



How Much Liberty Do Americans Have Left?

Par [Washington's Blog](#)

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This post explains the liberties guaranteed in the Bill of Rights – the first 10 amendments to the United States Constitution – and provides a scorecard on the extent of the loss of each right.

First Amendment

The 1st Amendment protects speech, religion, assembly and the press:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Supreme Court has also interpreted the First Amendment as protecting freedom of *association*.

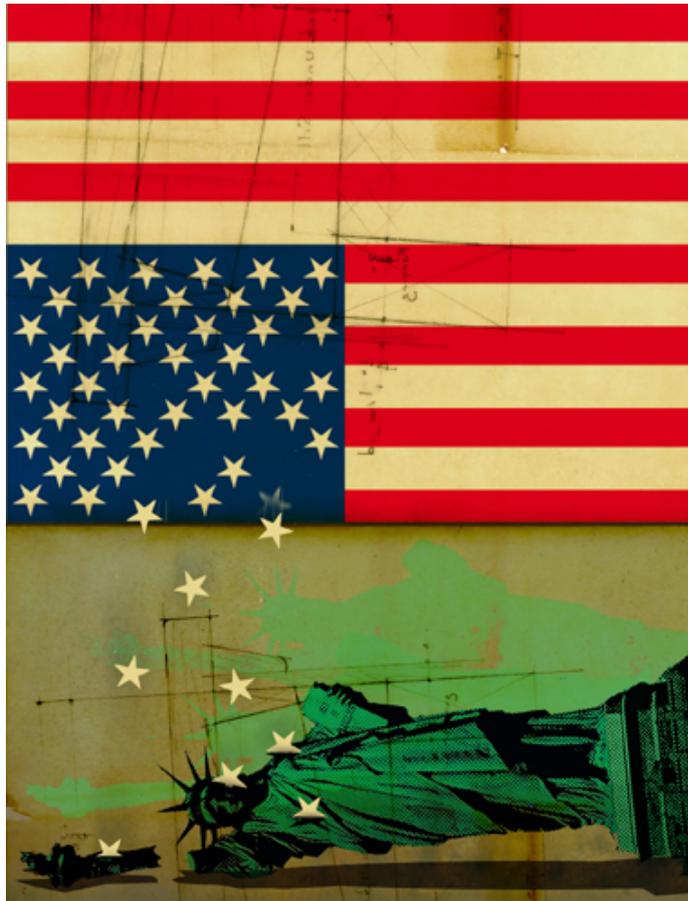
However, the government is [arresting those speaking out](#) ... and [violently crushing peaceful assemblies which attempt to petition the government for redress](#).

A federal judge found that the law allowing indefinite detention of Americans without due process has a [“chilling effect” on free speech](#). And see [this](#) and [this](#).

There are also [enacted laws](#) allowing the secret service to [arrest anyone protesting near the president or other designated folks](#) (that might explain incidents like [this](#)).

Mass spying by the NSA [violates our freedom of association](#).

The [threat of being labeled a terrorist for exercising our First Amendment rights](#) certainly violates the First Amendment. The government is [using laws to crush dissent](#), and it's gotten so bad that even [U.S. Supreme Court justices are saying](#) that we are descending into tyranny. (And the U.S. is doing the same things that tyrannical governments have done [for](#)



[5,000 years](#) to crush dissent.)

Photo Caption: Painting by Anthony Freda: www.AnthonyFreda.com.

For example, the following actions may get an American citizen living on U.S. soil labeled as a “suspected terrorist” today:

- Taking any [steps to protect your privacy](#) (and [see this](#))
- [Being a hippy](#)
- [Complaining about the taste](#) of your tap water
- [Being young](#) (if you live near a battle zone, you are [fair game](#); and [see this](#))
- [Acting like a kid](#)
- [Using social media](#)
- [Reporting or doing journalism](#) (and [here](#) and [here](#))
- Having [“strange odors”](#) or [“bright colored stains on clothes”](#) (what if you eat mustard or ketchup?)
- [Speaking out against government policies](#)
- [Protesting anything](#) (such as participating in the [“Occupy”](#) or [“Tea](#)

Party” movements). For example, [Department of Defense training manuals](#) classify *all protest* as “[low-level terrorism](#)”. And see [this](#), [this](#), [this](#) and [this](#)

