Centinel II, Philadelphia *Freeman's Journal*, 24 October 1787

By the proposed plan, there are divers cases of judicial authority to be given to the courts of the United States, besides the two mentioned by Mr. *Wilson.*—In maritime causes about property, jury trial has not been usual; but in suits in *equity*, with all due deference to Mr. *Wilson*'s professional abilities, (which he calls to his aid) jury trial, as to facts, is in full exercise. Will this jurisperitus say that if the question in equity should be, did *John Doe* make a will, that the chancellor of England would decide upon it? He well knows that in this case, there being no mode of jury trial before the chancellor, the question would be referred to the court of king's bench for discussion according to the common law, and when the judge in equity should receive the *verdict*, the fact so established, could never be re-examined or controverted. Maritime causes and those appertaining to a court of equity, are, however, but *two* of the many and extensive subjects of federal cognizance mentioned in the plan. This jurisdiction will embrace all suits arising under the laws of impost, excise and other revenue of the United States. In England if goods be seized, if a ship be prosecuted for non-compliance with, or breach of the laws of the customs, or those for regulating trade, in the court of exchequer, the claimant is secured of the transcendent privilege of Englishmen, *trial by a jury of his peers*. Why not in the United States of America? This jurisdiction also goes to all cases under the laws of the United States, that is to say, under all statutes and ordinances of Congress. How far this may extend, it is easy to foresee; for upon the decay of the state powers of legislation, in consequence of the loss of the *purse strings*, it will be found necessary for the federal legislature to make laws upon every subject of legislation. Hence the state courts of justice, like the barony and hundred courts of England, will be eclipsed and gradually fall into disuse.

The jurisdiction of the federal court goes, likewise, to the laws to be created by treaties, made by the President and Senate, (a species of legislation) with other nations; "to all cases affecting foreign ministers and consuls; to controversies wherein the United States shall be a party; to controversies between citizens of different states," as when an inhabitant of *New-York* has a demand on an inhabitant of *New-Jersey*.—This last is a very invidious jurisdiction, implying an improper distrust of the impartiality and justice of the tribunals of the states. It will include all legal debates between foreigners in Britain, or elsewhere, and the people of this country.—A reason hath been assigned for it, viz. "That large tracts of land, in neighbouring states, are claimed under royal or other grants, disputed by the states where the lands lie, so that justice cannot be expected from the state tribunals."–Suppose it were proper indeed to provide for such case, why include all cases, and for all time to come? Demands as to land for 21 years would have satisfied this. A London merchant shall come to America, and sue for his supposed debt, and the citizen of this country shall be deprived of jury trial, and subjected to an appeal (tho' nothing but the *fact* is disputed) to a court 500 or 1000 miles from home; when if this American has a claim upon an inhabitant of England, his adversary is secured of the privilege of jury trial.—This jurisdiction goes also to controversies between any state and its citizens; which, though *probably* not intended, may hereafter be set up as a ground to divest the states, severally, of the trial of criminals; inasmuch as every charge of felony or misdemeanour, is a controversy between the state and a citizen of the same: that is to say, the state is plaintiff and the party accused is defendant in the prosecution. In all doubts about jurisprudence, as was

observed before, the paramount courts of Congress will decide, and the judges of the state, being *sub graviore lege*, under the paramount law, must acquiesce.

Mr. *Wilson* says, that it would have been impracticable to have made a general rule for jury trial in the civil cases assigned to the federal judiciary, because of the want of uniformity in the mode of jury trial, as practised by the several states. This objection proves too much, and therefore amounts to nothing. If it precludes the mode of common law in civil cases, it certainly does in criminal. Yet in these we are told "the oppression of government is effectually barred by declaring that in all criminal cases *trial by jury* shall be preserved." Astonishing, that provision could not be made for a jury in civil controversies, of 12 men, whose verdict should be unanimous, *to be taken from the vicinage*; a precaution which is omitted as to trial of crimes, which may be any where in the state within which they have been committed. So that an inhabitant of *Kentucky* may be tried for treason at *Richmond*.

The abolition of jury trial in civil cases, is the more considerable, as at length the courts of Congress will supersede the state courts, when such mode of trial will fall into disuse among the people of the United States.

The northern nations of the European continent, have all lost this invaluable privilege: *Sweden*, the last of them, by the artifices of the *aristocratic* senate, which depressed the king and reduced the house of commons to insignificance. But the nation a few years ago, preferring the absolute authority of a monarch to the *vexatious* domination of the *wellborn* few, an end was suddenly put to their power.

"The policy of this right of juries, (says judge Blackstone) to decide upon *fact*, is founded on this: That if the power of judging were entirely trusted with the magistrates, or any select body of men, named by the executive authority, their decisions, in spite of their own natural integrity, would have a biass towards those of their own rank and dignity; for it is not to be expected, that the *few* should be attentive to the rights of the *many*. This therefore preserves in the hands of the people, that share which they ought to have in the administration of justice, and prevents the encroachments of the more powerful and wealthy citizens."

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