THE IDEOLOGY OF MERCY IN ENGLISH

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by

Patricia Helen McCune

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Doctoral Committee:

> Professor Thomas A. Green, Chairman
> Professor Marvin B. Becker
> Professor Thomas Garbaty
> Associate Professor Diane Owen Hughes
> Professor Thomas Tentler

This work is dedicated to

Ruth E. Roberts--scholar, teacher, friend

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PREFACE

When I began my research for this dissertation I
conceived of the project as a history of ideas--a
description of attitudes concerning mercy and its
relationship to justice in medieval and late medieval
England. The allegory of the Four Daughters of God was
intended as the centerpiece in an analysis of popular
literature. However, as I read I became convinced of the
link between the ideas expressed in the literature and the
reality of mercy in the courts; of the effect the
transformation of those ideas had on legal development and
consequently English governance. The result of my attempt
to elucidate those relationships is an unfortunate
"sandwich" structure: the literary exegesis is held between
a lengthy introduction to features of contemporary law and
society, and a conclusion obliged to make many connections.
As I develop the work for publication, I will integrate
these elements. Although for now the reader is asked make
frequent leaps between literature, practice, and theory, I
believe it is worthwhile to treat the sources on their own
terms, and allow that to dictate the dissertation's
structure.

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CHAPTER 1

INTRODUCTION: THE PLACE OF MERCY IN ENGLISH LAW

In medieval and Early Modern England, jurors often were
loathe to convict the accused men and women who came before
them. Execution was the prescribed punishment for all
felonies, which were broadly defined and widely inclusive.
Yet the history of the administration of criminal law in the
royal courts is notable for jury behavior that frequently
ran counter to the dictates of the law, practices that were
described by contemporaries as merciful. Not only were
acquittal rates high; jurors often tried to find the accused
guilty of a lesser charge that would qualify him or her for
non-capital punishment. There were a number of ways in
which the bench and Crown, as well as the jury, could
mitigate the law's sanctions. Royal pardons were available
and judges could exercize discretion favorable to the
accused in sentencing. Such practices were used to avoid a
law of sanctions that allowed few exceptions. The history
of crime has been a popular field during the last two or
three decades; as a result of the careful attention it has
received in both analytical and interpretive studies, many
writers have touched on the fact that men involved in the
royal courts were noticeably reluctant to condemn. And yet

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this phenomenon of merciful behavior has received relatively little attention. For the people of those times, however, it was a matter of great importance. In the law courts, in the royal household, in the pulpits, and the taverns, people complained incessantly about the merciful behavior that only served to aggravate what they felt was an increasing lawlessness. At the same time, mercy, pardon, and forgiveness were considered the obligation not only of one person to another, but of the king to the English people. This dissertation uses literature from the thirteenth through sixteenth centuries to illustrate contemporary meanings of mercy in the context of judgment, to trace the effect of those ideas about mercy on the administration of the law and, ultimately, on the governance of England.

This is an inquiry into notions or definitions of mercy in medieval and Tudor England, into the connection between ideas expressed in literature and actual legal practices, or the development of the law. It also is a study of governance and the growth of the state. The questions concern kingship and the nature of the relationship, expressed through the law, between ruler and ruled. I trace one element in England's metamorphosis from a society structured on communities, on multiple, complex bonds between kin, and between lords and their men, to a commonwealth comprised of individuals giving allegiance to one authority which spoke for God and Englishmen. The subject of mercy's role in judgment has been chosen for two

particular reasons. First, the governance of England was
achieved to a great extent through the medium of the courts.
Second, the king's most important obligation to his people
was to keep the peace, and it can be argued that in pursuit
of this end, his most useful prerogative was mercy. These
features of governance came to the fore in the later middle
ages in what modern historians have termed the crisis of
disorder. Whatever the objective reality of social
conditions, there was widespread complaint about increasing
violence in everyday life, about the Crown's failure to
maintain order and enforce the law, about royal abuse of the
king's pardon, and about the Crown's inability to restrain
the corrupting forces of "bastard feudalism." By examining
this crisis of disorder in terms of the apparently
degenerating and impotent royal courts, historians have
neglected to ask whether contemporaries had a different
perception of the conditions that prompted the complaint.
The sources used in this dissertation suggest that the men
and women of late medieval England felt customary practices
pertaining to charity and forgiveness no longer were able to
counter deficiencies in human society. There was a failure
of mercy corresponding to a failure of justice. Ideas were
changing about justice and mercy in the context of secular
courts as well as religion. This affected ideas about how
the king could best meet his obligation to keep the peace.
Following the development in those ideas affords another
perspective on the striking level of complaint that suggests

a crisis of disorder. We can see the effect these changing
notions of justice and mercy had on the form of English
governance.

The complexity of this phenomenon of merciful behavior
in the administration of justice--and the complexity that
any successful study of it must have--is obvious. We should
be careful to distinguish among the many factors involved in
the motivation behind this behavior, the working out of
pardon and forgiveness in the courts, and contemporary
descriptions of mercy. The people of medieval and early-
modern England were aware of the low conviction rates, the
frequent recourse to mitigation, the flow of royal pardons,
and they characterized all this as merciful. However,
attributing such practices to mercy must have been due in
part to the dominating presence of Christianity. Because
mercy featured so significantly in the religious culture,
the representation of behavior that seemed similar to mercy
was subsumed in the comparison. Writers were constrained,
to a large extent, by the rhetoric available to characterize
such behavior. There were many reasons behind the practices
described as merciful, and couched in the terms of religious
mercy. At all levels of the administration of criminal law
corruption and fear of reprisal masqueraded as clemency and
forgiveness; so, too, did ignorance and simple lack of
interest. There is the possibility, too, that the
administration of law was never meant to include mercy.
Perhaps the prescribed punishment was intentionally

exaggerated, providing latitude so that men might separate the truly criminal from the less offensive wrongdoer. This was not necessarily the same as a system based on mercy, though it may seem so. And it was commonplace to seek political power and to exercize various types of social control through the law. Mercy is a form of generosity, and it was used to secure differing kinds of return: villagers could forgive in the expectation of calling in future favors; kings could use their pardon to increase their majesty in a system of exemplary punishment.

