Ulrike Ludwig, Quentin Verreycken (eds.)

The Power to Pardon in Medieval and Early Modern Christian Europe

böhlau

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Ulrike Ludwig and Peter Oestmann

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An Introduction

On 20 January 2025, the first day of his second term, U.S. President Donald J. Trump issued a proclamation granting pardons or commutations of sentences to over 1,500 individuals convicted for offences "related to the events at or near the United States Capitol on January 6, 2021".[1] Unsurprisingly, this mass pardon provoked widespread reactions and commentary, particularly from Trump's political opponents, who denounced it as an authoritarian attack on the U.S. criminal justice system. While extraordinary, this measure aligned with the theatrical and interest-driven use of presidential pardons that characterised Trump's first presidency. For legal historian Bernadette Meyler, by transforming what was once a routine bureaucratic procedure into a series of public performances, Trump's "theatre of pardoning" is somewhat reminiscent of the uses of clemency by medieval and early modern European monarchs to stage their sovereign power over the life and death of their subjects. It reflects, Meyler writes, a vision of pardoning as the ruler's absolute ability to make exceptions to ordinary law, thereby further blurring the boundary between executive and judicial powers.[2]

As spectacular and questionable as Trump's use of pardoning may seem, he is far from the first U.S. president in recent history to face criticism for allegedly abusing such power for personal gain and to reward his supporters.[3] In fact, many jurists and political scientists today consider the ability of a Head of State to grant clemency in criminal matters (a common practice in many contemporary legal systems) as a "residue of the royal power"[4] once held by medieval and early modern kings, who exercised their privilege to pardon criminals by divine right and with few restrictions. For these scholars, the arbitrary nature of the power to pardon, inherited from absolute monarchies, thus makes it hardly compatible with the principle of fair and independent justice that underpins modern democracies, and

1 Trump, Granting Pardons (20/01/2025).

2 Meyler, Theaters of Pardoning, pp. 1–2; id., Transforming.

3 Crouch, The Presidential Pardon Power; Dodd, Mass Pardons; Toobin, The Pardon.

4 Novak, Comparative Executive Clemency, p. 4.

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it should be further supplemented by alternative clemency mechanisms within the judicial channel.[5]

The history of the power to pardon and its relationship to law, justice, and political authority is the central theme of this collective volume. It examines the use of pardoning in late medieval and early modern Christian Europe, and how it became a crucial component of the legal traditions that have shaped most contemporary Western judicial systems. This endeavour requires some clarification. First, our choice to speak of "Christian Europe" to define the cultural and geographical scope of this volume is motivated by the desire to highlight the central role played by Christian conceptions of mercy and forgiveness in shaping the judicial power to pardon. Second, what we call "pardon" or "pardoning" (German *Gnade* or *Begnadigung*, French *grâce* or *gracier*, etc.), in the context of criminal law and penal practice, refers to the full or partial remission of the legal consequences or punishments originally prescribed for a specific offence.[6] Since this volume focuses on serious, high justice offences, (*Peinliche Vergehen*) the applicable penalties were invariably severe, including capital punishment, corporal penalties involving bodily harm or loss of honour, and long-term exile.

The issuing of a pardon should be distinguished from other legal mechanisms such as the granting of privilege and dispensation (the non-application of a specific law in a particular case), which were relevant primarily outside the realm of criminal law. Moreover, while modern law typically differentiates between pardon and amnesty – the latter being a measure that forgives and expunges from collective memory the past actions of an entire group, often following a war and issued by the legislative power – this distinction was far less rigid in the premodern period, as some rulers had the flexibility to adapt their power to pardon and confer upon it the function of what we call amnesty, which they could extend to individuals, groups, or entire communities.[7] Another key difference between past and present pardoning practices lies in their procedural application. Today, except for amnesties, most clemency measures require that the recipient has already been convicted by a court. In contrast, during the medieval and early modern periods, pardons were also granted prior to trial (albeit with decreasing frequency), enabling individuals to avoid not only the execution of their sentence but judicial conviction itself. These pardons were not, however, unconditional, as they were often accompanied by additional requirements, such as the payment of a fine or the conclusion of a peace agreement with the victim's family.

5 For further discussions, see Ruiz Fabri, Della Morte, Lambert Abdelgawad, Martin-Chenut, La clémence; Pascoe, Novak, Executive Clemency; Love, After Trump.

6 Ludwig, Verreycken, Begnadigung.

7 Lévy, Pardons; Gauvard, Pardonner; Frisch, Forgetting Differences; Fuchs, Amnestie.

Surprisingly, despite a spectacular body of literature produced over the past fifty years, the history of the late medieval and early modern power to pardon has rarely been approached from a comparative European perspective.[8] Until now, most research has focused on studying pardoning practices within a single territory, such as a city, principality, or kingdom, without engaging in a systematic comparison with neighbouring regions. With this collective volume, we therefore aim to take a first step towards a more comprehensive approach to the history of pardon. The contributions gathered in this book cover a broad range of geographical contexts and time periods, including the Apostolic Penitentiary, Burgundy, France, the Holy Roman Empire, the Iberic Peninsula, the Low Countries, and Russia, from the twelfth century to the late eighteenth century. This diversity enables an examination of various legal and political frameworks, highlighting both commonalities and divergences in the medieval and early modern practices of pardoning.

This brings us to another strength of this volume: it moves away from the traditional state-centred approach to the power to pardon, which tends to focus exclusively on the practice of pardoning as the expression and triumph of monarchical sovereignty. Without rejecting the central role of pardon in state development, the contributions in this volume highlight the numerous challenges and controversies inherent in the practice of pardoning, exploring the wide range of actors and levels of authority involved in pardon procedures, starting with the recipients themselves, who, in many respects, were the central protagonists of the pardoning process.

1. The Power to Pardon and Legal Pluralities

Identifying a single origin for the power to pardon seems rather implausible, given its deep historical roots that stretch back to the earliest written records of human civilisation. To give just a few examples: as early as the second millennium BCE, the Code of Hammurabi included provisions for pardoning adultery by the king and the wronged husband.[9] In Ancient Greece, the first documented instance of general amnesty is commonly attributed to Thrasybulus, following the restoration of Athenian democracy in 403 BCE.[10] In Imperial Rome, the power to pardon, formerly possessed by the magistrates and the Senate, was rapidly concentrated in the hands of the Prince by virtue of his clemency (*Clementia principis*).[11] In the Early and High Middle Ages, the practice of granting pardons was closely linked

8 For a more systematic historiographical overview, see Verreycken, The Power to Pardon.

9 Good, Capital Punishment.

10 Joyce, Amnesty.

11 Dowling, Clemency; Flamerie de Lachapelle, Clementia. A spatio-temporal overview of amnesties in the ancient world is also provided by Harter-Uibopuu, Vergeben.

to Christian notions of grace (*gratia*), charity (*caritas*), and, more importantly, mercy (*misericordia*), defined by Augustine as a form of compassion used to preserve justice and pardon the penitent.[12] Together, these became essential attributes of the good Christian ruler, based on the imitation of God's divine justice and governance.[13]

The power to grant pardons was typically vested in those who held judicial authority within a specific territory or over a particular group of people. The fragmentation of judicial authority during the European Early and High Middle Ages meant that the power to grant pardons was distributed among a variety of local lords, princes, and magistrates, although it remained ultimately subordinated to the authority of the king or emperor, who held (at least formally) the highest jurisdiction in matters of mercy.[14] However, with the emergence of public criminal justice in the late medieval and early modern periods, the power to grant pardons gradually came to be recognised as a sovereign privilege (*regalia*), alongside the rights to impose criminal penalties or to judge major offences such as homicide. This makes the power to pardon a key factor in state development and the consolidation of monarchical – or more broadly, ruling – power.[15] To better understand the role of mercy within the medieval and early modern legal system, German historiography employs the concept of *"judging with grace"* (*Richten nach Gnade*), in contrast to *"judging according to law"* (*Richten nach Recht*). Given the absence of a fully developed penal framework and the limited means to consider the specific circumstances of individual cases during trials, *judging with grace* aimed to issue more lenient sentences than those prescribed by law.[16] This approach is reflected in the formula "preferring mercy to the rigour of justice" (*préférant miséricorde à rigueur de justice*), commonly found in pardon records.[17]

However, recent research has emphasised that the practice of pardoning was always more than a mere strategy for navigating undifferentiated legal norms; *judging with grace* is, in fact, a far more complex phenomenon.[18] Scholars have highlighted that the supplications and arguments introduced by petitioners formed an integral part of a loosely defined judicial process and contributed to the concretisation of

12 Augustine, The City of God, IX, 5, p. 365.

13 Ganshof, La *gratia;* McCune, The Ideology of Mercy; Schreiner, Strengkeit des gerichts; Vincent, Justice; Byrne, Justice; Moesch, Augustine; Prosperi, Crime.

14 Koziol, Begging Pardon.

15 Muchembled, Le temps des supplices; Gauvard, Condamner à mort; Haug-Moritz, Ullmann, Frühneuzeitliche Supplikationspraxis; Nubola, Würgler, Bittschriften; Härter, Nubola, Grazia.

16 For a traditional view, see Neidert, Sellert, Richten nach Gnade.

17 Dauven, Rousseaux, Préférant miséricorde.

18 A crucial argument is that legitimacy and acceptance could be achieved through the communicative involvement of the parties' social environment in the proceedings. The admission of supplications and the granting of pardons thus served to establish legitimacy. See Arlinghaus, Gnade.

the law.[19] Moreover, interpreting pre-modern legal norms as absolute overlooks the fact that judgments were always informed by a range of legal sources, each with distinct sets of penalties.[20] This diversity in the sources of law significantly broadened the spectrum of possible criminal punishment, resulting in considerable variations in judicial outcomes.

From a broader perspective, the practice of pardoning can therefore be described as a factor contributing to *legal pluralism* or, perhaps more accurately, *normative pluralism*, since multiple normative systems coexisted in the administration of justice. In contrast to a unified legal framework, which is often invoked as an ideal type, the exercise of sovereignty in criminal cases reveals a persistent interplay between different legal and social normative orders, most notably reflected in the central role that honour and reputation played in how justice addressed acts of violence.[21] At the same time, it is worth noting that some political and theological debates in the fifteenth century increasingly framed pardons as the antithesis of justice, and thus as contrary to the principle of equity.[22] These debates undoubtedly influenced the practice of pardoning, particularly with regard to the universal value of divine law, or natural law, although they did not result in its suppression.

As a public legal document, the pardon was typically issued by a chancery in the name of the merciful ruler, be it a king, prince, or city council. Known variously as *lettres de rémission* in France and the Low Countries, *carta pardonacionis* in England, *carta de perdão* in Portugal, etc., these charters were generally granted in response to petitions for mercy submitted to the competent authority holding the power to pardon, either by the offenders themselves or by third parties. Thanks to the abundance of available documentation, the study of medieval and early modern pardon letters has garnered growing interest from historians and legal scholars. In the late 1960s and early 1970s, Naomi Hurnard and María Inmaculada Rodríguez Flores were among the first to conduct systematic analyses of the pardon process in medieval England and Castile.[23] The subsequent rise of microhistory and the history of crime in the 1980s and 1990s further spurred interest, leading to influential works by scholars such as Natalie Zemon Davis, Robert Muchembled, and Claude Gauvard on the French *lettres de rémission*.[24] Since then, research on

19 Among others: Bauer, Gnadenbitten; Neithard, Richten; Schorer, Strafgerichtsbarkeit.

20 Oestmann, Legal Layers, pp. 7–9.

21 On this coexistence, interaction and conflict of normative systems in the context of judicial decision-making, see Duve, Rechtsgeschichte; Ludwig, Konzeptforum Normenkonkurrenz. On the role of legal and social norms in understanding violence, see Schwerhoff, Justice.

22 Hohlstein, Strenge.

23 Hurnard, The King's Pardon; Rodriguez Flores, El perdon.

24 Zemon Davis, Fiction in the Archives; Muchembled, La violence au village; Gauvard, De grace especial.

medieval and early modern pardoning practices has flourished across Europe, encompassing France,[25] England,[26] the Low Countries,[27] the principalities of the Holy Roman Empire,[28] Spain,[29] Portugal,[30] Italy,[31] the Nordic countries,[32] and the Papacy.[33]

Overall, pardons appear to have been a ubiquitous feature of pre-modern European criminal justice systems. This does not mean, of course, that the uses and practices of pardon followed uniform patterns across the medieval and early modern Christian world. On the contrary, the development of the power to pardon in each region was shaped by local legal traditions, institutional frameworks, and criminal justice systems. For example, the procedures to secure a pardon in France, Spain, and Portugal were not identical. While English pardon letters and papal absolutions occasionally shared similar terminology, they differed markedly in form and, to some extent, in function. Similarly, in the Habsburg Low Countries, the Holy Roman Empire, or the Italian city-states, the legal and political implications of receiving a pardon varied considerably due to the different models of government in each polity.

To capture this diversity, the volume is organised into three sections, each shaped by a distinct analytical perspective.

2. Norms, Pluralities, and the Challenges for Mercy

Research on the history of pardoning has traditionally focused on the right to pardon held by major European monarchs, such as the kings of England and France, placing particular emphasis on the role of mercy in early modern state formation. The rise of an increasingly repressive judicial system from the fifteenth century onwards, marked by a shift from financial penalties to corporal punishment, and by the centralisation of certain crimes under royal jurisdiction, coincided with a

25 Paresys, Aux marges du royaume; Abad, La grâce du roi.

26 Kesselring, Mercy; Lacey, The Royal Pardon.

27 Vrolijk, Recht door gratie; Arnade, Prenvenier, Honor; Beaulant, Pratiques de la grâce.

28 Bauer, Gnadenbitten; Blickle, Laufen gen Hof; Rehse, Supplikations- und Gnadenpraxis; Perdon, Gestaltungspotentiale; Pégeot, Derniame, Hénin, Les lettres de rémission; Haug-Moritz, Ullmann, Frühneuzeitliche Supplikationspraxis.

29 Chaulet, Crimes; Mantecón, La gracia regia; González Zalacain, El perdon real.

30 Duarte, Justiça; Abreu-Ferreira, Women.

31 Niccoli, Perdonare; Kumhera, The Benefits of Peace.

32 Österberg, Bauge Sogner, People Meet the Law; Koskivirta, The Enemy Within; Kotkas, Royal Police.

33 Salonen, Penitentiary; Fosi, Papal Justice; Lusset, Crime; Erdélyi, Negotiating Violence; Blastenbrei, Funktion.

dramatic expansion of the sovereign power to pardon. Punishment and pardon thus appear as two sides of the same coin in the process of state formation through judicial coercion.[34]

Even before the widespread practice of granting pardons on a large scale, the power to pardon already held a central place in medieval political and theological debates. At the heart of these discussions was the expectation that a monarch, as a reflection of God's justice, must exercise mercy in a just and measured way. The Bible, in this regard, served as a crucial reference point for reflections on the nature of kingship.[35] Philippa Byrne's contribution to the scholastic debate surrounding Solomon's pardon illustrates how a theological discussion could have concrete political implications. Solomon, a remarkable king in his youth, committed numerous sins in the later years of his reign. The central question posed by medieval theologians was whether he could have been absolved by God had he repented before his death, or whether he was eternally damned. Far from being a purely theoretical issue, this debate raised fundamental concerns about the limits of repentance, particularly in the case of sinful rulers. If God's power to forgive is infinite, should it extend even to those who show little or no repentance, despite earlier virtue or accomplishment? Comparable questions emerged in discussions of royal and princely pardons in the late Middle Ages, especially when petitioners lacked genuine contrition or deliberately misled the sovereign, leading to pardons perceived as unjust.[36] As Byrne also demonstrates, these debates coincided with the era of the Crusades, when renewed interest in the reconquest of Jerusalem cast Solomon's political legacy in a new light, despite the failures that marked the end of his reign.

Echoes of such discussions can also be found in the *Fürstenspiegel* (Mirror for princes) literature, which was popular throughout the late Middle Ages and the early modern period.[37] The typification of the ruler as righteous and therefore also punitive was closely linked to the expectation that a good ruler must also be merciful. Only when punishment and mercy were exercised in tandem did they constitute an ideal of just rulership. In contemporary teachings on governance, this interplay between harsh punishment and mercy was seen as essential to the maintenance of order: "with good words and harsh punishments, one keeps the common people in check and in good obedience" (*mit guten worten vnd harten straffen, behelt man den gemeinen Pöfel im zaum, vnd gutem gehorsam*). Accordingly, Mansfeld Chancellor Georg Lauterbeck, in his sixteenth-century treatise on governance, advised that

34 For examples of this interpretation, see Muchembled, Le temps des supplices; Rousseaux, Politiques judiciaires; Gauvard, Condamner à mort.

35 Buc, Pouvoir royal.

36 Verreycken, Tempérer la grâce du roi.

37 Mühleisen, Stammen, Politische Tugendlehre.

rulers should "at times listen and not listen, see and not see" (*vnterzeiten hören, vnd nicht hören, sehen vnd nicht sehen*).[38]

At the same time, it became increasingly necessary to establish a well-structured procedure and administrative system to manage the vast number of petitions addressed to the monarchs. This system also needed to be able to respond efficiently, by issuing pardon letters within a reasonable timeframe. The first large-scale administration of this kind was probably the Apostolic Penitentiary, which gradually emerged in the thirteenth century and served as a model for the royal and princely chanceries that developed thereafter.[39] This likely explains, at least in part, why pardon procedures, the format of pardon letters, and the vocabulary of mercy displayed striking similarities across Europe. Yet, the bureaucratisation of pardoning remained a persistent challenge, as medieval literature attests. As early as the twelfth century, Pierre de Blois, in his dialogue between the Abbot of Bonneval and Henry II of England, portrays the king complaining of being relentlessly pursued by petitioners, even in churches, where they disturbed him during mass.[40] A similar scene appears in the early fifteenth-century *The Book of Peace* by Christine de Pizan, where she describes how, upon leaving mass, King Charles V of France was immediately besieged by "all sorts of people, rich or poor, ladies or damsels, widows, or others" (*toutes manieres de gens, riches ou pouvres, dames ou damoiselles, femmes veusves ou autres*) presenting their supplications.[41] Echoing these accounts, the French *Ordonnance Cabochienne* of 1413, which sought to reform the royal government, condemned the "importunate infestation and multiplication of such particular and unnecessary requests" (*infestation importunées et multiplication de telles requestes particulieres et inutiles*), which prevented the king and his council from focusing on the kingdom's essential affairs.[42] In the early modern period, complaints about the seemingly endless stream of pardon petitions persisted, and authorities attempted to curb this flow by imposing bans. For example, early or persistent pleas for mercy were prohibited. In the case of duels, however, there were also legal provisions in German-speaking countries that categorically excluded the

38 Georg Lauterbeck, Regentenbuch. Aus vielen trefflichen alten und newen Historien/mit sonderm fleis zusammen gezogen. Allen Regenten und Oberkeiten/zu anrichtung und besserung/Erbarer und guter Pollicey /Christlichen und nötigen zu wissen, 2. ed. Leipzig 1557, fol. 79v, 80r.

39 See references in note 33.

40 Lachaud, Pétitions parlementaires, p. 99.

41 Pizan, Le Livre des faits, p. 44.

42 L'ordonnance cabochienne (26–27 May 1413), p. 139.

granting of mercy, meaning that no petitions were to be submitted. Ultimately, however, these measures proved ineffective.[43]

From the sixteenth century onwards, the ongoing bureaucratisation of state administration further complicated the pardon process and increased the number of intermediaries involved, as illustrated by the case of the Habsburg Netherlands, which Luke Giraudet explores later in this volume. However, not all monarchs succeeded in creating an efficient administrative system capable of managing the continuous influx of petitions for mercy. This issue is strikingly exemplified in Nancy Kollmann's chapter on pardons and petitioning in eighteenth-century Russia. Her analysis reveals that Tsar Paul I faced nearly identical problems to those described by Pierre de Blois and Christine de Pizan, leading him to complain about the overwhelming number of frivolous petitions that hindered his ability to govern effectively. Yet, as Kollmann demonstrates, rather than seeking to reduce the number of petitions, Paul I and his successors actively staged their merciful power to reinforce their legitimacy. The granting of pardons on Good Friday, an established tradition among many medieval and early modern monarchs, provided the tsars with a crucial opportunity to assert themselves as merciful sovereigns. This dynamic reveals a paradox: although tsarist power increasingly struggled to govern efficiently due to the sheer volume of petitions and the absence of an effective administrative system to process them, it could not afford to curtail its role as a dispenser of mercy.

Traditionally, a significant portion of historiography on the power to pardon has focused on acts of pardon granted for criminal offences such as homicide, assault, and sexual violence. However, the power to pardon also played a crucial role in regulating political crimes that directly challenged the authority of the monarch. One particularly well-documented example of this is the use of royal pardon in the aftermath of suppressed rebellions. This was notably the case in England following the Peasants' Revolt of 1381.[44] Similarly, in the Low Countries, the dukes of Burgundy and their Habsburg successors frequently resorted to granting pardons during urban revolts in the fifteenth century and religious conflicts in the sixteenth century.[45] However, for medieval and early modern monarchs, granting pardons to those who had defied their authority was often a delicate matter. This concern was explicitly voiced in the Parliament of Devils in 1459, during the Wars of the Roses, when Henry VI was urged to cease granting pardons to the Yorkist faction, which had repeatedly challenged his rule.[46] For royal mercy to be an effective tool

43 For the limitation of the right to petition in criminal law provisions, see, for example, Rudolph, Peinliche Strafjustiz, p. 271; Schwerhoff, Das Kölner Supplikenwesen; Härter, Aushandeln. For the special case of duel legislation, see: Ludwig, Das Duell, pp. 133–163.

44 Lacey, "Grace for the Rebels".

45 Soen, The City Defiant.

46 Verreycken, Tempérer la grâce du roi, pp. 263–265.

for reasserting authority over rebels or insurgents, it often had to be preceded by a period of repression.

This dynamic is particularly evident in Gerd Schwerhoff's contribution, which analyses the pardons issued after the Peasants' War of 1525 in the Holy Roman Empire, one of the most significant uprisings of the late medieval and early modern periods. Schwerhoff demonstrates how, in the immediate aftermath of the revolt, the penalties and pardons granted to rebels were largely arbitrary, with formal criminal procedures gradually gaining prominence over time. In the long run, authorities came to realise that an exclusively repressive policy was unsustainable, given the extent to which the revolt had disrupted society. As a result, efforts to restore peace through acts of mercy became an indispensable component of governance.

3. Agency, Social Vulnerability, and Petitioning for Pardon

Analysed as a means to understand sovereign pardon policies, letters of pardon also serve as valuable sources for studying the judicial practices of litigants. Most of these letters were granted in response to a request, petition, or supplication submitted by the individual seeking clemency. In most chanceries, these petitions were incorporated into the opening of the pardon letter with only minor modifications. In some instances, such as in late medieval England or the Habsburg Low Countries, the original petitions have also been preserved in chancery archives.[47] These documents, though filtered and indirect, raise an important question: do they offer access to the "voices from the silent masses"?[48] As Natalie Zemon Davis cautioned us, the narratives contained in pardon letters and petitions for pardon were carefully crafted by litigants and their advisors to maximise their chances of obtaining a pardon. Filled with legal and rhetorical arguments designed to favour the supplicant, these texts should not be regarded as unbiased testimonies, but rather as strategic appeals aimed at securing royal mercy.[49]

More recently, legal and judicial historians have focused on how litigants strategically navigated judicial systems, prompting a reassessment of how petitioners sought pardons. A key concept in this regard is legal agency, which highlights the ability of litigants to elaborate and pursue judicial strategies. Another important concept, the *use of justice* (*Justiznutzung*), originally developed by Martin Dinges, suggests that resorting to the justice system was just one of many options available

47 Lacey, Petitioners. For the Low Countries, see the contribution of Luke Giraudet.

48 Würgler, Voices.

49 Zemon Davis, Fiction in the Archives.

for resolving a conflict. Indeed, litigants often engaged in *forum shopping,*[50] deliberately choosing the court they believed most likely to rule in their favour. Given the legal and jurisdictional pluralism of the late Middle Ages, different authorities held the power to grant pardons, and these acts of clemency were not always in competition with one another but rather complementary. This is illustrated in Elisabeth Lusset's chapter on clerics guilty of homicide who sought pardon from both the King of France and the Pope. According to Lusset, although this was a deliberate strategy, this did not constitute forum shopping, as papal and royal pardons addressed distinct concerns. Receiving papal absolution restored a cleric's standing within the Church and ensured spiritual salvation, while royal remission provided immunity from prosecution under secular law. However, this does not mean that the two systems operated in complete isolation. Lusset's comparative analysis of royal petitions and papal supplications reveals that clerics often used a pardon from one authority as leverage to secure clemency from the other. Moreover, there is a striking similarity in the descriptions of crimes in petitions to both the Pope and the King, suggesting that clerics strategically economised their efforts by maintaining consistent narratives.

For historians, judicial archives, including pardon letters, often provide exceptional access to the lives of marginalised individuals who are otherwise poorly documented or have left far fewer written records than the elite. Of course, these "subaltern voices" are inevitably distorted by their recording in judicial archives, reflecting not only the testimonies of the litigants but also the ideology and frameworks of thought of the judicial authorities who produced these records.[51] Such sources nonetheless remain essential for documenting the experiences of the most vulnerable individuals when they come into contact with the justice system, thereby revealing more clearly how they encountered or, at times, actively used the law.

In that sense, Tomás Mantecón's contribution illustrates how women actively participated in judicial procedures through the practice of pardon. In early modern Castile, as in the rest of Europe, women were significantly less likely than men to be convicted by the courts, except in relation to certain gender-specific crimes, such as infanticide. This has led to a relative invisibility of women in judicial archives, a phenomenon that recent scholarship has brought to light.[52] Mantecón shows that Spanish women most frequently appear on the side of the victim: as survivors of violence or as family members of the deceased. They played an important role in reconciliation processes and peace agreements, which were integral to the practice of pardoning in early modern Castile. Indeed, one of the essential functions of

50 Jakab, Forum Shopping; on the general phenomenon of court diversity, see Jakab, Ludwig, Gerichtsvielfalt; Seineke, The Plural Turn, pp. 30–31.

51 Spivak, Can the Subaltern Speak?; Goodich, Voices.

52 Abreu-Ferreira, Women; Muchembled, Fils de Caïn; Roussel, La description; Kamp, Crime.

the pardon procedure was to bring an end to cycles of violence by securing peace between the parties. This often involved a requirement for the petitioner to reach a financial agreement with the victim's family, and in Spain and Portugal, to obtain their formal pardon, a condition that could be indispensable for securing royal mercy. While women were rarely the recipients of pardons due to their lower rates of criminal accusation, they were nonetheless prominently involved in the judicial process as representatives of the victim's side – for instance, speaking on behalf of a murdered husband in cases of homicide. In doing so, they exerted significant influence over judicial outcomes and helped shape the workings of justice itself, particularly the new balance of social coexistence that was established through the pardon process.

Comparatively, the study of pardon records undertaken by Darnele Abreu-Ferrera in her chapter, which investigates the role of enslaved people in early modern Portugal, reveals a far more ambivalent perspective. As Abreu-Ferrera observes, because enslaved individuals did not possess legal personhood, they were objects, rather than subjects, of the pardon procedure. Only their owners held the legal authority to grant a victim's pardon or to submit a petition for pardon on their behalf. As a result, locating traces of enslaved individuals in judicial archives is particularly challenging. Because enslaved individuals who committed crimes had little chance of receiving a pardon, most appear in the archives not as perpetrators, but as victims of violence. As Abreu-Ferrera demonstrates, such violence could result in severe penalties, even if these were ultimately followed by acts of clemency. Enslaved people were treated similarly to minors; they were held accountable for their actions yet deprived of the legal and financial autonomy needed to navigate the justice system or to seek a pardon. Particularly in cases where enslaved individuals were themselves the victims of violence, the judicial records tend to frame the harm as having been suffered primarily by their owners. Consequently, it was the slave-owners who were recognised as the principal legal actors in proceedings involving their enslaved property, and they were typically the ones entitled to receive compensation. The erasure of enslaved individuals and their experiences from criminal records thus appears all the more evident, so much so that some enslaved victims of violence are not even named in these archives. These findings allow Abreu-Ferrera to demonstrate that enslaved individuals' agency in the pardon process was necessarily extremely limited and subordinated to the actions of their masters. This observation ultimately highlights the limitations of a historical approach focused solely on the concept of agency when dealing with individuals deprived of self-determination. It is therefore up to the historian to read between the lines and decode the silences in the sources, in order to better expose, in the words of Abreu-Ferrera, how visible minorities are rendered invisible in legal records.

4. Multilevel Powers and the Construction of Sovereignty

As the manifestation of the ruler's power over the life and death of their subjects, the right to grant pardons is often considered central to early modern state formation and the construction of sovereignty.[53] This approach can be partly explained by the fact that many of the pioneering studies on pardon, dating from the late 1980s and early 1990s, focused on its use in centralised monarchies such as France, England, or Castile. At the time, historiography was particularly concerned with exploring the emergence of the modern state as a top-down process.[54] More recent research into the administration of pardon and the various authorities empowered to grant clemency has considerably nuanced this picture. In the frontier regions of rival monarchies, rulers made strategic use of their right to pardon as a means of asserting sovereignty over these contested borderlands.[55] Even within their undisputed territories, kings and princes were not always the sole holders of the right to pardon. They frequently had to contend with competing local authorities who possessed their own instruments of pacification in criminal matters and, in some cases, the ability to issue their own pardon letters. This dynamic has been particularly well documented in the Low Countries, where, up to the sixteenth century, princely officers sought to preserve their right to grant remission letters alongside those issued by the dukes of Burgundy and their Habsburg successors.[56] While some monarchs ultimately succeeded in asserting their monopoly over the power to pardon, in other regions this prerogative remained exclusively in the hands of local governments, as seen in the Italian city-states or in certain towns within the principalities of the Holy Roman Empire.[57]

Beyond the question of the monopoly over the legitimate right to remit crimes, the practical operation of pardoning necessarily involved multiple jurisdictions and layers of authority. As we have seen earlier, processing the large volume of petitions required rulers to rely on an efficient administrative apparatus capable of managing the complex channels of pardon. Even when a pardon letter was formally granted in the name of a king or prince, in reality, it was often the royal or princely council that reviewed the petitions and determined whether a case was eligible for mercy.[58] In making their decisions, these councillors frequently drew on the investigations

53 Nassiet, Musin, L'exercice.

54 For critics of this approach, see, for instance, Braddick, State Formation, pp. 11–20; Watts, The Making of Polities, pp. 23–34; Blockmans, Holenstein, Mathieu, Empowering Interactions.

55 Dauphant, La rivalité des pardons.

56 Nassiet, Musin, L'exercice, pp. 7–8; Vrolijk, Recht door gratie, pp. 139–141; Boone, Vorstelijk genaderecht; Schepper, Vrolijk, La grâce princière.

57 Ludwig, Herz; Niccoli, Perdonare.

58 Beaulant, Les pratiques de la grâce, pp. 190–191; Verreycken, Le fait du prince.

conducted by local jurisdictions that collected witness testimonies.[59] And when a pardon was granted, it was often these same local courts that were responsible for its final endorsement or ratification, leading to a new trial in which the narrative presented in the pardon letter was subjected to further scrutiny.[60]

As such, the practice of pardoning was far more than a top-down gesture from the monarchs. It involved the participation of various jurisdictions, whose involvement in the pardoning process often required careful coordination on the part of the central government. This is particularly well illustrated in Rudi Beaulant's contribution, which examines the application of royal pardons in the Duchy of Burgundy in the late fifteenth century. In 1477, following the unexpected death of Duke Charles the Bold on the battlefield, King Louis XI seized the opportunity to invade the duchy of Burgundy and swiftly incorporate it into the Kingdom of France. In this context, granting royal remission letters to his new Burgundian subjects (who had previously sought mercy from their own duke) appears to have been a strategic move to win their political loyalty.[61] This form of "subjection through grace", as Pierre Prétou has called it in his study of the royal conquest of Gascony at the end of the Hundred Years' War,[62] nonetheless required the royal government to contend with potentially resentful local jurisdictions, which were entrusted with the ratification of the pardon letters. Resolving this situation required a delicate balance between continuity and rupture in judicial practices, beginning with the establishment of a new Parlement in Burgundy, as the king had done in other regions of France. This was not only a way to assert royal authority but also a means of demonstrating that Burgundian subjects were now fully integrated into the French realm and entitled to the same rights and access to justice as the rest of the population.

The bureaucratisation of pardon in the early modern period further underscores the involvement of a wide range of actors in the pardon process. Luke Giraudet's chapter on the numerous pardon dossiers handled by the Privy Council (*Conseil Privé*) of the Habsburg Low Countries vividly illustrates the growing interdependence between the central government and the various layers of provincial authority. Through Giraudet's detailed quantitative survey, the power to pardon emerges here as a flexible and ad hoc instrument, employed by Habsburg sovereigns to respond in different ways to the political and religious crises that gripped the Low Countries in the sixteenth and seventeenth centuries. The exceptional richness of the Privy Council's archives – which, unusually for Europe, preserve not only successful pardon cases but also rejections – allows Giraudet to demonstrate how the Brussels

59 Vrolijk, Les avis; Giraudet, Witnesses.

60 Beaulant, Les pratiques de la grâce, pp. 200–208; Otis-Cour, Les limites; Verreycken, Crimes et gens, pp. 180–192.

61 Verreycken, Crimes et gens, pp. 234–241.

62 Prétou, Crime, pp. 299–307.

government increasingly relied on local officers to carry out preliminary investigations and to compare petitions with local evidence and witness testimonies. Far from representing the triumph of royal power imposing its merciful will on punitive lower jurisdictions, the pardon procedure instead served to reinforce cooperation and hierarchical relations across different levels of governance, and it is in this sense that it played a key role in state formation.

The considerable expansion of criminal law in the early modern period, marked by increasingly systematic legislation codifying offences, penalties, and judicial procedures, gave rise to a gradual *juridification* of the pardon process, that is, its growing alignment with the formal structures and procedures of written criminal law.[63] In this new configuration, the power to pardon was no longer viewed as an exception to legal norms, but rather as a mechanism fully embedded within criminal law, and increasingly governed by administrative procedure. This transformation is the focus of Ulrike Ludwig's contribution, which explores the use of pardon in seventeenth-century Electoral Saxony. Although in this region, pardons continued to be formally issued in the name of the prince, in practice, it was the Privy Council (*Geheimer Rat*) that evaluated the petitions and determined whether clemency should be granted. The prince's role was reduced to formally endorsing their decision. As Ludwig notes, this shift led to a process of decoupling or depersonalisation of the petition from the figure of the ruler. With the procedure now governed by rigid administrative rules rather than the discretionary judgement of the prince or his immediate counsellors, petitioners were no longer expected to craft and submit an individualised, emotionally driven plea for mercy. The conversion of mercy into an administrative act ultimately also contributed to subjects petitioning for criminals who were often complete strangers to them. With their pleas, these 'disinterested third parties' aimed to ensure that the criminals were granted pardons allowing them to pay fines – fines that the petitioners themselves hoped to receive. The standardisation of pardon requests, which increasingly relied on rational legal arguments rather than moral or emotional appeals, enabled these third parties to present petitions in a detached and procedural manner. Consequently, the image of the merciful ruler was no longer constructed through direct interaction with the offender but rather mediated through bureaucratic intermediaries who acted as semi-professional lobbyists.[64]

As the formation of the early modern state progressively distanced the institutions of government from the sole person of the monarch, the power to pardon likewise gradually lost its exclusive character as a manifestation of the sovereign

63 Blichner, Molander, Mapping Juridification. On the growth of criminal law in the early modern period, see Lenman, Parker, The State; Monballyu, Six Centuries; Rudolph, Schnabel-Schüle, Justiz; see also the research reports on the various countries in: Decock, Konfiktlösung.

64 Vermeesch, Professional Lobbying.

authority. Today, in most Western democratic societies, the legal provisions for clemency increasingly depend on governmental administration or the judiciary itself, rather than solely on the Head of State. However, the example of Trump, with which we opened this introduction, underscores the value of adopting a long-term comparative perspective on the history of pardon. This perspective is pursued by Xavier Rousseaux and Quentin Verreycken in their concluding chapter, where they offer a long-term historical reflection on the complex relationship between pardon, justice, and violence. Their analysis highlights how the history of pardon in medieval and early modern Europe resonates with contemporary debates surrounding international justice. While pardon once served as a powerful tool for affirming sovereignty at the national level, modern mechanisms of clemency and reconciliation in the aftermath of mass violence now function within an increasingly transnational judicial framework. Although medieval and early modern practices of pardoning cannot serve as direct models for contemporary legal systems, exploring their historical complexity offers critical insights. It encourages us to rethink the roles and meanings of clemency today, and perhaps even to envision new pathways to justice and reconciliation on a global scale.

Building on four decades of legal and historical scholarship, this volume invites a renewed, comparative exploration of the history of pardon in late medieval and early modern Europe. As the following chapters demonstrate, such an approach requires close attention to the diversity of political institutions and legal frameworks across regions, as well as to the variety of actors and levels of authority involved in the practice of pardoning. Far from being a fixed prerogative, the power to pardon emerges as a flexible and highly adaptable tool of governance, conflict resolution, and legal development, shaped by institutional structures and shifting political contexts. This adaptability explains both its enduring presence and the remarkable diversity in its application across medieval and early modern Europe. The contributions to this volume thus underscore not only shared patterns in the administration of pardon, but also notable divergences, bringing into focus the tensions, controversies, and practical challenges that royal and princely pardon could generate.

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1 Norms, Pluralities, and the Challenges for Mercy

Philippa Byrne

The Absolution (or not) of Solomon

Theology, Law, and Politics in a Twelfth-Century Debate on an Exceptional Case

This paper offers two and a half observations about where Solomon fits into a medieval discussion of pardon, justice, and divine absolution. The first is to suggest that historians have, by and large, overlooked a twelfth-century scholastic debate about whether the biblical king Solomon was pardoned by God. Or, at least, they have failed to recognise that there was a sustained scholastic argument about Solomon's salvation: an argument with political, not merely theological, implications. Those political implications turned on the question of whether one could ever expect a king to be truly just and what a king might need to do to make amends for sin. In other words, the case of Solomon could not merely be relegated to a "historical" question about the narrative of the Old Testament. It held within it "live" problems for medieval political systems – most significantly, how a model of monarchical power could accommodate the problem of seriously sinful rulership.

The second observation is that this argument over whether or not God had absolved Solomon of his sins was also an argument over "proof". In other words, what kind of evidence did one need to discover in the Old Testament in order to demonstrate Solomon's salvation? How could human minds review biblical history and determine whether God had granted absolution? What kinds of information counted? When considering such questions, scholastic theologians asked much the same questions as their colleagues in the law courts – how could a case be proven to the satisfaction of a human judge; what might be said when testimony pointed in different directions?

Finally, the "half" of my argument is about how understanding the nature of this debate may also throw light on one other curious aspect of medieval treatments of Solomon: the fact that medieval authors had surprisingly little to say about Solomon's positive acts of justice and judgment (specifically, his famous determination of which of two women was the true mother of a baby). We might consider this a reminder about medieval exegesis in general; our medieval commentators rarely picked the pericopes that modern readers have found most memorable or arresting.

Before going any further, it is important to make reference to the most significant piece of modern scholarship on the figure of Solomon in a medieval Christian

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tradition: Mishtooni Bose's 1996 article.[1] Bose gathered a wider array of evidence to demonstrate how medieval authors wrestled with the contradictory aspects of Solomon's character. Bose's focus was the literary and legendary figure of Solomon in later medieval vernacular literature. She endeavoured to bring to light the medieval "compulsion to investigate, ventilate and even perpetuate the discrepancies in the king's reputation".[2] What this contribution attempts to do is to highlight the specifically "scholastic" and Latin discussion in the twelfth and thirteenth centuries; it may be taken as a complement to Bose's work on the vernacular Solomon.

Let me begin, then, by setting out the scriptural narrative. The Book of Kings (3 Kings 11 in the medieval Vulgate; 1 Kings 11 in modern numbering) describes how Solomon, son of King David, fell into error at the end of his life due to his immoderate lust: he had 700 wives and 300 concubines late in his reign.[3] Those foreign wives led Solomon into idol worship, and he set up shrines to those gods and conducted sacrifices for them. The same book notes that God was displeased with Solomon and punished him by raising rebellions against him and taking the kingdom away from his son. But the ending to the story is ambivalent. The Book of Kings notes that Solomon still retained his wisdom, a gift bestowed upon him by God earlier in his reign (3 Kings 3:1–15).

Did God still look upon Solomon with favour and permit his salvation? This was a question which involved assessing the different aspects of Solomon's reign and asking how the admirable achievements weighed against his evident sins. It was a curiosity which attracted the attention of the great theological authorities of the early Middle Ages. Isidore of Seville and Bede commented on how the uncertain biblical text might be interpreted, and both answered that it seemed unlikely that Solomon had been pardoned.[4] Ambrose of Milan was more gloomy still.[5] Interest in Solomon was not limited to Christian authors, and the examination of Solomon's fate, character, and conduct persisted within a Jewish tradition across the Middle Ages.[6] The early Christian apologist Tertullian (d. c.220) made use of Solomon as part of a complex and highly polemical argument about what could really be known about God's choice to send individuals to election or reprobation.[7] But, on

1 Bose, From Exegesis to Appropriation.

2 Ibid., p. 189.

3 Throughout this paper, I follow the medieval numbering of the Books of Kings. The books medieval readers referred to as 1 and 2 Kings are now regarded as 1 and 2 Samuel; thus 3 and 4 Kings are now 1 and 2 Kings.

4 Isidore of Seville, Quaestiones in Vetus Testamentum in Regum tertium, c.6, PL. 83.417. Bede, In Regum librum xxx quaestiones, q.29, PL 91.754.

5 Ambrose of Milan, Apologia prophetae David, PL. 14.851A.

6 For this, as well as the intersection between Christian and Jewish traditions, see Shavit, An Imaginary Trio.

7 Tertullian, Adversus Marcionem, ed. Ernest Evans, Oxford 1972, ii.23, p. 148.

the whole, when Solomon was examined in early medieval theology, he was most often treated in an allegorical sense. The question of his sin was raised but it was not the centrepiece of exegetical discussion.

It was only with the arrival of scholasticism and the dialectic method in the late eleventh and early twelfth centuries that the question of Solomon's absolution was given more sustained and detailed treatment. This can be understood straightforwardly as a product of the rise of cathedral schools (and eventually universities): the growth of educational institutions and the expansion of literacy meant ever-closer attention was paid to the text of scripture. Rising literacy correspondingly meant the production of many more commentaries probing the meaning of scripture. In addition, we should also recognise that Solomon, as an ambiguous and contested figure, was a natural focus for scholastic authors, who enjoyed the investigation and precise dissection of difficult topics.[8] However, this case also presented a particular challenge: to debate whether Solomon had been pardoned was to contend with a matter of soteriology. If debated without caution and dexterity, the mere fact of the discussion might imply that a human mind (the scholastic theologian himself) was able to comprehend and explain God's decision. Thus, there had to be a careful balance within such discussions: human minds might assemble and assess the evidence of Scripture, but definitive knowledge of salvation belonged only to God.

When we come to twelfth-century scholastic theology, we should note there is not yet a well-developed or precise terminology for pardon. Most authors make little distinction between acts of forgiveness by earthly rulers and those by divine authority. Terms for pardon, absolution, and forgiveness are often used without distinction being made between these acts.[9] Moreover, as theology and legal study had not yet separated into completely distinct disciplines, there is often an implicit equivalence, at least in language, between God's act of forgiving sinners and the

8 The dialectic "engine" of scholasticism meant these authors were closely attuned to apparent contradictions in Scripture and other authoritative texts and sought to reconcile opposing passages. For another example of such behaviour concerning an Old Testament figure, see Byrne, Exodus 32. For a broader argument about the significance of this disputation, see Novikoff, Cultural History.

9 I discuss the imprecision of these terms further in Byrne, Justice and Mercy. Theological and political terms for mercy, pardon, and indeed justice frequently overlap. One likely reason for this is that theologians often borrowed the vocabulary of late antique and early medieval authorities, which do not reflect a world of systematic law. Multiple different terms recur across the following discussions of Solomon. His offences might be presented as *culpae* or *delicta*. What I refer to here as pardon might be called *venia* or the act of seeking *misericordia* or *indulgentia* from God. For a discussion of how the developing idea of *aequitas* was adopted in procedural law in the late twelfth century, see Landau, "Aequitas".

way in which an earthly king might pardon a subject who had offended. Indeed, that made sense, for did not God act like a great lord, who had all in his power?[10]

This ambiguity and shared vocabulary also gave the example of Solomon its political utility. *Misericordia* could denote divine mercy towards humanity, ecclesiastical approaches to sin, or royal mercy towards an offender.[11] Models from the Old Testament could be taken as examples for kings as well as examples for the rulers of the church. And, as I argue here, discussions about God's possible pardon of Solomon could be transferred to an earthly context too, becoming an examination of how penance might be performed and what a "complete" penance looked like.

Continuing arguments over Solomon's salvation did not preclude the employment of Solomon in other contexts by theologians. Solomon was held to be the author of the books of Proverbs, Ecclesiastes, and Song of Songs. He continued to be regarded as the author of important and instructive wisdom literature.[12] The wisdom in those moralising books of the Old Testament was associated with the wisdom granted to him by God. It was perfectly possible for medieval authors to insert a Solomonic pearl of wisdom into their texts, quoting from the sapiential books to reinforce their moral message, without ever becoming drawn into questions of Solomon's possible penance or eventual absolution. Likewise, by the twelfth century, a tangle of legendary traditions about Solomon had been established and continued to grow. Solomon's wisdom morphed into something beyond the powers of human discernment.[13] In short, one could invoke Solomon in at least three ways: as a byword for proverbial wisdom; as a legendary – even magical – figure

10 This assumption was given form in various twelfth- and thirteenth-century commentaries and expansions on Psalm 85, which imagined God as a great lord, listening to the case "for" and "against" the condemnation of sinful humanity. The best survey of this phenomenon remains Traver, The Four Daughters of God.

11 Regrettably, because it sits between the fields of theology, law, and political history, little work has been done in comparing the employment of these terms across different kinds of medieval texts. I offer some comparisons in my book Byrne, Justice and Mercy. In addition, on the broad applications of "misericordia" as both a legal term and a theological one, see the comments of McSweeney, The King's Courts.

12 To pick one example among many, consider the frequency with which the sapiential books (i. e. the "wisdom of Solomon") are quoted in the letters of the eleventh-century reformer, Peter Damian. In these letters – exhortatory and consolatory – Solomon's words are an endless source of spiritual and moral guidance. Peter Damian, Epistolae [vol. 1], ed. Kurt Reindel, Munich 1983. This is the case even though Peter Damian recognises Solomon's human sinfulness. For instance, when offering a set of arguments that Christians may use to debate with Jews, he distinguishes between the historical sinfulness of Solomon and the ultimate goodness of Christ: Ep. 1, pp. 79–80. For a small sample of Solomon's wisdom: Ep. 10, p. 134, 136; Ep. 21, p. 203; Ep. 22, p. 216.

13 For instance, the early thirteenth-century author Gervase of Tilbury reports a story in Jewish tradition (*tradunt autem Iudei*): Solomon had been able to build the Temple so quickly because he had learned a secret; if you sprayed the blood of a certain worm on a marble block, the stone would

associated with various stories separate from the scriptural narrative of his rule; or as the Old Testament ruler and a possible exemplar for kingship.

1. The Nature of the Scholastic Debate

It is necessary to first establish that there *was* indeed a scholastic debate over Solomon's fate; a debate with its own distinct contours. Little attention has been paid to it by modern authors.[14] This is all the stranger because we know that by at least the mid-twelfth century, scholastic masters were keenly interested in the activities of the Old Testament rulers of Israel.[15] The schools treated the Bible as a text that could disclose insights about the conduct of earthly politics. For instance, Philippe Buc has demonstrated how exegesis of certain biblical passages, in late twelfth century Paris, served as a focus for debate about kingship.[16] The first Book of Kings, in which the Israelites request a king and are warned that they will not enjoy the experience of a royal ruler, was one particular focus of attention (1 Kings 8/1 Samuel 8). Exegesis and commentary on this passage were a vehicle for political arguments about the nature of medieval kingship. Was kingship a positive institution with the potential to improve humankind, or merely a form of punishment for wayward peoples? This was not merely an argument over how one understood biblical history, interpreted the text of the Old Testament, and filled in the "gaps" in scriptural narratives. It was an argument about the political implications of kingship; and, to put it bluntly, what kings could be permitted.

In the matter of Solomon's absolution, the discussion settled on two central questions. First, how one should weigh the admirable things done early in Solomon's reign against the sin and wickedness at the very end of his life. Second, the question of whether, and how, Solomon had sought forgiveness and the implications of that for other sinners (perhaps especially royal ones). Theologians argued: if Solomon's sins had been done in public, should his penitence not also have been performed publicly? In other words, a private show of repentance between Solomon and God

become easier to shape. Gervase of Tilbury, Otia Imperialia: Recreation for an Emperor, ed. and trans. S. E. Banks/J. W. Binns, Oxford 2002, 3.104, p. 790.

14 One important exception to this generalisation is DiTommaso, Penitence of Solomon. DiTomasso challenges the assumption that this was a text written in connection with Henry IV's penitence at Canossa during the Investiture conflict.

15 More generally on the medieval treatment of the Books of Kings, see van Liere, Reception.

16 For instance: Buc, Pouvoir Royal; id., David's Adultery; Lachaud, Ralph Niger.

could surely not suffice when the offences were so grave, and when Solomon's sins had been so widely demonstrated before the community.[17]

The text which most clearly sets out this debate is a work known as *Responsio de damnatum Salomonis*, written at some point in the later twelfth century by Philip of Harvengt.[18] We know relatively little about Philip's biography. He joined the Premonstratensian canons early in the life of the Order and became prior of the abbey of Bonne-Espérance (in Hainault, modern Belgium) in the late 1120s. He became abbot in 1158 and retained that position until just before his death in 1183. He was also a prolific writer, particularly of hagiographical texts.[19] Philip was long-lived and his interests diverse, yet when he features in scholarly overviews of the twelfth century, it is usually to note his dispute with Bernard of Clairvaux over whether a fugitive monk might enter another religious order.[20] What matters for our purposes is to note that Philip was clearly an educated man, in close contact with the schools (though where exactly he studied has not been established). He was also in frequent correspondence with the courts of temporal rulers; he cultivated lordly connections. When I refer to Philip as a "scholastic" writer, this does not denote his location in the schools but his intellectual formation and his method of assembling his arguments: his reliance on a dialectic method.

Philip's *Responsio* throws the reader right into the middle of a debate. He is not composing a meditative treatise pondering the nature of Solomonic kingship but is instead intervening in an ongoing and lively argument.[21] Philip begins by noting that certain people make assertions that Solomon was saved (*ut quidam asserunt*), and differing and opposed opinions (*diversa et adversa sententi*) fly around on the question.[22] Indeed, the implication – both from the title (*Responsio*) and from the references to brothers (*fratres*) in the text – is that this is a question that had been posed to him, or at least was being debated in the world around him. In typical scholastic style, Philip never names his interlocutors. Philip's own stance is that – despite what some may claim – Solomon did not receive forgiveness from God. Indeed, Solomon never sought forgiveness for his sins. Philip makes his case on two points: the magnitude of Solomon's sin and the lack of evidence for his repentance.

17 On this public/private distinction in penance, see Hamilton, Practice of Penance, esp. pp. 7–9. In the case of discussions of Solomon, public penance is to be associated with a penance undertaken for particularly notorious or scandalous sins, which might be viewed as a danger to the fabric of Christian society. See also Scharff, Public Penance.

18 Philip of Harvengt, Responsio de damnatum Salomonis, PL. 203.621–66.

19 For biographical details, see Sijen, Philippe de Harveng. For Philip's activities as a hagiographer, see Robertson, Philip of Harvengt.

20 On this conflict, see Delhaye, Saint Bernard.

21 In the course of writing this paper, I became aware of Katreničová, *Responsio*. This can be consulted for a more detailed account of Philip's argument than can be included here.

22 Philip of Harvengt, Responsio, 623A.

Philip frames his discussion in terms of objections and answers to those objections. This is neatly demonstrated in a passage in which Philip discusses the scale of Solomon's sin.[23] First, he notes that Solomon's sins were not small ones. In taking the Pharaoh's daughter for his wife, Solomon transgressed the laws which God gave to Moses, namely the prohibition on the Israelites taking foreign women as wives. To this, Philip notes, some object that Solomon is not the only Old Testament figure to have done so: Moses took a foreign wife (Zipporah); as did Joseph when in Egypt. But Philip responds to the objection that as Moses, Joseph, and others took their wives before that command was handed down by God, they therefore did not break a prohibition as Solomon did. "*Ubi non est lex, non praevaricatio*" (where there is no law against it, there is no transgression).

More generally, the structure of the *Responsio* follows this scholastic, dialectic approach. Philip first assembles evidence for Solomon's praiseworthy behaviour – his just acts, his love of wisdom, his composition of books of the Old Testament, his building of the temple, and the idea that Solomon represents an allegorical prefiguring of Christ. He then turns to a discussion of the enormity of the sin, which, Philip suggests, outweighs those positive qualities that have just been listed. Indeed, more than outweighing them, Solomon persisted in these sins until the end of his life. Philip finds a structure for explaining the apparent contradictions in Solomon's biography: he was first good, then turned to wicked acts.[24] Finally, Philip assembles and selects from a series of earlier medieval authorities, including Isidore, Jerome, Augustine, and Gregory the Great. The impression is that there is an overwhelming body of authority arguing for Solomon's damnation, so much so that to disagree would be to contradict the reasoning of the Fathers of the Church.[25]

One further important element of Philip's argument is the insistence that Solomon's case must be contrasted with that of his father, David. King David had committed adultery with Bathsheba and subsequently arranged for Bathsheba's husband to be killed in order to disguise his sin (2 Kings 11). But Philip – following Augustine – wished to distinguish father from son.[26] Both men had sinned, but David repented his adultery during his lifetime and was forgiven by God. By contrast, Solomon persisted in his sin and ended without salvation.[27] Given Philip's office as an abbot, one might well surmise that he had a pastoral purpose in mind when making this argument. Solomon's "good beginning", his early virtue, did not protect against later sliding into vice. What Solomon needed was a continuing

23 Ibid., 626.

24 Ibid., 638B: *In ille exstitit prius bonum, posterius malum.*

25 For further discussion of the use of patristic authorities, see Katreničová, *Responsio,* pp. 213–214.

26 Augustine, De civitate Dei, ed. Bernhard Dombart/Alfons Kalb, Stuttgart 1981, xvii.7–8.

27 Philip of Harvengt, Responsio, 640D.

commitment to virtue, a willingness to persevere in it. It is precisely the kind of argument one might expect of someone charged with the care of souls.

Philip contends that that admirable behaviour early in a royal reign does not excuse sins at the end of it. Merely because a ruler begins well does not exempt him from criticism in his later years. Solomon's reign was to be assessed in totality, not just for its youthful promise. If one did that, the king's later, sinful years loomed large. Here it is possible to engage in some speculation. We do not know the precise date of composition of the *Responsio*. What we can say is that Philip lived at a moment when the three most powerful European rulers were long on their thrones: Henry II of England (r.1154–89) and the Holy Roman Emperor Frederick I (r.1155–90) both reigned for about 35 years; Louis VII of France for 43 (1137–80). If we consider this a work of Philip's later career, it may be the case that this state of affairs (relatively unusual for medieval Christendom) may have been on Philip's mind at the time of composition.

We might also wonder why Philip and others were so worried about more positive re-evaluations of Solomon's reign in the twelfth century. My suspicion is that at least part of this re-evaluation was fuelled by crusading, the Frankish presence in the Holy Land, and praise for Solomon's work as a builder. The conquest of Jerusalem in July 1099 meant Christian control not just of the crucial sites of New Testament history but also of the site of Solomon's temple. What remained of the great building was available for examination and (possibly) for rebuilding or renewing. It is no coincidence that the military order of Templars took their name from their occupation of the supposed site of the Temple.[28]

The Temple had, naturally, always been a topic for Christian theologians, but something shifted in the twelfth century. Bede had produced a full exegetical exposition of the Temple, but the focus was allegorical and mystical – the Temple prefigured the church that was yet to come. The descriptions of Solomon's building activities produced in the twelfth century are more resolutely literal. There are too many to name, but we might take (for instance) Peter Comestor's *Historia Scholastica*, essentially a digest of biblical history, written around 1170.[29] There the Temple – its dimensions, construction, and building materials – dominates the discussion of Solomon's reign.

Moreover, Comestor's description of Jerusalem under Solomon is tied to a positive estimation of his kingship. Solomon is decked out in "imperial" mode: his powers extended far beyond his own lands; he was offered tribute by neighbouring powers; he made the land secure by establishing a royal highway through the kingdom. Indeed, Comestor goes further in "modernising" Solomon for his own

28 On this point, see Kenaan-Kedar, Symbolic Meaning, esp. pp. 113–114.

29 Peter Comestor, Historia Scholastica, PL. 198.1350–1351.

day: he updates the job titles of Solomon's chief servants, as listed in 3 Kings 4. Comestor translates these roles into their twelfth-century equivalents, positions that would look recognisable in a royal court: thus "*sacerdos regis*" becomes "*cancellarius*"; "*praepositus domus*" in the Vulgate is glossed as "*procurator*", i. e. the twelfth-century term for a representative in the courts.[30]

To return to Philip of Harvengt's critique: here again was the problem – enthusiasm for Solomon's building projects and his adornment of the holy city had obscured the great failings of his rule. The Christian capture of Jerusalem gave a new lease of life to interest in Solomon, as a ruler whose material achievements could now be readily examined.[31] It also made these debates matter even more, as medieval rulers came "closer" to Solomon's example.

2. Weighing the Evidence for Penance

Here I come to the next part of the twelfth-century argument: the evidence for whether Solomon had done penance and, if so, whether it had been enough, been sufficient. The case for Solomon's penance was not founded in the Book of Kings but in Proverbs and Ecclesiastes. As we will see, various passages from these books – books attributed to Solomon – could be read as evidence of repentance. This might be taken as Solomon's textual references to his own penance. This, in turn, gave rise to a related question. If Proverbs or Ecclesiastes did suggest that Solomon had undertaken penance, what kind of penance had it been? Had it been done publicly or privately – in front of an audience or before God alone? Private penance was "easier" to argue for, precisely because a private penance would not (so the logic went) necessarily have been recorded in scripture.

Some of these concerns are distilled in the treatment of Solomon by Gerald of Wales (d. 1223). Gerald, archdeacon of Brecon and a prolific writer, had spent time in the schools. He was well-educated in legal and theological matters but was also engaged with the Angevin court. Gerald aspired not just to be a bishop (an ambition he never realised) but also a counsellor of princes.

Among Gerald's many works is one known as *De Principis Instructione* (On the Instruction of Princes). Gerald began the text in the 1190s, but it was not completed

30 Ibid., 1332.

31 For instance, note Suger of St Denis' comparison of his own building project to that of Solomon's temple. De Consecratione, in: Erwin Panofsky/Gerda Panofsky-Soergel (eds.), Abbot Suger on the Abbey Church of St. Denis and Its Art Treasures. Princeton 2019, p. 90. It is also worth noting that chronicles of the First Crusade make the 'Temple of Solomon' the setting for extreme violence and bloodshed after the crusaders entered Jerusalem. See Russo, Sack of Jerusalem.

until approximately 1216–17.[32] The work is divided into three books. The first is a more-or-less traditional example of the *speculum principis* genre, in which Gerald distils ideas about princely virtue and conduct from the Bible and the classical world. The second and third books move into Gerald's present and are both more political and more polemical. They contain an excoriation of the failures of the Angevin dynasty to live up to those moral examples.

Gerald discusses Solomon in the first book, as part of a narration of the Old Testament kings of Israel. Gerald treats most of these rulers in chronological order, except Solomon, who gets a much lengthier digression in his own right.[33] Gerald indicates from the start that Solomon is a difficult figure, more difficult than his virtuous successors Hezekiah and Josiah, or his father David. Solomon was a man of great wisdom, but "at last he strayed terribly from the path of truth (*quamquam a uia ueritatis demum enormiter exorbitauerit*)".[34] Perhaps because Solomon is such a tricky case, Gerald preferred to discuss Josiah – he who tore down the false temples set up by Solomon – before coming to Solomon himself.[35]

Gerald's discussion of Solomon is complex, partly because he makes arguments both about Solomon's status and ultimate fate but also about the nature of scriptural evidence. To make sense of Gerald's examination, we must recognise that he, like Philip of Harvengt, is replicating the techniques of scholastic argument. He brings forward a series of opinions held by others, only to critique them and offer his own "correct" solutions. Thus Gerald begins by stating that some take the position that Solomon did not do enough to earn divine forgiveness: "many people have doubts about his final repentance and return to the Lord, since in no canonical scripture do we read that he performed complete penance (*in nulla canonical scriptura legitur eum perfecte penituisse*)".[36] "Complete" (*perfecte*) penance in this sense is to be understood as a penance that was sufficient to atone for the twin sins of loving foreign women and alien gods (*mulieres alienigenas… deos alienos*).[37]

Gerald then introduces another opinion. Others argue that an account of Solomon's penance can be found in "*libri Hebraici*" (Hebrew Books): Solomon

32 Gerald of Wales, Instruction for a Ruler (De Principis Instructione), ed. and trans. Robert Bartlett, Oxford 2018. For the complex question of composition and dating, see introduction, pp. xv–xix.

33 Ibid., 1.18, pp. 234–316.

34 Ibid., 1.18, p. 242.

35 Ibid., 1.18, p. 252, discussing the events of 4 Kings 23. Gerald himself notes his decision to treat Solomon out of order: *De Salomone autem filio Dauid tempus est ut nunc dicamus; ordinem autem non seruauimus*, p. 258.

36 Ibid., 1.18, p. 261.

37 "Perfecte paenituit" is also a phrase used by Bede when debating the same question. Bede, In Regum, 754.

was dragged five times through the streets of Jerusalem as penance.[38] But Gerald rapidly dismisses this opinion because of the provenance of the material. Those books are not genuine, not canonical, and have not been translated – by this, he seems to mean that he cannot scrutinise them for himself.[39]

Gerald ultimately argues that Solomon was indeed pardoned. But his concern is to ensure that the argument is founded on the right evidence. Gerald thinks there are multiple different ways to argue for God's forgiveness of Solomon but only one correct way. "Since we prefer the certain to the uncertain and do not wish to rely on silly fables, we shall adduce some more powerful suppositions and proofs in this matter".[40] The evidence that Gerald relies upon is evidence found in Solomon's own writing in Proverbs 24:32 and Ecclesiastes 2:9. The latter refers to the description of Solomon as still possessing wisdom at the end of his life. Gerald interprets this as a demonstration that God did not take away his wisdom because the king had been pardoned.

For Gerald, part of the purpose of discussing Solomon is to introduce a discussion of the status of different kinds of evidence about scriptural history. He regards the material from Proverbs – Solomon's own mention of his penance – as proper proof, *probatio*. This he contrasts with the "fables" (*fabulae*) put forward by others. Gerald also grants that strong suppositions (*efficaciores praesumptiones*) may be used to support *probationes*. One such strong presumption is that God would not have granted Solomon the honour of building the Temple had Solomon not been worthy of that distinction – a distinction denied even to King David. Nor would scripture continue to describe Solomon as "wise" if he had fallen away from wisdom forever. Implicit in Gerald's text is the understanding that Solomon must have done penance, and in full.

What shines through in this discussion is Gerald's own education, and particularly his legal training. Gerald had studied both Roman and canon law in Paris.[41] His use of the terms *probatio* and *praesumptio* is likely to have been influenced by his exposure to Justinian. The Digest provides for a distinction between the two.[42] *Praesumptio* in moral writing could bear the connotation of arrogance, of human wisdom exceeding itself. But in this context, Gerald distinguishes between weak

38 Gerald of Wales, Instruction for a Ruler, 1.18, p. 261. See the discussion in DiTommaso, Penitence of Solomon, pp. 377–378.

39 Gerald of Wales, Instruction for a Ruler, 1.18, p. 261: *"Sed libros istos nec auctenticos credimus nec canonicos nec apud nos translatos."*

40 Ibid., 1.18, p. 263.

41 I discuss Gerald's legal education and how he put it to work in Byrne, Medieval Legal Theology.

42 D.22.3: *De probationibus et praesumptionibus* ("Concerning proofs and presumptions"). Digest, ed. Theodore Mommsen, Berlin 1878, pp. 289–291.

suppositions (an ill-founded idea) and stronger kinds. A strong *praesumptio* is similar to the idea of probability, a demonstration of a likely consequence.

Though Gerald of Wales and Philip of Harvengt disagree on whether or not Solomon was absolved, both authors share a concern with proof and evidence. Philip repeatedly emphasises that he can find no demonstration of Solomon's penance in canonical scripture (*scriptura canonica*), and information found outside these books is not to be trusted. This is an idea repeated several times across the *Responsio*.[43] It would not be correct to suggest that this interest in the status of evidence was entirely new, as early medieval authors, such as Isidore, had also demonstrated concern about the lack of material in scripture to support claims of divine *indulgentia* towards Solomon.[44] However, this insistence on determining exactly which texts are capable of supporting an argument does reflect a growing scholastic preoccupation with defining and categorising the sources of knowledge.

In addition to an interest in proof, Gerald of Wales also offers a further refinement in the question of Solomon's penance. It is, Gerald suggests, not merely a question of whether Solomon repented or not but whether he repented *fully* and *sufficiently*. The extent of Solomon's penance matters first because Gerald argues that great sin requires great apology; Solomon was a ruler and endangered the good of the people. Secondly, the level and depth of penance provides a link to the second and third books of *De Principis Instructione*. In these books, Gerald draws a none-too-subtle parallel with the English ruler Henry II. Gerald was, to say the least, critical of Henry. For Gerald, Henry's great sin was first commanding (or even plotting) the murder of Archbishop Becket and then failing to admit to it or make proper compensation.

After the death of Becket in 1171, Henry II did, ultimately, undertake public penance at Canterbury Cathedral in 1174. Gerald describes in book two how Henry walked barefoot to Becket's tomb in Canterbury and kept vigil there.[45] Part of Henry's penance had been a promise to take up the cross and join a new crusade. But, at least according to Gerald's narrative, the king attempted to defer this obligation, agreeing instead to found three new monasteries.[46] Gerald was highly critical of this step, which he viewed as a betrayal of the original oath. He is more critical still when reporting that Henry did not even carry out the reduced penance. He half-heartedly founded two monasteries, but not the third.[47] Gerald describes

43 Philip of Harvengt, Responsio, 664D: "*Nostra autem Scriptura non dicit quod in illis poenitentia Salomonis inveniatur*".

44 See Isidore, quoted in ibid., 637C.

45 Gerald, Instruction for a Ruler, ii.4, p. 456.

46 For the nature of the penance and the challenges of understanding exactly what was agreed, see Forey, Henry II.

47 Gerald, Instruction for a Ruler, ii.7, pp. 466–471.

him as acting "in a completely ineffectual way" (*prorsus inutile fecit*). Henry was, in essence, attempting to cheat God of the full penance he had promised.[48] Gerald follows this comment on Henry's deceit with a quotation from Proverbs (21:30): "there is no wisdom, there is no prudence, there is no counsel against the Lord". This may be a coincidence, or Gerald simply reaching for wisdom literature. But he is here selecting a book authored by Solomon to comment on Henry II's behaviour, having earlier in the book referred to Proverbs as proof of Solomon's full repentance.

Gerald sets up Henry II as the mirror image of Solomon. Both sinned greatly, but Solomon repented and performed proper penance. Henry sinned, made half-hearted penance, and did not fulfil his promises. The culmination of this is the third book of *De Principis Instructione*, in a scene in which Henry II seems to be on his deathbed.[49] Henry is surrounded by bishops, abbots, and three archbishops, all encouraging him to confess and repent. For three days this group tries assiduously to persuade Henry to correct his relationship with God. They are almost ready to give up and leave, when:

> *quoniam ulterius differre et proterminare non potuit, confessus quidem est, sed nec omnia quorum conscius extiterat, nec maiora. Quedam eciam suppressit et subticuit; quin immo quedam querentibus illis abnegauit, que tamen quibusdam eorundem ante quidem confessus fuerat. Et ea que audientibus illis tunc confitebatur, non accusando excessuum enormitates, non delicta lugendo, sed excusando pocius et racionem facti assignando ad excusandas, excusaciones proponebat, adeo quidem ut, altercando in singulis et disputando, simulatoriam magis quam ueram, et sophisticam magis quam deuotam, sic expleret confessionem.*
> (Since he was unable to put it off and defer it any further, he did indeed confess, but not everything he was conscious of, nor the greater sins. Some things he suppressed and did not speak about; moreover, he denied some things that he had previously confessed to some of them. He proposed excuses for the things that he confessed at that time in their hearing, not accusing the wickedness of his excesses, not grieving for his sins, but rather excusing and giving explanations for the deeds to justify them, so much indeed that by wrangling and disputing over each individual thing, he completed a confession that was more a show than a truthful one, more sophistical than devout.)[50]

In fact, Henry did not die on this occasion but, as Gerald notes, recovered only to be further chastised by God.

We should also raise the possibility that Henry's own actions underscored the parallel with Solomon for Gerald. In books two and three, Gerald sometimes moves

48 Ibid., ii.7, p. 469.

49 Ibid., iii.13, pp. 618–623.

50 Ibid., iii.13, p. 621. I have slightly modified Bartlett's translation for clarity.

away from events in the Angevin empire to comment on events in the Holy Land and the increasing threat posed by Saladin to the Kingdom of Jerusalem and its territories.[51] In doing so, Saladin was threatening the land defined by the temple that Solomon had built. This was also the land that Henry II failed to defend, by first delaying and then abandoning his promised crusade.

