

I Was Once Incarcerated and Now Can't Vote. But I Still Appreciate the US Constitution.

Written By



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Witnessing police ignore the U.S. Constitution's most basic edicts caused me to study it with a diligence worthy of many a legal scholar.

In the mid-1990s a girlfriend and I were pulled over in South Phoenix. It's difficult to pinpoint an exact year because we were both junkies riding the outward spiral of prison's revolving door. The cop was huge, and when he asked for permission to search the car, I demanded a warrant. His response was to reach in, wrap meaty hands around my throat, and pull me right out of the driver-side window—not so difficult, as I weighed a buck-twenty tops. He shook me for a bit, tossed me aside, then searched the car anyway. Finding nothing but some old syringes, he let us go.

Witnessing police ignore the U.S. Constitution's most basic edicts—the Fourth Amendment, for those who need a refresher, protects us from “unreasonable searches”—caused me to study it with a diligence worthy of many a legal scholar. At first it was out of sheer frustration, but it grew into something more, a feeling rooted in awe. For the first time in my life, I understood why people became lawyers.

It's a legal document, first off, and, like most things lawyerly, it can be difficult, requiring careful evaluation as opposed to reading and/or cherry-picking passages that conveniently adhere to agendas.

How does one square narcotics prohibition, for instance, with the lackadaisical permissibility of alcohol, nicotine, caffeine, or even fatty foods? It was 100 years ago that the 18th Amendment's prohibition of alcohol became law. When it was repealed 13 years later by the 21st Amendment, the prohibition on narcotics was left in place, where it remains to this day, running rampant under the smokescreen of the War on Drugs.

As a former prisoner of said war, I cannot vote simply because I cannot pay \$8,000-plus in fines levied against me on four Arizona State prison sentences. Fines are covered in the Eighth Amendment which, at just 16 words, is the shortest in the Bill of Rights: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

How does one, however, determine excessive? For me, a \$500 bail was extreme simply because I couldn't pay it. Excessive, then, is arbitrary, signifying one degree beyond any given defendant's means—which is why jails and prisons are so full of poor people.

Excessive fines fall along the same lines and, in my mind at least, violate not only double jeopardy, but so too equal protection. To prove my point, let's engage a couple hypotheticals. Imagine for a moment that President Trump is visiting Arizona and, while here, he assaults a journalist for saying something nice about the late Sen. John McCain—slaps him silly with a back issue of Stars and Stripes.

Imagine further that the constitutional concept of equal protection actually means something, and Trump is arrested, convicted, sentenced to three years in prison, and fined \$2,000. Upon his release, he pays the fine and, after a grace period, he can apply to get his civil rights restored in Arizona. It really is that simple.

For those who can't pay, however, it's a different matter entirely. In an email I received from Blair Bowie, Legal Counsel and Restore Your Vote Manager of the Campaign Legal Center, she wrote: “Remember that even when a state action may be unconstitutional, it remains enforceable until it is challenged in federal court, which almost always happens after the enforcement. In other words, even if a debt were in violation of ex post facto or double jeopardy, the state will still try to collect.”

Challenging the State of Arizona on the constitutionality of attaching fines to prison sentences, however, is difficult because they are not locking me up for nonpayment of them. That would definitely constitute double jeopardy. But withholding voting rights or using a fine as a poll tax is more iffy.

In the 2018 election, 1.4 million ex-felons were given their voting rights back by Floridians who overwhelmingly supported a constitutional amendment on the ballot. Florida Republicans, however, made that contingent upon payment of all fines and restitution, and a federal appeals court [ruled in favor](#) of the GOP last week, stating flatly that fines, even excessive fines, are part of a sentence and must be paid in full before felons can register to vote. The ruling brings us back to when only white male landowners were allowed to vote, which should impart a valuable lesson—knowing that a law is unconstitutional is one thing, proving it quite another.

And that's the Constitution's inherent flaw. It's very hard to change it.

Nor should this be surprising, as it was founded and written by men who were flawed and overseen and ruled upon by judges who are also, if not equally, flawed.

Like the bevy of flaws so prevalent in humanity, however, the Constitution's greatest strengths are often derivatives of those flaws. So even when we've gotten it tragically wrong, some upstart lawyer came

along and gave it a swift kick in its amendments, forcing it to cough up something more in tune with its initial promise. Think Brown vs. Board of Education which, on paper at least, ended Jim Crow laws.

So despite its many failings, I still revere the Constitution because, like the failings so ubiquitous in humans, myself not the least, it has the potential to better itself. Nor can the Constitution be rendered perfect, just as we can't render our fellow Americans perfect.

What we can do is try to live up to the promised potential inherent in both. That might mean taking a knee to the National Anthem as well as holding those accountable who so maliciously take a knee to the Constitution. Under Trump and his supporters, voter suppression is now the norm, and shooting down protesters exercising their First Amendment rights is the ideal.

The complexity of the U.S. Constitution can be comprehended with a vigilant application of common sense. We don't need to be legal scholars, pundits, nor politicians defined by our parties to appreciate this document. Indeed, knowledge of and veneration for the Constitution should be inherent in that plurality it's addressed to: We the People.

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