

The Royal Pardon: Access to Mercy in Fourteenth-Century England

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Anthony Musson

Helen Lacey's excellent book appears at a time when the exercise of executive and judicial clemency has become a topical talking point. The release from long term imprisonment on compassionate grounds of Ronnie Biggs and Abdelbaset Ali al-Megrahi, perpetrators of two criminal *causes célèbres* of the late 20th century, the Great Train Robbery and the Lockerbie bombing, has sparked political and legal controversy over the grounds upon which such decisions should be taken. The residual power of the monarch to pardon, essentially the discretionary power to forgive something defined in law as a crime for which the perpetrator has been duly convicted by a court of law and subsequently imprisoned, has been activated of late in the case of Michael Shields (convicted for attempted murder in Bulgaria and then sent back to the UK to serve out his sentence before receiving his reprieve) and is currently being considered posthumously for Harry 'Breaker' Morant's murder of prisoners during the Boer War. In recent times the power to pardon in the UK has been vested in the Home Secretary, although that role appears to have shifted to the new Secretary of State for Justice in England and Wales and the First Minister of the Scottish Executive for cases north of the border. The Justice Minister and Lord Chancellor, Jack Straw, has suggested that it should no longer be a political decision, one removed from the legal sphere, but should be referred to the courts. When exercising the discretionary power in the Lockerbie bomber's favour, the justice minister in the Scottish executive, **Kenny MacAskill**, invoked higher values of heavenly justice, adding a moral or theological dimension to the debate. He also stressed: 'Our justice system demands that judgment be imposed but compassion be available. Our beliefs dictate that justice be served, but mercy be shown'.⁽¹⁾ With attention focused on the decision makers, nobody has in fact commented on the methods or procedures used to initiate the machinery of clemency, which has usually involved repeated supplication of the families and their lawyers, sometimes assisted by the intervention of high profile public figures or celebrities.

These particular instances of decisions taken by the executive can be coupled with recent reports of judges ignoring sentencing guidelines (which do not allow provision for mercy) and showing clemency when pronouncing sentence on defendants in certain cases involving self-defence and assisted suicide. Judicial clemency here arose from an appreciation of what the Lord Chief Justice called the 'ancient principles of justice and mercy' and equitable insight of both the wider circumstances and the strongly held beliefs that underlay the defendants' actions in areas of the criminal law that have not been adequately or definitively legislated for by parliament.

The Royal Pardon demonstrates that these issues are by no means novel, even if, since the abolition of the death penalty, pardoning has ceased to carry the significance it once did. Even in the Middle Ages, opinions were divided about the king's use of the prerogative power to pardon. 'Its role was variously criticised, extolled and debated by authors of legal texts, parliamentary petitions and statutes, and literary works of advice or protest' (p. 181). In particular, there was contemporary concern about the potential abuse of the power of mercy and its relationship with the jurisdiction of the courts. This is something that has been emphasised in the historiographical debates of modern times with historians and legal theorists struggling 'with the notion that this kind of discretionary personal judgment could have any legitimate place in a properly functioning legal system'. (p.2) The assumption that widespread use of the royal pardon was evidence of systemic weakness and corruption led historians to see it as symptomatic of failings in the judicial system contributing to the apparent breakdown of law and order in the late medieval period.

Dr Lacey highlights the reluctance of past historians to get to grips with these conflicting attitudes towards pardoning and (with one or two notable exceptions) take adequate account of the mass of contemporary documentary material that survives. Distinguishing between individual and general pardons, she considers the nature of the relationship between the Crown and its people evinced, on the one hand, by the routine issue of charters of pardon either upon judicial recommendation (in cases of self-defence and accident), or at the request (with stated grounds) of individual supplicants and intercessors, and, on the other, by the more symbolic and often pragmatic mitigation of the severity of the law, usually initiated by the Crown, but nevertheless with parliamentary advice or consent. She stresses the cultural contingency of the pardon and the importance of a more holistic view, which she demonstrates by analysing pardoning procedure itself and then setting the theoretical concepts against both the reality of individual experience and the prevailing legal, social and political contexts.

Just as there is a plethora of contemporary theoretical, reforming, polemical and satirical literature associated with pardoning, there is no shortage of archival material relating to pardons. One of the strengths of this book lies in the way that Dr Lacey has underpinned her conclusions with analysis of the legal and administrative records, notably the patent and pardon rolls, parliamentary petitions and court proceedings. While the author manages not to drown in the wealth of detail, her willingness to provide full chapter and verse does veer towards the obsessional, with some footnotes considerably distended by the weight of manuscript references (e.g. pp. 61–5). Providing lists of known 'intercessors' for pardons (1307–99) in the appendices is to be welcomed in that it affords a valuable resource for historians, but it sparks the reader's interest. One wants to know more about them and the context in which they operated. Who was Alice Walleran, 'a poor woman'? (p. 231) Why were so many churchmen involved, particularly confessors? What about the judges and lawyers whose names occur? What is the proportion of officials in the royal household? What is the ratio of female intercession? If the initiative in seeking a pardon lay with the supplicant we need to know why particular intercessors were chosen (were some more likely to intercede on a petitioner's behalf than others?) and what they stood to gain (both from the supplicant and in bringing the matter to the attention of a busy king) by their intercession. I appreciate this is a potential book in itself, but we are only accorded half a dozen pages on the patrons of pardons before the focus shifts to the role of the intercessor in literature.

