

**To Pardon and To Punish:
Mercy and Authority in Tudor England**

by
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Abstract

This study explores the role of the royal pardon in the construction and experience of authority in Tudor England. Working initially from the historiography of law and order, it ultimately places itself among studies of English political culture. This thesis examines the functions and meanings of mercy in early modern society; it argues that while pardons constituted potent instruments of royal authority, public expectations of mercy also shaped the sovereign's exercise of power.

The Tudors used punishment and pardons as complementary strategies to exact the deference and obedience of their subjects. Historians who have discussed early modern justice without serious reference to mercy have overlooked something of vital significance to contemporaries. This thesis opens by delineating the web of ideas within which pardons operated; drawing from both Classical and Scriptural traditions, writers insisted upon the necessity of clemency as both a right and a duty of legitimate rule. It then explores the punitive context that pardons relied upon for their effect. During the sixteenth century, parliaments rendered an increasing number of behaviours punishable by the law, experimented with new types of penal sanctions, and restricted access to traditional forms of mitigation. In addition, Henry VIII gathered the prerogative of pardon into his hands alone; increasingly, people who hoped to avoid the penalties for their offences had no recourse but to seek mercy from their sovereign. Yet, as the law became more severe and the power of pardon became centralised, mercy assumed even greater importance. To mitigate the appearance of overly harsh justice -- to present themselves as clement and hence legitimate rulers -- the Tudors granted ever more pardons and sought new ways to extend their mercy more broadly. The leading actors in an intensely theatrical political culture, they also crafted dramatic spectacles to advertise their clemency and enhance their authority. Public expectations assured some people of remission, and broadly shared norms of due justice, pity, and humanity underpinned the decisions to pardon particular individuals. Nevertheless, the discretionary use of mercy

most often served the interests of the Crown and elites. With few bureaucratized methods of presenting a suit to the sovereign, petitioners had to work within existing social hierarchies of dominance and deference, pledging at least outwardly a humble submission to their sovereign. Finally, this study turns to the most dramatic performances of pardon: those offered, accepted, or rejected during the armed revolts of the period. Here again, but even more explicitly, the Tudors traded mercy for deference. The negotiations for mercy that permeated each protest and its resolution reveal with greatest clarity the relationship between pardons and punishment in the continuous reconstruction of the hierarchical bonds of obedience that lay at the core of Tudor political culture.

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Abbreviations

APC	<i>Acts of the Privy Council of England</i> , ed. J.R. Dascent, 32 vols. (London, 1800-1907).
BL	British Library
CAR	<i>Calendar of Assize Records: Home Circuit Indictments, Elizabeth I and James I</i> , ed. J.S. Cockburn, 10 vols. London, 1975-82.
CJ	<i>Journal of the House of Commons</i>
CPR	Calendar of the Patent Rolls
CSP	Calendar of State Papers
HEH	Henry E. Huntington Library
HLRO	House of Lords Record Office
HMC	Historical Manuscripts Commission
L&P	<i>Letters and Papers, Foreign and Domestic, of the Reign of Henry VIII</i> , ed. J.S. Brewer, J. Gairdner and R.H. Brodie, 21 vols. and Addenda (London, 1864-1932).
LJ	<i>Journal of the House of Lords</i>
TRP	<i>Tudor Royal Proclamations</i> , eds. P.L. Hughes and J.F. Larkin, 3 vols. (New Haven, 1964-69.)

Note: Throughout this work, modern spelling and punctuation have been used in all quotations, even for those taken from printed sources. When dates are given, the year is assumed to have begun on 1 January. All manuscript references are to the Public Record Office unless otherwise noted and are quoted by the call numbers in use at each repository (see the bibliography for the class designations). For parliamentary acts, the *Statutes of the Realm*, ed. A. Luders *et al*, 11 vols. (London, 1810-28) has been used, but citations are made by regnal year and chapter.

Introduction

The 11th of April, being Wednesday, was Sir Thomas Wyatt beheaded on Tower Hill...When he was up upon the scaffold he desired each man to pray for him and with him, and said these or much-like words in effect: 'Good people, I am come presently to die, being thereunto lawfully and worthily condemned, for I have sorely offended against God and the queen's majesty, and am sorry therefore. I trust God hath forgiven and taken his mercy upon me. I beseech the queen's majesty also of forgiveness...And let every man beware how he taketh any thing in hand against the higher powers. Unless God be prosperable to his purpose, it will never take good effect or success, and thereof you may now learn at me. And I pray God I may be the last example in this place for that or any other like...' [Then] he plucked off his doublet and waistcoat unto his shirt, and kneeled down upon the straw, then laid his head down awhile, and raise on his knees again, then after a few words spoken, and his eyes lift up to heaven, he knit the handkerchief himself about his eyes, and a little holding up his hands, suddenly laid down his head, which the hangman at one stroke took from him. Then was he forthwith quartered upon the scaffold, and the next day his quarters set at divers places, and his head upon a stake upon the gallows beyond Saint James.¹

Sir Thomas Wyatt had unsuccessfully led an armed revolt against his sovereign and paid the penalty. Bloody and bleak, this account of Wyatt's execution confirms the commonplace perception of Tudor justice. Sixteenth-century magistrates had heretics burnt, poisoners boiled, and pirates drowned. Hanging constituted the usual punishment for most other serious offenders. Yet these violent spectacles did not represent the Crown's only efforts to restore and maintain order. Another chronicler recorded that:

Other poor men, being taken in Wyatt's band, and kept a time in diverse churches and prisons without the city, kneeling all, with halters about their necks, before the queen's highness at Whitehall, her Grace mercifully pardoned, to the number of 600. Who, immediately thereupon, with great shouts, casting their halters up into the air, cried, 'God save your Grace! God save your Grace.'²

Wyatt had died for his part in the uprising; those of his followers willing to offer public submission to the queen won their lives. The operation of the law and its

¹ *Chronicle of Queen Jane and of Two Years of Lady Mary*, ed. J.G. Nichols, Camden Society, vol. 48 (London, 1850), pp. 72-74.

² J. Proctor, "The History of Wyat's Rebellion," (1555), in A.F. Pollard, ed., *Tudor Tracts, 1532-1588* (New York, 1964), p. 255.

broader social and political effects remain partially obscured if mercy does not receive its due. Punishment and pardons worked together as strategies of rule.

Pardons permeated Tudor political culture. In 1485, Henry VII began his reign by offering his forgiveness to all those “disloyal subjects” who had fought for Richard III at Bosworth; in 1603, at the end of the Tudor period, James VI of Scotland freed felons from the prisons he passed on the journey to claim his new crown. The four intervening monarchs each celebrated their coronations with lavish displays of mercy. Elizabeth ended all but the first of her parliaments with the gift of a general pardon as a token of her gratitude for the taxes granted her. Mary commemorated Good Fridays with acts of mercy. In 1538, a pardon saved Anne George from execution for burglary; like thousands more convicted of theft, murder, and other offences, she begged for and received the clemency of her sovereign. These pardons, first and foremost, preserved the lives of scores of people. They were also public performances that both articulated and constructed authority. The Tudor monarchs used pardons to exact deference from subjects of all social ranks: nobles and commoners alike sued for mercy. Men and women of the elite also used mercy to enhance their honour and prestige by acting as intercessors for the ruler’s grace. Modelled on traditional perceptions of divine justice and mercy, the royal pardon was one element of a broader effort to conflate divine and monarchical rule and thus to foster habits of deference. In addition to its analysis of the varied cultural functions and meanings of pardons in Tudor England, this study examines broadly shared attitudes towards mercy, punishment, and authority.

Mercy was considered an essential part of sovereignty, both a necessary and legitimate adjunct to justice. While particular pardons on occasion prompted criticism, the power to pardon remained an unquestioned component of the royal prerogative throughout the sixteenth century. A pardon had no intrinsic meaning; its significance depended on its proper presentation. The supplicant had to show humility, repentance, and above all, submission; the grant had to appear a benevolent gift, an act of grace. At least two actors participated in every performance of pardon: the monarch and the guilty

party. Both benefited, although in unequal ways. The monarch asserted royal power and reinforced royal authority; the recipient escaped the penalty for his or her offence. The audience, too, was essential to the drama. People could demand acts of mercy, and their public acclamation of such acts – even if at odds with their private beliefs – remained integral components of the performance. Like executions, pardons communicated messages about royal authority, but public expectations of mercy and justice also shaped the exercise of that authority.

While the role of mercy in the exaction of deference and obedience has received little attention from Tudor historians, studies of law and governance in the seventeenth and eighteenth centuries have paid it greater heed. Douglas Hay studied the royal pardon for felony in his seminal essay, “Property, Authority and the Criminal Law.”³ Together with the other contributions to *Albion’s Fatal Tree*, this article galvanised interest in a “new legal history” that moved from simple explorations of the inefficiencies of past legal systems to seek a broader understanding of their social importance and functions in their own time and place. This Marxist work thus signalled a departure from the Whiggish narrative of humanitarian progress in legal reform. Hay noted that eighteenth century England developed an increasingly bloody criminal code that resulted in many trials and yet, paradoxically, witnessed relatively few executions. The ruling elites, he suggested, were flexible in their use of terror. They displayed a willingness to forgo punishment when necessary to maintain a popular belief in justice. For the people to

³ D. Hay, “Property, Authority and the Criminal Law,” in Hay et al, eds., *Albion’s Fatal Tree: Crime and Society in Eighteenth-Century England* (New York, 1975), pp. 17-64. While many proponents of the “new legal history” have identified *Albion’s Fatal Tree* as a formative influence, many have also moved firmly away from its overtly Marxist tendencies. This has prompted one of the contributors to complain that the work, in fact, marked the “culmination of a historiography that had considered crime within a broader framework of social history.” P. Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century* (London, 1991), p. xix.

What follows is a highly selective account of the relevant historiography, highlighting those works that have been especially helpful in formulating this study’s questions and approaches. For more comprehensive reviews of the field, see J.A. Sharpe, *Crime in Early Modern England, 1550-1750*, 2nd edn., (London, 1998); J. Innes and J. Styles, “The Crime Wave: Recent Writing on Crime and Criminal Justice in Eighteenth-Century England,” in A. Wilson, ed., *Rethinking Social History* (Manchester, 1993), pp. 201-65; C. Herrup, “Crime, Law and Society: A Review Article,” *Comparative Studies in Society and History* 27 (1985): 159-70.

obey a law that entrenched elite power, they had to see it as fair; thus, those in power pardoned some to strengthen a system founded upon unequal property relations. Inseparable from terror, mercy spared only those that the elites chose to spare. The use of discretion, exemplified by the judiciary's recommendations for mercy, served to strengthen the bonds of obedience and deference. Pardons also constituted part of the "currency of patronage" and "tissue of paternalism." Intercession consolidated the powers of the ruling elite. Discretion, Hay argued, played an important role in the "ruling class conspiracy" to legitimise a structure of authority premised on the protection of property.

John Langbein promptly attacked Hay's thesis and its Marxist approach. He refused to see thieves as class warriors -- a term that Hay had avoided -- and suggested that the enforcement of the criminal law was relatively unimportant to social relations. Langbein maintained, somewhat naively, that nothing more than compassion motivated the judges who recommended people for pardon. Langbein did raise the important point that the accusers who brought offenders to court, and many of the jurors who tried them, came from the lower to middling social orders.⁴ E.P. Thompson had also argued that labourers participated in the law, using it for their own purposes and to resist exploitative social practises, but for Langbein, the participation of the lower orders meant quite clearly that Hay had erred.⁵ Peter King pursued this observation and the motivations for granting mercy at greater length in his response to Hay's essay.⁶ King believed that the law was important to social interactions and studied the processes of prosecution, sentencing, and pardoning to answer three questions: Who used the eighteenth-century criminal law? Who exercised discretionary powers? On what principles were decisions

⁴ Langbein, "Albion's Fatal Flaws," *Past and Present* 98 (1983): 96- 120. See also P. Linebaugh's "(Marxist) Social History and (Conservative) Legal History: A Reply to Professor Langbein," *New York University Law Review* 60 (1985): 212-43.

⁵ For Thompson, see "The Crime of Anonymity" in *Albion's Fatal Tree*, pp. 255-308 and especially *Whigs and Hunters* (London, 1975).

⁶ P. King, "Decision-Makers and Decision-Making in the English Criminal Law, 1750-1800," *Historical Journal* 27 (1984): 25-58.

made? He found that people from the middling ranks regularly made important choices about the use and relevance of the law; people of poorer ranks were also involved, although less frequently. Widely shared ideas of justice, King concluded, shaped decisions about sentences and pardons. Requests written by aristocratic figures achieved only marginally more success than those written by lower status neighbours and friends of the prisoners. A systematic study of issues mentioned in judges' reports and in petitions for pardon showed that the individual's youth, good character, and potential for reform provided the most common justifications for clemency. King concluded that the law was a "multi-use right" and its operation depended heavily on the decisions made by labouring and middling men.⁷ This need not imply that all had equal access to the courts, or that discretionary uses of the law failed to serve the ruling elites, but King did argue that seeing the law largely as a tool of economic domination obscured the system's broader social utility and meaning.

The product of many years of research, John Beattie's Crime and the Courts in England, 1660-1800 explored the use of discretion at all levels of the legal system: prosecutorial decisions, jury verdicts, judicial sentences, and royal pardons. Beattie combined a detailed study of crime and criminality with an analysis of administration and punishment, noting that all became deeply intertwined in practise. While Beattie downplayed the overtly Marxist interpretation of discretion as an instrument of class oppression, he agreed with Hay that the pardon had both political and judicial aspects; it enhanced the terror of the law while legitimising its use by emphasising the humanity of the king. Executions were meant as examples; discretion, used by many participants, ensured the selection of the most appropriate examples, and kept executions at levels broadly acceptable to the public.⁸ Implicated in this discretionary use of hangings was a

⁷ King borrowed this label from J. Brewer and J. Styles, eds., An Ungovernable People: the English and their law in the seventeenth and Eighteenth Centuries (London, 1980), p. 20.

⁸ J.M. Beattie, Crime and the Courts in England 1660-1800 (Princeton, 1986). His thoughts on eighteenth century pardons are developed in his articles, "The Royal Pardon and Criminal Procedure in Early Modern England," Historical Papers 1987 (Journal of the Canadian Historical Association): 9-22 and "The Cabinet and the Management of Death at Tyburn after the Revolution of 1688-1689," in L. Schwoerer, ed., The Revolution of 1688-1689: Changing Perspectives (Cambridge, 1992), pp. 218-33. See also his "London

growth of punishments secondary to death. Imprisonment and convict transportation to the colonies allowed the courts and king to deal with those felons not thought to merit death without simply releasing them into the community. For Beattie, this penal experimentation represented the most significant development in the period under study. His work corrected the older chronology of penal innovation: the transition from capital punishment to imprisonment began much earlier than the late eighteenth and early nineteenth-century “age of reform.”⁹ Enlightenment theorists and the Industrial Revolution no longer worked as the primary engines of change. Instead, altered sensibilities and changed definitions of justice and criminality affected ideas of appropriate punishments. Throughout the period, the enforcement of the criminal law legitimised and protected social and political arrangements while serving the interests and needs of many. Punishment and pardons maintained a particular form of social order, while also opening spaces for agency and participation.

The “new legal history,” with its sensitivity to historically contingent definitions of the due ends of justice and its focus on the social importance of the law, has shaped studies of earlier centuries, as well. Some of this work has examined the role of discretion, but has focused on juries and decision-makers in local communities rather than the pardon. For example, T.A. Green has studied jury nullification of the law between 1200-1800. Jurors regularly acquitted defendants whom they believed had committed illegal acts because they saw the punishment as too severe for the crime or the law proscribing the act as unfounded. Green explored the practise both for its effects on substantive law and for the window it opened on popular conceptions of legality and guilt.¹⁰ Cynthia Herrup’s study of seventeenth-century assize and quarter sessions

Crime and the Making of the ‘Bloody Code,’ 1689 - 1718,” in L. Davison et al, eds., *Stilling the Grumbling Hive: The Response to Social and Economic Problems in England, 1689-1750* (Stroud, 1992), pp. 49-76.

⁹ Beattie’s work and P. Spierenburg, *Spectacle of Suffering* (Cambridge, 1984), both contradicted the historical periodisation on which Foucault relied in *Discipline and Punishment: The Birth of the Prison*, trans. A.M. Sheridan (Harmondsworth, 1979).

¹⁰ T.A. Green, *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury, 1200-1800* (Chicago, 1985); see also Green and J.S. Cockburn, eds., *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800* (Princeton, 1988).

records from Sussex concluded that the enforcement of the criminal law reflected the perceptions of morality shared by property holders of all social ranks.¹¹ The jurors in her study ranged in social status from the lesser gentry to the lower ranks of the yeomanry. Like all other studies which have quantified evidence from early modern court records, The Common Peace found that relatively few indictments resulted in convictions. Juries rarely punished weak offenders with hanging and reserved this ultimate price for those who had deliberately adopted misbehaviour as a way of life. This did not represent a failure of the legal system. Rather, it reflected the values inherent in a broadly participatory system with widely diffused decision-making authority.¹² Flexible responses to disorder ensured that a common definition of peace and order prevailed.

Herrup characterised her study of seventeenth-century crime as a “social history of the criminal process.” Like Beattie’s work, hers blended the approaches of traditional legal historians interested in the procedure and theory of the courts with those of historians concerned with social structures and interactions. Sixteenth-century England has seen fewer examples of the “new legal history”: the records of gaol delivery and assize, upon which these studies have relied, have not survived for much of the Tudor period. J.S. Cockburn has produced an impressive calendar and analysis of the Home Circuit assize indictments that are extant from 1559 to 1625.¹³ J.G. Bellamy has noted the wide disparity between felony conviction rates in the later middle ages and later Elizabethan years, leading him to posit and plot a “verdict revolution” that took place in the sixteenth century. Late medieval court records showed that roughly one third of all people tried were convicted; when records resumed in the later Elizabethan years, they

¹¹ C. Herrup, The Common Peace: Participation and the Criminal Law in Seventeenth-Century England (Cambridge, 1987).

¹² On the participatory nature of the legal system and its implications, see J.A. Sharpe, “The People and the Law,” in Barry Reay, ed. Popular Culture in Seventeenth Century England (London, 1985), pp. 244-70.

¹³ J.S. Cockburn, Calendar of Assize Records: Home Circuit Indictments, Elizabeth I and James I: An Introduction (London, 1983).

revealed a conviction rate closer to two thirds.¹⁴ However, the timing and impetus of this shift remain obscured by the lack of court records.

Traditional legal historians have partially illuminated this “dark period” of the development of English law by studying the case books, court manuals, and statutes to document a host of procedural alterations. For example, J.H. Baker has relied upon case reports and readings at the Inns of Court to chart the intellectual history of the law and developments in jurisprudence.¹⁵ Langbein has examined the statutes that documented and encouraged the growth of crown officers’ prosecutorial functions. The Crown had traditionally relied upon local initiatives; having no police force, it had few means of bringing charges. Laws passed under Mary formalised a trend that supplemented victims’ efforts to bring offenders to the attention of the courts by allowing justices of the peace to gather evidence and initiate prosecutions.¹⁶ A.S. Bevan has used the patent rolls and records of King’s Bench to show that commissions for the trial of treasons, previously given to the assize judges only in exceptional circumstances, became a regular part of their responsibilities and powers from the 1530s onwards.¹⁷ Bellamy has studied sixteenth-century legislation to illustrate the growth of misdemeanours, the restriction of benefit of clergy, and general centralisation of efforts to deal with disorder.¹⁸ These historians have charted a growing concentration of justice in the hands of the Tudor monarchs.

¹⁴ J.G. Bellamy, *The Criminal Trial in Later Medieval England: Felony Before the Courts from Edward I to the Sixteenth-century* (Toronto, 1998), esp. pp. 93-134.

¹⁵ See J.H. Baker, *The Legal Profession and the Common Law: Historical Essays* (London, 1986); the chapters on the “Criminal Courts and Procedure at Common Law, 1550-1800,” and “The Refinement of English Criminal Jurisprudence, 1500-1848,” provide essential background for any study of the law in this period. See also his *Introduction to English Legal History*, 3rd edn., (London, 1990) and his essay in *The Reports of Sir John Spelman*, vol. II (London, Selden Society, 1978).

¹⁶ J. Langbein, *Prosecuting Crime in the Renaissance* (Cambridge, Mass., 1974).

¹⁷ A.S. Bevan, “The Henrician Assizes and the Enforcement of the Reformation,” in R. Fales and D. Sullivan, eds., *The Political Context of Law* (London, 1987), pp. 61-76.

¹⁸ J.G. Bellamy, *Criminal Law and Society in Late Medieval and Tudor England* (Gloucester, 1984).

While these works have not ignored pardons, they have discussed neither their social impact and meaning nor the procedural changes to the practise of granting pardons over the course of the sixteenth century.¹⁹ During the period, general pardons issued in conjunction with parliament became regular features of governance. In earlier centuries, the use of pardons for killings done in self-defence or by accident both shaped and slowed the growth of substantive laws governing homicide.²⁰ The refinement of laws differentiating misadventure, manslaughter, and murder continued into the Tudor period; the role of pardons in this process has yet to receive notice. Three other significant changes which have not yet attracted the attention of historians also took place in this era. In the middle ages, various lords enjoyed the prerogative of pardon; the first two Tudors arrogated this power to the monarch alone. This coincided with the decline of abjuration and sanctuary-seeking and with the restriction of benefit of clergy, traditional means of mitigating the severity of the law; thereafter, mercy required submission to the royal courts and pardon came only at the discretion of the Crown. Although judges had always recommended some offenders for royal pardon, this became a regular practise directed from the centre starting in Mary's reign. By the end of the period, assize judges regularly submitted lists of offenders they thought worthy of mercy as the Crown sought to manage the numbers of executions. Throughout the period, the Tudors and their parliaments experimented with punishments other than death to deal with offenders, primarily vagrants and religious nonconformists. In the later years of Elizabeth's reign, these secondary punishments began to be applied to felons through the use of conditional pardons.

These substantive changes and their effects are analysed in the pages that follow, as are broader issues of the pardon's function and meaning in sixteenth-century English society. This study draws upon a wide range of sources, including the charters of pardon

¹⁹ Two works do offer good, brief accounts of pardons in the sixteenth-century: J.S. Cockburn, *Calendar of Assize Records...Introduction*, pp. 126-29, and J.G. Bellamy, *The Criminal Trial*, pp. 137-48.

²⁰ See T.A. Green, "The Jury and the English Law of Homicide, 1200-1600," *Michigan Law Review* 74 (1976): 414-99 and N. Hurnard, *The King's Pardon for Homicide before A.D. 1307* (Oxford, 1969).

recorded on the patent rolls and the proclamations and statutes that offered clemency. These texts are placed in their cultural contexts with readings of legal treatises, law reports, state papers, and privy council registers. The sixteenth century produced no central archive of detailed petitions for pardon such as those used to great effect by eighteenth-century historians and by Natalie Zemon Davis in her work on French pardon tales.²¹ Those petitions that have been found, scattered throughout correspondence and state paper collections, provide unique evidence on the politics of pardons. Chronicles, crime pamphlets, and other forms of literature offer further insight. Patricia McCune has demonstrated the importance of using literary sources in her study of the ideology of mercy between 1200 and 1600. She examined various literary discussions of mercy to show that “mitigation and selective enforcement were not flaws in the legal system but rather intentional practices rooted in generally shared beliefs.”²² Refusing simply to castigate the use of pardons for its “complete disregard of the need to maintain the deterrent force of prospective punishment,” McCune clarified the need to understand the ways in which contemporaries described, justified, and criticised the pardon.²³ After surveying the existing secondary literature on pardons, she concluded that literary portrayals of mercy reflected and impinged upon the use of mercy in the

²¹ King, Beattie and Hay, all cited above, have used these petitions, as has V.A.C. Gatrell in The Hanging Tree: Execution and the English People, 1770-1868 (Oxford, 1994). They are found mostly in SP 36, 37 and 44; after 1782 in HO 47. N.Z. Davis, Fiction in the Archives: Pardon Tales and their Tellers in Sixteenth-Century France (Stanford, 1987).

²² P. McCune, “The Ideology of Mercy in English Literature and Law, 1200-1600,” University of Michigan Ph.D. thesis, 1989, p. 42. See also her review of E.B. Powell’s Kingship, Law and Society (Oxford, 1989), “Justice, Mercy and Late Medieval Governance,” Michigan Law Review 89 (1991): 1661-78. For other useful works by literary scholars, see J.A. Reynolds, Repentance and Retribution in Early English Drama (Salzburg, 1982) and J.M. Spencer, “Staging Pardon Scenes: Variations of Tragicomedy,” Renaissance Drama 21 (1990): 55-89.

²³ The quote comes from N. Hurnard’s The King’s Pardon for Homicide (Oxford, 1969), which treated as legitimate only those pardons given to people erroneously convicted or who committed justifiable homicide; the rest she saw as perversions of justice because they mitigated the deterrent effects of law and introduced uncertainty. Hurnard provided a valuable discussion of medieval pardon procedures, but by imposing twentieth century views of justice and punishment, obscured the role of pardons in medieval law and society.

courts.²⁴ Experience and representation are intertwined; literature, then, provides further clues about the social meaning of the pardon.

The study of these various sources has been influenced by David Garland's sociology of punishment. Pardons did not simply indicate a lack of punishment. Some, conditional on service, exile, or fines, resulted in modified penalties. By the end of the century, the Crown consciously used conditional pardons to introduce flexibility in sentencing. Although presented as merciful mitigations of harsher measures, these pardons allowed the Crown to regulate a broader range of offences and to encourage prosecutions. Even pardons that did free their recipients from penal sanctions cannot be understood in isolation from punishment; nor can early modern period punishments be properly studied if pardons are ignored. Mercy worked in conjunction with the terror of executions, as Sir Francis Bacon noted in his comments on the aftermath of the 1497 Warbeck rising. The king pardoned all, he wrote, "except some few desperate persons, which he reserved to be executed, the better to set off his mercy towards the rest."²⁵ Garland's study of punishment offers useful questions to ask of the sources and provides theories that might help to explain them.²⁶ Garland argued that while penal systems provide apparatuses of power and control, they also exist as social artefacts that incorporate broader cultural categories and constructs. Ideas about religion, gender, class, and justice, for example, shape the responses to disorder deemed appropriate in any society. Scholars must look at the sensibilities – the conceptions and values, ideas and beliefs – that provide the framework within which punishment operates. Garland argued for analytic pluralism: historians should look at the variety of functions served by punishment, but also at the meanings conveyed. They should seek the sources of

²⁴ McCune, "Ideology of Mercy." See also J.A. Reynolds, Repentance and Retribution in Early English Drama (Salzburg, 1982).

²⁵ F. Bacon, The History of the Reign of King Henry the Seventh, ed. Jerry Weinberger (Ithaca, 1996), p. 163.

²⁶ D. Garland, Punishment and Modern Society: A Study of Social Theory (Oxford, 1990). On the necessity of considering pardons and punishment in conjunction, see Carolyn Strange's introduction to Strange, ed., Qualities of Mercy: Justice, Punishment and Discretion (Vancouver, 1996).

authority and the bases of its social support, and ask what punishments communicated to various audiences. They should examine how values and beliefs about disorder, punishment, and authority affected the empirical realities of lived experience.

A study of pardons informed by Garland's cultural approach to punishment promises to bring the subject into the mainstream of Tudor historiography. In 1989, Patrick Collinson called for a social history of political processes. John Guy elaborated on Collinson's manifesto with his own agenda for future studies: the "new political history," he said, will focus on the interrelationships of people, institutions, and ideas and pay heed to the cultural dimensions of power. This study of political culture will probe the interpretive frameworks and codes of conduct within which political action, broadly defined, took place. It will elucidate the negotiations and exchanges that marked the use of power.²⁷ By examining the slowly changing conventions of mercy that shaped particular responses to disorder, this study of the pardon's functions and meanings both addresses those intrigued by the relationship of mercy, law, and authority more generally, and contributes to the broader picture of Tudor political culture. While the validity of Hay's specific claims and arguments remains a matter for historians of the eighteenth century, his central insight holds true for the years between 1485 and 1603: the discretionary use of punishment and mercy worked together and most often served the interests of those in power. The enforcement of the law, and its selective suspension through pardons, mediated social relations. A component of the cultural structure of

²⁷ P. Collinson, "De Republica Anglorum: Or, History With the Politics Put Back," *Elizabethan Essays* (London 1994), pp. 1-30. For Guy, see the introduction to Guy, ed. *The Tudor Monarchy* (London, 1997). See also Dale Hoak, ed. *Tudor Political Culture* (Cambridge, 1995).

For recent works guided by this approach, see Robert Tittler, *Reformation and the Towns in England: Politics and Political Culture, c. 1540-1640* (Oxford, 1998) and the essays in *The Experience of Authority in Early Modern England*, eds. P. Griffiths, A. Fox and S. Hindle (London, 1996).

This attention to political culture is also manifested in the "new constitutional history" advocated by scholars of fifteenth century England. Questions of law and order have long been central to studies of medieval governance and social relations; they remain key elements of the new historical focus. See C. Carpenter, "Political and Constitutional History: Before and After MacFarlane," in R.H. Britnell and A.J. Pollard, eds., *The MacFarlane Legacy: Studies in Late Medieval Politics and Society* (Stroud, 1995), pp. 175-206; Powell, "Introduction: Towards a New Constitutional History of Late Medieval England," in his *Law, Kingship and Society: Criminal Justice in the Reign of Henry V*, pp. 1-22.

politics, the pardon facilitated negotiations between Crown and subjects and thus helped to legitimise the growing power of the Tudors as authority.

The first chapter samples a range of judicial and literary texts to delineate the web of ideas within which pardons operated. Contemporaries discussed mercy as both a prerogative and duty of their sovereign. Public expectations of mercy allowed the Tudors to present pragmatic acts as princely benevolence, but the same expectations also imposed certain limits on the Crown. The following chapter turns to the statutes and other initiatives that expanded the scope and severity of the law. Traditional sources of mitigation disappeared or came under the supervision of the Crown while parliament created an increasingly broad and bloody set of laws. Yet, mercy (now given at the discretion of the Crown alone) still had to temper justice. The Tudors needed to present themselves as clement rulers, to keep executions at broadly acceptable levels, and to secure the co-operation of jurors and local officials. Chapter Three discusses the increasing frequency of both general and special pardons that accompanied the growth in the criminal law and its penalties. The necessity of conforming to public expectations of justice and mercy ensured the continued granting of pardons, but on what grounds did the Tudors choose the individual recipients of their grace? Chapter Four looks at the characteristics of offences and offenders that shaped royal decisions: a willingness to affect repentance and submission constituted the fundamental characteristic of those receiving mercy. While shared norms of due pity, justice, and culpability guided these evaluations, the practicalities of presenting a plea for mercy overrode most other concerns in determining who received pardon and who did not. With few bureaucratised methods of bringing cases to the attention of the Crown, petitioners frequently had to rely in informal networks of influence, working within the established hierarchies of dominance and deference. Chapter Five then turns to the public performances through which the Tudors sought to impress their God-like mercy upon their subjects. Carefully contrived public acts of intercession and pardons proclaimed at the scaffold coexisted with public punishments in the sixteenth-century political theatre. The last and longest

chapter examines the most dramatic performances of pardon: those offered during the protests and revolts of the period. Contemporaries believed such uprisings grew from lesser crimes; just as pardons might reconcile and reform a felon, so might mercy restore the rebel to his or her proper place in the polity. Both rulers and rebels used conventions of mercy to their advantage; the pardon was implicated in the entirety of the expression and suppression of dissent. The negotiations for mercy that shaped each rising reveal with greatest clarity the relationship between pardons and punishment in the continual reconstruction of the bonds of obedience that lay at the core of Tudor political culture.

Chapter One
Themes and Contexts

Mercy and truth preserve the King, and by clemency is his Throne strengthened.
Proverbs 20:28

Both classical and Christian sources lauded mercy as a virtue to be manifested in numerous ways by each member of society. They described mercy as especially necessary for the prince; like justice, mercy constituted both a right and duty of legitimate rule. Sovereigns had to display both in their public acts. God both commanded mercy from those He appointed to govern and provided an exemplar for its use. As Shakespeare's Portia noted of mercy,

'Tis mightiest in the mightiest, it becomes
The throned monarch better than his crown
His sceptre shows the force of temporal power,
The attitude to awe and majesty,
Wherein doth sit the dread and fear of kings;
But mercy is above this sceptered sway,
It is enthroned in the hearts of kings
It is an attribute to God himself;
And earthly power doth then show likest God's
When mercy seasons justice.¹

Portia emphasised that a strong ruler, like God, relied upon both dread and mercy, an idea commonly expressed in the sixteenth century. Displays of mercy had their place among the other visible trappings of power. The most potent display of the mercy attendant upon authority was the pardon; in the words of another Shakespearean character, "no word like 'pardon' for king's mouths so meet."² But, as Escalus opined in Measure for Measure, "Mercy is not itself, that oft looks so; Pardon is still the nurse of second woe."³ Pardons given too often or to the wrong people might encourage further wrongdoing rather than grateful, deferential obedience. Mercy was neither an absolute nor an unambiguous virtue.

¹ "Merchant of Venice," Act IV, i, ll. 188-197, Riverside Shakespeare, ed. G.B. Evans (Boston, 1974).

² "Richard II," Act V, iii, l. 118, Riverside Shakespeare.

³ "Measure for Measure," Act II, ii, ll. 283-84, Riverside Shakespeare.

Mercy played a legitimate role in sixteenth-century political culture; historians who have written about early modern justice without serious reference to mercy have overlooked something of great importance to contemporaries. Exploring the web of ideas within which pardons operated, this chapter introduces elements of the social meanings of mercy that subsequent sections will develop. It highlights the fissures within conceptions of clemency, punishment, and political sovereignty that permitted criticism of particular uses of the pardon. Yet, throughout the various debates on the applications of mercy, people insisted on its continued role in their society. Pardons existed in tandem with punishment as two complementary strategies in the enforcement of order. Yet, despite the usefulness of pardons to those in power, expectations of mercy sometimes restrained the governors of Tudor England. Rulers adduced divine grant as the source of their power and insisted that paternalist protection of their subjects guaranteed them the right to exact obedience and deference; these claims to legitimacy necessitated certain public performances. Classical and Christian definitions of a just and legitimate sovereign allowed people in early modern England to demand mercy. As a prerogative of the sovereign, mercy constituted a potent tool of authority; as a negotiated duty, it could shape the exercise of that authority. This chapter first gives the historical and legal context of sixteenth-century pardons, describing the laws and judicial opinions that defined mercy and its uses; it then samples a wider range of cultural texts to delineate the framework of ideas within which pardons operated.

Pardons restored their recipients to the king or queen's peace and freed them from the legal punishment for their offences. According to the standard formula in charters of pardon, by his or her "mere motion and special grace," the sovereign "pardoned, remitted and released" offenders from the penalties they had incurred. By the sixteenth century, most pardons remained conditional upon the recipient's future good behaviour; subsequent violations of the peace, in theory, nullified the pardon. Some pardons included more explicit conditions, requiring the performance of a specified obligation before taking full effect. The sovereign enjoyed the power to pardon

any offence to which he or she was a party, before or after conviction.⁴ Yet a royal pardon did not free an offender from the penalties due to other parties or prejudice another person's legal interest. For instance, a pardon did not absolve the loser in a civil suit. Nor did pardons apply to public nuisances such as failing to repair a bridge or maintain a road. Informers frequently initiated suits which resulted in fines split between themselves and the Crown; a pardon freed the offender only from that part of the fine due to the Crown. Similarly, a royal pardon did not save someone found guilty in a criminal case launched by a private appeal.⁵ By the end of the thirteenth century, people who killed by accident or in self-defence obtained pardons *de cursu* ("of course") from the royal Chancery. Once a jury found the defendant guilty of an excusable homicide, the judge sent the trial record to the Chancellor, who prepared the pardon.⁶ Eventually, outlaws who submitted received pardons *de cursu* as well. For pardon of all other offences, the offenders had to petition the Crown; their pardons remained *de gratia* -- discretionary acts of grace.

A pardon freed the offender from punishment, but in this period did not yet effect a more fundamental erasure of criminal guilt.⁷ It failed to restore the property an offender forfeited to the Crown upon conviction unless it included a clause that specifically stipulated such a gift. Conviction rendered a person "dead to the law" and

⁴ For the early history of pardons, see N. Hurnard, *The King's Pardon for Homicide Before A.D. 1307* (Oxford, 1969). T.A. Green, in "The Jury and the English Law of Homicide, 1200-1600," *Michigan Law Review* 74 (1976): 427, noted that in the middle ages pardons were generally given before trial and conviction. In contrast, many of the pardons given by the Tudors specifically noted that the recipient had already been convicted. Although the imprecision of some pardons makes it nearly impossible to quantify, it is my impression that the preponderance of the individual pardons in the sixteenth century were granted after judgement. It is unclear when and why this changed, but it seems likely that it responded to a desire to have people answer for their crimes in court and forfeit their goods and lands upon conviction.

⁵ On appeals, see J.G. Bellamy, *The Criminal Trial in Later Medieval England* (Toronto, 1998), pp. 35-49. By the late middle ages, indictments had become much more common than appeals as a method of prosecution, but victims of felonies retained the right to bring private actions. On pardons and appeals, see T. Smith, *De Republica Anglorum*, ed. M. Dewar (Cambridge, 1982), pp. 86, 125; on pardons more generally, E. Coke, *Third Part of the Institutes of the Laws of England* (London, 1670), pp. 233-40.

⁶ Green, "English Law of Homicide," p. 426. See A. Fitzherbert, *La Graunde Abridgement* (London, 1516), Corone, pl. 361 (1329).

⁷ On this issue, see C.H.W. Gane, "The Effects of a Pardon in Scots Law," *Juridical Review*, n.s. 25 (1980): 18-46. Gane noted that from at least 1890, an English pardon fully rehabilitated its recipient and removed the conviction for all purposes.

“corrupted” his or her blood; a pardon restored the recipient’s legal identity and enabled him or her to start afresh, but nothing more. For example, a wife convicted of a felony and then pardoned lost her dower rights in lands held by her husband. The pardon restored her civil rights in that she obtained dower rights in any lands her spouse acquired after the date of the grant, but it did not expunge the conviction or restore the claims she had thereby forfeited.⁸ Similarly, a man attainted for an offence and then pardoned lost his rights to any land held before the pardon; his wife may have retained her dower, as these rights preceded the conviction, but children born before the pardon were left with nothing to inherit. A son convicted in his father’s lifetime and then pardoned lost all rights of inheritance; one authority held, furthermore, that on the father’s death the land would not pass to any younger sons either, for the attainder of the eldest had corrupted the familial blood and extinguished the rights of the entire generation.⁹ In addition to posing significant limitations in a society so dependent on landed property and its transfer, these judicial opinions demonstrated that the pardon did not erase all the civil consequences of an offence and conviction.

Similarly, in the sixteenth century a pardon did not cleanse its recipient of the nebulous legal “infamy” that resulted from conviction. Judges in the 1570s declared that a man found guilty of a serious offence and then pardoned could never again be sworn as a juror or officer of the court, “for the pardon goes only to the contempt, and the infamy remains forever.”¹⁰ In a slander case from the same decade, judges decided that calling a man a thief or criminal after he had received pardon did not constitute libel. One justice claimed that “the punishment may be taken away, but the guilt remains forever.”¹¹

⁸ See Readings and Moots at the Inns of Court, ed. S.E. Thorne, Selden Society, vol. 71 (London, 1954), p. 41.

⁹ Coke, First Part of the Institutes, fo.8; Christopher St. German, Doctor and Student, ed. T.F.T. Plucknett and J.L. Barton, Selden Society, vol. 91 (London, 1974), p. 61. See also p. 71, which cited the aphorism that “the father to the bough, the son to the plough,” noting that according to the Kentish custom of gavelkind, the son of a convicted father still inherited the lands.

¹⁰ Reports from the Lost Notebooks of Sir James Dyer, ed. J.H. Baker, 2 vols., Selden Society, vols. 109-10 (London, 1994), II, p. 366, pl. 451 (III).

¹¹ Ibid., II, p. 455, pl. 196. This opinion would shortly be reversed. In a 1615 case, judges decided that calling someone a thief after a pardon was actionable. See Sir Matthew Hale’s The Prerogative of the King, ed. D.E.C. Yale, Selden Society, vol. 92 (London, 1976), p. 260.

A pardon, then, saved an offender from death or other punishments, but wiped out neither the full legal consequences nor the more amorphous public assumption of guilt that derived from a conviction. How did pardons received before a conviction fit into this picture? Did accepting a royal offer of clemency imply guilt? In a legal sense, no: those who received pardons before conviction retained their goods and lands, and avoided the other legal disabilities brought by a guilty verdict.¹² If the principal offender received a pardon before the conviction of his or her accomplices, they went free just as if the principal had been formally acquitted.¹³ No formal legal confession was required to obtain a pardon. However, offenders usually found it necessary to offer some sort of informal admission of wrongdoing. Consequently, in a general sense, some people thought that accepting a pardon did imply guilt. When examined by the Privy Council late in 1540, for example, Christopher Heron defended his innocence so vehemently that he refused a proffered pardon. Taking the remission presented the fastest way out of his difficulties, but he refused to accept what he saw as the attendant stigma.¹⁴ On the other hand, pardons offered the only means of releasing the falsely condemned; with no appeals courts or other means of reversing an erroneous conviction, pardons freed the innocent as well as the guilty from punishment. A handful of pardons throughout the period noted the certain or at least probable innocence of the recipient. In these cases, the pardon may have erased all legal effects of the conviction; one assumes that Tudor magistrates thought it voided the conviction sufficiently to allow another to be charged with the same offence.

The ability to pardon constituted part of the royal prerogative, the set of rights enjoyed by English rulers that acknowledged their sovereignty and enabled them to govern. In the sixteenth century, the royal prerogative combined the privileges of the

¹² 5 Coke's Reports 109a, 110b. (77 *English Reports* 224, 227.) See also SP 46/56, no. 141. Abjuring the realm, in contrast, did have the same effects as a conviction: the confession became a formal record of guilt.

¹³ *The Reports of Sir John Spelman*, ed. J.H. Baker, 2 vols., Selden Society, vols. 93-94 (London, 1977), I, p. 44, pl. 2; p. 67, pl. 62.

¹⁴ *Proceedings and Ordinances of the Privy Council*, ed. H. Nicolas (London, 1837), VII, p. 11.

pre-eminent feudal lord with those thought necessary for the executive authority of an emerging, centralised state.¹⁵ Defined by law, but in some senses outside and above the common law, the prerogative was inseparable from the public persona of the king and, indeed, constituted the essential powers of kingship. The law regulated some components of the prerogative, such as the right to purchase supplies for the royal household at prices below market rates. Other “absolute” elements the king exercised solely at his discretion, such as the ability to summon and dissolve parliament, to mint the coinage, and to make war or peace. Some aspects of these royal powers became points of contention between English sovereigns and their parliaments. In the middle ages, parliaments made some efforts to limit and regulate the royal prerogative of pardon. Members of the fourteenth century parliaments periodically voiced concerns that a particular king had granted too many pardons and thereby gave potential offenders hope of impunity. They maintained that the king too frequently pardoned people unlikely to amend their ways and thus heightened disorder in the realm. They also feared that hardened offenders, once pardoned, might attack those who had prosecuted them in the first place.¹⁶ Edward III granted many felons pardon in return for military service. When these men returned from the wars, they all too frequently returned to their violent habits. Members of the parliaments of 1328, 1330, and 1336 sought to limit Edward III’s ability to pardon by asking that he remit no offences save for excusable homicides.¹⁷ Although he assented to these statutes, the king promptly ignored them and continued to grant pardon for all types of felony.

Thereafter, members of the medieval parliaments did not try to impose any restriction on the king’s power to pardon. They reiterated their fears that too frequent pardons encouraged disorder, but recognising the usefulness of royal mercy, often linked

¹⁵ W.S. Holdworth, “The Prerogative in the Sixteenth Century,” *Columbia Law Review* 21 (1921): 554-71. For the traditional view of the prerogative, see W. Staunforde, *An Exposition of the King’s Prerogative* (London, 1568), but for the more developed picture, see Smith, *De Republica Anglorum*, p. 85ff.

¹⁶ See the preambles to the statutes cited below and *Rotuli Parliamentorum*, I, 446b.

¹⁷ 2 Edward III c. 2; 4 Edward III c. 13; 10 Edward III c. 2. See W.M. Ormrod, *The Reign of Edward III* (New Haven, 1990), pp. 54-55.

their complaints with requests that the king issue statutes of general pardon offering remission for a host of offences. Rather than attacking the prerogative of pardon, they sought to prevent abuses by recipients and petitioners. A statute of 1336 attempted to limit recidivism and pardons for egregious offenders. Anyone receiving a pardon had three months in which to find six people willing to enter pledges for his or her future good behaviour. The recipients had to present their sureties in Chancery or in the county court before the sheriff and coroner. If the recipients proved unable to find six guarantors, or afterwards bore “themselves otherwise against the peace than they ought,” their pardons became invalid.¹⁸ The offenders either had to suffer the punishment allotted for their original convictions or seek another pardon from the king and try once again to find sureties. A statute of 1353 noted that the king had often granted pardons on false information from petitioners who misrepresented the seriousness of an offence. Thenceforth, all pardons for felony had to list the suitor’s name and the reason for the pardon. When the offender returned to court to plead his or her pardon, the judges were to enquire about its accuracy. If they found discrepancies between the truth of the matter and the reasons advanced in the charter, the pardon became null and void.¹⁹

A statute of 1390 offered more significant changes. Members of parliament complained that treasons, murders, and rapes had proliferated because of the king’s too frequent pardons. Pardons often used general, inclusive terms that remitted the punishment for all felonies; this statute enacted that thenceforth, a pardon covered these serious offences only if it named them specifically. Writing almost 250 years later, Sir Edward Coke claimed that this statute constituted an indirect attempt to restrict the king’s ability to pardon: the members of this parliament, he said, thought that no king would openly pardon a murderer.²⁰ The text of the enactment suggested, however, that they hoped only to prevent people from obtaining a pardon under false pretences: people

¹⁸ 10 Edward III c.2. For these returns, see C 237: Bails on Special Pardons.

¹⁹ 27 Edward III st. 1, c. 2.

²⁰ Coke, *The Third Part of the Institutes*, p. 236.

sometimes misrepresented their offences or sought a pardon for a lesser crime, knowing that the usual formula for pardons covered all felonies. Thus, although the king may have thought that he had granted a pardon for theft, the document absolved the recipient of liability for any crime, including murder and rape. The 1390 statute did not infringe upon the king's right to pardon even the most serious offences; it merely stipulated that he had to name the offence specifically. The act also ordered that the petitioner's name had to be endorsed on the bill or petition and that the document had to be vetted by the Chamberlain and the Keeper of the Privy Seal before making its way to Chancery. If the petitioner sued for a pardon for a person that judges later found to have committed treason, murder, or rape without having said as much in the request, he or she became liable to heavy fines. An archbishop or duke misrepresenting a suit for pardon risked a fine of £1000, and bishops or earls a 1000 mark penalty. Clerks or those of lesser estate faced a fine of 200 marks and one year in gaol.²¹

Within three years, however, parliament repealed these latter provisions. Pardons for treason, murder, and rape still had to name the offence specifically, but the authorities had found it unwise to discourage suits for mercy. Their attempt to prevent misleading petitions had intimidated genuine suitors who feared incurring the heavy penalties. Some people had been maliciously and falsely indicted for murder by their enemies, "where in truth there was no such cause, to the intent that no man should be bold to sue to the king our lord for such a charter."²² Eight years later, another statute reiterated that people might make suits for pardon without any fear of wrongdoing.²³ One final measure, passed in 1403-4, returned to the principle of holding petitioners responsible for the

²¹ 13 Richard II st. 2, c.1. Some writers have claimed that these amounts were the fees to be paid for such pardons. The meaning of the text is unclear, but surely the clause for one year imprisonment constituted a penalty for improperly obtaining a pardon rather than a purchase price. Also, some writers have stated that pardon for murder was completely disallowed early in the Tudor period. They have been misled by Keilwey's comment that the "charter le Roy de pardon de tous felonies nest availeable pur cesty que est endite de murder, car ceo est p estatute, &c." Keilwey, 92 (72 *English Reports* 255). This referred to the statute discussed here, and only meant that a pardon for felony did not cover murder. The king's ability to pardon for murder remained unaffected. See also R. Brooke, *La Graunde Abridgement* (London, 1586), *Chartre de Pardone* pl. 10.

²² 16 Richard II c. 6.

²³ 2 Henry IV c. 22.

recipient's subsequent behaviour. People charged with an offence sometimes became "approvers" -- revealing the offences of others and bearing responsibility for launching the criminal appeals -- in hopes of obtaining a pardon. Anyone suing for the pardon of such an approver had to have his or her name included in the charter. If the approver returned to a life of crime, the petitioner had to forfeit £100.²⁴

The medieval attempts to regulate the use of pardons had only limited effect in the sixteenth century. The Tudors continued to demand that recipients of pardon produce sureties for their future good behaviour and maintained that pardons for treason, murder, or rape must explicitly name the offence. By the latter part of his reign, Henry VIII voluntarily extended the later policy by issuing most of his pardons for specific offences only and moving away from the general remission "of all felonies," a practise continued by each of his successors. But the Tudors ignored all other provisions of the medieval statutes. When early modern theorists delineated and analysed the royal prerogative, they categorised the ability to pardon as part of the dispensing power: the discretionary authority to dispense with positive law, or to suspend the operation of a statute when necessary. This same dispensing power enabled the Tudors to circumvent any of the laws governing pardons if they so chose, simply by inserting a *non obstante* clause that allowed the pardon in question to operate "notwithstanding any previous statute to the contrary."²⁵

In the sixteenth century, the royal prerogative of pardon remained unrestricted and largely unquestioned by parliament. Members of the parliaments of 1572 and 1587 counselled against a pardon for Mary Queen of Scots, but like members of other Tudor parliaments, attempted no permanent, binding limitation. Indeed, the closest any came to

²⁴ 5 Henry IV c. 2.

²⁵ On the dispensing power, see P. Birdsall, "*Non Obstante*: A Study of the Dispensing Power of English Kings," in C. F. Wittke, ed., *Essays in History and Political Theory in Honor of Charles Howard McIlwain* (New York, 1967), pp. 37-76; J.J.R. Greenberg, "Tudor and Stuart Theories of Kingship: the Dispensing Power and the Royal Discretionary Authority in Sixteenth and Seventeenth Century England," University of Michigan Ph.D. dissertation, 1970; Greenberg and C.C. Weston, *Subjects and Sovereigns: The Grand Controversy over Legal Sovereignty in Stuart England* (Cambridge, 1981), pp. 22-24. See also: Brooke, *La Graunde Abridgment*, Patents, pl. 109, Chartre de Pardone, pl. 10; Fitzherbert, *La Graunde Abridgment*, Graunt, pl. 33.

challenging the royal prerogative of pardon happened in 1531, when the Commons demanded a pardon for its members before proceeding with other business important to the king. They quickly backed down, however, when Henry VIII responded that he alone chose the recipients of his grace. Tudor parliaments passed statutes of general pardon and measures for the pardon of a few individuals, but in each case the authority for the grant came from the sovereign. The role of parliament was to publicise and confirm royal pardons. Tudor parliaments accepted without demur the monarch's ability to pardon people attainted by statute; only the right to reverse the "corruption of blood" that followed a conviction rested in parliament. The king or queen might free from punishment people convicted in any court -- parliament included -- and return to them any forfeited property still in royal hands, but restoring a convict's "blood" reinstated rights to lands already granted to or inherited by others.²⁶ For reasons of political expediency, late medieval kings had deemed it prudent to minimise the confusion and anger such restorations might cause by having parliament vet and assent to them. However, parliament did not jealously guard even this right, and authorised both Henry VII and his son to make restorations between sessions.²⁷

Indeed, parliament readily assisted in a profound expansion of the prerogative during the reign of Henry VIII. Acts of 1536 and 1543 extended royal jurisdiction into Wales and Durham.²⁸ Much of Wales had been governed by lords who owed allegiance to the English Crown but ruled independently and exercised justice in their own names. So, too, had the county palatine of Durham come under the largely autonomous rule of

²⁶ Some scholars have erroneously suggested that the king could not pardon someone attainted by parliament. This opinion may have emerged from a confusion over the legal terminology. "Attainder," the corruption of blood that *might* follow a guilty verdict in any court, could not be reversed by the king, but an "act of attainder" - a legislative conviction - could be. On this, see Coke, First Part of the Institutes, fo. 8 and Third Part of the Institutes, pp. 233, 240-41; J.R. Lander, "Attainder and Forfeiture, 1453 to 1509," Historical Journal 4 (1961): 123-24; W. Stacy, "The Bill of Attainder in English History," University of Wisconsin-Madison Ph.D., 1970, pp. 61-81.

²⁷ 19 Henry VII c. 28; 14 & 15 Henry VIII c. 21.

²⁸ 27 Henry VIII cc. 24, 26; 34 & 35 Henry VIII c. 26. On the effect of these acts in Durham, see C. Kitching, "The Durham Palatinate and the Courts of Westminster under the Tudors," in D. Marcombe, ed., The Last Principality: Politics, Religion and Society in the Bishopric of Durham, 1494-1660 (Nottingham, 1987), pp. 49-71. For Wales and the history of pardons under the marcher lords, see T.B. Pugh, The Marcher Lordships of South Wales, 1415-1536 (Cardiff, 1963), esp. pp. 41-48.

its bishop. The statutes imposed English law (and language) on the Welsh and ordered the courts in both Wales and Durham thenceforth to operate in the king's name. These measures emanated partly from practical concerns for law and order. People suspected of crimes had regularly fled into these areas for immunity from arrest; a unified jurisdiction where all sheriffs responded to the king's writ prevented offenders from escaping prosecution. The statutes contributed to a consolidation of royal power. Justice and mercy became essential attributes of the king alone, no longer shared with any privileged subjects. In Durham and the Welsh marches, prior to 1536, the Crown supervised only the trials and pardons for treason. Otherwise, people in these areas seeking pardons sued to lords other than the king. If the king wanted mercy for an offender tried in these jurisdictions, he had to request it from the local lord. In 1521, for instance, the Earl of Arundel, lord of one of the Welsh marches, granted a pardon for homicide to John Cloon at the suit of Henry VIII.²⁹ Seeking favour from a lesser lord became unacceptable to the dignity and authority of the sixteenth-century monarch.³⁰ Accordingly, the first of these statutes stipulated that thenceforth, no one might pardon any offence done in any part of the land save the king and his successors, who "shall have the whole and sole power and authority thereof united and knit to the Imperial Crown of this Realm as of good right and equity it appertains." Thereafter, suitors directed their humble pleas to the king alone, the sole fount of justice and mercy in the land.

While the power to pardon became increasingly concentrated in the hands of the monarch, ideas about the appropriate uses of mercy belonged to many. Parliamentary statutes and judicial opinions represented only some of the texts that shaped the functions and meanings of mercy in the sixteenth century. Pardons operated and

²⁹ BL Cot. MS Titus B.1, fols. 220-24. For examples of the Bishop of Durham's pardons, granted at the request of various lords, see DURH 3/57, mm. 1, 5; 3/64, m. 17.

³⁰ Henry's consolidation of the pardoning power into his own hands came soon after the French king had done the same: J. Foviaux, *La Rémission des Peines et des Condamnations: Droit Monarchique et droit moderne* (Paris, 1970), pp. 50-51. Whether Henry's decision was partly a conscious act of emulation, like so many of his innovations, or simply emerged from similar centralising tendencies must remain a matter of speculation.

acquired resonance within a public rhetoric and cultural tradition that explored the nature and necessity of mercy. Sixteenth-century discussions of the virtue drew heavily from classical sources. One of the most influential, and certainly the most extended treatment of the subject, was Seneca's *De Clementia*. Written for the young Emperor Nero, the work advanced arguments and employed metaphors that remained central to conceptions of mercy in the Tudor period. The first Latin contribution to the "mirrors for princes" genre of advice literature, it enjoyed the renewed interest of late medieval and early modern scholars. An edition appeared in 1475 and Erasmus included it in his 1529 collection of Seneca's works; Calvin also published a version with his own commentary in 1532.³¹ Contrasting the good ruler and the tyrant, Seneca extolled the merits of mercy and insisted that it must shape a good ruler's acts. He defined clemency as "restraining the mind from vengeance when it has the power to take it, or the leniency of a superior towards an inferior in fixing punishment"; it was "the moderation which remits something from the punishment that is deserved and due."³² Clemency was a virtue and thus morally and rationally imperative; it also constituted a pragmatic necessity for those in authority.

Seneca discussed clemency as an adjunct to justice. Punishment had three aims: "either to reform the man that is punished, or by punishing him to make the rest better, or by removing bad men to let the rest live in greater security." Clemency worked hand in hand with punishment: "the very clemency of the ruler makes men shrink from doing wrong; the punishment which a kindly man decrees seems all the more severe." If employed correctly, mercy promised to reform offenders and prompt them to live a new life. He acknowledged that since clemency applied mainly to those guilty of an offence, some thought that it encouraged vice and thus could be no virtue. He responded with a medical metaphor: "just as medicine is used by the sick, yet is held in honour by the

³¹ *Calvin's Commentary on Seneca's De Clementia*, ed. F.L. Battles and A.M. Hugo (Leiden, 1969), pp. 32-37; see p. 399 for a list of the 21 editions of Seneca's works published between 1475-1600. All citations are taken from the translation of Seneca's work, not Calvin's commentary.

³² *Ibid.*, p. 353.

healthy, so with clemency – though it is those who deserve punishment that invoke it, yet even the guiltless cherish it.” Furthermore, even the guiltless were sometimes guilty: people occasionally committed offences through misfortune rather than malice. Unless the ruler’s clemency exceeded justice, these people faced punishment. Too frequent punishment weakened its force and made sin more familiar; Seneca believed that “it is dangerous to show to a state in how great a majority evil men are.”³³ A ruler came near “to punishing unjustly who punishes unduly.”³⁴ On the other hand, Seneca cautioned against an excess of pardons: “it is not fitting to pardon too commonly; for when the distinction between good and bad men is removed, the result is confusion and an epidemic of vice. Therefore a moderation should be exercised which will be capable of distinguishing between curable and hopeless characters.” Too frequent pardons gave potential offenders hope of impunity; a mean must therefore be maintained.³⁵ For the Stoic, every virtue mediated between two extremes. Seneca interposed clemency between pity and cruelty, two vices that a good ruler must avoid. “Pity regards only the plight, and not the cause of it”; it emanated from emotion rather than reason. Pardons too rarely given denoted a cruel ruler; too commonly granted, clemency degenerated into pity. But given the difficulty of achieving a perfect balance, a wise ruler tipped the scales toward the more humane side.³⁶

Although a virtue expected of all people, clemency was especially apt in the sovereign. Seneca noted that “of all men none is better graced by clemency than a king or a prince.”³⁷ He told Nero that “you are the soul of the state and the state your body...you spare yourself when you seemingly spare another.”³⁸ If the ruler needed to let blood, he must avoid cutting deeper than necessary. The emperor was the father of

³³ *Ibid.*, pp. 303, 309.

³⁴ *Ibid.*, p. 233.

³⁵ *Ibid.*, p. 67.

³⁶ *Ibid.*, pp. 67, 357.

³⁷ *Ibid.*, pp. 77-78.

³⁸ *Ibid.*, p. 107.

his people and like a good parent must first assay gentle correction.³⁹ Seneca recited the story of the “king” bee who ruled but had no sting and said that “great kings will find herein a mighty pattern; for it is Nature’s way to reveal herself in small matters, and to give the tiniest proofs of great principles.”⁴⁰

Clemency made rulers not only more honoured but safer, too. A wise ruler sought to rule through affection rather than terror, and clemency offered the best means of gaining the favour of the people: “he alone has firm and well-grounded greatness whom all men know to be as much their friend as he is their superior.”⁴¹ Clemency, furthermore, offered proof of the ruler’s supreme power. “To save life is the peculiar privilege of exalted station, which never has a right to greater admiration than when it has the good fortune to have the same power as the gods.”⁴² By granting life or remission from punishment justly deserved, a ruler did what none but a sovereign might. Seneca asked Nero to remember that anyone could take a life whereas none but he could save, admonishing that “no glory redounds to a ruler from cruel punishment – for who doubts his ability to give it?”⁴³ Clemency presupposed and advertised an unequal relationship between giver and recipient. The mighty lion provided an exemplar: he did not devour or torment the enemy that lay vanquished before him. Rather, he preserved his fallen foe as “a lasting spectacle” of his power.⁴⁴ Even when lacking a merciful inner disposition, a ruler wisely offered outwards displays and performances of clemency, if only to show that it rested in his power to do so. Not only a moral imperative, expected by the people, mercy represented a pragmatic means of both constructing and expressing power.

Long after Seneca, writers continued to craft books of exhortation on the arts and duties of rule; these works also extolled the benefits and necessity of mercy through

³⁹ *Ibid.*, p. 233.

⁴⁰ *Ibid.*, pp. 277-78.

⁴¹ *Ibid.*, pp. 77-78.

⁴² *Ibid.*, p. 109.

⁴³ *Ibid.*, p. 267.

⁴⁴ *Ibid.*, pp. 109-11.

excessive praise of a ruler well-endowed with this virtue. The many variants of the Secretum Secretorum, for instance, which claimed to be Aristotle's advice to Alexander the Great, propagated the message that a good and wise ruler showed mercy.⁴⁵ In his works of princely prescription and praise, Erasmus borrowed from Seneca and other contributors to the genre. In 1516, he published his Education of a Christian Prince, first written for the future Charles V; the manual appeared in England almost at once and went through several editions. Erasmus admonished that "he who would be loved by his people should show himself a prince worthy of love" and noted that "his reputation for clemency should be his special form of praise."⁴⁶ A wise ruler sought the love of his people for its own sake, but also for his security. This affection was "won by those characteristics which, in general, are farthest removed from tyranny. They are clemency, affability, fairness, courtesy, and kindness." A king who followed prescriptions to temper justice with mercy rested assured of his subjects' loyalty. For those offences that touched him alone, the wise prince showed especial mercy. Acts of clemency need not emanate from genuine feelings of love and mercy; pragmatic self-interest sufficed: "out of respect for his own position he will sometimes pardon an unworthy man and with a thought for his own reputation will be lenient to those who deserve no clemency."⁴⁷

Clemency not only bolstered the ruler's good reputation, and thus his legitimacy, but also helped to heal the body politic. Erasmus borrowed Seneca's medical metaphor and asked "what is the prince but the physician of the state?" The realm constituted a single body, of which the prince served as both head and healer. Erasmus acknowledged that "the incorrigible must be sacrificed by the law (just as a hopelessly incurable limb must be amputated) so that the sound part is not affected." He warned, however, that "no one cuts off a limb if [the patient] can be restored to health by any other means."⁴⁸

⁴⁵ J. Ferster, Fictions of Advice: The Literature and Politics of Council in Later Medieval England (Philadelphia, 1996), pp. 45, 164. See also Four English Political Tracts of the Later Middle Ages, ed. J.P. Genet, Camden Society, 4th ser., vol. 18 (London, 1977), pp. 49-51, 118-24.

⁴⁶ Erasmus, The Education of a Christian Prince, trans. Lester K. Born (New York, 1973), pp. 162, 207. The editor's essay in this volume offers a solid introduction to the "mirrors for princes" genre.

⁴⁷ Ibid., pp. 209, 232.

⁴⁸ Ibid., pp. 231, 224-25.

Clemency offered a cure. It inspired to better efforts those aware of their faults and offered hope to those eager to change for the better.

Early in 1504, Erasmus delivered a panegyric to Philip of Austria, the future king of Spain. Fulsome in its praise, the speech lauded among other virtues that of clemency. As the kindly father of his people, Philip acknowledged mercy as one of his duties as God's vicegerent on earth:

You have so strongly conceived a kind of universal father's affection for all your people that you are even eager to spare the guilty ...if they are willing to return to their senses...No virtue is so proper to princes nor so welcome to the people as beneficence to the deserving and forgiveness to wrongdoers...Forgiveness is loved even by the wholly blameless. They approve other virtues as human, but admire this one as something divine. For since the prince performs the function of a sort of divinity among mortals, and nothing is more disposed toward beneficence or is more averse from severity than a god.

The nearer the prince approached the image of the divine, the more his people would revere him as a god.⁴⁹

After he published his Panegyric in 1507, Erasmus explained to a friend his motives for such lavish flattery of a less-than-perfect prince. He acknowledged the equivocal stance he and other writers of princely praise assumed: they constructed representations of the ruler conducive to his authority by trying to persuade the broader audience that its prince lived up to accepted ideals, yet also used that construction to admonish and advise the prince. Praise, he argued, worked better than straightforward counsel in effecting change. Like other writers of encomiums, he hoped "to exhort rulers to honourable actions under the cover of compliment" and to present princes with "a pattern of goodness." He asked: "what method of exhortation is more effective, or rather what other method has in fact become habitual to men of wisdom, than to credit people with possessing already in large measure the attractive qualities they urge them to cultivate?" Writers such as himself acted as the doctor's doctor: "do not the best

⁴⁹ Erasmus, "Panegyric for Archduke Philip of Austria", trans. Betty Radice, Collected Works of Erasmus, vol. 27 (Toronto, 1986), p. 39. For another continental work that appeared in England, and also borrowed heavily from Seneca in its discussion of clemency see Lipsius' Six Books of Politics (London, 1594), pp. 30-31.

physicians tell their patients that they find their appearance and colour satisfactory, rather in order to make them so than because they are so?”⁵⁰ These works sought to affect the behaviour of the ruler, but also revealed and shaped public perceptions of good rule and mercy’s place in a well-ordered polity.

English writers also extolled the virtue of mercy and insisted that it was an obligation of rule. Thomas Elyot, for example, spoke “of the inestimable price and value of mercy” in his Boke Named the Governour, published in 1531. Borrowing from both Seneca and Erasmus, Elyot blended classical and scriptural exhortations. Where Seneca had talked of the ruler’s need to show clemency in order to obtain the same from the gods, Elyot spoke of the Christian deity, asking rulers to remember the divine origin of their power and their own need for God’s mercy. He quoted Seneca’s definition of clemency and pointed to the Roman emperors as exemplary models for emulation. Like Seneca, he took care to distinguish between mercy and “vain pity”: reason prompted the former, emotion the latter. Disobedience, contempt, and misery ensued from vain pity, whereas peace, prosperity, and good order followed from clemency. “Surely,” Elyot wrote, “nothing more entirely and fastly joins the hearts of subjects to their prince or sovereign than mercy.”⁵¹

Elyot articulated ideas of general currency; his was one voice among many. Nor did these ideas appear only among the books and traditions of the learned. Sermons, plays and public orations proclaimed the merits of mercy and praised English sovereigns for displaying this virtue. In their coronation oaths, the Tudors pledged to temper “right justice with discretion and mercy”; during their reigns, their subjects reminded them of this duty.⁵² Like Erasmus with his panegyric, the English lauded their sovereigns for the qualities they wanted them to cultivate. Civic spectacles offered one means of

⁵⁰ Erasmus, “Correspondence,” in Collected Works, vol. 2, pp. 81-82.

⁵¹ T. Elyot, The Boke Named the Governour, ed. H.H.S. Croft (New York, 1967, 2 vols.), II, pp. 73-88, quotes at pp. 73, 79. On the mirror for princes genre in Tudor England and its insistence on the moral responsibilities of kingship, see F. Baumer, The Early Tudor Theory of Kingship (New Haven, 1940), pp. 192-210.

⁵² L.G. Legg, English Coronation Records (London, 1901), pp. xxix- xxxi, 241.

communicating between ruled and rulers that presented ideas both visually and orally to a socially diverse audience. In March 1486, when Henry VII declared his intent to travel through the northern parts of his newly-won realm, authorities in at least four of the towns along his route scrambled to put together welcoming pageants. The burgesses of York, for example, determined “that some convenient show be had against the king’s said coming by the counsel of some which can devise the same, whereby his highness may the rather be moved to think that the said Mayor, Aldermen, Sheriffs and other inhabitants here be gladdened and joyful of the same his coming.”⁵³ Each of the pageants combined not-so-subtle requests for relief and other favours with effusive flattery of the royal visitor. Their creators borrowed speeches and ideas from the “mirrors for princes” texts and translated them into public spectacles. The show planned for Worcester contained the most explicit and persistent praise of mercy. After the Gatekeeper’s welcome, a speaker representing Henry VI stepped forward. He spoke first of his relationship with the new king and of his own saintly life, then noted the importance of mercy to a good and happy reign:

Meek and merciful was I evermore,
 From cruelty refraining and from vengeance,
 God hath me rewarded largely therefore.
 And gentle cousin, since you have this chance
 To be my heir, use well my governance.
 Pity with mercy, have always in your cure
 for by meekness you shall longest endure.

Advertise well what is found in Scripture,
 The Gospel says, whoso right well it marks,
 Merciful men of Mercy may be sure.
 For God himself this writeth, and saith all Clerks,
 Preserved Mercy above all his works.
 Now for his sake show it to Free and Bond:
 And he shall guide you both by sea and land.⁵⁴

⁵³ York Civic Records, ed. A. Raine, Yorkshire Archaeological Society (York, 1939), I, p. 152.

⁵⁴ “A short and a brief memory by license and correction of the first progress of our sovereign lord King Henry the seventh,” reprinted in John Leland, De Rebus Britannicis Collectanea, ed. T. Hearne, 6 vols. (London, 1774), IV, pp. 192-93. The Worcester show was, however, apparently cancelled at the last moment for unknown reasons. On this pageant series, see also J.C. Meagher, “The First Progress of Henry VII,” Renaissance Drama, n.s. 1 (1968): 45-73 and C.E. McGee, “Politics and Platitudes: Sources of Civic Pageantry, 1486,” Renaissance Studies 3 (1989): 29-34. The latter showed that some of the verses delivered by characters in the pageants were borrowed almost word for word from the Secretum Secretorum as mediated through the works of Lydgate and Hoccleve. On the 1486 pageants and others

God commanded that kings act mercifully; kings who showed mercy to their subjects in turn found mercy from their Lord. The speech echoed, in more positive terms, the scriptural injunction that “he shall have judgement without mercy that showed no mercy.”⁵⁵ The Christian tradition of a forgiving God influenced sixteenth-century perceptions of royal clemency at least as much as did classical injunctions.

“Henry VI” then clarified the reason for this insistent call to mercy: the people of the town had asked him to present the new king with a petition for their pardon, since they had recently and misguidedly offered succour to the rebellion of Humphrey Stafford.⁵⁶ This represented a calculated praise of mercy, and not simply a reflexive use of standard tropes. Demonstrating the early modern fondness for analogical thinking, the speaker enjoined Henry VII to bear himself as the mighty lion, who never hurt those who lay prostrate before him. The Virgin Mary, always an exemplar for merciful mediation, joined local saints Oswald and Wulfstan to promise their continual intercession with God for a long and prosperous reign. A final speech, delivered by the personifications of the Holy Trinity, again exhorted Henry VII to emulate his saintly and clement kinsman Henry VI and assured him that mercy earned him divine rewards both on earth and in heaven:

O Henry! Much are you beholden to us
That you have received by our own election.
Be you therefore merciful and gracious;
For mercy pleases most our affection.
Follow King Henry which is your protection
As well in work as in sanguinity.

And in this world it will rewarded be right well
If you serve God in love and dread.
Having compassion of them that have need,
Everlasting joy shall be your mead
In heaven above where all saints dwell.⁵⁷

throughout the period, see S. Anglo’s important *Spectacle, Pageantry and Early Tudor Policy*, 2nd edition, (Oxford, 1997).

⁵⁵ James 2:13.

⁵⁶ For the Stafford rebellion, see Chapter 6.

⁵⁷ *Collectanea*, ed. Hearne, IV, p. 195.

Such spectacles, designed both to entertain and to instruct, occurred throughout the Tudor period. The creators of the London pageants performed at the coronations of Edward, Mary, and Elizabeth did not construct such single-minded praises of mercy, but neither did they fear the imminent wrath of an aggrieved sovereign as had the Worcester pageant planners. Nonetheless, all included some reference to the virtue in their portrayals of a good ruler. At the pageant presented to Edward VI, one scene had the personifications of Mercy, Truth, and Clemency encircling a figure of the king; a second depicted the wells of Mercy, Grace, and Pity watering a lush earthly paradisc. In case the young king or any of the audience misunderstood these references, a third device had Sapience declare:

For by the sentence of prudent Solomon,
 Mercy and Right preserves every king,
 and clemency with faith observe above reason
 keeps his throne from peril of falling,
 and makes it strong with long abiding.⁵⁸

In a fourth, personifications of Mercy, Justice, Regality, and Truth upheld a throne on which sat a child representing the king; Justice held in one hand a sword, while Mercy carried a curtana, or blunted blade.⁵⁹ At the entry pageant for Philip and Mary, Justice with her sword, Equity with a balance, Truth with a book, and Mercy with a heart of gold surrounded figures of the king and queen.⁶⁰ At the pageant performed for Elizabeth, the four virtues upholding the throne had changed to Pure Religion, Love of Subjects, Wisdom, and Justice, but “Unmercifulness in rulers” appeared in the representation of the Decayed Tree of the Commonwealth, a withered plant contrasted to the flourishing Tree representing a well-ordered polity.⁶¹

⁵⁸ Anglo, *Spectacle*, p. 288, collated from several different versions which give various readings of line three. See, for example, *Collectanea*, ed. Hearne, IV, p. 316.

⁵⁹ *Ibid.*, pp. 317-18.

⁶⁰ *Chronicle of Queen Jane and... Mary*, ed. J.G. Nichols, Camden Society, vol. 48 (London, 1850), pp. 150-51. See also, Anglo, *Spectacle*, p. 337.

⁶¹ R. Tottel, *The Quenes maiesties passage through the cite of London* (London, 1559), sigs. C4v-D1v.

These and other texts communicated the message that mercy constituted a necessary quality of a good and wise prince. To give the condemned their lives was an act of grace, a gift of sovereign authority that enhanced the prestige of the ruler; it signified and created power, but was also a duty. The importance of mercy remained largely unquestioned throughout the medieval and early modern periods. Yet, as Patricia McCune has shown, late medieval writers re-negotiated and redefined the role of mercy vis-à-vis justice. Her survey of literary discussions of mercy demonstrated that medieval authors praised reconciliation over retribution and treated mercy and justice as opposing yet equally powerful virtues. The early sixteenth-century sermons, plays, and treatises she examined continued to insist upon the merits of mercy, but began to give it a subordinate role to justice. When Mercy and Justice appeared together in sixteenth-century morality plays, the latter usually triumphed. Writers ceased troubling themselves with justifying the punishment of one member of society by another; their concern to prevent lengthy feuds through injunctions to mercy dissipated. While mercy became secondary to justice, it remained a necessary adjunct.⁶²

In the Tudor period, this altered role for mercy manifested itself primarily in injunctions that forgiveness for wrongdoers belonged only to the sovereign. Playwrights and preachers admonished subjects to show mercy through charity and kindness to their equals and inferiors; they encouraged people to display mercy in their private quarrels, but not in public matters. They urged judges and magistrates not to let personal pity interfere with their duty to enforce the laws as written. For instance, Edwin Sandys argued in an assize sermon that judges who showed lenience exhibited “foolish pity” rather than laudable clemency: “such as sit in judgement ought to correct and not to remit because they deal not with injuries done to themselves but to the laws and

⁶² P. McCune, “The ideology of mercy in English literature and law, 1200-1600,” Ph.D. dissertation, University of Michigan, 1989, *passim*, but see especially pp. 53, 267-293. For a shorter but more accessible introduction to medieval texts on mercy, see McCune’s “Justice, Mercy and Late Medieval Governance,” *Michigan Law Review* 89 (1991): 1661-78.

commonwealth.”⁶³ Mercy to criminal offenders remained essential, but it became a prerogative and duty of the sovereign alone.

Just as people demanded mercy from their sovereign, so, too, did they counsel against it in certain cases. Those who criticised particular uses of the pardon generally worked within existing conceptions of mercy, acknowledging the right and duty of the prince to forgive, but redefining the limits and objects of that clemency. While leaving the prerogative of mercy unquestioned, some maintained that the wrong people too frequently obtained pardon. A one-time soldier who spent his latter years crafting vituperative tirades against vice and heresy, George Whetstone published his Enemy to Unthriftiness in 1586. A mirror for magistrates and guide “for the reformation of disorders in a commonwealth,” it repeated the recurrent injunctions against judges’ false pity. Whetstone noted that wise men gave little credence to the notion that offenders might reform, nor did they let such false hopes influence their judgements. He reported gleefully Justice Chomley’s accustomed answer to “naughty livers” who begged him for lenience by appealing to his own journey from the pit of dissolute living to the path of virtue:

I tell you plainly, that of the twenty that in those days were my companions, I only escaped hanging; and it is very like that some of your fellowship is by God’s goodness reserved to be an honest man, but you are found offenders by the law, and truly justice (whose sentence I am sworn to pronounce) commands me to commend your souls to Almighty God and your bodies to the gallows.