- [Questioning war](#) (even though [war reduces our national security](#); and see [this](#))
- [Criticizing the government’s targeting of innocent civilians with drones](#) (although killing innocent civilians with drones is one of the main things which [increases terrorism](#). And see [this](#))
- [Asking questions about pollution](#) (even at a [public Congressional hearing?](#))
- [Paying cash at an Internet cafe](#)
- [Asking questions about Wall Street shenanigans](#)
- [Holding gold](#)
- [Creating alternative currencies](#)
- [Stocking up on more than 7 days of food](#) (even though all [Mormons are taught to stockpile food](#), and most [Hawaiians store up on extra food](#))
- [Having bumper stickers saying things like “Know Your Rights Or Lose Them”](#)
- [Investigating factory farming](#)
- [Infringing a copyright](#)
- [Taking pictures or videos](#)
- [Talking to police officers](#)
- [Wearing a hoodie](#)
- [Driving a van](#)
- [Writing on a piece of paper](#)
- ([Not having a Facebook account](#) may soon be added)

And holding the following beliefs may also be considered grounds for suspected terrorism:

- [Being frustrated with “mainstream ideologies”](#)
- [Being a libertarian](#)

- Liking [the Founding Fathers](#)
- Being a [Christian](#)
- Being [anti-tax, anti-regulation or for the gold standard](#)
- Being [“reverent of individual liberty”](#)
- Being [“anti-nuclear”](#)
- [“Believe in conspiracy theories”](#)
- [“A belief that one’s personal and/or national “way of life” is under attack”](#)
- [“Impose strict religious tenets or laws on society \(fundamentalists\)”](#)
- [“Insert religion into the political sphere”](#)
- [“Those who seek to politicize religion”](#)
- [“Supported political movements for autonomy”](#)
- Being [“anti-abortion”](#)
- Being [“anti-Catholic”](#)
- Being [“anti-global”](#)
- [“Suspicious of centralized federal authority”](#)
- [“Fiercely nationalistic \(as opposed to universal and international in orientation\)”](#)
- [“A belief in the need to be prepared for an attack either by participating in ... survivalism”](#)
- [Opposing genetically engineered food](#)
- [Opposing surveillance](#)

And [see this](#). (Of course, [Muslims](#) are more or less subject to a separate system of justice in America.)

And 1st Amendment rights are especially chilled when power has become so concentrated that [the same agency](#) which spies on all Americans *also decides* who should be assassinated.

[Additionally:](#)

Despite the clear protections found in the First Amendment, the freedoms described therein are under constant assault. Increasingly, Americans are being arrested and charged with bogus "[contempt of cop](#)" charges such as "[disrupting the peace](#)" or "resisting arrest" for [daring to film police officers](#) engaged in harassment or abusive practices. Journalists are being [prosecuted](#) for reporting on whistleblowers. States are passing legislation to [muzzle reporting](#) on cruel and abusive corporate practices. Religious ministries are being [fined](#) for attempting to feed and house the homeless. Protesters are being [tear-gassed, beaten, arrested](#) and forced into "free speech zones." And under the guise of "[government speech](#)," the courts have reasoned that the government can discriminate freely against any First Amendment activity that takes place within a government forum.

Second Amendment

The 2nd Amendment states:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Gun control and gun rights advocates obviously have very different views about whether guns are a force for violence or for good.

But even a top liberal Constitutional law expert reluctantly admits that the right to own a gun is [as important a Constitutional right as freedom of speech or religion](#):

Like many academics, I was happy to blissfully ignore the Second Amendment. It did not fit neatly into my socially liberal agenda.

It is hard to read the Second Amendment and not honestly conclude that the Framers intended gun ownership to be an individual right. It is true that the amendment begins with a reference to militias: "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed." Accordingly, it is argued, this amendment protects the right of the militia to bear arms, not the individual.

Yet, if true, the Second Amendment would be effectively declared a defunct provision. The National Guard is not a true militia in the sense of the Second Amendment and, since the District and others believe governments can ban guns entirely, the Second Amendment would be read out of existence.

