

# Constitution Day 2021: It's Time to Make America Free Again



By John W. Whitehead & Nisha Whitehead | [The Rutherford Institute](#)

“That was when they suspended the Constitution. They said it would be temporary. There wasn’t even any rioting in the streets. People stayed home at night, watching television, looking for some direction. There wasn’t even an enemy you could put your finger on.”—Margaret Atwood, *The Handmaid’s Tale*

The Constitution of the United States represents the classic

solution to one of humankind's greatest political problems: that is, how does a small group of states combine into a strong union without the states losing their individual powers and surrendering their control over local affairs?

The fifty-five delegates who convened in Philadelphia during the sweltering summer of 1787 answered this question with a document that called for a federal plan of government, a system of separation of powers with checks and balances, and a procedure for orderly change to meet the needs and exigencies of future generations.

In an ultimate sense, the Constitution confirmed the proposition that original power resided in the people—not, however, in the people as a whole but in their capacity as people of the several states. To bring forth the requisite union, the people through the states would transfer some of their powers to the new federal government. All powers not reserved by the people in explicit state constitutional limitations remained in the state governments.

Although the Constitution was adopted on September 17, 1787, the fear of the new federal government was so strong that a “bill of rights” was demanded and became an eventuality.

Intended to protect the citizenry's fundamental rights or “first liberties” against usurpation by the newly created federal government, the Bill of Rights—the first ten amendments of the Constitution—is essentially a list of immunities from interference by the federal government.

Unfortunately, although the Bill of Rights was adopted as a means of protecting the people against government tyranny, in America today, the government does whatever it wants, freedom is damned.

“We the people” have been terrorized, traumatized, and tricked into a semi-permanent state of compliance by a government that cares nothing for our lives or our liberties.

The bogeyman's names and faces have changed over time (terrorism, the war on drugs, illegal immigration, a viral pandemic, and more to come), but the end result remains the same: in the so-called name of national security, the Constitution has been steadily chipped away at, undermined, eroded, whittled down, and generally discarded with the support of Congress, the White House, and the courts.

A recitation of the Bill of Rights—set against a backdrop of government surveillance, militarized police, SWAT team raids, asset forfeiture, eminent domain, overcriminalization, armed surveillance drones, whole-body scanners, stop and frisk searches, vaccine mandates, travel lockdowns, and the like (all sanctioned by Congress, the White House, and the courts)—would understandably sound more like a eulogy to freedoms lost than an affirmation of rights we truly possess.

What we are left with today is but a shadow of the robust document adopted more than two centuries ago. Sadly, most of the damage has been inflicted upon the Bill of Rights.

**Here is what it means to live under the Constitution, post-9/11 and in the midst of a COVID-19 pandemic.**

The **First Amendment** is supposed to protect the freedom to speak your mind, assemble and protest nonviolently without being bridled by the government. It also protects the freedom of the media, as well as the right to worship and pray without interference. In other words, Americans should not be silenced by the government. To the founders, all of America was a free speech zone.

**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 so-called government forum.**

The **Second Amendment** was intended to guarantee “the right of the people to keep and bear arms.” Essentially, this amendment was intended to give the citizenry the means to resist tyrannical government. Yet while gun ownership has been recognized by the U.S. Supreme Court as an individual citizen right, **Americans remain powerless to defend themselves against SWAT team raids and government agents armed to the teeth with military weapons better suited to the battlefield.** As such, this amendment has been rendered nearly null and void.

The **Third Amendment** reinforces the principle that civilian-elected officials are superior to the military by prohibiting the military from entering any citizen’s home without “the consent of the owner.” With the police increasingly training like the military, acting like the military, and posing as military forces—complete with heavily armed SWAT teams, military weapons, assault vehicles, etc.—it is clear that **we now have what the founders feared most—a standing army on American soil.**

The **Fourth Amendment** prohibits government agents from conducting surveillance on you or touching you or invading you unless they have some evidence that you’re up to something criminal. In other words, the Fourth Amendment ensures privacy and bodily integrity. **Unfortunately, the Fourth Amendment has suffered the greatest damage in recent years and has been all but eviscerated by an unwarranted expansion of police powers that include strip searches and even anal and vaginal searches**

of citizens, surveillance (corporate and otherwise), and intrusions justified in the name of fighting terrorism, as well as the outsourcing of otherwise illegal activities to private contractors.

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.

The **Seventh Amendment** guarantees citizens the right to a jury trial. Yet **when 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 “we the people” retain the power to ultimately determine what laws are just.

The **Eighth Amendment** is similar to the Sixth in that it is supposed to protect the rights of the accused and forbid the use of cruel and unusual punishment. However, the Supreme Court's determination that what constitutes “cruel and unusual” should be dependent on the “evolving standards of decency that mark the progress of a maturing society” leaves us with **little protection in the face of a society lacking in morals altogether.**

The **Ninth Amendment** provides that other rights not enumerated in the Constitution are nonetheless retained by the people. Popular sovereignty—the belief that the power to govern flows upward from the people rather than downward from the rulers—is clearly evident in this amendment. However, it has since been **turned on its head by a centralized federal government that sees itself as supreme** and which continues to pass more and more laws that restrict our freedoms under the pretext that it has an “important government interest” in doing so.