Whetstone argued that cruelty inhered not in strict judges, but in those who winked at petty offences: such lenience led to greater and greater offences, whereupon the offender risked execution and eternal damnation. Therefore, “there cannot be too much good spoken of her Majesty’s gracious and sweet mercy, yet severity may no way be termed cruelty.” Whetstone worried that too much clemency weakened the deterrence of the gallows; mercy he called a holy virtue, yet too frequent pardons posed a danger to the commonwealth. While proponents of pardon looked to nature to find exemplars in the

⁶³ Sermons of Edwin Sandys, ed. J. Ayre, Parker Society, vol. 41 (New York, 1968, orig. pub. 1841), pp. 226, 229.

lion and stingless “king” bee, Whetstone pointed to the parable of the frozen snake. A poor farmer, finding the snake, nursed it back to health at his hearth only to have it sting his children. Such a fate he feared for England if the queen too liberally or injudiciously granted clemency.⁶⁴

In a later pamphlet, Whetstone again used the parable of the frozen serpent, but to warn against too much mercy for papists rather than for petty offenders. Focusing on the recent execution of fourteen Catholic conspirators, he structured the discussion as a dialogue between Weston, “a discreet gentleman,” and Walker, “a godly divine.” Weston opined that “there were never people governed with more mercy than the people of England under the reign of our most gracious Queen Elizabeth.” He worried, however, that the plenitude of her mercy threatened the peace of the realm and offered as proof the parable of the snake. Walker replied, “In very deed, mercy breeds presumption in the wicked, but no doubt almighty God is...so well pleased with mercy as he seldom suffers it to be the cause of inconvenience, especially where temperate justice is joined with mercy.” He agreed that the example of the farmer and the snake might apply to the queen’s clemency and the papists’ malice, but noted that when the snake stung his benefactor’s children, it received a grievous beating. So, too, did the Catholics who abused the mercy of the queen eventually receive their just desserts. Weston grudgingly acceded to the truth of his friend’s argument, but continued to assert that “if the queen were less merciful, the papists would be more faithful.”⁶⁵

Indeed, it was in discussions of the persistence and supposed perfidy of the Catholics that existing conventions of mercy became most hotly contested. The altered Protestant theologies of penance, contrition, and forgiveness had no discernible impact on perceptions of pardon, but confessional animosities resulting from the Reformation clearly did. According to some Protestants, the Reformation had created a group of people whose enmity for God had rendered mercy ineffective and hence inappropriate.

⁶⁴ Whetstone, *The Enemy to Unthriftiness* (London, 1586), sigs. 32v, 35v-36r.

⁶⁵ Whetstone, *The Censure of a loyal subject upon certain noted speeches and behaviours of those fourteen notable traitors* (London, 1587), sigs. A3v-A4r, F3v.

When the Earls of Westmoreland and Northumberland rebelled in 1569, making a return to the traditional faith their rallying cry, Protestant writers hastily cranked vituperative attacks off the presses.⁶⁶ Some argued that the queen's excessive mercy had led to the rising and counselled that she show no more clemency to Catholics. In a sermon preached before the queen and subsequently published, Thomas Drant acknowledged that mercy remained the essence of good rule, but thought the queen must show it first to faithful subjects: "these great marvellers at mildness must remember that mildness to some is at times unmildness and cruelty to many other."⁶⁷ In his tirade against the rebels, Thomas Norton agreed:

though it be magnificent and noble to contemn treasons, to pardon traitors, to reconcile dangerous underminers of her estate, yet the whole realm having interest in her life, by which we all live, and cannot live well without her, it is far more honourable to be good lady to true men than to false, to the whole commonwealth of good men that depend upon her, than to any knot of evil men.⁶⁸

Norton went further to make a bold argument that redefined in whose interests the queen exercised her sovereign power. The Catholic rebels threatened the life of the queen and thus the lives of all her subjects; as they offended not just Elizabeth, but also her dependants, she ought not to show them mercy. According to Norton, "the prince is not a private but a public person, as no attempt against her safety can or ought to be accounted a private cause." Furthermore, by the nature of their faith these rebels were enemies of God as well as the realm. The queen had no right to forgive those who so persistently and violently opposed divine command: "God's commandments of placability and forgiveness extend to our own enemies, but not to his."⁶⁹ Drant assured the queen that because the rebels fought against God, she might exact harsh retribution without fear of losing the reputation for clemency so necessary to a ruler: "her Majesty,

⁶⁶ For the 1569 rising, see Chapter 6.

⁶⁷ Drant, *Two Sermons Preached...at the Court at Windsor...the 8 of January, 1569* (London, 1570), pp. 232r-33v.

⁶⁸ Norton, *To the Queen's Majesty's poor deceived subjects of the North Country* (London, 1569), sigs. E2v-E3r.

⁶⁹ Norton, *A warning against the dangerous practises of Papists* (London, 1570), sig. B3v.

punishing even to the uttermost God's enemies, shall nevertheless by God's word retain the name of a mild and merciful prince."⁷⁰ Norton suggested that if the queen wanted to show the papists mercy, she did this best through punishment rather than pardon; severity might drive them to repent and find eternal redemption, whereas lenience allowed them to continue as Catholics, doomed to the everlasting fires of hell. Both Norton and Drant agreed that pardons simply failed to work with Catholics: normally, rulers used mercy to prompt contrition and amendment in essentially good but misguided subjects. Catholics might repent of their rebellion, but would not give up their traitorous faith. Thus, they could never become good and loyal subjects.⁷¹ While mercy and justice always had to exist in tandem, the desired balance between the two virtues shifted depending on particular political realities. Ardent Protestants, fearing the political machinations of disaffected Catholics, implored the queen to tip the scales toward unmitigated punishment for their opponents.

The same arguments against the use of clemency for Catholics appeared in the parliamentary debates on how best to deal with Mary Queen of Scots in 1572, following the Ridolfi plot and again in 1587, after Babington's conspiracy. In the face of Elizabeth's pronounced reluctance to order her cousin's death, members of parliament advanced numerous reasons for the execution. They held their discussions before a small audience and, unlike the pamphlet writers, did not intend their words for public consumption or instruction.⁷² Nevertheless, the arguments revealed the pervasiveness of certain ideas and their adaptation to varying purposes. While much of the debate dealt with pragmatic issues of security, a surprising amount of it focused on the nature and limitations of royal clemency. Again, the speakers recognised mercy as a duty and

⁷⁰ Drant, *Two Sermons*, pp. 232v-33v.

⁷¹ *Ibid.*, p. 236; Norton, *A Warning*, sig. L3v. See, in contrast, William Seres' ballad which argued that the queen's mildness could not be blamed for the rising: *An Answer to the Proclamation of the Rebels in the North* (London, 1569). On the ephemeral literature produced in response to the rising, see J.K. Lowers, *Mirrors for Rebels: A Study of Polemical Literature Relating to the Northern Rebellion* (Berkeley, 1953).

⁷² Of course, some of these arguments did appear in print, intended to sway public opinion. See, for instance, *The Copie of a Letter to the Right Honourable Earle of Leycester...with a report of certain petitions* (London, 1586), which included a summary of the parliamentary petitions and the queen's responses, esp. pp. 7, 9-10, 23-24.

prerogative of rule, but redefined its legitimate application. In 1572, the bishops in the House of Lords used the Scriptures to prove that conscience and divine law compelled Elizabeth to proceed with severity against the Scottish queen. Like Norton's arguments, theirs hinted at an altered conception of whose interests mercy and justice properly served. Crime offended not just the queen, but also her subjects, and she must take this into account when making decisions to pardon. God ordained princes mainly to administer justice and punishment; by failing to repress wickedness, the prince risked God's wrath, as proven by examples from both sacred and classical history. The bishops noted that when King Saul spared Agag, God took from him the kingdom; David, too, suffered divine punishment for refusing to punish his rebellious sons. A ruler must answer to God for any subjects hurt by a misuse of clemency. By slackness of justice in great causes, the prince might inadvertently give hope of impunity to potential offenders and thus increase the number of crimes committed throughout the realm. To the objection that Elizabeth violated her God-given duty to be merciful by executing the Scottish queen, the bishops replied: "Indeed, a prince should be merciful, but he should be just also... The prince in government must be like unto God himself who is not only amiable by mercy, but terrible also by justice." Like Drant and Norton arguing against clemency for the Catholic rebels of 1569, the bishops opined that execution, in some cases, became an act of mercy:

mercy often times shows itself in the image of justice, yea and justice in scriptures is in God called mercy... The smiting of Egypt with terrible plagues, the destruction of Pharaoh, the killing of great and mighty kings, are called the merciful works of God, as in deed they were, but mercy towards the people of God and not towards the enemies of God and of his people.⁷³

While redefining the proper recipients of mercy, the bishops also castigated those who called justice cruel. Those who counselled mercy for Catholic traitors obviously had suspect motives: "God I trust in time shall open her Majesty's eyes to see and espy their cruel purposes under the cloak of extolling mercy."⁷⁴

⁷³ *Proceedings in the Parliaments of Elizabeth I*, ed. T.E. Hartley, 3 vols., (Wilmington, 1981-95), 1, p. 279.

⁷⁴ *Ibid.*, I, p. 280.

One parliamentary diarist reported the debate on how to deal with the Duke of Norfolk, implicated along with the Scottish queen in the Ridolfi plot. Fresh from his diatribes against the Northern rebels, Thomas Norton offered his parliamentary audience many of the same ideas he had presented to the broader public in his pamphlets. He argued that the queen must maintain a balance between mercy and justice, and relied upon humoral or medical metaphors to make his case:

Heat and moisture are both necessary in every person; if either do abound it is perilous. I know her majesty has used severity, mercy, magnanimity and lowliness to divers person upon occasions, and all are commendable virtues in a prince; and yet if any of these should exceed, the nature is changed. Whosoever increases the humour of mercy in one naturally inclined to mercy offends perniciously, and has no regard to her safety.⁷⁵

Arthur Hall tried speaking in favour of lenience, saying that “if others had been met with the same rod of justice, diverse had not been which now be.” The lion, he said, refused to devour his prostrate foe. Other members, however, shouted so loudly that Hall could scarcely be heard. Another member repeated the traditional arguments for and against mercy and concluded that the latter clearly pertained to the Duke of Norfolk’s case. Mercy applied when an offence proceeded from ignorance rather than from malice; punishment might justly be administered for three reasons: to provide an example to others, to correct the offender through terror of worse punishment, and to condemn the offence. He claimed that “to use mercy when there is no cause to save and great cause to spill were cruelty and no mercy...If the offence be so great as the innocent cannot be in safety without the loss of the nocent, it is better the nocent to die then the innocent to be put in peril.”⁷⁶ For the Duke of Norfolk and Mary Queen of Scots, justice must prevail over mercy.

These arguments met with only partial success. The queen ordered Norfolk’s execution. Fearful of setting a precedent for killing an anointed ruler, however, she let

⁷⁵ *Ibid.*, I, p. 353.

⁷⁶ *Ibid.*, I, pp. 354-55.

the Scottish queen live. When Mary's plotting next surfaced, members of parliament repeated their earlier pleas more vociferously. Job Throckmorton declaimed:

but mercy, you will say, is a commendable thing and well beseeming the seat of a prince. Very true indeed: but how long? Till it bring justice in contempt and the state of the Church and commonwealth in danger, and then I hope it be time to take out a new lesson.⁷⁷

What had come of Elizabeth's earlier lenience? Nothing but more misery for her people.

The Catholic Jezebel's "monstrous and unkind requital" for the gift of her life demonstrated that further mercy was "both dreadful and dangerous." A new disease plagued the realm and necessitated a new cure: "since there is a new ague reigning among us, we must needs seek a new remedy. The old receipt will not serve; the disease is so festered and rankled within that if you apply nothing unto it but a lenitive the patient dies for it."⁷⁸ Speaker Puckering asserted that since the queen had first spared Mary, papist traitors and recusants had multiplied alarmingly; "mercy now in this case would in the end prove cruelty against us all."⁷⁹ This time Elizabeth yielded to the pressure. In her reply to parliament's petition for Mary's execution, she noted that if only her own life was in danger, she would gladly pardon her cousin upon a show of repentance, but since the peace and good religion of her people were also at risk, she would not.⁸⁰

These sixteenth-century critics carefully insisted that their sovereign had a right and duty to leaven justice with mercy. They acknowledged that pardons served vital judicial and political ends, with the potential to prompt offenders to reform and to pledge a renewed obedience to their lords and laws. But the effectiveness and appropriateness of mercy, as even its earliest proponents had noted, depended on maintaining a judicious balance between pardon and punishment. Critics of pardons for particular offenders of all sorts seized on this idea. Some used ambiguities in the traditional conceptions of mercy to advance more novel arguments, suggesting that by virtue of their foreign

⁷⁷ *Ibid.*, II, p. 230.

⁷⁸ *Ibid.*, II, pp. 228, 230-31.

⁷⁹ *Ibid.*, II, p. 241.

⁸⁰ *Ibid.*, II, pp. 249-50.

loyalties and opposition to God, Catholics had immunised themselves against the redeeming powers of royal grace. Prompted by their fears and hatreds, some critics argued furthermore that the queen ought to exercise justice and mercy not in her own interests, but in those of her (Protestant) people.

One sixteenth-century theorist offered a more fundamental critique. In his Short Treatise of Politic Power, John Ponet sought to justify resistance to Catholic authorities and elaborated a theory of sovereignty in which the Crown derived its authority solely from the people. Thus, a ruler could not dispense with positive laws, which God had designed for the common good. Exploring the ramifications of this altered view of political sovereignty, Ponet argued that mercy did not encourage offenders to repent and reform. He thought mercy misguided not only because of its ineffectiveness, but also because it violated God's commands:

God's word, will and commandment is that he that wilfully kills a man shall also be killed by a man: this is, the Magistrate. But this law has not been observed and always executed, but kings and princes upon affection have dispensed and broken it, granting life and liberty to traitors, robbers, murdered, &c. But what has followed of it? Have they (whose offences have been so pardoned) afterward shown themselves penitent to God and thankfully profitable to the commonwealth? No; God and the commonwealth have had no greater enemies.

All crimes were sins; a ruler ought not to free offenders from the penalties that God dictated for their disobedience. To do so constituted a "luciferous presumption."⁸¹

Arguments such as Ponet's did not appear again for the better part of a century.⁸²

Members of the Stuart parliaments also sought to effect some limitation on the king's ability to pardon. Sir Edward Coke expressed some reservations about the dispensing

⁸¹ J. Ponet, A Short Treatise of Politic Power (Strasbourg, 1556), sig. B4v. In contrast, John Aylmer advanced a similar theory of the royal ability to dispense with positive law, but expressed no reservations about pardons. Assuring his readers that a female ruler did not pose the danger others had feared, he noted that "it is not she that rules but the laws." She could dispense with no laws except in conjunction with parliament or by giving a pardon, "wherein if she err, it is a tolerable and pitiful error to save life." An Harborow for Faithful Subjects (1559), p. 56; Greenberg, "The Dispensing Power and the Royal Discretionary Authority," pp. 81-88.

⁸² See Greenberg, "The Dispensing Power and Royal Authority," and also K.D. Moore, Pardons: Justice, Mercy and the Public Interest (Oxford, 1989), which briefly reviews eighteenth century discussions of the pardon in light of altered perceptions of political sovereignty before concentrating upon recent American pardoning policy.

power in general and the prerogative of pardon in particular. He maintained that the law granted the king his pardoning power and thus parliament had the right to impose limits on the use of the prerogative.⁸³ In contrast to the fourteenth-century parliamentary complaints premised on concerns for law and order, the criticisms offered by Coke and other members of the Commons in the seventeenth century emanated from issues of high politics and altered conceptions of the derivation and limits of royal sovereignty. The king's ability to pardon people attainted or impeached by parliament came under repeated attack, most vocally in the 1678-79 proceedings against the Earl of Danby for his role in Charles II's covert negotiations with Louis XIV for a French subsidy. When the king granted Danby a pardon, members of the two Houses voiced the traditional limitations on the prerogative of pardon, but with a twist. Everyone knew that the king could pardon only when he was a party to a suit and that he could not intervene in a private appeal or pardon a public nuisance. Impeachment, some argued loudly, constituted an appeal launched by the people in the interests of the entire community and Danby's actions represented a common grievance. Therefore a pardon did not apply. The Revolutionary Settlement finally resolved the matter: thereafter, a legislatively sovereign parliament supervised the operation of the royal dispensing power and a royal pardon no longer barred the Commons' attempts to impeach.⁸⁴

In the Tudor period, however, all this lay in the future. During the sixteenth century, most people agreed that their sovereign had the right and duty to pardon. A wide range of texts, elite and popular, discussed mercy as a potent sign and tool of power; they described it as a gift that depended upon, advertised, and heightened the unequal relationship between givers and recipients, the monarchs and their subjects. Pardons communicated messages about royal authority, but expectations of pardon and

⁸³ See Coke's speeches in the parliament of 1628, which actually rejected a proffered general pardon on the grounds that it would hinder efforts to prosecute the Duke of Buckingham: *Commons Debates, 1628*, ed. R.C. Johnson (New Haven, 1977-84, 6 vols.), II, p. 537, V, p. 288, and also III, pp. 333, 336, and VI, p. 199. For Coke's comments on the dispensing power, see *Third Part of the Institutes*, p. 236; 12 Coke's Reports 18-19 (77 *English Reports* 1300-01.)

⁸⁴ See Greenberg, "The Dispensing Power and the Royal Discretionary Authority," pp. 377-97, 508-35; William Stacy, "The Bill of Attainder," pp. 491-97.

mercy also shaped the exercise of that authority. People sometimes criticised particular uses of the pardon, and on occasion redistributed the weight they gave to each side of the balance between justice and mercy, but they always insisted that a just ruler showed clemency. The following chapters continue to explore conceptions of mercy, looking at how they shaped and were shaped by experience and how they fit into the broader political culture of the period. The next turns to the dread upon which mercy relied for its effectiveness: punishment and the growing body of the criminal law.

Chapter Two

Changing Approaches to Punishment and Mitigation

Justice and mercy existed in tandem in both prescript and practise; changes to one transformed the other. Within the broad ideological context discussed in the previous chapter, Tudor authorities effected alterations to the uses of both punishment and mitigation. Over the period, parliamentary initiatives made an increasing number of actions criminal offences. This growth in the range of possible treasons, felonies, and misdemeanours was accompanied by experiments with penal sanctions. While legislators increased the number of crimes punishable with death, they also enacted fines, imprisonment, and corporal penalties to punish less serious offences and began to experiment with galley service and banishment. The social and political tensions wrought by religious realignments and the rapidly growing numbers of the itinerant poor frequently provided the incentive for penal innovations that later applied more broadly. Linked with this expansion in the scope and severity of the criminal law was a wholesale remodelling of traditional sources of mitigation. A growing sense among those in power that the indiscriminate mercy afforded by benefit of clergy, sanctuary, and abjuration no longer constituted an appropriate response to serious felonies prompted parliamentary and conciliar efforts to curtail these practises. These decisions and the discourse used to justify them demonstrated a pervasive belief that exemplary punishment deterred potential offenders. They also expanded the experience of authority in Tudor England.

Historians have recognised that the criminal law became increasingly severe in the Tudor period; this chapter fleshes out a story already told, in part, by previous studies.¹ The next chapter explores an allied set of changes that has not yet received the attention of historians: despite the increased severity of the law, mercy remained an essential complement to justice. Indeed, the growing scope of the law and its penalties required

¹ See, for example, J.A. Sharpe, *Judicial Punishment in Early Modern England* (London, 1990), pp. 27-28.

the flexibility and discretion allowed by clemency. As the Crown and its courts attempted to regulate more closely the misdeeds of the people, the Tudor sovereigns found mercy and mitigation, offered at their own discretion, an ever more necessary adjunct to punishment. Thomas Audeley's speech to the House of Commons in 1529 expressed an attitude to punishment and mitigation that remained constant throughout all the changes of the sixteenth century. According to a chronicler, Audeley

much praised the king for his equity and justice, mixed with mercy and pity so that none offence was forgotten and left unpunished, nor in the punishment the extremity nor the rigor of the law not cruelly extended: which should be a cause to bridle all men from doing like offence and also a comfort to offenders to confess their crime and offence and an occasion of amendment and reconciliation.²

As the severity and comprehensiveness of the law increased, so too did the need for flexibility and discretionary applications of mercy. The next chapter studies changes to the practise of pardoning; first, however, this chapter explores the punitive context within which pardons operated, analysing changes in punishments, sanctuary, abjuration, and benefit of clergy.

Punishment and the Law

At the beginning of the Tudor period, hanging remained the only punishment for offences that statute or common law deemed felonious.³ The king or his council might order hanging in chains to aggravate the punishment. Men convicted of treason were drawn to the execution site on a hurdle, partially hanged, cut down, disembowelled and quartered; women guilty of treason suffered a fiery death on the stake. Heretics risked death by burning, as well. Misprision and praemunire carried sentences of imprisonment at the king's pleasure. Forfeiture of land and goods to the one's immediate lord followed

² *Hall's Chronicle*, ed. Henry Ellis (New York, 1965), p. 765.

³ Executions in Halifax constituted a well-known exception: there, officials despatched offenders with an early form of the guillotine. See W. Harrison, "Of Sundry Kinds of Punishments Appointed for Malefactors," *Holinshed's Chronicle*, ed. H. Ellis, 6 vols. (New York, 1965), I, pp. 310-14. This chapter deals only with punishments meted out by royal courts. For a brief survey of the penalties used by borough courts, see J.G. Bellamy, *Crime and Public Order in the Later Middle Ages* (London, 1973), pp. 183-86.

each of these offences. Convictions for theft of goods worth less than 12d – petty larceny – resulted in whipping or imprisonment. Lesser offences, not yet clearly differentiated between civil trespass and criminal misdemeanour, resulted in fines, corporal punishment, and sometimes imprisonment. This set of punishments had changed little by the end of the Tudor period; death remained the penalty for all treasons and felonies. During the sixteenth century, however, the Tudors and their agents experimented with forms of punishment and expanded the range of offences to which they applied.

The Tudor period produced a plethora of statutes that created trespasses and misdemeanours, punishing them predominately with fines and forfeitures. The statutes represented an attempt to regulate more closely social and economic relations; many sought to further the project of government regulation by ordering punishments for local officials who failed to enforce their provisions. Henry VII's parliaments, although in session for just under two years of the twenty-four year reign, managed to pass fifty-two statutes imposing fines on a wide range of misdeeds. Thirteen of the measures included penalties on negligent officials; coroners, for example, faced a 100s fine for each inquest they failed to perform, and constables who neglected to enforce the new provisions against beggars risked forfeiting 20d.⁴ The others dealt primarily with manufacture, marketing, and customs. The parliaments of Henry VIII passed 158 statutes that contained financial penalties. These, too, focused on economic regulation, but also included measures to govern physicians, perjury, labourers, animal husbandry, and the production of weaponry. In addition to the subsidy acts, thirty-one imposed or heightened fines on officials who failed in their ever-increasing duties. During Edward VI's brief reign, parliament enacted forty-nine statutes imposing fines. Of these, thirteen had provisions for negligent officers. Mary's parliaments passed twenty-nine bills that created new offences punishable with fines; Elizabeth's enacted 103. Eight of Mary's and thirty of Elizabeth's threatened officials with financial penalties for failure in their duties.

⁴ 3 Henry VII c. 2, 11 Henry VII c. 2.

Some of these acts were of short duration, either through repeal or built in expiration dates. Their steady increase, however, showed an attempt to regulate more and more areas of life and endeavour by statutory penalties enforced in the courts.

Many of these measures sought to encourage prosecution by offering to split the fine with any informer who successfully brought charges against an offender. Informers and the so-called penal laws have received much attention from economic historians; however, as Bellamy has noted, their place in the development of the criminal law needs examination as well.⁵ The use of informers developed from attempts to encourage victims to lay charges by offering compensation. One statute from the reign of Edward I offered a reward to anyone who brought charges, or laid information, against an offender; from then until the death of Richard III, no fewer than fifty-nine acts of this nature appeared. Twenty-six from the reign of Henry VII included this mode of enforcement, while an additional three promised to share the forfeiture with civic or guild authorities who helped implement the new measures. During the reign of Henry VIII, 103 new acts relied upon the activities of informers. Edward VI's parliaments passed a further twenty-six. Sixteen of the acts passed under Mary and no fewer than sixty-five under Elizabeth did the same. Bellamy emphasised that the Crown did not simply nor primarily intend the penal statutes as sources of revenue for the Crown; rather, the practise of informing provided the Crown with the means to bring offences into its courts in addition to the appeals, presentments and indictments that comprised the regular modes of prosecution.⁶

Informers ran into opposition, however. Informing became a profession for some, and was open to a range of abuses: a common complaint was that informers took advantage of the costs of protracted litigation or trips to the London courts to induce

⁵ D.H. Brown noted that, strictly speaking, "penal" refers to the laws against Catholics, but from the sixteenth century the term was used loosely and often referred to the mass of non-felonious criminal legislation: "Abortive Attempts to Codify English Criminal Law," *Parliamentary History* 11 (1992): 3n.22.

⁶ J.G. Bellamy, "Information and Penal Laws," in his *Criminal Law and Society in Late Medieval and Tudor England* (Gloucester, 1984), pp. 90-113.

their victims to pay them to drop fabricated or malicious charges. Informers frequently suffered verbal, even physical, attack: in 1566, for example, people assaulted known informers while they plied their trade at the courts of Westminster.⁷ In Elizabeth's reign, some informers received commissions to compound for violations of various penal laws. One man, for instance, obtained the sole right to all fines mandated by a statute against burning timber to make iron; another had a licence to compound with those who violated the leather tanning statutes.⁸ Such licensees often relentlessly pursued offenders, hoping to make as much money as possible; the enforcement of the relevant statutes seemed less in the interest of the commonwealth than a nuisance to generate income. Parliament and the privy council made token efforts to reform the practise of informing of its abuses, but productive change had to wait for the parliaments of James I.⁹ The extent to which the courts enforced penal statutes will probably never be fully known, but M.W. Beresford found a significant increase in the appearance of informers in Exchequer over the course of the sixteenth century. Informations laid in Michaelmas term rose from forty-four in 1519 to roughly 550 in the 1590s.¹⁰

Royal proclamations also ordered the use of fines for both new and existing offences. Of Henry VII's sixty-two extant proclamations, for example, twenty-four called for financial penalties; fifty-four of the 231 surviving from the reign of Henry VIII did the same.¹¹ Public ordinances issued under royal prerogative, proclamations most commonly ordered the enforcement of existing statutes or extended their scope,

⁷ TRP, II, no. 547.

⁸ W. Price, The English Patents of Monopoly (Boston, 1906), p. 146.

⁹ For efforts in Elizabeth's reign, see D.R. Liddington, "Parliament and the Enforcement of the Penal Statutes: The History of the Act 'In Restraint of Common Promoters' (18 Elizabeth I, c.5)," Parliamentary History 8 (1989): 309-28. Much, of course, has been written about regulation of informers and penal statutes in the reign of James I; for a brief introduction, see M.W. Beresford, "The Common Informer, the Penal Statutes and Economic Regulation," Economic History Review, 2nd series, 10 (1957-8): 222-35.

¹⁰ Beresford, "The Common Informer," pp. 223-24; see also Bellamy, Criminal Law, p. 104 for information from D.J. Guth's unpublished dissertation on the Exchequer.

¹¹ See the TRP; see also R.W. Heinze, The Proclamations of the Tudor Kings (Cambridge, 1976) and F.A. Youngs, The Proclamations of the Tudor Queens (Cambridge, 1976).

sometimes by adding a penalty for officials who failed in their duties. Often admonitory in intent, they sometimes offered only vague penalties for disobedience: offenders might, for example, earn “the king’s great wrath” or find themselves in “extreme peril.”

Proclamations lacked the permanence of statutes, but still contributed to the increasing intrusion of the Crown and its officers into more areas.

Fines did not constitute the only punishments for the new misdemeanours and regulatory offences; the use of corporal punishment increased over the Tudor period as well. The statutes regulating vagrancy regularly included provisions for whipping, as did two of Henry VIII’s proclamations against beggars. Two of the vagrancy statutes, and seven others prohibiting such things as seditious speech, the exportation of sheep, and forgery of writs ordered the removal of ears or hands.¹² The act prohibiting malicious bloodshed within the confines of the king’s court stipulated, in grisly detail, the proper procedure for severing an offender’s hand. It assigned the chief surgeon and other officials of the royal household the various tasks associated with preparing the knife, searing the stump and providing sustenance to the offender.¹³ Some statutes stipulated time in the pillory, either as sole punishment or in conjunction with fines. The pillory served primarily to humiliate and shame an offender, but also inflicted a good deal of pain and opened the offender to attacks from observers.

Imprisonment proved a more common feature of the statutes than corporal punishment. Many commentators on the early modern legal system have maintained that the authorities used gaols to coercive or custodial rather than punitive ends; they have suggested that gaols housed only debtors or people waiting trial.¹⁴ Although these uses

¹² 22 Henry VIII c. 12; 27 Henry VIII c. 25; 33 Henry VIII c. 12; 2 & 3 Edward VI c. 15; 1 & 2 Philip and Mary c. 3; 1 Elizabeth I c. 6; 5 Elizabeth I c. 14; 8 Elizabeth I c. 3; 23 Elizabeth I c. 2; TRP I, nos. 128, 204. See also 33 Henry VIII c. 1 which left punitive options open: it ordered imprisonment, pillory, or other (unspecified) corporal pains short of death.

¹³ 33 Henry VIII c. 12. In June 1542, Sir Edward Knyvett was the first person condemned to the penalties of this act. Just as the surgeon was to strike Knyvett’s hand, the king issued a stay. Later that day he gave his pardon and proclaimed that henceforth any who violated the act were to lose their hands without any hope of redemption. Wriothesley’s Chronicle, ed. W.D. Hamilton, 2 vols., Camden Society, n.s., vols. 11 and 20 (London, 1875-77), I, p. 125.

¹⁴ J.H. Baker, The Legal Profession and the Common Law: Historical Essays (London, 1986), p. 295; Sharpe, Judicial Punishment, p. 25. Some historians, after comparing low conviction rates to the higher

comprised the most frequent functions of gaols, focusing on them alone obscures sixteenth-century experiments in punishment. J.M. Beattie's study of sentencing between 1660 and 1800 forced historians of modern penal systems to recognise that the punitive use of prisons predated the "age of reform."¹⁵ Imprisonment used as punishment also formed a feature of the period studied here and had even earlier roots. Ecclesiastical judges, unable to impose sentences of death, had long employed punitive confinement and so, too, had their secular counterparts. Bellamy noted that medieval prisons housed not only those awaiting trial, but also some convicted offenders. Sanction for imprisonment lay initially in the royal prerogative -- detention at the order of sovereign and council continued throughout the Tudor period -- but also came to rest on statute. R.B. Pugh has demonstrated that the accession of Edward I marked a watershed in the history of imprisonment in medieval England. Thereafter, penalties of time in gaol, tied to new statutory trespasses, began a marked multiplication that accelerated through the Tudor period.¹⁶

Far from salubrious, unhealthy prisons might easily turn a life sentence into a brief punishment. The coroners' records laconically recorded many deaths from "gaol fever," or typhus. Alice Casselowe, for instance, did not survive her one year sentence for witchcraft. At least 200 people died in Essex gaols between 1562 and 1603.¹⁷ Plays

numbers of presentments, have suggested an informal punitive use of gaols: jurors may have regarded the pre-trial confinement of suspects as sufficient punishment.

¹⁵ J.M. Beattie, *Crime and the Courts in England, 1660-1800* (Princeton, 1986). See also P. Spierenburg, *The Prison Experience: Disciplinary Institutions and their Inmates in Early Modern Europe* (London, 1991). Spierenburg argued that the transformations in penology at the beginning of the nineteenth century were not a radical innovations but the acceleration of processes begun long before. Prisons eventually replaced the scaffold, but only after a protracted period of co-existence. He erred, however, in claiming that prisons' punitive functions only began with the mid-sixteenth century house of correction. J. Langbein also noted that the reduction of capital sanctions throughout Europe during the Enlightenment built upon the earlier existence of alternative sanctions. See his chapter on "The Transformation of Criminal Sanctions," in *Torture and the Law of Proof* (Chicago, 1977), pp. 27-44.

¹⁶ Pugh, *Imprisonment in Medieval England* and Bellamy, *Crime and Public Order*, pp. 162-66. See also *Imprisonment in England and Wales*, eds. Ireland, Hines, et al., where Ireland followed Pugh in discussing the growing use of imprisonment as a punishment during the middle ages, but Hines ignored this argument and assumed that because punishment in this period was meant to induce exemplary terror through public displays, imprisonment could not have been important.

¹⁷ See Cockburn, *CAR: Sussex*, no.662 and his list of prison deaths on the Home Circuit in *Introduction*, pp. 145-71.

and other narratives vividly portrayed the horrors of imprisonment in dark, dank, and infested gaols: exposure to vermin and the elements remained common complaints.¹⁸ A man of some means, Edward Underhill paid for better accommodations than most during his 1554 confinement in Newgate, but nevertheless left in such a sick and weakened state that acquaintances proved unable to recognise him.¹⁹ The picture of health on her arrest for witchcraft, Elizabeth Stile had to come before the assize judges in a barrow because her toes had rotted off during her short stay in gaol. One contemporary attributed this malady to the malevolent efforts of a fellow witch, but the poor gaol conditions offer a more likely explanation.²⁰ If a prisoner avoided contagion, starvation always remained a threat. Henry Brinklow's 1542 litany of religious and legal abuses noted that prisoners' 'lodging is too bad for hogs, and as for their meat, it is evil enough for dogs, and yet, the Lord knows, they have not enough thereof.'²¹ Prisoners had to pay for their own food. The unsalaried gaolers earned their livings by charging inmates for necessities and improved treatment. Henry VIII's act ordering the construction of new gaols throughout much of the realm made only temporary provisions for prisoners' funding. In 1572, justices began to levy funds from the parishes to feed inmates, but many prisoners had to rely on public alms.²² Imprisonment, then, offered a fearsome penalty for disobedience.

In the Tudor period, authorities used punitive imprisonment both as a penalty for new crimes and as a harsher sentence than that previously used for an existing offence.

¹⁸ For the literary fascination with prison scenes, see E.D. Pendry, *Elizabethan Prisons and Prison Scenes*, 2 vols. (Salzburg, 1974); see also P. McGrath and J. Rowe, "The Imprisonment of Catholics for Religion under Elizabeth I," *Recusant History* 20 (1991): 415-35.

¹⁹ "Underhill's Narrative," in A.F. Pollard, *Tudor Tracts, 1532-1588* (New York, 1964), pp. 170-98.

²⁰ *A Rehearsal Both Strange and True of Heinous and Horrible Acts Committed by Elizabeth Stile* (London, 1579), sig. B2v.

²¹ Henry Brinklow, *The Complaint of Roderick Mors* (1542), ed. J.M. Cowper, Early English Text Society, n.s., vol. 22 (London, 1874), p. 27.

²² 23 Henry VIII c. 2; 14 Elizabeth I c. 5. See *Imprisonment in England and Wales*, eds. R. Ireland, B.Hines et al (Beckenham, Kent, 1985), pp. 40ff, 92-98 and R.B. Pugh, *Imprisonment in Medieval England* (Cambridge, 1968), pp. 315-73 for general discussions of the state of prisoners and their surroundings.

For instance, the act sanctioning imprisonment for fornicating or otherwise “fleshly incontinent” priests mandated a new punishment for an old offence, whereas the act ordering a year and a day in gaol for those caught stealing the eggs of swans and hawks offered a new penalty for a new crime.²³ Henry VII’s parliaments passed twenty statutes mandating the use of imprisonment, and Henry VIII’s passed forty-one. Edward VI’s reign saw a further twenty-one, Mary’s twelve and Elizabeth’s forty-four, for a total of 138 Tudor statutes ordering gaol terms. Some mandated time on the pillory or in gaol in addition to financial penalties; others used imprisonment alone. Twenty-three of the statutes ordered time in gaol to compel compliance to their provisions; the offenders earned release when they paid a tax or fee they had refused, or upon their bond to perform an act they had failed to do freely. For instance, tax collectors who neglected to tender their accounts on the specified day risked imprisonment until they did so; an act passed in 1496 ordered incarceration for servants who refused to work for the official set rates until they found sureties guaranteeing their willingness to comply.²⁴ The rest of the statutes ordering imprisonment had punitive aims. Many left the time to be served to the discretion of the king or royal officials. Others ordered sentences that ranged from a few days to five years. Parliament applied imprisonment to a range of offences, including forgery, foreign trade, and usury. People who hunted in disguise or begged without license risked imprisonment, as did those who owned prohibited books, ministers who refused to use the book of common prayer, and people who attended a religious service other than that sanctioned by law. Under Henry VIII, some statutes began to call for perpetual imprisonment: five from his reign, five from Edward’s, two from Mary’s and five from Elizabeth’s included life sentences. This penalty applied most commonly to religious offences that bordered on treason, such as preaching that derogated the Crown, but priests who married, people who used prophecy to incite insurrection and those who inflicted violence within the confines of the court also risked life terms in gaol.

²³ 1 Henry VII c. 4; 11 Henry VII c. 17.

²⁴ 11 Henry VII cc. 10, 23.

A significant proportion of the statutes mandated increasingly severe penalties for second or third time offenders. A fine might be ordered for the first offence and a term in gaol for the second, or a lengthy period of imprisonment might follow a shorter initial sentence. Graduated sentencing had appeared earlier, but with thirty such statutes passed in the Tudor period, it became a more regular element of efforts to deal with disorder. It arose most frequently in measures regulating vagrancy and religion. With the close relation of church and state, authorities feared nonconformity in religious doctrine and organisation. The persistent confessional turmoil of the sixteenth century inspired penal innovations, as did vagrancy. With the rapid population growth after 1520 -- doubling from about two million people to over four million by 1600 -- an insufficient distribution of land and employment swelled the numbers of the dispossessed. Humanist and puritan social thought came to treat poverty not as a sign of sanctity, but as a social and moral evil to be eradicated.²⁵ The seven acts using graduated sentences of the first two Tudors all dealt with religion and the poor, and another ten dealing with these issues followed in later years. The first such act of the period, for example, passed in 1497 and made those found begging without license liable to three days and nights in the stocks; it ordered those caught a second time to spend six days and nights so confined.²⁶ According to an act of 1544, anyone who printed matter contrary to authorised doctrine risked three months imprisonment and a £10 fine for each item published. On the second such offence, the printer faced life in gaol and forfeiture of all goods. The same statute ordered laymen who preached against the king's doctrine to recant and spend twenty days in gaol. If they refused or offended a second time, they had to abjure their

²⁵ M. Todd, *Christian Humanism and the Puritan Social Order* (Cambridge, 1987), esp. pp. 118-47. Much has been written documenting the growing numbers of the rootless poor, the causes of their dispossession and the responses they engendered. See A.L. Beier, "Vagrants and the Social Order in Elizabethan England," *Past and Present* 64 (1974): 3-29 and *Masterless Men: The Vagrancy Problem in England, 1560-1640* (New York, 1985), which also discuss vagrancy legislation as part of a larger extension of state authority. J. Youings, *Sixteenth Century England* (London, 1984), pp. 279-303 and the various works of J.F. Pounds and P. Slack are also helpful. The classic study of the demands religious change posed for legislators is G.R. Elton's *Policy and Police: The Enforcement of the Reformation in the Age of Thomas Cromwell* (Cambridge, 1972).

²⁶ 11 Henry VII c. 2.

beliefs and perform public penance. If they continued to refuse, or offended a third time, they were to forfeit all their goods and spend life in gaol.²⁷ In the reign of Edward VI, parliaments began to order progressive penalties for recidivists in other areas. A 1550 act stipulated one year in gaol and a £10 fine for those who used “fond and fantastical prophecies” to stir up insurrection. Those who failed to learn their lesson and made a second attempt faced life in gaol and the forfeiture of all goods and chattels.²⁸ Such measures allowed relative lenience for first time offenders and discouraged further wrongdoing with the threat of harsher punishment to follow.

The Tudor period, then, witnessed a dramatic growth in statutes ordering punitive uses of confinement. It also saw the first efforts to use imprisonment for corrective purposes. In 1552, a group of Londoners petitioned the king for permission to turn Bridewell palace into a workhouse. Idleness led to beggary, they claimed, which in turn led to thievery and other criminal behaviour. Work offered the cure. The willing poor needed a chance to redeem themselves; obstinate vagabonds faced coercion. They suggested that the workhouse might also serve to correct and punish people acquitted of petty offences.²⁹ The London Bridewell secured its charter in 1553, and others promptly appeared throughout the country. Gloucester, Ipswich, and Norwich had houses of correction by the 1560s. Acts passed in 1576 and 1597 encouraged their foundation and use; by the turn of the century, at least a quarter of all counties had a minimum of one such reformatory.³⁰ Men committed to these houses might spend their time grinding

²⁷ 34 & 35 Henry VIII c. 1.

²⁸ 3 & 4 Edward VI c. 15.

²⁹ Reprinted in *Tudor Economic Documents*, eds. R.H. Tawney and Eileen Power, 3 vols (London, 1924), II, pp. 306-12. See also a German visitor's account of Bridewell, where prisoners were whipped twice a week to promote penance for their wrongdoing. He thought that the palace, originally built to house the visiting Emperor Charles V, was “afterwards, to disgrace the later, made...a place of confinement for harlots and villains.” “Journey Through England and Scotland Made by Lupold von Wedel in the Years 1584 and 1585,” trans. G. von Bulow, *Transactions of the Royal Historical Society*, n.s. 9 (1895): 233.

³⁰ J. Innes, “Prisons for the Poor: English Bridewells, 1555-1800,” in F. Snyder and D. Hay, eds., *Labour, Law and Crime* (London, 1987), p. 62. Innes and A.L. Beier, in *Masterless Men*, pp. 164-69, are the only two historians who have given the English bridewells any sustained attention. Paul Griffiths, however, is currently engaged in a major study of the institution.

malt, women in carding and spinning.³¹ People who committed a range of petty offences ended up in the reformatories, as well as those found without work.

The authorities also experimented with the use of galleys, military service, and exile in their efforts to match new offences with appropriate penalties. The Tudors regularly banished offenders and unwanted groups of people that they deemed to be foreign subjects. While not always official judicial punishments, these moves did represent efforts to deal with disorder. In 1492, a parliamentary act adapted the mechanics of abjuration to deport Scottish subjects.³² In 1544, the king commanded the French to leave or risk galley service.³³ Gypsies frequently received orders to depart upon pain of imprisonment or worse. Perceived as vagrants of the worst sort who used devious means to get money from their victims, Gypsies were also thought to engage in more serious robberies and thefts.³⁴ In 1601, the privy council arranged to have all “blackamoors” transported from the country: infidels and frequently indigent, they were deemed to cause great annoyance to the queen’s “natural subjects.”³⁵ Religious dissidents frequently received similar treatment. In 1538, the king banished Anabaptists; Elizabeth ordered both Jesuits and seminary priests to leave the realm or risk the penalties of the law.³⁶ The authorities did not consider members of these groups to be English subjects. They arrived from abroad to cause trouble and vexation, and authorities decided to cope with them by sending them back whence they came.

Native-born offenders faced similar purges from the community. In the wake of the 1549 rebellions, the privy council ordered the Lords Lieutenant to seek the soldiers

³¹ See the “Regulations for the Relief of the Poor at Norwich,” in *Tudor Economic Documents*, eds. Tawney and Power, II, p. 319.

³² 7 Henry VII c. 6.

³³ *TRP* I, no. 227.

³⁴ 22 Henry VIII c. 10; 1 & 2 Philip and Mary c. 4; *APC*, iv, pp. 59, 166, v, p. 185.

³⁵ Salisbury MS v. 91, n. 15.

³⁶ *L&P* XIII, ii, 890; *TRP* I, no. 186; *APC*, xxvii, p. 21, xxviii, p. 153, xxxii, pp. 299, 491.

they needed from the ringleaders and worst troublemakers of the recent stirs.³⁷ In 1586, to meet the Earl of Leicester's need for troops and to prevent "further mischief growing by their lewd example and obstinacy," the privy council sent an order to levy two hundred of the most able-bodied recusants.³⁸ In these instances, military service was not strictly a penal sanction: the people concerned had already received punishment or pardon for their offences. Rogues and vagabonds were the first and most frequently used to flesh out armies or to row galleys. In 1545, the king determined to have "ruffians, vagabonds, masterless men, common players, and evil disposed persons to serve his majesty and his realm in these his wars in certain galleys and other like vessels."³⁹ Throughout the period, the privy council frequently suggested that local authorities forcibly recruit from among the "idle and loose persons" who wandered about the country. In 1601, the mayor of London welcomed the privy council's directive to offer vagrants the choice to serve in the queen's wars or to suffer the dangers of the law. He noted that such ill-disposed persons had become "burdensome to the commonwealth and cannot be thrust out but by such means."⁴⁰ Local authorities often needed no such suggestions from on high, and filled requests for troops from the ranks of their troublesome or impoverished neighbours. Military commanders did not always welcome these conscripts, who frequently arrived too ill or unwilling to offer much aid. Elizabeth responded to such criticisms and ordered that her agents fill no more levies for Ireland from the "base and ill conditioned."⁴¹ Domestic peace of mind prevailed over military considerations, however, and before long the council again suggested that rogues be purged from the realm in this way.

³⁷ SP 10/9, no. 46, 10/8, no. 4.

³⁸ APC, xiv, p. 125.

³⁹ TRP I, no. 250.

⁴⁰ Salisbury MS vol. 182, no. 143. See also APC, xvi, pp. 291-92; Analytical Index to the...Remembrancia, eds. W.H. and H.C. Overall (London, 1878), p. 240.

⁴¹ HEH HA 4150, 4152, 2545.

Although generally ad hoc and informal, the measures outlined above paved the way for the more methodical use of exile and galley service as secondary punishments applicable to new crimes or as punishments more severe than those previously used.⁴² A proclamation of 1549 threatened people spreading rumours of military defeat with time in the galleys if found guilty.⁴³ The Court of Star Chamber also used banishment and galley service as sentences imposed after trial in addition to the more common fines, imprisonments, ear croppings and other corporal punishments. As the court moved its focus from matters civil to criminal in the latter half of the sixteenth century, it developed and defined new classes of criminal misconduct.⁴⁴ The judges of Star Chamber had no authority to touch life, limb, or property, but otherwise enjoyed more flexibility than their common law counterparts in fashioning punishments they thought fit for the offenders before them. Few of their decrees, however, have survived.⁴⁵ This thwarts any attempt to understand fully how this court contributed to changing ideas of due punishment; only a few suggestive glimpses remain. In 1519, the court exiled a man for an offence left unspecified in the record.⁴⁶ In 1548, the judges found Edward Grymeston guilty of slander and sentenced him to a life of slavery in the king's galleys. In 1562, the court ordered the participants in a failed murder conspiracy to whipping, the pillory, and life in

⁴² Exile was a common judicial penalty retained by the English while they governed Calais and Tournai. Its regular use in the French territories might also have served as a precedent and inspiration.

⁴³ TRP I, no. 329. Langbein, in *Torture and the Law of Proof*, pp. 29-33, discussed the use of galley sentences in continental Europe but mistakenly stated that the English did not have galleys in their navy and thus never used them as a penal measure. For the use of galley sentences by continental powers, see also R. Pike, "Penal Servitude in Early Modern Spain: the Galleys," *Journal of European Economic History* 11 (1982): 197-217, and P. Bamford, *Fighting Ships and Prisons: The Mediterranean Galleys of France in the Age of Louis XIV* (Minneapolis, 1973), esp. pp. 173-99.

⁴⁴ T.G. Barnes, "Star Chamber and the Sophistication of the Criminal Law," *Criminal Law Review* (1977): 316-20. For the early history of the court, see J.A. Guy, *The Cardinal's Court: The Impact of Thomas Wolsey in Star Chamber* (Hassocks, 1977).

⁴⁵ See J.A. Guy, *The Court of Star Chamber and its Records to the Reign of Elizabeth I* (London, 1985), and T.G. Barnes, "The Archives and Archival Problems of the Elizabethan and Early Stuart Star Chamber," in F. Ranger, ed., *Prisca Munimenta, Studies in Archival and Administrative History* (London, 1973), pp. 130-49.

⁴⁶ Guy, *Cardinal's Court*, p.117; HEH EL 2655, fol. 14v.

gaol; it banished one man for his complicity.⁴⁷ In 1593, when two men came before the court a second time for counterfeiting warrants, the judges sent them to the galleys.⁴⁸ Three years later, they committed to the galleys two men who had extorted money with forged warrants.⁴⁹ In 1602, the four men who falsely accused the Lord Treasurer of a lengthy series of financial misdeeds received a sentence of fines, whippings, the pillory, loss of their ears and either perpetual imprisonment or the galleys.⁵⁰ In these cases, the Star Chamber justices used their freedom to craft sentences deemed appropriate to particular offences to impose penalties even more fearsome than imprisonment or mutilation.

Parliament also discussed the use of exile and galley service as secondary punishments for new offences not thought to merit death. An early copy of the 1593 bill “for restraining Popish recusants in some certain place of abode” ordered galley service or banishment for those who had not conformed after repeated offences.⁵¹ By the time the bill passed into law, however, it included a somewhat different set of punishments. All mention of galleys had disappeared and abjuration of the realm became the highest penalty in both this statute and its companion, “An Act to Retain the Queen’s Subjects in Obedience.”⁵² This was not abjuration as those living at the beginning of the century had known it. In both of these acts, exile was no longer something chosen by the offenders involved: it became a court-ordered sentence of banishment, inflicted after trial and judgement.

⁴⁷ HEH EL 2768 fols. 21v-22r; EL 2652, fol. 5v and 14r.

⁴⁸ *APC*, xxiv, 486.

⁴⁹ BL Harleian 2143, fol. 65; *Les Reportes del Cases in Camera Stellata 1593-1609*, ed. W.P. Baildon (London, 1894), pp. 36-38.

⁵⁰ SP 12/284, no. 46; 12/283, nos. 6, 7. Two had their sentences reduced because of penitence and past service.

⁵¹ SP 12/244, no.108.

⁵² 35 Elizabeth I cc. 1, 2. For the stormy passage of these acts, see the description in the “Anonymous Journal” of the 1593 parliament in *Proceedings in the Parliaments of Elizabeth I*, ed. T.E. Hartley, 3 vols. (Wilmington, Del., 1981-), III, pp. 122, 151, 162, 166-69.

Neither act passed unopposed. Members of the two houses argued and eventually agreed that married women did not have to face exile, as banishing a wife unfairly punished the husband. The second act applied to Brownists as well as Catholic recusants and generated much debate. Sir Walter Raleigh agreed that Brownists were “worthy to be rooted out of any commonwealth,” but asked that his fellow members consider “what danger may grow to ourselves if this law pass... The law is very hard that takes life or sends into banishment, where men’s intentions shall be judged by a jury.” Practical concerns intruded as well. “If 2,000 or 3,000 Brownists meet at the sea,” he asked, “at whose charge shall they be transported, or whether will you send them?... [W]hen they are gone who shall maintain their wife and children?”⁵³ Despite these objections, the bills passed into law with their provisions to banish people who persistently refused to conform to the religious settlement. With these acts, parliament for the first time authorised exile as a new punishment for offenders. Another soon followed. An act passed in 1598 built upon the casual and occasional use of impressment to control vagrancy and allowed JPs to sentence “dangerous rogues” to perpetual exile or service in the galleys.⁵⁴ Again, the problems the transient poor and religious dissidents posed for royal servants prompted innovations in penal sanctions. In these measures, banishment and galley service represented harsher penalties than those previously used or punishments for new, non-felonious offences. Thus, they contributed both to the general increase in severity of criminal sanctions and to the extension of the law’s ability to regulate more and more kinds of behaviour. As with fines, corporal punishment, and imprisonment, the authorities did not apply banishment and galley service directly to offences labelled felonies.

In the three statutes mandating exile, however, the offence became a felony if the offender refused to leave the realm. In this aspect, they resembled fifteen statutes with graduated sentences that culminated with the penalty of death. In eight, an act committed a second or third time became a felony and in seven the offence, when repeated, became an act of treason. A statute of Elizabeth’s reign, for example, banned

⁵³ *Ibid.*, III, pp. 162-63.

⁵⁴ 39 Elizabeth I c. 4; renewed 43 Elizabeth I c. 9.

the exporting of sheep and ordered forfeiture of goods and one year in gaol for the first conviction. It ordered local officials to take the offender to the market place, sever his or her left hand and nail it up for public view. If the offender again exported sheep, the offence became a felony with the standard punishment of death by hanging.⁵⁵ In these statutes, the offensive acts were not deemed inherently felonious or treasonous; they only became so through repetition. Definitions of treason had long changed to fit the particular needs of a ruler or situation, but these graduated sentences marked a different, more flexible use of the term “felony” than the common law had allowed in the past. If asked whether the Tudor parliaments ever found a true secondary punishment for felony, using imprisonment or exile rather than execution, a historian might easily respond in the negative, for no action labelled as a felony had a penalty less than death specified in the statutes. However, by the most common definition of felony – a crime resulting in a capital sentence – both question and answer are tautological. Two other conditions sometimes defined a felony: an offence committed with malice or evil intent, or an offence resulting in forfeiture. If understood in this way, then felonies did result in sanctions other than death during the Tudor period. The use of graduated sentences further complicated a static understanding of felony, and allowed a more flexible, less heavy-handed response to disorder. It permitted the application of lighter, more broadly acceptable penalties while making clear the perceived gravity of the offence.

Statutes that provided graduated penalties comprised part of a much larger body of measures that created new felonies and treasons. Although not uniform or linear across the period, the increase in capital penalties meant that those in authority deemed many more acts to merit death by 1603 than had been the case in 1485. Historians have long known of this general trend, and Bellamy has provided a detailed study of the multiplication of treasons over the period through statutes and judicial construction.⁵⁶

⁵⁵ 8 Elizabeth I c. 3.

⁵⁶ J.G. Bellamy, *The Tudor Law of Treason: An Introduction* (London, 1979); see also his *The Law of Treason in England in the Later Middle Ages* (Cambridge, 1970).

The magnitude of the growth in felonies and the impulses behind it, however, have received little discussion.⁵⁷ The parliaments of Henry VII's reign passed four statutes creating new felonies. Two made felons of soldiers deserting their posts and of all parties involved in the abduction of women; another labelled conspiracy by any member of the royal household to kill the king, his nobles or councillors a felony. The fourth, against unlawful hunting in forests and parks, noted the difficulty in achieving successful prosecutions under previous statutes because the hunters often wore disguises. Thenceforth, those who confessed to the offence upon examination were guilty of fineable trespass. If they persistently concealed their misdoing, the offence became a felony. Another statute made counterfeiting foreign coin, like counterfeiting domestic money, an act of treason.⁵⁸ Without explicitly labelling the offences felonious, two proclamations ordered death for individuals breaking the peace in the troubled early days of the reign.⁵⁹

Henry VIII's parliaments enacted a host of capital statutes. Eleven expanded the definition of treason. One of these made murder by poison, which already carried the death penalty, an act of treason, but also mandated a new and grisly form of execution: death by boiling.⁶⁰ A further fifteen statutes created new felonies.⁶¹ These covered a

⁵⁷ In contrast, many historians have studied the dramatic growth of capital sanctions after the Revolution of 1688-89, known as the "Bloody Code." These historians have tended to rely for comparative purposes on Radzinowicz's misleading statement that from the accession of Edward III to the death of Henry VII six capital statutes were passed and from 1509 to the death of Charles II, a further thirty were enacted: A History of English Criminal Law and its Administration from 1750, 5 vols. (London, 1948), I, p. 4. While the 150+ capital statutes passed between 1688-1820 outnumbered sixteenth century measures, it is worth remembering that parliament sat for a cumulative time of less than 41 of the 118 years of the Tudor period, in contrast to the annual meetings of the post-Revolution parliament. As J.A. Sharpe noted when discussing Elizabethan legislators, "one suspects that if length and regularity of sittings had given them the opportunity, they might have added as many capital statutes to the legal code as did their Hanoverian successors." Crime in Early Modern England, 1550-1750 (London, 1999, 2nd edition), p. 212; see also J. Innes and J. Styles, "The Crime Wave: Recent Writing on Crime and Criminal Justice in Eighteenth-Century England," Rethinking Social History, ed. A. Wilson (Manchester, 1993), pp. 241-43. A brief outline of the multiplication of capital sanctions is given in the pages that follow, but the subject deserves further work.

⁵⁸ 1 Henry VII c. 7; 3 Henry VII cc. 2, 14; 4 Henry VII c. 18; 7 Henry VII c. 1.

⁵⁹ TRP I, nos. 1, 13.

⁶⁰ 22 Henry VIII c. 9. See also W. Stacy, "Richard Roose and the Use of Parliamentary Attainder in the Reign of Henry VIII," The Historical Journal 29 (1986): 1-15 for more on this act.

broad range of offences. One defined tolls and other exactions in the Welsh forests as highway robbery and thus felonious; fishing in private ponds after nightfall, casting spells “to provoke unlawful love,” and selling horses to the Scots also became punishable by death at the end of a rope.⁶² The preambles of these statutes indicated that parliament enacted some of them to clarify existing felonies: some doubt had existed, for example, whether servants who embezzled goods belonging to their masters or mistresses had committed a felony. Some argued that the ambiguity in the law had emboldened servants to commit such deeds. The act declared this behaviour felonious and thus punishable by death.⁶³ Parliament passed some laws to control what it perceived as new and troubling behaviour; it enacted others to heighten the severity of penalties to deter offenders. The preambles attested to a firm belief in the preventative value of the death penalty.

This dramatic growth in capital sanctions halted abruptly at the accession of Edward VI. His first parliament repealed all felonies created since 1509 and all treasons enacted since 1352, save for those dealing with counterfeiting. The act noted these laws had been “very straight, sore, extreme and terrible.” Edward, it maintained, planned to rule through love rather than fear. While troubled times necessitated tough laws, more peaceful days allowed for the relaxation of these laws. The king trusted that the people would not abuse his “great indulgency and clemency,” but take it as an encouragement to live good lives.⁶⁴ Even in his short reign, however, parliament passed three laws that restored or expanded the definition of treason and three that restored previous felonies: those who denied the royal supremacy over the church, called the king a heretic or usurper, or participated in illegal gatherings faced charges of treason. Buggers, army deserters, and disguised hunters again risked a felon’s death. Two statutes created new

⁶¹ 27 Henry VIII c. 7 transferred piracy –murder, robbery, etc. committed on the high seas – long punishable by death in the civil law admiralty jurisdiction to a common law jurisdiction. In one sense, then, this created a new felony, but not a new offence, so it has not been included in this count.

⁶² 23 Henry VIII c. 16; 27 Henry VIII c. 21; 31 Henry VIII c.2; 33 Henry VIII c. 8.

⁶³ 21 Henry VIII c. 7.

⁶⁴ I Edward VI c. 12.

felonies. One declared that if twelve or more people gathered to break enclosures, they committed a felony. The second ordered that people who refused work when offered be branded on the chest and serve two years as a slave. The latter statute instituted a novel form of punishment in that it mandated private slavery rather than labour in the service of the state. If such slaves twice attempted to escape or conspired against their masters, they committed a felony.⁶⁵

In her first parliament, Mary followed her brother's example and assented to a bill that repealed all felonies and penalties of praemunire created since 1509. She, too, voided all treasons and misprisions created by statute since the Great Treason Act of 1352. She adduced the same reasons Edward had in his repeal act: the state of any ruler had its best foundation in love rather than dread of extreme punishment.⁶⁶ But she, too, soon felt a need for more rigorous laws. In addition to reviving the old heresy acts, her parliaments passed five laws making new treasons and four creating or restoring felonies. The treasons included praying for the queen's death, preaching against the king or queen, counterfeiting foreign coin or royal seals, and importing counterfeit foreign currency.⁶⁷ People who participated in unlawful assemblies or who destroyed Norfolk dikes risked a felon's death, as did soldiers who deserted their posts and Gypsies for the mere fact of being in the country.⁶⁸

Upon her accession, Elizabeth repealed the Marian heresy laws but no others. Her parliaments enacted eleven laws that expanded the scope of treason and nineteen that clarified, created, or restored felonies. Offences labelled treasonous included impugning the queen's title in writing, refusing the oath of supremacy, and clipping coins. Among other offences, exporting leather, casting spells that resulted in death, helping

⁶⁵ 1 Edward VI cc. 3, 12; 2 & 3 Edward VI cc. 2, 29; 3 & 4 Edward VI cc. 5, 17; 5 & 6 Edward VI c. 11. For more on the unusual provisions of the vagrancy act, see C.S.L. Davies, "Slavery and Protector Somerset: The Vagrancy Act of 1547," *Economic History Review* 2nd ser., 19 (1966): 533-49.

⁶⁶ 1 Mary I, st. 1, c. 1.

⁶⁷ 1 Mary st. 2, c. 6; 1 & 2 Philip and Mary cc. 9, 10, 11.

⁶⁸ 1 Mary I, st. 2, c. 12; 1 & 2 Philip and Mary c. 4; 2 & 3 Philip and Mary c. 19; 4 & 5 Philip and Mary c. 3.

Jesuits, and taking prisoners for ransom became felonies. The texts of these acts, like those passed earlier in the period, suggested that authorities thought them necessary to halt disorderly behaviours newly-grown rampant; previous laws had not regulated these behaviours or had offered penalties insufficient to deter would-be offenders. The act mandating a traitor's death for those who clipped coins noted that Mary's parliament had repealed a previous law to this effect: "by reason whereof diverse false and evil persons perceiving themselves to be loose and free from the severity and danger of the said law and penalty have been of late the more hardy and bold."⁶⁹ The law itself was thought to act as a deterrent. The forgery statute also made such thinking explicit:

forasmuch as the wicked, pernicious and dangerous practise of making, forging and publishing of false and untrue charters... hath of late time been very much more practised, used and put in ure in all parts of this realm than in times past... which seemeth to have grown and happened chiefly by reason that the pains and punishments limited for such great and notable offenders by the laws and statutes of this realm, before this time have been and yet are so small, mild and easy that such evil people have not been nor yet are afraid to enterprise the practising and doing of such offences.

To counteract this "great subversion of justice and truth," parliament ordered that offenders stand on the pillory, lose both ears and have their nostrils slit. Few would get to see this "perpetual note or mark of his falsehood" as the forger also faced life imprisonment. And all of this was for the first offence: subsequent violations of the statute became punishable with death.⁷⁰ Similarly, parliament made prophesying the queen's death a felony, "to the intent that such mischiefs and inconveniences as may thereby grow in the commonwealth... may be cut off and prevented."⁷¹ The peers and gentry who sat in parliament deemed the threat of execution the best deterrent and surely the best way to prevent recidivism.

Mary and Elizabeth both issued proclamations that ordered death for offenders. Mary threatened execution for those who pretended to be watermen in an effort to avoid

⁶⁹ 5 Elizabeth I c. 11.

⁷⁰ 5 Elizabeth I c. 14.

⁷¹ 23 Elizabeth I c. 2.

military service, and her sister did the same for anyone dishonouring the French ambassador.⁷² Other proclamations authorised the use of martial law for various classes of offenders: beggars, pirates, and deserters risked summary execution at various points throughout the latter half of the sixteenth century. Notoriously, both queens also issued orders subjecting the owners of seditious books to martial law.⁷³

Simply counting the statutes that ordered imprisonment or death does not demonstrate the full extent to which the offences carrying these penalties multiplied. Judicial interpretation occasionally broadened the scope of parliamentary measures, and individual statutes sometimes legislated death for several different offences. Furthermore, bills were occasionally split or merged during their passage through parliament. In 1559, for instance, the Commons passed a bill that proposed to restore felonies created in Henry VIII's reign: witchcraft, sorcery, and buggery. Having failed in the Lords, this bill later reappeared in the parliament of 1563, with the additional crime of servants embezzling their masters' goods. Both houses finally passed it, only after splitting it into four separate statutes.⁷⁴ This illustrates not only some of the difficulties faced in the passage of bills, but also the potential artificiality of counting statutes. Nevertheless, reviewing these statutes demonstrates the general broadening and harshening of the law that took place under the Tudors, and the ready willingness of the gentry and peers who sat in these parliaments to resort to penalties of death as a means of terrorising potential offenders.

These trends were neither uniform nor relentless. Edward's and Mary's repeal statutes marked a clear exception, with their pragmatic espousal of more lenient approaches to punishment. So, too, did parliament's repeal of the act ordering slavery

⁷² TRP II, nos. 444, 656.

⁷³ *Ibid.*, II, nos. 438, 441, 443, 571, 598, 699, 704, 716, 728, 740, 769, 796, 809.

⁷⁴ On the passage of these acts, see N. Jones, *Faith by Statute* (London, 1982), p. 182 and G.R. Elton, *The Parliament of England, 1559-1581* (Cambridge, 1986), pp. 110-11. Innes and Styles have warned that counting statutes offers only an imprecise measure of MPs' propensity to use capital punishment: "Crime and Criminal Justice in Eighteenth Century England," pp. 243-45.

for vagabonds who refused work, two years after its enactment in 1547. The statute had noted that because idleness was the “mother and root of all thefts, robberies and all evil acts,” severe punishment was both deserved and necessary as an example to deter others. It claimed that the “foolish pity and mercy” of people who failed to enforce existing laws exacerbated the problem. The more severe penalties mandated by the act, however, did not encourage stricter application of the law. The statute repealing the slavery provision noted that the extremity of the laws “have been occasion that they have not been put in use.”⁷⁵ Not all agreed, then, that the punishment fit the crime; harsh penalties might hinder effective enforcement. One suspects a similar motivation for the 1593 decision to repeal the act mandating death for twice arrested vagabonds and to have them whipped instead.⁷⁶ Even within parliament, not all agreed on the proper ways to deal with disorder. The legislative history of the statutes creating new punishments and crimes has suffered from missing or laconic records, but enough evidence has survived to show that bills of this sort frequently failed and that one or both houses often debated and amended those that succeeded. Nor did all such acts emanate from “official policy”: privy councillors advanced some while private members promoted others. Also, some of these statutes probably experienced intermittent or little enforcement. Even so, they revealed the fears, attitudes, and approaches with which the gentry and nobility faced disorder. The statutes -- as printed, dispersed, and proclaimed about the land -- also represented these concerns and perspectives to contemporaries and formed part of the general language of mercy and justice.

Traditional Sources of Mitigation

While statutes and proclamations broadened the scope of the criminal law, traditional methods of evading legal punishments also came under attack. At the beginning of this period, offenders enjoyed several traditional sources of mitigation or

⁷⁵ 1 Edward VI c. 3; 3 & 4 Edward VI c. 16.

⁷⁶ 35 Elizabeth I c. 7.

remission. Some fled to the chartered church sanctuaries. These sacred spaces, by custom and papal or royal grant, provided a permanent safe haven for many.⁷⁷ Other felons availed themselves of the allied practise of abjuration of the realm: after flight to a parish church or other consecrated ground, the offender confessed his or her crime to the king's coroner, and was accompanied to the coast to find passage out of the country after promising never to return.⁷⁸ Many male offenders evaded the rigours of the law by claiming the benefit of clergy.⁷⁹ Women had no equivalent avenue of escape. They might plead pregnancy, or benefit of the belly, which deferred execution until the baby's birth. In theory the mother then hanged, as a permanent reprieve required a pardon.⁸⁰ All these practises, save the last, changed substantially during the sixteenth century. The Tudors brought abjuration of the realm, sanctuary, and benefit of clergy firmly under secular control and limited the number of offences to which these sources of mitigation applied. The Crown's determination to exert sole authority over both justice and mercy, along with the social and religious tensions that modified understandings of due punishment and mitigation, led to significant alterations. Abjuration and sanctuary for all but debtors disappeared. Statutes made benefit of clergy applicable to first time offenders only, and for fewer and fewer types of offences as the years progressed. Nevertheless, benefit of clergy survived in altered form to remain an integral component of the armoury of responses to disorder.

Originally, benefit of clergy provided a means for clerics to evade the penalties of the secular law.⁸¹ Clerics claimed their privilege at the onset of a trial and were handed

⁷⁷ The standard source for this topic remains J.C. Cox, The Sanctuaries and Sanctuary Seekers of Medieval England (London, 1911).

⁷⁸ See R.F. Hunnisett, "The Last Sussex Abjurations," Sussex Archaeological Collections 102 (1964): 39-51 and K. Kesselring, "Abjuration and Its Demise: The Changing Face of Royal Justice in the Tudor Period," Canadian Journal of History 34 (1999): 345-58.

⁷⁹ L.C. Gabel, Benefit of Clergy in England in the Later Middle Ages (Northampton, Mass., 1928-29).

⁸⁰ J.C. Oldham, "On Pleading the Belly: A History of the Jury of Matrons," Criminal Justice History 6 (1985): 1-64.

⁸¹ On benefit of clergy in the Tudor period, see especially J.G. Bellamy, "Benefit of Clergy in the Fifteenth and Sixteenth Centuries," in Criminal Law and Society, pp. 115-72. Cockburn, CAR: Introduction, pp.

over to a church official to undergo canonical purgation. Since this generally included a period of confinement in the bishop's prison and forfeiture of goods, the privilege did not allow a complete evasion of punishment.⁸² By the mid-fourteenth century, offenders generally made their pleas after trial and conviction, and the ability to read a passage of scripture had become accepted as proof of clerical status.⁸³ Literate laymen began successfully to claim benefit of clergy, an extension recognised in the 1489 statute that restricted the privilege to the first offence for those not actually in holy orders. The statute ordered the branding of successful claimants – an “M” for murderers and a “T” for all other felons – to alert judges in any future trial to seek the record of the prior conviction.⁸⁴ Benefit of clergy, then, was thought proper for laymen as long as it did not become a license for a life of crime.

Restrictions soon followed. Under the early Tudors, contemporaries increasingly came to see benefit of clergy as an inappropriate response to offences deemed especially serious. Henry VII barred the privilege to petty traitors, and the statute that made a soldier's desertion a felony ordered that claims of clerical status provide no protection from death.⁸⁵ Members of parliament made more significant restrictions in 1512 when they forbade the privilege for anyone, not of genuine clerical status, who committed murder, highway robbery, robbery that put the occupants of a dwelling in fear for their lives, or any felony on consecrated ground.⁸⁶ Because of opposition to its provisions, however, they made the statute to last only until the next meeting of parliament. When

117-21 and J.H. Baker, *The Reports of Sir John Spelman*, 2 vols., Selden Society (London, 1977-78), II, pp. 327-34 are also important.

⁸² On forfeiture, see 5 Co. Reports, 110a.

⁸³ For the early history of the privilege, see Gabel, *Benefit of Clergy*.

⁸⁴ 4 Henry VII c. 18. Polydore Vergil wrote that the alterations were suggested by the king himself and thought the branding served not just as a token of a previous conviction but also as a punishment. He conjectured that the decision was inspired by the French, who cut off an offender's ear to signify wrongdoing. *Anglica Historia*, ed. D. Hays, Camden Society, 3rd series, v. 74 (London, 1950), pp. 116-17, 130.

⁸⁵ 12 Henry VII c. 7; 7 Henry VII c. 1.

⁸⁶ 4 Henry VIII c. 2.

the 1515 session drew near, several clerics launched an attack upon the measure because they thought it violated ecclesiastical law and privilege. During the ensuing debate, the House of Commons agreed to the renewal bill, but the king dissolved parliament before it passed.⁸⁷ When the statute finally reappeared it also barred the privilege to those who burned barns.⁸⁸ In 1518, the council and central courts began to supervise benefit of clergy more closely; to ensure that people did not twice use it to escape the penalties for crime, they ordered assize judges to submit lists of those who had successfully claimed the privilege.⁸⁹ In 1536, parliament declared that offenders in holy orders were thenceforth to receive the same treatment as those who were not.⁹⁰ Laymen and clerics now shared the privilege on the same terms and for the same crimes. The list of these offences continued to shrink. Parliament made some of the newly created felonies ineligible for the privilege: sorcerers, buggers, and priests who married, for example, had no hope of escaping the noose through claiming benefit of clergy. Horse thieves became ineligible, as did pirates when their crime came into the purview of the common law.⁹¹

Sanctuary and abjuration received similar limitations under the first two Tudors. Royal justices and members of parliament laboured to ensure that an offender used the privileges only once and limited the offences to which they applied.⁹² Henry VII barred

⁸⁷ For an account of the debate, see Bellamy, *Criminal Law and Society*, pp. 133-39 and Keilway 181-86 (72 *English Reports* 358-63).

⁸⁸ 23 Henry VIII c. 1.

⁸⁹ This was formalised by statute in 1543: 34 & 35 Henry VIII c. 14. See Cockburn, *CAR: Introduction*, pp. 118-19. These "clergy rolls" can be found in KB 9.

⁹⁰ 28 Henry VIII c. 1. This statute was made perpetual four years later in an act that clarified that clerics, too, were to be branded: 32 Henry VIII c. 3.

⁹¹ Relevant acts: 23 Henry VIII c. 11; 27 Henry VIII cc. 4, 17; 25 Henry VIII c. 6; 28 Henry VIII c. 15; 31 Henry VIII c. 14; 33 Henry VIII cc. 8, 12, 14; 37 Henry VIII cc. 8, 10.

⁹² For sanctuary and abjuration, see Cox, *Sanctuaries*; Hunnisett, "Last Sussex Abjurations"; A. Réville, "L'Abjuratio Regni; Histoire d'une Institution Anglaise," *Revue Historique* (1892): 1-42; and E.W. Ives, "Crime, Sanctuary and Royal Authority under Henry VIII: The Exemplary Sufferings of the Savage Family," in M.S. Arnold et al, eds., *On the Laws and Customs of England* (Chapel Hill, 1981), pp. 296-320. I. Thornley traced the piecemeal destruction of the Church's ability to harbour felons through the statutes of Henry VII and his son. She suggested that sanctuary was a long-standing evil; its demise was long overdue and, she argued, was brought about primarily by the campaign against secular liberties and the struggles between church and state: "The Destruction of Sanctuary," in R.W. Seton-Watson, ed., *Tudor Studies* (London, 1924), pp. 182-207. P.I. Kaufman has more recently questioned the extent to

sanctuary to traitors. Henry VIII's statutes removing the benefit of clergy from particular offences also restricted the privileges of sanctuary and abjuration.⁹³ Under Henry VII, a set of reforms made it more difficult to leave a sanctuary or to re-enter once having left. It ordered the posting of royal guards about the refuges who might forcibly remove people found to have previously claimed sanctuary.⁹⁴ As these measures had little success, Henry VIII's parliaments also issued regulations regarding dress and curfew that sought to prevent escapes. They ordered people in sanctuary to wear large identifying badges and to remain within the main sanctuary building at night on pain of losing their privilege.⁹⁵ Parliament also tried to ensure that abjurors actually went into exile, as they had promised to do in exchange for their lives. An act of 1529 required the coroner to brand the offender with an "A" on the thumb of the right hand, thus rendering the abjuror's status readily apparent if he or she attempted to stay in the country undetected.⁹⁶ The following year, parliament ordered coroners not to allow abjurors to find their own way into exile, but to have them passed from one local constable to the next all the way to the port of departure.⁹⁷ The difficulty of ensuring that abjurors left and did not return, and concerns about the able-bodied English felons who ended up fighting in enemy forces prompted a significant change. An act passed in 1531 ordered that coroners no longer convey abjurors to the coast but to one of the permanent sanctuaries, there to spend the remainder of their days.⁹⁸

which Henry VII's adjustments to the laws governing sanctuary constituted an attack upon ecclesiastical liberties or a long-standing drive to eradicate the privilege: "Henry VII and Sanctuary," *Church History* 53 (1984): 465-76. I have pursued this question elsewhere, and argued that the demise of abjuration was due less to attacks upon the Church than to changing ideas of justice and mercy: "Abjuration and its Demise."

⁹³ See 23 Henry VIII c. 11; 27 Henry VIII c. 4; 28 Henry VIII c. 17; 31 Henry VIII c. 14.

⁹⁴ On this, see Kaufman, "Henry VII and Sanctuary," and 19 Henry VII c. 10.

⁹⁵ 4 Henry VIII c. 2; 22 Henry VIII c. 14; 27 Henry VIII c. 19. For judicial and conciliar efforts to prevent recidivism, see also Ives, "Crime, Sanctuary and Royal Authority," p. 302.

⁹⁶ 21 Henry VIII c. 2.

⁹⁷ 22 Henry VIII c. 14. This formalised a practise long used by some coroners. See, for example, KB 9/482 m. 33 and 7 Henry VII c. 6.

⁹⁸ 22 Henry VIII c. 14. The preamble suggested that too many men, "able and apt for the wars," had left the country and thus diminished its strength.

These measures responded to the most common criticisms of sanctuary, which focused not on the institution itself, but on its abuses and breadth. Some people also opposed the papacy's role in the creation of sanctuaries; they did not suggest that practises offering protection from prosecution were wrong, but argued that the pardon and punishment of crimes belonged to the king alone.⁹⁹ The preambles of the statutes restricting the privileges clearly argued that while sanctuary and abjuration had their legitimate uses, these unrestrained sources of mercy were inappropriate for some crimes. Some did think that sanctuaries should be abolished. In his *History of Richard III*, Thomas More had the Duke of Buckingham argue against the practise. Most problems, he noted, lay in abuses that might be rectified. People must not be allowed to use a sanctuary as a safe-haven from which to re-offend, nor should the privilege protect murderers: if the killer acted in self-defence or by accident, the law guaranteed a pardon. If any other killers were to go unpunished, it must be solely at the king's discretion. On the whole, however, More's Buckingham moderately advocated abolition: "weigh the good that they do with the hurt that comes of them, and ye shall find it much better to lack both than have both."¹⁰⁰

Cromwell held the latter opinion and intended "the utter abolition of sanctuaries."¹⁰¹ A bill introduced in 1540, probably of his devising, resulted in the disappearance of permanent church sanctuaries. However, the bill received heavy debate and amendment. The ensuing act abolished neither sanctuary nor abjuration, but substituted civic refuges for the previous ecclesiastical ones. Abjurors and sanctuary seekers thenceforth had to seek protection in one of eight such towns.¹⁰² While the act

⁹⁹ Keilway 189-90 (72 *English Reports* 366-67.)

¹⁰⁰ *Richard III: The Great Debate*, ed. R.M. Kendall (New York, 1965), pp. 54-56.

¹⁰¹ *L&P X*, 254.