That those administering the criminal law had values and objectives that sometimes were in conflict with those of the Crown is apparent at least from the reign of Henry II, and the conflict continued to occur for centuries. This examination of changing ideas about mercy and the effect they had on the relationship of ruler and ruled is based on the assumption that beliefs about mercy's role in judgment are best seen where law called for the most extreme punishment. That is why the discussion will so often turn to mitigation in cases of homicide and theft. Although the law pertaining to felony was relatively simple and severe, it appears that for those administering the law matters were more complex. The worst offenders may have been singled out for hanging, but jurors, as well as justices and kings, had ways to mitigate the severity of the law. There was a cultural preference for forms of punishment and restitution that allowed the wrongdoer to rejoin the community. This is

not to deny that frequently opinion was divided about how to resolve disputes involving crime. However, there were traditional, accepted norms pertaining to the particular nature of such crimes and the character of those wrongdoers deserving the death penalty. These norms, and the intentions that formed them, coincided infrequently with those of the king's law.

At the same time that we see the dialectic between ruler and ruled in the administration of criminal law, we also see a notable period of development, a growing sophistication of the the law, especially in the period between 1350 and 1550. And in considering all the changes in jurisprudence, and in the processes and personnel used in the courts, we must question the extent to which this was directed at least partially by the Crown's efforts to cope with a crisis of violent crime and social disorder. The use of special commissions of justices, the powerful position that justices of the peace came to hold, the continuing use of the appeal of felony, secular regulation of benefit of clergy, the emergence of the conciliar courts--all are features of an increasingly puissant and refined English law administered by jurors, officials, and justices but, it seems, controlled by the Crown. However, no matter how much we understand about the machinery of the law, we are still left with the question of mercy's role in those courts.

We cannot assess the reasoning behind a medieval jury's or judge's apparent act of clemency; we could not assess the

reasoning of their equivalents today. What we can do,
though, is develop our understanding of the social and
cultural circumstances in which Englishmen administered the
criminal law. We must approach, as nearly as possible, the
constraints within which jurors acted, and the psychology
they typically possessed when making decisions of life and
death. Though sometimes it must have been easy to pronounce
a criminal guilty and other times impossible, most often
jurors must have been forced to translate cultural norms
into a "special language of justification" that would meet
the conflicting claims of justice and mercy.[1] The language
of justification is a means to approach the contemporary
conception of mercy's role in judgment. With a knowledge of
this language we can understand the function of mercy in the
context of the law, and the effect of those beliefs and
practices pertaining to mercy on governance.

These cultural values and attitudes about mercy can not
be uncovered completely if we are limited to the sources
favored by legal historians. Traditional legal and
sociological research must be supplemented by the
contemporary literature that provides another dimension for
the historical imagination. This dissertation is based on
an analysis of a popular allegory of judgment, and on
representations of mercy in a wide variety of sources from
the thirteenth through sixteenth centuries. The generous
time span has been chosen because of certain features of the
medieval literature of mercy. There are striking and

powerfully suggestive changes evident in the sources by the early decades of the sixteenth century that encourage an interpretation of the relationship between the discourse on mercy and justice and actual legal developments. I intend to use sources and techniques that will identify what have been called the more interesting and difficult questions about what observed changes mean in terms of social structures and systems of value and belief.

The nature of the sources should not be taken as a sign that the topic is better suited to literary studies. These questions about medieval and early-modern notions of mercy, and its function in society, have particular value for England because of England's use of the jury, and because many aspects of the late medieval polity and social order were conceived of in terms of the law. The English legal system during these centuries involved the participation of people from almost every level of society at some stage in the administration of the law. The ideas of English men and women about pardon and punishment were vitally important to governance: "Ultimately good order did not depend on law courts of any sort but on people's attitudes to their neighbours."[2] The form of this institutional structure allowed the exchange of ideas and expectations between ruler and ruled, as well as an ongoing dialogue among members of the community at large. The execution of the Crown's intent in criminal law always was through the men who gave the verdict, men who often had beliefs and goals that differed

from those of the Crown. Jurors knew that their power
resided in the conclusion they reached about the accused,
and that the judge had the ultimate disposition of those who
were convicted. Jurymen had to tailor their behavior to fit
the cultural norms and the outcome that seemed fit; the
bench had to adjust its decisions to the beliefs of those
who administered the law, yet still conform to the law of
the royal courts. Instead of asking yet again about social
disorder and crime in the later middle ages, about weak
kingship and corrupt juries, in this dissertation I shall
turn my sights to contemporary ideas about maintaining the
peace, and the obligation to pardon.

