
MAGNA CARTA YEAR 11 TEACHER RESOURCE

This resource addresses the following Politics and Law syllabus items:

Year 11 PAL General Course

Unit 2 – Civil and political rights

Political and legal systems

- **development of rights that emerged from the Magna Carta (1215), the Glorious Revolution (1688), the American Revolution (1775–1789), the French Revolution (1787–1799) and the United Nations Declaration of Human Rights (1948)**

Part One: Historical overview

Using the following links, give a brief overview of the origins of the Magna Carta.

[Magna Carta – an introduction](#)

[Magna Carta and the Rule of Law](#)

[Causes and effects of the Magna Carta](#)

[The Magna Carta in Australia](#)

[English Translation of Magna Carta](#)

In your overview include the following points:

- a definition of the name;
- the key people involved in the creation of the Magna Carta;
- the year it was created and why;
- the significance of the document;
- the influence of the Magna Carta in modern democracies; and
- which clauses of the Magna Carta are still used today.

The Magna Carta was created in 1215. The name is Latin for ‘Great Charter’. King John ruled over England during the 13th century. King John was considered a harsh and unpredictable ruler, often acting in a way that suited him without considering the effect on others.

Through these actions King John became very unpopular. He lost a number of battles where France reclaimed land that had belonged to England. This meant there was less money coming in through taxes and King John demanded higher taxes from the people of England to overcome the shortfall. The English barons rebelled against this, not just to avoid paying higher taxes, but also because King John did not consult with them as was the custom.

King John also went against custom by rejecting the election of Stephen Langton as Archbishop of Canterbury straining his relationship with the pope. He was excommunicated by Pope Innocent III in 1209 and to reconcile his differences, King John gave the pope the kingdom of England and paid an annual rent. This further angered the barons because it gave them even less control over their land.

Thus, the two most powerful groups angered by King John were the barons and the Catholic bishops. These two groups banded together to air their grievances against the King. “They also urged that John should agree to confirm the coronation charter issued by his ancestor, King Henry I, in 1100, which had promised ‘to abolish all the evil customs by which the kingdom of England has been unjustly oppressed.’”¹ King John refused to meet the demands of the barons and the bishops resulting in a civil war and the barons renouncing their allegiance to him in May 1215. “Their capture of the city of London that same month was a turning point in their campaign. Once London was in the barons’ hands, John had no option but to negotiate with them. The two sides met at Runnymede, on the River Thames near Windsor in the south of England, in June 1215. The demands of the barons were recorded in the document known as the Articles of the Barons. Following further discussions with the barons and clerics led by Archbishop Langton, King John granted the Charter of Liberties, subsequently known as Magna Carta, at Runnymede on 15 June 1215.”²

“The charter set out the feudal rights of the barons and stated that the king could continue to rule but must keep to the established laws and customs of the land. It was the first written document compelling an English king to act according to the rule of law.”³ In return for the king’s signature on the document, the barons renewed their allegiance to King John and agreed to end their hostilities.

Magna Carta is the first document in English history to limit the power of the monarch (the rule of law). It also established the council of 25 barons with whom the king was supposed to consult on matters that were important to the country (sowing the seed for parliamentary democracy in England.)

There are 63 clauses in the original document but only four are still valid today with some minor amendments. (It is worth noting that in the charter itself the clauses are not numbered, and the text reads continuously.)

1 FIRST, THAT WE HAVE GRANTED TO GOD, and by this present charter have confirmed for us and our heirs in perpetuity, that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired. That we wish this so to be observed, appears from the fact that of our own free will, before the outbreak of the present dispute between us and our barons, we granted and confirmed by charter the freedom of the Church’s elections - a right reckoned to be of the greatest necessity and importance to it - and caused this to be confirmed by Pope Innocent III. This freedom we shall observe ourselves, and desire to be observed in good faith by our heirs in perpetuity.

13 The city of London shall enjoy all its ancient liberties and free customs, both by land and by water. We also will and grant that all other cities, boroughs, towns, and ports shall enjoy all their liberties and free customs.

¹ Magna Carta: an introduction <http://www.bl.uk/magna-carta/articles/magna-carta-an-introduction>

² Magna Carta: an introduction <http://www.bl.uk/magna-carta/articles/magna-carta-an-introduction>

³ Causes and effects of the Magna Carta http://www.skwirk.com/p-c_s-1_u-105_t-279_c-929/causes-and-effects-of-the-magna-carta/nsw/causes-and-effects-of-the-magna-carta/introduction-to-democracy/democratic-development

39 No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.

40 To no one will we sell, to no one deny or delay right or justice.⁴

The most significant rights that emerge for modern democracies are from clauses 39 and 40.

⁴ English Translation of Magna Carta <http://www.bl.uk/magna-carta/articles/magna-carta-english-translation>

Part Two: Document review

On 14 October 2002, Lord Irvine of Lairg presented his inaugural Magna Carta lecture in the Australian Parliament. Click on the following link to read the transcript of the lecture.

["The Spirit of Magna Carta Continues to Resonate in Modern Law"](#)*

Summarise the information in Lord Irvine's lecture under the following headings.

1. The Legacy of Magna Carta: a Joint Commitment to the Rule of Law

Many lawyers and parliamentarians have discussed the significance of Magna Carta for 800 years. One significant lawyer was Sir Edward Coke. Magna Carta was so named to "distinguish it from the separate and shorter Charter of the Forest." It has "had effect both as a statute and through the common law." Magna Carta was re-issued four times and confirmed by Parliament almost fifty times. "Magna Carta has transcended the distinction between law and politics and its legacy represents a joint commitment by Monarchs, Parliamentarians and the Courts, to the rule of law. This legacy forms a central part of the shared constitutional heritage of Britain and Australia... the spirit of Magna Carta continues to resonate in modern law."

