

## Magna Carta –Notes for the Teacher

Among the themes that students should recognize as having their basis in the Magna Carta is the *rule of law*. This concept, fundamental to democratic forms of government, asserts that all – including a king, prime minister, or president – must abide by the laws of the nation. While Magna Carta does not specifically state that the king is subject to the rule of law, the provisions of this document establish that principle by imposing limits on the king’s power. The fact that the barons are given the authority to enforce this document in Chapter 61 of the original version reinforces the principle that the king could no longer ignore or violate established laws, traditions, or customs, nor could he arbitrarily infringe on the rights of his subjects. In short, the king would be compelled to abide by the rule of law.

The Magna Carta is not a carefully crafted constitution, or framework of government, like the U.S. Constitution. Rather, it addresses the principal grievances of the barons, merchants, and church officials through a set of rules designed to both restrict the power of the king and protect the liberties of Englishmen, Scots, and Welshmen. The organization, while not entirely haphazard, does not have the same clear structure that we expect to find in a constitution. With some exceptions, however, it does follow a loose outline.

The following notes are intended to assist in teaching the Magna Carta to high school students. The numbers correspond to the “chapters” in the document itself. In addition to these notes, you are encouraged to read the introductory notes and the head note [for the translation](#) provided by the British Library, which is used in this lesson.

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**Preamble:** This identifies the key players, the most important of whom are King John and Stephen Langton, the Archbishop of Canterbury. Others names in this section of the document include high church officials and leading nobles, described as “loyal subjects.” The fact that men of considerable stature had not joined the rebellion against the King is worth noting, for their presence probably helped to dissuade the barons from taking up arms against John. The King, it should be noted, signed the Magna Carta because of the threat of violence, but he had no intention of abiding by the agreement.

**Chapter 1:** The Archbishop’s role is evident in this provision – both its placement at the beginning of the document and its guarantee of the rights and freedom of the church to act without being subject to the king’s interference.

The second paragraph of this chapter was added, probably by Langton, between June 15 and June 19. It extends the liberties beyond the barons to include “**all free men**” and their heirs forever. At the time, this covered about 10% of the population; however, over time, as more of the population qualified as “free men,” it came to encompass virtually all of the people of Great Britain.

*Chapters 2-16 deal with the feudal systems and those traditionally governed by feudal arrangements. These provisions were intended to limit the arbitrary exercise of power by the king and, at the same time, reassert the traditions and customs (i.e. established precedents) that had governed feudal arrangements. These provisions serve as evidence of the commitment to the rule of law. They also*

*support two other themes that run through the Magna Carta: (1) the idea that the laws should be fair and just and (2) the right to property.*

**Chapter 2:** Under the feudal system, the heir of a feudal estate was required to pay a “**relief**” to the king in order to retain ownership of the property. King John had increased the fees many fold. This provision set the fee, or “relief,” to the much smaller traditional amount.

**Chapter 3:** The exemption of a minor from paying a relief when he came of age was an issue of fairness. The lord to whom the heir would have paid the fee would have had use of the land before the heir came of age, and, as a result, would already have benefited financially.

**Chapter 4:** Concern for fairness is again evident. The guardian of land inherited by a minor may use the land for “reasonable” purposes, but he must protect the land so that the heir will have full value of his inheritance. If the guardian damages or destroys the property, the heir has a right to compensation.

**Chapter 5:** The guardian will not only return the land to the heir when the latter comes of age, he will also provide the means for the heir to farm the land and to live off its product.

**Chapter 6:** This provision was designed to protect the children from being forced by guardians into marriages that would not have been approved by their fathers, had they lived.

**Chapter 7:** The king could not force a widow to leave her home by imposing excessive demands for money. A widow’s **dower** (what she brought into the marriage) as well as her **marriage portion** (her share of the family inheritance) and other property that she held jointly with her husband are protected, thus enabling her to live comfortably on what was rightfully hers.

**Chapter 8:** A widow could choose not to re-marry. However, if she did decide to re-marry, she had to obtain consent from whoever controlled her lands. The issue here is one of maintaining a balance of power among the barons. Marriage between a wealthy widow and a powerful baron could upset the balance within a region of the country.

**Chapter 9:** This provision calls for the orderly **settlement of debts** (i.e. fair treatment for both debtor and lender) and protection of an individual’s property. The king could not seize the land of a debtor if that individual had enough personal property (i.e. property other than land) to cover the debt. In turn, those who had given a loan could claim the land of the debtor as well as the rents from that land until the debt was paid.