Yet the comparison between Henry II and Solomon was not unique to Gerald of Wales. It had already been drawn by Thomas Becket himself, much more explicitly, several decades earlier. In 1166, in exile in France, Becket wrote a series of three letters to the king. At this stage in the conflict, Becket's approach was becoming increasingly combative. The first of the letters, written in April and known as *Loqui de Deo*, urges Henry to change his stance or to prepare for severe consequences from God.[52] Becket invoked Solomon as a demonstration of what might happen if Henry II did not cease his oppression of the church.

> *Alioquin uereor – quod Deus auertat – ne non deficiat gladius de domo uestra, donec ueniat qui ulciscatur de plano suam et suorum iniuriam Altissimus, sicut nec de domo Salomonis, a quo, licet eum Dominus elegisset, et contulisset ei tantam sapientiam et pacem.*
> (Otherwise, I fear, which God forbid, that the sword will not leave your house until the Most High comes to avenge thoroughly the wrong to himself and his servants, just as it did not leave the house of Solomon, from whom God wrenched his realm and gave it to his servant, because he left the way of God and walked in iniquity upon iniquity, even though the Lord had chosen him and granted him so much wisdom and peace.)[53]

In other words, just as God punished Solomon for his sins, so he would punish Henry – perhaps even by taking the throne from his dynasty. This was no gentle rebuke.

We should note here that Becket's use of Solomon differs from that of Gerald of Wales. Becket's letter seems to imply that Solomon never returned to righteousness. Instead, the story of Solomon is of an initially good king who declined into evil and was punished. Becket's purpose in the letter means he is less concerned with questions of absolution than with the earthly consequences of failing kingship. The epistolary frame means there is no scope for debate; instead, a sure and practical moral can be drawn from the story.

We might also wonder whether Gerald was aware of Becket's letter and whether the parallel Becket had drawn between Henry II and Solomon remained in Gerald's

51 Ibid., ii.22, pp. 518–520: Saladin's threat to Jerusalem; iii.3, pp. 576–580: Jerusalem attacked and the Holy Land nearly completely conquered.

52 The Correspondence of Thomas Becket, Archbishop of Canterbury, 1162–1170 [vol. 1], ed. Anne Duggan, Oxford 2000, Ep. 68, pp. 266–271.

53 Ibid., Ep. 68, pp. 268–271.

mind when he wrote *De Prinicipis Instructione*. While we cannot demonstrate that definitively, Becket's letter to the crown was no private correspondence but part of a "public" statement – an assertion of his position and part of an appeal for support to a wider, international audience. Moreover, Gerald was acutely interested in the Becket conflict as a demonstration of the failures of Angevin kingship and an attack on the liberties of the Church.

Thus, both in Gerald's *speculum principis* and in Becket's letter, one can see the political and pastoral implications of the seemingly abstract theological question of Solomon's salvation. How one worked through and weighed the evidence of scripture made a difference to politics and to how one advised kings and rulers. It could be presented in a more positive light: Solomon had sought forgiveness and returned to justice, or a more negative one: Solomon had persisted in error and forfeited salvation. In both, the emphasis was not on God's pardoning action but on Solomon's decision (or not) to seek forgiveness and perform an appropriately significant act of repentance.

Other authors, like Gerald, saw Solomon as an example of praiseworthy repentance and forgiveness. Indeed, Solomon could be useful in a pastoral setting precisely because his sins had been so great and yet he had (arguably) turned away from them. Stephen of Tournai (d. 1203) – both a canon and a canonist – invoked Solomon's forgiveness as a salutary example for abbots. Stephen was attempting to persuade another abbot to overlook the misbehaviour of a monk (a relation of Stephen's) and asked that his relative be restored to his place. Stephen was attempting to soften up (or possibly cajole) the abbot, persuading him that correction was possible. In essence, he argued: if Solomon could make absolution before God for such serious sins, why could a young monk not be forgiven for something rather more minor?[54]

We know too that the question of whether Solomon demonstrated repentance bothered at least some rulers in this period. The best-known example is the one alluded to in a letter from Fulbert, Bishop of Chartres from 1006 to 1028. Before he became bishop, Fulbert was a teacher at the cathedral school in Chartres, one of the pre-eminent intellectual centres of eleventh-century France.[55] Fulbert was at the centre of both ecclesiastical networks and well-connected to royal and lordly courts. His correspondents included Robert the Pious, King of France (r. 996–1031).[56] It was in this context, as a valued spiritual advisor, that Duke William V of Aquitaine posed a question to Fulbert. He wanted to know whether Solomon had been saved.[57]

54 Stephen of Tournai, Ep. 196, PL. 211.476.

55 The best biography of Fulbert is to be found in: Jeauneau, Rethinking, pp. 29–36.

56 White, Politics of Fidelity.

57 The Letters and Poems of Fulbert of Chartres, ed. Frederick Behrends, Oxford 1976.

William V of Aquitaine was a famously pious lord: a regular pilgrim and generous patron of the Church.[58] We only know of William's question through Fulbert's response, in a letter of 1024 addressed not to William but to Hildegar, a former student at Chartres and one of Fulbert's closest allies.[59] Fulbert presents Hildegar with authoritative texts so that he may expound them to William: "we have sent to you excerpts from Bachiarius, Bede, and Rabanus as regards his question concerning Solomon's salvation so that you may expound them to him".[60] These extracts are copied at the end of Fulbert's letter.

What is striking about this letter is that Fulbert did not provide William (or Hildegar) with a definitive answer to this question. He only assembled the contradictory verdicts of earlier authorities. Bachiarius (a fifth-century author) argues that Solomon did private penance – in front of God and his own conscience – and was pardoned and thence regarded as a just king. Bede takes the view that Solomon never repented, and this explains why he never removed the idols he had set up. Rabanus Maurus, drawing on Isidore of Seville, finds no evidence for repentance or pardon. One might suggest that this is where Fulbert, writing in the early eleventh century, differs from the more dialectic approaches of a century or so later. Fulbert was content to contrast authorities without explicitly resolving them.

Here I must disagree with one aspect of Bose's commentary on this letter. Bose suggests that Fulbert *did* take a definitive stance on the question of Solomon's absolution. She seems to attribute to Fulbert the opinion that Solomon did obtain a pardon, by doing penance in secret, before only God and his own conscience. However, this section of the letter, which Bose takes as Fulbert's own opinion, is in fact part of Fulbert's quotation from the text of Bachiarius.[61] This section of the letter is simply Fulbert marshalling his authorities. Nowhere does Fulbert disclose his own opinion on the matter; he only passes to Hildegar a selection of relevant passages. These were presumably copied from the library at Chartres, and likely represented a more compendious collection than might have been available at the ducal court.

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58 For William's biography: Bachrach, William the Great.

59 Fulbert of Chartres, Ep. 92. It is not clear from the letter whether William had posed the question in person or in writing.

60 Ibid., Ep. 92, p. 165.

61 Bose, From Exegesis to Appropriation, pp. 187–188: "*Non ambigo, frater, de penitencia eius quae non inscribitur publicis legibus; et fortasse ideo acceptabilior iudicatur, quia non ad faciem populi sed in secreto conscienciae Deo teste penituit. Veniam autem ex hoc consecutum esse agnoscimus: quia cum solutus fuisset a corpore, sepultum ilium inter regum Israhelitarum corpora scriptura commemorat*". This is part of a longer quotation from Bachiarius. The two can be compared: Fulbert of Chartres, Ep. 92, p. 166; Bachiarius, PL. 20.1048 (q. 12). In the PL edition of Bachiarius, the text begins "*Audi ergo, frater*", and there are some small differences which may be ascribed to variation between medieval copies.

It may be the case that Fulbert trusted Hildegar to guide William V as he worked through the material he had provided. Hildegar was Fulbert's "closest disciple" and later one of his literary executors.[62] Equally, perhaps the hope was that the exercise itself (the examination of the question) would prove useful in training William V to form his own opinion. On this point, we might draw a sharp contrast. In 1024, the pious William V could be trusted to engage carefully with the ambiguities of scripture. A century and a half later, in the politically charged environment of the Becket dispute, rulers could not be left to draw their own conclusions on Solomon.

3. Inimitable Acts of Judgement

Finally, I come to the "half" of my argument. There is one further aspect of Solomon's career that modern readers may associate with an act of judgement, determination, and punishment. It has become the proverbial "Judgement of Solomon". This is the scene in 3 Kings 3, in which the king is confronted with two women, both of whom claim to be the mother of a child. Solomon determines the real mother by threatening to have the baby cut in two and split between them. The real mother prefers to give up her child rather than see the child harmed; Solomon recognises this and awards her the baby. The scene comes immediately after Solomon (as a young ruler) has requested that God grant him wisdom. In other words, it is seemingly a demonstration of that wisdom in action.

It is a dramatic and arresting set piece and, seemingly, an obvious demonstration of how divinely granted wisdom rendered Solomon a great judge. Moreover, it is a scene that was described in even greater detail in Josephus' *Jewish Antiquities*, a text which twelfth- and thirteenth-century theologians knew well. Josephus was widely read and employed as a support to understanding the history of the Old Testament.[63] It is therefore somewhat surprising that medieval advice literature very rarely mentions this incident. Here we have an example of a king doing justice – a memorable scene – and yet it is almost never recommended to princes as an example for imitation. This may strike us as strange, given how often medieval moral literature quotes from the proverbial wisdom of Solomon in other contexts.

It is all the stranger because the power that God granted Solomon – to distinguish between good and bad courses of action, i. e. discernment – is the power that medieval writers often associate with judgement and the ability to weigh competing goods or claims. Discernment (*discretio*), allied to prudence, makes justice possible,

62 Fulbert of Chartres, introduction, p. xx; xxxvi.

63 Josephus, Jewish Antiquities [vol. 3], trans. Ralph Marcus, Cambridge MA 1934, VIII.2.2, pp. 228–232.

and medieval authors speak of it often.[64] It is through discernment that the good king can weigh advice and in turn can determine who deserves pardon and who will simply abuse it as a licence to commit further crimes.[65]

Of course, arguments from absence are not probative: the fact that a modern scholar expects a medieval author to have found a passage of scripture interesting and provocative tells us nothing. However, the neglect of this incident in advice literature and theological argument is all the more striking because medieval artists and illuminators were rather keen on depicting the scene of the judgement.[66]

It is visible, for example, in BnF Latin 1315, an English psalter from the early thirteenth century. Psalm 109 begins with an initial depicting the judgement of Solomon. Likewise, the Lothian Bible (created in Oxford c.1220) also shows the judgement in an initial.[67] One could also find the scene depicted in an eleventh-century ivory book cover showing the judgement of Solomon (Solomon above, mothers below), once belonging to St-Denis.[68]

Yet these images of Solomon in judgement over the two women do not usually appear in illustrations accompanying the Book of Kings but in illustrations on the sapiential books of the Bible.[69] I suspect it is because these texts were "safer" from a theological perspective. Solomon's proverbial wisdom could be easily digested and applied, detached from his biography. It was better to focus on these than on his acts as a living king.

Contemporary theologians offer strikingly little discussion of the judgement of the two women. It is rarely mentioned in detail; it is certainly not the most noteworthy part of Solomon's biography – theologians are much more likely to mention his building of the Temple or his foreign wives and idolatry than this incident with the mothers and baby. The absence of scholastic interest may reflect

64 See the comments of Payer, Prudence, in particular pp. 55–56. The Latin "discretio" did not have an identical meaning to the modern English "discretion".

65 For an example of discernment being praised as a princely virtue, see C. C. J. Webb, Ioannis Saresberiensis episcopi Carnotensis Policratici sive De nvgis cvrialivm et vestigiis philosophorvm libri VIII. Oxford, 1909, IV.6, pp. 256–257. This is part of an argument that all great kings take counsel before making decisions.

66 For an important discussion of this, see Boeye, Mutable Authority. I owe my awareness of the scene in BnF Latin 1315, and the Hague manuscript below, to this invaluable work. The scene in BnF Latin 1315 is described on pp. 139–140.

67 Morgan Library, New York, M.791 f. 93r. An image can be viewed at: https://ica.themorgan.org/manuscript/page/9/145047, accessed 03/19/2025.

68 Now in the Louvre (MR 372). This can be viewed at: https://collections.louvre.fr/en/ark:/53355/cl010096626, accessed 03/19/2025.

69 For instance, The Hague, KB, 76 F 23, f. 155v. Here the Judgement appears alongside the text of Proverbs. See Boeye, Mutable Authority, pp. 140–142 for a further discussion of this feature.

their early medieval authorities. Isidore of Seville, for instance, discusses the incident in his *Questions on the Old Testament* but treats it in an entirely allegorical fashion.[70] Solomon in judgement represents Christ; the lying woman is understood as "Synagoga", while the true mother is the Church.

Where the incident at 3 Kings 3 does receive mention among eleventh- and twelfth-century commentators, it is often detached from an evaluation of Solomon's kingship. For instance, Peter Damian, the eleventh-century reformer, notes the incident in a letter in which he advises an abbot to instruct a monk who has fled to his monastery to return to his true home. But Peter Damian's interest lay in the maternal love of the true mother for her child, not Solomon's justice. In this case, the abbot is behaving as the "false" mother and claiming an individual who does not belong to him.[71] As one might expect, the judgement is mentioned in Philip of Harvengt's lengthy survey of Solomon's life in the *Responsio*. It features in a much longer discussion of examples of Solomon's justice.[72] However, the judgement itself is less important than Philip's wider argument: Solomon had been granted the ability to discern between good and evil, making Solomon's later lapse into idol worship and failure to do penance for it all the more culpable.

What is perhaps most revealing is the one other (somewhat) substantial twelfth-century discussion of the judgement I have been able to find is John of Salisbury's *Policraticus*, written c.1159, as a book of advice for Henry II. John might provide a partial explanation for why the judgement of 3 Kings 3 does not feature more prominently in medieval exegesis. He reads the judgement of the women *not* as an example of great royal discernment but as a comment on legal procedure.[73] Solomon's example to others does not lie in his morality but in his technical probity. John argues that Solomon demonstrates how to deal with witnesses where truth is hard to establish and partiality is suspected. Solomon is advocating using probability – he first estimated how the real mother might behave, then acted accordingly. In *Policraticus*, this comment is immediately followed by a discussion of the rules set down by Pope Adrian IV for the questioning of witnesses. John had considerable legal knowledge of his own and had developed his knowledge further by observing the judicial workings of the papal court. John's treatment of 3 Kings 3 extends the tendency we saw in Gerald of Wales's *De Principis Instructione*. In both cases, incidents from Solomon's life are used as a discussion point about legal procedure and the weighing of evidence.[74]

70 Isidore of Seville, Quaestiones, c.4, 416–417.

71 Peter Damian, Epistolae, Ep. 29, p. 280.

72 Philip of Harvengt, Responsio, 628B.

73 John of Salisbury, Policraticus, v.14, p. 343.

74 It should be noted that John of Salisbury is not without interest in the question of Solomon's absolution, though he does not address it at great length. John writes that he believes that Solomon

Why did medieval authors not employ the judgment of Solomon when advising rulers about how to act justly? The answer, I think, lies in a concern that Solomonic wisdom might not be an imitable model for a king (or any other human judge). Scripture can be read to imply that this was something only given as a special act of divine favour. To suggest that justice could only work when the ruler had that level of insight might be to set the bar too high. In other words, almost everything that made Solomon an "exceptional" ruler of Israel – both good and bad – made him a very awkward example for scholastic theologians.

Finally, let us return to those texts which examine Solomon's absolution. One feature common to all of these works is that they rarely, if ever, attempt to consider how the dynamics of salvation or damnation might function. The discussion is not about the soteriological question of how God would weigh Solomon but about Solomon's own actions and motivations in seeking forgiveness. One can readily understand why this was the case. To ask about the operations of divine *misericordia* or *indulgentia* was to open up a hugely complex question of predestination and to peer into matters of divine knowledge, a strenuous test for even the most confident theologian. What could be examined instead was evidence for human behaviour – Solomon's behaviour. What was being asked was whether Solomon himself had done something and, if so, whether that was enough.

What we have, then, in twelfth-century examinations of the pardon of Solomon is an examination of the consequences of kingly sin for the conduct of politics. It was an argument over what a king needed to do to receive divine pardon, but, just as importantly, it was also an argument over the evidence for forgiveness. There is a certain irony here: in weighing the behaviour of Solomon, the great royal judge of the Old Testament, scholastic authors made themselves the ultimate judges of whether pardon was granted.

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(and other kings who departed from the rightful path) recovered their authority when they returned to God. John is less interested in the fine details of penance/absolution and more interested in what this should teach kings – namely that it may be possible for tyrants to step back from their oppressive actions and that those who do not will forfeit their authority. John of Salisbury, Policraticus, viii.20, pp. 373–374.

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Nancy Shields Kollmann

By Mercy Bound

Pardoning, Petitioning and Tsarist Power in Early Modern Russia

That rulers should dispense mercy in pardoning and resolve grievances by accepting petitions is an age-old expectation. As Serena Connolly has noted, "Helping the vulnerable in society was, from the second millennium BC, expected of rulers. One of the ways to fulfill that responsibility was to answer petitions, and to be seen to be answering them assiduously was a mark of praise."[1] Over the early modern era in Europe, rulers developed ceremonial moments for granting pardons and created a hierarchy of courts to hear cases and appeals. Thus, they turned ideological expectations into legal processes and institutions. Here, we explore how Russia's rulers from the sixteenth to the eighteenth centuries addressed such societal expectations for resolving grievances and granting pardon.

1. The Problem of Petitions

Russia had no tradition of days appointed for pardoning criminal convictions, but rulers did bestow mercy generously as part of a broad culture of petitioning. Well into the eighteenth century, Russian rulers prided themselves on bestowing mercy, but they also found it nearly impossible to regulate. As late as 1799, Paul I, a ruler not known for a warm personality, expressed frustration at the demands on him.

> *We have never turned Our ears and attention away from the sincere needs and just complaints of Our loyal subjects. On the contrary We have opened up all possible paths and means so that the voice of the weak, beleaguered person could penetrate to Us with all fidelity, and receive prompt justice in Our laws and decrees. But, to Our regret, Our experience over two years in power has shown us that such audacity and rudeness, taking advantage of Our patience with countless frivolous, capricious requests, not based on proper procedure and the law, take Our attention and Our time away from the very important issues and administration of all parts of Our so expansive state. Strict measures are well-known, taken*

1 Connolly, Petitioning, pp. 62–63. Petitioning over time and place: White, Form and Structure, on Greek antiquity; Connolly, Petitioning, on ancient Egypt to Rome; Macrides, Ritual of Petition, on Byzantium; Kivelson, Petitions, on antiquity to present day. On medieval England, see Smith, Killick, Introduction; Lacey, Petitioner for Royal Pardon; Musson, Patterns of Supplication.

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> *before Our time in various situations to repress this practice of unjust and burdensome requests. … we are required to renew and bring into all their effectiveness the decrees of 1714, 1718 and 1765, if after this Our decree they do not return to the proper order and sobriety.*[2]

Such prohibitions had indeed been explicit since the Conciliar Lawcode of 1649.[3] However, Russian subjects' time-honoured expectation of approaching the tsar in person could not be dislodged, even in the century when Russia was famous for "Europeanising" its high culture and trying to regularise its administration of the *Polizeistaat* model.

That people continued to approach tsars with petitions after repeated prohibitions reflects the endurance of a very traditional political culture. In any monarchical setting, there was an inherent tension in petitioning. Even when rulers created law and institutions to regulate litigation, punishment and mercy, they also clung to their right to grant exceptions. In so doing, they put themselves above the law and risked undermining faith in institutions.[4] Clearly, in Russia subjects trusted more in the ruler's willingness to transcend the law than they did in institutions intended to enforce it. Furthermore, accepting petitions and bestowing mercy were crucial to a Russian ruler's legitimacy. The legitimate ruler was expected to be accessible: he was to listen to the advice of wise counsellors and even in principle of the populace, and he was to hear his people's grievances. Subjects accepted autocratic rule but, in turn, expected that the state, in the name of the tsar, would respond to their petitions.[5]

Subjects were reminded of this ideology every time they interacted with the state. All addresses to the public sphere took the form of a petition to the tsar whose rhetorical formulae spelled out the ruler's personal connection with his subjects. Petitions began in the dative case, personally addressing the sovereign with his fullest title. The petitioner, no matter how high in status, played the role of dependent, presenting himself with a diminutive name: "Ivashko" instead of Ivan, for example. The petitioner often referred to his loyal service to the tsar and concluded with the phrase, "Sovereign, grant me favour." Even issues as mundane as a request for back pay were couched in this rhetorical formula.

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2 Polnoe sobranie zakonov Rossiiskoi imperii (hereafter PSZ), St Petersburg 1830, no. 18,957 (06 May 1799).

3 Rossiiskoe zakonodatel'stvo X–XX vekov, Vol. 3, Moscow 1985: Chap. 1, arts. 8 and 9, p. 86 and Chap. 10, art. 20, pp. 104–105.

4 On this tension, see Kivelson, Petitions; also Vallerani, Medieval Public Justice, Chap. 7, esp. pp. 312, 319–320, 346–347.

5 Rowland, Muscovy; Kivelson, Muscovite 'Citizenship'.

By the early modern era, many European states had institutionalised a judicial hierarchy that took the place of the ruler's direct involvement in petitions. Peter Arnade and Walter Prevenier described fifteenth-century Burgundian princes, for example, as balancing mercy – the "powerful religious and political concepts of *justicia* and *misericordia*" – with legality – "the image of the king as a *roi justicier* or bringer of justice."[6] Courts, offices and their staffs came to embody the sovereignty of the ruler.[7] Only on rare occasions, such as a ruler's adventus into a city or in his accepting pleas for pardon of a criminal conviction, could people turn directly to the ruler.[8] But in early modern Russia, such institutionalisation was never fully achieved.

2. Judicial Institutions

When Russia began to construct a centralised state in the sixteenth century, its emphasis was on military and fiscal control. Throughout the eighteenth century, Moscow flung across the quickly expanding empire a skeletal network of garrisons led by military governors. Governors were responsible for everything in their province – defence, taxation, administration and the criminal courts – but the judicial role was their lowest priority. Governors had no legal training; few people in Muscovy did. Russia had no law schools until late in the eighteenth century; a professional bar and judiciary were created only by the Great Reforms in 1864. Early modern Russia also had no notaries; legal expertise resided only in senior bureaucrats of the judicial chanceries in Moscow and St. Petersburg. There, they trained scribes who were dispatched to the localities where they dictated a governor's legal procedure and verdicts.[9]

Throughout the seventeenth century, Russia had only a loose hierarchy for appeal of legal decisions. Presumably, chanceries in Moscow functioned as appeals venues above the governors' courts; in the mid-seventeenth century, some mention is made of higher boards of judicial appeal. In the 1660s, the tsar's closest advisors (the boyars) were reported meeting "*in the Chamber*" to hear difficult cases from the chanceries; in the 1680s and 1690s, a Chamber of Appeals (*Raspravnaia Palata*)

6 Arnade, Prevenier, The Forgiving Prince, p. 7.

7 In medieval Europe, rulers consulted their councils but eventually created legal offices: ibid., pp. 10–11; Connolly, Petitioning, pp. 54–55; Lacey, Petitioner for Royal Pardon, p. 62. The Vatican and subsequent Italian states constructed an impressive bureaucratic model for dealing with petitions: Fosi, Papal Justice, chaps. 2 and 4; Vallerani, Medieval Public Justice, chap. 7.

8 On the rhetoric of pardon letters: Zemon Davis, Fiction in the Archives; Arnade, Prevenier, The Forgiving Prince, pp. 4–6, 13–18. On adventus, see Murphy, Royal Grace.

9 On legal expertise, see Kollmann, Crime and Punishment, pp. 47–65.

composed of boyars was said to take cases from chanceries or individuals.[10] The ruler also heard appeals, as attested by a decree of 1684 that threatened capital punishment for litigants who had "*disrespectfully*" appealed a case already resolved by the tsars themselves. But Peter I's impatient complaints in 1699 and 1700 about litigants causing him "*idle distraction*" show that such hierarchy was ineffective.[11]

Peter is famous as the Great Reformer whose primary attention went to war and to the creation of the army, navy and fiscal resources that they required. But he was also concerned about good justice. One might cynically say that this reflected his concern about fraud of government funds, but more was going on. Peter often spoke empathetically about the cost to his subjects of corrupt officials and ineffective courts, and he devoted significant effort to creating good judicial institutions. In 1711, for example, he founded the Senate – composed initially of only nine members – as the state's highest civil appeals court (in addition to its being the senior administrative and legislative body).[12] He followed up with a complete judicial reform in 1718, linking it to the public's demands on him personally:

> *Inasmuch as petitioners constantly impose on His Tsarist Majesty concerning their injuries, everywhere, in all places, not giving him any peace, and although it is easy to understand from their point of view that to each person his injury is bitter and unbearable, still everyone must also understand that there are many of them and they are submitting their petitioners only to one person, and that person is absorbed in so many military and other intolerable troubles, as is known to all. … And now, ruling over all, with care for the people and for just domestic administration, His Majesty did not allow Himself to neglect [these issues] but rather worked to bring them into such good order, as he had done in military affairs. Thus he created the Colleges … to bring this valuable project [just courts] to the people.*

The decree goes on to describe a new hierarchy of venues: "*For the complete satisfaction of all petitioners there will be a just court … everywhere – in the gubernii, the provinces and the towns. … Above them all will be a higher Superior Court (Nadvornyi sud) in the major gubernii, to which cases from lower courts can be brought, according to the Regulation, if they were resolved unjustly or they were mired in delay (volochit').*" Beyond the Superior Courts, litigants could turn to the Justice College

10 Ibid., p. 172. Peter the Great revived the *Raspravnaia Palata* in 1707 and, in 1712, folded it into his new Senate: PSZ, no. 2710 (09/04/1713); Eskin, Raspravnaia palata.

11 Disrespectfully appealed: PSZ, no. 1092 (3 October 1684). Impatient complaints: PSZ, no. 1707 (27 October 1699); PSZ, no. 1748 (02 February 1700).

12 On the Senate: Eroshkina, Senat; Serov, Sudebnaia reforma, pp. 242–253. On its oversight responsibilities: Gribovskii, Vysshii sud i nadzor v Rossii. Criminal cases were handled by a parallel hierarchy: Serov, Sudebnaia reforma, pp. 272–284, 463–469.

and from there to the Secretary of the Senate, who would present the case to the ruler.[13]

Furthermore, Peter created institutions of oversight to attack the most persistent obstacles to good governance: theft of state funds, corruption in the highest offices and "red tape" (*volokita*), that is, intentional or incompetent delay in offices and courts. Aiming specifically at graft, the *fiskaly*, lodged in the Senate in 1711, were a network of administrators in the provinces, the army, navy and Orthodox Church who were to report on theft of state funds and other official corruption.[14] Procurators served a similar purpose: by 1722, Peter I installed in the Senate a General Procurator to oversee the efficiency, quality and basic legality of its legislative, administrative and judicial functions, including the *fiskaly*; subordinate procurators were assigned to the Colleges, Superior Courts and *gubernii*.[15]

The judicial hierarchy that Peter I created in the 1710s was unprecedented in separating the judicial branch from the administrative, and it worked well. In some cases, judges worked in panels of two or three; they built up expertise and resolved cases promptly.[16] But Peter's reform was short-lived, overcome by structural inadequacies of the judicial system. The laws were never systematically codified despite Peter's and his successors' efforts; throughout the century, courts used a disparate combination of the 1649 Conciliar Lawcode, 1669 Criminal Articles, Petrine military codes and individual decrees.[17] In addition, in devoting all possible resources to the army, Peter made minimal effort to professionalise personnel for the courts. Although he tasked the Senate with judicial appeals, Peter selected senators for their eminence, and they, in turn, often embraced the role more for its prestige than its duties. Even if the senators had been conscientious about the tedious work of appeals, the Senate was, as A. N. Eroshkina noted,[18] overburdened with multiple responsibilities: oversight of the entire government, proposing legislation and re-

13 PSZ, no. 3261 (2 December 1718). Already in 1714, Peter had suggested judicial hierarchy (PSZ, no. 2787 (21 March 1714), notably in a requirement that scribes notate all petitions with the appropriate office to which it should be submitted (PSZ, no. 2865 (08 December 1714). Scribes punished for not doing so: PSZ, no. 7599 (16 June 1738) and PSZ, no. 7931 (07 November 1739).

14 *Fiskaly* created: PSZ, no. 2330 (02 March 1711), pt. 9 and PSZ, no 2331 (05 March 1711), pt. 3. Instruction to *fiskaly*: PSZ, no. 2786 (17 March 1714). On *fiskaly*: Eroshkina, Fiskal; Babich, Fiskal'naia kantseliariia; Serov, Sudebnaia reforma, pp. 107–118, 373–384.

15 General Procurator: PSZ, no. 3877 (12 January 1722), pt. 4. On *fiskaly* and procurators: Gribovskii, Vysshii sud i nadzor v Rossii, pp. 12–22, 29–39, 43–45, 54–55, 58–61, 65–66, 70–72; Serov, Sudebnaia reforma, pp. 107–130, 373–384; Eroshkina, General-Prokuror; Eroshkina, Ober-Prokuror Senata.

16 Kollmann, Crime and Punishment, pp. 191–194.

17 On attempts to codify the laws: ibid., p. 178.

18 Eroshkina, Senat, p. 83.

solving judicial appeals. Not surprisingly, backlogs of appeals cases accumulated over the century.

In the bureaucracy *per se*, professionalism was even more lacking. A. N. Gribovskii argued that age-old expectations that civil service was an opportunity for personal gain were never dislodged. Officials resisted institutions of oversight; even the *fiskaly*, charged with overseeing graft and fraud, became notoriously corrupt. The office fell into disuse by the early 1730s, while the procuracy was only begrudgingly maintained.[19] Furthermore, Peter himself undermined the bureaucracy when, pressed for funds for his war efforts, he virtually eliminated salaries for bureaucrats. Forced to rely on fees for services, scribes turned to bribery and corruption.[20]

Finally, Peter retrenched his judicial reform in 1722: he abolished a lower level of courts and folded the courts and their personnel into local offices, thereby destroying the separation of judiciary and administration that had worked well. His successor, Catherine I, abolished the Superior Courts (February 1727),[21] creating a truncated hierarchy – from *guberniia* to the Justice College to the Senate – that put all the work at the *guberniia* level. That system differed little from Muscovite practice and reinforced the population's perception that direct petitioning was their only recourse.

Perhaps most ironically, despite Peter I's protests that petitioners "*give him no peace*" and his many orders of "*merciless*" punishment for such behaviour, he himself had perpetuated the practice by encouraging the public to bring petitions directly to him.[22]

3. Peter Invites Petitioning

Peter I defined a few issues (they came to be called the "points" or *punkty*) on which one could bypass venues and directly approach the sovereign. They did not include, as was traditional in medieval and early modern Europe, pardons for criminal convictions. Rather, Peter allowed access to himself on issues that he was most worried about – threats to the ruler or to the state. Because he had witnessed the deadly violence of musketeer rebellions in 1682 and 1689 and because he faced sporadic opposition to his reforms, Peter was obsessed with his survival. And, as

19 Gribovskii, Vysshii sud i nadzor v Rossii, particularly pp. 12–13, 20–22, 29–32. Procuracy endured to 1917: Eroshkina, General-Prokuror; Eroshkina, Ober-Prokuror Senata.

20 Kollmann, Crime and Punishment, p. 198.

21 On Peter's judicial reforms and retrenchment: Serov, Sudebnaia reforma, chaps. 3 and 4; Kollmann, Crime and Punishment, chap. 8.

22 No peace: PSZ, no. 3900 (05 February 1722) and PSZ, no. 3947 (06 April 1722). Merciless punishment: PSZ, no. 3838 (21 October 1721).

noted, he was also deeply concerned with official corruption and good justice. So, he invited informants.

In October 1699, Peter advised that, although most petitions should go to their appropriate chanceries, one might petition to the sovereign directly on the two issues of "*unjust court decisions and great state affairs*" (by which he meant treason and rebellion). By the end of his reign, he had narrowed the *punkty* to treason and rebellion, advising the population to report graft to fiscal officials and judicial corruption to the Senate.[23]

Beginning in 1718, Peter created a framework for accepting petitions on the *punkty*. Initially, he tasked the Secretary of the Senate with collecting them, but since that office proved to be overburdened, by 1720, Peter assigned the task to a new office, the "Reketmeister."[24] This "eminent person" would accept petitions about treason, rebellion, unjust judgements or excessive delay in the courts of the highest state organs – the colleges and chanceries. The Reketmeister was to establish that a complaint about corruption was well grounded and take it to the appropriate judicial venue for prompt consideration; he was also charged with urging the Senate to resolve appeals quickly.[25] In practice, petitioners ignored all limitations and presented cases on any issue or bypassed lesser venues in favour of the highest court or persona.[26]

By the end of Peter the Great's reign in 1725, his efforts to create a well-supervised administration and officialdom had fallen short. He had not provided the professionalisation or financial support needed to create an independent judiciary; he had not established enduring offices of oversight; he had not convinced people to trust his institutions. He had, in fact, undermined that effort by allowing direct address to him on important state issues. Peter's successors addressed the same issues – the burden of petitioners addressing them, endemic corruption and judicial delay – using the same means Peter had tried – affirming the judicial hierarchy, promoting offices such as the Reketmeister and the procuracy, and exhorting officials to change

23 On the *punkty*: PSZ, no. 1707 (27 October 1699); PSZ, no. 1748 (02/02/1700); PSZ, no. 2877 (25 January 1715); PSZ, no. 3261 (22 February 1718); PSZ, no. 3984 (28 April 1722).

24 PSZ, no. 3261 (22 December 1718). The Ober-Secretary of the Senate as overburdened: Eroshkina, Ober-Prokuror Senata.

25 Eminent person: PSZ, no. 3581 (13 May 1720). A decree defined how the new official should vet petitions: PSZ, no. 3643 (17 September 1720). Reketmeister named: PSZ, 6 no. 3877 (12 January 1722), pt. 4. Instruction for Reketmeister office: PSZ, no. 3900 (05 February 1722). Further defined and expanded: PSZ, 6 no. 3947 (06 April 1722); PSZ, no. 3968 (17 April 1722). On the Reketmeister: Eroshkina, General Reketmeister; Volkov, Kantseliariia; Volkov, Reketmeister.

26 Hopping venues to higher instance: Serov, Sudebnaia reforma, p. 270; Kollmann, Crime and Punishment, pp. 182–183. The plethora of petitions lodged in the Senate archive reveals indiscriminate petitioning. This publication covers 1703–1733: Opis′ dokumentov. This collection covers 1711–1716: Kalachov, Dubrovin, Doklady i prigovory.

their ways. None of the sovereigns managed to create adequately funded and professionally staffed institutions, and none solved the problem of people claiming a direct relationship with the sovereign.

4. Petitioning After Peter the Great

All of Peter's successors came to the throne embracing their obligation to accept petitions and give good justice. At the start of their reigns, each issued a decree spelling out the proper wording of petitions to them.[27] Virtually all invited petitions and then struggled to control the resulting flood. We see with the succession of each ruler a performative dance: the ruler makes themself available for petitions, then crumbles under the burden without creating institutional changes to accommodate the petitioning process.

Months after her accession to power in January 1725, for example, Catherine I declared that when she had come to the throne, "*taking pity on Our subjects, especially poor widows and orphans and others suffering injury*", she had invited people to submit petitions to her. But she was so "*completely burdened and inconvenienced (obezpokoena)*" by the flood of requests, many of them frivolous or inappropriate, that she had had to rescind her order. Instead, she reminded people of the hierarchy of courts created by Peter the Great, allowing petitions to herself (through the Reketmeister) only regarding treason and rebellion.[28]

Empress Anna Ioannovna (ruled February 1730 to October 1740) echoed Peter I's concern with corruption and good justice and tried to resolve some of the problems discussed above. On March 12, 1730, for example, she ordered, under threat of her "grievous anger" (*tiazhkii gnev)* that all judicial offices from the central Colleges and Chanceries to the *gubernii* should resolve cases justly and report regularly on their work – how many cases they had resolved, how many still lingered, and how long each case had taken. Within a week (March 20), she created civil and criminal judicial offices (*Sudnoi* and *Sysknoi Prikazy*) to deal with the press of cases in the Moscow *guberniia* and a growing backlog of appeals in the Senate. She criticised

27 On the proper form of address in petitions: Peter I, PSZ, no. 1899 (01 March 1702); Catherine I, PSZ, no. 4755 (30 July 1725); Peter II, PSZ, no. 5071 (08 May 1727); Anna Ioannovna, PSZ, no. 5501 (09 February 1730); none for Anna Leopol'dovna; Elizabeth, PSZ, no. 8475 (27 November 1741); Peter III, PSZ, no. 11,392 (26 December 1761); Catherine II, PSZ no. 11,590 (02 July 1762).

28 Catherine I's lament: PSZ, no. 4785 (29 September 1725). Catherine I's successor and Peter the Great's grandson, the teenager Peter II (born 1715, ruled May 1727 to January 1730), did not report being inundated with petitions and he assigned the Reketmeister's role to the Ober-Prokuror: PSZ, no. 5023 (07 March 1727); Volkov, Reketmeister, p. 228. On oversight and petitions in Catherine I and Peter II's reigns: Gribovskii, Vysshii sud i nadzor v Rossii, pp. 26–39.

the Senate for shirking its work and her Prokurator for not overseeing the Colleges as his duties demanded.[29] Paralleling Catherine I, Anna Ioannovna reminded the public of Peter the Great's judicial hierarchy and his many decrees prohibiting approaching the ruler with petitions, and yet lamented "*But now people of all ranks, disdaining the above-mentioned decrees, bypassing the appropriate courts, not only for large but about the most insignificant issues, submit petitions to Us Ourselves, and in all places disturb and burden Us.*" Anna Ioannovna restored and expanded the Reketmeister's role, directing him to receive all petitions that had made their way up the hierarchy to the Senate.[30]

Nevertheless, throughout Anna Ioannovna's reign, petitioning continued to be a headache. In February 1732, Anna reiterated that people were not to approach her with petitions "*on all Sundays and ceremonial days and holidays, and during evening receptions at court* (*kurtagi*)*"*. In addition, the Senate tried to bring order to the petitioning process in August 1737, setting aside two days a week (Monday and Thursday) for submitting petitions to it: "*No petitioner is to give petitions to the Senators on the road or in the Senate, bypassing the Ober-Sekretari and bypassing the particular place (osobaia palata) designated for such receipt.*" Prosecutions for not following these norms continued.[31]

When Empress Anna Ioannovna died in October 1740, the same dynamic continued. Regent Anna Leopol'dovna came to the throne with a manifesto of 23 October 1740, affirming her commitment to good justice: "*because justice (pravosudie) provides the especial integrity and well-being of the State, and where it is lacking, there even God's blessing is absent.*"[32] She made herself available to hear her subjects' grievances but quickly became inundated: already in a decree of 12 November 1740, she complained that many petitions submitted to her inappropriately were asking for special favours and all ignored the many preceding edicts prohibiting approaching the ruler. A few weeks later, Anna Leopol'dovna again committed herself to hearing petitions; she set aside one day per week – Saturday – to receive petitions about corrupt justice, expressing her concern for the "*extreme ruin and impoverishment*" befalling her "*poor petitioners*" who suffer delays and losses despite her decree of

29 Anger: PSZ, no. 5513 (12 March 1730). New offices: PSZ, no. 5521 (20 March 1730). General-Prokurator: PSZ, no. 5625 (02 October 1730). Its Instruction: PSZ, no. 6475 (03 September 1733). On oversight institutions in Anna Ioannovna's reign: Gribovskii, Vysshii sud i nadzor v Rossii, pp. 39–55.

30 Complaint: PSZ, no. 5546 (23 April 1730).

31 *Kurtagi*: PSZ, no. 5963 (18 February 1732). Senate two days: PSZ, no. 7356 (23 August 1737). Continued prosecutions: PSZ, no. 7599 (16 June 1738); PSZ, no. 7931 (07 November 1739).

32 Manifesto: PSZ, no. 8262 (23 October 1740). On Anna Leopol'dovna's reign: Gribovskii, Vysshii sud i nadzor v Rossii, pp. 56–62. Anna Ioannovna was the niece of Peter I through his half-brother Ioann Alekseevich. Anna Leopol'dovna was her niece and a granddaughter of Ioann; she ruled on behalf of her infant son Ioann Antonovich (born August 1740).

12 November, ordering prompt resolution of cases.[33] Her new Reketmeister was, however, soon fired for corruption.[34]

Good justice also meant eliminating the Senate's backlog of appeals cases, and in her short reign, Anna Leopol'dovna issued many decrees urging the Senate to resolve the problem. But she never managed to spur them to action.[35] When Empress Elizabeth came to the throne in a coup on 25 November 25 1741, she similarly turned her attention to the Senate, clothing it in a declaration of loyalty to her father's legacy. She vowed to restore the Senate to the prestige and power that Peter I had envisioned, with particular attention to eradicating "*disorder in state administration*," including the judiciary.[36] Nevertheless, like her predecessors, throughout her reign, Empress Elizabeth struggled to get the Senate to do its work. In decrees of December 1744, July 1752, March 1753 and August 1760, she chided the senators for their inaction.[37]

Like her predecessors, Empress Elizabeth made herself open to petitions, but in January 1742, less than two months after her accession, she was forced to admit that too many petitioners were burdening her with requests. She declared that petitions could be submitted directly to her (through the Reketmeister) only on Tuesdays. Within a few months, this, too, proved untenable. In May she declared that "*We ordered this because in Our Most Merciful Empress's opinion We Ourselves could see the real, present need of Our subjects, and [We wanted] to overturn persecution done to them*." But because too many people were submitting to her all manner of inappropriate cases, completely upsetting her important tasks of governing, she was forced to remind them of the proper hierarchy of venues – the courts, the Senate and the Reketmeister. In no case should they approach her, under threat of "*harsh public punishment and exile to hard labour*."[38]

Nevertheless, the empress found no relief from petitions. In 1749, 1753, and 1759, Elizabeth repeated her complaints of 1742 and reiterated that only for unjust

33 Inundated: PSZ, no. 8289 (12 November 1740). Extreme ruin: PSZ, no. 8293 (27 November 1740). Calling oneself "poor" or facing poverty and ruin was a common trope in petitionary language: Brown, Poverty, particularly chaps. 2 and 3; Connolly, Petitioning, p. 63; Lacey, Petitioner for Royal Pardon, p. 52; Vallerani, Medieval Public Justice, pp. 320, 326–327, 334–345; Fosi, Papal Justice, pp. 217–219; Musson, Patterns of Supplication, p. 93.

34 New Reketmeister: PSZ, no. 8288 (12 November 1740). Dismissed Reketmeister: PSZ, no. 8345 (04 March 1741). His dismissal: Gribovskii, Vysshii sud i nadzor v Rossii, p. 57.

35 Anna's decrees: PSZ, no. 8294 (02 January 1740); PSZ, no. 8299 (15 December 1740); PSZ, no. 8385 (30 May 1741).

36 Elizabeth's intent: PSZ, no. 8480 (12/12/1741). On oversight in Elizabeth's reign: Gribovskii, Vysshii sud i nadzor v Rossii, pp. 63–95.

37 Elizabeth's decrees: PSZ, no. 9083 (05 December 1744); PSZ, no. 10,007 (02 July 1752); PSZ, nos. 10,085 and 10,089 (29 March 1753); PSZ, no. 11,092 (16 August 1760).

38 Tuesdays: PSZ, no. 8497 (13 March 1742); PSZ, no. 8558 (28 May 1742).

resolution and corruption in the Colleges and Chanceries could one write directly to the Senate through the Reketmeister. Her decree of 1759 strikes a familiar tone of exasperation and empathy: despite so many previous laws forbidding petitioning directly to the ruler, "*especially when I leave the palace and when I drive in the countryside, where there is neither time nor expertise for the appropriate investigation, often many people of all ranks disdain and give Her Imperial Majesty petitions, in many cases completely empty and frivolous.*" Yet she assured her people that if they do not get "*defence and resolution*" in the courts, then they should submit a petition to her through her Cabinet.[39] Her embrace of patrimonial ideology undermined her protestations.

When Catherine II took the throne in a coup on 28 June 28 1762, she was confronted with the same problems and responded in familiar ways.[40] She complained of petitioners approaching her; she named three officials to accept petitions to herself; she reorganised the Senate to create separate departments for judicial appeals; she created commissions to address the Senate's backlog of cases. However, neither these steps nor her reforms of the Senate in 1763 and of local administration in 1775 fundamentally changed the institutions, training or public expectations about justice.[41] Backlogs continued: on his accession in 1796, Catherine's son Paul I confronted more than 14,000 unresolved cases in the Senate.[42] Distrust of judicial venues endured, as did petitioning directly to the ruler. As we saw, Paul I, in 1799, was complaining in the same terms as Peter the Great and his successors had repeatedly invoked across the century. Russia's autocrats were trapped by their own ideology, as further indicated by their practice of pardoning.

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39 Complaints repeated: PSZ, no. 9612 (10 May 1749); PSZ, no. 10,136 (17 September 1753); PSZ, no. 10,980 (08/08/1759). A brief decree adding that she is not to be approached during evening receptions (*na kurtagakh*): PSZ, no. 9951 (03 March 1752).

40 In his brief reign (25 December 1761 to 28 June 28 1762), Peter III similarly chided the Senate and Colleges to work efficiently and complained of petitioners. Chided: PSZ, no. 11,411 (22 January 1762); PSZ, no. 11,437 (07 February 1762); PSZ, no. 11,558 (01 June 1762). Frivolous requests: PSZ, no 11,459 (04 March 1762). On oversight in Peter III's reign: Gribovskii, Vysshii sud i nadzor v Rossii, pp. 94–95. Peter III created Appeals Departments in various chanceries: PSZ, no. 11,422 (29 January 1762).

41 Petitioners: PSZ, no. 11,459 (04 March 1762). Three officials: PSZ, no. 11,867 (14 June 1763); PSZ, no. 11,868 (23 June 1763). Catherine II folded the General-Reketmeister into new judicial Departments of the Senate (the Second in St Petersburg and the Sixth in Moscow); the role endured in the Second Department until 1810: Eroshkina, General Reketmeister, pp. 148–149; Volkov, Reketmeister; Volkov, Kantseliariia. On Catherine's central government reforms: Gribovskii, Vysshii sud i nadzor v Rossii; Ledonne, Ruling Russia, pp. 145–152.

42 Paul I attacked the backlog seriously, reducing it from almost 19,000 in 1798 to about 13,000 in 1799. Ledonne, Ruling Russia, p. 148; McGrew, Paul I of Russia, p. 219.

5. Pardoning by Amnesty

Throughout the early modern era in ceremony, symbolism and actions, Russian rulers presented themselves as benevolent patrimonial autocrats exclusively empowered to bestow mercy. They regaled in this role. In 1699, for example, Peter I reassured his people that if approached with a complaint about major issues, he would "always decide the cases himself immediately." In 1720, he decreed that a specific place for public announcements of mercy for criminals should be constructed in St. Petersburg. In 1730, his niece Empress Anna Ioannovna defended the ruler's exclusive right of mercy (*pomilovanie*), including giving pardons, debt forgiveness and resolution of grievances.[43] As we have seen, all eighteenth-century rulers welcomed petitions and struggled to fulfil the role of managing them. Even more than in accepting petitions, Russian rulers unambiguously embodied mercy through their use of pardons.

There were two formats in which Russian sovereigns bestowed pardons that expunged or reduced a criminal sentence. One was in the court system, where judges routinely lessened sentences in the name of the tsar. But rulers personally captured the people's attention when they bestowed collective amnesties. In Europe, by the eighteenth century, amnesties had generally been subsumed into the judicial system, save for very special celebrations, but in Russia, collective pardons continued throughout the eighteenth century and beyond.

One cannot say with certainty how often Russia's rulers bestowed pardons. Sources in Russian history are scarce until the late seventeenth century, when cultural change and the dynamism of Petrine reform stimulated more diverse genres of sources. Until then, historical chronicles provide the sole political narrative, while bureaucratic documents record the most important diplomatic, fiscal, land and military activities of the state. Chronicles written in the various Rus' lands from the eleventh century up through Muscovite annals in the sixteenth century regularly depict grand princes distributing alms, food and gifts to the people. Such generosity might also have included pardons for criminals, but we first hear explicitly of such pardons in the mid-seventeenth century from two eye-witnesses. In 1666, Muscovite bureaucrat Grigorii Kotoshikhin described the tsar and tsaritsa's distribution of thousands of rubles to the elite, to church hierarchs and monks and to the people on important occasions, including the tsar's wedding, the birth of his children and family funerals. Their largesse also included pardoning criminals *en masse:* "*when the tsar is crowned and his nuptials are celebrated, all the criminals in Moscow and in the provinces are set free, except in the most serious cases of murder*."

43 Peter I will decide: PSZ, no. 1707 (27 October 1699). Specific place: PSZ, no. 3635 (30 August 1720). Anna defends: PSZ, no. 5601 (07 August 1730), pt. 16.

Indeed, in 1676, Tsar Fedor Alekseevich announced an amnesty from corporal punishment in commemoration of the death of his father.[44]

Aleksei Mikhailovich's doctor Samuel Collins also reported in the 1660s that the tsar bestowed mercy every Good Friday and Holy Saturday: "*Once a year, viz upon good Friday, he visits all the prisons in the night, and taking personal cognizance of all the Prisoners, buys out some that are in debt, and releases others that are criminal, as he thinks fit: He pays great sums for such as he is inform'd are really necessitated.* His *Czaritza buys out Women*."[45] This is not surprising. Across Europe, Good Friday was a traditional day for royal forgiveness, on the model of Christ forgiving one thief from the cross.[46]

From the 1690s onwards and throughout the eighteenth century, the tsars seem to have issued more frequent and more generous amnesties (see Appendix). This might create the illusion of a richer source basis, but it might well reflect the fact that succession to the throne in Russia was hotly contested, and amnesties might have helped a new ruler win popular support.[47] Peter I, as in many ways, differed from his successors in the form of his amnesties. His were strategic and narrowly focused, reflecting his long engagement in the Great Northern War (1700–21). In the 1710s and 1720s, Peter offered pardons not to convicted criminals but rather to deserters from the army and navy: they would face no punishment if they returned to the ranks.

Peter's successors used amnesties in more inclusive ways. As a rule, they linked amnesties with special occasions. Rulers generally began their reigns with amnesties to the people and lavish distributions of land and favours to elites. In memory of Peter I, in 1725, Catherine I, for example, issued generous amnesties to criminals. Military victories occasioned amnesties, such as the victory in the Great Northern War in 1721 and Catherine II's victories over Sweden and the Ottoman Empire. Coronations, weddings and funerals in the royal family further occasioned amnesties. Even with the advent of nationalism, Russia's emperors continued such personal largesse well into the nineteenth century. As Richard Wortman has demonstrated, tsars simply adapted nationalism to their autocratic identity by asserting

44 Kotoshikhin, O Rossii, chap. 1, quote art. 22, p. 14. Amnesty: PSZ, no. 623 (05 February 1676).

45 Collins, The Present State of Russia, p. 124, see also p. 58.

46 Good Friday: Lacey, Petitioner for Royal Pardon, p. 63; Murphy, Royal Grace, p. 307. Murphy notes that before a ceremonial adventus, town councils negotiated with monarchs regarding categories of criminals to be excluded from pardons (based on severity of crime or bodily mutilation): Murphy, Royal Grace, pp. 295–296, 300–304.

47 On amnesties : Iankovaia, Manifesto 1, pp. 15–16.

that they personally embodied the nation, and they continued bestowing patrimonial mercy.[48]

Although some amnesties alleviated taxation for a given period, pardons for criminal convictions were the most common. As a rule, they excluded the most serious criminals but allowed the release of lesser felons, most of whom were in Siberian exile. It was no small gesture to provide amnesty for exiles since Russia's exile system was far-flung and difficult to control. A complicating factor, however, was that capital criminals were often physically marked with bodily mutilation or branding before being sent into exile. Such defacement, in itself, regardless of crime, became an element in pardoning. Even though they had been pardoned and could live as free subjects, such scarred people were banned from returning to the Russian heartland. It was presumably too distasteful for the general populace to see physically disfigured individuals.[49]

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When Russian emperors across the eighteenth century complained of the burden of petitions, they had only themselves to blame. They had failed to create a professional officialdom or effective courts that people respected; they failed to support institutions of oversight and systems of vetting petitions promptly once received by a court, the Reketmeister or Senate. To a great extent, this reflected the poverty of the Russian empire, even in the eighteenth century. It was always scarce in fiscal resources, manpower, literacy, professional classes, and resources to create civil administration. Military expenditures and largesse for the court and elites gobbled up much. But the failure of civil administration that we have witnessed was also a reflection of inefficient? tsarist communication.

Russia's rulers failed to convince the public that impersonal institutions embodied tsarist sovereignty because they themselves projected the opposite message. They persisted in playing the role of benevolent personal autocrats. They complained about petitions, but they invited them on crucial issues. They relished in the opportunity to distribute benevolence in public displays of mercy. As late as the eighteenth century, petitioning and pardoning were central to their identity as legitimate rulers, despite their protestations to the contrary.

48 Nineteenth-century amnesties: Kimerling Wirtschafter, From Serf to Russian Soldier, pp. 99–101; Wortman, National Narratives.

49 On exile and the branding of criminals, see Kollmann, Crime and Punishment, chap. 11.

6. Appendix: General amnesties in the eighteenth century

In memory of recently deceased members of the dynasty: PSZ, no. 1407 (05/19/1691); and PSZ, no. 1483 (01/26/1694); PSZ, no. 1488 (03/10/1694); PSZ, no. 8263 (10/23/1740).

In honour of Peter I: PSZ, no. 4638 (01/26/1725); PSZ, no. 4641 (01/27/1725); PSZ, no. 4642 (01/27/1725); PSZ, no. 4648 (02/04/1725); PSZ, no. 4655 (02/14/1725); PSZ, no. 4738 (06/25/1725); PSZ, no. 4871 (04/22/1726).

In honour of Catherine II's lengthy reign: PSZ, no. 15,024 (06/28/1780); PSZ, no. 16,551 (06/28/1787); related: PSZ, nos. 16,638 and 16,639 (03/31/1788).

On the dedication of a statue to Peter I: PSZ, no. 15,488 (08/07/1782).

On the occasion of accession to the throne and coronations: PSZ, no. 4645 (01/30/1725); PSZ, no. 5089 (06/08/1727); PSZ, nos. 5243 and 5244 (02/24/1728); PSZ, no. 5596 (07/22/1730); PSZ, no. 8481 (12/15/1741); PSZ, no. 11,667 (09/22/1762); PSZ, no. 12,205 (07/14/1764); PSZ, no. 17,928 (04/25/1797).

Celebrating military victories: the Great Northern War, PSZ, no. 3842 (11/04/1721). Turkish and Swedish wars, PSZ, no. 8021 (02/14/1740); PSZ, no. 8992 (06/15/1744); PSZ, no. 14,275 (03/171775); PSZ, no. 17,149 (09/02/1793).

Peter I's amnesties for deserters: PSZ, no. 2318 (02/18/1711); PSZ, no. 2728 (10/28/1713); PSZ, no. 2755 (12/18/1713); PSZ, no. 2813 (05/26/1714); PSZ, no. 3597 (06/08/1720); PSZ, no. 3755 (03/07/1721); PSZ, no. 3924 (04/04/1722); PSZ, no. 4226 (05/20/1723); PSZ, no. 5122 (07/19/1727).

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Gerd Schwerhoff

Hanging or Pardoning?

Coping with the Rebels after the Peasants' War of 1525

With the emergence of the history of crime and criminal justice, the forms and functions of pardons have increasingly received attention.[1] Political conspiracies, Lèse-majesté or rebellions have always enjoyed a special status within the broader history of crime.[2] Unsurprisingly, pardon and grace play a significant role in the sanctioning of political crimes. However, they have rarely been the subject of systematic or comparative studies. For late medieval Flanders, Dumolyn emphasises the interplay between harsh individual punishments imposed on prominent leaders and collective acts of mercy intended to pacify the society.[3] Similar observations can be made both for the French Jacquerie of 1358 and for the Peasant Revolt of 1381 in England.[4] This article is about the largest uprising in the Holy Roman Empire of German Nation, perhaps even "the largest mass movement in Europe before the French Revolution"[5] of all, the so-called "Peasants' War" of 1525. These superlatives beg the question to which extent punishments and pardons formed part of the event's special profile when compared to other uprisings. The extensive research literature and the numerous source editions provide a good basis for discussing this question, although in-depth research is still lacking.[6]

1. The Case of the German Peasants' War of 1525

First, I will take a brief look at the event itself and its background. The rebellion began in autumn 1524 with insurrections in the southwestern part of Germany at the High Rhine westbound to Lake Constance and in the Black Forest. Subsequently,

1 Cf. the review article by Verreycken, The Power to Pardon. Furthermore, for the German research cf. Bauer, Gnadenbitten; Ludwig, Herz, pp. 151–271. Many thanks to Ulrike Ludwig, Quentin Verreycken and Maria Tauber for their helpful comments on a previous version of this article.

2 Beaulant, Verreycken, Pardonner des traîtres, here p. 6.

3 Dumolyn, Legal Repression of Revolts, pp. 508–509.

4 Firnhaber-Baker, The Jacquerie of 1358, pp. 241–265; Eiden, "In der Knechtschaft werdet ihr verharren ...", pp. 388–413.

5 Sreenivasan, Social Origins, p. 30; Scott, Scribner, The German Peasants' War, p. 1.

6 Cf. for my own view on the event, see Schwerhoff, Bauernkrieg; for more specific research on punishment within this context, infra note 12.

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the uprisings spread over Upper Swabia to the central and eastern areas of the Holy Roman Empire, from Franconia to Thuringia and even to the Alps. From mid-April to mid-May, most areas south of the Main were in revolt, with the exception of the Duchy of Bavaria. In the various areas of revolt, tens of thousands of peasants joined together to form numerous peasant bands, which put pressure on the feudal lords by storming numerous monasteries and castles.

The exact course of the uprising cannot be analysed in detail here, nor can its deeper causes.[7] A variety of economic grievances were at the root of the uprising, and political and legal demands were also formulated. However, the chronology alone suggests that mobilisation by the Reformation movement was of central importance, even if Martin Luther quickly and brusquely opposed the rebels. The mass movement of the subjects was hardly able to achieve any lasting military successes. The first major defeat at the Battle of Leipheim at the beginning of April was just a foretaste of the many battles, often massacres, that were to come: Böblingen in Württemberg on 12 May, Frankenhausen in Thuringia on 15 May, Zabern in Alsace on 17 May, Königshofen in Franconia on 3 June and Pfeddersheim in the Palatinate on 23 June are just some of the places where thousands of insurgents lost their lives. In the aftermath of the defeats, a sometimes-harsh judgement was issued against the survivors. However, there were also treaty arrangements that made it possible to avoid a violent confrontation. The best-known example is the Treaty of Weingarten, which ended the rebellion north of Lake Constance and to some extent in the Allgäu. In Tyrol and the prince-bishopric of Salzburg, the protest was directed into more peaceful channels by the constitution of the territorial states. The resolutions of the respective assembly of the estates took up at least some of the demands raised by the rebels. The established noblemen among the insurgents benefited the most, while other dissatisfied protesters were successfully criminalised.

Peter Blickle has described the Peasants' War of 1525 as a "revolution of the common man", an interpretation that has remained influential in German historical scholarship to this day.[8] The term "common man" suggests that not only peasants carried out the protest but also many ordinary citizens and sometimes even miners. And this protest, according to its characterisation as a "revolution", was aimed at a fundamental upheaval of social conditions. I am sceptical about both elements of this formula.[9] Although many city dwellers also took part in the actions of the "peasant bands" (Bauernhaufen) in the countryside, the protest of the urban lower classes within the respective city walls was mostly limited to the individual

7 Cf. overall Schwerhoff, Bauernkrieg.

8 Blickle, Die Revolution von 1525.

9 Cf. Schwerhoff, Bauernkrieg, pp. 580–584.

city. The Peasants' War can only be described as a "revolution" if scattered statements by individual authors and radical slogans born of the situation ("Beat all the nobles to death!") were subsequently combined into a coherent revolutionary programme. Most of the demands were anything but revolutionary, especially the famous "Twelve Articles": this condensation of many local gravamina from the German southwest, edited in Memmingen and quickly printed in numerous editions, was adapted and accepted by the rebels throughout the insurrection area as 'their' programme.

The legal historian David von Mayenburg, in particular, has recently emphasised how much the rebellious peasants relied on the legal card and how open they were to legal advice. While older German research denounced Roman law as hostile to the peasants, Mayenburg postulates this Roman law as the peasants' only realistic hope apart from the Bible.[10] In fact, the Twelve Articles also dealt with criminal law at least once in addressing a distinct level of law ("*große Frevel*"), namely, the offences that were tried before the village lower court. However, the complaint that the courts were not strictly objective, but sometimes too strict and sometimes too lenient, and the demand not to decide "*according to favour*", could be read in a very generalised way as a "call for a predictable, moderate and formalised handling of criminal law".[11]

The concrete operations of the many peasant bands also spoke against the revolutionary and subversive aims of the insurgents. They attempted to build up a potential threat to the feudal lords and to persuade them to make concessions through negotiation. In contrast, the rebels shied away from violent confrontations not only for tactical reasons but also because of their moderate aims: the vast majority of the peasants were keen to reach an amicable settlement with their lords or at least a legal decision on their grievances. Only superficially do the many destroyed monasteries and castles contradict this statement. They resulted in part from practical military considerations and in part from a radical anti-clericalism that was characteristic of the entire Reformation. Significantly, the storming of the enemy bastions cost surprisingly few lives. Acts of violence on the part of the peasants, such as the notorious bloody deed at Weinsberg on Easter Saturday 1525, were the exception. As a rule, the rebels dealt rudely with captured feudal lords but spared their lives. On the part of the feudal lords, however, there were hardly any such scruples. In many cases, the bloody reckoning of the princes stood in dismaying contrast to the demand of the Twelve Articles for a predictable criminal justice system.

10 Mayenburg, Gemeiner Mann, p. 353.

11 Ibid. p. 253.

2. The Normative Foundations of Punishment

The significance of clemency and pardon in the wake of the Peasants' War of 1525 has not yet been systematically discussed. However, there are now several works on the consequences of the uprising in which the sanctioning of the rebellion is discussed in detail, and which form an important frame of reference for the following considerations.[12] The first question to be asked is on what legal basis the punishment of the rebels of 1525 could have been based. A number of imperial or territorial laws against rebellion and outrage had existed since the beginning of the century. King Maximilian I's Heidelberg „*Empörermandat*" of 30 May 1502, drawn up in direct response to the "*Bundschuh*" uprising of the same year, served as a model. In it, the rebels were branded perjured traitors to their fatherland and threatened with corporal punishment, life imprisonment and banishment. It also makes a distinction between the captains and ringleaders, who were to be severely punished, and the mere followers, for whom less severe sanctions were possible; this was to be implicitly or explicitly included in all future legal norms.[13] In the Duchy of Württemberg, this line of legislation was continued with the Tübingen Treaty of 1514. In response to the uprising of "*Armer Konrad*," it contained a passage on the penalisation of "*sedition and outrage*". In direct reaction to the Peasants' War, provincial diets in the County of Tyrol and the Archbishopric of Salzburg passed similar legal norms to criminalise uprisings in 1525/6.[14] Ultimately, all of these provisions were rooted in the "Perpetual Peace" (*Ewiger Landfrieden*), which was passed at the Diet of Worms in 1495 and last reaffirmed in 1521. Fundamental to this was the prohibition of the enforcement of one's own interests through violence and the requirement to settle any conflicts by legal means. In fact, these provisions were primarily intended to put an end to feuding by the nobility. However, the regulations were comprehensive and applied to all estates, and it was in keeping with their spirit and content to apply them to all forms of violent self-help, including any rebellions by subjects: no one, "of whatever dignity, rank or nature, (shall) fight, make war, rob, capture, overrun, besiege [...] nor take any castles, towns, markets, fortifications, villages, farms or hamlets [...] with violent offence, or dangerously damage them with fire or in other ways."[15] In principle, the rebellious peasants could thus be criminalised as violators of the peace, and some of their leaders were later charged as such. In practice, however, in many cases, no formal court

12 Summarising with recent literature Gabel, Schulze, Folgen; of special importance Sea, Schwäbischer Bund and Hohn, Die rechtlichen Folgen.

13 Rosenkranz, Der Bundschuh, no. 21, p. 110; Pauser, Schennach, Tiroler Landesordnungen, Tit. 19. p. 227; Leist, Quellen-Beiträge, no. 101, p. 385.

14 Ohr, Kober, Württembergische Landtagsakten, no. 72, pp. 230–231.

15 Wrede, Deutsche Reichstagsakten, no. 29, p. 318.

judgement was required to establish the offence of breach of the peace and bring the perpetrator to justice.

Interesting and in need of explanation, but not to be discussed further here, is the observation that the Carolina of 1532 remained strangely unaffected by the Peasants' War. For centuries, Emperor Charles V's penal code (*Constitutio Criminalis Carolina*) was "probably the most important law of the Old Empire".[16] From its establishment, Article 127 of the *Carolina* was to be decisive for the criminalisation of social and political protest: anyone who "makes dangerous, wilful and malicious sedition of the common people against the authorities", it states, should be "punished according to the size and occasion of his ill-treatment with the cutting off of his head or struck off with rods and expelled from the country [...] in which he arouses the sedition".[17] In essence, this provision takes over Article 152 of the *Constitutio Criminalis Bambergensis* of 1507(!) on those causing sedition among the common people and therefore had its origins long before the events of 1525.[18]

In 1525, however, the legal provisions of the Swabian League were to become of the greatest practical relevance for the authorities' dealings with the rebels. The Swabian League was a confederation (*Einung*) of various imperial territories founded in 1488 to protect the peace of the land.[19] Originally formed under the patronage of the Habsburgs, primarily by small nobles and imperial cities, at the time of the Peasants' War, the alliance comprised almost all rulers in the south of the empire. In the era of the rising territorial state, peacekeeping organised on a cooperative basis was a rather "medieval" instrument, but in the transitional period at the beginning of the 16th century, traditional alliance politics and incipient statehood were combined in the Swabian League. The covenant regulations of 1500 already contained a passage according to which the subjects of the alliance members (*Bundesverwandte*) were forbidden to "disobey" their respective authorities. This effectively qualified disobedience by the subjects as a breach of the peace and implicitly justified action by the Confederation against potential rebels. The fact that the Confederation was to be the main instrument for combating rebellion in 1525 was already implicit in this provision. But that was not the whole truth: on the other hand, the article also contained the provision that any complaints by subjects against their masters should be brought before the Federal. The assembly of the League was to hear both sides, attempt to settle the dispute amicably, and, if this

16 Oestmann, Art. Constitutio Criminalis Carolina.

17 Cf. Zoepfl, Peinliche Gerichtsordnung, p. 238.

18 Hohn, Die rechtlichen Folgen, p. 348. This calls into question Peter Blickle's thesis that the Carolina was the keystone of a criminalisation of protest against the background of past experiences of insurrection. See Blickle, Criminalization.

19 Carl, Landfrieden und Genossenschaft.

was unsuccessful, make a decision.[20] In fact, in two cases around 1500, the Swabian League not only put down a subject revolt but also acted as a court of arbitration between rulers and subjects, and by no means unilaterally in favour of the lords.[21] This explains why, at the beginning of the revolt in the summer of 1524 and in the first months of 1525, the rebels placed some hope in the mediation activities of the League. They were to be bitterly disappointed. The army of the Swabian League under the supreme field captain Georg Truchsess von Waldburg became a key player in the suppression of the uprising.

Early on, at the beginning of April, the Confederation had already formulated terms of surrender, which it imposed on the vanquished as standard, albeit with regional variations. They also served as a model and inspiration for other authorities outside the federal territory.[22] The peasants were to surrender to their masters "on grace and disgrace" (*auf Gnade und Ungnade*), i. e., to capitulate unconditionally. Above all, this included the obligation to surrender their flags as well as all weapons, armour and military equipment. All those affected had to swear renewed obedience to their masters and fulfil their traditional duties. In addition, they were to pledge, on pain of death, never again to join any brotherhood, union or other association against the authorities. Compensation arrangements were to be agreed with the respective authorities for any damage caused. In addition, all villages were to pay six guilders from each house to the Confederation "as a punishment and as a war contribution (*Brandschatzung*)." As far as individual punishment was concerned, the "ringleaders" and those who incited others to rebel were to be punished by the field captain according to their guilt. All those who had "departed" and did not surrender on grace or disgrace (*die Abgewichenen*), i. e., who did not want to hand themselves over to the punitive power of the Confederation, were to have their wives and children sent after them and their goods confiscated; half of the latter were to go to the Confederation and half to their own authorities. All subjects were forbidden to offer support to the fugitives under any circumstances but had to report them to the authorities or, if necessary, hand them over. Anyone who felt unjustly treated had the right to appeal to the Federal Council but was not allowed to refuse obedience.

20 Datt, Volumen Rerum Germanicarum Novum, § 31, p. 357; cf. Carl, Der Schwäbische Bund, p. 423.

21 Carl, Der Schwäbische Bund, p. 424.

22 Sea, Schwäbischer Bund, pp. 130–131. Variants of this mandate in Schreiber, Der deutsche Bauernkrieg Vol. 3, no. 373, pp. 3–4; Franz, Quellen, no. 201, pp. 578–579.