I

Before we can discuss ideas about peacekeeping,
justice, and social obligations, we first must understand
something of the reality of mercy in English courts in the
thirteenth through sixteenth centuries. That is, we have to
look at the forms that merciful behavior took in the
administration of criminal law. The term mercy has been
used, by contemporaries as well as historians, to describe a
wide range of practices used by the Crown, bench, juries,
and others administering the law. These range from outright
pardon of a capital crime, to insuring that a lesser
sanction is imposed than the one called for by law. The
motivation for such behavior--whether it is piety, clemency,
pity, practical forgiveness, disregard for or corruption of
the law--can rarely be determined. However, the means of

mercifully treating a felon were many, and often the subject
of criticism. There were endless complaints about violence
and disorder throughout these centuries, and the mercy shown
to accused felons was considered a significant factor
contributing to these social ills. In the early sixteenth
century it seemed that as a result of a wide range of legal
developments royal courts would impose order: the scope of
felonies widened, restrictions were placed on the
qualifications for mercy, and the machinery was developed to
better prosecute and punish offenders. Yet merciful
treatment of the accused remained central to the system of
English justice; in fact, the options for lesser sanctions
that could be substituted for the death penalty multiplied
under the Tudors. What do these changes indicate about the
meaning mercy had for English men and women, and the purpose
they thought it had in the courts, by the end of the
sixteenth century?

The level of violence in both medieval and early modern
England has been the subject of debate, and is of primary
interest to anyone writing the history of the period.[3] The
fourteenth and fifteenth centuries are frequently
characterized as an age of violent social disorder. Legal
historians may see this disorder in terms of the abuse of
offices and the negligence of royal courts in punishing
criminals; political historians focus on the failure of king
and Parliament effectively to address the disorder; social
historians have sought to assess the effects of a high level

of violence on everyday behavior, and even questioned
whether there were effects. As a result of the interest in
social disorder from different quarters during the last
twenty years, substantial evidence has been established
concerning the behavior of Englishmen in administering the
law.[4] A variety of studies have been produced, with an
emphasis on statistically-oriented works based on legal
records from a particular court or region. These are
revealing in terms of actual practices as early as the
thirteenth century. One of the most striking features is
the degree to which juries, judges, and the Crown pardoned
or mitigated the sentences of the accused. A small
percentage of those convicted were hanged: frequently the
procedures of accusation, prosecution, judgment, and
sentencing were manipulated to avoid the harsh penalites of
the law.

The penalties were harsh by almost any standard,
although the law was made more sophisticated over the
centuries, its penalties were calibrated to suit the
circumstances and the individual accused, and as a result
the means of avoiding those harsh sanctions multiplied. The
men who served in the courts certainly did not consider.all
felonies in the same light. Felony in the medieval period
included treason, petty treason, rape, homicide, arson,
burglary, robbery, and larceny.[5] The crimes for which men
and women were less likely to be convicted and executed were
less serious forms of homicide (what came by the sixteenth

cnetury to be known as manslaughter) and simple larceny.
These felonies were committed with great frequency
throughout the country. The Crown demanded the capital
sanction for manslaughter and simple larceny, yet those who
had committed these crimes had acted in a way that, though
it was not acceptable, at least was very familiar and
perhaps even understandable to the men who served in the
courts. Other felonies requiring more stealth and planning,
such as murder, robbery, and burglary, were less common,
more in conflict with societal norms, and certainly treated
more severely.

Studies of conviction and execution rates strongly
suggest that men often were repudiating capital punishment,
though there were other factors contributing to low
conviction rates, such as a lack of evidence, failure of the
accused to appear, or prosecution of the offense as other
than a felony. Granted, these studies are based on only a
small portion of existing court records, and are limited to
different courts in different times and places.
Nevertheless, the desire of English jurors as well as the
bench to mitigate the legal sanction for felony is
indisputable. Here are just a few examples. Given found
that 17.4% of those charged with homicide at thirteenth
century eyres were convicted.[6] Pugh examined the rolls from
Newgate gaol delivery courts from 10 years during the reign
of Edward I. He found 21% of those charged with homicide
only were convicted and 31% were convicted for all forms of

theft.[7] Hanawalt, using gaol delivery records from the
early fourteenth century, concluded that 12% were convicted
for homicide, and 30% for theft.[8] Using records from
trailbaston proceedings in 1328, McLane found that 81% of
the alleged felons tried were acquitted and released; 18%
were found guilty; only 53% of the convicted were sentenced
to be hanged.[9]

In medieval England, capital punishment was mitigated
in a variety of ways by juries, judges, and the Crown.
Whatever their motivation, the men who administered the law
often took advantage of the opportunites for merciful
treatment of the accused. There were some institutionalized
means, and others that were informal, perhaps sometimes even
unintended. An essential part of the English justice system
was the king's pardon, a royal prerogative.[10] It was meant
as a way to counter the unintended rigors of keeping the
peace. Although royal mercy usually was described as a
Christian act, its motivation could be more complex than a
purely religious one. The king's pardon was a vehicle for
the power of generosity, and expectations of the return
received for that largess could range from political favors,
to control of one's enemy, to eternal salvation. There were
two types of royal pardon. Through the thirteenth century,
pardons of course (de cursu) were available to all entitled
to have them under the law. These were defendants charged
with excusable homicides--those committed in self-defense,
by accident, or by the insane. In the early fourteenth

