

# A Scripted Debate Between James Wilson and “Philadelphia Hecklers” over Powers Under the Proposed Constitution

Vince Kube  
Columbus High School  
Columbus, Wisconsin

## Documents Used in Script:

[James Wilson: Speech at a Public Meeting in Philadelphia, 6 October 1787](#)  
[A Republican I: To James Wilson, Esquire, \*New York Journal\*, 25 October 1787](#)

## Characters in Script: (4)

Narrator  
James Wilson (taken from James Wilson: Speech at a Public Meeting in Philadelphia)  
Heckler #1 (excerpted from A Republican I: To James Wilson, Esquire)  
Heckler #2 (excerpted from A Republican I: To James Wilson, Esquire)

## Script:

Narrator: [As you know, delegates recently met here in Philadelphia to revise the Articles of Confederation. At the end of the convention, they released an entirely new constitution for the public to consider. In Pennsylvania, James Wilson, a delegate at the Philadelphia Convention was among the first to speak publically in support of the proposed constitution. Wilson, at a public gathering at the State house] 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 endeavor to lay before the public . . . to reflect great light upon the interesting subject now in general discussion.

Wilson: 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.

Narrator: I understand that not everyone in the crowd was in support of your speech.

Wilson: [Well . . . there were a few who expressed some concerns.]

Heckler #1: [That’s an understatement.] When this performance was announced, as the first authoritative explanation of that system . . . its advocates . . . possessed the fullest confidence . . . that the objections raised against it would be refuted.

Narrator: And what is your assessment of Mr. Wilson’s speech?

Heckler #1: [We] ridiculed the feeble attempt.

Wilson: I confess that I [was] unprepared for so extensive and so important a disquisition.

Heckler #2: [Although] your address [was] confined to the citizens of a partial district, the subject affects the happiness of America; it is therefore open to the examination of every citizen.

Wilson: 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.

Heckler #2: I shall make no apology for troubling you with the following [criticisms].

Narrator: Let's get into the substance of the issue. Mr. Wilson, proceed.

Wilson: 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.

Narrator: So you are suggesting that if a constitution is silent on an issue or a power, the people should not be fearful. In other words, since that constitution doesn't provide the government any authority to act in regards to the matter, it can't act because it has no legitimacy to act?

Wilson: [Yes.] In delegating federal powers, another criterion was necessarily introduced, and the congressional authority is . . . but from the positive grant expressed in the instrument of union, [the constitution].

Heckler #1: [Really? You expect us to believe that?] That old "*the positive grant expressed in the instrument of union.*" argument?

Wilson: Hence it is evident, that . . . everything which is not given, is reserved.

Narrator: That seems reasonable.

Heckler #2: [Do you honestly expect us to believe the] "*everything which is not given, is reserved*" [speech?]

Wilson: 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.

Narrator: I am glad you mentioned this issue. Many have suggested that the lack of a bill of rights is a fatal flaw in this proposed constitution.

Wilson: for it would have been superfluous and absurd to have stipulated [to the convention] of our own creation, that . . . those privileges, of which we are not divested either by the intention or the act, that has brought that body into existence.

Narrator: But still, what about some rights that are seen by nearly everyone as essential in society?

Wilson: What control can proceed from the federal government to shackle or destroy that sacred palladium of national freedom?

Heckler #1: At first blush, [there is] a degree of plausibility, that you rest the defence of this constitution, in omitting a bill of rights, and particularly a stipulation for the security of the freedom of the press, it is proper that it should be carefully examined.

Narrator: So, again for you Mr. Wilson, since the constitution doesn't mention anything about the freedom of the press, the freedom of the press is safe. There's no grant of power to the government to limit the freedom and consequently, the government won't.

Wilson: [Exactly.] 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.

Narrator: Doesn't history prove that governments often do things that are not explicitly stated in their constitutions?

Wilson: There is no reason to suspect that so popular a privilege will in that case be neglected.