¹⁰² 32 Henry VIII c. 12. Elton, in *Reform and Renewal* (Cambridge, 1973), pp. 136-38 discussed Cromwell's determination to abolish sanctuaries and the opposition he met in parliament. The first bill proposed was so heavily revised in debate that a second had to be introduced. Elton suggested that the secular sanctuary towns had not been in the original bill, but were added by the Lords. For the skeletal outlines of the bill's passage, see *LJ*, I, 141, 142, 143, 160. The towns chosen were Wells, Westminster,

still paid homage to “the law of mercy,” it also mandated that sanctuary and abjuration no longer applied to a number of high felonies. It removed the hope of finding refuge from people who committed wilful murder, burglary, robbery, rape, or arson – or any other offence to which the benefit of clergy no longer applied. For a time, the now limited group of offenders used the new civic sanctuaries. But only two records of abjurations into the sanctuary towns remain. It appears that abjuration died out, in its new guise no longer an option deemed attractive by offenders who might instead claim their clergy or seek pardon from the king.¹⁰³

As noted earlier, an act from the reign of Edward VI repealed all felonies created in the previous reign in an effort to portray the new king as a kind and merciful ruler. It also stipulated that benefit of clergy and sanctuary applied to all the same felonies as they had in 1509. This seemingly generous provision excepted a lengthy list of offences: it barred the privileges to those who murdered, poisoned, stole horses, robbed people on the king’s highway, broke into occupied houses, or stole goods from churches.¹⁰⁴ The only offenders who had been denied clergy in the previous reign who might again use the privilege to escape death were arsonists, heretics, and accessories. Felonies newly created or re-enacted in Edward’s reign also barred offenders from the privileges. The repeal act did, however, make benefit of clergy more widely available to two classes of offenders: previously, a man who married a widow or who remarried upon the death of his first wife was considered bigamous and thus unable to claim clerical status. The act extended the privilege to the bigamous, and also enabled noblemen to claim benefit of clergy for all crimes save murder and poisoning. Like other offenders, a peer might claim his clergy only once, but he did not have to prove his ability to read or suffer branding. How this act affected sanctuary and abjuration was not clearly spelled out. It certainly did not

Manchester, Northampton, Norwich, York, Derby and Launceston. Manchester was soon replaced by Chester, which was in turn replaced by Stafford: 33 Henry VIII c. 15, TRP I, no. 212.

¹⁰³ Kesselring, “Abjuration and its Demise,” p. 357.

¹⁰⁴ 1 Edward VI c. 12. See also 2 & 3 Edward VI c. 33 which clarified an error in the wording of the first act: those who stole one horse, as well as those who took two or more, were ineligible for the privileges.

restore permanent ecclesiastical sanctuaries, and the civic refuges seem to have disappeared.¹⁰⁵ While it expanded slightly the list of offences for which people might abjure, it offered them no place to go.

Save for an act removing benefit of clergy from accessories to major felonies, Mary's reign witnessed few alterations to the privilege.¹⁰⁶ It did, however, see a temporary resurgence of one chartered church sanctuary. Westminster again harboured felons and murderers in addition to people fleeing their creditors.¹⁰⁷ Mary condoned the practise, but she and her councillors supervised it closely and removed offenders when they thought it necessary. Once again, sanctuary did not offer a complete respite from punishment: in addition to the usual penances, at least one murderer suffered a public whipping for his crime.¹⁰⁸ When the Commons read a bill to abolish all remaining privileges save the forty days protection afforded by all churches, the abbot of Westminster appeared in parliament and successfully defended his abbey's immunities. He noted that all princes, throughout the history of Christendom, had preserved "places of succour and safeguard for such as have transgressed laws and deserve corporal pains." He spoke of the antiquity of the practise and emphasised its social utility: people, from the highest rank to the lowest, had benefited from the right of sanctuary. He assumed throughout his discussion the necessity of mercy and clemency in the operation of justice; this remained unquestioned. Rather, he had to convince his audience that the *maintenance of places of refuge* constituted a legitimate way to ensure the temperance of the law. The abbot noted of Philip and Mary that "such is their merciful nature – such a

¹⁰⁵ See Thornley, "Destruction of Sanctuary," p. 204 n. 115. A 1558 bill stated that abjuration could not be made out of the realm, as this was against the law, "nor into any sanctuary within the realm, where none was indeed, though at Westminster by usurpation and permission it had of late been used."

¹⁰⁶ Her repeal act was interpreted to mean that the bigamous might not claim the privilege. See Bellamy, *Criminal Law and Society*, p. 151. See also: 1 & 2 Philip and Mary c. 4; 2 & 3 Philip and Mary c. 17; 4 & 5 Philip and Mary c. 14.

¹⁰⁷ Cox thought that the Beverley sanctuary was also revived, (*Sanctuaries*, pp. 147-49) but Thornley showed that this was incorrect. ("Destruction of Sanctuary," p. 204.)

¹⁰⁸ *The Diary of Henry Machyn*, ed. J.G. Nichols, Camden Society, vol. 42 (London, 1848), pp. 121, 125. See also *APC*, v, p. 328; vi, pp. 128, 135, 144, 215, 350.

perpetual sanctuary have they reposed in their own clemency for poor offenders,” – that refuges had become unnecessary. Future sovereigns, however, might not show such a forgiving nature, so sanctuaries must persist.¹⁰⁹ Parliament debated and amended the bill, but Mary’s death halted any further proceedings. Although sanctuaries still had their proponents, in the reign of Elizabeth I, they again fell into disuse for all save debtors. Churches retained their right to provide temporary refuge, but people no longer abjured from or found permanent respite in sacred spaces. Instead, they begged for mercy from their sovereign and pleaded for pardon. Otherwise, they had to put themselves “on queen and country,” submit to a trial and hope for the best from jury or judge.

During Elizabeth’s reign, parliament continued to adapt benefit of clergy to the use of the secular courts. One troubling problem needed resolution: upon conviction for an offence, a person became “dead to the law” and liability for prior crimes ceased. A man who successfully claimed the benefit of clergy for larceny did not have to worry about prosecution for an earlier burglary or murder. In 1566, parliament declared that offenders must answer for any previous felonies to which clergy did not apply.¹¹⁰ An act passed ten years later clarified this provision by stating that one who successfully claimed his clergy was still liable for all previous crimes. This act introduced even greater changes to the practise and completed the ad hoc process of secularisation begun so long before: judges no longer had to deliver claimants to the church courts for purgation. Instead, the judges might either free the convict or sentence him to gaol for up to one year.¹¹¹

Both of these statutes also barred the privilege to those who committed certain offences: cutpurses, rapists, and burglars lost this means of escaping the gallows. The acts were parts of a series of restrictive measures passed by Elizabeth’s parliaments.

¹⁰⁹ Historical Memorials of Westminster Abbey, ed. Arthur P. Stanley (London, 1868), pp. 542-48. The editor dated the document from 1555, but it was 1558: CJ I, pp. 48, 49.

¹¹⁰ 8 Elizabeth I c. 4.

¹¹¹ 18 Elizabeth I c. 7. This provision was made partly in response to concerns that claiming benefit of clergy usually necessitated perjury on the part of the offender and his associates: canonical purgation required that they all swear to the offender’s good character and innocence.

Accessories to horse theft, those who robbed from houses during the daytime, and men who abducted heiresses, along with any accessories before the act, all lost the privilege.¹¹² People who committed most of the new felonies also found themselves ineligible for this avenue of escape. The texts of these acts suggested that the availability of benefit of clergy emboldened offenders: that relating to the abduction of heiresses noted, for instance, that “as clergy hath been heretofore allowed to such offenders diverse persons have attempted to commit the said offences in hope of life.” As with the laws creating new felonies, parliament enacted some of these measures in response to a particular event. Parliament passed the statute barring the privilege to people who hired killers after one woman petitioned that the courts not allow clergy to the man who had procured her husband’s death.¹¹³ Elton narrated William Fleetwood’s involvement in the enactment of the bill barring clergy to rapists. As Recorder of London, Fleetwood tried a man for the rape of a child. When the accused pled benefit of clergy, Fleetwood indignantly resolved to do his best in the next parliament to prevent any future rapists from escaping execution by the same means.¹¹⁴

These statutes substantially restricted the crimes for which first time offenders might hope to escape with their lives. Beattie’s study of the late seventeenth-century courts demonstrated the significance of these measures: between 1660-1800, nearly 80 per cent of executed offenders had committed one of the offences made ineligible for the benefit of clergy by the Tudor parliaments.¹¹⁵ The statutes represented a general hardening of attitudes towards the applicability of indiscriminate mercy to the more serious felonies, but not to the principle behind benefit of clergy. Some people undoubtedly agreed with JP Edward Hext’s belief that, “happy were it for England if

¹¹² 31 Elizabeth 1 c. 12; 39 Elizabeth I c. 9; 39 Elizabeth I c. 15.

¹¹³ 2 & 3 Philip and Mary c. 17. The act relating to the abduction of heiresses also seems to have been inspired by a recent case: Proceedings in Parliament, ed. Hartley, III, p. 232.

¹¹⁴ Elton, Parliament of England, pp. 63-66.

¹¹⁵ Beattie, Crime and the Courts, p. 453.

clergy were taken away in case of felony.”¹¹⁶ But measures restricting the privilege did not pass through parliament unopposed. A bill proposing to bar benefit of clergy to those found guilty of stealing sheep, oxen and cattle failed twice, and the bill to remove the privilege from “such as steal maids against their wills” only became law on its second appearance in parliament.¹¹⁷ A bill intended to repeal all previous laws concerning benefit of clergy and to provide in their stead clearer, more comprehensive guidelines failed in 1589.¹¹⁸ The nature of the opposition to these proposals remains unclear. Troublesome technicalities or lack of time may have led to the demise of some of the bills, but clearly many of the JPs, lawyers, and other men who sat in parliament thought that benefit of clergy, if appropriately restricted and supervised, remained an essential component of the legal system. Indeed, despite the shrinking list of crimes to which the privilege applied, judges allowed more and more men to escape the noose in this manner. In some cases, the judges used their discretion to give benefit of clergy even when it was not strictly applicable; Elizabeth’s council had to admonish one group of JPs “not to allow clergy more than once, or where it is not allowable by law, for it is no pity but false pity.”¹¹⁹ Bellamy has noted that the percentage of convicted men in Middlesex who avoided death because of clerical immunity rose from roughly 9 per cent in the 1550s to 23 per cent in the following decade. By the 1590s, the percentage hovered around 39. Just over 17 per cent of Chester convicts received the benefit of clergy in the 1560s and 1570s; this rose to 28 per cent in the 1580s.¹²⁰ In its altered guise, benefit of clergy

¹¹⁶ BL Lansdowne 81, 6 fols. 161-62. Reprinted in *Tudor Economic Documents*, eds. Tawney and Power, II, p. 339.

¹¹⁷ LJ II, pp. 195, 196, 197, 199. The draft of the first failed oxen bill can be found in the HLRO Main Papers, 1592-3, fol. 24; *Proceedings in Parliament*, ed. Hartley, III, p. 232. See also SP 12/107, no. 64 for another measure, drafted by the Lord Chief Justice, that was heavily amended before it became law. For these and other measures, see Elton, *Parliament of England*, pp. 63-66, 301-2 and D. Dean, *Law-Making and Society in Late Elizabethan England* (Cambridge, 1996), pp. 189-92.

¹¹⁸ *Proceedings in Parliament*, ed. Hartley, II, p. 494.

¹¹⁹ *Les Reportes del Cases in Camera Stellata*, ed. W.P. Baildon (London, 1894), p. 21. See also BL Lansdowne 49, 29; HMC Salisbury, IV, p. 5 and *Tudor Economic Documents*, eds. Tawney and Power, II, pp. 339-40 for similar complaints.

¹²⁰ Bellamy, *The Criminal Trial in Later Medieval England* (Toronto, 1999), pp. 136-37; *Criminal Law and Society*, p. 157.

continued to serve as an weapon in the armoury of official responses to disorder. Along with pardons, it helped authorities keep executions at broadly acceptable levels.

Over the period, parliamentary statutes created a host of new treasons, felonies, and misdemeanours, but with this increasing severity came a need for secondary or flexible penal options. Parliament and council heavily curtailed the traditional sources of mitigation that depended on the initiative of the offender, revealing a perception that the more egregious offenders must only receive mercy at the discretion of the Crown. Benefit of clergy survived the period, emerging with new restrictions, but saved increasing numbers of people. Ideals of justice and the practicalities of enforcement required some lenience in punishing disobedience. The heightened scope and severity of the laws made pardons and other sources of mitigation, if properly supervised by the Crown or its agents, increasingly necessary. While the Crown sought to exert ever more control over the activities of its subjects, it had to work through local agents often hesitant to enforce overly harsh laws upon their neighbours. It also had to recognise the broad cultural demands that a legitimate ruler manifest both justice and mercy.

Chapter Three

Changing Approaches to the Pardon

Punishment and mercy worked together as strategies of power and authority in the increasingly centralised Tudor state. In conjunction with the growth in the scope and severity of the law emerged a set of changes that demonstrated the continued importance of mercy and ensured that greater numbers of people might avail themselves of its benefits. Pardons became much more frequent as the years passed, an increase helped in part by changes to the methods with which the Tudors distributed and displayed their clemency. Although late medieval kings had sporadically issued proclamations or statutes of general pardon that offered forgiveness for a host of offences, these devices appeared with much greater frequency in the sixteenth century and became a standard part of parliamentary business. As the years passed, general pardons tended to exclude more and more of the serious offences from their remit, thus reflecting the perception of those in power that indiscriminate mercy no longer suited serious crime. Nonetheless, although they gradually pardoned fewer and fewer types of offences, their increased frequency allowed more and more people to benefit from the acts of grace and enabled the Tudor sovereigns to present themselves as merciful despite an increasingly severe set of laws.

The motives adduced for each grant of a general pardon attested to the persistence of the belief that mercy must leaven justice. The law needed to deter potential offenders and exact vengeance; if given a second chance, however, many people might reform. Like God's forgiveness for sin, a pardon purportedly acted as a spur to future obedience by alleviating the burden of past offences. Although some crimes became ineligible for indiscriminate mercy, the use of individual pardons for all types of offences increased during the sixteenth century. By the 1530s, the king alone granted special or individual pardons. Over the period, the Tudors issued such pardons in ever greater numbers, an increase fostered partly by the advent of the circuit pardon – a list of people recommended for mercy by the assize judges at the completion of their circuits.

In the latter years of Elizabeth's reign, her council also experimented with the use of pardons conditional upon lesser punishments. This chapter first explores the use of general pardons before turning to the special pardon.

General Pardons

General pardons, issued by proclamation or through parliament, had been a component of English political culture long before the Tudor period. People benefited from such pardons by obtaining individual copies from the Chancery, paying a fee of 18s4d for the royal seal. Edward III gave the royal assent to the first broadly inclusive statute of pardon and used this device periodically throughout his long reign. In his fourteenth year, for instance, he remitted all seized chattels of felons and fugitives, escapes of thieves, trespasses of vert and venison, and fines and amerciaments due for infractions of the articles of eyre.¹ The statute noted that the king gave the pardon upon the people's petition and because of their heavy expenditures in the wars. Two similar pardons came from the king and parliament in subsequent years. In the fiftieth year of his reign, Edward III granted through statute an even greater gift of grace in celebration of his Golden Jubilee. Pardoning all offences save for murder, rape, and thefts, this act expressed the hope that people might find the greater courage to do well thereafter by having the weight of their past sins removed.² Upon his accession, Richard II confirmed his predecessor's act of grace, but he issued his general pardon conditional upon passage of a parliamentary subsidy.³ In addition to the occasional pardon granted by proclamation, subsequent kings also employed parliament to ratify and advertise broad pardons of offences. For example, Henry VI granted general pardons both on his own authority and in conjunction with parliament.⁴ Richard III passed no statutes of general

¹ 14 Edward III c. 2.

² 50 Edward III c. 3.

³ 21 Richard II c. 15.

⁴ R.L. Storey, *The End of the House of Lancaster* (London, 1966), p. 213.

pardon, but in an attempt to allay discontent at his usurpation, he began his reign by proclaiming pardon for all offences committed against him in the past.⁵ In the middle ages, some people opposed particular uses of the pardon, but these statutes of mercy, portrayed as tokens of gratitude or celebration, apparently received warm receptions. R.L. Storey found that 3,319 people obtained copies of the 1446 general pardon. Most of these, he noted, were not criminals seeking to escape execution, but people hoping to avoid the fines and inconveniences that followed questionable trade and property transactions.⁶

Upon his victory at Bosworth, Henry VII immediately offered forgiveness to most of Richard III's adherents. In his proclamation of pardon for Richard's northern supporters, the new king professed both pity and necessity as motivations. In line with attempts to bolster perceptions that he had a legitimate blood claim to the throne, he also emphasised his gratitude for the help provided to his noble progenitor Henry VI. He granted this pardon:

as well of pity as for the great dangers, perils, losses of goods and lives, that the ancestors of the inhabitants of that country have borne and suffered for the quarrel and title of the most famous prince, and of blessed memory, King Henry VI, our uncle; and also for that, that they of those parts be necessary, and according to their duty must defend this land against the Scots.⁷

Of course, Henry needed the northerners to defend the border with Scotland, and unless released from their fear of retribution, they were more likely to continue in rebellion and make common cause with Yorkists abroad. To receive this royal pardon, Richard's former supporters had to acknowledge Henry VII as their sovereign lord. Knights,

⁵ Richard III: The Great Debate, ed. P.M. Kendall (New York, 1965), p. 102.

⁶ Storey, The End of the House of Lancaster, pp. 213-14. J.G. Bellamy offered a brief discussion of the general pardons in The Criminal Trial in the Later Medieval England: Felony and the Courts from Edward I to the Sixteenth Century (Toronto, 1999), pp. 145-46, and see also A. Musson and W.M. Ormrod, The Evolution of English Justice: Law, Politics and Society in the Fourteenth Century (Basingstoke, 1999), p. 82, for a speculation that the general pardons offered "an effective means of reconciling the king's greater subjects to their public obligations and offered them the opportunity to express their loyalty and commitment to the regime."

⁷ TRP I, no. 2.

gentlemen, and “other thrifty commoners” had to pay for copies from the Chancery, but commoners unable to pay for individual charters still received mercy.

Around the time of his coronation, Henry VII proclaimed a broadly inclusive general pardon. Edward Hall, the apologist of the Tudor usurpation, chose not to mention the inaugural pardon of Richard III as a precedent for Henry’s mercy; he pointed instead to the noble example of the Athenians.⁸ The first parliament of the reign ratified a pardon for any offence committed against Richard III or his supporters save for murder, rape, and disseisin.⁹ Henry VII issued two general pardons later in his reign; perhaps because of their timing, he did not use parliament for either. He proclaimed one in 1487 to prevent people who feared punishment for past offences from joining the forces of pretender Lambert Simnel out of desperation. He issued the other when he thought his death neared. At the beginning of Lent in 1509, Henry VII made his confession and “with all diligence and great repentance” promised three things: to encourage his officials to execute indifferent justice, to give all ecclesiastical benefices at his disposal to the ablest candidates, and to grant a general pardon for all his subjects.¹⁰ Chroniclers reported that the king offered pardon unto all offenders, “saving only thieves and murderers, because that they did not offend him, but another man.” He paid the gaol fees of London prisoners and provided up to 40s to those imprisoned for debt. The dying king hoped “that the people might wish and pray for him after his death for his kindness that he showed them.” Indeed, upon news of the king’s grant, people throughout the realm joined in daily processions to pray for his health.¹¹ The texts of three of Henry VII’s five pardons have not survived, but the pardon rolls, damaged and incomplete, recorded that at least 1,612 people sued out copies over the course of the reign. Very few women – less than fifty – purchased such charters, but the rolls listed

⁸ *Hall’s Chronicle*, ed. Henry Ellis (New York, 1965), pp. 423-24.

⁹ I Henry VII c. 6.

¹⁰ BL Harleian MS 7030.

¹¹ *Hall’s Chronicle*, p. 504.

people of all social ranks and included fishmongers, shepherds, husbandmen, the Archbishop of York, and Elizabeth, the widow of Edward IV.¹²

A genuine fear of potential disorder attended the transition of power from the first Tudor to the second. S.J. Gunn has suggested that Henry VII intended his death-bed pardon as much “to ease his son’s path to the throne as his own passage through purgatory.”¹³ The new king immediately confirmed his father’s pardon to put the people “in good quietness of mind and out of all doubt and fear to be troubled or vexed in their bodies or goods by him or his officers for any offences done and committed in the king his said father’s days.”¹⁴ Wanting his subjects to begin the reign with a clear slate, he subsequently offered a pardon “much more ample, gracious and beneficial” than that of his father. He sought to advertise not only his kingly benevolence, but a magnanimity that exceeded even his father’s. Henry VIII issued this three days after his accession, rather than holding it back to accompany the pomp and splendour of his coronation, and had copies printed for easy distribution. The pardon was generous indeed: it remitted all treasons, rebellions, murders, and felonies committed before 23 April 1509, the day Henry VIII came to the throne.¹⁵ Of more practical significance for many subjects, the proclamation pardoned all intrusions, wastes, use of false weights and measures, unlawful retaining, as well as most fines and violations of regulatory statutes. In his latter years, Henry VII had incurred much resentment by milking the profits of justice; his son began his reign by freeing many subjects from the fear of financial ruin for past infractions and misdeeds. Henry VIII and his councillors barred the pardon to a few people: they sacrificed Richard Empson and Edmund Dudley, chief financial agents of the late king, to appease popular discontent. Most of the others excepted from the pardon received

¹² C 67/ 53 - 55, 93.

¹³ S.J. Gunn, “The Accession of Henry VIII,” *Historical Research* 64 (1991): 281.

¹⁴ TRP I, no. 59.

¹⁵ TRP I, no. 60.

mercy after individually pleading their cases.¹⁶ In the first year of the reign, people bought nearly 3,000 copies of the pardon from Chancery and over the following three years, almost 300 more joined them.¹⁷ Again, people of all social ranks obtained pardons; some pardons applied to all citizens of a town or to all members of a monastery.

In 1514, Henry VIII issued another general pardon, the text of which has not survived. Parliament declared that subjects might plead this pardon in the courts without a writ of allowance, but otherwise had no role in the grant.¹⁸ The following year, parliament passed the first Tudor statute that offered a general pardon. The preamble carefully presented the king as a kind and merciful ruler. It noted that despite the two previous general pardons, people continued to put themselves in danger of the penalties of the law. Ever compassionate, the king desired the reformation and amendment of his subjects rather than their deaths or impoverishment. He wanted “not by often forgiveness and remission to give audacity to offenders upon hope of impunity, but that his great bounteousness of benefits be a peremptory monition unto all his subjects.” The conservation of social order and good rule depended on laws, but also on mercy. The pardon statutes were among the first to be printed for broad distribution and public posting. Even when printers regularly began to publish all statutes, they continued to give pardons special treatment, issuing them on large sheets separable from the other acts. As S.J. Gunn has noted, printing made the preambles of statutes “a means to communicate not merely with the political nation at Westminster, but with the nation at large.”¹⁹

¹⁶ See, for example, C 82/335/6; *L&P* I, i, nos. 54.63, 89, 190.35, 218.6, 218. 41, 289.1, 357.22, 381.6, 381.28, 519. 41, 519.54. See also nos. 313 and 596 for two men not originally excepted who were later refused the general pardon.

¹⁷ C 67/ 56-61.

¹⁸ 5 Henry VIII c. 8.

¹⁹ S.J. Gunn, *Early Tudor Government, 1485-1558* (Basingstoke, 1995), p. 188. See also G.R. Elton, “The Sessional Printing of Statutes, 1484-1547,” *Studies in Tudor and Stuart Politics and Government*, 3 vols. (Cambridge, 1974-83), III, pp. 92-109.

Like all future statutes of general pardon, that of 1515 offered clemency for offences committed before the first day of the current parliamentary session. The text listed those offences that it pardoned, including statutory felonies, contempts, hunting and forest offences, forcible entries, and usury; it specifically excluded treasons, murder, robbery, and all other common law felonies, as well as concealments and unlawful assemblies of more than twenty people.²⁰ Effecting a striking change, this act declared that people did not have to obtain individual copies and thus freed them from the fees demanded by the Chancery. Instead, it voided any future suits concerning matters it pardoned and had no expiration date. People currently before the courts for offences pardoned in the act only had to plead the statute to have their cases discharged. The pardon, then, demanded no fees above the 12d due to the clerk who entered the plea. This arrangement persisted in all subsequent Tudor parliamentary pardons and presumably made it much easier for greater numbers of people to take advantage of the royal grants of mercy.

In 1523, Henry VIII issued another general pardon in consideration of the subsidy his subjects had paid to finance the war. Its inclusions and exceptions closely paralleled those of the 1515 pardon, but it also offered mercy for thefts of goods worth less than 20s and for “all felonies called Manslaughter not committed or done of malice prepered.”²¹ The general pardons freed people of the fines and americiaments that potentially attended a host of business transactions and from the costs of often protracted litigation on these matters. These acts of mercy provided appropriate expressions of gratitude for taxation because the king willingly forfeited the financial proceeds of his justice. General pardons were sufficiently popular that the king used them not only to express retrospective gratitude, but also to encourage members of parliament to pass financial measures. They served as bargaining tools in political

²⁰ 7 Henry VIII c. 11; HLRO 7 Henry VIII OA 12.

²¹ 14 & 15 Henry VIII c. 16. For an early working draft of this pardon, see BL Cot. MS Titus B.1, fols. 157-58d.

negotiations. In the parliamentary session of late 1529, King Henry wanted an act to cancel his obligation to repay loans given him by his subjects. The Commons “sore argued” the bill; as the chronicler reported, “many men had loss by it, which caused them sore to murmur.”²² When the king granted a general pardon specifically to allay this discontent, the financial measure passed.²³ Instead of listing the offences covered by the pardon, the text enumerated only the exceptions and thereby clearly emphasised those actions that the king and his advisors found especially heinous; this provided the model for all subsequent parliamentary general pardons. Valid in general terms, the pardon remitted the pains and penalties arising from any offence pardonable by the king save for those specifically named. The list began with the more serious crimes against the king and commonwealth, proceeded to enumerate causes pertaining to the king’s feudal prerogatives and ended with regulatory offences deemed too grave to pardon. In addition to high treason, murder, rape, robbery, and the theft of goods worth more than 20s, the act also excluded praemunire, unlawful enclosures, the casting down of public crosses and other offences. A provision appeared that became a regular feature of all subsequent general pardons: officers initiating prosecutions for any pardoned offence risked payment of treble damages to the aggrieved party.²⁴

The king presented his next general pardon to the sixth session of the Reformation Parliament in 1534. Like its predecessors, this measure noted the king’s desire “to allure offenders from vice to virtue.” Many people had incurred sufficient punishments and penalties to render satisfaction impossible without the king’s grace. Furthermore, parliamentary grants of taxation prompted the king “to show unto his loving subjects that he both can and will consider when he is both kindly and lovingly handled of them.” The bulk of the excepted offences remained unchanged from previous general pardons, but a few additions, reflective of current official concerns,

²² Hall’s Chronicle, p. 767.

²³ Ibid., p. 767; see also S.E. Lehmborg, The Reformation Parliament (Cambridge, 1970), p. 91.

²⁴ 21 Henry VIII c. 1.

intruded. Tensions emanating from the Cromwellian Reformation barred the general pardon to those guilty of misprision of treason or necromancy, and those sitting in bishops' prisons after successfully pleading the benefit of clergy similarly found themselves without hope of remission. On the other hand, the narrow offence of pulling down crosses on the highways disappeared from the list of exceptions, as did praemunire.²⁵

The next act of general pardon, passed in 1540, emerged from a bill that initially excluded praemunire offences from its remit. The Lords approved the deletion of this provision and the addition of two others that barred the pardon for all treasons done beyond the seas and for a specified list of heresies, over and above those already included in the bill.²⁶ The preamble to this act repeated, verbatim, that of the previous general pardon, but the list of exceptions had several significant changes. Besides excluding certain heresies, the text clarified that it did not pardon treasons done by any overt deed, writing, or printing. On the other hand, the usual line forbidding pardon for rape, robbery from persons, and thefts above the value of 20s did not appear, making this one of the more generous general pardons of the period.²⁷ If this was an accidental omission, the last and least inclusive general pardon of the reign soon rectified the error. The 1544 act used the same preamble as had the previous two general pardons, but followed it with a lengthy list of exceptions: all heresies, all treasons against the king or queen, insurrections, treasons committed overseas, praemunire, poisoning, prophesying, buggery, and burglary all appeared, as did robbery, rape, arson, witchcraft, the casting down of crosses, and a series of other offences.²⁸

²⁵ 26 Henry VIII c. 18.

²⁶ HLRO 32 Henry VIII OA 46.

²⁷ 32 Henry VIII c. 49.

²⁸ 35 Henry VIII c. 18. The only addition to the original act was the exclusion of treasons against the queen from the remit of the pardon. HLRO 35 Henry VIII OA 18.

Thus, in addition to his accession pardon and to that proclaimed in the fifth year of his reign, Henry VIII presented parliament with six general pardons. No more than six years separated each grant. At least one general pardon passed in five of the nine parliaments; the measures had perhaps not yet become standard ritual, but a set form had emerged. The continual flux in the types of offences each covered stemmed from changing contemporary political concerns, as identified by king and parliament. Over time and in an uneven fashion, the general pardons tended to remit the punishments for fewer and fewer offences, reflecting the same sentiments behind the reign's restrictions to benefit of clergy and sanctuary and its lengthening of the list of punishable crimes. Nevertheless, general pardons offered freedom from a host of fines, gaol terms, and sentences of death more frequently than ever before. While the Tudors came to see some offences as unworthy of indiscriminate mercy, they granted mercy more often and thus to more people. The general pardons encapsulated the general belief that mercy must temper justice: forgiveness and punishment conjoined to serve the best interests of a well ordered polity. They also helped advertise the king as merciful, and thus deserving of his ever increasing power.

Parliament also passed other measures that offered amnesty or absolution. The act attainting Elizabeth Barton and her supporters of high treason pardoned all those not specifically named in the statute; the king made the decision at "the humble suit and contemplation of his most entire and well-beloved wife Queen Anne."²⁹ Only a short time later, Henry VIII had Queen Anne executed and used a parliamentary statute to offer his pardon to all subjects who had by word, writing, or deed done anything in derogation of his late wife.³⁰ He had similar measures passed after the dissolution of his marriage to Anne of Cleves and the execution of Catherine Howard.³¹

²⁹ 25 Henry VIII c.12.

³⁰ 28 Henry VIII c. 7.

³¹ 32 Henry VIII c. 25; 33 Henry VIII c. 21.

Arguably the best known parliamentary acts offering pardon were not the statutes of general pardon but those emerging from the “*praemunire manoeuvres*” of 1530-1531. Their story has been told more fully elsewhere, but deserves some mention here.³² The general pardon of 1529 had excluded from its remit offences against the statutes of provisors and *praemunire*; the significance of this exception soon became evident. Cardinal Wolsey’s confession that he had supported papal jurisdiction in England and thereby had violated the statutes of *praemunire* and provisors opened all members of the English clergy to similar charges. Embroiled in his divorce proceedings, the king felt a need to tame the clergy. He also needed money. In July 1530, his attorney-general laid charges of *praemunire* against fourteen clerics. After repeated delays, parliament and convocation met in January 1531. Henry VIII asked the assembled clerics for a subsidy of £100,000. Following this demand, he offered to give the clergy a comprehensive pardon of all offences, including those against the statutes of *praemunire* and provisors. The clergy agreed to pay for their pardon in five instalments, but when the king demanded the option to exact full, immediate payment if the need arose, the clergy balked. In the ensuing negotiations, the clerics asked for confirmation of their ecclesiastical privileges; Henry replied by asserting his supremacy over the church. Heated debates erupted, but finally the clergy agreed to the king’s supremacy, “as far as Christ’s law allows.” As John Guy has noted, the king needed to secure his subsidy in a way that posed no hindrance to his attempts to get a divorce in England.³³

The king also needed to guard his prerogative of pardon. During the debates, Henry had put before the Lords a bill to ratify the subsidy and pardon the clergy. Guy has deduced that this bill pardoned the clerics of Canterbury province for aiding and abetting Wolsey as papal legate, rather than for illegally exercising their spiritual jurisdiction as did the final act. The bill failed in the lower house: when the Commons

³² See J.A. Guy, “Henry VIII and the *Praemunire Manoeuvres* of 1530-1531,” *English Historical Review* 97 (1982): 481-503 and G.W. Bernard, “The Pardon of the Clergy Reconsidered,” *Journal of Ecclesiastical History* 37 (1986): 258-87.

³³ Guy, “*Praemunire Manoeuvres*,” p. 498.

saw it, they panicked. According to the chronicler, “diverse forward persons would in no wise assent to [the bill] except all men were pardoned, saying that all men which had anything to do with the Cardinal were in the same case.” Speaker Audeley led a delegation to present the Commons’ case to the king. The king inveighed “that he was their prince and sovereign lord and they ought not to restrain him of his liberty, nor to compel him to show his mercy, for it was at his pleasure to use the extremity of his laws or mitigation and pardon the same.”³⁴ He refused to give a pardon upon pressure, nor did he need parliament to do so – he declared that he could easily pardon the priests on his own prerogative with letters patent.

In late March 1531, the king sent a second bill for pardoning the Canterbury clergy to the Commons. To ease its passage through the lower house, this bill noted that the clergy needed forgiveness not for honouring Wolsey’s legatine authority – a charge that might easily apply to laymen as well – but for the illegal exercise of their spiritual jurisdiction. The bill passed. Of his “mercy and pity and compassion,” and in gratitude for the subsidy, Henry granted the clerics of the southern province a pardon for all offences save treason, murder, robberies, and rape.³⁵ The clergy of York province later compounded for their own pardon with a subsidy of £18,840.³⁶ The king also offered to the laity his pardon for offences against the acts of provisors and praemunire; according to the chronicler, the “Commons lovingly thanked the king and much praised his wit that he had denied [the pardon] to them when they unworthily demanded it, and had bountifully granted it when he perceived that they sorrowed and lamented.”³⁷ The royal prerogative of pardon emerged unscathed; Henry made it clear that mercy emanated only from his own authority and initiative. However, he had come to see parliamentary statutes as a useful way to advertise and ratify his grants of mercy. He had also

³⁴ *Hall’s Chronicle*, pp. 774-75.

³⁵ 22 Henry VIII c. 15.

³⁶ 23 Henry VIII c. 19.

³⁷ 22 Henry VIII c. 16; *Hall’s Chronicle*, p. 775.

discovered that pardons provided a means of cajoling recalcitrant commons or clerics to provide taxation.

Like his father and grandfather before him, the young King Edward began his reign with a celebratory declaration of pardon, but saved his initial pardon for the day of his coronation. The council discussed the timing of the grant and concurred with the Earl of Hertford and Sir Anthony Browne who maintained that:

the time will serve much better at the coronation than at present; if it were granted now the king could show no such gratuity to his subjects when the time is most propitious. His father, whom we doubt not to be in heaven, would take the credit from him who has more need of it.³⁸

This pardon must have seemed a natural addition to the day's traditional pageantry, symbols, and rituals. During the procession to the church, nobles carried three swords before the king: two signified justice to the spirituality and the temporality while the third, a blunted sword, represented mercy. In his oath, Edward VI swore to provide justice leavened with clemency; he emerged from his anointment as a man reborn and cleansed of sin. On the procession returning from the church, scabbards sheathed the swords of justice, again to remind the king of the necessity of mercy.³⁹ What better day than one of renewal and reaffirmation of the ideals of governance to offer pardon? Edward granted clemency for offences committed before his accession, excepting only treason, decay of farms and houses, debts, and concealment of customs. Unlike the statutes of general pardon, the coronation proclamation of pardon could not simply be pled in court: people hoping to benefit had to obtain copies of the pardon from Chancery before 28 January 1548.⁴⁰ Understanding that the cost of obtaining an individual copy of the pardon prohibited many from enjoying its benefits, the council ordered the Chancellor to give free charters to any who sued for them within a specified period.⁴¹ Roughly 800 people

³⁸ SP 10/1, no. 2.

³⁹ On coronation ritual, see P.E. Schramm, *A History of the English Coronation* (Oxford, 1937) and the introduction to *The Coronation of Richard III*, ed. A.F. Sutton and P.W. Hammond (Gloucester, 1984).

⁴⁰ C 67/ 64, mm. 1-3.

⁴¹ SP 10/1, no. 27.

and nine guilds, colleges, or other groups obtained copies of the coronation pardon. These included men such as Protector Somerset and Archbishop Cranmer, but the majority -- nearly 70 per cent -- ranked below the status of the gentry. Again, women represented a small proportion -- less than 5 per cent -- of those buying their pardons.⁴²

The first parliamentary general pardon of the reign soon followed. Much less generous than either the coronation pardon or any of Henry VIII's general pardons, it excluded, among other offences, high and petty treason, misprision of treason committed outside the realm, murder, burglary, arson, rape, piracy, and robbery from persons, churches, or on the king's highway. Some offences -- manslaughter and horse theft for example -- constituted exceptions not made by any previous general pardon. Counterfeiting and crimes dealing with the coinage appeared on the list during the bill's passage through parliament.⁴³

The two parliaments of Edward's short reign passed three more statutes of general pardon. Somewhat more generous than the first, the second pardon remitted treasons and thefts. It also promised mercy to individuals who had fled the country for any treason, murder or felony if they returned by Christmas, 1549.⁴⁴ The third general pardon extended the deadline for remission to 15 May 1550. For the first time in Edward's reign, the general pardon excluded certain heresies. Composed in early 1550, the preamble to the pardon referred to the risings of the previous summer and declared that the king had decided to grant remission of a host of offences because "his Majesty by God's providence, being replenished with mercy, clemency and pity [was] much inclined to allure, provoke and stir his said loving subjects to love obedience." However, A proviso prohibited anyone involved in unlawful commotions after 12 June 1549 or who sued for damages suffered in the risings from benefiting in any way from the

⁴² C 67/64.

⁴³ 1 Edward VI c. 15; HLRO 1 Edward VI OA 21.

⁴⁴ 2 & 3 Edward VI c. 39.

pardon.⁴⁵ The 1553 act of general pardon, the last of the reign, specifically excluded from its remit people who had fled the realm in its lengthy list of exceptions; accessories to the major felonies found themselves excluded for the first time as well. The preamble offered a striking statement of the nature of royal authority and the role of mercy:

The King's Most Excellent Majesty, considering his high power to be given unto him from Almighty God to govern and rule his people by distribution of judgement and mercy as causes do require, and remembering this present time into how many penalties and dangers of laws sundry his loving subjects be fallen, out of the which (although they show themselves many ways sorry therefore) they cannot be delivered if his Majesty shall suffer the weight and burden of Justice to remain on their shoulders, is mercifully moved by Almighty God (in whose hands the hearts of kings be) of reasonable pity and princely bountifulness, [to grant pardon] having...great hope of an universal amendment of such as have erred.

The only one of Edward's pardons explicitly to trade a pardon for taxation, the text included a declaration of the king's gratitude for the love his subjects had shown by their grant of a subsidy.⁴⁶

At her coronation, Mary I granted clemency as part of the celebratory rite of new beginnings and renewal. After she received the people's acclamation, swore her oath and was annointed, Mary had her Lord Chancellor proclaim the pardon to the assembled crowd. Later, messengers carried copies throughout the realm. Like her father and brother, Mary made her inaugural pardon broadly inclusive. She remitted all treasons, rebellions, homicides, and felonies committed before her coronation. Forgeries, contempts, outlawries, fines, and forfeitures also found their way onto the list of pardoned offences. People had to purchase their copies within one year, at a cost of 22s each.⁴⁷ Nearly 1,600 people availed themselves of the opportunity to absolve themselves of past offences.⁴⁸ Mary barred the pardon to a number of people: forty-seven named individuals along with the mayor and aldermen of Boston found themselves excluded, as

⁴⁵ 3 & 4 Edward VI c. 24.

⁴⁶ 7 Edward VI c. 14.

⁴⁷ TRP, II, no. 394.

⁴⁸ C 67/65 (first membrane mutilated).

did anyone then in gaol at the express commandment of the queen or her council. This covered, of course, those arrested for their attempt to place Lady Jane Grey upon the throne. Most of the excepted individuals eventually compounded for their offences and received forgiveness.⁴⁹ When Mary reissued the pardon to celebrate her husband's coronation in July 1554, a further 288 people purchased copies.⁵⁰ She offered her parliaments no statutes of general pardon.

Immediately upon her accession, Elizabeth and her councillors began organising the coronation day events. They found that disorders, especially robberies, had multiplied alarmingly as some people anticipated remission from the inaugural pardon. The council issued a proclamation warning such violators of the peace not to expect absolution, but to what effect is unknown.⁵¹ On 15 January 1559, following the pomp and pageantry of the royal entry, the Lord Chancellor proclaimed the pardon. It must have disappointed offenders who had unwisely counted on immunity, for it covered only those crimes committed before Elizabeth's accession. It also pardoned fewer types of offences. Misprisions, homicides, statutory and common law felonies, most treasons, perjury, usury, and a host of other offences made their way onto the list of pardoned crimes. Exceptions included murder, robbery, crimes against the succession, offences in or concerning Calais, conspiracy against Elizabeth during her sister's reign, customs violations, and breaches of the statutes of praemunire and provisors.⁵² Those wishing to take advantage of this pardon had to obtain copies from Chancery before 20 June 1559 at a cost of 26s 8d. Some 2,597 men and 127 women – 2,725 people in all – purchased their charters of pardon.⁵³

⁴⁹ See *Holinshed's Chronicles*, IV, p. 7.

⁵⁰ *TRP* II, no. 415; C 66/66.

⁵¹ Strype, *Annals of the Reformation*, I, i, p. 41.

⁵² *TRP* II, no. 452. The editors omitted the pardon's exclusion of robberies; see the original in C 66/ 940, m. 13 or C 67/67, m. 1.

⁵³ C 67/67, 68.

While Queen Mary had issued no parliamentary general pardons, Elizabeth promptly returned to the example provided by her father and brother. She granted eleven general pardons during her reign. All but the first of her parliaments passed at least one such statute, leaving an average of four years between each. Elizabeth returned to both the frequency and format of her brother's general pardons. Again, the only required fee was that due to the clerk who enrolled the plea; the cost of this service had risen, however, from 12 to 16d. All of the Tudor monarchs used the act of pardon to portray themselves as beneficent rulers who governed by the time-honoured, God-given rule that mercy must accompany justice; like her father and brother, Elizabeth used the texts of her pardon statutes to refine this image and to guide public interpretation of her acts of clemency. While the preambles to each of the acts differed in expression, they encapsulated the same general sentiments and motivations. People had a duty to obey the queen and her laws, and justly deserved punishment for their offences. The queen, however, wanted their compliance to come from love as well as obligation and she, too, had a God-given duty: to leaven justice with mercy. Even good and loving subjects sometimes erred; only the queen's grace and clemency offered them the means to escape the penalties that they had incurred. Elizabeth offered her pardons in trust that people "will thereby be the rather moved and induced from henceforth more carefully to observe her Highness' laws and statutes."⁵⁴ The queen might restore order through the strict execution of justice, but felt moved to use merciful means because of the "great zeal and affection" shown by "her loving and obedient subjects."

This "zeal and affection" manifested itself most appreciably in taxation. Like her predecessors, Elizabeth granted her pardons partly to express gratitude for parliamentary subsidies. The speeches given during the closing ceremonies of parliament sometimes explicitly recognised this relationship.⁵⁵ At the end of every parliament, the clerk read aloud the title of the bills passed by the two houses and the queen's acceptance or

⁵⁴ 39 Elizabeth I c. 28.

⁵⁵ *Proceedings in the Parliaments of Elizabeth I*, ed. T.E. Hartley, 3 vols. (Wilmington, 1981-95), I, p. 110.

rejection of each. After he read the subsidy and the queen's expression of thanks, he declared the general pardon, whereupon the lords and commons proclaimed their humble gratitude.⁵⁶ In his closing speech before the Lords in 1585, the Speaker noted that "upon our knees" the assembled members gave their thanks for the queen's pardon and promised that "by which your clemency we all shall take occasion...to endeavour ourselves more carefully to observe your laws."⁵⁷ At the end of the 1601 session, the Speaker declared that all members of the houses "render with our bended knees all possible thanks unto your Majesty for your unspeakable goodness to us in your most gracious, most free and general pardon...and therefore, sacred sovereign, we admire and dread your justice and do magnify and bless your mercy and do ever beg to be partakers of it."⁵⁸ The members of parliament presumably welcomed the pardons not only for remission of their own misdeeds and fines, but also because they eased their burdens while sitting as justices of the peace: past offences no longer needed investigation or threatened to overwhelm the docket.⁵⁹ As with the coronation pardon, some people seemed emboldened to commit offences in anticipation of a general pardon – a group of the assize judges noted as much in 1586.⁶⁰ Nevertheless, the statutes were popular measures, at least with the queen, her councillors and members of parliament.

Elizabeth's general pardons, however, grew more restrictive as the years progressed. The pardon itself remained a useful and widely-accepted tool, but changing sentiments and troubling events rendered some violations of the law unsuitable for indiscriminate mercy. The first general pardon remitted all offences save high treason by overt deed or committed overseas, conspiracies, counterfeiting coin, piracy, voluntary

⁵⁶ *Ibid.*, I, p. 170.

⁵⁷ *Ibid.*, II, pp. 25; 27; see also p. 212.

⁵⁸ *Ibid.*, III, p. 267.

⁵⁹ No figures are available for the Tudor general pardons, but Attorney General Heath claimed that the pardon prepared for 1621 would forfeit as much judicial revenue as three subsidies would accrue in tax revenue. This surely indicates one reason for their popularity with the members of parliament. *Commons Debates, 1621*, ed. W. Notestein et al, 6 vols. (New Haven, 1935), III, p. 526.

⁶⁰ BL Lansdowne 22, 70.

murder, wilful poisoning, burglary from houses, robbery from persons, from houses during the day or committed on the queen's highway, and any accessories to the above. It also excluded rape, gaol escapes, wastes, marriage without license, concealment of customs, debts above £6 due to the queen, offences of the mint, ravishment of wards, *quare impedit*, forfeited recognisances, decays of houses, and conveyance of coins outside the realm. Later pardons saw the list of excluded offences grow: petty treason, robberies at night, horse theft, marrying women against their will or without parental consent, praemunire, arson, witchcraft, all remaining high treasons, writing or publishing slanderous books, covinous actions on penal statutes, forging seals, intrusions, and rescues of prisoners -- among other offences -- all became fixtures on the lists of exclusions. Some new exclusions had been the subject of unsuccessful parliamentary bills. For example, a bill seeking to heighten the penalties for abuses by Exchequer officials failed in 1589, but the general pardon of that year rendered the same offences unpardonable. David Dean has speculated that councillors may have promised members of parliament to deal with sensitive issues in the pardon to diffuse debate.⁶¹ The war years saw more crimes excepted: embezzlement of goods meant for war, illegal purveyance, and improper discharge of impressed soldiers became ineligible for pardon. The last pardon of the reign, coming after the tense 1590s and Essex's revolt, barred pardon to those concealing, abetting, comforting, or procuring any high treason and also to those involved in any rebellion or insurrection.⁶² Some offences, newly excluded in one pardon, disappeared from subsequent grants. For example, the 1576 general pardon offered no remission for those who slandered judges or stole goods worth more than 40s; in later pardons, these again became pardonable offences.⁶³ However, once added, most remained permanent exclusions.

⁶¹ D. Dean, *Law-Making and Society in Late Elizabethan England* (Cambridge, 1996), p. 61.

⁶² 43 Elizabeth I c. 19; the latter clause was added after drafting, HLRO 43 Elizabeth I OA 19.

⁶³ 18 Elizabeth I c. 24. The monetary limit was an afterthought: as originally engrossed, the act barred pardons for thefts of any value. HLRO 18 Elizabeth I OA 23.

The originals of Elizabeth's pardon statutes have few additions or changes other than those noted in this and the preceding note. For the most part, the texts prompted little debate or alteration in

Matters pertaining to the ecclesiastical courts offered an exception to this rule. The 1566 general pardon specifically excluded from its remit all church court offences, but the subsequent pardon in 1571 made no mention of them, thus making them pardonable by default. Or so it seemed. In one ecclesiastical case passed over to the common law judges in 1571, Justice Dyer doubted the pardon statute would restore an adulterous parson to his living without express words to that effect because the matter belonged to the spiritual jurisdiction. Justice Manwood, on the other hand, declared that the pardon did not need special words to apply to church court offences because “the queen is governess in respect of spiritual offenders as well as temporal, and is supreme in everything.”⁶⁴ One unidentified writer argued that the pardon did not allow adulterers and fornicators to evade ecclesiastical sanctions, echoing Dyer’s comment when he lamented that “it were [a] pity such foul matters should now pass away under a cloud of general words.” Although all general pardons previous to the 1566 statute had omitted any reference to matters heard in the church courts, he claimed that no judge had ever interpreted them to apply to such causes. The clause excluding ecclesiastical offences from the 1566 pardon was both a mistake and unnecessary; by right, no pardon freed people of the penance earned by their sins. The writer noted that the queen gave her general pardons to lift the heavy burden of penalties and punishments from her subjects. Yet, many spiritual offences received only public penance as a sanction; this did not constitute a punitive measure but “medicine for the soul” that needed no relief. Noting that the pope’s pardons of ecclesiastical offences violated both divine law and scriptural dictate, the author offered an oblique criticism of this use of the royal prerogative of

parliament, but the original of the first of Elizabeth’s pardon statutes suffered one lengthy excision: a large section – nearly two full lines of a wide document – was scratched out and made illegible. (HLRO 5 Elizabeth OA 31) Not knowing the defaced words is especially frustrating, as the change earned the pardon a place on Cecil’s litany of complaints at the end of the session. His note that the parliament had failed to deal with the succession, the queen’s marriage or the abuses of informers ended with the words “the abridgement of such parcel of the general pardon as, though it be no profit greatly to the queen, yet it was most plausible to the Commons.” SP 12/41 no. 36.

⁶⁴ Reports from the Lost Notebooks of Sir James Dyer, ed. J.H. Baker, 2 vols., Selden Society, vols. 109-10 (London, 1994), I, p. 366, pl. 451 (II).

pardon.⁶⁵ Early in her reign, some had questioned Elizabeth's ability to assume the headship of the church because they thought it impossible for a woman to inherit the apostolic duty of punishing the disobedient children of the church.⁶⁶ This author wisely did not raise any objections based on Elizabeth's gender; rather, he claimed that no one, man or woman, could pardon people of the penance and penalties due for their sins. The queen apparently agreed that incest, adultery, and fornication were inappropriate for pardon as she specifically excluded them in each of her subsequent pardons. She later made simony, disturbances during service, heresy, schism, and usury permanent additions to the list of exceptions, as well. In so doing, however, she asserted her right to punish or pardon matters heard before the church courts as she saw fit. In his study of the canon law after the Reformation, R.H. Helmholz noted that the church courts regularly applied the statutory pardons.⁶⁷ As supreme governor of the church, the queen had the final say in matters tried in its courts.

The statutory pardons not only denied remission for particular offences, but also refused any benefit to certain groups of offender. All of Elizabeth's general pardons declared outlaws ineligible for forgiveness of any misdeed until they made satisfaction to the party at whose suit they were first outlawed. A person outlawed for failing to respond to a relatively minor civil suit might thereby find himself encouraged to conform. The 1571 general pardon, the first after the Northern Rising, denied its

⁶⁵ SP 15/20, no. 54. Questions about the applicability of general pardons to offences in the ecclesiastical courts reappeared in the following reign: the working notes for one of James VI/I's general pardons listed those offences to be included and excluded but noted "the offences against the Ecclesiastical Courts were left to further advice." HEH EL 2194.

⁶⁶ Strype, *Annals of the Reformation*, I, ii, p. 401.

⁶⁷ R.H. Helmholz, *Roman Canon Law in Reformation England* (Cambridge, 1990), pp. 162-64. His assertion that the civilians searched for and implemented ways to limit the impact of the pardons rested largely on shaky examples: he noted that church court officials refused to apply the pardons to offences continued after the date of the grant or to civil cases where a private interest came into play. These were not innovations of the civilians but limitations built into the pardons; the same applications were made in secular courts. He noted also that a pardon did not automatically eliminate an offender's excommunicated status; the pardon granted absolution of the underlying offence, but the offender had to appear in court and ask that the sentence be lifted. Again, this paralleled procedure in the secular courts for such things as outlawry upon the sovereign's suit and did not represent civilians' principled "slender enforcement" of the statutes.

benefits to any rebel with lands worth £5 or more per year until he or she had paid a fine to the Lord President of the North.⁶⁸ Beginning with the 1581 general pardon, religious dissidents found themselves similarly excluded and pressured to obey: offenders against the Act of Uniformity could take no benefit from the pardon until they conformed. The subsequent pardon extended this restriction to those in violation of the 1581 “Act to Retain the Queen’s Majesty’s Subjects in their Due Obedience.” The pardon of 1589 and all that followed further barred the pardon to Catholics obstinate in their disregard for the “Act Against Jesuits and Seminary Priests.”⁶⁹

By the end of Elizabeth’s reign, general pardons had become a standard feature of parliament. We can not know how many people profited from these pardons, since they did not have to buy copies from Chancery and thus left no record on the rolls of government. One would have to search the records of each court, most of which have not survived, to find each relevant plea. Even if this were possible, many other people never had to face a court for their offences because of the absolution offered by the pardons. Damaged and incomplete rolls show that well over 10,000 people availed themselves of the general pardons proclaimed under Henry VII and at the inauguration of each new reign; presumably many more took advantage of the period’s twenty-one statutes of general pardon. The pardons did not always have the effect intended by the Crown and parliament. For example, Margaret Harding, “a notable pickpurse,” continued her thefts despite repeated use of individual and general pardons until her luck ran out in 1582 and she died on a London gallows.⁷⁰ One man who killed his master found that his crime fit a loophole in the general pardon: the statute forbade pardon for murderers, but not for petty traitors. Killing one’s master constituted petty treason and the common law held that the greater crime extinguished the lesser; the man went free.⁷¹

⁶⁸ 13 Elizabeth I c. 28.

⁶⁹ 23 Elizabeth I c. 16; 27 Elizabeth I c. 30; 31 Elizabeth I c. 16. On this principle, see *Reportes del Cases in Camera Stellata*, ed. W.P. Baildon (London, 1894), p. 118.

⁷⁰ BL Lansdowne 35, 26.

⁷¹ 6 Co. Rep. 14a. (77 *English Reports* 273.)

But parliaments would not have enacted general pardons so frequently had contemporaries believed that their disadvantages outweighed their benefits. For the Crown, the political benefits outweighed any attendant disorder. Over the years, the pardons narrowed in scope, excluding more and more offences. Like the restrictions to benefit of clergy, the increasing number of exclusions from the general pardons demonstrated that the authorities came to see indiscriminate mercy as inappropriate for a growing number of misdeeds. However, the frequency of the pardon statutes showed that the same authorities continued to believe that clemency had an important role in the maintenance and restoration of order. The repeated enactment of general pardons reflected a belief that offenders were not inherently, irredeemably criminal, but capable of contrition and improvement.

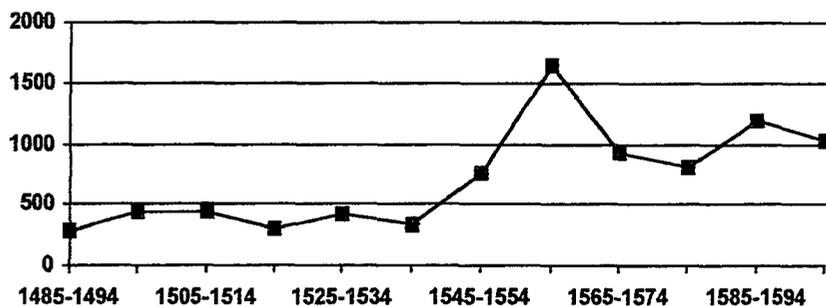
Special Pardons

The frequency of the general pardons ensured that more and more people might avail themselves of mercy. This development paralleled a growth in the numbers of people who received special pardons. These people, either convicted for an offence or fearing the same, obtained an individual grant of the sovereign's mercy. They might plead for pardon of any type of offence, even those specifically barred from the benefits of a general pardon. Excluding those people pardoned specifically for commercial offences, outlawry, offences arising from the exercise of their office, and alienation of property without licence, Henry VII granted an average of forty-one people special pardons each year he reigned; Elizabeth dispensed her clemency to an average of 109 individuals each year.⁷² The following chart shows the number of pardons – again, with

⁷² The large numbers of pardons given after Wyatt's Rebellion and the Northern Rising have been excluded from these tallies as well - the 3,804 pardons for the latter, for example, would seriously distort these averages. The large increase in 1555 to 1565 is partly due to the high numbers of pardons given by Mary to those arrested under the Protestant regime and to those involved in the attempt to put Lady Jane Grey upon the throne and later plots. All information about the numbers of special pardons has been derived from the patent rolls (C 66) or their calendars; see explanatory note in Appendix 1.

the same categories excepted -- granted in each ten year period, illustrating the general rise in numbers of people who received special pardons over the period.

Figure 1: Number of Special Pardons for Serious Offences per Ten Year Period



The numbers of pardons granted for each type of offence also tended to increase over the period. The main exceptions consisted of the pardons for commercial infractions and those for offences or debts arising from one's official or administrative duties: many such pardons appeared under Henry VII and in the early years of Henry VIII, but thereafter the numbers dropped precipitously, most likely because the general pardon statutes covered these offences. Several factors influenced the overall increase in numbers of pardons: the population boom that occurred between 1520 and 1600 probably led to a proportionate increase in the number of offences that needed pardons. Also, as more behaviours became illegal, crime almost certainly had to increase. In the assize records surviving from the five counties of the Home Circuit between 1559 and 1603, 6 per cent of those indicted, or nearly 10 per cent of those convicted, obtained pardons; however, as gaol delivery, assize, and other court records are lacking for much of the period, one cannot calculate the number of people indicted or convicted and hence determine if the ratio of pardons to indicted offences increased.⁷³ The increase in

⁷³ Numbers derived from Cockburn, *Calendar of Assize Records* and the patent rolls; see ahead for Figure 3 and accompanying note. One might speculate that the ratio of pardons to detected offences did increase, as these numbers exceed those found by K.E. Garay in her study of the extant records from all circuits between 1388-1399 where 3 per cent of those arraigned for felony obtained pardon; on the other hand, 7.53 per cent of those arraigned from 1399-1409 pled pardons, but this increase was likely a brief anomaly, due to the two general pardons proclaimed in this time (2 Henry IV, c. 13; 5 Henry IV, c. 15.) Garay, "No Peace nor Love in England? An Examination of Crime and Punishment in the English Counties, 1388-1409," University of Toronto PhD dissertation, 1977, pp. 142, 337-39. See also J.G. Bellamy, *The Criminal Trial in Later Medieval England* (Toronto, 1998), pp. 93-134, 147, 157. However, the numbers from Garay's period and the Elizabethan are not easily comparable. Very few of the Home Circuit records for Garay's period are extant, whereas they are the only records surviving for the sixteenth

raw numbers of pardons did at least demonstrate a continued commitment to the use of mercy to temper the severity of the law.

Without the numbers of indictments or convictions for particular offences, one cannot calculate whether some offences were more likely to be pardoned than others and if that changed over time. What the records do show, however, is that the Tudors pardoned any and every type of misdeed. While the general pardons came to exclude increasing numbers of offences from their remit, individual pardons given at the discretion of the king or queen experienced no such restrictions during the Tudor period.⁷⁴ French kings had no authority to pardon cold-blooded murder, witchcraft or infanticide; the law considered these crimes inexcusable and hence unpardonable.⁷⁵ In contrast, English rulers might pardon any matter, in any court, to which the Crown was a party. Subsidy collectors reprimanded in the Exchequer for faulty accounts, sailors sentenced in the Admiralty court for piracy, clerics sanctioned in the church courts for simony, spinsters tried at quarter sessions for theft and yeomen convicted at the assizes for burglary -- all received absolution from their sovereign.

Sixteen percent of the pardons left the particular offence that had prompted the suit unnamed; many of these absolved the recipient of guilt for all felonies and misdemeanours. Such blanket pardons predominated under Henry VII and in the early years of his son's reign; thereafter the pardons tended to be for specific offences.⁷⁶ At

century. More importantly, conviction rates differed significantly, from a rough average of 1/3 in Garay's period to nearly 2/3 by the end of the sixteenth century and in the middle ages, pardons were generally pled before conviction, rather than after as in the sixteenth century.

⁷⁴ T.A. Green mistakenly suggested that the Tudors "accepted legislation that revived the medieval proscriptions against the pardoning of particularly serious offenders" and cited the general pardon statutes as proof: *Verdict According to Conscience* (Chicago, 1985), p. 117. While passed by parliament, general pardons were clearly initiated by the Tudors themselves; these statutes never suggested that an offence not covered by its provisions could not receive pardon at the discretion of the king or queen. They imposed no limits on the prerogative of pardon.

⁷⁵ N.Z. Davis, *Fiction in the Archives* (Stanford, 1987), pp. 58, 85.

⁷⁶ The move to more specific language in pardons may have been intended to avoid inadvertently pardoning as yet unknown offences committed by the recipient. Robert Beale advised Secretaries of State to "take heed least in the draft of the pardon, under the colour to pardon one offence you be not abused with a general clause...reaching to things not spoken or thought of, as some have been heretofore." "Treatise of the Office of a Counsellor and Principal Secretary to her Majesty," (1592), in C. Read, *Mr. Secretary Walsingham and the Policy of Queen Elizabeth* (Oxford, 1925), p. 438.

least 13 per cent of the nearly 14,000 people who received special pardons had been implicated in a killing.⁷⁷ A minimum of 17 per cent obtained their pardons for larceny, burglary, or robbery. At least 33 per cent received pardons for treason, misprision, counterfeiting, or sedition.

Figure 2: Pardon Profile, 1485-1603⁷⁸

<i>Nature of the offence</i>	<i>Percentage of total</i>
Homicide	13%
Property	17%
Treason/State	33%
General/Unspecified	16%
Miscellaneous	21%

New offences led to new reasons for mercy: Elizabeth, for example, granted thirty-six pardons to people indicted under the witchcraft statute of 1563.⁷⁹ As the Court of Star Chamber assumed a criminal jurisdiction, the queen also began to give pardons to people it found guilty: seventy-one had at least parts of their punishments lifted.

Of all the special pardons given between 1485 and 1603, just over 10 per cent went to women. Of course, studies of women before the courts in various times and places have consistently demonstrated that far fewer women than men ever faced a jury. The extant Elizabethan assize records showed a similar pattern: of the 8,298 people indicted, only 1,140, or 14 per cent, were women. Scholars' explanations of this discrepancy have varied widely: some thought women far less likely to commit offences,

⁷⁷ This percentage does not include people specifically named as accessories to homicide or those pardoned for deaths due to witchcraft. Nor does it include those pardoned for piracy: they may have been involved in killings, but their pardons generally covered all offences done at sea.

⁷⁸ "General/Unspecified" refers to those pardons that left the particular offence unnamed, offering remission for "all treasons, felonies, and misdemeanours." "Miscellaneous" includes most commercial infractions, Star Chamber judgements, heresy, etc.

⁷⁹ Essex has earned itself a reputation for having been witch-crazed. Of the counties for which records survive, Essex witnessed 97 prosecutions compared to the 39 for the other four Home Circuit counties combined. The witchcraft pardons are especially interesting in that they offer a tantalising yet ultimately unprovable suggestion that witchcraft prosecutions may have been higher on the Eastern Circuit than on the Home Circuit. Twelve of the 36 witchcraft pardons were from the Home Circuit (5 from Essex), whereas the Eastern Circuit produced sixteen. Without the relevant court records, of course, it is possible that prosecutions were not higher but that the judges and local gentry of the Eastern Circuit were more willing to petition for pardons of this offence.

either because they were inherently and naturally more docile and law abiding or, a more tenable explanation, because of socialisation and restrictions on their public activities. Others have suggested that women did not necessarily commit fewer crimes, but that their offences were more trivial or of a hidden nature and thus less likely to be discovered or deemed sufficiently serious to take before the courts.⁸⁰ The discrepancy did not stop at the level of prosecutions: studies have shown that of those arraigned, juries convicted proportionately fewer women than men. Again, the Elizabethan situation did not differ. Juries returned a guilty verdict for 48 per cent of the female defendants, but for 64 per cent of the male defendants. As some historians have suggested, perceptions that women were easily misled and less likely than men to choose crime as a way of life may have influenced jury verdicts. Concern that female convicts did not have access to the saving mechanism of benefit of clergy may also have coloured jurors' decisions.

While many historians have noted prosecutors' and jurors' generally more lenient treatment of female offenders, few have observed that this relative lenience stopped once the court gave its verdict.⁸¹ Female convicts were marginally more likely to obtain a pardon, but much less likely to evade the gallows than their male counterparts. A glance at Figure 3, below, shows that female convicts were more than twice as likely to receive pardons than men, with 21 per cent pardoned as opposed to 9 per cent. However, many of these male convicts received benefit of clergy and thus had no need for a pardon. If those who claimed benefit of clergy are subtracted, 16.5 per cent of men facing death obtained pardon, a percentage not much lower than that of the female convicts.

⁸⁰ See, for example, B. Hanawalt, "The Female Felon in Fourteenth-Century England," *Viator* 5 (1974): 253-68; Hanawalt, "Women Before the Law: Females as Felons and Prey in Fourteenth-Century England," in *Women and the Law: A Social Historical Perspective*, ed. D.K. Weisberg, 2 vols. (Cambridge, Mass, 1982), I, pp. 165-95; K.E. Garay, "Women and Crime in Later Medieval England," *Florilegium* 1 (1979): 87-109; C.Z. Weiner, "Sex Roles and Crime in Late Elizabethan Hertfordshire," *Journal of Social History* 8 (1975): 38-60; J.M. Beattie, *Crime and the Courts*, pp. 237-43, 436-39.

⁸¹ In her doctoral dissertation, an expanded version of which is soon to be published, G. Walker has suggested that despite the lower indictments and convictions for women, those condemned were more likely to suffer death, a conclusion supported by what follows here. "Crime, Gender and Social Order in Early Modern Cheshire," esp. pp. 138-40.

Figure 3: Pardons on the Home Circuit, 1559-1603⁸²

MEN

<i>County</i>	<i>Indicted</i>	<i>Convicted</i> [†]		<i>Benefit of Clergy</i>		<i>Pardoned</i>	
		#	%	#	%*	#	%*
Essex	1985	1297	65.3	641	49.4	103	7.9
Hertfordshire	578	413	71.4	170	41.2	46	11.1
Kent	1940	1192	61.4	555	46.6	85	7.1
Surrey	1684	1089	64.7	593	54.4	100	9.2
Sussex	971	575	59.2	259	45.0	53	9.2
SUBTOTAL	7158	4566	63.8	2218	48.6	387	8.5

WOMEN

<i>County</i>	<i>Indicted</i>	<i>Convicted</i> [†]		<i>Benefit of the Belly</i>		<i>Pardoned</i>	
		#	%	#	%*	#	%*
Essex	386	188	48.7	46	24.4	29	15.4
Hertfordshire	105	50	47.6	16	32	8	16.0
Kent	234	116	49.6	64	55	20	17.2
Surrey	245	117	47.7	72	61.5	45	38.5
Sussex	170	74	43.5	26	35.1	11	14.9
SUBTOTAL	1140	545	47.8	224	41.1	113	20.7
TOTAL	8298	5111	61.6			500	9.8

[†] includes those who pled guilty

* percentage of those convicted

Benefit of clergy did not serve to protect female convicts. Judges and members of parliament had willingly extended the fiction of clerical status to most any man, but not to women. In 1624, parliament allowed women to claim the privilege, but only for theft of goods worth 10s or less.⁸³ From then until the full extension of the benefit of

⁸² Derived from *Calendar of Assize Records*, ed. Cockburn and the patent rolls and their calendars. Not all records for each of these counties have survived for the entire period. Hertfordshire, for instance, only has records from 1573-1603. For details on the records, see Cockburn, *Introduction* and Knafla, "John at Love Killed Her": The Assizes and Criminal Law in Early Modern England," *University of Toronto Law Journal* 35 (1985): 305-20. The numbers of pardons include the 311 special pardons received after conviction and the 189 people who pled general pardons. A further 182 people from these counties received special pardons during the years in question, but their names did not appear in the assize records; they were most likely tried in other courts (i.e., quarter sessions).

⁸³ 21 James I c. 6. The formal journals of the houses indicated that some discussion and debate surrounded the introduction and passage of this act. Unfortunately, the more explosively political issues of the session claimed the attention of the parliamentary diarists who failed to record the details which might have clarified the motivations behind the act. My thanks to Dr. Maija Janssen of the Yale Centre for Parliamentary History for checking her transcriptions of the relevant diaries.

clergy to women in 1693, their inability to claim this privilege on the same terms as men demonstrated an even more obvious bias on the part of law makers.⁸⁴ Until 1693, women had to rely on their fecundity rather than literacy to stall an execution by pleading a pregnancy to defer their executions.⁸⁵ In Elizabeth's reign, just under 25 per cent of the women convicted at the Essex assizes successfully postponed their executions through a plea of pregnancy. In the other counties of the Home Circuit, somewhat higher percentages prevailed, with Surrey having the highest proportion of female convicts -- just over 60 per cent -- earning a respite from death.⁸⁶ In all, 41 per cent of the women convicted on the Home Circuit successfully pled pregnancy. This would seem to compare quite favourably with the 48.6 per cent of male convicts who obtained benefit of clergy.

Benefit of clergy and benefit of the belly were not, however, analogous practises. Not all men could read, of course, and the literacy test favoured elite, educated men over those lower on the social scale, whereas women of any social standing could plead pregnancy.⁸⁷ Also, benefit of the belly was available for any offence, whereas the benefit of clergy, as we have seen, was increasingly restricted over the period. But literacy was far easier to fake than pregnancy. Men of any age or marital status could present themselves as literate without undue difficulty or shame. A pamphlet describing a 1593 witchcraft trial noted that when the judge asked the prisoners before him why he should not pass sentence of death, the elderly Alice Samuel asserted that she was pregnant, which "set all the company on a great laughing." She persisted with her claim, perhaps hoping that the

⁸⁴ 4 William and Mary c. 9. On the gendering of punishment and mitigation, see also F. Dolan, "Gentlemen, I have one more thing to say': Women on Scaffolds in England, 1563-1680," *Modern Philology* 92 (1994): 157-78, esp. 176-77; Dolan, "Home-Rebels and House-Traitors: Murderous Wives in Early Modern England," *Yale Journal of Law and the Humanities* 4 (1992): 1-31; Ruth Campbell, "Sentence of Death by Burning for Women," *Journal of Legal History* 5 (1984): 44-59.

⁸⁵ Cockburn has noted a bizarre way in which judges sometimes extended this respite to women not strictly deserving the privilege: they remanded some women to gaol to allow them time to get pregnant before ordering the physical examination. Cockburn, *Introduction*, p. 122.

⁸⁶ Numbers derived from Cockburn, *Introduction*, pp. 190-96.

⁸⁷ In 1706, parliament finally abolish the literacy test for benefit of clergy. Only then did all men and women share the privilege on the same terms. See Beattie, *Crime and the Courts*, p 452.

jury of matrons empanelled to examine her might lie to save her life, but to no avail. When the judge turned to her unmarried daughter Agnes, also convicted of witchcraft, a prisoner standing nearby urged her to plead pregnancy as well. She reportedly responded, "Nay...that will I not do: it shall never be said, that I was both a witch and a whore."⁸⁸ The greatest disparity between benefit of clergy and benefit of the belly was that the first offered freedom from execution whereas the latter only deferred it. A woman who successfully pled benefit of the belly still needed a pardon to escape death. One historian has suggested that "an overwhelming majority" of those reprieved for pregnancy eventually went free and that benefit of the belly represented a judicial fiction used to demonstrate the same lenience to women as claims of clerical status allowed for men. Yet, of the 224 women reprieved for pregnancy on the Home Circuit, at most 105, or 47 per cent, eventually obtained pardons.⁸⁹ Thus, of the women convicted, only 21 per cent escaped death, a percentage that compares unfavourably with the 57 per cent of male convicts who used clergy and pardons to evade the gallows. Juries demonstrated less willingness to prosecute or convict female offenders, but for those women they did find guilty, a royal pardon represented the only hope of mitigation. Although many of the women who had pled pregnancy eventually received pardons, the decision remained at the discretion of the Crown and its agents.

Most people obtained their pardons after making a personal plea to the Crown. But Mary and Elizabeth implemented a procedural change to the way cases came to their attention. They encouraged judges to recommend individuals tried before them for mercy upon returning from their circuits. The advent of the "circuit pardon" facilitated the increase in numbers of people pardoned in the latter half of the century. Throughout

⁸⁸ The Most Strange and Admirable Discoverie of the three Witches of Warboys (London, 1593), sigs. O2v-O3r.

⁸⁹ See Cockburn, Introduction, p. 122. Of the 224 women who obtained a reprieve for pregnancy, 27 later pled general pardons. Of all the women convicted on the Home Circuit, 78 later obtained special pardons. Even if we assume that every one of these had claimed pregnancy, this leaves only 105 women who turned a reprieve into freedom. It is, of course, possible that other women reprieved for pregnancy were just quietly released, but this seems unlikely.

the period, judges had frequently recommended people for mercy. The statute that imposed English law on Wales merely extended current English practise when it noted that if “justices see cause of pity or other consideration they may reprieve the prisoner till they have advertised the King’s Majesty of the matter.”⁹⁰ Many a pardon throughout the period noted that the trial judges had brought the case to the attention of the Crown. In the latter half of the period, however, the assize justices regularly submitted lists, sometimes quite lengthy, of condemned prisoners they thought fit to receive mercy. In 1590, for example, the justices of the Oxford Circuit returned from their Lent session with the names of fourteen people whom they recommended for pardon.⁹¹ They did so at the instigation of the Crown. With the circuit pardons, the authorities actively sought out potential recipients of mercy in an attempt to control the numbers of people executed and to present the queen as merciful.

The circuit pardon had its tentative beginnings in Mary’s reign. In August of 1554, the council requested the assize justices to stay from execution those prisoners whose offences did not include treason, wilful murder, burglary, rape, highway robbery, or thefts from churches. From the London gaols the councillors ordered lists of all condemned prisoners, the nature of their offences, and the reasons for the deferral of their executions.⁹² As a result, a special pardon for eighty-five people from all parts of the realm followed the next assizes.⁹³ Chancery issued another for twenty-nine people a few months later.⁹⁴ In 1557, the judges of the Midland Circuit submitted the names of seven men they had condemned; Mary granted each of the convicts pardon.⁹⁵ In February 1559, Elizabeth’s council began the new reign by asking the assize judges to

⁹⁰ 34 & 35 Henry VIII c. 26.

⁹¹ C 66/1348, m.15.

⁹² *APC*, v, pp. 59, 68, 145.

⁹³ *CPR Philip and Mary*, II, pp. 39-41.

⁹⁴ *Ibid.*, II, pp. 44-45.

⁹⁵ *Ibid.*, IV, pp. 190-91. See C 82/1045, m. 1 and PRO 30/26, no. 116 for another large pardon issued in April, 1558.

reprieve people condemned at their next sessions for such crimes as had been mentioned in the coronation pardon; they asked the justices to make their decisions based on the character of both the offence and the offender, and to tender a list on their return from the counties.⁹⁶ A pardon for 170 people followed.⁹⁷ After this rather exceptional beginning, judges regularly submitted lists that tended to grow both in frequency and length as the years passed. In 1561, for example, judges returned nine lists with the names of ninety-eight people; in 1597, justices responsible for four of the six assize circuits and the gaol delivery judges of Lancaster and London recommended 145 people for the queen's grace.⁹⁸ The council continued to encourage such reprieves, anxious to represent the queen as a merciful ruler and to ensure that the number of executions not appear excessive. William Fleetwood, the Recorder of London, responded to a letter from Lord Burghley with an assurance that "you do not need to write for the stay of any to be reprieved, because all here are desirous to save or stay any poor wretch if by any colour of any law or reason we may do it."⁹⁹ In all, the patent rolls for Elizabeth's reign recorded some 1,730 individuals who escaped the noose thanks to a circuit pardon.¹⁰⁰ In subsequent centuries, inclusion on a judge's list became the usual means of obtaining clemency, and authorities sometimes discouraged individual suits for pardon.¹⁰¹ In the

⁹⁶ *APC*, vii, p.55. Bellamy mistakenly assumed that this was an order to vet people attempting to plead their copies of the coronation pardon; the text and subsequent pardon made it clear that this order represented an extension of clemency over and above the coronation pardon, perhaps in an attempt to reach people who had been unable to purchase their charters. Bellamy, *Criminal Trial*, p. 146.

⁹⁷ *CPR Elizabeth I*, I, p. 21.

⁹⁸ C 66/1458 mm. 11-16, 1462 m. 4, 1467 m. 1, 1468 mm. 1, 28.

⁹⁹ B.L. Lansdowne, 44, 38. See also, *APC*, xxviii, pp. 8-10; xxx, p. 100.

¹⁰⁰ As some circuit pardons did not get recorded on the patent rolls this number does not represent all the people who obtained mercy in this fashion. For references to circuit pardons for which no corresponding entry was found on the patent rolls, see the Chancellor's docquet book, C 231/1, pp. 24r, 26, 35r, 49, 64, 106. Almost all of the pardons to individuals noted in the docquet book also appeared on the patent rolls; for some reason, the circuit pardons seem to have been especially susceptible to omission from the final record.

¹⁰¹ Beattie, *Crime and the Courts*, pp. 431-32.

sixteenth century, however, judicial recommendations supplemented and co-existed with the more usual individual suits for pardon.