3. Surrendering to Grace and Disgrace

In the early days of the uprising, some princes had announced that they would "graciously" forgive the rebels or not allow any "disfavour" to take effect if these subjects voluntarily ended their uprising.[23] Later, in accordance with the mandate of the Swabian League, the demand was always made that the rebels had to surrender "to grace and disgrace". What the surrender of the defeated to grace and disgrace meant in practice was demonstrated in Leipheim at the beginning of April 1525. The town, to which many peasants had fled after the lost battle, was to be fired upon by the League, but an old man and some women were sent out of the town with a plea for mercy. The commander decided to accept their surrender to grace and disgrace. As in neighbouring Günzburg, the captured citizens and peasants were locked up in churches overnight. The next day, some of the ringleaders were led out into the open and beheaded by an executioner.[24] In addition, the conquered were required to pay a large amount of plunder.

Wherever negotiations took place in the following months before or after a battle, the princes demanded that the rebels surrender to grace and disgrace. This was the case before the Battle of Frankenhausen in Thuringia in mid-May, where Landgrave Philip also demanded that the peasants hand over the "false prophet", Thomas Müntzer, and his followers alive; this fundamentalist preacher was denounced by Martin Luther as the main cause of the sedition. In this case, they could count on leniency. Thomas Müntzer in person asked the assembled peasants whether they wanted to accept these conditions: "They all shouted 'No, no, we want to stay together dead and alive.' He then comforted them and promised that he would catch all the arrows and bullets of the enemy in his sleeve."[25] The result was one of the greatest massacres of the Peasants' War. When the victorious princely army later negotiated with rebels from the Middle Rhine on their way back from Franconia towards the Palatinate, the beaten took a much more realistic view of their situation and regularly responded to the demand to surrender to grace and disgrace. The latter always formed the basis of the terms of surrender, which also contained further conditions such as the surrender of weapons or the imposition of specific penalties in the form of pillaging or renewed homage. However, the formula "grace and disgrace" also signalled that further stipulations could be added depending on the preferences of the conquered. Above all, it regularly included the harsh

23 Hohn, Die rechtlichen Folgen, pp. 145–146.

24 Baumann, Quellen, pp. 552–553.

25 Ein gloubwir||dig/vnd warhafftig vnderricht || wie die Dhoringischen Pawern || vor Franckenhawszen vmb yhr || miszhandlũg gestrafft/(...) Dresden 1525 (VD16 G 2205).

punishment of ringleaders, without it necessarily being clear how broadly this group of people was to be defined.[26]

The capitulations to grace and disgrace were regularly associated with humiliating rituals. In Hersfeld, the male inhabitants, accompanied by their wives, received the approaching Landgrave Philip bareheaded and barefoot in front of the town and handed him the keys to the town.[27] In return, they got off relatively lightly. The inhabitants of Mühlhausen resorted to even more dramatic means when the victorious princely army approached from Frankenhausen. In order to save their community, which had been decried as a rebellion nest, the women of the town went to the prince's camp to beg for mercy from Elector Johann, who was considered to be particularly accessible. The city chronicle records a total of 1,200 women in penitential dress and 500 virgins with wreaths of wormwood on their heads to symbolise their bitter fate, a significant proportion of the female population.[28] The petition of the "poor women" of Mühlhausen states that their husbands were innocent because they had been forced into the rebellion.[29] However, the women were unable to persuade the commanders of the opposing army to do more than promise the princes that only the truly guilty would be punished. The next day, Ascension Day, the staging of humility and penance was repeated on a larger scale outside the city gates. Unarmed, thousands of men from Mühlhausen faced the army of princes gathered in the field to hand over their town to the numerous princes, counts and lords present.[30]

The princes, for their part, also resorted to drastic measures to emphasise the uncertain, liminal threshold state in which the rebellious community now found itself after its capitulation on grace and disgrace.[31] Uncertainty was to prevail among all those affected, especially as to who was counted among the ringleaders and could expect capital punishment. After Landgrave Philipp had conquered the rebellious town of Fulda on 3 May 1525 ("half by storm and half by mercy", as he himself wrote), 1,500 rebels were forced into the castle moat and held prisoner there for a while before being released "on mercy". The peasant band of Bildhausen eloquently lamented the fate of their captive brothers: they had been "thrown into the castle moat by the ruffian and tyrant, the landgrave ... and forced there with great hunger, and for the last they were thrown their bread like unreasonable

26 Struck, Bauernkrieg am Mittelrhein, Nos. 33, 38, 60 95, 102 et alii.

27 Merx, Akten Vol. I,1; Franz, Akten Vol. I,2; Fuchs, Franz, Akten Vol. II; here Vol. I,1, no. 447, p. 339.

28 Franz, Akten Vol. I,2, no. 1616, pp. 415–416.

29 Ibid., no. 1561, pp. 376–377.

30 Ibid., p. 415.

31 On the concept of liminality according to Victor Turner, see Stollberg-Rilinger, Rituale, pp. 22–24.

animals, and also reviled them with scornful words and said: 'Where is your black peasant and evangelical God to help and succour you?'".[32]

Many people in the city of Würzburg were hit even harder. When the Swabian League dictated the surrender of the rebellious residents on 6 June, "*disgrace*" was spelt out in detail: 10 guilders for every household, punishment of the perpetrators, and complete disarmament were only the harshest articles; further compensation payments were to be determined by the episcopal sovereign. An answer had to be given within a few hours, otherwise, no one over the age of 12 would be left alive, and all vines and grain in the fields would be destroyed.[33] Despite the harsh conditions, a majority in the neighbourhoods decided to accept the terms of surrender. In the completely defenceless city, the humiliated awaited the judgement in three groups when the princes entered the city two days later: the citizens of Würzburg had been forced to assemble in the market square in front of the cathedral, the citizens of other towns in front of St Mary's Chapel and the peasants of the surrounding countryside in the suburb on the Rennweg. The people in all three groups were surrounded by lansquenets and had to fear for their lives, as the presence of several executioners did not bode well. The articles of surrender were read out, and all the town representatives threw themselves at the feet of the feudal lords present and begged for mercy. Georg Truchsess and Sebastian von Rotenhan, the fortress commander, read out lists of names. 80 men were to come forward, and anyone who wanted to hide had to be denounced by the bystanders under penalty of death. Those named had to assume that "they all wanted to be beheaded", wrote von Rotenhan later. The executioners asked "who they should start with. There was howling and screaming, with hands raised to beg for mercy." Six men were beheaded on the market square; there were more victims, 50 in total, on the other two squares. Further horrors awaited the survivors from the town's ruling class: around 40 men, including the famous sculptor and former mayor Tilman Riemenschneider and the town clerk Martin Cronthal, were held captive and interrogated for weeks in the dark cellars of the Marienberg; some of them, including Riemenschneider, were severely tortured by the executioner.

Meanwhile, in neighbouring Kitzingen, the sovereign Margrave Casimir of Brandenburg also held a severe judgement.[34] Through the mediation of the town's favourably disposed bailiff Ludwig von Hutten, he had accepted the town's surrender at grace and disgrace, adding that he would guarantee the lives of all its inhabitants. However, the supposedly favourable condition turned out to be the opposite, to the horror of the inhabitants, because – without directly breaking

32 Schäffler, Henner, Geschichte des Bauern-Krieges, pp. 372–373.

33 Ibid., pp. 332–333; Cronthal, Würzburg im Bauernkriege, pp. 86–87.

34 On the following Arnold, Kitzingen im Bauernkrieg, pp. 29–30.

his promise – the margrave took cruel revenge the next day. After the homage at the town hall, 134 punishable citizens were singled out and locked up overnight. Around 60 of them had their eyes gouged out by the margrave's executioner, Master Augustin, whom the people of Kitzingen have since called "Master Auwe". The margrave justified his action with angry, cynical words: he was only fulfilling the wishes of those who no longer wanted to see him as their lord.[35] According to one chronicle, no one was allowed to help or guide the blinded, they were treated "like unreasonable animals". Twelve of those punished in this way did not survive the ordeal. The others had to leave the town with their wives and children and, as a petition by a certain Michael Krum emphasises, live in "misery and poverty"; the brother of the meanwhile deceased Kasimir, Margrave Georg, allowed him to return in 1530.[36]

The terror could even be intensified, as the events in Alsace show. Duke Anton of Lorraine intervened there in mid-May when the Peasants' War threatened to spill into his territory.[37] In addition to practical reasons of rule, he was also guided by ideology, as he saw himself as a crusader waging a holy battle against the heretical insurgents. Thus, right at the start of his campaign, he refused to surrender to the local peasantry on the grounds of grace and disgrace, stating that he wanted to punish the peasants with God's help.[38] Faced with an initial slaughter in the neighbourhood and a large ducal force, the besieged peasants in the town of Zabern, together with the townspeople, then sought negotiations with Anton. There is contradictory information about the exact agreements; one eyewitness reports that the peasants surrendered "without grace", while another chronicler said "on grace." The fact that the peasants were to leave the town unarmed with white sticks and swear lifelong obedience speaks to the prospect of merciful treatment. However, when they marched out of the city on the morning of 17 May, flanked by armed lansquenets, the orderly procession turned into an excess of violence. A scuffle between departing peasants who defiantly celebrated Luther and lansquenets who reviled and cowed them formed the starting point of the ensuing bloodbath. In the face of this dispute, a voice had sounded from heaven, shouting, "Strike, it is us permitted!" ("Frappez dessus, il nous est permis!").[39] The mercenaries began to beat the unarmed peasants, who fled back into the town. Their pursuers followed them into the town and began a massacre which, as the chronicler himself

35 Ibid., p. 31; cf. the report of Michael Groß von Trockau in Franz, Quellen, no. 130, pp. 397–401. But even in ordinary criminal proceedings, the commutation of the death penalty to the corporal punishment of eye gouging was regarded as "mercy", cf. Bauer, Gnadenbitten, p. 58.

36 Edited in Franz, Quellen, pp. 41–42. Cf. Baumann, Quellen, p. 112.

37 Schwerhoff, Bauernkrieg, pp. 392–402.

38 Schreiber, Der deutsche Bauernkrieg Vol. 2, no. 222, p. 92.

39 Franz, Quellen, p. 256; cf. Recueil de documents, p. 186.

admitted, claimed the lives of a large part of the town's population along with the rebels. Perhaps it is no coincidence that the heavenly command to slay them all is reminiscent of the famous alleged sentence that the papal legate attributed to the stormers of the heretic stronghold of Béziers in 1209 in response to the question of how to distinguish heretics from innocents: "Just kill them, the Lord will recognise his own."[40] Three envoys from the Strasbourg Council passed through Zabern on 18 May on their way to the ducal camp and reported in horror of the mountains full of dead bodies that lined their path.[41]

It can be summarised that the capitulation on grace and disgrace meant that the victorious princes could decide the fate of the defeated in a sovereign manner, even arbitrarily. The aforementioned Treaty of Weingarten in mid-April, which has been viewed by scholars as unfavourable to the peasants, is a suitable counter-test. It did not make use of the semantics of grace, an indication that – if we consider this aspect of the text alone – it was an agreement on an equal footing. Significantly, however, the term appears again in the subsequent conflicts over the correct interpretation. The treaty stipulated that the peasants had to hand over their flags to the Confederation. Field Captain Georg von Waldburg explained the details of the handover in a letter: the captains of the insurgents had asked him for forgiveness and mercy and handed over their five ensigns to him.[42] According to the report in the prince-friendly Salem Chronicle, the Truchsess savoured this symbolic victory to the full: Georg tore up the ensigns immediately after handing them over, "for it was not proper that the chair should stand on the bench, and the water on the table and the wine under the bench", in other words, that the natural order should be turned upside down.[43] In a later letter to the Confederation, however, the outraged Truchsess stated that dishonourable peasants had spread the lie that he had fallen at their feet and begged them for mercy. As if to prove the opposite, he sent over some captured ensigns. Many had seen and heard that the peasants' master had fallen at his feet and begged for God's mercy.[44]

In the second Offenburg treaty of 18 September, the balance of power was much more unequal to the disadvantage of the peasants.[45] In the preamble of the treaty, Margrave Philipp von Baden and the council of the city of Basel explained that Archduke Ferdinand had wanted to lead a campaign against his subjects. They had reminded him in "friendly, faithful and good opinion" that this would result in nothing other than "devastation of land and people, as well as unchristian bloodshed

40 Reported once by Caesarius von Heisterbach: Dialogus miraculorum (dist. 5, cap. 21).

41 Virck, Politische Correspondenz, no. 295, pp. 166–167; no. 304, pp. 172–173.

42 Baumann, Akten, no. 227, p. 240.

43 Ibid., no. 266, p. 266; Mone, Quellensammlung, p. 125.

44 Vogt, Correspondenz, no. 256, pp. 295–296.

45 Schreiber, Der deutsche Bauernkrieg Vol. 3, no. 457, pp. 133–141.

and other troublesome and pernicious mischief" and had asked him to negotiate amicably. As a result of the ensuing negotiations, the first and fundamental article was that the subjects "submit to the grace and disgrace of Their Serene Highness." However, at the intercession of the margrave and the city of Basel, "the disfavour against the subjects was tempered and mitigated by the following articles". These sixteen determinations are little more than modifications of the traditional penal provisions of the Swabian League. Even the punishment of the ringleaders according to fault is expressly mentioned as a legitimate possibility. It must be seen as a concession by the Archduke that potential trials against the rebels were to be conducted before a proper criminal court, which was to be composed of natives of the country and was to organise a detailed evidentiary procedure.

4. Collective Disgrace – Individual Grace

The effects of princely disgrace after the capitulation of the rebels had many facets. In the territory of the Swabian Confederation, a system of mounted patrols was set up after the dissolution of the large federal army to apprehend fugitive insurgents.[46] Many regular rules of law no longer applied in this system of brutalised victor's justice; quasi summary executions were the order of the day. Insurgents were not only executed by beheading with the sword, which was not a dishonourable form of execution, but also often by shameful hanging. It was not uncommon for insurgent ringleaders to simply be hanged from a tree. This may have been partly due to the fact that there were no regular gallows nearby, and the hanging therefore had to be improvised. In other cases, this method of execution was probably simply intended to emphasise the dishonourable nature of the punishment and the fact that the execution took place outside the normal legal process. In Freiburg, the priest Andreas Metzger was hanged from a tree right next to the gallows site at the end of January 1526 for his involvement in the riot.[47]

On the other hand, in the hot phase of sanctioning immediately after the defeat of the rebels, we frequently hear of pleas for clemency from high-ranking persons. On 31 July 1525, for example, eleven named citizens from Bingen declared that they should have been put to the sword by Captain Frowin von Hutten on the orders of the Swabian League. However, at the intercession of the electoral governor Bishop William of Strasbourg and other counts and lords, they were given their lives, and their corporal punishments were remitted. Instead, they were permanently

46 Sea, Schwäbischer Bund, pp. 133–134.

47 Schreiber, Der deutsche Bauernkrieg Vol. 3, no. 502, p. 220; cf. Hohn, Die rechtlichen Folgen, pp. 35–36.

expelled from the city along with their wives and children.[48] We learn nothing about the exact circumstances from this oath of truth (*Urfehde*). In other cases, it is recorded that the intercession of the high lords took place in a dramatic manner directly on the spot, in that they (apparently) fell directly into the arms of justice. The above-mentioned judgement in Würzburg was originally intended to be held over 200 guilty persons. According to one chronicler, after the beheading of 75 delinquents, the "counts, lords and others of the nobility" in attendance asked the Truchsess to leave it at this number. He followed the plea for mercy so that the others escaped with their lives.[49] It can be assumed that this scenario had been agreed beforehand. The dramatic staging of an intercession is also reported for Mergentheim: three rebels were executed, four others were also led to the place of execution as if they were also to be beheaded; however, a pardon was then granted in response to previously agreed petitions.[50]

Such staging pursued two goals at the same time. On the one hand, there was the horror effect that such mock executions had on the apparently condemned to death, their relatives and the public in general. On the other hand, the noble intercessors asking for grace were fulfilling a role expectation by demonstrating Christian compassion or enabling the sovereign or general to present himself as a Christian, merciful ruler. This was also a common motive for the granting of mercy elsewhere.[51] The roles of stern fighter against the rebellion and compassionate pardoner were not necessarily mutually exclusive. When Georg von Waldburg in the Allgäu had already had 18 of the 70 captured rebels beheaded, two intercessors came forward for the others condemned to death. These were the Kempten bailiff Moritz von Altmannshofen and Georg von Frundsberg, the well-known lansquenet leader, who was on his way to fight the rebels in Salzburg.[52] In other cases, there was also clearly recognisable self-interest behind the plea for grace. The Bamberg bishop Weigand von Redwitz, who had called on the Swabian League for help against his own peasants, repeatedly pleaded with the Truchsess for leniency and pardons for his subjects, probably in the realistic realisation that their weakening or execution would weaken his own resources in the medium and long term.[53] In the Black Forest, the Count of Fürstenberg, together with other lords, felt compelled to intervene on behalf of his subjects in the face of the threat of punitive action by the

48 Struck, Bauernkrieg am Mittelrhein, no. 54, p. 170.

49 Baumann, Quellen, p. 598.

50 Hohn, Die rechtlichen Folgen, p. 146.

51 Cf. Beaulant, Verreycken, Pardonner des traîtres, p. 19; Firnhaber-Baker, The Jacquerie of 1358, p. 247.

52 Baumann, Geschichte des Allgäus, pp. 131–132.

53 Hasselbeck, Folgen, p. 140.

town of Villingen, even though he had previously been harmed by the uprising.[54] Evidently, he, too, was thinking beyond the day in terms of the future economic viability of his peasants.

5. Pleas for Pardon in the Context of "Ordinary" Criminal Proceedings

Immediately after a battle or after the surrender of the peasants, as well as in the days, weeks and months that followed, the rebels were often tried in "summary proceedings".[55] Here, the guilt of the delinquents was often only determined very summarily or simply assumed. The terms of surrender of the Swabian League outlined above certainly left room for the field commander to punish the ringleaders quickly and arbitrarily. A similar procedure was followed even in the Duchy of Württemberg, although such a procedure actually contradicted the Treaty of Tübingen of 1514, which expressly stipulated that in high justice matters concerning life and limb, no one should be "otherwise punished or killed than with judgement and justice".[56] During the campaign of the Swabian Confederation, its councillors changed this procedure on their own authority: in cases of *crimen lese maiestatis*, mutiny and conspiracy, action could be taken "with or without justice", they wrote to Georg von Waldburg. The fact that they did so discreetly in a ciphered letter shows that they were well aware of the explosive nature of this decision.[57] Such extrajudicial proceedings left only very limited space for appeals for pardon beyond staged intercessions and summary pardons.

The existence of numerous interrogation protocols and oaths of truth in the archives indicates that the accusation of rebels by means of a "normal" inquisition process was by no means unusual. However, we (still) know far too little about these ordinary proceedings. The above-mentioned *Carolina*, which was intended to standardise the inquisition process and attempted to curb excessive torture, was only just being drawn up and was due to be published in 1532. There is just as little systematic information about the composition of the inquisition courts that judged the rebels of the Peasants' War as there is about the actual course of the trials and whether and how intensively the instrument of torture was used. The surviving judgements are also often not very formalised or elaborate.[58] This is even true of the numerous documents about punishment (*Urfehden)* from the Duchy of Württemberg that have survived, which are more or less directly related to the

54 Roder, Villingen, pp. 394–395.

55 Hohn, Die rechtlichen Folgen, pp. 133–134.

56 Ohr, Kober, Württembergische Landtagsakten, no. 72, p. 230.

57 Baumann, Akten, no. 284, p. 275.

58 Hohn, Die rechtlichen Folgen, p. 120.

Peasants' War, totalling 760 documents concerning 900 people.[59] Two thirds of these date from 1525 itself, a further quarter from 1526. Individual cases date back to 1536.[60]

Malte Hohn estimates on the practice of pardon in the context of the Peasants' War that it largely corresponded to the usual practice. Against the background of what we have seen so far, this must at least be questioned.[61] As far as the aforementioned Württemberg documents on the pardon are concerned, they do not generally document capital punishments but comparatively lenient sanctions.[62] There is rarely any mention of pillorying or corporal punishment such as cutting off the fingers. In most cases, it was a question of banishment or its counterpart, confinement, with the condition that a village, an office or the country was not to be left. Around a third of the Württemberg *Urfehden* contained fines of varying amounts, from one guilder to 500 guilders. In addition to confinement in urban towers and bans on weapons or taverns, there are also more bizarre individual cases, such as hunting bans or a ban on shaving one's beard. The legal-historical literature characterises these sanctions as punishments against "followers" as opposed to the capital punishment of "main offenders". However, we must bear in mind that this distinction was not established from the outset but had to be made by the authorities and the courts. A man like Bernhard Schlemmer, who by his own admission had blackmailed clerics for money and had spoken among the peasants in favour of strangling the nobility and lords in the event of a victory at Böblingen, would most likely have been executed in 1525, immediately after the defeat. However, as he was not put on trial in Stuttgart until December 1526, he got off with the loss of the two oath fingers as well as a pillory and strokes of the rod before being sent home with an admonition to be obedient in future.[63] It is obvious to see this as an act of grace, but to substantiate this would require a more systematic analysis of the sources, also with regard to their semantics, which cannot be done here.

Consequently, only a very limited number of cases can be used to analyse the practice of grace during the Peasants' War, which mainly concerned people who had fled from the threat of punishment by the authorities. These exiles (literally "the stepped out", "*die "Ausgetretenen*") asked for various degrees of clemency

59 Hohn (ibid., pp. 164–165) undertakes a statistical analysis based on the archive repertories; cf. already Mayer, Rechtliche Behandlung, pp. 37–38 and Pietsch, Rechtliche Behandlung.

60 The situation is different with trials before the imperial courts, cf. Amend-Traut, Judikative Folgen.

61 This is how I read Hohn, Die rechtlichen Folgen, p. 147, who, after discussing the significance of clemency in general criminal law practice, concludes: "If one looks at the practice after the Peasants' War from this wide-ranging perspective, it becomes clear that it at least did not fall short of the possibilities."

62 Ibid., pp. 170–171.

63 Mayer, Rechtliche Behandlung, pp. 38–39 and Supplement no. 3, p. 73.

from exile: to be accepted back home without further sanctions; for a reduction in fines that had already been imposed; for free passage and the opportunity to justify themselves in court; or at least for temporary passage so that they could sell their goods in an orderly manner before finally settling down in exile. In the Rheingau, a multi-stage petition for grace, in some cases by the entire region, led to a considerable reduction in the originally imposed penalties.[64] Of course, not only those who had fled but also those who had been banished in the course of legal proceedings petitioned for clemency to be allowed to return to their old homeland. A very late but also prominent example of this is the mayor of Hersfeld, Ottensaß, who was considered the main instigator of the local riots. After 15 years in exile, he was allowed to return to his old homeland.[65]

In many respects, structural similarities can be found to the mechanisms of clemency in normal criminal trials of the era, despite the generally small source base. On the one hand, this concerns the weighing up of the personal qualities of the persons concerned and the argumentation in the petitions. For example, at the request of the delinquent, the family of the Counts of Sulz asked the general Georg Truchsess for clemency for a certain Jorg Krach because he had "behaved honestly and brave" in the Battle of Pavia (1525) and elsewhere.[66] Youthful age and insanity could also be considered grounds for mitigation, which was also the case in "ordinary" pardon letters from criminal cases.[67] In their petitions, the delinquents often claimed that they had been forced to take part in the uprising or at least that they had not been ringleaders.[68] However, repentant insight into past misdemeanours was also demonstrated. Georg Delhut, a citizen of Themar, had been expelled from the county of Henneberg with his wife and child in July 1525. He settled in Suhl and later, as an old man, asked in an undated petition to be allowed to return to Themar and live out the rest of his days there. He argued that he could not, in good conscience, fully apologise for "such a judicious outrage". The enemy of the human race, i. e., the devil, had moved him to rebel against the authorities under the pretence of defending the divine word. However, he had not been a ringleader. The count should be well aware that some of the bourgeoisies were actually heartily sick of the whole thing but that the majority had been driven into it by force. And so he had joined in.[69] Moreover, the rhetoric of the petitions could

64 Cf. the report in Struck, Bauernkrieg am Mittelrhein, pp. 189–190.

65 Merx, Bauernkrieg, pp. 308–309; cf. the interrogations of the Hersfeld prisoners in id., Akten Vol. I,1, no. 505, pp. 367–368.

66 Baumann, Akten, no. 342, p. 303.

67 Hohn, Die rechtlichen Folgen, p. 147.

68 Also a common argument in pardon letters, cf. Beaulant, Verreycken, Pardonner des traîtres, p. 10.

69 Merx, Akten Vol. I,1, no. 978, p. 606, note 1.

also include depicting fate in a foreign country in the darkest colours. For example, a petition from the mayor and the community of Jüchen for their former neighbour Hans Scholten stated that he was wandering around in misery, complaining that his clothes were rotting off his neck and that he had fallen ill after drinking from an putrid puddle.[70]

Also, the mechanisms of pleading for mercy with regard to the intercessors seem often comparable to other ("normal") criminal cases.[71] These were often wives, families and relatives of the delinquent, sometimes the whole community. Sometimes influential and respected people were mobilised whose intercession carried weight – mayors and officials, or even better, noblemen, lords, counts or even princes. Undoubtedly, they could not simply evade the obligation to be lenient if they wanted to fulfil their role as representatives of the Christian authorities. The two levels were often linked, with the family of a delinquent petitioning the nobles, who, in turn, petitioned third parties on behalf of the person in question. However, there was no automatic compulsion to petition for clemency, and the decision to grant clemency was, in principle, open; refusal was just as much an option as the partial or complete granting of the requested relief. The only certain thing was that a person who had no one "*who wanted to pardon or pardon for them*," like a former Mainz University bedel, had little chance of having their fate mitigated.[72] The lack of a social network testified to a precarious position within an estate-based society.

6. The Example of Henneberg

The interaction of all these elements can be observed in the well-documented correspondence between the authorities in the border region of Hesse, Franconia and Thuringia; Count Wilhelm von Henneberg, who was particularly affected by the Peasants' War, was at the centre of this.[73] In letters that he exchanged with the Hessian landgrave and the Saxon princes, in particular, it becomes clear that pleading for mercy was a laborious and often unsuccessful business. Jörg Weiß von Sennfeld, for example, was regarded by the authorities as one of the main participants in the recent uprising, especially because he had been involved in the destruction of Mainberg Castle as fire chief. As early as August 1525, four of Weiß's relatives had asked Count Albrecht von Mansfeld to intercede with the lord of the castle, Count Wilhelm von Henneberg, claiming that he had only been

70 Ibid., no. 1013, p. 634.

71 Ibid., pp. 150–151. On this more generally Schwerhoff, Historische Kriminalitätsforschung, pp. 93–94.

72 Quoted from Hohn, Die rechtlichen Folgen, p. 148.

73 Schwerhoff, Bauernkrieg, p. 323.

forced to take part in the uprising. Albrecht did indeed intercede in favour of Jörg Weiß, as did the Habsburg councillor Simon Geyr. Wilhelm von Henneberg remained adamant for the moment and insisted on Weiß's arrest. At the beginning of 1527, Elector John of Saxony interceded again on the delinquent's behalf through Count Gebhard von Mansfeld and, apparently, had limited success: after paying compensation to the count, Jörg Weiß was allowed to sell his remaining possessions and start a new life beyond the county without further legal persecution.[74]

Not everyone succeeded in mobilising such high-ranking advocates. The mayor of Schleusingen, Georg Schenk, apparently turned unsuccessfully to Elector Johann but was at least successful with other addressees. The Counts of Schwarzburg and Countess Katharina von Schwarzburg interceded on his behalf with Count Wilhelm, and a certain Lord of Wildenfels also spoke in his favour, albeit only in a very limited way: on 1 August, he wrote to the count: "If he is innocent, E.G. will know how to keep him, but if he is guilty, the devil help him."[75] High-ranking women were addressed as intercessors, particularly by other women.[76] For example, two noble sisters tried to recruit Countess Anastasia von Henneberg as an intercessor for the Themar citizen Bastian Cordis; she refused, however, stating that she wanted to refrain from any intercession during the uprising.[77]

Even those who were able to win over influential favourites could end up empty-handed. In September 1525, the Meiningen citizen Philipp Reinhart succeeded in making Elector Johann his advocate to obtain safe conduct or at least the sale of his goods. The Saxon elector immediately forwarded the petition to Landgrave Philipp with his endorsement, who promised to intercede with Bishop Konrad of Würzburg; however, he had little hope, as the bishop had "completely refused" him everything in 14 similar cases in which he had asked for clemency during his most recent stay in Würzburg.[78] The landgrave also had no success with his father-in-law and comrade-in-arms, Duke George of Saxony. On 25 July 1525, Philip turned to him with a petition about the citizens in Salza who had fled. Two of these citizens had previously approached him on behalf of all 48 refugees and asked for his intercession. They had fled the town the previous year during its capture by the landgrave. Their wives had already petitioned Duke Georg on their behalf, but he had labelled the fugitives as ringleaders and refused to take them back. They had renewed their request with the argument that others had been the main culprits, who wanted to shift all the responsibility onto them. The only reply from Duke Georg was that they had proven their guilt by fleeing. The

74 Merx, Akten Vol. I,1, no. 1071, p. 665, note 1.

75 Ibid., no. 976, here note 4.

76 Generally on the role of women for pardons Bauer, Gnadenbitten, pp. 79–84.

77 Merx, Akten Vol. I,1, no. 977, pp. 605–606, note 2.

78 Ibid., no. 1016, pp. 635–636, note 1 (636).

landgrave should pray on their behalf so that they would be "taken into gracious punishment". Philip forwarded the petition with his plea: the petitioners would now "recognise themselves as guilty and ask for mercy", which is why he did not want to refuse intercession. The duke should "punish them according to the possibility of forfeiture".[79] On the basis of the landgrave's intercession, the fugitives then turned directly to the duke and asked him to hold them accountable. If someone turned out to be guilty, they asked for the grace to be allowed to take up their dwellings again by paying a "fairly", i. e., tolerably high, fine; or at least for gracious permission to leave the country with their families and goods.[80] The duke, however, remained adamant in his decision.[81]

7. Conclusion and Comparative Perspectives

With their uprising, the peasants aimed not at least to create a fairer world, a world in which justice was less characterised by the arbitrariness of the lords of the court. In the short term, they failed across the board. Those insurgents who did not manage to come to an amicable agreement with their lords and thus survive the Peasants' War relatively unscathed found themselves confronted with an authoritarian force that consistently criminalised their protests based on a rigid interpretation of "*Landfrieden*". Especially in the first period after the suppression of the uprising, the penal regime of the authorities was characterised in many places by extraordinary arbitrariness, in the context of which vengeful "ungracious" treatment of the rebels was just as possible as merciful leniency in individual cases. Only if the persecution took place within the framework of "common" inquisition proceedings, as it happened more and more after 1525, then the mechanisms according to which the sanctions were "gracefully" mitigated came close to what we can observe in other "ordinary" criminal cases. Both aspects, disgrace and grace, severity and leniency, belonged together and indicated that the feudal powers challenged by the rebellion were still very much in place. However, this short-term finding is not the whole truth. In the medium and long term, the authorities had to realise that the political order could not be permanently stabilised without the outlet of a legal conflict resolution mechanism. More recent research has made it plausible that the Peasants' War can also be understood as the starting point of a process of increasing "juridification" (*Verrechtlichung*).[82] But this needs to be explored more.

79 Gess, Akten und Briefe, no. 1293, pp. 597–598, note 1.

80 Ibid. no. 1297, p. 601.

81 Ibid. no. 1300, p. 602; no. 1321, pp. 631–632; no. 1335, p. 643.

82 Schulze, Veränderte Bedeutung.

How do the observations on the Peasants' War fit into the general image of pardon in criminal proceedings under the Old Regime? We can find several familiar elements concerning the actors, mechanisms and functions of asking for mercy and granting pardon. For a more detailed analysis, it is important to consider that the Peasants' War was not only (at least by the sanctioning authorities) understood as a political crime but also that it was a mass uprising with its own dynamics. For a comparison, we must therefore look to other far-reaching mass rebellions. Let us consider only the two best-known movements in the later 14th century. In 1358, France experienced the great "Jacquerie".[83] Starting in a small village about 50 kilometers north of Paris, the rebellion spread very fast in late May 1358, not only to the Paris Basin but also to large parts of northern France, including parts of Picardy, Champagne and Normandy. The main target was the nobility, who had lost their prestige due to their defeat at the Battle of Poitiers (1356) and who, moreover, made the peasants pay for the ransom of those captured in the battle. In the following days and weeks, dozens of castles and manors were stormed, and a number of nobles killed. But as early as June 10, Charles of Navarre defeated a force of several thousand rebels at Mello, and the Jacquerie was also bloodily suppressed in other places. Shortly after the monarch entered the capital, several insurgents were demonstratively executed. But in August, the king quickly put an end to the affair with a general amnesty, at least for the greater Paris area. Remissions were also issued to rebels in the other rebellious provinces, referring to this general amnesty.[84]

A quarter of a century later, in May and June 1381, the English Peasants' Revolt quickly spread to large parts of Southeast England. In a well-coordinated military action in mid-June, the rebels advanced on the capital, where they killed some high-ranking officials and massacred foreign merchants. After the assassination of their leader, Wat Tyler, the teenage King Richard II initially managed to escort them out of the city peacefully. Immediately afterwards, however, he appointed a number of juridical „ad hoc" commissions to judge the rebels. Around 150 death sentences imposed by these commissions are known to have been handed down in July and August 1381 alone, although the true figure was almost certainly higher. However, this is a comparatively small number compared to the total number of people against whom accusations were made, which amounted to around 3,200. Even among contemporaries, there was fierce criticism of the verdicts, which were often passed without any legal proof of guilt ("sive juste sive ex odio"). This may have been one reason why the work of the tribunals was soon stopped.[85] Letters of

83 Cf. Firnhaber-Baker, The Jacquerie of 1358.

84 Ibid., pp. 243–244.

85 Eiden, "In der Knechtschaft werdet ihr verharren ...", pp. 399–413., Zitat p. 403; cf. also Hinck, "Die Raserei der Gemeinen", pp. 178–188.

pardon for individuals began to be issued as early as the fall, and a royal general amnesty for the rebels was proclaimed at the beginning of December.[86] Only a smaller group of 287, named "principales Ductores", could be legally prosecuted. "But even they could ultimately count on a pardon or an acquittal", even if this happened years later.[87]

The two rebellions of the 14th century, only roughly sketched out here, stand in stark contrast to the highly repressive and punitive profile of the Peasants' War of 1525.[88] A similar sequence of individual phases emerged: after the military confrontation, an exemplary harsh punishment of individual ringleaders by a summary procedure that only partially corresponded to the common legal procedures took place initially. The more time passed, the greater the chances of individual rebels receiving a reduction in sentence and pardon in a proper court case. These similarities quickly fade if one reduces the level of abstraction and takes a closer look at the specifics of the Peasants' War . The large number of bloody battles and massacres with tens of thousands of deaths in the course of the events of 1525 was in itself unique. The standard demand that rebels had to surrender to grace and disgrace was often seen as a license to treat the rebels very harshly during the first few months after the defeat. There was no general amnesty as an act of mercy from the authorities in 1525; rather, it had to be negotiated by the peasants through contracts, as happened in Weingarten, which at the same time meant that they effectively renounced further demands. Moreover, collective rituals of humiliation and submission, with which the defeated tried to reduce the extent of the authorities' disgrace, were common.[89] It took many months or even years before the mechanisms of ordinary criminal justice gradually took hold again. Ultimately, even the authorities in the empire could not carry out all their harsh threats of punishment, and they, too, had to resort to the instrument of pardon in order to pacify society (at least superficially) and return to a functioning everyday life. So, overall, repression rather than mercy and pardon dominated in the treatment of the insurgents of the Peasants' War, a fact that becomes all the more evident in comparison with previous uprisings in other countries.[90] However, the fundamental importance of

86 Eiden, "In der Knechtschaft werdet ihr verharren …", pp. 409.

87 Ibid., p. 412.

88 Rather unsatisfactory Gerlach, Vergleich, pp. 202–204. It is not my intention to claim that the two uprisings are typical of unrest in the late Middle Ages and at the turn of the modern era. For example, the conflict between peasants and the nobility in Hungary ("Dóza Uprising") in 1514 was much bloodier, cf. Fata, Ungarischer Bauernaufstand.

89 This also happened during English uprisings in the 15th century, cf. Hinck, "Die Raserei der Gemeinen", p. 187.

90 The explanation for this particular profile of the Peasants' War is beyond the scope of this article. Important elements of explanation could be first the territorial fragmentation of the Old Empire,

mercy and forgiveness in the pre-modern system of punishment has, once again, become apparent.

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Ein gloubwir||dig/vnd warhafftig vnderricht || wie die Dhoringischen Pawern || vor Franckenhawszen vmb yhr || miszhandlūg gestrafft/(...) Dresden 1525 (VD16 G 2205).

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which resulted in a particular dynamic of the uprising, but also of counter-insurgency; second the formation of the early modern territorial states with their harsh legislations.

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2 Agency, Social Vulnerability, and Petitioning for Pardon

Élisabeth Lusset

The Pope or the King of France?

Where Could Killer Priests Turn for a Pardon in the Late 15th Century?*

Since the 1980s, studies of medieval and modern pardon letters have shown how kings and princes alike established their own sovereignty by exercising mercy and giving grace to confessed offenders.[1] This 'government by pardon' has been compared on a European scale,[2] but the relationship between pardons by secular powers and pardons by popes has been broadly neglected.[3] Hélène Millet, in the 1998 conference proceedings for *Suppliques et requêtes. Le gouvernement par la grâce en Occident (XII^e–XV^e siècle)*, invited historians to "avoid isolating papal sources from petitions addressed to other sovereign powers in medieval Europe – Italian cities or French, Spanish and English kingdoms". She called on colleagues to set the petitions alongside one another and study "that particular way of exercising sovereignty which we call 'government by pardon'".[4] Despite her invitation, historians continued to work in separate silos.[5] At best, scholars noted that the chanceries of kings and princes imitated pontifical bureaucracy or placed articles on papal mercy alongside articles on princely pardons within the same collective work.[6]

There are several reasons why this dialogue faltered. The first lies in the fact that historiography on the papal curia has long been predominant. This is associated both with the volume of documents – under Leo X (1513–1521), the Apostolic Chancery and Penitentiary alone produced over 5,000 documents a month – and the fact that such studies were undertaken early, i. e. from the late 19th century

* I gratefully acknowledge the help of Sara McDougall, Aude Musin and Sébastien Nadiras.

1 Brissaud, Le droit de grâce; Zemon Davis, Pour sauver sa vie; Muchembled, La violence au village; Gauvard, De grace especial; Nassiet, La violence; Dauven, Rousseaux, Préférant miséricorde; Cerutti, Vallerani, Suppliques; Arnade, Prevenier, Honor; Fosi, Papal Justice.

2 Ormrod, Dood, Musson, Medieval Petitions; Smith, Killick, Petitions and Strategies; Lackner, Luger, Modus supplicandi; Verreycken, Power to Pardon; Bubenicek, Foronda, Doléances; Verreycken, Crimes et gens.

3 Dauphant, Rivalité des pardons.

4 Millet, Suppliques et requêtes.

5 Smith, Killick, Petitions and Strategies, pp. 4–5.

6 Millet, Suppliques et requêtes; Nubola, Würgler, Forme della comunicazione politica; Ormrod, Dood, Musson, Medieval Petitions; Härter, Nubola, Grazia e giustizia; Smith, Killick, Petitions and Strategies; Lackner, Luger, Modus supplicandi.

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when the Vatican opened its archives.[7] Research on princely pardons arrived in a second phase, at a time when historians might well have believed that everything, or almost everything, had already been said about papal practices. The second likely reason why dialogue has faltered is the difficulty in comparing documents that differ significantly in both nature and subject matter. On the one hand, royal and princely remissions mainly covered homicides (between 70 and 80% depending on the corpus),[8] and on the other hand, pontifical letters dealt primarily with benefices (two-thirds of such letters).[9]

The present paper shifts the focus somewhat by comparing the pardons granted by the king of France between 1480 and 1500, not with letters from the Apostolic Chancery, but with petitions to the Apostolic Penitentiary. I will briefly introduce this office and its documents; I will then analyse several homicide cases involving clerics, cases in which both the king of France and the pope granted a pardon. How are we to understand these joint requests for pardon? Are they duplicates, or did the pope and the French king meet distinctly different needs? Works on the rise of the modern state often present secular and ecclesiastical courts in the late Middle Ages as rivals, with the secular authorities gradually restricting the scope of the Church.[10] However, many recent studies have shown that their relations should not necessarily be analysed through a lens of confrontation but instead with a view to collaboration or even interconnection.[11]

1. Papal Petitions and Royal Remissions

The Apostolic Penitentiary emerged in the 13th century when papal power was centralised and gained autonomy the following century with Benedict XII's 1338 bull *In agro dominico*. It had a staff of around 200 in 1500, granting acts of clemency to the faithful throughout Europe. Although most petitioners were clerics, there was a higher proportion of laypeople here than in petitions to the Apostolic Chancery. The sums payable to be granted clemency were also lower. Petitioners who approached the Penitentiary had breached canon law in a wide variety of ways, including those relating to marriage, illegitimacy, homicide, theft, forgery and simony; they requested different types of clemency (absolution, dispensation, licence

7 Poncet, Histoire; Jamme, Poncet, Offices; Frenz, Papsturkunden; Lackner, Einführung.

8 Gauvard, De grace especial; Pegeot, Derniame, Henin, Lettres de remission, p. 25.

9 Schwarz, Klerikerkarrieren; Frenz, Kanzlei der Päpste.

10 Descamps, Déclin des officialités.

11 Genet, Vincent, Église et État; Barralis, Boudet, Delivre, Genet, Église et État; Arabeyre, Basdevant-Gaudemet, Les clercs et les princes; Beaulande-Barraud, Charageat, Les officialités.

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and special declaration).[12] Even if they were able to attend the Roman curia in person, most petitioned the Penitentiary in writing: sometimes on their bishop's initiative, sometimes on their own. The petition was taken to the Penitentiary by representatives of the bishop or by friends, relatives or merchants who were headed to the curia, either on a pilgrimage or for business. It then fell to the proctor in Rome, an expert in canon law, to draft his client's petition in accordance with the chancery's rules, forms commonly used in the Penitentiary and legal argumentation for obtaining a pardon.[13] The proctor was required to submit the petition, written in Latin, to the Penitentiary and to pay the taxes for the preparation of the letter. Well-trained jurists, so-called *auditores,* examined the case, and if the petition was correct, it was taken to the head of the office, the Cardinal Penitentiary, or his deputy (*regens*) for approval with their signature. The *corrector* composed a draft of the letter of grace based on all the necessary details mentioned in the petition. Then, a scribe wrote the letter of grace granted by the Penitentiary, which was generally addressed to the petitioner's ordinary bishop rather than the petitioner themselves.[14]

The original petitions were very rarely retained. From the 15th century onwards, the Penitentiary re-transcribed approved petitions in a shortened form into registers organised by subject.[15] Petitions for homicide can be found under two separate headings: *de diversis formis* and *de declaratoriis*. Among the petitioners were some laypeople guilty of having killed their priest, but most petitioners were clerics: either candidates for the major orders (sub-deacon, deacon and priest) or priests, who often had a benefice. They had a particular need for grace. Indeed, in the eyes of theologians and scholars of canon law, a servant of God could not celebrate Divine Office and administer the sacraments if their hands were tainted with blood. So to preserve the physical and moral integrity of the priesthood, canon law considered any cleric who had committed homicide to have contracted irregularity and incapacity (*irregularitas* and *inhabilitas*). Irregularity means a lack of the qualities required to access priestly functions or continue to exercise these. The canonist Huguccio states that any person involved in the death of another human being (including their involvement in secular criminal proceedings where the death penalty is imposed) would incur *irregularitas*.[16] Other canonists have

12 This is illustrated in a handy summary by Salonen, Schmugge, 'Well of Grace'. For the way the Penitentiary worked, see Göller, Päpstliche Pönitentiarie; Salonen, Penitentiary. For the division of petitions between the Penitentiary and the Chancery, see Zutshi, Inextricabilis Curie labyrinthus.

13 Fossier, Bureau des âmes.

14 Schmugge, Prokuratoren.

15 Vatican City, Archivio della Penitenzieria Apostolica, *Registra Matrimonialium et Diversorum* (APA, *Reg. Matrim. et Div*.).

16 Gillmann, Geschichte.

argued for some exception to this rule: a cleric who commits homicide through necessity to defend himself in the face of mortal danger and who is unable to flee is not irregular.[17] *Inhabilitas* does not in itself render a cleric unable to exercise priestly functions, but if the petitioner is not yet ordained, it renders them unable to receive either minor or major orders; if they are already a priest, it justifies their suspension.[18] In *de diversis formis* petitions, clerics who had committed homicide acknowledged their guilt and – besides absolution from the crime and their sins – requested dispensation to cleanse them of irregularity and rehabilitate them. However, in theory, it would not permit them to return to their previous situation (a suspension deprives them, for example, of the rewards from their benefice and the right to perform acts associated with their office, or it deprives them of their office or their benefice).[19]

In contrast, by drawing up a *de declaratoriis* petition, clerics were not aiming to be pardoned for their crime but to be exculpated for it. This type of petition provided a detailed account of the circumstances surrounding the homicide, often much longer than in a *de diversis formis* petition. It aimed to demonstrate that the cleric had acted in legitimate self-defence, was not guilty of homicide, had not incurred irregularity and was not judged to be 'incapable' (*inhabilitas*). This served to silence enemies who would otherwise continue to speak ill of the petitioner: to put an end to defamatory talk that would damage the cleric's reputation (*ad ora igitur talium et aliorum forsan sibi super hoc in futurum obloqui volentium emulorum obstruenda*). Indeed, an accusation of homicide was a formidable weapon in the hands of someone wishing to damage a cleric. It could prevent a candidate for the priesthood from being promoted or even contribute to a priest being removed from his spiritual and church roles. The declaratory letter issued by the Penitentiary seems to have been an alternative to canonical purgation (a sworn declaration of innocence), freeing the accused from infamy and restoring their reputation.[20]

For petitions of both types, *de diversis formis* and *de declaratoriis*, the petitioner was not necessarily pardoned when their petition was approved by the Penitentiary. The letters issued by the Penitentiary were only validated when the petitioner's ordinary or vicar-general, the official or other designated commissioners had verified the allegations (*si ita est*).[21] These commissioners were entitled to examine written evidence, hear witnesses and have people take oaths. They would also ensure that

17 Larson, Killing a Career; Clarke, Legitimate Self-Defence; Salonen, Killer Clergy.

18 Fossier, Bureau des âmes, pp. 331–338.

19 Basdevant-Gaudemet, Histoire, p. 83; Lusset, Crime, pp. 311–318.

20 Fiori, Il giuramento di innocenza; Clarke, Legitimate Self-Defence, pp. 142 and 146.

21 For texts regulating commissions, see Göller, Päpstliche Pönitentiarie, I/2, pp. 70–77. For the way these practices worked, see Salonen, Penitentiary, pp. 79–83; Ostinelli, Penitenzieria Apostolica, pp. 103–118; Clarke, Central Authority.

petitioners had performed the penance prescribed by the Penitentiary, be it a salutary penance or temporary suspension of holy orders, the terms of which are rarely stated in copies of petitions, and that they made satisfaction to their victims.[22]

As Wolfgang P. Müller stated in 2007, *de declaratoriis* petitions have several points in common with royal letters of remission for homicide.[23] Both were issued by the supreme judicial authority, who granted them at an individual's request. Part of the content was a detailed account of the criminal act, which wavered between the requirement for precision and the need to minimise the petitioner's culpability; both expressed regret and contrition. Both resulted from work done jointly by the petitioner, the proctor or cleric who helped, and court or curial officials who processed the petition and kept track of it in registers. Finally, obtaining either one resolved a situation of judicial paralysis.[24] Yet the objectives of royal letters of pardon and papal declaratory letters differed. While royal letters granted applicants a true pardon, put an end to any pursuit or sentences that were pronounced and restored their reputation and possessions, papal letters acknowledged and declared that petitioners bore no culpability. The profile of petitioners was also different: very few clerics applied for a royal pardon. In the reign of Charles VI (1380–1422), clerics made up only 4% of guilty parties and 12% of victims.[25] Of the pardons for petitioners from Poitou between the mid-14th and early 16th centuries, only 3% of petitioners were clerics (40 out of 1296 letters).[26] In contrast, *de declaratoriis* petitions were submitted exclusively by clerics who were either candidates for major orders or already established as priests holding ecclesiastic benefices and whose careers were endangered by the allegations of homicide.

2. Petitions to the Pope and/or King of France

2.1. An Overview

By reading through registers of petitions to the Penitentiary, we can see that some petitioners – mainly those involved in homicides and forgery – first obtained an act of clemency from the king of France before they approached the pope. Thus, on 20 August 1494, the Penitentiary approved a *de diversis formis* petition by Jean Doffay, a regular canon at the collegiate church of Eu and priest at the associated parish church in Normandy. He was guilty of working with a goldsmith to produce

22 Lusset, Crime, pp. 315–318.

23 Müller, Violence; Clarke, Legitimate Self-Defence, pp. 147–148.

24 Müller, Violence; Verreycken, Crime Narrations.

25 Gauvard, De grace especial, p. 392.

26 Verdon, Le clergé poitevin.

counterfeit coins. He referred to the royal pardon as an argument to elicit the pope's clemency and obtain absolution for his "crimes, excesses and sins", an absolution of his excommunication and dispensation from his incapacity and irregularity.[27] Similarly, certain petitioners to the king of France explained that they had first approached the pope and obtained a pardon from him. One such individual was Antoine Marin, a priest who lived at Puylaurens in the Lavaur diocese and had killed his brother, receiving a remission in May 1500.[28] Besides these documents attesting to the fact that petitioners were using one plea for clemency to support another plea to another sovereign institution, we can compare the registers from the Apostolic Penitentiary with those from the *Trésor des chartes* (archives of the French crown). Such evidence for the last two decades of the 15th century reveals that applications to both the king and the pope were more frequent than is indicated by the petitioners' accounts alone. A number of clerics approached both the king and the pope without stating as much in their petitions.

Before entering into greater detail about these doubly pardoned killers, I must emphasise that my enquiry was conducted on a small scale and was not exhaustive. First, a detailed examination of the papal archives was only conducted based on the registers for the Penitentiary, specifically the registers for the reigns of Popes Innocent VIII (1484–1492) and Alexander VI (1492–1503).[29] This will not shed light on petition activities in other offices of the papal curia, especially the flood of letters issued by the Apostolic Chancery. Second, although the registers for the late medieval *Trésor des chartes* are available online up to 1483 via the French National Archives' website, no complete inventory is available for remission letters kept by the Royal Chancery.[30] Nor were all of these letters necessarily recorded. I worked with the tools at my disposal: inventories and transcripts focused on a particular reign, region or registry.[31] Despite these difficulties, I found 14 homicide cases between 1486 and 1500, in which 29 people petitioned the pope and/or king (Table 1). Of these, 27 were clerics.[32] Half of the homicides I studied were concentrated in four years (1497–1500). As it happens, a full inventory of the Chancery registers under

27 APA, *Reg. Matrim. et Div.* 43, fol. 274r; Feller, Faux-monnayeurs.

28 Paris, Archives nationales (AN), JJ 234, fol. 56v-57r; Dossat, Lemasson, Wolff, Documents relatifs, p. 457, no. 4539.

29 Petitions examined during the reign of Pope Innocent VIII: 4937 *de diversis formis* and 993 *de declaratoriis*. Salonen, Schmugge, 'Well of Grace', p. 19. This work was done in preparation for the book Lusset, Pieyre, Pénitencerie apostolique.

30 https://www.siv.archives-nationales.culture.gouv.fr, accessed 18/03/2025; Scheurer, L'enregistrement à la chancellerie.

31 Célier, Recueil des documents; Chevalier, Documents. The search tools used are listed on the French National Archives website, http://www.archivesnationales.culture.gouv.fr/chan/chan/fonds/edi/sa/jj.htm, accessed 18/03/2025.

32 The last two were laypeople. Lusset, Jacque and her four husbands.

Louis XII is available for these years (this runs 1498–1502). I was thus able to compare systematically against the Penitentiary's registers.[33]

Table 1 Cases of homicide recorded in the registers for both the Apostolic Penitentiary and the French Royal Chancery (1486–1500)

No.	Victim	Petition to the pope, approved by the Apostolic Penitentiary	Letter of remission granted by the king of France
1	1485 (?), Denis de La Gastine, layman	Nicolas Legay, deacon, Master of Arts, canon of Chartres Cathedral, 3 June 1486 *De declaratoriis*, APA, *Reg. matrim. et div.* 35, fol. 178v, Lusset, Pieyre (eds.), 2024, no. 65.	
	Ibid.	Jean Fernand, cleric of Chartres, 30 June 1486 *De declaratoriis*, *ibid.*, fol. 180r, Lusset, Pieyre (eds.), 2024, no. 68.	
	Ibid.	Jean Claustre, cleric, Diocese of Chartres, 2 May 1487 *De declaratoriis*, *ibid.* 36, fol. 255v, Lusset, Pieyre (eds.) 2024, no. 93.	
	Ibid.	*Petition cited in the remission letter but not found in the Penitentiary's registers, possible petition to the Apostolic Chancery.*	Jean de Villiers, deacon, canon of Chartres, August 1487 AN, JJ 217, fol. 66v, Transcription et analyses de AN JJ 217, Nassiet, Morineau, Mourin (eds.), University of Angers, 2009.
	Ibid.	Jacques de Moulins, cleric of Chartres, Master of Arts and Bachelor of Law, 2 April 1491 *De declaratoriis*, APA, *Reg. matrim. et div.* 40, fol. 358r-359r, Lusset, Pieyre (eds.), 2024, no. 232.	
2	12 July 1487, Guillaume Tissier, layman	Noël Rouer, canon of Nevers Cathedral, 18 August 1487 *De declaratoriis*, APA, *Reg. matrim. et div.* 36, fol. 263v-264r, Lusset, Pieyre (eds.), 2024, no. 99.	

33 Vaissiere, Daudet, Registres de Louis XII.

No.	Victim	Petition to the pope, approved by the Apostolic Penitentiary	Letter of remission granted by the king of France
	Ibid.	Regnault des Raoulins, canon of Nevers Cathedral, 18 August 1487 *De declaratoriis*, *ibid.*, fol. 264r-264v, Lusset, Pieyre (eds.), 2024, no. 100.	
	Ibid.	Hugues Laurendeau, canon of Nevers Cathedral, 18 August 1487 *De declaratoriis*, *ibid.*, fol. 264v-266v, Lusset, Pieyre (eds.), 2024, no. 101.	
	Ibid.	Jean Guiot, chaplain of Nevers Cathedral, 18 August 1487 *De declaratoriis*, *ibid.*, fol. 266v-267v, Lusset, Pieyre (eds.), 2024, no. 102	
	Ibid.		Hugues Seguin, cleric, August 1487 AN, JJ 217, fol. 62r-63r, Lusset, Pieyre (eds.), pp. 195–199.
3	5 September 1489, Jean Ledonné, layman		René du Bellay, grand archdeacon of Poitiers, 23 September 1489 AN, JJ 220, fol. 117, abstract: Célier, 1938, t. 13, no. 187, pp. 166–167.
	Ibid.	Jean Lemaire, Diocese of Angers, 12 October 1489 *De declaratoriis*, APA, *Reg. matrim. et div.* 39, fol. 274v, Lusset, Pieyre (eds.), 2024, no. 170.	Jean Lemaire, squire, servant of René du Bellay, October 1489 AN, JJ 220, fol. 137v-138r, no. 246, abstract: Célier, 1938, t. 13, no. 190, pp. 169–170.
4	6 January 1490, Pierre Machaut, regular canon at La Madeleine de Châteaudun		Pierre Gastellier, priest, January 1490 AN, JJ 221, fol. 94v-95r, abstract: Chevalier, 1993, p. 435, no. 4210.
	Ibid.	Mathieu Boudet, priest at the Hôtel-Dieu de Châteaudun (Diocese of Chartres), 25 February 1490 *De declaratoriis*, APA, *Reg. matrim. et div.* 39, fol. 288r, Lusset, Pieyre (eds.), 2024, no. 180.	
	Ibid.	Petition cited in the remission letter but not found in the Penitentiary's registers, possible petition to the Apostolic Chancery.	Master Guillaume Cousté, priest at the Hôtel-Dieu de Châteaudun, August 1491 AN, JJ 226B, fol. 45, abstract: Chevalier 1993, p. 473, no. 4575

No.	Victim	Petition to the pope, approved by the Apostolic Penitentiary	Letter of remission granted by the king of France
5	16 February 1491, Martin Le Breton, layman	Louis de Combete, Benedictine priest, Abbey of Tiron, Diocese of Chartres, 13 June 1491 *De declaratoriis*, APA, *Reg. matrim. et div.* 40, Lusset, Pieyre (eds.), 2024, no. 243.	Louis de Combete, monk at the Abbey of Tiron, March 1491 AN, JJ 225, fol. 225r, abstract: Chevalier 1993, p. 461, no. 4464.
6	1491 (?), Gille Loste, layman		Jean Hanocque, layman, April 1491[34] AN, JJ 225, fol. 231r.
	Ibid.	Jacque Le Carpentier, laywoman, Amiens, 25 May 1492[35] *De diversis formis*, APA, *Reg. matrim. et div.* 41, fol. 232r-233r.	
7	18 January 1497, Robert le Roux, monk	Macé Potin, priest, Diocese of Beauvais, chaplain to the Duke of Orléans, 9 December 1497 *De diversis formis*, APA, *Reg. matrim. et div.* 46, fol. 187r-v.	Master Macé Potin, priest, precentor at the chapel of the Duke of Orléans, March 1497 AN, JJ 227, fol. 214r-v, abstract: Chevalier 1993, no. 4766.
8	30 January 1497, Jean de Campaigne, layman	Jean Dalerie, priest, Diocese of Amiens, 19 September 1497 *De declaratoriis*, APA, *Reg. matrim. et div.* 46, fol. 320v.	Jean Dalerie, priest residing at Buire-le-Sec, near Montreuil-sur-Mer, March 1501 AN, JJ 234, fol. 132r-v, inventaire des lettres de Louis XII
9	29 March 1498, Jacques Rogier, known as *le Bourguignon*		Huguet Le Mastin, scholar at the University of Poitiers, July 1498 AN, JJ 230, fol. 61r, abstract: Célier, t. 14, pp. 172–174 and inventaire des lettres de Louis XII.
	Ibid.	Jacques Goulard, priest of Maillezais resident at Poitiers, 11 April 1499 *De diversis formis*, APA, *Reg. matrim. et div.* 47, fol. 316r-v.	Jacques Goulard, priest, November 1500 AN, JJ 234, fol. 46r-v, abstract: Célier, t. 14, p. 149 and inventaire des lettres de Louis XII.
10	7 April 1498, Le Gascon, layman	Pierre Bourgaize, priest, Diocese of Sées, 23 May 1498 *De diversis formis*, APA, *Reg. matrim. et div.* 46, fol. 274v-275v	Pierre Bourgaize, priest, August 1498 AN, JJ 230, fol. 125v-126r, inventaire des lettres de Louis XII.
11	25 April 1499, Guillaume Le Roux or Lecoris	Pierre Pely, priest, Diocese of Chalon, 4 June 1499 *De diversis formis*, APA, *Reg. matrim. et div.* 47, fol. 361r-v	Pierre Pely, priest at Chalon, July 1499 AN, JJ 232, fol. 124r, inventaire des lettres de Louis XII.

34 Lusset, Jacque and her four husbands.

35 Ibid.

No.	Victim	Petition to the pope, approved by the Apostolic Penitentiary	Letter of remission granted by the king of France
12	November 1498, Jean Le Tellier	Robert Le Tellier, priest, Diocese of Amiens, 8 February 1499 *De declaratoriis*, APA, *Reg. matrim. et div.* 47, fol. 453v-454v.	Robert Le Tellier, priest at Huppy, Bailiwick of Amiens, June 1499 AN, JJ 233, fol. 160r-v, inventaire des lettres de Louis XII.
13	August 1498, Gilles Chaignon, layman	Pierre Picart, Benedictine sacristan of Saint-Maixent, Diocese of Poitiers, 11 January 1500 *De diversis formis*, APA, *Reg. matrim. et div.* 48, fol. 422r-423r	Pierre Picart, Benedictine monk and sacristan of Saint-Maixent, September 1498 AN, JJ 230, fol. 150r-v, abstract: Célier, t. 14, no. 19, pp. 122–123 and inventaire des lettres de Louis XII; edited in *Revue Mabillon*, 4, 1908, pp. 95–99.
	Ibid.	Savinien Aymeret, priest, regular canon at Nieul-sur-l'Autize, Diocese of Maillezais, 11 January 1500 *De diversis formis*, APA, *Reg. matrim. et div.* 48, fol. 423r-v.	Savinien Aymeret, regular canon at Nieul-sur-l'Autize, September 1498 AN, JJ 230, fol. 151v-152r, abstract: Célier, t. 14, no. 20, p. 123 and inventaire des lettres de Louis XII.
14	6 July 1499, Antoine Jurie, cleric	Pierre Eschallier, priest, rector for the parish of Seychalles, Diocese of Clermont, 5 August 1499 *De diversis formis*, APA, *Reg. matrim. et div.* 47, fol. 407r.	Pierre Eschallier, priest, curate at Seychalles, July 1499 AN, JJ 232, fol. 126v-127v, inventaire des lettres de Louis XII.
	Ibid.	Antoine Jurie, priest at Clermont, the victim's father, 17 May 1500 *De diversis formis*, APA, *Reg. matrim. et div.* 48, fol. 537v-538r.	

2.2. What Kind of Clerics Committed Homicide?

Who were these clerics who managed to mobilise the legal resources on offer from the Royal Chancery and the papal Curia? Most came from regions close to Paris (the Chartres region, Picardy, Champagne) or areas under the jurisdiction of the Paris Parlement such as the Auvergne.[36] Three types of clerics emerge. First, parish curates involved in family or neighbourhood quarrels,[37] who had everything to lose if they were found guilty of homicide, were excommunicated and incurred irregularity.[38] One such curate was Pierre Eschallier in the Diocese of Clermont. He was 30 years old when he petitioned the king in July 1499 along with three relatives – "poor ploughmen, encumbered with wives and several children". This followed the killing

36 Gauvard, De grace especial, pp. 244–246; Nassiet, Musin, L'exercice de la rémission; Goudot, Parlement de Paris; Dauphant, Le royaume, pp. 289–292.

37 Muchembled, La violence au village; Gauvard, De grace especial; Armstrong-Partida, Defiant Priests; Erdélyi, Negotiating Violence.

38 Beaulande, Le malheur.

of another priest, Antoine Jurie, while wheat was being gathered from a field belonging to his parish (Table 1, homicide no. 13). The following month, the Penitentiary absolved Eschallier conditionally, which provided him with a guarantee that he would retain his priestly functions and parish. It is hard to determine how these petitioners, of apparently modest means, met the high cost of these proceedings.[39]

On the other hand, it is easier to discern how the second and third groups of petitioners had the necessary resources. The second group was made up of young clerics who had not yet acceded to the priesthood, whose youth might count as an attenuating circumstance in the king's eyes.[40] They were either scholars or university graduates. Of the 27 petitioners, one was a student (Huguet Le Mastin, "scholar studying at the University of Poitiers aged around 22 years"), three Masters of Arts (Nicolas Legay, Jacques de Moulins and Macé Potin) and two law graduates (Jacques Goulard, "young scholar at the University of Poitiers in the faculty of canon law" and Jacques de Moulins, *baccalaureus in legibus*).[41] The "young monk" and priest at the Abbey of Tiron, Louis de Combete, was accompanied by three young men, including two students from Paris, when a bloody fight broke out with villagers from Ablis, near Rambouillet. People died partly as a result of the young men's violent activity, when groups of clerics confronted young, single tradesmen: the tanners in Chartres (Table 1, homicide no. 1) and the pastry chefs in Poitiers (no. 9).[42] The young clerics benefited from belonging to clientelist networks that could mediate in obtaining acts of clemency. This was the case with Jean Lemaire, the noble squire who served the Angevin line of the Du Bellays, or Macé Potin, chaplain to the Duke of Orléans (who would go on to be crowned Louis XII).[43] In homicide case no. 1, at least three of the petitioners belonged to the powerful cathedral chapter of Chartres: Jean de Villiers, a deacon aged 24, surely related to his namesake who was subdean of the chapter; Nicholas Legay, a deacon perhaps related to the canon Jean Legay († 1505), who was in turn related to Bishop Miles d'Illiers (1459–1492); and finally Jean Claustre, who referred to himself as a 'simple cleric' from the Diocese of Chartres, but he was already a canon when he approached the pope.[44] Through

39 Scheurer, L'enregistrement à la chancellerie; Gauvard, De grace especial, pp. 68–70; Müller, The Price.

40 Gauvard, De grace especial, pp. 360–367.

41 We might add to their number Guillaume Cousté, a brother at the Hôtel-Dieu in Châteaudun with a degree in "canon and civil law", who was older – assuming this is the same person as described in *Studium parisiense* (no. 17801), http://studium-parisiense.univ-paris1.fr/individus/17801-guillelmuscouste, accessed 18/03/2025.

42 On homicide no. 1, see 2.3. "Division of role".

43 On Jean Lemaire, see 2.4. "One person, two pardons"; on Macé Potin, see 3.1. "Different strategies in approaching the Apostolic Penitentiary".

44 Having obtained the declaratory letter exonerating him of homicide, he became *chevecier* of Chartres Cathedral in 1499 and was awarded the parish of Écrosnes in 1510, followed by the parish of Saint-

the dual royal and papal pardons, these clerics intended to shield their burgeoning church careers from harm and certainly made use of a network of colleagues who exercised responsibilities in the curia, the royal court or parlement. In this, they were similar to the third group: older priests with better social and institutional positions who held one or more major social or institutional benefices, such as the canons of Nevers Cathedral (no. 2) or Pierre Picart, the sacristan at Saint-Maixent (no. 14).[45] The dual pardon allowed them to preserve these advantages and not compromise their future chances of obtaining other titles and benefices.

What conclusions can we come to as to the frequency of killer priests who solicited a pardon? Although all the petitioners whom we investigated did obtain a royal and papal pardon, the serious and exceptional nature of their crimes meant they were obliged to engage in complex, onerous legal procedures with two administrations. At least six of them travelled to Rome in person, "at great cost and expense", in what was as much a legal manoeuvre as a penance, perhaps at the instigation of their bishop. The royal pardon was not granted as a matter of course. Several remissions were granted during a period when royal clemency was being expanded for Lent or Easter (no. 5, 7 and 8) or upon a royal entry into a town or city when prisoners were being freed and pardoned (no. 9).

2.3. Division of Roles

By observing how applications for clemency are distributed, we can see that the decision to petition the pope depended primarily on the protagonist's degree of culpability. A cleric who had dealt a fatal blow approached the king, whereas clerics involved in the homicide and considered as accomplices under canon law approached the Apostolic Penitentiary.[46] Thus in August 1487, Charles VIII pardoned Hugues Seguin, a cleric residing in Nevers, who had killed Guillaume Tixier (no. 2). On 12 July, Hugues came to a village with a chaplain and three canons of Nevers Cathedral, including his uncle Hugues Laurendeau; they were there to collect the tithe on the wheat harvest. Guillaume Tixier claimed that one of his fields was "free from tithes" and refused to relinquish the relevant wheat. After a tempestuous discussion, the parties agreed that this wheat would be handed to a third party while a judge ruled on the case.[47] The canons, the chaplain and the petitioner went to a tavern and asked Mathé des Coustes, a tithe collector, to

Jacques d'Illiers in 1519. Beauhaire, Diocèse de Chartres, pp. 205 and 142; Clerval, Les écoles, p. 486.

45 On homicide no. 2, see 2.3. "Division of role"; on case no. 14, see 3.3. "Homicide and benefices".

46 On the extensive nature of complicity in canon law, see Kuttner, Kanonistische Schuldlehre; Kéry, *Non enim homines de occultis*; Lusset, Pieyre, Pénitencerie apostolique, pp. 32–40.

47 Viader, La dîme; Lauwers, La dîme.

ensure that Guillaume Tixier respected this agreement. But when Mathé arrived at Guillaume's home, he was violently taken to task. When the petitioner, chaplain and canons returned to the place, a fight broke out during which Tixier suffered several blows – some given by the petitioner – and died. In his petition, Hugues Seguin stated that he had only been obeying his uncle, he had acted to help him, and the death of Guillaume Tixier was not premeditated. Tixier had been "the aggressor in words and deed". Fearing punishment, Seguin took refuge in a place of asylum, then approached the king, who granted his pardon in Clisson, near Nantes.

At the same time, in Rome, the Apostolic Penitentiary approved the petitions by the chaplain Jean Guiot and the three canons involved: Noël Rouer, Regnault des Raoulins and Hugues Laurendeau (Hugues Seguin's uncle) on 18 August 1487. This account of the crime contains less detail than the account in the remission letter but adopts the same narrative framework and particulars. Each petitioner asks to be declared not guilty of each of the two homicides (another layperson was killed during the altercation) and not to be considered irregular, so he can continue to act as a priest and retain his ecclesiastic benefices (as canon or chaplain). Two different objectives can be identified for these pleas for clemency: a pardon for the killer and an exculpation for their accomplices.

