Reading Medieval Studies XL (2014)

The King's Courts and the King's Soul: Pardoning as Almsgiving in Medieval England

Thomas J. McSweeney[1]
William & Mary Law School

The early history of the common law is usually written as a story of increasing rationalization.[2] The royal courts of the late twelfth and early thirteenth centuries were creating an ever more sophisticated system of rules around the new procedures Henry II introduced between the 1150s and the 1170s. That system of rules had an internal logic to it. It was a legal logic, designed to eliminate irrelevant facts and narrow the question in the case. A court no longer needed to know a defendant's social status or whether he was a habitual sinner, for instance. It only needed to know whether he had, in fact, disseised the plaintiff of the land.[3] The logic of the law simplified things, decreased the number of questions a court was forced to ask, and thus created a sense that justice was, and should be, blind to qualities like social status, which were legally irrelevant.

Pardons occupy an ambiguous space in this story of ever more rational law. On the one hand, pardons can act as a safety valve. When the law fails to do justice, some official is empowered to pardon the person whom the law, in its rigidity, would convict unjustly. Pardons can thus promote justice by fixing those anomalous situations where the legal system fails. On the other hand, pardons have the potential to reintroduce the irrelevancies that the law seeks to purge from decision-making. Pardons require no justification. In the thirteenth century, the king could pardon a killer for any reason or no reason. He could pardon a killer because that killer had powerful supporters or because he had agreed to serve in one of the king's wars, reasons that had no bearing on his culpability and thus had no legal significance.[4] When misused, pardons can represent the failure of a rational system of law.

---

1 I would like to thank Karl Shoemaker, Liz Kamali, Helen Lacey, Charlie Donahue, Phillipp Schofield and the participants in panels at the 2013 meeting of the American Society for Legal History and the 48th International Congress on Medieval Studies for their valuable comments on this paper. There is, of course, one more person I have to thank. This article grew out of a paper I wrote for Paul Hyams's seminar on medieval poverty in 2007. It was Paul who originally suggested that I try to sort out what was going on with the pardons for poverty that we see on the plea rolls and I happily dedicate this article to him.

2 See, *e.g.* S. F. C. Milsom, *The Legal Framework of English Feudalism* (Cambridge: CUP, 1976); Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, MA: Harvard University Press, 1983), pp. 457 ff.

3 This is not to say that social status no longer had any effect over the outcome of trials, only that legal discourse began to treat social status as if it should be irrelevant to the outcome.

4 Naomi Hurnard, *The King's Pardon for Homicide Before AD 1307* (Oxford: OUP, 1969), p. 36.

In her magisterial work on royal pardons for homicide, Naomi Hurnard explored both of these tendencies.[5] Hurnard surveyed hundreds of pardons, looking for trends in the ways they operated. She found that thirteenth-century kings would ordinarily issue pardons in cases where the killing was either accidental or committed in self-defense. The king clearly thought that these types of killing were less culpable than, say, an intentional killing in cold blood and he even created judicial procedures for determining whether a pardon was warranted on one of these two grounds.[6] Modern lawyers have little trouble understanding this pattern of pardoning. Our own rules of culpability exclude the accidental killing and the killing in self-defense from the definition of murder. It is too easy, however, to see our own reflection in the pardoning practices of the thirteenth century and to miss significant differences between medieval and modern discourses of pardoning. Thirteenth-century kings, as it turns out, issued pardons for many reasons that had nothing at all to do with the party's culpability. These pardons do not fit into a model where a pardon should be given to ensure that justice is done. They seem to be capricious acts of will rather than measured acts of law. When Hurnard found these seemingly arbitrary pardons in her sources, she treated them as a failure of the system.[7]

Pardons that appear arbitrary to us may not have seemed so to contemporaries, however. In this article, I will look at two types of pardons, pardons of amercements and pardons for homicide, and show that pardoning practices stood at the intersection of at least two discourses. The first is the discourse of law. In many cases, the king and his officials did grant pardons because the discourses of law that were current in the thirteenth century, the ones that focused on the killer and his culpability, dictated that the killer should not be punished. Often, however, the pardon had little or nothing to do with the killer's culpability. We find many instances on the patent rolls and the pleas rolls where a killer or an amerced party is pardoned 'for the king's soul', placing the pardon within a different discourse altogether: a discourse of alms. Pardons that were meant to bring spiritual benefit to the king were not irrational; they simply operated according to a different kind of reason than the law did.

Pardons that were given as alms challenge our notion of what a court is and what it should do. We think of courts as entities that are concerned with law, and law alone. There were certainly people who thought about courts in this way in the thirteenth century. The justices who wrote the great treatises of the twelfth and thirteenth centuries seem to have thought this way and tried to marginalize other ways of thinking about courts in their texts. Modern scholars give them quite a bit of credence because the justices who wrote texts like

---

5 Hurnard, *King's Pardon for Homicide*.

6 Hurnard, *King's Pardon for Homicide*, pp. 77-78

7 Hurnard, *King's Pardon for Homicide*, p. 36.

the *Bracton* treatise thought about courts in essentially the same way we do today. Their writings line up with our own expectations. They were only one group within the royal administration, however, and others saw the courts as institutions that were as concerned with the king's soul as they were with the king's justice.