century, the king no longer personally took part in the granting of these pardons; they would be issued by Chancery on judges' recommendations. Pardons of grace (de gratia) were more characteristic of royal prerogative. They were granted by the king to felons not technically entitled to pardons in return for a fee, or in response to the mediation of influential friends or family members. In actuality, at least in the medieval period, the king's pardon was available to almost anyone before trial if he or she could pay for it in Chancery. A significant change occurred in 1294 when Edward I regularly began to offer, on a large scale, pardons on condition of a term of military service. In the fourteenth and fifteenth centuries pardons frequently were used as a convenient way to raise troops. As a result, many habitual criminals escaped the gallows to serve on the Continent, returning in so many years to resume their crimes. It was for this seemingly indiscriminate and undeserved granting of pardons of grace that there were frequent complaints and attempts in Parliament, beginning in the fourteenth century, to restrict the granting of pardons. As early as the Ordinances of 1311 there was an effort to limit the terms of pardoning to customary practices. In 1328 the Statute of Northampton attempted to restrict pardons for homicide to those who had killed in self-defense or by misadventure. Recurring complaints and similar statutes appeared periodically in Parliament throughout the fourteenth and fifteenth centuries. Some legislation, such

as a statute of 1390, set high standards for enforcing the conditions for pardons of grace, but subsequently enforcement broke down under practical difficulties. Sovereigns in the fourteenth and fifteenth centuries also continued to offer, through Parliament, general pardons on such occasions as coronations or after subduing widespread revolts. Although they often included exclusions, they were used by the Crown as a political tool, to reward supporters or raise funds, and so often were available to all who wished to purchase them.

Judges could assure that at least some of the condemned were not executed. This was achieved through the application of a privilege meant for the clergy, in which the bench played the decisive role.[11] Benefit of clergy originated in the conflict between Henry II and Becket. Clerics were to be tried in royal courts, and if found guilty turned over to the Church for punishment. But this special exception for clerics was used to mitigate the law for all men. In theory allowed only to men in holy orders, in practice benefit of clergy also was granted to many laymen who claimed it. This clerical privilege could be claimed before or after trial. The qualifying tests to determine eligibility became less demanding in the course of the fourteenth century. At the same time, control of the whole process increasingly came into the hands of secular judges. By the late fourteenth century it frequently was allowed to anyone who could pass a literacy test to the

satisfaction of the bench; even literacy often was feigned
by memorizing the psalm used to determine if the accused
could read. This wide application of benefit of clergy
became the object of complaint; like the king's pardon, it
was considered corrupt, and a tool used by professional
criminals. Judges also could mitigate punishment in other
ways.[12] These options grew in number and complexity
throughout the middle ages. Judges could override a jury's
verdict of guilty, and sentence the accused to some lesser
form of punishment. Reduced sentences included such
sanctions as outlawry, corporal punishment, imprisonment,
and fines. Judges were unable to grant pardons; they only
could recommend the defendant to the Crown. However, they
could use a number of strategies, such as allowing benefit
of clergy or a claim of pregnancy, to provide a reprieve
until a formal pardon could be obtained.

Jury mitigation is perhaps the most interesting form
taken by merciful treatment of accused felons.[13] Although
the nature of the evidence largely obscures the reasoning
and behavior that led to such verdicts, juries regularly
adjusted the law and the facts to insure that the defendant
would not be executed. Jury nullification of the law
occurred when jurors favored a defendant who they thought
had committed the crime charged. It might indicate that the
jury felt the law was wrong, or the punishment
inappropriate, or the accused a worthy exception. Jury
mitigation could result, therefore, from objections to the

legal rules, or to the sanction, as well as from some
feeling that the person whom they must judge deserved
clemency. There were a number of ways in which jurors could
mitigate the law. They might simply acquit the accused. Or
jurors could return a special verdict, which reserved
difficult cases for full judicial discussion, or a partial
verdict, in which the accused was found guilty of a lesser
offense. Jurors might also restate the facts in cases of
homicide, sometimes even persevering in their verdict
against the evidence, so that they might find the defendant
guilty of self-defense or accidental killing--verdicts that
qualifed the accused for a pardon. In cases of larceny,
jurors might undervalue the goods that had been stolen; if
the value was less than twelve pence the crime was not a
capital one. Jurors claimed that there simply was
insufficient evidence on which to convict, and often this
was true.

There also were other means in the royal courts, and
outside them, to save the accused. Not all criminal suits
were brought on behalf of the Crown. Victims or surviving
kin could bring appeals (private suits) against a suspect.
Appeals often resulted in private arbitrations and
settlements between the parties involved; it seems that the
intention of the appellor rarely was to secure the death of
the felon.[14] Of course, many disputes over wrongs never
reached the courts at all, but rather were resolved through
concord and some form of restitution.[15] Trial jurors were

not the only people engaged in mitigation and merciful
treatment. The administration of English justice relied to
a great extent on lay participation, and there were many
ways that the people involved could attempt to frustrate
prosecution and punishment. For example, the presentment
jury could decide there was not even enough evidence to
bring a charge; neighbors could fail to raise the hue and
cry. The legal system depended on witnesses and officials,
all of whom had means of non-cooperation that would benefit
the accused.

Finally, there was another privilege of the Church that
might be used to merciful ends. Every church and churchyard
enjoyed the privilege of sanctuary.[16] Anyone who fled there
was to remain unmolested for forty days, and could be
supplied with food by clergy or friends. Those who tried to
interfere during this period of sanctuary could be
excommunicated. After that time the person either had to
surrender to authorities for trial, or to abjure the realm
and leave by the nearest port. If neither action was taken,
the person could be seized for trial. There was a second
type of sanctuary, often confused with the first, which came
to be the cause of bitter public complaint. Some places had
the right of permanent sanctuary, originating in a royal
grant. This was a secular and jurisdictional privilege, and
such sanctuaries were independent of royal justice. Over
the centuries the Crown gradually removed most such
protective jurisdictions from laymen, but not from the

Church. Attempts were made throughout the fifteenth century to eliminate these permanent homes for criminals.

