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Book Review [The Imperial Republic]

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BOOK REVIEW


Reviewed by James T. Erickson*

You will be emancipated from tyranny and oppression, and restored to the dignified station of freemen... The United States offer you peace, liberty, and security,—your choice lies between these and war, slavery, or destruction.

— General Hull's proclamation to the Canadians, delivered shortly before he led the United States' invasion of Canada in 1812

[It] is doubtful if Congress would ever assent to the annexation of territory upon the condition that its inhabitants... shall become at once citizens of the United States... It is obvious that in the annexation of outlying and distant possessions grave questions will arise from differences of race, habits, laws and customs of the people... which may require action on the part of Congress that would be quite unnecessary in the annexation of contiguous territory inhabited only by people of the same race, or by scattered bodies of native Indians.

— Justice Henry B. Brown, writing for the majority in Downes v. Bidwell (referring to the 1899 cession of Puerto Rico—and impliedly of the Philippines, Cuba, and Guam—to the United States following the Spanish-American War)

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* Book Review and Ethics Editor, Santa Clara Law Review, Volume 44. J.D. candidate, Santa Clara University School of Law; B.A., Hampshire College.


2. Downes v. Bidwell, 182 U.S. 244, 279-80, 282 (1901) (quoted in Wilson,
One "contiguous territory" the United States never did manage to "emancipate from tyranny and oppression" is Canada, though not for want of trying. In 1775, before the United States had become the United States, the Continental Congress authorized the first invasion of Canada.\(^3\) The second invasion came a year later.\(^4\) The third followed in 1812.\(^5\) As late as 1860, presidential candidate and future Secretary of State William H. Seward informed the no doubt bemused Canadians that "you are building excellent states to be hereafter admitted into the American Union."\(^6\) When the Canadians ignored the offer, Seward looked further north.\(^7\) To this day, his folly saves Americans many a penny at the pumps.

Seward, of course, bought rather than conquered Alaska. The distinction may not have been so clear-cut to the Alaskans—certainly it was not to the inhabitants of the Louisiana Territory after President Jefferson unconstitutionally made his deal with the Emperor Napoleon.\(^8\) Acting more like an emperor than a President, Jefferson appointed a governor and created "The Assembly of Notables" to rule Napoleon's surrendered subjects, all without their consent much less representation.\(^9\) During the debate over the purchase, Jefferson's supporter John Randolph asserted that the United States had the right to annex not merely Louisiana but—why not?—Texas, Mexico, and South America, too.\(^10\)

As Professor James G. Wilson points out in The Imperial Republic, Jefferson, the champion of Republicanism, thus created in the Louisiana Territory a "completely nonrepublican mode of government."\(^11\) Wilson explains that

Jefferson’s cherished belief in equal, republican govern-

\(^3\) See WILSON, supra note 1, at 38.
\(^4\) See id. at 39.
\(^5\) See id. at 127.
\(^6\) See id. at 238 (citing WALTER LAFeBER, THE NEW EMPIRE: AN INTERPRETATION OF AMERICAN EXPANSION 1860-1898, 28 (1963)).
\(^7\) See id. Seward arranged for the purchase of Alaska from Russia, an act his critics referred to as "Seward's folly." See id. at 239.
\(^8\) See id. at 104, 106.
\(^9\) See WILSON, supra note 1, at 105 (citing JOSEPH J. ELLIS, AMERICAN SPHINX: THE CHARACTER OF THOMAS JEFFERSON 210 (2001)).
\(^10\) See id. at 104 (citing HENRY ADAMS, HISTORY OF THE UNITED STATES OF AMERICA DURING THE ADMINISTRATIONS OF THOMAS JEFFERSON 368 (1986) (1889-90) [hereinafter ADAMS ON JEFFERSON]).
\(^11\) See id. at 105.
ments throughout an empire, a position he and [Benjamin] Franklin had turned into the major constitutional premise justifying the American Revolution, was sacrificed to his desire to expand Westward and his fear of non-Anglicans. The fundamental doctrine of taxation without representation could be delayed until a region became sufficiently “homogenous,” that is, until Anglo-Americans had sup- planted Creoles as the majority in the new Territory. The American Revolutionary model was altered, at least for several years, into the Athenian-Anglican system of double standards for different parts of an empire, a system premised upon assumptions of racial and ethnic superior- ity.12

Here, the use of the noun “empire” may seem presumptuous. Canada, Alaska, the Louisiana Territory, Puerto Rico, and the Philippines—could not these index-entries in the book of American history be referenced without any mention of “empire”? And if mentioned, whose definition of “empire” is to apply to the three invasions of Canada? Or to the unconsti- tutional purchase of the Louisiana Territory and concomi- tant creation of a “completely nonrepublican mode of govern- ment” there? Or to Seward’s folly? Or to the 1898-1902 U.S. invasion of the Philippines and slaughter of hundreds of thousands of Filipinos?13 “Empire” means one thing in one context, something else in another—and its modern sense may not apply to long-past events at all.14

Nervous academics fret over such semantic issues. Yet in some contexts it seems bizarre that anyone would debate the definition of the word “empire.” For example, shortly after the United States became the most powerful nation on earth, the United Fruit Company was threatened by the 1951 election of Jacobo Arbenz to the Presidency of Guatemala.15

12. Id. at 105-06.
United Fruit was in a position to protect its banana interests in Central America via the executive branch of the United States government: John Foster Dulles and Allen Dulles, two men with strong ties to the company, were respectively President Eisenhower's Secretary of State and Director of Central Intelligence.  