Pardoning the Abbey: Ramsey, Meaux and the King's Soul

In 1229 the Abbot of the wealthy and powerful Benedictine monastery of Ramsey in Huntingdonshire was sued by four men who claimed that the Abbot had disseised them of their common right in a pasture.[8] The jury delivered a verdict against the Abbot and the court issued a judgment awarding seisin of the pasture and 5*s*. in damages to the four men.[9] Near the end of the entry, the clerk who was keeping the roll of the court additionally noted that 'the abbot is in mercy'.[10] This is a common notation to find on the plea rolls and indicates that the Abbot had been amerced. An amercement is akin to a modern fine and could be levied for many reasons. If a plaintiff failed to prosecute her case once she had begun it, she was amerced for non-prosecution.[11] If she did prosecute the case but lost, she was amerced for a false claim. If a defendant lost his case, say, for a parcel of land, as the Abbot of Ramsey had done, he would be amerced for unlawful detention of the land.[12] The theory behind the amercement was that, by committing one of these bad acts, the party had harmed the king and was now in his mercy. He would have to placate the king to get himself out of it.

The most common way to placate the king was with a cash payment. Since in theory the hapless litigant was entirely in the mercy of the king, the amercement could be of any amount.[13] The Angevin Kings had used amercements both as a means of revenue-production and as a means of political control. Great lords could be amerced beyond their means to pay, even for relatively minor offenses, putting them in the king's debt. If they continued to please the king, the debt could be put off indefinitely, but if they did not, the debt could be called in.[14] The king's ability to levy amercements had been curtailed in *Magna Carta*, however, and

---

8 *Curia Regis Rolls Preserved in the Public Record Office*, 20 vols (hereinafter *CRR*) (London: HMSO, and Woodbridge: Boydell, 1922-2002), xiii (1959), p. 421 (no. 2011).

9 *CRR*, xiii, p. 422 (no. 2011).

10 *CRR*, xiii, p. 422 (no. 2011).

11 C. A. F. Meekings, *The 1235 Surrey Eyre, Volume 1- Introduction* (Guildford: Surrey Record Society, 31, 1979), p. 39.

12 Meekings, *1235 Surrey Eyre*, pp. 85-86.

13 See Meekings, *1235 Surrey Eyre*, p. 86.

14 J. L. Bolton, 'The English Economy in the Early Thirteenth Century', in *King John: New Interpretations*, ed. by S. D. Church (Woodbridge: Boydell, 1999), pp. 27-40 (p. 29).

for most litigants the process of seeking the king's mercy had become rather mechanical by the 1220s.[15] For routine amercements the justices usually charged the small, but not wholly insignificant, amount of half a mark, equivalent to eighty pence, the price of a decent riding horse or half a dozen sheep.[16] This would have been a heavy burden for a small-time peasant farmer, but not for a large monastery like Ramsey.

Amercements, once levied, did not have to be collected. The amercement was separate from any damages the amerced party might have to pay the winner of the suit and went wholly to the king. Since the amercement was entirely within the king's discretion — with no other parties to satisfy — the king could thus pardon the amercement if he wished. We know of amercement pardons as early as Henry II's reign and, from the beginning of the royal courts' records, every term includes a few.[17] We do not know exactly who did the pardoning or how a litigant went about seeking a pardon in most cases. Juries may have pardoned amercements at times; *Magna Carta* guaranteed that the amount of the amercement would be set by 'the testimony of reputable men of the neighborhood'.[18] It appears that court practice in the decades after *Magna Carta* was for the justices themselves to set the initial amount of the amercement and then send it to a jury, which might reduce the amount.[19] These juries presumably pardoned some of the amercements, but the rolls show us that they were not the only ones who did so. The king,[20] the king's council,[21] the treasurer,[22] the justiciar,[23] and the royal justices themselves are all said to pardon amercements in various cases.[24]

---

15 J. C. Holt, *Magna Carta*, second edn (Cambridge: CUP, 1992) pp. 456-7, 505 (cc. 20-22 of the 1215 version of *Magna Carta*, c. 14 of the 1225 version).

16 Meekings, *1235 Surrey Eyre*, p. 130. John Hudson, *The Formation of the English Common Law: Law and Society in England from the Norman Conquest to Magna Carta* (New York: Longman, 1996), p. 169. Paul Latimer, 'Early Thirteenth-Century Prices', in *King John: New Interpretations*, ed. by Church (Woodbridge: Boydell, 1999), pp. 41-73 (pp. 70, 73).

17 L. W. Vernon Harcourt, 'The Amercement of Barons by their Peers', *English Historical Review*, 22 (1907): 732-740 (p. 734, n. 14).

18 Holt, *Magna Carta*, pp. 457, 505 (c. 20 of the 1215 version of *Magna Carta* and c. 14 of the 1225 version).

19 Harcourt, The Amercement of Barons', p. 734.

20 *CRR*, ix, p. 198; *CRR*, xi, pp. 41 (no. 238), 135, (no. 675). It is worth noting that in all of these cases, the King was a minor. The decision to pardon must have been made by someone other than the king himself.

21 *CRR*, viii, p. 196; *CRR*, xi, p. 50 (no. 288).

22 *CRR*, viii, p. 34.

23 *CRR*, viii, p. 331.

24 *CRR*, viii, p. 275.

The abbey of Ramsey was pardoned its amercement, but it was not pardoned on the spot. The pardon came at some point after the proceedings. The clerk added a notation at the very end of the entry that '[t]he amercement of the abbot is pardoned by the lords, the chancellor Karl' and S. of Segrave'.[25] The case had been tried by a special commission, and had probably been heard in Huntingdonshire, where the land was situated.[26] But at some point the issue of the amercement apparently went to Westminster, where it was pardoned at the command of some of the king's most important functionaries.