As for the **Tenth Amendment’s** reminder that the people and the states retain every authority that is not otherwise mentioned in the Constitution, **that assurance of a system of government in which power is divided among local, state, and national entities has long since been rendered moot by centralized Washington, DC, power elite**—the president, Congress, and the courts.

If there is any sense to be made from this recitation of freedoms lost, it is simply this: **our individual freedoms have been eviscerated so that the government’s powers could be expanded.**

Yet those who gave us the Constitution and the Bill of Rights believed that the [government exists at the behest of its citizens](#). It is there to protect, defend and even enhance our freedoms, not violate them.

It was no idle happenstance that the Constitution opens with these three powerful words: “We the people.” As the Preamble proclaims:

*We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this CONSTITUTION for the United States of America.*

In other words, we have the power to make and break the government. We are the masters and they are the servants. We the American people—the citizenry—are the arbiters and ultimate guardians of America’s welfare, defense, liberty, laws, and prosperity.

Still, [it’s hard to be a good citizen if you don’t know anything about your rights](#) or how the government is supposed to operate.

As the *National Review* rightly asks, “[How can Americans possibly make intelligent and informed political choices if they don’t understand the fundamental structure of their government?](#) American citizens have the right to self-government, but it seems that we increasingly lack the capacity for it.”

Americans are [constitutionally illiterate](#).

Most citizens have little, if any, knowledge about their basic rights. And our educational system does a poor job of teaching the basic freedoms guaranteed in the Constitution and the Bill of Rights. For instance, a survey by the Annenberg Public Policy Center found that a little more than [one-third of respondents \(36 percent\) could name all three branches of the U.S. government](#), while another one-third (35 percent) could not name a single one.

A survey by the McCormick Tribune Freedom Museum found that [only one out of a thousand adults could identify the five rights protected by the First Amendment](#). On the other hand, more than half (52%) of the respondents could name at least two of the characters in the animated *Simpsons* television family, and 20% could name all five. And although half could name none of the freedoms in the First Amendment, [a majority \(54%\) could name at least one of the three judges on the TV program American Idol](#), 41% could name two, and one-fourth could name all three.

It gets worse.

Many who responded to the survey had a [strange conception of what was in the First Amendment](#). For example, 21% said the “right to own a pet” was listed someplace between “Congress shall make no law” and “redress of grievances.” Some 17% said that the First Amendment contained the “right to drive a car,” and 38% believed that “taking the Fifth” was part of the First Amendment.

Teachers and school administrators do not fare much better. A study conducted by the Center for Survey Research and Analysis found that [one educator in five was unable to name any of the freedoms in the First Amendment](#).

In fact, while some educators [want students to learn about freedom, they do not necessarily want them to exercise](#) their freedoms in school. As the researchers conclude, “Most educators think that students already have enough freedom and that restrictions on freedom in the school are necessary. Many support filtering the Internet, censoring T-shirts, disallowing student distribution of political or religious material, and conducting a prior review of school newspapers.”

[Government leaders and politicians are also ill-informed.](#)

Although they take an oath to uphold, support, and defend the Constitution against “enemies foreign and domestic,” their lack of education about our fundamental rights often causes them to be enemies of the Bill of Rights.

So what’s the solution?

Thomas Jefferson recognized that a citizenry educated on [“their rights, interests, and duties”](#) is the [only real assurance that freedom will survive](#).

As Jefferson wrote in 1820: “I know no safe depository of the ultimate powers of our society but the people themselves; and if we think them not enlightened enough to exercise their



control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education. [This is the true corrective of abuses of constitutional power.](#)”

From the President on down, anyone taking public office should have a working knowledge of the Constitution and the Bill of Rights and should be held accountable for upholding their precepts. One way to ensure this would be to require government leaders to take a course on the Constitution and pass a thorough examination thereof before being allowed to take office.

Some critics are advocating that [students pass the United States citizenship exam](#) in order to graduate from high school. Others recommend that it must be a prerequisite for attending college. I'd go so far as to argue that students should have to pass the citizenship exam before graduating from grade school.

Here's an idea to get educated and take a stand for freedom: anyone who [signs up to become a member of The Rutherford Institute](#) gets a wallet-sized Bill of Rights card *and* a Know Your Rights card. Use this card to teach your children the freedoms found in the Bill of Rights.

If this constitutional illiteracy is not remedied and soon, freedom in America *will* be doomed.

As I make clear in my book [Battlefield America: The War on the American People](#) and in its fictional counterpart [The Erik Blair Diaries](#), we have managed to keep the wolf at bay so far. Barely.

Our national priorities need to be re-prioritized. For instance, some argue that we need to make America great again. I, for one, would prefer to make America free again.

## **ABOUT JOHN W. WHITEHEAD**

Constitutional attorney and author John W. Whitehead is the founder and president of [The Rutherford Institute](#). His books [\*Battlefield America: The War on the American People\*](#) and [\*A Government of Wolves: The Emerging American Police State\*](#) are available at [www.amazon.com](http://www.amazon.com). He can be contacted at [johnw@rutherford.org](mailto:johnw@rutherford.org). Nisha Whitehead is the Executive Director of The Rutherford Institute. Information about The Rutherford Institute is available at [www.rutherford.org](http://www.rutherford.org).