Thanks to the CIA's "Operation Success," Arbenz was overthrown. Guatemala was ruled during the subsequent decades by a military dictatorship, culminating in the "slaughter of over one hundred thousand Indian peasants"—a slaughter "aided and abetted" by the United States in the 1980s and 1990s.

To some, this hegemonic intervention amounts to a pretty clear-cut example of imperialism. But in the politicized world of American academia, little may ever be clear-cut. Anticipating his critics, Wilson provides at least four different definitions of "empire" (analytic/descriptive, empirical, emotive, and normative), each with its own sub-definitions. The overthrow of the Guatemalan government and installation of a puppet regime would fall into the category of the "emotive definition" Wilson borrows from Michael Doyle: "Empire... is a system of interaction between two political entities, one of which, the dominant metropole, exerts political control over the internal and external policy—the effective sovereignty—of the other, the subordinate periphery." Though not perfect, this definition is close enough for government work, or at least for the Eisenhower government's work in Guatemala.

Why is this quibbling over words even necessary? One reason, as Richard W. Van Alstyne mentioned in The Rising American Empire, is that "[I]n the United States it is almost a heresy to describe the nation as an empire. [But] the founders so regarded it." Written more than four decades ago, this statement remains cogent in its use of the word "heresy." Clifford Angell Bates, Jr., in a review of The Imperial Republic written for the Law and Courts section of the American Political Science Association, opines that Wilson's work "re-

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16. See id. at 76, 106.
17. See id. at xiii.
18. See id. at 254-55; Wilson, supra note 1, at 255.
20. See id. at 18-19 (citing Michael W. Doyle, Empires 12 (1986)).
21. See id. at 7 (citing Richard W. Van Alstyne, The Rising American Empire 6 (1960)).
fects the new-fangled Marxism that emerged after the intellectual collapse of the Soviet Block”; worse, it has a “shrill and moralizing tone.” Here, once you get past the weirdly anachronistic red-baiting, the key buzzword is “shrill.” In the fair and balanced era of Fox News, any time a scholar reminds his readers of Guatemala or the Philippines or the treatment of Native Americans, he is sure to be described as “shrill” by critics weary of the truth. Once mentioned, by anyone anywhere, the uglier simple truths of American history are deemed to have been sufficiently discussed, and are henceforth to be either ignored (silence is never “shrill”) or rationalized—though one can hardly imagine a Canadian historian viewing sympathetically the United States’ three invasions of her native land, no matter how attractive our splendid health care system may be.

But Van Alstyne’s point brings up another issue, one treated with as little objectivity by Bates as the “new-fangled Marxist” application of the word “empire” to the United States: the founders themselves regarded their invention as an “empire.” Correspondingly, Wilson emphasizes to the point of redundancy that the word “empire” has had different connotations for different people at different times. Later, perhaps overdoing it, he predicts that “the very charge that will be made against this book” is that he is “applying [his] conceptions of ‘empire’ depending upon [his] underlying political preferences.” But when dealing with heresy, such efforts are to no avail: Bates—who, in his excitement about the intellectual collapse of the Soviet Block, seems not to have read past page twelve of the book—takes Wilson to task “for trying to convince the reader that when people like [Alexander] Hamilton, Franklin, [John] Marshall, and others, speak of ‘empire’ their understanding of the term coincides with his own.” Running out of pejorative compound nouns, Bates claims again that “Wilson’s structural approach arbitrarily

23. See supra text accompanying note 21.
24. See, e.g., Wilson, supra note 1, at 12.
25. See id. at 202-03.
26. Bates quotes repeatedly from the first twelve pages, once from pages fifty to fifty-one, never from any other page.
27. See Bates, supra note 22, ¶ 6.
imposes a new-fangled Marxism with its understanding" of the terms "republican," "empire," and "liberty." 28

In fact, as described, Wilson goes to some length to provide alternative definitions for the book's key terms. 29 Having done so, he then gathers dozens of examples of the terms' use by eighteenth- and nineteenth-century American politicians. This encourages the reader to determine independently what the words meant at the time they were spoken or written.

I. THE NASCENT AMERICAN "EMPIRE"

With the relativism of the word "empire" in mind, it is well to remember that at the founding of the United States the nation's territory encompassed the thirteen colonies and not much else. 30 Meanwhile, England, France, and Spain (and, later, Mexico and Russia) had competing interests in the rest of North America, while untold numbers of Native Americans had different ideas altogether. 31

Within seventy years, the United States controlled all but a small southwestern strip of its present North American contiguous land mass. 32 This did not happen by accident. As Wilson describes with ample documentation, "the majority of [early] American leaders and average Americans consistently and strongly committed themselves to an exhilarating expansion of their nation." 33 In short, Wilson's thesis is that "Empire building has consistently been a major force in the development of America's legal and political constitutions." 34

Such a simple thesis, verging on the self-evident, would likely not be regarded as a "hot button" notion anywhere outside our nation's borders. At home, though, it is another story. As Wilson reminds us: "In the Twentieth Century, it became impolitic to refer to America as an 'empire.'" 35 The word "empire," in other words, is politically incorrect—at least when applied to the United States. Clifford Angell

28. See id.
29. See supra text accompanying notes 19, 24.
30. The Proclamation Line of 1763 established the boundaries beyond which the colonists were forbidden to settle. See Paul C. Bowers, The American Revolution, in 1 ENCYCLOPEDIA AMERICANA 716 (1998).
31. See, e.g., WILSON, supra note 1, at 71-72, 74-75, 137, 193.
32. See id. at 197.
33. Id. at 7.
34. Id. at 11.
35. Id. at 253.
Bates' review has been emphasized above to illustrate what Wilson and other clearsighted revisionists are up against in employing such an "impolitic" term. But revisionism is necessary when the vision being supplanted is at best myopic and at worst blindfolded.

