

***First defense of the Constitution; a government of limited and delegated powers; a constitution in which what is not granted is reserved.***

*James Wilson was one of the primary architects of the Constitution; he served in the Philadelphia Convention as a delegate from Pennsylvania. He had been a signer of the Declaration of Independence; he was recognized as one of the nation's leading attorneys and, along with Madison, as one of the leading theorists about government; he would go on to serve on the United States Supreme Court. Because the Pennsylvania Legislature was in session when the Constitution was released for public comment and debate, Wilson was invited to speak outside of the Pennsylvania State House, more commonly known as Liberty Hall, to explain the Constitution and rebut some of the early criticisms that had been leveled against it. Wilson's defense of the Constitution served as the first major argument in the Ratification Debates. His position advocating the ratification of the Constitution was the most widely read and cited defense of the Constitution.*

*Unfortunately for Wilson, poor business decisions proved his undoing in the coming years. He was even forced into debtor's prison for a time as a result of failed real estate deals. He died in North Carolina in 1798 while dodging Pennsylvania creditors. At the time he was trying to repair his financial situation.*

*As you read Wilson's argument, keep in mind that he was the best that the advocates of the Constitution had. His speech is really a series of small arguments that he presents in detail. After you read each one, most often contained in a paragraph, scrutinize it to see if you really find it persuasive. Consider how reasonable the opponent's fears were and hypothesize about how circumstances might develop that would lead to a tyrannical central government.*

James Wilson's State House Yard Speech October 6, 1787

Mr. Chairman and Fellow Citizens, Having received the honor of an appointment to represent you in the late convention, it is perhaps, my duty to comply with the request of many gentlemen whose characters and judgments I sincerely respect, and who have urged, that this would be a proper occasion to lay before you any information which will serve to explain and elucidate the principles and arrangements of the constitution, that has been submitted to the consideration of the United States. I confess that I am unprepared for so extensive and so important a disquisition; but the insidious attempts which are clandestinely and industriously made to pervert and destroy the new plan, induce me the more readily to engage in its defence; and the impressions of four months constant attention to the subject, have not been so easily effaced as to leave me without an answer to the objections which have been raised.

It will be proper however, before I enter into the refutation of the charges that are alledged, 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.<sup>1</sup> But in delegating foederal powers, another criterion was necessarily introduced, and the congressional authority is to be collected, not from tacit implication, but from the positive grant expressed in the instrument of union. Hence it is evident, that in the former case every thing which is not reserved is given, but in the latter the reverse of the proposition prevails, and every thing which is not given, is reserved.<sup>2</sup> 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 foederal 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 that body into existence.<sup>3</sup> For instance, the liberty of the press, which has been a copious source of declamation and opposition, what controul can proceed from the foederal 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.<sup>4</sup> With respect likewise to the particular district of ten miles, which is to be made the seat of foederal 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.

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 Foederal 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

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<sup>1</sup> So in essence, other than those powers specifically denied to state governments—and you will recall from your study of the constitutions of North Carolina and Massachusetts that there are very few—all power resides in the government and can be exercised. This is another way to define the power of a government of inherent authority. It does not operate from a list of delegated powers; rather it is assumed that it has complete and unlimited power to govern except for those power denied it in bills of rights or in the bodies of the constitutions.

<sup>2</sup> Wilson is arguing that the federal government is a kind of government that is different from state governments. The federal government can only exercise powers that it has specific grants of authority to exercise. If it is not granted a power, it cannot exercise it. At the state level, the government can exercise all powers that are not denied to the government.

<sup>3</sup> Be careful. What kind of bill of rights is he referring to? One like the Bill of Rights that contains the first ten amendments and that was ratified in 1791 or a bill of rights like the bills of rights that precede the state constitutions that you have studied? Assuming that he is referring to a bill of rights like that in state constitutions, why does he argue that a bill of rights is not necessary?

<sup>4</sup> Read this argument carefully. He argues that the federal government cannot interfere with the liberty of the press. Do you find his argument persuasive? Remember that at the time he makes this argument the Bill of Rights has not been added to the Constitution. How might the federal government interfere with the liberty of the press with its existing powers? Be specific and detailed in your answer by referring to powers that the government has in Article I, Section 8 of the Constitution.

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 foederal 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 causes 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.<sup>5</sup>

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 controul and with the restrictions which the new constitution provides.<sup>6</sup>

Perhaps there never was a charge made with less reasons than that which predicts the institution of a baneful aristocracy in the foederal 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 cooperation 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 dependance 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

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<sup>5</sup> Where in the Constitution is it declared that in all criminal cases the trial by jury shall be preserved? In federal courts today many civil cases are heard by a judge alone. This is perfectly constitutional. Knowing this, who had the better argument between detractors of the Constitution and Wilson on this point about jury trials in civil cases?