The entry does not tell us why these officials of the central government saw fit to pardon Ramsey. Some of our pardons do provide a reason, however. The pardons that appear on the rolls of the early thirteenth century most often say that they have been given account of the litigant's poverty.[27] The royal courts were, in this period, attracting more and more litigants at the lower end of the social scale, and there must have been quite a few people for whom half a mark represented a large part of their annual income. To the extent that historians have looked at these pardons at all, they have tended to assume that the pardons worked according to a logic of justice. They were intended to prevent the poor man from being completely ruined simply because he had sought to vindicate his rights and had turned out not to have any. There is contemporary evidence for this view of amercements. *Magna Carta* had treated them as an issue of justice, prohibiting amercements that would destroy the amerced party's livelihood or that were totally disproportionate to the wrong committed.[28]

---

25 *Misericordia abbatis perdonatur per dominos cancellarium Karl' et S. de Segrave*: *CRR*, xiii, p. 422 (no. 2011). The attribution to *cancellarium Karl'* on the plea roll is probably incorrect. The chancellor at the time was Ralph de Neville, Bishop of Chichester, and neither his name nor his title could easily be abbreviated *Karl'*: Fred A. Cazel, Jr, 'Neville, Ralph de (d. 1244)', in *Oxford Dictionary of National Biography* [*ODNB*] <http://www.oxforddnb.com/view/article/19949?docPos=5 > [accessed 28 February 2014]. The treasurer in 1229, however, was Walter Mauclerk, Bishop of Carlisle, which could be abbreviated as *Karl'*: Nicholas Vincent, 'Mauclerk, Walter (d. 1248)', in *ODNB* <http://www.oxforddnb.com/view/article/18355?docPos=1> [accessed 28 February 2014]. It is possible that the clerk who composed this roll was copying from an earlier draft and accidentally omitted a few words. The entry should probably read 'the chancellor, the bishop of Carlisle [i.e., the treasurer], and Stephen of Segrave'. I would like to thank Kathleen Neal for this suggested reading. The treasurer presided over the exchequer and the chancellor often sat there, as well. Stephen of Segrave, in addition to being an important royal justice, performed many duties for the king and might have been present in the exchequer when this amercement came up. Ralph V. Turner, *Men Raised from the Dust: Administrative Service and Upward Mobility in Angevin England* (Philadelphia: University of Pennsylvania Press, 1988), pp. 123-8. The amercement was therefore probably pardoned at the order of three of the King's most important ministers.

26 *CRR*, xiii, p. 422 (no. 2011).

27 Of 120 amercement pardons I have surveyed on the *CRR* of 1201-1224, eighty specifically say they were given on account of the party's poverty. They rolls often simply say: *Misericordia. Pauper est* ('Amercement. He is a pauper'), but sometimes appear as the more specific: *Misericordia. Perdonatur pro paupertate* ('Amercement. It is pardoned for poverty').

28 Holt, *Magna Carta*, pp. 457, 505 (c. 20 of the 1215 version of *Magna Carta* and c. 14 of the 1225 version).

Not all amercement pardons fit this model, however. When pardons do not fit neatly into a narrative of justice, scholars often try to make them fit. Alfred May, in his survey of amercement pardons in seigniorial courts, found many amercement pardons for parties who did not actually appear to be poor. He argued that pardons to litigants who were not poor in absolute terms were meant to spare people who were temporarily short of cash, taking the position that there must have been some principled reason to pardon these people.[29] It is difficult to find a principled reason to spare Ramsey, however. Ramsey's amercement was not explicitly pardoned on account of poverty. It may have been the unstated reason for the pardon, but this seems unlikely, as it would be difficult to make the case that Ramsey had a cash flow problem. Ramsey was one of the wealthiest monasteries in all of England and enjoyed substantial royal patronage under Henry III.[30] There is no doubt that Ramsey could afford to pay an amercement of half a mark.

Another monastery had been placed in a very similar position to Ramsey six years earlier, and may shed some light on Ramsey's pardon. The great Cistercian house of Meaux in Yorkshire was pardoned an amercement in a 1223 land case.[31] Meaux, like Ramsey, had no cash flow problem at the time it was amerced. The chronicle of the abbey contains five folios devoted to their land transactions between 1210 and 1220.[32] By 1223 Meaux had been amply endowed with gifts of new lands from Yorkshire families and the monks were actively purchasing land.[33] They were even lending money out, so they must have had cash on hand.[34] They could certainly pay half a mark.

We might be able to fit both Ramsey and Meaux into a model where pardons were intended to do justice, as both houses had suffered under King John. Ramsey was without an Abbot between 1207 and 1214 because the monks would not elect the candidate John

---

29 Alfred N. May, 'An Index of Thirteenth-Century Peasant Impoverishment? Manor Court Fines', *Economic History Review*, new series 26, (1973): 389-402 (p. 398).

30 Matthew Paris, *Matthaei Parisiensis, Monachi Sancti Albani. Chronica Majora*, ed. by Henry Richards Luard, 7 vols (London, 1872-1884), v (1880), p. 51, vi (1882), pp. 390-391.