Circuit pardons not only enabled the Crown to control the numbers of executions, but also helped to ensure that poor and petty offenders did not figure too highly among those executed at the end of each assize session. While the recipients of circuit pardons, their friends, or their families probably begged the justices for mercy, they did not have to mobilise the social and financial resources necessary for a suit to the sovereign. Indeed, many were too poor to do so. Circuit pardons often passed the seals “*in forma pauperis*” and described their recipients as “poor prisoners.” The judges had reprieved some of these people in expectation that they would seek mercy from the Crown, but returned on subsequent circuits to find them still in gaol, unable to make their suit for a pardon. In 1590, judges appended to one list a note that “these poor prisoners in the gaols of sundry shires have been diverse years detained in prison...[they] were reprieved in hope of your gracious pardon, but having no wealth or friends, do yet remain.” Four years later, the judges of the Midland circuit submitted the names of twenty nine people and explained that

some of the persons above named have long since been reprieved for such causes as at that time in conscience moved us...They now lie at the great charge of the sherriffs of the several counties and countries to the great pestering and annoyance of their gaols...they lie in miserable estate, and like to perish in the gaols to the endangering of the residue of the prisoners there.¹⁰²

Similar concerns for the sufferings of impoverished prisoners and the burdens they placed on local gaols had prompted occasional action from the early Tudors: both Henry VII and Henry VIII on at least one occasion paid the fees of those people remaining in gaol only because they had not settled their bills with the gaoler.¹⁰³ The Lord Chancellor of Edward VI gave free copies of the coronation pardon to those too poor to pay and in 1552, received further orders to set at liberty “such poor men as he

¹⁰² C 82/1511, m. 47; C 82/1568, m. 53.

¹⁰³ L&P X, no. 254; Hall's Chronicle, p. 504.

shall think convenient.”¹⁰⁴ Throughout the period, Chancery issued some of the pardons “without fine or fee.” Yet, only in the latter portion of the century, with the growing frequency of circuit pardons, did the Crown make regular provision for indigent felons. These judicial lists also included a large number of female prisoners: women comprised 34 per cent of the recipients of the enrolled circuit pardons, whereas they received only about 10 per cent of all individual pardons.¹⁰⁵ This may have reflected either a judicial bias towards female prisoners or the greater scarcity of women’s financial resources. Executions of too many poor women who stole a few garments or of impoverished men whose burglaries netted only a few shillings were likely to provoke more pity than awe at the grandeur of justice. The circuit pardons, then, by facilitating the growth in numbers of people obtaining mercy, helped both to control the number of hangings and to select the best possible candidates for exemplary punishment.

During the sixteenth century, royal and parliamentary efforts limited the range of offences to which indiscriminate forms of mitigation applied while increasing through statutes the numbers of crimes for which people might suffer severe penalties. By the 1530s, the English kings had gathered the prerogative of pardon firmly into their own hands; mercy remained both appropriate and essential, but only if emanating from the king or queen alone. With the circuit pardons, Mary and Elizabeth delegated some of the process to their judges, but retained the final authority to determine whether an offender lived or died; the circuit pardons simply allowed more cases to come to the attention of the Crown. The authorities could not execute all who were ineligible for the benefit of clergy or whose crimes fell outside (or between) general pardons. Justice and mercy required that the nature of some offences and the characters of some offenders be met

¹⁰⁴ *APC*, iv, p. 6.

¹⁰⁵ Again, this number excludes the same categories as were omitted in Figure 1, ie. commercial offences, property transactions, outlawry, involvement in the major rebellions and offences due to office. In these categories men also heavily outnumbered women, but enough women appeared to make these pardons a potential source for anyone studying women’s relationships to property and office holding. Women frequently had to get pardons as the widows and executors of escheators, customs collectors and other such officers or for the acquisition or alienation of property without the license of the Crown.

with pardon. Contemporaries saw the execution of all offenders as neither practical nor desirable; as one Senecan proverb noted, “numerous executions are as discreditable to a prince as numerous funerals are to a physician.”¹⁰⁶ The discretionary use of special pardons helped select the best candidates for exemplary punishment.¹⁰⁷

The ready availability of special pardons and judicial recommendations may also have helped to encourage prosecutions and convictions. The victims and neighbours of offenders sometimes failed to bring cases to the courts because they did not always deem death the appropriate response to an offence. As one JP complained, some victims refused “to procure a man’s death for all the goods in the world.”¹⁰⁸ Another castigated the “foolish pity of the baser and most ignorant sort of common people who do...make the jury to acquit a great number of such as in their conscience both think and know to be guilty.”¹⁰⁹ Juries frequently tried to tailor a punishment to fit the crime by acquitting people who had already spent months in pestilential gaols awaiting trial or by finding the defendant guilty of a lesser charge. Knowing that pardon or mitigation was available may have made people more likely to prosecute and juries to convict. Members of the Tudor parliaments offered tentative recognition of a need for punishments less than death and for flexible, graduated sentences in the statutes they passed. Special pardons, whether following upon an offender’s suit or the recommendation of a judge, also responded to these same needs.

In addition to the increased frequency of general pardons and the advent of the circuit pardon, the Tudor period saw the tentative first uses of the conditional pardon.

¹⁰⁶ *Calvin’s Commentary on Seneca’s De Clementia*, ed. F.L. Battles and A.M. Hugo (Leiden, 1969), p. 311.

¹⁰⁷ J.M. Beattie has explored this facet of the pardon’s use in the period from 1660-1800. See, for example, “The Cabinet and the management of death at Tyburn after the Revolution of 1688-1689,” in L.G. Schworer, ed., *The Revolution of 1688-1689: Changing Perspectives* (Cambridge, 1992), pp. 218-33. See also J. Samaha, “Hanging for Felony in Colchester,” *Historical Journal* 21 (1978): 763-80. Samaha concluded from a study of the Colchester gaol delivery rolls, extant from 1575-77, that “hanging was a last resort, not a primary aim, of the criminal law in the sixteenth century.”

¹⁰⁸ *Tudor Economic Documents*, ed. R.H. Tawney and E. Power, 3 vols. (London, 1924), II, p. 339.

¹⁰⁹ BL Lansdowne 49, 29. I. Archer has also argued that increasing discretion in the operation of the law on the part of jurors and judges may have increased prosecution rates: *Pursuit of Stability: Social Relations in Elizabethan London* (Cambridge, 1991), p. 248.

Individual pardons conditional on military enlistment, galley service, or exile became key elements of penology in subsequent centuries; Beattie has shown that after 1660, most pardons were given contingent upon transportation to the colonies. This condition allowed the rapid proliferation of pardons: Beattie found that nearly 60 per cent of people sentenced to death in Surrey between 1660 and 1800 obtained mercy, as opposed to the 12 per cent of Surrey convicts pardoned between 1558-1603.¹¹⁰ Conditional pardons allowed authorities to regulate the numbers facing the gallows without simply releasing offenders back to the community; they directly combined punishment and mercy and permitted the sovereign to appear merciful while providing some correction for the offender. They developed from Elizabethan initiatives and perceptions that neither death nor outright remission offered the best means of dealing with some offenders. We have already seen that the council, parliaments, and the courts made some attempts to use exile and service as penalties for new offences or as punishments more severe than those previously used; the council also began to use these as prerequisites for the pardon of more serious offences. In a sense, all pardons were conditional: the recipient promised his or her future good behaviour, and in theory any subsequent offences nullified the pardon. Pardons given in return for service or exile, however, served several purposes and allowed greater flexibility in responding to disorder. Although judicial opposition and an unwillingness to pay the attendant fees helped ensure that conditional pardons did not become standard practise in the late sixteenth century, their piecemeal implementation emerged from a recognition that harsher laws necessitated displays of mercy.

While the later dependence upon conditional pardons emerged from Elizabethan initiatives, they in turn had a long pedigree. Edward I offered clemency to any offender who fought in his Scottish campaigns. His successors made similar arrangements both to meet their need for troops and also to deal with crime. E.B. Powell has shown that

¹¹⁰ Beattie, *Crime and the Courts*, pp. 431-33; on transportation, see pp. 470-84, 500-19. For the 1558-1603 numbers, see Figure 3, above.

Henry V granted pardons for military service partly because of a lack of soldiers and also to end the violence endemic to his realm. While a policy of reconciliation and mercy promised to restore the peace, his subjects might have perceived outright forgiveness of too many felons as a sign of weakness or as inappropriate to the offences committed. Mercy contingent on dangerous service in the army lessened such criticisms.¹¹¹ The practise declined by the mid-fifteenth century, but was not forgotten.

One navy commander suggested to the Lord Admiral in 1512 and to Wolsey in the following year that men for the war with France be recruited from the condemned. He thought it better to risk the lives of criminals than those of honest men and reasoned that some convicts might prefer an honourable death in battle, with the promise of a heavenly reward, than a shameful death at the end of a rope.¹¹² His suggestion apparently received little support. Henry VIII used minor offenders for military service, but left convicted felons to their more certain deaths on the gallows. Early in Edward VI's reign, the council reprieved a few condemned criminals for galley service, but in 1551 decided that the ships incurred too great an expense and took them out of service.¹¹³ Upon rumours of trouble in the north, Lord Grey reportedly wrote to Queen Mary, "desiring to have some soldiers, part of such as were condemned to be hanged"; whether anything came of this request is unknown.¹¹⁴ In Elizabeth's reign, some again saw felons as a useful source of military recruits and their reprieves as an effective means of dealing with disorder.

In 1563, the male prisoners in Newgate were surveyed for pardon in exchange for service at LeHavre according to their character, offences, and physical fitness.¹¹⁵ In 1577,

¹¹¹ E.B. Powell, *Kingship, Law and Society: Criminal Justice in the Reign of Henry V* (Oxford, 1989), pp. 232-40.

¹¹² BL Cot. MS Caligula E.1 fols. 11-12.

¹¹³ *APC*, ii, p. 556; iii, p. 209.

¹¹⁴ *The Chronicle of Queen Jane and of Two Years of Queen Mary*, ed. J.G. Nichols, Camden Society, vol. 48 (London, 1849), p. 62.

¹¹⁵ SP 12/28, no. 63.

ten men convicted of robberies and horse thefts were released to join Martin Frobisher's expedition.¹¹⁶ From 1585 to the end of Elizabeth's reign, England had heavy military commitments in Ireland and on the Continent. One historian estimated that in these years the average number of men levied for foreign service each year exceeded 5,000.¹¹⁷ With troops in such heavy demand, some people thought that pardons in return for military service provided a good solution. In 1588, prompted by the Duke of Savoy's occupation of Provence, someone gathered a list of precedents for the practise.¹¹⁸ A number of men whose petitions for pardon included an offer to serve in the queen's armies had their requests granted.¹¹⁹ In 1592, the mayor of London asked permission to fill the city's quota of soldiers from the able bodied men then in the prisons.¹²⁰ Four years later, the councillors asked the London justices of gaol delivery to certify which prisoners they thought meet for pardon in return for service. They presented this request not as an expedient for gathering troops but as an act of mercy. They queen, they wrote, felt "disposed to extend her clemency" in hopes of reforming the men.¹²¹

When the privy councillors made their first attempt to systematise the use of pardons conditional on service, however, they presented the decision as an act of rigorous justice. In 1586, they selected commissioners to pardon felons in return for time in the galleys. While this aimed at extracting labour from offenders, concerns for law and order rather than the immediate necessities of war prompted their decision. It grew from perceptions that traditional responses had failed to deal with increasing levels of crime. The commission offered life to men convicted of capital offences; its drafters, however, described it as an act of severity rather than an act of mercy. Walsingham

¹¹⁶ SP 12/112, no. 46.

¹¹⁷ C.G. Cruickshank, *Elizabeth's Army* (Oxford, 1946), p. 134.

¹¹⁸ HEH EL 463; see also EL 2547.

¹¹⁹ See, for example, SP 15/25, no. 60; SP 12/132, no. 54; SP 12/24, no. 41; SP 12/232, no. 10; Salisbury MS vol. 69, no. 45.

¹²⁰ *Analytical Index of the... Remembrancia*, eds. W.H. and H.C. Overall (London, 1878), p. 240.

¹²¹ *APC*, xxv, pp. 182, 233.

noted that the use of galley service as a punishment would “terrify ill disposed persons from offending.”¹²² The document authorised the reprieve of able bodied men convicted of felonies – wilful murder, rape, and burglary excepted – for service in the galleys. The severity and length of the sentence were at the commissioners’ discretion. The document listed every possible justification for the new policy:

the number and violence of the offenders is growing to be such, in spite of the severity of the laws, that it is requisite that some other speedy course may be used for repressing the same, wherein the queen’s will is that justice may be so tempered with mercy that her peaceful subjects may be protected, evil doers restrained, and offenders so corrected that even in their punishment they may yield some profitable service to the commonwealth.¹²³

The queen’s letter to the assize judges explained that galley labour “is very great and painful and therefore in many other countries appointed for a great penalty.” She asked them to send lists of men “as you shall think for the quality of their crimes and offences neither meet to be put to death nor yet to full liberty.”¹²⁴ The motives of this commission remain ambiguous. Was this a recognition that some offenders did not deserve death and thus an attempt to introduce a more flexible, discretionary sentencing option? Was it done because juries acquitted so many felons whose offences they did not think worthy of death? Jurors reluctant to sentence a horse thief to the gallows might show less hesitation about the galleys. The commission adduced reformative impulses similar to those that had appeared in descriptions of the bridewells and to that predominated in later discussions of penology. The documents also suggested, however, that a desire for greater severity and exemplary terror motivated the commission; judging life in the galleys more fearsome than death on the gallows, potential offenders might be deterred from crime.¹²⁵

¹²² HEH EL 6215.

¹²³ C 66/1279, mm. 11-12; for drafts, see HEH EL 6216, BL Lansdowne 47, 33.

¹²⁴ SP 12/157, no. 38. See also Ruth Pike, “Penal Servitude in Early Modern Spain: the Galleys,” *Journal of European Economic History* 11 (1982): 197-217.

¹²⁵ S. Devereux has discussed a similar failure to define the specific penal purposes of transportation when it became the usual condition for pardon in the eighteenth century; he noted that the ease with which it could be presented as either an act of terror or mercy ensured its popularity as a penal sanction and helped to mute differences over the proper aims of punishment: “In Place of Death: Transportation, Penal

The commissioners began their work immediately. Two appeared at Newgate after a session of gaol delivery and spent the day “perusing the strength and ability of the prisoners.”¹²⁶ The justices, however, responded just as quickly with a list of the problems that they thought likely to arise. They argued that the expectation of a reprieve would embolden felons and discourage the honest men who laboured to apprehend them: their exertion would have little effect and might indeed put them in danger from freed and vengeful convicts. If the council wanted bodies for the galleys, the judges suggested that they use “valiant rogues” or men already saved by benefit of clergy. If the council wanted to reduce felonies, stricter enforcement of the laws, not reprieves, provided the best option.¹²⁷ The council may well have heeded the judges’ admonitions, as no more was heard of pardons conditional on galley service for more than a decade.

In 1602, the council returned to the idea of exchanging galley service for pardons of capital offences. Again, they excepted wilful murderers, rapists, and burglars, and ordered judges to submit lists of possible candidates to the commissioners.¹²⁸ Not content with free labour, the council asked that friends of the convict pay £3 per year for his maintenance. Where this proved impossible, they expected the county community to contribute.¹²⁹ Two judges’ returns have survived. After the July assizes, the judges reprieved eleven men from the Midland circuit and twenty-six from the Home circuit for consideration.¹³⁰ Assize records for the first group no longer exist; the latter group included two men convicted of homicide, eighteen of grand larceny (six of these for

Practices and the English State, 1770-1830,” in C. Strange, ed. *Qualities of Mercy* (Vancouver, 1996), pp. 57-76.

¹²⁶ BL Lansdowne 49,1.

¹²⁷ BL Lansdowne 22, 70. The catalogue dated this document from 1576. The date on its dorse is difficult to read, but could just as easily be 1586, which is likelier.

¹²⁸ C 66/1582, m. 4d; see also C 231/1, p. 136. M.S. Gretton has discussed this commission, seeing it as the precursor of the later transportation enactments: *Oxfordshire Justices of the Peace in the Seventeenth Century* (Oxford, 1934), pp. lxxxix-ci.

¹²⁹ *APC*, xxxii, p. 489.

¹³⁰ Salisbury MS vol. 94, nos. 64, 67.

horse theft), one of vagrancy, one of highway robbery, and even two of burglary.¹³¹ The judges noted, however, that few had friends able to pay the £3 fee and that the local justices of the peace had declared their counties too heavily burdened to contribute. Eleven of the twenty-six men remained in gaol seven months later; the commissioners either rejected them as unfit for service or because of their lack of financial backing. Their fates, and that of the galley commission, remain unknown.¹³²

Thieves and robbers were not the only recipients of conditional pardons. Elizabeth and her councillors, plagued by the persistence of Jesuits and seminary priests in the realm, first tried warning them to flee the country or face the penalties of the law. When that met with little success, they then sought a cure through pardons conditional on exile. Royal officials diligently arrested and tried significant numbers of Catholic priests, whose activities parliament declared treasonous in 1581, but found the execution of too many impolitic. They sought to minimise any resemblance to the Marian persecutions of protestant divines, so vividly illustrated in Foxe's martyrology. The queen countered accusations that she unjustly bloodied her hands by killing for causes of conscience with arguments that treason, not religious difference, prompted the executions. In 1583, William Cecil joined those who penned pamphlets that proclaimed the just nature of the priests' deaths.¹³³ The privy council ordered the sheriffs who supervised the executions to do their utmost to induce the condemned to submit in return for an assured pardon; such offers allowed magistrates to argue that the blind obstinacy of the offenders, in defiance of the queen's clemency, led to their deaths.¹³⁴

¹³¹ Information derived from *Calendar of the Assize Records*, ed. Cockburn. Two men's offences could not be located.

¹³² For the pardon of convicts conditional on transportation in the subsequent reign, see A.E. Smith, *Colonists in Bondage, 1607-1776* (Gloucester, Mass., 1947).

¹³³ W. Cecil, *The execution of Justice in England for maintenaunce of publique and Christian peace* (London, 1583); see also T. Norton (attributed), *Declaration of the fair dealing of her Maiesties commissioners appointed for the examination of certain traitors* (London, 1583).

¹³⁴ For one such account, see *Holinshed's Chronicles*, IV, pp. 488-94. Mary had made similar offers of pardon to some of the Protestant heretics/traitors that she had executed: see D. Loades, "John Foxe and the Traitors: The Politics of the Marian Persecution," in D. Wood, ed., *Martyrs and Martyrologies* (London, 1993), pp. 231-44.

Generally, however, the priests remained resolute and denied the queen an easy solution. Furthermore, the priests' scaffold speeches failed to conform to those expected of the condemned in Tudor England: the priests steadfastly refused to legitimise the authority about to take their lives when they asserted that they died as martyrs for their God rather than as traitors to their queen.¹³⁵

Starting in 1584, Elizabeth tried a new tack: pardons contingent on exile. She issued a series of commissions that authorised pardon for imprisoned Jesuits and seminary priests conditional upon their transportation from the country. These texts, like the galley commissions, represented the conditional pardon as a potential tool of rehabilitation; unlike the galley pardons, however, these were described as acts of lenience and mercy, rather than as punitive measures. The first commission, dated 14 November 1584, named thirteen men whose treason the queen portrayed as motivated by a "blind zeal and affection" for the pope. She expressed her hope that "time and better instruction may persuade them to a more loyal and conformable course." Because of her gracious clemency, she had decided to banish them, "not minding to execute them by justice as by our laws we might do."¹³⁶ If any of the priests returned without special licence, however, they nullified their pardons and risked immediate execution. The council named commissioners to select for exile other priests -- and laymen -- who might be found seducing the queen's subjects from their due obedience. The commissioners had instructions to make their choices based on the quality of the individual and the seriousness of the offence.

The commissioners deported another twenty Catholic priests and one gentleman in January 1585. William Bolles and Anthony Hall assumed responsibility for the men and paid the travel costs. Adverse winds repeatedly stayed the ship, and pirates chased it

¹³⁵ On the powerful platform for public speech Catholic priests acquired at their executions, see P. Lake and M. Questier, "Agency, Appropriation and Rhetoric Under the Gallows: Puritans, Romanists and the State in Early Modern England," *Past and Present* 153 (1996): 64-107.

¹³⁶ C 66/1305, mm. 21d-20d; draft of the commission and pardon, SP 12/246, no. 82. (In the *CSP Domestic* this document was mistakenly given the tentative date of 1593.)

once it reached open waters. It arrived safely at Boulogne on 2 February. The banished men signed a document attesting to their good treatment and went on their way. After describing the deportation, one chronicler exclaimed:

O Lord, what a merciful queen is this, in such sort to forgive and forget injuries, yea treasonable injuries, as by banishment only to chastise them, that deserved extreme punishment? Yea, with a banishment scare fitly to be so termed, since in the execution thereof there was such clemency showed as that the banished by their own confessions have acknowledged.¹³⁷

Similar deportations occurred periodically until 1603.¹³⁸ Lists of priests held in London gaols have survived with notations next to the names: some, “thought meet for the gallows,” others, “meeter to be banished.”¹³⁹ The commission issued on 13 October 1601 noted that the queen had, from mercy, left many Catholic priests in gaol rather than send them to the executions that they deserved. Yet, the condemned priests had responded to this clemency with increased wilfulness, proselytising in prison and vexing their keepers. Elizabeth declared herself still inclined toward moderation and thus ordered their pardon and transportation. A minimum of ninety-four men escaped death in this manner. The queen benefited in several ways: she reduced the presence of priests in her prisons while limiting executions that might foster criticism and resistance. By exiling rather than executing the Catholic priests, she denied them the powerful platform for contentious speech afforded by the scaffold. Elizabeth adapted the pardon as a

¹³⁷ *Holinshed's Chronicles*, IV, pp. 554-57; see also p. 328 for the banishment of 10 Anabaptists. For the text of the commission described by Holinshed, see HEH EL 2081.

¹³⁸ *Ibid.*, IV, pp. 620-1; C 66/1554 m. 37d (13 October 1601); *APC*, xxvii, p. 21 (April 1597), xxxii, pp. 299, 316 (October 1601), 491 (March 1603). See also R.B. Manning, “Elizabethan Recusancy Commissions,” *Historical Journal* 15 (1972): 23-36.

Women appeared on none of the lists of people receiving conditional pardons, save for one group of Anabaptists deported in the later years of Elizabeth's reign, comprised of nine women and one man. (*Holinshed's Chronicles*, IV, p. 328.) Parliament had shown a reluctance to banish married women as this unfairly punished their spouses and intruded upon husbands' domestic authority. But the authorities overlooked even single women in their discussions of pardons conditional on service; presumably, they thought military and galley service inappropriate for women and did not feel a need to find alternate options. In later years, when transportation had become a regular means of mitigating the death penalty, women were regularly banished but even then some of the people who transported and received the convicts expressed an unwillingness to deal with women because they considered the value of women's labour insufficient compensation for the costs incurred. See A.E. Smith, *Colonists in Bondage*, pp. 103-4.

¹³⁹ SP 12/191, no. 37.

means of containing the problems posed by Catholic priests while appearing as both clement and just.

Pardons became more frequent as the period progressed and assumed greater importance to convicts and to those in authority as other sources of mitigation declined and the laws became more severe. The potential for pardon may have helped to encourage people to bring offences to the attention of the courts. Mercy may also have helped to foster the complicity of the local, largely unpaid officials on whose efforts the Crown relied so heavily: statutes and proclamations repeatedly declared officials' negligence in enforcing laws an offence, but pardons mitigated the chance that frequent fines might have alienated officials. By allowing some flexibility and discretion, pardons certainly helped prop up a bloody system of criminal law. They played an essential role in the public perception of justice and its personification in the king or queen: coronation pardons signalled fresh beginnings and affirmed the new sovereign's intention to rule with both justice and mercy. The pardon statutes responded and contributed to common ideas of the monarch's God-given, divinely-modelled duty to exact vengeance and bestow forgiveness, to ensure that no crime was overlooked while not extending the full rigor of the law. Individual pardons also offered a public statement about royal authority: recipients appeared in court to acknowledge their wrongdoing, to offer their pledge of future good behaviour, and to thank their sovereign for their life. This public element of mercy and the messages it constructed is discussed in later chapters; the next seeks to understand why some individuals received pardons instead of others and to examine the characteristics of particular offences and offenders that prompted displays of mercy.

Chapter Four

Patronage and the Motives For Mercy

The Tudors granted their pardons from a variety of motives and pretexts, to serve ends both implicit and explicit. Some they used to celebrate new beginnings; others they issued as tokens of gratitude. The Tudors employed pardons to present themselves as God's merciful justiciars and to help cement the allegiance of the governing elites. Pardons encouraged widespread complicity in an increasingly bloody system of justice: Janus-like, they selected some to live and thereby sanctioned the death of others. But why, specifically, did some offenders receive pardon and others not? The necessity of conforming to widely shared perceptions of justice and mercy ensured that some would obtain pardon, but on what grounds did the Tudors choose the individual recipients of their grace? Some pardons freed the wrongly convicted, while others issued automatically from Chancery for crimes -- usually homicides -- that the law deemed excusable; most pardons remained gifts of royal grace, but also recognised varying degrees of culpability and the potential for reform. This chapter examines the official correspondence surrounding pardons, petitions for mercy, and the pardons themselves to delineate the various characteristics of offences and offenders that shaped these decisions. It then explores the processes through which petitioners sought and sovereigns granted remission. The nature of petitioning and the practicalities of presenting a suit affected who received remission as much as did concerns for mitigating circumstances; these processes shaped the social functions and meanings of pardons.

Peter King and J.M. Beattie have analysed the motives adduced for late seventeenth and eighteenth-century pardons and concluded that they reflected widely shared norms of due pity, justice, and culpability.¹ The same was true of many sixteenth-

¹ P. King, "Decision-Makers and Decision-Making in the English Criminal Trial, 1750-1800," *Historical Journal* 27 (1984): 25-58; for J.M. Beattie, see esp. "The Royal Pardon and Criminal Proceedings in Early Modern England," *Historical Papers* (1987): 9-22 and "The Cabinet and Management of Death at Tyburn after the Revolution of 1688-1689," in L.G. Schworer, ed., *The Revolution of 1688-89* (Cambridge, 1991), pp. 218-33. Beattie also emphasised that levels of crime, or perceptions that a particular kind of crime was increasing, affected who received pardons: if horse theft had recently come to plague an area, a convicted horse thief, no matter how well he met all the other criteria for pardon, was much less likely to

century pardons. The proffered justifications for royal grants of mercy echoed those that influenced jury verdicts and judicial sentencing. The low conviction rates throughout the medieval and early modern periods have led historians to infer that juries frequently acquitted many who, while technically guilty, did not seem to merit death. In her extended analysis of decision-making throughout the early seventeenth-century court process, Cynthia Herrup concluded that a broad consensus existed among the propertied men who directed the system as to what characteristics differentiated forgivable from unforgivable offenders.² A conflation of crime and sin shaped responses to offenders. According to Herrup, what most distinguished those sentenced to death from those allowed to go free was that the former, unlike other sinners, “appeared to have abandoned even the quest for self-discipline.”³ Intent and deliberation marked the serious criminal. Offenders who showed remorse or whose crimes reflected weakness found greater lenience from juries than did those who acted from avarice or malice. As this chapter demonstrates, pardoning decisions often reflected the same concerns.

Yet the correspondence of pardoning criteria with broadly held social values did not mean, as King has argued for the later period, that pardons failed to serve the interests of those in power. King has suggested that Douglas Hay erred in describing mercy as an instrument of elite rule, manipulated to foster deference and acquiescence.⁴ According to King, the criteria that prompted pardons hindered rather than helped the hegemony of the dominant members of society, since a departure from these principles of lenience threatened to weaken the legitimacy of the ruling class. In the markedly different social and political world of the Tudor period, however, pardons most often

obtain mercy. Unfortunately, the lack of court records for much of the Tudor period makes it impossible to chart any such correlation here.

² C. Herrup, *The Common Peace: Participation and the Criminal Law in Seventeenth Century England* (Cambridge, 1987), esp. pp. 165-206. Since studies of medieval court processes have noted that similar concerns shaped jury verdicts, it seems safe to assume that the sixteenth century juries manifested these attitudes as well.

³ *Ibid.*, pp. 191-92.

⁴ D. Hay, “Property, Authority and the Criminal Law,” in D. Hay et al, eds., *Albion’s Fatal Tree* (London, 1975), pp. 17-63.

served the interests of both the Crown and elites. Each pardon had the potential to enhance the sovereign's image as merciful and hence to legitimise his or her power. Public expectations of mercy imposed certain constraints on royal decision-making and self-presentation, and people could always refuse to interpret an act of mercy in the manner intended by the Crown. Yet, no matter how widespread the values that informed pardoning decisions, remission for most offences remained contingent upon the discretionary grace of the Crown. A professed willingness to repent and to submit to their sovereign constituted the most fundamental attribute of the recipients of pardon. Of necessity, those seeking mercy had to declare publicly their deference, whether genuine or not, to God's anointed. But what of the utility of pardons to the broader elite? We must turn from the characteristics of offences and offenders that prompted mercy to the petitioning process itself. With the exception of those whose crimes merited mercy *de cursu* ("of course") or those personally recommended by a trial judge, offenders had to navigate the channels of favour and influence to obtain their pardons. With few bureaucratized methods of bringing a case to the attention of the Crown, offenders had to rely upon the hierarchical social structures and cultural codes of "good lordship" that shaped so many aspects of sixteenth-century life. Pardons constituted part of the range of gifts, grants, and favours that both bound members of the elite to the Crown and in turn helped them maintain their influence in the localities. Contrary to one historian's assertion, the Tudors did not simply make their pardons "available to anyone with enough money to pay the price"; yet pardons did constitute a valuable form of financial and social currency, further complicating any straightforward connection between pardons and shared norms of justice.⁵ Thus, patronage and informal networks of power not only played an integral role in the ways people obtained mercy, but also shaped the cultural meanings of pardons.

⁵ J. Samaha, *Law and Order in Historical Perspective: The Case of Elizabethan Essex* (London, 1974), p. 58.

Some people received their pardons because of their innocence or because the judges had doubts about their guilt. With no courts of appeal, the sixteenth-century legal system offered no means of reversing a conviction save through the pardon.⁶ Twenty-six men and ten women obtained pardons that specifically noted their probable innocence; this represented the bare minimum of people pardoned on this basis, as most pardon charters gave no reason for the grant.⁷ Furthermore, when the assize justices returned from their circuits and recommended people for pardon, they sometimes included among their motivations qualms about the evidence which led to particular convictions, without providing specific reasons. For instance, a letter appended to one list of sixteen names noted that for “some” of the people, “the indictment against them at their arraignment seemed to the said justices to be very slender and doubtful to convict them of the offence.”⁸ On another list, a vague note explained that “some of them” had been convicted “upon weak and slender evidence.”⁹ Even with the low conviction rates of the early modern period, people found themselves facing death on very little evidence of wrongdoing. In these sources, the justices sometimes noted that they “presumed” a person’s innocence or that a jury had convicted merely on a “presumption” of guilt, but they clarified none of the guidelines they used for their decisions.

Some convicts received their pardons not because the trial judge had disagreed with the verdict but because of the timely appearance of evidence suggesting their innocence. In 1565, Margaret Watson faced death at the stake for putting arsenic in her husband’s stew; luckily, before her execution, the person who had accused her admitted to fabricating the evidence.¹⁰ In 1500, months after James Lelly successfully claimed

⁶ See Sir Thomas Smith, *De Republica Anglorum*, ed. M. Dewar (Cambridge, 1982), p. 120.

⁷ All of these pardons came from the reigns of Henry VII and Elizabeth. The patent rolls from intervening years contain no pardons that specified probable innocence as the reason for the grant. See, however, five bills signed by Henry VIII that authorised such pardons for which no corresponding entries appeared on the patent rolls: *L&P* II, 2609, 4543; III, i, 442.24; IV, i, 137.19, 464.1.

⁸ C82/1528, no. 49.

⁹ C82/1529, no. 72.

¹⁰ *CPR Elizabeth I*, III, p. 233. Poisoning was considered an especially fearsome crime, even more so when done by a wife. (See G. Walker, “Crime, Gender and Social Order in Early Modern Cheshire,”

benefit of clergy for his felony conviction, the person who had committed the crime confessed and Lelly went free from the bishop's prison.¹¹ One man, condemned for a murder committed during a robbery, received a pardon after his companions affirmed from the scaffold that he had not consented to the killing and had received serious injury while trying to restrain them.¹² Words spoken just before death resonated with unparalleled power in sixteenth-century England; people facing an imminent meeting with their heavenly judge were thought unlikely to lie. Parnell Wyvell had reason to thank the special aura attached to last, dying words. A grand jury indicted both Wyvell and her son for the death of his wife Catherine. When the son swore even to his death that he alone murdered his wife, his mother received a pardon.¹³ Similarly, a Welsh yeoman convicted with three other men for burglary obtained his release from the penalty of death when the others denied his guilt from the scaffold.¹⁴ During the pains of childbirth, women were thought likely to tell the truth; upon a threat of withholding their services, midwives often demanded that an unwed mother name the father while giving birth.¹⁵ The validity assumed to inhere in words uttered during this strange form of "natural" torture freed Cecily Bostoke from death on the gallows in 1574. Despite swearing her innocence, she had been convicted with two men and another woman for burglary and murder. The other three suffered execution, but Bostoke earned a

Liverpool University D.Phil, 1994, pp. 147-49.) Yet even here pardons were granted. The patent rolls recorded the cases of two other women, convicted of murdering their husbands with poison, whom the judges later thought to be innocent: CPR Elizabeth I, V, p. 170, LIS v. 243, p. 184. The judges were so confident that the jury had falsely convicted the first woman, Maud Marshall, that they ordered the jurors to appear in Star Chamber. See also the signed bill for the pardon of Joan Burleton (L&P IV, i, 137.19), similarly condemned for poisoning her husband; the judges thought she had been indicted by maliciously minded people who wanted to obtain her goods and tenures. In addition, a court deemed one woman's poisoning of her husband an accident - she had put rat's bane in his medicine: CPR Philip and Mary, III, p. 48. Two others received pardons that mentioned no extenuating circumstances for poisoning their husbands: CPR Philip and Mary, III, p. 484; CPR Elizabeth I, V, p. 1.

¹¹ CPR Henry VII, II, p. 197.

¹² LIS, v. 243, p. 144.

¹³ CPR Elizabeth, II, p. 183.

¹⁴ C 66/1404, m. 19. See also, LIS v. 241, p. 104.

¹⁵ L. Gowing, "Secret Births and Infanticide in Seventeenth Century England," Past and Present 156 (1997): 103.

temporary reprieve because of her pregnancy. At the time of her delivery, the women helping Bostoke examined her about the crime and became convinced of her innocence. She duly received her pardon.¹⁶ One other rather remarkable case deserves mention: in 1566, Mary Asheton received a pardon for a burglary to which she had confessed when several “trustworthy persons” reported her innocence to the queen. After the crime, when locals had voiced their suspicions that Asheton’s husband was the culprit, she implicated herself to save him. The queen, convinced of her innocence and “out of pity for so rare and unheard of an example in a poor woman,” had Asheton released.¹⁷

For most people who received pardon, no suggestion of innocence arose; however, contemporaries recognised gradations of responsibility among the guilty. For those who killed another person, evaluations of their intent and motivation largely determined who received a pardon and who died; as the judicious Richard Hooker wrote, “who knows not that harm advisedly done is naturally less pardonable and therefore worthy of the sharper punishment?”¹⁸ Law and custom guaranteed a pardon for any killing done by the mentally ill, by the very young, by accident, or in self-defence. The patent rolls recorded the names of 949 people who received remission for these excusable forms of homicide over the Tudor period. The harm done required some acknowledgement or propitiation, including conviction in open court. Nevertheless, the guilty party’s lack of malice and, in the first three instances, lack of intent was recognised by a pardon *de cursu*. Jurors found such people guilty of the killing, but gave them a special verdict noting the attenuating circumstances and thereby guaranteed them pardons. Conviction generally left the offender subject to forfeiture of all goods and chattels. The judge then remanded the offender to await a royal pardon; such cases might proceed through the usual channels of petition, but the Chancellor also had the authority to issue a pardon immediately upon seeing the trial record or a note from the judge.

¹⁶ CPR Elizabeth I, VI, p. 245.

¹⁷ CPR Elizabeth I, III, p. 484; C 82/1165, m. 5.

¹⁸ R. Hooker, *Laws of the Ecclesiastical Polity*, ed. G. Edelen (Harvard, 1977), p. 104.

Medieval and early modern social norms held that the mentally ill, the mentally deficient, and children under the age of seven lacked the ability to reason and to tell right from wrong. Judges had to determine whether a child between the ages of seven and fourteen suffered the same incapacity. As these people were thought to have no control over their will or actions, the law did not hold them responsible. One historian of insanity and crime, unable to find any sixteenth-century pardons given for reasons of mental illness, argued on the basis of one clear acquittal in 1505 that the medieval practice of requiring conviction and pardon had disappeared by the Tudor period; certainly, by the late eighteenth century, the courts simply acquitted people who killed other people while mentally disturbed.¹⁹ A transition in attitudes among some jurors and judges may well have begun under the Tudors, but sixteenth-century judges continued to require that some mentally ill defendants await a pardon, with at least four disturbed killers receiving pardon after conviction. In 1550, Chancery granted a charter to Joan Vaughn: a jury had deemed her guilty of the boiling death of another woman's infant, but had also declared her *non compos mentis*.²⁰ Four years later, another court found that Robert Goldyng had slain his son "in madness and not of malice" and remanded him to await the queen's pardon.²¹ Thomas Hughes, found guilty of a killing while insane, had his pardon in 1565.²² Peter Conwey, the rector of Alderton, killed a man although confined for his mental illness and also received a pardon.²³

¹⁹ N. Walker, *Crime and Insanity in England*, 2 vols. (Edinburgh, 1968), I, pp. 25-26, 42. In the introduction, Walker acknowledged ambiguity on this point. People who became mentally ill *after* the offence were to have their executions respited until their health returned, but see Walker, pp. 183-85 for a discussion of one short-lived change to the judicial treatment of the mentally disturbed offender. Lady Rocheford, implicated in the adultery of Catherine Howard, became mentally unstable after her arrest. Henry VIII quickly had a law passed to allow the execution of traitors who had seemed sane at the time of their offence but who later became ill. (33 Henry VIII c. 20). On perceptions of mental illness in early modern England, see M. MacDonald, *Mystical Bedlam: Madness, Anxiety and Healing in Seventeenth Century England* (Cambridge, 1981), esp. pp. 123-32. For eighteenth century practise, see J.M. Beattie, *Crime and the Courts in England, 1660-1800* (Princeton, 1986), pp. 83-85.

²⁰ CPR Edward VI, III, p. 295.

²¹ CPR Philip and Mary, II, p. 260.

²² C 66/1612, m. 7. See also CAR: Surrey, no. 162.

²³ CPR Elizabeth I, IV, p. 414; pardon undated, either 1571 or 1572. Eleanor Kechyn, who received remission for all offences in 1491, may also have committed a crime while ill: her pardon required that she

Four pardons for people thought incapable of evil intent because of their mental condition is not a great number. Were others simply acquitted, a prelude to later standard practice? The assize records surviving from Elizabeth's reign described only four other homicide suspects as mentally ill. The courts exonerated two and allowed the third to plead benefit of clergy.²⁴ The fourth, "a frantic man" named Henry Pellyng, slew his pregnant wife Joan with an axe. The court found Pellyng guilty and returned him to gaol to wait for the queen's pardon. It seems, however, that he died in gaol before Chancery could issue the document.²⁵ Juries may have acquitted others on this ground in cases now obscured by laconic records; Pellyng was, however, the only killer deemed mentally disturbed recorded among over 800 coroners' inquests extant from Sussex between 1485 and 1603.²⁶ It seems likely that inquest and trial jurors believed that only the acutely, patently disturbed lacked responsibility for their actions. A few people judged as mentally deficient, or "simple," received pardons as well, but none for homicide and none followed automatically upon conviction: a suitor rather than trial jurors or judges brought the recipient's simplicity to the attention of the Crown. For example, Queen Elizabeth pardoned fifteen year old John Bell of coin clipping because of his simple-mindedness and youth and at his mother's suit.²⁷ The patent rolls recorded no pardons for children under the age of seven; presumably, juries had convicted none that young. Thomas Barcar, aged nine, was the youngest child pardoned, but a court deemed his killing of a three year old girl during archery practice an accident and this judgement alone sufficed for a pardon.²⁸ Children and the mentally deficient either posed no

remain in the custody of her parents or nearest kin for the remainder of her life. CPR Henry VII, I, p. 341.

²⁴ CAR: Surrey, nos. 610, 1995; CAR: Essex, no. 2476.

²⁵ CAR: Sussex, no. 162.

²⁶ See Sussex Coroner's Inquests, 1558-1603, ed. R.F. Hunnisett (Kew, 1996), no. 24; see also Sussex Coroners' Inquests, 1485-1558, ed. R.F. Hunnisett (Lewes, 1985).

²⁷ CPR Elizabeth I, IV, p. 363.

²⁸ C 66/687, m. 16.

significant problems in Tudor England or received straightforward acquittals for their offences.

In the early middle ages, people judged to have killed by accident or misfortune also received pardons *de cursu* after conviction. In 1279, Edward I told some of his judges simply to acquit such people, thus freeing them of the forfeiture attendant upon conviction and the fees associated with the pardon.²⁹ No permanent change in legal practise resulted, however. Only in the late fourteenth century did courts again proffer acquittals for accidental homicide.³⁰ At the beginning of the sixteenth century, this more lenient practice abruptly stopped. From 1498 onward, at least some of those who killed another by accident again found themselves convicted of homicide and subject to forfeiture of goods before receiving their guaranteed pardon. In all, the patent rolls recorded 183 pardons for accidental slayings over the period, ranging from three in the reign of Henry VII to 146 -- an average of three and a quarter per year -- in Elizabeth's reign. What prompted the reversion to the older practice of forcing accidental killers to await a pardon rather than acquitting them remains obscure. J.H. Baker has uncovered a few sixteenth-century law reports in which judges deemed deaths resulting from accidents during prohibited games or unnecessary entertainment to be felonious homicide rather than misadventure. The judgement in these cases, he suggested, showed a tightening of the law provoked by a greater respect for human life.³¹ A desire to offer at least some punishment for negligence and to promote greater care may have prompted the change, or perhaps the forfeitures of convicted killers offered sufficient motivation to restore the practice. When some people who thought the loss of goods and chattels an unjust punishment for those who killed only by accident tried to stop the practice, they

²⁹ N. Humard, *The King's Pardon for Homicide Before A.D. 1307* (Oxford, 1969), p. 279.

³⁰ T.A. Green, *Verdict According to Conscience* (Chicago, 1985), p. 86 and "The Jury and the English Law of Homicide, 1200-1600," *Michigan Law Review* 74 (1975-76): 430. See also Fitzherbert, *Graunde Abridgement*, "Corone" pl. 94. At some point between 1603 and 1670s, the courts again acquitted people who had killed by accident; Beattie found acquittals standard practise in his study, *Crime and the Courts*, pp. 82, 87.

³¹ J.H. Baker, *The Reports of Sir John Spelman*, Selden Society, 2 vols. (London, 1977-78), II, p. 314.

found their efforts quashed. In 1566, the House of Lords considered a bill to save from forfeiture anyone who inadvertently killed someone during archery practice. Since the matter touched the royal prerogative of pardon, the Lords stopped proceedings to learn the queen's pleasure. She apparently wanted the measure dropped and it did not reappear.³²

Most of the pardons for accidental homicide followed deaths during archery practice, a common pastime and an activity the law demanded of all men of military age. Some of the records portrayed the victim, not the killer, as the negligent party. In 1551, for example, Cheshire yeoman Henry Birch received a pardon for the death of fellow archer Randolph Huxley. While the arrow fell toward the ground, it seems that Huxley "carelessly ran from his place and met the falling arrow with his forehead."³³ Richard Mathewe had to get a pardon in 1557 for killing someone who "imprudently interposed his head" between target and arrow.³⁴ The Earl of Sussex described a death on his estate in the same manner when requesting an immediate pardon and restitution of all forfeitures for his servant, Anthony Hamner. Sussex explained that "all the principle gentlemen and their wives of this county" had joined him for a day of hunting and shooting matches, and many could bear witness to the accidental nature of the killing. Hamner's arrow "was well shot toward the mark," but one of his own men, "desirous to see his master win would not avoid when he was willed by crying to from the marks, but wilfully abode at the mark" and died "by his wilfulness."³⁵

Various other games and sports also resulted in death for participants or bystanders: people received pardons for deaths brought on by overzealous wrestling, sword play, and hammer throwing.³⁶ While tossing a hammer, for example, Thomas

³² *LJ*, I, pp. 630, 631.

³³ *CPR Edward VI*, IV, p. 153.

³⁴ *CPR Philip and Mary*, III, p. 340.

³⁵ SP 15/14, no. 86.

³⁶ See, for example, *CPR Elizabeth I*, III, p. 78; IV, pp. 121, 415.

Hartwell inadvertently struck Hugh Allison and the baby boy he held in his arms; the son died shortly thereafter.³⁷ Other less structured amusements sometimes had unfortunate results as well; attacks intended for animals occasionally killed a person instead. Thomas Chyck, throwing stones at a dog, accidentally struck and killed a man sitting in a nearby window.³⁸ In 1539, a man on the banks of the Thames aimed his handgun at a crow perched on the bow of a boat, overshot his mark, and killed Agnes Acrehed while she washed her linens on Westminster bridge.³⁹ Juries deemed each of these killings accidental and excusable; all three men received pardons.

Guns proved especially dangerous for two people in the Howard family entourage. In both cases, the records carefully emphasised the unintentional nature of the killings. In 1556, Henry Howard, son of the Duke of Norfolk, received a pardon for inadvertently shooting a man. The pardon noted that Howard, while loading his gun, lacked the strength to prevent the cock from striking the pan; of its own force and against Howard's will, it lit the powder and discharged the bullet that struck the victim. The gun, not Howard, bore responsibility for the death. The following year, the duke needed his own pardon for killing one of his servants. The record insisted that no animosity existed between the killer and his victim: Norfolk liked the man and held him in good repute, and the two were roughhousing in a friendly manner when Norfolk's horse stumbled, causing a loaded gun in the duke's hands to discharge with fatal results.⁴⁰

In some of the cases, the jury may have done the accused an unmerited favour by finding a verdict of misadventure, with its guaranteed pardon, rather than felonious homicide. During a riotous land dispute, for example, an arrow struck Thomas Spore; when he fell, his crossbow discharged an arrow and killed one of the combatants. This did not meet the legal definition of accidental homicide, but the jurors noted that Spore,

³⁷ CPR Elizabeth I, V, p. 23.

³⁸ CPR Elizabeth I, III, p. 505.

³⁹ C 66/689, m. 36. For a similar example, see CPR Elizabeth I, III, p. 292.

⁴⁰ CPR Philip and Mary, III, pp. 196, 363.

the aggrieved party in the land dispute, was running to a church for cover when the incident occurred. The jury convicted him only of accidental homicide and he had his pardon.⁴¹ During an argument with Elizabeth Thomas, Thomas Puplet struck her with such force that she fell against a neighbour nursing her infant son by the fire. According to the judicial opinion recorded in similar case reports, the jurors probably should have treated the baby's death as felonious homicide, but instead they deemed it an accident and remanded Puplet for a pardon.⁴² When social norms of culpability disagreed with formal legal definitions, pardons sometimes served as safety valves.

The law did allow pardons for people who inadvertently killed one of the combatants in a fight that they had tried to stop. When Elizabeth Wylson physically attacked John Roche during an argument, her husband intervened and threw her to the ground; unfortunately, she fell on her own cutlass and died.⁴³ A jury duly convicted Wylson's husband only of accidental homicide. In a rather more doubtful case, while Elizabeth Pyne and Thomas Strange quarrelled, bystander William Densham threw a cup "between" them – to what intended end was not noted. The cup struck Pyne and she died ten days later. A court convicted Densham of misadventure and he received a pardon.⁴⁴

Chancery issued most of its pardons for excusable homicide to people who had killed someone in self-defence. The patent rolls recorded the names of 763 people who received pardons for this form of homicide; the rate increased from just under three per year under the first Tudor to nearly nine per year under the last. To be deemed self-defence, a killing had to meet a rigorous definition: the defendant must have made every feasible attempt to evade the attacker and must have reached a point beyond which

⁴¹ C 66/665, m. 9.

⁴² C 66/ 1331, m. 78; Baker, *Spelman's Reports*, II, p. 310.

⁴³ *LIS*, vol. 242, p. 123.

⁴⁴ *CPR Elizabeth I*, IV, p. 123.

further retreat was impossible.⁴⁵ T.A. Green has shown that medieval trial jurors often displayed a willingness to refashion the narrative of a killing to fit the strict requirements of self-defence; occasionally they did this for people who had unintentionally killed an opponent during a tavern brawl or who had defended themselves from attack instead of running away.⁴⁶ By finding the individual guilty of self-defence rather than felonious homicide, they guaranteed his or her life. Green argued that the jurors acted upon their own notions of criminal liability, beliefs that sometimes conflicted with the formal definitions entrenched in the law. He suggested that this practice declined over the sixteenth century with the demise of the “self-informing” jury: as jurors lost control of the version of the truth presented in court, they found it more difficult to craft a verdict that matched their own perceptions of the defendant’s liability. When Tudor JPs assumed the tasks of collecting and presenting evidence, jurors had less chance of manipulating the facts to find a killer guilty of self-defence.⁴⁷

The practice may well have declined, but evidence from the pardons showed that trial juries continued to fashion accounts of the killings and return verdicts that favoured the accused throughout the sixteenth century.⁴⁸ A number of pardons recorded that the coroner’s jury had deemed the killing felonious homicide, but that the trial jury later

⁴⁵ See Green, *Verdict According to Conscience*, pp. 30, 35; Baker, *Spelman’s Reports*, II, pp. 314-16.

⁴⁶ Green, *Verdict According to Conscience*, pp. 28-64. See also P. Maddern’s discussion in *Violence and Social Order in East Anglia, 1422-1442* (Oxford, 1992), pp. 117-20; she, too, noted that while all killers were culpable, jurors refused to punish all equally. They recognised finer gradations in the seriousness of a crime than did the law.

⁴⁷ Of course, there has been an extended debate on the character and behaviour of medieval and early modern juries, and their relative independence vis-à-vis the judges. In his study of fifteenth century juries, for instance, E.B. Powell suggested a more gradual decline of the “self-informing” jury and an earlier appearance of official prosecution than Green had initially outlined, a position now accepted by the latter. Powell also suggested that historians need not see juries and judges as opponents – jurors did not have to “trick” the judge into allowing a verdict of self-defence where the evidence dictated a verdict of homicide, as judges themselves were often willing to allow such a fiction. So, “jury nullification” could continue even when judges did acquire more control over trial outcomes. See his essay in *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800*, eds. J.S. Cockburn and T.A. Green (Princeton, 1988), and also Green’s “Retrospective” in the same volume, esp. pp. 373-75.

⁴⁸ G. Walker has also suggested that Tudor juries continued to craft narratives favourable to the accused and reflecting their own notions of liability. “Crime, Gender and Social Order in Early Modern Cheshire,” pp. 108-69.

found a verdict of self-defence. For example, a coroner's inquest concluded that Henry Breamer killed Anthony Timberman in a drunken quarrel over a card game. Accordingly, a court tried Breamer for manslaughter, but the trial jury found the killing an act of self-defence.⁴⁹ Edward Jowpe struck Walter Kaynes with a staff during a disagreement. When Kaynes died eight days later, a grand jury indicted Jowpe for manslaughter but again a trial jury deemed the act legitimate self-defence.⁵⁰ Similar cases abound in the records. While a woman or her spouse who killed a would-be rapist also deserved a pardon, the only recorded case looks more like revenge than preventative force. In 1515, Joan Clerke, assisted by her husband Robert, attacked and killed a man who had previously raped her. The jury found the defendants guilty of killing in self-defence and, thereby, assured them of pardons.⁵¹ Thus, despite the narrow legal definition of self-defence, in practise jurors and authorities considered a somewhat broader group of homicides as excusable and deserving of mercy.

At the beginning of the Tudor period, the courts convicted people who killed in self-defence in recognition that the offender had taken a life and had violated the sovereign's peace. This practise changed after a statute of 1533 clarified that to avoid the loss of goods and chattels that followed upon conviction, a jury might simply acquit anyone who killed a person who had attempted murder or robbery on the highway or in their own home.⁵² In these cases, the victims had put themselves beyond the protection of the law by committing a felony. For those people who had not defended themselves

⁴⁹ CPR Elizabeth I, II, p. 411.

⁵⁰ CPR Elizabeth I, I, p. 364. See also, I, p. 145; II, p. 199; CPR Philip and Mary, III, p. 429. Of course, if a jury's verdict too obviously contradicted the facts presented in court, the jurors could find themselves in trouble. A coroner's jury, for example, judged a killing to be self-defence when the evidence required them to find it felonious homicide and found themselves imprisoned and fined by the judges of Star Chamber. See HEH EL 2768, fol. 21d.

⁵¹ C66/ 627 (3 July 1516).

⁵² 24 Henry VIII c.5. After this act, some who killed while defending themselves or their home from someone intending to commit a felony still received pardons, but the verdict of the coroner's jury sufficed. Green thought that pardons for self-defence killings all but stopped after 1550 as he found none recorded in C 260: "Jury and the English Law of Homicide," pp. 493-94. They continued unabated, and can be found in the patent rolls, C 66.

against an obvious felon, but against someone who had simply attacked them, the guilt and subsequent need for both conviction and a pardon *de cursu* remained.⁵³

Nearly half of the people who received a pardon for homicide had committed crimes that social norms did not hold as excusable, justifiable, or inherently deserving of mercy. These killings were neither accidental nor acts of self-defence; their perpetrators did not have diminished legal responsibility because of age or mental defect. These people obtained pardons solely at the grace of their sovereign, *de gratia* rather than *de cursu*. Even within the broad category of felonious homicide, gradations existed. By the strict letter of the law, all who committed such crimes deserved death, but juries, judges, and sovereigns alike recognised differences among particular cases: the degree of intent and evil will mattered here, too. In 1565, for example, William Vallance attempted to cure four children of an unspecified malady with a home-made medication made principally of lye; when all four died, a court convicted Vallance of homicide. Nine years later, a jury found a man guilty of homicide after his attempt to perform a caesarean delivery on a woman ended with her death. Both men demonstrated a negligence that the law did not consider accidental, but their lack of ill will or desire to harm provided the basis for the queen's mercy and both received pardons.⁵⁴ This attention to the motivation and circumstances behind a killing also manifested itself when the law began to distinguish manslaughter, also called chance-medley, from murder. The first was a deliberate act, but done in a sudden fight or immediately upon provocation; the second required "malice aforethought," involving premeditation or stealth, and revealed a greater degree of deliberation and evil intent.⁵⁵ Both remained capital offences, but perpetrators of the first had a greater chance of going free.

⁵³ On this distinction, see Lambarde, *Eirenarcha* (London, 1588), pp. 256-57.

⁵⁴ C66/1012, mm. 6-8; *CPR Elizabeth I*, VI, pp. 285-86.

⁵⁵ On the distinction as understood by the end of the sixteenth century, see Lambarde, *Eirenarcha*, pp. 223-24, 239-55. Lambarde preferred to use "manslaughter" to denote the entire class of homicides and to save "chance-medley" for the particular variant, but acknowledged that this was not the prevalent usage. T.G. Watkin's "Hamlet and the Law of Homicide," *The Law Quarterly Review* 100 (1984): 282-310 is also helpful but must be used with care.

When and why did this distinction emerge? T.A. Green has argued that although the laws instituted after the Norman conquest made no such allowance, trial jurors had long treated the two types of slayings differently; they either acquitted the less deliberate killers or manipulated the evidence to allow a finding of self-defence. Social norms, unlike formal legal prescriptions, insisted on a difference between malicious, planned killings and sudden slayings upon provocation. Eventually, the popular perception that the two types of killing differed forced lawmakers to recognise the distinction; they did so first through pardons. Bellamy found a few pardons from the mid-1300s that emphasised that the recipient had killed “impetuously” and not “from premeditated malice.”⁵⁶ The pardon statute of 1390 offered a further recognition of the distinction: Richard II promised that thenceforth, unless by express words, his pardons would not remit punishment “for murder, or for the death of a man slain by await, assault, or malice prepensed.”⁵⁷ This implied that the broadly inclusive special pardons would still cover other forms of homicide. After the passage of this act, some indictments distinguished between premeditated killings and less deliberate forms of homicide by using the word “murder” only for the more serious offence, presumably to make pardons for the latter more difficult. The differentiation remained vague, however, and no further application or clarification appeared until the sixteenth century.⁵⁸

⁵⁶ J.G. Bellamy, *The Criminal Trial in Later Medieval England* (Toronto, 1998), p. 61.

⁵⁷ 13 Richard II st. 2 c.1.

⁵⁸ Green, “Jury and the English law of Homicide,” 462-87. This interpretation of the 1390 statute differs from J.M. Kaye’s earlier analysis. Kaye argued that the act made no distinction between different forms of homicide: “malice prepensed” meant not premeditation but merely “deliberately” or “wickedly,” and thus a pardon for any homicide would have to indicate as much in express words. The distinction between murder and manslaughter, he argued, did not emerge until the sixteenth century. See Kaye, “The Early History of Murder and Manslaughter,” *Law Quarterly Review* 83 (1967): 365-95, 569-601. Green acknowledged that the language of the statute was open to debate, but noted that the petition it responded to clearly differentiated between murder and less serious forms of homicide. It asked only that the king restrict his pardons for the more heinous killings and, he argued, the king was unlikely to grant any more than requested. Bellamy concurred with Green’s reading of the statute, but has clarified other aspects of his discussion, *Criminal Trial*, pp. 57-69. For a review of the debate and a comparison to Scottish developments, see W.D. Sellar, “Forethocht Felony, Malice Aforethought and the Classification of Homicide,” in *Legal History in the Making*, eds. W.M. Gordon and T.D. Fergus (London, 1991), pp. 43-60.

In the Tudor period, lawyers and lawmakers formalised the long-standing popular distinction. The first of Henry VIII's statutes regarding the benefit of clergy barred the privilege to anyone who killed on the king's highway or in the victim's home "upon malice prepensed."⁵⁹ This statute expired after one year, but parliament passed an act in 1532 that again removed the privilege from "wilful murder of malice prepensed." While Edward VI's parliament repealed many of the statutes regarding benefit of clergy passed in Henry VIII's reign, it retained this exception for murder.⁶⁰ These acts did not specifically name or describe a lesser form of homicide that retained the benefit of clergy, but the courts clearly interpreted the legislation in this way: manslaughter remained open to benefit of clergy throughout the period. The general pardon statutes also recognised this distinction beginning with the act of 1523, which included on its list of pardonable offences "all felonies called manslaughter not committed or done of malice prepensed" and barred mercy for "all prepensed and voluntary murders."⁶¹ All but one of the subsequent pardon statutes offered clemency for manslaughter.⁶² Although voluntary, manslaughter did not display the long-standing malice or well-formed intent characteristic of murder. It was not excusable and thus did not earn a pardon *de cursu*, but the difference in intention and evil will sometimes resulted in pardon nonetheless. William Lambarde, a practising magistrate and the author of a popular sixteenth-century legal treatise, noted that the distinction between murder and manslaughter also took into account "the infirmity of man's nature" and the quick temper and ready violence

⁵⁹ 4 Henry VIII c. 2.

⁶⁰ 23 Henry VIII c. 1; 1 Edward VI c.12.

⁶¹ 14 & 15 Henry VIII c. 17. A working draft of the pardon demonstrates that the labels given to the different forms of homicide were still somewhat new and unfamiliar: the list of offences to be pardoned included "murders by way of defence and not prepensed." "Murders" was later struck through and "manslaughter" written above. BL Cot. M.S. Titus B.1 no. 44.

⁶² 1 Edward 6 c. 15 was the exception. Most of the general pardons listed only what was excepted from their remit and thus while they excluded murder, they did not mention manslaughter specifically. They were, however, understood to pardon the lesser form of homicide. When editing his volumes of coroner's inquests, Hunnisett tracked those cases that he could through the King's Bench rolls; he found one man, indicted of homicide, who successfully pled the general pardon of 1544. Hunnisett, *Coroners' Inquests, 1485-1558*, no. 125. For later references to people guilty of manslaughter and released by general pardon statutes, see *APC*, ix, p. 248; xxiv, p. 74.

associated with “manhood.”⁶³ On the other hand, Dr. Alexander Nowell thought the distinction should result in greater penalties for murder rather than more lenient treatment for manslaughter; preaching before parliament in 1563, he commended the French practise of hanging for the equivalent of manslaughter and using a more terrifying death on the wheel for murder.⁶⁴ While others may have shared Nowell’s opinion, it did not reflect the prevailing view and resulted in no changes to sixteenth-century legal practise.

Special pardons revealed the same tendency as general pardon statutes to grant mercy to people who killed in an unexpected fight or a sudden, provoked rage. For example, one man convicted of manslaughter after a deadly argument about who was to clean the stables received pardon, as did a man who too vigorously attacked the person who had abused his dogs.⁶⁵ In 1561, John Crowther obtained clemency after convicted of killing Roger Barnes; Barnes had attacked first, but Crowther refused to run and inflicted the final blow.⁶⁶ William Wright received a pardon for killing his wife’s lover after Walter Jobson, his neighbour and the former mayor of Kingston-upon-Tyne, interceded on his behalf in 1560. Jobson crafted an account that highlighted characteristics of both the offence and the offender that seemed most likely to provoke a pardon. He described Wright as an “honest, sober, and discreet poor man who by evil hap and a wicked wife [had] fallen into danger of the law.” The man’s wife, being “a light woman not regarding the duty of a wife and falling in love with strange men,” had two years previously hired people to kill her spouse. Mayor at the time, Jobson had heard of her plans and prevented the murder. On her humble confession and suit, Jobson convinced Wright to take her back and became a pledge for her future good behaviour. But she, “not having grace to amend her former evil life, fell into her old trade of

⁶³ Lambarde, *Eirenarcha*, p. 251.

⁶⁴ *Nowell’s Catechism*, ed. G.E. Corrie (Parker Society, vol. 55, 1853), pp. 223-29.

⁶⁵ *CPR Elizabeth I*, III, p. 189; IV, p. 338.

⁶⁶ *CPR Elizabeth I*, II, p. 54.

lewdness with the parish clerk.” When her husband rebuked her and told her never to associate with the clerk again, the lover became angry and confronted Wright. Then, “by misfortune the said Wright with his staff struck him upon the head whereof he died.” In his narrative, Jobson attempted to divert the blame to the wife and her lover and used language found in accounts of killings done by accident or in self-defence to describe Wright’s act. Any evil will or anger in the story inhered not in Wright but in his wife and the victim. The law did not consider Wright’s crime excusable, but Jobson thought that a contextual account and the offender’s good character should save him from the noose.⁶⁷

Although John Neele was condemned for murder in 1595, one JP thought him worthy of pardon as his crime more closely approximated manslaughter. His account further clarifies the distinction between the two types of killing and how the less deliberate form sometimes found mercy. The JP reported that Neele met up with John Harris and “according to the custom of men of their quality,” the two began drinking. Harris called his own wife a whore, whereupon Neele, “in good sort and without any malice reproved him for it.” When Harris asked him what business it was of his, Neele responded that “it was an unseemly term for a man to bestow upon his wife.” Nothing further came of the matter that night, but on the next day Harris challenged Neele to a fight. According to the JP, Neele tried to avoid the confrontation but finally gave Harris “a light hurt” in self-defence then once again asked him to back off. Enraged by the injury, Harris attacked with greater fury and suffered a second, more serious injury. That week Neele went to Harris’s home to apologise for his behaviour. The two drank together, and Harris acknowledged the fault as his own. When Harris died a few days later, a coroner’s jury accused Neele of manslaughter. Later, however, a malicious JP indicted Neele of murder and had him condemned to death. The petitioner disagreed with the verdict and asserted that if he had presided at the trial, Neele would only have been convicted of manslaughter. He noted furthermore that as a Scot, Neele knew little

⁶⁷ Salisbury MS vol. 153, no. 56.

of the ways of English courts and should have had a translator at his trial.⁶⁸ When the attorney general conferred with the assize judge, the latter agreed that Neele probably deserved only a conviction of manslaughter and expressed a willingness to insert Neele's name in the circuit pardon.⁶⁹

Pardons in the latter half of the sixteenth century frequently reported that a jury had found the recipient "guilty of the death, but without malice," or more specifically, "guilty of manslaughter but not of murder." Others reported that the blows inflicted during a fight resulted in death only weeks or even months later. For example, Thomas Bennet eventually received a pardon for killing a man who died four months after he had obtained his wounds.⁷⁰ Technically, if the death occurred within a year and a day of the assault, the assailant was guilty of homicide. The pardons for people whose attacks resulted in death only after the passage of weeks or months suggest that sometimes a more lenient attitude toward the assailant's responsibility prevailed. In some of these cases, the victims might have survived had better medical care been available; one pardon specifically noted that death had occurred partly for lack of a good surgeon.⁷¹ Perhaps this contributed to the feeling that the killer, although culpable, did not merit execution. The numbers of pardons given for manslaughter as opposed to murder cannot be ascertained, as the line between these offences remained dimly marked throughout much of the sixteenth century. Some charters pardoned the recipient of murder, but described a crime that closely resembled manslaughter; others simply labelled the offence a "felonious killing" and gave no further details. In some cases, the jurors themselves abandoned the attempt to classify a killing. In 1560, when a Staffordshire man killed the man attacking his house with the bolt from a crossbow, the jurors proved unable to decide if the offence was murder, manslaughter, or self-defence. The queen decided

⁶⁸ SP 12/254, no. 55.

⁶⁹ Salisbury MS, vol. 41, no. 91.

⁷⁰ *Ibid.*, II, p. 50.

⁷¹ *CPR Philip and Mary*, III, pp. 144-45.

simply to pardon the man.⁷² Two years later, Henry Woodward tried to distrain John Townsend's cattle in payment of an outstanding debt. When Townsend and his family offered forcible protest, Woodward struck Townsend, who died about a week later. Again, jurors' doubts prompted a royal pardon.⁷³ The Tudor sovereigns acted upon general perceptions that murder was more serious than manslaughter and seem to have granted mercy more frequently to the latter than the former. Yet, not all people convicted of manslaughter received pardon. Nor did all people found guilty of cold-blooded, brutal slayings hang. In both cases the pardon remained a discretionary act of grace.

The line between excusable and felonious killing, and the division between manslaughter and murder, proved especially permeable when jurors faced those who killed their subordinates. Some people obtained pardon who killed in an overzealous exercise of what contemporaries would have deemed their legitimate authority. With social and gender relations premised upon patriarchal control, masters were expected to chastise their servants, and husbands their wives, to maintain order. Sometimes, however, these "corrections" turned deadly. In 1519, a Cornish blacksmith reacted to his servant Henry Rawlyn's misbehaviour by striking him on the head with a smith's ladle; four days later Rawlyn died from the injury. The blacksmith later received a pardon for the killing.⁷⁴ Anne Gainsford and William Ludford received pardons in 1572 and 1577 respectively for sentences of manslaughter incurred from the beating deaths of their servants Agnes Rayner and Randolph Franklyn.⁷⁵ In 1564, Richard Sharman wounded his servant John Roose on the head while chastising him. When Roose died two months

⁷² *CPR Elizabeth I*, II, p. 9. In such cases one might argue that the pardon had a detrimental effect on the formal law: instead of having the superior judges discuss such difficult cases and create new case law, a pardon simply closed the matter.

⁷³ *CPR Elizabeth I*, II, p. 531. See also, Salisbury MS, P. 2292.

⁷⁴ C66/633, m. 22. See Maddern's discussion of medieval perceptions of "righteous violence." When determining the punishment due for a killing, jurors and judges considered whether the offence had arisen from the infliction of socially sanctioned violence meant for the public good: *Violence and Social Order*, pp. 84-86.

⁷⁵ *CPR Elizabeth I*, V, p. 340; VII, p. 337.

later, a jury guaranteed Sharman his pardon by declaring the death accidental and, hence, excusable. Another did the same for Richard Aburne, who had beaten his servant Marion Tue to death.⁷⁶ These obviously did not constitute accidents in the usual sense – the perpetrators had intended to inflict violence, only the result was inadvertent.

The brief records provide few details. Did the same concern for intention and deliberation that prompted so many other pardons surface here, or did the relationship between the victim and assailant lend an extra impetus to mercy? Had the servants disobeyed in ways that prompted jurors to see the exceptionally harsh correction as provoked and thus understandable? A letter about one such case offers a few details that might provide a key for understanding others of its kind. In 1546, Lord Grey wrote to the king's secretary from Boulogne to plead the case of one James Lyslye, a warden of the works. Lyslye had killed a labourer under his supervision while chastising him. Grey reported that Lyslye, "reproving him [the worker] for his evil service, both had evil language and also his fault not amended," struck and "accidentally" killed him. Grey clearly thought that Lyslye's position of authority vis-à-vis the victim in some way excused the killing. He feared, furthermore, that unless Lyslye received a pardon, "the other labourers [will] be thereby so encouraged as none officer might be able to rule any labourer." He seemed to recognise, however, that these reasons did not suffice for a pardon and asserted that Lyslye had not displayed any malice nor used an illegal weapon. Indeed, he had only given "two or three little stripes with a small ruler" and, in apparent contravention of the facts of the case, said that Lyslye had not used sufficient force to cause death.⁷⁷

Husbands killed their wives for a variety of reasons, but two at least seemed to have done so while inflicting punishment for disobedience. The 1550 pardon for Ellis Biggerford suggested that his wife Joan had struck first, and "in the way of due

⁷⁶ CPR Elizabeth I, III, p. 291, VII, p. 445.

⁷⁷ SP 1/227, fol. 230 (L&P XXI, ii, 636.)

correction,” Buggerford returned her blow with fatal results.⁷⁸ A pardon granted in 1590 recorded that the recipient killed his wife Joan when he accidentally kicked her as he was getting out of bed to slap her following an argument.⁷⁹ In both of these cases, the jurors not only mentioned the assailant’s just exercise of authority, but also emphasised the provocation; perhaps they thought both necessary to justify the pardon. Legal and social norms sanctioned, and even demanded, the violent correction of disobedient subordinates.⁸⁰ The law forbade unduly violent, deadly correction, but some people felt a reluctance to see such killers hang. The law also entrenched social and gendered subordination by declaring a dependant who killed a master guilty of petty treason. Despite this, jurors recognised some of the killings of masters by servants or husbands by wives as excusable. For example, one jury decided that John Fythe killed his master in self-defence during a violent correction, and another gave the same verdict when Joan Turpenny’s husband died from blood poisoning months after she had bitten him during a beating.⁸¹ Again, nothing in these offences made them inherently deserving of mercy, but assessments of their character by juries and the Crown prompted discretionary acts of grace.

In contrast to killings, the law did not distinguish any property offence as excusable, but the petty nature of some of these offences prompted pardons for their perpetrators. A number of people convicted of larceny, robbery, coin clipping or counterfeiting received their pardons because of the minor nature of their crime. One Devonshire man, for instance, obtained a pardon for coin clipping partly because of the “trivial extent” of his crime - he had clipped only four 12s and eight 6p pieces of silver.⁸² The law had long deemed petty larceny (the theft of goods worth less than 12d) a non-

⁷⁸ CPR Edward VI, III, p. 320.

⁷⁹ C 66/1356, m. 34.

⁸⁰ See Maddern, Violence and Social Order and S. Amussen, “Punishment, Discipline and Power: The Social Meanings of Violence in Early Modern England,” Journal of British Studies 34 (1995): 12-18.

⁸¹ CPR Elizabeth I, II, p. 69; CPR Philip and Mary, III, pp. 244-45.

⁸² LIS v. 241, p. 38.

capital offence; because of the steep inflation during the sixteenth century, some members of the parliament of 1593 tried, unsuccessfully, to raise the monetary limit. When the law first came into effect, one member noted, “the value of 12d silver then was as much as 3s4d now.” Judges sometimes counselled juries to devalue the amount of goods stolen, “yet the jury cannot in conscience safely do this knowing it of more worth.”⁸³ When jurors and judges failed to reduce the charge, the Crown sometimes intervened with a pardon. Legally, only the manner of the theft, not the amount taken, mattered in robberies and burglaries, but here, too, an offender who netted little profit might receive pardon. A circuit pardon from 1590 noted that the judges recommended some for remission “for the small value of their offences”; one in 1594 recorded that “some of the causes being so small,” the judges hoped for clemency.⁸⁴ The “small value” of their offences proved that these were not professional criminals who habitually lived off the goods of others and that their actions were crimes of opportunity, weakness, or need rather than serious threats to property.

Of course, not all offenders who stole goods of little value or who killed in a sudden fight received pardons. Nor did all those convicted of straightforward, serious felonies hang. In addition to doubts about the evidence or considerations for the offender’s amount of profit from a crime, judges adduced other motivations for their reprieves. The character of the offender often mattered more than the nature of the offence. An offender’s youth, prior good behaviour, desire to reform, or willingness to inform on others figured into judicial decisions, as did evidence that the offender had acted at the instigation or compulsion of others. To one list of people recommended for pardon, the judges appended a note that:

some of them for their being young were persuaded by others to commit the offences whereof they were indicted. Some others for that appearing unto the said justices it was their first offence they not only confessed the same but also disclosed other offenders with them therein who were by that means for the

⁸³ *Proceedings in the Parliaments of Elizabeth I*, ed. T.E. Hartley (Wilmington, 1981-, 3 vols.), III, p. 128. See also, Cockburn, *Introduction*, p. 115.

⁸⁴ C 82/1511, no. 47; C 82/1568, no. 53. See also C 82/1529, no. 72.

same apprehended and executed.⁸⁵

Another recommended a pardon for Alice Richards, “for that she was compelled by her husband to commit felony, who was convicted for the same.”⁸⁶ Judges requested a pardon for Henry Vye because he was a young fellow who had not previously offended. Drawn into his crime by others, he would probably live honestly thenceforward if given a second chance.⁸⁷ Few judges’ reports remain, however. The majority of the circuit lists of people recommended for pardon provided only names without reasons. Judges must have submitted any accompanying explanations verbally or in separate letters that have not survived.⁸⁸

Nor did many of the pardon documents explain the reason for the mercy granted. Many noted simply that the person received his or her pardon “for considerations reported by diverse trustworthy persons.” Those that did include specifics recorded reasons similar to those listed in the judges’ reports and tended to cite two or more factors in conjunction. A belief in the offender’s contrition dominated. In a sample of fifty pardons with explanatory clauses, fourteen cited the person’s penitence. Thirteen explained that the recipient had acted upon the instigation or compulsion of others. Eight mentioned the offender’s youth; social constructions described the young as especially prone to the evil example of others. This belief justified discriminatory treatment of youths, but also rendered them less responsible for their actions. Their supposed malleability meant, furthermore, that they had a good likelihood of reformation.⁸⁹ Eleven of the fifty pardons noted that the offender had previously

⁸⁵ C 82/1528, no. 49.

⁸⁶ C 82/1159, no. 73.

⁸⁷ C 82/1164, no. 23.

⁸⁸ This marks a difference not only in record survival but also in practise from latter periods in which judicial reports have provided the main sources for historians studying the pardon. See the works cited in the introduction, especially note 21. For example, King was able to do a statistical “factors-mentioned” study of the judicial recommendations and petitions: “Decision-Makers and Decision-Making,” pp. 42-51. The Tudor evidence, unfortunately, dictates a less statistical approach.

⁸⁹ On early modern constructions of “youth,” see P. Griffiths, *Youth and Authority* (Oxford, 1996), esp. pp. 34-40 where he noted that contemporaries attributed particular qualities to each age and believed young people, roughly defined as those in their teens and twenties, to be reckless and easily misled. See also I. Ben-Amos, *Adolescence and Youth in Early Modern England* (New Haven, 1994).

enjoyed a good reputation and was of “honest conversation”; seven recorded that the crime had been the person’s first offence. These people had erred but once and had not committed themselves to a life of crime. Three mentioned that the recipients had freely turned themselves in and confessed; two recorded an expectation of the recipient’s future good behaviour, a factor perhaps implicit in some of the other motivations. Some pardons served as rewards: eight of the fifty recounted the recipient’s past service, and ten that he or she had provided evidence against other offenders. Two noted the serious illness of the gaoled recipients as reason for their release and pardon. Two others mentioned the person’s poverty, perhaps seen as a cause of the crime. Three cited the person’s substantial familial responsibilities: the offender had many children who would be left destitute and ungoverned by the parent’s death.⁹⁰ Two observed that the male recipient had received mercy upon promise of military service. While men could obtain remission for their strength and suitability for the wars, women could receive clemency for their weakness. One woman received a pardon after speaking treasonous words because of “compassion for the frailty of her sex”: she had been pregnant at the time of the offence and spoke in haste.⁹¹ The texts of the pardons themselves, then, suggested that those who could present themselves as penitent and redeemable, or their offences as products of the weakness inherent in poverty, youth, or femininity, might find mercy from their sovereign.

Other official documents repeated these motivations and highlighted the importance of the offender’s penitence. In September 1544, Queen Catherine and her council wrote to Henry VIII, then in France, asking him to authorise a pardon for a serving boy who had stolen a small item from his mistress as he was “very repentant, having consideration as well thereof as his young years and because the fact is but hardly

⁹⁰ For other types of familial responsibilities that prompted pardon, see the entries in the Chancery docket book from the latter years of Elizabeth’s reign that noted that one pardon was given “for the mad woman’s husband,” and another for a man whose wife “is great with child.” C 231/1, pp. 59r, 97r.

