

Sovereignty and the Law: Challenging the Divine Right to Rule

Framing Question:	<ul style="list-style-type: none"> ▪ Are there limits on governmental power? ▪ How is abuse of power to be redressed?
Materials:	<ul style="list-style-type: none"> ▪ Excerpts from Student Handbook ▪ Ayesha’s Hijab Scenario ▪ Discussion Points
Opening Activity (5 Minutes):	<ul style="list-style-type: none"> ▪ Remind the class that the Magna Carta is the product of an armed revolution by the English barons who felt that the King was oppressing them and disregarding their traditional rights. ▪ Ask for modern examples of people fighting for their rights against a government or other authority.
Class Activity (30 Minutes):	<ul style="list-style-type: none"> ▪ Ask the class to define “right” and “grievance” and to compare their definitions for each. ▪ Ask students to brainstorm a list of their “rights.” Using the list, the Legal Team should help the class differentiate between a right (to vote) and an entitlement (to drive). Also discuss the positive right to do something (I may speak freely within the construct of our laws) versus the right to be free from interference (I can think what I want without interference). ▪ Read the “Ayesha’s Hijab” scenario to the class (attached). ▪ Ask the students what Ayesha’s rights are. For your convenience, a Discussion Points sheet is attached to help guide the discussion. ▪ Next, ask the students what the School’s interests are in regulating what Ayesha wears on her head. Examples are included on the Discussion Points sheet. ▪ Finally, ask students to give examples of Ayesha’s avenues of redress. Examples are included on the Discussion Points sheet. How would the arbiter of law decide who wins? What balance must be established?
Closing Activity (5 Minutes):	<ul style="list-style-type: none"> ▪ End by re-connecting the students to the Magna Carta era. ▪ Emphasize that the sovereign had to give up portions of his power in order to allow individuals to have rights. This was a novel concept at the time of the Magna Carta. ▪ As an introduction to later lessons, stress that people seeking to assert their rights have many avenues now due to past conflicts where parties had to negotiate a redistribution of rights and power.
Enrichment Activity (For extended class periods):	<ul style="list-style-type: none"> ▪ Discuss the actual grievances of the barons. Show the ways in which many of their grievances—like the right to judicial review and the right to back out of loyalty oaths when those oaths were abused—are assumed parts of our system today.

AYESHA'S HIJAB

Note: This scenario is entirely fictional. The Philadelphia School District, as a matter of policy, allows Muslim students to wear hijab.

Factual Background: Ayesha Bakir is a junior at Florence Nightingale High School, a school in the Philadelphia School District. Her homeroom teacher is Adam Corrigan and the principal at Florence Nightingale is Eric Jackson. Ayesha is a devout Muslim and she wears a traditional Muslim head covering, the hijab (alternately, the khimar). She does not wear a veil to cover her face.

The Philadelphia School District Code of Student Conduct provides that a student violates the District dress code if he or she “wears stocking caps, doo rags, bandanas or hats.” (Code of Conduct § 3.1, Rule 2(g)). Adam Corrigan believes that Ayesha’s donning of the hijab violates this rule, and he seeks to discipline her for it.

“AYESHA’S HIJAB” DISCUSSION POINTS

Ayesha’s Rights

Some possible examples of rights implicated by Corrigan’s decision are:

- Ayesha’s right “not to be excluded from public schools or from School Privileges... because of her... gender [and/or] religion.” (Code of Conduct 2.2.2).
- Ayesha’s right not to be disciplined except in accordance with the procedures in the Code of Conduct, Art. 4.
- Ayesha’s right to free exercise of her religion under the First Amendment of the United States Constitution.
- Ayesha’s right to be free from interference with her right to conscience under Art. 1, § 3 of the Pennsylvania State Constitution.

The School’s Interest

Possible justifications include:

- Student safety
- Identification issues
- Uniformity

Administrative, Judicial and Political Redress Process

Possible avenues of Redress include:

- *Administrative Redress*-Procedures available through the School District:
 - A student cannot be suspended without being informed of the violation and being allowed to respond to it (Code of Conduct § 4.1.1)
 - A student cannot be suspended for more than three days without a parent-teacher conference (Code of Conduct § 4.1.2)
 - A high school student being transferred to an “alternative school” must be given a hearing with the right to present evidence and cross-examine witnesses (Code of Conduct § 4.4)
 - A high school student being expelled has additional hearing rights in front of a neutral official of the School Reform Commission (Code of Conduct § 4.5)
 - In addition, the student could ask the principal to overrule the teacher’s interpretation and, failing that, could ask the School District to overrule the principal.
- *Judicial Redress*-remedies available through the Courts:
 - Appeals of School District administrative decisions
 - Addressing the grievance with a civil right complaint against the School District, asserting constitutional violations
- *Political Redress*-are there political ways to draw attention to the situation? If so, who would then decide what’s right?
 - Civil disobedience
 - The effect of the media, public embarrassment, and representation (i.e. writing one’s city Councilperson to express outrage as a means of changing policies, having a “wear-in,” etc.)

BACKGROUND INFORMATION - Sovereignty and the Law: Challenging the Divine Right to Rule

Looking Forward and Back

This lesson builds upon the jury exercise in a variety of ways, but most significantly in that it provides additional examples of rights in action. The Magna Carta was a novel and significant guarantor of jury rights in the Anglo-American system. Looking forward, this lesson establishes framework for the rest of the civics sequence, as the concepts of rights and redress will recur again and again.

Historical Background

The Magna Carta was the product of an armed revolution by the barons and other nobles against King John I, who had inherited the throne from his popular brother, Richard the Lionhearted. After numerous missteps and a partially failed war in France in John's first five years of rule, the English barons demanded that the King cede to them certain inalienable rights, including the right to a trial by jury. When John rejected these demands, the barons rebelled and seized London on June 10, 1215, and the city residents showed their sympathy by opening the gates. Thus began a month-long civil war that ended in July at Runnymede, when the barons compelled the King to sign the Magna Carta, a charter of rights consisting of 63 articles. Some parts deal with feudal duties that have long since ceased to have meaning, but other parts have modern resonance. Among the most significant of these is Article 39 – “No free man shall be arrested or imprisoned or disseised [i.e. divested of property] or outlawed or in any way victimized . . . except by the lawful judgment of his peers or by the law of the land.”

Articles 17 and 22 created a fixed law court, and Article 24 established that crown officials could not try a case instead of a judge. Articles 36, 38, 39 and 40 collectively define the right to habeas corpus. Articles 14 and 61 allowed barons to form a council, and members of this council were expressly permitted to renounce the oath of loyalty to the King and to replace it with one to the council in some cases.

The Magna Carta was subsequently repudiated by King John (and by the Pope), but John died a year later, and his son, Henry III, reissued the Magna Carta. Because Henry III ruled for 56 years, by the time he died, the Magna Carta had become a part of English law. Each English king for over 200 years confirmed the Magna Carta in one form or another. Although the Magna Carta's actual power as a legal declaration of rights against the crown varied over time, it grew in the minds of the English people to stand as a boundary against absolute monarchical power.

Modern Connections

The Magna Carta laid the foundations for numerous rights in the American system, including most significantly the rights to a jury trial and to habeas corpus, but it also stands as one of if not the first document in the Anglo-American legal tradition to purport to limit the authority of the sovereign. This concept of limited government is the foundation of the American system and the idea that rights would be captured in a single, written, “Great Charter” translated over time into the American Constitution. Echoes of the Magna Carta are particularly strong in the Suspension Clause and the Fifth and Sixth Amendments.