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CHAPTER ONE

Introduction

The king's pardon was an important legal document in fourteenth-century England, yet its influence was felt far beyond the confines of the judicial system; it played a part in the major political crises of the period, and carried with it a symbolism that resonated throughout medieval culture. The power to grant mercy was inherited by the monarchs of later medieval England as one of the prerogative rights of the Crown. In practical terms this privilege was extended to supplicants in the form of letters patent of pardon, which were authorised by the monarch or his chancellor and then issued from the royal Chancery. The prerogative was wide-ranging: as ultimate arbiter of the law, the king could intervene at any point in the legal process and pardon all charges brought in his name. From the accession of Edward I to the deposition of Richard II, close to 40,000 of these letters patent are recorded on the patent rolls alone, and numbers were increasing across the period, despite the dramatic fall in population after the mid-century Black Death pandemic.¹ While in many ways the monarchs of the fourteenth century had come to preside over the judicial system as symbolic figureheads, rather than active judges, they still saw fit, on occasion, to personally intervene and grant mercy to one of their subjects.²

¹ The exact number of pardons issued cannot be calculated, as not all were recorded in the government archives. However, the total figure is substantially higher, when those recorded on the supplementary patent rolls (TNA C 67, commonly referred to as the 'pardon rolls') and those on the Gascon and Scottish rolls (TNA C 61; C 71) are taken into account. The C 67 series records the issue of almost 20,000 pardons by Edward I and his three successors. Many of these were recorded separately because they were issued under the grant of a general pardon. A proportion of these were then duplicated onto the main patent roll (TNA C 66). For further discussion of these records, see below, Appendices: Introduction, p. 183 and Appendix 1.

² For legal cases in which the Crown intervened directly, see TNA KB 145/1/18; JUST 1/425, fols. 12v, 13, 21v, 22; SC 1/39/27; SC 1/55/86; *Year Books of the Reign of King Edward the Third, Years XI–XX*, ed. A. J. Horwood and L. O. Pike, RS 31 (London, 1883–1911), III, 196–7; *Calendar of Letter Books of the City of London*, ed. R. R. Sharpe, 10 vols. (London, 1899–1912), G, II, 23. The King's Bench acknowledged the personal influence of the king in its proceedings: SCCKB, III, cxxxiii–iv. See also A. Musson, *Medieval Law in Context: The Growth of Legal Consciousness from Magna Carta to the Peasants' Revolt* (Manchester, 2001), pp. 218–64; J. Watts, *Henry VI and the Politics of Kingship* (Cambridge, 1996), pp. 1–80, for discussion of the extent to

The fourteenth century also saw an important innovation in the process of pardoning; in the latter half of Edward III's reign the Crown introduced a new form of comprehensive pardon, enshrined in statutory form and available to anyone who chose to purchase a copy before a stated deadline. These 'general pardons' were negotiated in Parliament, and involved the active cooperation of the Commons in their formulation.³ Indeed, the use of pardons of all types became a regular feature of parliamentary discussion and debate. The grant of a general pardon, in particular, could play an important political role in symbolising reconciliation between the Crown and the polity in the aftermath of a governmental crisis on the scale of the Good Parliament in 1376, for example, or the 1381 Peasants' Revolt.⁴ Moreover, they provided tangible evidence of the Crown's obligation to provide effective justice for its subjects. Accordingly, these public acts of mercy became trademarks of the English Crown in the later Middle Ages, yet their role has received little attention from historians. The purpose of this introductory chapter is to address the major trends and methodological problems of existing scholarship on the subject, and to examine the wider context of discretionary mercy.

Historiographical Debates

One reason for the relative neglect of pardoning in the existing scholarship has been the tendency to dismiss it as a prime example of the corruption and nepotism endemic in the medieval courts of justice. Historians and legal theorists have often struggled with the notion that this kind of personal discretionary judgment could have any legitimate place in a properly functioning legal system. The concept that something defined as a crime might be forgiven without punishment by the power vested in the person of the king carries notions of personal interpretation and modification of the law to its extreme. Pardoning therefore provides an example of law at its most discretionary. Several of the eminent constitutional and legal historians of the nineteenth and early twentieth centuries were scathing about this perceived

which the medieval monarch played an active role in the legal system. For discussion of the associated area of royal arbitration, see E. Powell, 'Arbitration and the Law in England in the Later Middle Ages', *TRHS* 5th series 13 (1983), 49–67; E. Powell, 'Settlement of Disputes by Arbitration in Fifteenth-Century England', *Law and History Review* 2 (1984), 21–43; C. Rawcliffe, 'English Noblemen and their Advisers: Consultation and Collaboration in the Later Middle Ages', *Journal of British Studies* 25 (1986), 157–77; C. Rawcliffe, 'Parliament and the Settlement of Disputes by Arbitration in the Later Middle Ages', *Parliamentary History* 9 (1990), 316–42.