**Chapters 10 & 11:** These two provisions, by singling out Jewish moneylenders, raise questions regarding prejudice (though 10 also applies to the king and 11 makes clear that the provisions apply to other moneylenders as well). The basic idea behind both is to make sure that neither wives nor minor children unfairly lose their inheritance or other properties.

**Chapter 12:** The term *scutage* refers to a tax paid by feudal lords to avoid military service. The barons who wrote this provision were objecting to the King’s demands that they provide financial support for his military campaigns in Europe. To avoid such payments, they are limiting the circumstances for which such a tax could be imposed.

**Chapter 13:** The protection of the rights and liberties of London’s business class recognizes that the King’s exercise of arbitrary power had threatened this influential group and had led to their support of

the barons' uprising against John. By referring to ancient customs, etc., it reinforces the idea of **rule of law** – not just for landowners, but for other powerful members of English society as well.

**Chapter 14:** The requirement that “**general consent**” for taxes be given by leaders from both secular society and the church opened the way for oversight of the king by representatives within the community. The meetings provided for here led to the creation of the **British parliament**. They also set in place an orderly procedure for convening this meeting and assured that it would take place as arranged.

**Chapter 15:** This provision placed additional restrictions on the **power to tax**: limiting the purpose as well as the amount.

**Chapter 16:** Concerned with fairness as well as the cost of foreign wars, the charter asserted that no man would have to give greater military service than his property holding required.

*The next series of items provided for **due process of law**. In other words, they focus on the institutions and procedures needed to assure that an individual would be treated fairly by the legal process. The fundamental principle of “due process” as well as the specific provisions of the Magna Carta are generally considered as the most lasting contributions of the Great Charter. They deserve the most careful consideration as you review the document with your students.*

**Chapter 17:** The idea of establishing a **permanent court**, which included a place where legal records could be stored and consulted, was presented as reasonable alternative to the former practice of moving the court from one location to another, a practice that resulted in uncertain schedules and indefinite delays in having a case heard.

**Chapter 18:** Certain cases were more appropriately (and conveniently) heard in **local courts**, provided for in this chapter. The details were intended to assure a just hearing.

**Chapter 19:** Efforts would be made to assure a **fair hearing**, even when the docket was overloaded.

**Chapters 20-22:** **Punishment** for violations of the law was to be in proportion to the seriousness of the offense, thus establishing a standard of fairness.

**Chapter 23:** Traditionally, local communities were obligated to build and maintain bridges so that soldiers could cross. However, King John had taken this requirement to extremes, insisting that bridges also be provided in areas where he wanted to hunt. This resulted in considerable hardship for communities in terms of time and cost. This chapter limited the responsibility for bridges to those towns with “**ancient obligations**.”

**Chapter 24:** The goal of this provision was to provide a **uniform system of justice**, one not subject to local interpretation.

**Chapter 25:** With the exception of royal manors, **rents** would be set as a means to prevent local officials who collected rent for the crown (such as sheriffs) from increasing the rents of local tenants.

**Chapter 26:** Sheriffs had a reputation for seizing all the goods of an individual who, at the time of his death, owed money to the king. This chapter limits the property that could be seized to the amount of the debt and, requires a third party – a “worthy” man – to agree that the value of the goods taken did not

exceed the amount of the debt. The provision calls for “**due process**,” respects the **rights of property**, and assures fair treatment of the heirs. This chapter, like others in this section, laid out a fair procedure – i.e. a due process.

**Chapter 27:** In the case of a man who dies without a will, the church is expected to oversee the fair **distribution of his property** to family and friends. At the same time, the property rights of those to whom he owed money would be honored.

**Chapter 28:** The practice of the king’s men to obtain goods from nearby farms and villages in order to feed members of the royal household frequently resulted in underpayment, delayed payment, or no payment. This provision required immediate payment unless the seller voluntarily made other arrangements.

**Chapter 29:** Traditionally, tenants had been called upon to serve as guards at the castles of local lords. They had been given the option of paying for a substitute but, over time, the option had been replaced by a required fee to pay for professional soldiers. This chapter restored the “option” so that tenants who could not afford the fee could, instead, accept guard duty.