The same allocation of roles applied to the homicide of a layman from Chartres, Denis de la Gastine (no. 1). Between 1486 and 1491, three clerics and one deacon, two of whom were canons of the cathedral church, applied to the Penitentiary requesting that they be declared not guilty of homicide. Each gave an account of a trip to the bathhouse that went wrong after the clerics encountered some young tanners. All admitted taking part in a fight but stated that the homicide occurred after they had left. In August 1487, the king pardoned Jean de Villiers, a deacon and canon of Chartres aged 24. In contrast to his companions, he admits that they "came to blows with one another to the point where, it seemed to the petitioner, he had hit with his sword one of their number who was pressuring him more than the others, called Denis de La Gastine". The remission letter tells us that the request for a royal pardon was only secondary. In the first instance, de Villiers went in person to the papal curia to request absolution and dispensation.

> *Ledit suppliant est allé à Rome à grands frais et dépens et il y a obtenu de notre saint père pleine absolution et réhabilitation de ses ordres sacrés et de ses bénéfices, à la condition d'effectuer une pénitence, à laquelle il se soumet chaque jour. Mais néanmoins, il n'ose aller, venir et demeurer dans son pays ni ailleurs, sans avoir préalablement eu et obtenu de nous notre grâce et miséricorde.*
>
> (The said petitioner incurred great expense and cost travelling to Rome and obtained full absolution and rehabilitation of his holy orders and benefices from our holy father, on condition of a penance to which he shall subject himself daily. Nevertheless, he does

not dare to come and go or stay in his country or elsewhere without having obtained in advance our clemency and mercy).[48]

2.4. One Person, two Pardons

Eleven petitioners, besides Jean de Villiers, approached both the king and the pope. Yet no set pattern emerges: some turned first to the pope and then to the king (no. 8, 9, 10, 11 and 12), while others did the contrary (no. 5, 7, 13 and 14), and one cleric sent requests to the pope and the king simultaneously (no. 3). It is, however, possible to distinguish two groups of petitioners: those with two divergent statements of fact and those whose accounts (*narrationes*) align with one another.

We can begin by looking at cases where the statements of facts differ, both in the context supplied and in the length of the account. We will examine the documents produced by Pierre Pely, priest for the parish of Saint-Isidore (in Saint-Désert) in the Diocese of Chalon-sur-Saône (no. 11). The petition *de diversis formis* (193 words) was approved by the Penitentiary in June 1499, two months after the homicide. Pierre describes a hostile layman, Guillaume Lecoris, who set up an ambush for him in a wood, together with three or four other men on horseback. Gravely injured, the petitioner first tried to flee, then fought back with his knife and killed Guillaume. He obtained conditional absolution for the homicide (*absolutio ad cautelam*); we will come back to this later. One month later, in the much longer remission letter (487 words), the petitioner declared himself "a priest, native of Saint-Désert in the Bailiwick of Chalon", but the victim is called Guillaume Le Roux, and the account is much more detailed. Pierre explains that Guillaume attacked him several times because he suspected him of being in a relationship with a married woman. Guillaume is said to have been jealous, acted "furiously" and "persisted in his sorry, damnable proposition", ultimately attacking Pierre on the road between Saint-Désert and the neighbouring Maison-Dieu in Givry along with two servants on horseback. Pierre is said to have defended himself and landed several dagger blows on his victim, who died two or three days later.

In a different example, Jean Lemaire obtained a royal pardon and papal declaratory letter concurrently in October 1489 (no. 3).[49] The royal letter (969 words) contains very precise details of the petitioner's identity and the circumstances. Jean was a squire and a noble aged 28, whom his parents had placed with the du Bellay family at the age of five, and a servant of René du Bellay, Archdeacon of Poitiers (1472–1497).[50] He obtained his royal pardon after having killed a resident

48 Petition not found in the Penitentiary's registers, possible petition to the Apostolic Chancery.

49 For remission letters from Poitou, see Verdon, Le clergé poitevin.

50 Vallière, *Fasti ecclesie gallicanae*, p. 356, no. 527; Bourquin, Les Du Bellay.

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of Chauvigny, Jean Ledonné, with his javelin on 5th September 1489 in defence of his master. René du Bellay himself obtained a remission for the same case on 23rd September. The letter states how the victim had "great hate and malevolence" for the archdeacon due to rights that he was claiming in the name of the Bishop of Poitiers, who was also baron of Chauvigny. Jean Ledonné and two companions are said to have attacked Jean Lemaire and his master at night while they were returning from supper with the bishop, one on horseback and the other on a mule, and found themselves "on a narrow path", located "between the hospital in Chauvigny and the gallows". The *de declaratoriis* petition is much more succinct (70 words): the petitioner's status is not given (probably forgotten by the scribe who copied the petition into the register), and the *narratio* adds little information on the motives and circumstances behind the conflict. It does not mention the existing conflict over the bishop's rights, nor even the presence of the petitioner's master, René du Bellay. Only the main aspects are set out for legal purposes: the victim's name and status, the weapon used (*cum quadam javelina*), and the ambush. The latter is described in terms (*in quadam via publica et loco arcto et stricto*) that echo the "narrow path" in the remission letter and justify self-defence.

However, other petitioners provided two detailed accounts that are almost identical. Yet it should be noted that the statement of facts was not written in the same language (one is written in Latin and the other in Middle French), according to the same rules or chancery manuals. Furthermore, the processes of petitioning the pope and the king were part of different legal systems (one used canon law and the other the monarch's law) and different value systems. In contrast to the French king, who granted his subjects the right to avenge their honour, the Church firmly condemned the use of retributive violence, especially on the part of clerics.[51] We can also identify a few discrepancies as the supplicant adapted his arguments according to the authority to whom he was addressing his request. Yet, these adaptations are not always as expected. This is clear when we examine the case of Jean Dalerie, a priest residing at Buire-le-Sec near Montreuil-sur-Mer in the Diocese and Bailiwick of Amiens. He killed the tailor Jehannin de Campaigne, who had violently attacked his brother Pierre Dalerie (no. 8). This conflict opposed two sets of siblings, namely Jean and Pierre Dalerie on the one hand and, on the other, Jehannin de Campaigne, a brewer of *cervoise* ale, and his brother of the same name, a tailor. In a petition *de declaratoriis* that aimed to exculpate him, Jean Dalerie acknowledged that family revenge was a motive (*ut eos hujusmodi injuria eidem Petro illata vindicare posse*). In his statement to the king he masked this with other motivations, stating that he had acted because he was "moved by love and brotherly affection" and that "the aforementioned case was committed in the heat of the moment (*chaude colle*) and came

51 Lusset, La *fama*.

about through the aggression and insult of the brewer in question".[52] Both cases illustrate the conflicts petitioners experienced between the conventions for their priestly ethos and those for the male habitus in a society governed by an honour code.[53]

Despite these differences in language and legal norms, the accounts concur on all points setting out the circumstances, places, words exchanged (sometimes transcribed as direct speech), and people present. We can see this from the documents produced by Pierre Bourgaize (no. 10). Bourgaize was the priest of the Diocese of Sées. At an inn at Montargis in April 1498, he quarrelled with a man nicknamed 'Le Gascon' about a prostitute and the way a song should be sung, and he killed him at the culmination of a fight. The accounts employ the same 'realistic effects' and pay attention to the same details, with astonishing intertextual interplay (Table 2).[54]

This holds true even for documents written by different individuals. With the killing in Nevers (no. 2), where in the royal letter Hugues Seguin is cited saying, "Ribald fellow! You killed my uncle!" (*Ha ribaud! Tu as tué mon oncle!*) before killing Guillaume Tixier, the petition to Rome by the canons and chaplain has "*O ribalde! Avunculum meum interfecisti!*".[55] It is as if the petitions to the Apostolic Penitentiary were exact copies of the applications to the king and vice versa.

One initial hypothesis is that the drafting of one document is based on the other. We do know that petitioners sometimes provided their proctor in Rome with their royal letter of remission. Hence, in 1466, a squire, Jean de Rochefaton, was guilty of killing his adulterous wife, Françoise Chaperonne, and had received a royal remission in 1462. He explained that he had lost his royal letters before they could be ratified while travelling to Rome by sea. This was doubtless a pilgrimage undertaken as a religious or legally imposed penance.[56]

52 Nassiet, *La violence*, p. 131 ; id., Récit de crime rémissible.

53 Lusset, La *fama*; Gay, Mostaccio, Tricou, Masculinités sacerdotales.

54 Zemon Davis, Pour sauver sa vie, p. 106.

55 The full texts of the petitions and letters of remission are available in Lusset, Pieyre, Pénitencerie apostolique, pp. 193–198.

56 AN, JJ 202, fol. 24, http://corpus.enc.sorbonne.fr/actesroyauxdupoitou/tome11/1418, accessed 18/03/2025. First remission letter: AN, JJ 198, fol. 426, http://corpus.enc.sorbonne.fr/actesroyauxdupoitou/tome10/1376, accessed 18/03/2025. Beaulande-Barraud, Les péchés les plus grands; Rousseaux, Religion.

Table 2 Comparing the papal petition and royal remission letter for Pierre Bourgaize (homicide no. 10)

	Petition *de diversis formis* approved by the Apostolic Penitentiary (23 May 1498)	Royal letter of remission (August 1498)	Translation of the letter of remission
Place and circumstances of the homicide: a meal at Bertrand Hardillon's home	*in opido Montisargi in domo Bertrandi Hardillon, certam cameram in suo domicilio conducere volens in eadem domo, cum quodam presbitero et pluribus aliis cenam faceret.*	*en la ville de Montargis alla souper en l'hôtel de Bertrand Hardillon avec l'intention de louer une chambre et avec lui il y avait un autre prêtre nommé Jean Muydorge et ils soupèrent avec ledit Hardillon et d'autres en faisant bonne chère.*	in the town of Montargis went to dine at Bertrand Hardillon's hostel, intending to rent a room and with him there was another priest named Jean Muydorge and they were dining with the aforesaid Hardillon and others, sumptuously.
Dispute about a song	*cui prefatus Gasconus dixit: "Verum dicitis sed nimium alte cantatis". Cui orator respondit: "Vos inchoastis cantilenam in tono vestro et juxta vocem vestram, ego vero in tono et voce mea cepi".*	*Dit Le Gascon : "Mais vous la prenez bien haute". Et ledit suppliant lui répondit : "Vous l'avez prise à votre ton et moi au mien".*	Le Gascon said: "But you are singing it very high". The aforesaid petitioner responded: "You sang it in your pitch and I in mine".
A woman's intervention	*eum interficere vellet prout interfecisset aut enormiter mutilasset, nisi mulier, existens in dicta coquina, ipsum amplexa fuisset.*	*l'eut tué et vilainement outragé, s'il n'y avait eu une femme qui était là, qui saisit et retint ledit Gascon.*	would have killed and heinously abused him, if there hadn't been a woman there who seized and held back the said Le Gascon.
Mutilation	*digitum manus sinistre exponentis taliter momordit, quam illius inervos et ossa <contudit>, ex quo dictus digitus inutilis effectus remansit atque mutilatus.*	*lui mordit le petit doigt de la main gauche si cruellement qu'il lui rompit l'os et les nerfs, en raison de cette morsure, ce doigt est mutilé et rendu à jamais inutilisable pour ledit suppliant.*	bit the little finger on his left hand so cruelly that it broke the bone and the nerves, due to this bite that finger is mutilated and rendered unusable forever for the aforesaid petitioner.
The petitioner's reply	*ensem hujusmodi de manu ipsius laici ut potuit extraxit, et cum potinella seu capite ipsius ensis aliquos ictus supra caput dicti laici dedit et postea de parte scindente ejusdem ensis duos ictus per quas partes corporis nescit. Attamen, ex illis ictibus seu altero illorum ut a nonnullis fertur, aliquos de digitis amputavit et cuspide prefati ensis in femore dicti laici Gasconis percussit et vulneravit.*	*Il prit comme il put la rapière dudit Gascon et lui en donna des coups de la pointe sur la tête et puis deux coups de taille il ne sait à quel endroit de son corps. Et néanmoins, il a entendu dire depuis que, desdits coups ou d'autres, il lui a coupé des doigts de la main et il lui a donné un autre coup d'estoc à la cuisse.*	He grasped the aforesaid Le Gascon's rapier however he could and gave him thrusts to the head with its point, then two cuts he knew not where on the body, and yet he heard tell that, whether from these blows or from others, he had cut off some of his fingers and given him another thrust in the thigh.

Yet, in at least two of the homicide cases (no. 2 and 3), the legal procedures at the Royal Chancery and the Apostolic Penitentiary ran concurrently. Are we therefore to assume that petitions to the king and the pope were written side by side by a single clerk who was well versed in the chancery rules of both administrations? Little is known about these legal intermediaries who advised petitioners and helped them to draft their applications in the expected form. Nor do we know how petitioners decided to approach one or the other body for forgiveness.[57] It must nevertheless be noted that the same clerical staff populated both bureaucracies and served both the church and the state; they were all trained at university, sometimes *in utroque juris*.[58]

As we compare the individual terms of the petitions, we note that royal remission letters paid greater attention to identifying the places, dates and people, as required by the 1413 *ordonnance cabochienne*, which stipulated that a supplication for remission should describe the "la manière, qualité et circonstance des délitz" of the case.[59] They included more data with which to clearly identify the people involved in the act. The petitions to the pope present Hugues Laurendeau and Regnault des Raoulins as simple canons and priests, whereas the remission states that Hugues Laurendeau was a non-prebendary canon who sits in the *bas chœur* and that Regnault des Raoulins was a collector at anniversary masses (no. 2). Equally, in 1499 the remission letter for the homicide of Jean Le Tellier the younger by his brother Robert mentions the lord of Gassebercque, while the papal petition is vaguer with its mention of *dominus temporalis* (no. 12). The remission letter from Pierre Bourgaize describes "another priest named Jean Muydorge" and "a dissolute woman known as La Catherade", whereas his petition *de declaratoriis* merely alludes to them (*cum quodam presbitero*; *quedam mulier incontinens*) (no. 10).

This attention to detail was likely motivated by a desire to identify potential witnesses to satisfy specific royal remission requirements. Once it was obtained, the remission had to be ratified by a royal judge, who verified that the facts relayed were accurate and that both sides of the argument had been heard in the presence of the opposing parties.[60] Further evidence of this can be seen in the blanks sometimes left in remission letters for a missing name, as for Guillaume Tixier's neighbour, whom the canons of Nevers Cathedral were asking about payment of tithes ("went to the *hôtel* of a certain [blank], his neighbour, who had the wheat

57 For more on clerks at the Royal Chancery, see Gauvard, Les clercs; Killick, The Scribes of Petitions. On proctors at the papal curia, see Bombi, Andrea Sapiti; Alexander, Paduans; Schmugge, Prokuratoren; Bombi, Anglo-Papal Relations.

58 Barralis, Boudet, Delivré, Genet (eds.), *Église et État*.

59 *L'ordonnance cabochienne (26-27 mai 1413)*, Alfred Coville (eds.), Paris 1891, p. 142.

60 Gauvard, De grace especial, p. 67; Otis-Cour, Limites de la grâce; Nassiet, Récit de crime remissible; Beaulant, Pratiques de la grâce, pp. 200–208.

from a field belonging to him without the tithe being paid", no. 2). Does this mean that the Apostolic Penitentiary was less particular than the Royal Chancery when it came to fact checking? As I stated in my introduction, from its seat in Rome, the papacy did not have the means to check the petitioners' allegations and usually entrusted the execution of the letters to the petitioner's ordinary or their official (in 18 out of 22 cases). It is clear that this procedure was better respected for *de declaratoriis* petitions (13) than for *de diversis formis* petitions (9).[61] According to the details supplied at the bottom of the petition about the commissioner's identity, we know that at least four of the 22 petitioners (no. 10, 11 and 14) personally travelled to Rome and hence the execution of their papal letters was entrusted to a bishop within the curia or a minor penitentiary (*penitentiarius minor*). Among the commissioners was an important member of the Penitentiary, François Berthelay, Bishop of Mylopotamos in Crete. Given the number of commissions he received – in the Jubilee year of 1500, almost all the German petitioners present in Rome were due to appear before him – it is unlikely that he demanded any evidence to validate papal clemency other than an oath taken by the petitioner.[62]

3. Working Together or Acting against one Another?

This joint appeal to the pope and the king presents an opportunity to examine the relationship between papal and royal acts of clemency. In the cases I studied, the two sovereigns can be seen complementing rather than competing with one another, as they each met different legal, administrative and spiritual needs.

3.1. Different Strategies in Approaching the Apostolic Penitentiary

For clerics such as Jean Lemaire, a servant to the Archdeacon of Poitiers, applying simultaneously to both the king and the pope (with a *de declaratoriis* petition) served two complementary objectives. On the one hand, it halted the usual course of justice. On the other hand, it ensured he could access major orders (no. 3).[63] For other, more established figures, the question was not merely one of avoiding legal pursuit – in Macé Potin's case, he had already taken refuge in a place of sanctuary – but one of not losing one's benefices. This priest, precentor, tenor and chaplain to the Duke of Orléans had killed a regular canon in Blois (in the Diocese of Chartres) called master Robert le Roux, who had mocked him. In March 1497, Charles VIII

61 Salonen, Penitentiary; Lusset, Pieyre, Pénitencerie apostolique.

62 Schmugge, "Weihetourismus"; Clarke, Between Avignon and Rome.

63 Salonen, Hanska, Entering a Clerical Career; Larson, Killing a Career.

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granted him a pardon on condition that he pay 10 *livres tournois* to the Poor Clares in Blois to pray for the soul of the deceased and that he stay in the town for three months so that the letters could be ratified (no. 7). In December, Macé drafted a *de diversis formis* petition to ask for absolution of the homicide, excesses and excommunication he had incurred, and for dispensation from irregularity. The petition to the pope did not duplicate the remission letter in any way. Once the royal remission put an end to his legal difficulties, the petitioner planned to remove the obstacles to his church career and his enjoyment of the revenue from his duties. Traditionally, the absolution and dispensation thus obtained would allow him to serve as a priest and hold any benefice, with or without cure of souls. However, the level of detail was unusual: the petitioner was careful to state the name of his benefice (a canonry in the collegiate church of Saint-Nicolas de Sézanne, in the Diocese of Troyes, which the pope conferred on the holder) and asked to be allowed to keep it and the associated prebend.[64]

Comparing these two examples (no. 3 and no. 7) shows that not all clerics adopted the same strategy in approaching the Apostolic Penitentiary. When some clerics such as Jean Lemaire aimed for a costly declaratory letter to exonerate them, others, including Macé Potin, acknowledged their guilt but argued they had acted in self-defence in order to be welcomed back into the church through absolution and dispensation. To the twin facets of innocence and absolution, we must add a third type of petition for conditional absolution (*absolutio ad cautelam*); this belongs to the category *de diversis formis*. Here, the petitioners feared they had incurred excommunication but were not sure of this and requested absolution as a precaution. *Ipso facto* excommunications meant that the transgressor was automatically censured, without the intervention of a judge. Since there was no monitory procedure and no sentence was pronounced, legal confusion reigned, and conditional absolution was intended as a response to this. As *ipso facto* excommunications increased, the number of conditional absolutions rose from the late 12th century onwards.[65] Applications for conditional absolution made by killer priests would appear to be an edge case: the petitioners acknowledged their own involvement in a killing but claimed they did not know whether or not they had been excommunicated and requested absolution just in case. This is how Pierre Pely, a priest from the Diocese of Chalon who committed homicide (case no. 11 above), stated his request:

> *Cum autem Pater Sancte dictus exponens in mortem dicti defuncti alias quam ut premittitur culpabilis non fuerit, de ea plurimum doluerit prout dolet de presenti premissaque pro*

64 Lamauvinière, Fiche.

65 Villien, art. Absolution.

sua necessaria defensione fecerit, cupiatque in omnibus suis ordinibus, etiam in altaris ministerio, ministrare ac quecumque per eum forsam obtenta retinere sibique in futurum conferenda beneficia ecclesiastica recipere et similiter retinere posse, dubitat tamen ibi culpam agnoscere volens ubi minime reperitur se propter premissa homicidii reatum incurrisse et irregularitatis maculam sive inhabilitatis notam contraxisse, supplicat etc. quatenus ipsum ab homicidii reatum et excessibus hujusmodi ad cautelam ac peccatis suis aliis nisi talia fuit propterque merito sit sedis consulenda predicta absolvi, demum cum eo super irregularitate ex premissa contracta quodque premissis non obstantibus in omnibus suis ordinibus, etiam in altaris ministerio, ministrare ac beneficia hujusmodi recipere et retinere libere et licite possit dispensari misericorditer mandare dignemini omnemque inhabilitatis notam et infamie maculam ex premissis insurgentis circa eum penitus aboleri.
(However, Holy Father, although the petitioner is not guilty of the death of the victim except as aforementioned, he has deeply regretted this death, as he regrets it still, and acted as required to defend himself; he is desirous of serving in all his orders, even the sacred and priestly orders, of retaining that which he has obtained and of receiving and retaining those ecclesiastical benefices that will be conferred upon him in future. However he suspects, while he wishes to acknowledge any fault of his wherever it has arisen, that he has incurred the crime of homicide and to have contracted the stain of irregularity or the mark of incapacity due to the aforementioned deeds and therefore begs etc. to be conditionally absolved of the crime of homicide, of the excesses and his other sins, excepting where these are such that he must consult the apostolic see and be absolved. Finally, [he applies] for dispensation from the irregularity contracted by the said deeds and, in spite of these, to be graciously authorised to serve in all his orders, even the sacred and priestly orders, and to receive and retain his benefices freely and legitimately and that any mark of incapacity and stain of infamy arising from the said deeds be completely annulled).

Although he acted by necessity, the priest states that he believes he may have committed homicide and therefore asks to be absolved as a precaution. In this case, conditional absolution creates a legal fiction that allows the petitioner to avoid contracting the impediments and incapacities associated with the crime and thus to continue to serve as a priest and escape a poor reputation and scandal.[66]

3.2. Papal Pardons are not enough for Secular Justice

Yet Pierre Bourgaize's remission letter (no. 10), which obtained a conditional absolution from the pope called "abolition and rehabilitation", shows that this in itself was not sufficient to fully rehabilitate the petitioner:

66 Fossier, Bureau des âmes.

> *Mais néanmoins ledit suppliant craignant encore la sévérité de la justice temporelle a fui le pays et n'ose y retourner, vivre et demeurer ni ailleurs dans notre royaume.*
> (Yet nevertheless the said petitioner remained in fear of strict temporal justice and fled the country, not daring to return, live or abide there or anywhere else within Our Kingdom.)[67]

Equally, there is the case (no. 9) of Jean Goulard, a priest in the Diocese of Maillezais and a student in Poitiers. He was guilty of killing Jacques Rogier, known as Le Bourguignon, whom he and fellow students had confronted. Jean was conditionally absolved by the pope on 11 April 1499 and subsequently ordained as a priest; he gave himself up to justice at Thouars so he could be freed and pardoned by the king when he came to town in November 1500:[68]

> *Ledit suppliant a obtenu de Notre Seigneur Père le pape ou de son pénitencier ses lettres de grâce, de pardon et d'absolution et depuis il a accédé aux saints ordres de la prêtrise. Toutefois ledit suppliant, redoutant d'être sévèrement traité par la juridiction temporelle en raison dudit cas, s'est constitué prisonnier dans les prisons de la ville de Thouars, desquelles il a été libéré lors des solennités de notre première et nouvelle entrée.*
> (The said petitioner obtained from Our Lord Father the pope or from his penitentiary his letters of clemency, pardon and absolution and has since then accessed the holy orders of priesthood. However, the said petitioner, suspecting he would be treated severely by temporal justice because of the said case, gave himself up to justice in the prisons for the town of Thouars, from whence he was freed at the time of the ceremony for our first and recent entry there.)[69]

In the late 15th century, despite the 'benefit of clergy' (*privilegium clericale*), which, in theory, guaranteed that clerics would only be judged, punished and pardoned by the Church's courts – primarily by officialities[70] – including in cases where a layperson was killed, petitioners doubted the capacity of papal clemency to prevent secular judges from pursuing them. They feared strict temporal justice (*doubtant*

67 We have learned from Pierre Bourgaize's remission letter that conditional absolution was associated with a penance : *Ledit suppliant s'est tiré pardevers nostre saint père le pape et de luy ou son penitencier, ou comme, avec invocacion faicte dudit cas, a obtenu abbolicion d'icelluy et reabilitacion, moyennant une penitence salutaire qui luy a est enjoincte faire et acomplir*.

68 Charbonnier, Limites du pardon ; on Louis XII's travels, see Dauphant, Le royaume.

69 This same argument can be found in remission letters from princes, Pégeot, Derniame, Hénin, Lettres de rémission, p. 261, 6 August 1503.

70 A person who passes judgement in God's name may not be judged by laypeople. In theory, a cleric cannot be pursued by a secular court in criminal matters. They may only be subject to the secular arm of the law once they have been dismissed by the church authorities. Lefebvre-Teillard, Les officialités ; Carbasse, Histoire ; Mathieu, Le privilège de for.

rigueur de justice), which might even condemn them to death.[71] Indeed, since the 14th century, secular courts had applied the theory of *cas privilégiés*. This was especially true of parlements, which were sovereign courts: they deemed themselves competent to rule on any infraction that went against the monarchy's interests and to get involved in ecclesiastical disciplinary cases and impose *afflictive* sentences on clerics such as mutilation, exile or death.[72] Given the enormity of their crimes, they considered such clerics to be ordinary subjects.[73] Hence, Cosme Guymier (1486), canonist and member of the Paris Parlement, maintained that the 'benefit of clergy' should be conditional on the crimes committed.[74] In parallel with these doctrinal debates, from the 1470s onwards, the Parlement of Toulouse had no hesitations about condemning criminal clerics to death: it did not always wait for their bishop to dismiss them and officially subject them to the secular arm of the law.[75]

Besides the intervention of lay judges, there could be resistance from bishops, who sometimes baulked at applying papal decisions. This is what happened in a case (no. 4) where a regular canon, Pierre Machaut, was killed. Guillaume Cousté, a brother at the Hôtel-Dieu de Châteaudun (in the Diocese of Chartres), relates in his remission letter how his official put him in prison despite his 'rehabilitation' by the pope. This letter does not stop at recounting the fatal altercation. It also retraces Cousté's chaotic career. As a novice, he set fire to a hospital building to drive out the occupants; in 1489, he killed brother Pierre Machaut in self-defence while the latter was attacking the Hôtel-Dieu, then violently attacked the victim's mother who had called him "a vile rogue, murderer, firebrand". These multiple crimes doubtless explain the official's reticence to execute the pope's act of clemency.

Another letter of remission dating from December 1464, and therefore earlier than our main corpus, also explains the difficulties petitioners encountered with validating the Penitentiary's decisions. Jean Salemon was a regular canon and procurator at the Priory of Saint-Jean-du-Gray, a dependency of the Abbey of Cormery (in the Diocese of Tours). In 1463, he killed Mathurin Verdon in self-defence. He went to Rome and obtained papal letters, which he presented to a judge-delegate whose job it was to verify his claims. Having investigated the case, the judge declared that the petitioner was not irregular, but this decision was not to the liking of the Archbishop of Tours, who placed the petitioner in prison and opened a new enquiry. The fact that the Papal Curia designated a commissioner other than

71 Gauvard, Condamner à mort, pp. 167–170. See Hurnard, The King's Pardon, pp. 375–380 and Clarke, Legitimate Self-Defence, pp. 146–152 for a comparison with England.

72 Gazzaniga, L'Église du Midi; id., Les clercs criminels; Durand, Délits privilégiés; Goudot, Parlement de Paris.

73 Gauvard, Condamner à mort, p. 168.

74 Lange, Gallicanisme.

75 Gazzaniga, Les clercs criminels, pp. 52–53.

the petitioner's ordinary indicated that there was a pre-existing conflict.[76] This was confirmed by the archbishop's refusal as described above. At the end of the second procedure, instructed by the archbishop, the petitioner's statements were confirmed, and he was released from prison. However, since he feared harassment from the king's officers, he decided to request an act of clemency from King Louis XI. In the dispositive section of the letter, the king states that he pardons the petitioner because he is a "good monk" and has been absolved by the pope and his archbishop. In this way, the king established a division of roles between the pope, whose power he recognised in matters of spiritual grace, and himself in temporal matters. By his act of clemency, the king protected the petitioner from "all penalty, fines and offences, whether corporal, criminal or civil", restored "his good reputation" and "imposed silence" on his procurator. The bailiff of Touraine and the other judges were banned from seizure of both the petitioner's own person and his belongings, which were to be returned to him without delay. These legal provisions reveal what was at stake in a joint appeal to both pope and king, i. e. the enjoyment of benefices and the related revenue.[77]

3.3. Homicide and Benefices

Under ecclesiastical penal law, the primary penalties imposed on a cleric would relate to the revenue from their benefice, depriving them either temporarily or permanently of all or part of the revenue from said benefice.[78] As royal court officials called into question the 'benefit of clergy', they gradually expanded their jurisdiction to include the ecclesiastical processes concerning benefices. When two clerics were in dispute in the second half of the 15th century, the Parlement of Toulouse had the power to place the revenue from benefices "into the King's hand" and appoint administrators for it.[79] A remission letter dated 1477 explains the legal mechanisms for sequestering benefices in homicide cases. Due to a conflict about collecting tithes between the Augustinian Prior of Coudray and Jean Barthélémy, the curate for Brèdes (in the Diocese of Maillezais), a fight broke out, and one of the regular canons, Jean Bertran, died. The curate explained:

> *Redoutant qu'on lui reproche qu'il a encouru une irrégularité et une sentence, une censure ou des peines ecclésiastiques en raison de cette mort, il a obtenu de Notre Saint Père le pape une provision, par laquelle il a été et est absous du cas et de tout ce qu'il pourrait encourir à*

76 For the *recusatio iudicis*, Müller, Violence.

77 AN, JJ 199, fol. 352v-353v, December 1464, transcription provided by Aude Musin, to whom I extend my warmest thanks.

78 Basdevant-Gaudemet, Histoire.

79 Gazzaniga, *L'Église du Midi,* pp. 98–101 and 188.

l'occasion de celui-ci. Et une pénitence secrète lui a été imposée sous le secret de la confession, ainsi qu'il apparaît dans ces lettres apostoliques et dans le procès exécutoire sur ces lettres, hormis la pénitence secrète, qui ne doit pas être révélée. Mais ce nonobstant, il est venu à la connaissance du suppliant que ses temporels et biens meubles ont été pris et saisis en notre main à la requête de notre procureur et du procureur général de l'université d'Angers, car le défunt se disait écolier de cette université, et pareillement à la requête de frère Helye du Boys, soi-disant prieur du prieuré du lieu de Coudray, en vertu des lettres du conservateur de l'université, et semblablement de Jacques Turpin, écuyer, seigneur de Vihiers, ou son procureur dans ce lieu, en la châtellenie duquel ledit cas est advenu, au point que le suppliant demeure entièrement empêché en ses biens meubles et temporel de sa cure.
(Expecting that he would be accused of having incurred irregularity and that he would be sentenced, censured or incur ecclesiastical penalties due to this death, he obtained a provision from Our Holy Father the pope by which he was and is absolved of the case and of anything he might incur as a result thereof. And a secret penance was imposed on him under the seal of confession, and this appears in these papal letters and in the procedures for executing these letters, except for the secret penance which may not be revealed. Notwithstanding the above, it came to the petitioner's knowledge that revenue from his benefices and movable goods had been taken and seized by our hand at the request of both our procurator and the procurator general at the University of Angers, since the deceased stated he was a scholar of this university, and similarly at the request of brother Helye du Boys, the so-called prior at the Priory of Coudray, in virtue of the letters from the conservator at the University, and apparently also of Jacques Turpin, squire and Lord of Vihiers, or his procurator for that place, in whose castellany the said case arose, to the point where the petitioner remained wholly unable to access his movable goods and the revenue from his office.)[80]

Despite being absolved of the homicide, having obtained dispensation from irregularity and completed a penance, the curate's legal troubles were far from over. The revenue from his benefices was sequestered at the instigation of three judges: the king's procurator, who was doubtless acting because of the nature of the subject matter (*ratione materiae*); the conservator at the University of Angers, on the grounds that the victim was studying there (*ratione personae*); and finally, the Lord of Vihiers, since the homicide was committed within his castellany (*ratione loci*). To stop being prosecuted and sanctioned and to regain enjoyment of the income, Jean Barthélémy had no other choice than to plead for royal clemency.

The same reasons pushed Pierre Picart, sacristan ("*secretain*") for the Benedictine Abbey at Saint-Maixent (Diocese of Poitiers), to ask the king to pardon him for

80 AN, JJ 203, fol. 6, http://corpus.enc.sorbonne.fr/actesroyauxdupoitou/tome12/1599, accessed 18/03/2025.

killing Gilles Chaignon in 1498. Although he played no direct part in the crime, Pierre Picart did instigate the lethal ambush in which his cousin, brother Savinien Aymeret, also took part (no. 14). The ambush aimed to take revenge on laypeople who regularly threw stones at the door of the Abbey, and the weapon used for the crime was deposited in the petitioner's sacristy ("*secretainerie*"). When he learned that Gilles had died, about which a rumour was spreading throughout the town of Saint-Maixent, Pierre Picart fled, and the revenue from his benefice was "placed in the hands of the king". In Abbeys, monastic officials sometimes had their own income from real estate and the related *rentes*. As the letter of remission shows us, they might also have their own domestic arrangements and individual lodgings, located outside the enclosure. According to the statutes of the Abbey of Saint-Pierre-de-la-Couture in Le Mans, the sacristan, who was responsible for maintaining the church, had the best income of all the officials.[81]

Where clerical petitioners approached the king, this was because the system of benefices was effectively gradually being "nationalised" in the context of the Pragmatic Sanction of Bourges, drafted in 1438, and the 1472 Concordat of Amboise, which Louis XI negotiated with Sixtus IV.[82] Not only were the king's judges arrogating the right to sequester the revenue from benefices, but the king also controlled how these were attributed more broadly, which allowed him to remunerate all those who served him and win over new servants.[83]

Yet Pierre Picart was not content to appeal to royal mercy alone: on 11 January 1500, he obtained absolution of homicide from the Apostolic Penitentiary and dispensation from the irregularity he had contracted, which allowed him to continue serving as a priest and also to keep his sacristan's benefice. A papal act of clemency was still required to "secure" the benefice and related revenue. At the dawn of the 16th century, the Papal Curia still seemed the best guarantor for acquiring – and safeguarding – a benefice, especially for parish churches and priories.[84] It seems as if the steps Pierre Picart took at the Royal Chancery and Penitentiary were effective: in a written text from 1509, he is still described as "sacristan brother at the Abbey of Saint-Maixent".[85]

81 Guilloreau, L'abbaye.

82 Poncet, Antiromanisme.

83 Id., Bénéfices ecclésiastiques; Tewes, Die römische Kurie; Montaubin, Les chanoines.

84 Tewes, Die römische Kurie.

85 AN, MC/ET/VIII/11, Minutes et répertoires du notaire Pierre Chevalier, 10 September 1509.

4. Conclusion

Analysis of these fourteen dual or duplicate pardons reveals a variety of case types, regarding both the petitioners' profiles and their routes to justice. The channels through which clemency was obtained at the end of the Middle Ages were certainly not watertight. Clerics who killed could access the conventional openings – the legates and the offices at the Papal Curia (the Penitentiary, the Chancery and the Dataria) – but were also able or obliged to resort to the Royal Chancery.[86] Indeed, the king of France was "emperor in his kingdom", reaffirming his own sovereignty over all his subjects, including the clergy. Like an appeal from an abuse (*appel comme d'abus*) did in Parlement, a remission letter allowed him to reach beyond legal boundaries and extend his legal power over the Church.

Yet this multiple availability of clemency (from the pope, the king and princes) should not be interpreted as a marketplace where 'forum shopping' occurred. We must emphasise that these pardons were not in consumerist competition but instead complemented one another. Although a letter from the pope no longer held the binding force it once had – in the days of triumphant papal theocracy – it nevertheless remained an administrative and spiritual guarantee, which killer clerics could not do without, even when they were pardoned by the king. In the late 15th century, the pope was not the distant figure that the historiography depicts when describing the rise of the modern state. As Götz-Rüdiger Tewes has shown, the Pragmatic Sanction did not put an end to the relationship between France and the Papal Curia, despite some vehement Gallican discourse. Quite the reverse: around 1490, almost half of the bulls issued by the Apostolic Chancery related to France. The same families served both the king and the Church and built their ascent through society using royal commissions and ecclesiastical benefices as stepping stones.[87] These close connections and interconnections certainly made it easier to apply to both the pontiff and the king for mercy. Yet killer clerics were better assured of rehabilitation when they first squared things with the king before approaching the pope.

Let us conclude with a final narrative of a criminal priest, offering insight into the scope and limitations of pontifical and royal letters of pardon. In November 1498, a priest resident at Huppy (Diocese and Bailiwick of Amiens), Robert Le Tellier, argued with his brother Jean about inheritance from their father. The priest and his mother planned to sell oaks to finance masses and alms for the father's soul, whereas Jean was opposed to the idea. The dispute degenerated into violence, and Robert hit Jean on his head with a spear. Jean died shortly afterwards. The priest

86 Similarly, clerics developed the habit of referring internal church litigation to parlements, see Gazzaniga, *L'Église du Midi;* Goudot, Parlement de Paris; Bonzon, Galland, Justices croisées.

87 Tewes, Die römische Kurie.

first obtained a declaratory letter from the pope in 1499, then a royal remission (no. 12); the two accounts follow the same lines. Yet a third document sheds light into areas the other accounts left in the dark and on what happened to the petitioner after he had obtained his double pardon. Having been pardoned by the pope in February and by the king in June, the priest himself was killed in October 1499. We learn this from the remission granted to his four murderers. Before he had obtained his royal pardon, Robert Le Tellier had been arrested by the Provost of Vimeu and imprisoned in Amiens for the death of his brother, as well as other "misdeeds and crimes". It should be noted that he threatened to kill the Lord of Huppy, who was patron of the parish church, because the latter refused to let Robert celebrate mass in the church due to the murder. He was pushed into a corner due to local justice, pressure from his patron and the scandal invoked by his crimes: Robert Le Tellier drafted a *de declaratoriis* petition to the Penitentiary and an application to the Royal Chancery. In the remission granted to his murderers, he was said to be "quarrelsome and feared, with a bad reputation in the land" ("querelleur, redouté et mal renommé au pays"). While this account certainly emphasises the priest's faults, to ensure his murderers were exonerated, it also shows that a papal and a royal pardon failed to quash the petitioner's bad reputation. However loudly the sovereigns, judges and peacemakers claimed to have purged society by decreeing that criminals be fully reintegrated and all conflict forgotten, papal and royal pardons did sometimes fail to restore a clerical reputation that had been ruined when blood was spilled.

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Darlene Abreu-Ferreira

Pardons for and by the Enslaved and Racialised in Pre-Modern Portugal[1]

In Portugal, a legal apparatus for granting pardons to individuals accused of committing crimes existed from at least the late Middle Ages, when the first set of royal ordinances were compiled.[2] The practice of granting pardons was not unique to early modern Iberia, but the process in Portugal and Spain included a unique element. Before an individual charged or convicted of a crime could appeal to the crown for clemency, that individual had to obtain a pardon from the victim(s) or the victim's relatives. The local notary recorded the *perdão de parte*, or victim's pardon, and the supplicant submitted the written document to the crown in an appeal for a reduced sentence or a full pardon.[3]

The requirement for evidence of some form of reconciliation between victim and perpetrator existed in other parts of Europe as well,[4] but the Portuguese *perdão de parte* differs from the French *paix à partie*, for instance, in at least two crucial areas. First, contrary to the situation in the *Ancien Régime*, there is no evidence of a change in legislation or social practices in Portugal regarding the victim's pardon during the early modern period. Second, Portuguese women were legally entitled to engage, on their own or with their kin, in the granting and receiving of the *perdão de parte* and in appealing for royal pardons, whereas French women could not act alone in such judicial matters.[5]

The present study aims to highlight yet another key difference in appeals for mercy found in the Portuguese archives, a distinction based on Portugal's prom-

1 This essay is based on a presentation at the conference, 'The Power to Pardon in Medieval and Early Modern Christianity: Exceptions and Diversities', Münster, Germany, 2–3 November 2023. The author is grateful to the organisers for the invitation to participate and for the stimulating discussions that ensued. This research was made possible with a grant awarded by the Social Sciences and Humanities Research Council of Canada (SSHRC).

2 The royal ordinances were compiled in five volumes in three separate periods, all of which were printed and subsequently published, see Ordenações Afonsinas; Ordenações Manuelinas; Ordenações Filipinas.

3 For a discussion of this process, see Hespanha, A monarquia; Drumond Braga, Crime; Ribeiro da Silva, Cardoso, Escrituras de perdão.

4 For a brief overview of this broad topic, see Verreycken, The Power to Pardon.

5 Dupont-Bouchat, Le crime pardonné, p. 44. Big thanks to Luke Giraudet from Louvain-la-Neuve for bringing this study to my attention.

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inent role in the African slave trade in the early modern period.[6] Although the transatlantic slave trade was geared overwhelmingly towards overseas European colonial posts, a significant number of those African slaves ended up in European households, particularly in southern Europe. Consequently, in this essay, I will focus on members of a visible minority group in early modern Portugal – those who were or had been enslaved or otherwise racialised. The number of references found in the relevant sources to this underprivileged sector of the population is relatively small compared to the recorded cases that involved members of the broader society. However, even a few extant examples serve to highlight a hitherto unknown facet of the role of enslaved and racialised peoples in the process of granting and receiving pardons in a pre-modern European society whose domestic economy was visibly linked to enslaved labour.[7]

In my previous work on victims' pardons in early modern Portugal, I showed the extent to which women's participation in the granting of pardons to perpetrators of crime was exceptional only in terms of comparison with women's involvement in legal matters in other parts of Europe.[8] In the Iberian Peninsula, where partible inheritance systems were entrenched in law if not in practice, women had tangible reasons to protect themselves from potential encroachments on their property due to criminal activity, and – as my study shows – crime was linked invariably to property and not necessarily in cases of theft alone. From fines and legal fees to potential compensation costs, individuals enmeshed in criminal acts, either committed by themselves or against them, generally stood to lose in the short and long term. The notarised pardon was a powerful mechanism through which individuals attempted to mitigate their losses, and this was true for plaintiffs and defendants alike.

The need for a victim's pardon was undoubtedly multifaceted, but one obvious reason was the recognition by legislators that an injury, for instance, could have grave consequences for the survival of a family. At a time when everyone was expected to contribute to the household economy, the loss of a member of that unit could lead to long-term economic or financial repercussions, not only for the immediate household but also for future heirs. For this reason, the notarised victim's pardon provided a blanket indemnity to the pardoned and the pardoner against all potential claims. Given the limited civil rights of the enslaved, it is

6 The best study in English of Africans in pre-modern Portugal remains Saunders, Social History. See also Sweet, Recreating Africa; Fonseca, Escravos; Queija, Stella, Negros, Mulatos, Zambaigos.

7 For studies about racialised peoples elsewhere in pre-modern Europe, see, for example, Kaufman, Black Tudors; Habib, Black Lives; Gnammanou, Modzinou, Les Africains; Clark Hine, Keaton, Small, Black Europe; Earle, Lowe, Black Africans.

8 Abreu-Ferreira, Women.

highly unlikely that an enslaved individual could grant a pardon.[9] At best, the law considered enslaved people as minors, and thus only their superiors could enter into a legal contract, ostensibly on their behalf.[10] What we have instead are pardon documents that *deal with slaves*, but the protagonist of those narratives is always the slave owner or another free person. Nevertheless, these narratives are worth examining for what they reveal and conceal about the place of enslaved or racialised peoples in the legal fiction that paved the road to forgiveness.[11]

This study is based on the examination of two main types of documentation: the victim's pardon and the calculated outcome of the victim's pardon – the royal pardon. Given the arbitrariness of the available sources from the pre-modern period, it is impossible to know how many victims' pardons were produced at the local level, how many of them were deliberated by crown officials, and how many of those petitions for clemency were successful on appeal. Nor can we hope to match the notarised pardon with the Chancellery record, for neither set of documents is indexed. The summaries registered in the royal pardon seldom indicate the time of the initial conflict, and it appears that the time lapse could run several years. For instance, one royal pardon granted in 1670 related to a homicide that took place in 1654, and in another case, a pardon from 1604 dealt with the non-compliance of obligations for a surety from 1588.[12]

We have, however, a sample of victims' pardons and a sample of royal pardons which make some reference to the enslaved, and/or to those people who were categorised by their racial/ethnic identities, of which there were a multitude. The term used most commonly for the enslaved was *escrava* (female) and *escravo* (male), but occasionally that label had additional qualifiers, such as *escrava cativa* (captive female slave) or *escravo forro* (free male slave), the former indicating total enslavement, while the latter related to some form of conditional freedom.[13] Sometimes, the enslaved were also identified by their African origin and/or their skin colour, but racial categories were used most often for those whose physical appearance set them apart from the general population. Thus, a Black or dark-skinned person could

9 Saunders, Social History, pp. 114–115.

10 For an overview of the rights of slaves in the Iberian Peninsula, see Phillips, Slavery. For an expansive look at the history of racism, see Bethencourt, Racisms.

11 The classic work on this general topic remains Zemon Davis, Fiction in the Archives. For the Portuguese example, see Abreu-Ferreira, Women, pp. 21–31 and *in passim*.

12 Lissabon, Arquivo Nacional da Torre do Tombo (hereafter AN/TT), Chancelaria de D. Afonso VI, Livro do Registo de Cartas de Perdões e Legitimações, Livro 4 (1658–1684), f. 124; AN/TT, Chancelaria de D. Filipe II, Livro do Registo de Cartas de Perdões e Legitimações, Livro 4 (1602–1604), f. 274v–275.

13 For a discussion of this terminology, see Saunders, Social History, p. XIII, p. 140.

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be legally free in early modern Portugal but socially differentiated and stigmatised because their "white" counterparts were not identified by their skin colour.

In his study of children in the criminal records in Dijon, Rudi Beaulant admits that his small sample is not good for statistics but reveals something about certain social norms.[14] Likewise, the documents analysed for this study, though quantifiably small, have the qualitative potential for shedding light on members of a historically marginalised segment of the population whose lives were at times embroiled in the pardon process, if not directly affected by it. The following question is of particular interest to the present study : can we gauge the level of agency – if any – of the enslaved and racialised in the granting or receiving of legal pardons in early modern Portugal?

To facilitate the examination of the archival findings, the analysis of the primary sources is divided into two parts. First, the *perdão de parte* or victim's pardon is mined for passages that relate to the enslaved or racialised to highlight how members of a visible minority were dealt with in cases of conflict that necessitated judicial intervention. Second, the discussion turns to a sample of royal pardons, documents that represent the desired outcome of the victim's pardon. Following the analysis, a brief conclusion attempts to link the events of the past with the challenges of the present. As will be shown, the archival evidence represents the points of view of the enslavers and contains a blatant silence from the enslaved, regardless of whether the latter were victims or perpetrators of criminal acts. Such absences are not surprising, given that written records were notoriously created by and for those who had the means to navigate through officialdom. In the case of the enslaved, there were several factors that hindered their participation in the production of official documents, starting with their status: legally, the enslaved were *personae non gratae*.[15] This fundamental principle dictated the extent to which their voices would have been heard, acknowledged, and absorbed into the creation of pardon narratives.

To date, little has been found to demonstrate the direct input of the enslaved in the pardon process, and this, in turn, complicates questions about agency, for a focus on agency is not without its pitfalls. As Walter Johnson pointed out, agency implies self-determination, and such a concept is problematic when applied to those who lived in a constant state of "civil objectification and choicelessness."[16] One other useful approach to the study of the enslaved and pardons is to look for the "indubitable signs", to quote Anthony Bly, which allow us to read "silence as text." Bly tells a compelling story of a young woman who, in 1743, was reported as

14 Beaulant, Violences contre l'enfant.

15 Saunders, Social History, pp. 114–115.

16 Johnson, On Agency, p. 115.

a runaway, and in the process, "the enslaved? woman *wrote* herself into history."[17] Likewise, references to the enslaved and/or racialised in pardon documents can be interpreted as historical validation of members of a visible minority rendered invisible in the official records.

1. The *perdão de parte*: Local Voices, Local Silences

My initial archival research into victims' pardons in the Portuguese archives yielded 224 records, found in an array of notary collections kept in different regional and district archives in mainland Portugal and in the Azores Archipelago, covering a little over two centuries (1544–1754). For the present discussion, the sample is reduced even further, for only 17 of 224 examples of victims' pardons examined have any direct reference to enslaved or racialised individuals, or approximately 7.6 per cent of the total. While 7.6 per cent is not high, it is also not insignificant and may indeed be a close representation of the actual number of enslaved and racialised people on Portuguese soil in the sixteenth and seventeenth centuries. Estimates indicate that African slaves made up approximately 10 per cent of the population in Lisbon in the mid-sixteenth century, which, as the nation's capital, held the crown's monopoly on the imports and exports of African slaves in the early modern period.[18] Ironically, none of the 17 cases of *perdões de parte* gathered thus far that deal with the enslaved or racialised come from the Lisbon archives, a telling example of the vagaries of research. The sample of 17 victims' pardons under discussion comes from four regions: Evora with 10; Faro with 5; and Porto and Terceira with one each.

The types of crimes that show up in this sample of victims' pardons are similar to those found in other victims' pardons that do not deal with enslaved or racialised individuals.[19] Of the 17 pardons, 10 were linked to physical injuries, four to homicide, and one each to running away, rape, and slander. Similarly, the sex ratio of pardoner/pardoned is also visible in this sample, with the overwhelming presence of male protagonists and only a few females. Out of 17 cases under discussion, only six women granted pardons and only one woman received a pardon (see Table 1). Most acts of violence that were recorded by officials occurred between men, but

17 Bly, "Indubitable Signs", p. 245.

18 By the 1550s, the number of slaves in Lisbon was approximately 10,000, or 10 per cent of the population. Almeida Mendes, Africaines esclaves, pp. 45–48.

19 See, for example, Ribeiro da Silva, Cardoso, Escrituras de perdão.

there is a significant gap between the number of women who received a pardon and the number of women found as victims in the pardon narrative.[20]

While only one woman received a pardon, five were victims of violence, including one Black woman killed by a white man. More pertinent to the present discussion, nearly all of the 17 victims' pardons connected to the enslaved or racialised were petitioned by free non-racialised individuals, with the exception of two examples from two siblings whose skin colour was not highlighted, but whose mother was identified as *negra* and Black. Interestingly, though, enslaved individuals were found as recipients of victims' pardons (8), or as victims of crimes for which their slave owners granted pardons to the perpetrators (4), or as accomplices in criminal behaviour with other slaves (2), or just mentioned in the narrative associated with a crime in which they were not necessarily implicated (3).

In order to illustrate the place of the enslaved/racialised in the pardon process, three victims' pardons are analysed closely, all from the Evora region. The first example informs us that Domingos Dias (presumably free and not a dark-skinned man)[21] had claimed that ten months earlier (January 1549), a group of men came to his door and attacked and injured him on the head, for which reason Domingos filed an accusation against Pedro Mulato, *escravo* (slave) of António Freire. Since then, however, Domingos "became certain that Pedro the slave was not part of this brawl, nor was Pedro the one who injured him". Since they were friends and wanted to continue their friendship, Domingos explained, he pardoned Pedro Mulato of all culpability, wanting nothing from him, and the notary accepted the *perdão de parte* on behalf of Pedro.[22]

The case of Pedro, the mulatto slave – the term *mulato* was used in the text both as a describer and seemingly as part of his name – exemplifies perfectly the legal fiction that was part of the many, if not most, victim pardon documents I have examined over the years. First, we are told that a group of men came to Domingos' home to attack him; second, we learn that of all those men, Domingos chose the enslaved Pedro as the instigator; third, about ten months later, Domingos came to the realisation that not only was Pedro not responsible for Domingos' injuries, but that Pedro was not even part of the attack. Was Pedro at the brawl? Possibly. Was he there on his own volition? Unlikely.

As Debra Blumenthal has shown in her study of violence in fifteenth-century Valencia, slave owners were notorious for using their slaves and servants in attacks of

20 Similar findings were reported for Burgundy. Beaulant, Pratiques de la grâce, pp. 344–349. I am grateful to the reviewer who shared this source with me.

21 The general rule followed by record keepers in pre-modern Portugal was to identify "the other" in terms of gender and race.

22 Évora, Arquivo Distrital de Évora (hereafter ADE), Fundo Notarial, Diogo Luís (notary), Série no. 24 (1549), f. 21v–2. All translations are mine unless otherwise noted.

personal enemies for two main reasons: one, being attacked by a servile individual was considered dishonourable among the elite; two, using the servant or slave as a scapegoat preserved the dignity of and removed the responsibility from the actual instigator.[23] Blumenthal examined a number of convictions of slaves, but court records unfortunately are not readily available for early modern Portugal. What we have instead is the victim's pardon, which is an indication that some conflict occurred, but it says little about the source of that conflict and even less about the final outcome. Nevertheless, Blumenthal's examples serve to situate the case of the above-mentioned Pedro, the *mulato* slave, who was a pawn at best in the construction of Domingos Dias' pardon document. This record is suffused with a legal fiction right to the very end, when the notary declared that he accepted Domingos' pardon on behalf of Pedro, as if Pedro had a choice in rejecting the settlement that undoubtedly took place between Domingos Dias and António Freire, Pedro's slave owner. As usual, this victim's pardon reveals very little about the behind-the-scenes negotiations that led to its creation, nor does the record tell us much about Pedro himself because, ultimately, he was not considered essential to the narrative.

By contrast, we are told more when those details could serve to exonerate the perpetrator of a crime. This phenomenon was found in the second example under examination, a victim's pardon granted by Manuel Vicente to Alonso Manhos. In his notarised declaration, Manuel explained that the previous year (1619), he had sold a Black slave named António, 26 years old, more or less, who was very nasty, as well as a habitual runaway, thief, and obstinate, *e não havia mais ha roim que elle não tivesse* (and there was no wickedness that he did not have). Our perception of António is thus very negative from the outset of the narrative, and the slave owner explained further that he did not trust his slave and, therefore, kept António in shackles and handcuffs and had him placed in the local jail. The jail was used as a holding station until Manuel sold António to Alonso Manhos for 16,000 *réis* in coin, at which point Manuel handed over the slave, and Alonso took him home.

Later the same day, however, Alonso returned and showed up at Manuel's house, with António lying dead across a mare. Alonso deposited the corpse at Manuel's door, stating that the slave lay on the ground and stiffened himself, and since Alonso could not unstiffen him, he placed the slave on the mare to return him to Manuel. On the way back, however, António obstructed his breathing, asphyxiated himself, and was dead upon arrival. Seeing the dead slave at his doorstep, Manuel took steps to protect his interests: *por elle não perder o seu dinheiro querellera do ditto Allonso Manhos e demandera a dita morte aos justisas* (so that he would not lose his money, he denounced the said Alonso Manhos and reported the said death to the justices).

23 Blumenthal, Defending.

Following an inquiry, Alonso was found guilty and jailed. In his victim's pardon, however, Manuel declared that he was later better informed of the facts. He thus pardoned Alonso for the death of António, for he was certain that Alonso *não teve nem tem cullpa na dita morte antes a teve toda o ditto negro* (did not have nor has any blame in the said death rather the said negro has all [the blame]). To be clear, in the court of law, Alonso had been condemned for killing António; in the court of private negotiations between Alonso and Manuel, the deceased was declared responsible for his own demise.[24]

Manuel's victim's pardon raises a number of questions, one of which regards his role as pardoner. In what sense could Manuel claim to be a victim in the death of the enslaved António he had sold to Alonso? There are at least two possible explanations for this phenomenon. First, Portuguese law had provisions to protect consumers from fraudulent transactions, including in the purchase of slaves. If someone bought a slave who turned out to be defective, such as being prone to be a fugitive, and the defects had not been openly declared by the vendor, the sale could be annulled.[25] It is possible that Alonso's defence included arguments of trickery and deception on the part of Manuel, who was unlikely to have revealed the extent of António's "wickedness" to a potential buyer. Although there is no way to corroborate Manuel's allegations of António's obstinacy, it is highly probable that the young man (literally) fought to his death against enslavement. Therefore, Manuel's first claim of victimhood was linked to possible accusations of misrepresentation from Alonso, an accusation that motivated Manuel to alert authorities of the homicide, for he admitted in the notarised document that he feared losing his money. In fact, at the end of the document, Manuel pointed out that he had no interest in the dead slave because he had his money from the sale.

Manuel's second claim of victimhood is connected to early modern Portuguese policing, or lack thereof. As was the case in most of pre-modern Europe, Portugal had the legislation to deal with crime but insufficient infrastructure to apprehend criminals. Well into the nineteenth century, the state depended on and indeed encouraged citizens to report any criminal activity. To motivate citizen engagement, the legislation allowed for a reward of up to half of the monetary value of the penalty imposed on the guilty. Thus, even a third party – someone not directly implicated in a conflict – could be an accuser and, subsequently, a pardoner. It is in this sense that Manuel – the one who denounced Alonso – could desist from the inquiry and forgo his entitlement to the reward. However, his retraction of the accusation had to be crafted carefully to avoid counter accusations of making a false statement.[26]

24 ADE, Fundo Notarial, Manuel Rodrigues (notary), Série 408 (1620), 09/11/1620, f. 4–5v.

25 Ordenações Filipinas, Livro 4, Título 17, No. 2.

26 To avoid false accusations, the law required third parties to provide a surety for their accusations. Ordenações Filipinas, Livro 5, Título 117 and 124.

In all the victims' pardons that I examined to date, every protagonist claimed to have received new information that absolved the accused.

One does not have to read this text too closely to see that the case dealt with an enslaved man rebelling against the brutality inflicted on him and killed in the process, for which crime Alonso was convicted. But, in preparation for an appeal to the crown, Alonso got the victim's former slave owner to depict António as a brute whose disposition was so degenerate that he was able to kill himself seemingly by just holding his breath. This was not a pardon *for* but rather a deflection *from* the death of António. As an enslaved individual, António would have had no heirs – parents, siblings, spouse, children – who could have made a legal claim for compensation. There was no victim in this tragedy except for the dead slave, whose death was a loss to his new owner. Not only did Alonso spend 16,000 *réis* for a slave he no longer had, but Alonso also faced legal expenses and possibly a sentence of exile overseas, a common punishment in such cases.[27] For his part, Manuel was an opportunist who found himself in a win-win situation: he was rid of a reportedly rebellious slave, he had pocketed 16,000 *réis* from the sale, and, undoubtedly, he had received some form of payment from Alonso that led to the creation of a victim's pardon. Manuel was not a victim, but he had the legal right to play that fictional role to his benefit.

The agreement between Manuel and Alonso highlights the extent to which the system of granting pardons in early modern Portugal had more to do with financial arrangements than with genuine acts of forgiveness. Indeed, in the official record, the actual victim was sometimes deemed irrelevant in the proceedings, and this was especially so in the case of the disenfranchised. This harsh reality is exemplified in a *perdão de parte* from 1544, a document that refers to an enslaved girl and a pardon granted by Beatriz Mendes, her enslaver. In her narrative recorded by the notary,[28] Beatriz stated that two or three years earlier (1541 or 1542), a youth named Brás attacked *huma escravinha* (a young slave girl) named Maria, taking her out to a rural property where he slept with her and injured her.

The follow-up to this attack on the young Maria was not recorded in the pardon document, but Beatriz must have complained to the authorities, and the subsequent arrest, inquiry, sentencing, and negotiations for a victim's pardon lasted for two to three years. It took that long for Beatriz to concede in the notary's office that Maria *do mall ja hera sam e sem alleyjam* (was already healed from the harm and had no disfigurement). The silences in this document are palpable, and one is alerted to a number of euphemisms used to detail the drama – not trauma. The

27 Abreu-Ferreira, Women, p. 46.

28 For a discussion about the possible influence of scribes in the documents they created, see Nussdorfer, Brokers of Public Trust. For the Portuguese example, see Abreu-Ferreira, Women, p. 16.

word abduction is never used, but rather we are told that Brás took Maria away from the city; reference is made to some injuries that Maria suffered, but the nature of those injuries is not revealed; the word rape is not mentioned, but instead it is acknowledged that he *dormyra con ella* (slept with her).[29] According to the notarised narrative, therefore, the consequences were minimal and Beatriz was prepared to pardon Brás *por o dyto caso* (for the said incident). The incident was so minor that Beatriz could not even recall whether it had happened two or three years earlier.[30]

What were Maria's physical and emotional injuries, and how long did it take for those injuries to heal? Was she traumatised by the attack? Was she impregnated? All of the above? None of these questions can be answered, but Maria's case highlights the vulnerability of marginalised members of society in the pardon process. As already mentioned, the notarised victim's pardon was a legal mechanism through which a victim of crime could be empowered in the judicial process. If a perpetrator needed a victim's pardon to appeal a criminal conviction, the perpetrator would have to negotiate – maybe even grovel – with someone whom he or she had harmed. The victim, for her or his part, was free to acquiesce or deny the request for a formal pardon. That is, the victim was *legally* free to grant or deny a victim's pardon, but how free was the victim from social pressures, if not coercion?

In fact, at times, the victim's pardon was framed in such a way that one is left wondering if it were not the victim who owed the culprit an apology for having reported the crime in the first place, or – in the case of António discussed earlier – for dying. This, at least, was the fiction in which most victims' pardons were embedded, and this fictional element is even more glaring in pardon documents that involved the enslaved. Note that although the pardon document discussed above makes reference to Maria, it is not her own account, for her own words were left unrecorded. This was not her story, but rather a story about her enslaver's ability to present herself as a person who was compelled to pardon – not for monetary gain, but for the love of God and *por sua amyzade do ditto Bras e do ditto Bento Diaz seu pay* (for the affection she had for the said Brás and the said Bento Dias his father).

How much affection Beatriz felt for the three parties named in her document can never be known, but, undoubtedly, the language was chosen deliberately to convey a peaceful resolution to a slight indiscretion committed by a *mancebo* (lad). Beatriz's self-fashioning as a pious and caring person even applied to Maria, who was described as an *escravinha*, the diminutive form of *escrava*. In the Portuguese

29 For a look at euphemisms used for sexual assault in pre-modern Europe, see, for example Dyer, Seduction by Promise; Barahona, Sex Crimes; Mantecón Movellán, Mujeres forzadas; Rudolph, Rape and Resistance.

30 ADE, Fundo Notarial, Livro 3 (1544), 09/16/1544, f. 70–71.

language, the diminutive form is often used to denote smallness or youthfulness, and depending on the context, it can also be used as a term of endearment or dismissiveness. Whatever the case, the tone of this document changed dramatically at the end, when the notary inserted an update: *E ao começo desta escritura a dyta escrava por nome Maria estava vyva doente e ao outorgar ja hera finada de sua doença* (And at the start of the document the said slave named Maria was alive [but] sick and at the signing was already dead of her illness]. Legally, the notary could only go so far in maintaining a fiction, though he did his best to establish the probability that Maria died of an illness, not of any injury.[31]

The three victims' pardons examined above have one key factor in common: they deal with enslaved individuals who were enmeshed in violence, the outcome of which had little to do with them. Domingos Dias pardoned Pedro, a *mulato* slave man, for injuries that ostensibly Pedro did not inflict on Domingos; Manuel Vicente pardoned Alonso Banhos for killing António, an enslaved man who Alonso had purchased from Manuel and who apparently choked himself to death; Beatriz Mendes pardoned Brás for the injuries to her young slave, Maria, though those injuries were carefully camouflaged to deflect from her ultimate death. Pedro, António, and Maria were named in the records, but their experiences were merely implied. This was true for all the cases examined for this study, even in the rare occasion when an enslaved person received a victim's pardon, for such a pardon was to appease the enslaver, not the enslaved.

Such fictional arrangements were constructed by and among free citizens of early modern Portugal for at least four reasons: one, it was profitable for the slave owner; two, it served as a decoy to protect others from the consequences of a criminal act; three, it provided the victim's pardon with a human element that aimed to arouse the sympathy of judicial officials; and four, it gave the pardoner a Christian aura of benevolence. Conversely, a slave owner could profit by using a slave as a scapegoat in an altercation that he or she instigated. Portraying the enslaved as the principal actor in violent incidents served to perpetuate the stereotype of the unruly slave and saved the slave owner from personal responsibility.[32] Still, it would not do to be too zealous in this negative portrayal of the enslaved, for ultimately, the slave owner aimed to arouse the sympathies of the judges who would evaluate the appeal for a pardon. It would also be imprudent to overstate the flaws of the enslaved in a narrative couched with Christian charity. Unless, of course, a negative portrayal was advantageous for the principal parties in the pardon document, as was seen in the case of António, who ultimately was described as deserving of his fate.

31 For an examination of pardon narratives elsewhere in Europe, see Verreycken, Crime Narrations.

32 For similar findings, see Blumenthal, Defending.

Not surprisingly, a similar performance took place at the higher level of justice. To recall, a victim's pardon was part of the package that a petitioner for clemency submitted to the court of appeals. The result of those petitions is found in the Chancellery collections kept at the National Archives in Lisbon, and an examination of the royal pardons confirms that the general practice was to address the slave owner and pay little heed to the enslaved.

2. The Royal Pardon: Admissions and Omissions

The extent to which the enslaved were marginalised in the pardon process is seen most glaringly in the Chancellery records that contain the royal pardons. For the purposes of this study, two sets of Chancellery records were examined, with a combined 1471 royal pardons recorded, 1192 pardons found in one volume from 1602–1604, and another 299 pardons found in a second volume from 1658–1684.[33] Of the 1471 royal pardons examined, 34 dealt with individuals who were noted either as enslaved or noted by a racialised label. These made up 2.4 per cent of the total of royal pardons recorded during that time. Of those 34, 12 cases related to individuals identified by a racial category but not necessarily enslaved (though the narrative at times suggests that enslavement was a possibility), while 22 cases stipulated enslavement. For enslaved individuals, racial, cultural, or ethnic diversity was rarely provided (see Table 2).[34]

Portuguese Chancellery records from the early modern period hold hundreds of volumes, with possibly tens of thousands of royal pardons registered under different monarchies. The two volumes highlighted for the present discussion were not chosen for any deliberate purposes but rather for accessibility reasons following the COVID-19 outbreak of 2020. Consequently, this small sample barely scratches the surface of a larger potential, but the 34 cases offer a preliminary look at another side of the pardon spectrum. We have looked at a few examples of those who sought a pardon; now, we will focus on those who received it.

As was the case with the victims' pardons, the 34 royal pardons that make direct reference to the enslaved or racialised deal predominantly with physical injuries (19), a finding that contrasts with studies elsewhere in Europe that show pardons

33 The discrepancy between the numbers of pardons in one volume over another is due to the haphazard nature of the Chancellery records. The volumes contain registered pardons and registered certificates of legitimations, and a volume can have more of one type of registry than another for no apparent reason.

34 For discussions about the challenges with nomenclature associated with the enslaved, see, for example Almeida Mendes, Réseaux de la traite; id., Traites ibériques; Rosario Pimentel, Ser escravo; Lahon, Exclusion.

were granted almost exclusively for homicide.[35] This regional difference merits further investigation, for Portuguese historians have found that royal pardons were granted predominantly to crimes against the state, followed by crimes against the person, such as physical assault and homicide.[36] The sample under discussion, with its focus on a marginalised group, shows a greater number of cases associated with physical injuries, followed by cases linked to confronting justice, such as jailbreak, escape/fugitives, or curfew (5), death (3), lapsed surety (2), concubinage/prostitution (2), bystanders to crime (2), and one case of theft of several slaves. The majority of enslaved individuals found in these 34 cases were identified by name (20), with those who were racialised but supposedly not enslaved given their first and last names (10). These numbers do not include those persons mentioned only in vague terms, such as other slaves, a few slaves, or an unspecified number of daughters of a Black woman (see Table 2).

The distinction between the enslaved and non-slaves is not always evident, for even if the term *escrava* or *escravo* is missing in the text, other indications point to a potential slave status. For example, a royal pardon from 1670 reveals that a fight broke out in Alcobaça among a group of men, including *Dom* André Castelhano and a *mulato seu* (mulatto man of his), and this phrasing could mean that the unidentified man was a servant or slave of Castelhano.[37] Likewise, Luís Dias and his wife received a royal pardon for *a culpa de consentirem a sua mulata usar mal de si em sua casa* (for the culpa of consenting their *mulata* woman to use herself badly in their house). In fact, the couple had been accused of having Joana, mulatta, in concubinage with a *mancebo solteiro* (young single man), following reports that he had been coming to their house to be with Joana, for which the crown had granted a pardon. It is not clear whether it was the unidentified young man or Joana who had been pardoned already, and that royal pardon has not been found, but the phrasing in the surviving text is noteworthy. The word slave was never used, but since Joana was their *mulata*, the implication is that she was enslaved, certainly racialised, and most likely prostituted for their benefit.

35 Dupont-Bouchat, Le crime pardonné; see also Verreycken, Crimes et gens de guerre, pp. 84–89; Beaulant, Pratiques de la grâce, p. 248; Garnot, Justice et Argent. By contrast, research conducted in a few German-speaking areas shows that the pardon process applied to all capital crimes. Ludwig, Herz, p. 243. I am grateful to Ulrike Ludwig for sharing these findings.

36 For studies on royal pardons in various parts of the Iberian Peninsula, see, for example Corteguera, Encuentros imaginados; Chaulet, Crimes; Mantecón, Behrend-Martínez, Patterns of Violence; Drummond Braga, Crime; Mendes, Drummond Braga, A criminalidade nos Açores.

37 AN/TT, Chancelaria de D. Afonso VI, 02/09/1670, f. 124. Alcobaça is in mainland Portugal, located southeast of Nazaré. *Dom* (male) and *Dona* (female) were honorific titles used by the nobility and aristocracy.