<sup>6</sup> Yes but what are the restrictions in the Constitution to protect state governments from the national army? Are there any? What would keep the federal government from marching the army into a state to intimidate its citizens or to put down legal opposition to federal policies?

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.

The next accusation I shall consider, is that which represents the foederal constitution as not only calculated, but designedly framed, to reduce the state governments to mere corporations, and eventually to annihilate them. Those who have employed the term corporation upon this occasion, are not perhaps aware of its extent. In common parlance, indeed, it is generally applied to petty associations for the ease and conveniency of a few individuals; but in its enlarged sense, it will comprehend the government of Pennsylvania, the existing union of the states, and even this projected system is nothing more than a formal act of incorporation. But upon what pretence can it be alledged that it was designed to annihilate the state governments? For, I will undertake to prove that upon their existence, depends the existence of the foederal plan. For this purpose, permit me to call your attention to the manner in which the president, senate, and house of representatives, are proposed to be appointed. The president is to be chosen by electors, nominated in such manner as the legislature of each state may direct; so that if there is no legislature, there can be no electors, and consequently the office of president cannot be supplied. The senate is to be composed of two senators from each state, chosen by the legislature; and therefore if there is no legislature, there can be no senate. The house of representatives, is to be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature,—unless therefore, there is a state legislature, that qualification cannot be ascertained, and the popular branch of the foederal constitution must likewise be extinct. From this view, then it is evidently absurd to suppose, that the annihilation of the separate governments will result from their union; or, that having that intention, the authors of the new system would have bound their connection with such indissoluble ties. Let me here advert to an arrangement highly advantageous, for you will perceive, without prejudice to the powers of the legislature in the election of senators, the people at large will acquire an additional privilege in returning members to the house of representatives—whereas, by the present confederation, it is the legislature alone that appoints the delegates to Congress.<sup>7</sup>

The power of direct taxation has likewise been treated as an improper delegation to the foederal government; but when we consider it as the duty of that body to provide for the national safety, to support the dignity of the union, and to discharge the debts contracted upon the collective faith of the states for their common benefit, it must be acknowledged, that those upon whom such important obligations are imposed, ought in justice and in policy to possess every means requisite for a faithful performance of their trust. But why should we be alarmed with visionary evils? I will venture to predict, that the great revenue of the United States must, and always will be raised by impost, for, being at once less obnoxious, and more productive, the interest of the government will be best promoted by the accommodation of the people. Still however, the objects of direct taxation should be within reach in all cases of emergency; and there is no more reason to apprehend oppression in the mode of collecting a revenue from this resource, than in the form of an impost, which, by universal assent, is left to the authority of the

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<sup>7</sup> Wilson argues that the federal government depends upon the state governments for its existence. But how really independent do the state governments have to be in order for the federal government to exist? How might state governments be perverted in a way that allowed them to exist to fulfill their role in the federal system and yet have no real independence at all?

foederal government. In either case, the force of civil institutions will be adequate to the purpose; and the dread of military violence, which has been assiduously disseminated, must eventually prove the mere effusion of a wild imagination, or a factious spirit. But the salutary consequences that must flow from thus enabling the government to receive and support the credit of the union, will afford another answer to the objections upon this ground. The State of Pennsylvania particularly, which has encumbered itself with the assumption of a great proportion of the public debt, will derive considerable relief and advantage; for, as it was the imbecility of the present confederation, which gave rise to the funding law, that law must naturally expire, when a competent and energetic foederal system shall be substituted—the state will then be discharged from an extraordinary burthen, and the national creditor will find it to be his interest to return to his original security.

After all, my fellow citizens, it is neither extraordinary or unexpected, that the constitution offerred to your consideration, should meet with opposition. It is the nature of man to pursue his own interest, in preference to the public good; and I do not mean to make any personal reflection, when I add, that it is the interest of a very numerous, powerful, and respectable body to counteract and destroy the excellent work produced by the late convention. All the offices of government, and all the appointments for the administration of justice and the collection of the public revenue, which are transferred from the individual to the aggregate sovereignty of the states, will necessarily turn the stream of influence and emolument into a new channel. Every person therefore, who either enjoys, or expects to enjoy, a place of profit under the present establishment, will object to the proposed innovation; not, in truth, because it is injurious to the liberties of his country, but because it affects his schemes of wealth and consequence. I will confess indeed, that I am not a blind admirer of this plan of government, and that there are some parts of it, which if my wish had prevailed, would certainly have been altered. But, when I reflect how widely men differ in their opinions, and that every man (and the observation applies likewise to every state) has an equal pretension to assert his own, I am satisfied that any thing nearer to perfection could not have been accomplished. If there are errors, it should be remembered, that the seeds of reformation are sown in the work itself, and the concurrence of two thirds of the congress may at any time introduce alterations and amendments. Regarding it then, in every point of view, with a candid and disinterested mind, I am bold to assert, that it is the best form of government which has ever been offerred to the world.

