The Library of America • Story of the Week
From *The Debate on the Constitution*
(two volumes, Library of America, 1993), volume 1, pages 669–72.

On the Absurdity of a Bill of Rights

Noah Webster (as "Giles Hickory")

American Magazine (New York), December 1787

One of the principal objections to the new Federal Constitution is, that it contains no *Bill of Rights*. This objection, I presume to assert, is founded on ideas of government that are totally false. Men seem determined to adhere to old prejudices, and reason *wrong*, because our ancestors reasoned *right*. A Bill of Rights against the encroachments of Kings and Barons, or against any power independent of the people, is perfectly intelligible; but a Bill of Rights against the encroachments of an elective Legislature, that is, against our *own* encroachments on *ourselves*, is a curiosity in government.

One half the people who read books, have so little ability to apply what they read to their own practice, that they had better not read at all. The English nation, from which we descended, have been gaining their liberties, inch by inch, by forcing concessions from the crown and the Barons, during the course of six centuries. *Magna Charta*, which is called the palladium of English liberty, was dated in 1215, and the people of England were not represented in Parliament till the year 1265. Magna Charta established the rights of the Barons and the clergy against the encroachments of royal prerogative; but the commons or people were hardly noticed in that deed. There was but one clause in their favor, which stipulated that, "no villain or rustic should, by any fine, be bereaved of his carts, plows and instruments of husbandry." As for the rest, they were considered as a part of the property belonging to an estate, and were transferred, as other moveables, at the will of their owners. In the succeeding reign, they were permitted to send Representatives to Parliament; and from that time have been gradually assuming their proper degree of consequence in the British Legislature. In such a nation, every law or statute that defines the powers of the crown, and circumscribes them within determinate limits, must be considered as a barrier to guard popular liberty. Every acquisition of free-

Are you receiving Story of the Week each week?
Sign up now at storyoftheweek.loa.org to receive our weekly alert
so you won't miss a single story!

dom must be established as a *right*, and solemnly recognized by the supreme power of the nation; lest it should be again resumed by the crown under pretence of ancient prerogative; For this reason, the habeas corpus act passed in the reign of Charles 2d, the statute of the 2d of William and Mary, and many others which are declaratory of certain privileges, are justly considered as the pillars of English freedom.

These statutes are however not esteemed because they are unalterable; for the same power that enacted them, can at any moment repeal them; but they are esteemed, because they are barriers erected by the Representatives of the nation, against a power that exists independent of their own choice.

But the same reasons for such declaratory constitutions do not exist in America, where the supreme power is *the people in their Representatives*. The *Bills of Rights*, prefixed to several of the constitutions of the United States, if considered as assigning the reasons of our separation from a foreign government, or as solemn declarations of right against the encroachments of a foreign jurisdiction, are perfectly rational, and were doubtless necessary. But if they are considered as barriers against the encroachments of our own Legislatures, or as constitutions unalterable by posterity, I venture to pronounce them nugatory, and to the last degree, absurd.

In our governments, there is no power of legislation, independent of the people; no power that has an interest detached from that of the public; consequently there is no power existing against which it is necessary to guard. While our Legislatures therefore remain elective, and the rulers have the same interest in the laws, as the subjects have, the rights of the people will be perfectly secure without any declaration in their favor.

But this is not the principal point. I undertake to prove that a standing *Bill of Rights* is *absurd*, because no constitutions, in a free government, can be unalterable. The present generation have indeed a right to declare what *they* deem a *privilege*; but they have no right to say what the *next* generation shall deem a privilege. A State is a supreme corporation that never dies. Its powers, when it acts for itself, are at all times, equally extensive; and it has the same right to *repeal* a law this year, as it had to *make* it the last. If therefore our posterity are bound

by our constitutions, and can neither amend nor annul them, they are to all intents and purposes our slaves.

But it will be enquired, have we then no right to say, that trial by jury, the liberty of the press, the habeas corpus writ and other invaluable privileges, shall never be infringed nor destroyed? By no means. We have the same right to say that lands shall descend in a particular mode to the heirs of the deceased proprietor, and that such a mode shall never be altered by future generations, as we have to pass a law that the trial by jury shall never be abridged. The right of Jury-trial, which we deem invaluable, may in future cease to be a privilege; or other modes of trial more satisfactory to the people, may be devised. Such an event is neither impossible nor improbable. Have we then a right to say that our posterity shall not be judges of their own circumstances? The very attempt to make *perpetual* constitutions, is the assumption of a right to control the opinions of future generations; and to legislate for those over whom we have as little authority as we have over a nation in Asia. Nay we have as little right to say that trial by jury shall be perpetual, as the English, in the reign of Edward the Confessor, had, to bind their posterity forever to decide causes by fiery Ordeal, or single combat. There are perhaps many laws and regulations, which from their consonance to the eternal rules of justice, will always be good and conformable to the sense of a nation. But most institutions in society, by reason of an unceasing change of circumstances, either become altogether improper or require amendment; and every nation has at all times, the right of judging of its circumstances and determining on the propriety of changing its laws.

The English writers talk much of the omnipotence of Parliament; and yet they seem to entertain some scruples about their right to change particular parts of their constitution. I question much whether Parliament would not hesitate to change, on any occasion, an article of Magna Charta. Mr. Pitt, a few years ago, attempted to reform the mode of representation in Parliament. Immediately an uproar was raised against the measure, as *unconstitutional*. The representation of the kingdom, when first established, was doubtless equal and wise; but by the increase of some cities and boroughs and the

depopulation of others, it has become extremely *unequal*. In some boroughs there is scarcely an elector left to enjoy its privileges. If the nation feels no great inconvenience from this change of circumstances, under the old mode of representation, a reform is unnecessary. But if such a change has produced any national evils of magnitude enough to be felt, the present form of electing the Representatives of the nation, however *constitutional*, and venerable for its antiquity, may at any time be amended, if it should be the sense of Parliament. The *expediency* of the alteration must always be a matter of opinion; but all scruples as to the *right* of making it are totally groundless.

Magna Charta may be considered as a contract between two parties, the King and the Barons, and no contract can be altered but by the consent of both parties. But whenever any article of that deed or contract shall become inconvenient or oppressive, the King, Lords and Commons may either amend or annul it at pleasure.

The same reasoning applies to each of the United States, and to the Federal Republic in general. But an important question will arise from the foregoing remarks, which must be the subject of another paper.