It is also worth noting that while both husband and wife were charged, the husband alone was named, although each had to pay 2,000 *réis* for the royal pardon. Perhaps the wife's name was left out for reasons of propriety, but that is doubtful, for she had been publicly charged. More likely, the document exemplifies the gender bias of the time, for the scribe wrote the entire document from the point of view of the husband only, even noting on the margin that the certificate had been granted to *Luís Dias e sua mulher* (Luís Dias and his wife). The wife was important enough to be found guilty of a crime and to be punished with a hefty fine but not important enough to be properly identified.[38] Indeed, in another example, the wife of Manuel de Oliveira was assaulted during a home invasion in Almada while her husband was away, and although she and her husband launched a complaint, which led to a royal pardon granted to the instigator of that attack, she remained nameless in the record. The gender prejudice was emphasised further when the instigator claimed in his petition that she had provoked the attack.[39]

Admittedly, the young single man involved in concubinage with Joana noted above was also not identified, but women more often than men were left nameless, and this tendency was even more pronounced in the case of women of servile status. For example, one royal pardon informs us that an enslaved woman was married to the enslaved man Diogo. They belonged to two separate households in Lisbon, and although Diogo was attacked while he was talking to his wife at her doorstep, the culprit of that attack never felt compelled to name her. Likewise, she remained nameless with the authorities who reviewed and dealt with the application for clemency from the accused after Diogo's *senhor* (lord/master) filed a complaint for the injuries to his slave.[40]

Fortunately for the historian, exceptions are found that provide a more substantive account of the deed that required an appeal for a royal pardon. Such was the case that involved António Fernandez, a Galician residing in Avis, who declared in his petition that in 1601, he had been condemned for living in concubinage with Maria Mendes, *molher preta solteira* (Black single woman), with whom he had a son, all of which had caused great scandal, he admitted. Since he had abandoned that relation, and Maria Mendes had left town (with the illegitimate child, presumably), António received a royal pardon for the *culpa de estar amencebado com a negra* (the culpa of being in concubinage with the negro woman). At first, his concubine partner was fully named, which was common in cases that dealt with racialised individuals who were not associated with enslavement; however, Maria's racial identity was underscored when the document referred to her only as *a negra*.

38 AN/TT, Chancelaria de D. Filipe II, 11/06/1604, f. 237v.

39 AN/TT, Chancelaria de D. Afonso VI, 26/10/1669, f. 68–v. Almada is situated across Lisbon, on the south side of the Tagus River.

40 AN/TT, Chancelaria de D. Filipe II, 07/01/1604, f. 164v–165.

Nevertheless, this pardon letter contains more details than usual, including the full identity of another woman not connected to the crime in question. For his royal pardon, António had to pay 3,000 *réis* to cover court costs, and then the text indicates that he had already paid that amount to Antónia da Silva, a poor widowed woman whom the crown authorities deemed worthy of this *esmola* (charitable act).[41]

As we have seen with the victim's pardon, the text of the royal pardon contains a narrative that represents the voice and concerns of the slave owner, with a few references to the enslaved person in the explanation. For instance, Filipe Pereira of Vila dos Cascais (just south of Lisbon) received a royal pardon in connection to his petition, in which he had explained that back in May 1601, his slave named João, while amusing himself with other slaves, got into a confrontation and injured Caterina Francisca. The latter launched a complaint with the local justices but subsequently pardoned João. The appeal judges concluded that since the petitioner – that is, the slave owner – had the *perdão das partes*, or victim's pardon, all was pardoned, *e mais não ha de lhe perdoar a culpa do ferrimento au seu escravo q fez cõ a pedrada* (and nothing remains to pardon him the guilt of the injury that his slave committed with the [throwing of] a stone). It is possible that the "him" in question referred to João himself, but the writing is ambiguous, and the rest of the text is addressed to the slave owner who had to pay 1,000 *réis* to cover court costs.[42]

All the examples examined suggest that the injuries caused by or to the enslaved or racialised were taken seriously by judicial authorities: Rui Lorenço was condemned to two years of exile to Africa and to pay 50 *cruzados* for the injury he caused to Felicia, *escrava cativa* of Isabel Fernandes;[43] António Dias Mangas had to obtain a surety for 200 *cruzados* following an injury he and another man inflicted on Bertolomeu, *escravo* of Cosme de Barros;[44] Bernardo de Faria, chief medical officer in Almeirem, after unlawfully apprehending and causing harm to Caterina Manoel, a Black woman, and her daughters, was sentenced to a year of exile in Africa and to pay 30 *cruzados* to the victims.[45] The perpetrators in these three cases received a royal pardon, but their actions proved costly, financially and possibly socially as well.

Nevertheless, notwithstanding the legal and financial repercussions, the pardon documents from early modern Portugal, whether produced by the local notary or by authorities in the royal Chancellery, show that the enslaved were overall objects,

41 Ibid., 29/03/1605, f. 376. Galicia is the northwest region of Spain, just north of Portugal; Avis is located between Portalegre and Evora, in eastern Portugal.

42 Ibid., 27/02/1603, f. 38v–39.

43 Ibid., 03/06/1603, f. 72–v.

44 Ibid., 11/11/1602, f. 8.

45 Ibid., 02/08/1604, f. 8. Almeirim is northeast of Lisbon, across the Tagus River from Santarém.

not subjects, of the pardoning process. Was Isabel concerned, at a human level, with the injuries inflicted on Felicia, or was it just a case of being compensated for damaged property? Did Filipe understand the circumstances under which João got into an argument with Caterina, or did Filipe resent and punish João for the costly incident? These are among the many unknowns and unknowables in this type of archival record. This is not to say that the pardon document should be dismissed as a fraud. On the contrary, the pardon document says something about what a society dependent on enslaved labour thought appropriate in the handling of problems with the enslaved. Nor can we be certain about the lack of input from the enslaved in this process, for I found one example that shows otherwise. In 1571, Gracia, identified as an *escrava* of Caterina Franca, *dona viuva* (widowed lady), was injured by someone else's servant, and Gracia – with her lady's permission – went to the local administrator to denounce the man who injured her.[46]

Here, then, is an example that arguably shows the agency of an enslaved woman, for Gracia was able to voice her complaints to a local official, who followed through with an investigation that ultimately led to the out-of-court settlement between the mistress and the man who injured Gracia. True, the text of this victim's pardon indicates that *Dona* Caterina desisted from the accusation that the slave woman made against Francisco, and Gracia was able to launch the accusation only because her mistress gave her permission, but that may have been similar to what occurred with other, non-enslaved servants.[47] In pre-modern Europe, masters and mistresses had quasi-parental powers and authority over their domestic servants.[48]

A more intriguing case was that of Maria, the enslaved woman of António Moraes, resident in Caparica. In the crown's narrative outlining the reasons for the application for a royal pardon, the text informs us that João Fernandes declared that his father-in-law had been a guarantor for an enslaved woman named Maria who needed to offer the local court a surety of 100 *cruzados* so that she could free herself from a criminal case. The father-in-law died before fulfilling the stipulations of the surety, and as heir to his father-in-law's estate, António was responsible for his father-in-law's obligations. The petitioner asked for a pardon from these obligations, and the crown obliged for a fee.[49] The document reveals nothing about Maria's circumstances, but it clearly shows that she was involved in a financial transaction connected to a crime in which she was implicated. Possibly the guarantee was provided to her master who would have to deal with the legal system, but that is

46 ADE, Fundo Notarial, Domingos Pires (notary), Séries no. 181 (1571), 01/10/1571, f. 32–33.

47 Saunders, Social History, p. 118.

48 See, for example Mummey, Whose City Is This; Fonseca, Black Africans.

49 AN/TT, Chancelaria de D. Filipe II, f. 94–v. Caparica is located near Almada across the Tagus River from Lisbon.

not what the text tells us, raising the question of whether she was able to negotiate with the deceased father-in-law in the first place.

Although 10 of the 34 royal pardons under discussion deal with sureties, only two inform us that the surety in question had been granted to an enslaved individual. In addition to the example of Maria discussed above, one other similar case was found in a royal pardon granted to Afonso Gago, resident of Viana da Foz de Lima and steward of the town's charity institution, the Misericórdia. In his application to the crown, Afonso explained that he had provided the enslaved man Francisco with a surety of 40 *cruzados* so that Francisco could prepare for his exile to Africa for two years for an unspecified crime.[50] In both surety cases, the royal pardon was issued to those who had been held responsible for the surety, not to the recipients of the surety. As surety holders, Maria and Francisco were obligated to comply with the conditions of their contracts, but if they reneged, their guarantors had to deal with the legal consequences.[51]

Whatever the circumstances of the crimes allegedly committed by Maria and Francisco, the documents suggest that they had some autonomy in the way in which they dealt with their troubles, and this is especially surprising for Maria because she was enslaved and linked to her slave owner. Francisco's case is also perplexing because although he was identified as *hum escravo* (a slave man), there was no reference to an owner, and, in fact, we are told that this slave man was named Francisco *forro* – that is, Francisco was a free slave man. Such an incongruity is telling, for it means that he had been a slave, liberated in some form, but still regarded by his enslaved status, a status that undoubtedly contributed to his poverty and receiving assistance from the Misericórdia.

The remaining royal pardons that deal with sureties did not directly involve anyone identified as enslaved or racialised, but the cases of Maria and Francisco point to loopholes in the law and society in general. Such loopholes were occasionally employed by those most legally and socially marginalised to seek and, at times, receive some form of recognition in the pardon process, albeit still conditional. We saw this in the royal pardon granted to Filipe Pereira, discussed earlier, which stipulated that Caterina Francisca pardoned João and not his master Filipe. Such was the summary that crown authorities registered according to the petition submitted by Filipe, yet crown authorities worded their decision in a way that perpetuated João's dependency: João's master negotiated and paid for a settlement that resulted in the prerequisite *perdão de parte*; his master filed the petition to the crown; and his master paid for the royal pardon.

50 Ibid., 21/01/1604, f. 169. Viana da Foz de Lima, later called Viana do Castelo, is located on the northwest coast of Portugal, near the Spanish border.

51 For a discussion on women and sureties, see my article Abreu-Ferreira, Women, Law, and Legal Intervention.

One last example serves to highlight this ambivalence even further. A royal pardon from 1603 informs us that Francisco Fernandes of Portalegre and Domingos, *escravo* of Francisco de Avellar, sent a petition to the crown. The text indicates that the supplicants had been denounced for their involvement in a fight that resulted in injuries, that *they* had received the *perdões de parte*, and that *they* each had to pay 1,000 *réis* for court costs. The narrative implies all along that "*they*" refers to Francisco Fernandes and Domingos, although only Francisco's name was registered on the margin. Did authorities consider Domingos one of the two supplicants, or did his owner take precedence in the legal mindset? There is no evidence that Domingos was a scapegoat in this brawl from which, we are told, almost all of them came out injured, and the victims pardoned each other. At face value, Domingos participated in a fight, perhaps willingly, and appears to have been considered one of the plaintiffs, as well as one of the recipients of the victim's and the royal pardon, yet his personhood was deemed too precarious to have him listed by name as such an agent.[52] By contrast, an appeal for a pardon for homicide from the enslaved Garciade, sent to Charles V, indicates that part of the argument put forth by Garciade was that he had acted in defence of his master.[53]

Whether produced at the notary's office or at the Chancellery, pardon documents provide glimpses into daily life: an enslaved man got into a physical altercation when he went to get some olive oil and argued about its price and weight;[54] another enslaved male was *folgando con otros escravos* (fooling around with other enslaved friends) when he got into a confrontation and wounded a woman;[55] yet another was playing the viola outside when a fight broke out between two other men, one of whom was killed.[56] Yet, such benign references cannot mask the inherent violence that was inflicted on the enslaved. In the descriptions of these seemingly routine cases of fights and injuries, one finds examples of horrific cruelty, as seen in the cases of victims' pardons discussed earlier, such as the young Maria, who was abducted, assaulted, and raped (and died of her injuries), and António, who was killed but blamed for asphyxiating himself.

The royal pardons, too, reveal occasions of extreme violence perpetrated on the enslaved, as described in an appeal by Diogo de Betancourt of Funchal, Madeira,

52 AN/TT, Chancelaria de D. Filipe II, 26/07/1603, f. 90–v.

53 Brussels, Archives générales du royaume, T 101, 894A. The case involved an argument that led to a fight that led to a homicide, all of which took place in southern Portugal, but Garciade and his master fled the country to avoid the repercussions. The author is grateful to Rudi Beaulant for sharing this document.

54 AN/TT, Chancelaria de D. Filipe II, 26/07/1603, f. 90–v.

55 Ibid., 27/02/1603, f. 38v–39.

56 AN/TT, Chancelaria de D. Afonso VI, 05/07/1666, f. 47–v.

who admitted to having whipped João, *escravo* of Bastião Dias Dornellas. In addition to the whippings, Diogo also took João home, locked him up and held him prisoner in a private jail made especially for João and tortured him, resulting in a broken arm, among other injuries.[57] It is possible that Diogo used João as a means to harm Bastião, but that would have been little comfort to the traumatised victim, a victim who had little recourse to fight back for justice against either form of captivity, temporary or long term. Indeed, had Bastião, the slave owner, committed the same atrocities against João, his slave, there would have been less chance of a paper trail.[58]

Victims' pardons and royal pardons alike contain more references to the enslaved than to the racialised, but one example was found that dealt with both in an atypical circumstance. The royal pardon in question also says something about the power to revoke a previous pardon, for that is what happened to João Rodrigues, prisoner in Portel for homicide. Following an appeal to his conviction, João received a royal pardon, for which he paid 50,000 *réis*. That crown decision was rescinded, however, when the local judge declared that the supplicant had omitted vital information in the application process. In his second appeal, João pointed to another culprit for the deed, Francisco, *hu mulato escravo* (a mulatto slave) of Fernão Gil, *preto* (Black). The initial pardon was reinstated for an additional 10,000 *réis*.[59]

In the above case, both the slave and the slave owner were racialised, which raises questions about the reasons for highlighting the racial categories. As stated earlier, the enslaved were seldom provided with racial or ethnic labels, and the slave owners even less, for the white native Portuguese was the default (as was male over female). A Black slave owner would have been unusual, and, conventionally, such otherness would have been noted according to the mindset of the time, but was there an ulterior motive in this situation? In his second appeal to the crown, did the supplicant, João Rodrigues, attempt to stir the racist sentiments of the judicial authorities as a strategy to deflect his guilt? In the process, João pointed out that the evidence against him – a bona fide white Portuguese man – was *presumptiva e endiciosa* (presumptive and indecisive), while there was a *matador serto* (certain killer) who was a *mulatto*, enslaved, and whose master was a black man. Three strikes against Francisco.

Francisco's master was also in a more vulnerable position than most slave owners, for as a black man, Fernão Gil was unlikely to have the social capital that would allow him to question authorities as easily as Pero Fernandes Tara, for instance. Accused of breaking the prohibitions imposed on wheat distribution, Pero argued

57 AN/TT, Chancelaria de D. Filipe II, 18/02/1605, f. 369.

58 However, there is some evidence of neighbours denouncing enslavers who maltreated their slaves. Saunders, Social History, pp. 115–116.

59 AN/TT, Chancelaria de D. Afonso VI, 29/11/1669, f. 69. Portel is located southeast of Évora.

that the large volume of grain he had purchased was not for the purposes of resale but rather to support his large household and family, which comprised brothers-in-law as well as *criados e escravos* (servants and slaves).[60] Likewise, it is doubtful that Fernão would have had the temerity to challenge a government agent as did Jorge Correia Telles, a *fidalgo* (noble). Upon hearing that Francisco de Sousa, alcaide in Loulé, arrested *hum moço escravo* (a young slave man) of his, Jorge approached Francisco and attacked him verbally, calling the alcaide a *cabrão cornudo* (cuckold goat). Jorge then told another of his slaves that if any *filho da puta* (son of a bitch) would try to imprison another of his slaves, he would saw off his horns. For his scandalous behaviour, Jorge was ordered to pay 30 *cruzados* to the alcaide and sentenced to a year of exile in Africa.[61]

Given the small sample of pardon documents under discussion and the limited details contained in this type of record, it is difficult to determine any variations in the success rate of supplicants according to their socio-economic status. Yet, the entrenched hierarchies of the pre-modern period, coupled with the embedded racism that systems of slavery perpetuated, meant that the enslaved and racialised members of society were stigmatised on a continuous basis, with few exceptions. On the one hand, Caterina Manoel and her daughters, mentioned earlier, received some compensation for the ill-treatment and injuries they endured; on the other hand, the enslaved or racialised were enmeshed at times in criminal activity due to provocation or under duress. This was seen in the above-mentioned case of an attack on the anonymous wife of Manuel de Oliveira. The supplicant admitted that he went to her house with *sette homens e hum negro* (seven men and a negro), and that he had the *negro* remove her clothes before whipping her.[62] To this supplicant, therefore, the *negro* in question was not deemed man enough to be counted among the other seven, though the *negro* played a key role in his master's humiliation of a white woman. The use of the *negro* had a double purpose: the master could diminish his accountability by pointing to his servile servant, and the attack on Manuel de Oliverira's honour – for certainly he was the target via his wife – was accentuated through the use of the *negro* who broke all taboos by undressing a white woman.

60 Ibid., 26/05/1662, f. 22.

61 ADE, Fundo Notarial (Loulé), No. 1–1–4 (1604) João Mendes (notary), 28/09/1604, f. 258v–261.

62 AN/TT, Chancelaria de D. Afonso VI, 26/10/1669, f. 68–v.

3. Conclusion

All the examples examined for this study suggest that judicial authorities took the injuries caused by or to the enslaved seriously, but, overall, the pardon documents from early modern Portugal, whether produced by the local notary or by authorities in the royal Chancellery, show that the enslaved were objects, not subjects, of the pardoning process. While they took part in the process, that "part" was conditional and circumscribed, for only their owners had the legal agency to grant a victim's pardon or to petition for a royal pardon. In essence, the enslaved were non-persons in the legal sense, though a slave's humanity was recognised in the punishments meted out to those who caused them undue harm. However, although the documents under examination refer to violence done to enslaved individuals, the rhetoric used to downplay that violence implied that the *real* harm was caused to the slave owners. Violence committed by, or attributed to, the enslaved was subject to punishment, but in the judicial proceedings, they were treated like minors – responsible for their acts but lacking the legal and financial autonomy to deal with the judicial system and to negotiate for a pardon. As A.C. Saunders pointed out, "In many ways their civil status resembled that of the most disadvantaged free persons, dependent children."[63] Accordingly, the recorded arguments in the appeals for clemency addressed the prerogatives of the slave owners, not the affronts committed against the enslaved.

Such incongruities should not surprise us, given that the underlying atrocity was slavery itself, for which, until recently, few in authority have sought a pardon. On 25 April 2023, Marcelo de Sousa, Portugal's president, called for a national apology in recognition of the country's role in the transatlantic slave trade; the Dutch prime minister, Mark Rutte, made an apology on 19 December 2022, calling the slave trade "a crime against humanity", while the king of the Netherlands made a public apology on 1 July 2023; and there have been calls for a public apology from the Canadian Prime Minister for Canada's involvement in the slave trade. But not everyone is prepared to take this step of reconciliation. On 26 April 2023, for instance, the UK's prime minister, Rishi Sunak, rejected the notion of an official apology, claiming that such an apology, with its intended reparations, is not the answer.[64]

And that is the crux of the matter: responsibility can be costly, then and now. For this reason, the official record of the victim's pardon and the royal pardon diminished the immediate and long-term effects of an assault, particularly if the

63 Saunders, Social History, p. 116.

64 All of these reports were found online. For Marcelo de Sousa's public statement, see Reuters, Portugal Should Apologise; for Elise Harding-Davis, see Dodge, Roberts, Essex County Historian; for the Dutch prime minister, see Henley, Dutch PM Apologises; for the Dutch king, see Ferguson, Dutch King Apologises; for the UK prime minister, see Nevett, Slavery.

victim was poor and marginalised. As far as the enslaved were concerned, the early modern legal pardon was a performance in whitewashing, the legacy of which is enmeshed in what we now call systemic racism, a phenomenon that too few are ready to acknowledge. The study of the early modern pardon document offers a possible avenue through which we can confront and address some of the historical inequities that were based on gender and racial discrimination. The texts under examination here were not penned by or on behalf of the enslaved, but their silence can speak volumes.

Table 1 References to the enslaved and racialised in victims' pardons, Portugal, 1544–1650

Date	Name	Identity	Role
16/09/1544 Évora	Maria	slave girl (*escravinha*)	rape victim
06/031545 Évora	Nicolao	Moor slave man (*escravo morisco*)	pardoned for injury
31/10/1549 Évora	Pedro Mulato	slave man (*escravo*)	pardoned for injury
10/01/1571 Évora	Gracia	slave woman (*escrava*)	injured (filed complaint)
07/031572 Évora	António do Paço	free Black man (*homem preto foro*)	granted pardon for injuries to himself
16/04/1577 Porto	Pedro	negro slave man, captive (*negro escravo, cativo*)	pardoned for injury
10/11/1590 Loulé	Bertolomeu	slave man/serf/servant (*servo*)	pardoned for injury
01/12/1600 Tavira	António and Francisco	slave man, negro; slave man (*escravo, negro; escravo*)	injuries to one another; Francisco received pardon
07/09/1601 Évora	Ascenso	captive negro slave man (*negro cativo*)	pardoned for injury
28/09/1604 Loulé	Two unnamed men	young slave man; slave man (*hum moço escravo; escravo*)	unspecified crime; by-standers
28/02/1605(a) Loulé	Jerónima	dark-skinned subjugated slave woman (*escrava sua sujeita molher baça*)	fugitive
28/02/1605(b) Loulé	Lazaro	captive slave man (*escravo cativo*)	pardoned for sheltering Jerónima (fugitive)
16/03/1607 Vila Viçosa	Luís	slave man (of two male owners) (*escravo*)	pardoned for injury
10/11/1616 Angra do Héroísmo	Bento mulato	captive slave man (*escravo cativo*)	killed
11/09/1620 Évora	António	Black slave man (*escravo preto*)	killed

Date	Name	Identity	Role
08/04/1630* Vila Viçosa	Maria Fernandes	Black/negro woman (*preta/negra*)	killed, adult children granted pardon to jail guard
31/08/1630* Vila Viçosa	Maria Fernandes	Black/negro woman (*preta/negra*)	killed, adult children granted pardon to perpetrator
06/02/1650 Aljezur	António	slave man (*escravo*)	bystander

Sources: Arquivo Distrital de Évora (ADE), Fundo Notarial, Livro 3 (1544), f. 70v–71; ADE, Fundo Notarial, Livro 5 (1545), f. 136v–137; ADE, Diogo Luís (notary), 21v–22; ADE, Domingos Pires (notary), f. 32–33; ibid., Séries no. 183 (1572), f. 137–138; ADE, Fundo Notarial, Felicio de Béça (notary), Séries 327 (1601), f. 94v–95; ADE, Fundo Notarial, André Luís de Cerveira (notary), Vila Viçosa, Séries 29 (1607), f. 75v–76v; ADE, Manuel Rodrigues (notary), f. 4–5v; ADE, Fundo Notarial, Manuel de Oliveira (notary), Vila Viçosa, Séries 88 (1630), f. 73–74 and f. 194–195; ADE, Fundo Notarial (Loulé), No. 1-1-1 (1591), f. 10v–11v; ADE, João Mendes (notary), f. 258v–261; ADE, Fundo Notarial (Loulé), No. 1-1-5 (1605) João Mendes (notary), f. 103–105; ADE, Fundo Notarial, Diogo Rebelo da Fonseca (notary), Aljezur, No. 499 (1650), f. 112–113; ADE, Fundo Notarial, Vasques Fernandes (notary), Tavira, No. 8-4-147 (1600), f. 52–v; Arquivo Distrital do Porto (ADP), Fundo Notarial, Po. 1, 3a Se, No. 58 (1577), f.134v-135v; Arquivo Distrital de Angra do Héroísmo (ADAH), Fundo Notarial, No. 6 (1616), f.127v-129. The two items noted with a) and b) are from the same *perdão de parte* but divided for the table to allow space for crucial details. The two items noted with an asterisk are from two different victims' pardons, but they deal with the same homicide victim and siblings who granted the pardons. The identity column contains the words used to describe the enslaved or racialised, with the original words in italics.

Table 2 References to the enslaved and racialised in royal pardons, Portugal, 1602–1684

Date	Name	Identity	Role
11/11/1602 Beja	Bertolomeu	slave man (escravo)	injured by man (re surety)
27/02/1603 Cascais	João	slave man (escravo) and other slave men (outros escravos)	injured a woman
07/03/1603 Évora	Inacio Pinheiro	mulatto	killed by man (re surety)
17/04/1603 Alenquer	António	slave man (escravo)	helped woman escape jail (re surety)
03/05/1603 Lisbon	Gaspar	slave man (escravo) and other slave men (outros escravos)	injured two men
05/05/1603 Vimieiro	Manuel	slave man (escravo)	escaped jail (re surety)
09/051603 Cascais	Marcos	slave man (escravo)	injured man
03/05/1603 Moura	Filicia	captive slave woman (escrava cativa)	injured by man (re surety)

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Date	Name	Identity	Role
25/07/1603 Beja	Damioa Raposa	Black woman deceased (molher preta já defunta)	former owner of landed property (re surety)
26/07/1603 Portalegre	Domingos	slave man (escravo)	injured man
26/07/1603 Caparica	Maria	slave woman (escrava)	unspecified crime (re surety)
2011/1603 Vila Viçosa	Gaspar	slave man (escravo)	injured by two men
07/01/1604 Lisbon	Diogo	slave man (escravo) and unnamed slave woman (escrava)	injured by man
21/01/1604 Viana da Foz de Lima	Francisco	free slave man (escravo forro)	unspecified crime (re surety)
15/12/1603(?) Montemor o novo	António Fernandes	zimbalho mulato	injured by man
17/05/1604 Lisbon	António Mendes	dark-skinned man (homem pardo)	injured by two men
09/06/1604 Castro	Luísa Fernandes	gypsy (sigana)	vagabonding and theft; escaped jail (re surety)
11/06/1604 Beja	Joana	mulatta slave woman (mulher mulata deles)	concubinage/prostitution
13/07/1604 Lagos	Unnamed	slave man (escravo)	broke curfew
19/07/1604 Vila Franca de Xira	Pero Lobo	dark-skinned man (homem pardo)	killed child
02/08/1604 Almeirim	Caterina Manoel	Black woman (molher preta) and daughters	injured by medical officer
01/09/1604 Beja	Damião Fernandes	dark-skinned man (homem pardo)	injured by man
04/10/1604 Pedrógão (Beja)	Simão	slave man (escravo)	fugitive
27/09/1604 Colares	Francisco	slave man (escravo)	injured by man
16/12/1604 Lisbon	Sebastião de Noya	Black man (homem preto)	injured Pero da Silva, another black man (outro si homem preto)
31/01/1605 Lisbon	Unnamed	slave man (escravo)	injured by man (re surety)
18/02/1605 Funchal (Madeira)	João	slave man (escravo)	injured by free man
29/03/1605 Avis	Maria Mendes	Black/negro woman (molher preta; negra)	concubinage

Date	Name	Identity	Role
05/07/1666 Grândola	Unnamed	slave man (escravo)	bystander/witness to fight-/homicide
29/11/1669 Portel	Francisco	mulato/slave man (hum mulato/escravo) of Fernão Gil, black man (preto)	killed a man
05/03/1672 Portel	Francisca	slave woman (escrava)	injured another woman
02/09/1672 Alcobaça	Unnamed	His mulato/slave man (mulato seu)	brawl
11/03/1682 Lisbon	Unnamed	several slaves (hums escravos)	slaves were stolen by two men
26/10/1684 Almada e Barros	Unnamed	negro man (hum negro)	house invasion

Sources: Arquivos Nacionais/Torre do Tombo (AN/TT), Chancelaria de D. Filipe II, f. 8v, 38v–39, 42v–43, 54–54v, 62–v, 63–v, 72–v, 88–v, 90–v, 94–v, 145–v, 164v–165, 169, 169v–170, 214, 235–236, 237v, 259v, 263, 275, 290, 307v, 349v, 362–v, 365, 369, 376; AN/TT, Chancelaria de D. Afonso VI, f. 22, 47–v, 68–v, 69, 99v, 124, 256v.

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Tomás A. Mantecón Movellán

Uses of Grace and Justice

Female Agency in Ancien Régime Spain[1]

Between the 16th and 19th centuries, the intersection of grace and justice in Hispanic societies rested on notions of power that conferred on the owner of supreme jurisdiction (*princeps*) absolute power to arbitrate, dole out punishment through the court system, and, should conditions require it, grant pardons or overturn court rulings for the sake of public peace and the 'commonwealth'. Monarchs, advised by their councils, could and did request information about ongoing judicial cases anywhere within the territories of the monarchy. This not only applied to the Iberian Peninsula but also to the king's overseas possessions, which were legally bound to the Crown of Castile.

Based on their historical experience, all societies create norms to facilitate social peace and maximise the likelihood of intergenerational survival. Beginning in the 16th century, Hispanic political theory and legal doctrine emphasised the key role played by justice in the political edifice on which the power of the Crown rested. The Crown, for its part, possessed absolute authority to resolve conflicts, placing the king above the parts and the whole of the society over which he ruled.

These principles consolidated the categorical superiority of the monarch and underlined the need for a governance model that guaranteed stability and quashed internal tension. Many treatises in the Hispanic and continental traditions emphasise this point while arguing for a gradual scale of punishments that considers both the severity and circumstances of a crime and the damage inflicted on victims and the *res publica*. This encouraged collective reflection on extenuating, aggravating, and exculpatory circumstances, as well as the idea that punishment and pardon were tools to achieve the same goal, the 'commonwealth'; excessive leniency towards perpetrators was explicitly argued to be an act of cruelty against those who actively worked to keep the *res publica* together.

The texts written by the founding fathers of criminal law are full of this sort of argument. Partially inspired by Tiberio Deciani, professor at Padova, these pioneers

1 This research is part of project PID2021-124823NB-C22 with financial support from MCIN/AEI/10.13039/501100011033/and FEDER-A way of building Europe (*La ciudad en acción: resistencias, (re)significaciones del orden y cultura política en la Monarquía Hispánica*). I thank Quentin Verreycken and Ulrike Ludwig for their constructive and enriching comments on this chapter. I'm also in debt with Maria Tabuer for her kind and precise help to improve the final result.

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included Covarrubias y Leyva,[2] André Tiraqueau,[3] and, later, leading jurists of the Enlightenment like the Spanish-Mexican Manuel Lardizábal y Uribe[4] and the brilliant Valencia-born lawyer and activist against torture, Juan Pablo Forner.[5] These texts built on the essential foundations laid down by such authors as the prestigious Mancha-born jurist Jerónimo Castillo Bovadilla[6] and the Murcia-born lawyer and diplomat Diego Saavedra Fajardo,[7] whose works were cited in countless judicial proceedings and rulings, both in the Iberian Peninsula and Spanish America.

During this long period, the Spanish language adopted many of the concepts developed by legal theorists. The idea of clemency, for instance, retained its consideration as a necessary princely humanistic value, to prevent the monarch from being driven by feelings of favour or revenge. This was a virtue to be extended to private citizens, but always with justice as defined by the *res publica* as a guiding principle; anything less would risk undermining order, "leading to grievances, disobedience, and the ruin of the State". However, with wisdom and prudence, clemency could be "the throne's most beautiful prerogative" and "have wonderful effects" without getting mixed up with weakness and impotence, as argued by the lawyer of the Enlightenment Manuel Lardizabal y Uribe in 1782.[8]

A clement monarch could pardon crimes (*per donum*, that is, a *gift* as an action of grace) and remit fines. Importantly, pardons, whether as a grace or a privilege, were by definition conferred by superiors upon inferiors. The word amnesty, however, is absent from juridical texts and etymological dictionaries written before or during the Age of Enlightenment, even though it is rooted in the Greek word for "forgetting". This is how it is understood in modern legal doctrine and in everyday language: "pardon for certain kinds of offences, which lifts responsibility off perpetrators".[9] An amnesty is a *sui generis* form of pardon, as it imposes forgetting or, in other words, declares the punishable acts not to have occurred at all.

Some 18th-century diplomatic documents already feature the word "amnesty" in the modern sense, for instance, chapter nine in the Peace of Vienna of 1725. However, in the context of the end of the War of the Spanish Succession, amnesty

2 Covarrubias y Leiva, Summa.

3 This innovation already featured in his *De legibus connubialibus* (1513), which included a deep reflection on the legal punitive system and which continued to have a lasting influence/impact.

4 Lardizábal y Uribe, Discurso sobre las penas.

5 Forner, Discurso sobre la tortura. The first draft was written in 1795 and quickly gained popularity in intellectual circles, but it was not published until 1843.

6 Castillo Bovadilla, Política.

7 Saavedra Fajardo, Empresas Políticas.

8 This was written inthe enlightened *Diccionario de Autoridades* published during the first decades of the 18th century. However, these arguments were based on those previously given by Ivan Eusebio Nierenberg (Obras y días) and Saavedra Fajardo (Empresas Políticas) in the 16th and 17th centuries.

9 Art. "amnistía".

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meant much more than forgetting. It was a means to create stability inside the monarchy, fostering conditions for reconciliation and the return of exiles, and outside, through the Austrian Habsburgs' recognition of the Bourbons' claim to the throne and the normalisation of diplomatic relations between Madrid and Vienna.

In real life, these mechanisms put in place to organise the administration of justice and grace were a major source of inequality. Privilege, personal honour, faith, blood, and ethnic group, and their intersection in the notion of "race," as well as gender, acted as variables in the unequal and fragmented implementation of subjective rights and the consuetudinary, social, administrative, and institutional resources mobilised to recognise and enforce them.

Women from all walks of life lacked the legal power to appear for themselves before a tribunal; they needed judicial licences, powers of attorney, an *ad litem* curator, or a male representative. Lone women, servant girls, wage-labourers, girls from poor families, and orphans were especially vulnerable. In an attempt to compensate for this, the Castilian legislation imposed special protections on women, but these were insufficient to offset the harsh social environment in which they lived. *Casos de corte* were issues dealt with by special royal tribunals owing to their peculiar nature, including forced women (*mujeres forzadas*), a special form of admission by the Crown of the need to curtail all forms of male sexual violence against women. However, judicial records indicate that these issues were not always given the attention they required, and the dark figure of gendered violence in court was vast.[10] Sexual violence encompassed rape and many other offences; some of these, in fact, were often believed by the contemporaries to be as serious as rape, as they could be just as traumatic.[11]

However, specific judicial records in which women voiced their complaints, expressed their experiences and aspirations, and appealed for the king's clemency and grace allow us to analyse the agency available to them. In all cases, however, this was an uphill battle, as they faced constant hurdles in carving out a space for themselves in which to make free choices about their own lives.

This article analyses this *female agency*, focusing especially on low social class women. It examines their behaviour, how they negotiated crises and vital transitions, and their relational social environments, which had to meet the balanced conditions of *public peace* demanded by their specific social life experiences contexts. The experience of women of low social status is thus brought to the forefront: women who underwent particularly cruel forms of abuse at the hands of men who not only were in objective positions of power, owing to their status or trade, but also other

10 Mantecón, Mujeres forzadas.

11 This has already been proven for many other traumatic experiences of women who were later involved in diverse judicial cases analysed in this chapter. This same pattern has also been observed in the European context, as shown by Clark, Women's Silence, pp. 59–75.

who also self-empowered themselves illicitly in their local contexts by making use of effective tools of social intimidation and domination. This violence was rarely brought before the courts, only when it became unbearable, as seen in the episodes analysed here.

1. Infrajustice and Grace Outbursts

The tension between (ordinary) justice and (extraordinary) grace left the king in an absolute position of power. This went beyond the natural flexibility that governs the application of the law, which lay between the rigour of the written word, unwritten rules, and judicial practice. This included the capacity of *arbitrio,* or discretionary authority, enjoyed by judges to adapt the law in consideration of behaviour and facts. The king's judicial and grace powers went even beyond the degree of tolerance that society provides (*infrajusticia* or infrajustice). This last, in the 16th, 17th, and 18th centuries, was still fairly accepting with regard to violent behaviours; informal agreements that allowed the parties to rebalance conflicts and mitigate their impact to avoid escalation were far from rare.[12]

Para-judicial (simultaneous and complementary to judicial processes) and *extra-judicial* (independent from judicial processes) approaches to administer justice have been used in the Iberian Peninsula and other European and overseas territories. Sometimes, this involved the participation of 'good men' (district mayors, local clerics, advocates of indigenous groups, and even charismatic residents) or corporate agents (religious brotherhoods, guilds, and even kinship groups and families).[13]

These different scales of action, including a wide array of expressions of *infra-justicia*, generally regarded as the social body's take on the law, allowed for some flexibility outside the strict application of legislative texts. These approaches, alongside court rulings and administrative sanctions imposed by public officials for breaking local ordinances, created the setting for a more efficient system to restore the broken public peace and resolve conflicts in civil cases and even in severe criminal offences.

12 I have alredy verified this both in local analyses and within the peninsular and Spanish-American Ancien Regime. See Mantecón, Meaning and Social Context of Crime; id., El mal uso de la justicia; id., El peso de la infrajudicialidad; id., Social Control from Below; id., Usos de la justicia; id., La acción de justicia; id., Justice.

13 The differences between these three complementary levels of judicial, extrajudicial and parajudicial intervention was clearly explained in Garnot, Justice. An overview on the state of the art at the end of the twentieth century in Garnot, L'infrajudiciaire. On mediation agents in the Old and New World see Undurraga, 'Valentones'; Barriera, La organización; Hidalgo, Alcaldes.

Then, there was the extraordinary recourse to pardons, that is, the remission of the charges and sometimes even the punishment pointed in the sentence and still without a real execution. Pardons could be a private matter recorded by a notary in public or expressed before witnesses; other pardons were granted by a social superior to their inferior, by the ruler to the ruled. Pardons were an extraordinary, but also a frequent, expression of royal grace, demonstrating the clemency of the monarch. This act of grace, however, did not overshadow the nature of the committed crime. Royal pardons had to be preceded by a pardon from the victim, expressed either in writing or before witnesses. However, in exceptional circumstances, royal grace was also granted when it was essential to resolve conflicts – often decades-long – that affected the social peace or the monarchy's diplomatic relations. In some of the latter cases, female agency is also evident in the handling of documents to obtain pardons or even amnesty, strengthening the arguments in their appeals.

A year before the Peace of Vienna of 1725, which brought an end to the war fought between the death of Charles II in 1700 and the Peace of Utrecht, a pardon was proclaimed to get royal clemency to all sort of criminals. Within the petitioners of the king's grace there were rebels who had supported the Habsburg succession to the Spanish Crown, and some of them still were the exiles that had sought shelter in Austria. The appeals made to the king in 1724 anticipated some of the characteristics of the special and exceptional expressions of grace that emerged from the negotiations leading to the Peace of Vienna a year later. From the end of the war in 1715 up to the Peace of Vienna (1725), between 25,000 and 30,000 people had fled into exile, from which they gradually returned, some as late as 1725. The 1724 pardon benefitted many high-profile figures in the kingdom and some leading military commanders.

The pardon that preceded the Peace of Vienna aimed to encourage the return of dissident Habsburg supporters who had held military positions for the emperor in Austria, Hungary, and Italy, and also included the widows and families who were still in exile in Vienna, Milan, Naples, Palermo, and Budapest – a total of 300 people. The pardon was the prelude to the amnesty attached to the peace treaty of 1725, which finally sealed the safe return of the exiles who had remained in the court of Vienna in the service of the Habsburg emperor.

Chapter nine of the Peace of Vienna declared "reciprocal amnesty" and pardoned all Spaniards that had taken part in the conflict, decreeing the reinstatement of their property and positions and mutual respect for the honours bestowed by both Philip of Anjou and Archduke Charles up to the signing of the treaty. It was not only a matter of attracting back the last exiles -men and women- and their families ten years after the end of the war, what actually could help the social peace building, but also of harmonising the relations between Bourbon Spain and the Austrian

Empire.[14] Actually, this pardon also helped the overcoming of these men and women personal traumas, with their different gender impacts.

For this reason, the peace established "perpetual forgetting, amnesty, and abolition of all the things done, openly or otherwise, since the beginning of the war"; the amnesty was to apply "to all and every one of the subjects of both monarchs, whatever their station in life, dignity, honours, condition, and sex". All assets, rights, privileges, honours, dignities, and exemptions were to be honoured, and rulings pronounced against any person were to be regarded as "void and invalid".[15]

The pardon of the Peace of Vienna was an exceptional expedient brought forth to allow two dynasties forced to understand one another in the European diplomatic arena to recognise the rights of their erstwhile opponents. More often, pardons were an extraordinary measure that was frequently employed in the context of anniversaries, happy events for the royal family (births, weddings, recovery from illness), and diplomatic or military success. These occasions were celebrated with general and extraordinary pardons in response to the need for royal grace to be expressed publicly and politically. More regularly, each Easter, the Crown commemorated the passion of Christ with the Good Friday Pardon.

Appeals rejected for consideration on Good Friday were often relaunched by justice officials at the request of the applicants or their families, and even people whose judicial process was still ongoing could request a pardon. People with the right social support launched constant appeals, and in some instances, following endless private negotiations, they managed to see their sentences rescinded through the expedient of royal grace. These were the so-called *perdones al sacar*, which were generally managed and resolved by the royal councils.

Like in previous iterations of this pardon resource (*perdones al sacar*), the king's pardon had to be preceded by pardons from the victims of the committed offence, and this generally followed long negotiations between the parties, many times helped by further people from each party's social environment. Often, the process lasted years, and often, judicial officials of varying ranks and councils could only be kept interested in the case at great expense for the supplicant.

2. Structural Male Domination and Violence

Asymmetric power relations were implied by gender in all spheres of life and interpersonal interactions. The social vulnerability of women could be aggravated

14 Among the beneficiaries of exiles in Vienna with imperial pensions, about ten percent were women (mainly widows) and descendants of exiled Austracists.

15 Stiffoni, Un documento inédito; León, El exilio austracista valenciano; Mantecón, La gracia regia.

by specific circumstances, such as loneliness and social isolation or dependence and, naturally, poverty. People who had to earn a living were categorically more vulnerable than those who did not. This is reflected in the sources not only qualitatively but also quantitatively: most criminal cases for statutory rape, cohabitation, adultery, and rape concerned poor women.[16]

The justice system was only utilised to arbitrate cases of sexual violence when the parties failed to reach an agreement; for instance, when the perpetrator's offer of compensation to avoid the issue being elevated to a tribunal to decide upon the damage caused and the proper indemnity to be given was rejected. In any case, when the courts were involved, women were put under constant pressure to release their claims, sometimes successfully. Nevertheless, as in other European regions, the court's knowledge of the specific context of each case gave women, even maids in very weak positions against their masters, a chance of obtaining some form of economic compensation through the judge's intervention. Personal and environmental factors varied from case to case, resulting in different judicial steps and proceedings. These were also influenced by the social context of the crime, whether or not the tribunal explicitly endorsed that influence.

One of the most effective gauges to measure the resources to be able to deal with the worst economic circumstances and make easy or, on the contrary, very difficult to go to court to solve civil and criminal conflicts. The increasing or decreasing involvement of local courts in the resolution of financial disputes itself is an indicator of when the economic circumstances were worst. Court-cases in the first judicial instance related with this reflect domestic bankruptcies, which obviously were more frequent during hard times and disproportionately affected those closest to the breadline the most; when debts piled up to saturation point the courts were called in to inventory the possessions of debtors, order creditors hierarchically, and organise the auction of the inventoried assets.

Statistically, the *lineal correlation* between debt-related cases and criminal cases for sexual offences (statutory rape, shacking up, adultery, rape) in a continuous series of nearly 500 cases from three Cantabrian valleys (Northern Spain) in the 17th and 18th centuries was 0.43.[17] This indicates a positive correlation between the *dependent variable*, i. e., sexual crimes (appeals in cases of breach of promise of marriage, adultery or rape and violent rape), and the *independent variable*, i. e., debt-related lawsuits (informal or formalised personal loans, mortgage credit,

16 I have already given details from different viewpoints in publications such as Mantecón, Conflictividad; id., Aux marges de la société; id., Estigmas de la pobreza; id., Urban Outcasts.

17 The legal documents refer to the Cantabrian valleys of Alfoz de Lloredo, Cayón, and Reocín. This collection of documents makes a complete series kept in the Regional Historical Archive of Cantabria. Archivo Histórico Regional de Cantabria (AHRC), sections: Alfoz de Lloredo, files 1–27, 28–37, 42–77, 78–94; Cayón, files 51–85; Reocín, files 119–132, 136–209.

insolvency proceedings, etc.). This suggests that sexual crimes were strongly affected by economic factors, and over 40% of sexual crimes contained economic variables. This is significant but not sufficient to explain the social fragility of women regarding these forms of violence and criminality.

In other words, this figure indicates that in about two-fifths of cases, economic factors were the main trigger behind lawsuits filed by women against men for illicit advances or other forms of sexual abuse. Honour culture played a role, as such offences risked the public reputation and social esteem of women and their families. This pattern occurred in all social groups but particularly within the lower classes and in women who needed to keep a good reputation locally because they depended on external help. Furthermore, there were legal dispositions to protect women from male violence. Naturally, these nearly 500 cases do not represent the entire phenomenon in this particular context, as many cases never reached the authorities and never entered the written records. The cases that we know about are those in which women managed to make their situation visible, getting the courts to open a criminal cause.

Supporting arguments with data is extremely important to establish the scale of the phenomenon while emphasising the vulnerability component that compounded the inferior status of women. Powerful men were in a position of privilege to abuse the vulnerability of women of all ages and social statuses but especially young servant girls and lonely wage labourers, who feature in censuses and other registers as "beggar" (*pobre de solemnidad*), "young day-labouring widow" (*viuda jornalera*), "day-labourer" (*jornalera* or *girl who lives by his work and the sweat of his face*), "poor widow" (*viuda pobre*), "poor orphan" (*huérfana pobre*), "poor blind girl" (*pobre ciega*), "daughter of unknown parents" (*hija de padres desconocidos*), "poor foreigner" (*residenta* or *forastera pobre*), or "who lives for herself" (*que vive de sí misma*) or "freely" (*a sus libertades*), or "who has to earn a leaving" (*que tiene que ganarse la vida por sí*)[18].

All these conditions made these women, especially – but not only – young girls and teenagers, particularly vulnerable. According to the census records for the 18th century, at least one-fifth of all women were in positions that put them at greater risk of being victimised. That this was a chronic problem is confirmed by the censuses carried out for the collection of the tax of the *moneda forera*, the detailed Cadastre of Ensenada, the censuses ordered by Floridablanca and Godoy, and the *Cuadernos*

18 All phrases come from initial proceedings of criminal cases in different courts of early modern Spain and were also used to define women's economic and social situation in fiscal reports consisting of lists of neighbourhoods and neighbours, which were used up to the second half of the eighteenth century.

de Riqueza, which was compiled with similar aims (fiscal proposals) early in the 19th century.[19]

Overall, there seem to be no major differences between urban and rural areas, although these conditions of vulnerability were perhaps a little more acute in cities. The available evidence also indicates that there were no significant regional differences either, as this situation was found all over the Iberian Peninsula, including the Cantabrian coast, Aragon, interior Castile, and Andalusia, although in the latter two regions and Galicia, the problem may have been somewhat more severe.[20]

In cases of breach of engagement or betrothal seen by the ecclesiastical tribunal of Zamora during the 17th century, 10% of claimants were servant girls with an average age of 23. The proportions in other regions were roughly the same.[21] Young women inserted in any domestic environment were in a difficult position, especially if they were not related to the paterfamilias. Yet, relation was no guarantee against the incontinence and lust of males, even their own fathers, who sometimes could not be restrained even by the moral barrier posed by incest.[22]

It must also be taken into account that any misfortune or accident, love affairs, or an extramarital pregnancy – situations that were anything but rare and that, not infrequently, ended in banishment – only further increased the vulnerability of these women. In these settings, the statements of their new neighbours speak of their extremely exposed position: "she is suspected of living badly" (*sospechosa de mala vida*), "she does not serve anyone" (*no sirve a nadie*), "she lives in the suburbs" (*vive fuera del vecindario*), "she lives in vice and freedom" (*vive en vicio y libertad*), "she lives badly" (*vive malamente*) or was taken as "a public whore" (*es una puta pública*) or a woman who was "bad to her body" (*mala de su cuerpo*)[23]. Even worse invectives were "*frailuna*" (a friar's lover), "kept by the Church" (*mantenida de la iglesia*) "dweller of the brothel" (*moradora de burdel*) and "pertinacious prostitute" (*puta probada*). Women who were seen like this in their social environment were extremely vulnerable and nearly powerless to defend themselves from male abuse.

19 On the case of Cantabria in global terms, see Mantecón, Conflictividad, pp. 365–376.

20 See data provided by the Cadastre of Ensenada in Mantecón, España, pp. 200–202.

21 Bénavidès, Les femmes délinquantes, p. 76, 78, 80; Barahona, Mujeres vascas, p. 81; Mantecón, Conflictividad, pp. 249–251; Pinar, Amores inciertos, p. 37 and following pages.

22 In 1794, a sexagenarian cobbler of the Southern Cantabria village of Nestares was abusively and violently soliciting sexual favours from his two daughters, which led to several dramatic episodes of marital violence following his wife's attempts to stop him. In this case, the intervention of the high court of Valladolid does not seem to have been very effective, as it opted for a counterclaim and issued a stern warning, threatening severe consequences if the lascivious cobbler did not restrain himself and control his impulses. Mantecón, Conflictividad, p. 68.

23 All phrases were taken from judicial documents, pointing out women in unfavourable situations.

3. Brutal Men, Vulnerable Women

When several of these factors converged, women were completely exposed to abuse, which often began during childhood. In the Cantabrian valley of Reocín, in the mid-18th century (1756), a young girl called Inés Salas, from the nearby district of Trasmiera, was brutally raped by her master, Antonio García, an intimidating young armourer with a good position in the valley. Ostensibly, García had brought Inés to the valley to attend to his domestic needs. His attack was so violent that she was left badly injured and unable to walk. The attack left Inés "bleeding abundantly from her body," which the neighbours noticed when they saw her coming out of the shed where her master had used her so brutally. He had also threatened to "stab her to death" if she told anybody, because "he would lose his good name".

Although the matter reached the first-instance court and a cause was opened against Antonio García, the ruling did not undermine his position of authority in the district. He was banished to an African enclave for four years, and his property was used to provide food and healthcare for the girl, but six years later, Antonio was back, soon to be judged again for intimidating his neighbours. In July 1763, when he was 31 years of age, the armourer was sent to the prison of the *corregimiento* in the town Laredo, before being released before the end of the year with only a warning from the tribunal.[24]

Antonio García was perfectly aware of the space and framework of impunity that his violent temperament had earned him in the valley. He was empowered by his violent nature and perhaps even by the court rulings pronounced against him, and this inhibited those who lived near him and the local institutions from being able to stop him. His neighbours knew him well, and Inés Salas and other vulnerable young girls in the area suffered from his very presence.

Inés Salas was not an isolated example. At the age of nine, Ana Rodríguez suffered a similar attack in a desert area in Zamora in 1697, and a girl of Galician origin called María Nocela had known the same fate in the same place 24 years earlier.[25] These abusive patterns of behaviour continued unabated throughout the *Ancien Régime*. Even by the late 18th century, in a rural area of Cantabria, an empowered, well-off peasant called Antonio Bajuelo was known to be "care-free with girls" (*alegre con las mozas*), because he often abused them in the neighbourhood, without anyone, even the judges, being able to stop him. He selected his victims among young maidservants without relatives in the vicinity. Despite having committed several sexual crimes, he was never prosecuted or punished for them.

24 Further details about Inés Salas in Mantecón, Mujeres forzadas, pp. 157–185.

25 On these two examples from Zamora, see Pinar, Amores inciertos, pp. 80–82.

One of his victims was called María de la Maza, a home maid in the same village, who told of her rape in the forest, where "forcefully, he dragged her from her path and covering her mouth he got his wish". She resisted as much as she could, but Antonio "showed her his jack-knife [near her face] and told her he would kill her if she didn't give him her body, because even though he had lost his soul he had to satisfy his desires".[26]

After this, María became pregnant and lost her job as a maidservant because her master dismissed her. She had to leave the valley and judicial district and had her child in the nearby valley of Cabuérniga, also in northern Spain, Cantabria. Afterwards, the rapist came to her to ask for the child and, later, he left it on the footsteps of the parish church in another valley. María did not say anything about this at the time but finally came forward with her story when several years later the rapist was involved in other cases. She thought that Bajuelo was going to be sentenced and told the judge her story. Despite her testimony and the other crimes committed by Bajuelo, the aggressor was never prosecuted, and nothing more of his story appears in the records. This silence reveals a deeper reality: the ability of a local chieftain to exercise violence with complete impunity both before the judge was aware of it and even after it had been brought to his attention.

These situations were not suffered by all women with the same degree of intensity, although they invariably affected their lives in equal measure. Women in early modern Spain suffered from the above-mentioned risks daily. Many rapes like the one recounted by María left no trace at all in the records, even if every instance was as tragic as the next. The personal vulnerability factors in each case made them dramatic, traumatic, and unique.

A quarter century before the incident involving María Nocela, on a spring day in 1649, the body of a 20-year-old girl called Lorenza Lozana was found hanging in a shed in her home in Manganesos, León, in the north of the Crown of Castile. It is impossible to know what abuses she had suffered at the hands of her uncle, a middle-aged local official of the Inquisition, called Gabriel Temprano.

It was never clarified if the young woman had taken her own life because she could not endure the constant abuse any longer or whether the jealous wife of the local potentate had played a hand in her death. The perpetrator enjoyed judicial privileges (*fuero de inquisición*), which probably contributed to the case being dismissed as suicide. In addition to her everyday home-torment and losing her life, Lorenza was not even buried in sacred ground, and, to this day, her bones remain

26 AHRC, Alfoz de Lloredo, file 92, document 1, f. 705–709.

in an inaccessible, depopulated area.[27] In this instance, the perpetrator was also allowed to walk away scot-free.[28]

These cases cannot be used to illustrate the situation of all women, but they do emphasise the risk at which all of them were in their daily lives. Many of them fit some of the conditions described in this work: vulnerability, dependence, loneliness or weak social ties, minorities, poverty, and lack of family or institutional protection.

When abuse happened so early in life, it increased the risk of new episodes of victimisation and, often, of low self-esteem in addition to the social ostracism suffered by victims: many women working in domestic service ended up on the streets and from there fell into the most abject misery. It must, however, be emphasised that many men did not even spare married women or widows in their violent impulses.

Very frequently, when men acknowledged the murder of another man, women (widows) were left to care for their children and the sustainability of the household and domestic economy of the victim's family. Likewise, their aspirations, requests and demands were widely represented in petitions for pardon, even those coming from the aggressors or murderers of their husbands. Considered by themselves and by the possible minors under their charge, who were also considered victims of the committed crime, their private pardon had an essential value for the convicts to be able to obtain the sovereign's pardon.

The private pardon was needed to obtain the final royal pardon. This offered women a very important negotiation space, which enabled them to reorganise their lives and those of their families. However, all kinds of pressures on these women's wills also played an essential role in negotiating forgiveness on the victim's side. Once again, violence in its most varied forms could be exercised on these women (by the aggressor kin or social clients) to obtain their support for the criminals' pleas for pardon.

27 Mantecón, Mujeres forzadas, pp. 157–185.

28 As a member of the Holy Spanish Inquisition (*familiar*), Temprano had some judicial privileges and immunity when dealing with ordinary courts. This provided him with an effective tool in peripheral territories. Cases like this can still be found in the 18th century. See Torres Arce, De comisarios. In earlier times, the effectiveness of this tool was demonstrated through actions that enabled a form of violence difficult to control for judges and local rulers in 17th-century Cantabria. See my book Mantecón, Conflictividad, pp. 260–271. Also in other Castilian territories, id., Parentelas y pendencias.

4. Women and the Pardon Economy

The fact that many women represented the victim's side (other times they were the victim's parents or even guardians of their minor successors) in cases in which the death of their husbands had been confirmed gave these women very important agency in the case resolution process. The records used to analyse the conversations between the different parties and the judicial officials in the courts are very heterogeneous. This is why it is so difficult to draw a comprehensive picture, but a few complete sets of files from each lawsuit suffice to outline common patterns.

During the 17th century, the Chamber of Castile analysed most of these petitions, referring to almost all types of persons of very diverse status and social stratum. The series of pardon appeals *al sacar* (to be considered separately from the Holy Friday pardons or the exceptional royal pardons on the occasion of a particular event) presented before the Chamber of Castile in the seventeenth century offers a rich source of information. Other full collections were processed by other royal councils. In order to obtain a diachronic perspective, the *al sacar* appeals analysed by the Chamber of Castile are here considered in comparison and contrast with data obtained from later homogeneous documentary series, such as those administered by the Department of Grace and Justice between 1760 and 1788.

The array of offences perpetrated by women was dominated by honour-related issues, generally to do with sexual abuse, adultery, concubinage, and prostitution, followed by offences against private property (damages, theft) and contraband. They were also often accused of breaching banishment orders and other sentences. This is not to say that they were never involved in assaults and (accidental or deliberate) homicides, but as far as this type of crime is concerned, their participation was much less common than that of men. Women featured as defendants in pardon appeals five times less often than men in the 17th century and half of that in the 18th century, when they appeared predominantly in cases involving bodily harm, so-called immoral behaviour, property damage, and, exceptionally, homicide in any of its typologies.

An example of what these appeals could mean for the lives of 17th- and 18th-century women can be found in the itinerary of a woman named Francisca Concejo. In 1769, she was barely 28 years old, but she already knew exile from her valley of birth in Cantabria, scrapping a living as a maidservant or perhaps working in inns or taverns in the city of Valladolid in interior Castile.

Table 1 Offences and Crimes Behind Pardon Appeals Castile, 17th–18th Centuries (%)

Crime/Offence	1625	1665	1760–1788
Manslaughter	49.40	45.16	82.47 (accidental homicide) 11.55 (deliberate homicide)
Actual bodily harm	13.20	26.87	-
Concubinage	6.60	-	-
Pimping	3.20	-	-
Sexual harassment	1.00	-	-
Adultery	4.30	-	-
Prostitution	4.30	-	-
Forgery	9.80	8.60	-
Robbery	3.20	-	-
Usury	1.00	-	-
Contraband	1.00	-	-
Contempt	1.00	18.27	-
Breach of exile	1.00	-	-
Escape	1.00	1.10	-
Other offences	-	-	5.98
Total	100.00	100.00	100.00

Sources: General Archive of Simancas (hereafter AGS), Castile Chambre (CC), files 1742–1748, 1908–1912, 1955–1957; also, AGS, Grace and Justice (GJ), sig. 874. Number of pardon appeals taken into account: 91 in 1625, 93 in 1665 and 311 in 1760–1788.

There is no record of her criminal history even in her pardon appeal, handled by the Department of Grace and Justice in 1769, but it is known that she had spent some time in the prison of La Galera in Valladolid after breaching a banishment order imposed when she was found guilty of sexual offences, notably prostitution. Her accusers also referred to her alleged involvement in abortions and infanticide.

It is also unclear how Francisca Concejo, born to a peasant family, had reached Valladolid, hundreds of miles away, where she entered a downward spiral that ended in prostitution by the time she was barely twenty years of age. It is not difficult to imagine Francisca, like many other young women who migrated to interior Castile to earn a living as maidservants, day-labourers, or retailers, suffering some traumatic experience like those described earlier in this article.

Social ostracism could easily be a trigger to take on whoring, which was punished with a fine (a silver mark) and a banishment order, pushing these women one notch deeper into their process of personal degradation. Banished women that arrived at a new destination were naturally presumed to be prostitutes, and this is reflected in

the language used to refer to them and to project many other social prejudices onto so-called dishonourable women.

In many criminal court cases involving women, slanderous words were used against them because of their so-called "bad behaviour" (*mala vida* or *malas costumbres*). This was often due to their lack of social integration, which led to a presumption of misconduct. They were further referred to as "exiled" or "banished" (*desterrada*), "loose" (*perdida*), or, in this specific context, *residenta*. Normally, *residenta* referred to a person who had recently arrived and was not yet fully integrated into the community, unlike a long-term resident (*residente*), but in this context, it applied to women in general. This was a real verbal offence, implying all the negative attributes associated with unknown origins, lack of social references, and social isolation[29].

By the time Francisca submitted her pardon appeal, which the king granted in 1769, she had breached her banishment order from Valladolid and was no longer in the jail of *La Galera*. She had also spent time in the women's prison in Madrid, where she went when the banishment order became effective and she was, it seems, earning a living as well as she could; she was arrested again and freed by the mutineers that rose against the Marquis of Esquilache in the spring of 1766. She took an active part in the riot, joining the mutineers in the streets of Madrid.

It seems plausible to think that all of these circumstances – her young age, her relapses to her "bad habits", her time in jail, and her participation in the emblematic urban mutiny, which shock Madrid and resonated across the whole of Spain, affecting urban supply and governance – made her case sufficiently important to be addressed (and granted): it was one of the few pardon appeals dealt with by the Department of Grace and Justice that did not involve homicide (barely 6% of the total of 311).[30] The pardon she received can be understood in light of her personal circumstances, which portrayed her as a relatively passive figure in shaping her own future and making choices in her best interest. What happened to her and what helped to facilitate the final outcome of her case was not primarily the result of her own will.

Many more women were included in the pardon appeals, but not because they were directly affected or because they were the protagonists in the commission of a crime. This case was unusual. They were much more present on the side of the victims. This was also because they were the victims or because they represented the interests of their deceased husbands or the voices of their mothers and daughters in the defence of their interests damaged by the loss of a male and direct relative responsible for the house or holder of rights that should be judicially protected.

29 On the uses of language against women, see Mantecón, Conflictividad, pp. 69–83, 245–260.

30 AGS, GJ, sig. 874.

These women played a key role in granting pardons to some of the criminals who had already been convicted or those who were still awaiting sentencing and feared a guilty verdict. This gave these women great influence in overcoming the conflict situation created by the committed crime. This influence was visible both inside and outside the judicial procedure. Once compensation was agreed upon for them and for their minors under guardianship, derived from the damage caused by the crime, they granted their private pardon and that of their represented parties with a notarial act. This was a necessary step before the king's pardon could be awarded.

Therefore, these negotiations were essential to the restoration of peace. Women, despite all the legal and social restrictions they had to overcome, negotiated to grant a private pardon and joined the petition process for the pardon of their husbands' or fathers' aggressors (often guilty of homicide or the greater crimes against persons or property). These negotiations were essential to obtain the king's pardon and often strained the offenders' economic and social resources. In the end, they had to deal with all the compensations they had to pay to the victims' parties while facing the expenses of judicial procedures caused by the whole process of obtaining the pardon.

This use of the justice system by women illustrates the mechanisms in place that allowed for a flexible application of the law, which could lead to acceptable results, that is, it helped with maintaining the social peace and ensuring that the victims were compensated. However, the compensation rarely fully covered the damage caused, even if pardons were considered absolute. The social context of victims and perpetrators either facilitated or undermined negotiations, and it is of great interest to analyse this process of negotiation that involved the parties involved and the justice system in detail.

5. Uses of Justice and Grace

In the previously explained social contexts, people experienced the strict application of the law, although first-instance civil and criminal courts adapted the rulings and sentences to varying social needs, and it was also known that over three-quarters of cases ended without a firm ruling.[31] In a few cases, the parties explicitly gave

31 On Spain and Latin America, see Caselli, Justicias. On rural and urban patterns in Spain within the European contexts, Mantecón, Conflictividad, pp. 453–463, also id., Patterns of Violence; Popular culture and the arbitration of disputes: id., Northern Spain and Kingston, Criminal Justice showed how flexible French courts were at the lower stages beneath the *parlaments* level. For European societies, see Dinges, Uses of Justice; Friedeburg, Making of Popular Cultures; Hoffmann, Social Control; Ingram, Charivari; Mantecón, Social Control from Below; Schwerhoff, Social Control; Spierenburg, Social Control. There is a wide range of research with a local and regional perspective

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up their rights, and in other instances, the file was closed by a note from the judge stating that the parties had reached a private agreement.

Most of these agreements were not even recorded. Many were verbal and informal, although they were obtained with the mediators' help. These, frequently close neighbours with good social reputation. Some of the agreements have left notarial acts, private contracts and documents filed by the social institutions that acted as intermediaries, even if the issue at hand involved major crimes – sexual crimes, crimes against honour, slander, theft, and damages – or civil disputes. The longevity of the approaches used by society to overcome conflict speaks volumes about their historical vitality.

The *usos de la justicia*[32] is the Spanish term for this array of practices that used the law, the court system, and social status to affect judicial cases and achieve negotiated outcomes. These practices included the communication and negotiation between victims and perpetrators, dialogues that took place both in the court and outside of it, as well as the mediation of justice officials, which were another variable in the operationalisation of the notion of judicial tolerance. The result of each case produced *actions of justice* in which every factor affected the establishment of a new, balanced social coexistence (what was called *peace*).

People's social positions were derived from their social group of origin, bloodline, ethnic group, class, and gender, which all took part in these practices. Other factors further affected the social status of the individual – their position within a household or domestic community, lineage, a faction or a patronage group, a neighbourhood, a professional group, an age group, or a generational or gender-based cultural group – but these were heavily determined by the above-mentioned structural factors.

The uses of justice and its results affected judicial resolutions. This was because if parties withdrew their claims in the first-instance ruling, in the appeals to a higher tribunal, or because of a private agreement between the parties, perhaps with the encouragement of the court, it meant that no firm ruling was given, only the judge's endorsement of the terms of the pact. This shows/reflects a degree of

building on Garnot, La petite delinquance. Anglo-Saxon and even urban traditions also show flexibilities, as shown, e. g., by Sharpe and Shoemaker, in referential publications. Sharpe, Crime, pp. 21–72; Shoemaker, Prosecution. More recently, some of these patterns have been stressed by Antichi, Giustizia consuetudinaria; Broggio, Pace; Carroll, Peace-Making; Edigati, La pace; Mantecón, La acción de justicia. See also Matikainen, Lidman, Morality (particularly Lidman's contribution on early modern Bavaria, pp. 85–106).

32 I explained this in Mantecón, Meaning and Social Context of Crime, pp. 49–73 (particularly in the fifth paragraph: The uses of justice and social discipline, pp. 24–37). My considerations on *actions of justice* in id., La acción de justicia. For further developments, see Vermeesch, Heijden, Zuijderduin, Uses of Justice.

judicial tolerance, as private pacts did not lead to the closure of cases, only to their suspension in perpetuity.

These private peace agreements (*paces*) were indeed an unorthodox expression of the king's grace, but one that was encouraged by both high and first-instance tribunals. The Crown had full faith in the operation of the justice system, with its combination of an ordinary justice administration complemented by extraordinary grace mechanisms, including ample tolerance for extrajudicial agreements and the occasional social recourse to private clemency and amnesties.

However, we still need to gauge to what extent the common or plebeian people, who were often the protagonists of conflicts that reached the desks of specialised high tribunals, were aware of their role in achieving social peace in their own social contexts. This would involve being cognisant of their social place in terms of gender, family identity, corporation, and community, as well as the deployment of the best strategies to achieve the most harmonious outcomes possible. The strategies used in complex negotiations illustrate the way women involved in difficult lawsuits, and often living in dramatic circumstances, manoeuvred the justice system to achieve the most advantageous outcome for themselves.

Since the acquiescence of the victim was a prerequisite for royal pardons, victims or their representatives used all possible resources to obtain the biggest possible compensation in exchange. However, the records indicate that some pardons were given unconditionally (*apartamiento llano*), while others involved an economic compensation or a social or family agreement of some sort, which often did not fully repair the damage caused. Sometimes, the conditions imposed on perpetrators or their social environments caused additional humiliation to the victims, but also prevented further escalations. This is referred to in the lawsuits as *apartamientos condicionados*. In some instances, the victims even explicitly joined the pardon appeals filed by the aggressors.

Apartamientos llanos typically reveal the will of the parties to restore social peace or feelings of altruism, often encouraged by charismatic neighbours (good men or *hombres buenos*) or religious and political mediators (parish priests, brotherhood officials, local councillors, and procurators). It was not rare for this outcome to be facilitated by the extreme poverty of the aggressors, whose predicament could push their families into utter destitution, or by fear of a disproportionately harsh sentence.

Sometimes, good relations between the families of the victim and the aggressor also facilitated an agreement to avoid the families of perpetrators becoming collateral damage and thus prevent "a greater evil". In almost all cases, however, measures were imposed to keep the aggressors and victims and their families sepa-

rate, sometimes involving formal banishment orders that could only be rescinded by those who represented the voice of the victims.[33]

Unconditional pardons were frequent in cases of theft, with or without home invasions, especially when the defendants were slaves or domestic servants. In theory, these offences were punished with forced and unpaid labour in the king's galleys. But the poverty of defendants and the collateral damage that punishments could cause for their families often encouraged the victims to grant their pardon, perhaps following the restitution of the value of the stolen property.

The circumstances in which the offence had been committed could also affect unconditional pardons: gambling, drunkenness, naivety, the bad influence of third parties, or any other factor which could be argued to have obscured the perpetrator's judgement and inspired a degree of indulgence in some victims.

Generally, unconditional pardons were inspired by these sorts of feelings as well as a degree of reciprocal empathy between the parties and shared notions of the commonwealth. However, the same outcome could be achieved by totally different means when victims were intimidated into agreeing with the pardon appeal, but these instances of renewed victimisation left the least trace in the records. In such agreements, social pressure mechanisms as well as a party's capacity for coercion and intimidation over the other to agree to a pact were a real tool to avoid even the worst – and sometimes fatal – results. In any case, conditional private pardons (*apartamientos condicionados*) were the most common type of pardons, emphasising negotiation according to the practices examined above and giving full meaning to the idea of *acts of justice* when the outcome was accepted at both social and institutional levels.