³ For further discussion of general pardons, see below, Part II. 'Commons' is used throughout this book to refer to the representatives in Parliament.

⁴ For further discussion, see below, Chapters 8 and 9.

defect in medieval law.⁵ These scholars contrasted the vagaries of the royal prerogative of mercy with the reliable predictability of English common law, a legal code that had reached its apogee in the Victorian courts of justice. For Bishop Stubbs, the parliamentary Commons of the later Middle Ages were fighting a losing battle against the Crown's exploitation of its prerogative powers, which he castigated in no uncertain terms: 'this evil was not merely an abuse of the royal attribute of mercy, or a defeat of the ordinary processes of justice, but a regularly systematised perversion of prerogative'. It was, he added, manipulated by the 'great people of the realm' to secure an exemption from the law for their retainers, or for those who paid them enough to buy their support.⁶ Jean Jules Jusserand concurred, adding that the royal Chancery willingly granted these pardons in order to boost government revenue. As a result, he stated, 'the number of brigands increased by reason of their impunity', and men dared not bring the most formidable criminals to justice for fear of reprisals. The Commons could do little in the face of such corruption, yet they 'unweariedly renewed their complaints against these crying abuses'.⁷ It is important to note, however, that not all constitutional historians were so outspoken in their condemnation. Pollock and Maitland took a more measured approach, criticising only the treatment of those who killed in self-defence, or by accident.⁸

It was not until 1969 that a comprehensive study of the origins and use of the royal pardon in England was published. Naomi Hurnard's detailed examination of the role of pardoning in the legal sphere provided a thorough and scrupulous survey of the array of archival material relating to royal mercy, and did much to further the cause of empirical research in the study of this prerogative power.⁹ However, Hurnard reiterated the condemnation with which earlier scholars had dismissed royal pardons. Her work sought to drive home the point that royal pardons were responsible for holding back the development of the common law, by substituting 'administrative discretion for judicial decision, uncertainty for the predictability of

⁵ W. Stubbs, *The Constitutional History of England in its Origin and Development* (Oxford, 1875), II, 582; J. J. Jusserand, *English Wayfaring Life in the Middle Ages: XIVth Century*, 4th edn (London, 1961), pp. 166–7; F. Pollock and F. M. Maitland, *The History of English Law Before the time of Edward I*, 2nd edn (Cambridge, 1911), II, 478–84.

⁶ Stubbs, *Constitutional History*, II, 582.

⁷ Jusserand, *English Wayfaring Life*, p. 167.

⁸ The Anglo-Saxon customs of *wergild* and *wite* addressed the problem of differing degrees of liability, but had been replaced with deferment to the king's mercy in each specific case. This, for Pollock and Maitland, was a somewhat inadequate stop-gap measure: Pollock and Maitland, *English Law*, II, 483–4; J. F. Stephen, *History of the Criminal Law of England* (London, 1883), III, 42–4.

⁹ N. D. Hurnard, *The King's Pardon for Homicide Before AD 1307* (Oxford, 1969).

punishment'.¹⁰ In medieval England, she asserted, the king's prerogative of mercy was certainly used to excess, and yet was scarcely ever available to those condemned to death in error. While Henry III misused the prerogative in his attempts to appease opposing factions, Hurnard blamed Edward I in particular for taking this corruption to new heights by using pardons as an incentive to enlist military recruits. This 'disastrous expedient' removed all pretence of any equitable motives for pardoning.¹¹

Hurnard demonstrated that the royal pardon was an important subject, and one that might be explored beyond the bounds of her work, which focused on the use of pardons for homicide only in the period before 1307. Since her book was published, nearly forty years ago, scholars have generated a huge volume of work on the role of justice, law, kingship and political culture in later medieval society, and this material gives an entirely new context to a study of pardoning. One important conclusion of this more recent work has been that the fourteenth century was a dramatic period of evolution and change in the English legal system. The reasons for this change, and its impact on medieval society, have been the subject of much debate. Several scholars writing in the 1970s and 1980s thought that the fourteenth century witnessed a dramatic decline in public order, as foreign warfare became the priority of the government, to the detriment of domestic stability. Hurnard's views on pardon fitted well with this picture, and historians such as Herbert Hewitt, Gerald Harriss and Richard Kaeuper similarly characterised the use of the royal pardon as a short-term expedient taken to channel resources into the war effort. According to this view pardoning therefore occupied a minor role in the wider debate over public order in the later fourteenth century 'war-state'.¹² An alternative to this view, put forward by Anthony Musson, Mark Ormrod and others, is that there was a perceived deterioration in standards of public order in this period, because medieval expectations had risen in

¹⁰ Hurnard, *Homicide*, p. vii.

