

UNDERSTANDING

# CIVIL LIBERTIES

*A Guide  
for the Perplexed*



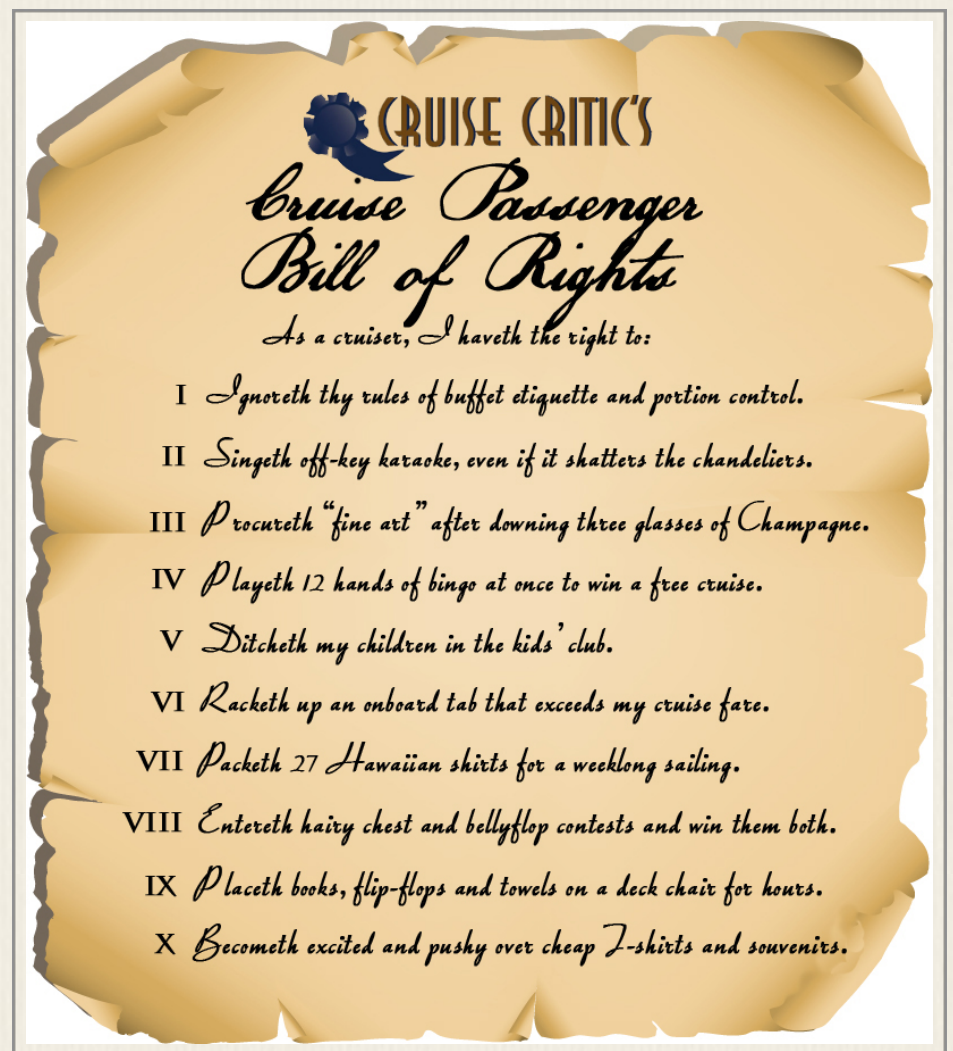
Jasper Chou

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# Bill of Rights

Proposed by the Anti-Federalists who had opposed the Constitutional ratification, the Bill of Rights is the collective name for the first ten amendments to the United States Constitution. These amendments guarantee a number of personal freedoms by limiting the government's power in judicial and other proceedings and reserving some powers to the states and the public. At the start, the amendments only applied to the federal government, but later on through a process called incorporation, the Fourteenth Amendment applied the amendments to the state governments.

The Bill of Rights mentions and specifies freedoms that not in the main body of the Constitution, including: freedom of religion, freedom of speech, freedom of press, and freedom of assembly (First Amendment); the right to keep and bear arms (Second Amendment); freedom from unreasonable search and seizure, security in personal effects, and freedom from warrants issued without probable cause (Fourth Amendment); indictment by a grand jury for any capital or "infamous crime" (Fifth Amendment); and guarantee of a speedy, public trial with an impartial jury (Sixth Amendment). Also, the Bill of Rights reserves rights that not specifically mentioned in the Constitution and reserves all powers not specifically granted to the federal government to the people or the States (reserved powers).





# Freedom of Expressions

The First Amendment to the United States Constitution prohibits the making of any law respecting an establishment of religion, impeding the free exercise of religion, abridging the freedom of speech, infringing on the freedom of the press, interfering with the right to peaceably assemble or prohibiting the petitioning for a governmental redress of grievances.