⁹¹ C 66/1426, m. 21.

construed felony.”⁹² In 1593, the privy councillors asked the assize justices to reprieve Thomas Heyfield as the queen had decided to pardon him. Heyfield had not committed murder, they reported, but manslaughter in a heated quarrel over a game, noting that “we are further very credibly informed that Heyfield was then very sorry and ever since hath been heartily penitent for this fact and is a man otherwise of very honest conversation.”⁹³ Later that year, they asked the justices to take special care with the trial of George Scott for desertion. His mother, a poor widow, had seven small children and depended on Scott for support. Furthermore, “he (it seems) is very penitent for his offence ignorantly committed and thereunto enticed by a lewd fellow.” The councillors asked the justices to determine if Scott had previously offended and if not, to exercise lenience.⁹⁴ In a letter to the mayor of Chester, the councillors explained their decision to pardon two men for mutiny: “with all repentant submission they have acknowledged their offence and earnestly made suit to be employed in service to make amend for their former offence.”⁹⁵

A few letters from royal agents in the localities to those at court further illustrated the decision-making process in their requests that particular offenders *not* receive pardon. In 1527, a royal forester thought that John Oseland, indicted for killing numerous “harts, stags and hinds, and also one keeper,” planned to sue for a pardon. The forester hoped that the king would refuse Oseland’s request, as he had committed previous hunting offences.⁹⁶ Years later, the Recorder of London wrote to Lord Burghley that some people intended to plead for pardons for a group of young men charged with numerous petty offences. He believed that most of them, if set at liberty, meant to live a new life; two of the youths, however, seemed unlikely to reform and might well have “descended of the blood of Nero the tyrant.” If released, they should at least have to raise heavy

⁹² SP 1/193, fol. 6.

⁹³ *APC*, xxiv, p. 74.

⁹⁴ *APC*, xxiv, pp. 87-88.

⁹⁵ *APC*, xxx, p. 61.

⁹⁶ *L&P I*, Addenda, p. 548.

financial bonds for their future good behaviour.⁹⁷ The Earl of Huntington, president of the Council in the North, wrote to the Lord Keeper about one man involved with three others in a “foul robbery,” who had friends planning to make suit for his pardon before the case even came to trial. Huntington emphasised the seriousness of the particular offence and declared that the individual could not claim that he had acted unwillingly or at the instigation of others: “he is, in my conceit, most faultier of all...the fact was most foul, as I am told, and therefore the more fit to be tried and judged by the law.”⁹⁸

Rowland Lee, president of the Council in Wales for much of Henry VIII’s reign, wrote repeatedly to ask that the king deny pardons to particular offenders; he had a strong belief in the deterrent value of public executions and clearly thought that mercy should not forestall those executions that promised to provide excellent examples. In one letter, he noted that it “were [a] pity that ever such murderers should have pardons...the punishment of them shall be an example to all naughty persons intending such like”; if the court found the men guilty, he hoped “to make them a spectacle to all others.”⁹⁹ In another missive, he wrote that John Thomas ap Rice, a retainer of Lord Ferrers, had committed felony and homicide. Hearing that the man intended to make a suit for pardon, Lee asked Cromwell that “if such come to your hands, I beseech your lordship to stop the same, for the hanging of such one, being a gentleman, in his county, and for such an offence, will save twenty men’s lives and do more good than the hanging of 100 other petty wretches, as knoweth Christ.”¹⁰⁰

Offenders might receive pardon if their victims expressed a willingness to forgive and a desire that the sovereign grant his or her mercy as well. A few pardons specifically noted the victim’s suit as the reason for the extension of clemency. In 1575, the queen pardoned a Surrey yeoman for theft after a petition from the two men whose goods he

⁹⁷ BL Lansdowne 37, 5.

⁹⁸ BL Harleian 6997, fol. 123.

⁹⁹ SP 1/ 158, fols. 81d-82 (L&P XV, 398.)

¹⁰⁰ SP 1/154, fol. 44 (L&P XIV, ii, 384.) See also L&P X, 354 and 453.

had stolen. The following year, she pardoned two Lincolnshire men for robbery, again at the suit of the victims.¹⁰¹ In 1580, six men received pardon for unlawful assembly and destroying fences that enclosed lands of Ambrose, Earl of Warwick; the earl himself, in fine paternalist fashion, had asked the queen for clemency.¹⁰² A Wiltshire tailor, unable to resist the rich velvet decorating the tomb of Jane, late countess of Southampton, obtained pardon upon the suit of the earl.¹⁰³ A few petitions from victims suggested the variety of reasons why they might be willing not just to forgive, but also to ask the sovereign to forgive the violation of the royal peace. Aged and nearing her own heavenly judge, Maude Carew requested that Henry VIII pardon the men who had robbed her: “considering how near I am to the pit, and that my goods should be the occasion of the loss of so many men, I thought my conscience not to be discharged.”¹⁰⁴ The Earl of Derby wrote to Robert Cecil, asking him to arrange a pardon for a young manservant who had stolen a small piece of silver from the countess’ chamber. His wife asked him to write, as “being the [man’s] first fault, she was loath to have him die.”¹⁰⁵ Christian Anthonius, the minister of the Dutch church at Sandwich, requested pardons for four men condemned for a robbery from one of the church members. The goods taken consisted only of “some small trifles of small importance”; the men had threatened no violence and the robbery was “the first fact that the parties ever committed, and [they] were all ready to depart for Flushing, there to do her Majesty and our country honest and true service, as before some of them have done.” Furthermore, and perhaps of greatest importance to the Dutch congregation, the minister feared the robbers’ deaths would prompt adverse local sentiment and “be imputed to our Strangers”; he asked for their

¹⁰¹ CPR Elizabeth I, VI, p. 507; VII, p. 65.

¹⁰² C 66/1193, mm. 29-30.

¹⁰³ CPR Elizabeth I, VI, p. 555.

¹⁰⁴ SP 1/155, fol. 9 (L&P XIV, ii, 556.)

¹⁰⁵ Salisbury MS, vol. 38, no. 13.

pardon, hoping to maintain the concord and friendship between the English locals and the Dutch newcomers.¹⁰⁶

These various letters attested to some of the basic reasons articulated by contemporaries for extending mercy to one individual over another and revealed the multiple functions which that served. Statute law demonstrated little compassion for the young, the weak, and the poor, but pardons allowed paternalist sympathies to shape their experience of the law. While laws specified uniform punishments for particular actions, pardons permitted room for competing concerns about degrees of guilt and responsibility, free will, intent, and malice. Pardons also allowed a discretionary individuation of punishment tailored to the nature of the offence and the character of the offender. They sometimes served as rewards for previous good behaviour, for disclosing the crimes of other offenders, and for service past or promised. They revealed a belief in the inherent potential for amendment; some historians continue to describe early modern justice as concerned only with retribution, never reformation. The latter impulse they reserve for the later age of Enlightened penal reform. Yet the evidence surrounding pardons supports the conclusions Herrup reached in her study of seventeenth-century jury decisions: a hope for offenders' regeneration shaped responses to criminality.¹⁰⁷ All who defied the law deserved punishment, but the grace of the sovereign, like the grace of God, could spur people to live better lives.

Petitions

Petitions for clemency documented the mitigating factors and circumstances that people hoped would prompt a pardon. In their content and form, they further clarify the reasons behind particular grants of mercy. Pardoning decisions reflected widely shared norms; thus, people knew what values to stress. While not all of these requests for

¹⁰⁶ Salisbury MS vol. 175, no. 88.

¹⁰⁷ Herrup, *Common Peace*. See also her "Law and Morality in Seventeenth-Century England," *Past and Present* 106 (1985): 121-22.

pardon found success, their writers self-consciously characterised themselves and their offences in the manner they thought most likely to achieve that end.¹⁰⁸ Considering the numbers of pardons granted over the period, few written petitions survive. Most people, one suspects, presented their pleas orally. Some of the written petitions attested to this verbal process. One letter requesting a pardon for Thomas Morgan, condemned for coinage offences, mentioned the man's wife as bearer of the petition.¹⁰⁹ Some letters not only revealed the co-existence of an oral petitioning process, but suggested that a personal approach was preferable to the written word. Anne, Lady Nevill pleaded with Robert Cecil for her husband after the latter's involvement in the Essex plot. She noted, "I would use no other messenger for my suit but myself, but God having many ways afflicted me, and made me unable to do those duties which I desire, I beseech you to accept my humble suit in these few lines."¹¹⁰ In another letter seeking pardon, she again offered her excuses: "I hope your honour will pardon me for not attending on you at the court, for I am so deaf that I should be very cumbersome unto you."¹¹¹ Similarly, Lady Sandys ended a petition for her husband's life with a request that Cecil "pardon her boldness in writing, being great with child, near her deliverance....and most sorrowful not able to attend your honour in person, as duty would require her to do."¹¹² Despite the paucity of written petitions, those that do survive further illustrate both the common motives for pardons and the general currency of these ideas. The reasons offered in these letters largely corresponded to those listed in judges' recommendations and actual charters of pardon. Lack of malice, youthful indiscretion, familial responsibilities,

¹⁰⁸ On the fictional, narrative elements of French pardon petitions and the various constructions their authors used, see N.Z. Davis, *Fiction in the Archives: Pardon Tales and their Tellers in Sixteenth Century France* (Stanford, 1987). No central repository of pardon petitions exists for this period in England; letters have been found among the state papers and other correspondence collections.

¹⁰⁹ Salisbury MS vol. 22, no. 75.

¹¹⁰ Salisbury MS vol. 183, no. 117.

¹¹¹ Salisbury MS vol. 77, no. 91.

¹¹² Salisbury MS vol. 181, no. 81.

previous good conduct and offers of service figured into many of the requests for pardon. Expressions of penitence and humble sorrow appeared in all.

A few petitioners thought that consideration for aristocratic birth might dispose their sovereign toward clemency. In 1546, when Lord Henry Nevill pled for pardon, he referred to his exalted parentage and begged, “let not that noble blood be shamed through my negligence.”¹¹³ Years later, the Bishop of Durham wrote to request a pardon for Lady Margaret Nevill for consorting with Catholics. He noted her reformation, repentance, and submission, but also mentioned her descent from diverse noble houses as a reason for mercy.¹¹⁴ For more humble petitioners, a respectable background might help as well: one man, writing for his servant, noted that he was “descended from honest parents with whom I have long been acquainted.”¹¹⁵

All petitioners offered to spend the life they received back from their sovereign in loyal service and humble prayers. Some, however, promised more tangible services in return for pardon. Alchemists Cornelius de Lannoy and Alex Bonus volunteered to make gold for Queen Elizabeth in return for pardon.¹¹⁶ One man, excepted from Henry VIII's accession pardon, asked that he might be restored to the king's favour and receive his forgiveness. Asserting that he had always been “of good conversation, name, and fame,” he noted his long years of faithful service to the late king and offered his service to the new king, in battle or otherwise.¹¹⁷ In his request for pardon, John Lyte described himself as likely to perish from want and offered both to reveal the treasons of others and to serve in the army, hoping thereby to make amends for his disobedience.¹¹⁸ John

¹¹³ L&P XXI, ii, 420.

¹¹⁴ BL Lansdowne 78, 11.

¹¹⁵ Salisbury MS vol. 250, no. 35.

¹¹⁶ SP 12/39, no. 44; Salisbury MS vol. 166, no. 119. They were by no means the only ones to offer such a service. Burghley noted that John Prestall received a pardon precisely for this reason: A Collection of State Papers...left by William Cecill, ed. William Murdin (London, 1759), p. 763.

¹¹⁷ C 82/335, no. 6.

¹¹⁸ SP 12/185, no. 84.

Price asked that Elizabeth pardon the remainder of his Star Chamber judgement. Having already suffered in the pillory and currently imprisoned in the Fleet, he hoped not “to remain and die in prison but rather to be employed in any service of her Majesty’s” and swore that he would think himself a happy man if only he could risk his life fighting the queen’s enemies. Price wanted to provide satisfaction for his offences through service on the battlefield rather than life in prison.¹¹⁹

When the Earl of Surrey wrote to the king’s councillors in 1542 asking them to intercede for his pardon, he, like several others, played upon social constructions of youth that emphasised the propensity of young men to be easily misguided. He asked that the councillors impute his errors rather “to the fury of reckless youth than to a will not conformable.” He affected to welcome the punishment he had already received: he promised “by so general a warning to learn how to bridle my heady will which in youth is rarely attained without adversity.” He laid before them his previous good conduct, “quiet conversation,” and abject repentance, promising to amend his behaviour and to serve the king in any way.¹²⁰ Young people were thought to have little self-control or sense of responsibility; while this belief justified the exclusion of young men from positions of authority, petitioners might also adduce it to prompt lenience. Furthermore, like married women, youths both male and female generally lived under the subjection of their parents and were therefore thought somewhat less responsible for their actions. Upon his conviction for treason in 1553, the Duke of Northumberland pled for his children, “considering they went by my commandment who am their father, and not of their own free wills.”¹²¹ In 1528, Brian Tuke asked Wolsey to obtain a pardon for the young son of Sir William Lisle, recently arrested with his father for disturbances in the Scottish borderlands. Tuke said that thoughts of his own innocent children prompted his suit for the boy, who “never offended, but that he hath been out with his father, peradventure

¹¹⁹ SP 12/132, no. 54.

¹²⁰ BL Harleian MS 78, fol. 20.

¹²¹ Holinshed’s Chronicles, IV, p. 4.

fearing that he should lack bread at home.” By the king’s laws the boy might be guilty, but surely not by the “instinct or law that is in nature.”¹²²

Many of the men’s petitions both reflected their concerns for their families and played upon generalised fears about ungoverned, unsupported households. Orderly patriarchal households served as both analogy and foundation of the well-ordered state. If the offenders themselves did not deserve mercy, surely the potential plight of their innocent and helpless dependants did. George Felton, for example, asked the council to intercede for his pardon and release from prison. He noted that “heretofore, besides this offence, I was never touched in all my life as offender. I trust so to live hereafter, that your honours shall never hear of me but as a true and obedient subject.” Concentrating on the effect his death would have on his family, he asked the councillors “to consider the poor and wretched estate of my poor wife and my eleven children” and to “have further consideration of them that depend on me, than of me.”¹²³ Richard Casye similarly used perceptions of patriarchal duty and feminine weakness to his advantage. By granting his pardon, the queen would show mercy not just to himself but also to his guiltless family; he asked that she consider his poor children and wife, the latter now “distract of wit” from fear.¹²⁴ One man, writing on behalf of a kinsman, did not try to diminish the seriousness of the offence, but emphasised instead the offender’s familial obligations and the pity due to his spouse: “his poor wife has been here this nine weeks space, being great with child, attending for some good means for her said husband’s deliverance, having been at great charge and is in a most pitiful and distressed estate for her poor husband and like even to perish for grief and sorrow.”¹²⁵ Another man wrote that since his imprisonment, God had “taken from him his wife leaving him sundry

¹²² SP 1/47, fol. 226 (L&P IV, ii, no. 4204).

¹²³ SP 12/125, no. 7.

¹²⁴ SP 12/146, no. 113.

¹²⁵ Salisbury MS, P. 945.

children and a great family, which partly for want of a head to rule and direct them, be greatly out of order and good government.”¹²⁶

Women also cited important familial duties as a reason for mercy, whether writing on their own behalf or for their husbands. When Alice Brown requested that William Cecil obtain her husband’s pardon in 1549, she did not list aspects of her husband’s offence or character that might prompt pity, but detailed instead his responsibilities. She noted that she was pregnant, unable to collect the rents and likely to fall into ruin without her husband’s help.¹²⁷ While women sometimes found remission because of their domestic subjection, they might also receive pardon because of their domestic responsibilities. Elizabeth Gaywood, imprisoned in the Tower and facing exorbitant fines for religious offences, raised concerns for her family in a letter signed by herself, but written with her husband’s help. “She is a very young wife and newly married,” the letter reported, “having an house by this means utterly dispersed, her husband’s goods therein wasted and spoiled, their hay and harvest like to be lost and ungathered.” She protested her “lack of experience and knowledge” of the laws, pledged a future of good service and noted that the fines threatened to cripple her innocent husband.¹²⁸

Official sources noted that some women received pardon because of their weakness or dependency; unfortunately, too few petitions written by women on their own behalf have survived to determine whether women themselves routinely employed a deferential tone or set of excuses in their requests that differed from those used by men.¹²⁹ This paucity of written petitions reflected the lower numbers of women indicted

¹²⁶ SP 12/276, no. 9. Families left without a provider had to be supported by the parish. A desire to avoid such financial expenses probably gave such appeals a stronger chance of success. However, sixteenth century writers seemed less likely to discuss such matters in the nakedly, financially pragmatic terms King found in his eighteenth century records; one judge, in 1762, recommended a pardon for Ann Halford because “she had seven children who might become chargeable to the parish.” King, “Decision Makers,” pp. 46-47.

¹²⁷ SP 10/8, no. 49.

¹²⁸ SP 12/75, no. 75.

¹²⁹ See, for example, Davis’ *Fiction in the Archives* for a discussion of the different ways in which women and men presented their narratives in requests for pardon from the French king. Women, she found, were less likely to excuse their actions through anger, knowing that this was less likely to be seen as a legitimate justification. Davis, too, found that petitions written for men predominated in her records; for instance, in

for offences; it may also have stemmed from the lower rates of literacy among women. Women appeared most frequently in the petitions when acting on behalf of someone else as the writer or bearer of the plea, or rhetorically as the poor, innocent wife to whom pity was due.¹³⁰ Of the few letters written by women on their own behalf, Catherine Howard's most explicitly used language that differed from that found in men's letters. Facing a traitor's death for the extremely gender-specific crime of adultery by the wife of a king, Howard offered gendered excuses along with all the other standard tropes found in the entreaties of the condemned. She referred to "my sorrow...my youth, my ignorance, my frailness, my humble confession of my fault and plain declaration of the same referring me wholly unto your grace's pity and mercy" and begged the king to consider "the subtle persuasions of young men and the ignorance and frailness of young women."¹³¹ While Howard's case proved exceptional in many ways, she was not the only woman who attempted to use public perceptions of feminine weakness and dependency to her own benefit in requests for pardon.¹³²

Very few of the letters protested the offender's innocence. One man pleading for his brother's life did assert that those who arrested and convicted him had confused him with another man of the same name. Another unusual petition, with the forthright heading, "Reasons to move her most excellent Majesty to have mercy upon Barnes," claimed that the author had suffered a malicious and false arrest for religious matters.¹³³

one batch of 4189 letters, only 35 dealt with women offenders. (pp. 84-84, 192 n.22) For women's letter writing and the ways it sometimes differed from men's, see J. Daybell, "Women's Letters and Letter Writing in England, 1540-1603: An Introduction to the Issues of Authorship and Construction," *Shakespeare Studies* 27 (1999): 161- 86.

¹³⁰ On the prevalence of women petitioning as intercessors or brokers for others, see B. Harris, "Women and Politics in Early Tudor England," *Historical Journal* 32 (1990): 259-81 and S.J. Gunn, "A Letter of Jane, Duchess of Northumberland in 1553," *English Historical Review* 114 (1999): 1267-71.

¹³¹ *HMC Bath MS*, II, pp. 8-9.

¹³² They certainly did offer gendered excuses when facing arrest or trial; see for example, the recusant wives who responded that they could not be held liable for their actions because of the doctrine of *coverture*, HEH EL 2768, fols. 65r-v, and the women who similarly claimed that because of their diminished legal status they could not be tried for riot, discussed in J. Walter, "Grain riots and popular attitudes toward the law: Maldon and the crisis of 1629," in J. Brewer and J. Styles, eds., *An Ungovernable People* (London, 1980), pp. 48-49.

¹³³ BL Cot. MS. Caligula B. IX, fol. 408; SP 12/269, no. 67.

These were exceptions, however. Most petitioners for pardon acknowledged their guilt and that they deserved severe punishment. Even when they denied responsibility for the particular offence with which they were charged, petitioners admitted to a more amorphous wrongdoing and did not dispute the justice of their punishment.

Most offenders offered little more than a plea of general ignorance or lack of malicious intent in their own defence. Most, in fact, offered no tangible reasons for the sovereign to grant pardon other than their simple, abject submission. Unlike the French petitions studied by Natalie Zemon Davis, in which the offender had to craft a story that made the offence appear excusable by law, few English petitions offered any sort of narrative of the crime.¹³⁴ Instead, they concentrated on expressions of remorse. A willingness to admit wrongdoing and to display both penitence and contrition constituted the most fundamental characteristics of those who received pardon. Submission by no means guaranteed mercy, but it was a necessary precondition. Petitioners focused more on the form, tone, and language of humility than on any mitigating circumstances. They extolled mercy in general and the clemency of their sovereign in particular. The monks of Canterbury, for instance, began a petition to Henry VIII with an observation about the king's "most benign nature, much more inclined to mercy and pity than to the rigour of justice."¹³⁵ Sir Thomas Perrot, writing for his father's life, noted that "inasmuch as justice and mercy are the chief ornaments of an excellent prince, her Majesty having proceeded in the one, may now beautify herself with the other: with no doubt but God will reward in her Majesty and those that persuade her in so heavenly a work."¹³⁶

The petitioners emphasised their humility and submission in terms that sought to emulate the oral petitioning process. They referred repeatedly to postures of penitence and contrite tears. One man requested the council's intercession "most humbly with

¹³⁴ Davis, *Fiction in the Archives*.

¹³⁵ *Letters to Cromwell... on the Suppression of the Monasteries*, ed. G.H. Cook (London, 1965), p. 31.

¹³⁶ SP 12/242, no. 28.

tears and on my knees (if time and place served).¹³⁷ In 1595, Margaret Nevill requested mercy “most humbly with tears.”¹³⁸ In 1572, the Duke of Norfolk wrote for pardon “humbly on my knees... prostrate at your highness’ most gracious feet, hoping most in your Majesty’s most gracious clemency.”¹³⁹ Thomas Cromwell, who had in better days received many petitions for pardon, used the standard tropes in his own supplication and twice described himself as “prostrate at your Majesty’s feet.”¹⁴⁰

In humble terms, the offenders admitted their guilt and rightly acknowledged that their only hope lay in the grace of the king or queen. For instance, after the discovery of his plot to kill the queen, Anthony Babington acknowledged that “there can be no proportion betwixt the quality of my crime and any humane consideration” and suggested that pardoning a deed as heinous as his own would make her mercy seem all the more laudable to others: “so shall your divine mercy make your glory shine far above all other princes as these my most horrible practices are most detestable.”¹⁴¹ Sir Henry Nevill begged for pardon after his arrest for participating in Essex’s failed rising in 1601. He wrote: “I need not repeat the nature of my offence, neither do I mean to justify myself. I acknowledge a great fault, only I would be glad it might be conceived that there was more misfortune than malice in it... But I disclaim, as I said, all justification and appeal only to [the queen’s] princely mercy.”¹⁴² Lord Sandys hoped for pardon of the same offence and acknowledged, “my merit I must confess is nothing and my fault is in a high nature... for my offence against God and her majesty, I with sorrow and submission appeal to him and her highness for mercy.”¹⁴³

¹³⁷ SP 12/125, no. 7.

¹³⁸ BL Lansdowne 78, 11.

¹³⁹ Salisbury MS vol. 5, no. 70.

¹⁴⁰ Letters to Cromwell, pp. 254-55.

¹⁴¹ BL Lansdowne 49, 26.

¹⁴² Salisbury MS vol. 86, no. 37.

¹⁴³ Salisbury MS vol. 85, no. 111.

Lord Sandys' letter also demonstrated the conflation of crime and sin that shaped so many of the entreaties. Disobedience to royal authority equalled disobedience to divine dictate. The pirate John Calis "beseech[ed] the living God or his son Jesus Christ ...to forgive me my manifold offences against his divine Majesty and the Queen's Highness, craving herewith her Majesty's most gracious mercy and so doing I will by God's grace working within me so show myself in amendment."¹⁴⁴ In 1577, William Phayre bewailed "his wretched life and misbehaviours against god and my prince." Suspected of Catholicism, he carefully presented his request for forgiveness in Protestant terms: he emphasised that through the inward working of God's grace he had become a new man and hoped for his sovereign's grace as well.¹⁴⁵ Similarly, in 1572, the Duke of Norfolk had realised his need "to ask pardon...of almighty God and of your most excellent Majesty"; the first he had already requested and received, "and so by the grace of Him [would] continue with a new heart and full mind of amendment." He asked then for the queen's grace and promised therein to find the strength to live a better life.¹⁴⁶ These letters exalted the nature of royal authority by linking it so closely with the divine, and used understandings of divine grace and redemption to encourage pardon.

Any request for mercy implicitly recognised the superiority of the sovereign. The submission assuaged the royal honour, challenged by the offender's disobedience, and allowed the king or queen to pardon, if he or she so chose, without appearing to sanction the offence. With their admissions of guilt, such letters publicly acknowledged the justice of the verdict and hence the legitimacy of the authority that imposed it. Even if the petitioners denied committing the offence for which they faced imprisonment or death, their life of sin and disobedience rendered the sentence just. All petitioners carefully crafted their entreaties; some may well have felt none of the remorse and deference they

¹⁴⁴ SP 15/25, no. 60.

¹⁴⁵ Salisbury MS vol. 9, nos. 84-85.

¹⁴⁶ Salisbury MS vol. 6, no. 19.

claimed, but merely offered prudent external compliance.¹⁴⁷ Whether their expressions of sorrow and submission were genuine or contrived, the petitioners wrote what was both expected and necessary. They played the required role. Although some may have borrowed their words from letter writing manuals, even formulaic phrases remained meaningful.¹⁴⁸ The language of entreaty used by petitioners for pardon reaffirmed the hierarchical social order of deference and obedience that their misbehaviour had violated. The petitions of particularly notorious offenders sometimes found their way into print: Catholic conspirator Francis Throckmorton acknowledged himself justly condemned with “no further mean of defence but submission” and begged that the queen, “in imitation of God,” bestow upon him her accustomed gracious clemency. Elizabeth denied his request but allowed it a broad readership by releasing it to the compilers of Holinshed’s Chronicle.¹⁴⁹ Petitions shared the standard themes of the last dying words, or gallows speeches, studied by J.A. Sharpe.¹⁵⁰ They spoke to a much smaller audience, but still served to legitimise the authority of the Crown; the condemned hoped such petitions might save their lives and pre-empt the need for a death speech.

The need to limit executions and to select the best candidates for exemplary punishment ensured that the Tudors would pardon some offenders. Their decisions reflected perceptions that the full implementation of legal penalties did not represent a just response to all offences; considerations for the seriousness of the crime, for the motivations behind it, and for the character of the offender shaped the decision-making

¹⁴⁷ See V.A.C. Gattrell, The Hanging Tree: Execution and the English People, 1770-1868 (Oxford, 1994), pp. 213-15 for a critique of those who take the deferential statements of petitioners at face value. For a more general examination of the “hidden transcripts” and public words of the marginalised, see also J. C. Scott, Domination and the Arts of Resistance (New Haven, 1990).

¹⁴⁸ For one such manual, see Angel Day, The English Secretary, or Methods of Writing Epistles and Letters (London, 1599). Day collected exemplary letters for emulation by his writers. He offered no petitions for pardon, but gave much general advice on how to write effective letters of supplication. See also Robert Beale’s “Formulary for a Clerk of the Council” - a collection of model letters that included two sample petitions for pardon: BL Add MS 48150, fols. 76-78.

¹⁴⁹ Holinshed’s Chronicle, IV, pp. 543-44.

¹⁵⁰ J.A. Sharpe, “Last Dying Speeches: Religion, Ideology and Public Execution in Seventeenth-Century England,” Past and Present 107 (1985): 144-67. See also L.B. Smith, “English Treason Trials and Confessions in the Sixteenth Century,” Journal of the History of Ideas 15 (1954): 471-98.

process. Those who humbly repented, whose actions did not emanate from malice and who seemed likely to reform might have their punishment remitted. The same widespread social values Herrup found to have influenced jury decisions also guided decisions to pardon. People accepted lack of intent, youthful indiscretion, need, weakness, and remorse as grounds for pardon and might even expect a merciful response in such cases. Yet, in the sixteenth century, the correspondence of pardoning criteria with broad social values did not mean, as King has argued for a later period, that pardons failed to serve the interests of those in power. On one level, no matter how widely shared, the concerns behind some pardons reinforced discriminatory social constructions of youth and gender that strengthened particular groups of power holders. Women of all ages and young men found it in their interests to portray themselves as weak and lacking in rational self-control, depictions that legitimised the unequal distributions of power in early modern society. The humble submission of the petitioners, more generally, also heightened the legitimacy of the law and the Crown. Acts of apparent benevolence rather than rights to be demanded, pardons did not emerge from the uniform application of standard principles but remained contingent upon the discretion of the sovereign.

Processes and Patronage

Deferential repentance and mitigating circumstances alone failed to explain why one offender received pardon over another. Remorse, need, weakness, and lack of intent mattered little to a convicted offender if no one brought these things to the attention of the Crown. With few bureaucratised procedures for obtaining a pardon, offenders frequently had to find mediators. The hierarchical social structure of Tudor England, with its cultural codes of “good lordship” and reciprocal obligation, shaped many facets of life, including experiences of mercy and pardon. Turning to the processes involved in obtaining a pardon further clarifies the importance of mercy to elites and the Crown.

As Douglas Hay has argued for the eighteenth century, mercy formed part of the “currency of patronage.” Hay observed that contemporaries recognised the ability to

obtain a pardon to signify the importance of the great and the propertied. Beattie concurred, but based on his quantified analysis of the records, noted that political favour and influence resulted in only a small proportion of the pardons he studied. King, too, found that the intercession of a member of the elite was only slightly more likely to result in a pardon than the requests of those lower on the social scale.¹⁵¹ Evidence remaining from the Tudor period does not lend itself to quantification, but does suggest that pardons were more likely to be granted as favours to the intercessors than in later years. The mitigating characteristics of offences and offenders that shaped decisions to pardon coexisted with, and were sometimes subordinated to, the politics of patronage and reward. In some cases, the prestige or influence of the intercessor contributed to the decision to extend mercy.

At least since the publication of Wallace MacCaffrey's 1961 essay, "Place and Patronage in Elizabethan Politics," historians have acknowledged the ubiquity of patron-client relationships and notions of "good lordship" in the Tudor polity.¹⁵² Social interaction and political conduct were premised upon favour and reward and the exchange of gifts and obligations. MacCaffrey and A.G.R. Smith have shown that Elizabeth employed patronage to cement the loyalty of nobles and gentry; with no bureaucracy or standing army, the Crown needed the acquiescence and consent of local elites to rule. The judicious use of patronage helped secure their support and in turn helped them enhance their prestige and authority in their own communities.¹⁵³ The ability to obtain favour for one's dependants fostered local acknowledgement of one's

¹⁵¹ Hay, "Property, Authority and the Criminal Law," 46-9; Beattie, "The Cabinet and the Management of Death," p. 229; King, "Decision-Makers and Decision-Making," p. 49.

¹⁵² W. MacCaffrey, "Place and Patronage in Elizabethan Politics," in S.T. Bindoff et al, eds., Elizabethan Government and Society (London, 1961), pp. 95-126. Historians of the Stuart period have perhaps given more attention to the importance and prevalence of patronage; see P. Christianson, "The Causes of the English Revolution: A Reappraisal," Journal of British Studies 15 (1976): 40-75, and his more recent article for a brief review of the major works: "Politics, Patronage, and Conceptions of Governance in Early Stuart England: The Duke of Buckingham and His Supporters in the Parliament of 1628," Huntington Library Quarterly 60 (1998): 289-302.

¹⁵³ Ibid.; MacCaffrey, "Patronage and Politics under the Tudors," in L.L. Peck, ed., Mental World of the Jacobean Court (Cambridge, 1991), pp. 21-35 and A.G.R. Smith, The Government of Elizabethan England (London, 1967), pp. 37-69.

gentle status and “good lordship”; nobles and gentry based their claims to rule upon promises to protect and assist those beneath them in the social hierarchy and thus had to appear to do so.¹⁵⁴ The well-connected obtained for their dependants a vast range of economic and political resources, such as: military, ecclesiastical, household, and legal posts; leases; pensions; exemptions; and various other grants. Historians of the sixteenth century have traced the Crown’s attempt to consolidate its power by placing itself at the apex of networks of reward that had formerly focused on the nobility. After a brief decline under Henry VII, the nobility resumed a position of influence in the politics of favour and reward; nevertheless, the Crown placed itself at the summit of noble networks and created its own affinity in the localities.

David Starkey has shown that throughout the various institutional realignments of the period, politics remained a matter of personal relationships.¹⁵⁵ Barbara Harris has recently argued that histories of the period must recognise the interdependence of the bureaucratic and the personal, of governance and politics. She has shown, furthermore, that “aristocratic women were actively and persistently involved in politics, when politics are properly defined to include pursuit of the king’s favour and influence at court”: the Crown relied on the women of the elite as well as the men to create the networks it needed to rule in the countryside.¹⁵⁶ In a polity predicated upon personal relationships and hierarchical ties of obligation, it should come as no surprise that the receipt of a pardon often relied upon the favour and support of those better situated on the social hierarchy.

¹⁵⁴ See G.W. Bernard, *The Power of the Early Tudor Nobility* (Brighton, 1985), pp. 197, 203-7; F. Heal and C. Holmes, *The Gentry in England and Wales, 1500-1700* (London, 1994), pp. 19, 276.

¹⁵⁵ See especially Starkey’s essays in Starkey et al, eds., *The English Court from the Wars of the Roses to the English Civil War* (London, 1987), pp. 1-24, 71-118 and “Court and Government” in Starkey and C. Coleman, eds., *Revolution Reassessed* (Oxford, 1986), pp. 29-58.

¹⁵⁶ B. Harris, “The View from My Lady’s Chamber: New Perspectives on the Early Tudor Monarchy,” *Huntington Library Quarterly* 60 (1999): 215-47, quote at p. 220 and see also her “Women and Politics in Early Tudor England,” pp. 259-81. She noted that studies that view politics and governance as intertwined will more easily link with those of medievalists who, following in the tradition of K.B. MacFarlane, have long looked at the links between “good lordship” and governance.

Save for those personally recommended by a trial judge or those whose offences merited a pardon *de cursu*, there existed no standardised route to the royal ear. If allowed release upon bail or if not yet arrested, an offender might make his or her own personal suit to the Crown. If already condemned to death, the offender first had to acquire a reprieve, as executions generally occurred immediately after the sentencing. Even if the judges did not see sufficient cause for mercy to recommend the individual's pardon themselves, they often saw no harm in remanding the offender to gaol to allow time for a private petition. If the judge showed no sign of suspending the sentence, offenders or their friends might beg him to change his mind; in his letters to Burghley, London's Recorder Fleetwood often mentioned the importunity of the condemned. In one letter he noted that with the next court date some time away, he and his fellow judges were enjoying a quiet time: at the moment, they were "not troubled with letters, neither for the reprieve of this prisoner nor for sparing of that fray-maker."¹⁵⁷ If straightforward pleas did not work, cash might. Fleetwood observed that "it is grown for a trade now in the court to make means for reprieves; twenty pounds for a reprieve is nothing, although it be for a mere ten days."¹⁵⁸ Another writer complained that "for some 40s or 3 pounds," the clerks and servants of judges often encouraged their masters to reprieve the condemned.¹⁵⁹

Offenders sometimes turned to the help of family members. Those in gaol, unable to write or to command sufficient attention to their letters, obviously needed outside assistance. Some of the pardon documents included the identity of the intercessor. Of 120 Elizabethan pardons that noted a familial relationship between the petitioner and the offender, nearly half came at the suit of a wife. Mothers and fathers each received mention in thirteen percent of these pardons; sisters, brothers, unidentified kinsmen, husbands, sons, and one aunt followed them in frequency. The offender or

¹⁵⁷ BL Lansdowne MS 20, 8.

¹⁵⁸ BL Lansdowne MS 44, 38.

¹⁵⁹ BL Lansdowne MS 49, 29.

family member might head for the court, hoping to make a petition directly to the sovereign or to the royal councillors. For instance, Yorkshire glazier William Johns travelled to Elizabeth's court at Richmond, gained the queen's attention, confessed to stealing four horses and received his pardon.¹⁶⁰ When the Tudors appeared in public, people frequently presented to them petitions of every sort. One German visitor in the latter part of Elizabeth's reign observed that one Sunday when the queen walked to the chapel at Hampton Court, people thronged the route and fell on their knees whereupon "she showed herself very gracious and accepted with an humble mien letters of supplication from rich and poor."¹⁶¹ Another German, visiting the court at Greenwich in 1598, noted that suitors crowded the queen's antechapel where "petitions were presented to her, and she received them most graciously, which occasioned the acclamation of 'Long live Queen Elizabeth!' She answered it with 'I thank you good people.'"¹⁶²

Throughout the period, petitioners flocked to the court hoping for access to the public or semi-public areas where, if they did not see the sovereign, they might at least find someone who stood a better chance of doing so. Henry VII added to the bipartite medieval court, which consisted of the public Household and semi-public Chamber, a third and more private set of rooms: the Privy Chamber.¹⁶³ Petitioners approached the people who served in any of these three departments to advance their suits; the patent rolls recorded, for instance, pardons given at the request of the page of the bottles, the clerk of the spicery, and the groom of the stables. Gentlemen, yeomen, and ladies of the Privy Chamber also appeared frequently on the rolls as successful suitors; serving in the private apartments, they had the best chance of finding a propitious moment to present a

¹⁶⁰ C 66/1177, m. 30.

¹⁶¹ "Journey through England and Scotland Made by Lupold von Wedel in the Years 1584 and 1585," trans. G. von Bulow, *Transactions of the Royal Historical Society* n.s., 9 (1895): 250.

¹⁶² Quoted in Smith, *Government of Elizabethan England*, p. 2.

¹⁶³ On this transformation, see Starkey, *The English Court*, pp. 1-24, 71-118.

petition to the sovereign. The power of the grooms of the Privy Chamber to determine who received favour reached its peak between September 1545 and January 1547, when the king allowed two of them to authorise grants with a stamped facsimile of his signature.¹⁶⁴ Petitioners also approached royal councillors or their secretaries for help; under Henry VII the members of the Council Learned and in later years the privy councillors channelled suits to the Crown.¹⁶⁵ Others sought the intercession of the royal consorts and members of their courts as they, too, enjoyed frequent access to the sovereign. Henry VIII claimed Anne Boleyn had convinced him to pardon various participants in the Elizabeth Barton affair; when requesting his own forgiveness, John Musarde noted that Anne “hath the name to be as a mediatrix betwixt your Grace and high justice.”¹⁶⁶ Catherine Howard petitioned the king to pardon three men linked to the Botolf plot; a short time later she obtained mercy for a Lincolnshire woman convicted of felony.¹⁶⁷ Philip of Spain, the only male royal consort of the Tudor period, also responded to requests for his assistance periodically throughout his marriage to Queen Mary.¹⁶⁸

¹⁶⁴ They kept a register of the bills so authorised for the king to check at the end of each month. See SP 4/1, which noted the grant of some 80 pardons. The number of pardons given in 1546, the only full year in which the stamp was in use, was significantly higher than it had been in previous years, suggesting that the innovation greatly eased the authorisation of grants.

¹⁶⁵ See M. Condon, “Ruling Elites in the Reign of Henry VII,” in C. Ross, ed., *Patronage, Pedigree and Power in Later Medieval England* (Gloucester, 1979), p. 134; A.G.R. Smith, *Servant of the Cecils: The Life of Sir Michael Hicks, 1543-1612* (London, 1977), pp. 51-80; A.J. Slavin, *Politics and Profit: A Study of Sir Ralph Sadler, 1507-1547* (Cambridge, 1966), pp. 46-67.

¹⁶⁶ 25 Henry VIII, c. 12; SP 1/95, f. 55 (*L&P IX*, no. 52.)

¹⁶⁷ C 66/ 706, m. 38; C 66/ 709, m. 10; *CSP Spanish*, VI, i, p. 314.

¹⁶⁸ Pardons issued jointly in both their names, yet Mary alone decided who received mercy and who did not. Indeed, Philip may have valued his ability to intercede for pardon more highly than did the queens consort; unlike them, he received no dower lands or annuities from his marriage with which to foster clientage networks. He had to provide pensions from his own, foreign revenues. As D.M. Loades has noted, the pardon constituted the one area in which his marriage did provide resources for reward and influence: he repeatedly interceded for and secured the pardon of various offenders in an attempt to recruit “serviceable men.” Loades, “Philip II and the Government of England,” in C. Cross et al, eds., *Law and Government under the Tudors* (Cambridge, 1988), p. 181. See also SP 11/9, no. 10 for the council’s report of the queen’s response to some of his suits for pardon.

In the latter portion of Elizabeth's reign, the privy council periodically tried to restrict the numbers of petitioners gaining entry to the court and to impose order on those who did. They directed that each suitor first declare his or her name and abode to a porter and obtain a license to enter from a member of the council or one of the Masters of Requests. Furthermore, they ordered that suitors present their petitions to a Master of Requests or Clerk of the Council and have him endorse the written bill and annotate it with his opinion of its contents.¹⁶⁹ If these men deemed the petition worthy, they had it taken to the queen's attorney and solicitor for vetting, a common step since the middle of the century. If the offender had already been indicted or condemned, one of these officials usually wrote to the judges involved in the case for their assessment. If nothing emerged to hinder the pardon, the Master of Requests or some other household official then procured the queen's signature.¹⁷⁰ This new procedure represented a step toward bureaucratising favour, but did not manage to supplant other modes of approaching the queen.

Petitioners often needed help gaining the attention or favourable opinion of the various officials on this convoluted route to the royal ear or, indeed, to circumvent as much of it as possible. They frequently sought a letter of introduction or a petition on their behalf from a local grandee; those who found a trip to court impossible sometimes asked someone better connected than themselves to do the petitioning for them. When Hugh Park set off to court in 1550 to sue for his pardon for homicide, for instance, his cousin wrote to the Earl of Rutland noting that as Park had "small acquaintance, I pray you to write for him to the lords."¹⁷¹ When seeking a pardon for his brother in 1569,

¹⁶⁹ "A commandment that no suitors come to the Court for any private suit except their petitions be endorsed by the masters of Requests," STC 8239; "A proclamation to reform the disorder in access to the court," STC 8233.

¹⁷⁰ See the one Signet Office docket book extant from the Elizabeth's reign, SO 3/1 (1585-1597), which lists those who "subscribed" and "procured" the pardons and various other grants. Dr. Valentine Dale, one of the Masters of Requests, appeared to be the most frequent procurer of the grants. For a discussion of the docket books and the window they open onto Jacobean patronage, see L.L. Peck, *Court Patronage and Corruption in Early Stuart England* (Boston, 1990), pp. 40-42.

¹⁷¹ *HMC, 12th Report, App. 4: Rutland Manuscripts*, pp. 56-57.

Michael Shafto obtained the assistance of Sir Henry Percy, who in turn wrote to the Earl of Sussex.¹⁷² Throughout the period, members of the political and social elite showed themselves willing to assume the tasks of intercession and mediation. Nobles, local gentry, urban oligarchs, royal officials, members of the privy chamber, and household staff regularly advanced suits for pardon, either at the humble suit of the offender or on their own initiative.

These intercessors displayed in their actions and words a range of motivations and justifications, all of which involved some form of exchange. They might hope for the enhanced prestige that came from making successful suits on behalf of their inferiors, or for a more tangible reward, as well. Pity, paternalist concern, and their assessments of the mitigating circumstances surrounding a crime manifested themselves in many mediators' acts; sometimes, crass self-interest prompted intercession. The social status of many intercessors ensured that they not only had a greater chance of gaining the attention of those nearest the Crown, but also of having their representation of the offence believed. The petitions of members of the elite revealed their writers' awareness of the duties attendant upon their position in the social hierarchy. There seems, for instance, no reason to doubt that Sir William Sandys acted from pity and a desire to gain the favour of the local population when he asked Wolsey to obtain the king's pardon for Harry Ledar, "a poor miserable man" in a Calais prison. Sandys noted that a recent pardon for three poor men had prompted "the continual, universal, and hearty prayers of all people in these parts"; trusting that the locals would again display similar gratitude, he requested a further act of mercy for Ledar. Sandys claimed that while Ledar had offended, "his offences be not so grievous as in the beginning they were alleged." Sandys clarified that this constituted his first intercession for a pardon; he had not depleted his credit by frequent suits, nor had he shown himself overly susceptible to appeals. He asserted that "only very mere pity moves me thereunto."¹⁷³ Sandys expected

¹⁷² BL Cottonian MS Caligula B. IX, 408.

¹⁷³ SP 1/19, fol. 107 (L&P III, i, 517)

no tangible reward for his intervention other than the honour due to a man who had obtained the king's favour and helped someone in a position of need.

Others responded to appeals that they play the part of a "good lord" or "good lady." Much of the voluminous correspondence of Lord and Lady Lisle from the early 1530s has survived to allow insight into the politics of pardons and patronage. Amidst all the negotiations for positions, preferment, and privileges, Lord Lisle, the deputy of Calais, advanced both the suits of those serving in the garrison town and those of his servants home in England. His agent at court and other acquaintances kept him apprised of various cases requiring his attention. John Husec reported that "Mr. Hastings is in prison here upon a statute. He desireth your lordship to be good lord unto him... Surely the gentleman is very ill and cruelly handled."¹⁷⁴ Another letter of 5 July 1539 informed Lisle that a former servant, John Harrys, had been arrested the previous day "and is likely to suffer at this first assize, except it please your lordship to be so good lord unto him as to write unto my Lord Chief Baron that he may be reprieved it for this time. And in the mean space he trusteth through your good lordship and other of his friends to obtain his pardon."¹⁷⁵ Later that month, Harrys wrote two letters to Lady Lisle asking for the help she could provide in her own right and that she secure her husband's intervention as well: "I desire your ladyship for to help me now in the honour of Christ's passion. If that I may have my life at this time I will spend my life and my living that my father left me in your service." Without their intervention, he thought himself likely to die within the month. "Madame, be good to me at this time or else I am like to die... [I] desire your ladyship to desire my lord to help me with speed."¹⁷⁶ Harrys had served Lord Lisle in Calais and also, it seems, had been attached to the households of Lady Lisle's parents and first husband. She wrote to Anne Basset, a daughter from her previous marriage and a

¹⁷⁴ *The Lisle Letters*, ed. Muriel St. Clare Byrne (Chicago, 1981, 6 vols.), II, no. 929.

¹⁷⁵ *Ibid.*, V, no. 1510.

¹⁷⁶ *Ibid.*, V, nos. 1511, 1512. See Harris, "The View from My Lady's Chamber," p. 233, where she noted that the "normative aristocratic political unit was a couple rather than an individual."

lady of the queen's privy chamber, asking her to present Harrys' case to the king. Basset regretfully informed her mother that she had left the court, but promised to do her best to find someone to speak to the king.

The Lises acted on behalf of these and other supplicants, employing their range of connections and using their good name to secure attention to the plight of those who looked to them for protection. A fundamental duty of lordship, such intervention rewarded those who had provided faithful service. Concern for mitigating circumstances may have played a role in the Lises' decisions to intercede, but seemed secondary at best to paternalist concerns and their desires to appear a "good lord" or "good lady." Sandys, the Lises and other elite intercessors acted from a varied range of motives. In these cases, the offenders clearly needed the help of mediators to bring their cases to the attention of the Crown. Harry Ledar and Mr. Hastings, rotting away in their respective prisons, and John Harrys, in gaol awaiting an imminent trial and execution, required the intervention of someone more powerful than themselves. They could not depend on bureaucratic procedures to weigh the merits of their pleas for mercy, but had to rely upon the hierarchical bonds of deference and duty. The Lises and Sandys cemented their personal networks of obligation and reward, and gained the prestige that came from the perception that they performed the duties of lordship and had the ability to find favour with their king. Pardons provided them with a further arena in which to display their benevolence and power.

Supplicants added to their pledges of gratitude and loyal service promises to pray for their benefactors. As the patrons interceded for them with the sovereign, so too would they intercede for the patrons with God; as Felicity Heal has noted, the prayers of the needy had a special potency and thus constituted valuable rewards.¹⁷⁷ Some patrons, however, expected a more tangible gift in exchange for their services. John Bedell thought he needed to offer something more than promises of prayer and loyal service to

¹⁷⁷ F. Heal, "Reciprocity and Exchange in the Late-Medieval Household," in R.G. Asch and A.M. Birke, eds., *Princes, Patronage and the Nobility: The Court at the Beginning of the Modern Age, c. 1450-1650* (Oxford, 1991), p. 181.

secure his pardon. In a moving letter to his wife, Bedell counselled her to approach Queen Mary's Mistress of the Robes: "move [Susan] Clarencieux for me and be a suitor to the council. Give Mrs Clarencieux my fine cloth, though it be all that you have, for if God pleases I may have my pardon thereby; we are yet young enough to labour truly for more good."¹⁷⁸ Tokens or *douceurs* acted as lubricants of Tudor social and political interaction. Contemporaries considered such exchanges legitimate, only labelling them bribes if they unduly influenced the recipient's course of action or seemed too crassly a payment for service.¹⁷⁹ Gifts both created and recognised a reciprocal obligation; they also served to remind the recipient of the donor's gratitude, good will, and deference. Wolsey had received many gifts when he channelled petitions to the king; when seeking his own pardon, he turned to Henry Norris, the groom of the stool and head of the Privy Chamber. He knelt in the mud before Norris, frantically tore off his cap and presented him with the gold chain and cross he had long worn about his neck. He assured Norris that

although it seem but small in value, yet I would not gladly have departed with it for the value of a thousand pounds. Therefore I beseech you take it in gree [ic: good will] and wear it about your neck for my sake. And as often as you shall happen to look upon it, have me in remembrance unto the king's majesty as opportunity shall serve you; unto whose highness and clemency I desire you to have me most lowly commended.

He also asked Norris to convey to the king himself a rather surprising token: Wolsey's poor fool, whose anger at the exchange necessitated a guard of six men to take him to court.¹⁸⁰

Just as some supplicants gave their patrons gifts, so too did the patrons provide their court connections and brokers with *douceurs*. When trying to arrange a pardon for Adrian Skell, Lord Lisle's London agent, John Husee, secured an interview with the king

¹⁷⁸ SP 11/7, no. 57. For another request that Susan Clarencieux move the queen to pardon, see Gunn, "A Letter of Jane, Duchess of Northumberland, in 1553," pp. 1267-71.

¹⁷⁹ Slavin, *Politics and Profit*, pp. 178-84.

¹⁸⁰ George Cavendish, *The Life and Death of Cardinal Wolsey*, ed. R.S. Sylvester and D.P. Harding, (New Haven, 1962), pp. 105-7.

with Henry Norris' help. Husee told Lisle that Norris had expressed his gratitude for the fine falcon Lisle had sent him the previous year - perhaps a hint that he would also welcome another gift.¹⁸¹ Certainly, Husee thought Norris deserving of thanks for his assistance in this and other matters and noted that "your lordship is as much bound [to Norris] as to any friend you have on this side the seas." Norris appeared frequently in the correspondence, promising to "spy a time" to present the king with Lisle's various requests for favours and grants. Lisle rewarded his friend at court with expressions of gratitude and a second falcon.¹⁸²

Lisle's suit for the pardon of Adrian Skell illustrated other, more mercenary motives that prompted some patrons' decisions to intercede. Skell, a foreign husbandman living in Calais, stopped for a drink early in the evening of 15 July 1535. He had already consumed a few pots of beer when he offered one to John Ansley, an Englishman sitting nearby. Ansley contemptuously refused to drink "with no such Fleming or Picard." Skell seized his staff; Ansley drew his sword. Within moments, Ansley lay dead on the ground and Skell stood facing the possibility of his own imminent death on the gallows. Five months later, however, Henry VIII signed a warrant to pardon Skell.¹⁸³ Skell's story bears recounting at length: the extant records provide few details for most cases of this nature, but the five months between Skell's crime and pardon produced a flurry of letters that have survived to illustrate the processes and contingencies that prompted this particular royal act of grace.

Immediately after the killing, Lord Lisle wrote to John Husee not to arrange for Skell's pardon, but for a grant of the goods Skell would forfeit upon his conviction. Lisle also wrote to the king's Secretary to request the property, but the letter went missing, perhaps intercepted by a servant of Lord Edmund Howard, who also hoped to receive

¹⁸¹ Lisle Letters, II, no. 483.

¹⁸² Ibid., II, nos. 483, 493.

¹⁸³ C 82/705 (2), reprinted in Lisle Letters, II, p. 672.

the forfeiture.¹⁸⁴ Husee informed Lisle that “the forfeiture of Skell’s goods, unless your lordship may have his life withall, will be to no purpose.”¹⁸⁵ The customs of Calais saved two thirds of the property of an executed convict for his dependants and only one third went to the king. Perhaps some of Skell’s property was entailed to pass directly to his heirs or maybe his friends and family had expressed a willingness to pay more for his pardon than anyone would receive from his execution. Whatever his reasoning, Husee convinced Lisle that Skell was more valuable alive than dead and they began a suit for his pardon.

The Lord Comptroller also became interested, but his agent failed to secure the pardon. Lord Howard received Skell’s forfeitures, through the mediation of Anne Boleyn and the Duke of Norfolk, his niece and brother respectively. Estimates of their worth ranged from one to two hundred marks, yet more remained.¹⁸⁶ Although Husee continued to solicit the Secretary, nothing further occurred until November.¹⁸⁷ Finally, with Norris’ help, Husee obtained an audience with the king. When Henry enquired about the nature of the killing, Husee assured him that it had occurred during a drunken fray. The king assented to a pardon, but for life only as Howard had already secured the goods. Henry expressed his hope that Lisle would receive £100 for his effort; he thought the pardon worth at least that much, “for diverse hath moved for the same and have been denied.” When recounting his interview to Lisle, Husee concurred: “unless your lordship may have a good reward, after my simple opinion it is not to be dealt withall.” He enthused furthermore that the “king’s Highness never favoured your lordship better than he now do and is right well pleased with your lordship’s service.”

¹⁸⁴ See *Lisle Letters*, II, pp. 529-530 for this speculation. Howard’s servant “Buck” had at other times carried Lisle’s letters to and from England and may have been the messenger on this occasion as well. Husee certainly thought the letter’s disappearance suspicious.

¹⁸⁵ *Ibid.*, II, no. 420.

¹⁸⁶ *Ibid.*, II, no. 428.

¹⁸⁷ *Ibid.*, II, no. 430.

Having received the king's assent, Husee then required documentation of Skell's case: copies of the coroner's inquest and the indictment, details of his forfeitures, and a list of all the names Skell used and of the places he had lived. The validity of the pardon required full accuracy. Upon receipt of these materials, Husee had the Chancery clerks draw up a bill for the king's signature. He obtained this, again with Norris' help; the latter took the occasion to counsel Lisle to stop asking for favours so small as criminals' forfeitures: "sue for nothing but that it be worth the asking" for frequent petty requests diminished the lord's credit to little avail. The signed bill then passed through the various sealing offices and finally, on 20 December, Husee despatched Skell's pardon.¹⁸⁸ Skell ended the month a free if impoverished man. By granting Lisle the pardon that he had refused to others, the king demonstrated his respect and favour and thus publicly signified Lisle's influence and prestige. He also used one man's crime to provide financial rewards for two of his lords: he gave Howard a direct grant of the forfeitures and used the pardon to provide Lisle with a boon that cost the royal coffers nothing. What financial benefits Lisle received in return for mobilising his court connections and employing his store of credit with the king is unclear, but money rather than pity clearly motivated his suit.¹⁸⁹

Similarly, in 1595, Anthony Bacon intervened for Robert Booth's pardon not from paternalist concern but from a desire for financial gain. The Star Chamber judges sentenced Booth to heavy fines, time in gaol, and the loss of his ears. Bacon took up his cause upon promise of £100 and a bond for £500. Bacon asked his agent at court, Anthony Standen, to obtain the assistance of Lady Edmondess, one of the ladies of the privy chamber.¹⁹⁰ Unlike Norris with his falcons and gold chain, Lady Edmondess

¹⁸⁸ *Ibid.*, II, nos. 498, 501, 505.

¹⁸⁹ *Ibid.*, II, p. 506; III, no. 689; IV, no. 929. Skell was freed, but not yet finished with the matter. Royal pardons absolved their recipients only of their debt to the Crown; the victim's family retained the right to bring its own case, and John Ansley's brother demanded redress. Thomas Ansley travelled to Calais to launch his appeal; ironically, one of his acquaintances wrote to Lisle asking him "to be [a] good lord" unto the man. Ansley, however, did not receive Lisle's support and in February 1537 his case was quashed on a technicality.

¹⁹⁰ Lambeth Palace Library (LPL), Bacon MS 654, no. 2, f. 3. (from copies at the HEH). This case is discussed in both Pam Wright, "A Change in Direction: The Ramifications of a Female Household, 1558-

wanted more than a token gift in recognition of her services. Like Bacon, she professed herself willing to help upon payment, and proved a shrewd negotiator. She told Standen that the Lord Chamberlain had no love for Booth or pity for his offence and would stymie any suit for his pardon; later, she told Standen that the Chamberlain was “for her sake willing to relent, but withall did advertise her that if she made not the suit worth to her a thousand pounds she was unwise, assuring her that if she handled it well it would be no less available to her.” Standen informed Bacon of Edmondess’ demands for more money; she had informed him that “she must make an express suit thereof to her Majesty and therein plead her ancient and long service...and that the manner of the queen is to ask what the suit will be worth, so that naming £100, which is the sum I offered her, she says that the queen will not be moved with it, for so small a matter to employ her credit and forces she will not.” By Edmondess’ representation, Elizabeth used suits for pardon to provide cash rewards to her favourites without any cost to herself, much as Henry VIII had done with Skell’s pardon. Standen suspected that Edmondess’ demands resembled those of the Paris shop keepers, “who in the end sell their wares for half.” Even halved, however, the payment she expected threatened to consume whatever profit Bacon had hoped to make from the transaction. Bacon and Standen had little choice but to continue negotiating with her, as the Lord Keeper plainly “desires this water to be brought to her mill” and Edmondess herself promised to defeat any suit for Booth’s pardon brought by another.¹⁹¹ When Edmondess presented her suit to the queen, Elizabeth responded that she had already promised the fine to someone else, but agreed to pardon the other parts of Booth’s sentence. In the end, Lady Edmondess settled for £200, half for payment immediately and the rest within six months.¹⁹²

1603,” in Starkey, ed., *The English Court*, pp. 162-63 and C.I. Merton, “The Women Who Served Queen Mary and Queen Elizabeth: Ladies, Gentlewomen and Maids of the Privy Chamber, 1553-1603,” Cambridge D.Phil., 1992, pp. 176-78.

¹⁹¹ LPL Bacon MS 652, fols. 312-13; 654, no. 1, f. 1.

¹⁹² LPL Bacon MS 654, no. 68, f. 108.

The negotiations for the pardons of Adrian Skell and Robert Booth both noted a source of patronage that has yet received little attention: the financial proceeds of justice.¹⁹³ Petitioners sued for and obtained the forfeitures of the condemned and the fines ordered by the courts. At least one commentator thought this a dangerous practice leading to over-hasty convictions from a desire for the convicts' property: "no doubt, the riches of men has helped many an honest man to his death, by the covetousness of the officers that farm such things of the king."¹⁹⁴ As seen with the pardons for Booth and Skell, the use of judicial revenues as rewards sometimes impinged upon suits for pardon and their success. Laurence Smith's request that Queen Elizabeth recognise his past service also demonstrated a callous pragmatism: he wanted a lease of all the lands and tenements she received upon Rowland Cole's burglary conviction. The lands promised a yearly revenue of £60. Upon Cole's conviction, the lands forfeited to the queen, but upon his execution they would pass directly to his heirs because of an entail. Therefore, Smith asked the queen "to grant unto him your gracious pardon for the life of the said Rowland Cole, in respect that the lands of Cole is supposed for to be entailed, whereby your Majesty nor any other by your Highness' grant cannot receive any longer benefit of the said lands than during the life of the said Rowland Cole."¹⁹⁵ Smith did not want the pardon from pity or even because he hoped to exact payment from Cole and his family for his services; he wanted the queen to save Cole from the gallows only because the convict's lands would otherwise be unavailable for forfeiture. While ultimately unsuccessful, this request revealed a remarkably mercenary motivation that might prompt suits for pardon.¹⁹⁶

¹⁹³ MacCaffrey, "Place and Patronage in Elizabethan Politics," p. 117 did note that the goods and lands forfeited by recusants were frequently the objects of suitors' attention, but the subject deserves sustained attention to determine what effects, if any, it had on the practise of the law.

¹⁹⁴ Henry Brinklow, *The Complaint of Roderick Mors*, ed. J.M. Cowper, Early English Text Society, e.s. vol. 22 (London, 1874; reprinted 1975), p. 14. See also the signed bill for the pardon of Joan Burleton, deemed innocent of poisoning her husband after being indicted "by certain malicious gentlemen (in order to obtain her goods and tenures)." *L&P* IV, i, no. 137.19.

¹⁹⁵ Salisbury MS, P. 820.

¹⁹⁶ In the end, Cole did receive his pardon, but at the suit of Richard Baylies, one of the people he had burgled. Baylies' suit was also motivated by financial considerations, but perhaps less callously so than

Nor did the Tudors use convictions and pardons to provide financial rewards only to their servants; they showed a willingness to trade mercy for their own financial gain. When William Lord Dacres offered Henry VIII £10,000 for his pardon, or when Mary and Elizabeth each exacted large payments for pardoning the richer participants in the Wyatt and Essex risings, they could pretend that the money constituted a fine in lieu of full punishment rather than a purchase price. Queen Catherine Parr and her regency council attempted no such pretence when they suggested that Henry pardon two Gypsies convicted of felony who had offered £300 for their lives; they forwarded the suit “to the intent this money might be had, which we thought hard to attain by any other means.”¹⁹⁷ One man, indeed, saw nothing wrong with selling pardons and with labelling such transactions as merciful: he counselled that if Henry VIII wanted to “be rich, let him follow the trade of his noble and wise father, . . . the Second Solomon, who enhanced his riches by wisdom, mercy, and good policy, for if a man had deserved death . . . he might have his pardon for money.”¹⁹⁸ The ability to pay for a pardon usually did not suffice to prompt the grant, but it certainly helped in many a case.

When pardoning Adrian Skell, Henry VIII enquired about the nature of the offence; both considerations for the mitigating circumstances and a desire to reward Lord Lisle shaped his decision to pardon. The patent roll entries suggested that many pardons emerged from a similar combination of motives. When Henry Neville, Lord Burgavenny, struck the Earl of Oxford in the presence of King Edward, he risked losing his right hand as a punishment. According to the text of his pardon, the king had granted mercy both because of Neville’s youth and because other lords had humbly pled for the same.¹⁹⁹

Cuthbert Williamson received Queen Elizabeth’s pardon for a series of thefts partly

Smith’s request. The burglary had led to the “utter impoverishment” of Baylies, his wife and ten children. With the connivance of the local authorities, the parents and friends of Cole made an agreement with Baylies that if he obtained Cole’s pardon, they would reimburse the poor man the value of his stolen property. CPR Elizabeth I, VII, p. 218.

¹⁹⁷ SP 1/ 192, fols. 51, 53. (L&P XIX, ii, no. 207.)

¹⁹⁸ SP 1/ 112, fol. 115 (L&P XI, no. 1244.)

¹⁹⁹ CPR Edward VI, IV, p. 322.

because he had expressed his penitence and revealed his accomplices, but perhaps more importantly because the Bishop of Durham had interceded for him.²⁰⁰ Some of the petitions written by members of the elite explicitly appealed to this duality of motivation. When the Earl of Sussex interceded with William Cecil on behalf of Anthony Hamner, for instance, he carefully described the accidental nature of Hamner's crime, but noted also that if Cecil obtained the queen's pardon, "her Majesty shall show me great favour, and you do me great pleasure."²⁰¹ For other pardons, the desire to reward superseded concern for mitigating circumstances. The pardon Lady Edmondes acquired for Robert Booth provided one example. So, too, did the privy councillors' response when in 1551, the French ambassador requested lenience for a group of Scots arrested as pirates. The councillors granted his wish and reprieved thirteen of the men. They professed their willingness to have two or three of the others pardoned if the ambassador should so wish, as his "honest and gentle behaviour deserved favour at the King's Majesty's hands."²⁰²

Contemporaries accepted pardons granted either wholly or in part because of the request of an intercessor as legitimate uses of the prerogative. Mediators were not just important in bringing cases to the Crown's attention – they did not just remedy a gap in bureaucratic procedures. Rather, their intervention and humble requests formed part of the cultural protocol for pardon. Their intercession and the sovereigns' often calculated responses were not hidden secrets but openly acknowledged. Broadly shared ideals of justice and lenience were not the only cultural values that shaped perceptions of the pardon. Granting mercy at the request of a powerful intermediary did not constitute corruption; rather, it fulfilled broader expectations of royal beneficence and of lordly duty.

²⁰⁰ C66/ 1413, m. 11.

²⁰¹ SP 15/14, no. 86.

²⁰² *APC*, iii, p. 234.

At the same time, King correctly indicated that public conceptions of the proper applications of mercy imposed restrictions on the use of the pardon.²⁰³ People could both demand and oppose particular grants. Some might criticise pardons given solely as rewards to the intercessor if the money motive dominated. In 1594, for instance, when Lady Skudamore obtained a pardon for the man who libelled Sir William Cornwallis' daughter, Cornwallis wrote to William Cecil in a fury. His long years of service apparently counted for little when one of the queen's ladies stood a chance to turn a profit: "if it had been [the queen's] own humour to pardon him, my heart is a subject to hers; but when it is wrought by a base fellow for such a base respect as lending money or given some £60 or 100 marks, by such a brazen faced woman...I cannot choose, Sir, but complain."²⁰⁴ While the Tudors offered some of their pardons primarily from a desire to reward and show favour, they could not with impunity give them too frequently to egregious offenders who lacked the accepted mitigating characteristics. While juries welcomed, even requested mercy for some of the people that overwhelming evidence forced them to convict, they condemned others because they thought death the best response. In 1535, for example, Lord Lisle solicited a pardon for one of his servants. The king consented, but before the pardon passed, he happened to travel through an area in which the offender was known, whereupon "there was a great exclamation made to the king against him." The council assembled an impromptu jury, who deposed that he "is an arrant old thief, and has been five times indicted, some for stealing of cattle, some for horse and diverse by the highway, and once in a man's house"; he had, furthermore, already enjoyed the benefits of a previous pardon thanks to the efforts of a royal guardsman. It seems he did not receive a second.²⁰⁵

At some point during the sixteenth century, it became standard practise to send petitions to the appropriate trial judge before final assent. Mary did so at least on

²⁰³ King, "Decision-Makers," p. 57.

²⁰⁴ Salisbury MS vol. 29, no. 21.

²⁰⁵ Lisle Letters, II, no. 426.

occasion and in 1566, the Commons' Speaker (and Chief Justice) Christopher Wray praised Elizabeth for she had not "pardoned any without the advice of such before whom for offenders have been arraigned and the cause heard."²⁰⁶ When asked for information on John Hollingshed after his wife had petitioned the queen for mercy in 1580, the Mayor of London offered no explicit advice but described Hollingshed as a "common and notorious thief" who had already claimed benefit of clergy for a previous offence.²⁰⁷ Justice Fenner more vehemently counselled against a pardon for William Jeames, convicted of infanticide. He acknowledged a lack of direct evidence, but concluded: "I humbly desire your honours to spare me in setting to his pardon my hand [for I] should do it against my conscience."²⁰⁸ Negative reports could outweigh even elite intervention; in 1562, when William Cecil responded to Sir Thomas Smith's request for three pardons, he expressed his doubt "that that of Molyneux shall be obtained, and indeed I cannot favour it, for he is one of the notablest thieves in England."²⁰⁹ These judges' reports perhaps reduced the chance that a pardon might offend public norms.

Hay described the eighteenth century pardon as a political as well as judicial instrument, manipulated by the elites who traded mercy for deference. King disagreed, and may well be correct. Public perceptions of the proper uses of the pardon did impose certain limitations, as King suggested, yet the norms of sixteenth-century political culture differed greatly from those of later centuries. In the Tudor period, pardons most often served the interests of the Crown and elites. Pardons required supplication. Every supplication, at least outwardly, constituted an act of subjection. To obtain a pardon, offenders not only had to express contrition and submission to their sovereign, but many also had to work within existing hierarchical structures of dominance and deference. The bureaucratized methods of obtaining pardon that prevailed in later centuries had not yet

²⁰⁶ *Proceedings in Parliament*, ed. Hartley, I, p. 199.

²⁰⁷ *Analytical Index to the...Remembrancia*, eds. W.H. and H.C. Overall (London, 1878), p. 265.

²⁰⁸ Salisbury MS vol. 44, no. 59.

²⁰⁹ BL Lansdowne 102, 10.

supplanted traditional patronage routes. The process not only helped the Crown secure the co-operation of members of the elites, but in turn allowed them to forge and cement networks of dependence. Pardons permitted a responsive mediation of a harsh code of law, giving room to competing notions of culpability and manifesting paternalist concern for the weak and redeemable. Performative exchanges, they offered benefits to each participant and operated within a constraining set of cultural assumptions. They remained contingent, however, upon the grace and favour of those in power.

Chapter Five
Public Performances of Pardon

Each pardon made a public statement about the relationships between sovereign and subject and the links between mercy and deference. Recipients generally returned to the court that had indicted or convicted them, recited their offence, and entered a plea for their pardon. They presented sureties for their future good behaviour and pledged their gratitude to their merciful sovereign. The court crier then announced the pardon for all to hear and proclaimed the offenders' restoration to the protection of the law. This ceremony of remission and reintegration to the social body occurred amidst the rituals and drama of the court day. Some pardons, of course, made more spectacular statements than others. Each of the Tudor monarchs recognised the need to appear merciful and accordingly crafted public demonstrations of their princely clemency. They responded to the broad cultural demands that a legitimate ruler embody both justice and mercy, not only through the routine pardons for criminals, but also with self-consciously public performances. The exhortations of the laudatory "mirrors for princes" texts and encomiastic civic pageants, discussed in the first chapter, provided part of the impetus and context for the royal displays of God-like mercy. The Tudors also recognised the potency of such performances for conveying varied messages to varied audiences. As Sir John Haywood noted of Elizabeth, the Tudor sovereigns knew "right well that in pompous ceremonies a secret of government doth much consist, for that the people are naturally both taken and held with exterior shows."¹

These public pardons constituted part of a broader, intensely theatrical political culture. Tudor spectacles were not empty displays, superfluous to the realm of politics. Nor did they simply affirm an existing, stable power; rather, they helped to construct and renew that power as legitimate authority. Spectacles existed hand-in-hand with patronage networks, bureaucratic measures of control, and material technologies of power. They

¹ John Hayward, *Annals of the First Four Years of the Reign of Queen Elizabeth*, ed. J. Bruce, Camden Society, vol. 7 (London, 1840), p. 15.

worked together with both the expansion of the criminal law and the procedural changes to the practise of pardoning to solidify Tudor rule. Public pardons served both instrumental and expressive ends: the coronation and general pardons discussed previously, for example, not only had practical, bureaucratic advantages for the Crown, but their proclamation also provided a forum for powerful public statements about the benevolence of the sovereign and the duties of the subject. Intended as instructional and didactic, spectacles also comprised a form of social and political interaction. Scholars of the sixteenth century have long recognised the theatrical elements of its politics; so, too, did contemporary observers.² In a frequently cited passage, Sir Thomas More described the affairs of kings as “stage plays, and for the more part played upon scaffolds.”³ Like theatre, politics required negotiations between performer and audience.⁴ While More thought that “poor men be but the lookers on” and meddled in the theatre of politics at their peril, Queen Elizabeth acknowledged that a certain power resided in the audiences’ expectations and reactions: “We princes, I tell you, are set on stages, in the sight and view of all the world duly observed...It behoves us therefore to be careful that our

² While historians have long acknowledged the theatrical dimension of Tudor politics [see, for instance, A.G.R. Smith, *The Government of Elizabethan England* (London, 1967), pp. 1-5], some have recently given it more sustained attention, often inspired by sociologists, anthropologists or literary theorists. Clifford Geertz and Victor Turner have provided especially influential models of analysis. For a small sampling, see D. Dean, “Image and Ritual in Tudor Parliaments,” in D. Hoak, ed., *Tudor Political Culture* (Cambridge, 1990), pp. 243-71; R. M. Smuts, “Public Ceremony and Royal Charisma: The English Royal Entry in London, 1485-1642,” in A. Beier et al, eds., *The First Modern Society* (Cambridge, 1989), pp. 65-93; D.R. Starkey, “Representation through Intimacy,” *Symbols and Sentiments*, ed. I. Lewis (London, 1977), pp. 187-224; *Rituals of Power: Power and Ceremonial in Traditional Societies*, ed. D. Cannadine and S. Price (Cambridge, 1987).

Literary scholars, too, have devoted considerable attention to the performative dimension of Tudor politics, noting that playwrights manifested a fascination with the sources and uses of regal power and appropriated its dramas for the stage. See, for instance, S. Orgel, *The Illusion of Power: Political Theatre in the English Renaissance* (Berkeley, 1975); G.W. Kendall, *Shakespearean Power and Punishment* (London, 1998); C. Pye, *The Regal Phantasm: Shakespeare and the Politics of Spectacle* (London, 1990); *The Theatrical City*, ed. D. Bevington et al (Cambridge, 1995); S. Greenblatt, *Shakespearean Negotiations* (Oxford, 1988). Indeed, as S. Mullaney warned, “the theatricality of early modern power” had become such a catch-phrase among literary scholars that it risked becoming empty of all meaning: *The Politics of the Stage: License, Play and Power* (Chicago, 1988), p. 91. E. Hanson has recently echoed this warning and asked that literary scholars begin to take material technologies of power more seriously: *Discovering the Subject in Renaissance England* (Cambridge, 1998), p. 7.

³ Thomas More, “History of Richard III,” in P.M. Kendall, ed., *Richard III: The Great Debate* (London, 1965), pp. 100-1.

⁴ For this point, see especially K. Sharpe, “Representations and Negotiations: Texts, Images and Authority in Early Modern England,” *Historical Journal* 42 (1999): 853-81.

proceedings be just and honourable.”⁵ Public performances of pardon communicated and constructed royal authority, but people’s expectations of pardon and mercy also shaped the exercise of that authority. Members of the crowd often lacked sufficient power directly to alter a predetermined course of events, but they could always refuse to accept the messages intended by authorities. Thus, the Crown recognised the need to mould interpretations of its actions through carefully scripted spectacles.

Some of the most dramatic performances of pardon were those given at the public intercession of a powerful figure. As discussed earlier, the intercession upon which so many pardons relied had the practical benefits of bringing cases to the attention of the Crown and cementing elite networks of favour and dependence. Intercession also conveyed messages about the relative power of grantor, mediator, and recipient; it displayed their acceptance of the roles and duties assigned to them by a hierarchical social structure and cultural traditions. Intercession defined their relationships in terms of submission and deference. While denoting the intermediaries’ ability to obtain favour, intercession also enacted their subordinate position vis-à-vis the monarch, confirming the monarch as the holder of sovereign power and sole fount of forgiveness. The texts of the pardons themselves advertised the fact of intercession, but sometimes carefully scripted performances presented the messages of intercession before a broader public.⁶

While each of the Tudor sovereigns recognised the potential impact of public intercession, it seems that Henry VIII had a special fondness for including mediators in his spectacles of mercy. He found them useful not just for advertising his majestic benevolence to the people at large, but also for expressing and constructing his superiority over his nobles. As Jennifer Loach has observed, Henry VIII’s various ceremonial displays served to bind not only the king and his subjects in general, but the king and his most powerful subjects in particular.⁷ Henry VIII continued his father’s

⁵ *Proceedings in the Parliaments of Elizabeth I*, ed. T.E. Hartley, 3 vols., (Wilmington, 1981-95), II, p. 251.

⁶ For a perceptive look at the rituals of supplication as social discourse, see G. Koziol, *Begging Pardon and Favor: Ritual and Political Order in Early Medieval France* (Ithaca, 1992).

⁷ J. Loach, “The Function of Ceremonial in the Reign of Henry VIII,” *Past and Present* 142 (1994): 44.

project of reducing and regulating the ability of great lords to retain armies of servants. The number of retainers controlled by a lord both signified and enhanced his power and, if excessive, threatened the king's control of his realm. As Henry VIII built up his own network of men who pledged him their personal service and wore his livery, he insisted that his men swear allegiance to no other: service to the king must supersede service to any lesser lord. To his practical efforts he added the dramatic. In October 1519, Henry decided to make an example of Sir William Bulmer, one of his men who had appeared publicly in the livery of Edward Stafford, the rich, popular, and royally-descended Duke of Buckingham.⁸ Bulmer's public statement of loyalty to Stafford threatened perceptions of the king's pre-eminence and had to be countered. Feeling his honour impugned, the king summoned Bulmer to Star Chamber and rebuked him, saying "that he would none of his servants should hang on another man's sleeve, and that he was as well able to maintain him as the Duke of Buckingham."⁹ On his knees and in tears, Bulmer threw himself upon the king's mercy. He assumed the necessity of intercession and portrayed himself as unworthy of approaching the king directly. He directed his pleas to those around him, "beseeching the most reverend father [Wolsey] and the other lords of the king's council to be means to the king's highness for him."¹⁰ According to the chronicler, however, the lords feared the king's displeasure and refused to speak for him. After a few nights in the Fleet, Bulmer returned to Star Chamber. In front of the king, assembled lords, and court spectators, Bulmer again confessed and "submitted himself most humbly." Presumably, the king had signalled his altered disposition: when Bulmer repeated his pleas for mediation, Wolsey and "all the others then present upon their knees made most humble intercession to the king's grace for him." With all the lords subjected before him, the king "felt moved by pity and mercy and giving... a lesson to be

⁸ For Henry's fear of Buckingham, see M. Levine, "The Fall of Edward, Duke of Buckingham," in A.J. Slavin, ed., *Tudor Men and Institutions* (Baton Rouge, 1972), pp. 33-48.

⁹ *Hall's Chronicle*, ed. H. Ellis (London, 1809, reprinted New York, 1965), p. 599. Dating taken from HEH EL 2655 (Star Chamber Proceedings), fol. 14d.

¹⁰ HEH EL 2655, fol. 14d.

remembered” announced both his pardon and the primacy of service to the Crown.¹¹ Henry had initiated this case to restore the honour and supremacy that Bulmer had challenged. While a successful prosecution could have restored the royal dignity, Henry opted instead for Bulmer’s public submission and the humble intercession of the most powerful lords in the land. These intercessors acknowledged that the king alone had the power to pardon and punish, and their pleas allowed the king to demonstrate the mercy attendant upon benevolent lordship.