The people of sixteenth-century England were no less concerned with crime and its control than those of the previous two centuries. However, over the centuries the government had increased its ability to deal with the exigencies of crime. During the same period a new ideal pertaining to peace-keeping had gained ascendency. As a result of this improved capacity to control, and the associated cultural value placed on an obedient populace, the English government in the sixteenth century was able to galvanize efforts to contain criminal activity. Perhaps we are justified in drawing contrasts between the ways in which the people of late medieval England and the Tudor era dealt with the problem of crime. The attempts of the fourteenth and fifteenth centuries seem haphazard; all too often the Crown was obliged to delegate authority for keeping the peace to the private initiative of a politically fragmented aristocracy and gentry. The Tudor era is notable however for repeated joint efforts by Crown and Parliament to eradicate through statute and courts the worst abuses of the justice system, and to improve its administration.[17]

Under the Tudors the definitions of felonies were refined.[18] One reason was the obvious intention to widen by statute the scope of offenses that would earn execution. Throughout the sixteenth century the category of captial felony repeatedly was expanded to include more crimes, such

as buggery, witchcraft, theft by servants, and horse theft.
Of course, this required a more precise understanding and
agreement on the elements that constituted a felony; a
capital crime had to be distinguished from a lesser offense.
The processes of mitigation also necessitated that
distinctions be made in the seriousness of acts. For
example, the category of homicide came to include
manslaughter, which was clergiable; that is, the capital
sanction did not apply for the first offense for literate
males. Further definition of homicide also included
examination of causation, the mental element, excusable
homicide, and misadventure. Most felonies came under such
scrutiny; the significant features of robbery, burglary, and
rape were settled during the reign of Henry VIII. The Crown
and Parliament apparently sought to achieve greater order in
society through executing the worst offenders. The actual
process of refining the definitions of felonies probably
occurred in discussions among justices, in such contexts as
Readings at the Inns of Court and examination of reserved
cases. By the sixteenth century the responsibility to adapt
the law and devise just sanctions for crime had shifted to
the bench.[19]

Despite the increasing emphasis on the use of capital
punishment, it does not seem that there was a corresponding
inclination among sixteenth-century juries to condemn the
accused to death. It is possible to provide some indication
of how Englishmen administered the law, though the

computation of acquittal and execution rates for the
sixteenth centuy is a complex matter; so too is a comparison
with medieval rates. For example, Cockburn found that at
the Home Circuit Assizes during the second half of the
sixteenth century and the early seventeenth, only 24% of
those charged with felonies were condemned. And not all of
these were actually executed; some were reprieved, some
pardoned, and some escaped.[20] Although the government
continued the attempt to tighten the administration of the
law and eliminate the worst criminals, many forms of
mitigation remained in use, and some even multiplied.

The royal prerogative to pardon was employed throughout
the sixteenth century, often just as it had in the past, for
political ends. Parliament, however, continued in the
attempt to bar the worst offenders from qualifying. Public
complaints of the Crown's abuse of the general pardon
prompted Parliament in continuing efforts to impose
restrictive terms on that pardon's availability, and to
legislate the restoration of capital punishment for the most
offensive felonies by specifically listing them as crimes
that did were barred from mitigation. By the end of the
century Parliament did manage to exert closer control over
the availability and qualifications for pardons, but the
Tudor sovereigns never stopped issuing general pardons to
commemorate events such as their coronations in order to
increase popular support.[21]

Unlike the king's pardon, benefit of clergy rapidly came under the control of the Crown through legislative efforts that finally wrested the clerical privilege from the Church. This secularization gave the Crown a new measure of control over achieving a fixed death penalty. Both bench and Parliament were eager to reduce the Church's authority-- to co-opt and refine the use of this privilege to the government's ends.[22] Restrictions on the use of benefit of clergy were imposed beginning in the late fifteenth century. In 1489, a statute limited its availability to laymen: it could be claimed only once for homicide, rape, robbery, theft, and "other mischievous deeds." Offenders were branded with an M or T on first conviction, and this perhaps was followed by a term in prison. Other felonies and restricting conditions were added to the list in 1497, 1512, 1533, and 1536, further limiting the availability of benefit of clergy to those society thought the most destructive offenders, such as murderers, horse thieves, and burglars. In 1576 an Act finally gave lay authorities complete control over benefit of clergy; in addition, they were given the power to impose up to a year in prison on successful claimants when they felt it necessary that the defendant be penalized in some way.

The assault on the privilege of permanent sanctuary also took on full force under Henry VII and his son. The final judicial assault began in 1516, with the case involving Sir John Savage and his son. Both men secured

pardons in 1520, but the financial and territorial costs
were high--clearly intended as punishment, and part of the
king's strategy to use existing legal means in new ways in
order to break his enemies and maintain political control.[23]
Sanctuary rights were whittled away under the Reformation
Parliament, but not completely abolished until 1623.