## Freedom of Speech and Press

- Supreme Court made it illegal to advocate the violent overthrow of the government. (*Gitlow v. New York* 1925).
- “malicious, scandalous, or defamatory” publications is banned (*Near v. Minnesota* 1931).
- Congress could restrict speech that was “of such a nature as to create a clear and present danger” to the nation’s security **clear-and-present-danger test** (*Schenck v. United States* 1919).
- State cannot prohibit speech that advocates the unlawful use of force unless it meets a two-part test: speech must be “directed at inciting or producing imminent lawless action” and “likely to produce such action” (*Bradenburg v. Ohio* 1969).
- Government may not prohibit the expression of an idea simply because the society finds the idea itself offensive or disagreeable (*Texas v. Johnson* 1989).
- Supreme Court ruled that libel of a public official requires proof of actual malice (*New York Times Co v. Sullivan* 1964).
- A doctrine defining what constitutes as **fighting words** was established as a result of spoken words that “by their utterance inflict injury or tend to incite an immediate breach



of peace that governments may constitutionally punish” (Chalinsky v. New Hampshire 1942)

- Court ruled that student’s rights are “not shed at the schoolhouse gates” and defined the students’ wearing a black armband in silent protest as a legitimate form of symbolic speech (Tinker v. Des Moines 1969)

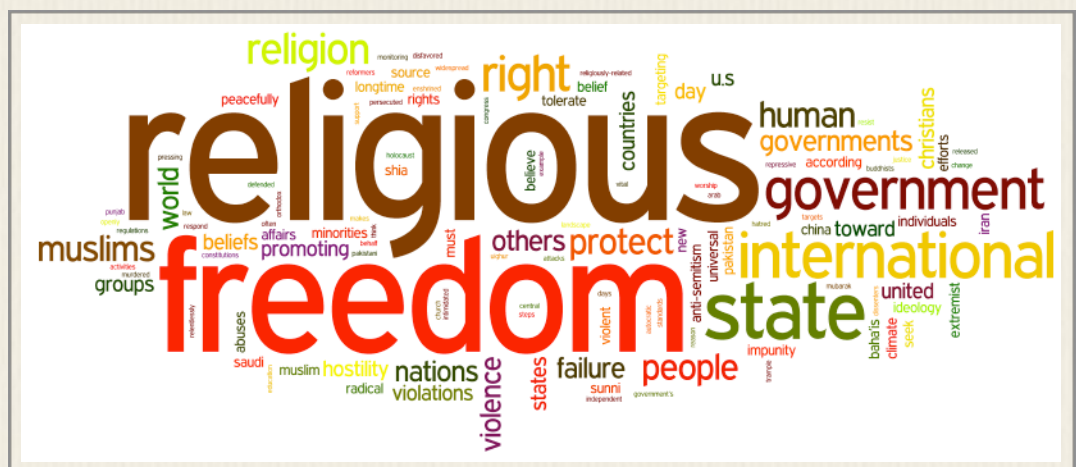
### Freedom of Assembly

- Regarding assembly: people can’t hold a public rally at a busy intersection during rush hour nor do that have the right to turn up the volume on loudspeakers to the point where the can be heard miles away
- Supreme Court held that for material to be judged obscene, it has to **1.**depict sexual conduct in a patently offensive way **2.**be precisely described in law as obscene **3.**material “taken as a whole” must appeal to “prurient interest” and have “no redeeming social value (Miller v. California 1973).



### Freedom of Religion

- Court held that establishment clause, which has been interpreted by the courts to mean that government may not favor one religion over another or support religion over no religion, prohibits the reciting of prayers in public schools (Engel v. Vitale 1962).
- The Court articulated a three-point test (Lemon Test) in deciding whether government assistance for religious activity as lawful, and the conditions are 1.statute must have a secular legislative purpose 2.its principal or primary effect must be one that neither advances nor inhibits religion 3.statute must not foster “an excessive government entanglement with religion” (Lemon v. Kurtzman 1971).
- Court ruled that schools cannot invite clergy to recite prayers at graduation ceremonies (Lee v. Weisman 1992).



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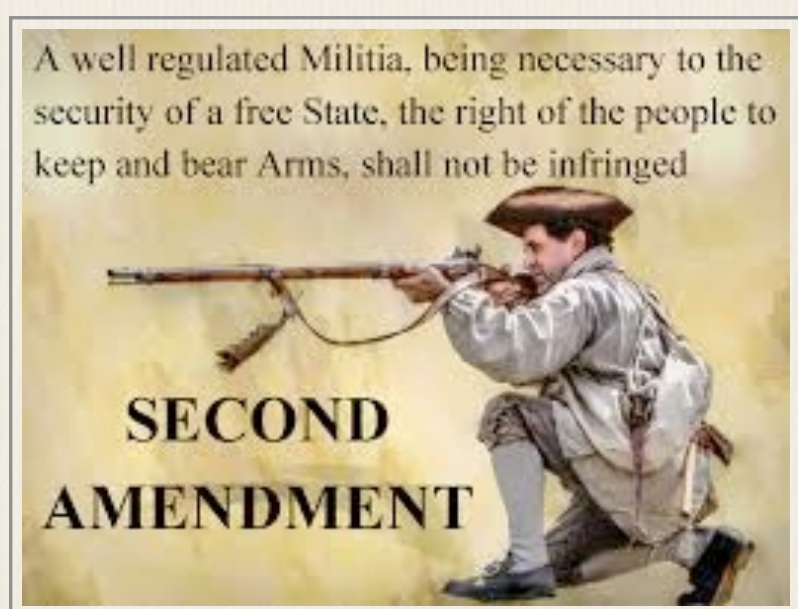
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# Right to Bear Arms

The Second Amendment to the United States Constitution protects the right of individuals to keep and bear arms.

