

## Bill of Rights Day: What's left of them?

By [Nat Hentoff](#) 12/15/2011

John Jay, the co-writer of the Federalist Papers and the first chief justice of the United States (1789-95), wrote in a 1786 letter to Thomas Jefferson that he was worried that under our evolving founding document that became the Constitution, Congress would have exorbitant power.

“These three great departments of sovereignty,” he told Jefferson, “should be forever separated and so distributed to serve as checks on each other.”

The separation of powers was indeed embodied in the Constitution, but especially in the Bush and Obama administrations, the executive branch has been so disproportionately and unilaterally strengthened that I urge the Cato Institute to actively redistribute, with a short epilogue, its 2008 book by Gene Healy, [The Cult of the Presidency: America's Dangerous Devotion to Executive Power](#). It can make for more crucially discerning voters in 2012.

The Bill of Rights' First Amendment, from which all our individual liberties flow, is still working. Although FBI agents, during J. Edgar Hoover's reign, knocked on my door to supplement the FBI files on me, I have not since been visited by them. However, despite the Fourth Amendment, like so many Americans, I am aware that this is increasingly a society under government surveillance and tracking. Accordingly, many Americans are becoming careful about what they say on the phone or the Internet, let alone on cell phones or social media.

The Bill of Rights' now-broken Fourth Amendment guaranteed that we are protected against “unreasonable searches and seizures” by the government. But it is now on life support, thereby beginning to diminish citizens' confident exercise of the First Amendment. Do you want the FBI to know everything you're saying?

Also, the new generation — and quite possibly others to follow — are recognizing that what they put about themselves on Facebook, Twitter and other newly quickening means of communication may be embedded in FBI and other government files.

Also under attack by the government is the distinctively American Fifth Amendment: No person “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 ...”

Due process of law is our bedrock of citizenship, and it's greatly envied by many around the world. But the Bush-Cheney administration cast it aside with regard to suspected terrorists — including American citizens in certain contexts. Then, in 2009, President Barack Obama began pursuing, as Bush-Cheney already had, preventive detention, by which terrorism suspects, including Americans, can be held without going to a U.S. court, thereby also doing away with due process.

Recently, Obama appears to have moderated in part his further suspension of the Fifth Amendment, without abandoning preventive detention entirely. This happened concerning a 93-to-7 Senate vote for an amendment to the National Defense Authorization Act that would empower the military to seize and hold terrorism suspects, including Americans, within our borders, in preventive detention. No right to trial.

What surprised me was that Obama, because of extraordinary control given the military by the Senate vote, threatened a veto of the bill, while also among its opponents were FBI Director Robert Mueller and Defense Secretary Leon Panetta — neither of whom would have been recognized by John Jay or Thomas Jefferson as civil libertarians.

As of this writing, the ultimate vote on this defense authorization bill is still pending; but alarming is the fact that 93 senators — in what these days was an astonishingly large bipartisan vote — were so eager to deny these suspects, including Americans, any trace of due process of law.

Were he still alive, John Jay would remind us why he so feared a Congress so leaping over the separation of powers.

Another section of the Bill of Rights, the Eighth Amendment's banning of "cruel and unusual punishments," was brutally suspended during the Bush-Cheney "torture policy" in the CIA secret prisons ("black sites") and elsewhere. And the CIA "renditions" to other nations known for torturing their prisoners continue, to some extent, under President Obama. I have reported, for instance, on a covert part of a U.S. prison on our Bagram Air Base in Afghanistan where former prisoners have described being tortured to the BBC.

The Republican presidential aspirants seem to have only the smallest concern about any of this dismembering of the Bill of Rights I have cited in my inability to celebrate, rather than mourn, Bill of Rights Day. The incumbent in the White House has refused any attempts at accountability — through independent investigations — for the Bush-Cheney desecration of the Bill of Rights, let alone his own.

How many voters in 2012 will keep in mind America's continuous Dangerous Devotion to Executive Power?