

Read the following excerpts and complete the first two columns in the chart provided by your teacher.

Magna Carta

1215

John, by the grace of God, King of England ... Know that we, out of reverence for God and for the salvation of our soul and those of all our ancestors and heirs, for the honour of God and the exaltation of holy church, and for the reform of our realm ...

[1]... We have also granted to all free men of our kingdom, for ourselves and our heirs for ever, all the liberties written below, to be had and held by them and their heirs of us and our heirs.

[14] And to obtain the common counsel of the kingdom about the assessing of aid ... or of a scutage ...

[38] No bailiff shall in future put anyone to trial upon his own bare word, without reliable witnesses produced for this purpose.

[39] No free man shall be arrested or imprisoned or disseised or outlawed or exiled or in any way victimised, neither will we attack him or send anyone to attack him, except by the lawful judgment of his peers or by the law of the land.

[61] ... if we, or our justiciar, or our bailiffs or any one of our servants offend in any way against anyone or transgress any of the articles of the peace or the security and the offence be notified to four of the aforesaid twenty-five barons, these four barons shall come to us, or to our justiciar if we are out of the kingdom. and, laying the transgression before us, shall petition us to have that transgression corrected without delay ...

[63] Wherefore we wish and firmly enjoin that the English *church* shall be free, and that the men in our kingdom shall have and hold all the aforesaid liberties, rights and concessions well and peacefully, freely and quietly. full and completely. for themselves and their heirs from us and our heirs, in all matters and in all places for ever, as is aforesaid ...¹

Petition of Right

3 Chas. 1, c. 1, 7 June 1628

X. They do therefore humbly pray your most excellent Majesty, That no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such-like charge, without common consent by act of parliament; (2) and that none be called to make answer, or take such oath, or to give attendance, or be confined, or otherwise molested or disquieted concerning the same, or for refusal thereof; (3) and that no freeman, in any such manner as is beforementioned, be imprisoned or detained; (4) and that your Majesty would be pleased to remove the said soldiers and mariners, and that your people may not be so burthened in time to come; (5) and that the aforesaid commissions, for proceeding by martial law, may be revoked and annulled; and that hereafter no commissions of like nature may issue forth to any person or persons whatsoever to be executed as aforesaid, lest by colour of them any of your Majesty's subjects be destroyed, or put to death contrary to the laws and franchise of the land.

XI. All which they most humbly pray of your most excellent Majesty as their rights and liberties, according to the laws and statutes of this realm; and that your Majesty would also vouchsafe to declare, That the awards, doings and proceedings, to the prejudice of your people in any of the premisses, shall not be drawn hereafter into consequence or example; (2) and that your Majesty would be also graciously pleased, for the further comfort and safety of your people, to declare your royal will and pleasure, That in the things aforesaid all your officers and ministers shall serve you according to the laws and statutes of this realm, as they tender the honour of your Majesty, and the Prosperity of this kingdom. *Qua quidem petition lecta & plenius intellecta per dictum dominum regem taliter est responsum in pleno parlamento, viz.* Soft droit fait come est desire .²

Bill of Rights

1 W. & M., 2d sess., c. 2. 16 Dec. 1689

An act for declaring the rights and liberties of the subject, and settling the succession of the crown.

Whereas the lords spiritual and temporal, and commons assembled at Westminster, lawfully, fully. and freely representing all the estates of the people of this realm, did upon the thirteenth day of *February*. in the year of our Lord one thousand six hundred eighty eight, present unto their Majesties. then called and known by the names and stile of William and *Mary*, prince and princess of *Orange*, being present in their proper persons, a certain declaration in writing, made by the said lords and commons, in the words following: viz.

Whereas the late King James the Second, by the assistance of divers evil counsellors, judges, and ministers employed by him. did endeavor to subvert and extirpate the protestant religion, and the laws and liberties of this kingdom.

All which are utterly and directly contrary to the known laws and statutes, and freedom of this realm.

And whereas the said late King James the Second having abdicated the government, and the throne being thereby vacant, his

highness the prince of *Orange* (whom it hath pleased Almighty God to make the glorious instrument of delivering this kingdom from popery and arbitrary power) did (by the advice of the lords spiritual and temporal, and divers principal persons of the commons) cause letters to be written to the lords spiritual and temporal, being protestants; and other letters to the several counties, cities, universities, boroughs, and cinque-ports, for the choosing of such persons to represent them, as were of right to be sent to parliament, to meet and sit at Westminster upon the two and twentieth day of *January*, in this year one thousand six hundred eighty and eight. In order to such an establishment, as that their religion, laws, and liberties might not again be in danger of being subverted; upon which letters, elections have been accordingly made.

