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[Symposium Remarks by UNH Professor of History David Bachrach, April 12, 2016]

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Magna Carta, the great charter of rights to which King John agreed at Runnymede on 15 June 1215, was treated at the time and has been considered ever since as a crucial enunciation on the limits of royal power. However, it is also important to understand that Magna Carta did not emerge de novo in its fully fledged state in the late spring of 1215. The list of baronial demands, made on behalf of the kingdom as a whole, were born out of grievances that, in some cases, dated back more than a century. In addition, the actual confrontation at Runnymede was the result of a specific constellation of political events that owed far more to King John's incompetence as a politician than to an emerging consensus among the barons, much less the people of England as a whole, about the nature of justice, liberty, and a desire for constitutional government. In my talk, I will discuss the actual contents of the great charter issued by John. I will then turn to a brief discussion of the origins of the demands made by the barons, and the proximate causes for their decision to force a confrontation with the king.

The original version of Magna Carta, issued in 1215, included 63 clauses. In the first of these, King John recognized the rights and privileges of the church, including the free election of abbots and bishops. This was an issue that had caused turmoil in England and ultimately resulted in John's excommunication at the hands of Pope Innocent III when the English ruler refused to accept Stephen Langton's election as archbishop of Canterbury. It was only after John acquiesced to the election of Langton in 1213 that this excommunication was revoked, but at a cost. John had to acknowledge the pope as his superior lord, a fact that would ultimately have a decisive impact on the implementation of the provisions of Magna Carta.

After the initial clause in which the king guaranteed the rights and freedoms, of the church, the next 59 clauses were focused on aspects of royal rule, or perhaps better stated misrule. The first group of clauses concerns the rights of those great men who held lands from the king in return for specified types of service, usually military in nature. For example, when the land-holder died, the king agreed to limit the amount of money he demanded from the man's heir, a payment known as a relief, to inherit both the property and obligations from his father. Similarly, the barons wanted assurances that if they died leaving young heirs, the men appointed by the king to act as guardians of their estates would not devastate the properties for their own ends, but rather would manage them properly on behalf of the heirs, taking only a reasonable payment for themselves. King John acquiesced on this point as well.

In addition to concerns about the lands and offices that they held from the king, the barons also wished to limit the exactions that the king could impose on the population, including not only themselves, but also the lesser landowners as well. Thus, the king agreed to limit his demands for aids, that is cash payments, to those occasions on which the king had his eldest son knighted, his eldest daughter was married, or as a ransom for the king. The king also agreed that he would not demand more military service, or fines in lieu of military service, from landowners than that which they normally would owe on the basis of the value of their properties.

The barons also demanded and received promises from the king that he would ensure the proper functioning of the legal system. Legal cases dealing with conflicts over property would be heard in the proper courts. Men would not be fined

or otherwise punished more than is appropriate for the criminal or civil violations with which they have been charged and convicted. The king could not impose fines on barons at his own discretion, but rather had to receive the consent of the baron's equals. No royal officials were to impose judgment on the basis of their own will alone, but rather were to follow normal judicial procedures in the appropriate court. In a similar vein, no one could be imprisoned or have his property confiscated without due procedure.

Another group of clauses dealt with royal forest law. It should be understood that the lands deemed forest were not simply wooded areas, but rather those areas claimed by the king for his own use as hunting preserves. Once lands were declared forest, with no payment or other recompense to the current owners, the property owners and holders in these areas faced significant liabilities. They could no longer hunt on their own lands, which they previously had been able to do. They could no longer take resources from timberlands and other properties that previously had been their own. Moreover, they faced the prospect of royal hunting parties, or other hunting parties licensed by the king, running amok on their properties, causing damage to their assets as well as fields. If property owners violated the wide-ranging ordinances issued to protect the king's rights in forests, they faced very high fines, and even mutilation or death. As a consequence, the barons demanded and the king agreed that "all evil customs relating to forests, warrens, foresters, warreners, sheriffs and their servants, or river-banks and their wardens, are at once to be investigated in ever county by twelve sworn knight of the county, and within forty

days of their inquiry the evil customs are to be abolished completely and irrevocably.”

The barons also sought and received ex post facto relief from the king’s earlier acts of misrule. Thus, all of those who had been dispossessed by the king without due process were to receive back their properties and other assets. All unjustly levied fines were to be repaid. There were even clauses for the restoration of property and money taken from Welshmen.