31 *CRR*, xi, p. 234 (no. 1149)

32 Thomas de Burton, *Chronica monasterii de Melsa, a fundatione usque ad annum 1396, auctore Thoma de Burton, abbate. Accedit continuatio ad annum 1406 a monacho quodam ipsius domus*, ed. by Edward A. Bond, 3 vols (London: Longmans, Green, Reader, and Dyer, 1866-1868), i (1866), pp. 359-380

33 Burton, *Chronica monasterii de Melsa*, p. 373.

34 Burton, *Chronica monasterii de Melsa*, pp. 367, 374.

preferred and John would not permit them to elect another.[35] Meaux had suffered even more. The Cistercian order in England, pleading special privileges granted by John's predecessors, had claimed to be exempt from the various taxes John raised to pay for his wars in Ireland and France.[36] In 1210 their dispute with the King came to a head when John tried to force the Cistercian houses to pay up: the Abbot of Meaux resigned in protest and John sent his men to seize the monastery.[37] John eventually expelled the monks from the monastery's lands later that year, but allowed them to return in exchange for a fine of 1000 marks.[38] This treatment at John's hands may have prompted the pardons of both monasteries, as the Cistercian order had many sympathizers in England who thought John's actions towards them had been illicit. But pardoning an amercement of half a mark is a clumsy way of returning 1000 marks that had been taken illicitly. If the two monasteries were pardoned out of a sense of justice, it was a rough justice.

Fortunately, the entry for Meaux's case, unlike that for Ramsey's, tells us why the amercement was pardoned. Two rolls exist for this term of the court, and one tells us that '[t]he amercement is pardoned for the soul of King John' and the other 'for God and for the king'.[39] Language indicating that the pardon was intended for the king's soul would have clearly marked it as an act of almsgiving to contemporaries. The chancery, which was responsible for recording most of the king's grants of land and gifts of money, regularly used words like these to mark that a gift was being made as alms on behalf of the king or members of his family. Grants of land to hospitals, money to feed paupers, funds to build bridges, and gifts to religious houses were made for 'the salvation of the king's soul and the souls of his ancestors and heirs', or for 'the soul of the Empress, late the king's sister', or 'for the soul of I. formerly the queen of England, the king's mother', to give just a few examples.[40] Monasteries were considered particularly worthy recipients of alms, and it might have been less a sense of justice that drove the royal officials who pardoned these amercements than a sense that giving half a mark to a monastery was good for their royal master's soul.

---

35 *Chronicon Abbatiae Ramesiensis*, ed. by W. D. Macray (London: Rolls Series, 1886), p. 342. William Page, Granville Proby (editors) assisted by H.E. Norris, 'Houses of Benedictine monks: The Abbey of Ramsey', in *A History of the County of Huntingdon*, 3 vols (Oxford: OUP for the Victoria County History, 1926-1936), i (1926), pp. 377-385, British History Online, <http://www.british-history.ac.uk/report.aspx?compid=3814> [accessed 28 February 2014].

36 Burton, *Chronica monasterii de Melsa*, p. xxxiv.

37 Burton, *Chronica monasterii de Melsa*, p. xxxv.

38 Burton, *Chronica monasterii de Melsa*, pp. xxxv, xxxviii.

39 *CRR*, xi, p. 234 (no. 1149).

40 *Calendar of the Patent Rolls Preserved in the Public Record Office. 3, Henry III, A.D. 1232-1247* (London: HMSO, 1906), p. 341 (October 1242); *Calendar of the Liberate rolls Preserved in the Public Record Office,* ed. by William Henry Stevenson and Cyril Thomas Flower, 6 vols (London: Public Record Office, 1916-1964), ii (1930), p. 124 (April 1242); iii (1937), p. 71 (August 1246).

The Logic of Justice and the Logic of Alms

This is not to say that almsgiving was the only lens through which the king or one of his officials could see a pardon. In many cases the discourses of alms and law overlapped. The largest category of pardons was given to people who were designated *pauperes* on the rolls. The poor were, of course, traditional recipients of alms. Pardoning a pauper's amercement could also be seen as an act of justice, however. Protecting the poor was a fundamental duty of the king in the discourse of kingship of the thirteenth century. In the fourth century, St Jerome made the case that the king, as God's anointed, must protect the poor and weak if he was to be a legitimate ruler.[41] It appears that princes — or at least their servants — were prepared to take Jerome's pleas seriously. The author of the late twelfth-century treatise known as *Glanvill* makes a plea for his lord's justice to the poor, as in the royal court 'a poor man is not oppressed by the power of his adversary'.[42] Richard FitzNigel's *Dialogue of the Exchequer* also lauds the king's general eyre — a judicial visitation of the counties — as an institution that 'spared the labor and possessions of the poor', because it brought the king's justices to the people, instead of requiring the people to find the king if they wanted access to his justice.[43] The people writing about royal administration from the inside in the twelfth and thirteenth centuries were thus aware that, while the king had a duty to do justice to all his subjects, he had a special duty to do justice to the poor.

It was not only in his capacity as almsgiver that the king showed concern for his soul; a king who did not take his God-given duty to do justice seriously might not make his way into heaven. Jerome's text on the duty of the king to do justice to the poor made its way into Gratian's *Decretum*, a collection of canon law that became a standard textbook from the twelfth century on throughout Latin Christendom. Gratian commented on Jerome's passage that 'it is necessary, however, that faith and reverence be preserved by them, the princes and the potentates, because he who will not have offered them to God will not attain the rewards'.[44] Gratian thus attaches the king's duty to do justice to the oppressed to the king's own salvation. Failure to do justice would not lead merely to de-legitimization in the eyes of the king's subjects; it might lead to eternal damnation.

---

41 *Regum est proprium, facere iudicium atque iusticiam, et liberare de manu calumpniantium vi obpressus, et peregrino pupilloque et viduae, qui facilius obprimatur a potentibus, prebere auxilium*. C. 23, q.5, c. 23.

