

Pop Quiz: How Many Constitutional Rights Have We Lost?

By [Washington's Blog](#)

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[Washington's Blog](#)

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How Many Constitutional Freedoms Have We Lost?

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. (*This is an updated version of an essay we wrote in February. Unfortunately, a lot of information has come out since then.*)

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.)

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.

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.

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



Painting by Anthony Freda:
www.AnthonyFreda.com.

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.

Moreover, the military is arguably [quartering “digital” troops](#) within our homes.

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](#).

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](#).

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 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 jury trial. In both cases, the defendant is “disposed of” without ever receiving a trial ... and often without ever hearing the charges against them.

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. 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”](#).

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](#).

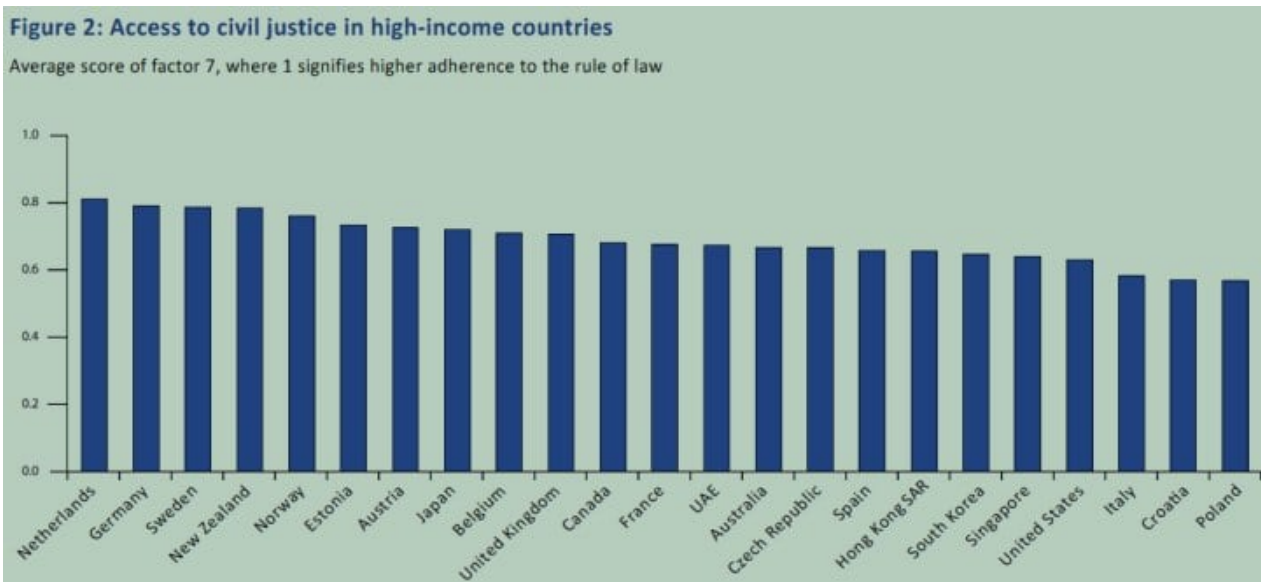
Seventh Amendment

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.

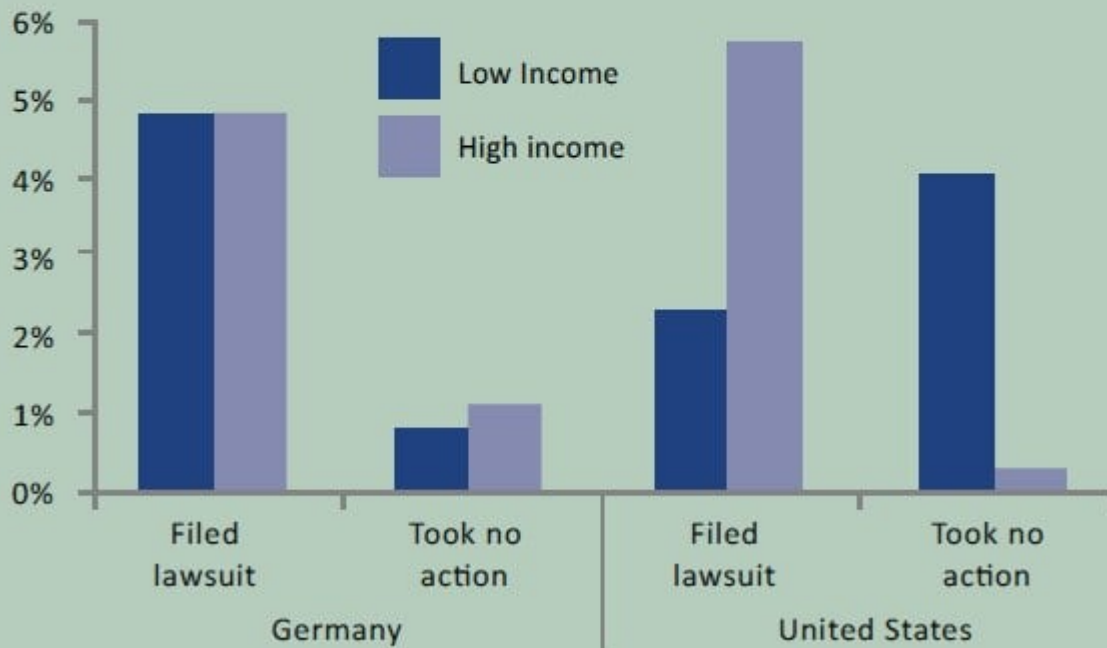
And the World Justice Project - a bipartisan, independent group with honorary chairs including numerous current and former Supreme Court Justices - released a report saying that Americans have less access to justice than most wealthy countries ... and many developing nations. The report [finds](#) that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

Figure 3: Use of formal dispute mechanisms in Germany and the United States

% of respondents who filed a lawsuit in court (including small claims court) to resolve a civil dispute vs. % of respondents who took no action to resolve the dispute, grouped by household income level



Source: *The WJP Rule of Law Index 2011 database*

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.

Finally, federal judges have 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.



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.



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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