¹¹ For discussion of military pardons, see below, Chapter 7, pp. 100–6 and Appendix 2.

¹² Reform of the judicial system had long been on the political agenda of the Commons, echoing the contemporary perception that the quality of the legal system was degenerating. Some historians suggest that this perception reflected a real qualitative slide in the fourteenth century: B. H. Putnam, 'The Transformation of the Keepers of the Peace into the Justices of the Peace, 1327–1380', *TRHS* 4th series 12 (1929), 19–48; H. J. Hewitt, *The Organisation of War under Edward III 1338–62* (Manchester, 1966), p. 173; G. L. Harriss, *King, Parliament and Public Finance in Medieval England to 1369* (Oxford, 1975), pp. 354–5, 516–17; R. G. Nicholson, *Edward III and the Scots: The Formative Years of A Military Career, 1327–1335* (Oxford, 1965), pp. 130, 174, 197; T. F. T. Plucknett, *A Concise History of Common Law* (London, 1956), p. 457; *The Shropshire Peace Roll, 1400–1414*, ed. E. G. Kimball (Shrewsbury, 1959), pp. 43–5; R. W. Kaeuper, *War, Justice and Public Order: England and France in the Later Middle Ages* (Oxford, 1988), pp. 126–7.

line with the expanding legal apparatus, which reached a greater range of the populace than ever before.¹³ These historians have, to an extent, moved away from Hurnard's negative stance towards pardons, emphasising the degree to which concepts of pardon and mercy permeated medieval society and were, at various times, both criticised and extolled by supplicants and by those in positions of judicial authority. It is certainly an interpretation that allows for a more nuanced understanding of medieval attitudes to the royal pardon, and it has done much to inform the analysis offered in this book.

This debate on fourteenth-century law and order has not evolved in isolation; much work on the ideology of the law and the nature of political culture, in particular, has changed the intellectual landscape since Hurnard's book was published. In the 1970s the 'Warwick school' of historians, which included Edward Thompson and Douglas Hay, sought to apply Marxist techniques of analysis to the social history of crime in the seventeenth and eighteenth centuries.¹⁴ For Hay, the continued use of the royal pardon in eighteenth-century England served to promote a belief in the fairness and equity of a legal system that upheld the propertied interests of the ruling elite. While the government expanded the number of crimes punishable by death, it mitigated the severity of the law with the use of royal pardons, and therefore kept the populace in a deferential relationship with the ruling class. Although this work has since been modified and challenged, it served to raise awareness of the extent to which the law influenced, and was in

¹³ A. Musson and W. M. Ormrod, *The Evolution of English Justice: Law, Politics and Society in the Fourteenth Century* (Basingstoke, 1999), pp. 161–93; A. Musson, *Public Order and Law Enforcement: The Local Administration of Criminal Justice, 1294–1350* (Woodbridge, 1996), pp. 189–201; A. J. Verduyn, 'The Politics of Law and Order during the Early Years of Edward III', *EHR* 108 (1993), 842–67; E. Powell, 'The Administration of Criminal Justice in Late-Medieval England: Peace Sessions and Assizes', in *The Political Context of Law: Proceedings of the Seventh British History Conference*, ed. R. Eales and D. Sullivan (London, 1987), pp. 49–59. Musson and Ormrod's stated aim is to 'assess the evolution of justice in an objective manner, free from the moral hyperbole of medieval – and of some modern – commentators'. Musson and Ormrod, *Evolution*, p. 11.

¹⁴ D. Hay, 'Property, Authority and the Criminal Law', in *Albion's Fatal Tree: Crime and Society in Eighteenth Century England*, ed. D. Hay, P. Linebaugh, J. Rule, E. P. Thompson, E. Palmer and C. Winslow (New York, 1975), pp. 17–64; E. P. Thompson, *Whigs and Hunters: The Origins of the Black Act* (New York, 1976). See also J. M. Beattie, *Crime and the Courts in England 1660–1800* (Princeton, 1986); 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 *Rethinking Social History*, ed. A. Wilson (Manchester, 1993), pp. 201–65. K. Kesselring discusses this material, and its relevance to royal pardons in the early modern period: K. J. Kesselring, *Mercy and Authority in the Tudor State* (Cambridge, 2003), pp. 4–7.

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Note: For the names of those who acted as intercessors for pardon throughout the period 1307–1399, please see the alphabetical lists in Appendix 4, i–iii.

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