6. Women's Pardons

In early August 1623, María García, a young woman from the town of Huete in Cuenca, accepted 2,100 *reales* from her neighbour and brother-in-law, Gabriel Beltrán, who had killed María's husband in a brawl four months earlier. Gabriel was awarded his official pardon a little later, in the spring of 1625.[34] In this case, the family relations between the parties certainly facilitated an agreement. The monetary compensation was considered a new dowry for María to marry again if she so wished. This is one instance in which the documents recording the clauses of the agreement, often comprising monetary reparations and other conditions, non-

33 In addition to this see Mantecón, Las mujeres; Premo, Before the Law.

34 AGS, CC, sig. 1743, doc. 13.

aggression pacts to avoid future vendettas, etc., have survived. Generally, more complicated circumstances led to more difficult negotiations between the parties.

A young Galician woman called Catalina de Mazcarelle, from Coto da Pena, Lugo (Galicia), expressed many of her concerns in the document that she filed in favour of her father and brothers-in-law, who had publicly killed her husband during a religious festival (*romería*). Catalina granted her private pardon in exchange for an unspecified amount of money and certain promises from the aggressors. She also did it because "lawsuits have uncertain endings" and are a source of "nuisance and ill feelings". She wanted to secure the future of her family and children. She said her pardon was given "because they are all uncles and cousins to one another; so that the friendship that always existed may continue". She pardoned the perpetrators "at the behest of principal and good people that interceded". She believed she was helping to restore public peace.[35] It is likely she was afraid of being isolated in her community because of her in-laws' violent history in the same neighbourhood in which she lived with children.

In the end, José da Pena, Catalina's father-in-law and the person responsible for the death of his own son, who had demanded him to pay a debt as administrator of a local brotherhood, gave her child support for his grandchildren and a house with a stable and a cart and paid a number of debts incurred by Catalina in the years before the incident. Catalina then withdrew her claims and joined the pardon appeal filed by the aggressors, absolving them of blame. In the appeal, she even wrote that her husband's death had been "her husband's fault and not theirs" and that the witnesses who spoke against them in the criminal proceedings "were their sworn enemies, among other flaws".[36] These expressions were a product of the adversaries' ability to produce an extremely effective environmental social pressure on this girl.

Far from Galicia, in the heart of urban Madrid, the wife of a man named Pedro Lozano likely experienced social pressure very different from Catalina Mazcarelle. In 1629, she granted a pardon in her name and that of her minor son to Hernando López de Arroyo, a silk weaver who had killed her husband, Pedro, during a drunken tavern brawl. She pardoned the murderer because "it is better for me and my son", because "by order of said Hernando López Arroyo, my son is being taught to read and his trade", "and he is succouring me in my need". Ostensibly, the pardon was granted unconditionally, but in reality, the killer had become the protector of the victim's family, who were in dire need after Pedro Lozano's death.

These kinds of situations, rooted in poverty, often left women with little ability to negotiate with violent men whose actions led to tragic outcomes. Maidservants,

35 AGS, CC, sig. 1776, doc. 29, f. 39–48.

36 Ibid., f. 42–48.

day labourers, or the wives of peasants or small craftsmen with children were particularly vulnerable and frequently became easy targets for private arrangements that seldom served their interests. For instance, this can be seen in the unconditional pardon granted by a young girl from the town of Trujillo, Extremadura. Ana González had been serving in the house of the miller Antón Sánchez for a month. She worked in the mill, overlooking the grinding of grain and also handled domestic tasks in the house. From the day she arrived, the miller's son tried to persuade her to leave, suspicious that their father had a special interest in her.

After a few weeks, she decided to heed their advice, but when she left, they followed her. After they had caught up with her, they pulled her away from the path and beat her up badly. Despite her pleas "not to be marked", one of the two brothers, Pedro Sanchez, took out a knife and cut her face, accusing her of having seduced their father. The mark aimed not only to deform her but also to do so in a way that made her alleged moral laxity obvious to everyone, just as if she had been marked and banished for prostitution. His aim was for her to carry that prejudice wherever she went thereafter.[37]

After this, she was so terrified that she refused to file any reports against them, granting an unconditional pardon that spared the main aggressor, Pedro Sánchez, the eight-year forced military service in the fort of Mamora (Mehdya) in northern Morocco, to which he had been sentenced by the first-instance court. This sentence was commuted to a four-year term by the higher court of the Chancillería of Granada, although he was ultimately fully cleared with the pardon granted in 1635.

Some arrangements revealed a much closer relationship between victims and aggressors, which could lead to the latter offering support to the former thereafter, or, conversely, to deepened enmity. A woman from Ciudad Rodrigo, mother of the university graduate Pedro Álvarez, killed in a duel in 1621, pardoned his murderer on the sole condition that he marry the victim's sister.[38] Such intimate ties become particularly poignant in cases of uxoricide, where familial obligations, along with the circumstances and context of the crime, could either facilitate or entirely prevent the granting of a pardon.

In the Castilian town of Pobladura, near Benavente in interior Castile, the wife of the local peasant Bartolomé López was having an affair with one of the town's three priests. In 1630, the couple lived in poverty and had three young children. One day, as they sat at the table arguing over food, the tensions in their marriage finally came to a head. She stood up, and when she turned around, he stabbed her in the buttocks. She bled to death despite the best efforts of the surgeon called by her husband. Even before a ruling was issued, Bartolomé López had been pardoned

37 AGS, CC, sig. 1812, doc. 15.

38 AGS, CC, sig. 1747, doc. 9.

by the legal representatives (*curadores*) of his three children.[39] In this case, what proved decisive in securing both the victim's pardon and, ultimately, the king's pardon was the vulnerable position the children would have been left in if their father had been condemned to death and executed.

He was granted a royal pardon upon payment of a 100-ducat fine to the Chamber of Castile, which was more or less the equivalent of a good dowry for a peasant girl at the time and a very modest sum for securing grace in a homicide case. His decision to call a surgeon may have been interpreted as evidence that the death was accidental, without minimising the seriousness of his actions. Her infidelity could also have been considered an extenuating circumstance, since Castilian law granted husbands the right to punish wives caught in the act of adultery (*in flagrante delicto*).

Another poor Castilian husband, Pedro de Botija, was pardoned in the same year, based on the application of the same argument. On 22 August 1623, he found his wife, María Torres, and her lover, Miguel Palacios, from the same town of Paredes, "one on top of another". He entered the house unnoticed by the lovers and killed them on the spot. The father of Miguel Palacios and the wife's closest relatives, her aunt Catalina Torres and her uncles Vicente and Juan Rojo, pardoned Pedro unconditionally based on his limited means to pay any potential compensation for the tragic deaths.[40] The argument for the final pardon rested on the notion of 'hot blood', in cases where a man directly witnessed the adulterous act between his wife and her lover.

The circumstances surrounding this crime of passion were addressed in the Laws of Toro of 1505, which were rooted in the Roman Law tradition as conveyed by Alphonse X's *Partidas.* These laws recognised the legitimate right of a husband to act as Pedro had done, and this must have played a part in the ease with which his pardon was granted. Such examples highlight the numerous factors that could influence the negotiation of private pacts that must precede royal pardons, which ultimately aimed to compensate the victims and restore social order and peace.

7. Conclusion: Actions of Justice & Women's Agency

A good understanding of the internal logic and the implementation of mechanisms of grace and justice in the Hispanic monarchy requires the joint analysis of juridical doctrines, political treatises, positive law, and the social practices surrounding justice and grace. This includes a wide array of practices employed by subjects,

39 AGS, CC, sig. 1776, doc. 18, ff. 3–3 vº and 64.

40 AGS, CC, sig. 1778, doc. 1, ff. 6, 62–64.

shaped by their gender and social status, within various social contexts. These factors are essential variables for any rigorous study of the participation of all social classes, especially the common people, in conflict resolution and the restoration of social peace in a traditional society.

Despite the limitations imposed by entrenched power relations and deep gender-based inequality, which offered women only a narrow path for personal development, they were often forced, like men, to navigate every step of the judicial process. They confronted their counterparts in negotiations, both within the court system and outside of it, seeking extra-judicial agreements to resolve conflicts through arbitration or by invoking royal grace.

The restoration of social equilibrium to overcome a criminal conflict, through whatever combination of means necessary, reflected a shared aspiration of both the justice system and society in general: to restore peace. This was the only way to fulfil all the *actions of justice*, each with its own complexity.

The information used in this work is primarily judicial in nature: criminal cases, lawsuits, and pardon appeals. The study of these sources sheds light on the behaviour of these women and various forms of *female awareness*, expressed through their *agency* in intervening in the process of restoring public peace, despite the structural limitations they faced. Their actions often overcame the explicit rigour of convention and the rigidity of a legal framework that treated all women as minors under male guardianship (fathers, husbands, legal representatives), stripping them of the right to represent themselves in court, although tribunals held a degree of discretion in this regard.

The fact that royal pardons needed the acquiescence of the victims gave them a very important tool to protect themselves. For the Crown, it was a key mechanism to prevent conflicts from escalating into blood feuds, revenge, and *vendettas*. Each negotiation undertaken to secure a pardon reflected the tension but also the complementarity, between public/royal and private justice, expressed in a wide variety of practices.

This turned every criminal action into a *case* in which mothers, widows, and lone women had significant leverage to defend their own interests and rights, which, in other contexts, were undermined by their limited support networks and scarce means. In some instances, intimidation and social pressure could be extremely harsh and lead to tragic outcomes. Negotiations to achieve *actions of justice* frequently involved the social/support network of victims (family, lineage, faction, charismatic local figures). The need for the victim's endorsement gave women and their social environment an important role in the construction of justice.

Depending on the circumstances and the utilised tools, victims could be offered compensation or be presented with various alternatives to pursue their interests. This was essential for women who were left alone, without assets and in charge of

minors or elderly or disabled relatives. The deeper these women's roots were in their social contexts, the more actively they could participate in restoring social peace. In contrast, women who had experienced personal degradation had fewer social levers to pull, and this often affected their health and determination.

The *action of justice*, in short, was often less satisfactory for female victims than it could have been through a rigorous judicial resolution, even if the goal of restoring social peace was ultimately achieved. However, the strict adherence to the law could also result in a less stable outcome if it lacked the social consent necessary to keep the parties calm and cooperative.

Women's pursuit of justice combined different *ad hoc* strategies, shaped by the specific circumstances and settings of each conflict. Their behaviour and their judicial and extra-judicial strategies reveal both a self-awareness and a culturally informed sense of fairness. These women demonstrated a good understanding of their capabilities and limitations (*legal conscientiousness*) that allowed them to find meaningful margins of freedom in a society where their ability to make decisions was severely curtailed, both socially and legally. To fully grasp the production and complexity of justice in traditional societies such as *Ancien Régime* Europe, it is essential to consider both gender-based restrictions women faced and the forms of empowerment they exercised in everyday life.

Behaviour expresses values and, insofar as those values are shared and transmitted, also reflects forms of culture, in this case, ideas about what was intolerable and what could be tolerated, the strength or fragility of social bonds, prevailing prejudices and conventions, recognised or illicit power, and the methods available to repair abuses, aggressions, offences, and crimes. This culture, shaped through the uses of justice and the pursuit of peace in *Ancien Régime* Hispanic societies, was a socially participatory one, encompassing all levels of society. Within it, the *agency* exercised by women from all walks of life was key to the formation of protective structures capable of addressing and repairing the harm they suffered.

The counterpart to this agency was their resilience in the face of tense situations and, sometimes, long negotiations between parties, a toll paid in exchange for the empowerment that granted them some space to assert themselves. This was never easy. The cases described in this study were often dramatic, and many victims never fully achieved their goals. Still, the first step in securing their rights was to defend them wherever possible, whether in formal courts of justice or extra-judicial arenas – both key vehicles through which justice operated and through which their rights were gradually formed.

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3 Government, Multilevel Powers and the Construction of Sovereignty

Rudi Beaulant

From the Duke to the King

Pardoning Criminals in Dijon under the King of France after 1477

1. Introduction

At the beginning of the 14th century, the practice of granting pardons took the form of letters of remission, first granted by the French king Philip IV the Fair. By granting these letters, the king interrupted the ordinary course of justice by forgiving the crime committed and restoring the supplicant to his good *fama*, allowing him to reintegrate into society while preserving the rights of the injured party, who had to be satisfied.[1] It should be noted that a remission had no legal value until it had been ratified. This royal practice was quickly adopted by the great princes of the kingdom, especially the dukes of Burgundy, who, as early as the reign of Eudes IV, granted letters of remission in the first half of the 14th century, largely using the model of royal letters.[2]

Through the quantitative analysis of approximately 800 remission letters issued by the dukes and duchesses (between 1336 and 1477), I was able to highlight the social, legal, and political norms they convey. This analysis reveals the construction of a discourse whose content participates in the construction of a judicial truth that takes precedence over the reality of the facts,[3] with the aim of satisfying all the parties involved and avoiding the cycles of revenge triggered by homicides, which are the most frequently pardoned crimes among the corpus studied –a pattern also observed in the kingdom of France and in other principalities such as the Duchy of Lorraine.[4]

Besides the remission letters registered in chancery records, this article draws on the rich judicial archives of the city of Dijon, which provide an initial insight into the power to pardon after the fall of the Burgundian principality in 1477.[5]

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1 Gauvard, De grace especial, p. 63.

2 Beaulant, Les pratiques de la grâce. See also Verreycken, Crimes et gens; Cauchies, de Schepper, Justice.

3 Zemon Davis, Pour sauver sa vie.

4 Pegeot, Derniame, Henin, Les Lettres de rémission.

5 King Louis XI seized the duchy of Burgundy in January 1477, when he got confirmation of the death of Charles the Bold (the last Valois duke) before Nancy. He also attempted to seize other Burgundian possessions such as the county of Burgundy and the county of Artois. See Santamaria, La mort.

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The decrees issued by the kings of France provide information on the legal and political framework in which the royal power to pardon was exercised from 1477 to the beginning of the 16th century.[6] The few pardons and remissions that have been preserved do not allow for a quantitative study in the judicial archives of Dijon, but they do provide an opportunity to take a qualitative look at the return of the royal power to pardon in the Duchy of Burgundy and in Dijon more specifically. The investigations and trials conducted by the justice of Dijon make it possible to compare the content of a pardon or remission with the perspective of the urban jurisdiction and the witnesses to the events, while the registers of deliberations also provide some examples of the reactions of the town council, which sometimes decided to contest the pardons granted.

The aim here is, therefore, to offer an initial insight (part of a work in progress) into the exercise of the royal power to pardon in Dijon and the Duchy of Burgundy from the time of the annexation in 1477 until the early years of the sixteenth century, a topic that will require further study. First, it is important to examine the holders of the power to pardon, which was regularly delegated to the lieutenants and governors appointed for Burgundy by the king. We must then examine the characteristics of the pardons granted in the duchy during these years, highlighting the continuities and ruptures that the submission to royal authority implies in the practice of pardon. Finally, the comparisons between pardons and trials, and the political issues at stake, will emphasise the rich potential of the theme addressed here at the urban level.

2. Holders of the Power to Pardon

Under the dukes of Burgundy, the prince was almost the only figure responsible for granting letters of remission to the inhabitants of the duchy; the duchesses also had this power by delegation from their husbands and in their absence, as several pardons and remissions granted by Margaret of Male and Margaret of Bavaria (wives of Philip the Bold and John the Fearless) have survived. Philip the Good also delegated the power to grant pardons and/or remissions to his various wives, in particular Isabella of Portugal, although no letters were found during my research in the archives. Charles the Bold, however, does not appear to have acted in this

6 On this topic, it is worth mentioning the doctoral dissertation in progress of François Foulonneau, titled Rattacher la terre, s'attacher les cœurs : la réunion des duché et comté de Bourgogne au royaume de France (1477–1530), under the supervision of Elisabeth Crouzet-Pavan and Laurent Vissière.

way with regard to his wife, Margaret of York, reserving for himself the exclusive power to grant pardon (at least in his southern possessions).[7]

As early as 19 January 1477, fourteen days after the death of Charles the Bold, King Louis XI granted a general abolition to the inhabitants of the duchy and county of Burgundy for having supported their duke; he repeated this general abolition when, later this month, he confirmed the privileges of the inhabitants of the county of Auxerre, which he established as a royal bailiwick.[8] He thus established his image as the king of justice and his sovereignty, implicitly emphasising that he was now the one to whom the inhabitants of Burgundy should turn if they needed pardon for their crimes.

However, Louis XI and his successors frequently delegated this power to pardon to several individuals. Register B 17 of the Dijon Chamber of Accounts contains some twenty such ordinances granted to successive governors between 1477 and 1514, which regularly include mention of the power to pardon and its extent, as shown in the following summary table.

Table 1 Delegation ordinances in the B 17 register

B 17	Date	Name	Office
fol. 15r–15v	3 February 1477	Georges de la Trémouille	Governor and lieutenant general
fol. 16r–17r	24 February 1477	Georges de la Trémouille	Governor and lieutenant general
fol. 37v–38r	6 July 1477	Jehan Blosset	Royal commissioner
fol. 45v	21 September 1477	Philippe Pot	Grand Seneschal
fol. 42v	12 October 1477	Charles d'Amboise	Governor and lieutenant general
fol. 43v–44r	12 October 1477	Charles d'Amboise	Governor and lieutenant general
fol. 63r	12 July 1480	Bishop of Maillezais	Governor and lieutenant general
fol. 77v	9 March 1482	Bishop of Maillezais	Governor and lieutenant general
fol. 80v–81v	16 March 1482	Jehan de Baudricourt	Governor and lieutenant general
fol. 96v–97r	5 October 1483	Jehan de Baudricourt	Governor and lieutenant general

7 Beaulant, Les pratiques de la grâce, pp. 139–161.It may be useful to recall that the Burgundian principality under the dukes was a collection of principalities without physical continuity, including notably the Low Countries in the north and the duchy and county of Burgundy in the south.

8 Ordonnances des Rois de France de la troisième race (hereafter ORF), Vol. 18, Paris 1828, p. 225. See also Carbonnet, Louis XI, pp. 74–76 and p. 469.

B 17	Date	Name	Office
fol. 97v–98r	12 October 1483	Jehan d'Amboise	Governor and lieutenant general
fol. 134v	5 April 1484	Philippe Pot	Lieutenant of the governor
fol. 157v–158r	2 January 1493	Prince of Orange	Governor and lieutenant general
fol. 174r	31 May 1498	Jehan d'Aumont	Governor and lieutenant general
fol. 174v	3 June 1498	Jehan d'Aumont	Marshal
fol. 176r–177r	11 June 1498	Jehan de Baudricourt	Governor and lieutenant general
fol. 185v–186r	12 May 1499	Engelbert de Clèves, count of Nevers	Governor and lieutenant general
fol. 230v–231v	24 November 1506	Georges de la Trémouille	Governor and lieutenant general
fol. 254r	15 May 1513	Charles de la Trémouille	Lieutenant general
fol. 264r–265r	26 October 1513	Charles de Bourbon	Lieutenant general of the army defending the duchy of Burgundy
fol. 266r–266v	10 October 1514	Jehan d'Albon	Governor's lieutenant general

As shown in the table, the governor and lieutenant general of the king in Burgundy seems to have had the same power to grant pardons as the king, as he could grant pardons, remissions, banishment reversals, and even abolitions. These different forms of grace have distinct implications. The distinction between remission and abolition is well known: the former forgives the crime committed, while the latter erases it.[9] A banishment reversal allows the banished person to return to their place of residence by overturning the sentence against them. As for pardon, one of the elements that distinguishes it from remission is its non-perpetual value, as attested by its red wax seal, whereas remission is sealed with green wax.[10] Whether it was Charles d'Amboise or Jean de Baudricourt, each governor, when granting a pardon (in the general sense), specified that he was acting by virtue of the power entrusted to him by the king ('par vertu du povoir à nous donné par le roy nostredit sire'),[11] just as the duchesses of Burgundy – acting in the name of their husbands – had done before them. Nevertheless, unlike the Burgundian princesses, they did not have to indicate that they were acting in the absence of the king's usual authority at the beginning of their acts.[12] When the governor was absent, the lieutenant who replaced him also had the power to pardon. Although this is not mentioned in his

9 Gauvard, Pardonner et oublier.

10 Beaulant, Les pratiques de la grâce, pp. 194–199.

11 Archives départementales de la Côte-d'Or (hereafter ADCO), B II 361, 12/11/1490.

12 The duchesses indicated in their titles that they governed the countries in the absence of the duke.

delegation ordinance of 1484, Philippe Pot, Grand Seneschal of Burgundy, granted a banishment reversal to Marie Mairet in 1491.[13] However, it is not possible at this stage of my research to determine whether the governor's lieutenant also had the power to grant pardons, remissions and abolitions. In 1513, Charles de Bourbon, as lieutenant general of the army defending the Duchy of Burgundy, was granted the power to 'release, remit and pardon' crimes committed by soldiers in the army during wartime; therefore, it seems that he had the power to grant remissions, but perhaps not abolitions, and that this power was limited to members of the army and not to society as a whole. The following year, when he appointed Jean d'Albon as his lieutenant, he does not appear to have delegated to him any power to pardon criminals.

Finally, we should mention the exceptional case of Jean Blosset, who on 6 July 1477, was appointed commissioner by the king to restore order in Dijon after the '*mutemaque*' (mutiny) in June.[14] King Louis XI delegated to him the power to grant pardons, remissions and abolitions to all those who requested them for the events that had occurred. He also had the power to remit and abolish all cases and crimes of lèse-majesté, something that is never mentioned in the delegations of powers granted to governors. Would this mean that the latter could implicitly forgive all forms of crime, or did forgiveness of lèse-majesté remain the exclusive prerogative of the king outside times of revolt? Finally, it should be noted that several letters preserved in Dijon were granted directly by the king, particularly when he was in Dijon, as in the case of Regnault Argault in 1495.[15] Delegating the power to pardon to his governor thus did not prevent the sovereign from granting pardons to his Burgundian subjects himself. For further investigation, it is interesting to note the number of pardons granted by Kings Louis XI, Charles VIII and Louis XII to inhabitants of the Duchy of Burgundy in the registers of the royal Treasury of Charters. At this stage of the investigation, the following copies have been preserved in the archives: two letters from Jean de Baudricourt, two others from Jean d'Amboise (Bishop and Duke of Langres), one from Jean de Chalon, and even one from Philippe Pot, Grand Seneschal of Burgundy, when Jean de Baudricourt entrusted him with the government of Burgundy in his absence. The letters granted by Jean de Baudricourt and Jean d'Amboise are remissions and pardons, while the two letters preserved from Philippe Pot and Jean de Chalon are banishment reversals. The crimes for which pardons and other letters were granted were theft,

13 ADCO, B II 361, 03/09/1491.

14 ORF, Vol. 18, p. 277; Carbonnet, Louis XI, pp. 230–232. Voisin, La "mutemaque", pp. 353–355.The 'mutemaque' was an urban revolt against the royal power (26–29June) led by partisans of Mary of Burgundy, the daughter and heir of Charles the Bold. Jean Jouard, the president of the parliaments of Burgundy, was killed during this revolt.

15 ADCO, B II 360/16, February 1495 (n. st.).

assault and battery, pimping, and attempted rape, but never homicide which was within the scope of the remission.

The general lieutenants and royal governors generally indicated that they granted pardons by virtue of the power delegated to them by the king, as did the duchesses towards their husbands. However, unlike these letters, the letters granted by the governors did not contain the words 'de grace especiale' that are usually found in letters of remission, which emphasises the exceptional nature of the document granted and the power of the king or prince. It is, therefore, possible that there was a hierarchy between pardons granted by governors and those granted by the king. It is possible that Louis XI and his successors limited the scope of the power to pardon of the governors they appointed, as shown by a royal decree of 27 November 1480 for the specific problem of the return of people removed from the duchy after the annexation of 1477: the king authorised the Mayor of Dijon, Étienne Berbisey, to take all necessary measures to condemn and exclude individuals who were allegedly on the side of Mary of Burgundy, and made it clear that these people could not obtain any banishment reversal from the governor, but only from the king himself.[16]

3. The Practices of Grace in Burgundy: Continuities and Ruptures

Several continuities can be highlighted in the exercise of pardon in Burgundy after 1477, starting with the diversity of letters granted to supplicants. These letters reflect a distinction already present under the Dukes of Burgundy (possibly of royal origin), not only based on the wording used to express the pardon but, above all, on the colour of the seal affixed to it.[17] BThe documentation preserved in Dijon's judicial archives mentions a pardon granted in 1493, at least four remissions granted between 1486 and 1502, an abolition granted in 1490, and two banishment reversals granted in 1492 and 1493.

As under the Dukes of Burgundy, the seals affixed at the bottom of the letters (when known) indicate a consistent distinction between pardon and remission. The pardon is sealed with red wax on double silk lakes, as shown by the example of the copy of the pardon granted in 1493 by Governor Jean de Baudricourt to Alain Carbonnier and Jehan de la Tibardiere.[18] However, the remission has perpetual value due to a green wax seal (on double silk lakes), in accordance with the conventions of the royal and princely chanceries.[19] This distinction can generally only be identified through local judicial sources, rather than the registers of the royal

16 ORF, Vol. 18, p. 595.

17 Beaulant, Les pratiques de la grâce, pp. 190–199.

18 ADCO, B II 361, 17/07/1493.

19 Guyotjeannin, Pycke, Tock, Diplomatique médiévale.

Treasury of Charters, which typically contain only remissions and other charters of grace with perpetual value. Under the Dukes, special political events remained occasions for granting pardons. This was the case for first entries ceremonies, which were important symbolic and political ceremonies, as shown by the example of the count of Nevers' entry in Dijon in 1500, during which Martin des Querelles was released after committing a theft. The pardon was mentioned the following January, when Martin was again imprisoned and interrogated on suspicion of stealing a horse.[20]

An analysis of the judicial sources also provides some information on the strategies of certain supplicants, such as Katherine de Vaucouleurs, who was banned from the town for life and took refuge with a lawyer who promised to have her ban revoked, and by whom she became pregnant.[21]

On the other hand, there were two main ruptures in the exercise of the royal pardon after 1477 (compared to the ducal practices). The first concerns the financial aspect of the pardon. Under the Dukes of Burgundy, from the principate of Philip the Bold onwards, petitioners were regularly required to pay a civil fine in addition to receiving their remission. The proportion of remissions requiring the payment of a civil fine increased steadily under Philip the Good and became almost systematic under Charles the Bold, when it was imposed in more than 80 % of letters.[22] From 1445 onwards, the proceeds of these fines were paid into the Treasury of Épargne, created by Philip the Good to provide cash, along with income from other charters of grace, such as legitimations of bastards or ennoblements.[23] This system of civil fines, while not unprecedented in late medieval pardon practices, took on a scale that was specific to Burgundy. In comparison, royal pardons almost never involved this type of payment,[24] which explains why there are no examples of them in Burgundy after 1477. As for the Treasury of Épargne, although it was maintained under the king of France, it no longer received income from civil fines imposed for remissions.[25] On the other hand, in March 1477, Louis XI, in an ordinance regulating justice in the duchy and county of Burgundy, set the amount due for the seal of charters and perpetual graces at one silver marc, half of which went to the Sainte-Chapelle in Dijon.[26]

20 ADCO, B II 360/17, 11/01/1501 (n. st.).

21 ADCO, B II 360/18, 12/01/1507 (n. st.).

22 DeSchepper, Vrolijk, La grâce princière; Beaulant, Les pratiques de la grâce, pp. 432–442.

23 Kauch, Le trésor; Beaulant, Pratiques de la grâce, pp. 459–473.

24 Hoareau-Dodinau, Argent et miséricorde, pp. 234–235.

25 The first post-attachment registers still contain the title of the chapter relating to civil fines for remissions, but the section remains empty and disappears after 1483.

26 ORF, Vol. 18, p. 247.

It should also be noted that, in the second part of the letter of remission, the formula referring to ratification by a local judicial officer no longer appears in the royal letters, whereas it was systematic in ducal remissions. However, remissions granted by the kings and their governors were still subject to this verification and ratification procedure. Several documents attest to this, such as town hall deliberations in which the urban authorities decided to contest the ratification of a remission granted to one of its citizens. More significantly, several copies of the letters preserved in the archives are accompanied by orders from the bailiff of Dijon instructing one of his sergeants to summon the parties involved in the remission. These are often followed by a statement from the said sergeant confirming that he has indeed summoned the required individuals. These individuals were typically the victim or their next of kin, the royal prosecutor of the bailliage, and the prosecutor of the Dijon town hall, who was investigating the case against the supplicant. Their meeting was the precondition for the endorsement procedure, intended to conclude the *paix à partie.* When the letter was delivered in Dijon, this process generally took just a few days. The preparation of these proceedings is visible, for example, in the town hall's copy of the remission granted by Louis XII to Pierre Chaillerot in 1502,[27] the margins of which contain numerous notes that contradict the statements in the petition and which were probably written by the town prosecutor.[28] Unfortunately, the preserved documentation does not allow us to determine whether the pardons were actually endorsed or whether some were ultimately rejected. However, the fact that the names of petitioners can be found in judicial sources after their remission indirectly attests to the fact that the latter was indeed validated. On the whole, the pardons granted in Burgundy after 1477 followed only the norms of the royal letters, without retaining any of the specific features that the Dukes of Burgundy had introduced into their remissions. The royal model was thus applied in the same way as in the rest of the kingdom, demonstrating to the Burgundians that they were now subject to the same standards as their neighbours.

Another rupture, which affected all judicial practices in the duchy and not just those relating to pardons, was the establishment of the Parliament of Burgundy in Dijon in the early 1480s.[29] The establishment of this sovereign court in the capital of the duchy made it easier for litigants to appeal decisions, compared to the previous need to turn to the Parliament in Paris. From then on, it was not uncommon for litigants to contest sentences handed down against them, and the sovereign court was also occasionally called upon to rule on cases in which pardons were contested

27 ADCO, B II 361, October 1502.

28 Beaulant, "Le contraire est vérité".

29 Leguai, Dijon, pp. 254–256.

by one of the parties. The town hall, which most often investigated cases occurring in Dijon, was also among the opponents of certain pardons.

4. Confronting the Remission and the Investigation

The granting of a pardon could be contested if its content was not considered to reflect the judicial truth it was meant to contain, or the letter could be declared surreptitious and obrepticious[30] This concept of judicial truth, as demonstrated by Natalie Zemon Davis,[31] consists of a narrative that does not necessarily convey the complete reality of the facts, but is constructed in a way that acknowledges the supplicant's guilt while mitigating their responsibility, in a form acceptable to the injured party. Dijon's judicial sources sometimes contain a brief statement indicating that the city prosecutor should contest the granting of a pardon, as in the case of Marguerite Sanet in February 1501, without specifying either the case for which she had obtained a pardon or the nature of the sentence already passed by the town hall. In other cases, it is possible to compare the content of the letter with that of the investigation opened against the petitioner, as we shall see through three examples. First, I will focus on a well-documented case with political implications. The political dimensions of letters of remission and abolition are often obvious when the pardon is granted to an entire city rather than to an individual, especially in the Burgundian Low Countries. In the case of individual pardons, however, it is sometimes more difficult to detect from the letter of remission alone, whose polished discourse does not always reveal all the issues at stake, as we have previously seen. Once again, these dimensions become clearer when reading other sources concerning remissions in cases where they are preserved. The following example is particularly interesting because the remission letter itself does not appear to have survived (at least at this stage of the investigation), which does not, however, prevent us from reconstructing and analysing the circumstances surrounding it.

4.1 Contesting the Remission Granted to Jehan Lamoureux

In January 1487, Jehan Lamoureux obtained a letter of remission from King Charles VIII of France for the homicide he committed against Charles Charchaude in Dijon.[32] Prior to receiving his remission, he was judged on 13 and 14 December by the urban (or aldermanic) court, which sentenced him to death for murder,

30 A remission was considered obreptitious when its content omitted parts of the truth. It could be considered surreptitious when facts were knowingly disguised. See Gauvard, De grace especial.

31 Zemon Davis,Pour sauver sa vie.

32 ADCO, B II 360/15, December 1486–January 1487 (n. st.).

specifying that his fist was to be cut off at the scene of the crime, located in the faubourg Saint-Nicolas (north of the city), before he was hanged in the Morimont field, which was the common site for executions. Jehan Lamoureux appealed against this judgement, and either he or his parents, acting on his behalf, obtained a remission from the Grand Chancery of Paris. The endorsement of the letter, however, led to a conflict with the town hall of Dijon, as Jehan Lamoureux's victim was a sergeant of the town.

The town hall opposed the ratification of the remission, declaring it to be surreptitious, and wrote a memorandum to contest the arguments in Lamoureux's petition. From this document, we can infer that Lamoureux presented the case as one of homicide (rather than murder), claiming he had been insulted and hit by the sergeant, and that he had retaliated in anger and in self-defence (a classical narrative). His trial was then said to be expeditious because the victim was a sergeant of the town hall. In contrast, the town hall sought to show that the act was premeditated, as several witnesses claimed to have heard him saying several times, up to a week before, that he intended to kill Charles Charchaude. It also points out that the legal procedure had been properly followed, that the culprit had not even been tortured and that his confession had been read back to him on several occasions.[33]

In January 1487, the town hall produced an *amplificatio* of the information concerning the murder. The first witness stated that no priest had been present at the scene of the crime, and that the victim had therefore been unable to confess before dying. The investigation then turned to Lamoureux's *fama*, with one witness testifying that he had previously committed a theft of gold and silver in the hotel of the moneychanger with whom he was lodging (who believed that his wife, the daughter of Arnolet Macheco, was stealing from him), for which his parents had agreed to an arrangement so that the case would not go to court. A Cistercian monk also testified to Lamoureux's bad *fama*, claiming he had threatened to kill him. The repeated mention of the supplicant's bad *fama* shows that his honour, so important in late medieval society, had already been depleted.[34] A sergeant of the town hall further confirmed that the theft was widely rumoured, as were Lamoureux's threats against the monk and others. He was also known to gamble with dice and cards in his hotel, which was forbidden.[35] During his trial, Lamoureux claimed that Charchaude had thrown stones and clods of earth at him, and had then tried to seize his dagger. He denied having premeditated the crime or having publicly threatened his victim.

33 It is confirmed in the trial that he was not tortured.

34 On this topic, see Fenster, Smail, Fama.

35 See Brown, Passing the Time.

Charles Charchaude may not have been blameless in this affair, but at least the urban judicial sources show that he had been involved in two cases of violence during the previous decade: one against soldiers who had assaulted him,[36] and the other when he attacked a man who had told him, in jest, that he had heard Charchaude wanted to be the next executioner.[37] The witnesses at the inquest all insisted on Lamoureux's anger and did not testify to any animosity on Charchaude's part. At most, he responded to Lamoureux with a blasphemy and, according to one or two witnesses, bent down to pick up a stone just before Lamoureux struck him with his dagger (and cut his throat). Two documents also concern an investigation opened after a group of nobles, playing a game of *paume* in Vannerie Street on 17 December 1486, argued about the murder committed by Lamoureux. One of them claimed that the trial conducted by the mayor had been too hasty, and that the culprit should not have been sentenced to death so quickly, adding that Sergeant Charles Charchaude was not of good *fama*.

On 22 January 1487, the governor of Burgundy, Jean de Baudricourt, ordered that the royal pardon granted to Lamoureux be endorsed. He renewed, on the king's authority, the pardon that had been granted, thanks to the intercession of the king's ambassadors, the Marshal of Burgundy, the Lord of Roussi, and the nobles of the estates who were present at the council meeting when the pardon was granted – regardless of the true motivation for the crime, whether it had been premeditated or not (i. e., whether it was murder or homicide).

The written records concerning this affair, as revealed by an inventory drawn up by the town hall, are indicative of the commune's determination not to allow a pardon to be endorsed that, according to them, would undermine their authority. In this inventory, it is noteworthy that the copy of Lamoureux's pardon extends to seven sheets, which seems unusually long. Among the other documents in the file are the *information*, the ampliation of the latter, the trial of Jehan Lamoureux, the appeal made by the town hall to contest his pardon, three *appointements* issued by the Parliament of Burgundy, a copy of this inventory, two extracts from the register of the bailiwick of Dijon, and the initial writings for the town prosecutor and the widow and heirs of the victim, altogether amounting to a total of 16 sheets.[38]

Finally, on 3 March 1487, the Parliament of Burgundy issued a judgement in which it considered that the judgement had been carried out by the town hall, rejected Lamoureux's appeal, and ordered him to pay the costs. On the other hand, the Parliament endorsed his letters of remission but condemned him to perpetual

36 ADCO, B II 360/12, 16/07/1475.

37 ADCO, B II 360/12, 16/09/1473.

38 These types of procedures could be long and costly, as shown by another document containing the costs incurred by the town hall and the widow and children of Charchaude in their appeal against Lamoureux. It is interesting to note that the copy of the first pardon of Lamoureux, which contained

banishment and required him to pay 40 pounds to the widow and heirs of Charles Charchaude. Lamoureux would be imprisoned until the sum was paid in full. The Parliament thus arbitrated this affair by making sure that all parties were satisfied: the town hall, by securing the perpetual banishment of Jehan Lamoureux, rid itself of the murderer of one of its officers, thereby preserving its authority and reputation; the king, or his Grand Chancery of Paris, as well as the governor of Burgundy, also saved face by maintaining the effectiveness of the pardons granted to the culprit. Finally, the rights of Charles Charchaude's widow and heirs were also preserved through the fine of 40 pounds to be paid to them. One can therefore consider that, in this affair, the root of the problem was political, and its outcome could only be political. However, Jehan Lamoureux returned to Dijon, as he was involved in another case of assault and violence in 1505.[39] Thus, it is likely that his ban was revoked at an undetermined time.

4.2 The Judicial Truth of Drehue Mairot

The second example allows us to compare the content of the granted pardon with that of the investigation carried out by the Dijon town hall.

In February 1490, the town hall opened an investigation for a case of assault and battery or '*bature*'.[40] On the evening of 13 February, a man named Drehue Mairot, accompanied by four men, went to the municipal brothel to have Jehan Baron beaten up. Two of them entered the brothel to find the victim, who was then lying with two prostitutes who refused to let them in. They proceeded to beat Jehan Baron in the room where he was, wounding him several times with swords while insulting and blaspheming at him, before forcing him to get dressed. They then led him to the back door of the brothel, where Drehue Mairot was waiting, and in front of him, he knelt and begged for mercy. Drehue and his accomplices made him swear never to return to the brothel, taking his dagger and purse. According to the introduction to the enquiry, Drehue owed money to Jehan Baron's mother for expenses allegedly incurred at the hotel of Guyennot Baron, Jehan's father; thus, he harboured a grievance against the son. In the words of the prostitute Guyote, Drehue had threatened Jehan a few days before the incident, telling him that he had previously insulted him. Another prostitute, nicknamed '*la petite Normande*'(the

seven sheets, cost 5 gros and 1 blank. That of the second pardon, containing two sheets, cost 6 blanks. Jehan Lamoureux is said to have received a third pardon according to the following articles, but few details are given on this one. The writings of the town hall and the widow and children of Charchaude contesting the first pardon contain 16 sheets and cost 6 pounds 8 gros, while the writing to contest the two other pardons cost 3 gros.

39 ADCO, B II 360/18, 18/05/1505.

40 ADCO, B II 360/15, 08/07/1490.

little Norman girl), who was with Jehan on the night of the crime, was said to have been beaten at the request of a 'son' from the Hôtel des Trois Rois, who was in fact Drehue Mairot's father, Guiot. Although Jehan Baron was seriously injured, the surgeon's report indicated that his life was not immediately in danger, though he required long-term care.

The town hall's procedure is not preserved in its entirety and does not provide direct access to the outcome of the case. However, in the abolition he requested and obtained, Drehue Mairot stated that he had been banished *in absentia* from the town after being summoned four times, because he had fled after the crime.[41] In his account, he acknowledged that he had hired the companions to beat the victim, but he mitigated his own responsibility in two ways. First, he reiterated that Jehan Baron had previously insulted him, though he provided no details, suggesting that his actions were a legitimate form of revenge to restore his honour. He added that the victim had insulted his companions when they knocked on the door of the room in which he was staying, a point the investigation did not confirm. Second, Drehue claimed that he had only asked his accomplices to give Jehan Baron two '*buffes*' (a few lightblows) to intimidate him and not to seriously wound him by drawing blood. He downplayed his own involvement in the affair by stating that he had stayed outside the brothel and did not enter the room where Jehan Baron was, a claim that was supported by the investigation. Without going so far as to deny any responsibility for the crime committed, Drehue Mairot nevertheless played down its significance. However, he was not really lying when we compare his account with the findings of the investigation carried out by the town hall. Moreover, the fact that he asked for abolition rather than remission suggests that he understood the difference between these two forms of pardon and that he wished to have his crime erased, rather than simply obtaining a royal pardon.

It is also possible that Drehue Mairot came from a relatively wealthy family, as evidenced by two orders issued by the Bailiff of Dijon in July 1490. These documents were sent to the royal sergeants so that they would summon the prosecutor and several sergeants of the town hall, who were being sued on appeal by Guiot Mairot, Drehue's father. Guiot claimed that they had committed abuses of justice against his son: first, by adjournment without valid reason, and second, by attempting to enter the Hôtel des Trois Rois, where Drehue was living, which, according to Guiot, was a place of franchise as it belonged to the abbey of Clairvaux. Not only does this imply that Drehue was still in Dijon in early July, despite his crime having been committed in February, but it also suggests that Guiot Mairot was well versed in the workings of the legal system and was attempting to delay proceedings on his son's behalf. The abolition Drehue obtained from Governor Jean d'Amboise, which

41 ADCO, B II 361, 12/11/1490.

also contained his banishment reversal, was dated 12 November 1490. There is no record of the endorsement, but a case mentioning his name in August 1493 suggests that Drehue may have returned to live in Dijon. At the time, he was allegedly involved in a case concerning remarks made about the town's mayor. However, only the introduction to the investigation mentions his name, and no witnesses testified to his presence. The mere mention of his name suggests that Drehue had indeed returned to Dijon. This case highlights the relative convergence between the content of the investigation and the pardon granted, despite the nuances introduced by the petitioner, which contributed to the construction of his judicial truth.[42]

4.3 Regnault Argault and Viennot Lescot, one Narrative for Two Remissions

The third and final example is particularly interesting because, unlike the previous two, it allows us to compare the content of the investigation carried out by the town hall with the trials of one of the guilty parties and the pardons granted to him and to the person who ordered the crime.

Dijon town hall opened an investigation on 22 December 1494 following a complaint about thefts in the house of Étienne Berbisey le Jeune. He and several of his relatives had died of the plague, leaving the house unoccupied.[43] According to other documents in the case, the crime was committed around All Saints' Day, shortly after the epidemic wave that struck the city. The sequence of events can only be reconstructed by analysing the various documents in the file. The first two witnesses provided information on a man called Pierre Brodeur, or Pierre le Harpeur, originally from Besançon, and on a man called le Camus de Rochefort, also living in Besançon. According to the first witness, Pierre Brodeur had a bad reputation and had committed several thefts in the past. The third witness, a merchant named Jehan Carpe, who lived in Besançon, stated that some time before the investigation, he had seen Pierre Brodeur and Le Camus arguing in a tavern in Besançon over the distribution of the loot from a robbery they had committed together in Dijon. Le Camus complained that he had not received his full share of the booty, and Pierre Brodeur told him to go and speak to a '*vielz prevost de Diion*' (old provost of Dijon) and the '*patissier*' (pastry chef), as well as to a man from Saint-Mihiel in Lorraine. The first two individuals he referred to were, in fact, Viennot Lescot, former provost of the town, and the pastry chef Regnault Argault. The witness went on to say that he knew that Pierre le Harpeur and three accomplices, after committing their robbery in Dijon, had hidden for two days in a house whose occupants had died of the plague, thus not fearing that they would be found there.

42 Zemon Davis,Pour sauver sa vie, pp. 50–54.

43 ADCO, B II 360/16, 22/12/1494.

After collecting food from his wife, Pierre Brodeur and his accomplices stayed in the empty house for a further two days before leaving the town for Vergy and then Lyon. One evening, on his way to Notre-Dame church, the witness finally heard about the theft and "pour peu de sa conscience et qu'il n'en feust chargee"('in order not to burden his conscience'), he confided in the vicar of Saint-Jean church in Dijon and asked what he should do. The clerk then took him to the town's mayor, meaning that the merchant was the one who reported the crime.

The investigation carried out by the Dijon town hall is not very precise about the crime itself, focusing more on what the culprits did after committing the theft. However, the case against one of the main protagonists, Regnault Argault, provides more details.[44]The pastry chef was questioned on 24 December 1494 and initially denied any knowledge of or involvement in the theft. He was threatened with torture, but replied that if he was tortured, he would appeal to escape. That same evening, he asked the jailer to take him to the mayor to tell him the truth. Argault then stated that it was the former provost, Viennot Lescot, who had ordered the robbery, when he declared that he knew of a house in Dijon where all the inhabitants had died and that it would be possible to enrich oneself by going there to steal the goods. Viennot had also led the six culprits to the house, but their first attempt was aborted when a fire alarm went off at the church of Saint-Nicolas. They spent the next day at Viennot Lescot's hotel before returning to Étienne Berbisey le Jeune's house in the evening without the former provost, who was to join them later. He had previously told the thieves which room would contain the most valuable items, such as gold, silver, and rings. Regnault Argault claimed that he stayed outside the hotel, while only Pierre Brodeur and one of his accomplices, called Arvier, entered and remained for more than two hours. They were said to have come away with a number of precious objects, which Argault listed. Leaving Étienne Berbisey's hotel, they found Viennot Lescot near the Saint-Michel ovens before returning to his home. The former provost became angry because, in his opinion, the thieves had not taken the most valuable goods and had not looked in the right places. He then instructed them to return, but the six individuals refused and shared the loot, of which Regnault Argault received 10 pounds. On 25 December, he confirmed the contents of his written confession and also admitted that the tools shown to him were those used in the robbery and had been supplied by Viennot Lescot.

The next day, Viennot Lescot's wife, Anthonie, asked to make a statement to the officers. She said that Regnault and her husband had discussed Pierre Brodeur, and that Regnault had given her a list of people Pierre had been seeing. According to Anthonie, her husband wanted to regain the provostship the following year, whatever the financial cost. With this list of criminals at his disposal, he intended to

44 Ibid., 24/12/1494.

arrest them once he had become an officer of the king again, in order to recover the financial losses he had incurred during his previous years as provost. Anthonie's testimony was corroborated by Regnault Argault, with whom she was confronted. Pierre Brodeur's wife then testified that both she and Anthonie had been threatened with death by their husbands if they tried to interfere in their theft.

Regnault was questioned again on 13 February 1495, which suggests that the investigation had lasted longer than expected. He was sentenced to death on 18 February, but waited until the noose was around his neck before declaring that he was appealing against his sentence. The execution was then suspended, and Regnault took advantage of the situation to apply for a remission, which he obtained a few days later from King Charles VIII.

In his narrative, Regnault repeated the contents of his confession without distorting them, but provided further details about his personal life and the circumstances of the robbery. He explained that he was 26 years old, had a wife and several children, that his wife was pregnant, and that he also had to look after his elderly parents. He claimed that Pierre Brodeur and Arvier had approached him to get him involved in their theft project, adding that there were five or six participants in total. He said that Viennot Lescot was the instigator of the theft and that he had supplied the culprits with tools to force the locks. Regnault repeated several times that during the robbery, he had never entered Étienne Berbisey le Jeune's hotel, but had merely kept watch outside. He added that he had exchanged his share of the loot with Pierre Brodeur for the sum of 10 pounds and a few objects, which he valued at 4 écus, no doubt to emphasise that he had not tried to conceal the stolen goods, which could have aggravated his case. Finally, Regnault added, like so many other supplicants, that he had always had a good *fama*. He was eventually granted remission '*de grace especiale, plaine puissance et auctorité royale*' (special grace, full power and royal authority), a formula that reinforced the sovereign's will. The preserved copy of the letter is followed by an order from the Bailiff of Dijon to summon the parties involved in order to proceed with the ratification of the remission, dated 23 February 1495, only five days after Regnault was almost executed, which shows how quickly the remission was obtained.

It is not possible to confirm whether Regnault Argault and Viennot Lescot were still in touch in February 1495.However, the former provost obtained a letter of remission from the Governor of Burgundy, Jean de Baudricourt, on 10 March 1495, barely two weeks after Regnault.[45] In his narrative, Viennot stated that he had a wife and four children. According to a 1476 case in which he testified that he was about 25 years old, he was about 43 or 44 at the beginning of 1495.His account gives an insight into how the thieves' band was assembled. He admitted that he

45 ADCO, B II 361, 10/03/1495 (n. st.).

was the instigator and organiser of the theft from Étienne Berbisey le Jeune's house. The rest of his account, from the meeting of the culprits to their return to the targeted hotel the following day, is almost identical to that of Regnault Argault. The account/description of the theft differs slightly, as Viennot was not present with his companions. The list he drew up of the stolen goods was exactly the same as that in the statement of Regnault Argault's remission, and the former provost still acknowledged the anger he felt towards the thieves when he saw the loot they had brought back, which was not what he had expected. He admitted that he had received his share of the stolen goods and indicated that he had fled Dijon, for which reason he was subsequently banished *in absentia* by the town hall.[46] Finally, Viennot also presented himself as a man who had always had a good *fama*. While this may seem possible int the case of Regnault Argault, it was a lie on the part of the former provost, who had already been involved in several cases in previous years, as attested by the Dijon court records. A register of deliberations indicates that he was fined 10 pounds for an altercation with Jacot Coustain and Hugues Jehannin in February 1475.[47] He was also implicated in several cases of abuse of power when he was provost in 1488 and 1491,[48] and was reported to have spoken out against the town's authorities and inhabitants. Here we find some of the typical abuses committed by this type of officer, as shown by the even more detailed example of Jehan de Marnay in the 1460s, or by other provosts of the duchy of Burgundy.[49] In any event, Viennot Lescot also obtained his remission, which was granted on the advice of royal advisors, based on the contents of his letter/petition. As in the case of Regnault Argault, the copy of Viennot Lescot's remission is followed by a copy of the order of the Bailiff of Dijon, dated 15 March, which sets the adjournment for the parties concerned for Wednesday 18 March at nine o'clock in the morning. Unfortunately, no proof of endorsement has been preserved. In contrast, it is clear that Viennot Lescot did not succeed in obtaining the provost's leasehold again, which was occupied by Jehan de Marnay until 1499 and then by Aymé Pasquote.[50]

This example of the pardons granted to Regnault Argault and Viennot Lescot is not an isolated one, as there are other cases of remissions being granted to several people guilty of the same crime.[51] What is more exceptional, however, is the fact that the content of Regnault Argault's narrative is very similar to that of his confession at

46 This banishment was actually pronounced on 24 January 1495, as shown in the prosecutor's case register. ADCO, B II 337/7, fol. 129r.

47 Archives municipales de Dijon (hereafter AMD), B 164, fol. 17r.

48 ADCO, B II 360/15, 16/07/1488, June 1491 and 01/10/1491.

49 Beaulant, Mobiliser son réseau ; id., Les officiers de justice,pp. 72–75.

50 ADCO, B 4530, fol. 1r–2r ; B 4531, fol. 4v–5v ; B 4532, fol. 1r–2r ; B 4535, fol. 4r–5r ; B 4536, fol. 1r–2r ; B 4538, fol. 2r–3r.

51 Lalière, La lettre de rémission, pp. 24–25 ; Beaulant, Les Pratiques et évolutions, pp. 37–40.

trial, and that it is largely repeated by Viennot Lescot in the statement of remission that he obtained two or three weeks later. This suggests that there was contact between Regnault and Viennot, or at least that the clerk or clerks responsible for drafting their supplications drew inspiration from the former's remission when composing the narrative of the latter's supplication.

These three examples illustrate situations commonly found in many remissions from the late Middle Ages. However, the issues at stake in these cases become apparent only in the light of other judicial archives, underlining the need to cross-reference sources. In the case of Jehan Lamoureux, the political implications linked to the status of the victim, a sergeant of the town hall, help to explain the supplicant's difficulties in having his remission ratified, which had to be issued twice. This case also highlights the distance taken by the criminal from the truth in his petition, whereas the pardons granted to Drehue Mairot and Regnault Argault and Viennot Lescot contain narratives that are closer to the facts established by the council's investigations. The complementary nature of the information contained/found in the pardons, investigations, and trials provides a better understanding not only of the context in which the crimes were committed, but also of the situation of the culprits and victims at the time of the events and afterwards. It also highlights the importance of the individual's *fama*, since all the suppliants mentioned it in their narrative of the events, even if it was not always true. However, it served to emphasise their good initial integration into society, which was necessary to show that they deserve a second chance.

5. Conclusion

The power to pardon after 1477 was based on royal rather than ducal procedures, although the ducal procedure itself had largely been modelled on the French system: the king granted letters of remission, but he regularly delegated this power to his lieutenant in Burgundy or to the governor of this province. The diversity of pardons nevertheless remained, as shown by the examples presented: pardons, remissions, abolitions, banishment reversals, with the same distinguishing elements that had previously allowed them to be clearly differentiated under the rule of the Valois dukes of Burgundy. The return to royal practices of pardon is particularly evident in the financial aspect of remission, notably the end of the civil fine and its disappearance from the registers of the Épargne – although this financial institution retained the structure it had under the dukes, while being taken over by royal officers.

Above all, this analysis of the few pardons preserved in Dijon's judicial archives highlights the growing importance of the new Court of Parlement of Burgundy in the early years following its establishment in Dijon. It facilitated access to a

court of appeal for litigants and provided an institutional channel for the aldermen, who did not hesitate to challenge certain royal pardons before this sovereign court. A number of promising avenues are outlined here, and the analysis deserves to be systematised – in particular by also consulting the remissions recorded in the registers of the Trésor des Chartes Royal and by attempting to cross-reference these letters with the investigations and trials to which they initially gave rise.

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The Power to Pardon and the Privy Council of the Habsburg Low Countries

Evolution and Variation, 1540–1633

1. Introduction

Since the surge of historical interest in pardon letters in the 1980s and 1990s, royal grace has been interpreted as a crucial tool of premodern governance, encapsulated in Claude Gauvard's classic formulation of 'government by grace'.[1] Through the act of granting pardons, rulers asserted their power over the life and death of their subjects, insisting upon their supreme majesty and judicial sovereignty.[2] Concurrently, petitioners seeking royal clemency were compelled to explicitly acknowledge this power. In submitting to princely authority, repentant criminals fashioned themselves as ideal subjects, affirming their loyalty and piety. Reinforcing the reciprocal ties that bound individual petitioners to the sovereign, pardons also assumed a significant political and disciplinary function, enabling rulers to intervene directly in the regulation of crime and interpersonal violence in local communities while instilling disciplinary virtues.[3] Consequently, as thousands of petitioners for royal pardon submitted pleas to European monarchs in the early modern period, they invited rulers to assume a central role in crime regulation. This progressive monopolisation of the power to pardon by sovereigns emerged as an essential aspect of state development, facilitating collaboration between central and local authorities in the regulation of transgressive behaviours.[4]

If studies of princely grace have enabled instructive comparisons to be drawn between England, France, Germany, and Italy, the pardon procedure of the early modern Habsburg Low Countries remains something of an outlier.[5] This is due, in part, to the Low Countries' geopolitical complexity. The Habsburg Low Countries comprised an array of distinct provinces with their own customs that had been gradually amalgamated under the Valois dukes of Burgundy during the fifteenth

1 Gauvard, Le roi de France; Verreycken, Power to Pardon.

2 Boone, Want remitteren is princelijck.

3 Gauvard, Discipliner la violence.

4 De Schepper, La justice.

5 Lacey, Royal Pardon; Kesselring, Mercy; Zemon Davis, Fiction in the Archives; Gauvard, "De grace especiale"; Carroll, Enmity.

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century. In their efforts to centralise the government of these territories and establish their political independence, Burgundian and Habsburg rulers of the Low Countries faced the dual challenge of overcoming competition both within their lands (in the form of powerful urban and provincial authorities) and without from rival judicial centres such as the Parlement of Paris.[6] These challenges intensified in the sixteenth and early seventeenth centuries, particularly due to the religious crises that culminated in the Iconoclastic Fury of 1566 and the Dutch Revolt that threatened the Habsburg Netherlands' northern frontier until its conclusion in 1648. At the same time, the region remained a key battleground in the Franco-Spanish rivalry and the broader religious tensions that dominated diplomacy in early modern western Europe. Finally, after the departure of Philip II for Spain in 1559, the Low Countries were administered by a succession of governors-general for almost half a century before the territories, ceded to the Archdukes Albert and Isabella as the latter's dowry, saw the return of a sovereign residing in Brussels from 1598 until Isabella's death in 1633.[7] While the power to pardon has long been recognised as an essential part of the Habsburgs' unifying strategies in this period, a consequence of such territorial disparity has been a tendency for historians to focus on provincial studies detailing premodern grace in Artois, Flanders and Holland, Brabant, or Namur.[8] Work remains to be done to draw these regions into dialogue with one another and, in the process, situate the Low Countries within the broader history of early modern European violence and justice.

This contribution highlights some of the findings of the Belgian PARDONS project, which has surveyed pardons granted by the rulers of the Habsburg Low Countries between the fifteenth and seventeenth centuries.[9] Providing one of the first statistical overviews of princely grace for the entire region, the project examines the petitions for pardon preserved in the Belgian State Archives, tracing variations and evolutions over time and space. Indeed, this focus offers an important reminder that the structure of the archive offers valuable insights into how the relationship between sovereign and subject – central to the governance and regulation of violence – was conceptualised and managed by central, provincial, and local authorities.

The broadened geographic and chronological scope is significant because it highlights the extent to which the power to pardon was in a state of constant evolution throughout the early modern period. Although the Habsburg sovereign's status and power were inherently singular, and the early modern ordinances promulgated

6 Dauphant, Rivalité des pardons, pp. 73–87. See also Beaulant, Pratiques de la grâce.

7 Martyn, "Sovereign", pp. 202–208; Soen, Geen Pardon.

8 Muchembled, La violence au village; Vrolijk, Recht door gratie; Musin, Sociabilité urbaine; Dauven, Pardonner et être pardonné.

9 Topographies of Pardon Tales.

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in Brussels were applicable throughout the Low Countries, the range of archived dossiers indicates that the grant of pardons by the sovereign's Privy Council was ultimately determined by context. As has recently been argued by Bernard Dauven, quantitative analyses of the pardon procedure are essential to appreciating the extent to which rulers exploited their judicial privileges to cement their authority.[10] In this light, three different approaches will be employed in this study. First, this article will survey the evolution of the power to pardon from the perspective of Brussels, with attention paid to the rate at which pardons were issued and shifts in the nature of pardoned crime. Second, this overview also enables regional comparisons of pardoning that reveal a flexible application of grace, adapted to the management of territories facing distinct social and political challenges in the sixteenth and early seventeenth centuries, with particular attention paid to the County of Flanders and the Franche-Comté. Finally, where so many studies of premodern pardons have concentrated on grants, this article innovates by turning our attention to the tensions surrounding rejected pardons, pointing to the relative weight of local and provincial justices in ostensibly centralised decision-making processes.

2. The Privy Council of the Habsburg Low Countries and its Archives

In the sixteenth- and seventeenth-century Habsburg Low Countries, the legal and jurisdictional structures underpinning pardons were multiple, multileveled, and complex. Efforts to centralise both the pardon process and broader judicial decision-making occurred in earnest in the later fifteenth century with the establishment of the short-lived Parliament of Mechelen (1473–1477) by Duke Charles the Bold. It was only in 1531, however, with the establishment of the three princely collateral councils (the Council of State, the Council of Finances and the Privy Council) that a step-change in the administration of the Habsburg Low Countries was accomplished.[11] Such reforms were necessary from a purely political perspective: the union of the Low Countries with the Holy Roman Empire and Spain under Charles V meant that the monarch was increasingly absent from his Netherlandish provinces, with the collateral councils instructed to advise regents and deliver legislation in the emperor's name. Responsible for conveying such advice and promulgating new legislation, the Privy Council quickly became the 'most influential central governmental body in the Habsburg Netherlands', assuming additional responsibilities for grace and justice, though its capacity for action in this field remains 'to a large

10 Dauven, Pardonner et être pardonné, pp. 77–79. See also id., Politique de la grâce.

11 Baelde, De Collaterale Raden, pp. 23–34.

extent *terra incognita* in historical research'.[12] With the exception of the Duchy of Brabant, whose provincial council fiercely defended its judicial prerogatives, the Privy Council increasingly asserted its authority to intervene exceptionally in the workings of other provincial councils, especially in matters of grace, viewed 'as the expression of the supreme and residual powers associated with the early modern sovereign's prerogative.'[13] This process of conciliar centralisation gradually curtailed the independent powers of the Low Countries' provincial councils and enabled the development of new, codified forms of royal grace.[14]

This phenomenon is illustrated by the extensive criminal legislation promulgated over the course of the sixteenth and early seventeenth centuries, with key ordinances in 1515–1518, 1531, 1541, 1570, 1589, and 1611.[15] These reforms endeavoured to restrict pardonable violence, excluding culprits who had been drunk, had killed rivals during fairs, or carried prohibited weapons such as sharpened knives.[16] They also specified the legal procedures to be followed to ensure a pardon's validity. For example, petitioners seeking a remission following a homicide were instructed to wait a year before filing their plea before the Privy Council, and their case had to be corroborated by evidence collected by local officers.[17] Reflecting the development of efficient communication channels between the political centre and provinces, the Privy Council was instructed to request reports or '*avis*' from local judges or provincial councillors who had overseen these investigations, who would advise the privy councillors as to whether the crime should be pardoned.[18] An integral component of the centralisation of justice, these instructions brought localised responses to interpersonal violence under the direct surveillance of the councillors acting in the sovereign's name in Brussels in the form of witness statements,

12 Wijffels, Supreme Judicature, p. 390; de Schepper, Conseil Privé.

13 Wijffels, Supreme Judicature, pp. 390–391. See also Simon, Culture d'État.

14 Cauchies, de Schepper, Justice, p. 77.

15 Ordinances of 28 May 1515, 26 October 1515, 21 October 1516 and 13 August 1518, Lameere, Simont, Recueil des ordonnances, Vol. 1, pp. 406–407, 425–426, 519–520, 658; Ordinance of 7 October 1531, id., Recueil des ordonnances, Vol. 3, pp. 265–273; Ordinance of 20 October 1541, id., Recueil des ordonnances des Pays-Bas, Vol. 4, pp. 325–329; *Ordonnance, edict et decret du roy nostre sire sur le faict de la justice criminelle es Pays-Baz*, Antwerp 1570; Ordinance of 22 June 1589 in *Coutumes et ordonnances du pays et comté de Namur*, Vol. 1, The Hague 1736, pp. 525–537; Perpetual Edict of 12 July 1611, *Ordonnance et edict perpetuel des archiducs nos princes souverains*, Gent 1672.

16 Ordinances of 7 October 1531, 20 October 1541 and 22 June 1589.

17 Ordinance of 20 October 1541; Vrolijk, Recht door gratie, pp. 30–32; Simon, Un dossier, pp. 150–152; Monballyu, Strafrechtspleging in het Vlaamse recht, p. 127.

18 Vrolijk, Les avis, pp. 374–375.

coroners' reports, and statements of good conduct.[19] The petitioner also had to fulfil several conditions to be considered for a pardon: a reconciliation or '*paix à partie*' detailing compensatory terms had to first be agreed with the victim's party and, following the outbreak of religious turmoil, after 1570 petitioners also had to declare their Catholic faith, prompting an influx of certificates testifying to their piety.[20] It was only once these conditions had been satisfied that the Privy Council granted a pardon, which would be ratified before the relevant provincial council where the adverse parties would agree to the letter's content before the document was registered and sealed.[21]

A consequence of the Privy Council's growing responsibilities for overseeing the pardon procedure is the series of over 12,000 petitions for the period 1540–1633 held in the Belgian State Archives.[22] Containing the original petitions submitted by subjects who had committed – or were accused of committing – crimes, these files are exceptional when compared to other Western European pardon collections that have only preserved copies of successful grants transcribed in chancery registers, as seen in France, the medieval Low Countries, or the Duchy of Brabant. Upon a grant, the Council's secretaries adapted the petition's narrative for the final pardon letter. Moreover, as the above description of the procedure suggests, these dossiers often include ancillary documentation pertaining to the petitioner's plea, including over 10,000 *avis*. The most contentious cases resulted in lengthier dossiers containing witness depositions, certificates of good Catholic conduct, or signed reconciliations between the criminal and victim parties.

As a result, the 12,000 dossiers comprise over 35,000 different documents that paint a clear picture of the mechanisms used by the Habsburg Privy Council to verify the explanations advanced by the petitioners. These documents also reveal the detailed commentaries about recent crimes produced by legal experts and local witnesses. Highlighting how wider communities participated in royal or princely justice, these files crucially give nuance to scholarly interpretations of pardons as "fictionalised" ego-documents.[23] Furthermore, the files illustrate the gradual bureaucratisation of the pardon procedure: increasing levels of documentation in

19 Dekoster, Legal Foundations, p. 147; Dupont-Bouchat, Le crime pardonné, pp. 42–50; Rousseaux, Mertens de Wilmars, "Concurrence" du pardon.

20 As the ordinance of 1570 stated : '*Que aussi il apperre, ceulx ausquelz il soit pardonné, estre en autres choses bons catholicques, & gens de bien, n'ayans commis cas dignes de reprehension*'. Ordonnance (1570), p. 15. See also Soen, The Beeldenstorm; Dauven, Justice souveraine.

21 Vrolijk, Recht door gratie, p. 380; de Schepper, Gratierecht, p. 80.

22 Brussels, Archives générales du royaume (hereafter AGR), Letters of remission, abolition and pardon (1540–1633), 894–979.

23 Zemon Davis, Fiction in the Archives; Arnade, Prevenier, Honor, pp. 5–6; Verreycken, Crime Narrations, pp. 13–15.

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the late sixteenth and early seventeenth centuries point to the state's growing reach in matters of justice, the maintenance of peace, and the reconciliation of adverse parties at the local level.[24] Indeed, the regular communication between the Privy Council in Brussels, the provincial councils of the Spanish Netherlands and local bailiffs and provosts highlights the very ways in which pardoning served as a crucial and ever-present link between Habsburg sovereigns and their subjects.

Despite this wealth of information, the Privy Council's records are unevenly preserved. While the majority of dossiers contain an *avis* tracing the dialogue between Brussels and the provinces, only 12% (1,448 dossiers) are accompanied by reports of good Catholic conduct, and even fewer (1,074; 8.9%) include witness depositions. The preservation of dossiers is especially haphazard for the sixteenth century, with the records only becoming more complete from the 1580s onwards. The absence of pardons from the archive for this earlier period is further demonstrated by comparing the Brussels records with the registers of Lille's *Chambre des Comptes*, where many of the pardons granted by the Privy Council were transcribed as letters of remission upon the payment of a fine or a fee for their sealing.[25] The juxtaposition of these series reveals that where the Privy Council's archives have only retained 272 original petitions for the last fifteen years of Charles V's reign, 2,388 pardons were registered at Lille. Using the latter, Robert Muchembled counted 536 remissions for the County of Artois under Philip II, wheras the Privy Council's archives have only preserved 315 petitions for the same province.[26] However, under the Archdukes Isabella and Albert, this dynamic was reversed (Figure 1). During the period 1599–1629, 6,044 pardons were registered at Lille, compared to 6,863 granted petitions surviving in Brussels. As a result, where Marie-Sylvie Dupont-Bouchat and Vincent Noël encountered 33 remissions for the County of Namur for the period 1600–1633 using the Lille records, the Privy Council's archives reveal that, actually, as many as 84 remissions were granted to the inhabitants of the county in this period.[27] The divergence over the course of the century underscores the importance of a diachronic study that accounts for all the available archival sources while encompassing the reigns of Charles V, Philip II, and the Archdukes Isabella and Albert. Their comparison demonstrates the particular value of the Privy Council's archives for the seventeenth century, when improved bureaucratic procedures resulted in far more complete archives.

24 Vermeir, Conseil Suprême, p. 1086.

25 Dehaisnes, Chrétien (ed.), Inventaire-sommaire des Archives départementales antérieures à 1790. Nord. Archives civiles – série B. Chambre des Comptes de Lille, Vol. 3, Lille 1877, pp. 75–290.