And thereupon the said lords spiritual and temporal, and commons, pursuant to their respective letters and elections, being now assembled in a full and free representative of this nation, taking into their most serious consideration the best means for attaining the ends aforesaid; do in the first place (as their ancestors in like case have usually done) for the vindicating and asserting their ancient rights and liberties, declare;

1. That the pretended power of suspending of laws, or the execution of laws, by regal authority, without consent of parliament, Is illegal.
2. That the pretended power of dispensing with laws, or the execution of laws, by regal authority, as it hath been assumed and exercised of late, is illegal.
3. That the commission for erecting the late court of commissioners for ecclesiastical causes, and other commissions and courts of like nature are illegal and pernicious.
4. That levying money for or to the use of the crown, by pretence of prerogative, without grant of parliament, for longer time, or in other manner than the same is or shall be granted, is illegal.
5. That it is the right of the subjects to petition the King, and all commitments and prosecutions for such petitioning are Illegal.
6. That the raising or keeping a standing army within the kingdom in time of peace. unless it be with consent of parliament is against law.
7. That the subjects which are protestants, may have arms for their defence suitable to their conditions, and as allowed by law.
8. That election of members of parliament ought to be free.
9. That the freedom of speech, and debates or proceedings in parliament, ought not be impeached or questioned in any court or place out of parliament.
10. That excessive bail ought not to be required, nor excessive fines imposed; nor cruel and unusual punishments inflicted.
11. That jurors ought to be duly impanelled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders.
12. That all grants and promises of fines and forfeitures of particular persons before conviction, are illegal and void.
13. And that for redress of all grievances, and for the amending, strengthening, and preserving of the laws, parliaments ought to be held frequently.

And they do claim, demand, and insist upon all and singular the premisses, as their undoubted rights and liberties; and that no declarations, judgments, doings or proceedings, to the prejudice of the people in any of the said premisses, ought in any wise to be drawn hereafter into consequence or example.³

John Locke, Second Treatise

4 & 6, 95 - 99

1689

4. To understand Political Power right, and derive it from its original, we must consider what State all Men are naturally in, and that is. a State of perfect Freedom to order their Actions, and dispose of their Possessions, and Persons as they think fit. within the bounds of the Law of Nature, without asking leave, or depending upon the Will of any other Man.

A State also of Equality, wherein all the Power and Jurisdiction is reciprocal, no one having more than another ...

6. But though this is a State of Liberty, yet it is not a State of License, though Men in that State have an uncontrollable liberty, to dispose of his Person or Possessions, yet he has not liberty to destroy himself, or so much as any Creature in his Possession, but where some nobler use, than its bare Preservation calls for it. The State of Nature has a Law of Nature to govern it, which obliges every one: and Reason, which is that Law, teaches all Mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, Health, Liberty, or Possessions ... And being furnished with like Faculties, sharing all in one Community of Nature, there cannot be supposed any such Subordination among us, that may Authorize us to destroy one another, as if we were made for another's uses.... Every one as he is bound to preserve himself and not to quit his Station wilfully; so by the like reason when his own Preservation comes not in competition, ought he, as much as he can, to preserve the rest of Mankind, and may not unless it be to do Justice on an Offender, take away, or impair the life, or what ends to the Preservation of the Life, Liberty, Health, Limb or Goods of another.

95. Men being, as has been said, by Nature, all free, equal and independent, no one can be put out of this Estate, and subjected to the Political Power of another, without his own consent ... When any number of Men has so consented to make one Community or

Government, they are thereby presently incorporated, and make one Body Politick, wherein the Majority have a Right to Act and conclude the rest ...

97. And thus every Man, by consenting with others to make one Body Politick under one Government, puts himself under an Obligation to every one of that Society, to submit to the determination of the majority, and to be concluded by it; or else this original Compact, whereby he with others incorporates into one Society, would signify nothing, and be no compact ...

98. For if the consent of the majority shall not in reason, be received, as the act of the whole, and conclude every individual; nothing but the consent of every individual can make any thing to be the act of the whole; but such a consent is next impossible ever to be had ...

99. Whosoever therefore out of a state of Nature unite into a Community, must be understood to give up all the power, necessary to the ends for which they unite into Society, to the majority of the Community, unless they expressly agreed in any number greater than the majority ... And thus that, which begins and actually constitutes any Political Society, is nothing but the consent of any number of Freemen capable of a majority to unite and incorporate into such a Society. And this is that, and that only, which did. or could give beginning to any lawful Government in the World.⁴

Montesquieu-Spirit of Laws

Bk. 1 1-Ch. 6

1748

In every government there are three sorts of power, the legislative; the executive in respect to things dependent on the law of nations; and the executive in regard to matters that depend on civil law.

By virtue of the first, the prince or magistrate enacts temporary or perpetual laws, and amends or abrogates those that have been already enacted. By the second, he makes peace or war, sends or receives embassies, establishes the public security, and provides against invasions. By the third, he punishes criminals, or determines the disputes that arise between individuals. The latter we shall call the judiciary power, and the other simple the executive power of the state.

The political liberty of the subject is a tranquillity of mind arising from the opinion each person has of his safety. In order to have this liberty, it is requisite the government be so constituted as one man need not be afraid of another.

When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws to execute them in a tyrannical manner.

Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the Judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression ...⁵

¹ *The New Encyclopedia Britannica*, 1989, s.v. "Magna Carta."

² Philip B. Kurland and Ralph Lerner, eds., *The Founders' Constitution*, Vol. 5 (Chicago: the University of Chicago Press, 1987), 487-488

³ Kurland and Lerner, *The Founders' Constitution*, Vol. 1, 433-434

⁴ *Ibid.*, 42-43

⁵ *Ibid.*, 624