The transformation of benefit of clergy at the hands of
Parliament certainly had the goal of restricting mitigation
for certain classes of criminals, but that was not its only
purpose. Such changes also ensured that the bench had
available lesser sanctions for those deemed worthy of
merciful treatment. Throughout the sixteenth century judges
continued to use all available means of avoiding execution
for such lesser offenders, and still were able to impose
some type of sanction. Imprisonment, fines, and corporal
punishment were ordered with increasing frequency. And new
methods of sanctioning were introduced: transportation and
forced labor could be the sentence for those who had been
reprieved from execution.[24] The availability of lesser
sanctions also served to encourage the process known as plea
bargaining: in return for a guilty plea the prisoner was
sentenced to a reduced charge, to a non-capital or
clergiable offense. Little if any use was made of this
prior to 1575, but assize records show a great increase
between 1575 and 1617. Since guilty pleas avoided the need
for a regular jury trial, it is probably no coincidence that

the increase in confessions occurred at times when the assizes were under great pressure from extended business.[25]

Juries continued to mitigate capital punishment throughout the sixteenth century. Yet we must ask whether the changes in criminal prosecution, trial, and punishment that reinforced the authority of the Crown actually overshadowed the influence of ideas men generally shared about the role of mercy in the administration of the law.[26] Was the reality of mercy in the criminal courts substantially altered during the sixteenth century? This question often has been considered in the context of the "new monarchy" of the early Tudors, and the increasing powers of the state. However, recent studies of various aspects of the criminal trial from the fourteenth through seventeenth century suggest that these sovereigns did not suddenly reorder the administration of criminal law in royal courts; rather, they may have directed the use of practices that arose from slowly evolving changes in criminal prosecution and trial. The legal administration seen under Elizabeth may have been the end result of two centuries of change. If so, we must ask whether sixteenth century juries still were expressing popular values about criminality, as well as question the degree of control that the bench had over the outcome of the trial.

Very little is known of the criminal trial in medieval England, and historians have had to depend to a large extent on treatises, occasional references gleaned from court

records, and more ample information from later centuries. There is little indication of the materials and practices of prosecution before the sixteenth century. This is part of the reason that the Marian bail and committal statutes of 1554 and 1555 (1,2 Phil. and Mary, c. 13 and 2,3 Phil. and Mary, c.10) seem to mark the institution of administrative procedures that gave the Crown real control over the prosecution of felons; it was surmised that new means to control crime rapidly had been devised only under Henry VII and Henry VIII. The first of these statutes required the justices granting bail to examine the prisoner and those accompanying him or her, and to send a written examination to the judges at the next gaol delivery. The second statute concerns the actual pretrial activities of justices of the peace. It extended these examinations and depositions to suspects held without bail, and obliged justices to bind over witnesses to appear at trial and give evidence. This then would have produced prosecution evidence for the Crown's use during trial. Yet it is probable that these statutes did little more than formalize practices that long had been customary.

A number of practices that gradually developed during the later middle ages contributed to an active and independent prosecution by the Crown in the sixteenth century. The methods of bringing a complaint that would initiate proceedings against a felon were expanded. There was presentment by jury, on the knowledge of an individual

or on bills prepared by clerks, and the appeal of felony
which was initiated by a writ or bill. In the early
thirteenth century, the members of the jury, theoretically
drawn from the area in which the crime had been committed,
themselves were to testify as to the facts. But the gradual
shift, from the public to magistrates and officials, in the
responsibility for the preliminary investigation, and the
co-ordination of the proceedings involved in prosecution,
may have been related in part to the fact that,
increasingly, jurors no longer were drawn from the locality
of the crime.[27] Recent studies of jury composition indicate
that, by the early fifteenth century, few jurors would have
come to the courtroom personally acquainted with the facts,
if indeed they had any knowledge at all of the matter
involved.[28] It is suggested that there must have been an
increase in the evidence at trial to compensate for the
decline in the self-informing aspect of the jury. Such
testimony must have come from accusers; from those who
brought in the suspect; perhaps from local officials such as
the coroner, bailiff, and constable; from prosecution
witnesses. But there is practically no evidence of this
process.[29] Evidence could have been obtained at any of stage
in the process that brought the accused to the trial, and
potential witnesses in contact with magistrates: at the
coroner's inquest, when the accused was indicted, arraigned,
appealed, bailed, or committed to jail. The theory is that,
between the thirteenth and sixteenth centuries, there was an

ever-increasing tendency to obtain written testimony during
the course of investigation, and this sometimes included the
deposition of witnesses. The officials, too, who were
involved in all the activities that led up to trial were a
likely source of evidence. Unfortunately, at this point
historians can base their accounts of the development of
prosecution and criminal trial before the late sixteenth
century on little more than speculation. We may come
closest to the past reality by imagining a complex rate of
maturation, with practices varying throughout the realm
until finally prescribed in the sixteenth century. And we
should not assume that the evolution of prosecution
testimony in court, and the securing and producing of
evidence by the Crown, quickly supplanted the power and
influence of a jury that remained to some degree self-
informing.[30] A good case has been made for the claim that,
by the second half of the sixteenth century, the materials
gathered in preliminary investigation and subsequent
prosecution were organized by "bureaucrats," court officers
such as the clerk of the peace, and that this enabled
judicial control of courtroom procedure and directed the
outcome of the trial.[31]

The procedural innovations that eventually transformed
the administration of criminal justice were introduced in
the functions of court officials. The justice of the peace
may be the crucial figure in the development of prosecution
procedures for criminal trials. At least we can detect in

the expanding duties of these justices gradual growth
directed by practical need.[32] The office originated in the
keeper of the peace in late thirteenth century; their duties
simply required them to record breaches of the peace.
Beginning in 1329 they intermittently were given the power
to determine felonies and trespasses, and this became
permanent in 1389. Much of the local influence of justices
of the peace was rooted in their power to determine offenses
against labor laws after 1349. In 1361 the officials were
permanently made justices and give expanded powers. By the
end of century they regularly were commissioned to deliver
gaols. Due to their use as agents of social control in the
last half of the fourteenth century, and because of the
social structure of late medieval English society, by the
late fifteenth century they had become powerful figures in
the administration of criminal law. Increasing numbers of
gentry were appointed to the peace commissions and they held
positions of influence in local and regional politics. The
responsibilities of the justices of the peace had grown from
arresting those suspected of trivial offenses to trying
felons. The role of prosecutor may well have grown out of
the manifold duties and types of investigation required of
these justices. The question remains how much of the growth
of criminal prosecution was intentionally directed by the
Crown in its efforts to combat the vicissitudes of public
disorder.