42 *The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill*, ed. by G. D. G. Hall (Oxford: OUP, rpt. 2002), p. 2 (prologue).

43 *Dialogus de Scaccario, and Constitutio Domus Regis: The Dialogue of the Exchequer and The Establishment of the Royal Household*, ed. and trans. by Emilie Amt and S. D. Church (Oxford: OUP, 2007), pp. 116-7.

44 *Ipsis autem principibus et potestatibus fidem et reverentiam servari oportet, quam qui non exhibuerit apud Deum premia invenire non poterit*. Commentary post C.23, q.5, c.23

The king's duty to do justice was therefore connected to his concern for his soul. While the king and his servants were surely thinking of their duty to do justice when they pardoned the amercements of paupers, we are also presented with cases, like that of the Abbot of Meaux, where the pardon does not appear to make sense from the standpoint of justice. To make sense of these pardons, we must turn to the logic of alms.

Alms worked according to a different kind of logic than law or justice. It was still a kind of logic, however. Theologians and canon lawyers in the universities were able to create very sophisticated and rational systems out of the culture of almsgiving. The goal of almsgiving was not primarily to produce justice or to see that every man received his due, although justice was not entirely absent from the logic of alms.[45] The theologians and canonists argued that all things were owned in common before Adam's and Eve's fall and that common ownership was the natural state of things.[46] They extrapolated from this that the rich owed a duty to distribute their excess wealth to the poor and to spend it on socially useful projects. They even argued, at times, that the poor, when in a state of absolute necessity, had a right to steal from the rich.[47] University scholars could thus think of alms as a way of doing justice to the recipient.

For the giver, however, alms were also a way to shorten time in purgatory, a goal that might have very little to do with the recipient.[48] There was a sense in the thirteenth century that the poor were 'created and placed in the world for the sake of the rich man's salvation'.[49] King John, for instance, often fed paupers to atone for eating meat on Fridays or hunting on feast days. This became a regular pattern during his reign.[50] To John, the poor appear to have been a ticket to break the Church's commandments.

Alms could produce multiple benefits for their givers. In the second half of the thirteenth century, Thomas Aquinas summarized a common way of thinking about alms and their effect in his *Summa Theologica*. According to Thomas, alms produced spiritual fruits for the giver in two ways. First, 'in so far as a man gives corporal alms out of love for God

---

45 There was a theological and canonistic debate over whether alms were an act of justice or an act of mercy. Brian Tierney, *Medieval Poor Law: A Sketch of Canonical Theory and its Application in England* (Berkeley: University of California Press, 1959), p. 35.

46 Tierney, *Medieval Poor Law*, pp. 29, 51.

47 Tierney, *Medieval Poor Law*, p. 38.

48 Tierney, *Medieval Poor Law*, pp. 34-7.

49 Michel Mollat, *The Poor in the Middle Ages: An Essay in Social History*, trans. by Arthur Goldhammer (New Haven: Yale University Press, 1986), p. 106.

50 Virginia A. Cole, 'Royal Almsgiving in Medieval England: A Study in the Ritual and Administrative Construction of Kingship' (unpublished doctoral thesis, Binghamton University, 2002), pp. 219-220.

and his neighbor', they produce a direct spiritual benefit for the giver.[51] They also produce spiritual benefit in an indirect way, in that he 'who is succored by corporal alms, is moved to pray for his benefactor'.[52] Alms were not unidirectional; they operated as a sort of gift exchange. This had certainly been the theory behind gifts to monasteries for centuries. Donors' names would be recorded in the house's book so that special prayers and masses could be said for their souls.[53]

Not all recipients were created equal, however; some people were more deserving of alms than others. Aquinas tells us that the purpose and motive of alms is 'to relieve one who is in need' and that 'we ought to give alms to one who is much holier and in greater want, and to one who is more useful to the common weal'.[54] The English royal court practised all of these different types of almsgiving. Those 'much holier' received alms from the royal coffers regularly. Giving money or land to churches had long been classified as an act of almsgiving in England. Whether a church had received land 'in free and perpetual alms' (*libera elemosina et perpetua*), meaning that the land had been freed of all secular services and duties and placed entirely in control of the Church, was often litigated in the king's courts.[55] Kings often made gifts to ecclesiastical bodies explicitly for their souls. In 1242, Henry III granted certain lands to the prior and brethren of the hospital of St Mary for ten years 'for the salvation of his soul'.[56] Individual clerics were also considered proper objects of almsgiving. Richard FitzNigel, in describing the way alms should be enrolled in exchequer records, lists 'those gifts which the generosity of kings has conferred on churches, *or on those who have served them*'.[57] While Meaux and Ramsey might have been particularly good targets for alms because John had treated them so roughly, there is no need to assume that these previous bad dealings were the only reason to pardon their amercements. Pardoning an amercement to a religious house could have spiritual benefit simply because it was a religious house.

The king also distributed alms to those who were 'in greater want' on a large scale. Henry III had a reputation for piety and was known to be generous in his provision for the

---

51 Thomas Aquinas, *Summa Theologica*, ed. and trans. by the Fathers of the English Dominican Province (New York: Benziger Brothers, 1947), p. 1602 (P. 2 P. 2 Q. 32, Art. 4).

52 Aquinas, *Summa Theologica*, p. 1602 (P. 2 P. 2 Q. 32, Art. 4).

53 Stephen D. White, *Custom, Kinship, and Gifts to Saints: The* Laudatio Parentum *in Western France, 1050-1150* (Chapel Hill: University of North Carolina Press, 1988), pp. 26-8.