It becomes clear from Wilson's research that early American politicians used the word "empire" in two predominant senses. First, "empire" was often no more than a synonym for "a large territory under one government's control." Thus, the United States, England, France, and Spain all had "empires" on the American continent. But "empire" was also used to describe a state intent upon expansion. Because expansion could occur by treaty, purchase, or conquest, "empire" could describe both peaceful and violently aggressive states.

However one defines "empire," Wilson convincingly demonstrates that early exponents of America's "empire" frequently had expansion on their minds. Those who opposed expansion, such as some of the anti-federalists, usually did so not on principle but because they considered it dangerous to their own interests. Throughout the book, therefore, Wilson makes a motif of James Madison's oft-noted comparison of the capacities of "large" and "small" states to sustain a republican government; Madison, thereby, may be used as a touchstone for the views of others. In Federalist Ten, Madison argued that "large republics were preferable to small republics... because there would be so many groups and interests that the majority could never coalesce into a tyrannical faction." Apparently taking America's substantial expansion for granted, Madison followed up in Federalist Sixty-three by contending that republican representation is an "advantage" whose "full effect" can be realized only if "we [are] careful not to separate it from the other advantage, of an extensive territory." From this argument, Wilson concludes that Madison believed "republican governments had no alternative to being of great

36. See id. at 12-13.
38. See infra text accompanying notes 40-70.
39. See, e.g., WILSON, supra note 1, at 29.
40. See, e.g., id. at 29-30, 33.
41. Id. at 29-30 (paraphrasing THE FEDERALIST No. 10, at 83-84 (James Madison) (Clinton Rossitor ed., 1961)).
42. See id. at 33 (citing THE FEDERALIST No. 63, at 387 (James Madison) (Clinton Rossitor ed., 1961)).
size. . . . Republicans have no choice but to pursue and protect empire.”

At the very least Madison was representative of his ambitious Virginian countrymen: “All the [Revolutionary] Virginians who would later become President—Washington, Jefferson, Madison, and Monroe—sought to expand the country, particularly westward.” While President, Jefferson dreamed of the day when (as he put it in a letter to James Monroe) “our rapid multiplication will expand itself . . . & cover the whole northern, if not the southern continent, with a people speaking the same language, governed in similar forms, & by similar laws.”

As for Madison’s Federalist collaborator and Jefferson’s great rival, Alexander Hamilton “became the equivalent of a Prime Minister within Washington’s first cabinet, [and] did everything he could to guarantee that the Presidency . . . would have the ‘energy’ to facilitate the growth of empire.”

This “growth of empire,” as mentioned, involved acquiring lands not only from England, France, Spain, and eventually Russia and Mexico, but also from a great many Native Americans. Regarding the last, Wilson writes: “Every treaty violation was a form of conquest. A large part of the expanding American empire was gained in the traditional imperial fashion: massacres, skirmishes, and battles.” All too easily, historians may forget that the gradual absorption of indigenous peoples’ lands was every bit as “imperial” as would have been, say, invading and conquering Canada. Yet this prominent aspect of American expansion is rarely conceived as the act of an empire. Instead, it often seems to be merely—or, as it were, manifestly—the work of destiny.

In his “shrill and moralizing” references to Native Americans, Wilson underscores the essential fact that empire-building was a preoccupation not just of American leaders but of the forgotten American citizens who pushed westward.

43. Id. at 33.
44. Id. at 40.
45. See WILSON, supra note 1, at 41 (citing Letter from Thomas Jefferson to the Governor of Virginia [James Monroe] (Nov. 24, 1801), in THOMAS JEFFERSON: WRITINGS 1097 (Merrill D. Peterson ed., 1984)).
46. See id. at 94.
47. Id. at 43.
48. Id. at 45.
49. See id.
After all, the aggressive Generals Jackson, Harrison, and Taylor won the popular vote in five of the seven presidential elections between 1824 and 1848, strongly suggesting widespread approval of the expansionist aims these military leaders represented;\textsuperscript{50} indeed, “widespread” may be an understatement, considering that the other two elections were won by James Polk, who ran on a frankly militaristic platform,\textsuperscript{51} and by Jackson’s Vice President, Martin Van Buren.\textsuperscript{52} Whereas the Generals’ predecessor President Jefferson had strategized to purchase Native American land as cheaply as possible,\textsuperscript{53} “a large segment of the American public . . . used whatever force and fraud necessary to drive the Native Americans further West.”\textsuperscript{54} As the great American historian Henry Adams put it: “From Lake Erie to Florida, in long, unbroken line, pioneers were at work, cutting into the forests with the energy of so many beavers, and with no more express moral purpose than the beavers they drove away.”\textsuperscript{55}

According to Wilson, “Jefferson continually encouraged” the “relentless pressure of the average Western settler”—not only as a means of dealing with the Native American population but also as a geopolitical strategy: “Jefferson knew that the steady increase in well-armed settlers was America’s guarantee of ultimate success. Over the coming decades, none of the European countries could resist that combination of demographic, economic, and military force.”\textsuperscript{56} Indeed, Jefferson’s authorization of Lewis and Clark’s “survey” of the continent was, Wilson writes, “part of his plan to eventually extend the United States’ sovereignty to the Pacific Ocean.”\textsuperscript{57}

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\textsuperscript{50} See id. at 198. John Quincy Adams was elected President in 1824, but Jackson won the popular vote.