More important, the mere reference to a purpose of the Second Amendment does not alter the fact that an individual right is created. The right of the people to keep and bear arms is stated in the same way as the right to free speech or free press. The statement of a purpose was intended to reaffirm the power of the states and the people against the central government. At the time, many feared the federal government and its national army. Gun ownership was viewed as a deterrent against abuse by the government, which would be less likely to mess with a well-armed populace.

Considering the Framers and their own traditions of hunting and self-defense, it is clear that they would have viewed such ownership as an individual right — consistent with the plain meaning of the amendment.

None of this is easy for someone raised to believe that the Second Amendment was the dividing line between the enlightenment and the dark ages of American culture. Yet, it is time to honestly reconsider this amendment and admit that ... here's the really hard part ... the [NRA](#) may have been right. This does not mean that Charlton Heston is the new Rosa Parks or that no restrictions can be placed on gun ownership. But it does appear that gun ownership was made a protected right by the Framers and, while we might not celebrate it, it is time that we recognize it.

And George Mason University School of Law Professor Nelson Lund and UCLA Law School Professor Adam Winkler [note](#):

Implicit in the debate between Federalists and Anti-Federalists were two shared assumptions. First, that the proposed new Constitution gave the federal government almost total legal authority over the army and militia. Second, that the federal government should not have any authority at all to disarm the citizenry. They disagreed only about whether an armed populace could adequately deter federal oppression.

The Amendment was easily accepted because of widespread agreement that the federal government should not have the power to infringe the right of the people to keep and bear arms, any more than it should have the power to abridge the freedom of speech or prohibit the free exercise of religion.

The gun control debate – including which weapons and magazines are banned – is still in flux ...

[However](#):

Americans remain [powerless to defend themselves](#) against SWAT team raids and government agents armed to the teeth with military weapons better suited for the battlefield than for a country founded on freedom. Police [shootings of unarmed citizens](#) continue to outrage communities, while little is really being done to demilitarize law enforcement agencies. Indeed, just recently, North Dakota became the [first state to legalize law enforcement use of drones](#) armed with weapons such as tear gas, rubber bullets, beanbags, pepper spray and Tasers.

Third Amendment

The 3rd Amendment prohibits the government forcing people to house soldiers:

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

A recent lawsuit by a Nevada family – covered by ([Mother Jones](#), [Fox News](#) and [Courthouse](#)

[News](#) - alleges violation of the Third Amendment.

The military is also arguably [quartering "digital" troops](#) within our homes.

Gordon S. Wood - Alva O. Way University Professor and Professor of History Emeritus at Brown University - [points out](#):

In its Declaration and Resolves on October 14, 1774, Congress protested the presence in a time of peace of a standing army and the quartering of troops in the colonies without their consent. Then in the Declaration of Independence of 1776, two of the many accusations Congress leveled against the king were his keeping "among us, in Times of Peace, Standing Armies, without the Consent or our Legislatures," and his "quartering large Bodies of Armed Troops among us."

Some legal scholars have even begun to argue that the amendment might be applied to the government's response to terror attacks and natural disasters, and to issues involving eminent domain and the militarization of the police.

[Indeed](#):

With the police increasingly training like the military, acting like the military, and posing as military forces—complete with military weapons, assault vehicles, etc.—it is clear that we now have what the founders feared most—a [standing army on American soil](#). Moreover, as a result of SWAT team raids (more than 80,000 a year) where police invade homes, often without warrants, and injure and even kill unarmed citizens, [the barrier between public and private property has been done away with](#), leaving us with armed government agents who act as if they own our property.

Indeed, the Founding Fathers fought the Revolutionary War partly [to stop the type of militarized police that we now have](#).