54 Aquinas, *Summa Theologica*, p. 1608 ((P. 2 P. 2 Q. 32, Art. 9).

55 *Bracton on the Laws and Customs of England*, ed. by George E. Woodbine and trans. by Samuel E. Thorne, 4 vols (Cambridge, MA: Belknap Press, 1968-1977), ii (1968), p. 93.

56 *Patent Rolls 1232-1247*, p. 334.

57 *Dialogus de Scaccario*, p. 44.

poor. When Henry gifted land to the hospital of St James in Bordeaux 'for the maintenance of the poor of the hospital', it was for 'the salvation of the king's soul and the souls of his ancestors and heirs'.[58] In 1265, he remitted a payment of 3*s*. a year to the hospital of St Katharine in Gloucestershire 'out of pity for their poverty' and 'for the saving of his soul and the souls of his ancestors and heirs'.[59] Henry even combined concern for the poor with concern for clerics when he granted land for an oratory for life to 'Nicholas de Denton, a poor clerk' for 'the saving of the king's soul and the souls of his ancestors and heirs'.[60]

An amercement pardon could be seen as a type of alms, albeit an inverted form of alms. It was not a payment, but rather the forgiveness of a debt. The logical step from one to the other is not a large one. If we apply the logic of alms to the amercement pardons on the plea rolls, we can make sense of pardons that otherwise seem arbitrary. Clerics, for instance, were often forgiven their amercements on the plea rolls, occasionally for no other stated reason than that they were clerics. In a 1219 case, Alan FitzWilliam, the losing demandant in a case, was 'pardoned, because he is a cleric'.[61] In 1223, the prior of Studley, like the Abbot of Meaux, was pardoned his amercement 'for God and for the king'.[62] Those cases that only make sense according to a logic of alms show us that the king and his officials were thinking in terms of alms when they issued at least some of their pardons. Perhaps an eleemosynary intention is lying just beneath the surface of the many pardons that also make sense according to a logic of justice, such as pardons to paupers. An intention to do justice and an intention to give alms need not be mutually exclusive. The king certainly felt that he could do both at the same time in the context of homicide pardons.

Pardoning Killers as a Form of Alms

At English law, the decision to set a killer free could not be made by a court. Any killing, no matter how justified, required a pardon.[63] There were certain types of killings, however, for which the king would ordinarily issue a pardon as a matter of course. In the thirteenth century, the king would routinely issue pardons in cases where the justices

---

58 *Patent Rolls 1232-1247*, p. 341.

59 *Calendar of the Patent Rolls Preserved in the Public Record Office. 5, Henry III, A.D. 1258-1266* [*CPR*](London: HMSO, 1910), p. 430.

60 *Patent Rolls 1258-1266*, p. 464.

61 *Perdonatur, quia clericus est*: *CRR*, viii, p. 161.

62 *CRR*, xi, p. 75 (no. 404).

63 Hurnard, *King's Pardon for Homicide*, p. 25.

indicated to him that the killing had been done without a culpable intent (non-feloniously).[64] The killer's mental state was important to the justices, who probably helped to shape the king's pardoning practices.[65] They had taken their emphasis on mental state from Roman and canon law, both of which placed a heavy emphasis on the killer's state of mind in determining culpability.[66] Thus, a person who killed in self-defense killed not out of hatred or malice for the person he killed, but out of a desire to save his own life.[67] Since the death was the unfortunate consequence of a perfectly licit impulse, the killer was not guilty of a crime. The king was thus likely to issue a pardon, on his justices' recommendation, in cases where the killer had killed in self-defense or accidentally.[68]

The king did not always follow these rules, however, and was not bound to follow any rules of law when granting his pardons. He might pardon because the killer lacked culpability, but he might pardon because the killer was his friend, was too powerful to execute, or had a powerful patron. Edward I was famous for pardoning many killers in exchange for military service in his wars.[69] Thirteenth-century justices with Roman and canon law training were clearly bothered when the king issued a pardon in a case where the killer had a culpable mental state. In the *Bracton* treatise, written by a group of schools-trained justices between the 1220s and the 1250s, one of the authors implicitly criticizes royal pardoning practices by laying out that in cases where the act of killing 'may be called a felony, perpetrated with evil intent and [in a] premeditated assault' the killer 'ought never to be admitted to grace, or only with great hesitation, because from such inlawry and such grace easily obtained, from such ease of pardon, an excuse for offending is furnished not only to those inlawed but others who place their reliance thereon'.[70] These justices felt that the pardon should not be used to excuse culpable behavior; it should, rather, be bound by the rules of law.

---

64 Hurnard, *King's Pardon for Homicide*, pp. 77, 220. For a recent discussion of the meaning of the terms 'felony' and 'feloniously' in the medieval English courts that stresses the presence of a culpable mental state, see Elizabeth Papp Kamali, '*Felonia Felonice Facta*: Felony and Intentionality in Medieval England', *Criminal Law and Philosophy* < DOI 10.1007/s11572-013-9273-2> [accessed 28 February 2014].

65 Justices in the early thirteenth century often questioned the jury closely on their views of the killer's mental state. It is not clear, however, whether they questioned the jurors because they knew the king cared about mental state, or whether they cared about mental state and then lobbied the king to issue pardons based on it. The justices who wrote *Bracton* clearly cared about mental state and, as discussed below, seem to have resented royal pardons that were based on other grounds. Hurnard, *King's Pardon for Homicide*, pp. 76-7.