\textsuperscript{51} See WILSON, supra note 1, at 197.

\textsuperscript{52} See id. at 189.

\textsuperscript{53} Jefferson imagined that the Native Americans, being hemmed in by white settlements and forbidden to sell to anyone but the United States, would be obliged in farming smaller plots to purchase equipment, go into debt, sell more land to cover the debt, and so on. See id. at 44-45 (citing Letter from Thomas Jefferson to Governor William H. Harrison (Feb. 27, 1803), \textit{in THOMAS JEFFERSON: WRITINGS, supra note 45, at 1118}). Should this non-violent plan fail, Jefferson added, “we have only to shut our hand to crush them.” See id.

\textsuperscript{54} See id. at 45.

\textsuperscript{55} Id. at 99 (citing ADAMS ON JEFFERSON, supra note 10, at 121).

\textsuperscript{56} Id.

\textsuperscript{57} WILSON, supra note 1, at 99.

\textsuperscript{58} Id. at 104 (citing ADAMS ON JEFFERSON, supra note 10, at 527).
Meanwhile, Jefferson combined threats of force with diplomatic maneuvering to facilitate additional expansion. The Louisiana Purchase explicitly excluded the Floridas, which Spain, not France, controlled. Jefferson nevertheless demanded the Floridas, though he also claimed that Spain's "existence on this hemisphere and ours should have rested on the same bottom. . . . We want nothing of hers." A few months later Jefferson informed the British that the United States, upon strengthening its navy, would be in a position to conquer not just the Floridas but Cuba as well.

Although Jefferson's ambitions in the Floridas and Cuba were frustrated (the first invasion of Florida was delayed until the administration of his successor, James Madison; the invasions of Cuba were delayed until the administrations of McKinley and Kennedy), a French envoy described Jefferson as threatening to "take Canada" and "have the Floridas;" and in a letter to the American minister to Spain, the President wrote, "We ask but one month to be in possession of the city of Mexico." Given such a vision on the part of so prominent a founder, it is unsurprising that Alexis de Tocqueville would later describe America as "the most grasping nation on the globe," a place where "the rapacity of the set-

59. See id. at 110-16.
60. See id. at 111 (citing ADAMS ON JEFFERSON, supra note 10, at 331).
61. See id.
62. See id. at 113 (citing ADAMS ON JEFFERSON, supra note 10, at 641). Adams expressed skepticism about Jefferson's sincerity, pointing out that "for eighteen months he had exhausted every resource, short of force, to gain Baton Rouge, Mobile, and Pensacola, not to speak of East Florida and Texas." See ADAMS, supra note 10, at 641-42 (not quoted by Wilson).
63. See WILSON, supra note 1, at 113 (citing ADAMS ON JEFFERSON, supra note 10, at 673).
64. See id. at 119.
66. See id. at 304.
67. See WILSON, supra note 1, at 115 (citing ADAMS ON JEFFERSON, supra note 10, at 952). The envoy was General Turreau, whom Napoleon had appointed minister to the United States in 1804. See ADAMS ON JEFFERSON, supra note 10, at 483, 952.
68. See WILSON, supra note 1, at 115 (citing ADAMS ON JEFFERSON, supra note 10, at 904). Wilson substitutes "Mexico City" for "the city of Mexico"—the words Jefferson used—but does not bracket the change. See id.; ADAMS ON JEFFERSON, supra note 10, at 904. Adams argued that Jefferson was being hyperbolic. See ADAMS ON JEFFERSON, supra note 10, at 904 (not noted by Wilson).
69. See WILSON, supra note 1, at 347 (citing ALEXIS DE TOCQUEVILLE, 1 DEMOCRACY IN AMERICA 369 (Phillips Bradley ed., 1945) (1835)).
tlers [toward Native Americans] is usually backed by the tyranny of the government."^70

II. THE AGE OF JACKSON AND BEYOND

De Tocqueville visited America during the Jacksonian Era,^71 a period whose dominant attitudes seem, in Wilson's chronology, to have been the inevitable progeny of the expansionism preceding them. In the wake of the Monroe Doctrine, a definitive statement of jealous imperial sovereignty,^72 America underwent a “wave of religious enthusiasm” which “provided another justification of expansion: Americans had an obligation not just to civilize Native Americans, but also to . . . spread righteous Christianity throughout the hemisphere."^73 Wilson sums up the result in a simple formula: “the ‘divine right of kings’ became the ‘divine right of Americans.’”^74 In this milieu Andrew Jackson’s star rose.^75

Jackson was the hero of the Battle of New Orleans, a needless encounter that occurred soon after the War of 1812 had ostensibly ended.^76 His emergence as a national figure in that War is all the more striking, historically, given that the War had “radically changed [the nation’s] internal political culture and relevant constitutional practices, accelerating the transition from nonaggression to militarism, from provincialism to nationalism.”^77 In turn, Jackson’s 1828 presidential victory “signified . . . the triumph of a more militaristic, racist, and aggressive conception of the Constitution.”^78 Again emphasizing that expansionist impulses lurked in every stratum of society, Wilson notes, “Jackson’s widespread support, which lasted beyond his death, is a grim reminder that many of the United States’ most appalling traits are attributable not just to the country’s ruling class, but also its citizenry.”^79