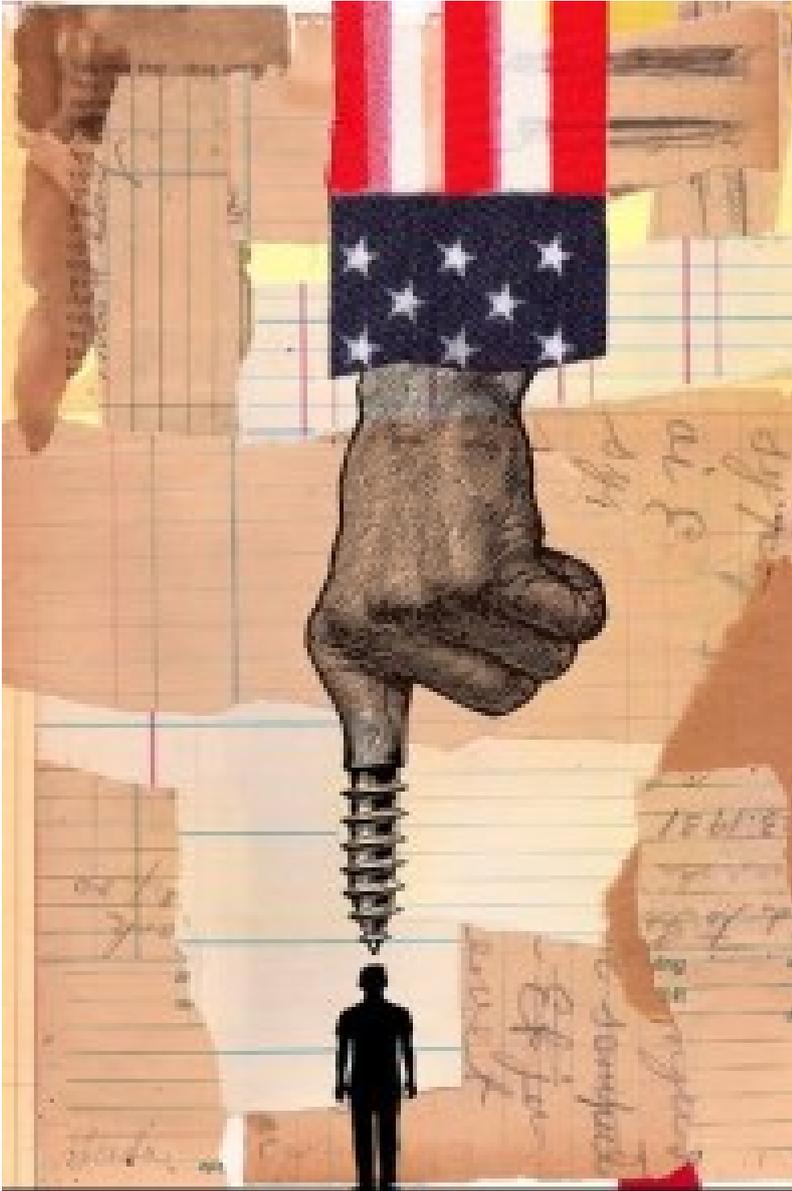


Photo Caption: Painting by Anthony Freda: www.AnthonyFreda.com.

Fourth Amendment

The 4th Amendment prevents unlawful search and seizure:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

But the government is [spying on everything we do](#) ... [without any real benefit](#) or [justification](#) (and [see this](#)).

By one estimate, the average American going about his daily business on any given day will be monitored, surveilled, spied on and tracked in [more than 20 different ways](#), by both government and corporate eyes and ears.

(And things are [getting worse](#), and the government will [greatly expand](#) its spying in the near future.)

Indeed, experts say that the type of spying being carried out by the NSA and other agencies is *exactly* the kind of thing which [King George imposed on the American colonists ... which led to the Revolutionary War](#).

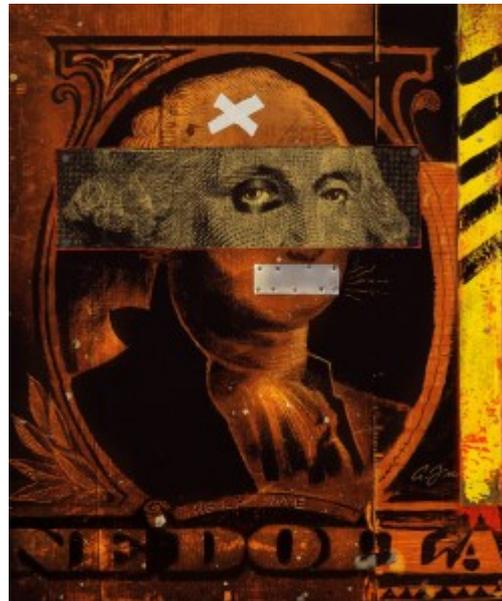
And many Constitutional experts – such as [Jonathan Turley](#) – think that the police went too far in Boston with [lockdowns and involuntary door-to-door searches](#).