The procedures surrounding the obtaining and granting of pardons are well-researched and clearly set out. The reader is made aware of the distinctions between different types of pardon and guided through the various stages. In places, however, there could be more cross-references to the court records to provide a

sense of what was happening in practice. For example, using the 'Ancient Petitions' in the National Archives SC 8 class the author cites instances of petitioners seeking pardon for killing in self-defence (pp. 37–8), but does not marry these up with the corresponding cases in the gaol delivery rolls (JUST 3) or King's Bench records (KB 27), nor refer to her earlier section on such cases in court (pp. 21–3). Later on, she mentions sureties acting as intermediaries in the process of obtaining a pardon (pp.49–50), but her examples are drawn solely from literature (*Piers Plowman*). This is an area where the court records could provide more concrete evidence and flesh out the standing and identity of the sureties. Finally, Dr Lacey's discussion of pardons obtained by improper means, through the 'feigned and untrue suggestions' of intercessors and the forging of pardons (pp.48, 51–2), is rather perfunctory considering the potential significance of the issue, notably in what it implies about the value of pardons, the lengths to which people will go to obtain one and the level of literacy of those forging them or passing them off. She mentions the concern of the parliamentary Commons and legislation enacted in response (and subsequently repeated later in the century), but does not present us with any evidence (from the court rolls or elsewhere) as to whether the justices did enquire into the truth of the reasons for a pardon and how many (if any) were rejected. Similarly, the reader's curiosity as to how forgeries were made and how they were detected is piqued, but not satisfied.

These are minor quibbles, though, and should not detract from the undertaking as a whole. In particular, Dr Lacey has achieved an adept rebalancing of the concept of pardoning in late medieval England and rehabilitated its function within a more holistic view of the legal system. In dispelling the notion that personal pardons were easily obtainable, she makes clear how bureaucratic the system was, but also points out how decisions were not necessarily taken lightly and that time was taken to verify the grounds for a pardon and weigh up evidence in individual cases. While stressing the political advantages of group pardons, she also reveals that the vast majority of such pardons were never taken up, or if they were, only as a precaution against an appearance in court.

Her holistic view could perhaps have addressed more fully the peculiar status of the palatinate regions of Durham, Chester and Lancaster, whose autonomous lords could apparently issue pardons in their own right. Some examples of these and any potential conflict with royal justice would have been interesting. In concentrating on the royal pardon, however, she has re-emphasised the personal role of the monarch and convincingly demonstrated the significant constitutional role pardoning played both in the national psyche and in political and social reality. This is underlined by the fact that there was no fundamental challenge during the period to the king's prerogative power to pardon. Nor could it escape totally from its theological connotations. In addition showing how pardoning complemented the sanctuary provisions of the church, Dr Lacey highlights the use of religious discourse, such as the Corpus Christi play *The Killing of Abel* (which contains a scene where Cain proclaims a pardon for his servant), in underpinning concepts of unity and reconciliation.

The book's contribution further lies in its acknowledgment that the legal and the political dilemma of pardoning cannot be neatly reconciled. This is aptly demonstrated in a study of how politicised pardoning became, not just as a result of the military campaigns of Edward I and his grandson, but during the highly eventful reign of Richard II, a discussion that fully occupies the final two chapters of the book. Dr Lacey again associates it positively with a discourse of reconciliation and the rebuilding of relations between the king and (through parliament) his people, while making it clear that Richard's manipulation of the royal prerogative was an aberration that itself required rebalancing by the political elite.

The granting of pardons by the sovereign has a long history going back at least to Anglo-Saxon times. Indeed the procedure surrounding the monarch's exercise of mercy in this way is one of the most enduring features of the criminal justice system. Its popularity and notoriety in the fourteenth century probably has less to do with the merits of pardoning itself, than its confluence with rapidly evolving judicial and political systems and a corresponding growth in legal and political consciousness across the social spectrum. Dr Lacey shows how the expectations engendered by the new structures and cultures were met or thwarted within the context afforded by the monarch's gift of grace, his exercise of mercy. In some cases it was purely a judicial matter, at other times it was overtly political. More often than not decisions confronting the king

melded both politics and law. The book's uncompromising message for the present debate, therefore, is that politicians cannot avoid the public opprobrium of such decisions or palm them off on the judges, as if they were justifiable by a legal code, just as judges cannot hide from decisions with political implications.

Notes

1. Transcript of full statement made 24 August 2009 <<http://www.scotland.gov.uk/News/This-Week/Speeches/Safer-and-stronger/lockergie-statement> [2]> [accessed 1 March 2010].[Back to \(1\)](#)

The author would like to thank Prof. Anthony Musson for his thoughtful review. The point he makes about elucidating the role of the patrons in the pardoning process is well made, and the author intends to publish on this in the future.

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