^70. See id. (citing TOCQUEVILLE, supra note 69, at 350).
^72. See WILSON, supra note 1, at 40-41; see also VAN ALSTYNE, supra note 21, at 98-99.
^73. WILSON, supra note 1, at 117.
^74. See id.
^75. See id.
^76. See id. at 132.
^77. See id.
^78. Id. at 143.
^79. See WILSON, supra note 1, at 143.
During Jackson's second term, the large-scale immigration of Americans to Texas led to the declaration of Texas' independence from Mexico, whose land had been seized (remember the Alamo?) by those now creating a Republic upon it. Jackson, a compatriot of Sam Houston, immediately recognized the new nation, and within a decade Texas was annexed by virtue of majority vote of Congress. That is, Americans seized land from Mexico without the explicit participation of the United States government; but the government soon cooperated by annexing the land without benefit of treaty with Mexico nor consent of the Mexican inhabitants.

To a greater extent than ever before, prominent Americans strongly opposed the expansion; but as had been the case with the few anti-federalists who opposed a "large" republic at the founding, the argument against expansion actually centered upon different issues. In this case, those issues were slavery and the governance of territories. Both Northerners and Southerners were included among those opposing annexation, though based on different theories (beyond our present scope) of its probable effects.

Shortly before Congress settled the question of annexation, American "voters turned the 1844 Presidential election into a mandate for continued expansion." Democratic candidate James Polk called for the "reannexation" [sic] of Texas and the "reoccupation" of Oregon, and generally advocated quick expansion to the Pacific. Moreover, as many of us learned to our bewilderment in high school, Polk's slogan was "Fifty-four forty or fight" (happily, yet another unfulfilled campaign promise). Polk was elected. However, the combined Northern vote of Liberty Party candidate James K. Birney and Whig candidate Henry Clay, the former opposing expansion and the latter lukewarm towards it, exceeded

80. See id. at 144.
81. See id.
82. See id. at 195-96.
83. See id. at 194-96.
84. See id. at 192-99.
85. See WILSON, supra note 1, at 192-99.
86. See id.
87. See id. at 194.
88. See id. at 195.
89. See id. at 197. The slogan referred to the line of geographic latitude (in Canada) Polk proposed as the northernmost point of contemporary American expansion. Id.
Polk’s Northern vote by almost 50,000.\textsuperscript{90} Noting this, Wilson points out that “[d]uring certain moments of American history, many citizens, well represented by powerful leaders, have opposed a particular expansion, formal or informal, of the empire. But one of the interesting patterns in American history is how often the anti-imperial advocates lost.”\textsuperscript{91}

President Polk proceeded to go to war with Mexico after the Mexicans turned down his generous offer of five million dollars for New Mexico and twenty-five million for California.\textsuperscript{92} The crafty commander in chief ordered the United States Army (led by General Zachary Taylor) to occupy a contested region never formally controlled by Texas;\textsuperscript{93} when the Mexicans defended the region, Polk protested that they “had invaded our territory and shed American blood on American soil.”\textsuperscript{94}

And the war, or at least a war, or one of the wars, came. Forty years after Jefferson’s proud boast to the French,\textsuperscript{95} the United States at last “seized” Mexico City—not to mention California.\textsuperscript{96} After obliging certain dubiously representative Mexicans to sell the latter, the United States relinquished the former\textsuperscript{97} . . . over the protests of the southern “all Mexico” movement.\textsuperscript{98}

III. CHIEF JUSTICE MARSHALL AND EMPIRE

Famously, the United States was conceived as a nation ruled by laws, not men.\textsuperscript{99} As an unusually litigious and lawyerly nation,\textsuperscript{100} one where the rule of law would, ideally, be supreme over any competing “rule,” the United States cannot be comprehended historically without paying due respect to

\begin{footnotes}
\item[90.] See id. at 195.
\item[91.] WILSON, supra note 1, at 195.
\item[92.] See id. at 197.
\item[93.] See id.
\item[94.] See id. at 197-98.
\item[95.] See id.; text accompanying note 68.
\item[96.] See id. at 198.
\item[97.] See WILSON, supra note 1, at 198.
\item[98.] See id. at 199.
\item[99.] The phrase is usually attributed to John Adams, who in 1776 wrote: “the very definition of a republic is ‘an empire of laws, and not of men.’” PAGE SMITH, 1 JOHN ADAMS 246 (1962).
\item[100.] The United States leads the nations of the world in lawyers per capita. See, e.g., Sara Terry, Has U.S. Become a Nation of Finger-Pointers?, CHRISTIAN SCI. MONITOR, Aug. 20, 1999, at 9.
\end{footnotes}
its legal history. Professor Wilson appropriately devotes a large share of his book to analyzing the role of the Supreme Court in the great expansion of the nineteenth century.\textsuperscript{101}

The Marshall Court is the subject of much of this attention, but Wilson’s focus on Marshall differs from his general legal focus in that he uses Marshall to pursue a special goal: he attempts “to test the imperial ambition thesis” by “apply[ing] it to a high-quality, contemporary work of legal history,”\textsuperscript{102} G. Edward White’s \textit{The Marshall Court & Cultural Change 1815-1835}.\textsuperscript{103} In \textit{The Marshall Court}, the author lists the “premises” that were shared by Chief Justice Marshall and his Republican opponents: “America was a republic; property rights were to be protected; commerce was to be encouraged; liberty and virtue were to be furthered; sovereignty was to be divided among the respective spheres of influence.”\textsuperscript{104}

In response, Wilson notes that White “did not include as a ‘starting premise’ the equally universal commitment to the growth of the republican empire. Instead, he emphasized the country’s expansion as one of the major forces of ‘cultural change,’ an external, background pressure on the existing legal system.”\textsuperscript{105} In other words, the Marshall Court was sometimes more pro-active than reactive in the quest for expansion.