[In reality](#):

The Fourth Amendment has suffered the greatest damage in recent years and been all but eviscerated by an unwarranted expansion of police powers that include strip searches and even anal and vaginal searches of citizens, surveillance and intrusions justified in the name of fighting terrorism, as well as the outsourcing of otherwise illegal activities to [private contractors](#). Case in point: Texas police forced a 21-year-old woman to undergo a [warrantless vaginal search](#) by the side of the road after she allegedly “rolled” through a stop sign.

The use of [civil asset forfeiture schemes](#) to swell the coffers of police forces has also continued to grow in popularity among cash-strapped states. The federal government continues to strong-arm corporations into providing it with access to Americans’ private affairs, from emails and online transactions to banking and web surfing. Coming in the wake of massive leaks about the inner workings of the NSA and the massive secretive surveillance state, it was revealed that the government threatened to fine Yahoo \$250,000 every day for failing to comply with the NSA’s mass data collection program known as [PRISM](#). Meanwhile, [AT&T has enjoyed a profitable and “extraordinary, decades-long” relationship with the NSA](#).

The technological future appears to pose even greater threats to what’s left of our Fourth Amendment rights, with advances in biometric identification and microchip implants on the horizon making it that much easier for the government to track not only our movements and cyber activities but our very cellular beings. Barclays has already begun using a [finger-scanner](#) as a form of two-step authentication to give select customers access to their accounts. Similarly, Motorola has been developing thin “[digital tattoos](#)” that will ensure that a phone’s owner is the only person who may unlock it. Not to be overlooked are the aerial spies—[surveillance drones](#)—about to take to the skies in coming years, as well as the [Drive Smart programs](#) that will spy on you (your speed, movements, passengers, etc.) while you travel the nation’s highways and byways.



Paintings by Anthony Freda: www.AnthonyFreda.com.

Fifth Amendment

The 5th Amendment addresses due process of law, eminent domain, double jeopardy and grand jury:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

But the American government has shredded the 5th Amendment by [subjecting us to indefinite detention](#) and [taking away our due process rights](#).

The government claims the right to [assassinate or indefinitely detain any American citizen on U.S. citizen without any due process](#). And [see this](#).

For example, American citizens are being detained in [Guantanamo-like conditions in Chicago](#) ... including:

- Brutality
- Being held in secret
- Not even telling a suspect's lawyer whether his client is being held?

And see [this](#), [this](#) and [this](#).

As such, the government is certainly depriving people of life, liberty, or property, without due process of law.

There are additional corruptions of 5th Amendment rights - such as property being taken for [private purposes](#). And the right to remain silent [is gone](#).

The percentage of prosecutions in which a defendant is denied a grand jury is difficult to gauge, as there is [so much secrecy](#) surrounding many [terrorism trials](#).



Image by [William Banzai](#)

Sixth Amendment

The 6th Amendment guarantees the right to a speedy and public trial, by an impartial jury in the location where the crime allegedly occurred, to hear the criminal charges levied against us and to be able to confront the witnesses who have testified against us, as well as speedy criminal trials, and a public defender for those who cannot hire an attorney:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Subjecting people to [indefinite detention](#) or [assassination](#) obviously violates the 6th Amendment right to a speedy and public jury trial. In both cases, the defendants is “disposed of” without ever receiving *any* trial at all ... let alone a speedy or public one. In neither case do they get a jury, a defense lawyer, or the right to call their own witnesses. And they often never even *hear* the charges against them.

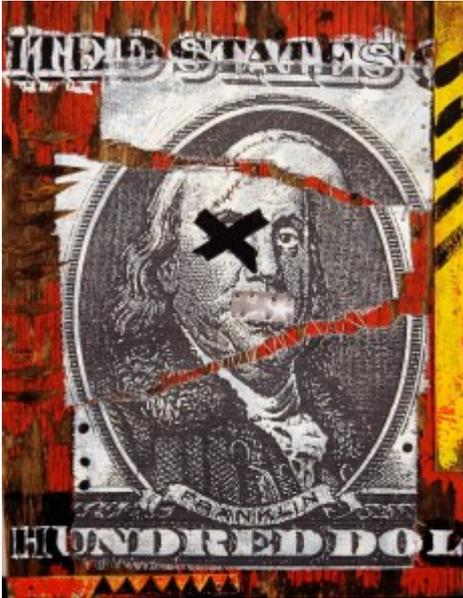
Indefinite detentions usually *don't* occur where the alleged crime occurred, but at a black site.