In order to secure this agreement, the barons wanted the king to give up his efforts to prepare for a possible civil war. The king agreed to remove foreign military commanders from the royal court and strip them of their offices in the counties and their commands of numerous castles throughout England. John’s power in England was enforced, in many cases, through the threat of military force using foreign mercenaries. In this context, the king also agreed that “as soon as peace is restored, we will remove from the kingdom all the foreign knights, bowmen, their attendants, the mercenaries who have come to it, to its harm, with horses and arms.” The 61st clause, the lengthiest of the Magna Carta, then provided for the establishment of a committee of 25 barons who would work with the king to maintain the peace and to resolve disputes within the kingdom, and also to ensure the enforcement of the clauses of the Magna Carta.

The last of these concessions would have represented a radical transformation of the constitutional system in England, had it actually been put into practice. Of course, it was not, for two reasons. First, Pope Innocent III declared Magna Carta null and void almost immediately after John sealed the text, because

contracts that are made under duress are not valid. In addition, and perhaps more importantly from Innocent's point of view, John had not first received permission from the pope to enter into this agreement, which diminished his royal power. As John's overlord, the pope insisted that no agreement of this type could be made without his prior approval. In addition, long-standing church teaching held that kings did not own their offices but rather were stewards of them, and consequently were not permitted to take acts that diminished them. It was not until the baronial crisis and wars of the 1250s and 1260s that the radical experiment in conciliar government actually was imposed in England. But once more the result was civil war and the emergence of an even stronger and more centralized English government under Edward I.

At this point, however, it is worth taking a step back and considering the origins of the complaints that led to Magna Carta and also why the barons took action in 1215. Of primary concern to the barons, at least regarding their personal power and welfare, was the secure maintenance of the lands and offices that they held from the king. John's efforts to squeeze them at every opportunity rankled. However, it is also the case that John was not acting any differently than had his elder brother Richard and his father Henry II. Both of them had demanded reliefs, had imposed wardships, and had required extended military service of their magnates and all others holding military lands.

But if there was very little difference on the demand side, there were significant differences between the Henry and Richard on the one hand, and John on the other. Both of the elder Angevin kings had been very successful in military

terms. They had won their wars, and the great magnates had shared in their successes, often gaining additional lands and offices. By contrast, John was a military failure. He lost the Angevin empire across the English Channel. Henry and Richard had been bold, and always were to be found where the conflict was the most dangerous and where a military strike was most needed. John, by contrast, was timid and in almost every case was far away from where the fighting was taking place and dithered when decisive action was necessary.

John's lack of skill in military matters was compounded by his political incompetence. Henry II and Richard certainly showed ruthlessness toward their political enemies, but also were magnanimous on many occasions, even to former enemies. By contrast, John gave little incentive for his enemies to become his friends, and also alienated those magnates whose support he required. As a case in point, in the one of the few instances in which John showed boldness in military matters, he captured his nephew Arthur in 1202 as the latter was laying siege to the fortress of Mirabeau. However, rather than acting magnanimously after this great military victory, John arranged for his nephew's murder, and incarcerated under terrible conditions all of the magnates in Arthur's army whom he had captured. As one medieval historian explained, John could not resist kicking a man when he was down.

But the men John kicked after the victory at Mirabeau were related to most of the noble families in the north of France, families whose support John need to maintain his position against the French king Philip Augustus. To make matters worse, John then alienated his leading loyalists in France by failing to reward them

for their good service. Within two years, John lost virtually all of his French dominions to Philip.

For the remainder of his reign, John sought, unsuccessfully, to recover the lands that he had lost in France. However, he now possessed only a fraction of the resources available to his elder brother and father. Conversely, King Philip of France had now more than tripled the size of his domains. In order to pay for his military endeavors, John found it necessary to press ever harder on the levers used by his predecessors. But John lacked the man-management skills and charisma that could make these demands more palatable. Combined with his continued military failures, most spectacularly on display in the failure of his two-pronged invasion of the French kingdom in 1214, John accelerated the alienation of the barons. Ultimately then, Magna Carta can be understood as a repudiation of John and his poor record as a ruler and as a manager of men. A number of constitutional claims can be read into the document, but it was ultimately political in nature. Moreover, it was a dead letter within months, following Pope Innocent's intervention and the beginning of the civil war and invasion of England by Prince Louis of France.

Nevertheless, the Magna Carta of 1215 remained a touchstone for political and also constitutional demands of the barons, and later an expanded political community of the barons and gentry for the remainder of the thirteenth century and into the fourteenth. Ultimately, the contractual form of government enunciated in Magna Carta became the basis for the rise of parliament as a central institution in English political life and ultimately our representative form of government today.