Wilson goes on to delineate the contribution of the judicial branch to empire-building, a contribution easily ignored in the standard analysis of black-letter law.\textsuperscript{106} To begin with, “The Marshall Court’s jurisprudence \textit{constitutionalized} a particular ideological/political tradition, the imperial vision of Alexander Hamilton.”\textsuperscript{107} Wilson thus brings a novel perspective to several of the Marshall Court’s most celebrated cases. Consider the following:

By stating in \textit{Marbury v. Madison}\textsuperscript{108} that most foreign af-

\textsuperscript{101} See \textit{Wilson, supra} note 1, at 147-85, 207-52.
\textsuperscript{102} See \textit{id.} at 147.
\textsuperscript{104} See \textit{Wilson, supra} note 1, at 149 (citing \textit{White, supra} note 103, at 52-53).
\textsuperscript{105} \textit{Id.} at 149.
\textsuperscript{106} See, \textit{e.g., id.} at 149-50.
\textsuperscript{107} See \textit{id.} at 150 (emphasis added).
\textsuperscript{108} 5 U.S. 137 (1803).
fairs questions were judicially unreviewable “political” decisions, [Marshall] allocated responsibility for the implementation of foreign affairs and the war power to the two elected branches. In those areas, the politicians would be primarily constrained by their consciences and the electorate. Thus Marshall helped create a Machiavellian republic, in which the rule of law would apply internally, but not externally. He also implemented [contemporary historian] David Ramsay’s vision of a republic headed by an emperor-like figure who had vast discretion over foreign policy.  

This, to put it mildly, is not the Marbury spin found in most textbooks. And as for constitutionalizing “the imperial vision of Alexander Hamilton,” Wilson has this to say about Marshall’s treatment of Hamilton’s creation, the Bank of the United States:

In the course of upholding the constitutionality of the bank in McCulloch v. Maryland, Marshall explicitly included the bank within his imperial vision that extended far beyond the country’s existing boundaries at the Mississippi River: “Throughout this vast republic, from the St. Croix to the Gulf of Mexico, from the Atlantic to the Pacific, revenue is to be collected and expended, armies are to be marched and supported.” By validating the right of the federal government to create corporations, immunizing federal corporations from state harassment, fleshing out the “universal law” of corporations in a variety of State “contract” cases, and implying numerous important rights, Marshall created a blueprint for a powerful institution that governments could use in any way they saw fit.

To support his thesis, Wilson describes what Marshall was up to in the aftermath of the empire-building the Court had endorsed. In American Insurance Co. v. Canter, a Florida-centered case decided a decade after Florida was acquired, Marshall “aggressively implied extensive federal

109. WILSON, supra note 1, at 159-60 (citing Marbury, 5 U.S. at 166) (citations omitted).
110. 17 U.S. 316 (1819).
111. WILSON, supra note 1, at 181 (quoting McCulloch, 17 U.S. at 408 (alteration in original)) (citations omitted).
113. Spain gave up title to both Floridas in 1819. See WILSON, supra note 1, at 136.
powers from a mixture of text and general principles; the Union’s powers of making wars and treaties and ‘the usage of the world’ implied the derivative power to acquire additional land, ‘either by conquest or by treaty.’”

_Canter_ arose after a Florida territorial court ordered the cargo of a wrecked ship sold to reimburse the ship’s salvors. Marshall ruled that the territorial legislature, established by Congress, was competent to establish the territorial court. The fact that the territorial court heard cases in admiralty did not make it an “Article Three” court, because such an Article Three limitation “does not extend to the territories. In legislating for them, congress exercises the combined powers of the general, and of a state government.” The last sentence, with no more than a handful of words, creates in Congress powers crucial to the administration of an empire.

_Canter_ is not among the cases now forming the traditional, textbook canon. Wilson’s wholly relevant attention to such a case exemplifies the value of his thesis in bringing to bear any vision at all, much less a “revision,” to the Court’s contributions to empire. As Wilson puts his own case, “The central importance of _Canter_, which Professor White considered only for its jurisdictional implications, reconfirms the utility of emphasizing the role of empire in constitutional ideology.”

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114. _Id._ at 160 (quoting _Canter_, 26 U.S. at 542).
115. _See_ _Canter_, 26 U.S. at 541.
116. _See id._ at 546.
117. _See id._ In pertinent part, Article Three provides: “The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. . . . The judicial Power shall extend . . . to all Cases of admiralty . . . .” U.S. CONST. art. III, §§ 1-2. The court at issue in _Canter_ was created by a territorial legislature, leading to the question of whether a territorial court had jurisdiction in “Cases of admiralty” arising in the territory. Marshall answered:

>The jurisdiction with which [the territorial courts] are invested, is not a part of that judicial power which is defined in the 3d article of the Constitution, but is conferred by Congress, in the execution of those general powers which that body possesses over the territories of the United States.