Heckler #2: Can the reasonable mind conceive of a compact [without] implied [powers] under the general terms in which they are expressed? [The silence of this constitution on the matter scares us.]

Narrator: And I take it that the silence on the matter for your Mr. Wilson does not scare you?

Wilson: [Correct.] In truth then, the proposed system possesses no influence whatever upon the press [and a] declaration might have been construed to imply that some degree of power was given, since we undertook to define its extent.

Heckler #2: Now, according [this] doctrine, unless these powers which are excepted were *expressly granted*; the exceptions would be "*superfluous and absurd*." For brevity sake, I shall instance one of those exceptions only.

Narrator: Which exception is that?

Heckler #2: [In the constitution it states "*that no title of nobility shall be granted by the United States*." This power [is] *expressly* given to Congress by the new constitution. [This] exception must be to guard against an incidental or implied power.

Narrator: So you would suggest that the since the constitution in certain areas explicitly limits the national government, Mr. Wilson's assertion is faulty when applied to the silence of the constitution relating to the freedom of the press?

Heckler #1: [Exactly. Remember,] *the press is the scourge of tyrants and the grand paladium of liberty*.

Narrator: Another issue has been the lack of a guarantee in the constitution for jury trials.

Wilson: [Yes, indeed.] 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.

Narrator: So, as a lawyer and scholar, what can you say to shed light on the subject?

Wilson: Let it be remembered, . . . the business of the Federal Convention was not local, but general; not limited to the views and establishments of a single state, but coextensive 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.

Narrator: Is that to say there were too many differing policies in the states to sort through for the delegates at the convention?

Wilson: 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.

Narrator: So if I understand you, it would have been impossible for the convention to come up with a set of standards for jury trials for 13 separate states?

Wilson: [Yes.] 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.

Narrator: It sounds like state sovereignty is an issue here.

Wilson: [Yes.] The next accusation I shall consider is that which represents the Federal Constitution as not only calculated, but designedly framed, to reduce the state governments to mere corporations, and eventually to annihilate them.

Heckler #2: [Let’s remember,] in forming [the Articles of] Confederation, it was declared, “that each state shall retain its sovereignty, freedom, and independence . . .

Heckler #1: . . . and every power, jurisdiction, and right, which is not by that confederation expressly delegated to the United States in Congress assembled . . . ”

Narrator: . . . is prohibited? Meaning its off limits to the national government?

Heckler #2: [Exactly. We should keep that principle in mind.]

Wilson: But upon what pretense can it be alleged that it was designed to annihilate the state governments?

Heckler #1: [There is no statement that expressly limits the national government.]

Narrator: Also, is it safe to say the critics of the constitution would fear that the national government will annihilate the states in that the elected officials would not represent that interest of the states.

Wilson: Permit me to call your attention to the manner in which the President, Senate, and House of Representatives are proposed to be appointed.

Narrator: The executive is elected how?

Wilson: 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.

Narrator: And the Senate?

Wilson: 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.

Narrator: And representatives in the lower house?

Wilson: 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 Federal Constitution must likewise be extinct.

Narrator: It sounds like the constitution does protect the states?

Heckler #1: But let us investigate this subject a little farther.

Heckler #2: There are extensive powers of legislation granted to this new government.

Narrator: Such as the supremacy clause and the necessary and proper clause?

Heckler #2: [Precisely.]

Wilson: But why should we be alarmed with visionary evils?

Heckler #1: I shall reserve the remarks I intend to make on the remainder of your speech for future letters.

Narrator: [And with that we must conclude. I might add as a witness to Mr. Wilson's speech, I would note that it] was frequently interrupted with loud and unanimous testimonies of approbation,

and the applause which was reiterated at the conclusion evinced the general sense of its excellence, and the conviction which it had impressed upon every mind. [I would predict, however, there will be additional critics emerge in this discussion over the proposed constitution.]