66 Hurnard, *King's Pardon for Homicide,* pp. 70-1.

67 Hurnard, *King's Pardon for Homicide*, pp. 70, 74.

68 Hurnard, *King's Pardon for Homicide*, pp. 77-9.

69 Hurnard, *King's Pardon for Homicide*, p. 36.

70 *Bracton*, ii, p. 372; Hurnard, *King's Pardon for Homicide*, p. 226.

Modern legal systems have largely adopted the Romano-canonical model for guilt and innocence. The killer's state of mind is what differentiates culpable killings from non-culpable killings, or more culpable killings from less culpable ones. From the perspective of a modern scholar looking at the sources through a lens shaped by Roman and canon law, the decision to pardon should be based on the killer's culpability at the time the homicide was committed. Modern scholars like Hurnard have followed the justices down the rabbit hole of mental state and constructed a world of pardoning where certain pardons were warranted because the homicide had been committed with a non-culpable mental state and others were simple acts of royal will, outside the scope of the law, and evidence of royal caprice.

To a thirteenth-century king, however, it might not have been so clear that the killer and his culpability should be the exclusive focus when deciding whether to grant a pardon. Certainly the worthiness of the killer had something to do with the king's decision and was probably the primary consideration in most cases. There were some cases, however, in which the killer's merit played no role in the pardon. In the fourteenth century, kings occasionally pardoned to mark important events in a reign: in 1362, Edward III issued a blanket pardon for judicial fines from the eyres in honor of his fiftieth birthday.[71] Fifteen years later, he pardoned all crimes except treason, murder, common theft, and rape to celebrate his royal jubilee.[72] Pardoning acted as a symbol of reconciliation between the king and his subjects and also put royal power on display.[73] It gave the king an opportunity to show how powerful royal mercy actually was. To a certain extent that depended on the king being able to demonstrate that he was not bound by the law. The less meritorious the killer pardoned, the more the king could drive that point home.

There is at least one instance of a king granting a blanket pardon that he justified as an act of almsgiving. King John issued a pardon in 1204, freeing 'all prisoners, whatever the cause for which they may have been detained, whether for murder, felony, or larceny, or breaking the forest laws, or for any other wrong whatsoever'.[74] John may have done this at

71 Helen Lacey, *The Royal Pardon: Access to Mercy in Fourteenth-Century England* (York: York Medieval Press, 2009), p. 114.

72 Lacey, *The Royal Pardon*, p. 115.

73 Lacey, *The Royal Pardon*, p. 125.

74 *Rotuli Litterarum Patentium in Turri Londinensi Asservati*, ed. by Thomas Duffus Hardy (London: Record Commission, 1835), pp. xvii, 54. The entry is misdated in *RLP*. It was issued in 1204, not 1205.

least partially to put his power on display at a time when his fortunes were waning, but his stated reason for issuing the pardon was 'for the love of God and for the salvation of the soul of our dearest mother', Eleanor of Aquitaine, who had died just a few weeks earlier.[75]

This blanket pardon had even less to do with the recipients' merit than Edward's jubilee pardon, which excluded the worst categories of felons. In contrast to Edward, John made only one distinction based on the type of wrong committed: a killer would have to settle with his victim's kin before he would be set free. If he was unable to do so, he would have to abjure the realm.[76] All other types of wrongdoers were to be set free so long as they could give some kind of security that they would behave themselves in the future.[77] The person who killed out of malice aforethought, the robber on the highway, the rapist, and the poacher would all receive the same freedom as the person who killed in self-defense or by accident. This pardon makes no sense at all if we look at it from the standpoint of justice. John's actions appear to be completely lawless. If we look at this pardon through the lens of almsgiving, however, it begins to make sense. John was giving something up, and the very act of giving up his claim against the wrongdoer was spiritually efficacious. John takes pains to make it clear that he is only surrendering his own claim; killers are to make amends with the families of their victims. Only those who have broken the forest laws — laws that are solely for the benefit of the king, as they protect the royal hunting grounds — are said to be 'altogether liberated'.[78] John was also procuring prayers for his mother's soul and on this count the blanket pardon might have been particularly efficacious; a felon spared the noose would presumably pray somewhat harder than a litigant pardoned an amercement of half a mark.

Nothing demonstrates more elegantly that this pardon was about alms and not about law than the fact that murderers and rapists were eligible for pardon, but Jews were ineligible.[79] If we try to read this pardon according to a legal logic, the exclusion of Jews makes little sense. A Jewish killer would be no more innocent or guilty of the crime than a Christian one, simply by virtue of being Jewish. If we read the pardon according to a logic

---

75 *Pro amore Dei et salute animae karissime matris nostre*: *Rotuli Litterarum Patentium*, p. 54 This was a difficult time in John's reign. On 6 March, the great Norman fortress of Château Gaillard had fallen to the King of France and John was quickly losing control of Normandy. John Gillingham, 'John (1167–1216)', *ODNB* <http://www.oxforddnb.com/view/article/14841?docPos=2> [accessed 28 February 2014] . Given the circumstances, John may have felt the need to reassert his authority in England.

76 *Rotuli Litterarum Patentium*, pp. xvii, 54.

77 *Rotuli Litterarum Patentium*, pp. xvii, 54.

78 *Rotuli Litterarum Patentium*, pp. xvii, 54.

79 *Rotuli Litterarum Patentium*, pp. xvii, 54.

of alms, however, the exclusion of Jews from the pardon makes very good sense. John wanted Christians, not Jews, praying for his mother's soul. If John's goal was to get his mother into heaven, pardoning Jews would not accomplish it.