_Canter_, 26 U.S. at 546.
118. _See_ _Wilson_, _supra_ note 1, at 162.
119. _See id._
120. _Id._
IV. The Nineteenth Century Military-Industrial Complex

It is not too much of a stretch to locate in Marbury, McCulloch, and Canter the legal ground from which would grow "another institution... that would effectively extend imperial power without needing to expand territorial sovereignty: the modern multi-national corporation."\(^{121}\) After the Civil War,

American corporations helped formulate foreign policy in Washington and domestic policy throughout the Americas. These increasingly powerful corporations worked closely with the government to further both military and economic expansion. As early as the mid-1880s, [former secretary to Lincoln and future Secretary of State] John Hay... lamented: "This... is a government of corporations, by corporations, and for corporations..." The... alliance between government, the military, military contractors, and private power became ever tighter by the end on [sic] the Nineteenth Century, culminating in the Spanish-American War.\(^{122}\)

The Civil War itself contributed to this development: "When the war ended, the opportunity for a vast empire had never been brighter. The North had created a military-industrial complex, combining the brute force of military power with the flexible, aggressive productive capacities of the modern corporation, a system which would help lead to American eventual worldwide supremacy."\(^{123}\) Inevitably, this had an effect on political theory and the terms of political discourse: "Some of the old Anti-Federalist arguments against vast empires—areas distant from the center would be hard to defend, regulate, and integrate—were undermined not so much by theory, as by technology and the brutal art of modern warfare."\(^{124}\) Move forward a few decades and add the shipping capacities of modern aircraft, and the contours of twentieth-century neocolonialism are essentially defined.

Unfortunately, it is difficult to do justice to Wilson's nar-

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121. *See id.* at 244.
122. *Id.*
123. *Id.* at 236.
rative of the years between the Mexican and the Spanish-American Wars without overextensive quotation from the final section of The Imperial Republic. For example, in examining the obvious entanglement of the questions of expansion and slavery, Wilson quotes Frederick Jackson Turner’s thesis that the Civil War was “also a war for the possession of the unoccupied West, a struggle between the Middle West and the States of the Gulf Plains.” Provocatively, Wilson adds: “Turner argued that historians’ emphasis on slavery obscured the even greater importance of expansionism on the American mind (just as the contemporary obsession with racial and sexual injustices underemphasizes the country’s relentless quest for power).”

Wilson also gives compelling and unorthodox readings of the infamous Dred Scott decision and the “constitutional vision” of John C. Calhoun: “Just as Hamilton provided through theory and practice the basic constitutional system that Justice Marshall eventually converted into constitutional law, so Calhoun developed through words and deeds a conception of empire that Justice Taney would temporarily imbed into the legal constitution in Dred Scott.”

More crucially, Wilson stresses that the otherwise repellent Dred Scott decision held a small silver lining in declaring that “Congress had no constitutional authority to maintain perpetual colonies.” Not only did this ruling effectively create the limit on the modern geographical shape of the nation, it also transformed the manner in which the empire was henceforth administered. In combination with the citi-

125. See id. at 232 (quoting FREDERICK JACKSON TURNER, The Middle West, in THE FRONTIER IN AMERICAN HISTORY 141 (1996)).
126. Id. at 241.
128. WILSON, supra note 1, at 207.
129. See id. at 217. Wilson paraphrases the decision in Dred Scott, 60 U.S. at 446, which held:
There is certainly no power given by the Constitution to the Federal Government to establish or maintain colonies bordering on the United States or at a distance, to be ruled and governed at its own pleasure... [N]o power is given to acquire a Territory to be held and governed permanently in that character.
Id.
130. See id. at 217, 220, 238.
131. See id. at 221-22.
zenship clause of the Fourteenth Amendment, the prohibition against perpetual colonies created a system in which, as Bertrand Russell put it, "annexation of territory has difficulties under the American Constitution: it involves the admission of new voters, who may be thought undesirable." A typical result: "After the Cuban revolution [for independence from Spain] ended in 1878, American citizens increased their influence by buying up depressed sugar plantations. . . . In 1888, the North American Review concluded that this new, informal 'species of ownership' provided profits without incurring political obligations." Similarly, in arguing against the annexation of Hawaii after the Spanish-American War, William Graham Sumner put the neo-colonialist position succinctly:

What private individuals want is free access, under order and security, to any part of the earth's surface, in order they may avail themselves of its natural resources for their use, either by investment or commerce. If, therefore, we have free trade with Hawaii while somebody else has the jurisdiction, we should gain all the advantages and escape all the burdens.

Wilson sums up the result of the Spanish-American War: "America would have perpetual colonies. Native populations in Puerto Rico and the Philippines would not be brought into the Republic via 'compact and equality.' Particularly in the Philippines, they would be subjugated through relentless violence and permanent inequality." Meanwhile,

The American empire also slowed its geographical growth because it devised other means for broadening its influence. . . . America facilitated its naval/commercial presence throughout the world by gaining control of many strategic locations: Alaska, Hawaii, Puerto Rico, Samoa,
the Panama Canal, the Virgin Islands, Cuba, and the Philippines. The brutal subjugation of the Philippines demonstrated that force and conquest remained integral parts of American foreign policy. In addition to developing a formal colonial system, American Presidents would engage in "gunboat diplomacy." Periodic invasions of South American countries to maintain "stability" occurred throughout the coming century.\(^\text{137}\)

Finally, Wilson rounds out his "re-vision" of the first half of post-Revolutionary American history by focusing again on legal history. After *Santa Clara County v. Southern Pacific Railroad Co.*\(^\text{138}\) established that the "persons" granted rights by the Fourteenth Amendment included corporations,\(^\text{139}\) in the *Slaughter-House Cases*\(^\text{140}\) Justice Miller listed among Fourteenth Amendment rights the privilege "to demand the protection of the Federal government . . . when on the high seas or within the jurisdiction of a foreign government."\(^\text{141}\) Consistent with his book's theme, Wilson finds here that "[a]t long last, Daniel Webster's preference of expanding American power through private investment instead of territorial growth received its constitutional imprimatur."\(^\text{142}\)

Unfortunately for the disciples of Webster, the portion of *Dred Scott* forbidding perpetual colonies had been reconfirmed after the Civil War in *Reynolds v. United States.*\(^\text{143}\) This created the "imperial difficulty" that Congress, while creating administrative structures in new territories, could not interfere with the constitutional rights of the residents of these former "colonies."\(^\text{144}\) The Supreme Court solved this and related difficulties in the *Insular Cases.*\(^\text{145}\)

\(^{137}\) Id. at 243-44.