26 Muchembled, Une histoire de la violence, p. 61.

27 Dupont-Bouchat, Noël, Le crime pardonné, p. 224. See Table 2 below, p. 17.

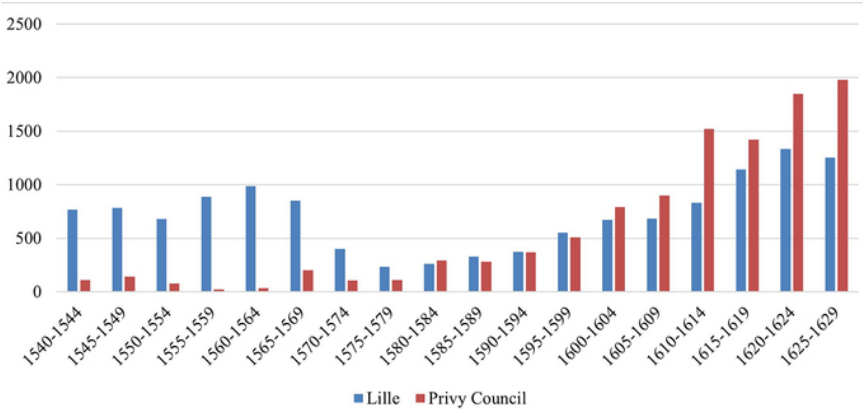

Fig. 1 Recorded grants in the Archives of Lille and Brussels (1540–1629) (Source: AGR 894-970A; Lille, Archives départementales du Nord, B1751-1812

3. The Early Modern Power to Pardon viewed from Brussels

With the caveat that the Privy Council's sixteenth-century records are incomplete, they still represent an essential means of gauging the sovereign's use of (and reliance upon) the power to pardon as a tool of governance in the early modern period. The statistical overview of the records enables comparisons with the recent analyses of pardons undertaken by Bernard Dauven for the premodern Duchy of Brabant. Principally, the Privy Council's records confirm the '*saut quantitatif*' (quantitative leap) in the number of pardons detected both by Dauven and Robert Muchembled (for the County of Artois) between the 1540s and the 1560s (Figure 2).[28] Subsequently, against the backdrop of the Iconoclastic Fury, the ensuing Dutch Revolt, and the civil conflict, the number of pardons granted by the Privy Council declined substantially. At this time, the day-to-day operations of the central and provincial councils were severely disrupted: the Privy Council and the Council of Brabant were both compelled to leave Brussels, and the Privy Council was even split into two parts in 1580, each supporting a different regent: Don Juan of Austria in Namur and Matthias of Austria in Antwerp.[29] It was only with the recovery of Antwerp in 1585 and the gradual restoration of order from that date that pardons returned to the levels seen at the end of Charles V's reign. Finally, with the cession of the Netherlands to the Archdukes Albert and Isabella in 1598, Habsburg rule was characterised by the renewed use of the power to pardon. Several political

28 Dauven, Politique de la grâce, pp. 85–87; Muchembled, La violence au village, pp. 19–23.

29 De Schepper, Conseil Privé, p. 289. On the broader context of 1566, see Arnade, Political Culture, pp. 92–124.

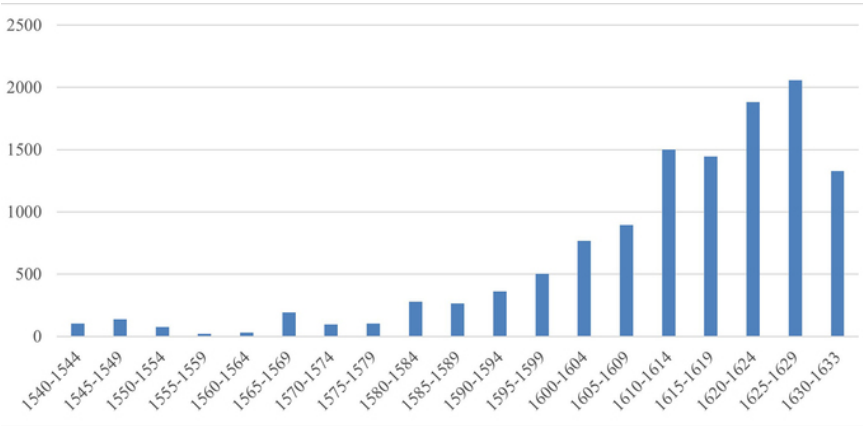

Fig. 2 Petitions before the Habsburg Privy Council (1540–1633) (Source: AGR 894A–979B)

reasons may have underpinned this extensive use of pardons. First, Albert and Isabella ruled independently, without direct Spanish interference in their domestic affairs, enabling the administrative reorganisation of the provinces. Second, their reign witnessed an unprecedented era of political, military and financial stability during the Twelve Years' Truce with the Dutch Republic between 1609 and 1621.[30] Finally, unlike their predecessors, the Archdukes were the first sovereigns to reside permanently in the territory since the early sixteenth century.[31]

By examining the Council of Brabant's records, Dauven sought to give nuance to the perception that pardon rates shifted by different reigns. Supporting the findings of Aude Musin and Michel Nassiet, who noted a decline in pardons after 1615, Dauven argued that in Brabant the Archdukes' propensity to grant pardons had only manifested itself '*de manière assez timide*' (in a rather timid way) by the 1610s.[32] The documentation preserved by the Privy Council from the 1590s onwards, however, contradicts these findings, so that Brabant's experience may even appear anomalous when compared to the other provinces of the Habsburg Low Countries. Not only did the number of cases passing before the Privy Council reach levels similar to those in the heyday of Charles V's reign in the early seventeenth century, but the 1610s marked a real step-change in the use of the power to pardon by the Archdukes and their Privy Council (Figure 3). This growing trend can even be perceived from the later 1590s onwards, coinciding with Albert of Austria's appointment as governor-general of the Low Countries in 1596, and suggesting that the recourse to pardons was already perceived as a means of cementing Albert's

30 Vermeir, Introduction.

31 Soen, Philippe II, p. 18.

32 Musin, Nassiet, Requérir le pouvoir, pp. 22–23; Dauven, Politique de la grâce, pp. 77–79.

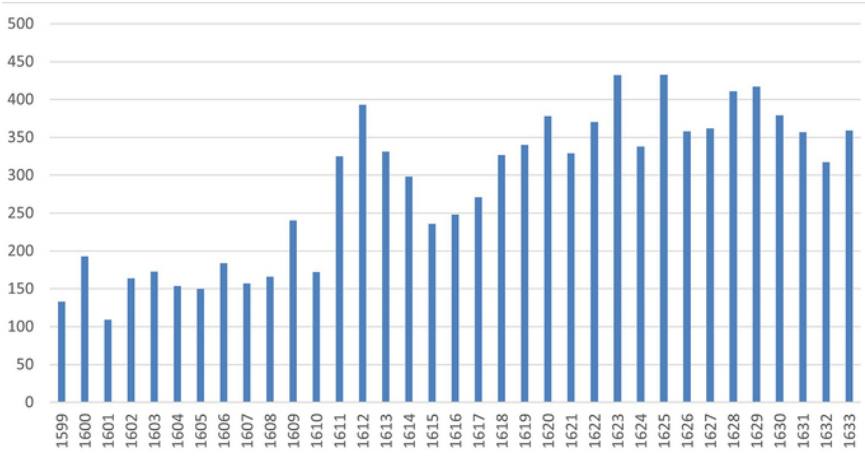

Fig. 3 Petitions before the Habsburg Privy Council during the reign of the Archdukes Albert and Isabella (1599–1633) (Source: AGR 909A-979B)

authority and restoring societal order even before the cession of the Low Countries in May 1598.

From the beginning of their reign in late 1598, it is clear that the power to pardon was deployed with increasing regularity by the Archdukes. While the number of cases passing before the Privy Council rose steadily between 1590 and 1609, a substantial increase occurred between 1611 and 1614 and, after a brief decline, remained elevated after 1618. Significantly, the rise in cases before the Privy Council coincides with the judicial reforms undertaken by the Archdukes, encapsulated by the Perpetual Edict of 12 July 1611.[33] Gradually drafted by the Privy Councellors starting in the last decade of the sixteenth century, the Perpetual Edict had the fourfold effect of codifying (and therefore stabilising) local, provincial and urban customs; reaffirming the stipulations of the Criminal Ordinance promulgated by Philip II in 1570; emphasising the place of the written record in legal processes; and countering corrupt practices in the Habsburg judicial structures.[34] Together, these aspects gave the Privy Council greater oversight over provincial justice, while the stress upon due process and the centrality of written evidence compelled petitioners to submit their cases to Brussels and increased the amount of documentation reviewed by provincial and central councils alike.

A consequence of early seventeenth-century reform, therefore, was the extension of the Privy Council's power to pardon and the corresponding increase in its archival traces. While limiting the ability of provincial judges to conclude compositions and

33 Martyn, Het Eeuwig Edict.

34 Id., Recht ten tijde van de aartshertogen.

agreements on their own terms, the Archdukes' efforts to address corrupt practices may also have encouraged greater public confidence in the efficacy, impartiality, and validity of the Privy Council's decisions.[35] Indeed, where Hugo De Schepper argued that a sense of equity and good justice were integral to securing Habsburg authority in the Low Countries, more recently historians have pointed to how a wider sense of trust in the judicial system reinforced the bonds between ruler and ruled.[36] Concurrently, and perhaps paradoxically, the renewed emphasis on due criminal processes would have driven increasing numbers of criminals to submit pleas to the Privy Council to escape the "rigours of justice". As a result, while insisting that judges perform their duties assiduously to improve public confidence in criminal justice, the Perpetual Edict may have had the inverse effect of provoking an increase in the number of pardon cases considered during the latter half of the Archdukes' reign, not least given the Edict's insistence that judges thoroughly investigate crimes and readily impose the penalties for crimes prescribed by royal ordinances.[37]

More generally, the rise in pardons under the Archdukes invites us to reconsider the scholarship that has emphasised the sixteenth-century transition from judicial procedures 'of taxation' to those of 'repression'.[38] Rather than being mutually exclusive, the rise in pardons implies that these distinct components of premodern justice – financial composition, punitive repression, and royal grace – were complementary. The ongoing complementarity of these elements in the judicial system of the Habsburg Low Countries further complicates notions of a unidirectional shift toward state-imposed repression as signalled by proponents of an early modern 'legal revolution'.[39] Combined with the Habsburg state's establishment of a quasi-monopoly over the power to pardon by the end of the sixteenth century, the legislative insistence upon evidence-based prosecutions obliged subjects to escape punishment through recourse to the Privy Council, with the ultimate consequence that the conclusion of financial settlements became centralised through the bureau-

35 The ban on agreeing compositions that bypassed provincial or central councils was reiterated by Article 44 of the Perpetual Edict : *Defendons a tous officiers d'user compositions avec les delinquans ppour cas & crimes, que par noz edictz & placcarts, ou les usances du pays, sont punissables de mort, bannissement perpetual, ou autre peine corporelle.' Ordonnance et edict perpetuel*, p. 112. On composition, see de Schepper, Vrolijk, La grâce princière; Dauven, Musin, Composition et rémission.

36 De Schepper, The Individual on Trial, pp. 204–205; Carroll, Thinking With Violence, pp. 41–42; Rose, A Renaissance of Violence, p. 21.

37 Ordonnance (1672), Articles 39–42.

38 Rousseaux, Politiques judiciaires, p. 521.

39 Breen, Review; Gatrell, Lenman, Parker, State, Community and Criminal Law.

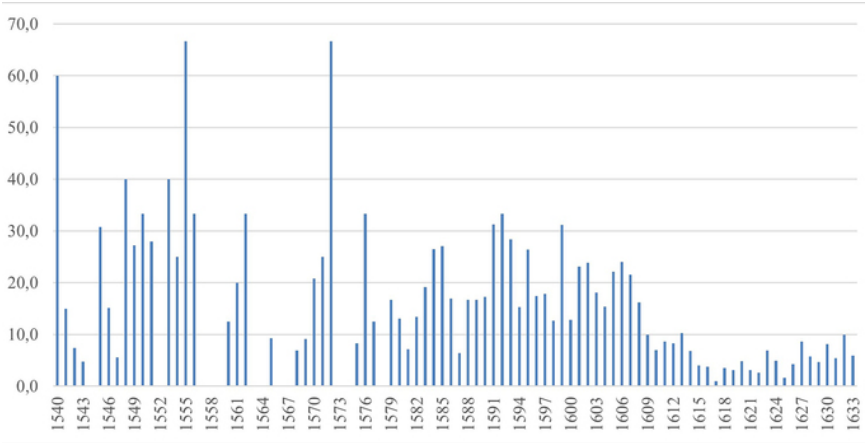

Fig. 4 Percentage of cases pardoned by the Privy Council on Good Friday (1540–1633) (Source: AGR 894–979B)

cratic mechanisms of the Privy Council.[40] This process can be seen when evaluated against multiple criteria. For example, not only did the payment of fines to the archducal fisc and the conclusion of compensatory agreements between parties constitute integral conditions for the grant of a pardon, but, inversely, from the first decade of the seventeenth century, the proportion of pardons granted freely without a civil fine, as on the occasion of Good Friday, declined significantly (Figure 4).[41]

In short, confronted by the prospect of harsh punishment codified in legislation, increasing numbers of petitioners turned to the Privy Council for their pardons and paid the fisc for the privilege. Consequently, the early seventeenth-century procedure appears as a considerable extension – if not an explosion – of the 'justice of taxation' rather than its decline. Rather than signifying a failure to prosecute, as Muchembled has argued in the case of Artois during this period, the growing number of these petitions, commensurate with an increasing number of rejections, suggests something different.[42] This trend indicates the effectiveness of ordinances that compelled individuals to submit their cases to the Privy Council for assessment on behalf of the sovereign, thereby reinforcing the Archdukes' oversight over judicial processes and the regulation of crime throughout their territories.

40 The stress upon Roman-Canon evidentiary procedures being a mainstay of sixteenth-century legislation concerning crime's regulation. See Monballyu, Six Centuries of Criminal Law, pp. 15–16; DeKoster, Legal Foundations, pp. 130–136.

41 De Schepper, Het gratierecht, p. 75; Vrolijk, Recht door gratie, pp. 44–45; Muchembled, La violence au village, p. 22; Musin, Sociabilité urbaine, pp. 157–158; Joost de Damhouder, La Practicque et enchiridion des causes criminelles, Louvain 1555, p. 346.

42 Muchembled, Homicide et infanticide, p. 1075.

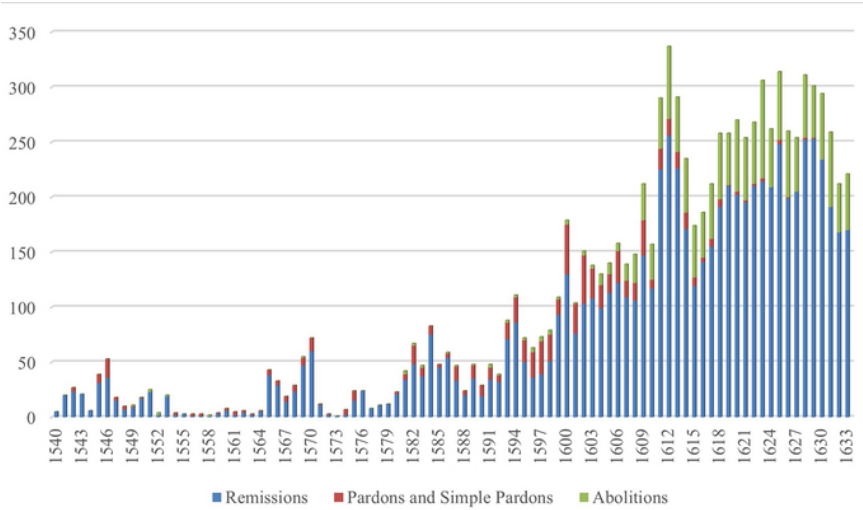

Fig. 5 Remissions, pardons and abolitions granted by the Habsburg Privy Council (1540–1633) (Source: AGR 894A–979B)

4. Evolutions in Princely Grace: Remissions, Pardons and Abolitions

If the number of pardons granted by the Archdukes rose significantly, what kinds of grace did the Habsburg sovereigns favour during the sixteenth and early seventeenth centuries? What kinds of crime did they pardon? These questions call attention to the 'polymorphous' typology of premodern pardons, which appeared in three distinct forms in the vocabulary employed by the Privy Council: as remissions, pardons and simple pardons, or abolitions. Bernard Dauven sought to distinguish these subcategories of grace by examining the grant formulae in the registered copies of the letters, but the marginal annotations affixed by the Privy Councellors to the original petitions indicate that contemporary clerks clearly distinguished between the different forms of grace.[43]

As Figure 5 demonstrates, most of the letters of grace (76.9%) issued by the Privy Council were remissions, which instructed officers to end their prosecution of petitioners and restored their good reputation.[44] Of these, the vast majority (97%) were issued for homicides that petitioners typically explained as being committed accidentally or in self-defence. By monopolising the right to grant remissions and outlawing compositions between officers and criminals, the Habsburg rulers

43 Dauven, Rémission, pardon et abolition; id., Pardonné et être pardonné, pp. 217–218.

44 De Schepper, Het Gratierecht, p. 76.

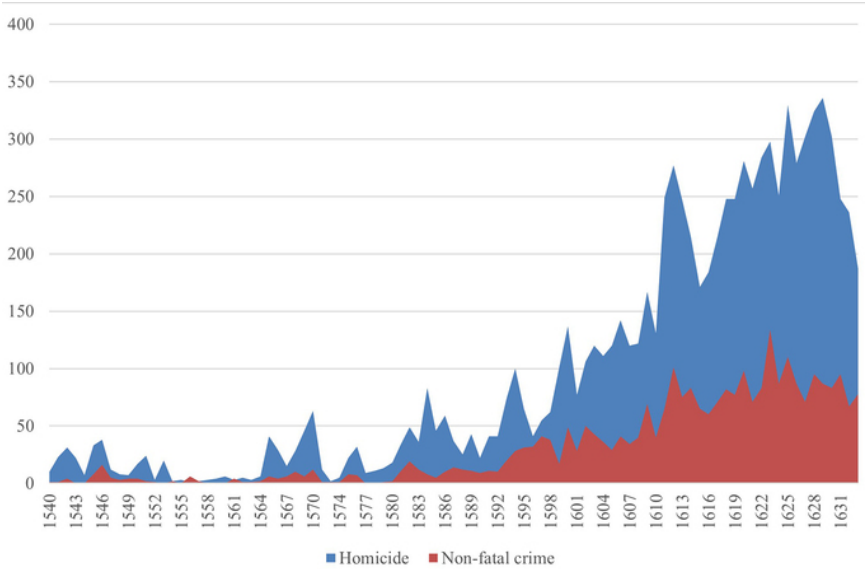

Fig. 6 Petitions for homicides and non-homicidal crimes (1540–1633) (Source: AGR 894A–979B)

significantly curtailed the autonomy of provincial, local, and municipal authorities, limiting this specific form of grace to fatal crimes during the early sixteenth century.[45]

More intriguing is the consistent manner in which the Habsburg sovereigns intervened in non-fatal cases throughout the early modern period. These were handled by the Privy Council, usually through the grant of a pardon in the sixteenth century or an abolition in the seventeenth century (Figure 6). Because pardons and abolitions were less frequently recorded in chancery registers, historians have traditionally regarded the use of pardons to respond to non-violent crimes as exceptional.[46] However, owing to the survival of original petitions, the Privy Council records reveal that petitions for non-homicidal crimes reached peaks of 40% of all cases between 1596 and 1599 and remained consistently high during the Archdukes' reign in the early seventeenth century.

Changes in the kinds of non-fatal crime pardoned also reveal a calculated use of the power to pardon to respond to socio-political challenges. Under Charles V, the leading non-homicide crime to be pardoned was theft (14 cases). Under Philip II, a similar number of pardons was granted for rebellion, assisting rebels, and sedition. During the Archdukes' reign, the number of non-fatal pardons increased

45 Ordinance of 22 June 1589. See also no. 34 above.

46 As noted in Dauven, Pardonner et être pardonné, pp. 9–10.

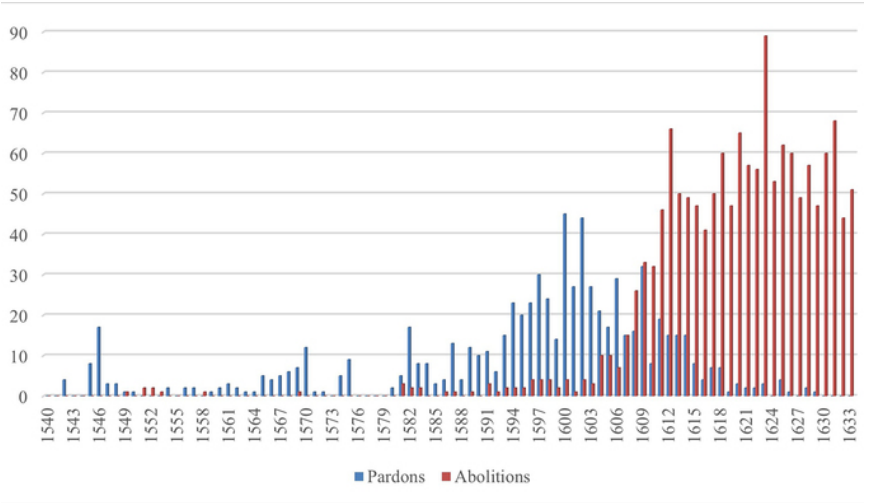

Fig. 7 Pardons and abolitions granted by the Habsburg Privy Council (1540–1633) (Source: AGR 894A–979B)

further. In particular, moral crimes appear to have come under the purview of the pardon process in the early seventeenth century. Crimes such as adultery, incest, blasphemy, defamation, and even heresy appeared regularly. The variation in these cases points to the importance of context in understanding how and why pardons were granted. Whereas Philip II's pardoning of rebels was a necessary response to the political crisis he confronted at the outbreak of the Dutch Revolt, the Archdukes likely used abolitions as a means of asserting their authority as Catholic rulers by intervening in the regulation of their subjects' spiritual and moral wellbeing.[47]

A transition occurred in the use of pardons and abolitions in the first decade of the Archdukes' reign (Figure 7), becoming evident from 1608, when abolitions began to outstrip pardons. Despite the clear shift in terminology, the differences between these two forms of grace remain unclear, in part owing to the fact that historians working on either side of the divide have rarely encountered the respective other form: scholars working on the sixteenth century have discovered a paucity of abolitions, whereas those studying seventeenth-century grace have similarly noted the rarity of pardons.[48] Sixteenth-century Netherlandish jurists such as Filips Wielant and Joost De Damhouder explained that pardons should be employed for non-homicidal (or non-capital) crimes, but, like remissions, pardons brought an end to prosecution proceedings and restored reputations; the letters were only valid

47 Pollmann, Catholic Identity, pp. 161–191.

48 Pitout, Les lettres de grâce, p. 19; Vrolijk, Recht door gratie, p. 22; de Burchgraeve, Les pratiques de grâce, pp. 163–164.

once they had been ratified by a provincial council and a civil fine had been paid.[49] In contrast, abolitions had the dual effect of ending prosecutions *and* juridically effacing the case from the community's memory: they, therefore, assumed a moral dynamic by introducing a legal fiction.[50] Ultimately, the sharper distinction that emerged in the early seventeenth century – between remissions granted exclusively for homicide and abolitions for moral and non-homicidal crimes – reflects a stricter application of the criteria proposed by Wielant and Damhouder.

The Privy Council's archives appear to contradict the conclusions presented by Dauven in his analyses of Brabant's registers. By counting grants recorded in the *comptes du droit du sceau* for Brabant, Dauven found that the Archdukes granted abolitions infrequently in the duchy until their number exploded between 1631 and 1633.[51] As he convincingly argued, this surge was a politicised, calculated reaction to the resumption of hostilities between the Habsburg Low Countries and the Dutch Republic after 1621, culminating in the conquest of 's-Hertogenbosch (1629) and then Maastricht (1632).[52] An examination of the frequency with which the Privy Council granted abolitions for inhabitants of the other Habsburg provinces after 1609, however, suggests that here, abolitions had less to do with immediate military or political contexts than they did in Brabant. Although the conclusion of the Twelve Years Truce between the Habsburg and Dutch provinces in 1609 might be expected to have led to an influx of petitions for abolition from returning refugees, migrants, and rebels, this was not the case. As in Brabant, abolitions for serving with the enemy or residing in the Dutch Republic became significant only in the late 1620s, peaking at nine in 1633. Instead, under the Archdukes, abolitions replaced pardons for non-homicidal crimes: instances of violent assault, involvement in homicides, and sexual, property or religious crimes. including theft, adultery, fornication, and blasphemy (Table 1b). The available data highlights this inverse proportionality: between 1540 and 1608, pardons accounted for 19% of all grants, before declining to a mere 2.3% for the remainder of the Archdukes' reign. Subsequently, abolitions increased from 3.85% of all grants before 1608 to 21% between 1609 and 1633.

49 Filips Wielant, Filips Wielant verzameld Werk I. Corte Instructie in Materie Criminele. Eerste redactie (1510), ed. Jos Monballyu, Brussels 1995, p. 110; Damhouder, La Practicque, pp. 345–346; Vrolijk, Recht door gratie, pp. 30–31.

50 Simon, Un dossier, pp. 129–130; Gauvard, Pardonner et oublier, pp. 30–32.

51 Dauven, L'abolition en Brabant, pp. 70–74.

52 Ibid., pp. 88–90.

Table 1a Leading crimes granted a pardon (1540–1608) (Source: Brussels, AGR 894A–919C)

Crimes Pardoned (1540–1608)	Number of Pardons (% of Total Pardons)
Residing in enemy lands or assisting enemies	181 (30%)
Theft	69 (11.4%)
Resisting authorities	47 (7.8%)
Adultery, fornication, incest	43 (7.1%)
Trade infringements and tax evasion	39 (6.5%)
Assault	37 (6.1%)
Escape of prisoners	26 (4.3%)

Table 1b Leading crimes granted an abolition (1609–1633) (Source: AGR 920A–979B)

Crimes Abolished (1609–1633)	Number of Abolitions (% of Total Abolitions)
Theft	221 (16.5%)
Assault	150 (11.2%)
Adultery, fornication, incest	147 (10.9%)
Trade infringements and tax evasion	104 (7.8%)
Implication in homicide	75 (5.6%)
Insults, blasphemy, calumny	75 (5.6%)
Residing in enemy lands or assisting enemies	72 (5.4%)

This conceptual overlap is demonstrated by the pardons and abolitions granted in the same year, for the same crime, and in the same province. In April 1609, Archembauld Van Ost of Ecques (Artois) asked that the Privy Council '*luy quicter, remectre et pardonner*' (discharge, remit, and pardon him) for blasphemy. The Privy Council acquiesced, granting Van Ost a pardon and specifying that the sovereign had '*quicté et pardonné*' (discharged and pardoned) the crime in question.[53] Three months earlier, however, François Brunel of Givenchy-en-Gohelle (Artois) had also asked for a '*pardon et lettres d'abolition*' (pardon and letters of abolition), again for blasphemy. On this occasion the Privy Council granted an abolition with the distinct formula: '*avons audit cas aboly et effacé, abolissons et effacons ledit cas…*' (we have abolished and effaced, we abolish and efface the said case).[54] In each case, the supplicants referenced multiple modes of grace in their petition – remission and pardon for Van Ost, pardon and abolition for Brunel – but the Privy Council

53 AGR, Petition of Archembauld Van Ost (10 October 1609), 920B.

54 AGR, Petition of François Brunel (14 March 1609), 921.

resolved to bestow a single, distinct type of grant for the same crime, and for petitioners originating from the same county.

Although abolitions were not employed specifically for political crimes, as in Brabant, it is possible that political, religious and social circumstances informed this transition from an earlier custom of pardons. Anticipating the Perpetual Edict, the decision to privilege abolitions may have enabled the Privy Council to better manage non-capital crime while bringing moral transgressions under greater degrees of central control commensurate with the Archdukes' Counter-Reformation policies. Primarily, the prospect of effacing the public memory of a crime may have proven especially attractive to criminals seeking to escape the rigours of justice by submitting their cases to sovereign arbitration, enabling the Archdukes to acquire a privileged position in determining the moral character of Netherlandish society. In turn, abolitions appear to have represented a particularly versatile means of intervening in the course of justice. The absence of a prescribed sum to be paid to the fisc for an abolition enabled the Privy Council to tailor punishments according to the petitioners' status and the perceived gravity of the crime through the stipulation of extraordinary conditions to be met before the letter was delivered.

Consequently, unlike remissions (15.3% of cases) or pardons (26%), 31% of abolitions included additional stipulations. Most commonly, these were outright fines, ranging from smaller amounts, such as 36 or 50 florins, to the 1,200 florins paid by the Lille merchant Pierre Cambier for an abolition following his contravention of official decrees (or placards) regarding the distribution of proscribed currencies in 1612.[55] As Jacqueline Hoareau-Dodinau has argued, the imposition of these fines was essential to reinforcing the 'rigorous' character of justice, preventing the wealthy and middling sort from acquiring pardons easily through the administration of sometimes financially crippling penalties.[56] Other conditions, however, reveal the effects of the Archdukes' Counter-Reformation efforts. In the sixteenth century, pardons required the performance of a public act of penance relatively frequently (14% of all cases), either in the form of a declaration, retraction, or oath, or through the performance of the *amende honorable*, in which the criminal took part in a ceremonial procession to restore the honour of the victim's party and symbolically convey their reconciliation.[57] The *amende honorable* was used extensively in Flanders and Holland (87% of cases), typically for crimes against the royal majesty or public authorities, particularly in cases of heresy or assistance of heretics, abuses of

55 AGR, Petition of Pierre Cambier (17 January 1612), 925C. The average fine required for 285 abolitions granted between 1581 and 1633 was 155 florins; a fine of 50 florins was the most common (70 cases).

56 Hoareau-Dodineau, Argent et miséricorde, pp. 233–236.

57 On this practice, see Moeglin, Pénitence publique, pp. 226–227.

office, or resistance to authorities.[58] However, the Privy Council records indicate that after 1600, the *amende honorable* was imposed less frequently and applied in more heterogeneous cases, including false testimony, fraud, fornication, adultery, blasphemy, and theft.[59] Rather than emphasising the relationship between penitent subject and benevolent ruler, the practice increasingly focused on the restoration of interpersonal bonds in local contexts, perhaps to mitigate future rivalries that could lead to violence in instances of assault, insults, or false testimony.

Moreover, after 1600, the Privy Council increasingly required the performance of expiatory pilgrimages as a condition for the grant of an abolition or remission, sometimes mandating journeys covering distances of almost 500 kilometres.[60] The Council prioritised two new sites of seventeenth-century Marian traditions that were personally patronised by the Archdukes in prescribing these additional duties, namely Notre-Dame de Grâce at Loos outside Lille (12 cases) and Notre-Dame de Montaigu, or Scherpenheuvel (13 cases) in the Duchy of Brabant. The significant building projects at both shrines, complemented by the diffusion of miracle accounts, reflected the Archdukes' commitment to restoring the Catholic fabric as a core part of their Counter-Reformation policies, with the new basilica at Montaigu described as the most ambitious of their artistic endeavours.[61] The shrines also drew boundaries between the Habsburg Catholic community and its Reformed rivals. A formative moment in the development of the devotional community at Loos was its ransacking by Protestants in 1591, while the frontline site of Montaigu stood 'in the land of heretics'; both shrines represented key centres for the performance of processions beseeching God for key victories, as at Ostende in 1604.[62] That the grant of remissions and abolitions was co-opted into this effort is demonstrated both by the peak in pilgrimages between 1613 and 1620 and the crimes for which they were required, especially adultery, fornication, and blasphemy. Within the broader religious and political context, these pilgrimages transformed

58 A phenomenon noted by Vrolijk, Recht door gratie, p. 300.

59 Examples include AGR, Jacques le Comte of Armentières (Lille) (9 October 1603), 914B, for adultery; AGR, Adrienne le Bailly of Agny (Artois) (14 February 1609) and Simon Baudet of Manin (Artois) (30 March 1609), 921, for false testimony; AGR, Omaer Van Visscheryn of Ghent (Flanders) (14 November 1609), 921, for fraud; AGR, Jan Groignart of Oudenaarde (Flanders) (11 July 1612), 927A, for blasphemy; AGR, Pieter Stevens of Beveren (Flanders) (18 February 1614), 929B, for theft; AGR, Anthoinnette Le Moisne of Arras (Artois) (4 March 1624), 954B, for fornication; AGR, Thomas du Pont of Oudenaarde (Flanders) (5 July 1625), 956A, for stealing horses.

60 As in the case of Jacques Sombret of Auchy-les-Hesdin (Artois), who was compelled to perform a pilgrimage to Scherpenheuvel in Brabant to secure his abolition for fornication – a distance of 232 kilometres. AGR, Jacques Sombret (25 September 1620), 943A.

61 Duerloo, Scherpenheuvel-Montaigu, p. 439.

62 Ibid., pp. 424–425; Liagre, Le culte, pp. 9–12; Germonprez, Foundation Rites, pp. 275–276; Pollmann, Catholic Identity, pp. 168–169.

wayward criminals into penitent subjects, refashioning them as 'good Catholics' and embedding their acts of devotion within the wider ideological and religious struggles faced by the Habsburg sovereigns in the early seventeenth century.

Historians of the pardon procedure in the Habsburg Low Countries have rarely looked in detail at its transition in form and function during the early seventeenth century. However, the data presented above reveals that further analysis of the first decade of the Archdukes' reign is key to understanding how Habsburg rulers exploited pardons as an integral aspect of governance. The rise in cases that correlated with the judicial reforms of the Perpetual Edict in 1611, as well as the corresponding replacement of pardons by abolitions, suggests that the Archdukes Albert and Isabella, in particular, recognised the value of princely grace as a means of regulating wider societal conflicts in the aftermath of the disruption that had characterised the final decades of the sixteenth century. The increasing preference for abolitions, in lieu of pardons, provided the Archdukes with a more direct means of intervening in the surveillance of moral behaviours, further supporting their restructuring of the southern Netherlands' religious landscape.

5. Provincial Differences: Flanders and the Franche-Comté

While a chronological analysis reveals certain aspects of how royal grace represented an integral element of early modern Habsburg rule, it is not the only lens through which this can be appreciated. As shown by the comparison with the Duchy of Brabant, it is particularly difficult to extrapolate regional evidence to draw general conclusions about trends in the granting of? princely grace for the early modern Low Countries.
(1599–1633)

Table 2 Petitions in the archives of the Habsburg Privy Council by key province (1540–1633) (Source: AGR 894A–979B)

Reign	Charles V (1540–1555)	Philip II (1556–1598)	Archdukes Albert & Isabella	Total
Province				
County of Artois	47 (21.1%)	315 (20.5%)	1,486 (15.5%)	1,848 (16.2%)
County of Flanders	75 (33.6%)	705 (45.8%)	3,296 (34.4%)	4, 076 (35.9%)
Franche-Comté	36 (16.1%)	5 (0.3%)	2,186 (22.8%)	2,227 (19.6%)
County of Hainaut	10 (4.5%)	77 (5%)	366 (3.8%)	453 (4%)
Lille-Douai-Orchies	40 (17.9%)	218 (14.2%)	1,343 (14%)	1,601 (14.1%)
Duchy of Luxembourg	10 (4.5%)	91 (5.9%)	304 (3.2%)	405 (3.6%)
Reign	Charles V (1540–1555)	Philip II (1556–1598)	Archdukes Albert & Isabella	Total
County of Namur	1 (0.4%)	48 (3.1%)	177 (1.8%)	226 (2%)
Bailiwick of Tournai	4 (1.8%)	81 (5.3%)	430 (4.5%)	515 (4.5%)
Total	223	1,540	9,588	11,351

The bird's-eye view on pardoning offered by the Privy Council's archives adds complexity to such challenges. With the exception of the Franche-Comté, whose inhabitants do not appear to have submitted petitions directly to Brussels during Philip II's reign, it is clear that the regional proportionality of grants remained relatively stable throughout the period.[63] This consistency offers a counterpoint to the argument advanced by Aude Musin and Michel Nassiet for France and the Low Countries, namely that pardons increased in positive correlation to the petitioners' proximity to the capital or an itinerant sovereign's presence.[64] On the one hand, the two castellanies of Lille, and of Douai and Orchies, in Walloon Flanders represent an important outlier in the data. Centred around the administrative capital of

63 Only four petitions for the Franche-Comté have been preserved at Brussels, none of which resulted in a ruling (AGR, 896A, 899C, 902A, 906B), while three grants for the region appear in the registers of Lille's *Chambre des Comptes* (Lille, Archives départementales du Nord, B1770, B1774, B1791). Due to the absence of records, grace in the Franche-Comté is poorly understood for Philip II's reign, and contemporary assessments are contradictory. In 1582, Philip II chastised the Privy Council for being too generous in its provision of pardons for the Franche-Comté, while in 1587, Alexander Farnese, duke of Parma and governor-general of the Low Countries, warned that the Franche-Comté's ministers were bypassing Brussels in deciding their own affairs. De Schepper, La Franche-Comté, p. 303, pp. 309–314.

64 Musin, Nassiet, Requérir le pouvoir, pp. 19–24.

Lille, under the Archdukes, the inhabitants of Walloon Flanders submitted an almost equal proportion of petitions to the Privy Council as those of the County of Artois, and this despite its population being half that of Artois.[65] On the other, the inhabitants of the counties of Hainaut and Namur submitted far fewer petitions than their Walloon Flemish compatriots, even though they were located closer to Brussels and were of a comparable size. At the same time, the more distant Duchy of Luxembourg, with its smaller population, submitted a similar number of petitions to the inhabitants of Namur and Hainaut.[66] Equally telling, and further undermining the notion of a direct relationship between proximity and petitioning, is the fact that the Archdukes' reign witnessed an explosion in the number of petitions received from the Franche-Comté, second only to the County of Flanders, despite the sovereigns never having visited the Burgundian county.[67] Just as Bernard Dauven has shown for the Duchy of Brabant during this same period, the rulers' absence from their provinces seems to have had a limited influence upon the rate of petitions granted.[68] As the cooperation between the Privy Council in Brussels and the provincial councils of the Habsburg Low Countries suggests, the demand for self-government in the sovereign's absence during the sixteenth century witnessed the emergence of sophisticated bureaucratic procedures through which pardoning evolved as an administrative tool, rather than a personalised expression of princely power.

Nevertheless, an examination of the pardon procedure's documentary traces suggests that this power was wielded very differently in each province, being adapted by rulers to local contexts. As Table 2 shows, the County of Flanders – the most populous of the provinces under the Privy Council's purview – occupied a significant portion of the Council's time and energy. Historically, Flanders and its prominent towns of Ghent and Bruges had struggled to defend their privileges against centralised encroachments. But, during the sixteenth century, this independence was significantly eroded, first with the defeat of the Revolt of Ghent in 1540, then by the challenges of civil conflict seen with the outbreak of the Iconoclastic Fury in

65 Regional populations are especially difficult to determine for the period. Denis Morsa estimates that at the beginning of the seventeenth century, Walloon Flanders comprised 100,000 inhabitants, compared to 200,000–350,000 in the County of Artois. Morsa, Le siècle de malheur, p. 103. Robert Muchembled suggests that the County of Artois comprised 200,000 people in the sixteenth century. Muchembled, La violence au village, p. 7.

66 The population of the County of Namur has been estimated by Morsa as comprising 65,000 people in the early seventeenth century, compared to 53,000 for the Duchy of Luxembourg. Morsa, Le siècle de malheur, p. 103.

67 Delsalle, La Franche-Comté, p. 5.

68 Dauven, Pardonner et être pardonné, p. 85.

1566 and the Pacification of Ghent in 1576.[69] Simultaneously, the Habsburg princes strove to monopolise the power to pardon in Flanders: the sovereign bailiff's authority to grant remissions was significantly curtailed during the second half of the sixteenth century, and local officers were forbidden from overseeing compositions between parties in 1541.[70] Much like the increase in petitions in correlation with the promulgation of the Perpetual Edict in 1611, this progressive restriction of localised forms of pardoning during the sixteenth century compelled Flemish criminals to seek grace uniquely through the channels of the Privy Council.

Within Flanders, the importance of pardoning as a tool of governance, even one of surveillance, is illustrated by the petitions received from the Flemish West-Quarter, a region comprising modern-day southwest Belgium and maritime Flanders in France. During the 1560s and 1570s, the West-Quarter represented a key site of religious dissent, the point of origin of the Iconoclastic Fury that swept through the Habsburg Low Countries in 1566 and a source of Calvinist opposition until the 1580s. More generally, the region was in a state of acute flux throughout the sixteenth century, characterised by high levels of rural-urban migration as workers moved to major cloth producing towns and villages such as Nieuwkerke, which doubled in size between 1500 and 1550, only for these same sites to suffer significant economic hardship during the market contractions in the later sixteenth century.[71]

The attention paid by the Privy Council to the socio-political unease in the Flemish West-Quarter can be glimpsed through the archive. Despite the presence of large towns such as Bruges and Ghent in northern Flanders, by the 1560s inhabitants of the West-Quarter accounted for almost half of all Flemish petitioners, and this rarely dipped below 40% for the remainder of Philip II's reign. Naturally, the social disruption, civil conflict, and religious tensions that followed the Iconoclastic Fury in 1566 may explain the elevated levels of crime in the region. However, this surge in pardons also functioned to restore and reinforce the bond between Philip II and his subjects.[72] Indeed, following the criminal ordinance of 1570, the grant of a pardon was conditional upon declarations of loyalty to the regime and good Catholic identity on the part of the petitioner. In this context, the fact that the pardon procedure functioned as a check upon potentially seditious behaviours and as a means of surveillance is suggested by the higher level of documentation found in the Privy Council's archived dossiers. Of the 119 petitions submitted by sixteenth-century Flemish petitioners that were accompanied by a preparatory

69 Blockmans, Alternatives; Duke, The Use of "Privileges"; Arnade, Political Culture, pp. 148–163. See also Haemers, For the Common Good.

70 De Schepper, Vrolijk, La grâce princière, pp. 746–747.

71 For the industrial, economic and social contexts of the sixteenth-century Flemish West-Quarter, see van der Meulen, Woven into the Urban Fabric, Ch. 4.

72 Arnade, Political Culture, pp. 95–104.

information file with witness depositions, 60% pertained to cases for the West-Quarter. Likewise, 46% (82) of all the preserved sixteenth-century reports of good moral and religious conduct produced by local authorities and priests in Flanders to support a petitioner's account were also included in dossiers from the same region. The resulting impression is that petitioners from the West-Quarter were required to submit larger dossiers attesting to both the account of their actions and their everyday behaviours in order to persuade the Privy Council to acquiesce to their plea. The Privy Council submitted the sixteenth-century West-Quarter cases to more stringent reviews by reviewing collective accounts of crime, bringing entire communities under surveillance in the process. Concurrently, the act of witnessing accorded the West-Quarter witnesses a stake in the pardon process, and because their testimony corroborated individual pardon narratives, they consequently held an unacknowledged part in these decisions. The involvement of ordinary legal actors in the pardon procedure transformed potentially rebellious communities into contributors that were integral to the workings of sovereign justice.

The pardon procedure's adaptation to provincial and geographical contexts is underscored by contrasting the Flemish West-Quarter with the distant Franche-Comté. Located along France's eastern frontier, these *pays de par-delà* were of particular military significance to the Habsburg Netherlands during the Dutch Revolt. The Army of Flanders was resupplied by troops travelling north from Italy through the Franche-Comté along the 'Spanish Road'.[73] Although the Franche-Comté remained diplomatically neutral with respect to the Habsburg princes' northern conflicts, wars between Spain and France threatened the route's security, particularly during the French invasions of the Duchy of Savoy in 1597–1601.[74]

Following the accession of the Archdukes Albert and Isabella, the number of petitions from the Franche-Comté that passed before the Privy Council in Brussels exploded, but these left very different traces in the archive. Unlike Flanders, where dossiers were constituted of three different documents on average, before 1615, the Privy Council only required the receipt of the petition from Comtois seeking a pardon, without requesting ancillary documentation such as the *avis* from local justices, witness depositions, or reports of good character (Figure 8). As a result, it appears that the Privy Council was content to rely upon petition narratives to decide whether to grant pardons to the inhabitants of the Franche-Comté, with Comtois petitioners confronting fewer legal hurdles than their Flemish counterparts.

The ease with which Comtois petitioners received their pardons may have been geographically expedient. Criminal reforms since 1570 had repeatedly insisted upon the need for swift and reliable justice, but even the fastest messengers required

73 Parker, The Army of Flanders, pp. 51–59.

74 Ibid., pp. 58–59. See also Delsalle, L'invasion.

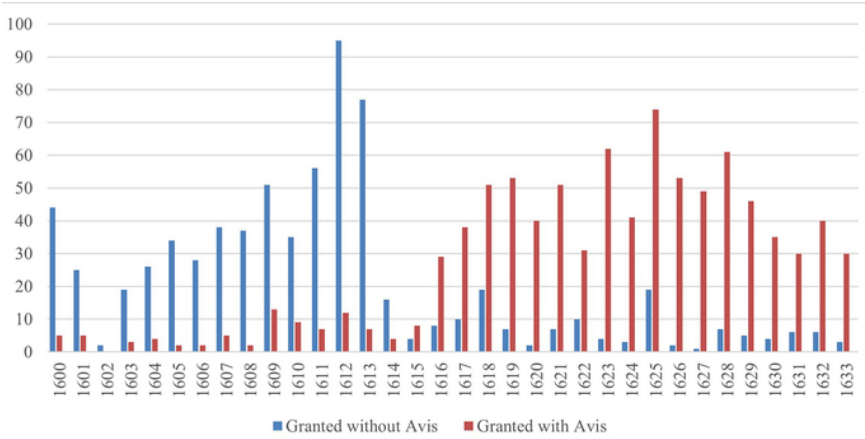

Fig. 8 Pardons and remissions granted to the inhabitants of the Franche-Comté (1600–1633) (Source: AGR 910A–979B)

six days to travel from Brussels to Dole, the Franche-Comté's capital and seat of its Parlement.[75] The requirement that additional checks be made, therefore, risked delaying the pardon procedure considerably to the detriment of individual petitioners and a broader perception of justice efficiency. The Privy Council may have opted for efficiency in the earlier phase of its administration of justice in the Franche-Comté.[76] An alternative explanation, however, may also be advanced upon the same grounds as the experience of the Flemish West-Quarter. The higher levels of documentary evidence required for Flemish petitioners functioned to place entire local communities under the closer scrutiny of the Privy Council, progressively involving neighbours, local officials, and priests in the pardon procedure. By contrast, the straightforward nature of pardons for the Franche-Comté might have been, by design, encouraging the region's inhabitants to submit themselves to central authorities in Brussels and, in doing so, to affirm their ties to the Archdukes'

75 Contrary to the two weeks suggested by Febvre, Philippe II, pp. 48–49. De Schepper, La Franche-Comté, p. 302; Delsalle, Sur la route des Flandres, pp. 46–48.

76 Instructions disseminated by the Privy Council in 1623 lamented that justice frequently delayed investigations while awaiting the outcome of pardon petitions. Local judges were instructed to wait a maximum of two weeks to hear from the Privy Council before either releasing an imprisoned petitioner (if they believed the crime was pardonable) or proceeding with a criminal trial. Dispositions relatives à la surséance de l'exécution des sentences à la charge des prisonniers poursuivant grâce ou rémission (27 October 1623) in : René Vermeir (ed.), Recueil des ordonnances des Pays-Bas. Deuxième série. Règne de Philippe IV (1621–1665), Vol. 1, Brussels 2023, pp. 152–153.

regime in the early years of their reign.[77] Where Lucien Febvre argued in his classic thesis that the relationship between Brussels and the Franche-Comté during Philip II's reign was characterised by distance and disinterest, the high level of petitions received in the seventeenth century under the Archdukes suggests that the pardoning process strengthened jurisdictional and political connections between the *pays par-deça* and *par-delà*, ensuring that the region remained tied to the Low Countries and preserving the precious routes that supplied the Low Countries with vital soldiers.[78]

6. Rejecting Petitions

While the comparison of Flanders and the Franche-Comté indicates that the power to pardon was wielded in a highly contextual manner by the Privy Council, it is also necessary to account for the fact that this power was rarely wielded unidirectionally. Although sixteenth-century criminal legislation in the Habsburg Low Countries typically endeavoured to curtail the independent ability of local justices to decide pardon outcomes, provincial councillors, bailiffs, and town or village authorities nevertheless continued to influence the Privy Council's conclusions through the reports that they submitted concerning petitions from their jurisdictions.

The Privy Council's power to pardon was highly contingent upon regular communication and negotiation between Brussels and provincial authorities, a fact best demonstrated by the survival of rejected cases in the archive. These are especially significant, not least because they give historians an important insight into the 'chiffre noir' of pardoned crimes, namIely the number of cases that went unreported in the registers of granted pardons.[79] While the Privy Councellors did not specify their reasons for rejecting a petition, they frequently followed the advice submitted by provincial or local justices who had reviewed the available evidence. A survey of 223 refused petitions accompanied by reports from 1580 to 1633 demonstrates that rejections were largely (46.8%) due to discrepancies between the excuses offered by petitioners for their actions and the witness depositions recorded during preliminary inquests as part of the criminal procedure. In the *avis*, these discrepancies were determined to be *obreptice* or *subreptice*: either the petitioner had omitted aggravating circumstances highlighted by the available evidence, or

77 As suggested by Amandine de Burchgraeve, regarding the exclusive grant of abolitions by the Privy Council to the inhabitants of the Franche-Comté during Charles V's reign. De Burchgraeve, Les pratiques de grâce, p. 162.

78 Febvre, Philippe II, p. 46. For a contrasting approach, see de Schepper, La Franche-Comté, pp. 301–331.

79 Gauvard, Les sources judiciaires; Dauven, Politique de la grâce, p. 90.

they had straightforwardly lied, and both were grounds for denial.[80] Alternatively, petitions might be rejected because the authorities concluded that the crime was of such gravity that it could not satisfy the conditions for a pardon (25.6% of cases). Rarely, petitions were denied on procedural grounds (8.1%). For instance, if the supplicant requested a pardon before the required deadline of a year following the crime had passed, their petition was straightforwardly rejected, or the supplicant was told to 'patienter' or 'habeat patientiam' until the required time had passed for the supplication to be possible.[81] Likewise, supplicants who failed to secure a *paix à partie* or reconciliation agreement with the victim's party prior to petitioning often saw their petitions rejected.[82]

Just as the number of petitions preserved by the Privy Council increased following the Perpetual Edict in 1611, the Edict's stress on documentation and a heightened need for evidence also meant that records of rejected cases improved, representing as many as 35% of the total cases found in the archive for 1632 (Figure 9). Unlike granted pardons, where the original petition was kept to be reused as the text of the pardon letter issued by the sovereign, rejections are usually known through the conserved *avis* that had informed the Privy Council's decision.[83] Upon rejection, it was possible that the Privy Council's secretaries discarded the original petition but retained the *avis* to support a review of the case should the petitioner appeal the Council's refusal. This coincides with the increasingly regular appeal of rejections during the Archdukes' reign, when some 40% (1,232) of all the rejected petitions were subsequently granted upon appeal. This is known because the rejection was recorded by the secretaries on the *avis* with the note 'nihil', the date of the decision, and occasionally the additional stipulation that the petitioner could not appeal the decision: '*nihil sans plus travailler la cour*'. Amidsts an increasing number of appeals, these *avis* feature in an average of 1.55 rejections per case, suggesting that supplicants were likely to seek an alternative outcome at least once after the original refusal, with some individuals contesting the Privy Council's rejection as often as eleven times.[84]

80 Vrolijk, Recht door gratie, pp. 315–316, 387–388.

81 The requirement to wait a year after the crime in question was stipulated in the ordinance of 1541. See also van Bamis, Een nieuw begin, pp. 54–56.

82 The *grand bailli* of Hainaut had the ability to override the refusal of the victim's party to come to terms with the perpetrator, while in Namur, the victim's party was not permitted to refuse the *paix à partie*. Louant, La paix à partie, p. 311; Musin, Sociabilité urbaine, p. 62.

83 Out of over 1,800 rejected cases throughout the period 1540–1633, 1,609 (86.5%) are known through *avis* instead of archived petitions.

84 Three homicide cases were rejected eleven times. AGR, Maillard van Elst (Flanders, 23 June 1626), 944D; AGR, Claude Henry (Poligny, 9 August 1632), 976A; AGR, Legier Allemand (Vesoul, 3 November 1632), 977A. Of these, only Allemand eventually received a remission letter.

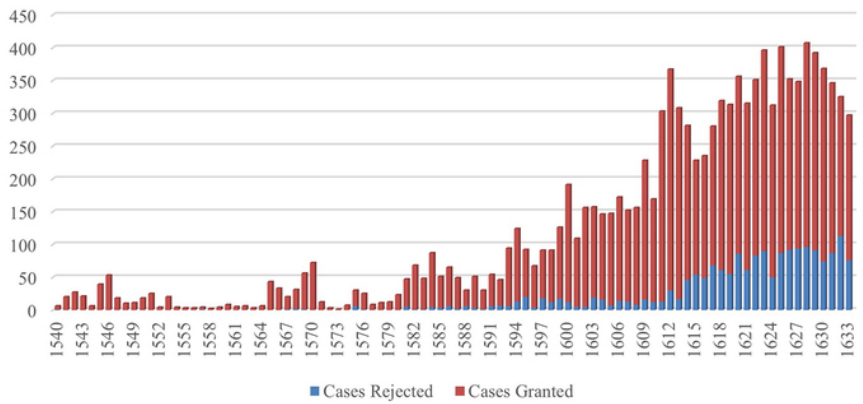

Fig. 9 Cases granted and rejected by the Habsburg Privy Council (1540–1633) (AGR 894A–979B)

It is important to note that the inconsistent preservation of petitions to the Privy Council for most of the sixteenth century (see above, pp. 6–7) makes it especially difficult to determine how many cases were rejected before the Archdukes' reign.

A regional comparison of rejections can be instructive with regards to the relationship between the Privy Council and regional authorities (Table 3). As with the granting of pardons, the Franche-Comté appears exceptional in the low number of rejected cases, supporting the conclusion that it was more straightforward for the Comtois to receive pardons than it was for those residing in the Low Countries. In contrast, the number of rejected petitions for the Bailiwick of Lille was especially high, with 43% of cases being rejected at least once and almost 30% of cases being ultimately rejected– and this despite the fact that Lille was both intensely loyal to the Habsburg regime and geographically closer to the geopolitical heart of power.

Table 3 Number of petitions rejected by key province under the Archdukes Albert and Isabella (1599–1633) (Source: AGR 909A–979B)

Province	Total Cases	Number of Rejected Cases Granted on Appeal	Number of Cases Rejected Outright
County of Artois	1,603	230 (14.3%)	226 (14.1%)
County of Flanders	3,296	458 (13.9%)	566 (17.2%)
Franche-Comté	2,253	194 (8.6%)	228 (10.1%)
County of Hainaut	404	39 (9.7%)	73 (18.1%)
Governance of Lille	1,148	160 (13.9%)	326 (28.4%)
Duchy of Luxembourg	333	20 (6%)	52 (15.6%)
County of Namur	200	12 (6%)	47 (23.5%)
Bailiwick of Tournai and the Tournaisis	452	45 (10%)	80 (17.7%)
Total	9,689	1,158 (12%)	1,598 (16.5%)

An explanation for such divergences in rates of rejected cases can be found in the relative influence and authority of the provincial officers advising the Privy Council in its decisions, as well as in the proximity of the local authorities to the case in question. When the Privy Council issued requests for advice to review a petition, this was typically dispatched to one of the subordinate authorities in whose jurisdiction the crime had occurred: either the provincial council (for Artois, Flanders, Hainaut, Luxembourg, and Namur), the regional governance (in the case of Lille, Douai and Orchies), the castellany or bailiwick (as in the Tournaisis and the Franche-Comté) or, the magistrature or mayoralty of the local town or village. Surveying the number of reports requested from each jurisdiction type under the Archdukes highlights a correlation between the declining role of town or village authorities and the increasing number of rejections.

As indicated by Figures 10 and 11, the increasing role played by provincial and regional justice in advising the Privy Council corresponded with a growing number of cases that were rejected by the Privy Council. Not only were provincial councils and governance more likely to be staffed by professionals with advanced university training, but their position between the central Privy Council and local authorities also meant they were distanced from the immediate concerns of the communities affected by these crimes and, as such, perhaps less likely to be subject to the intense local influences and the potential for corruption that might affect lower courts–precisely the challenges that the Perpetual Edict of 1611 had sought to overcome. Their involvement may explain the high rate of rejections in the Governance of Lille, for instance, where the regional governor was responsible for submitting advice in 69% (629) of the rejected cases. In contrast, the situation in the counties

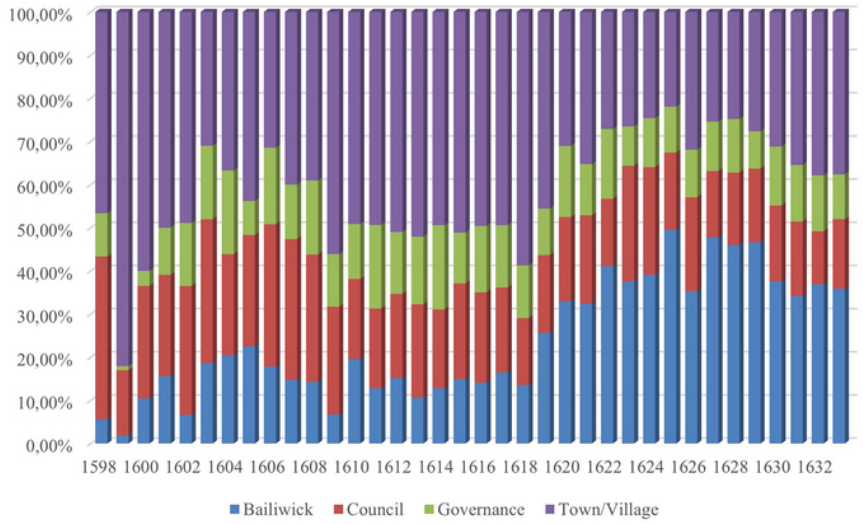

Fig. 10 Proportion of avis submitted by the authorities of the bailiwick, council, governance, or town and village for all cases (1598–1633) (Source: AGR 908A–979B)

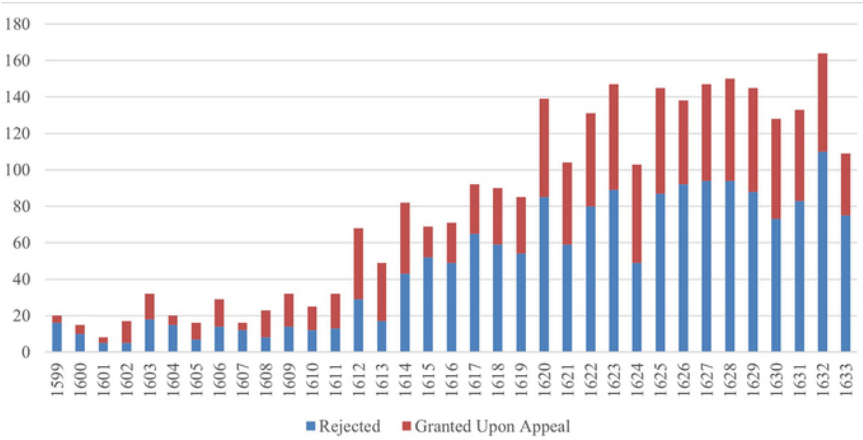

Fig. 11 Rejected cases and cases granted upon appeal under the Archdukes Albert and Isabella (1599–1633) (Source: AGR 909A–979B)

of Flanders, Hainaut, and Artois was more diverse, where the combined weight of the regional bailiwicks and provincial councils constituted 39%, 39%, and 53% of all reports submitted to the Privy Council. In short, the figures suggest that as decision-making became further centralised and more bureaucratic, pardon cases were more likely to be rejected.

7. Conclusion

The petitions archived by the Privy Council represent an excellent resource for quantitative analysis, giving nuance to current understandings of early modern princely grace. A look beyond the content of pardon tales, and a focus on documentation practices have revealed the complex and multiple legal stages of each petition. To conclude, three early findings are worth reiterating. First, fluctuations in pardoning during the sixteenth and seventeenth centuries underscore that pardoning was socially and politically contextual. Rather than being conditioned by proximity to the prince, the fluctuations reveal how Habsburg sovereigns employed the power to pardon to respond to distinct crises. Princely mercy represented a means of shoring up loyalty, securing declarations of Catholic faith, and reintegrating disordered communities into the overarching polity.

Second, rather than straightforward indications of homicide or crime rates, regional differences should be attributed to the malleable use of grace to manage disparate provinces with distinct political needs, and distinct relationships with Brussels. Variations in rejected cases confirm the value of this comparative approach, highlighting the differing degrees of scrutiny under which the Privy Council placed the work of local officers, and the nature of cooperation between provincial councillors and the political centre.

Finally, these archived petitions were performative in light of the state's concretisation and the emergence of related bureaucratic activities. The establishment of these dossiers, the differences in regional documentation, and the decision to preserve rejections all functioned to actively cement hierarchical bonds, from local officers through to the Privy Council in Brussels and, ultimately, the sovereigns of the Southern Netherlands, through their power to pardon.

Taken together and supported by some of the unique sources conserved in the State Archives of Belgium, these empirical findings offer fresh perspectives on the broader history of early modern criminal justice and the role of princely grace in the processes of state formation. In bringing to the fore the administrative and procedural dimensions of pardons – rather than viewing them solely as reflections of crime rates, indications of monarchic clemency, or individual tales – this study highlights the judicial and political negotiations that shaped governance through the power to pardon in the early modern Habsburg Low Countries. Fundamentally, it demonstrates that the power to pardon was not a static privilege but an evolving instrument of authority, one that was consistently adapted in response to shifting crises, regional tensions or customs, and the diverse imperatives of consolidating Habsburg power over a fragmented polity. In this light, pardoning appears not as an anomaly in the trajectory of state formation but as an enduring and flexible mechanism through which rulers reinforced their legitimacy, balanced local and

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central interests, and shaped the governance of violence and order across their domains.

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Ulrike Ludwig

Territorial-Princely Pardon as an Administrative Act

Preconditions and Effects of a Changed Territorial-Princely Pardon Practice in Electoral Saxony in the First Half of the 17th Century

The following discussion has two aims. First, and more generally, the example of Electoral Saxony will be used to determine how territorial pardon practice[1] in the first half of the 17th century was organised. It assumes that pardons increasingly gained administrative traits and resembled administrative and administrated proceedings, which led to gradual juridification,[2] i. e. the alignment of pardons with the principles of criminal law. At the same time, the transformation of pardons into administrative acts affected petition practices, creating specific new logics in the form of petitions from disinterested third parties. These petitions – which form the second object of this study – were far removed from the original character of petitions and their granting in criminal matters. Both processes will be examined in more detail following an introduction of the source material used to develop the theses of this article.

1. On the Regional Case Study and Source Sample

The article focuses on the Albertine Electorate of Saxony, one of the political and economic powerhouses of the Holy Roman Empire of the German Nation during the period examined here. Moreover, due to its relatively locked territory and the prince's many territorial domains (*Domanialbesitz*)[3], Electoral Saxony was among the princely territories of the Holy Roman Empire that had already reached comparably highly developed administrative penetration in the 16th century. Yet regarding the influence of territorial princes on pardons and criminal

1 In other words, a pardon that only applied to the territory of Saxony.

2 On the concept of juridification of social conflicts in the early modern period, see e. g. Schulze, Die veränderte Bedeutung; Härter, Policy und Strafjustiz; Stollberg-Rilinger, Zur Verrechtlichung von Rangkonflikten; Vermeesch, Reflections.

3 Meaning the land owned by territorial princes and all corresponding rights.

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law, it must be noted that they barely owned half of the territory.[4] Only in territories that were the domain of a territorial prince did the latter and their local representatives have direct criminal jurisdiction, and, therefore, the first and sole authority to grant pardons.[5] However, when petitioning for a pardon, all subjects, including those answerable to the jurisdiction of towns or nobilities, could also appeal to the territorial prince as a second pardon authority alongside local judicial authorities.[6]

The examination of territorial-princely pardons in Electoral Saxony was heavily based on the volumes of '*Justiz=Sachen, darunter Lehens vnd Policeysachen auch gesuchte Privilegien befindlich*', which are located in the *Geheimer Rat* (privy council) collection at the Central Saxon State Archive in Dresden but are assigned to the territorial government. Bound annual volumes exist for the years from 1593 onwards. They contain a collection of judicial material prepared by the territorial government for presentation to the territorial prince, with whom the final decision lay. Due to its relative completeness, this collection is the only one that allows for a systematic examination of individual petition proceedings at the territorial level. However, it remains unclear at what point individual files had been gathered into annual collections. Therefore, we cannot rule out the prior existence of further files which had not been included in the bound collection. All volumes are in chronological order.

The examined material from the *Justiz=Bände* can be divided into cases of ongoing criminal proceedings, including proceedings yet to be launched, and files from petition proceedings or individual petitions.[7] The components of case files broadly follow three schematic phases: following the case announcement – letters were usually addressed to the territorial prince (phase 1) – the circumstances were examined and assessed by the government, which then sent a statement to the prince. In some cases, the government obtained further information (phase 2). The final decision by the territorial prince concluded the case and prompted the issuing

4 On the relation between territorial rule and intermediary powers Reinhard, Geschichte, pp. 235–247; Willoweit, Struktur und Funktion; Brakensiek, Lokale Amtsträger. For Electoral Saxony Blaschke, Raumordnung.

5 So far, there is no evidence for the existence of petitions to the emperor. This is hardly surprising since the *privilegium de non appelando* also forbade applications to imperial courts in matters of criminal law.

6 See below for more on this.

7 The filed petition proceedings usually consisted of petitions, the government report and, in most cases, a statement from the relevant court. In cases of granted or rejected pardons, the files also contained princely orders. Furthermore, the files often comprised a statement on the delinquent's financial situation, especially if the pardon was related to a monetary penalty or if such a pardon had been suggested by the territorial government. Some of the files also included excerpts from trial records and final judgements.

of instructions to the local courts or concerned parties (phase 3). It is important to note that not all files consistently display all three phases. The termination of a proceeding must be considered typic, a fact that became relevant for examining the petitions. The varying comprehensiveness of the files included in the collection must not be dismissed as a shortcoming. Crucial elements of the decision practice are only revealed through proceedings that were terminated or never initiated in the first place, which offer deeper insights into the different forms of territorial pardon practice. Individual proceedings were usually transmitted as separate files, which facilitated a systematic inspection and examination.

To create a meaningful sample eleven years were selected for the examination.[8] The first complete year of this file type, 1593, was included, and from 1597 onwards, the material was processed in ten-year increments. Additionally, 1616, 1618, 1632, and 1645 were included to minimise potential outliers and include special phases in the territory's development.[9]

Overall, 750 case files have been recorded for the territorial level. The following information was retrieved to include in the sample: authorised court, gender and, if applicable, the social status of the accused, offence(s), sentence(s) awarded, evidence of pre-trial detention, successful escape of the delinquent and use of torture. In cases where a pardon was requested, the number and authors of petitions and the extent of the pardon granted were also recorded. If several delinquents were involved in a case, they were recorded separately. The quantitative data therefore always refers to the total number of delinquents and not to the number of cases recorded.

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8 Sächsisches Hauptstaatsarchiv Dresden (in the following SächsHStADresden), 10024, Geheimer Rat (Geheimes Archiv), Loc. 8836/1: Justiz=Sachen Anno 1593; Loc. 8836/2: Justiz=Sachen Anno 1593; Loc. 8836/3: Justiz=Sachen Anno 1593; Loc. 8837/1: Justiz=Sachen Anno 1593; Loc. 8840/1: Justiz=Sachen Anno 1597; Loc. 8840/2: Justiz=Sachen Anno 1597; Loc. 8840/3: Justiz=Sachen Anno 1597; Loc. 8847/2: Justiz=Sachen Anno 1607; Loc. 8852/1: Justiz=Sachen Anno 1616; Loc. 8852/2: Justiz=Sachen Anno 1616; Loc. 8852/3: Justiz=Sachen Anno 1616; Loc. 8853/1: Justiz=Sachen Anno 1617; Loc. 8853/2: Justiz=Sachen Anno 1617; Loc. 8853/3: Justiz=Sachen Anno 1618; Loc. 8854/1: Justiz=Sachen Anno 1618; Loc. 8860/1 :Justiz=Sachen Anno 1627; Loc. 8860/2: Justiz=Sachen Anno 1627; Loc. 8862/2: Justiz=Sachen Anno 1632; Loc. 8863/2: Justiz=Sachen Anno 1637; Loc. 8867/3: Justiz=Sachen Anno 1645; Loc. 8868/1: Justiz=Sachen Anno 1645; Loc. 8869/1: Justiz=Sachen Anno 1647.

9 The year 1592, when the *Justiz=Sachen* volumes began, was not included since its files commence in the middle of the year. In addition to 1617, the years 1616 and 1618 have been looked at. These years do not only represent a phase of great political stability in Electoral Saxony but also the most intensive involvement of the territorial level in matters of criminal law. Furthermore, 1632 was included as the year in which Electoral Saxony, as part of the Holy Roman Empire, began to feel the immediate effects of the Thirty Years' War. Finally, 1647 and 1645 were both included so that we might get a better understanding of the functioning of judicial processes at the final stages of the Thirty Years' War.

Concerning the sample collected, it should be noted that not all information was always available. This was partly due to the varying scope of the individual files. In some instances, this was somewhat compensated for by the 'recapitulatory' style of the sources; at the beginning of most letters, in addition to the central information about the offence and perpetrator, it was often stated whether a verdict had already been made or how far the proceedings had progressed. Furthermore, these reports could include information on pre-trial detentions, escapes or the use of torture. The fact that the territorial princes and their governments did not act as sentencing authorities lends a special character to the criminal cases investigated.[10] In every proceeding, one of the parties to the conflict, their families or the court turned to the territorial prince.[11] Hence, those cases are very specific and cannot be equated with the total number of criminal proceedings conducted in the country or even in the courts of the domain.[12]

In addition to the material from the *Geheimes Archiv*, a close examination of a local court was carried out. Here, the city of Freiberg was chosen as an example because it offered sources that were exceptionally well preserved for the area under study. Central to the investigation were three surviving so-called *Urfriede- und Zetergeschreibücher* that contained very dense material for the period from 1548 to 1619 and then less compact material until 1636. In addition, a memorial book was used, which also recorded individual criminal cases. In total, cases against 484 delinquents were recorded. Furthermore, the so-called *Gelübdebuch,* which recorded

10 During the examined period, verdicts in criminal cases in Electoral Saxony were reached exclusively by lay judges of the two *Schöffenstühle* in Leipzig and Wittenberg and – albeit less frequently – by the law faculties there. See also Ludwig, Herz, pp. 46f.

