

- Hence, the people retained all rights that had not been explicitly alienated to the government.

The most important statement of this position came from James Wilson in a widely reported public speech of October 6, delivered to a supportive crowd gathered outside the Pennsylvania statehouse where the Federal Convention had met. Of all the framers of the Constitution, Wilson was the one who most clearly grasped the potential meaning of the theory of popular sovereignty. To counter the expected objection that the Constitution would destroy the sovereignty of the separate states, Wilson argued that sovereignty—the ultimate authority to rule—was not a property or attribute of government itself but rather something that always remained in the people, who were free to divide and delegate portions of it to state *and* national governments alike.⁴

But the *manner* in which that authority would be delegated was not the same for these two levels of government, Wilson told his Philadelphia audience. And in that difference lay a powerful reason for concluding that a federal bill of rights would be superfluous—and even dangerous: if the Constitution would not give the new government any authority to regulate certain activities, the addition of articles protecting those rights could be read to imply that some power over these liberties had indeed been granted. The fact that the Constitution did not explicitly protect rights of conscience or freedom of the press did not matter because nothing in its text could be read to suggest that Congress would have any power to meddle with religion or to regulate the press (except by granting authors limited copyrights over their works).

Whatever might be said about this argument on its merits, Wilson's speech proved crucial to the politics of ratification for two reasons. As the first framer to offer a public defense of the Constitution, Wilson in effect unilaterally established his ideas as an authoritative statement of the Federalist position. Second, and equally important, his argument proved vulnerable to one telling objection. After all, the Constitution did protect some rights explicitly—the right to trial by jury in criminal cases, for example, or the benefit of the writ of habeas corpus. But by the logic of Wilson's own argument, Anti-Federalists reasoned, those clauses should have been superfluous, for where had the Constitution granted the

⁴For Wilson's speech, its reception, and republication, see Kaminski and Saladino, eds., *Documentary History of Ratification*, XIII, 337–44. The best studies of Wilson's political thought are in Samuel H. Beer, *To Make a Nation: The Rediscovery of American Federalism* (Cambridge: Harvard University Press, 1993), 341–77; and Jennifer Nedelsky, *Private Property and the Limits of American Constitutionalism: The Madisonian Framework and Its Legacy* (Chicago: University of Chicago Press, 1990), 96–140.

national government any power to violate these fundamental securities for the liberty of the subject? If these rights were explicitly protected, did that fact not imply that other rights left unmentioned were now open to violation? If the Constitution already protected some rights, why should it not be amended to protect all the fundamental rights Americans cherished?

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JAMES WILSON
Statehouse Speech
October 6, 1787

Mr. Wilson then rose, and delivered a long and eloquent speech upon the principles of the Federal Constitution proposed by the late convention. The outlines of this speech we shall endeavour to lay before the public, as tending to reflect great light upon the interesting subject now in general discussion.

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

James Wilson, "Statehouse Speech," October 6, 1787, *Pennsylvania Herald*, October 9, 1787. From Kaminski and Saladino, eds., *Documentary History of Ratification* (Madison: State Historical Society of Wisconsin, 1976–), XIII, 339–40.

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 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. 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. 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. 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 Con-~~

vention 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 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.

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.