\(^{138}\) 118 U.S. 394 (1886).

\(^{139}\) *See* Wilson, *supra* note 1, at 244. Technically, the Supreme Court held that the case could be decided without reaching the constitutional question. *See* Santa Clara County, 118 U.S. at 410. However, Justice Field's concurrence in the decision's companion case makes clear what the resolution of the constitutional question would have been, thus effectively establishing the Court's position even if only in dicta. *See* San Bernardino County v. S. Pac. R.R. Co., 118 U.S. 417, 422-23 (1886) (Field, J., concurring).

\(^{140}\) Slaughter-House Cases, 83 U.S. 36 (1872).

\(^{141}\) *See id.* at 79; Wilson, *supra* note 1, at 245.

\(^{142}\) Wilson, *supra* note 1, at 245.

\(^{143}\) 98 U.S. 145 (1878); *see* Wilson, *supra* note 1, at 247 (citing Reynolds, 98 U.S. at 162).

\(^{144}\) *See* Wilson, *supra* note 1, at 247.

\(^{145}\) *See* Downes v. Bidwell, 182 U.S. 244 (1901); Dooley v. U.S., 182 U.S. 222
Wilson pays particular attention to *Downes v. Bidwell*, which he argues should "be pulled out of the collectivity of the *Insular Cases* and considered on its own merits" because it is "one of the most despicable Supreme Court opinions of all time." In the first of the *Insular Cases*, the Court created a presumption in favor of free trade with a colony acquired by treaty; in the second it modified the presumption to allow military expenses to be offset (prior to formal treaty ratification) by pre-existing import duties. Then in *Downes*, the Court allowed tariffs on "imports" from Puerto Rico even if such tariffs would have been unconstitutional within the mainland. "Thus," Wilson explains, "the United States could have it both ways with its new colonies: it could create free trade zones whenever desirable, yet tax any of those colonies' imports that threaten domestic interests." Meanwhile, the Court quoted the Fourteenth Amendment as another authority for imperialism. Because the colonies were neither in the United States nor States, their inhabitants had no constitutional rights particularly the dreaded right to be treated as a human being throughout the United States under the Privileges and Immunities Clause. The Court explicitly relied upon imperial necessity and racial difference to justify its peculiar doctrine that facilitated lucrative trade but little else. Whatever the Framers may have thought about republican empires, Congress needed to have the same powers all other countries have when they conquer a new land. The majority imbedded racism into the American empire after the Fourteenth Amendment as much as Taney imbedded race slavery into the original Constitution.

While the Fourteenth Amendment did "make it more difficult to fully assimilate [foreign] lands into the Republic," the only lands formally taken (other than the Isthmus of Pa-

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(1900); DeLima v. Bidwell, 182 U.S. 1 (1900).
146. *Downes*, 182 U.S. 244.
147. WILSON, supra note 1, at 248.
149. Id. at 186-87; see WILSON, supra note 1, at 247-48.
151. Id. at 233; see also WILSON, supra note 1, at 248.
152. See WILSON, supra note 1, at 248.
153. Id.
154. Id. at 248-50 (paragraph divisions omitted).
namas) were, as Wilson notes, islands "necessary for trade or war." As for larger countries, it was "easier and cheaper to use military and economic force to keep [them] under indirect control with the ruthless assistance of compliant local leadership."

And there, at the entrance or perhaps open door to the twentieth century, Wilson leaves his narrative. The rest is not only history but also the present and the foreseeable future. Appropriately, then, Wilson closes his book with questions about the fate of republican institutions in the context of "that new semi-sovereign force known as the Global Market." But he also gives a last glance backwards, asking:

Have the "other" Americans—the Native, and Latin Americans—benefited from this history, which at least immunized them from significant European intervention? They have certainly felt the wrath of a Machiavellian republic, which treats its citizens with some degree of respect but sees the rest of the world as a source of exploitation. In terms of actual policy, for well over a century the United States has been far more concerned to make the world safe for America and its corporations than for democracy. American leaders generally have favored "stable" dictatorships to turbulent democracies . . .

The point of all this is not to "bash" America. Wilson concludes, "[t]he United States' overall imperial history has been rather ordinary for an empire, not exceptionally evil or virtuous." He also finds that the "evolution from subordinate colonies of England to a political constitution that grants formal equality throughout almost all its borders and provides basic citizenship rights to all adults is truly admirable." But history, even if written by the victors, must be written with some objectivity—and the object cannot be seen accurately through rose-colored glasses or the lens of nationalism. James G. Wilson is a revisionist only in the sense that most historians, in regarding our history as an empire, have viewed the subject while wearing blinders.

155. See id. at 252.
156. See id.
157. See id. at 258.
158. WILSON, supra note 1, at 255.
159. Id. at 257.
160. Id.