**Chapters 30 & 31:** These two chapters protected property from being stolen.

**Chapter 32:** Feudal custom allowed the king to use the property of a lord who had been convicted of a felony for a year and a day. At the end of that time, the land was to be returned to the lord. John had ignored that custom, controlling land well beyond the stipulated period. This provision re-instated the former “rule,” thus honoring precedent and, in the process, re-establishing what had been considered a fair process.

**Chapter 33:** In recognition of the need to facilitate transportation in order to accommodate trade, the king agreed to the removal of obstructions on the river-ways.

**Chapter 34:** The writ of *praecipe* had first been used by King Henry II to remove cases from local courts, where lords presided over cases involving their own tenants, to the king’s own courts. The king had claimed that his courts would be able to administer a uniform system of justice. The barons objected because it took away much of their influence and authority over their tenants. This provision was a major concession on the part of the king, made in response to one of the barons’ most pressing demands.

**Chapter 35:** This chapter recognized the need for **fair exchange** in the marketplace.

**Chapter 36:** A precursor to the **writ of habeas corpus**, this chapter required that in inquiry be conducted in any case that might result in the defendant being deprived of life or limb. The writ calling for the inquiry was to be issued free of charge. This establishes one of the essential components associated with due process of law.

**Chapter 37:** A rather confusing provision that, in essence, minimizes the king’s claims over property.

**Chapter 38:** Another key element in due process, this chapter required “**faithful witnesses**” to attest that a man had committed a crime before he was formally accused and prosecuted. Edward Coke referred to this as the “**golden passage**,” indicating the importance he placed on this procedure.

**Chapter 39:** The requirement for a **jury of one's peers** (or, as the British Library translation puts it, “**the lawful judgement of his equals**”) is probably the most famous and certainly one of the most critical guarantees of due process in the Magna Carta. In the context of the time in which it was written, this provision meant that a person could present his case to members of his own class; it did not, however, mean that a jury (as we understand that term) would hear the case and render a verdict.

**Chapter 40:** The practice, until this clause was adopted, was to charge for certain **writs** – with cost dependent on the nature of the writ and its potential value. [N.B. A *writ* is a legal document issued by a court, under the authority of the state, compelling certain action to be taken. It directs an officer of the law to carry out a specified action.] These charges were considered legitimate ways for the king to raise revenue. However, they had the effect of denying justice to those who could not afford them.

*The next chapters deal with a range of economic and property rights – from those exercised by merchants as part of doing business to those claimed by the many people who lived in the forests (Robin Hood and his “Merry Men,” among others). For the most part, these deal with conditions of the 13<sup>th</sup> century and shed little light on the rights and liberties that were passed down to the American patriots. It is, however, worth pointing out that these laws, like the earlier provisions relating to the feudal system, were important for a different reason. Their immediate relevance to the people of the 13<sup>th</sup>-17<sup>th</sup> centuries kept the Magna Carta alive in the minds of English men and women. These laws dealing with every day life and trade were regularly cited in court and, as a result, gave the Great Charter an enduring place among the laws of England. Not until the early 17<sup>th</sup> century, when Edward Coke became the leading authority and interpreter of the rights and liberties embedded in the Magna Carta, did the document assume the stature that has since been awarded to it.*

*A few of the remaining chapters are worth noting.*

**Chapter 45:** This sets a standard for those appointed to enforce and administer the law – they must “**know the law**” and be prepared to “keep it well.”

**Chapter 55:** Picking up on the theme of fairness, the chapter calls for the repayment of all fines that were imposed unjustly and establishes the procedure by which challenges against unjust fines were to be handled. Worth noting is to attempt to avoid a “**conflict of interest**”: a baron was expected to step aside and allow a substitute to decide a case similar to one in which he was himself involved.

**Chapter 60:** Another of Coke’s favorites, this chapter enlarges the scope of the Magna Carta, implying that the right and liberties would be extended to all men and by all men within the kingdom.

**Chapter 61:** Intended to provide for the enforcement of the Great Charter, this chapter established the means by which the barons would be able to enforce the rights and liberties agreed to by the king. Although this arrangement appears to have some merit, the reality was that the men most likely to have served were also likely to have acted in their own self interest, thus jeopardizing the achievement at Runnymede. Furthermore, the existence of such a council would have set the stage for subsequent rebellions should the king not comply with their rulings. The dangers inherent in this arrangement were avoided: first by the Pope’s annulment of the document, and later by the omission of this chapter from subsequent re-issues.

[These notes are drawn from William F. Shindler’s *Magna Carta: Legend and Legacy* (Indianapolis: Bobbs-Merrill Co., 1965).