More and more commonly, the government prosecutes cases [based upon “secret evidence”](#) that they don't show to the defendant ... or sometimes even the judge hearing the case.

The government uses “secret evidence” to [spy on Americans](#), prosecute [leaking](#) or [terrorism](#) charges (even against [U.S. soldiers](#)) and even [assassinate people](#). And see [this](#) and [this](#).

[Secret witnesses](#) are being used in some cases. And sometimes lawyers are [not even allowed to read their own briefs](#).

Indeed, even the [laws themselves are now starting to be kept secret](#). And it's about to [get a lot worse](#).



Moreover, government is [“laundering” information gained through mass surveillance](#) through other agencies, with an agreement that the agencies will [“recreate” the evidence in a “parallel construction”](#) ... so they don’t have to admit that the evidence came from unconstitutional spying. This data laundering is getting [worse](#) and [worse](#).

A former top NSA official says that this is the opposite of following the Fourth Amendment, but is a [“totalitarian process” which shows that we’re in a “police state”](#). (A second former top NSA official [agrees](#).)

And there are [two systems of justice in America](#) ... one for the big banks and other fatcats, and [one for everyone else](#). The government made it [official policy not to prosecute fraud](#), even though fraud is the main business model adopted by Wall Street. Indeed, the [biggest financial crime in world history](#), the [largest insider trading scandal of all time](#), illegal [raiding of customer accounts](#) and [blatant financing of drug cartels and terrorists](#) have all been committed recently without any real criminal prosecution or jail time.

On the other hand, government prosecutors are using the legal system to [crush dissent](#) and to [silence whistleblowers](#).

And some of the nation’s most powerful judges have lost their independence ... and are [in bed with the powers-that-be](#).

Constitutional lawyer John Whitehead [explains](#):

The Fifth Amendment and the Sixth Amendment work in tandem. These amendments supposedly ensure that you are innocent until proven guilty, and government authorities cannot deprive you of your life, your liberty or your property without the right to an attorney and a fair trial before a civilian judge. However, in the new suspect society in which we live, where surveillance is the norm, these fundamental principles have been upended. Certainly, if the government can arbitrarily freeze, seize or lay claim to your property (money, land or possessions) under government asset forfeiture schemes, you have no true rights. That’s the crux of a [case before the U.S. Supreme Court](#) challenging the government’s use of asset forfeiture to strip American citizens of the funds needed to hire a defense attorney of their choosing.

Seventh Amendment

The 7th Amendment guarantees trial by jury in federal court for civil cases:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

But there are [two systems of justice in America](#) ... [one for the big banks and other fatcats](#), and [one for everyone else](#). So good luck going after the powers-that-be.

And the World Justice Project - a bipartisan, independent group with honorary chairs including numerous current and former Supreme Court Justices - released a report saying that Americans have less access to justice than most wealthy countries ... and many developing nations. The report [finds](#) that Americans have less access to justice than Botswanans, and that only the wealthy have the resources to protect rights using the court system:

✘ For example, Germans sue equally whether they are rich or poor ... but in America, only the wealthy have the resources to protect rights using the court system:

✘

(And the [austerity caused](#) by the [highest levels of inequality in world history](#) - which are in turn is caused by [socialist actions](#) by our government, which have [destroyed the Founding Fathers' vision](#) of prosperity - is causing severe budget cuts to the courts, resulting in the wheels of justice slowing down considerably.)

Federal judges have also recently decided that they can [pre-judge cases before the plaintiff even has the chance to conduct discovery](#) ... and throw cases out if they don't like plaintiff's case.

[And:](#)

The populace has no idea of what's in the Constitution—civic education has virtually disappeared from most school curriculums—that inevitably translates to an [ignorant jury](#) incapable of distinguishing justice and the law from their own preconceived notions and fears. However, as a growing number of citizens are coming to realize, the power of the jury to nullify the government's actions—and thereby help balance the scales of justice—is not to be underestimated. [Jury nullification](#) reminds the government that it's "we the people" who can and should be determining what laws are just, what activities are criminal and who can be jailed for what crimes.



