

AMERICAN CONSTITUTIONALISM  
VOLUME II: RIGHTS AND LIBERTIES  
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Supplementary Material

Chapter 3: The Founding Era — Foundations/Sources/Constitutions and Amendments

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James Wilson, **State House Yard Speech** (1787)<sup>1</sup>

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James Wilson (1742–1798) signed the Declaration of Independence, was a member of the convention that drafted the Constitution, and was one of the first appointees to the Supreme Court of the United States. Next to James Madison, Wilson was the most important defender of a strong national government both during the framing and ratification debates. He successfully led the pro-ratification forces in Pennsylvania.

Wilson's "State House Yard Speech" provided the standard Federalist justification for the decision not to have a Bill of Rights in the Constitution. What reasons does he give? Are his arguments sound? Notice that Wilson claims that the right to trial by jury had different meanings in different states. How does that influence the proper interpretation of the Sixth Amendment?

It will be proper . . . to mark the leading discrimination between the State constitutions and the constitution of the United States. When the people established the powers of legislation under their separate governments, they invested their representatives with every right and authority which they did not in explicit terms reserve; and therefore upon every question respecting the jurisdiction of the House of Assembly, if the frame of government is silent, the jurisdiction is efficient and complete. But in delegating federal powers, another criterion was necessarily introduced, and the congressional power is to be collected, not from tacit implication, but from the positive grant expressed in the instrument of the union. Hence, it is evident, that in the former case everything which is not reserved is given; but in the latter the reverse of the proposition prevails, and everything which is not given is reserved.

This distinction being recognized, will furnish an answer to those who think the omission of a bill of rights a defect in the proposed constitution; for it would have been superfluous and absurd to have stipulated with a federal body of our own creation, that we should enjoy those privileges of which we are not divested, either by the intention or the act that has brought the body into existence. For instance, the liberty of the press, which has been a copious source of declamation and opposition—what control can proceed from the Federal government to shackle or destroy that sacred palladium of national freedom? If, indeed, a power similar to that which has been granted for the regulation of commerce had been granted to regulate literary publications, it would have been as necessary to stipulate that the liberty of the press should be preserved inviolate, as that the impost should be general in its operation. With respect likewise to the particular district of ten miles, which is to be made the seat of federal government, it will undoubtedly be proper to observe this salutary precaution, as there the legislative power will be exclusively lodged in the President, Senate, and House of Representatives of the United States. But this could not be an object with the Convention, for it must naturally depend upon a future compact to which the citizens immediately interested will, and ought to be, parties; and there is no reason to suspect that so popular a privilege will in that case be neglected. In truth, then, the proposed system possesses no influence whatever upon the press, and it would have been merely nugatory to have introduced a formal declaration upon the subject—nay, that very declaration might have been construed to imply that some degree of power was given, since we undertook to define its extent.

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<sup>1</sup> Excepted from *Independent Gazetteer* (October 11, 1787).

Another objection that has been fabricated against the new constitution, is expressed in this disingenuous form—"The trial by jury is abolished in civil cases." I must be excused, my fellow citizens, if upon this point I take advantage of my professional experience to detect the futility of the assertion. Let it be remembered then, that the business of the Federal Convention was not local, but general—not limited to the views and establishments of a single State, but co-extensive with the continent, and comprehending the views and establishments of thirteen independent sovereignties. When, therefore, this subject was in discussion, we were involved in difficulties which pressed on all sides, and no precedent could be discovered to direct our course. The cases open to a trial by jury differed in the different States. It was therefore impracticable, on that ground, to have made a general rule. The want of uniformity would have rendered any reference to the practice of the States idle and useless; and it could not with any propriety be said that, "The trial by jury shall be as heretofore," since there has never existed any federal system of jurisprudence, to which the declaration could relate. Besides, it is not in all cases that the trial by jury is adopted in civil questions; for cases depending in courts of admiralty, such as relate to maritime captures, and such as are agitated in courts of equity, do not require the intervention of that tribunal. How, then was the line of discrimination to be drawn? The Convention found the task too difficult for them, and they left the business as it stands, in the fullest confidence that no danger could possibly ensue, since the proceedings of the Supreme Court are to be regulated by the Congress, which is a faithful representation of the people; and the oppression of government is effectually barred, by declaring that in all criminal cases the trial by jury shall be preserved.

This constitution, it has been further urged, is of a pernicious tendency, because it tolerates a standing army in the time of peace. This has always been a topic of popular declamation; and yet I do not know a nation in the world which has not found it necessary and useful to maintain the appearance of strength in a season of the most profound tranquility. Nor is it a novelty with us; for under the present articles of confederation, Congress certainly possesses this reprobated power, and the exercise of that power is proved at this moment by her cantonments along the banks of the Ohio. But what would be our national situation were it otherwise? Every principle of policy must be subverted, and the government must declare war, before they are prepared to carry it on. Whatever may be the provocation, however important the object in view, and however necessary dispatch and secrecy may be, still the declaration must precede the preparation, and the enemy will be informed of your intention, not only before you are equipped for an attack, but even before you are fortified for a defence. The consequence is too obvious to require any further delineation, and no man who regards the dignity and safety of his country can deny the necessity of a military force, under the control and with the restrictions which the new constitution provides.

Perhaps there never was a charge made with less reason than that which predicts the institution of a baneful aristocracy in the federal Senate. This body branches into two characters, the one legislative and the other executive. In its legislative character it can effect no purpose, without the co-operation of the House of Representatives, and in its executive character it can accomplish no object without the concurrence of the President. Thus fettered I do not know any act which the Senate can of itself perform, and such dependence necessarily precludes every idea of influence and superiority. But I will confess that in the organization of this body a compromise between contending interests is discernible; and when we reflect how various are the laws commerce, habits, population and extent of the confederated States, this evidence of mutual concession and accommodation ought rather to command a generous applause, than to excite jealousy and reproach. For my part, my admiration can only be equalled by my astonishment in beholding so perfect a system formed from such heterogeneous materials.

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