The blanket pardons of John and Edward notwithstanding, kings did feel constrained by the justices' view of pardoning. In 1227 Henry III sent a letter to the royal justice Martin of Pattishall concerning a potential pardon for homicide, asking him 'what grace ... the lord king can decently make'.[80] Even as pardoning practices regularized over the course of the thirteenth century and the king began to leave the initial question of whether to pardon to his courts, however, he could still imagine the pardon as an act of grace that brought him spiritual benefit. At times, the king even claimed spiritual benefit for pardons that should have been issued almost as a matter of course. In January 1260, Henry was staying at St Denis, outside Paris, on a visit to his royal colleague and competitor, Louis IX of France. During that visit, Henry made three pardons 'for the safety of the soul of Louis, first born son of the king of France', who had recently died at the age of six.[81] One was for a homicide that the patent roll explicitly says was committed in self-defense, and thus not felonious.[82] Henry seems to have clung to the theory that the pardon was an act of grace and mercy — even though a pardon in this case should have been nearly automatic — and enough of an act of grace and mercy to give some spiritual benefit to the giver. It is therefore possible that almsgiving lies just beneath the surface of the many pardons that do not explicitly tell us that they are for the salvation of the king's soul. By giving pardons to people the royal justices had deemed worthy of pardon, the King was exercising his grace to earn himself time out of purgatory.[83]

Conclusion: Overlapping Discourses of Pardons

When reading the sources, it is easy to miss the fact that pardons were considered to be a form of alms in the thirteenth century. We approach these sources with a modern mindset that has been heavily influenced by the Romano-canonical discourse of law, which emphasizes the merit of the party pardoned. We are predisposed to see pardons as acts meant

---

80 Hurnard, *King's Pardon for Homicide*, p. 223.

81 *CPR 1258-1266*, pp. 114-117 (TNA, C66/75, mm. 3 and 4).

82 *CPR 1258-1266*, p. 117 (TNA, C66/75, m. 4).

83 The logic of almsgiving makes better sense of many of these pardons than our current theories. Pardons that required the killer to go on pilgrimage or enter a monastery may have had to do with the killer's merit, forcing him to make his peace with God and expiate the sin before he received a pardon, or they may have had to do with the victim's soul, as the killer's spiritual acts could be dedicated to his victim. Hurnard, *King's Pardon for Homicide*, p. 36. A possibility that has never been considered is that the pilgrimage might have been meant to benefit the king, who had given up his own right to vengeance for breach of his peace when he pardoned the killer.

to further justice and most of the pardons on the rolls look like they were issued out of a sense of justice. The legal discourse of pardons favored by the schools-trained justices who wrote *Bracton* and the alms-based discourse of pardons employed by kings often overlapped. A pauper's amercement pardon could be characterized as an act of justice, in line with *Magna Carta*'s pronouncement that a man should not be amerced to the point that it would destroy his livelihood. It could also be characterized as an act of alms, a gift to a poor person that, if it cost the king treasure in this world, would build up treasure for him in the next.

The few cases where the record explicitly records that the pardon was made for someone's soul or where the pardon would not make sense according to a logic of justice show us that, at least in some cases, the king and his officials saw pardons as a form of alms. But some of the justices resented pardons that did not operate according to a legal logic. Justices like Martin of Pattishall, William of Raleigh, and Henry of Bratton presented themselves as the masters of an independent legal discourse. They alone had the knowledge of Roman and canon law required to expound and apply the law of the realm. Pardons that did not align with Romano-canonical ideas of guilt and innocence, given to people who 'ought never to be admitted to grace', were arbitrary in their eyes and were thus aberrations, acts of will that detracted from the law.[84] The justices who wrote *Bracton* were trying to differentiate themselves from the rest of the royal administration and to argue that the work they were doing was the impersonal work of the law, not the very personal work of distributing the king's alms. It is worth noting that, at the same time they were denigrating the use of the pardon to do anything but justice in the Romano-canonical sense, they were participating in the royal almsgiving system. The justices who were most involved in trying to create an image of the justice as a servant of the law were also noting on their rolls that amercements were forgiven for the king's soul. The notation for the abbey of Meaux appears on the roll of the justice Martin of Pattishall, and probably was written by his clerk William of Raleigh, the most likely candidate for the primary author of *Bracton*.[85] If a clerk like Raleigh objected to this display of royal piety, he could easily have simply noted 'it is pardoned' as the clerks so often did.[86] The same justices who resented pardons that violated the norms of the law could see their work as simultaneously the work of law and as the salvation of the king's soul.

---

84 *Bracton*, ii, p. 372.

85 Paul Brand, 'The Age of Bracton', in *The History of English Law: Centenary Essays on 'Pollock and Maitland'*, ed. by John Hudson, Proceedings of the British Academy, 89 (Oxford: OUP, 1996), pp. 65-90 (p. 78).

86 Henry of Bratton, who probably also worked on the *Bracton* treatise during his time as Raleigh's clerk, noted on his roll of 1253 that an amercement was pardoned 'for God and for the king': TNA JUST1/1178, m. 20d.

Thirteenth-century courts were complex institutions that could be understood in different ways by different groups of people. While some of the justices of his courts advocated for a view of the royal courts as temples of the law, spaces where the justices represented the king in his capacity as God's vicegerent on earth, placed here to do justice to his subjects, the king and many of his officials could see the court as an extension not of the king's office, but of his person. It was a place where royal alms were distributed for the benefit of the king's soul and those of his relatives. This did not make the court an irrational place. It was simply a place that operated according to a different kind of logic.