A Democratic Federalist
Pennsylvania Herald, 17 October 1787 (excerpt)

. . . The second and most important objection to the federal plan, which Mr. Wilson pretends to be made *in a disingenuous form*, is the entire *abolition of the trial by jury in civil cases*. It seems to me that Mr. Wilson's pretended answer is much more *disingenuous* than the objection itself, which I maintain to be strictly founded in fact. He says "that the cases open to trial by jury differing in the different states, it was therefore impracticable to have made a general rule." This answer is extremely futile, because a reference might easily have been made to the *common law of England*, which obtains through every state, and cases in the maritime and civil law courts would of course have been excepted. I must also directly contradict Mr. Wilson when he asserts that there is no trial by jury in the courts of chancery. It cannot be unknown to a man of his high professional learning that whenever a difference arises about a matter of fact in the courts of equity in America or England, the fact is sent down to the courts of common law to be tried by a jury, and it is what the lawyers call a *feigned issue*. This method will be impracticable under the proposed form of judicial jurisdiction for the United States.

But setting aside the equivocal answers of Mr. Wilson, I have it in my power to prove that under the proposed Federal Constitution *the trial of facts in civil cases by a jury of the vicinage* is entirely and effectually abolished and will be absolutely impracticable. I wish the learned gentleman had explained to us what is meant by the *appellate* jurisdiction as to law and *fact* which is vested in the superior court of the United States? As he has not thought proper to do it, I shall endeavor to explain it to my fellow citizens, regretting at the same time that it has not been done by a man whose abilities are so much superior to mine. The word *appeal*, if I understand it right in its proper legal signification includes the *fact* as well as the *law*, and precludes every idea of a trial by jury. It is a word of *foreign growth* and is only known in England and America in those courts which are governed by the civil or ecclesiastical law of the *Romans*. Those courts have always been considered in England as a grievance and have all been established by the usurpations of the *ecclesiastical* over the *civil* power. It is well-known that the courts of chancery in England were formerly entirely in the hands of *ecclesiastics*, who took advantage of the strict forms of the common law to introduce a foreign mode of jurisprudence under the specious name of *Equity*. Pennsylvania, the freest of the American states has wisely rejected this establishment and knows not even the name of a court of chancery. And in fact, there cannot be anything more absurd than a distinction between LAW and EQUITY. It might perhaps have suited those barbarous times when the law of England, like almost every other science, was perplexed with quibbles and *Aristotelian* distinctions, but it would be shameful to keep it up in

these more enlightened days. At any rate, it seems to me that there is much more *equity* in a trial by jury, than in an appellate jurisdiction from the fact.

An *appeal*, therefore, is a thing unknown to the common law. Instead of an appeal from facts, it admits of a second, or even third trial by different juries, and mistakes in points of *law* are rectified by superior courts in the form of a *writ of error*—and to a mere common lawyer, unskilled in the forms of the *civil law* courts, the words *appeal from law and fact* are mere nonsense and unintelligible absurdity.

But even supposing that the superior court of the United States had the authority to try facts by *juries of the vicinage*, it would be impossible for them to carry it into execution. It is well-known that the supreme courts of the different states, at stated times in every year, go round the different counties of their respective states to try issues of fact, which is called *riding the circuits.* Now, how is it possible that the supreme continental court, which we will suppose to consist at most of five or six judges, can travel at least twice in every year, through the different counties of America, from New Hampshire to Kentucky, and from Kentucky to Georgia, to try facts by juries of the vicinage. Common sense will not admit of such a supposition. I am therefore right in my assertion, that *trial by jury in civil cases is, by the proposed Constitution, entirely done away and effectually abolished.*

Let us now attend to the consequences of this enormous innovation and daring encroachment on the liberties of the citizens. Setting aside the oppression, injustice, and partiality that may take place in the trial of questions of property between man and man, we will attend to one single case, which is well worth our consideration. Let us remember that all cases arising under the new Constitution, and all matters between *citizens of different states*, are to be submitted to the new jurisdiction. Suppose, therefore, that the military officers of Congress, by a wanton abuse of power, imprison the free citizens of America, suppose the excise or revenue officers (as we find in Clayton's *Reports*, page 44 Ward's case that a constable, having a warrant to search for stolen goods, pulled down the clothes of a bed in which there was a woman and searched under her shift), suppose, I say, that they commit similar or greater indignities; in such cases a trial by jury would be our safest resource. Heavy damages would at once punish the offender and deter others from committing the same. But what satisfaction can we expect from a lordly court of justice, always ready to protect the officers of government against the weak and helpless citizen, and who will perhaps sit at the distance of many hundred miles from the place where the outrage was committed? What refuge shall we then have to shelter us from the iron hand of arbitrary power? O! my fellow citizens, think of this while it is yet time and never consent to part with the glorious privilege of trial by jury, but with your lives. . . .

CITE AS: John P. Kaminski et al., eds., *The Documentary History of the Ratification of the Constitution*, Vol. II: Pennsylvania (Madison, Wis.: Wisconsin Historical Society Press, 1976), 193–98.