## **Limits & Rights:**

- Court ruled that guns can be used for lawful purposes such as self-defense within the home (District of Columbia v. Heller 2008).
- Court ruled that the right to keep and bear arms is constitutionally protected from infringement by state and local officials (McDonald v. Chicago 2010)



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# Freedom of Privacy

## **Limits and Rights:**

- Court concludes that a state had no business interfering with a married couple's decision regarding contraception (Griswold v. Connecticut 1965).
- Women have full freedom to choose abortion during the first three months of pregnancy (Roe v. Wade 1973).
- Supreme Court upheld Federal Partial Birth Abortion Ban Act and ruled that during the case of giving birth, the child should be saved rather than the family (Gonzales v. Carhart 2007).
- Prohibited abortions from being performed in public funded facilities except when it should be necessary to save mother's life (Webster v. Reproductive Health Services 1989).
- Privacy rights did not extend to consensual sex amongst same sex couples (Bowers v. Hardwick 1986).
- Supreme Court ruled Texas sodomy law violated rights to privacy, and struck the sodomy law in Texas and 13 other states. (Lawrence v. Texas 2003).



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# Rights of Persons Accused of Crimes

**Procedural due process** refers primarily to the procedures that authorities must follow before a person can lawfully be punished for an offense. A fundamental legal principle in liberal democracies is the protection of accused people who are presumed innocent until proven guilty in a court of law. **Habeas Corpus** stated that if one person is accused of crime, he or she must be brought to trial. **Bills of Attainder** prohibits the punishment of people without a law. Constitution prohibits the passing of *ex post facto laws* targeting an act committed before the pass of the law. **Stop and frisk** is a clear example of **systematic discrimination**.

## Rights and Limits:

- Police cannot have unreasonable search and seizures, even with modern technologies like thermal sensors (Fourth Amendment).
- Patients in hospitals cannot be forced to take a test for illegal drugs if the purpose is to report to police those patients who test positive (Ferguson v. Charleston 2001).

### MIRANDA WARNING

1. YOU HAVE THE RIGHT TO REMAIN SILENT.
2. ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW.
3. YOU HAVE THE RIGHT TO TALK TO A LAWYER AND HAVE HIM PRESENT WITH YOU WHILE YOU ARE BEING QUESTIONED.
4. IF YOU CANNOT AFFORD TO HIRE A LAWYER, ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONING IF YOU WISH.
5. YOU CAN DECIDE AT ANY TIME TO EXERCISE THESE RIGHTS AND NOT ANSWER ANY QUESTIONS OR MAKE ANY STATEMENTS.

#### WAIVER

DO YOU UNDERSTAND EACH OF THESE RIGHTS I HAVE EXPLAINED TO YOU?  
HAVING THESE RIGHTS IN MIND, DO YOU WISH TO TALK TO US NOW?

- At the time of arrest, police cannot legally begin their interrogation until the suspect has been warned that his or her words can be used as evidence (Miranda's Rights/ Miranda v. Arizona 1966).

- Suspects charged with federal crime cannot be tried unless indicted by a grand jury (Fifth Amendment).
- Criminal defendants in federal cases must be provided a lawyer at government expense if they cannot afford legal counseling (Johnson v. Zerbst 1938).

↑ Included felony cases (Gideon v. Wainwright 1963).

- Court ruled that evidence discovered under a faulty warrant was admissible because the police had acted in **good faith** (United States v. Leon 1984).
- There cannot be cruel and unusual punishment imposed on people (Eighth Amendment).
- Court outlawed the death penalty for the mentally retarded on grounds that it constitutes cruel and unusual punishment for them (Atkins v. Virginia 2002 & Panetti v. Quarterman 2007).
- The court prohibits frivolous and multiple federal court appeals (Felker v. Turpin 1996).
- Court held that random drug testing of high school students involved in extracurricular activities does not violate the ban on unreasonable searches (Board of Education of Independent School District No.92 of Pottawatomie County v. Earls 2002).





# Rights and the War on Terrorism

## Rights:

- Tribunals are ruled to be unlawful because they did not provide even minimal protections of detainees' rights, including the right to see the evidence against them (Hamdam v. Rumsfeld 2006)
- **USA Patriot Act of 2001** allowed USA to fight terrorism by providing appropriate tools required to intercept and obstruct terrorism act.

