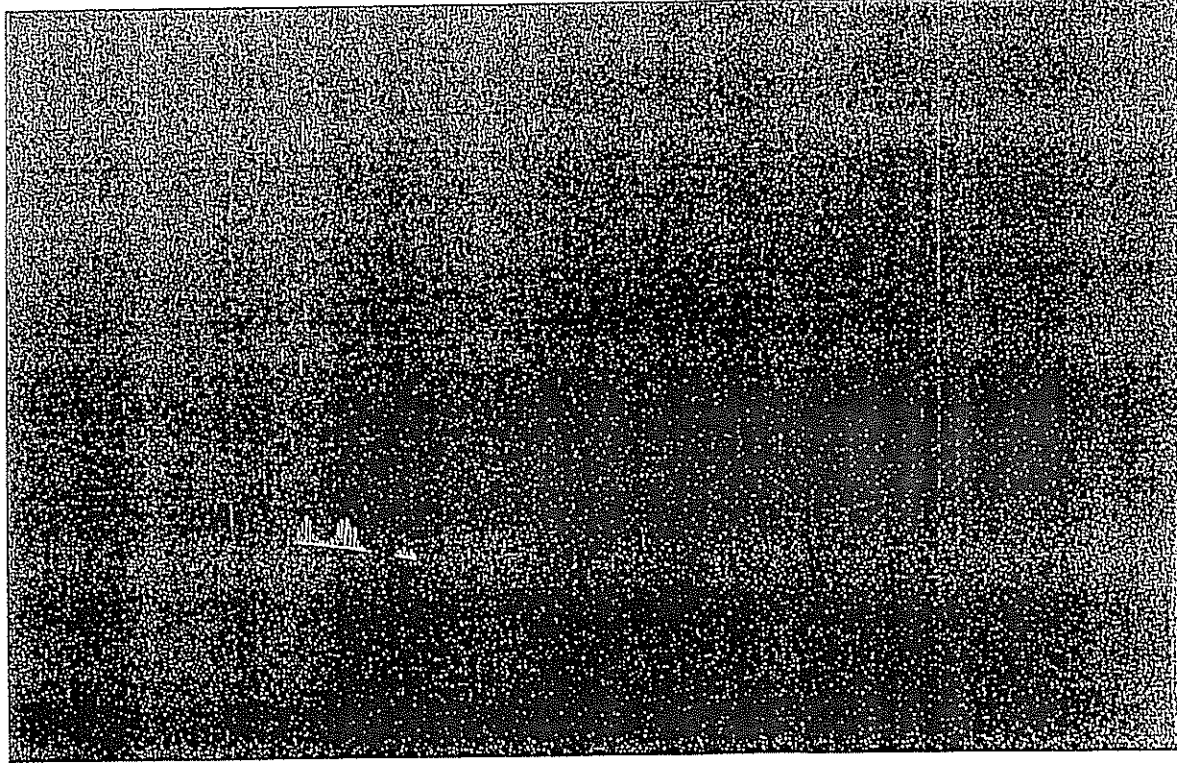
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curiosity, compelled me to see this through. It is to these two individuals that I dedicate this work.



As Bailyn explains, Wilson's friend and colleague on the *Chisholm* Court, Justice James Iredell, condemned the "beautiful theory" of divided sovereignty as "narrow and pedantic, calculated to sacrifice to a *point of speculation* the happiness of millions." Instead, Iredell developed a counter argument to the applicability of divisible sovereignty. The "great solecism of *imperium imperio*," wrote Iredell, wherein the "several distinct and *independent legislatures* each engaged within a *separate* scale and employed about *different* objects," was "not at all applicable" in America's case.¹² Like most leaders of the founding era—or any era, for that matter—Iredell was a product of his day. Much like Blackstone, Iredell saw the sovereignty in the legislature, he transposed the British experience and Americanized it. As we now know, Wilson argued that sovereignty was divisible and was not entirely necessary in America's case because the people remained the sovereigns at all times.¹³ Wilson provided for a distinctly contra-English, American

¹²Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, Massachusetts: The Belknap Press of Harvard university Press, 1967. p 224-226. Italics as in original. Internal quotation removed

¹³As Seth Tillman notes, in the founding period, "Sovereignty was recognized as vested in the people." Seth Barrett Tillman, "A Textualist Defense of Article I, Section 7, Clause 3: Why

Hollingsworth v. Virginia Was Rightly Decided, and Why *INS v. Chadia* Was Wrongly Reasoned," 83 Texas Law Review p 1265 at 1268 (2005)

¹⁴Thomas Reid, *Practical Ethics, Being Lectures and Papers on Natural Religion, Self-Government, Natural Jurisprudence, and the Law of Nations*, with an introduction by Knud Haakonssen (Princeton: Princeton University Press, 1990), p 255. Quoted also in David Boucher and Paul Kelly, "The Social Contract and its Critics: An Overview," in David Boucher and Paul Kelly, eds. *The Social Contract from Hobbes to Rawls* (New York: Routledge, 1994), p 16