2. Magna Carta and the Emergence of the Rule of Law

"The story of Magna Carta is a chapter in the continuing history of the struggle between power and freedom." Its constitutional significance and meaning must be kept in historical context. King John alienated not only the barons but also the bishops of the Catholic Church. Magna Carta was "dominated by issues of contemporary importance... Magna Carta manifestly asserted the superiority of the ordinary law and of regular over arbitrary justice." Under the surface of the troubles of the time, "the first great step was taken towards a new political theory of the state... government not only had to be just, but also had to consider the good of the community... 'the great precedent for putting legislation into writing'... an awesome record of the terms on which power was to be exercised." "Magna Carta is a defining document in the emergence of the rule of law."

3. Magna Carta and the Conception of Modern Human Rights Documents

In modern law, there are "equivalents of Magna Carta in agreements to respect human rights." – the Universal Declaration of Human Rights; the American Declaration of Independence. "The primary importance of Magna Carta is that it is a beacon of the rule of law. It proclaimed the fundamental nature of individual liberties." Magna Carta influenced human rights documents through its role in

- 1. The development of theories of natural rights;**
- 2. The various constitutions of the American States and the United States;**
- 3. The writings of Blackstone and Coke; and**
- 4. The writings of John Locke and Tom Paine.**

"Winston Churchill spoke of the 'great principles of freedom and the rights of man which are the joint inheritance of the English-speaking world and which through Magna Carta, the Bill of Rights, the Habeas Corpus, trial by jury, and the English common law find their most famous expression in the American Declaration of Independence.'" Other significant figures that have kept the spirit of Magna Carta alive and well are H. G. Wells, Professor Lauterpacht, Eleanor Roosevelt, and Dr H.

V. Evatt, the Australian President of the General Assembly. Even though the Universal Declaration of Human Rights did not use the precise terms of Magna Carta, “we can see in the guarantee that ‘no one shall be subjected to arbitrary arrest or exile’ clear similarities with Chapter 29⁵ of Magna Carta.” “...a further dimension to the relationship between Magna Carta and modern protections of human rights... relates to the translation of international human rights into domestic law.”

4. Reinigorating the Rule of Law: Guaranteeing Human Rights in Domestic Law
“The Universal Declaration is not directly binding on States.” Domestic laws passed through parliament in the UK include the *Human Rights Act, 1998*. “Since it is the joint responsibility of Parliament and the courts to protect the birthright of our citizens it was entirely fitting, and in accord with our constitutional heritage from Magna Carta through to the Petition of Right 1672, the *Habeas Corpus Act 1679* and the Bill of Rights, for Parliament to set out new terms on which power is to be exercised; and so reinvigorate the rule of law in the UK.” A controversial issue in Australia is whether to enact a bill of rights. “Since 1991 Australia has extended to individuals the protection of the International Covenant on Civil and Political Rights by allowing those claiming to be the victims of violations of protected rights to submit a communication to the Human Rights Committee. However, Australia has so far kept this protection beyond the jurisdiction of its own courts.” Nevertheless, the Australian Constitution and the Courts already protect individual rights thereby suggesting that Australia might already have a bill of rights.

5. The Continuing Relevance of Magna Carta in Australian and United Kingdom Law
“The process of Federation meant that Magna Carta was given concrete legal effect in Australian jurisdictions in a complex way. Jurisdictions with Imperial Acts (the Australian Capital Territory, New South Wales, Queensland and Victoria) all chose to enact chapter 29... By contrast, in the Northern Territory, South Australia, Tasmania and Western Australia, Magna Carta was received by Imperial law reception statutes. These jurisdictions find themselves in the surprising position of having almost all the provisions of Magna Carta theoretically still in force.” “The legacy of Magna Carta has also been inherited by Australia through the common law. Today, it can be seen to resonate most clearly through the fundamental common law doctrine of legality and the right of access to justice... Magna Carta has effect not only as a statute, but also resonates through the common law principles of interpretation developed to safeguard the liberties of the individual from the exercise of governmental power.” Some aspects of Australian law that stem from Magna Carta are the right of access to justice and the promise not to delay or defer right or justice, or at least “a right not to have one’s trial unreasonably delayed.”

⁵ Magna Carta, Chapter 29: “No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.”

6. The Doctrine of Legality and final summary

“The doctrine of legality mandates that government action cannot proceed arbitrarily and without lawful authority. It represents the kernel of the rule of law.”

In summary, “the constitutions of the UK and Australia are distinct, but they share the same roots and Magna Carta and its legacy represent the sturdiest and the oldest... Magna Carta can be truly appreciated as the foundation stone of the rule of law. Its terms continue to underpin key constitutional doctrines; its flame continues to burn in the torches of modern human rights instruments; and its spirit continues to resonate throughout the law.”

Possible Discussion Questions that look at some of the rights that have emerged from the Magna Carta and are still prevalent in Australian law.

1. Magna Carta established a right to access to justice. Do all people actually have this right in Australia or is access to justice based on monetary wealth to afford the best lawyer?
2. The promise not to delay or defer right or justice is good in theory but is it realistic?
3. “No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.” Was this clause applied during the early settlement of the Swan River colony? (Students may want to research specific characters like Midgegooroo, Yagan, Munday or Weeip.)
4. Does Australia already have a hidden bill of rights?
5. Magna Carta was a document written to address issues from the 13th century and should not apply in the 21st century.



This work is licensed under a [Creative Commons Attribution-NonCommercial 4.0 International License](https://creativecommons.org/licenses/by-nc/4.0/)