11 In this context, it should be noted that the territorial prince's right to confirm judgments in criminal cases, at least when the proceedings were pending in the princely offices, was not part of the survey. Verdict confirmations were filed separately, as evidenced by a single surviving copy volume containing criminal cases for the Thuringian district (i. e. an administrative sub-unit within Electoral Saxony). SächsHStADresden, 10079, Landesregierung, Loc. 30500, Copial in Criminalis 1589–1603. With the exception of this one volume, all other copies of the series, which once comprised hundreds of volumes, were sold in the 19th century.

12 The total number of proceedings cannot be precisely stated because the verdicts of the Leipzig lay jury, which was by far the most frequently consulted in criminal cases, have only been preserved in fragments. SächsHStADresden, 10085, Schöppenstuhl Leipzig Spruchkonzeptband no. 3–9. Ultimately, we can only estimate the total number of high justice cases heard. See the debate over the number of verdicts that passed through Carpzov's hands, newly discussed in Jerouschek et al., Carpzov. Based on the Wittenberg lay jury, Lück concludes that there were around 2,300 verdicts per year for the Leipzig lay jury, of which – also based on the results of the Wittenberg jury – around a quarter could be attributed to criminal cases. This means that for the lay judges in Leipzig and Wittenberg (for which Lück refers to a total of 1,150 verdicts per year) one could expect almost 900 interim and final judgments in criminal cases every year, although their regional origin remains open. Lück, Carpzov, p. 113.

the agreements reached in cases of verbal and physical injuries, was evaluated for three reference years.[13] The number of criminal cases filed overall, combined with pardon requests, which were mostly processed in parallel, made further careful quantitative recording and processing possible.[14] Concerning the meaningfulness of the following evaluations, it should be noted that simple quantitative studies can only point out tendencies. Significant gaps in the criminal history sources for Electoral Saxony prevent further statistical approaches. To date, existing studies on the population development and distribution of Electoral Saxony remain underdeveloped. It must therefore be taken into account that no acceptable comparative values are available for the quantitative analyses carried out. However, the examined source material allows for cautious conclusions on individual developments that are limited to the involvement of the territorial level in matters of criminal law and pardons and the relevant decision-making proceedings.

During the examined years, on average approximately a third of the events collected in the *Justiz=Sachen* related to criminal law matters. If compared to the feudal matters, inheritance matters and policing (*policey*) matters recorded in the same volumes, a decline can be seen for all areas from the early 1620s onwards, although this was somewhat less noticeable for criminal cases. This declining trend partly corresponded to the course of the war and was particularly noticeable in the study years 1632 and 1637. It was not until the 1640s that a slight increase was recorded again.

Table 1 Number and types of inquiries received at the territorial level for selected years

Year	Total Inquiries	Inquiries Relating to Criminal Law Matters	Criminal Law Matters Incl. Petition	Criminal Law Matters without Petition
1593	444	72 (16 %)	47	25
1597	421	79 (19 %)	58	21
1607	221	85 (39 %)	65	20
1616	391	104 (27 %)	58	46
1617	201	111 (55 %)	63	48
1618	214	74 (35 %)	42	32

13 SächsHStADresden, 10686, Stadtgericht Freiberg, no. 385, 419–421, 426.

14 The information collected was the same as in the statistical data collection for the territorial level.

Year	Total Inquiries	Inquiries Relating to Criminal Law Matters	Criminal Law Matters Incl. Petition	Criminal Law Matters without Petition
1627	208	67 (31 %)	40	27
1632	65	40 (62 %)	16	24
1637	61	36 (59 %)	23	13
1645	134	40 (30 %)	25	15
1647	138	42 (30 %)	22	20
Total	2.498	750 (30 %)	459	291

Comparing the material for cases with and without petitions in central areas of crime, we can see that the distribution was roughly similar. However, slight increases can be seen in those offences for which pardons were more typical (homicides, adultery) and a slight decrease in the percentage of offences for which pardons were rarely granted (notably, serious property crimes but also violent offences due to the comparatively mild punishments).

Table 2 Offence distribution for all cases and pardon matters

Offence	Total Cases (Percentage of Sample)	Cases with Petitions (Percentage of Sample)
Homicides	199 (27 %)	142 (31 %)
Assault	113 (15 %)	41 (9 %)
Verbal Injuries	67 (9 %)	46 (10 %)
Property Crimes	94 (13 %)	28 (6 %)
Adultery	69 (9 %)	53 (12 %)
Fornication	84 (11 %)	39 (9 %)
Others/NOC	124 (17 %)	110 (24 %)
Total	750	459

It can be concluded that in approximately half of the cases in which a pardon was requested from the territorial prince, a pardon was also granted. Cases where no pardon was granted can be divided into two groups: the first comprises explicit rejections, usually resulting from individual case reviews. However, quite often no in-depth examination was carried out and a decision was simply not made. In these cases, belonging to the second group, no pardon was granted either.[15] At the

15 It could be argued that in some cases, decisions simply were not filed. Of course, this cannot be ruled out. Nevertheless, a lack of reaction to petitions can be observed as a typical action pattern. In the case of the Curia, there was even an explicit reference to the fact that it had been decided that

same time, it can be seen that the rate of pardons varied significantly depending on the crime.

Table 3 Success rates of petitions for pardons for selected offences

Offence	Cases With Petitions	Thereof Pardoned	Thereof Rejected	Thereof without Outcome	Pardoned without Petition
Homicides	142	61 (43 %)	26 (18 %)	55 (39 %)	2 (1,4 %)
Assault	41	17 (41 %)	9 (22 %)	15 (37 %)	5 (12 %)
Verbal Injuries	46	7 (15 %)	10 (22 %)	29 (63 %)	1 (2 %)
Property Crimes	27	11 (39 %)	8 (29 %)	8 (29 %)	5 (18 %)
Adultery	53	28 (53 %)	9 (17 %)	16 (30 %)	2 (4 %)
Fornication	39	26 (67 %)	5 (13 %)	8 (21 %)	9 (23 %)
Others/NOC	110				
Total	459	150 (33 %)	67 (15 %)	131 (29 %)	24

Differences in the pardon rate can also be explained as essentially related to specific offences. Typically, in fornication cases, pardons resulted in the mitigation of formally relatively harsh sentences. This is confirmed by the nine cases in which a pardon was granted without a petition. The main argument here was the equal treatment of delinquents. In the case of adultery, the possibility of a pardon was also legally enshrined.[16] The noticeably low rate of pardons in the case of verbal injuries may be due to the comparatively low penalties for such offenses (see Table 4 below).

2. Territorial-Princely Pardon as an Administrative Act

Based on the material collected, the starting point for the following discussion is the observation that since the late 16th century, territorial pardon in Electoral Saxony can no longer (and no longer primarily) be understood as a personalised and personally practised right of rule (*Herrschaftsrecht*); instead, territorial pardon increasingly became an administrative act.

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no decision should be made and, therefore, no response was given. On this Emich, Uniformity, p. 42.

16 In Electoral Saxony's Constitutions of 1572, it was stipulated that in the case of simple adultery (one married and one unmarried party), the punishment of the sword was provided for, but this was to be reduced to eternal expulsion from the country if the cheated spouse had forgiven the delinquent. Codex Augusteus, Constitutiones Part IV, col. 122 (Art. XIX).

What exactly does pardon becoming an administrative act mean? Fundamentally, it means that the dual communication between ruler and petitioner changed into a three-way constellation: formally, the petitioner continued to address the ruler, who remained the symbolic head of the pardon system. Yet, the petitions were processed and prepared for decision-making by territorial administrative bodies on two levels: on the one hand, the territorial government was involved at the central level as the highest judicial authority, which, upon receipt of the petition, opened a petition proceeding in the sense of an examination proceeding.[17] In this examination proceeding, which represents the second level of administration, reports were obtained from the local courts, in which local officials, and sometimes priests, assessed the delinquents' moral conduct and financial circumstances. Incidentally, both the territorial prince's servants in the so-called *Erbämter* (inherited offices) of the domanial property and the courts of the intermediate powers, i. e. noble and municipal courts or local judicial authorities, were involved in such examination proceedings. Based on these reports and, of course, the criminal files, the territorial government then prepared a fully formed proposal for a decision on the pardon request, which, in principle, only had to be signed by the territorial prince. As a rule, the prince did exactly this: he confirmed the territorial government's proposal.

The transformation of pardon from a personally practised right of rule to an administrative act decoupled the petition process from the ruler. Instead, the process was turned into a proceeding and linked to the principle of writing, which enabled its implementation from anywhere in the country. The act of (personally) petitioning for a pardon and the granting thereof, which was once experienced sporadically, for example when a ruler entered a city, became a communication tool that was formally open to anyone and usable at any time.[18]

The establishment of these petition proceedings had a variety of reasons. The fact that the mass of incoming petitions could hardly be handled by one individual and, therefore, required procedural processing, was certainly of importance. A glimpse at petitions beyond the chosen research focus of criminal cases, reveals an even greater necessity for efficiency. Requests for privileges, tax discounts or letters

17 This procedural approach was not unique to the Holy Roman Empire, nor was it limited to it. In late medieval and early modern England, for example, there was a similar process for making pardons an administrative practice. See Lacey, The Royal Pardon, pp. 20–22; Kesselring, Mercy and Authority, p. 95. I thank Quentin Verreycken for this reference.

18 Writing has been dominant in the context of petitions since the second half of the 16th century. This is conceptually reflected in Holenstein's approach to empowering interactions, which presupposes petitions as a common communication channel between the subjects and the administration or territorial ruler. Holenstein, Empowering Interactions. However, in addition to submissions via messengers or third parties, traditional practices of personal handover to the ruler persisted, albeit for a limited time. Cf. e. g. Blickle, Laufen gen Hof.

of safe conduct far exceeded the number of petitions in the rather marginal area of criminal law.[19]

An essential prerequisite for the development and establishment of petition proceedings was, however, their specific interlinking with criminal court practice. Here, it needs to be emphasised that Electoral Saxony has had a largely functional local administrative and judicial structure since at least the last third of the 16th century. The territorial prince's judicial rights were recorded in so-called *Amtserbbüchern* (official inheritance books), and the offices, i. e. the administrative units into which the prince's domain was divided, were staffed with at least one *Schösser* (local official).[20] Those offices provided a local judicial administration which existed parallel to the intermediate powers, and which was administratively linked to the central level.

In Electoral Saxony, judgments in high justice cases were generally not prepared by the local courts, but rather by the two Electoral Saxon lay judges (*Schöffenstühle*) in Leipzig and Wittenberg and, albeit to a limited extent, by the law faculties.[21] Petitions to the territorial prince, however, were processed by the territorial government sitting at the Dresden court. In both cases, the final decisions were legitimised by confirmation from the territorial prince, although in the case of criminal judgments, this only applied to proceedings in the offices, where the prince was the local judicial authority. In contrast to noble or urban courts, which had their own authorities, proceedings in the offices required confirmation from the territorial prince to become legally binding. This resulted in a general separation of sentencing and pardon practices for the courts in the offices. In the intermediate courts, this separation only applied to the special form of petitions to the territorial prince. Consequently, in petition proceedings on a territorial level, applications for pardons were generally subordinated to regular proceedings in criminal matters because they were processed by different authorities. This stands in stark contrast to evidence from the cities, where petitions were also submitted during criminal proceedings. These procedural petitions aimed, for example, at an out-of-court settlement of the conflict, the termination of the proceedings, and the prevention of pre-trial detention and torture. On the one hand, arguments were introduced that were intended to serve as evidence in the proceedings (e. g. evidence of reduced culpability, the role of third parties in the crime, and in some cases, complete denial of the crime or any involvement in it). On the other hand, arguments were made

19 On this Neuhaus, Reichstag; id., Supplikationen, esp. pp. 122–124. Cf. Table 1 above, which shows that criminal matters only made up a small part of the examined files. In addition, there were parallel volumes for Electoral Saxony with specific requests for tax discounts, pardons with gifts of money and goods, etc., which also had to be processed.

20 Ludwig, Herz, pp. 49–51.

21 Ibid., pp. 46f.

for mitigation of punishment with a view to everyday aspects (e. g. family situation, loyal service, good moral conduct).[22] The shift to pardoning after a verdict was pronounced further presents a clear difference to the pardon practice of medieval rulers.[23] However, it should also be noted that Natalie Zemon Davis, for example, has shown for early modern France that the majority of the petitions she examined were submitted immediately after the crime, during the trial or following an escape. At this stage, the circumstances of the crime had not yet been determined, which gave the petitions the character of written pleas.[24] Further discussion is needed to establish to which extent the decoupling of criminal and pardon proceedings represented an overarching, albeit staggered, development in all European territories or whether country-specific differences remained.

In the case of Electoral Saxony, criminal and pardon proceedings were ultimately characterised by a dominance of written communication. Together with a pardon practice that tends to follow criminal proceedings, this had a decisive impact on the argumentation strategies in the petitions, the pardon sentences granted and the composition of the group of petitioners.

A look at the argumentation strategies in pardon requests indicates that admission of guilt and, therefore, a formal acceptance of the received sentence as a just punishment became necessary components of a successful pardon request. Hence, Katharina, wife of the Waldkirchen priest Jacob Kleberg, who had been sentenced to death for adultery, declared that it was the duty of the authorities to punish all evil (*„alles vbel zu straffen“*). Yet, she also asked that her poor husband be forgiven for his misconduct and given life as a special act of pardon. (*„dem armen man, aus sonderlicher gnade sein mißhandlung zu vorgebenn, vnd ihme das leben zu schencken“*).[25] This was expressed even more clearly by the adulterer Jacob Weiditz, who stated that he had committed a grave offence against God and the holy Ten Commandments and that he deserved not only God's wrath and disgrace but also worldly punishment. *(„wieder Gott vnd die heiligen zehen gebot gröblich gesundiget, vnd nicht allein in gottes gerechten zorn vnd vngnade sondern auch darneben in zeittliche straffe fallen müsste“*).[26]

22 On this urban logic see e. g. Schwerhoff, Köln im Kreuzverhör, pp. 166–173; id., Das Kölner Supplikenwesen; Schuster, Stadt, p. 288; Arlinghaus, Gnade.

23 Here, pardons at royal entries and amnesties at coronations, weddings, etc. were even more important. This has been shown for late medieval Konstanz in Schuster, Stadt, pp. 278–285.

24 Zemon Davis, Kopf in der Schlinge, p. 21. In the case of France, it cannot be assumed that petitions generally contained fictional content in the sense of mere fabrications that did not contain relevant elements of truth. The timing made the French petitions look more like defence letters for the defendant. On this see also Blastenbrei, Funktion, pp. 71f.

25 SächsHStADresden, 10024, Geheimer Rat (Geheimes Archiv), Loc. 9703/26, fol. 22b.

26 SächsHStADresden 10024, Geheimer Rat (Geheimes Archiv), Loc. 8862/2, Nr. 35, fol. 204a.

Consequently, the petitioners did not protest the offenders' innocence but instead used other reasons to justify their request for a pardon or mitigation. These included the previously impeccable character of an offender, the devastating consequences for an innocent family,[27] or the recent suffering of a pre-trial detention or even torture. Another interesting observation is that in Protestant Electoral Saxony, prayers for the prince were also offered in return for a pardon.[28] In addition, some promised loyal service, offered to pay a fine instead, or submitted to service on the military border with the Ottoman Empire in Hungary.[29] Those options were indeed listed in the catalogue of granted pardons (see Table 4).

This is consistent with the fact that, if successful, the sentence was reduced, but never (and this needs to be emphasised: not in a single case) completely remitted. Moreover, a comparison with the other criminal and pardon matters recorded in the volumes of *Justiz=Sachen*, shows that the sentences issued in the pardon remained within the usual range of punishments for the various offences. However, there was a definitive shift away from capital punishment towards other, milder forms of punishment, particularly fines. It is also interesting that the service at a border house in Hungary[30] – as a mitigation of the death penalty – can only be understood as a pardon.[31]

27 With this in mind, people often pointed out the large number of small children who still had to be looked after, as well as sick and old parents and the general fact that punishment would send an entire family into poverty.

28 For an informative perspective of the Catholic side Blickle, Interzession.

29 Discussed in detail in Ludwig, Herz, pp. 173–218.

30 The border house in Hungary was located on the fortress belt that had been constructed on the Ottoman-Hungarian border in the middle of the 16th century. The personnel requirements of these fortresses were considerable. Jan Paul Niederkorn points out that in 1577, a (target) crew of 16,800 men was planned for the 48 larger and smaller fortresses. Niederkorn, Türkenkrieg, p. 63.

31 On this Ludwig, Herz, pp. 213–216. In principle, service at a border house on the Hungarian military border was not included in the civilian catalogue of punishments, but it did occur occasionally in the military context. For instance, Paul Rauchfueß was sentenced to serve in a Hungarian border house for several years because he had forgotten part of the watchword. Paul Wagner was supposed to be sent to a border house because he left his senior guards at the gate, went out into the field and, there, deliberately injured a woman with a knife. Jacob Goldberg was ultimately sentenced to death for sleeping through the watch. SächsHStADresden, 10024, Geheimer Rat (Geheimes Archiv), Loc. 9691/4, fol. 29a, 39b, 97a.

Table 4 Reduced sentences following a pardon in criminal proceedings for selected crimes[32]

Offence	Death Penalty	Expulsion	Public Shaming	Imprisonment	Fines	Border House in Hungary	Fortress Construction	Other Penalties	Total	Thereof without Petition
Homicides (Pardons)	2	21		2	31	5	2		63	2
Homicides (Sentences)	*21*	*61*		*1*	*13*			*7*	*103*	
Assault (Pardons)		4		5	8	1		4	22	5
Assault (Sentences)		*15*	*2*	*9*	*22*		*2*	*6*	*56*	
Injuries (Pardons)		1		1	5	1			8	1
Injuries (Sentences)		*10*	*5*	*2*	*11*				*28*	*7*
Property Crimes (Pardons)	2	8		1			3	2	16	5
Property Crimes (Sentences)	*32*	*14*					*2*	*3*	*51*	
Adultery (Pardons)		13		1	14		2		30	2
Adultery (Sentences)	*17*	*25*	*2*						*44*	
Fornication (Pardons)		10	2	4	17		2		35	9
Fornication (Sentences)	*3*	*41*	*1*	*2*				*2*	*49*	
Total (Pardons)	4	57	2	14	75	7	9	6	174	24
Total (Sentences)	*73*	*166*	*10*	*14*	*46*	*0*	*4*	*18*	*331*	

Regarding petitioners on the territorial level, another observation stands out: a noticeable number of petitioners (28 %) petitioned in their own case. Especially in comparison with Freiburg and, therefore, urban pardon practices occurring in parallel, it becomes clear that, in petition matters, the family and, above all, the wider community had clearly lost their importance. The latter included friendship petitions and requests from pious people, i. e. usually members of the delinquent's church community, guild members or neighbourhood groups.

32 It should be noted that the pardon sentences also included cases in which a pardon was granted without prior request. The following crime groups are not listed in the table due to the comparatively small number of cases in the sample: counterfeiting, arson, blasphemy, rape, pandering, abuse of office. There were also cases in which the offence remains unclear.

Table 5 Comparison of author groups of submitted petitions[34]

Authors/Sender of Petition	Territorial Level	Freiberg
Delinquent	28 %	9 %
Spouse	13 %	18 %
Parents	10 %	14 %
Other Family Members	4 %	7,5 %
Friendship	7 %	18 %
Intercession	8 %	7,5 %
Pious People	0 %	26 %
Disinterested Third Party	11 %	0 %
Others[33]	19 %	0 %

This probably has a lot to do with the fact that in the case of territorial pardons, the delinquents had already been legally convicted and, consequently, a process of social exclusion had already begun. At the city level, however, such requests from friends or pious people were usually received by the city council while the criminal proceedings were ongoing, so one could still hope for an acquittal. In the Freiberg case, the closer connection between criminal proceedings and pardon requests is also reflected in the distribution of punishment and pardon sentences.
1556 1566 1576 1586 1596 1616 1636

Table 6 Proportion of criminal and pardon sentences in Freiberg[35]

Sentences	1547–	1557–	1567–	1577–	1587–	1597–	1617–	∑
Pardons without Prior Sentence	28	24	43	23	10	10	6	144
Pardons with Prior Sentence	0	7	28	19	9	8	2	73
Total of Pardons	28	31	71	42	19	18	8	217
Sentences without Pardons	17	36	29	45	48	27	13	215
Criminal Proceedings without Outcome	13	13	15	5	1	5	0	52
Total of Criminal Proceedings	58	80	115	92	68	50	21	484

34 This comparison is based on 263 petitions in Freiberg and 750 petitions on the territorial level.

33 This category includes petitions against the delinquent (90 = 12%), from judges (16), marriage candidates (8) and two petitions from the victims made for the perpetrator.

35 Due to the low case numbers, the latter years were combined into brackets of 20 years.

Based on these observations, three points can be made about territorial pardon practices.

1. The fluid transitions and fusions of judgment and pardon that were found in previous research on urban or territorial pardons of earlier centuries were no longer to be found in Electoral Saxon pardons from the late 16th century onwards. This was due to the clear institutional separation between criminal proceedings and the practice of pardoning, meaning that the judicial proceeding was carried out in the courts of the offices, and this was also where the verdict reached by the lay judges (or occasionally but rarely by the law faculties) was published. However, a pardon could not be granted by the local court and had to come from the territorial prince. Hence, there was a decoupling of the criminal proceeding, which ended with the passing of a sentence, and the granting of a pardon. A pardon from the territorial prince usually only took place after the conclusion of all criminal proceedings. It was only granted based on the punishment imposed in the verdict and the circumstances of the crime and perpetrator as laid out by the courts. Interventions in ongoing proceedings such as their suspension, pardons before the verdict or the avoidance of criminal proceedings that may include the use of torture were an exception.[36] This essentially also applied to petitions for pardons that were submitted at the territorial level by or for delinquents accused in municipal and noble courts. As the Freiberg example impressively shows, it can be assumed that the practices of punishment and pardon at the local level were much more linked and that they preceded pardon on a territorial level.

2. In addition, the Dresden material repeatedly shows that the introduction and use of petition proceedings were justified by the ideal of uniform decision-making and the integration of the exception into the organisation of the rule – in this case, the punishment. In addition to the uniform practice of criminal punishment, the uniform practice of pardoning had become an ideal in the late 16th century. This becomes strikingly tangible in cases where a pardon was granted without prior requests. In the long term, we can also observe a massive strengthening of procedural pardons compared to individual decisions by a ruler. This means that a relatively standardised catalogue of arguments was always used to justify the

36 For example, the first petition from Peter Töpfer of Naumburg, sued by his friends for the killing of Caspar Fleming, arrived mid-proceedings. The requested suspension or at least shortening of the proceeding as not granted. However, all the way through, the proceeding remained closely tied to the territorial prince, who was informed of all interim results in the form of judgments and reports from the Naumburg council. Yet, ultimately, Töpfer did not manage to have his request for a pardon processed until the end of the trial. Since he was the only witness to his stated self-defence, the hoped-for success did not materialise. SächsHStADresden, 10024, Geheimer Rat (Geheimes Archiv), Loc. 8854/1, no. 127.

reduced sentence both in the territorial governments' deliberations and the pardon itself.

3. Finally, it should be noted that the establishment of petition proceedings as an administrative procedure led to a strengthening of central and decentralised administrative structures that gave territorial rule a spatial component. The establishment of petition proceedings in Electoral Saxon pardon practice is not an exception, but rather typical. The now wide-ranging research on territorial pardons in the Holy Roman Empire clearly shows that, sooner or later, comparable petition proceedings were introduced in all territories. Even for Prussia, with its popular image of Frederick II as someone who personally added caustic comments in the margins of petitions, it has been established that although such occasional annotations by the ruler did occur, they did not replace petition proceedings on a larger scale.[37]

This well-administered petition practice opened up completely new possibilities. A strengthened administration could be used strategically, and, to some extent, its establishment developed its own dynamic. A particularly remarkable example of this dynamic can be found in the petitions of disinterested third parties, which, as a phenomenon, only became possible within the framework of a petition practice supported by administrative structures.

3. Petitions from Disinterested Third Parties as the Product of Administrative Proceedings in Territorial-princely Pardons

The specific meaning of petitions from disinterested third parties is best illustrated by a brief but rather typical example: it takes us to the year 1617, specifically the 5th of February 1617, when a petition for the murderer Tobias Rauchfuß reached the Dresden chancellery. In it, the petitioner Andreas Brenigk did not, as usual, report in detail about the crime and the culprit. Instead, the focus of the extensive petition was the petitioner Andreas Brenigk himself. He was a forester in Hirschbach and described himself as a poor, old and long-standing servant of the House of Saxony. He referred to the trying times and the general hardship as well as the damage to his right eye and the resulting high medical costs. Having described his position and his current living conditions in detail, Brenigk finally asked for Rauchfuß to be pardoned to pay a fine. However, the pardon was not the main concern of his

37 On this aspect of pardon in a territorial context see e. g. Rudolph, "Sich der höchsten Gnade würdig zu machen"; Härter, Das Aushandeln von Sanktionen und Normen; Blickle, Laufen gen Hof; id., Die Supplikantin und der Landesherr; Nubola, Die "via supplicationis", esp, pp. 75–78.

petition, as, in the same breath, he asked the territorial prince to pass on the fine to him, Andreas Brenigk.[38]

Petitions like these beg for questions. At first glance, the request from an uninvolved person to the territorial prince to pardon a delinquent hardly or completely unknown to him seems strange, and it asks for more than an explanation. Not only did the petitioner ask for the alleged murderer's pardon, but he also did it to receive the money from the fine himself.[39] Evidently, the interplay between a ruler with the power to pardon, on the one hand, and a delinquent worthy of such a pardon and his community, on the other hand, did not form the starting point of the pardon. The delinquent was reduced to his economic circumstances.

About one in ten petitions for criminals' pardons that reached the Electoral Saxon princes in the 16th and 17th centuries were a means to an end for petitioners only interested in fines.[40] Therefore, petitions from disinterested third parties must be considered an integral part of the petition and pardon system of the time.[41]

A look at the commonalities within this specific group of petitioners suggests that their relationship with the prince was central to the communication context described here. Their relationship was often one of more or less direct service. In some cases, however, petitioners simply presented themselves as loyal subjects turning to their ruler. In each case, reference was made to a relationship with the prince that existed independently of the delinquent. It also becomes clear that the majority of the petitioners were 'ordinary people'. Among those petitioning were foresters, lackeys and *Expectanten*, i. e. candidates for the position of clerk or similar offices, as well as bailiffs, journeymen farriers, grooms, trumpeters, drummers and musicians.[42] Even "*reisige Knechte*", simple soldiers,[43] acted as

38 SächsHStADresden, 10024, Geheimer Rat (Geheimes Archiv), Loc. 8853/1, no. 23.

39 The sources speak of pardons and the act of pardoning ("begnaden", or "Begnadung"). In contrast to the broader term "Begnadigung", they referred to the act of granting financial support. It is according to this specific meaning that "pardon" was used in the present text. Favouring ("Begünstigung") was also used here as a synonym.

40 Of a total of 750 petitions at the territorial level issued in the years 1593, 1597, 1607, 1616, 1617, 1618, 1627, 1632, 1637, 1646 and 1647, 78 came from this group of petitioners. See above Table 5.

41 The number of submitted petitions reached a peak in 1616. Given the overall decline in the number of petitions in the following years, the decline in petitions from disinterested third parties can be seen as part of a general trend. After three such petitions were received in 1593, not even one was recorded for 1597. In 1607, there were nine, in 1616, eighteen, in 1617, only seven and in 1618, another eleven. In 1627 and 1632, ten such petitions reached the prince, in 1637, only one, in 1645, five and finally four in 1647.

42 E. g. SächsHStADresden, 10024, Geheimer Rat (Geheimes Archiv), Loc. 8852/3, no. 293, here fol. 73a; Loc. 8852/3, no. 288, hier fol. 41a–42a; Loc. 8853/3, no. 1, here fol. 11a,b.

43 *Reisiger Knecht* referred to mercenaries or *Landsknechte*. SächsHStADresden, 10024, Geheimer Rat (Geheimes Archiv), Loc. 8853/3, no. 83, here fol. 345a,b; ibid., no. 101, here fol. 419a,b.

petitioners. Very rarely did petitions from disinterested third parties come from high-ranking officials.[44]

On the whole, it should be noted that the petitioners generally neither knew those involved in the proceedings nor were they directly involved themselves. This raises the question of how they even found out about suitable criminal cases that allowed them to request a fine as a pardon sentence with some prospect of success.

It seems that some petitioners received information from the delinquent's social environment or were even directly asked by them to petition. In 1617, the petition of three court trumpeters reached the prince-elector. They had previously been informed by a certain Martha Große of Dresden that she would be willing to pay a fine for her fugitive husband, who was being tried eight times for aggravated robbery. Apparently, Martha Großen specifically addressed the three trumpeters. Perhaps she knew them from the city, but, in any case, it was clear to her that their direct service to the territorial prince could only be favourable to her intentions. The three supplicants then took advantage of their position and asked for Großer to be pardoned for their own financial benefits.[45]

This targeted search for suitable petitioners, or the use of existing contacts was by no means an isolated case but still not the rule.[46] It was much more common that the petitioners had received information from people directly entrusted with the proceedings. We can think of the *Schösser*, the responsible court administrators in the territorial offices, who dealt with criminal and petition proceedings as they happened. The scribe David Müller, for example, was also the son of the *Schösser*

44 This was the case, for example, with a joint request from the secretary of the Leipzig district and a privy and chancery clerk. SächsHStADresden, 10024, Geheimer Rat (Geheimes Archiv), Loc. 8862/2, no. 29.

45 SächsHStADresden, 10024, Geheimer Rat (Geheimes Archiv), Loc. 8853/1, no. 28, esp. no. 166a,b, 171a.

46 Very similar to the three trumpeters in the case just described, three chancery scribes also stated in their petition that they had been assured by a woman that she was prepared to pay a fine of 300 guilders if her husband was pardoned. SächsHStADresden, 10024, Geheimer Rat (Geheimes Archiv), Loc. 8852/3, no. 293. In the petition case of the forester Andreas Brenigk, discussed above, the information appears to have come from the perpetrator's family. SächsHStADresden, 10024, Geheimer Rat (Geheimes Archiv), Loc. 8853/1, no. 23. Finally, another petitioner reported that the family of the fugitive murderer Paul Munchen had explained to him that Munchen wanted to sell his property and pay a fine of 300 guilders if pardoned from the death penalty. SächsHStADresden, 10024, Geheimer Rat (Geheimes Archiv), Loc. 8853/1, no. 37. In 1611, Munich had killed Reichenbrandt, the feudal judge, and then fled. What is noteworthy in this case is that no separate petitions were received from Munchen or his family, and so a pardon was only requested through the support of a disinterested third party.

responsible for the process and was therefore well informed about the status of the proceedings.[47]

Other petitioners, however, used their connections at court. They too were usually surprisingly well-informed. For example, two *Expectanten* from the government chancellery enclosed with their petition a copy of the verdict for the manslaughterer Lorenz Kieselingen, in which they asked for Kieselingen to be pardoned to pay a fine.[48] The scribe Paulus Berger, who worked at the court and asked for a nobleman's fine, was equally well-informed about internal processes between the government and the prince-elector. He submitted his first petition to the territorial government dated 10 December 1616 immediately after the arrival of the verdict. In his second petition of 11 January 1617, he even mentioned an electoral order that had recently been sent to the territorial government, in which the latter had been instructed to determine the final amount of the fine granted as a pardon. In the petition, Paulus Berger also explained that the government had, in fact, already made a proposal, and he asked for the fine specified in it, which he was also awarded. When the delinquent still had not paid after six months and had even asked for a reduction in the fine, Berger sent a third petition, in which he emphatically complained that he had not yet received the promised money. This petition seems to have sped things up. Attached to the end of the file were two receipts from 8 September 1617 confirming the receipt of the paid fine in the *Rentkammer* (revenue chamber) and payment to Berger.[49]

In some cases, long-term cooperation between potential petitioners and the legal authorities can be observed. Werner Sontag, for example, reported in his petition that two years earlier, he had asked for a pardon for a delinquent who had been convicted of incest with his stepdaughter. However, a pardon was rejected at the time and the chamber secretary encouraged the petitioner to propose something different. Following this exchange, Sontag regularly inquired whether there was a good case until he finally heard of a suitable adultery case.[50]

If criminal trials and subsequent petition proceedings took longer, the circle of petitioners also expanded. Knowledge of the proceedings had to reach the

47 SächsHStADresden, 10024, Geheimer Rat (Geheimes Archiv), Loc. 8853/3, no. 107, here fol. 461a,b and 472a.

48 It stipulated that the delinquent should either serve a temporary expulsion from the country or be pardoned to pay an appropriate fine. Naturally, the *Expectanten* Andreas Wolserker and Johann Burckstadt hoped for the latter. SächsHStADresden, 10024, Geheimer Rat (Geheimes Archiv), Loc. 8852/2, no. 275, here fol. 487a,b.

49 SächsHStADresden, 10024, Geheimer Rat (Geheimes Archiv), Loc. 8853/1, no. 10.

50 SächsHStADresden, 10024, Geheimer Rat (Geheimes Archiv), Loc. 8852/2, no. 187, here fol. 187a.

community first for some petitioners to be able to use the case for their purposes. In those cases, the circulation of rumours was likely the main source of information.[51]

A few examples will have to suffice. At this point, the following finding needs to be emphasised: although direct contact between delinquents and petitioners can sometimes be proven, the majority of the petitioners acted independently of the delinquents and most likely without their knowledge. Information was exchanged via the judicial authorities and rumours. Therefore, most petitioners cannot be seen as belonging to the wider social circles of the delinquents. Their petitions must be viewed as an independent phenomenon. Ultimately, personal contact between petitioners and delinquents was not decisive for the outcome of the submitted petitions for pardon.[52] However, what turned out to be crucial – and this brings us full circle – was that the pardon process was an administrative act – an administrative act that also offered the opportunity to use it for one's own purposes.

The phenomenon of petitions from disinterested third parties shows that the territorial-princely administration and its staff were no longer just representatives of the territorial prince but also served the population. Not only did subjects request and receive information on appropriate cases, but a whole range of petitions also suggests coordination of various enquiries and interests within the administration. Typically, several people petitioned together in a case, and the fact that these groups could be quite heterogeneous makes pre-existing social contact rather unlikely. One example of such a joint petition was by a master, a coin scribe and two hired soldiers.[53]

The fact that the princely officials were being watched very closely strongly suggests that the local administration was already perceived as a kind of public service. In 1608, three petitioners complained that the manslaughter trial against a feudal judge at St. Micheln was being deliberately delayed to their detriment. They asked the prince-elector to order the responsible bailiff of Freiberg to continue the

51 E. g. in the case of two servants at the court winery: SächsHStADresden, 10024, Geheimer Rat (Geheimes Archiv), Loc. 8862/2, no. 30, fol. 190a,b; similarly also Loc. 8852/3, no. 282.

52 Regarding success rates, it can be observed that in half of the cases in which disinterested third parties petitioned, a pardon and a fine followed. This may seem little at first, but this impression changes when taking into account that disinterested third parties achieved a slightly higher success rate with their requests compared to the 'usual' petitioners; here only 43% were successful with their requests. Petitions were submitted by disinterested third parties for 63 delinquents. Of them, 30 were pardoned and fined. It should be noted, however, that disinterested third parties primarily chose cases that promised a successful outcome.

53 SächsHStADresden, 10024, Geheimer Rat (Geheimes Archiv), Loc. 8853/3, no. 101, here fol. 419a,b.

trial immediately so that the subsequent pardon proceeding could begin. Their request was promptly passed on to the Freiberg *Schösser*.[54]

Finally, the petitions of disinterested third parties also reveal an internal administrative dynamic that arose from the transformation of pardon into an administrative act and which, ultimately, led to the strengthening of the administrative structures themselves. This is particularly evident in the case of two *Expectanten* of the territorial government who not only asked for a criminal who was a complete stranger to them to be pardoned with a fine but were also able to enclose with their petition a letter of recommendation from the chancellor and councillors of the government.[55] This means that they were supported in their personal requests by the very authority that recommended a decision to the territorial prince and acted as scribe in the petition proceeding. In this specific case, the government members simultaneously served in three different roles: as advisors preparing decisions for the territorial prince, as supporters of the petitioners and as their superiors. Since the territorial government as an authority was undoubtedly interested in the work and loyalty of the *Expectanten* and was probably not entirely uninvolved in their financial misery, it is hardly surprising that, in this case, the government recommended a pardon to the territorial prince in favour of the two *Expectanten*, which was also granted.

Judging from the phenomenon of petitions from disinterested third parties, pardon as a ruling practice went beyond the performative representation of a merciful ruler and their worthy delinquents. If petition proceedings were initiated or influenced by petitions from disinterested third parties, there was always an obligation on the part of the ruler to offer compensation, which was superior to the criminal law case. By redistributing the fines to his servants, the territorial prince primarily fulfilled his obligations towards the petitioners. The pardon of the delinquent was only one aspect among a comprehensive set of princely duties and rights. We can, therefore, speak of an external 'logic' of pardons that is detached from the offender. This existed parallel to the forms of requesting and granting pardons which remained closely related to the crime, the offender and their social environment and thus followed a 'logic' that was internal to the case.

Against this backdrop, the petitions of disinterested third parties and their success no longer appear to be a genuinely new phenomenon. They can be compared, for example, with the intercessions of foreign rulers or late medieval pardons granted during royal entries.[56] In the context of intercessions of foreign rulers or pardon

54 SächsHStADresden, 10024, Geheimer Rat (Geheimes Archiv), Loc. 8853/2, no. 95; Loc. 8853/3, no. 17, here fol. 102a,b and 107a as well as 103a,b; similar requests can be found in: ibid., no. 101.

55 SächsHStADresden, 10024, Geheimer Rat (Geheimes Archiv), Loc. 8852/2, no. 275, here fol. 488a,b.

56 However, the intercessions of foreign rulers and noble advocates are clearly distinguishable from the 'professional lobbyists' in the petition process who increasingly appeared in the 18th century. In the 15th and 16th centuries, the intercessions were not yet a monetary business but served primarily

petitions submitted as part of the foreign ruler's entry, the relationship between the author of the (oral or written) intercession and the ruler with the power to grant a pardon was the central starting point for the pardon decision. The delinquent for whom a pardon was requested became a secondary component of this political pardon process within the framework of intercessions. What the intercessions and petitions of disinterested third parties had in common was that the rulers' obligation to these groups "external to the case" fundamentally determined the decision on a pardon. Yet, both types of pardon petitions can be clearly distinguished from one another in terms of their expression. This means that the ruler's self-image of a pardon-granter was tied to both the ruler–delinquent relationship and the relationship between the ruler and third parties. This ultimately means that the decision-making logic of territorial-princely pardons must be understood more broadly than it has been the case in previous research.

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to increase the intercessor's own honour and social status. For the different systems in the 18th century, see Vermeesch, Professional Lobbying.

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Conclusion

The Power to Pardon and the History of Crime, Justice, and Violence in Western Europe

How did the medieval and early modern practices of pardoning contribute to conflict resolution, and what can the long-term history of pardon teach us about regulating conflicts in the twenty-first century? How might a historical perspective on the sovereign prerogative of mercy inform contemporary approaches to peace and reconciliation in shaping social relations among individuals, communities, and states? These are large questions, and attempting to provide a comprehensive answer is undoubtedly an overly ambitious undertaking. Nevertheless, it is remarkable that even today, the relationship between justice, mercy, and forgiveness remains the subject of philosophical and legal debates, just as it was in antiquity, the medieval period, and the early modern era.[1] Whether as a provision for clemency in criminal matters, a political amnesty, or a tool of reconciliation in the aftermath of mass violence, the power to pardon remains a complex and contested instrument that challenges our understanding of justice and human rights.

The contributions gathered in this book illustrate that the study of pardoning remains a particularly dynamic field of research for historians of crime and criminal justice.[2] Over the past 50 years, historians have extensively explored the transformations of the prerogative to pardon, tracing its various forms and manifestations, from religious mercy to political amnesty, over more than two millennia. Most scholars agree that the power to pardon was a fundamental component in the construction of sovereignty and governmentality in Western Europe, making it a crucial factor in the early modern state building process. However, as the contributors to this volume also show, this process was neither uniform nor linear, but rather multidirectional, operating across multiple power levels and driven as much by central authorities as by local actors and communities. For instance, recent studies in political history have highlighted the crucial role of popular participation

1 See, for instance, Murphy, Hampton, Forgiveness; Sarat, Hussain, Forgiveness.

2 For this reason, in this conclusive essay, we have opted to provide only a limited list of bibliographical references on the history of pardon, as this would otherwise lead to an overwhelming number of footnotes. Instead, we refer the reader to the other contributions for a more comprehensive bibliography.

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in shaping late medieval and early modern political structures.[3] Since the granting of a royal or princely pardon was generally based on a written petition submitted to the monarch and their advisors, the power to pardon proved to be a formidable tool for building subordinate political relationships between rulers and the ruled, encouraging people to engage with the institutions of the monarchical State.

Closer to us, the question of pardon and legal forgiveness has continually resurfaced in the twentieth and twenty-first centuries, particularly in debates over how to address war crimes and crimes against humanity. In the eyes of the historian, the contemporary concept of "transitional justice" arguably incorporates mechanisms once reserved for the pardoning powers of medieval and early modern monarchs, such as the co-creation of a shared judicial truth between perpetrators and victims of crimes to ensure public reconciliation – what Norwegian philosopher and political theorist John Elster poetically calls "closing the books".[4]

Therefore, and to bring this collective volume to a close as well, this concluding essay is intended as an effort to provide a long-term historical reflection on how past Western European societies articulated the notions of justice and pardon in relation to their understanding of violence and power. In doing so, we hope to highlight the value of fostering a dialogue between research on the history of medieval and early modern pardon and studies on contemporary transitional justice, for both practices ultimately address the same fundamental issue: the value attributed to human life, whether that of victims or perpetrators of violence. To conduct this reflection, our contribution is structured in four parts. We begin with a broad examination of how, in close conjunction with punitive justice, the late medieval and early modern power to pardon served as a legal and political instrument allowing State power to become directly involved in local conflicts, thereby strengthening its authority over its subjects (I). Subsequently, to better illustrate the multifaceted dimensions of conflict resolution operating through the pardon process, we provide a detailed analysis of two case studies from the sixteenth-century Low Countries (II). We then explore the changes in the use of punishment and pardon between the seventeenth and nineteenth centuries, in close relation to transformations in the conduct of violence in Western Europe (III). We conclude by considering the role of pardon in the twentieth and twenty-first centuries, particularly in the context of transitional justice and international law (IV).

3 Blockmans, Holenstein, Mathieu, Empowering Interactions; Watts, The Making of Polities; Blockmans, Political Participation.

4 Elster, Transitional Justice.

1. The Power to Pardon and the State in the West: A Grand Narrative

It is now a well-established fact that, in premodern Western Europe, most rulers frequently granted pardons for crimes to individuals, groups, or communities, usually in the form of a letter of pardon. As historical documents, these letters typically feature three common characteristics: (a) they appear in a relatively standardised written form between the twelfth and fifteenth centuries; (b) they are consistently preserved in archives over extended periods, in some cases even into the nineteenth century;[5] and (c) they are frequently issued, ranging from a few letters to several hundred or even thousands per year, depending on the context and region. As such, pardon letters are particularly well-suited to comparative approaches due to their enduring recurrence and their shared formal characteristics across Europe.[6] Moreover, because of the rich narrative content of these documents, over the past fourty years, the study of pardoning has opened multiple perspectives for the history of crime, justice, and violence, whether through social, political, or cultural approaches.[7] Yet, to this day, no comprehensive work has sought to write a global history of pardon. It would be impossible to fill this gap in this brief essay, but we can offer some general observations here by focusing on Western Europe.

The practice of pardoning criminals took place at various levels and in many different spheres of late medieval and early modern societies. Unsurprisingly, the largest archival collections come from the chanceries of the dominant monarchical powers of Western Europe, such as the kings of France and England, the Burgundian-Habsburg dynasty, the Papacy, etc. Other frequent dispensers of mercy were the secular and ecclesiastical lords – local princes and abbots of great abbeys – who often competed with monarchical powers to assert their authority over the territories they ruled. Beyond these royal and princely powers, many Italian, Rhenish, or Flemish town magistrates exercised the power to pardon those prosecuted by urban tribunals. Finally, at the micro level, the practice of pardoning is also documented within local social and institutional structures, where fathers, priests, masters, captains, and teachers exercised their authority through both punitive measures and acts of forgiveness.[8] How, then, did these various dispensers of justice

5 The practice did not die out after the Congress of Vienna: Kotskas, Pardoning; Monballyu, Political Responsibility; van Ruller, Genade door recht; Overath, Tod und Gnade; King, Crime.

6 See, for instance, a comparison of the pardoning practices in fifteenth-century France, England, and the Low Countries in the context of war: Verreycken, Crimes.

7 Recent comparative research includes Nassiet, La violence; Muchembled, History of Violence; Dwyer, Damousi, History of Violence; Emsley, McDougall, Global History of Crime; Carroll, Enmity.

8 Hanawalt, Peasant Families; Delumeau, L'aveu et le pardon; Allen, Discipline; Grace, Affectionate Authorities.

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and forgiveness interact with one another throughout the late medieval and early modern periods? As we have said, the history of the power to pardon is closely tied to the consolidation of sovereign authority and the early modern process of state formation. While in the High Middle Ages multiple pardoning authorities often coexisted within the same territory, from the thirteenth and fourteenth centuries onwards, the power to pardon increasingly tended to concentrate in the hands of sovereign rulers. Of course, no single, universally applicable model can fully capture the complex history of pardon in Western Europe. However, using Max Weber's classical categories of authority, we can try to identify long-term historical trends – one might even say a grand narrative – in the transformations of the practices of pardoning.[9]

From 1200 to 1500: the charismatic authority of the king, prince, or pope gradually asserted its sovereignty over a multitude of lesser potentates, such as the *pater familias*, priest, or landlord, who had traditionally held the power to resolve conflicts at the local level. The sovereign's right to grant pardon, like his judicial power to punish, could not be directly overruled by courts of justice – although there were procedures for endorsing pardon letters at the local level, these never directly called into question the monarch's decision to grant pardon. Instead they sought to identify malpractice on the part of pardon recipients, such as lying about the circumstances of the crime in the petition initially submitted to the monarchs. In this process, the restoration of social peace embedded in the granting of pardon also required the supplicant to negotiate a financial agreement with the victim or their family. Rooted in the penitential model of the Christian Church, as well as in traditional forms of private reconciliation (such as the *wergild*), this agreement was conducted under the auspices of the merciful monarch, who thereby gradually imposed his own routes to pacification.[10] Moreover, as the victim's party usually came to testify when the letter was endorsed, this process of verification and negotiation helped forge a consensus around judicial truth, restoring social order by establishing a shared narrative of the crime that had been committed and redressed.[11]

From 1500 to 1800: although the monopoly on the right of pardon remained symbolically vested in the sovereign ruler, the bureaucratisation of the pardon process increasingly detached the practice of pardoning from the sovereign's person and placed it in the hands of multiple intermediaries. The issuing of pardon letters became a formalised bureaucratic procedure within a rational-legal framework,

9 Weber, Economy.

10 Gonthier, Faire la paix; Texier, Qui parlera pour le mort; Texier, Réparation et rémission.

11 Giraudet, Witnesses.

closely tied to judicial institutions and reflected in the expanding use of investigative records. This shift introduced new layers of mediation between the supplicant and the sovereign's administration, with the written word playing a crucial role in processing petitions for pardon, making lawyers, notaries, and court intercessors indispensable actors in the pardon process.[12] These administrative and judicial agents helped legitimise State administration as a channel for resolving local disputes, particularly at the individual level. By the eighteenth century, authorities wielded the power to pardon as an instrument of penal policy, especially in cases where individuals were deemed threats to public order.[13]

From 1800 onwards: because it was seen by revolutionaries and early democrats as a vestige of the Old Regime's arbitrary power, the practice of granting pardons by the Head of State provoked strong criticism. For advocates of democracy, inspired by the English transformation "from a more monarchical and judgment-focused to an increasingly parliamentary and legislative vision of sovereignty",[14] justice had to be exercised in the name of the people and, as such, no longer required the sovereign's mercy. Nevertheless, the power to pardon re-emerged as a constitutional attribute of representatives of the sovereign people. Legislative assemblies, constitutional monarchs, and elected presidents could now grant pardons and amnesties, albeit under governmental oversight and public scrutiny, and never with the same frequency as early modern rulers.[15]

However, there seems to be at least one notable exception to this broader historical shift in the use of pardoning: colonial violence. From the seventeenth to the nineteenth centuries, "hundreds of thousands of men and women were transported as convicts across the imperial world", where "officials tasked with administering these newly acquired territories turned to the pardon to develop new societies". Until the middle of the twentieth century, colonial governments frequently "sought to deploy mercy and terror strategically to reassert sovereignty", balancing the use of harsh punishments with judicial pardons in a manner echoing medieval and early modern practices.[16]

By contrast, in the imperial metropoles, the emerging sciences of government in the twentieth century provided a rationale for distinguishing between judicial verdicts and sentence adjustments, with the latter becoming a matter of penal policy under executive authority. While the death penalty, imprisonment, and fines

12 Abad, La grâce du roi. See also Vermeir, A latare principis; Vermeesch, Professional Lobbying.

13 King, Crime, pp. 297–333.

14 Meyler, Theaters of Pardoning, p. 3. See also Herrup, Negotiating Grace.

15 For an example of these debates on the legitimacy of the right of pardon at the turn of the end of the Ancien Régime, see le Gall, Les Lumières. See also the references in note 5.

16 McClure, Trials, pp. 18–19, 330. See also, among recent research, Turrell, White Mercy; Devereaux, Imposing the Royal Pardon; Gendry, Hynd, African Women.

remained in force, they became increasingly subject to revision or commutation. In most modern legal systems, provisions for clemency, usually taking the form of penalty reductions, were incorporated into the legal procedure as an administrative measure, allowing magistrates to moderate sentences under probation. As a result, in most democracies, the practice of clemency is nowadays distributed among judicial actors, representative assemblies, and the Head of State, all subject to strict regulation. In contrast, authoritarian or illiberal regimes and dictatorships continue to employ pardons extensively to oppose constitutional justice, consolidate their power, and reward political supporters.[17]

From these general observations, a conceptual framework emerges in which the power to pardon first appeared in Western Europe as a tool enabling monarchs to intervene in the daily regulation of their subjects' conflicts. Over time, this power gradually shifted away from the individual figure of the sovereign, was absorbed by the State apparatus, and was eventually rejected and reshaped in line with the fundamental values of democracy and the rule of law.

2. Two Micro Studies of Pardon Cases in Sixteenth-Century Brabant

Of course, such a grand narrative is inherently imperfect, as it fails to account for the variety of political and legal configurations across different regions and periods. Nor does it fully capture the complexity of the multi-level interactions among the numerous actors involved in the pardon process. Therefore, to better illustrate the multifaceted dimensions of conflict resolution involved in the pardoning process, the second part of this article focuses on two case studies. These two instances took place within a specific socio-political context and geographical terrain, namely sixteenth-century Nivelles, a small town located in the south of the Duchy of Brabant in the Low Countries. Although a relatively modest town compared to the major and wealthy trading cities of the Low Countries – such as Antwerp, Ghent, Bruges, or Lille – Nivelles has preserved exceptionally rich judicial archives. It was also unique in being under the competing judicial authority of both the Duke of Brabant and the Abbess of Nivelles, who, as the town's temporal lord, exercised seigneurial justice. This distinctive configuration makes Nivelles a particularly valuable case for examining the transformation of conflict resolution practices from the late medieval to the early modern period.[18]

17 Verdussen, Degrave, La clémence; Ruiz Fabri, Della Morte, Lambert Abdelgawad, Martin-Chenut, La clémence; Pascoe, Novak, Executive Clemency. See also the debate on the use of (preventive) executive clemency by the presidents of the United States of America since 2016: Toobin, The Pardon.

18 De La Croix, Rousseaux, Urbain, To Fine or To Punish; Rousseaux, La violence.

The first case took place in 1519, when the ducal Chancery of Brabant issued a pardon letter to Ferry de Davre, the mayor of Nivelles, a representative of the Abbess's authority.[19] The letter describes a dispute that arose one evening on the outskirts of Nivelles, when Ferry de Davre encountered a rather unpopular man named Jehan Bellereau. At the time, Bellereau had failed to complete the judicial pilgrimage to which he had been sentenced by the aldermen's court of Nivelles for committing fraud while serving as the receiver of the poorhouse's assets.[20] To justify his presence in town, Jehan Bellereau claimed to be under the prince's jurisdiction and to hold safe conduct from the bailiff of Brabant, a ducal officer. Yet, tensions escalated quickly: swords were drawn, and Jehan Bellereau wounded both the mayor's servant and his horse. In response, Ferry de Davre pursued and arrested him under the jurisdiction of the Abbess. During his violent arrest, Jehan Bellereau alleged that his hand and head had been wounded. He subsequently obtained three successive mandates from the Chancery of Brabant, requiring Ferry de Davre to conduct a proper trial and release him on bail. Upon learning that bailiffs from the Council of Brabant were arriving in Nivelles, Ferry de Davre warned the Abbess and went to the prison armed with his sword of justice. There, he allegedly threatened the public general prosecutor of Brabant, the representative of the Duke of Brabant, Emperor Charles V. Despite the mayor's efforts to keep his prisoner under arrest, Jehan Bellereau was moved to a hostel under ducal protection, awaiting his trial. However, the sudden death of the Abbess of Nivelles brutally interrupted the trial, and to avoid complications with the ducal justice, Ferry de Davre petitioned for a ducal pardon, which Charles V granted him in person when he was in nearby Mechelen.

The second case, occurring twenty years later, concerns a carpenter from Nivelles named Guillaume Charlet. In October 1541, he submitted a petition for pardon to the Duke and Council of Brabant, in which he admitted that, somewhere between 1539 and 1540, he had killed another fellow carpenter named Célias Bouly.[21] Following the homicide, Charlet immediately fled the Duchy of Brabant to avoid prosecution, but with the help of supportive friends, he obtained a safe-conduct that allowed him to return to Nivelles. He then concluded a peace agreement with the victim's family, which subsequently helped him to secure a pardon from the Abbess of Nivelles. However, this pardon was meaningless outside the walls of Nivelles, and Guillaume Charlet frequently needed to travel across the Duchy to

19 Letter of pardon for Ferry de Davre, 1519, Brussels, National Archives of Belgium, Chamber of Accounts of Brabant, registers, 636, fol. 398v-401r.

20 State Archives of Louvain-la-Neuve, City of Nivelles, 4466 II 22, 17 August 1519.

21 NAB, Chamber of Accounts of Brabant, Acquittals n° 2898, before October 1541. For a more extensive examination of this case, see Rousseaux, Mertens de Wilmars, Concurrence du pardon.

pursue his activity as a carpenter. Seeking complete legal security, Charlet therefore petitioned for a ducal pardon before the Chamber of Accounts of Brabant, arguing that he had already reached an agreement with Célias Bouly's family, costing him 8 florins, and offering an additional 12 florins to the Duke for securing his pardon. This petition led to a judicial inquiry before the ducal bailiff of the *Roman pays* – the Francophone region of Brabant – who heard witnesses and further questioned Charlet to confirm the circumstances of the crime as described in the petition. The Chamber of Accounts then ordered the bailiff to issue a pardon letter in the Duke's name, granting Charlet full legal protection, on the condition that he paid the 12 florins fee within 15 days, a payment duly confirmed in the bailiff's accounts.

As we can see, these two cases of pardon, granted to the mayor Ferry de Davre and the carpenter Guillaume Charlet, perfectly illustrate the intricate social relations and the various institutions involved in conflict resolution. The dispute between the mayor of Nivelles and the Council of Brabant, as well as the efforts of a carpenter to obtain forgiveness both inside and outside the town walls, illustrate how everyday conflicts continuously reshaped and reinforced networks of interdependence between individuals, communities, and local and regional authorities. The fraud committed by Jehan Bellereau, as the receiver of the poorhouse's assets, turned into an act of violence when he refused to serve his sentence, which had been pronounced by the aldermen and sanctioned by the Abbess of Nivelles. His defiance ignited a jurisdictional conflict between the mayor of Nivelles, a member of the lower nobility and a representative of the seigneurial jurisdiction, and the general prosecutor of the Duchy of Brabant, a ducal officer representing the authority of Emperor Charles V. Similarly, the killing of Célias Bouly in 1539 or 1540 temporarily fractured neighbourhood relations, which were vital for maintaining public order. To restore social peace, Guillaume Charlet mobilised his network of friends and family to reach a financial agreement with the victim's party and obtain a pardon from the Abbess, enabling him to return home. However, as Charlet needed to travel regularly across the Duchy, he had no choice but to secure a pardon from a larger jurisdiction, namely the Chamber of Accounts and the ducal bailiff. In both cases, the escalation of a local conflict into a princely matter settled through a pardon illustrates the expanding role of ducal authority in conflict resolution. This process reinforced the bond of authority and obedience between the pardon beneficiary and the prince while ensuring the pacification of the urban community. It also contributed to the centralisation of justice across the principality of Brabant, which formed, in turn, a small part of a vast empire.

3. Pardon, Punishment, and the Decline of Violence in Western Europe

Since the early 1980s, an enduring debate among historians of crime and criminal justice has centred around the supposed decline of violence in Western Europe since 1500, reflected in the gradual decrease in homicide rates recorded in criminal archives. We will not delve into the complexities of this debate – whether in the challenges of reliably measuring homicide rates, their adequacy to demonstrate broader societal trends in violence, or the extent to which this decline was accurate, continuous, or uniform.[22] More interesting for us is how the early modern criminal justice system not only prosecuted violence but also used it extensively through torture and corporal punishment, while also frequently mitigating these severe sentences through the granting of pardons.

When examining the treatment of violence through pardoning practices, it becomes apparent that the number of pardons granted for homicide usually peaked between the early sixteenth and mid-seventeenth centuries, before gradually declining in the late seventeenth and throughout the eighteenth century. This phenomenon could potentially be related to various factors, such as a decrease in fatal accidents, an increasingly legal differentiation between involuntary and voluntary homicide, or even a lesser judicial tolerance for such violent crimes. It appears, however, that a crucial transformation in pardoning practices took place: the victim's party and private peace agreements were gradually removed from the pardon process, while local courts gained prominence in the criminal prosecution of homicide.[23] As a result, princely pardons could no longer circumvent the judicial process and only intervened after legal proceedings had taken place. In the eighteenth-century Habsburg Low Countries, for instance, the number of denied pardons significantly rose, although rejected supplicants could reintroduce their requests multiple times until they have successfully negotiated a pardon. As such, princely administrators used the power to pardon as an ad hoc instrument of penal policy to mitigate the harsh punishments imposed by criminal justice. By positioning pardons as a final recourse rather than a way to bypass judicial proceedings, eighteenth-century administrators reinforced the individualisation of criminal responsibility, strengthened the monopoly of justice in dispute resolution, and undermined the private settlements that had been central to medieval practices of conflict resolution.[24]

At the beginning of the twentieth century, French sociologist Émile Durkheim tried to analyse the evolution of the penal system in Western Europe. For him, this dual evolution was the result of two laws. The former posits that the less advanced

22 See, most recently, Eisner, Violence; Roth, American Homicide; Schwerhoff, Seebröker, Kästner, Voigt, Hard Numbers.

23 Rousseaux, From Case to Crime.

24 Id., Doctrines criminelles; id., A History of Crime; id., Crime.

the type of society – and the more absolute the central power – the greater the intensity of punishment. The latter suggests that modern penal systems increasingly favour punishments based solely on deprivation of liberty, with the duration of imprisonment varying according to the severity of the crime.[25] However simplistic and deterministic Durkheim's laws may seem – what, exactly, is an advanced type of society? – they offered for the first time a consistent historical interpretation of the shift from the intensive use of corporal punishments to the systematic application of imprisonment in many European criminal justice systems at the turn of the eighteenth and nineteenth centuries. In this configuration, crime was no longer seen primarily as an offence against the sovereign's authority and the values of the community, but rather as a violation of individual rights and the social order upheld by the State. In that sense, the power to pardon also evolved from a personal prerogative of the ruler into a more strategic political tool wielded by governing elites to maintain social stability.

Building on Durkheim's approach to historical sociology, the work of German sociologist Norbert Elias, particularly his theory of the "civilising process", has had a lasting influence on historians of crime and justice and how they interpreted the supposed decline of violence in Western Europe.[26] In simple terms, Elias characterised this process as the combination of two key elements: the rationalisation of power and economic activity – manifested in bureaucratisation, legal codification, and growing social interdependence through state formation – and the internal transformations of individuals through self-restraint or *Selbstzwang*, which included a growing intolerance for violence. Thus, historians have viewed the civilising process – along with other concepts such as social disciplining – as a powerful framework for explaining the gradual decline of violence in Europe. But how, then, can we account for the rise of corporal punishment in many judicial systems from the sixteenth century onwards, which seems to contradict the notion of declining violence? For supporters of the civilising process, what might appear as a paradox actually reflects the State's efforts to secure a monopoly on legitimate violence. The increase in capital punishment, along with the use of royal and princely pardons as the only avenues for pacification, marked the growing control of the State over social behaviour in the sixteenth and seventeenth centuries. Subsequently, the progressive softening of criminal justice from the eighteenth century onwards, coinciding with the decline of capital punishment, reflected a growing public revulsion towards physical suffering, shaped by the processes of civilisation and social disciplining. This is precisely what Michel Foucault illustrates in his analysis of the public reaction to the infamous execution of Robert-François Damiens – who

25 Tiryakian, Durkheim.

26 Elias, The Civilizing Process. See also Rousseaux, Verreycken, The Civilising Process.

attempted to assassinate Louis XV in 1757 – as many contemporaries perceived the punishment as barbaric, uncivilised, and a relic of a bygone era.[27]

Despite its apparent paradoxes, the paradigm of the civilising process remains a valuable heuristic tool for analysing the mechanisms driving the transformation of judicial practices and the balance between mercy and the strict application of justice. However, it also has several well-known limitations. Among them is Elias's misinterpretation of medieval and early modern violence as the expression of uncontrolled passions, rather than as codified, ritualised practices. Another key criticism concerns its tendency to portray long-term societal changes as straightforward top-down processes – though this may be more a flaw of some of Elias's followers than of Elias himself. The decline of violence, like that of torture, corporal punishment, and the death penalty, has never been a uniform or continuous process. This is particularly evident in the twentieth and twenty-first centuries, with the brutal resurgence of the death penalty under many dictatorial and totalitarian regimes, as well as the outbreak of mass and genocidal violence. Yet, even in the immediate aftermath of such extreme brutality, forgiveness and pardons once again emerge as possible instruments of public reconciliation.

4. Facing Extreme Violence in the Twenty-First Century: Pardon and Transitional Justice

As the previous paragraphs illustrate, the question of the decline and resurgence of violence remains highly complex and continues to preoccupy historians. Most research on criminal statistics suggests that, throughout the twentieth century, Western societies experienced a general decline in everyday acts of interpersonal violence traditionally prosecuted by the justice system – such as homicides and assaults – though this trend was periodically disrupted by surges in violence, as seen in the United States between the 1960s and 1990s.[28] Yet, this same period witnessed an unprecedented rise in large-scale violence worldwide. Civil and interstate wars, colonial and imperial conflicts, as well as ethnic and communal strife, all contributed to this escalation.[29] In some cases, the State itself became a formidable instrument of mass destruction, while in others, it was the collapse of State institutions that enabled the proliferation of armed groups and widespread

27 Foucault, Discipline and Punish. See also Spierenburg, The Spectacle of Suffering; van Dülmen, Theatre of Horror; Muchembled, Le temps des supplices; Bastien, Une histoire de la peine de mort; Friedland, Seeing Justice Done.

28 Eisner, Modernity Strikes Back.

29 Levine, Roberts, The Massacre; Gellately, Kiernan, The Specter of Genocide; Osiel, Making Sense.

violence. These diverse patterns underscore the ongoing difficulty in constructing a unified explanatory historical model for the emergence and transformation of mass violence.[30]

Beyond the study of mass violence itself, historians have also examined processes of retribution, pacification, and amnesty, particularly in the aftermath of total wars, brutal dictatorships, and civil conflicts. A key element to overcome the crises caused by extreme violence has been the growing emphasis on international law and international courts of justice as instruments for fostering societal pacification and reconciliation.[31] Since the end of the Second World War, the rise of supranational justice systems and the establishment of a common set of international offences – such as war crimes and crimes against humanity – have made it possible to move beyond the traditional framework of the Nation-State in addressing large-scale violence.[32] This has also created tensions between the preservation of national sovereignty and the growing public demand for international justice.[33] Despite its origins in the victors' justice of the postwar period, international justice has increasingly sought to provide a voice – and a path to legal redress – for victims of conflict.[34] In this instance, the question of forgiveness and pardon resurfaced at the heart of international and transitional justice.[35] In particular, the creation of truth and reconciliation commissions in Latin America, Africa, and in European countries like Germany has facilitated forms of societal pacification. By providing answers about past violence and contributing to the construction of a new national narrative, these commissions have also, in some cases, granted a form of immunity – and thus, in effect, a form of pardon – to perpetrators who agreed to confess their crimes.[36]

At first glance, these practices may seem somewhat reminiscent of the reconciliation practices involved in granting royal and princely pardons before 1800. However, this comparison also has its limitations, as these pardons primarily concerned instances of limited interpersonal violence, such as homicide. The flexibility of medieval and early modern pardoning also allowed rulers to extend clemency to entire groups and communities, including rebellious cities, disobedient nobles,

30 De Swaan, Dyscivilization; Gerlach, Mass Violence.

31 Koskenniemi, The Gentle Civilizer.

32 Schaller, Zimmerer, The Origins of Genocide; Cooper, Raphael Lemkin; Sands, East West Street.

33 Beigbeider, Judging War Criminals; Köchler, Global Justice; Moghalu, Global Justice; Bosco, Rough Justice.

34 Archibugi, Pease, Crime.

35 See, for instance, Huyse, To Punish.

36 Rotberg, Thompson, Truth v. Justice; Foblets, von Trotha, Healing the Wounds; Hayner, Unspeakable Truths; Sullo, Beyond Genocide; Kerr, Redwood, Gow, Reconciliation after War.

religious dissenters, and political or military opponents. These practices established distinct patterns for the granting of pardons in the context of interstate and civil wars. In particular, when late medieval and early modern rulers granted collective pardons or "abolitions" to restore social order in the aftermath of large-scale conflicts, such as the Hundred Years' War or the Wars of Religion, these pardons frequently imposed a form of *oubliance* – the deliberate forgetting of past violence – sometimes explicitly incorporated into peace agreements signed between warring parties.[37] Rather than aligning with contemporary international justice, this use of *oubliance* more closely resembles modern post-war political amnesties, which often encouraged or institutionalised a form of collective amnesia.[38] This approach is, in many ways, the exact opposite of truth and reconciliation commissions' efforts since the late twentieth century to break the silence on past mass violence. This contrast underscores the absence of direct historical continuity between medieval and early modern pardoning practices and contemporary transitional justice, even though both, at times, rely on similar mechanisms – such as the construction of a shared narrative – to address violence within vastly different political and institutional contexts.

To conclude, this essay shows that while royal and princely pardons played a key role in strengthening State justice in the premodern period, today's discussions on the use of pardon are largely shaped by efforts to develop international justice and supranational legal standards that extend far beyond the framework of the Nation-State. At the same time, the use of pardon for common crimes still exists in most legal systems, though it is often criticised – either due to concerns over favouritism and political influence or because victims' families rarely have a say in the process. By contrast, in the late Middle Ages and early modern period, the granting of individual pardons required an agreement between the offender and the victim's party as a prerequisite for restoring social peace. Far from being an ideal system, this practice operated under strict legal and political constraints, within a non-democratic context, and in conjunction with judicial punishments that could be extremely severe.

In this sense, studying the history of the power to pardon does not offer direct recommendations for contemporary justice based on past experiences. However, examining how medieval and early modern pardon procedures were woven into the regulation of interpersonal violence – territorially enforced by the figure of the prince – offers valuable historical insight into contemporary efforts to establish (international) legitimacy.

37 Offenstadt, Faire la paix; Gauvard, Pardonner; Frisch, Forgetting Differences.

38 Frei, Adenauer's Germany; Gacon, L'amnistie ; Wahnich, Une histoire politique; Schmidt, G. Pickel, S. Pickel, Amnesie; Hutchinson, After Nuremberg.

On the one hand, the Western experience illustrates the development of a rationalised justice system, grounded in generalisable norms that gradually replaced negotiated settlements between parties. The dialectic between punishment and mercy rests on a dual institutionalisation: first, the institutionalisation of justice, which is rendered in the name of the city, the prince, or the nation, whose rulings establish a judicial truth regarding individual or collective conflicts; and second, the institutionalisation of social reconciliation, shaped by the personal relationship between the petitioner, the victim and their family, and the prince, whose act of forgiveness paves the way for reconciliation.

On the other hand, in response to mass violence, the international community seeks to legitimise international justice by reinforcing the authority of its rulings, while also creating a space for political dialogue between perpetrators and victims, ensuring the recognition of crimes, facilitating amnesty, and enabling the reconstruction of fractured societies.

Although not a direct reflection of the past, contemporary efforts in international justice and reconciliation commissions can draw lessons from the centuries-long process that accustomed European subjects to state-administered justice and sovereign pardon, which may ultimately contribute to the relegation of lethal violence to the margins of our globalised societies.

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