When we look at all the changes in legal administration
and development during the period 1350-1550, it does seem
that development of the law must have been shaped in part by
the government's efforts to address the crisis of disorder.
Particularly, if we look at some of the wider changes, such
as the continuing presence of personal compensation in
felonies and the use of equity in conciliar courts,[33]it does
seem that under the Tudors, Crown and Parliament consciously
tried to keep the peace and bolster royal authority by
directing the growth of criminal law instead of simply
relying on the enforcement of customary practices.
Consider late medieval and sixteenth-century developments in
the appeal of death.[34] The appeal did not fall out of favor
after the thirteenth century. There is no evidence that, as
it has been claimed in the past, the appeal was considered a
form of blackmail. The process of criminal appeals was
simplified in the early fourteenth century: means had been
devised to evade the penalties for false appeals, and trial
by battle eliminated. As a result the appeal continued to
be used throughout the fourteenth and fifteenth centuries.
Ideas about the public prosecution of felony were grafted
onto the private action for personal remedy. In the late
middle ages, the appeal of death was an action sued in
King's Bench and not the local court, except for appeals by
bill before the commissions for gaol delivery. This
changing use of the appeal of death shows the integration of
at least one of the Crown's goals--control over crime--with

traditional means of settlement and punishment. As a private action it could be compromised. However, in medieval common law, if the initial prosecution by either appeal or indictment ended in acquittal or a manslaughter conviction, the defendant could not be prosecuted again by either means. This meant that the defendant would be tried only once, by one form of prosecution. Justices favored the appeal in that, if both an indictment and appeal were pending, the justice stayed the indictment until the appellor prosecuted. To save the suit, justices would not arraign an indicted killer within a year. Nor was the appellor's satisfaction obstructed by a royal pardon; the king could not pardon an execution on an appeal, except for cases of self-defense or misadventure.

The Crown's intention to gain tighter control over prosecution of homicides is obvious in a statute of 1487 (3 Hen. 7, ch.1). The interests of the private prosecutor were displaced by the intention of the Crown to try and to punish criminals. The statute directed prosecutors to arraign suspects on indictment immediately. However, if within a year and a day the survivor appealled a suspect prosecuted by indictment, the plea was removed which would bar the appeallor's suit. The appeal for the same killing was barred only if the accused had had benefit of clergy. As a result of the statute, killers could no longer buy a year of freedom from the surviviors. The Crown was interested in .... inferference with prosecution: it still would

delay proceedings on indictment if an appeal was being
pursued. And it still allowed an appeal of death if the
prosecution on indictment had not ended in hanging or
benefit of clergy. But whatever the survivor's intent, the
coroner would investigate and report to royal justices. The
statute had restated the coroner's role in prosecution: he
received a fee to view the body and was to be fined for
default. The statute of 1487 acknowledges that the
survivor's interest in compensation is in conflict with the
public interest in prosecuting homicide; the statute favored
the public welfare.

The evolution of the conciliar courts, although they
did not have jurisdiction over felonies, do provide another
clear example of the Crown's manipulation of the law to
bolster its authority in the later middle ages.[35] Following
the breakdown of the eyre in the last quarter of the
thirteenth century, the Crown came to rely upon a legal
system that delegated responsibility to justices from the
central courts as well as men from the localities. The
business of the eyre was gradually transferred, during the
late thirteenth and early fourteenth century, to assize
justices and special commissions of justices for gaol
delivery, oyer and terminer, and trailbaston. These special
commissions heard charges brought on presentment as well as
querelae, bills of complaint presented by individuals. One
of the results of the shift to special commissions was a
decrease in centralized authority. The power to try civil

and criminal matters was increasingly shared with local
aristocrats and gentry. Just as royal prosecution and
maintenance of public order came to rely on the initiative
of private accusers, the Crown also depended on local powers
to administer the courts. Yet at the same time, during the
period 1350 to 1500, the Crown gradually developed a new set
of courts, ones that operated outside the common law, and
particularly appealed to those who felt they were not being
given justice in the common law courts--courts so often seen
as the tools of local factions. By the early sixteenth
century the magnate councils that had been important in
promoting arbitration and forms of equitable jurisdiction
were superseded by new royal courts.

