



Sovereign Citizens

Considering cases from courts around Australia and how they have addressed the claims of Sovereign Citizens who believe they are not bound by the law.

Pre-learning activity

1. Why is it important for the law to apply equally to everyone?
2. Should people be able to choose which laws they want to follow? Should there be exceptions made for certain circumstances or individuals?

Introduction:

The rule of law ensures that laws are applied equally, and that no one is above the law. It protects against arbitrary rule and provides a system of justice for all.

But what happens when people claim that they are not bound by the law?

There is a growing number of individuals called '**sovereign citizens**' who claim they are not bound by the law. There has also been a sharp rise in the presence of sovereign citizens appearing before the courts in disputes with the state across Australian jurisdictions, particularly in lower and appeal courts. How does this impact our justice systems?

What are sovereign citizens?

Sovereign citizens assert that government laws do not apply to them.

They actively disengage from societal structures like taxation, state requirements (e.g., birth certificates and driver's licenses), and other laws, believing that governments lack legal authority over them.

They have been described as "people who selectively reject the authority of the Constitution and deny the reality of the legal framework founded on that constitution in instances where denial is personally convenient." (Arnold & Fletcher, 2023)

Beyond this, there is no single or consistent set of beliefs or ideology among sovereign citizens acting as individuals or as groups, no common demographic of followers, and some ideas may be adopted while others are not, depending on the individual's circumstances. Some of the shared beliefs of sovereign citizens include:

- Disputing the sovereignty of the Australian Government.
- Claiming laws only apply if individuals' consent to them, like a contract.

- The Magna Carta invalidates the Australian Constitution
- Refusing to respond to a name and calling themselves a "flesh and blood man" so as not to be subject to legal authority;
- Tendering documentation which does not comply with legal requirements;
- Claiming a right to trial by jury;
- Claiming that there cannot be a law, particularly a criminal law, unless there is an injury or damage.

This resource will consider cases that have come before different courts around Australia involving sovereign citizens. It will consider the first three arguments used by sovereign citizens and the counter arguments brought by judges hearing those cases.

Part 1: Disputing the sovereignty of the Australian Government

What is the Claim?

Sovereign citizens often raise arguments relating to the distinct sovereignty of an individual or group and make the claim that the **Commonwealth and State Parliaments lack the power/authority to pass laws affecting them.**

In Australia, sovereignty rests in the people.

However, this is not individual sovereignty. Since the passing of the *Australia Act 1986* (Cth), sovereignty has collectively resided with the Australian people. This means collective power/authority is given to the people of Australia in their ability to amend the Constitution via referendum (section 128) and by electing members of parliament.

*For more elaboration, see the 2010 High Court Case *Rowe v Electoral Commissioner*.*

The idea of multiple sovereigns within a jurisdiction, (whether it be lots of individual sovereigns or a separate sovereign nation) may conflict with the rule of law. Allowing a parallel and separate legal system creates doubt and inconsistencies, particularly in relation to jurisdiction, applicable legal standards, and due process, threatening the integrity of the whole justice system. Dual or multiple legal systems will limit



the capacity of the people to have knowledge of the law, impacting on compliance and access to justice.

For more elaboration, see the 1979 High Court Case Coe v. Commonwealth.

Critical Thinking Questions:

Imagine a country has multiple sovereignties within its jurisdiction. In this country, one person is accused of murdering another, but both are considered as being from different sovereignties.

1. What police would respond to the matter?
2. Which criminal justice system would apply and how would this be determined?
3. Who would be the judge and how would the jury be selected?
4. Would concepts such as the onus of proving the charge beyond reasonable doubt and the right of the accused to remain silent still apply?
5. By which laws would the sentence be determined?
6. How would having multiple sovereigns within a single jurisdiction challenge the ability of justice systems to achieve equality before the law and just outcomes?

Part 2: Laws only apply if individuals' consent to them, like a contract

What is the Argument?

Some sovereign citizens argue **that laws only apply if individuals' consent to them, like a contract**. The key element of the law of contracts is that there needs to be an agreement (ie offer and acceptance) to create a legally binding obligation.

Sovereign citizens claim they have not consented to the law and therefore not agreed to the contract. This means they have not given permission to the authority of the jurisdiction and can renounce the 'contract', meaning they do not have to comply with the laws of the State.

This leads them to question the validity of any legal consequences that they may face under laws created by the Federal, State or Territory governments or the Judiciary, as they perceive themselves to have autonomous sovereign status.

Case Study:

In *Shaw & Ors v The State of Western Australia Attorney General Mr Jim McGinty & Anor* [2004] WASC 144, the plaintiffs accused the defendants of having 'broken the contract' of the Australian Constitution by introducing a different set of laws, rules and oaths not known or agreed to by the plaintiffs.

The Supreme Court of Western Australia held that the Australian Constitution is a statute and does not give rise to contractual rights or obligations to anyone – it merely sets out Australia's federal system of government and defines the scope of power afforded to each branch.