Such transactions also figured into the exchanges of honour that characterised sixteenth-century diplomacy. When planning Charles V’s journey through Calais on his way to England in 1522, Henry VIII’s councillors ordered local officials to present the Emperor with the keys to the town and to give their services to him as if to Henry himself. They suggested, furthermore, that “if offer were made unto him for the deliverance of such prisoners as shall be thought convenient to be released, it should the more redound to the king’s honour.”¹² After his arrival in England, the Emperor joined Henry for a magnificent progress through London before large crowds gathered to watch the pageantry. One historian of royal spectacles has recently expressed doubts about the impact of such shows, noting that the crowd must have found much of the complex iconographic display indecipherable.¹³ While observers may have missed some of the messages, they could not have remained oblivious to the broader show of pomp and royal magnificence. Furthermore, this particular pageant included an episode with a broadly accessible ritual of kingship: when the two sovereigns came to the Marshalsea prison, the Emperor halted and “desired pardon of the king for the prisoners and he at the Emperor’s request, pardoned a great number of them.”¹⁴ Ten years later, when Henry crossed the Channel to parley with the French king, elaborate celebrations and a

¹¹ *Ibid.*, fols. 15r-v.

¹² *Rutland Papers*, ed. W. Jerdan, Camden Society, vol. 21 (London, 1842), pp. 70-71.

¹³ S. Anglo, *Images of Tudor Kingship* (London, 1992); *Spectacle, Pageantry and Early Tudor Policy*, 2nd edition (London, 1997), preface.

¹⁴ *Hall’s Chronicle*, p. 637. See also the privy seals authorising pardon for three Hereford men involved in a murder, “out of esteem for the Emperor Charles.” *L&P* III, ii, no. 2482.

carefully paralleled exchange of honour took place; reciprocal requests for pardons accompanied all the jousts, feasts, and other displays of regal power. When Henry travelled to the French city of Boulogne, he recognised Francis' sovereignty by seeking pardon for the imprisoned, whereupon Francis showed his respect by granting the request. The kings reversed the performance when Francis arrived in Calais: "and in like wise, did the French king in Calais of our king and master at his there being, and obtained grace for all banished men that would make suit for their pardon."¹⁵

So, too, did the royal consorts sometimes intercede publicly for pardon. During her first royal entry into London, for example, Catherine Howard relied not just on heraldic displays and an entourage of richly costumed nobles to advertise her new-found position of influence. When passing by the Tower, she also "took occasion and courage to beg and entreat the king for the release of Master Wyatt, a prisoner in the said Tower, which petition the king granted."¹⁶ In publicly pleading for pardon and presenting herself as a merciful mediator, Howard had much precedent. Earlier queens such as Joan of Navarre and Katherine of Valois included public intercessions for pardon in their coronation celebrations and continued to portray themselves as brokers for mercy throughout their husbands' reigns.¹⁷ These women actively exploited intercession to sustain perceptions of their influence. Lois Huneycutt has argued that Matilda, the wife of Henry I, sought to extend her power by consciously emulating the Biblical queen Esther in her public actions.¹⁸ Renowned for her intercession with King Ahasuerus for her fellow Jews, Esther remained an exemplar of the ideal queen into the sixteenth

¹⁵ *The manner of the Triumph at Calais and Boulogne*, 2nd edition (London, 1532), sig. A3r. See also C 66/663, m. 7, a pardon for Warwickshire yeoman John Dowe for murder, "granted in consideration that in October 24 Henry VIII when the King of France was at Calais, divers felons had their punishments remitted."

¹⁶ *CSP Spanish*, VI, i, p. 314.

¹⁷ J. Carmi Parsons, "Ritual and Symbol in English Queenship to 1500," in L.O. Fradenburg, ed., *Women and Sovereignty*, *Cosmos* 7 (1991): 64. Parsons speculated that this may have been a standard element of the queen's investiture and noted that in France queens consort were specifically given the power to pardon criminals at their coronations. See also Parsons, "The Queen's Intercession in Thirteenth-Century England," in J. Carpenter and S. Maclean, eds., *Power of the Weak* (Urbana, 1995), pp. 147-77.

¹⁸ L. Huneycutt, "Intercession and the High-Medieval Queen: The Ester Topos," in *Power of the Weak*, 126-46.

century. In the early Tudor Enterlude of the Virtuouse and Godly Queen Hester, Mardocheus counselled Esther that the duties of a queen included being “good to the commons when they did call/ By meekness for mercy, to temper the fire/ Of rigorous justice in fume or in ire.”¹⁹ Nor did Esther stand alone: the Virgin Mary provided the best known of all intercessory models.

Historians of medieval queens have studied their public petitions and intercessions. They have shown that the kings welcomed such requests, which portrayed them as receiving supplications the same way God heard the suits of his saints. For political offenders, such intercessions often allowed the king to disguise lenience born of pragmatic necessity as the benevolent gift of a powerful monarch, granted at the humble request of a loving wife. They allowed the king to reverse a sentence of death without appearing to weaken or vacillate.²⁰ However, suggestions that contemporaries saw intercession as inherently feminine, a power premised on female vulnerability that both existed “beyond the boundaries of systematized male power” and highlighted the “maleness” of the king, seem to reach beyond the evidence.²¹ Certainly, petitioning marked the queen’s power as limited and subordinate to the king’s, but the same held true for all petitioners, male or female. Charles V and his London audience doubtless did not see his intercession as an inherently feminine act.

Admittedly, literary treatments of pardons did offer more representations of the female than male intercessor, suggesting a certain tendency to see suits for mercy in gendered terms. In Shakespeare’s Measure for Measure, Lucio counselled Isabella to seek her brother’s pardon, noting that “when maidens sue/ Men give like gods, but when they weep and kneel/ All their petitions are as freely theirs/ As they themselves would owe them.”²² Infamous as the mistress of Edward IV, yet renowned as a prolific and

¹⁹ The Enterlude of the Virtuouse and Godly Queen Hester, ed. W.W. Greg (Louvain, 1904), ll. 181-83.

²⁰ In addition to Parsons and Huneycutt, cited above, see also P. Strohm, “Queens as Intercessors,” in his Hochon’s Arrow: The Social Imagination of Fourteenth-Century Texts (Princeton, 1992), pp. 95-119 and England’s Empty Throne: Usurpation and the Language of Legitimation, 1399-1422 (New Haven, 1998), pp. 162-63.

²¹ Strohm, Hochon’s Arrow, pp. 103-4.

²² “Measure for Measure,” Riverside Shakespeare, ed. G.B. Evans (Boston, 1974), I, iv, ll. 80-83.

proficient petitioner, Jane Shore became the subject of several ballads, plays and histories.²³ However, a man as powerful as Cardinal Wolsey could be portrayed as taking pride in his ability to intercede with his king even more successfully than Jane Shore had with hers; the Mirror for Magistrates has him boast:

And as for suits, about the king was none,
So apt as I, to speak and purchase grace.
Though long before, some say, Shore's wife was one,
That oft kneeled down, before the prince's face
For poor men's suits, and helped their woeful case,
Yet she had not, such credit as I gate...
One suit of mine, was surely worth a score
Of hers indeed, for she her time must watch,
And at all hours, I durst go draw the latch.²⁴

Intercession, when performed publicly, may well have acquired meanings nuanced by the gender of the petitioner, but it was not an essentially feminine act of weakness. Both male and female intercessors participated in public performances of pardon because they saw it as both a sign and source of power.

Of all the public uses of clemency, the most intensely dramatic (in every sense of the word) was the last minute pardon at the gallows or the stake.²⁵ Occurring at the place appointed for death, such pardons transformed the spectacle of punishment by linking it with the spectacle of mercy. These pardons, no less than executions, conveyed and constructed messages about the nature of royal authority. In a more spectacularly public fashion than the quotidian pardons of the condemned, the last minute pardon demonstrated the immediacy of the sovereign's power both to give and to take life. Given the scarcity and nature of the records, the number of such performances remains unknown, yet the Tudor chroniclers noted many scaffold pardons among their more

²³ See, for example, Thomas Heywood, The First and Second Parts of King Edward IV (London, 1600); Thomas More, "The History of Richard III," in Kendall, ed., Richard III: The Great Debate, pp. 77-78; The Mirror for Magistrates, ed. L.B. Campbell (Cambridge, 1938), pp. 373-87, esp. pp. 379-80.

²⁴ The Mirror for Magistrates, ed. Campbell, pp. 502-3.

²⁵ For ease of expression, "the scaffold" is often used in the discussion that follows to designate all places of execution, including the gallows, the stake, the stage for beheadings, and the scene of the varied elements of a male traitor's death.

frequent descriptions of executions. Wriothesley recorded the procession of five clerics, condemned for treason, to Tyburn on 4 May 1535. Four suffered their grisly deaths, but the last received a pardon. In 1535, a young serving boy condemned for theft had the noose about his neck before obtaining his pardon. Similarly, on 26 February 1549, the sheriff had already tied Joan Edling, guilty of coinage offences, to the Smithfield stake when a royal messenger arrived with her pardon.²⁶ Such last minute reprieves continued throughout the century; Holinshed's Chronicle noted, for instance, that of the seven pirates taken to hang at the low water mark of the Thames in April 1593, two received mercy at the gallows.²⁷

Such pardons clearly gained their effect from the proximity to the gallows or stake, relying on the threat of death to emphasise the life-giving power of the sovereign. So, too, did the ever-present possibility of mercy amplify and affect the message of the execution. The two must be studied together. Recently, a number of scholars have offered analyses of the “spectacle of the scaffold,” inspired or provoked by Foucault’s account of the late eighteenth and early nineteenth-century transition from spectacular physical sanctions, imposed by the sovereign from above the social body, to technologies of surveillance and incarceration organised from within the social body.²⁸ While some of these scholars have rejected the theoretical underpinnings of Foucault’s work, they have joined him in refuting earlier accounts that treated public punishment largely as a sign of the callous brutality of past ages and its demise as the triumph of humanitarian enlightenment. So, too, have most insisted that executions constituted political as well as

²⁶ Wriothesley's Chronicle, ed. W.D. Hamilton, 2 vols., Camden Society, n.s., vols. 11 and 20 (London, 1875, 1877), I, pp. 27-28, 73, 162-63.

²⁷ Holinshed's Chronicle, ed. H. Ellis (New York, 1965, 6 vols.), IV, p. 323.

²⁸ M. Foucault, Discipline and Punish: The Birth of the Prison, trans. A. Sheridan (New York, 1979). P. Spierenberg accepted much of Foucault’s characterisation of the two modes of repression, but criticised his lack of archival research and slender explanation for the shift itself. Spierenberg offered a “developmental perspective” that linked the decline of public punishment to changing mentalities and systems of human organisation (ie., to the rise of a European network of states): The Spectacle of Suffering: Executions and the Evolution of Repression (Cambridge, 1984). For other studies of executions that build from Foucault, see the works cited in the notes that follow and R. McGowan, “The Body and Punishment in Eighteenth Century England,” Journal of Modern History 59 (1987): 651-79; L. Masur, Rites of Execution: Capital Punishment and the Transformation of American Culture, 1776-1865 (Oxford, 1987).

judicial acts: the state used public executions not only to despatch an offender, but also to affirm and renew its power. Most have concentrated on the moment and motors of change that caused the disappearance of the public gallows, but some have looked at the character of earlier executions, noting that their accompanying rituals and meanings never remained static. While Huizinga long ago noted the dramatic aspects of medieval European executions and described them as “spectacular plays with a moral,” J.G. Bellamy, J.A. Sharpe and others have speculated that the early sixteenth century witnessed an elaboration of the practises surrounding the scaffold.²⁹ The increasing control of central authorities over the legal system and the growing pretensions of the Renaissance state rendered state-managed spectacles of death both possible and necessary. Sharpe has suggested that the heightened attention given to executions in the sixteenth century was as important and as indicative of broader social changes as the multiplication of statutes imposing the death penalty. One might speculate that the growing scope of the law, joined with the restriction of traditional sources of mitigation, made scaffold spectacles of mercy ever more important, as well. Ultimately, however, little can be said of the nature or basis of a shift in practise at the beginning of the Tudor period because proof of its very existence relies on a lack of evidence for earlier executions: as Bellamy has noted, the primarily monastic chroniclers of the middle ages crafted few and perfunctory accounts of public punishments whereas sixteenth-century secular writers paid them more heed. This may have reflected the different interests of the two groups of chroniclers rather than changes to the practise of execution.

While the evidence renders conjectural any assessment of the novelty of Tudor executions, it does delineate the bare outlines of the practise. Official sources continually and explicitly referred to the exemplary intent of public punishment. The authorities

²⁹ J. Huizinga, *The Waning of the Middle Ages*, trans. F. Hopman (Harmondsworth, 1976, orig. pub. 1924), p. 11. For Bellamy, see esp. *Crime and Public Order in the Later Middle Ages* (London, 1973), p. 189 and *The Criminal Trial in Later Medieval England* (Toronto, 1998), p. 154. Sharpe has made his argument most cogently in *Judicial Punishment in England* (London, 1990), pp. 30-34. Others have offered similar speculations about execution rituals on the continent: R. van Dülmen, *Theatre of Horror: Crime and Punishment in Early Modern Germany*, trans. E. Neu (Cambridge, 1990), p. 59 and Spierenberg, *Spectacle of Suffering*, p. 44.

spoke of the deterrence afforded by all types of punishment -- including imprisonment, the pillory, and fines -- but believed that the ultimate penalty of death provided the best admonitory example. Convinced of the need for displays of the penalties attending disobedience, privy councillors frequently wrote to local authorities asking them to punish offenders "to the terror and example of others" or "for the more terror of like offenders."³⁰ Some spoke of punishment as reformatory, retributive, or expiatory, but deterrence remained the most common explanation. Richard Cosin articulated common assumptions in his 1593 catalogue of the due ends of punishment. He cited Plato's dictum that punishment must reform either the offender or those witnessing it. Some punishments, when tempered with mercy, aimed to better the offender. Others allowed satisfaction to the law or victim that the offence had violated. All others were meant to admonish, "done for others that they who behold the punishment, may at least for terror thereof, become better and amend."³¹ Penal sanctions might attest to public abhorrence for the crime itself, "to signify in what detestation and abomination such enormities are to be had." Even the execution of animals that caused deaths or the destruction of the homes of traitors were intended as deterrents so "that men, who are endued with reason, may by such examples of law be admonished what punishment more justly abideth them if they commit the same for which even brute beasts and insensible things are so duly, as it were, punished."³²

The exemplary terror or didacticism of an execution relied heavily on its visual components. In 1605, Attorney General Sir Edward Coke offered an extended analysis of the symbolism inherent in the prescribed penalty for treason. The traitor was:

drawn to the place of execution from his prison as being not worthy any more to tread upon the face of the earth whereof he was made; also for that he hath been retrograde to nature, therefore he is drawn backward at a horse-tail. And whereas God hath made the head of man the highest and most supreme part, as being his chief grace and ornament...he must be drawn with his head declining

³⁰ See, for example, *APC*, vi, pp. 254, 354.

³¹ R. Cosin, *An Apology for Sundry Proceedings by Jurisdiction Ecclesiastical* (London, 1593), Bk. 2, p. 3.

³² *Ibid.*, p. 4.

downward, and lying so near the ground as may be, being thought unfit to take the common air. For which case also he shall be strangled, being hanged up by the neck between heaven and earth, as deemed unworthy of both or either: as likewise, that the eyes of men may behold, and their hearts condemn him. Then is he to be cut down alive, and to have his privy parts cut off and burnt before his face as being unworthily begotten, and unfit to leave any generation after him. His bowels and inlaid parts taken out and burnt, who inwardly had conceived and harboured in his heart such horrible treason. After, to have his head cut off, which had imagined the mischief. And lastly his body to be quartered, and the quarters set up in some high and eminent place, to the view and detestation of men, and to become a prey for the fowls of the air.³³

Perhaps few read as much meaning into the traitor's death as Coke, but none would have denied the intense visual impact of such an execution. The authorities sometimes added symbolic or aggravating features to executions in efforts to increase their exemplary terror, to convey certain messages, and to heighten the visual effect. Like that of the plays performed in market squares and great halls, the staging for most executions allowed the audience to share an intimate proximity to both dialogue and action, not separated by an empty space or impermeable barrier. For some executions, however, the authorities ordered a railed scaffold and gave special consideration to the height and location of a gallows to ensure easy viewing. The chosen location might also serve to parallel and thus expunge a crime. Royal councillors frequently ordered the performance of executions "as near unto the place where the fact was committed as may be."³⁴ In 1512, for instance, Henry VIII had Newbolt, one of his guardsmen and a murderer, hanged on a special gallows constructed on the spot where the victim lost his life.³⁵ The Wansworth ground upon which Lord Burke had bled to death provided the stage for the execution of his murderer, Arnold Cosby.³⁶ Similarly, the authorities ordered the hanging of pirates high on seaside cliffs or at the low water mark of tidal rivers. Magistrates sometimes adjusted other elements as well. In special cases, killers had the hand they

³³ *Cobett's State Trials*, ed. T.B. Howell (London, 1809-26, 33 vols.), II, p. 184; cited from S. Amussen, "Punishment, Discipline and Power: The Social Meanings of Violence in Early Modern England," *Journal of British Studies* 34 (1995): 6-7.

³⁴ See, for example, *APC*, x, pp. 224, 343.

³⁵ *Holinshead's Chronicles*, III, p. 568.

³⁶ *The Arraignment of Arnold Cosby* (London, 1591/2), sig. B4r.

used to slay their victims struck off on the procession to the gallows.³⁷ Noble offenders sometimes had novel shaming elements added to their executions: while dragged through the London streets on his way to Tower Hill, for instance, Lord Audeley had to wear a torn and reversed paper copy of his family coat of arms.³⁸

Authorities attended not just to the visual components of execution, but also to the aural. They encouraged the participation of clerics, who exhorted the condemned to make their peace with God and die a righteous death. The clergymen offered public prayers and sometimes sermons; they conflated earthly with divine justice and ensured that executions conveyed messages both secular and spiritual. Clerics assumed an even greater importance at the executions of religious dissidents, seeking to instil the tenets of the proper faith in both the condemned and the audience. Bishop Latimer recognised his Smithfield ministrations as part of a larger performance; in 1538, he expressed his willingness “to play the fool after my customable manner” at the upcoming execution of a heretic and asked only that “his stage” stand nearer the condemned so that all might better hear his message.³⁹

The condemned, too, had their parts to play. While their bodies provided the visual focal point, their words also shaped the message of the scaffold. Most traitors gave submissive gallows speeches and at least by mid-century, even people convicted of mundane offences regularly made public confessions. Their words demonstrated the state’s power not only over the body, but also, seemingly, over the mind. Offering a symbolic restoration of the social relations of power that disobedience had disrupted,

³⁷ See William Harrison’s discussion “Of Sundry Kinds of Punishments Appointed for Malefactors,” included in *Holinshed’s Chronicles*, I, pp. 310-14. For one example, see the account of Charles de Gavaro’s execution in 1550 in “The Letters of Richard Scudamore to Sir Philip Hoby, September 1549 - March 1555,” ed. S. Brigden, *Camden Miscellany* 30, Camden Society, 4th ser., vol. 39 (London, 1990), pp. 112-13.

³⁸ *Hall’s Chronicle*, p. 480. On the symbolic elements of some Tudor punishments, see W. Stacy, “Richard Roose and the Use of Parliamentary Attainder in the Reign of Henry VIII,” *Historical Journal* 29 (1986): 1-15.

³⁹ SP 1/ 132, fol. 106 (*L&P* XIII, i, no. 1024.) All who have commented on early modern executions have noted the role of the clergy, but for an extended treatment, see P. Lake and M. Questier, “Agency, Appropriation and Rhetoric Under the Gallows: Puritans, Romanists and the State in Early Modern England,” *Past and Present* 153 (1996): 64-107 and “Prisons, Priests and People,” in N. Tyacke, ed., *England’s Long Reformation, 1500-1800* (London, 1998), pp. 195-233.

such apologetic orations displayed common features: the offenders acknowledged the legality of their execution, held themselves up as examples of the just wages of sin, requested the prayers of the people, and implored the forgiveness of both God and sovereign.⁴⁰ At his execution in 1572, for instance, the Duke of Norfolk reportedly claimed, "I must confess I have well deserved to die." After detailing his offences, he expressed his hearty sorrow, and begged God for forgiveness. He then called

to remembrance an ancient father, an old preacher, Father Latimer, who in his sermon...did put the people in remembrance of concord, unity, and true obedience and to be steadfast and constant in religion and to trust constantly to be saved by the blood of Jesus Christ only. I must now show the same lesson here in this place amongst you all, praying God I may be an example to cause all traitors to cease.

Finally, he extolled the mercy of the queen for having allowed him time to repent; he implored her favour for his poor children and asked God to preserve her long and prosperous reign. After requesting the prayers of the assembled, he knelt "and then his head was stricken off at one stroke and so taken up and showed to the people."⁴¹ Not all, of course, offered such compliant ends as Norfolk; of the recorded cases, religious offenders -- both Protestant and Catholic -- most commonly refused to apologise for their beliefs or to legitimise the authority that sent them to their deaths. These proved the great exceptions to the rule that in Tudor England, the condemned offered speeches emphasising the perils of disobedience.

All the aural and visual lessons of an execution meant nothing without an audience. One historian has recently suggested that large crowds did not gather at sixteenth-century executions and that few people outside of London would ever have witnessed one.⁴² A more careful examination of the accounts of sixteenth-century

⁴⁰ On these scaffold apologies, see L.B. Smith, "English Treason Trials and Confessions in the Sixteenth Century," *Journal of the History of Ideas* 15 (1954): 471-98, esp. 476 and J. Sharpe, "Last Dying Speeches": Religion, Ideology and Public Execution in Seventeenth Century England," *Past and Present* 107 (1985): 144-67.

⁴¹ SP 15/21, no. 49.

⁴² J.S. Cockburn, "Punishment and Brutalization in the English Enlightenment," *Law and History Review* 12 (1994): 158-62. While arguing that the people of pre-Enlightenment England were neither brutal nor brutalised, as their later detractors claimed, Cockburn offered a valuable warning that scholars should not assume that people outside of London (which by all accounts witnessed hundreds of executions a year) had a regular visual diet of blood and gore: exposure to capital punishment was not universal. One must,

observers, however, shows that large numbers of both men and women of all social ranks attended public executions. Admittedly, when recording the deaths of mundane offenders, chroniclers paid scant attention to the size or composition of the crowd, noting at most “the people there assembled.” For more noteworthy offenders, they offered more explicit estimates. At Friar Forrest’s burning for both treason and heresy in 1538, Wriothesley noted the presence of nobles, aldermen “and, as I think, ten thousand persons and more.”⁴³ Henry Machyn estimated a crowd of similar size for the Duke of Northumberland’s scheduled execution in 1553.⁴⁴ These political performances formed a general cultural experience, shared by elite and plebeian.⁴⁵ Later sentiments that attendance at executions was beneath those of gentle status and fit only for the uncouth masses made no appearance in sixteenth-century discussions of the practise. A news pamphlet describing the executions of Anne Saunders, Anne Drewrie, and Roger Clement at Smithfield on 13 May 1573 for the murder of Saunders’ husband remarked upon both the immense size of the audience and its social diversity. It noted the presence of the Earls of Bedford and Derby and “so great a number of people as the like hath not been seen there together in any man’s remembrance.” People thronged the route from Newgate to Smithfield and watched from nearby roofs, steeples, and houses, “whose windows and walls were in many places beaten down to look out.”⁴⁶ The execution of the Catholic conspirator Babington and thirteen of his associates on 20 and 21 September 1580 also drew a “wonderful great” assembly. According to the chronicler:

it is no question whether there wanted people at this public spectacle, no more than it is to be doubted whether their treasons deserved death. For there was no lane, street, alley, or house in London, in the suburbs of the same, or in the

however, take issue with statements such as “there is no authority at all for the recent claim that Tudor authorities ‘allowed thousands to gather at public executions.’” (p. 162) On the crowds at sixteenth century executions, see also Bellamy, *Tudor Law of Treason*, pp. 188-210.

⁴³ *Wriothesley’s Chronicle*, I, p. 80.

⁴⁴ *Diary of Henry Machyn*, ed. J.B. Nichols, Camden Society, vol. 42 (London, 1859), p. 42.

⁴⁵ For a similar observation that French executions bridged “popular” and elite cultures, see M. Bée, “Le spectacle de l’exécution dans la France d’Ancien Régime,” *Annales: E.S.C.* 38 (1983): 844-46.

⁴⁶ *A Brief Discourse of the Late Murder of Master George Saunders* (London, 1573), sigs. B2r, C2r.

hamlets of bordering towns near the city (and like enough that they would come from afar, both by water and by land, to see that and the next day's work dispatched) out of the which there issued not some of each sex and age; in so much that the ways were pestered with people so multiplied, as they thronged and overran one another for haste, contending to the place of death for the advantage of the ground where to stand, see and hear what was said and done.⁴⁷

Even the “private” executions given to some highborn offenders had large audiences. One observer estimated that over 2,000 people attended Anne Boleyn's trial within the precincts of the Tower; her execution also took place within the Tower, “in the presence of a thousand people.”⁴⁸ London executions drew audiences from outside the city; people travelled specifically to watch the deaths of noteworthy offenders. Those in London on other business also availed themselves of the opportunity to witness public punishments. One Swiss visitor noted that because hanging days coincided with the law terms, “a great concourse of people from all areas” who had legal business in the city attended the executions.⁴⁹ In the localities themselves, the assizes and quarter sessions produced substantial fodder for the gallows; both events were well attended by people from throughout the county. Special executions in the various towns, occurring outside of the regular court sessions, also drew people from outlying areas: before his scheduled execution, Thomas Mountayne received word that a large crowd had gathered in the Cambridge prison yard to watch, some people arriving from as far away as Lincoln.⁵⁰ Even allowing for the exaggeration of partisan viewers, it seems safe to conclude that large numbers of people did gather for executions in Tudor England.

How did the crowd respond to the various messages the authorities attempted to convey through the execution spectacle? Certainly, contemporaries and historians alike have noted that in their express intent – to deter possible criminals— execution spectacles often failed. The pickpockets who assiduously practised their trade in the gallows crowd, blithely ignoring the death before them, provided one frequently cited

⁴⁷ Holinshed's Chronicles, IV, pp. 914-16.

⁴⁸ L&P, X, nos. 908, 918.

⁴⁹ Thomas Platter's Travels in England, 1599, trans. C. Williams (London, 1937), p. 174.

⁵⁰ Narratives of the Reformation, ed. J.G. Nichols, Camden Society, vol. 77 (London, 1859), p. 203; cited in Bellamy, Tudor Law of Treason, p. 277, n. 37.

example.⁵¹ So, too, did members of the crowd sometimes reject the state's broader attempts to inculcate obedience and deference through the scaffold drama. One need look no further than Foxe's epic Book of Martyrs and the equivalent Catholic hagiographies of Elizabeth's reign to find evidence of people denying the legitimacy of particular executions and questioning the authority of the laws and leaders that ordered them. While the executions of religious dissidents represented departures from the norm, even the punishment of mundane offenders might prompt complaint. The Crown recognised the potential for such dissent and attempted various means to mould crowd responses. For the particularly divisive executions of heretics it might order householders to keep their servants and apprentices at home.⁵² Hoping "to remove fond talk out of men's mouths," Edward's council deferred the Duke of Somerset's execution and held lavish Christmas festivities with much free entertainment, food and drink.⁵³ The Crown also used the pardon in an attempt to shape perceptions of its authority and actions at the scaffold.

Scholars have offered various interpretations of the spectacles of the gallows and stake and their reception; in giving only scant attention to the pardon, however, they have missed some essential components.⁵⁴ While acknowledging that executions sometimes failed to confirm royal authority, Foucault and Sharpe portrayed the public execution as a potent visual display of power, a technique of terror, and a sign of the totality of royal control. In Foucault's account, the pardon or its potential constituted another sign of the

⁵¹ See Spierenberg, Spectacle of Suffering, p. 93; P. Linebaugh, The London Hanged: Crime and Civil Society in the Eighteenth Century (London, 1991), p. xx.

⁵² APC, x, p. 224.

⁵³ Holinshed's Chronicles, III, pp. 1032-35.

⁵⁴ R. Wilson offered an insightful Foucauldian analysis of the role of pardons in Shakespeare's plays, but his attempt to ground the discussion in James VI/I's public displays of mercy was weakened by his assumption that such displays were new to James' reign. He wrote that mercy was never an attribute of the Renaissance prince and hence the pardon "was an unexpected and novel technique of the self-styled *Rex Pacificus*," marking a turn from the "atrocious" to the "humane" and the beginnings of the carceral society identified by Foucault. Particular deployments of the pardon changed with time and circumstance, but the pardons discussed by Wilson cannot be considered "new" in the fundamental way he suggested. "The Quality of Mercy: Discipline and Punishment in Shakespearean Comedy," The Seventeenth Century 5 (1990): 1-42.

monarch's total power over life and death.⁵⁵ In contrast, Thomas Lacqueur insisted upon an inverted reading of the public execution, which represented the crowd's carnivalesque moment of inversion. According to Lacqueur, the crowd did not simply constitute an audience, but was both director and principal actor in the drama; the people did not cower in terror at a state-directed tragedy, but turned the execution into a festive, popular comedy.⁵⁶ For Lacqueur, the ever-present possibility of a pardon did little more than heighten the disruption and disorder at the foot of the scaffold, threatening to turn the popular comedy into farce.⁵⁷ Certainly, it sometimes had this effect. Twice during the execution of the Duke of Somerset in 1552, sudden arrivals of armed men at the scaffold prompted some in the crowd to conjecture "that which was not true, but notwithstanding which they all wished for, that the king by that messenger had sent his uncle pardon: and therefore with great rejoicing and casting up their caps, they cried out "Pardon, pardon is come: God Save the King."⁵⁸ The duke himself had to quiet the people and disabuse them of their hope before his execution could proceed.

Peter Lake and Michael Questier have recently offered a third and more promising analysis of public executions that mediated between Foucault's theatre of totalised power and Lacqueur's carnival. Concentrating on the punishment of religious dissidents, they refuted Lacqueur's contention that the authorities did nothing to direct the scaffold performance, but agreed that the agency of the crowd cannot be overlooked. Royal agents did try to use executions to foster submission and obedience, but their efforts did not terrorise scaffold audiences into agreement with the pretensions of the Crown in any straightforward way; indeed, "the very act that expressed sovereign authority could also generate resistance to that authority."⁵⁹ Lake and Questier portrayed

⁵⁵ Foucault, *Discipline and Punish*, p. 53.

⁵⁶ T. Lacqueur, "Crowds, Carnival and the State in English Executions, 1604-1868," in A. Beier et al, eds., *The First Modern Society* (Cambridge, 1989), pp. 305-55.

⁵⁷ Lacqueur, "Crowds, Carnival and the State," p. 325.

⁵⁸ *Holinshed's Chronicles*, III, pp. 1034-35.

⁵⁹ Lake and Questier, "Puritans, Romanists and the State," pp. 65, 69. For other critiques of Lacqueur's account, see R. McGowan's note that Lacqueur too readily accepted middle-class observers' accounts of crowd misbehaviour, only removing the disapproving tones: "Civilizing Punishment: The End of the

the public execution as a potential site of intense ideological struggle where various actors attempted to appropriate the message of the stake and the gallows to their own ends; they saw a “genuinely popular celebration of and participation in the rites of execution in ways that sometimes, but only sometimes, accorded with and reinforced the purposes of the authorities on the scaffold.”⁶⁰ Perceptions of due punishment sometimes intervened. Those who gathered to watch executions occasionally requested the reprieve of a particular offender or decried the amount of suffering imposed.⁶¹ Sometimes they agreed that an offender was guilty, but did not deem execution the appropriate response. While Lake and Questier focused on the possibilities that executions afforded for confessional conversion and thus paid little attention to pardons, their notion of conversations between rulers and ruled at the foot of the scaffold offers a promising route for analysis of the role last-minute pardons played in the theatre of punishment. Members of the crowd had little hope of shaping the outcome of any one execution, but could well reject the messages of “exemplary” punishment. As a consequence, the Crown manipulated public pardons, often deciding to offer mercy well in advance, in an attempt to mould interpretations of the scaffold drama in ways that favoured royal authority. The conceptions of mercy and due punishment that shaped resistance at the scaffold also allowed the authorities to pre-empt or respond to dissent without the appearance of weakness.

The pardon, or at least its ever-present possibility, sometimes helped obtain the acquiescence of the condemned on the scaffold: if fear of dying unrepentant did not suffice to prompt a submissive gallows speech, perhaps the hope of a pardon would. Some believed that the Duke of Northumberland’s compliant performance on the gallows and astonishing last-minute disavowal of Protestant beliefs emerged from his

Public Execution in England,” *Journal of British Studies* 33 (1994): 274. See also V.A.C. Gatrell’s criticism that Lacqueur ignored the coercive structures under which the crowd gave its consent. Gatrell preferred to see the crowd’s behaviour not as callous celebration, but as psychological “strategies of defence” designed to “cancel out terror while camouflaging its submission to authority.” *The Hanging Tree: Execution and the English People, 1770-1868* (Oxford, 1994), pp. 74-76, 90-99.

⁶⁰ Lake and Questier, “Puritans, Romanists and the State,” p. 102.

⁶¹ See also Bellamy, *Tudor Law of Treason*, p. 203 and Amussen, “Social Meanings of Violence,” pp. 10-12.

hope of a pardon.⁶² No less revealing was the response of the London criminal Ned Browne, who faced his 1592 execution “resolute and reprobate,” publicly refusing “by a cowardly confession to attempt the hope of a pardon.” (Of course, as one man reported, Browne’s failure to die compliantly prompted a pack of wolves to desecrate his grave.)⁶³ In their efforts to impose self-serving meanings on the especially problematic execution of religious offenders, authorities regularly offered pardon in return for submission. The use of such offers preceded the Tudors: at the first English execution of a lay heretic in 1410, the Prince of Wales offered John Badby a pardon in exchange for his recantation, going so far as to order the blaze extinguished when he thought Badby had relented.⁶⁴ Obviously, a last minute recantation represented a propaganda coup of the highest order.⁶⁵ Of course, most refused to submit and, without such a display, the Crown could not offer a pardon. But even when they failed in their ostensible purpose, such offers allowed claims that the pernicious obduracy of the offenders rather than official cruelty led to their deaths. Offers of last-minute pardon permitted the sovereigns to present themselves as clement and merciful, ever hopeful for the physical and spiritual well-being of their subjects. After the lengthy interrogations and pre-execution attempts to convert offenders, the rejection of most of these overtures must not have come as a surprise. Yet authorities continued to make such offers throughout the Tudor period, expecting not so much a recantation as a favourable reaction from the crowd. In some circumstances, they did not work to this effect; Foxe’s dismissive treatment of Mary’s proffered pardons provided one example, and the strong opposition of some Elizabethan Protestants to any pardons for Catholics another. However, they worked often enough to continue; for example, upon hearing of one proffered pardon, those gathered to watch the execution

⁶² *Chronicle of Queen Jane and of Two Years of Queen Mary*, ed. J.G. Nichols, Camden Society, vol. 48 (London, 1849), p. 25.

⁶³ R.G. *The Black Book’s Messenger: Laying Open the Life and Death of Ned Browne* (London, 1592).

⁶⁴ P. McNiven, *Heresy and Politics in the Reign of Henry IV* (Woodbridge, 1987), pp. 211.

⁶⁵ John Cheke’s public recantation and pardon, although not at the stake itself, was both carefully planned and highly effective in weakening the resolve of other Protestants. See K.R. Bartlett, “The Politics of Pardon: The Case of Sir John Cheke, 1556,” *Cahiers d’Histoire* 16 (1996): 33-44.

purportedly exclaimed, “O exceeding mercy and favour! What a gracious princess we have.”⁶⁶

The authorities did not limit their manipulation of the public pardon only to religious offenders. Despite the exclusion of the more pitiful and pitiable offenders through the regular use of pardons, some who reached the gallows prompted the crowd’s compassion. Some of these received a last-minute pardon; indeed, royal officials reserved some for the gallows with the express intent of enacting a dramatic scaffold show of mercy. Careful planning, rather than a sudden burst of pity, determined the timing of these pardons. By emphasising how near the offenders’ disobedience had brought them to death, they might provide the recipients with a greater spur to amend their behaviour. Certainly, the Tudors knew that reprieves at the gallows or stake, used judiciously, offered a bolder public witness to royal mercy than those obtained in less evocative locations. In 1536, Henry VIII granted Lord Lisle’s request for an offender’s pardon, but commanded “that the law should proceed upon him even till the last point of execution, and then his gracious pleasure to be denounced and published.”⁶⁷ In 1549, the Earl of Rutland, Warden of the East and Middle Marches, found that numerous desertions plagued his military efforts against the Scots. The Privy Council suggested that “by the quick and sharp punishment of a few, the multitude may be learned to do their duties.”⁶⁸ Not content with a straightforward execution, Rutland asked Cuthbert Blownt to stage a more elaborate piece of gallows theatre. Blownt conveyed three army deserters to the place of execution, each wearing on his head a placard advertising his offences. He had two of the men watch the other hang and:

then, they not knowing but that they should suffer, I caused one of them to go up the ladder and to have the rope put about his neck. When it came to turning the ladder, I stayed him, and declared to him and his fellow that if they would repent of their offence and declare the danger that they had deserved to the example of others, and so serve the king truly from thenceforth, I would take

⁶⁶ See Bellamy, *Tudor Law of Treason*, p. 201.

⁶⁷ *The Lisle Letters*, ed. Muriel St. Clare Byrne, 6 vols. (Chicago, 1981), III, no. 704.

⁶⁸ *HMC, 12th Report, App. 4: Rutland MS*, p. 33.

upon me to spare execution of them till I might know your pleasure. They answered that they were sorry for their offences, and that they would gladly serve the king if they might have their lives.⁶⁹

Blownt assured Rutland that all had proceeded “according to your letter.” The men received their pardons and returned to their military duties.

One particularly dramatic gallows pardon earned extended treatment in a ballad hawked about London and in a short news pamphlet; the reporter included the various speeches, “word for word so near as could be gathered,” and offered his interpretation of the crowd’s behaviour in the margins of the text.⁷⁰ On 17 July 1579, a young serving man called Thomas Appletree rowed along the Thames with a few friends. In a playful mood, he decided to test his new gun and began firing randomly across the water. One shot inadvertently struck a man rowing a nearby barge and inflicted serious injuries. Unfortunately for Appletree, the barge was the queen’s. The bullet had only narrowly missed Elizabeth and the French ambassador sitting at her side. Doubly unfortunate for Appletree, the queen and her councillors had recently heard numerous reports of designs on her life by both Catholic conspirators and Protestants unhappy with the proposed French marriage.

The council had Appletree sentenced to death. On 21 July, the Knight Marshal and his men led Appletree through the city to a gibbet erected on the river bank, as near to the scene of the crime as possible. Along the route, Appletree continuously bewailed his offence and prayed for forgiveness. He affirmed his belief in the saving grace of Christ his saviour, whose humble intercession converted God’s anger to love and his fury to pity. At the place of execution, he fell on his knees and asked the assembled crowd to pray for him. Standing on the ladder, with tears in his eyes, he confessed the heinousness of his deed but swore he had intended no harm. He apologised for the shame he had brought his master, appointed specially to serve as Knight Marshal for the day.

⁶⁹ *Ibid.*, p. 43.

⁷⁰ *A New Ballad Declaring the Dangerous Shooting of the Gun at the Court* (London, 1579); *A Brief Discourse of the Most Heinous and Traitorlike Fact of Thomas Appletree* (London, 1579). The STC/UMI Microfilm copy of the latter is imperfect, but John Stow included it in his 1580 edition of the *Summary of Our English Chronicles*, pp. 1196-1204; for ease of reference, citations are made to Stow.

Appletree begged for forgiveness from the queen, admonished all to take heed from his example, and offered up his soul to God. He could not have made a more penitent, compliant gallows performance. The executioner put the rope about young Appletree's neck, but the people, many in tears, cried, "Stay! Stay!"

At that, Sir Christopher Hatton, the queen's vice-chamberlain, stepped forward, doffed his cap, and began a lengthy speech detailing the reasons why Appletree deserved death. According to the reporter, the people at first doubted that Hatton brought pardon and stared intently into his face, some weeping, some trembling. When they heard how close the queen had come to death, many lifted up their hands to heaven crying "God bless her majesty." With a fine sense of the dramatic moment, Hatton suddenly declared, "And now, if it please you, you may with marvel hear the message I come of. I bring mercy to this man, the gracious pardon of our most dear sovereign, who with her merciful eye, beholding the cleanness of this man's heart, free from evil thought and consequently from prepension of any malicious fact... vouchsafes to rob him from the gallows."⁷¹ He described the queen's heavenly disposition, which differed from the usual frailty and vengefulness of others. Reporting Elizabeth's assertion that no ruler ever had better, kinder or truer subjects, he then exclaimed, "God for his mercy direct us ever to be so." To Appletree, still on the ladder with the rope about his neck, Hatton declared, "Thomas Appletree, receive thy life from her most excellent Majesty, and pray to God on they knees for her all thy days to come."⁷² At that, great cheers of "God save the queen" erupted. Many in the crowd threw their caps into the air for joy. Hatton, Appletree, and all assembled knelt to thank God for giving them such a merciful queen.

In Appletree's case, those who had assembled around the gallows did not agree with the judgement of the authorities. Killing this young man, who repented heartily for

⁷¹ *Ibid.*, pp. 1201-2.

⁷² *Ibid.*, p. 1204. Poor Appletree had not yet finished paying for his rash act: he remained in gaol after the dramatic gallows pardon, unable to pay his fees, and had to petition the Earl of Leicester for assistance. SP 12/ 131, no. 51.

a serious yet inadvertent offence, did not seem a legitimate exercise of power. If an execution was meant to reinforce the ideological hegemony of the Crown – to foster the “internalisation of obedience and deference” that Sharpe and others have identified as the object of executions – this one would have failed miserably. It would have been a dramatic act of brute power, but little more. The queen had obviously decided to pardon Appletree in advance, contingent only upon his scaffold behaviour; the cries of the crowd did not determine the outcome. But by granting a pardon, the queen turned this potential failure into a success.

Of course, the Crown did not respond with a pardon to all instances of displeasure with an execution, nor did all pardons work as well as this one. In 1582, Philip Price earned the sympathy of those who gathered to watch his execution for killing the sergeant sent to arrest him for another crime; “partly with his speeches which were pathetic, and partly with his tears which were plentiful, as also with his vehement sighs and grievous groans, joined with diverse other gestures (great signs of inward grace) he so moved the beholders that many which beheld him pitied his woeful end.” Some of those with wet eyes “were such as a man would have thought had never a tear to shed at such a sight, having viewed diverse the like and more lamentable spectacles.”⁷³ Yet no pardon came for Price. Soon after the Appletree incident, a court sentenced three men associated with the printing of a scandalous tract opposing the French marriage each to have a hand severed in the Westminster market place. The last minute pardon of one of the men did not suffice to assuage those assembled; a chronicler reported that “the multitude standing about was altogether silent, either out of horror of this new and unwonted punishment, or else out of pity towards the man, being of most honest and unblameable sort, or else out of hatred of the marriage, which most men presaged would be the overthrow of religion.”⁷⁴ To no avail, the proposed groom himself asked

⁷³ *Holinshed's Chronicles*, IV, pp. 494-95.

⁷⁴ Camden, *The History of...Princess Elizabeth*, Book III, p. 10; cited from John Stubb's *Gaping Gulf with Letters and Other Relevant Documents*, ed. L.E. Berry, (Charlottesville, 1968) pp. xxxvi-xxxvii. One may doubt, however, the veracity of Camden's report: he claimed to have observed the punishment, but placed it in 1581 rather than 1579. On this incident, see also E.M. Tenison, *Elizabethan England*, 10 vols., (London, 1933), III, pp. 174-78.

Elizabeth to pardon the men's subsequent imprisonment, "so that they might understand that they owed their lives and her favour to his intercession."⁷⁵ In the immediate context of a particular execution, the crowd had little ability to shape events. The Crown, however, could not with impunity ignore public perceptions of justice and mercy. The pardon and conventions of mercy clearly could be potent tools in the construction and maintenance of authority and a medium conducive to the negotiations between rulers and ruled.

Thus, pardons sometimes derived from the Crown's need to placate public sentiment. Yet the cultural codes that demanded mercy also allowed the Crown to portray these acts of necessity as benevolent gifts. Expectations of mercy restrained and shaped the exercise of royal power, but did so in ways that permitted pragmatism to masquerade as majesty. When the crowd itself offended the laws and royal dignity, the need to leaven justice with spectacular shows of mercy became imperative to quiet dissent and to re-establish hierarchical relations of deference and obedience. The aftermath of the 1517 "Evil May Day Riot" demonstrated a dramatic response to public demands for clemency, one carefully scripted to depict the king as the exemplar of Christian and classical definitions of a legitimate sovereign.

In the late spring of 1517, many Londoners forcefully complained that foreigners had special protection in the royal courts, enjoyed unfair business advantages, and took too many jobs from English men. Despite petitions to the city leaders, nothing changed. After Easter, one Dr. Bele preached a sermon designed to inflame his listeners. He blamed outsiders for the current economic distress and for the concomitant challenges to men's abilities to protect and provide for their families. According to different recollections, Bele told his audience that the foreigners not only ate "the bread from poor fatherless children," but also debauched the wives and daughters of the men whose jobs they stole. He exhorted the crowd to rise against the foreigners, as "the redress

⁷⁵ *CSP Spanish*, vol. 3, pp. 1-2; cited from *Stubbs's Gaping Gulf*, p. xxxix.

must be of the commons.”⁷⁶ On 28 April, some young men attacked a number of foreigners and were sent to gaol. The king’s councillors heard a rumour that the people planned to rise against the aliens on the first of May and ordered the London aldermen to take precautions. When an official tried to arrest a young man for no apparent cause, the city erupted. Women and men of all degrees and ranks ran to the streets, broke open the gaols, and freed the young men arrested three days previously. They looted and destroyed the property of foreigners, but offered serious physical harm to none. The king sent troops to help the city officials who made a large number of arrests and soon quelled the riot.⁷⁷

The king’s reaction was swift and severe. His judges and councillors met at the home of Chief Justice Fineux. Henry VIII wanted the rioters charged with treason; basing their decision on a statute of 1414, which made the violation of safe conducts and truces high treason, the judges obliged.⁷⁸ Accordingly, when the commissioners of oyer and terminer met on 4 May, they announced that the 273 rioters assembled before them had committed treason. On the following day, they condemned thirteen men to be hanged, drawn, and quartered. These rioters died on new gallows erected throughout the city and by each gate. On 7 May, the commissioners condemned four more men. After the hanging of the first, a command came from the king to halt the proceedings. To a great cheer, the three remaining men went back to gaol. Hall noted the execution of fourteen men, but a Venetian despatch of 12 May asserted that “some twenty” had suffered and that executions continued; another report sent on 19 May estimated that nearly forty had hanged.⁷⁹ Henry needed a rigorous display of justice, both to assuage the

⁷⁶ *Hall’s Chronicle*, p. 587; *Four Years at the Court of Henry VIII: Selection of Despatches Written by the Venetian Ambassador Sebastian Giustinian*, trans. R. Brown, 2 vols. (New York, AMS Reprint, 1970; orig. pub. London, 1854), II, p. 69. The letters in this volume are more complete than the calendared versions in the *CSP Venice* or *L&P*.

⁷⁷ *Hall’s Chronicle*, p. 589; Polydore Vergil, *Anglica Historia*, ed. D. Hay, Camden Society, 3rd ser., vol. 74 (London, 1950), p. 245; *Giustinian*, II, p. 72. Hall was careful to note that the city officials had resolved the situation before the troops arrived, but Vergil’s account contradicted this.

⁷⁸ *Holinshed’s Chronicle*, III, p. 625. See Bellamy, *The Tudor Law of Treason*, pp. 18-20 for the “remarkable” nature of this decision and its importance for the subsequent development of the treason laws.

⁷⁹ *Hall’s Chronicle*, p. 590; *Giustinian*, II, pp. 74-77.

foreign ambassadors and their masters, and to counter rumours that had reached the continent about a lack of safety for foreign traders in London. The king's councillors needed to quell rumours at home, as well. Trouble threatened in other areas, and its instigators might gain encouragement from the London riots.⁸⁰

Yet, people in London thought that royal servants had too amply filled the need for justice. The executions had not cowed Londoners into submission; indeed, some reacted angrily and threatened further violence.⁸¹ One ambassador reported that "the people cannot bear that... their countrymen should be so cruelly hanged and quartered." Despite orders that men keep their wives at home, a number of women – perhaps thinking themselves immune from arrest – continued to vent their discontent.⁸² Part of this protest remained focused on the foreigners, but some was clearly directed at the harsh reprisals. Some people grumbled that the executions proceeded not from true justice but from one judge's grudge against the city; the ambassador in France heard a report that people angered by the executions had besieged the king.⁸³

On 11 May, when a delegation of London aldermen humbled themselves before Henry VIII and requested mercy for the remaining prisoners, he sent them away without an answer.⁸⁴ Within a few days, however, he decided that the time for mercy had arrived. Wolsey met with Henry to discuss the executions and to learn "his pleasure for them which shall... submit."⁸⁵ After their deliberations, the young king gave London a spectacle of mercy to contrast with that of the tortured final moments of the people who

⁸⁰ See the copy of Henry's circular letter in the "Letters of the Cliffords, Lord Clifford and Earls of Cumberland, c. 1500-c. 1565," ed. R.W. Hoyle, *Camden Miscellany* 31, Camden Society, 4th ser., vol. 44, (London, 1992), pp. 33-34; and the accounts of the 5 May enclosure riot in Southampton in SP 1/232, fols. 23, 27 and *The Third Book of Remembrance of Southampton, 1514-1602*, ed. A.L. Merson (Southampton Record Society, 1952), I, pp. 20-26.

⁸¹ *Giustinian*, II, p. 74.

⁸² *Ibid.*, II, p. 74. While no women were executed for their involvement in the riot, some were arrested: eleven were among those later pardoned.

⁸³ *Hall's Chronicle*, p. 589; *L&P* II, ii, no. 3367.

⁸⁴ *Hall's Chronicle*, pp. 590-91.

⁸⁵ For the careful planning and orchestration of these events, see HEH EL 2654, fols. 23d-24.

had died days before and to the swollen, brutalised bodies still hanging on gibbets around the city. The Venetian secretary's account revealed both the expressly theatrical nature of the pardon and the dramatic potential of intercession:

The king having lately exercised such rigorous justice, thought fit moreover to display his extreme clemency by pardoning the rest of those concerned in this conspiracy, and came one day to a place half a mile hence with his court in excellent array, the right reverend Cardinal [Wolsey] being there likewise with a number of lords, both spiritual and temporal, with their followers, in very gallant trim. And his Majesty being seated on a lofty platform, surrounded by all those lords, who stood, he caused some four hundred of these delinquents, all in their shirts and barefoot, and each with a halter round his neck, to be brought before him. And on their presenting themselves before his Majesty, the Cardinal implored him aloud to pardon them, which the king said he would not by any means do. Whereupon said right reverend Cardinal, turning towards the delinquents, announced the royal reply. The criminals, on hearing that the king chose them to be hanged, fell upon their knees, shouting 'Mercy!' The Cardinal again besought his Majesty most earnestly to grant them grace, some of the chief lords also doing the like, so at length the king consented to pardon them, which was announced to these delinquents by said right reverend Cardinal with tears in his eyes. And he made them a long discourse, urging them to lead good lives, and comply with the royal will... When the Cardinal told them this, that the king pardoned them, it was a fine sight to see each man take the halter which hung from his neck and throw it in the air, and they jumped for extreme joy, making such signs of rejoicing as became their escape from such peril.

He concluded: "It was a fine spectacle and well arranged and the crowd of people was innumerable."⁸⁶ The gallows that had so offended the Londoners were taken down, and peace was restored.

Like the Venetian observer, the audience and the condemned may well have recognised this mass pardon as a staged performance. Apparently, a number of offenders who had escaped arrest stood among the spectators. Realising that the king was about to grant mercy, they "suddenly stripped them into their shirts and halters, and came in among the prisoners willingly, to be partakers of the king's pardon."⁸⁷ These men, presumably, felt little repentance, but wisely chose to participate in the performance and accept a pardon. Like the others, they played their part of the script

⁸⁶ *Giustinian*, II, pp. 74-5. See also the account in *Hall's Chronicle*, p. 591. Hall said this occurred on 22 May, but the Venetian account has it on some unspecified date before the 19th.

⁸⁷ *Hall's Chronicle*, p. 591.

with their shouts of apparent joy and acclamation. Whether the condemned had internalised the intended message or only offered prudent external compliance, they followed their cue and gave a credible performance of humility and deference for the rest of those assembled. As for the audience itself, Hall reported that “many a good prayer [was] said for the king, and the citizens took more heed to their servants.”⁸⁸ Wolsey and the assembled nobles played the role expected of “good lords.” The king himself may have felt no genuine forgiveness or mercy, but the script allowed him to respond to the complaints of Londoners who felt that he had exceeded the limits of justice with a display of the mercy attendant upon legitimate authority.

Those present at public intercessions and pardons did not constitute their sole audience. Clearly, people told their relatives and friends about these dramatic events. The more informal means of reporting such events are lost to the historian, but the writers of pamphlets, chronicles, and ballads frequently narrated such occurrences, confident of an interested readership. Playwrights, too, adapted pardon dramas for the stage. The Evil May Day pardon, for example, found audiences not only in the readers of the major chronicles of the period, but also became the subject of an Elizabethan play and a Jacobean ballad. In the ballad, Queen Katherine played the role of intercessor; in the play, Thomas More earned the gratitude of king and commons by mediating for mercy. In both, of course, the pardon prompted loud cries of acclamation and thanksgiving.⁸⁹ Several literary scholars have commented on the prevalence of pardon scenes in early modern plays, noting the “almost parasitic” relationship between the mimetic and state-directed spectacles of mercy.⁹⁰ Literature, of course, did not exist in a separate cultural realm, but participated in the broader production of social experience and cultural meaning. Whether the plays encoded or questioned prevailing orthodoxies –

⁸⁸ Hall's Chronicle, p. 591.

⁸⁹ The Book of Sir Thomas More, ed. W.W. Greg (Oxford, 1911); Broadside Black Letter Ballads Printed in the Sixteenth and Seventeenth Centuries, ed. J.P. Collier (New York, 1968; orig. pub. 1868), pp. 96-101.

⁹⁰ See J.M. Spencer, “Staging Pardon Scenes: Variations of Tragicomedy,” Renaissance Drama 21 (1990): 55-89; Greenblatt, Negotiations, pp. 10, 129-63; Wilson, “The Quality of Mercy,” pp. 1-42.

whether they helped contain dissent or fostered subversion – has received considerable attention, but extant records only rarely reported the reactions of individual viewers or even collective audiences. Some critics have argued that literary productions offered a subversive challenge in exposing the theatrical basis of state spectacles. However, the ubiquity of theatrical metaphors in a wide range of texts suggested that royal displays of mercy needed little demystification: contemporaries showed a prescient awareness of the scripted, performative nature of political spectacles. Certainly, the plays communicated messages about the royal duty to show mercy and taught their audiences of the behaviours expected of those acting as supplicants or intercessors. Plays, pamphlets, ballads, and chronicles confirmed the importance of theatricality as a way of doing politics; they attested to the pervasiveness of intercession and pardon as performative social discourse for the negotiation of power in hierarchical relationships. They represented and mediated sets of strong social values for audiences that overlapped with those who witnessed executions and public pardons.

Seeing the pardon in this way allows insight into the most basic question of Tudor politics: in a society with a manifestly unequal distribution of power and resources, in a time of frequent religious and economic turmoil, how did the authorities maintain their position of dominance? Strategic displays of the virtues attendant upon the legitimate rule of a divinely appointed sovereign and public performances of hierarchical social realities helped. When dissent erupted into disobedience, conventions of mercy offered a means of negotiating a resolution. The next chapter turns to the major rebellions of the Tudor period and shows that in each, the king or queen traded mercy for deference. The Crown accompanied exemplary punishment of some rebels with pardons for most to display and enhance royal authority in the face of challenge. But traditions of mercy and good lordship also helped protesters cloak an independence of action and again, expectations of mercy restrained and shaped the exercise of royal power.

Chapter Six *Protest and Pardons*

In 1590, Sir John Smythe implored Lord Burghley to intervene with judges who allowed criminals to go free “under pretence of pity and mercy or favouring of life (as they miscall it).” Echoing the common belief that small sins led to greater crimes if not corrected, Smythe worried that such lenience not only emboldened people to offend, but also to turn to more serious offences that threatened the very basis of society. He cited as examples the *Jacquerie* in France, the Hungarian peasants’ rebellion, and the violent troubles in Spain, and warned that “commonly the beginnings are very small and therefore lightly regarded, but once begun, they suddenly grow great, and then they turn all to fire and blood.”¹ For Smythe, mercy prompted rebellion. Yet, throughout the Tudor period, the Crown used the pardon to diffuse protest, trading mercy for a public display of deference and submission. Indeed, the majority of people in Tudor England who received royal grants of grace did so during and after the period’s rebellions. These pardons had many of the same meanings and uses as those granted after murders, thefts, and other violations of the peace. Like them, the pardons after revolts sought to maintain not just “order,” but also a certain kind of social order. The numbers of people to whom they applied, and the direct political challenges to which they responded, did make them more dramatic performances; unlike the individual pardons for murderers and thieves, these were most often granted *en masse* after negotiations in which the offenders had considerably more power, however temporary. Their study reveals yet more facets of the role of mercy in the Tudor polity.

The rebellions and protests of the early modern period have generated a vast historiography. Much of this has found inspiration in the pioneering studies done by Marxist historians of popular protest in industrialising England.² Their demonstration of

¹ *HMC Salisbury*, vol. 4, p. 5.

² See especially E.P. Thompson, “The Moral Economy of the English Crowd in the Eighteenth Century,” *Past and Present* 50 (1971): 76-136. For a useful summation of this historiography, see the introduction to N. Rogers, *Crowds, Culture and Politics in Georgian Britain* (Oxford, 1998).

the rationality of crowds, their determination to access “history from below,” and their elaboration of the rites and rituals that shaped protest have had a special importance.³ M.E. James’ work on Tudor rebels has shown that despite the angered militancy of some, most neither resorted to violence nor explicitly questioned the authority of the Crown; some opted for a negotiated settlement rather than battle, and most sought to express their dissent within pre-existing conventions of obedience. Few risings overtly polarised elites and commoners.⁴ Paul Slack has summarised many of the findings offered by students of protest: most rebels, save for religious protesters, had conservative aspirations. They drew their support from all ranks of society, and their demands did not openly challenge the social structure of deference and obedience – on the contrary, they often insisted that their governors were the ones who had violated the hierarchical links of obligation that permeated their society.⁵ One recurring feature of rebellion that has not yet been studied is the pardon. Many historians of protest, interested in the causes and course of a rising, have ignored the pardon, tacking it on simply as the conclusion to their story. Others who have commented on the role of pardons in a particular rebellion have not connected them to pre-existing traditions of mercy. By studying how Tudor monarchs traded mercy for deference in each major rising, this chapter adds to the

³ See the introduction to *Rebellion, Popular Protest and the Social Order in Early Modern England*, ed. Paul Slack (Cambridge, 1984).

G. Rudé’s *The Crowd in History* (New York, 1964) offered important admonitions about the use of both denigratory and approbatory labels for crowds: they intrude bias, and often imply that the crowd was a “disembodied abstraction” rather than an aggregate of individuals. This raises the question of appropriate labels. In calling the people engaged in protest “rebels” one uses the name given them by the authorities rather than one they themselves accepted during their protest. Most loudly swore their loyalty; only when they accepted a pardon did many acknowledge that they had in fact earned the name of rebel. I have used the term in this chapter largely for ease of reference, but hope that this caveat will be kept in mind.

⁴ James’ essays have been collected in *Society, Politics and Culture: Studies in Early Modern England* (Cambridge, 1986) of particular relevance are “Obedience and Dissent in Henrician England: the Lincolnshire rebellion, 1536,” pp. 188-269, and “English Politics and the Concept of Honour,” pp. 308-415.

⁵ *Rebellion*, ed. Slack, pp. 1-15. R.B. Manning’s *Village Revolts: Social Protest and Popular Disturbances in England, 1509-1640* (Oxford, 1988) focused on riot rather than rebellion, but also emphasised protesters’ use of custom to legitimise their actions and their efforts to hold their rulers up to their own rhetoric. (One might quibble, however, with Manning’s decision to label such protesters “pre-political” and “devoid of political consciousness.”)

general model of popular protest and offers new insights into the dynamics of individual risings.

The outlines of these revolts are well known to students of the early modern period. In addition to the detailed studies of individual risings, Anthony Fletcher's Tudor Rebellions has offered succinct analytic descriptions of each.⁶ Much of the narrative that follows, then, is not new. It does, however, highlight elements previously ignored. It foregrounds the complex negotiations and methods of resolution, and focuses on the use and understanding of mercy by rulers and rebels in the suppression of dissent.⁷ Pardons did not simply conclude a revolt: they were implicated from the earliest stages in the expression and regulation of dissent. The pardon again emerges as a performance with the potential both to communicate and to construct royal authority; the realisation of that potential depended on the protesters' participation and their willingness to join in public performances of pardon.

Henry VII

Henry VII began his reign with extensive offers of mercy. Central to the ceremonial aspects of power, pardons helped the new king to secure his legitimacy. Soon after his victory at Bosworth, he offered pardon to those "rebellious" subjects who had

⁶ Anthony Fletcher, Tudor Rebellions (London, 1968); references in this chapter are to the fourth edition, revised by Diarmaid MacCulloch, 1997.

⁷ Three recent works have especially influenced this study. J. Walter's "A 'Rising of the People': The Oxfordshire Rising of 1596," Past and Present 107 (1985): 107-42, noted that the Oxfordshire disorders forced the government to open a dialogue with the people. It quoted Thomas Smith's dictum that the poorer sort "have no voice nor authority in our commonwealth" and suggested that there was in fact "a more equivocal relationship between the people and their governors in early modern England." Walter pursued this observation to great effect in his Understanding Popular Violence in the English Revolution (Cambridge, 1999). E. Shagan's "Protector Somerset and the 1549 Rebellions: New Sources and New Perspectives," English Historical Review 114 (1999): 34-63 highlighted the period's "unusually dynamic interplay between rulers and ruled" and the need to look not just at events themselves but at how they were represented and understood. Both authors suggested that historians might look to protests to study the mediations and conversations through which hierarchies of deference were created and maintained.

The extant documents, unfortunately, often record only one side of these conversations. Protesters' words may be found occasionally in depositions, where they are filtered by the scribe, the vagaries of memory, and the speakers' efforts to present themselves in the best light. Sometimes the speeches of rebels appear as reported to, or imagined by, chroniclers and contemporary historians. Here, one is cautioned by John Haywood's claim that "it is a liberty used by all good writers of history to invent reasons and speeches": CSP Domestic, 1598-1601, p. 540.

supported Richard III. Some of Richard's supporters, however, refused to avail themselves of this opportunity, while others accepted it only grudgingly. Lord Lovell and Humphrey Stafford remained obdurate in the Colchester sanctuary, where they had fled after Bosworth. In April 1486, the new king learned that these men planned two simultaneous risings.⁸ Henry quickly patched together a force of some 3,000 men. The Duke of Bedford led this small army to the enemy camp, and there proclaimed the king's pardon to all who laid down their arms.⁹ The Tudors repeatedly combined a display of force with an offer of mercy as an initial response to insurgency. The proffered pardon offered an escape to those who regretted their actions upon sober second thought. While not always effective in diffusing a crisis, it worked this time. Lovell fled and his forces submitted to royal agents. Stafford ran to sanctuary at Culham, whence he was soon removed and tried for treason. The king did not confine his display of mercy to the field. He had the ringleaders arrested and tried in sessions at Birmingham and Worcester. C.H. Williams studied the relevant indictments, and concluded that none save for Stafford himself suffered death; the rest, after humble submission to Henry as their rightful king, received pardon and release.¹⁰ Henry had not yet sufficiently secured himself upon the throne to risk the alienation and offence that large numbers of executions might cause. Pardons allowed him to turn weakness into strength by bartering mercy for deference. Mercy was a prerogative of rule: by giving pardon, he did what none but a lord might do. The public display of mercy enhanced the king's prestige, and its acceptance required an acknowledgement of his sovereignty.

⁸ Stafford apparently claimed he had been pardoned for his activities at Bosworth in order to draw men to his cause. This suggests that although he hoped for Henry's deposition, he used some other rallying cry. Materials for a History of the Reign of Henry VII, ed. W. Campbell, 2 vols., (London, 1873-77), I. pp.434-35.

⁹ Edward Hall suggested that the offer of pardon was Bedford's initiative, but Polydore Vergil, writing nearer the time of the event, gave the more plausible explanation that it was the king's decision. Hall's Chronicle, ed. Henry Ellis (London, 1809), p. 427; The Anglica Historia of Polydore Vergil, A.D. 1485-1537, ed. and trans. Denys Hay, Camden Society, 3rd series, vol. 74, (London, 1950), p. 11.

¹⁰ C.H. Williams, "The Rebellion of Humphrey Stafford in 1486," English Historical Review 43 (1928): 186. See also S. Cunningham, "Henry VII and Rebellion in North-Eastern England, 1485-1492: Bonds of Allegiance and the Establishment of Tudor Authority," Northern History 32 (1996): 42-74 for a discussion of the importance of bonds and recognizances in the king's efforts to establish his authority. These financial obligations were often a condition of a pardon, and thus gave added weight to submissions.

While he resolved the Stafford crisis quickly, Henry had not long to wait before another serious challenge arose. On 24 May 1487, the Irish crowned as king the ten year old Lambert Simnel, who claimed to be the Earl of Warwick.¹¹ A council of nobles gathered at Richmond Palace decided upon two measures: first, to put on public view the real earl, then imprisoned in the Tower; second, to proclaim a broad, general pardon of all offences, lest “participants in the new conspiracy should in despair of pardon have no alternative but to persist in their resolution.”¹² This pardon may have dissuaded some from joining Simnel, but it did not stop those already committed. Henry travelled to the north, gathering men as he went. His army met and defeated the pretender’s forces at Stoke-on-Trent on 16 June. The king pardoned both Simnel and his mentor, according to Polydore Vergil because “the innocent lad...was too young to have himself committed any offence, the tutor because he was a priest.”¹³ The king’s display of mercy undoubtedly sprang from more complex motives than these, and extended well beyond the young pretender and his teacher. Simnel assumed a position in the royal household, where he eventually became the king’s falconer and “a living token of the magnanimity of the king.”¹⁴

After the battle of Stoke, Henry progressed through areas suspected or known to have supported the rebels. In Lincoln, he witnessed the executions of an unspecified number of the rebels taken in the field. A few days later, Henry and his entourage reached York, where they received a warm welcome from the city leaders and attended various plays and festivities. On 2 August, a jury condemned three local squires for their support of the rising. On the following Saturday, at two o’clock, one was beheaded in the centre of the city. Complementing this display of royal vengeance, the king

¹¹ M. Bennett, *Lambert Simnel and the Battle of Stoke* (Gloucester, 1987), p. 5.

¹² *Anglica Historia*, p. 17.

¹³ *Ibid.*, p. 25.

¹⁴ Bennett, *Lambert Simnel*, p. 106.

dramatically pardoned the other two gentlemen at the execution site.¹⁵ The total numbers of people executed and pardoned remain unknown – chroniclers recorded no details – but the vast majority of participants seem to have returned home unpunished.

Onerous taxation rather than elite political ambition motivated the next rising Henry had to face. In 1489, a group of Yorkshire men refused to pay the subsidy parliament had granted to finance military endeavours on the continent. When the Earl of Northumberland conveyed their complaints to the king, Henry refused to compromise and ordered him to compel payment of the tax. The Yorkshire men offered the Earl fierce resistance; one group of protesters killed him. Under the leadership of Robert Chamber and Sir John Egremont, rioting continued. One commentator thought that desperation drove the Yorkshiremen to further revolt. He reported that the protesters, repenting after the killing, sent to the king for mercy and promised to do whatever he required. Henry, however, decided to exact a greater show of submission.¹⁶ He ordered the Earl of Surrey to the north, and followed with his own troops. Surrey's men quickly quelled the rising.

York again set the stage for Henry's display of the justice and mercy attendant upon a king. Forty-four men were tried for their participation in the revolt; six suffered the death penalty.¹⁷ They met their end on a four sided gallows specially constructed with one gibbet rising above the lower beams. Robert Chamber, the rebel leader, died upon this highest point.¹⁸ The rest received pardons after participating in striking

¹⁵ Hall's Chronicle, p. 435; York House Books, 1461-1490, ed. L.C. Attreed (Phoenix Hill, UK, 1991), VI. 587-88.

¹⁶ State Papers, Venetian I, p. 181; M.J. Bennett, "Henry VII and the Northern Rising of 1489," English Historical Review 105 (1990): 49. With these early risings, which left so few traces in records, we cannot be sure that all exchanges between rebels and figures in authority are known.

¹⁷ M.A. Hicks, "The Yorkshire Rebellion of 1489 Reconsidered," Northern History 22 (1986): 39-62. Hicks suggested that only four men were executed; Bennett, however, noted six. Egremont escaped to Flanders.

¹⁸ Great Chronicle of London, ed. A.H. Thomas and I.D. Thornley (London, 1938), p. 242. Surrey remained to supervise the north. In 1492, when further disturbances in Ackworth threatened another popular revolt, he took immediate military action. After a brief skirmish, he had the captains executed. He promised the rest that he would sue the king for pardon on their behalf, and "won thereby the favour of the country." We know of this incident only from the memorial inscription on Surrey's monument and

spectacles of repentance and reintegration. One chronicle recorded that a group of the poor commoners involved in the rising, “fearing grievous punishment, put halters about their necks, and in their shirts came into a great court of the palace where the king was lodged, and there kneeling, cried lamentably for mercy and grace.”¹⁹ The king accepted their submission and granted them pardon. This account accorded with that of the royal herald, who noted that the king pardoned some 1,500 men while at York. On successive days, groups of two to three hundred re-enacted this ceremony of submission, crawling towards the king and begging mercy.²⁰ Such displays were a recurring component of the political theatre of the Tudor years: 1489 was neither the first nor the last time disobedient subjects initiated their return to deferential codes of behaviour in this way.²¹

The next series of troubles centred around the person of Perkin Warbeck, who claimed to be the youngest son of Edward IV. His story served the needs of various disaffected parties; many apparently believed it.²² One group of aristocratic plotters came to light in 1494. At their trials in January of the following year, all twenty-one received sentence of death. Some immediately received their pardons, but on 4 February, five were led to Tower Hill to suffer their punishment. The executions of Simon Mountford, Robert Ratcliffe, and William Daubeney proceeded as planned, but as the axe lifted above the fourth, the king earned the cheers of the crowd by granting pardon to the two remaining prisoners.²³ More executions and pardons followed, but for Henry and the chroniclers, the most notable trial was that of Sir William Stanley. A powerful figure and

a brief notice in the Plumpton correspondence. *The Reign of Henry VII from Contemporary Sources*, ed. A.F. Pollard, 3 vols., (London, 1913-14), I, p. 81.

¹⁹ *Great Chronicle of London*, p. 242.

²⁰ The herald's account is in B.L. Cotton MS. Julius B. XII, fols. 53d-56. Bennett published the relevant passages in an appendix to his article on the rising: “Henry VII and the Northern Rising of 1489,” pp. 56-59.

²¹ For earlier examples, see accounts of Cade's Rebellion; ie., I.M.W. Harvey, *Jack Cade's Rebellion of 1450* (Oxford, 1991), p. 152.

²² *Anglica Historia*, p. 67; I. Arthurson, *The Perkin Warbeck Conspiracy, 1491-1499*, (Stroud, 1994).

²³ *Great Chronicle*, p. 257; Arthurson, *Warbeck Conspiracy*, pp. 85-86.

brother to the Earl of Derby, Stanley had joined in the plotting. He confessed to the king in hope of a pardon, but Henry allowed the trial to proceed and on 16 February, Stanley paid the price for supporting a pretender. Vergil speculated on the reasons for Henry's denial of pardon. He thought the dictates of clemency and the desire to avoid alienating Stanley's brother moved the king towards mercy. On the other hand, Sir William's popularity made him a dangerous figure, who might not be truly reconciled by a pardon. If he went unpunished, others might take this clemency as an encouragement to offend.²⁴

The suppression of this aristocratic plot only temporarily held back Warbeck and his remaining supporters. In July of 1495, more than 500 landed on the coast of Kent and endeavoured to raise the locals to their cause. Instead, the Mayor of Sandwich successfully led a gathering group of local men against the invading force. Warbeck fled to his ship, but 163 of his men were captured.²⁵ The sheriff of Kent brought them to London to face trial; no mercy appeared here. A group of mostly foreign adventurers, these supporters of Warbeck had acquired few English followers needing placation. The king sent groups to the coasts of Essex, Sussex, Norfolk, Kent, and Suffolk and had them executed as pirates. Their rotting corpses hanged above the beaches and cliffs for months, visible to any and all who passed near by. Some suffered for the edification of Londoners, with a few beheaded at Tower Hill, others hanged at Tyburn, and four Dutch men tied at the low tide mark of the Thames to drown.²⁶ On 17 August, Henry examined a list of those already killed and those whose executions had been deferred. Few, if any, of this lot received the king's forgiveness.²⁷

Warbeck and his backers then allied themselves with James IV of Scotland. Together, they marched into England on 21 September 1496. As Richard IV, Warbeck

²⁴ *Anglica Historia*, pp. 76-77.

²⁵ *Great Chronicle*, pp. 258-59; Arthurson, *Warbeck Conspiracy*, pp. 117-18.

²⁶ *Great Chronicle*, p. 260.

²⁷ Arthurson, *Warbeck Conspiracy*, pp. 118-20.

issued a proclamation to garner popular support. In addition to his assertion that Henry Tudor had unlawfully usurped his throne, he castigated Henry's record in taxation, justice, and war. Warbeck went so far as to offer pardon to those misguided subjects who had served Henry Tudor if they returned to their rightful allegiance. To those that defied him he threatened that "we shall come and enter upon them as their heavy lord, and take and repute them and every of them as our traitors and rebels"; to those that acknowledged their proper allegiance, Warbeck promised that "we shall come and enter upon them lovingly as their natural liege lord, and see they have justice to them equally ministered."²⁸ His call went unheeded, so he turned back. James persisted for four days, leaving behind him looted farms, burning houses, and angry calls for retribution when he returned to Scotland.²⁹ Henry soon declared war. The parliament that assembled on 16 January 1497 authorised unprecedented taxation – far more than voted in any previous year of the reign – to finance the war effort.

Trouble broke out in an unexpected quarter. Large numbers of people in the south-west were dismayed, if not outraged, by the heavy taxes. A group in Cornwall, led by lawyer Thomas Flamank and blacksmith Michael Joseph, decided to march to London and present their grievances to the king. At Wells, Lord Audley and several other members of the gentry and lesser nobility joined the protesters. Henry, who had gathered an army against Scotland, turned back to meet them. Numbering some 15,000 people by one count, the protesters stopped at Blackheath. Some of those assembled had not anticipated a pitched battle as the means of expressing their grievances. That, or fear of the approaching royal forces, led them to argue that they should submit themselves to the king's grace. When the leaders refused this option, many of the rank and file began to slip away. Indeed, the lack of any royal offer of pardon at this point may have confused and concerned some of the rebels. A few days earlier, some of the

²⁸ *Sources*, ed. Pollard, I, pp. 150-55.

²⁹ *Anglica Historia*, pp. 85-91; Arthurson, *Warbeck Conspiracy*, pp. 146-47.

Cornish men had made advances to the Lord Chamberlain to secure them a general pardon upon their promise to leave quietly. Nothing, however, came of this request.³⁰

On 17 June, Henry's forces routed the rebels. Some 200 of the protesters died in battle; still more surrendered themselves. The bloodshed on the field seems to have sufficed for Henry. Only the three leaders – Flamank, Joseph, and Lord Audley – were executed. This occurred in London, not Cornwall. The king had planned to send their dismembered bodies to the towns of the south-west for display, but upon learning that tensions remained high in the region, felt it prudent to avoid any further provocation. To the rest of the protesters, the king offered pardon. Vergil noted that the king spared the large group of captives “in consideration of their rustic simple mindedness.”³¹ One suspects that Henry also feared the consequences of a quick, harsh repression. He might respond severely to foreign adventurers intent on a political coup, but native protesters with grievances that might generate broader sympathy demanded a more merciful approach. Although the king's forces triumphed at Blackheath, that did not mean that he had fully defeated the Cornishmen and caution seemed prudent. On June 20, and again over the next few days, the sheriffs of the south-western counties issued the king's proclamation of pardon to all involved in the rising.³² Over the summer, commissioners travelled to the region to inquire into the extent of the rebellion and its support: they received orders to punish those who refused to submit and to give warrants for pardon to those who did.³³

This process of pacification had little time in which to take effect. Warbeck had heard of the rising and decided to make Cornwall the base for his next attempt upon the throne, landing on 7 September. The king offered him pardon, but his supporters distrusted the offer.³⁴ Within days, some 3,000 men had joined him. Warbeck, long

³⁰ *Great Chronicle*, pp. 275-77.

³¹ *Anglica Historia*, p. 97.

³² *TRP* II, no. 35; *CPR Henry VII*, II, p. 117.

³³ *CPR Henry VII*, II, pp. 115, 117, 118.

