

## **The Dissent of the Minority of the Pennsylvania Convention, *Pennsylvania Packet*, 18 December 1787**

The Address and Reasons of Dissent of the Minority  
of the Convention of the State of Pennsylvania  
to their Constituents.

It was not until after the termination of the late glorious contest, which made the people of the United States an independent nation, that any defect was discovered in the present confederation. It was formed by some of the ablest patriots in America. It carried us successfully through the war; and the virtue and patriotism of the people, with their disposition to promote the common cause...

...The judicial powers vested in Congress are also so various and extensive, that by legal ingenuity they may be extended to every case, and thus absorb the state judiciaries, and when we consider the decisive influence that a general judiciary would have over the civil polity of the several states, we do not hesitate to pronounce that this power, unaided by the legislative, would effect a consolidation of the states under one government.

The powers of a court of equity, vested by this constitution, in the tribunals of Congress; powers which do not exist in Pennsylvania, unless so far as they can be incorporated with jury trial, would, in this state, greatly contribute to this event. The rich and wealthy suitors would eagerly lay hold of the infinite mazes, perplexities and delays, which a court of chancery, with the appellate powers of the supreme court in fact as well as law would furnish him with, and thus the poor man being plunged in the bottomless pit of legal discussion, would drop his demand in despair...

We have before noticed the judicial power as it would effect a consolidation of the states into one government; we will now examine it, as it would affect the liberties and welfare of the people, supposing such a government were practicable and proper.

The judicial power, under the proposed constitution, is founded on the well-known principles of the *civil law*, by which the judge determines both on law and fact, and appeals are allowed from the inferior tribunals to the superior, upon the whole question; so that *facts* as well as *law*, would be re-examined, and even new facts brought forward in the court of appeals; and to use the words of a very eminent Civilian—"The cause is many times another thing before the court of appeals, than what it was at the time of the first sentence."

That this mode of proceeding is the one which must be adopted under this constitution, is evident from the following circumstances:—1st. That the trial by jury, which is the grand characteristic of the common law, is secured by the constitution, only in criminal cases.—2d. That the appeal from both *law* and *fact* is expressly established, which is utterly inconsistent with the principles of the common law, and trials by jury. The only mode in which an appeal from law and fact can be established, is, by adopting the principles and practice of the civil law;

unless the United States should be drawn into the absurdity of calling and swearing juries, merely for the purpose of contradicting their verdicts, which would render juries contemptible and worse than useless.—3d. That the courts to be established would decide on all cases of *law and equity*, which is a well known characteristic of the civil law, and these courts would have consue [cognizance] not only of the laws of the United States and of treaties, and of cases affecting ambassadors, but of all cases of *admiralty and maritime jurisdiction*, which last are matters belonging exclusively to the civil law, in every nation in Christendom.

Not to enlarge upon the loss of the invaluable right of trial by an unbiassed jury, so dear to every friend of liberty, the monstrous expence and inconveniences of the mode of proceeding to be adopted, are such as will prove intolerable to the people of this country. The lengthy proceedings of the civil law courts in the chancery of England, and in the courts of Scotland and France, are such that few men of moderate fortune can endure the expence of; the poor man must therefore submit to the wealthy. Length of purse will too often prevail against right and justice. For instance, we are told by the learned judge *Blackstone*, that a question only on the property of an ox, of the value of *three* guineas, originating under the civil law proceedings in Scotland, after many interlocutory orders and sentences below, was carried at length from the court of sessions, the highest court in that part of Great Britain, by way of *appeal* to the house of lords, where the question of law and fact was finally determined. He adds, that no pique or spirit could in the court of king's bench or common pleas at Westminster, have given continuance to such a cause for a tenth part of the time, nor have cost a twentieth part of the expence. Yet the costs in the courts of king's bench and common pleas in England, are infinitely greater than those which the people of this country have ever experienced. We abhor the idea of losing the transcendent privilege of trial by jury, with the loss of which, it is remarked by the same learned author, that in Sweden, the liberties of the commons were extinguished by an aristocratic senate: and that *trial by jury* and the liberty of the people went out together. At the same time we regret the intolerable delay, the enormous expences and infinite vexation to which the people of this country will be exposed from the voluminous proceedings of the courts of civil law, and especially from the appellate jurisdiction, by means of which a man may be drawn from the utmost boundaries of this extensive country to the seat of the supreme court of the nation to contend, perhaps with a wealthy and powerful adversary. The consequence of this establishment will be an absolute confirmation of the power of aristocratical influence in the courts of justice; for the common people will not be able to contend or struggle against it.

Trial by jury in criminal cases may also be excluded by declaring that the libeller for instance shall be liable to an action of debt for a specified sum; thus evading the common law prosecution by indictment and trial by jury. And the common course of proceeding against a ship for breach of revenue laws by information (which will be classed among civil causes) will at the civil law be within the resort of a court, where no jury intervenes. Besides, the benefit of jury trial, in cases of a criminal nature, which cannot be evaded, will be rendered of little value, by calling the accused to answer far from home; there being no provision that the trial be by a jury of the neighbourhood or country. Thus an inhabitant of Pittsburgh, on a charge of crime committed on the banks of the Ohio, may be obliged to defend himself at the side of the

Delaware, and so *vice versa*. To conclude this head: we observe that the judges of the courts of Congress would not be independent, as they are not debarred from holding other offices, during the pleasure of the president and senate, and as they may derive their support in part from fees, alterable by the legislature...

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