Painting by Anthony Freda: www.AnthonyFreda.com

Eighth Amendment

The 8th Amendment prohibits cruel and unusual punishment:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

[Indefinite detention](#) and [assassination](#) are obviously cruel and unusual punishment.

The widespread system of torture carried out in the last 10 years – with the [help of other countries](#) – [violates the 8th Amendment](#). Many want to [bring it back](#) ... or at least [justify its past use](#).

While Justice Scalia [disingenuously argues](#) that torture does not constitute cruel and unusual punishment because it is meant to produce information – not punish – [he's wrong](#). It's not only cruel and unusual ... it is technically a [form of terrorism](#).

And [government whistleblowers are being cruelly and unusually punished](#) with unduly harsh sentences meant to intimidate anyone else from speaking out.

[Moreover:](#)

A California appeals court is being asked to consider “whether [years of unpredictable delays from conviction to execution](#)” constitute cruel and unusual punishment. For instance, although 900 individuals have been sentenced to death in California since 1978, only 13 have been executed.

As CBS News reports, "[More prisoners have died of natural causes on death row](#) than have perished in the death chamber."



Ninth Amendment

The 9th Amendment provides that people have other rights, even if they aren't specifically listed in the Constitution:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

We can debate what our inherent rights as human beings are. I believe they include the right to a level playing field, and access to non-toxic food and water. You may disagree.

But everyone agrees that the government should not *actively encourage* fraud and manipulation. However, the government – through its [malignant, symbiotic relation with big corporations](#) – is interfering with our aspirations for [economic freedom](#), [safe food and water](#) (instead of [arsenic-laden, genetically engineered junk](#)), freedom from undue health hazards such as [irradiation](#) due to [government support](#) of archaic nuclear power designs, and a level playing field (as opposed to our crony capitalist system in which the [little guy has no shot](#) due to [redistribution of wealth](#) from the middle class to the super-elite, and government support of [white collar criminals](#)).

By working hand-in-glove with giant corporations to defraud us into paying for a lower quality of life, the government is trampling our basic rights as human beings.

Tenth Amendment

The 10th Amendment provides that powers not specifically given to the *Federal* government are reserved to the states or individual:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Two of the central principles of America's Founding Fathers are:

- (1) The government is created and empowered with the consent of the people
and
- (2) Separation of powers

Today, [most Americans believe](#) that the government is *threatening* - rather than *protecting* - freedom. We've become [more afraid of our government](#) than of terrorists, and believe that the government is no longer acting with the "[consent of the governed](#)".

And the federal government is trampling the separation of powers by stepping on the toes of the states and the people. For example, former head S&L prosecutor Bill Black - now a professor of law and economics - [notes](#):

The Federal Reserve Bank of New York and the resident examiners and regional staff of the Office of the Comptroller of the Currency [both] competed to weaken federal regulation and aggressively used the preemption doctrine to try to prevent state investigations of and actions against fraudulent mortgage lenders.

Indeed, the federal government is doing everything it can to stick its nose into every aspect of our lives ... and [act like Big Brother](#).

Conclusion: While a few of the liberties enshrined in the Bill of Rights still exist, the vast majority are under heavy assault.

Other Constitutional Provisions ... and The Declaration of Independence

In addition to the trampling of the Bill of Rights, the government has also [trashed the separation of powers](#) enshrined in the main body of the Constitution.

The government is also engaging in activities which the Founding Fathers fought against, such as taxation without representation ([here](#) and [here](#)), [cronyism](#), [deference to central banks](#), etc.

As the preamble to the [Declaration of Independence](#) shows, the American government is still carrying out many of the acts the Founding Fathers found most offensive:

He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures. [Background [here](#) and [here](#)]

He has affected to render the Military independent of and superior to the Civil power. [Background [here](#), [here](#), [here](#), [here](#) and [here](#)]

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation: [[Background](#)]

For transporting us beyond Seas to be tried for pretended offences [[Background](#)]

He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation. [[Background](#)]

He has abdicated Government here, by declaring us out of his Protection and waging War against us. [[Background](#) [here](#), [here](#) and [here](#)]

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