³⁴ *CSP Milan*, I, p. 325.

starved of public support, must have welcomed this popularity among the still-smarting population of Cornwall. He reached Exeter on 17 September with roughly 6,000 men. They fought their way into the city, but were forced to withdraw. Thence they travelled to Taunton, where the Chancellor proclaimed a pardon to all who laid down their arms.³⁵ Many accepted the offer. The king also made it known that 1,000 marks and a full pardon awaited the person who brought Warbeck to him.³⁶ With his support quickly eroding, Warbeck fled to sanctuary at Beaulieu. Upon a herald's message offering mercy, he submitted. The pretender came before Henry and a large assembly of both nobles and commoners; he confessed his imposture and wrongdoing and, on his knees, asked for forgiveness.³⁷ With Warbeck in his train, Henry set out on a progress through the area. Eventually, after two escape attempts and one more pardon, Warbeck was led to Tyburn with a halter about his neck and hanged.³⁸

Meanwhile, the remaining rebels at Taunton begged for mercy, which the king readily granted to all save for a few ringleaders. Henry then travelled to Exeter, where he stayed for nearly a month. Beginning with elaborate celebrations of his victory, he set about the pacification of the south-west. Years later, an eye-witness reported that several of the trees in front of the king's window were felled so that he might look down to see the penitents who thronged the cathedral close. With halters about their necks, they begged for mercy in the standard performance of submissive sorrow. When the king spoke through the window to grant them pardon, "they made a great shout, hurled away their halters, and cried, 'God save the king.'"³⁹ While few paid the penalty of death for

³⁵ *Ibid.*, I, p. 327.

³⁶ *Sources*, ed. Pollard, I, p. 169.

³⁷ *CSP Milan*, I, pp. 329-31.

³⁸ *Great Chronicle*, p. 287; *Anglica Historia*, p. 115; Arthurson, *Warbeck Conspiracy*, pp. 202-18 discussed and discounted theories that Warbeck's second escape attempt and attendant plotting were actually contrived by the king in an effort to justify Warbeck's execution.

³⁹ G. Oliver, *History of Exeter*, (Exeter, 1861), p. 87, quoted from A.L. Rowse, *Tudor Cornwall*, (London, 1969), p. 134.

their involvement in this insurrection, many paid dearly in cash and goods. New commissioners arrived to compound for pardon with the rebels and any who had offered them aid.⁴⁰ A.L. Rowse has examined the extant fine rolls: one from Somerset, Dorset, Wiltshire, and Hampshire totalled £8810 16s 8d.⁴¹ A subsequent roll from the same counties recorded a further £4629 8s 8d in fines. Known tallies for Cornwall and Devon came to £623 and £527 respectively.⁴² These numbers lent credence to Francis Bacon's later assessment that "the commissioners proceeded with such strictness and severity as did much obscure the king's mercy in sparing of blood, with the bleeding of so much treasure."⁴³

Bacon paid particular attention to the displays of mercy that attended rebellions and risings in his history of Henry VII, observing that:

It was a strange thing to observe the variety and inequality of the King's executions and pardons: and a man would think it at the first a kind of lottery or chance. But looking at it more nearly, one shall find there was a reason for it; much more perhaps, than after so long a distance of time we can now discern.⁴⁴

Indeed, the passage of time and paucity of extant records have served to obscure much of the context necessary to understand fully the use of the pardon in the rebellions of Henry VII's reign. The brief narrative given above, however, demonstrates that traditions of mercy and submission were central to the methods used by the first Tudor for containing dissent. The king used offers of clemency, backed by force, to weaken the resolve of rebels in arms. In the aftermath of a rising, the king mixed exemplary punishment of the leaders with pardons of the rank and file to display and hopefully

⁴⁰ *CPR Henry VII*, II, pp. 202-3.

⁴¹ This roll is summarised in *Letters and Papers Illustrative of the Reigns of Richard III and Henry VII*, ed. J. Gairdner, 2 vols., (London, 1861-63), II, pp. 335-37.

⁴² Rowse, *Tudor Cornwall*, pp. 137-38. See also, Arthurson, "The Rising of 1497: A Revolt of the Peasantry?," in J. Rosenthal and C. Richmond, eds., *People, Politics and Community in the Later Middle Ages* (Gloucester, 1987), p. 13.

⁴³ Francis Bacon, *The History of the Reign of King Henry the Seventh*, ed. J. Weinberger (Ithaca, 1996), p. 164.

⁴⁴ Bacon, *Henry the Seventh*, p. 154.

enhance his authority in the face of challenge. Spectacular enactments of lordly benevolence and dutiful submission, public performances of pardon offered visual primers in the realities of rule. But these performances required the participation of the ruled and depended for their success upon the interpretations of the audience. Expectations of mercy also restrained and shaped the king's exercise of power. Rebels' requests for pardon, and their acceptance or rejection of mercy were both instrumental and expressive as well; this became more apparent in the better documented risings of later reigns.

Henry VIII and the Amicable Grant

Like his father, Henry VIII faced a number of riots and popular disturbances in the early years of his reign. In 1513, Londoners staged a massive and successful enclosure riot, and people in the north refused to pay the latest subsidy. The following year, rioting occurred in Yorkshire, Cornwall, and Lincolnshire.⁴⁵ The tax protest appears to have been the only one that developed into an armed revolt, but few details of these incidents remain. A better-documented tax protest launched in 1525 offered a clear demonstration of the importance of the commons in the Tudor polity. Henry VIII had decided to invade France, which required vast sums of money. Just two years previously, parliament had authorised the collection of the largest subsidy in recent memory, but this still did not suffice. Wolsey and the king decided upon a levy ranging from one tenth to one sixth the value of a lay person's goods, and between one quarter to a third of the yearly revenues of clerics. The king ordered bonfires, processions, and "other tokens of joy and comfort" to encourage popular sentiment against the French and thus ease the

⁴⁵ *Hall's Chronicle*, p. 568; *Anglica Historia*, p. 203; *L&P* I, ii, nos. 3408.37, 3408.4, 3408.6. See also the group pardons recorded on C 67/62, ie., 122 people from York pardoned on 1 October 1514; and 194 from Cumberland pardoned on 16 November 1514. The offences are unspecified, but it seems a reasonable assumption that they stemmed from riots of some sort.

collection of the levy.⁴⁶ Nevertheless, people greeted the new tax scheme, known as the Amicable Grant, in the most unfriendly fashion.

When the commissioners began their work in early April, they encountered many who simply refused to pay. In private, a few grumbled about the uselessness of a war in France or the apparent illegality of such a levy.⁴⁷ In public, most swore their loyalty to the king and acknowledged their duty to support his wars; they were, however, just too poor to pay. In Suffolk, many of the wealthier cloth makers did agree to the levy, but then had to lay off their workers. By 25 April, Wolsey found it necessary to ask Londoners to give only what they could afford.⁴⁸ He did not extend this offer to the rest of the country and, as the commissioners' demands became more strident, the grumbling grew louder. Protesters began to gather, and some threatened their own rough justice by promising to "hew in pieces" any who paid the grant.⁴⁹ By early May, the Dukes of Norfolk and Suffolk met daily to discuss the growing unrest in their areas.⁵⁰ Some 4,000 people gathered near Lavenham in Suffolk. The Dukes of Norfolk and Suffolk assembled a force to meet them, but its value was dubious: the dukes' tenants expressed a willingness to protect their lords, but not to fight their neighbours.⁵¹ Their loyalty was not, in the end, put to the test.

The dukes decided to attempt a resolution by "dulce means." They wrote to the king suggesting that he use the same approach elsewhere if rebellion occurred, arguing that hasty punishment might lead to further danger at a later date.⁵² A rising might be

⁴⁶ G.W. Bernard, *War, Taxation and Rebellion in Early Tudor England: Henry VIII, Wolsey and the Amicable Grant of 1525* (Brighton, 1986), pp. 55-56 for the rates; pp. 61-64 for Henry's involvement in the planning for the grant. See also "Instruction for the Levying of the Amicable Grant," ed. G.W. Bernard and R.W. Hoyle, *Historical Research* 67 (1994): 190-202, quote at p. 200.

⁴⁷ B.L. Cot. MS Cleopatra F.VI., fo. 341; *Hall's Chronicle*, p. 698.

⁴⁸ *Hall's Chronicle*, p. 698.

⁴⁹ SP 1/34, fols. 192r-v (*L&P* IV, i, no. 1321).

⁵⁰ SP 1/34, fol. 190 (*L&P* IV, i, no. 1319).

⁵¹ HMC Wales, 48th appendix, I, ii. (This is a translated excerpt from Ellis Griffith's contemporary chronicle of Henry VIII's reign.) *Hall's Chronicle*, pp. 699-700.

⁵² SP 1/34, fol. 190 (*L&P* IV, i, no. 1319).

suppressed, but the underlying cause aggravated rather than cured. Whether they favoured this approach because of their men's reluctance to fight or because of Norfolk's "nobleness" and wisdom, as Hall implied, it proved a good choice. On 11 May, the dukes invited several of the protesters to a brief conference. They decided to meet again to discuss the people's grievances. A larger group came, but according to the chronicler all tried to speak at the same time, "like a flock of geese in corn."⁵³ The dukes interrupted and told them to go back to their comrades to decide whether they wanted to continue their disobedience or to submit.

A delegation of sixty protesters returned. This time they came dressed only in their shirts – the garb of religious penitents -- to show repentance and humility. They knelt and explained their grievances, whereupon the dukes promised to speak to the king for their pardon if they submitted. The rebels returned to their camp and explained the offer. While some wanted to accept, others thought to gain more if they persisted. They ran to ring the church bells and thereby raise the countryside, but found that the clappers had been removed. Deciding then that further rebellion was futile, they agreed to approach the dukes. Bareheaded, kneeling, and stripped to their shirts, they expressed their contrition, but also carefully explained the reasons for their rising. One elderly weaver came forward to answer Norfolk's questions; his eloquence impressed all who heard him. When asked for the leaders' names, he replied that they had no captain but Poverty.⁵⁴ The dukes reported that the men

with piteous crying for mercy showed that they were the king's most humble and faithful subjects and so would continue during their lives, saying that this offence by them committed was only for lack of work so that they knew not how to get their living. And for their offence most humbly besought us to be means to the king's highness for pardon and remission.⁵⁵

⁵³ HMC Wales, 48th app., I, iii.

⁵⁴ *Ibid.*, iii-iv; *Hall's Chronicle*, pp. 699-700. The weaver's speech lived long in the popular memory - several figures in the 1536 revolts named themselves "Captain Poverty."

⁵⁵ B.L. Cot. MS Cleopatra F.VI, fol. 260.

The negotiations were not yet complete. Before the dukes agreed to play the part of “good lords” and make their own humble intercession with the king, they spoke at length of the heinousness of the rebels’ crimes. They kept four of the leaders, and sent the rest home with a warning that all others must present themselves by the next morning or be taken as rebels. Over the following days, processions of penitents, many wearing halters, streamed in from the surrounding towns and villages to offer their submissions to the king’s agents.⁵⁶

Wolsey argued for harsh repression because the offenders had refused to submit until an armed force appeared against them.⁵⁷ The Dukes of Norfolk and Suffolk, however, continued to suggest a delicate approach as some people in their areas were not yet quiescent; Archbishop Warham’s letter of 12 May indicated that problems persisted in Kent, as well.⁵⁸ On 18 May, a special commission began to try the Suffolk rebels, indicting 525 men, but for riot and unlawful assembly rather than treason.⁵⁹ Thus, no executions followed; the trials may have served largely as a salutary warning of the danger into which the rebels had placed themselves. Wolsey soon began to portray himself as a helpmate of the people.

The king spoke before a large gathering at Westminster. He maintained that he had never wanted to ask anything of his subjects that might affect his honour or infringe upon his laws; he denied knowing how great a burden the tax had been. After Wolsey stepped forward to accept the blame, Henry announced a pardon for all who had refused to pay. The assembled lords knelt to thank their king. New letters sent to the commissioners in each county declared that through Wolsey’s intercession, the king now asked his people to give only so much as they felt able.⁶⁰ Henry had connived at the

⁵⁶ SP 1/34, fol. 196 (L&P IV, i, no. 1319); Hall’s Chronicle, p. 700.

⁵⁷ L&P IV, i, no. 1324. (Undated letter.)

⁵⁸ SP 1/34, fol. 196; B.L. Cot. MS Cleopatra F.VI., fol. 341 (L&P IV, i, nos. 1329, 1332).

⁵⁹ Bernard, Amicable Grant, p. 85.

⁶⁰ Hall’s Chronicle, pp. 700-1.

grant to finance his pursuit of honour through foreign conquest, but found his honour challenged at home. The first was desirable, but the second absolutely necessary.

The dukes returned to London with their prisoners. On 29 May, two tax protesters – one from Huntingdonshire and one from Kent – were brought to the Star Chamber. Wolsey explained to them, “with terrible words,” the seriousness of their offences; he then offered them the king’s pardon. The following day, the Suffolk protesters came to Star Chamber. After the judges read the charges, Wolsey stepped forward to announce the king’s clemency. When the attorney general demanded that the men produce sureties for their good behaviour, Wolsey declared himself and Norfolk their guarantors, paid their gaol fees, and sent them home.⁶¹

For their part, the protesters used traditions of both armed protest and repentance to present their grievances more forcefully than through petition. In their public words and actions, they supplemented their defiance with expressions of loyalty and deference. The protesters dispersed without promise of pardon or redress, hoping they had made their point and that their ready submission sufficed to allay the king’s anger. They accepted the dukes’ pledge to act as intercessors; after all, this constituted the proper role of the nobility in a hierarchical society. Despite an initial desire for strict justice, Wolsey decided to play the part of an intermediary for grace, and thereby try to gain the respect such a role might earn. Conventions of mercy allowed the king to extricate himself from a bad situation while maintaining his honour and appearing both magnanimous and benevolent. The dynamic of protest and submission, linked with the dynamic of force and mercy, shaped the course of this and subsequent protests.

Henry VIII and the Pilgrimage of Grace

The Pilgrimage of Grace has garnered more attention from historians than any other rebellion of the Tudor period. This scholarship has focused on the causes of this

⁶¹ *Ibid.*, pp. 701-2.

massive series of risings in which over 60,000 people took up arms in the latter three months of 1536.⁶² Most recent works have accepted the importance of both economic and religious issues for the Pilgrims; a range of social and political grievances motivated different participants, but concerns about the dissolution of the monasteries and attendant religious innovations provided a common front for rebels of all social ranks.⁶³ M.E. James has bypassed questions about the Pilgrimage's causation to concentrate instead on the forms and conventions that shaped it and its predecessor, the Lincolnshire Rebellion. Asking how opposition might be expressed in a society predicated on deference, James demonstrated that the rebels took care to express their dissent within conventions of obedience.⁶⁴ His depiction of popular protest in Tudor England offers a fruitful starting point for a discussion of the uses and meanings of pardons in the Pilgrimage.

⁶² For numbers of people involved, see M.L. Bush's *The Pilgrimage of Grace: A Study of the Rebel Armies of October 1536* (Manchester, 1996), p. 376. Bush's work is just what its subtitle claims, and thus only partially supersedes the standard narrative by Madelaine and Ruth Dodds, *The Pilgrimage of Grace and the Exeter Conspiracy*, 2 vols, (London, 1915). For a concise introduction to the events of 1536, see Fletcher and MacCulloch, *Tudor Rebellions*, pp. 22-49.

⁶³ The Dodds suggested that the Pilgrimage was a composite of a religious protest by gentlemen and a social movement by commoners. Much of the subsequent comment has been shaped by divergent understandings of the Reformation; A.G. Dickens' focus on secular causes has remained influential. See his "Secular and Religious Motivation in the Pilgrimage of Grace," *Studies in Church History*, ed. G.J. Cummings, vol. 4, 1967, pp. 39-64. C.S.L. Davies stressed the interrelation of various factors, but noted especially the tenacity of traditional beliefs and, thereby, resurrected the importance of religious grievances. See his "The Pilgrimage of Grace Reconsidered," *Past and Present* 41 (1968): 54-75 and "Popular Religion and the Pilgrimage of Grace," in A. Fletcher and J. Stevenson, eds., *Order and Disorder in Early Modern England* (Cambridge, 1985), pp. 58-91. In an early stage of his revision of Reformation history, C. Haigh followed Davies in emphasising the pre-eminence of religious conservatism as a motivation in the Pilgrimage: *The Last Days of the Lancashire Monasteries and the Pilgrimage of Grace* (Chetnam Society, 1969). S. Harrison studied the rebels from the Lake Counties, previously thought to have been motivated almost solely by economic grievances, and found them concerned by changes to church ceremony and customs: *The Pilgrimage of Grace in the Lake Counties, 1536-7*, RHS Studies in History Series, v. 27, (London, 1981). G.R. Elton intervened with a provocative recasting of the rising in which the commons were upstaged by a bitter, defeated Court faction and the Pilgrimage was the result of noble intrigue and conspiracy: "Politics and the Pilgrimage of Grace," in B. Malament, ed., *After the Reformation* (Manchester, 1980), pp. 25-56. Bush's work on the rebel armies has rehabilitated the role of the commons in instigating the risings; gentry and noble leaders were acquired later in an effort to legitimise the protest as a manifestation of a "society of orders." In relentless detail, Bush has emphasised the multiplicity of motivations and concerns that drove people to begin or join the protest. The Pilgrimage's place in the broader history of the Reformation is probably not yet settled: new anti- or post-revisionist work on the Reformation will likely return to this subject.

⁶⁴ M.F. James, "English Politics and the Concept of Honour," and "Obedience and Dissent in Henrician England."

Unlike those in other Tudor risings, these pardons have received considerable study and debate. A full pardon for all participants was the first and most adamant of the Pilgrims' demands; the overwhelming superiority of their army forced the king to comply. Subsequent to this pledge, however, further protests erupted and the king was able to reply with executions. The Dodds and A.G. Dickens argued that Henry never intended to keep his promise of pardon: he offered it merely as an expedient to disperse the rebels.⁶⁵ This remained the standard understanding until M.L. Bush and David Bownes recently reopened the question in their study of the "postpardon" revolts of 1537. They suggested that the December pardon marked a major victory for the Pilgrims; the later tumults that presented the king with the opportunity for revenge were fortuitous, rather than the outcome of Machiavellian machinations.⁶⁶ While their descriptive narrative discussed the pardons, it provided little hint that these agreements had a meaning beyond the purely mechanical, instrumental level. Negotiations for pardon determined who lived and died after a rising, but they also acted as performances that allowed the expression of dissent and the restoration of royal authority. These negotiations were heavily contested, however, and showed that a pardon had no fixed, intrinsic meaning. Both Henry VIII and the Pilgrims wanted the pardon presented in a manner that encouraged interpretations favourable to themselves.

The Lincolnshire rising has generally been treated as a mere prelude to the more significant Pilgrimage; historians have emphasised its role in inspiring further protests and in providing the first articulated set of grievances.⁶⁷ Responses to its resolution and aftermath, however, greatly shaped the course of the Pilgrimage. By the beginning of October 1536, three groups of commissioners - one collecting a subsidy, one dissolving the smaller monasteries, and one examining the clergy - set to work in Lincolnshire. On

⁶⁵ Dodds and Dodds, *Pilgrimage*, II, pp. 24-55; A.G. Dickens, "Royal Pardons for the Pilgrimage of Grace," *Yorkshire Archaeological Journal* 33 (1938): 397-412.

⁶⁶ M.L. Bush and D. Bownes, *The Defeat of the Pilgrimage of Grace: A Study of the Postpardon Revolts of December 1536 to March 1537* (Hull, 1999).

⁶⁷ Bush, *Pilgrimage*, pp. 16, 43.

2 October, a number of people gathered and seized several of the commissioners. The next day, a group 3,000 strong and growing captured four more royal agents.⁶⁸ These commissioners notified the king of the general tenor of the commons' complaints: a fear of new taxes and the loss of church goods. Reporting the commons' assertions of loyalty to the king, they begged that Henry grant a comprehensive general pardon to effect a speedy resolution.⁶⁹ On 7 October, a list of grievances was read to the assembled crowd, now at least 20,000 strong.⁷⁰ The people shouted their approval and sent the list to the king. Some approached Lord Shrewsbury to intercede for their pardon and demands.⁷¹ Others pressed for action, but the leaders convinced them to await the king's answer to the commissioners' letter. Many later claimed to see no disloyalty in their actions; in a deposition given after the rising, one man said that had the people known their actions constituted high treason, they "would not have gone forward, for all the people with whom he had intelligence thought they had not offended the king, as the gentlemen caused proclamations to be made in his name."⁷²

The king quickly disabused them of this notion. His response arrived on 10 October. The protesters had it read aloud, along with a communication from the Duke of Suffolk, the king's commander in the area. If the king's letter followed the extant draft, it was far from conciliatory. Henry had previously sought to diminish local support for the protesters by claiming that they molested the wives and daughters of honest men; he now threatened to send an army against the Lincolnshire men to destroy "with all

⁶⁸ For the causes of this rising, see M. Bowker, "Lincolnshire 1536: Heresy, Schism or Religious Discontent?" *Studies in Church History*, ed. D. Baker, vol. 9 (Cambridge, 1972), pp. 195-212.

⁶⁹ SP 1/106, fol. 250 (*L&P* XI, no. 534). The main body of information about the 1536-7 rebellions lies in the documents calendared in the *L&P*; contemporary chroniclers gave the protests only brief notice in their works. Relevant documents are many; Dickens has warned, however, that a good number of these were drafts or were not sent and must therefore be used with caution. Also, much of the information comes from depositions after arrest; in addition to the usual problems with this type of source, the interrogators did not think to ask questions a historian might like to see answered.

⁷⁰ *L&P* XI, nos. 553, 585, 780 (2), 828 (5).

⁷¹ *L&P* XI, no. 618.

⁷² *L&P* XII, i, no. 70 (11).

extremity” the wives and children they had left behind in their eagerness to rebel.⁷³ He made no direct offer of mercy, and claimed to see no way to save the rebels from his righteous fury unless they dispersed immediately and sent to the Duke of Suffolk one hundred of their ringleaders with halters about their necks.

Little wonder that the man reading the letter aloud decided to skip a passage – unspecified in the record -- for fear that it might infuriate his audience. A bystander, however, noted his omission and members of the crowd became angry with both their leaders’ apparent duplicity and the king’s harsh answer.⁷⁴ The next day, their leaders convinced them to wait for the king’s reply to their second despatch of grievances and promised to beg Suffolk to intercede for mercy.⁷⁵ Suffolk, however, refused to negotiate further while the people still bore arms.⁷⁶ The king’s herald arrived and over two days managed to persuade most of the protesters to disperse; others stayed to hear from Suffolk.⁷⁷ The gentlemen agreed to wait to receive a pardon, pledging to recall the rebels if one did not arrive.

Extant records do not tell what offers the herald and Suffolk had made to induce the people to return home. Suffolk’s letters suggested that he promised to sue for pardon, but relayed no certain guarantee of the king’s clemency. On 12 October, he wrote to ask the king how best to deal with the largely subdued insurgents. He counselled mercy, for the pragmatic reason that it offered the quickest way to resolve the situation and allowed him to divert his attention to the new rising in Yorkshire.⁷⁸ Some of the protesters, however, had the impression that the herald had granted them the king’s pardon; for this reason, they had made their humble submission and dispersed.⁷⁹

⁷³ I&P XI, no. 557 (2); for the king’s draft letter to the rebels, XI. 569. For Suffolk’s, XI, no. 616.

⁷⁴ I&P XI, no. 971.

⁷⁵ SP 1/110, fol. 158r-v (I&P XI, no. 971); I&P XI, no. 665.

⁷⁶ I&P XI, no. 615.

⁷⁷ I&P XI, nos. 640, 854.

⁷⁸ I&P XI, no. 672.

⁷⁹ I&P XI, nos. 706, 734.

In no hurry to despatch a formal guarantee of clemency, the king deemed any offers conditional. Henry VIII wanted a number of rebels examined to unearth all of the instigators, and he demanded that they hand over their weapons and assist in the arrest of ringleaders.⁸⁰ Suffolk began making arrests, but some people continued to burn the beacons and ring the bells of parish churches in an effort to renew the revolt. Sir Gervase Clifton reported that a handful of protesters swore “they will have their pardon general or else none at all.”⁸¹ The king sent off a less than conciliatory answer to the second petition. His approach had not changed: although he preferred “policy” to fighting, he offered no concessions and refused to guarantee a pardon until those involved had submitted and made some public acknowledgement of their repentance.⁸² Henry ordered Suffolk to proceed with executions to terrify the people into quietness.⁸³ The gentlemen and ringleaders he wanted sent to London for closer examination. The growing unrest in Yorkshire made Suffolk hesitant to proceed with too much severity; he did, however, have some people executed in the immediate aftermath of the rising, a point hardly noted by historians of the Pilgrimage.⁸⁴ Suffolk had a provost marshal, and reportedly was exacting “good justice” in early November.⁸⁵ Later, rumours of Suffolk’s supposed treachery ran rampant throughout the north; one travelling minstrel reported that “Suffolk promised and was bound unto the Lincolnshire men to get their pardon for them all and that none of them should suffer death and contrary to that the same duke did [cause] seven men to be hanged.”⁸⁶ These rumours grew from actual executions and

⁸⁰ I&P XI, nos. 717, 718.

⁸¹ “Letters of the Cliffords, Lord Clifford and Earls of Cumberland,” ed. R.W. Hoyle, Camden Miscellany 31, Camden Society, 4th ser., vol. 44. (London, 1992), p. 143.

⁸² I&P XI, no. 780. The answer was published at the time, and is reprinted in full in Humanist Scholarship and Public Order, ed. David Berkowitz (Washington, 1984), pp. 172-76.

⁸³ SP 1/108, fols. 150-51. (I&P XI, no. 764.)

⁸⁴ Dodds, Pilgrimage, II, pp. 151,153.

⁸⁵ I&P XI, nos. 1086, 938; XII, i, 70.

⁸⁶ SP 1/116, fol. 30. (I&P XII, i, no. 424).

help to explain the attitudes of the Pilgrims of Grace to offers of mercy.⁸⁷ Suffolk probably did not violate any legal promise of pardon, but popular perceptions of his perfidy became vitally important. By the end of October, many of the Lincolnshire men came in to enact their submission to Suffolk and swear oaths of allegiance. Not until 14 November did the king issue their pardon, carefully excepting those already imprisoned.⁸⁸ Months later, after all the tumults had ended and a number of crowd-pleasing last-minute reprieves, forty-six men were executed in the spring.

While the king and his council concentrated on Lincolnshire, another more serious rising began in Yorkshire. On 8 October, a group took up arms in Beverley; by 13 October, people from the West and East Ridings joined them for a march on York. Their captain, Robert Aske, began to speak of their movement as a “pilgrimage of grace for the commonwealth.” He declared:

for this pilgrimage we have taken it for the preservation of Christ’s church, of this realm of England, the king our sovereign lord, the nobility and commons of the same, and to the intent to make petition to the king’s highness for the reformation of that which is amiss within this his realm and for the punishment of the heretics and subverters of the laws.⁸⁹

All swore oaths of loyalty to the king, church, and commonwealth. They took York and soon had support from people throughout the north. By late October, nine armies had formed; most of these, roughly 30,000 men, joined Aske. They coerced and cajoled nobles and gentlemen to become their leaders and present their grievances. The lords, they said, “had misused themselves” and failed in their duty to commons and king by not telling him of the poverty and heresy that plagued his realm; it was time for the nobles to make amends.⁹⁰ With members of all social orders in their army, the Pilgrims felt

⁸⁷ These executions are noted in Dodds, *Pilgrimage*, II, p. 150; Bush and Bownes, however, ignored them altogether. They noted that the Pilgrims in early spring were agitated by rumours of executions following the Lincolnshire submission, but implied that these rumours were unfounded.

⁸⁸ *L&P* XI, nos. 728, 834, 1061, 1103, 1224.

⁸⁹ SP 1/118, fol. 41 (*L&P* XI, no. 705).

⁹⁰ “The Pilgrimage of Grace and Aske’s Examination,” ed. M. Bateson, *English Historical Review* 5 (1890): 335-36.

confident that the king would grant their “reasonable requests” and “retake” them to his mercy.⁹¹ Indeed, these protesters included a request for pardon on their list of grievances.

On 21 October, a herald approached the Pilgrims at Pontefract with a proclamation of pardon for all but ten leaders if they dispersed. He convinced a group he met on the way to depart for their homes, but when he got to the market cross to make his proclamation, Aske refused to let him speak.⁹² Norfolk, the king’s lieutenant, realised that the strength of the Pilgrims’ force exceeded his own and had serious doubts about the loyalty of his forces.⁹³ But Norfolk’s reluctance to risk battle grew from more than a pragmatic counting of opposing numbers. He and his council, like the Pilgrims, preferred “policy” to bloodshed. Accordingly, the herald returned to the Pilgrims three days later and asked them to send four men to discuss their petition with Norfolk. He relayed Norfolk’s offer to act as a suitor for the king’s mercy.⁹⁴ Aske wanted the Pilgrims to accept the offer, saying it was their duty to declare their grievances to their sovereign lord.⁹⁵ The Pilgrims agreed and despatched their delegates for two meetings on 27 October.⁹⁶ Both sides resolved to disband their armies. Norfolk accompanied Sir Ralph Ellerker and Sir Robert Bowes, two of the Pilgrim leaders, to present the king with five general articles of grievance and to petition for a full pardon for all.⁹⁷

⁹¹ “William Stapleton and the Pilgrimage of Grace,” ed. J. Cox, Transactions of the East Riding Antiquarian Society 10 (1903): 95 (L&P XII, i, no. 392).

⁹² L&P XI, no. 826 (the herald’s report). Aske later said that the herald came only to tell of the defeat of the Lincolnshire rising, and had no offer of pardon: “Aske’s Examination,” ed. Bateson, p. 336.

⁹³ SP 1/109, fols. 96, 214-29 (L&P XI, nos. 864, 884, see also no. 904.) On the fears about the loyalty of the king’s forces, see G.W. Bernard, The Power of the Early Tudor Nobility (Brighton, 1985), pp. 39, 42.

⁹⁴ L&P XI, no. 887.

⁹⁵ “Aske’s Examination,” ed. Bateson, p. 337.

⁹⁶ L&P XII, i, nos. 946 (118), 1022.

⁹⁷ L&P XI, nos. 901, 909, 1045; “Thomas Master’s Narrative of the Pilgrimage of Grace,” ed. R.W. Hoyle, Northern History 21 (1985): 70-71.

This agreement is usually referred to as “The Truce.” This is somewhat misleading, however, as the king and his councillors initially thought matters resolved and so, it seems, did some of the Pilgrims. The king rescinded his orders to muster more troops for service in the north. On 1 November, he wrote to the earl of Cumberland and asked him to see if the rebels, “now in retirement, . . . remain in quietness repenting the offence of their insurrection against us.” Henry asked Cumberland to tell them of the danger they had escaped only because their king was “a prince of great mercy.”⁹⁸ Pardons devised on 2 November and 11 November noted that because the rebels had acted from ignorance, the king deigned to forgive them and planned to despatch instruction to relieve them from their deception. The Pilgrims had to hand over six of the known leaders, and four men to be identified later. The king ordered the Pilgrims to apprehend these men as a “declaration of your good hearts again toward his grace and for a demonstration of your repentance.” These exceptions from the pardon were ringleaders, and therefore deserved no clemency. The king ordered all to make their submission before Norfolk or his deputies.⁹⁹

Many people in the north, however, remained unsettled. Some wanted a firmer commitment to address grievances and pledged not to be assuaged by mercy alone. One claimed that unless the king resolved their complaints, “whatsoever letter, bill or pardon shall be sent unto us we will not accept nor receive the same, but send it to his Highness again.”¹⁰⁰ The king seemed to think that matters stood much as they had in Lincolnshire after that group of rebels had dispersed; he urged the northerners to learn from the Lincolnshire example. They took heed, but drew a moral not intended by Henry.¹⁰¹

⁹⁸ “Clifford Letters,” ed. Hoyle, pp. 55-7.

⁹⁹ SP 1/110, fols. 93-99, quote at fol. 96; SP 1/111, fol. 50. (*L&P* XI, no. 955, 1040.) Dickens believed that these pardons were not proclaimed, as the king must have realised it to be too foolhardy a move during a truce. (“Royal Pardons,” pp. 401-3.) But the king did not think this was a truce. Dickens adduced as evidence the recall of Ellerker and Bowes on 5 November, who had set out to return to the north. (*L&P* XI, nos. 985, 986.) But Henry was still committed to the demand for ten victims well after the 5th. (*L&P* XI, nos. 1002, 1003, 1046.) Certainly, a pardon that sounds like this one was proclaimed at some point in November. (“Master’s Narrative,” ed. Hoyle, p. 75.)

¹⁰⁰ SP 1/ 118, fols. 261-64 (*L&P* XII, i, no. 1013.)

¹⁰¹ *L&P* XI, nos. 712, 1244.

They continued to disdain any pardon that did not extend to all participants in the rising. Some, hearing of the exceptions from the pardon, declared they “would all die on a day rather than lose the worst upon the field.”¹⁰² Norfolk reported that the pardon “did no good, for everyone was afraid for himself.”¹⁰³ Previously, they had asked for a pardon by act of parliament “or otherwise.” Obviously, their distrust had grown, for some now insisted that the king confirm his offer of mercy in a statute.¹⁰⁴

The Pilgrims’ feelings of grievance proved more difficult to resolve than Henry had initially hoped after the October agreement. He tried disengaging the Pilgrim leadership by individual offers of pardon, but to no avail.¹⁰⁵ He drew up his answer to the petitions, but decided not to let Ellerker and Bowes take it back with them. They must wait, he said, until a meeting with Norfolk to receive it. When the king initially proposed this second appointment, he most likely intended it to be the occasion of a mass submission and a haughty display of his princely grace and clemency. As November wore on, it became increasingly apparent that this was not to be. Distrust mounted on both sides, and the Pilgrim hosts began to reassemble.¹⁰⁶ By the end of the month, Norfolk and his council warned the king that the impending meeting promised to be difficult, and that he would probably have to meet at least two of the demands -- a full pardon for all, and a meeting of parliament.¹⁰⁷

In a letter hurried off to Ellerker and Bowes, Henry castigated them for the ingratitude and presumption they showed in making continued demands and fostering further protest. They desired mercy of him, and thus acknowledged him as their sovereign lord; however, by demanding safe-conducts, sureties and other such

¹⁰² *L&P* XII, i, no. 29; see also “Master’s Narrative,” ed. Hoyle, pp. 72-3.

¹⁰³ “Master’s Narrative,” ed. Hoyle, p. 75.

¹⁰⁴ *L&P* XI, nos. 902 (2), 1170.

¹⁰⁵ See, for example, *L&P* XI, no. 1064 and Bernard, *Early Tudor Nobility*, pp. 45-46.

¹⁰⁶ *L&P* XI, nos. 1153, 1154.

¹⁰⁷ *L&P* XI, no. 1227; “Master’s Narrative,” ed. Hoyle, p. 74.

guarantees, they failed to act the part of dutiful subjects. He asked if they found no shame in calling themselves humble subjects when their actions demonstrated the contrary. Words did not suffice: they had to show submission in their deeds.¹⁰⁸ To Norfolk, Henry despatched detailed instructions for the meeting, quite consciously hoping to manipulate the resolution of the conflict through a stage-managed spectacle of pardon. He told Norfolk to show the people the danger of their continued disobedience, then to extol the king's undoubted clemency. Norfolk must not give them a pardon, but induce them to seek it with all humility. If, however, they refused to ask humbly for anything less than a comprehensive pardon, Norfolk must pretend that he had no authority to grant mercy and offer to intercede for them from his great love of the people in the north. He might then return six or seven days later, announcing that after great suit he had induced the king to forgive them all and grant their desire for parliament. Only then was Norfolk to produce the pardon he had held since the beginning of the negotiations. The act of pardon itself was secondary to the manner in which the Pilgrims requested and received it.¹⁰⁹ The king wanted a few executions to assuage his honour and discourage others from future rebellion, but at the very least, his prestige demanded displays of submission and due repentance.

Henry needed to appear a magnanimous lord, rather than the loser in some hard negotiations. In case Norfolk missed the point, the king's councillors advised him to gather troops and reiterated that he must preserve the king's honour throughout his dealings with the rebels. This meant using all means to induce the Pilgrims to seek the first pardon.¹¹⁰ In these directives, reserving some prisoners for execution no longer represented the main concern of the king's advisors; rather, they sought to avoid the appearance of a monarch forced into making concessions. It was not Henry's thirst for

¹⁰⁸ *L&P XI*, no. 1175.

¹⁰⁹ SP 1/112, fols. 88-103 (*L&P XI*, no. 1227).

¹¹⁰ *L&P XI*, no. 1228.

blood that required satisfaction; he needed to maintain the honour and dignity, and thus the authority, of a king.

The meeting on 6 December began well: Aske and his companions immediately fell on their knees and humbly requested pardon.¹¹¹ From this point on, however, proceedings turned markedly against the king. The Pilgrims insisted on directing this piece of political theatre. Few details of the negotiations have survived, but by the end of the day, Norfolk had granted the Pilgrims' requests for a full pardon (without the delay Henry had required) and a parliament to resolve their grievances.¹¹² Aske reported the agreement to the assembled crowd. At first, they received it joyously. Soon, however, came word that some demanded to see the pardon with the great seal before they dispersed. Aske sent for the herald, who came that night to display the document; the assembled host "lowly and humbly" accepted the pardon and most departed to their homes. After a final meeting with Norfolk and his council, Aske and his fellow leaders tore off their Pilgrims' badges and solemnly declared that henceforth "we will wear no badge or sign but the badge of our sovereign lord."¹¹³

Was this a victory for the Pilgrims? Most historians, looking back through subsequent events, have answered in the negative; for the short-term, however, as Bush and Bownes have noted, the Pilgrims had achieved considerable success. The king had no intention of endorsing Norfolk's ambiguous pledges regarding the monasteries and other grievances, but did accept that his deputy had guaranteed the full pardon and parliament. Once his initial fury had passed, Henry VIII confirmed these two basic promises and on 9 December sent a full pardon for proclamation throughout the north.¹¹⁴ Stressing that he offered this pardon at the humble petition of many suitors, he

¹¹¹ "Aske's Examination," ed. Bateson, pp. 340-42 (*L&P* XII, i, no. 6).

¹¹² *L&P* XI, no. 1271. He also made some sort of promise to end the suppression of the monasteries, or at least to petition the king to do so. On this, see the Dodds, *Pilgrimage*, II, pp. 20-22, 38-40.

¹¹³ "Aske's Examination," ed. Bateson, p. 341 (*L&P* XII, i, no. 6). Unfortunately, the text of this pardon does not survive.

¹¹⁴ *L&P* XI, nos. 1271, 1276; for the dates of its proclamation, see *L&P* XI, no. 1392.

noted that ignorance and deception had guided the Pilgrims' actions and expressed a willingness to forgive the Pilgrims on their submission to one of his representatives in the north:

Your sovereign lord and king...desiring rather...your reconciliation by his merciful means than by the order and rigor of justice to punish you according to your demerits, of his inestimable goodness and singular mercy and pity, and at the most humble petitions and submissions made unto his gracious highness, is contented and pleased to give and grant...his general and free pardon... Provided always that you and every of you, in token of a present declaration and knowledge that you do heartily lament and be sorry for your offences, shall make your humble submission.¹¹⁵

Henry most likely still wanted to have some ringleaders executed; however, as his later actions demonstrated, he resigned himself to the limits his promise of pardon imposed.¹¹⁶

A victory it was, but not all Pilgrims were content with their achievement. The people of Kendal displayed their opposition to the agreement by attacking the local *bailiff* when he tried to read the pardon.¹¹⁷ Some, after they heard the proclamation, maintained that they wanted a full redress of grievances rather than mercy.¹¹⁸ Others balked at a pardon that required acknowledging the king not only as the lord of their bodies but of their souls as well: opposition to the king's new status as the supreme head of the church had formed one of the initial issues of complaint.¹¹⁹ Although the Pilgrims

¹¹⁵ *IRP* II, no. 169, reprinted in Dickens, "Royal Pardon," pp. 406-8. One unsolved mystery complicates the narrative given above. On 3 December (ie., before the meeting), Henry issued a pardon, without exceptions, to be proclaimed by Suffolk and others throughout the north. (SP 1/112, fols. 101d-102; *L&P* XI, no. 1235, 1236; PRO 30/26/116.) Bush and Bownes were wrong to differentiate this pardon from the latter offer on the grounds that the second did not require a submission and was thus more palatable to the Pilgrims; both were clearly contingent upon submission: *Defeat of the Pilgrimage*, p. 11. Was the 3 December pardon a last attempt to divide and lessen the Pilgrims before a military attempt? Might this have been the same pardon Norfolk had with him at the meeting? Suffolk, at any rate, did not declare the pardon immediately, preferring to wait until the outcome of the 6 December meeting. ("Clifford Letters," ed. Hoyle, p. 106, see also pp. 58-59.)

¹¹⁶ Of course, in the aftermath of the 1534 Irish rebellion, Henry had gained experience in interpreting pardons in their narrowest possible sense and in using any subsequent offences to his advantage. See S. Ellis, "Henry VIII, Rebellion and the Rule of Law," *Historical Journal* 24 (1981): 513-31.

¹¹⁷ *L&P* XII, i, no. 7.

¹¹⁸ *L&P* XII, i, no. 307 (p. 167).

¹¹⁹ *L&P* XII, i, nos. 201 (p. 99), 138.

had demanded clemency since the beginning of their protest, some now opposed the admission of wrongdoing necessitated by accepting the offer of pardon. Throughout the rising, the Pilgrims had insisted upon their loyalty and refused to be labelled “rebels.”¹²⁰ “If they call us traitors we would call them heretics,” ran a common refrain. This conflict over identification, of course, lay at the heart of the protest. In their request for pardon, the Pilgrims had required that the document not refer to them as traitors.¹²¹ In the end, most accepted this acknowledgement as the price for their restoration to a polity built on deference. Others did not, however, and continued to insist they had done nothing that required forgiveness.¹²² As such, the central achievement of the December agreement rang hollow for some.

While constrained to honour his pledges, the king remained unhappy with the agreement. He acquired the public submission of most Pilgrims, but they had exacted the pardon from him rather than allowing him to offer it as a benevolent gift. While Henry had failed to control the manner in which he granted the pardon, he did endeavour to manage the manner in which others obtained news of it. To portray the process as a demonstration of the king’s authority, rather than as an act of weakness, the text of the pardon claimed the king had offered it only after the humble suit of many people. Cromwell ignored the king’s inability to gather sufficient troops to suppress the rebels, and told ambassadors that Henry had decided in his wisdom and mercy to avoid battle: “instead of cutting off the corrupt members they are now healed.” He maintained that despite the rebels’ initial intransigence, they ended by submitting entirely with all due repentance. The king’s agents dispersed such doctored accounts widely; many people, it seems, accepted their validity.¹²³ To further a proper understanding of the rising and his

¹²⁰ *L&P* XI, no. 1086 (p. 436); XII, i, no. 29.

¹²¹ *L&P* XI, no. 1246.

¹²² *L&P* XI, no. 914 (p. 417), XII, no. 201 (4), XII, no. 70 (p. 39).

¹²³ *L&P* XI, nos. 1363, 1282.

response, Henry also published his earlier answer to the Pilgrims, which stressed rebel perfidy, royal indignation, and finally, princely benevolence.¹²⁴

Such manoeuvres, necessary for the king's image, posed a serious danger to a settlement precariously predicated upon trust and honour. The king's answer circulated in two versions -- one that included the original clause that the pardon required the arrest of ten leaders, and another with this demand excised.¹²⁵ Both served to confuse their northern readers and heighten feelings of distrust.¹²⁶ Rumoured discrepancies between pardons proclaimed in different towns caused further alarm. Some people noted that the pardon referred to the king as "he" rather than "we": this led them to surmise that it came not from Henry but Cromwell and, therefore, lacked legal substance.¹²⁷ Others continued to find the treatment of rebels in Lincolnshire a fearful precedent: in early January, rumours reached the north that the Lincolnshire men "were busily hanged" and their pardon of no effect. They feared that Norfolk planned to return with an army to do the like to them.¹²⁸ Sir Francis Bigod and John Hallom, vocal opponents of the pardon, generated enough support for a short-lived rising in late January 1537. In February, a large group of the Cumberland commons mustered in fear of reprisals and to protest the apparent lack of redress for their earlier grievances.¹²⁹ Loyal forces quickly suppressed both of these risings.

Aske and other Pilgrim leaders returned from their interviews with the king, convinced that he intended to keep his promises. Henry had especially impressed some of them by declaring that he had forgiven the rebels not only in writing, but also in his

¹²⁴ Printed in Berkowitz, *Humanist Scholarship*, pp. 177-84.

¹²⁵ *Ibid.*, p. 184.

¹²⁶ *L&P* XII, i, nos. 67, 102, 104.

¹²⁷ *L&P* XII, i, no. 201 (p.91).

¹²⁸ *L&P* XII, i, nos. 145, 259, 1012 and SP 1/118, fol. 263.

¹²⁹ See Bush and Bownes, *Defeat of the Pilgrimage of Grace*, pp. 29-72 for detailed accounts of the Bigod/Hallom rising, and pp. 230-85 for that in Cumberland. Other examples of unrest in the "postpardon" period are discussed throughout the work.

heart and that he wished the rising to be taken “but for a dream.”¹³⁰ They endeavoured to assuage the fears and concerns of the discontented, with considerable success.¹³¹ The majority of Pilgrims had accepted the pardon as valid. Many even wore badges of the red cross of St. George -- the king’s emblem -- to show their obedience and grateful acceptance of the pardon.¹³² When Norfolk arrived to administer the oaths of loyalty, he was greeted by many willing to put the rising behind them.¹³³

Norfolk’s tasks extended beyond taking submissions from the Pilgrims: he also had to suppress and punish the people involved in the new risings. The letters that now passed between the king and his agents in the north contained no discussion of “policy” or gentleness. Instead, at the end of January, Norfolk asked the king how many of the new rebels he wanted executed. In February, he started interrogations in York and reported that “dreadful execution begun here would be followed with diligence in other places.”¹³⁴ Christopher Dacres, a former Pilgrim demonstrating his resumed loyalty by suppressing the Cumberland rising, was urged “to slay plenty of these false rebels... pinch now no courtesy to shed blood of false traitors.”¹³⁵ According to Norfolk, some 6,000 of these rebels came in, “most humbly submitting them unto your most high mercy with as humble fashion as could be devised in all countenances and gestures, and if sufficient number of ropes might have been found would have come in with the same about their necks.”¹³⁶ He selected seventy-four of them to die. Ellerker and Bowes, two of the Pilgrim leaders, supervised the execution of the rebels, despatching twelve in Carlisle and

¹³⁰ L&P XII, i, nos. 48, 66, 271.

¹³¹ See, for example, L&P XII, i, nos. 44, 46, 67, 102, 146, 171.

¹³² L&P XII, i, nos. 234, 271.

¹³³ The text of the oath is unknown. For drafts, see L&P XII, i, no. 98.

¹³⁴ SP 1/116, fol. 20 (L&P XII, i, no. 416); L&P XII, i, nos. 292, 293. Norfolk was nearly as concerned as the northern gentry to prove his loyalty. In a rousing report to Cromwell of his doings he noted, “Now shall appear whether for favour of these countrymen I forbare to fight with them at Doncaster.” SP 1/116, fol.49 (L&P XII, i, no. 439).

¹³⁵ L&P XII, i, no. 426.

¹³⁶ SP1/116, fol.108 (L&P XII, i, no. 498).

the others in their home villages. Henry urged Norfolk to proceed without pity to “the hanging of them up in trees, as by the quartering of them and the setting of their heads and quarters in every town great and small...they may be a fearful spectacle to all other hereafter.”¹³⁷ To avoid the problems posed by sympathetic juries, however, Norfolk found it necessary to unfurl the king’s banner and proceed by martial law. Executions of the northerners continued into the summer; by the end, between 144 and 153 people suffered death.¹³⁸

Most commentators have written that the risings of 1537 gave Henry the pretext he needed to exact vengeance for the Pilgrimage. But as Bush and Bownes have recently demonstrated, all of the people executed were convicted of offences committed after the December pardon. Doubtless, the king responded to the 1537 risings with greater severity than usual, but to achieve all but a few of the executions, Henry broke no promise. He knew he could not violate a pledge of pardon with impunity. At least, he must not appear to do so. For the seven, possibly eight, victims who had been key figures in the Pilgrimage but had not actually risen in 1537, Henry mustered evidence (however tenuous) to show that they had offended after the December agreement.¹³⁹ Henry VIII found it necessary to offer repeated assurances that he had not broken his word. When Aske and two other Pilgrim leaders were committed to the Tower, for example, the king counselled Norfolk to assure the northerners that “it is for none old matter before the pardon, but only for new conspiracy since the same.”¹⁴⁰ Other intended victims, against whom no plausible case existed, obtained release. Public perceptions of legality, honour, and good lordship constrained the indignation of the king.

¹³⁷ SP 1/116, fol. 93v (L&P XII, i, no. 479).

¹³⁸ For the execution tallies, see Bush and Bownes, *Defeat of the Pilgrimage of Grace*, pp. 364, 411-12.

¹³⁹ *Ibid.*, pp. 73, 314, 365.

¹⁴⁰ “Clifford Letters,” ed. Hoyle, pp. 117-18. See also L&P XII, i, nos. 846, 863.

Henry planned a royal progress through the north. He notified Norfolk that during his tour he intended in person “to give our general pardon...for their offences committed since the publication of the pardon granted for the late rebellion, which we will in no wise violate, as you may declare to all our subjects there.”¹⁴¹ The queen’s pregnancy and death forced the king to delay the trip, and with it the pardon. In early summer, Norfolk repeatedly counselled the king to send a pardon covering the spring offences. To avoid desperation and to effect a final settlement, he wanted the pardon delivered by a person of authority -- a noble or justice of assize -- and “the sooner the better.”¹⁴² Finally, on 24 July, Henry issued the pardon.¹⁴³

The discovery of plotting by a few disaffected Yorkshiremen early in 1541 prompted the king to finally make his progress through the north.¹⁴⁴ The York city officials began planning for the visit, laying new pavements, ordering beggars and livestock off the streets and commissioning festive pageants. Then, hearing that the Lincolnshire men had made a public submission on Henry’s arrival in that county, the York officials hurriedly wrote off to the Archbishop and Norfolk for advice: should they do the same?¹⁴⁵ Receiving affirmative answers, they prepared for the final act of the Pilgrimage.

The former rebels had long since offered their submissions to the king’s representatives, but in August had the opportunity -- and obligation -- to humble themselves before the king in person. Upon Henry’s arrival in Yorkshire, groups of gentlemen came out to meet him and to re-enact scenes familiar from the previous king’s trips to the north after armed risings. Those who had remained faithful in the rebellion and subsequent disturbances stood to one side. According to an observer, the others,

¹⁴¹ State Papers of Henry VIII, i, 555. (L&P XII, I, no. 1118.)

¹⁴² L&P XII, ii, nos. 100, 229.

¹⁴³ TRP II, no. 179.

¹⁴⁴ A.G. Dickens, “Sedition and Conspiracy in Yorkshire in the later years of Henry VIII,” Reformation Studies, pp. 1-20.

¹⁴⁵ York Civic Records, ed. Raine, IV, pp. 62-63.

including the Archbishop of York, “were a little further off on their knees; and one of them, speaking for all, made a long harangue confessing their treason in marching against their sovereign and his council, thanking him for pardoning so great an offence and begging that if any relics of indignation remained he would dismiss them.”¹⁴⁶ According to the official transcript, they addressed the king as their “supreme head by divine permission,” employing all the standard tropes about pardons and deference to humbly thank him for his God-like mercy :

having the lives, lands, and goods of us wretches at your will and pleasure, by your good and wholesome laws for our said unnatural and traitorous offences, [you] have of your excellent prudence, mercy, and pity –infused into you our natural sovereign lord by the spirit of Almighty God – granted to us wretches, being desperate of any manner [of] hope or relief, your most gracious and charitable remission, frank and free pardon, whose bountiful heart and liberal grant we of ourselves are in no wise able to recompense or satisfy, but continually have been from the bottoms of our stomachs repentant, woe[ful], and sorrowful for our said unnatural and heinous offences.¹⁴⁷

When the king accepted their written submissions, they arose and joined his court.

Although Henry had honoured the December pardon, he did not hold the promised northern parliament. The Pilgrims’ petitions went unheeded.¹⁴⁸

Edward VI and the Protests of 1549

In 1549, the commons rose in a “general plague of rebelling.”¹⁴⁹ In May, Somerset, Wiltshire, Hampshire, Kent, Sussex, and Essex witnessed troubles; in June, people in Devon and Cornwall began their protests. In July, Northamptonshire,

¹⁴⁶ *L&P* XVI, no. 1130. See also, no. 1131.

¹⁴⁷ *York Civic Records*, ed. Raine, IV, pp. 68-70.

¹⁴⁸ Bush and Bownes endeavoured to show that the Pilgrims were, in fact, successful in many of their demands. As most of the changes that they adduced as proof did not actually result from the demands of the Pilgrims (ie., Cromwell’s fall, Mary’s legitimisation, the attack on heresy embodied in the Act of Six Articles, etc.) it seems difficult to take them as signs that the Pilgrims had not acted in vain: *Defeat of the Pilgrimage*, pp. 398-99.

¹⁴⁹ HMC, 12th Rep., IV, p. 42.

Bedfordshire, Buckinghamshire, Oxfordshire, and East Anglia joined. Some found cause for concern in the rapid pace of religious innovation that threatened traditional practices. Encouraged by the Protector's plans to reduce enclosures and halt depopulation, most expressed agrarian or economic grievances and sought to implement these measures in the face of gentry intransigence. Many of the protests were brief, orderly affairs in which groups of peasants might destroy an offending hedge or ditch, then return to their homes. In some places, however, protesters banded together and drew up lists of grievances to send to their young king.¹⁵⁰

Many of the protests received swift resolution. The king recorded that "fair persuasions, partly of honest men among themselves and partly by gentlemen" served to appease the first wave of riots.¹⁵¹ Local gentlemen asked the protesters to present their complaints in written petitions, offered at least token redress of agrarian grievances, and pledged to sue the king for pardons if the protesters dispersed. For example, Sir John Thynne negotiated with rioters at Odiam; the Protector praised him for the prompt resolution of the disorders, and despatched the pardon Thynne had promised to the protesters.¹⁵² Throughout these months, royal heralds busily carried responses to grievances and letters of pardon.¹⁵³ The pardon proclaimed on 14 June was typical of those responses to the protesters that have survived. It noted the evils of rebellion, and that these people had misunderstood the proclamations against unlawful enclosures. Redress of such grievances belonged to the king alone: by arrogating this duty to themselves -- by acting under "their own head and authority" -- they had earned death.

¹⁵⁰ On these protests, see B.L. Beer, *Rebellion and Riot: Popular Disorder in England During the Reign of Edward VI* (Kent, Ohio, 1982) and M.L. Bush, *The Government Policy of Protector Somerset* (London, 1978), pp. 84ff.

¹⁵¹ *Chronicle and Political Papers of Edward VI*, ed. W.K. Jordan (Ithaca, 1993), p. 12. See also L. Stone, "Patriarchy and Paternalism in Tudor England: The Earl of Arundel and the Peasants Revolt of 1549," *Journal of British Studies* 13 (1974):19-23.

¹⁵² Longleat MS, Seymour Papers, vol. 4, fols. 10r-d. For similar examples, see *CSP Spanish*, IX, p. 405; Russell, *Kett's Rebellion*, p. 198 re: Cambridge protesters.

¹⁵³ *APC*, ii, pp. 303, 307, 313-4. See also, BL Add. MS 48018, fols. 389r-390v, printed in Shagan, "Protector Somerset," pp. 57-61.

The king accepted that the rioters had acted out of ignorance, and at the instigation of “lewd and seditious persons,” rather than of malice or evil intent. Because they had submitted and humbly sued for pardon, and at the advice of his “dearest uncle” Somerset, the king restored them to his “most high clemency and tender love.”¹⁵⁴ As with the pardons of earlier risings, the monarch supported those who had restored order on the scene by acceding to their requests for mercy so long as the offenders submitted and requested forgiveness.

The risings were not all bloodless, however. The ringleaders of the more serious protests were executed. In Wiltshire, Sir William Herbert and an assembled force attacked and killed some of the rebels.¹⁵⁵ Offers of clemency easily resolved one protest in Oxfordshire; they failed in the second.¹⁵⁶ Joined by people from nearby Buckinghamshire, a group rose in early July against the new prayer book and other religious changes. Passing through the area on his way to Devon with some 1,500 troops, Lord Grey stopped long enough to deal with the Oxfordshire protesters; some died in battle and over 200 ended up as prisoners. Lord Grey ordered fourteen of the men executed in various locations, with two of the priests hanged from the steeples of their churches. For the greater terror of the population, he ordered the severed heads set up about the towns that had supplied rebels.¹⁵⁷

By the first of August, most of the disturbances had ended.¹⁵⁸ Trouble persisted in Devon and Norfolk; rumours of these risings prompted a revolt in Yorkshire. Yeoman William Ombler and Thomas Dale, a parish clerk, opposed the new religious practises. News of the Devonshire rebels reminded them of a prophecy that a rising begun at the north and south seas of the realm was to result in the overthrow of the king

¹⁵⁴ TRP, II, no. 334.

¹⁵⁵ Political Papers of Edward VI, ed. Jordan, p. 12.

¹⁵⁶ For the earlier rising, see BJ. Add. MS 48018, fol. 389v, printed in Shagan, “Protector Somerset,” p. 58.

¹⁵⁷ For this rising, see Troubles Connected with the Prayer Book of 1549, ed. N. Pocock, Camden Society, n.s., vol. 37 (London, 1885), pp. 26-7, 29; SP 10/8, nos. 9 and 32.

¹⁵⁸ HMC, 12th Rep., IV, pp. 42-43.

and lead to a government elected by commoners. They lit the beacons, as if the coasts had come under attack, and roused some 3,000 people to join them in effecting the foretold rebellion. The king's council responded by issuing a pardon for all offences before 21 August. Despite Ombler's attempts to dissuade them, most of the protesters availed themselves of the offer and dispersed to their homes. They knew that persistence thereafter was to risk death, "wherewith there was no dispensing after the contempt of the prince's pardon and refusal of his mercy."¹⁵⁹ Four local gentlemen captured Ombler, who was executed along with seven others at York on 21 September.¹⁶⁰

The risings in Devon and Norfolk continued for a much longer time. Due partly to the lack or ineptitude of local gentry to address grievances and threaten reprisals, these disturbances dragged on, ending only after repeated military engagements and much loss of life.¹⁶¹ Like the other protesters, the south-western rebels had their share of social grievances; however, they made the cessation of religious innovations their rallying cry.¹⁶² The introduction of the new Book of Common Prayer and its reformed liturgy on Whitsunday, 10 June, ignited their protest. People in Bodmin, Cornwall and Sampford Courtenay, Devon voiced their objections immediately; others quickly joined.

¹⁵⁹ Holinshed's Chronicles, III, p. 986.

¹⁶⁰ See ibid., III, pp. 985-87 for an account of this rising. See also A.G. Dickens, "Some Popular Reactions to the Edwardian Reformation in Yorkshire," Reformation Studies (London, 1982). For the importance of prophecy in political protests, see S.L. Jansen, Political Protest and Prophecy under Henry VIII (Woodbridge, 1991).

¹⁶¹ Perhaps because of these battles and the enormous death toll, these risings prompted contemporary narrative histories of their causes, course, and consequences. John Vowell, alias Hooker, wrote an eye-witness account of the Western Rising and siege of Exeter: The Description of the Cite of Excester, 2 vols., ed. W.J. Harte, J.W. Schoop and H. tapley-Soper (Devon and Cornwall Record Society, 1919-47), I, pp. 55-96. The Norfolk rising was described by Nicholas Sotherton, who had ties to Norwich and may have witnessed some of the events he recorded; "The commoyson in Norfolk, 1549," ed. B.L.Beer, Journal of Medieval and Renaissance Studies 6 (1976): 73-99. Alexander Neville, secretary to Matthew Parker, published a narrative based on Sotherton and Parker's reminiscences of the rising in East Anglia; De Furoribus Norfolciensium Ketto Duce (London, 1575); translated into English by Richard Woods, who was himself a young witness to the events. All quotes come from Woods' Norfolkes Furies (London, 1615). These accounts displayed biases and have led subsequent historians to discount the importance of the other 1549 disturbances, a tendency criticised in D. MacCulloch, "Kett's Rebellion in Context," Past and Present 84 (1979): 36-59 and J. Youings, "The South-Western Rebellion of 1549," Southern History 1 (1979): 99-122. Nonetheless, they remain invaluable sources for the function and meaning of the pardon for both elite and commoners.

¹⁶² See Youings, "South-Western Rebellion," for an examination of the rebels' motives.

Cornwall had only one year earlier witnessed a forceful protest against the alterations in religion. A group drawn from several villages gathered at Helston on 5 April 1548 to prevent William Body, an ecclesiastical commissioner, from stripping their churches of images and goods. Body was murdered. Within two days, 3,000 people had assembled to protect Body's killers and to demand a return to Henry VIII's religious settlement. The local gentry felt sufficiently alarmed to gather troops. Their show of force and the council's prompt offer of pardon diffused the situation.¹⁶³ The pardon excepted twenty-eight of the "chief stirrers." Six were taken to London; ten, at least, suffered execution.¹⁶⁴ One historian of the troubles in 1549 has speculated that the fresh memory of these executions fostered mutinous feelings; indeed, even some of the privy councillors had thought the number appointed to die excessive.¹⁶⁵ It may have increased some individuals' resolve not to be so easily deflected or assuaged by an offer of mercy accompanied by no promise of redress. Certainly, the memory did not impede the Cornish rebels in 1549.

The Cornish and the Devonshire protesters met at Crediton on 20 June. One observer thought the protesters would be "tamed with authority and reformed with instruction."¹⁶⁶ The council expected the same, and on 20 June despatched a message to the Devonshire JPs that authorised them to proclaim a pardon for all who dispersed. Because of the humble suit of diverse gentlemen, it noted, the king accepted that ignorance rather than malice motivated the rising.¹⁶⁷ This pardon may not have been proclaimed: Sir Peter and Gawain Carew arrived on the scene before it did to take control of the forces of order. Whether they went on their own initiative or on the council's

¹⁶³ TRP, II, no. 308. Significantly, this pardon - like the December pardon for the Pilgrimage -- noted that the king had charge "under God both of your souls and bodies."

¹⁶⁴ F. Rose-Troup, The Western Rebellion of 1549 (London, 1913), pp. 76-92; J. Cornwall, Revolt of the Peasantry 1549 (London, 1977), pp. 52-55.

¹⁶⁵ Rose-Troup, Western Rebellion, p. 122; APC, ii, p. 554.

¹⁶⁶ R.L., A Copy of a letter contayning certayn newes...of the Deuonshyre and Cornyshe rebelles (London, 1549), reprinted in Rose-Troup, Western Rebellion, p. 485.

¹⁶⁷ SP 10/7, no. 37.

directive is unclear; that they botched the job was evident to all.¹⁶⁸ The Duke of Somerset later accused Sir Peter of being “the only cause of the commotion,” and the Chancellor admonished that his actions merited the punishment of hanging.¹⁶⁹

What had Sir Peter done wrong? The only account of his actions came from Hooker, a protégé of Carew: it most likely presented as flattering an image as possible. Hooker noted that the rebels rebuffed Carew’s first attempt to speak with them. He attributed their refusal to “the sun being in Cancer and the midsummer moon at full.”¹⁷⁰ More likely, they suspected some harsh dealing or their leaders did not want an offer of clemency to weaken their men’s resolve. Indeed, these religious conservatives may have wanted no dealings with a known religious radical such as Carew. If they had fears of treachery, these soon came true. One of the men in Carew’s entourage set fire to the barns that protected the rebels. This was hardly a conciliatory gesture, and news of it travelled quickly. Carew’s next attempt further eroded his credibility with the rebels. He travelled to Clyst St. Mary, where the rebels again refused to speak with him. Eventually, they agreed to confer with three of the gentlemen Carew had brought with him. They spoke together for the better part of the day, then the three gentlemen returned to report their agreement to Carew. The rebels had pledged to stand down in return for a promise to stop further religious alterations until the king came of age.¹⁷¹ Carew had an agreement with the rebels, but one that he could not possibly honour. He argued heatedly with the local justices, then stormed off to London. Seeing their agreement had come to naught, the rebels advanced on Exeter. On 2 July, they began a protracted siege of the city that eventually threatened many of its inhabitants with starvation. The Devonshire JPs had earlier reported that they had nearly resolved the situation; however,

¹⁶⁸ See H. Speight, “Local Government and the South-Western Rebellion of 1549,” *Southern History* 18 (1996): 10-13, and Youings, “South-Western Rebellion,” pp. 110-11.

¹⁶⁹ Hooker, *Description*, I, p. 81.

¹⁷⁰ *Ibid.*, I, pp. 61.

¹⁷¹ *Ibid.*, I, pp. 63-65.

Carew's actions and departure ensured the opposite.¹⁷² In response to Carew's provocative actions, the rebels' determination returned.

The privy council despatched John Russell, Lord Privy Seal, to the south-west. His first set of instructions, dated 24 June, showed that the council thought the stirs nearly settled; most points dealt with the prevention of further protests.¹⁷³ The next set, dated 29 June, also sprang from outdated information about the rebels' position, but acknowledged that the troubles persisted. Preferring policy to force -- partly out of need -- the council wanted to mould public perceptions of the king and the rebels. Like a letter sent to the Devonshire JPs one day earlier, these instructions urged offers of mercy and other such "gentle persuasions."¹⁷⁴ The council asked local JPs to notify the rebels that their agrarian grievances were being resolved; on the religious issues, no compromises were possible, so the JPs must convince the rebels of the validity of the new measures. If an offer of pardon had no effect, the councillors suggested that Russell have the rebel host infiltrated by men responsible for a rumour campaign. These agents should instil fear of the punishment to come and spread word that popish priests, aiming to enthrall the English to the papacy, had deceived the rebels. They also ordered Russell to cut off the rebels' food supplies, and thus induce them to reconsider the offer of clemency. Russell did as ordered, but to no avail.¹⁷⁵ He held back and requested armed reinforcements; his own efforts to levy troops in the area met with little success. The council sent some foreign mercenaries, warning that further aid must wait until the settlement of the other stirs. They suggested that Russell augment his rumour campaign by spreading word of rebel atrocities and "devilish behaviours": this might weaken local support for the protesters and hinder their recruiting efforts.¹⁷⁶ Over the following

¹⁷² SP 10/7, no. 42.

¹⁷³ SP 10/7, no. 40.

¹⁷⁴ SP 10/7, no. 42; *Troubles*, ed. Pocock, pp. 15-19. Pocock published letters from Petyt MS. 538; there are some problems with his transcriptions, corrected in Rose-Troup, *Western Rebellion*, pp. 430-32.

¹⁷⁵ Hooker, *Description*, I, pp. 66. One of Russell's letters was intercepted by the rebels and read from pulpits; one wonders what information it contained: *Troubles*, ed. Pocock, p. 42.

¹⁷⁶ *Troubles*, ed. Pocock, pp. 23, 25-26.

weeks, the authorities issued a proclamation permitting anyone to seize lands left unattended by rebels and suggested to Russell that the summary execution of some who refused service might aid his recruiting efforts in Somerset.¹⁷⁷

Knowing that news of trouble in other counties encouraged the Devonshire rebels, Somerset told Russell to announce the resolution of many of these disturbances.¹⁷⁸ Each rising fed off the others; news of each, and the responses they provoked, travelled quickly. One observer noted of the Devonshire rebels that “nothing more encouraged them, then when they saw people elsewhere stirred up...nothing has more decayed their courage as now they hear the contrary.”¹⁷⁹ Indeed, the reported result of these other protests further diminished their hopes: many of the agrarian grievances received redress and the people returned to their homes, pardoned and seemingly contented.¹⁸⁰ Propaganda and the control of information served other purposes, too. Many of those who did not rise nonetheless felt sympathetic to the rebels and their demands.¹⁸¹ The council responded to this sympathy by fabricating or exaggerating stories of rebel misdeeds, and broadcast far and wide its response to rebel demands. It emphasised the intransigence of the rebels despite generous offers of clemency. On 18 July, the council caused heralds, trumpeters, and messengers to proclaim throughout the realm that the king assured his benevolence to any who submitted themselves and asked mercy; all others risked death.¹⁸² If they did not cause the rebels themselves to desist, such proclamations at least allowed the council to paint its efforts in the best possible light; they might diminish support for the protesters and sow doubt in the rebels’ minds. The council used traditions of mercy and deference to several

¹⁷⁷ *Ibid.*, p. 40.

¹⁷⁸ *Ibid.*, p. 24.

¹⁷⁹ R.L., *A Copie of a Letter*, in Rose-Troup, *Western Rebellion*, p. 489.

¹⁸⁰ *Ibid.*, p. 489.

¹⁸¹ *CSP Spanish*, IX, p. 396.

¹⁸² *Greyfriars’ Chronicle*, pp. 59-60.

ends: primarily, to attempt a relatively bloodless, cost-effective resolution to the stirrs, but also to present the king as the benevolent, paternalistic guardian of his people against whom protest was unnatural. The people who anticipated and accepted mercy used these conventions to their own ends as well. Some rebels, however, employed the pardon in less expected ways, such as the group who pretended to submit to Russell, but instead gathered information about his plans and troops and returned to their fellows.¹⁸³

Finally, on 28 July, Russell felt sufficiently secure to begin his advance on the rebel positions. A series of bloody battles ensued. Lord Grey and his mercenaries slaughtered the rebel prisoners taken after one engagement to prevent them from aiding their fellows in the next. On 6 August, Russell entered Exeter.¹⁸⁴ Soon after he had gallows set up throughout the town and surrounding countryside and began executing the “chief doers and busy ringleaders” in the commotion. Russell had one vicar hanged from the steeple of his church along with his sacring bell, rosaries, and other Catholic paraphernalia.¹⁸⁵ Hooker reported that, as a consequence, “infinite” numbers of people submitted and received pardon. Soon, however, came word that the remaining rebels had gathered at Sampford Courtenay for another stand. When Russell set off to attack, many of the recently pardoned rebels joined his troops in battle, revealing the seriousness with which people understood their submissions.¹⁸⁶ Upon the defeat of the rebels at Sampford Courtenay, Russell began a cycle of executions and pardons throughout Cornwall. When the last few rebels fled into Somerset, they were pursued and vanquished. Of the 104 prisoners taken there, two or more were hanged in each of eleven towns and the rest pardoned.¹⁸⁷ Russell returned to Exeter after leaving Sir Anthony Kingston in charge of the remaining executions. Hooker wrote that some 4,000

¹⁸³ Troubles, ed. Pocock, pp. 32-33.

¹⁸⁴ For an account of these battles, see Hooker, Description, I, pp. 83-90.

¹⁸⁵ Ibid., I, pp. 91-94.

¹⁸⁶ Ibid., I, p. 94.

¹⁸⁷ Rose-Troup, Western Rebellion, pp. 318-19.

rebels died in the battles but gave no estimate of the numbers of executions.¹⁸⁸ Kingston became notorious for his actions in Cornwall, perhaps more for the cruelty of his proceedings than for the excessive numbers executed.¹⁸⁹ By 21 August, Russell had a general pardon to proclaim, but the privy councillors had second thoughts and asked him to wait. They feared that many of the key figures in the rising had not yet come to light; if Russell issued the pardon too soon, these ringleaders would escape prosecution. However, the council also recognised that too long a delay might lead to desperation and further troubles. Thus, they told Russell to pardon people individually for the time being and to allay the fears of others with an announcement that he had written for pardon and trusted to receive it soon.¹⁹⁰ The ringleaders and most prominent rebels were taken to London and executed there.

Like those in the south-west, the Norfolk troubles were remarkable for their longevity and the refusal of many participants to be placated by pardons. Their story illustrated even more clearly the importance of trust and honour in the maintenance and restoration of *deferential relationships*. It also demonstrated the futility of pardon as a political tool when the protesters saw no wrong in their actions. Pardons for rebels generally noted that the recipients had acted from ignorance rather than malice; like those who killed accidentally, their lack of evil intent did not absolve them of guilt, but did make them deserving of mercy. The recipients might still think their goals laudable, but had to accept publicly that their methods wrongfully sundered natural bonds of obedience. Those convinced of the justice of their actions and who refused to acknowledge even outwardly the unnatural sinfulness of their behaviour posed a more serious problem.

On 6 July, a crowd gathered at Wymondham for a religious holiday of feasts, plays and processions. Some turned to the destruction of hedges in the area. When they

¹⁸⁸ Hooker, *Description*, I, p. 96.

¹⁸⁹ For accounts of his reputed cruelty, see *Holinshed's Chronicles*, III, p. 925.

¹⁹⁰ *Troubles*, ed. Pocock, pp. 63-66.

threatened Robert Kett's enclosures, he not only agreed with their complaints, but offered to lead them. Together, they tore down more hedges while they travelled towards Norwich. Undeterred when the sheriff declared them rebels, they found their numbers increased by a steady stream of arrivals. By 12 July, at least 10,000 people had set up camp on Mousehold Heath on the outskirts of Norwich.

Even the hostile narratives of the chroniclers had difficulty obscuring the well-ordered nature of the campers. They heard religious services twice daily, arbitrated disputes, and carefully portrayed themselves as the king's friends and deputies.¹⁹¹ A feeling prevailed that local leaders had failed in the provision of prompt and fair justice, thus neglecting to fulfil their end of the paternalist bargain. Some expressed their frustration through attacks on the persons and goods of local gentlemen, while others attempted to establish an alternate system for the maintenance of law and order.¹⁹² They drew up a list of grievances, almost entirely of an agrarian and economic nature, and requested a royal herald to receive the articles.¹⁹³ While the rebels waited for the royal reply, a townsman rode from Norwich to speak with the king's councillors. He asked that they offer pardon to the rebels in hopes that it might encourage a great number to go home.¹⁹⁴ Accordingly, a herald arrived on 21 July with a pardon and the king's response to the list of grievances. The message cited the evils of rebellion and noted that humble petitions represented the proper manner of presenting grievances, but also made a few concessions.¹⁹⁵ Upon the herald's announcement, many fell on their knees and offered

¹⁹¹ "Commoyson," ed. Beer, pp. 80-82, 92-93.

¹⁹² One suspects that some of the arrests of local gentlemen served a practical purpose. Letters planning the suppression of the rising had been intercepted; having fewer gentlemen at large might have been seen as a way to allow the protest a longer life. "Commoyson," ed. Beer, pp. 82-83. For the rebels' provision of an alternative government, see Cornwall, *Revolt*, p. 146.

¹⁹³ For the articles, see BL Harleian MS 304, fol. 75; also printed in Russell, *Kett's Rebellion*, pp. 48-56. For the request for a herald, see BL Add. MS 48018, fols. 388r, printed in Shagan, "Protector Somerset," p. 54.

¹⁹⁴ "Commoyson," ed. Beer, p. 85; this trip is confirmed by an entry in the city records, printed in Russell, *Kett's Rebellion*, p. 73.

¹⁹⁵ BL Add. MS. 48018, fols. 388r-389r, printed in Shagan, "Protector Somerset," pp. 53-57.

thanks for the king's clemency. The rising might have ended here, like many of the others, but Kett rallied many around him to refuse the pardon. He argued that they had not offended the king in any way, and therefore required no mercy. In one account, Kett declared that "kings are wont to pardon wicked persons, not innocent and just men; they for their part had deserved nothing and were guilty to themselves of no crime; and therefore despised such speeches as idle and unprofitable to their business."¹⁹⁶ The herald proclaimed them traitors, but many persisted, convinced of the righteousness of their cause and methods. That night, the rebels attacked and entered Norwich. After another failed attempt to diffuse the situation through pardon, the herald departed for London.¹⁹⁷

The privy councillors decided that they must back any subsequent offers of pardon with the threat of imminent retribution. Accordingly, William Parr, Marquis of Northampton, led a force toward Norwich. He and his mercenaries decided to rest before approaching the rebel camp and spent the night of 30 July in the city. Kett took the initiative by using expectations about pardon and submission to his advantage. Rebels' humble requests for pardon while engaging in active disobedience always had some element of a strategic ploy, but Kett manipulated conventions of deference in a more directly instrumental fashion. His brother William went to Northampton, asked for mercy, and promised to convince the others to yield as well. Upon his return to the camp, however, he assured the rebels that they might easily take Northampton's meager forces.¹⁹⁸ The morning of 31 July, Northampton heard that some four to five hundred rebels waited at a city gate to offer their submission. When the herald arrived, he found no one. He nevertheless sounded his trumpet to call for a parley. When a group arrived from the camp, the herald told them to relay to the rest the king's offer of pardon. Their spokesman, John Flotman, reiterated Kett's statement that they had done nothing

¹⁹⁶ Woods, *Norfolkes Furies*, fol. E2r.

¹⁹⁷ "Commoyson," ed. Beer, pp. 87-88.

¹⁹⁸ *Holinshed's Chronicles*, III, pp. 984-85.

requiring a pardon. Expressing their loyalty to the king, he found no stain of treason or malicious intent in their consciences. Having committed no offence deserving of punishment, they rested secure in their innocence and promised never to beg mercy of anyone. Furthermore, Flotman suggested, they did not trust the herald, who surely sought to effect a peace empty of any real change, or to disarm the protesters and thereby prepare the way for future bloodletting.¹⁹⁹ Kett apparently arranged this parley as a diversion: before Flotman had finished his speech, the rebels attacked at another point and broke into the city.

In the street fighting that ensued, the king's forces lost miserably. Many, including Lord Sheffield, were slain. Northampton left the city to the rebels. Protector Somerset reacted with fury, accusing Northampton of disregarding explicit orders to avoid engagement and stay in the field. He had ignored Somerset's counsel to cut off the rebels' food supplies and thus induce them to seek pardon.²⁰⁰ Instead, the rebels had used the offer of pardon against the royal forces and forced them to limp home in disgrace.

