

Why The Constitution Still Matters: The Constitution Is the Issue

Written by John W. Whitehead

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"In America, the law is King. For as in absolute governments, the King is law, so in free countries the law ought to be king; and there ought to be no other." - Thomas Paine

As usual, the contenders for the White House are making a lot of promises about what they will change if elected. They're singing the siren song all politicians adopt by telling us exactly what we want to hear: reduce taxes, lower gas prices, reform Social Security, and provide us with more and more benefits. In other words, they're going to give us something for our vote - maybe. But reading between the lines, it's what Barack Obama and John McCain *aren't* saying that should cause voters to pause.

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In all their stump speeches, little to nothing has been said by either Obama or McCain about repairing the damage done to our constitutional freedoms during the Bush presidency. Yet there is no denying that these precious liberties have come under attack.

During his two terms in office, President George W. Bush has managed to subvert the Constitution at almost every turn. In the process, he has assembled an amazing toolbox of powers and greatly increased the authority of the executive branch and the reach of the federal government. Thus, the groundwork is laid for the establishment of an imperial presidency.

Claiming to possess the "inherent" authority to suspend laws as he conducts his never-ending "war on terrorism," Bush has assumed near-absolute power in the wake of the 9/11 attacks. Indeed, over the course of the past seven years, Bush has expanded presidential power to allow government agents to open the private mail of American citizens, assume control of the federal government following a "catastrophic event," declare martial law and authorize government agents to secretly, and illegally, listen in on the phone calls of American citizens and read our e-mails, among other things. Bush has also declared that if he disagrees with a law passed by Congress, he can disregard it.

Yet if the president can simply chart his own course and set his own rules, not being bound by either the Constitution or the other branches of government, he is "above the law" and becomes, in effect, a law unto himself. But in America, as Thomas Paine tells us, "the law is King." And that means the Constitution. The president cannot do whatever he wants. If so, he then becomes the law, which is precisely what the founders intended to prevent when they drafted the Constitution. We've never tolerated that before in this country.

Unfortunately, what Americans often fail to comprehend is that the powers amassed by President Bush will not expire when he leaves office. They will be available to future presidents to use - and abuse.

Generally, history has demonstrated that presidential powers have a constant and evolving ebb and flow. Under the Bush administration, we have seen those powers steadily and dramatically augmented. It remains to be seen whether McCain or Obama will restore our constitutional government. Will they, if elected, place the executive branch back on equal

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footing with the other branches of government, relinquishing the powers that Bush has amassed and restoring the separation of powers? We would do well to remember that presidents don't easily relinquish power.

That is why the separation of powers, which is at the heart of our system of checks and balances, is so critical. It allows the president to have as much power as Congress and the courts, but no more than that. The importance of this constitutional principle cannot be overstated. It ensures that power does not become centralized in a single branch of government, thereby preventing our country from sliding into an authoritarian regime.

However, the history of governments is that they inevitably overreach. As the government invariably oversteps its authority, Americans are faced with the pressing need to maintain the Constitution's checks against governmental power and abuse and to ensure that, in America, the law is king - not the president.

If just one of the candidates would step up and say, "One of the first things I'm going to do if elected is restore the constitutional republic," that would be revolutionary. But it's probably not going to happen.

We cannot rely on Obama or McCain to raise these issues - their interests obviously lie elsewhere. And we certainly can't wait for the media to pose the important questions - they're too busy regurgitating talking points and spreading celebrity gossip about the candidates.

Thus, we need to become *thinking* people once again. This means studying the Constitution and understanding that the responsibility for raising these issues rests with "We the People."

And we certainly don't want to make the mistake of trusting another president to protect our freedoms. Thus, we shouldn't be praising the politicians; we should be examining them with extreme scrutiny.

Finally, while politicians and civil servants take an oath of office to uphold and defend the

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Constitution, it is we - the people, the voters, the heart and guts and sinew of this country - who are entrusted as ultimate guardians of the freedoms laid out in the Constitution. When we shirk that duty, we leave ourselves wide open for an authoritarian regime to rise to power, place restrictions on our freedoms, and usurp our right to govern ourselves.

Constitutional attorney and author John W. Whitehead is founder and president of The Rutherford Institute (Rutherford.org). His book The Change Manifesto will be released this month.