In Australia, laws are not opt-in, opt-out. All people physically present within Australia are bound by the law by virtue of living in the country, regardless of personal agreement. While some laws may not apply due to life choices, such as the road laws if you don't own or drive a car, the law is still equally applicable to you by virtue of living in Australia.

Imagine if Australia were a place where people could pick and choose what laws applied to them; the whole legal system would break down, anarchy would reign, and violence would ensue.

For more elaboration, see the 1988 High Court Case Union Steamship Co of Australia Pty Ltd v King.

Critical Thinking Questions:

1. How does the idea of 'laws as contracts' challenge the principle that no one is above the law?
2. What potential issues arise when individuals could pick and choose which laws to follow based on personal beliefs?

Part 3: The Magna Carta invalidates the Australian Constitution

What is the Argument?

Sovereign citizens sometimes claim that current laws violate their rights under the Magna Carta. They argue that Clause 39 of the Magna Carta guarantees the right to a jury trial and prohibits legal penalties imposed without one.

Clause 39 of the Magna Carta states: "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."



Case Studies:

1. *Chia Gee v Martin (1905)* [1905] HCA 70 – The High Court ruled that any argument suggesting a Commonwealth law is invalid because it conflicts with the Magna Carta does not warrant serious debate.
2. *Carnes v Essenberg; Lewis v Essenberg* [1999] QCA 339 – The Queensland Court of Appeal confirmed that the *Australian Courts Act 1828* (UK) and the *Australia Act 1986* (Cth) establish parliamentary sovereignty, allowing laws to override the Magna Carta. McHugh J emphasised the Magna Carta is primarily a historical document expressing political ideals rather than binding legal authority.
3. *MacDonald v County Court of Victoria* [2013] VSC 109 – The court rejected the claim that the Magna Carta prevents issuing a speeding fine based solely on photographic evidence without witness testimony.
4. *Flowers v New South Wales [No 5]* [2019] NSWSC 1467 – The NSW Supreme Court clarified that Clause 39 allows for convictions either through a fair judgment of peers or by the law of the land. This means that the clause does not guarantee a right to a jury trial but instead ensures that punishment follows due legal process.

While the Magna Carta played a foundational role in shaping common law, it does not hold supremacy over Australian Federal, State or Territory legislation. Courts have consistently rejected the claims of sovereign citizens that rely on the Magna Carta, affirming that Australian law is determined by Parliament.

For more elaboration, see the 1992 Mabo Case (No. 2).

Critical Thinking Questions:

1. Under the separation of powers in the Australian Constitution, the role of the Courts is to resolve disputes by interpreting and applying the law. Who has the power to make the laws of Australia? Is the Magna Carta one of the laws of Australia?
2. In what ways are historical documents like the Magna Carta still applicable to contemporary legal disputes before the courts?

Impact on Resource Efficiency

The rising number of cases involving sovereign citizens has placed a significant strain on court resources, increasing the time required to process cases and affecting the overall efficiency, fairness, and timeliness of the justice system. Judges have emphasised that courts cannot afford to waste time on defendants who provide legal theories that have no basis in law. Court

time is a scarce public resource and should be allocated to cases with legitimate legal claims rather than applications based on a misunderstood concept of law. However, it is equally important to uphold a key principle of the rule of law: the right to openly and freely critique the law and provide reasons for one's actions.

The legal system must remain accessible to individuals with genuine grievances, ensuring that valid legal challenges can be heard. A key function of the Australian judiciary is to provide a forum for individuals to challenge the validity and constitutionality of laws, ensuring that legal questions are properly examined to provide a just outcome.

Critical Thinking Questions:

1. How does the increase in cases involving sovereign citizens affect
 - a. The efficiency and fairness of the legal system?
 - b. Access to the system and justice in other matters before the court?
2. Why is it important for judicial resources to be used on legally sound cases?

End Note: Indigenous Sovereignty

The concept of Sovereignty has been much debated in respect of Aboriginal and Torres Strait Islander people; especially whether a single nation such as Australia can accommodate multiple sovereign nations, and how to make that possible without undermining the rule of law in Australia.

With the arrival of the First Fleet in 1788 came questions about how the British law should be applied to Indigenous peoples. See our resource to learn more: <https://www.ruleoflaw.org.au/education/australian-colonies/indigenous-early-penal-colony-and-law/>

Case Study:

In *Walker v State of NSW* [1994] 182 CLR 45, the plaintiff, an indigenous man who had been charged with a criminal offence, declared that the Commonwealth and State Parliaments had no “power to legislate in a manner affecting aboriginal people without the request and consent of the aboriginal people”.

The High Court rejected his sovereignty argument and ruled that indigenous people are subject to Commonwealth and State laws like all citizens. The Court dismissed the need for their consent, explaining that Mabo (No. 2) did not support indigenous sovereignty or a separate legal status.