The council began to levy fresh troops. A circular letter requesting support emphasised that mercy had been offered and refused. It elaborated the vile actions of the rebels and highlighted attacks on honest men and thefts from innocent widows.²⁰¹ The new force, under the command of John Dudley, Earl of Warwick, reached Norwich on 23 August. Warwick sent a herald to the city to proclaim war upon its citizens unless they opened the gates. Men on the walls implored the herald to offer pardon: they thought this time, the protesters might accept it. Indeed, reports had reached London that many had gone home, discouraged by news of the Devonshire rebels' defeat.²⁰² The herald conferred with Warwick, who reportedly declared that his response "should not be

¹⁹⁹ Woods, *Norfolkes Furies*, fols. G2v-G3r.

²⁰⁰ *Troubles*, ed. Pocock, pp. 57-59.

²⁰¹ Printed in Russell, *Kett's Rebellion*, pp. 114-15.

²⁰² *CSP Spanish*, IX, p. 432.

measured according to the villainies they had committed, but according to the dignity of the king and the utility of the kingdom.”²⁰³ The herald returned and offered pardon to all save Kett. Those who heard him expressed a profound distrust: some thought the overture merely a means to lull them into a false security, signifying nothing more than “barrels filled with ropes and halters.”²⁰⁴ Others maintained that he was no herald of the king, but a ruse prepared by local gentlemen. The herald and Kett moved to speak with people in another area of the camp. During the herald’s speech, one boy offered his opinion by dropping his pants to Warwick’s men. When one of the men shot and killed the boy, cries again arose that the herald’s offer represented merely a trick or diversion. Seeing the offer had failed, Warwick ordered his men to attack.²⁰⁵

He entered the city and promptly had forty-nine people hanged at the market cross, a grisly spectacle to advertise royal power in the face of a massive challenge.²⁰⁶ Many citizens came forward and received pardon, but Warwick had not yet won the city. Another 350 rebels died in vicious street fighting. On 26 August, Warwick received reinforcements; on the same day, the rebels broke up their camp. Following a prophecy that they interpreted to predict their victory if they moved to Dussindale, they relocated and prepared for battle. Warwick sent privy councillors with another offer of pardon; the rebels refused to capitulate.²⁰⁷ A fierce battle ensued: reports of the number of people slaughtered ran from 2,000 to 3,500.²⁰⁸ Kett fled, but the remnant fought on. Warwick sent a herald to offer mercy to the rebels if they laid down their arms. Still, they refused to believe the sincerity of the overture, again fearing that it presaged naught but “vessels of ropes and halters.”²⁰⁹ Warwick sent to ask if they would trust the offer if he gave his

²⁰³ Woods, *Norfolkes Furies*, fol. H3v.

²⁰⁴ *Ibid.*, fol. I1v.

²⁰⁵ *Ibid.*, fols. I1v-I2r.

²⁰⁶ Russell, *Kett’s Rebellion*, p. 132.

²⁰⁷ Woods, *Norfolkes Furies*, fols. K1v-K2r.

²⁰⁸ *Ibid.*, fol. K2v; *Political Papers of King Edward VI*, ed. Jordan, p. 16.

²⁰⁹ Woods, *Norfolkes Furies*, fol. K3r.

word to them in person. When they agreed, he went before them; they accepted the offer of clemency and the battle ended with cries of “God save King Edward.”²¹⁰

On 28 August, judgement began. Nine of the principal figures in the rising were hanged on the tree from which Kett had ordered the camp. An unspecified number of executions followed, and many people received pardons. According to some of the local gentlemen, far too many of the commoners went unpunished. While some sought the lands and goods forfeited by attainted rebels, others wanted revenge. Warwick sought to convince the gentlemen of the need to leaven harsh executions with leniency. He reportedly declared:

There must be measure kept, and above all things in punishment, men must not exceed. He knew their wickedness to be such as deserved to be grievously punished, and with the severest judgement that might be. But how far would they go? Would they ever show themselves discontented, and never pleased? Would they leave no place for humble petition, none for pardon and mercy? Would they be plowmen themselves, and harrow their own lands?²¹¹

The Kett brothers stood trial in London but received their punishment in Norfolk where their December executions provided the final act in this demonstration of justice.

Kett and some of his followers refused pardon because its acceptance necessitated an acknowledgement of wrongdoing; other Norfolk campers, however, resisted this resolution of their protest because of a profound distrust. They were not alone in suspecting that treachery lay behind offers of mercy. Protesters in Chichester accepted a pardon, but expressed concerns about its authenticity.²¹² People in Hampshire doubted the validity of their pardon because they did not have individual copies passed under the great seal. Protector Somerset had to assure them that even “if his Majesty might gain a million of gold to break one jot of it with the poorest creature in all his realm, he would never; nor never hath it been used to stain his honour.”²¹³

²¹⁰ Woods, *Norfolkes Furies*, fols. K3r-v.

²¹¹ *Ibid.*, fol. K4r. For the gentlemen’s pursuit of attainted properties, see SP 10/8, no. 55.

²¹² Longleat MS, Seymour Papers, vol. 4, fols. 11r-v.

²¹³ BL Add. MS 48018, fol. 391r, printed in Shagan, “Protector Somerset,” pp. 61-62.

What made these fears so pervasive? Somerset assumed that individuals hoping to provoke or prolong protests had started rumours about false pardons.²¹⁴ Sir Thomas Smith implied that some who professed their loyalty raised doubts about the provenance of an offer to avoid a direct denial of the king's authority.²¹⁵ For many, however, these fears had a legitimate grounding. Some apparently saw the numbers of ringleaders arrested as excessive, or as contraventions of pledges of pardon. In Kent, for example, people rose to protest the imprisonment of some of their companions in an earlier rising, threatening to march on London to free them from the Tower.²¹⁶ The most common problem came from local gentry who used lenience as a ploy to disarm protesters or disregarded pardon when granted by the king. The Bishop of Bath and Wells dispersed a group of enclosure rioters with a promise to address their complaints if put in writing and presented in a lawful manner. When five men came forward with the petition, the Bishop threw them in gaol.²¹⁷ This did not violate a pledge of pardon, but it surely did little to promote trust of gentry promises. Elsewhere, the council repeatedly had to order local justices to stop prosecutions of pardoned rebels.²¹⁸ Word of such deceits travelled quickly and lived long in the popular memory.

Some gentlemen had grave reservations, either with the pardon of particular individuals or with the general policy of "gentle persuasion."²¹⁹ Sir Anthony Aucher noted that the pardons for notorious troublemakers raised suspicions among the Kentish gentry that Somerset intended "the decay of gentlemen."²²⁰ Early in the summer, Sir

²¹⁴ Ibid.

²¹⁵ J. Foxe, Acts and Monuments (London, 1583), p. 1328.

²¹⁶ CSP Spanish, IX, p. 405.

²¹⁷ Cornwall, Revolt of the Peasantry, pp. 9-10.

²¹⁸ See APC, iii, p. 322; Longleat MS, Seymour Papers, iv, fol. 11r-v. Of course, the council's own October directive to the Lords Lieutenant to find the troops they needed for Boulougne among the ringleaders and troublemakers in the recent protests probably helped matters little. SP 10/9, no. 46.

²¹⁹ On this discontent, see J.D. Alsop, "Latimer, the 'Commonwealth of Kent' and the 1549 Rebellions," Historical Journal 28 (1985): 379-83.

²²⁰ SP 10/8, no. 56.

Thomas Smith wrote that men of property wanted a firm, swift resolution to the troubles; certainly, he thought an armed response “better than ten thousand proclamations and pardons for the quieting of the people.”²²¹ Sir William Paget opposed Somerset’s policy as well, although he showed little of the blood lust of the other critics. Then serving as an ambassador on the continent, Paget despatched to his friend an impassioned and forthright letter in July, castigating his lenience: “I would to God that at the first stir you had followed the matter hotly and caused justice to have been ministered in solemn fashion to the terror of others and then to have granted a pardon.” He argued that Somerset’s early pardons, too easily given and unaccompanied by displays of vengeance, were little better than the Pope’s indulgences, “which rather upon hope of a pardon gave men occasion and courage to sin than to amend their faults.”²²² Unlike other Tudor rebellions, these risings had very little gentry involvement or leadership. Many participants destroyed gentry property and improvements. Some had arrested, attacked, or otherwise insulted local gentlemen. Between those gentlemen who wanted revenge and those who simply thought pardons ineffective, a good deal of opposition arose to the Protector’s policy.

Their complaints, later manifested in the charges presented on Somerset’s fall from power, have led some historians to assume that the merciful approach to the rebels was unusual. A long-standing interpretation used Somerset’s supposedly novel lenience with rebels as an indicator of his interest in radical social reform; M.L. Bush accepted the premise of Somerset’s unprecedented tolerance of disorderly behaviour, but argued in contrast that this came from a need to redirect men and resources to the Scottish war as quickly as possible, rather than from sympathy for rebel aims.²²³ When put into the

²²¹ SP 10/8, no. 33.

²²² SP 10/8, no. 4 and see also “The Letters of William, Lord Paget of Beaudesert, 1547-1563,” ed. B.L. Beer and S. Jack, *Camden Miscellany* 25, Camden Society, 4th ser., vol. 13 (London, 1974), p. 78.

²²³ Bush, *Government Policy*. Typifying the older position is W.K. Jordan, *Edward VI: The Young King* (London, 1968). In a more recent essay, however, Bush has argued that the Protector’s approach had important continuities with that of Henry VIII in the Pilgrimage. “Protector Somerset and the 1549 Rebellions: A Post-Revision Questioned,” *English Historical Review* 115 (2000): 105.

context of other Tudor risings and reactions to them, however, Somerset's lenience does not seem that unusual. Furthermore, Warwick, who became Somerset's successor, showed similar forbearance with the Norfolk campers. The number (and nature) of the concessions Somerset was prepared to make was exceptional and, as Ethan Shagan has recently argued, the tone of his communications with the rebels came "dangerously close to envisaging a political partnership between government and commons."²²⁴ In comparison with earlier uprisings, however, the true novelty of this situation came not from the policy of pardon but from the degree of opposition some gentlemen mounted against it. As suggested above, this emerged in part from the popular nature of the risings. The situation became dangerous because of Somerset's anomalous position as Protector. He had much of the power but little of the authority of a king. During other Tudor revolts, although debates arose over the extent and timing of displays of mercy, the monarch always had the last word. Those opposed might continue to complain or advise, but were far less likely to see their differences as sufficient reasons to topple God's anointed.

Mary I and Wyatt's Rebellion

With broad support throughout the realm, Mary had little difficulty in wresting her crown back from the plotters who had tried to subvert the succession in favour of Lady Jane Grey. She did not have long to wait, however, before a more troubling challenge emerged. In late 1553, it became clear that the queen had determined to marry Philip of Spain. Fearful of the political and religious implications of a match with the

²²⁴ Shagan, "Protector Somerset," p. 36. Shagan's article offered an important and sensitive redirection of attention from the Protector's personality and government minutiae to questions of popular politics and public rhetoric. Its assessment of the novelty and "radical" nature of Somerset's interactions with the rebels is, however, somewhat overstated. For example, Somerset's identification of rebellion as the source of government anger, and insistence that grievances would be heard and addressed if made "in humble petition" were not novel: they were common, if under appreciated, features of Tudor responses to protest. See also the critiques of Shagan's "post-revision" by Bush and G.W. Bernard, *English Historical Review* 115 (2000): 103-20 and Shagan's response, pp. 121-33.

powerful Catholic ruler, a group of gentry conspired to replace Mary with her sister Elizabeth. They hoped to convince Elizabeth to marry Edward Courtenay, a grandson of Edward IV, and then to generate a ground swell of popular support to put them on the throne. They planned a four pronged revolt to begin on 18 March: Sir James Croft, Sir Peter Carew, the Duke of Suffolk, and Sir Thomas Wyatt agreed to raise Herefordshire, Devon, Leicestershire, and Kent respectively. The latter three men had all avidly supported the Crown in past revolts; now, they planned their own challenge to the social order. When news of the plot leaked in early January, however, the conspirators had to act earlier than planned. Croft's proposed rising never began. Carew's attempts to raise the Devonshire gentry failed, and fearing arrest, he fled to France on 25 January. The Duke of Suffolk's efforts had only marginally more success. By 30 January, he apparently had some 400 to 500 men, but even the promise of daily wages of 6d brought him no further supporters.²²⁵ The Earl of Huntington easily dispersed this small force, eventually capturing the duke and his brother.²²⁶ Wyatt, however, had more luck in Kent.

On 25 January, he raised his standard at Maidstone. To the market day crowd he proclaimed his intention to rise against the Spanish marriage and repel the strangers who threatened a subversion of English liberties. Wyatt swore his loyalty to the queen and maintained that he wished only to overthrow those councillors who advanced the match. To bestow legitimacy upon his cause, he noted that most of the nobility and many of the queen's own councillors stood behind him. He studiously avoided any mention of religion or plans to replace Mary with a more amenable monarch. Wyatt's confederates

²²⁵ *CPR Mary and Philip*, II, pp. 242, 290. This contrasts somewhat with the standard account, derived from *Holinshed's Chronicles*, IV, pp. 13-14, which stated that few answered Suffolk's call.

²²⁶ For the standard account of the conspiracy, the failed risings and Wyatt's Revolt, see D.M. Loades, *Two Tudor Conspiracies* (Cambridge, 1965). Loades corrected an earlier view that Wyatt's rebellion was driven by religious concerns and pointed instead to fears of foreign domination through the Spanish match. His argument that the rebels' motives were solely secular and political prompted M. Thorp to demonstrate that while secular concerns were uppermost, religious motivations cannot be dismissed: "Religion and the Wyatt Rebellion of 1554," *Church History* 47 (1978): 363-80. See also W. Robison, "The National and Local Significance of Wyatt's Rebellion in Surrey," *Historical Journal* 30 (1987): 769-90.

delivered the same proclamation to audiences throughout Kent.²²⁷ This message attracted many supporters who flocked to Wyatt's banner.

Mary had few details of the rebels' aims, but moved quickly to counter their claims to loyalty. On 26 January, she declared the Duke of Suffolk, the Carews, and Wyatt traitors who intended to replace her with Lady Jane Grey.²²⁸ The following day, her herald travelled to meet Wyatt and his forces at Rochester. He had with him the queen's offer to "relieve such as should be by sinister motions abused and seduced"; Mary promised pardon to all who quietly returned home within twenty four hours.²²⁹ The herald had orders to explain to the assembly that Wyatt secretly intended the overthrow of the Catholic church. Seeing the herald's approach, however, Wyatt rode to turn him back. He refused to allow the herald to deliver his message and ripped the papers from his hands, knowing that such an offer might weaken the resolve of some of his followers. The herald had to proclaim the pardon at some distance from the camp, and distributed copies to people nearby.²³⁰ Sir Robert Southwell, the sheriff of Kent, told the market crowd at Malling of the queen's offer of pardon, and the sheriff of Surrey delivered this message to people in his county.²³¹ According to one ambassador, these overtures of mercy had some success in dampening the enthusiasm with which many had greeted Wyatt's call.²³²

The first engagement between the rebels and the queens' forces occurred when the latter, under Southwell and Lord Abergavenny, met a detachment of some 600 men at

²²⁷ John Proctor, *The History of Wyat's Rebellion* (London, 1555); reprinted in *Tudor Tracts, 1532-1588*, ed. A.F. Pollard (New York, 1964), pp. 208-10.

²²⁸ *TRP* II, no. 400; SP 11/2, nos. 19, 7, 27 (*CSP Domestic*, p. 57.)

²²⁹ *TRP* II, no. 399.

²³⁰ *CSP Spanish*, XII, p. 55; Proctor, *Wyat's Rebellion*, p. 216. This may actually have been Mary's second effort to diffuse the situation through clemency. Loades noted that years later, Wyatt's son (who was an infant in 1554) claimed that a herald had first approached the conspirators at Allington on either 23 or 24 January, before the standard was raised. Loades, *Two Conspiracies*, pp. 53-54.

²³¹ Proctor, *Wyat's Rebellion*, pp. 218-21; *The Loseley Manuscripts*, ed. A.J. Kempe (London, 1836), pp. 129-30.

²³² *CSP Venetian*, V, p. 457.

Wrotham on 28 January. After a brief skirmish, the rebels fled. Sixty prisoners were taken, and others deserted. The following day, the elderly Duke of Norfolk led a contingent of the queen's forces to Rochester, intending to meet Wyatt's main force. He sent forward a herald to offer pardon to any who laid down their arms. Most responded that they had done nothing that required pardon, but one of the rebel captains, George Harper, quietly offered to defect with his men in exchange for mercy.²³³ Upon the herald's proclamation, he passed to Norfolk's camp. This may have represented a ruse to give Norfolk false confidence, for Harper quickly rejoined Wyatt. The Duke soon faced a greater problem: 600 of his own men, the London White Coats, deserted to Wyatt's side. With Norfolk forced to flee, the rebels found their resolve strengthened and enjoyed renewed support from the countryside.²³⁴

Although counselled otherwise, the queen again tried to end the rising through conciliation. On 31 January, Wyatt and some three to four thousand men reached Dartford. Two privy councillors met the force and relayed the queen's offer to pardon them and hear their grievances about the marriage if they laid down their weapons and sent envoys with a petition.²³⁵ Of course, Wyatt wanted more than a pledge to reconsider the Spanish match. Professing a distrust of the queen's offer, he recalled her father's failed promises to the Pilgrims of Grace; he reminded his men of the executions that had followed Henry VIII's offer of mercy and negotiation.²³⁶ Saying he would "rather be trusted than trust," Wyatt demanded as sureties the custody of the queen and the Tower, along with the right to appoint new councillors.²³⁷ Mary, of course, found these terms unacceptable.²³⁸

²³³ *The Chronicle of Queen Jane and of Two Years of Queen Mary*, ed. J.G. Nichols, Camden Society vol. 48 (London, 1849), p. 38; SP 11/2, no. 21 (*CSP Domestic*, p. 57).

²³⁴ Proctor, *Wyat's Rebellion*, pp. 229-31; SP 11/2, no. 30.

²³⁵ *CSP Spanish*, XII, p. 78.

²³⁶ *CSP Venetian*, V, p. 459.

²³⁷ Proctor, *Wyat's Rebellion*, p. 237.

²³⁸ Loades followed Harbison's lead in giving credit for this conciliatory gesture to Gardiner. Both wrote that throughout the rising, Gardiner and his faction pushed for lenient measures, while Paget and his

Hearing this exchange, some of Wyatt's followers began to doubt his professed loyalty to the queen. According to one chronicler, some "perceiving how unreverently he used himself as well to the Queen's Herald at Rochester as to the Privy Council[lors] at Dartford; and considering within themselves also that he would suffer none of the Queen's Proclamations to be read among them: their hearts began to rise against him."²³⁹ Indeed, the councillors had hoped for this response: if Wyatt refused to negotiate, this showed the people that he "was aiming at the Crown, and intended to overthrow religion, shed blood, sack London, ruin the kingdom, and bring in the French."²⁴⁰ Despite the scepticism of some contemporaries, we must not lightly dismiss the usual claims of loyalty to the Crown made by rebels trying to effect change. Some, like Wyatt, used this language largely as a cover for hidden motives; the pretence worked because many contemporaries believed in the compatibility of loyalty and protest. The Tudors often argued that their rebellious subjects were "deceived" or "seduced" by disaffected leaders; this argument made reconciliation easier and in this case had some truth. Wyatt's goals and those of many of his followers did not coincide. Mary attempted to find persuasive means to counter his propaganda with her own and thus minimise the threat to her rule.

Accordingly, on 1 February the queen gave a celebrated speech at the Guildhall. Before a large crowd and accompanied by a number of her nobles, she described her overture to the rebels. She said she had wanted to quiet the tumult by mercy, not the sword. She related Wyatt's answer in full, and then explained that she had embarked

following strove for quick, forceful retaliation: Loades, *Two Conspiracies*, pp. 65-66; E.H. Harbison, *Rival Ambassadors at the Court of Queen Mary* (London, 1940), pp. 131-32. Nothing in the sources they cited supports this idea. The Spanish ambassador, Simon Renard, on whose despatches both Loades and Harbison based their narrative of a court nearly immobilised by factionalism, noted only that "the Council" decided upon this plan. Furthermore, it was Paget and Petre who explained it to him. (*CSP Spanish*, XII, p. 78.) Loades' statement that the policy of conciliation (and with it Gardiner as well) was completely discredited after Wyatt's response is not correct, as the council continued to make further offers of pardon. The works by Loades and Harbison represent an older strain of Marian historiography premised on the existence of crippling conciliar factionalism. More recently, A. Weikel has demonstrated the fallacy of this assumption: "The Marian Council Revisited," in J. Loach and R. Tittler, eds., *The Mid-Tudor Polity, c. 1540-1560* (Basingstoke, 1980), pp. 52-73.

²³⁹ Proctor, *Wyatt's Rebellion*, p. 237.

²⁴⁰ *CSP Spanish*, XII, p. 78.

upon her plans for marriage only with the advice of her council. Disingenuously implying that the match depended upon the approval of the next parliament, she described herself as the mother of her subjects and the bride of the realm. She protested a tender love for all her people:

I cannot tell how naturally the mother loves the child, for I was never the mother of any, but certainly, if a Prince and governor may as naturally and earnestly love her subjects, as the mother doth the child, then assure yourselves that I being your Lady and Mistress, do as earnestly love and favour you. And I thus loving you, cannot but think that ye as heartily and faithfully love me, then I doubt not, but we shall give these rebels a short and speedy overthrow.

Mary promised the members of her audience that she would stay in London to face any danger with them, and exhorted them to steadfast loyalty.²⁴¹ While her promises of mercy had only limited success with Wyatt's followers, she carefully used them to portray herself as a clement and hence laudable sovereign to a broader audience.

Mary and her councillors organised military forces to meet Wyatt, who continued to march on London. He reached Southwark on 3 February, but, contrary to his expectations, found the gate barred. The queen ordered another proclamation of pardon to all who went home, but this time specifically exempted Wyatt and three other leaders. In an effort to dishearten the Kentish rebels, she advertised the failure of the other planned risings; indeed, Peter Carew had fled to France, and the Duke of Suffolk and his brothers had dishonoured themselves by escaping dressed as servants. She offered a substantial reward to anyone who captured Wyatt.²⁴² Three days later, Mary had two men who had assisted the rebels hanged in St. Paul's churchyard.

When Wyatt found himself stymied at Southwark, he and his men marched to Kingston-upon-Thames. Throughout the march, Wyatt kept his men on their best behaviour, for he knew that looting only lost them support.²⁴³ Early on 7 February, they

²⁴¹ For accounts of the speech, see *CSP Spanish*, XII, p. 79; Proctor, *Wyat's Rebellion*, pp. 239-40; *Machyn's Diary*, p. 53; quotation from Foxe, *Actes and Monuments*, p. 1418.

²⁴² *Chronicle of Queen Jane*, pp. 41-42. Wyatt apparently responded to this offer by affixing a sign with his name onto his cap.

²⁴³ Proctor, *Wyat's Rebellion*, pp. 241-43.

arrived at Hyde Park. The queen's lieutenant, the Earl of Pembroke, sent a herald to ask Wyatt to "submit himself for cause of bloodshed and stand unto the Queen's highness' mercy unto whom he would be a mean for his pardon."²⁴⁴ Wyatt refused. He and his men, he said, were prepared to fight it out to the end. They skirmished successfully through the outskirts of the city; facing only diffuse and disorganised opposition, they marched down Fleet Street, where armed men lined each side but offered no resistance. One chronicler suggested that this was done "by policy" to trap the rebels and avoid unnecessary bloodshed.²⁴⁵ Quite possibly, the Londoners Wyatt had expected to help him now stood by unwilling to commit to either side, perhaps confused by the Kentish men's cries that the queen had granted them pardon and met their demands. Soon, however, the rebels' luck ran out: they found Ludgate closed against them and suffered attack when they turned back toward Temple Bar.²⁴⁶ At least forty of the poorly armed rebels died. A herald again demanded Wyatt's submission, reportedly stating: "Perchance you may find the queen merciful, and the rather if you stint so great a bloodshed as is like here to be." In this account, Wyatt responded, "Well, if I must needs yield, I will yield me to a gentleman." At this, Sir Maurice Berkeley stepped forward and took Wyatt into custody.²⁴⁷ Some of Wyatt's men later claimed that they had only surrendered upon promise of pardon given by a herald. One argued at his trial, "if the queen's pardon promised by a herald, which in the field is as her own mouth, be of no value or authority, then the Lord have mercy upon us!"²⁴⁸ The state papers and chroniclers' accounts suggested that the herald asked them to surrender and put themselves on the queen's mercy but did not guarantee clemency. The compilers of

²⁴⁴ Rawlinson MS, B 102, ff. 83-5, English Historical Review 38 (1923): 255.

²⁴⁵ Proctor, Wyat's Rebellion, p. 249.

²⁴⁶ Chronicle of Queen Jane, pp. 49-51.

²⁴⁷ Ibid., p. 50. Proctor's account, however, had it happening differently: Wyatt refused when Berkeley asked him to submit, and only agreed when the Queen's Herald arrived. Wyat's Rebellion, p. 250.

²⁴⁸ Chronicle of Queen Jane, pp. 59-60.

Holinshed's Chronicle, often quick to criticise Mary, similarly noted the falsity of claims that the queen had promised pardon.²⁴⁹

Wyatt's men were taken into custody. The gaols proved unable to hold them all, so churches served as places of detention. What now to do with these rebels, and with the conspirators not yet arrested? Mary's motives, and those of her councillors, are difficult to ascertain. Division certainly arose when it came time to decide how to treat Edward Courtenay and Princess Elizabeth. No evidence exists, however, for a factional split over the handling of the rebels themselves.²⁵⁰ The Spanish ambassador reported that immediately following Wyatt's defeat, Mary resolved to have strict justice done.²⁵¹ Gardiner's sermon on 11 February also suggested such a policy. He argued that the queen's previous lenience and gentleness had allowed conspiracy and open rebellion to blossom. He then implored that "she would now be merciful to the body of the commonwealth, and conservation thereof, which could not be unless the rotten and hurtful members thereof were cut of and consumed."²⁵²

Whether Gardiner offered the queen unsolicited advice or spoke at her direction, audience members who saw the sermon as a prelude to "sharp and cruel execution" anticipated correctly. The unfortunate Jane Grey and her husband Guildford Dudley suffered first. Not involved in the plotting, they paid for the Duke of Suffolk's rising, reportedly done in Jane's name.²⁵³ Attention then turned to the Kentish rebels. The council had gallows built throughout Kent and the London area. Courts sitting over the next few days convicted some 480 people.²⁵⁴ On 14 February, perhaps as many as forty-

²⁴⁹ Holinshed's Chronicle, IV, p. 20.

²⁵⁰ This as opposed to Loades' view that Paget favoured full lenience, while Gardiner reversed his earlier views and wanted harsh justice for all. Renard's reports noted that the two disagreed over the treatment of Elizabeth and Courtenay, but their attitudes towards these figures cannot be taken as indicative of their broader approach to the resolution of the rebellion. See Loades, Two Conspiracies, pp. 165-66.

²⁵¹ CSP Spanish, XII, p. 87.

²⁵² Chronicle of Queen Jane, p. 54.

²⁵³ Loades, however, doubted that Suffolk did rise in his daughter's name: Tudor Conspiracies, p. 27.

²⁵⁴ Ibid., pp. 109-12.

six men died on gibbets around London and Westminster. London White Coats, men who had defected from the queen's forces on the battlefield, made up most of those hanged in London.²⁵⁵ On the following day, an unknown number died in Southwark. Three days later, twenty-three of the Kentish men and their captains were despatched to die in various villages across their home county.²⁵⁶ The Spanish ambassador reported that "one sees nothing but gibbets and hanged men."²⁵⁷

Soon Londoners witnessed another spectacle to contrast with those hanging from the gallows and decorating the gates of their city. Mercy, as ever, had to leaven justice. The defeated rebels knew that further defiance would only result in death; they also knew their parts in the traditional performance of humble submission. On 22 February, over 200 of Wyatt's men were "coupled together two and two, a rope running between them, all with halters about their necks." They gathered in the Westminster tiltyard, kneeling in the mud. When the queen announced their pardon, they threw their halters in the air and cried, "God save your Grace!" Three days later, another 300 men repeated the same performance.²⁵⁸ The queen had obviously staged these rituals of repentance; yet, by playing their part, the rebels allowed the queen to pardon them and thereby gain the accolade of a clement ruler. With their mass acknowledgement of guilt and wrongdoing, they also publicly legitimised the punishment of those selected to die.

For the rank and file of Wyatt's supporters, executions had finished.

Commissioners met in Kent to fine offenders and announced a general pardon by early April.²⁵⁹ The Duke of Suffolk was executed on 23 February, and Wyatt on 11 April.

²⁵⁵ The number comes from *Machyn's Diary*, p. 55. For other accounts, with lower numbers, of these executions, see *CSP Spanish*, xii, 97; *Greyfriars' Chronicle*, p. 88; *Chronicle of Queen Jane*, p. 59, *Wriothesley's Chronicle*, II, 112. All gave different numbers and had a tendency of adding "and divers others," but it seems a safe estimate that the number executed was below 100.

²⁵⁶ *Machyn's Diary*, p. 55.

²⁵⁷ *CSP Spanish*, XII, p. 109.

²⁵⁸ Rawlinson MS, *EHR*, p. 257; Proctor, *Wyat's Rebellion*, p. 255. Machyn described the first of these two pardons, then said a second happened on 23 or 24 February in Southwark. It is unclear whether this was a third group pardon, or just Machyn's mistaken reporting of the one on the 25th at court. *Machyn's Diary*, p. 57.

²⁵⁹ Proctor, *Wyat's Rebellion*, p. 256; *Greyfriars' Chronicle*, p. 88.

Proceedings on the conspirators and leaders dragged on for some time: many trials only began in mid-April. Notoriously, a jury acquitted Sir Nicholas Throgmorton, one of the plotters; the others directed their pleas for mercy to the queen. They had found reason to hope in Mary's Holy Week demonstrations of clemency. On Palm Sunday, a group of her councillors decided that since the "day was a holy one, it was meet to urge the Queen to be merciful and not shed the noble blood of England." They sought her mercy for six gentlemen slated to die in Kent.²⁶⁰ She agreed and five days later released eight more men, honouring a tradition that each Good Friday the ruler of England pardon a few prisoners.²⁶¹ Another batch of gentry rebels Mary kept waiting in gaol: she had decided to pardon them, but thought it a fitting touch that they benefit from the general pardon she planned to celebrate her marriage.²⁶² By 1558, some 321 men had paid to have their pardons enrolled in Chancery.²⁶³

Like her predecessors, Mary met protest with a mixture of force and lenience. Like theirs, her offers of mercy were not in fact "merciful," but pragmatic political gestures. Both tradition and the expectations of the crowd shaped her responses: she had to appear to embody both the justice and mercy inherent in legitimate rule. Mary's forces had won the battle, but she still needed to placate people unhappy with her plans for religion and marriage. She had to avoid fostering further dissent with overly harsh repression, while also sending a message about the perils of disobedience and assure her future spouse of his safety. Her gender made her an exception, but her tactical deployment of mercy to weaken rebel resolve, to advertise her sovereign power, and to

²⁶⁰ CSP Spanish, XII, p. 168.

²⁶¹ Ibid., XII, p. 175. There seems little reason to believe Renard's report that Mary was "scandalised" by her councillors' Palm Sunday request. Mary at other times in her reign refused her council's suggestions for recipients of mercy; if she was opposed to these pardons, she would not have granted them. Renard had been pushing for the swift execution of all conspirators, even going so far as to give Mary a copy of Thucydides, "that she may see what advice he gives where rebels are concerned." Mary was probably excusing her actions to Renard, whose support she still needed to further the Spanish match.

²⁶² CSP Spanish, XII, p. 213.

²⁶³ CPR Mary and Philip, I-IV. See especially IV, pp. 52-57 for a group pardon of 243 men.

restore the disaffected to their place in the polity marked Mary as an astute student of the traditional arts of rule. She has been criticised for lacking a talent for the spectacular displays required of a Renaissance monarch, but throughout Wyatt's rising, she showed herself adept.

Elizabeth I and the Northern Rising of 1569

Mary Queen of Scots and the vexatious problem of succession dominated Elizabethan politics from 1568 to 1587. The first crisis occurred in 1569: the Duke of Norfolk, England's premier peer, conspired to marry the Scottish queen. When the plot collapsed in September 1569, Norfolk half-heartedly backed plans for an armed uprising, but in October threw himself on Elizabeth's mercy and landed in the Tower. The Earls of Westmoreland and Northumberland, who had involved themselves in the scheme, came under a heavy cloud of suspicion.²⁶⁴ Throughout October, rumours of trouble in the north persisted and grew. In November, the Earl of Sussex, President of the Council of the North, summoned the Earls of Westmoreland and Northumberland to meet with him at York. Fearing arrest, the Earls offered their excuses. Sussex advised the queen that the Earls would not agree to meet unless she first offered pardon for any past offences. Each side mistrusted the motives of the other, but for the queen, the Earls' refusal to attend upon herself or her representatives sufficed as evidence of their perfidy.²⁶⁵ Sussex and his council began to prepare for the worst: by 9 November, they had ordered the city of York to survey its military preparedness.²⁶⁶ The Earls, meanwhile, continued to meet with their advisors. Anticipating charges of treason even if they did nothing, they decided to carry through with the plot. Westmoreland at first refused, balking at the idea of open rebellion and the attendant stain upon his lineage.

²⁶⁴ The relationship between the Court conspiracy and the Northern Rising remains unclear. See Fletcher and MacCulloch, *Tudor Rebellions*, pp. 94-98.

²⁶⁵ *CSP Domestic, Addenda: 1566-1579*, pp. 98-99.

²⁶⁶ *York Civic Records*, ed. A. Raine (Wakefield, 1939-), VI, pp. 161-63.

Spurred by the insistence of his wife Jane, sister of the Duke of Norfolk, however, he soon joined with Northumberland and agreed to rise.²⁶⁷

On 13 November, the two earls marched on Durham Cathedral with some seventy retainers. There, with the enthusiastic aid of the congregants, they ripped asunder all Protestant books and celebrated a Catholic service. Sussex ordered an immediate levy of troops, and issued a proclamation declaring the Earls rebels against the queen.²⁶⁸ He countered point by point the claims made in the Earls' own proclamation, observing, for example, that they were not in fact the queen's loyal subjects, nor did they have the support of the nobility. He dismissed their stated aim to restore the old religion as a cover for baser motives. The Earls had also argued that if they failed to reform the polity from within, foreign princes would make the attempt from abroad. Sussex responded that the rebellious practises of the earls posed the real threat of foreign intervention.

While Sussex continued to gather men and arms and to counter the earls' propaganda, he argued that a liberal display of mercy provided the best means of resolving the growing crisis. On 15 November, he and four other members of the northern council wrote as much to the queen: the Earls "know their offences to be such as without your pardon, they intend to do their uttermost which they affirm to be for the surety of their lives." Indeed, Northumberland had written to the queen protesting his

²⁶⁷ *CSP Domestic, Addenda: 1566-1579*, pp. 404-7. The Northern Rising has not yet been studied in any depth; its causes and effects have nonetheless received been the subject of various interpretations. It has been treated as the last baronial rising, with its failure demonstrating that loyalty to the Crown and emergent state had superseded feudal relations: M.E. James, "The Concept of Order and the Northern Rising, 1569" *Past and Present* 40 (1973): 49-83. Its religious aspect has prompted claims that it showed the widespread persistence of traditional religion; its failure has been portrayed by others as a sign of the new church's dominance. See for example, C. Haigh, *English Reformations* (Oxford, 1993) and W.E. Collins, *Queen Elizabeth's Defence of her Proceedings in Church and State* (London, 1899). Standard accounts placed the earls' motivations within the context of court politics, i.e., W. MacCaffrey, *The Shaping of the Elizabethan Regime* (Princeton, 1968), pp. 330-71, but D. Marcombe has more recently directed attention to the regional problems that led the earls' advisors to push for rebellion: "'A Rude and Heady People': the Local Community and the Rebellion of the Northern Earls," in D. Marcombe ed., *The Last Principality* (Nottingham, 1987), pp. 117-51. All have treated it as an affair of the gentry and nobility. What follows focuses on the use of pardon and punishment in the suppression of the rising, an aspect that has been little studied; it also suggests that the popular element in the rising was vitally important and worth further study.

²⁶⁸ *CSP Domestic, Addenda: 1566-1579*, pp. 103-5.

loyalty and desire to join her at court, if only he might receive assurance of her clemency.²⁶⁹ In a second letter dated 15 November, Sussex elaborated:

It is for you to weigh whether it shall be greater surety for you to pardon those Earls and their partakers their offences past, and to call upon the Earls to attend at your court, and to purge this winter this country and other parts of the realm of the ill-affected, and so to avoid the danger of foreign aid, and make all sure at home; or else to hazard battle against desperate men, with soldiers that fight against their conscience...I find all the wisest Protestants affected that you should offer mercy before you try the sword.²⁷⁰

While Sussex urged the pragmatic use of mercy as a tool of state-craft, the queen replied that since the beginning of her reign she had shown generous amounts of mercy, perhaps too much so. Furthermore, pardon required a deferential display of repentance:

in a matter that touches us so near, we can in no wise find it convenient to grant pardon or other show of favour unto those that do not humbly and earnestly sue for the same; yea, and though they should sue for it, ...it stands not with our honour to pardon the Earls and their principal adherents without further deliberation by us to be had hereof, seeing they have so openly shown themselves rebels, and so grievously and arrogantly offended us and our laws.²⁷¹

She did, however, authorise Sussex to offer pardon to the “meaner” sort. Accordingly, on 19 November the Lord President issued a proclamation assuring a full and free pardon to all who returned to their homes by 22 November. This offer exempted the earls and five additional named men.²⁷²

This effort seems to have robbed the earls of some supporters; if nothing else, it allowed the queen to posture as a clement ruler. As Sussex realised, however, with the leaders given no incentive to cease, the rebellion was not to be ended so easily.²⁷³ He wrote to Cecil, again expressing the wish that the queen end the matter quickly, either by pardon or by force. Knowing the queen’s opposition to outright forgiveness for the

²⁶⁹ SP 15/15, no. 23 (*Ibid.*, pp. 106-7.)

²⁷⁰ SP 15/15, no. 25 (*Ibid.*, pp. 107-8.)

²⁷¹ *A Collection of State Papers...left by William Cecil*, ed. S. Haynes and W. Murdin, 2 vols. (London, 1740), I, p. 557.

²⁷² *York Civic Records*, VI, pp. 170-71; *CSP Domestic, Addenda: 1566-1579*, p. 113.

²⁷³ *The State Papers...of Sir Ralph Sadler*, ed. A. Clifford, 2 vols. (Edinburgh, 1809), II, pp. 54-56.

leading rebels, he requested immediate support in men and money.²⁷⁴ The earls' defence of the traditional faith continued to earn them much support, both armed and passive. Sussex had some 3,000 men, whereas the earls commanded nearly 6,000; the earls' horsemen outnumbered his by at least three to one.²⁷⁵

The rebel host marched through Ripon, Sherborne, and Tadcaster, celebrating traditional religious services and despoiling churches of their Protestant paraphernalia. Nevertheless, Sussex's despatches soon became more optimistic. Sir Ralph Sadler joined him at York, easing his burden by endeavouring to allay the queen's fears about the his loyalty. The earls apparently had little idea of what to do with their troops, and as winter wore on, found it more difficult to feed them. Some of the men had turned to pillaging, and thus diminished local support for the rebels. Westmoreland reportedly wanted to submit; his wife, who rode with the army, seemed his only hindrance.²⁷⁶ But the rebels continued to have some success. On 1 December, they took Hartlepool and besieged Sir George Bowes at Barnard Castle. As the siege wore on, more and more of Bowes' men fled to the enemy. Indeed, the heaviest casualties of the rebellion occurred on the night when 226 of the men leapt over the castle walls to join the rebel host: 35 broke necks, legs, or arms.²⁷⁷ Bowes escaped to join the Earl of Sussex at York. Finally, the queen's forces marched out to meet the rebel army. Suddenly, however, the earls lost their nerve. At one o'clock on 16 December, they gave notice to the commoners in their train to fend for themselves and fled towards Northumberland with a much reduced force.²⁷⁸ After a brief skirmish at Hexham, the earls, the Countess of Northumberland, and a small group of their horsemen escaped into Scotland.

²⁷⁴ CSP Domestic, Addenda: 1566-1579, p. 114.

²⁷⁵ Ibid., p. 115.

²⁷⁶ Ibid., pp. 124, 128.

²⁷⁷ Ibid., p. 150.

²⁷⁸ Ibid., p. 156; C. Sharp, Memorials of the Rebellion of 1569 (London, 1840), pp. 104-5.

The queen's captains dismissed most of their forces, but the real work of suppression had just begun. The queen and her council showed the greatest concern for the capture of those rebels who had fled into Scotland and with the seizure of as many attainted estates as possible. Toward the "meaner sort," vengeance became the order of the day. None gathered to ask for pardon, and none was given. On 24 December, Elizabeth told the French ambassador that she had granted pardon to the populace, but no record of such an offer has survived.²⁷⁹ The only pardon that probably remained in effect was that given on 19 November. Those who had persisted in their rebellion past 22 November faced the full danger of the laws. Despite suggestions from Sussex and others, the queen insisted on a policy of rigorous justice.

In this she received loud support from southern Protestants who thought no Catholic deserving of mercy. They argued that recusants had long benefited from tenderness and clemency. The Catholics had not learned the lesson of mercy, but had grown bolder; this boldness had culminated in a rebellion that endangered the entire realm. The purpose of pardon was to make offenders better subjects, but Catholics, by the nature of their faith, could never become loyal. They did not offer deference and repentance in exchange for mercy. Instead, the papists saw clemency as a vindication: God stood by the righteous and protected them in their time of need.²⁸⁰ One anonymous author argued that those who moved the queen to pardon the rebels brought suspicion upon themselves; he also suggested that the queen had no right to pardon these rebels and threatened that "overmuch cherishing of papists" might make the better sort less likely to defend their queen in the future.²⁸¹ In a sermon preached before the royal court, one minister repeated the familiar argument that "mildness to some is oft times unmildness and cruelty to many others"; he went further, however, to claim that because

²⁷⁹ CSP Venetian, VII, p. 441.

²⁸⁰ See for example, T. Norton, To the Queenes Maiesties Poor Deceyued Subiectes of the North Country (London, 1569), sigs. E2v-E3r; "A Balad Intituled a Cold Pye for the Papistes," Ballads and Broad-sides...at Britwell Court, no. 68.

²⁸¹ Anonymous (attributed to Thomas Norton), A Warning Agaynst the Dangerous Practises of Papistes (London, 1570), sigs. B3r-v, D1r-v, L3v, N2v.

the northerners had rebelled not just against the queen but also against God, they must suffer severe punishment. Just as David smote the Amalekites, so must Elizabeth destroy the Lord's Catholic enemies: he assured the queen, "let them in God's name feel the punishment of a club, an hatchet, or an halter and in so doing, I dare say God shall be highly pleased."²⁸²

Cecil ordered that rebels with lands or significant income receive trial at the common law to ensure that the queen obtained their forfeitures. Fearing the partiality of northern jurors, he also directed that the trials must await the arrival of southern commissioners.²⁸³ In contrast, he suggested immediate judgement under martial law for the poorer sort. Sussex concurred. He planned to execute some from each order of society, to exact especially harsh retribution on constables and officers who had abused their positions to deceive the people, and to hang some in every town that had sent men or aid to the rebels.²⁸⁴

The activities of the southern army hindered their plans. Led by the Lord Admiral and the Earl of Warwick, these men had arrived just as the Earls fled and the rebellion ended. With no useful work to do, the troops set about seizing and plundering rebel goods, but made little distinction between those the November pardon had covered and those it did not. They ignored letters of protection granted by Sussex and, without sanction, promised pardon to others in exchange for goods.²⁸⁵ Naturally, Sussex found that this weakened his authority and increased the confusion of people already made desperate by their circumstances.

Sussex and his men spent their time interrogating prisoners. Sifting the innocent from the guilty, they also tried to sort the guilty by the degree of their offences.²⁸⁶ He

²⁸² T. Drant, *Two Sermons Preached...at Windsor* (London, 1570), sigs. I8r, K4r.

²⁸³ *CSP Domestic, Addenda: 1566-1579*, p. 172.

²⁸⁴ *Ibid.*, p. 169.

²⁸⁵ *Ibid.*, p. 177; confirmed by Sadler, p. 179, and Gargrave, p. 181.

²⁸⁶ *Ibid.*, p. 175.

and his marshals drew up lists of those involved in the rebellion, and “appointed” from each village and social rank a number to die. Although taking care to ensure that only the guilty risked death, their decisions on the life or death of guilty individuals had all the appearance of a lottery.

Much remained at the discretion of the marshal, Sir George Bowes. Years earlier, Bowes had diligently served among the Pilgrims of Grace; showing again the permeability of the line between rulers and ruled, he now set out to effect the queen’s retribution. His correspondence allows insight into his decisions. Of the 794 people from the county of Durham who had joined the rebellion, Sussex had selected 308 to die. Of the 1,241 people from Richmondshire who rebelled, he marked 231 for death. The authorities planned to distribute these hangings among the various market towns and major villages that had offered aid to the rebels. Sussex told Bowes to execute more or fewer in each town as he saw fit, basing his decisions on the degree of the individuals’ offences and the need for example in each community.²⁸⁷ Both Bowes and Sussex executed only those involved in the latter stage of the rising. While those who had aided the rebels also faced punishment of some sort, Bowes avoided hanging any who had not ridden with the earls. He added two days to the expiration of the November pardon: those who had persisted past 24 November bore the brunt of his commission.²⁸⁸ By 9 January, Bowes had finished his work in Durham. Because he had not yet found many of the worst offenders, however, he had to defer some executions. Already he was receiving requests for reprieves: Lord Scrope asked for the lives of six men, as long as they were not notorious offenders.²⁸⁹ By January 11, Bowes had finished his work in Richmondshire. Of the 231 appointed to die, he probably only put 57 to death.²⁹⁰ He then travelled to

²⁸⁷ Memorials, ed. Sharpe, p. 144.

²⁸⁸ Ibid., pp. 140-42, 188.

²⁸⁹ Ibid., p. 140-41.

²⁹⁰ See H.B. McCall, “The Rising in the North: A New Light Upon One Aspect of It,” Yorkshire Archaeological Journal 13 (1905): 83. McCall argued persuasively that far fewer men were executed than had been appointed to die.

Alverton and Cleveland. For the latter, he had a list of 217 people who had assisted or gone to the rebels. Very few in either area, he found, had stayed with the rebels for the duration of the rising; those who did claimed to have been coerced.²⁹¹ He executed some, but the rest he bound over to appear before Sussex at a later date.²⁹² Bowes lived in the north and recognised the need to avoid undue severity. While assessing rebel goods, he thought it prudent to deal fairly with the wives of those executed. He met with them to discuss composition; from women with many children, he took nothing at all.²⁹³ Bowes received word from Sussex to speed up his proceedings, both to appease the queen's impatience and to minimise the offence caused by the executions.²⁹⁴ He travelled then through Ripon, Tadcaster, and Thirsk, all centres of the rising and thus selected for especially heavy retribution. By the end of January, Bowes reported that in all, he had executed some "600 odd" rebels.²⁹⁵

Still the queen gave no sign of mercy. Bowes wrote to Sussex asking him to move Elizabeth to pardon: these "miserable people," he wrote, must be allowed to "return themselves into the case of subjects, with the uttermost of their substance."²⁹⁶ Thomas Gargrave, the sheriff of Yorkshire, despatched a similar message to Cecil on 1 February. Because many of the poorer offenders dared not return home, he noted, some towns had few men left and were thus undefended against any further trouble. "They should be called home by proclamation," he wrote, "with certain exceptions; and those who are able, pay a reasonable fine and be pardoned. Until they are thus made lawful subjects, it is dangerous dealing with them."²⁹⁷ A few days later, in response to the

²⁹¹ *Memorials*, ed. Sharpe, pp. 151-52.

²⁹² *Ibid.*, p. 156.

²⁹³ *Ibid.*, p. 141.

²⁹⁴ *Ibid.*, p. 159-60.

²⁹⁵ *Ibid.*, pp. 163.

²⁹⁶ *Ibid.*, p. 172.

²⁹⁷ *CSP Domestic, Addenda: 1566-1579*, p. 218.

queen's plan for an oyer and terminer to attain all offenders with property, Gargrave noted that "if we do so, we shall leave many places naked of inhabitants. I think a number should be chosen, chiefly papists, and the rest pardoned, except some chief people who are abroad. The poor husbandmen may become good subjects, and 500 of the poor sort are already executed."²⁹⁸

But still no offer of mercy appeared. After the executions of the rank and file, trials of the gentry and lords remained. The Bishop of Durham claimed that any forfeitures by people who had lived in his diocese belonged to him; the queen refused to proceed until this was resolved.²⁹⁹ The murder of the Earl of Lennox, regent of Scotland, further hindered efforts to retrieve the Earls and their followers. Leonard Dacres, however, became the most immediate focus of the queen's attention.

She had suspected Dacres of involvement in the Earls' plot; when the confessions of men recently arrested further implicated him, she ordered his quick and quiet apprehension. Dacres refused invitations to meet with the queen's representatives in the north, protesting that an injured leg made travel impossible. Evidently surmising Elizabeth's intentions, he began to gather his men.³⁰⁰ The queen finally decided to proclaim her pardon to the humbler sort.³⁰¹ News of her belated clemency had not reached the north, however, before Dacres rose in open rebellion. When Lord Hunsdon moved to arrest Dacres on 18 February, the latter had lit the beacons to call the north to arms and had fled with some 3,000 men.³⁰² This rising had the potential to pose an extremely dangerous threat to the peace of the north: the people had not yet been able to submit and have their fate settled. The executions had cowed some people, but reports suggested that others remained ready to rise.³⁰³ The danger was short-lived, however, as

²⁹⁸ *Ibid.*, p. 221.

²⁹⁹ *Ibid.*, p. 238.

³⁰⁰ *Ibid.*, p. 237.

³⁰¹ TRP, III, no. 569.

³⁰² *CSP Domestic, Addenda: 1566-1579*, pp. 238-39.

³⁰³ *Memorials*, ed. Sharpe, pp. 174-75.

Dacres made the unusual move to strike first. On 19 February, he and his men attacked the force led by Lord Hunsdon and Sir John Forster. Despite having the numerical advantage, Dacres lost. Some 300 to 400 of his men died on the field, and he fled into Scotland.³⁰⁴

Realising the danger posed by desperate men lurking on the Scottish side of the border, Hunsdon and Scrope endeavoured to “comfort” as many of Dacres’ men as possible. They announced that they had no authority to grant pardon, but promised to intercede for all who submitted themselves to the queen’s mercy.³⁰⁵ Many presented themselves to beg for clemency. On 4 March, the queen proclaimed her pardon to all who fully repented of their confederacy with Dacres. According to the proclamation, she granted her mercy at the intercession of Lords Scrope and Hunsdon and because many had humbly begged for the same.³⁰⁶

The resolution of the first, more serious rising continued. Throughout the north, heralds proclaimed the pardon first issued before the Dacres rising. It covered those who:

will acknowledge themselves bound to her majesty as her true and natural subjects, and as persons that have received their lives and beings from her highness as the *minister of Almighty God*, for the which they be bound by double bond to serve her majesty faithfully and truly during the continuance of their lives to come, and to spend in her service that which from her clemency they have received.³⁰⁷

It applied only to those without estates of value, and had to be sued in person before the appointed commissioners. Soon the remainder of the population, excepting those still reserved for trial, received word to attend upon the commissioners and compound for their pardons.³⁰⁸ The queen instructed the commissioners to base their assessments

³⁰⁴ CSP Domestic, Addenda: 1566-1579, p. 241.

³⁰⁵ Ibid., p. 244.

³⁰⁶ TRP III, no. 570.

³⁰⁷ TRP III, no. 568.

³⁰⁸ See for example York Civic Records, VII, p. 6.

upon a list of considerations: the length of time the individual had remained in rebellion, whether he had stirred up others, whether he had participated in previous risings, and the size of his family.³⁰⁹ All had to attend a sermon that detailed the heinousness of their sins and to swear an oath of loyalty to the queen before receiving mercy.³¹⁰ Significantly, Catholics were not to receive pardon until they repented not only of their actions in the rebellion, but also of their faith. The oath they had to swear bound them to “declare in your consciences” that the queen was supreme governor in matters spiritual as well as temporal, and that the pope had no authority within the realm.³¹¹

The common law trials commenced at York on 20 March. The commissioners indicted sixty-four men, many in absentia. Most of those present for trial were followers rather than instigators, so the audience expected the granting of mercy. Of the eleven men condemned, four died on 24 March. Sussex and the commissioners held the others back and asked for a royal pardon. One of these men was simple and led astray by his wife; another Lord Hunsdon wanted freed. The notes made of the others confirmed the heavy influence of the dictates of finance, rather than clemency, in the wake of this rebellion. One very young man was attainted only to bring the title of his brother's lands into the queen's hands. The other four were all reputed to be good, honest men and fully repentant; two had large families to support and one had stayed with the rebels only under duress. In case these reasons did not suffice to prompt pardon, Sussex pointed out that their entailed lands would revert to their families, not the queen, upon their deaths.³¹² If they were pardoned for life only, however, their goods were forfeit to the

³⁰⁹ *CSP Domestic, Addenda: 1566-1579*, p. 251. The mention of earlier risings probably referred to the Pilgrimage of Grace. Much was made of the fact that some of the people involved in this rebellion had been in the earlier rising and had been pardoned before. See, for example, *A Warning Agaynst the Dangerous Practises of Papists*, sig. D4v. Less noted were those, like Sir George Bowes, who had been in the Pilgrimage and were now staunchly loyal.

³¹⁰ This sermon was likely the “Homily Against Disobedience and Wilful Rebellion,” which was written during the rebellion and later added to the second book of homilies. See *Certain Sermons or Homilies (1547) and A Homily Against Disobedience and Wilful Rebellion (1570): A Critical Edition*, ed. R.B. Bond (Toronto, 1987).

³¹¹ *CSP Domestic, Addenda: 1566-1579*, p. 251; TRP III, no. 569.

³¹² *CSP Domestic, Addenda: 1566-1579*, pp. 261-63.

queen during their lifetimes. The queen granted pardon to the simpleton, the man supported by Lord Hunsdon, and the youth. The other four she felt “moved to spare for the profit that might come to us by their life,” but she thought that the commissioners needed to make more examples of rigorous justice.³¹³ She left the decision to the commissioners, who had moved on to Durham for more trials. These men, spared at York, were taken to Durham for execution.³¹⁴ The commissioners, however, returned them to the gaol and eventually the men received their pardons, two with the help of prominent intercessors. The queen granted their lands to others as rewards for service.³¹⁵ The commissioners heard thirty-three indictments at Durham, and thirty-two at Carlisle.³¹⁶ Whether any suffered death in these two places is unknown.

The commissioners continued to take submissions and compound for pardon well into the summer.³¹⁷ By late April, slightly more than 3,800 people had paid to have their pardons enrolled in Chancery.³¹⁸ Acknowledging that the price might be prohibitive for some, the queen allowed that up to ten people might have their names entered on each charter of pardon. Some of the propertied insurgents remained in gaol. Eventually, sixteen of these received their pardons at the suits of various nobles.³¹⁹ Bowes later estimated that between 11,000 and 12,000 -- double the number of people ever in arms -- obtained pardons³²⁰ Eight of the gentry leaders were executed in London in early 1570; four died in York and others, perhaps, in Durham and Carlisle.

³¹³ *Ibid.*, p. 266.

³¹⁴ *Ibid.*, p. 280.

³¹⁵ *CPR Elizabeth I*, V, p. 268: Leonard Metcalf, pardoned 1 September 1571 at the suit of Anthony Mildmay; p. 163: Robert Lambert, pardoned 20 March 1571, pp. 271, 388 land grants; p. 375: Robert Claxton, pardoned 12 March 1572 at the suit of Robert, earl of Leicester, p. 464 land grant; p. 341: Ralph Conyers, pardoned 22 November 1571, p. 213, land grant.

³¹⁶ *CSP Domestic, Addenda: 1566-1579*, p. 291. Twenty eight of the Carlisle indictments were for involvement in Dacres' rising.

³¹⁷ *Ibid.*, p. 305.

³¹⁸ *CPR Elizabeth I*, V, pp. 81-114.

³¹⁹ *Ibid.*, V, pp. 66, 163, 168, 249, 268, 283, 289, 290-92, 340-41, 360, 375.

³²⁰ *Memorials*, ed. Sharpe, p. 187.

Westmoreland, the Countess of Northumberland, and other key figures escaped to the continent. The Countess of Westmoreland remained in England, unmolested for her part in the rising.³²¹ The Scots, after repeated military incursions by the English, handed over the Earl of Northumberland in June of 1572.³²² Following lengthy interrogation, he lost his head in York on 22 August.³²³ The exact number of people who died for their involvement in the rebellion is unknown; Bowes' estimate of "600 odd" will have to suffice. This was a staggering number, but if the queen had had her way, more would have died. Many of the propertied element survived because of the long delay before their trials; most exchanged their lives for the payment of extortionate fines. The "meaner" sort suffered the heaviest toll, by far. Clearly contemporaries did not share the interpretation of those historians who have treated the rising primarily as an affair of the Earls and gentry. After all previous Tudor risings, the leaders had suffered death while most of their followers obtained pardons. The Northern rising witnessed a signal change in the official responses to rebellion.

Tudor monarchs deployed the pardon differently in each of the rebellions; although a common set of conventions and range of possibilities existed, no standard response prevailed. Yet the use of pardon in the 1569 rising differed in significant ways from that in earlier revolts. Neither side attempted to negotiate; those rising in protest despatched no petitions or requests to a powerful figure for intercession. Elizabeth did not offer to hear the rebels' grievances and only once promised pardon to those who dispersed. The punishment she exacted at the end of the rising showed greater severity than that after any previous Tudor revolt. Did these differences emerge from changing

³²¹ Women have largely been absent from this narrative. Few women sued out pardons or made submissions in the wake of a rising. They did play important supporting roles, but seem to have played a less active role in rebellion than in the localised enclosure and food riots where a strong female presence has been well-documented. Men who supported and encouraged rebellion frequently had to answer for their actions in some way, but women generally did not. The degree of a woman's responsibility for her actions when engaged in riot and other criminal activity remained ambiguous and contested; their responsibility for involvement in rebellion was almost ignored.

³²² R. Pollitt, "The Defeat of the Northern Rebellion and the Shaping of Anglo-Scottish relations," *Scottish Historical Review* 64 (1985): 1-21.

³²³ For an account of the execution, see *Memorials*, ed. Sharpe, pp. 334-35.

ideas of the due exercise of mercy? Possibly, but if so, only indirectly. The Earl of Sussex advocated a more traditional policy, and the resolution of Dacres' rising paralleled those of earlier revolts. The Northern Rebellion, like others before it, had primarily religious motivations and aims. Unlike earlier religious protesters, however, these were led by men who had scant hope of actually effecting change; other than protestations of loyalty, they made little effort to take a conciliatory or deferential stance. The social and political context had changed: the succession crisis had reached its peak, and the rebellion brought to the surface a virulent anti-Catholicism. In a political culture that still considered mercy a vital element of sovereignty and adjunct to justice, many Protestants displayed a harsh willingness to demand only retribution for Catholic rebels.

The pardons offered during and after revolts were instrumental and expressive for both rulers and rebels. Traditions of loyalty permitted people to cloak a certain independence of action with a rhetoric of submission. Protestations of loyalty throughout risings allowed the expression of dissent while minimising challenges to the deferential order of society. A humble request for forgiveness followed by a magnanimous extension of clemency enabled the reintegration of rebels into the polity with no loss of honour to the ruler. Some chosen victims usually suffered exemplary punishment, but most lived to resume their places in the social hierarchy. Pardon was a prerogative of rule that demonstrated superiority over those who had placed themselves at the lord's mercy. The proclamations of pardon always emphasised God as the source of this regal power; divine justice also provided its model. Upon the sorrowful repentance of the rebel, and often with the intercession of a respected figure, the sovereign might extend his or her grace.

Rituals of pardons both displayed and contributed to royal authority, but only if performed and perceived in certain ways. The act of pardon itself had no fixed meaning. To appear a sign of strength rather than weakness, it had to be requested and given only after a show of repentance. This offered a potential source of power for protesters:

when threat of force proved insufficient to induce submission, battle or concessions of some sort had to follow. For the king or queen, battle was an undesirable option, especially since divided loyalties often made it difficult to gather sufficient or trustworthy forces. If they did offer battle, wholesale slaughter of the rebels posed a danger to their rule and to the stability of the realm. Such tactics might strengthen resentment among the already disaffected and spread that discontent to others previously unwilling to rise. Excessive repression might cause protesters to re-examine the language of loyalty and lordship that guided their actions. Even successful battles highlighted a sovereign's failure in the arts of rule. The power of the Tudor monarchs operated within a constraining set of cultural values: people expected and demanded both justice and mercy. Submission and pardon legitimised violent punishment, but also limited its usage. The particular course of events in each rising shaped the character of the rebellion, the behaviour of the participants, the sympathies of the audience, and the inclination of the ruler, but all occurred within a range of commonly accepted assumptions and conventions about mercy and authority.

Conclusion

The bloody nature of Tudor justice is self-evident. Prisoners literally rotted in dank gaols; postmen travelled the country delivering traitors' severed limbs to selected towns; young boys burned at the stake for heresy; women who killed their spouses or mistresses with poison met their ends in vats of boiling water. The number of executions remains unknown, but one historian has estimated that in later Elizabethan England, the courts sent between 600 and 1,200 people to their deaths every year.¹ In 1577, London's Recorder William Fleetwood reported to Lord Burghley that "at the last sessions there were executed eighteen at Tyburn...It was the quietest sessions that ever I was at."² Yet, many people in early modern society talked of their sovereigns and the enforcement of their law as clement. This study seeks to explain this seeming contradiction by clarifying how people in Tudor England understood the relationship between mercy and justice, and how this understanding shaped the experience of law and authority.

Studying pardons illuminates several key aspects of Tudor political culture. If seen not with a presentist gaze, but rather through the lenses offered by contemporary texts, pardons had an accepted place in early modern conceptions of justice and due punishment. The uniformity and rationality that Enlightenment penal theorists would later advocate had no place in Tudor England. Justice consisted of giving to each person his or her due; following divine and classical injunctions, however, mercy might mitigate the harsher manifestations of this duty. Early modern writers identified the aims of punishment primarily as exemplary and hence preventative, but also as punitive or propitiatory. Their discussions of pardons revealed an allied commitment to reforming offenders as well. Just as God's grace might prompt sinners to amend, so too might the sovereign's grace encourage offenders to right their ways. The use of pardons shaped the formal law, affecting the responses to wrongful convictions, excusable killings, and

¹ P. Jenkins, "From Gallows to Prison? The Execution Rate in Early Modern England," *Criminal Justice History* 7 (1986): 52.

² BL Lansdowne MS 24, 80.

offences done by those deemed to lack responsibility for their actions. They also provided a safety valve when local attitudes towards a particular offence or offender favoured a course of action differing from that demanded by statute or common law.

Pardons represented one element of a broader effort of the Tudors and their apologists to conflate divine and monarchical rule and thus to inculcate habits of obedience. Integrated into such public spectacles of majesty as coronations and parliaments, grants of mercy served to legitimise the power of the monarch. Central to the expression and resolution of dissent when it burst through the veneer of apparent consent, pardons helped restore and secure acquiescence, if not assent. While people throughout the period insisted that mercy must counterbalance justice, the relative weight given to each side of the scale changed in response to specific tensions or events. Conventions of mercy had a sufficient breadth and fluidity to allow very different actions the label of “merciful” and to permit the refusal of pardons to certain groups of people. The most striking shifts of the scales occurred when those in power faced religious dissidence. Historians have long recognised the dramatic effects of population pressures and economic distress on both the formal law and the practise of the courts.³ Yet religious tensions -- generally seen as extraneous to legal history -- also prompted remarkable statutory initiatives and more general renegotiations of the balance between mercy and justice. Judicial sentences of exile and pardons conditional upon banishment, for instance, found support from Elizabethan legislators hoping to minimise the threat of Catholicism; pamphlet writers and members of parliament forcefully declared papists exempt from the redeeming benefits of mercy. Focusing on pardons, then, adds to our understanding of the cultural structures of Tudor politics and the negotiations that occurred within them.

Studying the Tudor pardon also contributes to the broader debate about the relationships between justice, mercy, and authority; it allows insight into basic questions, asked by historians of other times and places, about the nature of the law’s power. As

³ See, for instance, J.A. Sharpe, “Social Strain and Social Dislocation, 1585-1603,” in J.Guy, ed., *The Reign of Elizabeth I* (Cambridge, 1995), pp. 192-211.

Douglas Hay and others have argued, the law had both coercive and symbolic elements. It attempted to secure compliance through punishment and fear, but also sought to convince people of both its own legitimacy and that of the rulers in whose names it operated.⁴ In Tudor England, the pardon clearly contributed to both these aspects of the law's power. After observing that the eighteenth century's increasingly bloody code of laws paradoxically resulted in fewer and fewer executions, Hay concluded that the Crown used its discretion to pardon many in order to convince people of the justice and humanity of a coercive system of law. The Tudors, too, pardoned selectively to secure compliance to their harsh set of laws. Yet the substantial differences between the political cultures of Tudor and Hanoverian England ensured that mercy meant something quite different in the earlier period. In both, discretionary uses of mercy kept executions at levels accepted by most people as not too excessive, but in late Tudor England absolute numbers of executions were perhaps ten times higher, and the proportion of felony convicts suffering death was higher as well.⁵ Of course, economic realities and conceptions of the political sovereignty of state and monarch differed, too. The justice and mercy of the Tudors retained many of the highly personalised characteristics of their medieval forebears; as the standard phrasing of indictments conveyed, crime directly violated both the sovereign's peace and dignity. Mercy in this period was a much more personal gift than in later years, achieved not through bureaucratised channels but through the intercession of powerful figures. Pardoning procedures relied upon and supported a strongly hierarchical social structure. Yet, for all these differences, the central insights of Hay's thesis held true for Tudor England: the elites traded mercy for deference in efforts to legitimise their rule.

In addition to its coercive and symbolic elements, the law also encouraged people to speak in particular ways if they wanted to be heard at all. As Philip Corrigan and Derek Sayer argued in their history of English state formation, sixteenth century

⁴ D. Hay, "Property, Authority and the Criminal Law," in *Albion's Fatal Tree*, ed. Hay, et al (New York, 1975), pp. 17-64.

⁵ J.A. Sharpe, *Crime in Early Modern England, 1550-1750* (London, 1999, 2nd edition), pp. 90-93.

authorities insisted, with increased success, that subjects use forms of political expression suited to the material interests of the elite and the authority of the Crown.⁶ In this project, too, pardons had their part to play. People hoping to express their grievances and survive expressed themselves in deferential terms that minimised the challenge to the existing structures of society; even rebels more directly opposing the servants of the Crown frequently masked their demands in the language of obedience. They humbly implored the gracious gift of their lord's mercy while voicing their complaints. So, too, did offenders hoping to evade harsh penalties for their actions employ a deferential language of submission that strengthened the authority of the Crown. Pardons promoted the use of a particular kind of public speech between rulers and ruled.

No one would uncritically believe Henry VIII's protestations that mercy and tender pity alone prompted him to pardon the Pilgrims of Grace, or many other offenders; nor should one readily accept the humble declarations of submission and gratitude made by rebels and other offenders at face value. Rightly sceptical of the public statements of members of the elite, historians must also avoid reading those of the marginal as transparently true. Pardon spectacles, chroniclers' accounts, mimetic treatments, and the occasionally published petitions and submissions of notable offenders not only advertised the sovereign's mercy to a broader audience, but also ensured that future supplicants knew the parts expected of them. Enough examples of pardon recipients re-offending and of rebels manipulating the conventions of mercy to their own advantage remain to show that the deference people displayed to prompt or pay for mercy was not always genuine. Yet, the tactical or desperate nature of such statements did not render them meaningless: the form, not the hidden motivations, mattered most for the purposes of those in power. Individuals' willingness to work within existing structures and to use language set out for them by the servants of the Crown served to enhance the majesty and security of the sovereign.

⁶ P. Corrigan and D. Sayer, *The Great Arch: English State Formation as Cultural Revolution* (Oxford, 1985), p. 198. On this, see also J.C. Scott, *Domination and the Arts of Resistance* (New Haven, 1990). For a historical study of a very different time and place that similarly discusses the law's coercive and ideological elements while emphasising its functioning as a system of rhetoric or way of arguing, see Tina Loo, *Making Law, Order and Authority in British Columbia, 1821-1871* (Toronto, 1994).

At the same time, the Crown and its agents were also held to their own rhetoric. Every pardon constituted a reciprocal exchange and a public performance. Thus, recipients and audiences had a certain power. At the most basic level, public expectations of mercy meant that the Tudors had to grant pardons to some and to cloak their public acts in the language of mercy and lordly benevolence. As they adduced God as the source and model of their authority, they had to seem God-like in their dispensing of mercy and justice. As the elites justified their social superiority with claims to protect their inferiors, they had to appear to honour these pledges. In most cases, the crowd generally lacked the power to alter a course of action prearranged by the authorities, but its members might still refuse the intended meanings and messages. Traditions and public expectations of mercy did impose certain limitations on the manner in which the Tudors exercised their prerogatives of pardon and punishment. The same cultural conventions also offered a channel and a form of rhetoric through which the continual negotiations between rulers and ruled might occur.

Of course, throughout these conversations, the authorities generally maintained their position of dominance -- seeing the exercise of power as a reciprocal exchange must not obscure this basic fact. Indeed, during the Tudor period, the Crown strengthened its power, centralising justice and mercy into its own hands. Parliament rendered an increasing number of behaviours punishable by law and sought means to encourage greater numbers of prosecutions in the royal courts. Legislators and privy councillors experimented with new types of penal sanctions and restricted access to traditional forms of mitigation. New methods of granting and displaying royal clemency helped this extension of royal power. The Tudors used acts of mercy to ease the passage and enforcement of an increasingly stringent body of laws by highlighting the possibility of mitigation. The pardon constituted one of a range of tools used by Tudor authorities to maintain order -- the absence of crime and misdeeds -- but also to affirm a particular kind of social order -- a system of overlapping economic, political, and gender hierarchies premised on unequal power.

Appendix: Sources

Charters of pardon were issued as letters patent under the great seal. An explanation of the procedures involved in the production of such charters provides a necessary grounding for the discussion of sources which follows.

At the beginning of the Tudor period, the king's approval of a petition initiated the formal process. By the mid-sixteenth century, however, the king or queen's attorney and solicitor would first have to sign the back of any petition, and either attach or write onto the document itself a summary of its contents.¹ The king or queen might sign the bill, in which case it could serve as an immediate warrant and be carried directly to Chancery. The use of immediate warrants was eventually curtailed: Queen Elizabeth ordered that signed bills be directed through all the relevant offices like any other warrants. She did, however, make allowance for petitions requiring speedy action - which included some pardons - and noted that if the signed bill was endorsed by the Lord Treasurer and two or three other members of the Council it could still serve as an immediate warrant.

Otherwise, the approved petition was sent to the Secretary's office, where clerks wrote under the signet to the Keeper of the Great Seal, first keeping the bill they received as their warrant and making a note of the document being sent forward. The Keeper of the Privy Seal in turn caused a writ to be issued to the Chancellor; the clerks of the Privy Seal kept the Secretary's letter as their warrant and entered a note of it into the privy seal register.²

The chancery clerks, then, received either a signed bill or writ of privy seal as a warrant to issue a pardon. A clerk prepared a docquet briefly summarizing the text of the warrant; this docquet was signed by the Chancellor as the record of the pardon's passage

¹ This discussion is drawn from H. Maxwell-Lyte's *Historical Notes on the Use of the Great Seal of England* (London, 1926).

² *Ibid.*, p. 90.

through Chancery. A clerk then wrote up, or engrossed, a formal version of the warrant which was then sealed and issued to the grantee upon payment made to the clerk of the Hanaper. The warrant was given to the clerks of the enrollment who then entered it onto the patent roll, which was the formal record of instruments issued under the great seal.³

Proclamations of pardon, offered at coronations or after rebellions, were sued directly out of Chancery, and thus did not pass through the hands of the clerks of the signet and privy seal. So, too, were pardons “de cursu” issued directly from Chancery: the Chancellor could, on his own authority, issue such a pardon after seeing the trial record or a note from the justices involved. Similarly, a royal warrant was unnecessary for a pardon of outlawry: the Chancellor could issue such a pardon upon notice that the outlaw had surrendered to the authorities. Copies of these pardons too would be entered into the patent rolls.

Statistics on the numbers of pardons granted have been extracted primarily from the calendars of the patent rolls:

Henry VII: Calendar of the Patent Rolls...Henry VII, 2 vols. (London: HMSO, 1914-1916.)

Henry VIII: 1509-1542,
Draft Calendar of the Patent Rolls, P.R.O. OBS 1/441-454.

1542-1547,
Original rolls consulted: P.R.O. C 66/ 710-798.

[The Letters and Papers, Foreign and Domestic of the Reign of Henry VIII, eds. J.S. Brewer, J. Gairdner, R.H. Brodie, *et al.*, 21 vols and Addenda (London: HMSO, 1862-1032) does calendar the patent rolls, but misses a few entries found on the original rolls and also includes pardons found only in C 82, the collected writs of privy seal and signed bills that served as warrants for the great seal. These warrants may have resulted in pardons that were mistakenly overlooked for enrollment on the patent rolls, but they have not been counted here: events such as a last minute rejection, the intended recipient's lack of funds or too-prompt execution could intrude between the issue of a warrant and the final grant of a pardon.]

Edward VI: Calendar of the Patent Rolls...Edward VI, 6 vols. (London:

³ Ibid., pp. 332, 363-65.

HMSO, 1924-9).

Mary: Calendar of the Patent Rolls...Philip and Mary, 4 vols. (London: HMSO, 1937-9).

Elizabeth I: 1558-1583,
Calendar of the Patent Rolls...Elizabeth I, 9 vols. (London: HMSO, 1939-1986).

1584-1589,
List and Index Society, vols. 241, 242, 243, 247, 255.

Rolls C66/ 1223-1253, which include materials from 25 and 26 Elizabeth, and C 66/ 1337- 1346 for part of 32 Elizabeth have not been calendared; the original rolls were consulted.

1590-1603,
For the remainder of Elizabeth's reign, unpublished calendars are available at the PRO in ZBOX 1/3-12.

Names of individuals who sued out copies of the general pardons were recorded in supplementary patent rolls which now form an archival class of their own, C67. Some of these have been calendared along with the other patent rolls, but the originals have all been consulted:

Henry VII: C67/53, 54, 55, 93.
Henry VIII: C67/56-61 - calendared in the L&P, I. pp. 203-273.
C67.62, 63, 74, 75
Edward VI: C67/64 - calendared in CPR Edw VI, II. pp. 138-168.
Mary: C67/65 - calendared in CPR P&M, I. pp. 411-468.
C67/66 - calendared in CPR P&M, II. pp. 346-359.
Elizabeth I: C67/67, 68 - calendared in CPR Eliz, I. pp. 149-246.

Some entries have no date recorded. As the rolls were organized by regnal year, the entry could belong to either of two calendar years. Such entries have arbitrarily been assigned the year of the preceding pardon.

The patent rolls were the official record of government grants; all tallies in this study are based on them alone. It must be noted, however, that some documents slipped out of Chancery without being engrossed on the patent rolls. Cross referencing the calendars of the patent rolls with remnants of other record series which mention pardons illustrates the problem. Warrants for the great seal and docquet books of the various

offices note some pardons for which no corresponding record exists on the patent rolls; as noted above, some of these may not have been issued. Records of payment for pardons do, however, reflect final grants, and demonstrate that the patent rolls are not complete: one Hanaper file, E 101/320/16, lists 26 recipients of special pardons for the years 7-8 Henry VIII; 5 of these could not be found among the names on the patent rolls. A second such document, E 101/220/16, lists 15 grantees, 5 of whom could not be identified in the patent rolls. This series of records is not complete for the period, but the Accounts Office books tell much the same story: of 96 payments listed in AO 3/373/5 for the years 9-10 Elizabeth, 5 were not found on the patent rolls. Cross-checking all the various financial records for missing pardons would be an excessively time consuming task that would most likely still not provide a complete list, so the patent rolls have been accepted as the official record they were intended to be.

Finally, this study has had the same general problem with sources that has affected most historians of Tudor England: a frustrating paucity of extant documents. Henry VII's reign receives noticeably short shrift in this thesis, as in so many studies that attempt to cover the entire Tudor period. No state paper archive exists for his reign, and records of the sort that would later go into such a collection are relatively few. While the fuller records of his son's reign are a boon, they also create a fundamental irony. Henry VIII had a number of his chief ministers and important nobles arrested. When each entered royal custody, so too did their papers, as royal officials seized them to look for evidence of treacherous dealings. Thus, we are able to discover more about Henry VIII's uses of mercy because he so frequently punished his closest advisors.

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- C 231 Chancery and Lord Treasurer's Office: Crown Office: Docquet Books
- C 237 Chancery: Bails on Special Pardons
- DURH 3 Palatinate of Durham: Chancery: Cursitors' Records
- E 101 Exchequer: King's Remembrancer: Accounts, Various
- E 163 Exchequer: King's Remembrancer: Miscellanea of the Exchequer
- OBS 1 Obsolete Lists, Indexes and Miscellaneous Summaries
- PRO 30 Gifts and Deposits, Miscellaneous
- SO 3 Signet Office and Home Office Docquet Books and Letters Recommendatory
- SP 1 State Papers, Henry VIII: General Series
- SP 4 State Papers: Signatures by Stamp, Henry VIII
- SP 10 Secretaries of State: State Papers Domestic, Edward VI
- SP 11 Secretaries of State: State Papers Domestic, Mary I
- SP 12 Secretaries of State: State Papers Domestic, Elizabeth I
- SP 15 Secretaries of State: State Papers Domestic, Addenda
- ZBOX 1 Unpublished and Unfinished Texts, Calendars and Finding Aids

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