The conciliar courts include the courts of Chivalry,
Admiralty, Requests, Star Chamber, and Chancery; for our
purposes the last two are the most important. Chancery
court originated in the mid-fourteenth century. Common law
procedure needed reform; it was complex, rigid, dilatory,
and antiquated in face of social and economic complexity.
Reform that met the deficiencies of the common law resulted
when the Crown provided new procedures that still followed
the principles of common law. Suitors gave a bill or
petition to the Crown in seeking redress, and this in turn
was given to the chancellor. The bill procedure was well-
developed by the fifteenth century, and procedurally
superior to the common law. Chancery also had better
methods of examination, and better machinery for bringing

people into court and enforcing judgments; in addition, it was relatively fast and less expensive. Lawyers then saw to it that new procedures were assimilated by tradition and the call for reform was met within the bounds of custom. The real expansion in Chancery's business began in the reign of Edward IV, and greatly increased under Henry VII. Prerogative courts did not take business away from the older courts; rather, they attracted the suitors unwilling to tolerate the expense and delay of common law procedure. They offered the alternative remedies that good lordship did. Chancery's power and distinctiveness lay in its administrative powers. It was a forum similar to many other informal ones for arbitration and mediation that sought equitable judgments; its appeal was in the force of central bureaucracy, not in a special kind of justice. The king responded to the public demand for expanded equity and prerogative jurisdiction. Just as in previous centuries the jury had been absorbed and used in the struggle for authority, so were the conciliar courts shaped to provide people with what they wanted in return for strengthened support of the Crown's government.

The Council in Star Chamber, which evolved in the fifteenth century, also used procedures not available in the common law courts, and heard cases initiated by bills based on the complaints of private individuals. Among the matters it handled, Star Chamber had jurisdiction over riot, so that was the label used to get cases before this court that were

actually property disputes in battles of litigation between
local powers. More importantly, for our purposes, Star
Chamber had jurisdiction over cases of corruption in offices
and institutions. This meant that it investigated and
punished those who tampered with the administration of
justice; not only those who tried to corrupt jurors but
jurors who were suspected of giving a false verdict as a
result of bribery, embracery, extortion, or perjury. Star
Chamber was able to fine and imprison jurors. Those who had
reached a verdict that seemed in opposition to the evidence
could be bound over to Star Chamber by the trial judge; but
it does seem that the court was primarily interested in
outright corruption rather than perverse interpretation of
the evidence. Not only the development of the courts of
Chancery and Star Chamber, but the very nature of these
courts, suggest that their origns and guided growth are
rooted in the Crown's attempts to control social disorder
and reinforce the government's authority. Nor do these
courts illustrate a piecemeal effort. They are another
element of the widespread changes in legal administration--
in the definition of crime, in procedure, in personnel--used
to great advantage by the Tudor monarchs.

When we consider the reality of mercy in the courts in
the period 1350 to 1550, and changes in the law and its
administration, we are faced with questions about the
fundamental nature of English criminal law and the
relationship between the Crown and the men who served in its

courts. Legislation for "law and order" is in a sense the
hallmark of the Tudor era. Yet it is likely that the roots
of these changes in the law go back to the time of the Black
Death. Can we identify the impetus behind the shift from
the public to the Crown of the primary responsibility to
keep the peace and preserve those less deserving of death?
The reality of mercy in the law remained the same: the law
was harsh, but mitigation of its penalties was a regular
part of its administration. Was merciful behavior in the
courts on the initiative of bench by the sixteenth century,
or were judges responding to societal pressure, conforming
to public attitudes about crime and punishment? Frequently
the reality of merciful treatment in the courts is
understood as an indication of a corrupt system and weak
government. Perhaps we are misled by thinking of the
administration of justice only in terms of the punishment
administered, of the number of convictions and executions.
Instead we could ask what preserved this tradition of
mitigation in the face of such powerful forces for keeping
the peace and enforcing obedience to central authority
through exemplary punishment. Let us turn now to see what
some historians have made of this apparent paradox of
justice and mercy in English law.

II

Legal and social historians who discuss the phenomenon
of mitigation in the royal courts of medieval and early
modern England rarely present it in terms of mercy, of

clemency, or forgiveness, or largess.[36] Instead, they view

mitigation in one of two ways: as the mark of corruption,

the breakdown of the administration of the law and central

authority; as an indication that the law was being used in a

way only partially directed by the Crown and perhaps for

differing purposes. Most historians have explained merciful

behavior in the courts as a response to the harsh sanctions

for breaking the king's peace, and by citing lenient

attitudes toward violence and criminality. Almost all

writers have focused exclusively on the ideas and machinery

of justice. What discussions of mercy there are usually

come under the rubric of religion--medieval requirements of

piety or the effect that protestantism had on the common

law. Studies of mitigation to date have ignored an entire

dimension of this merciful behavior in the courts. They

fail to see that the system of justice was not confined only

to administering punishment, and mercy was not defined

solely by religion.

Following are some examples of the ways in which

historians of crime in medieval England account for mercy.

In his study based on thirteenth century records from the

eyre, Given concludes that the punishment meted out by the

royal courts would have deterred few intent on murder. The

justice found in the king's courts was "more than tempered

with mercy; it was extremely lenient." In general jurors

were very reluctant to hang those accused of homicide. This

attitude may have been caused, Given suggests, by the

harshness of a law which insisted on capital punishment
without distinguishing the nature of the crime. "Had the
jurors been able to impose lesser penalties on some killers,
they might have done so with greater frequency."[37] However,
he posits that this leniency was a sign of an essentially
approving attitude toward violence as the usual way of
settling certain conflicts. Pugh also insists that judgment
in thirteenth century courts be seen in the context of the
"crude and inflexible punishments then prevailing." He
claims that there is not enough evidence to suppose that
compassion lay behind the leniency; yet he cites examples of
what he terms clemency by the bench.[38] McLane suggests the
possibility that jurors had a live-and-let-live attitude to
accused killers, particularly if a fight in a public place
resulted in death. The element of fairness may have been a
crucial factor. This would account for the fact that
robbery and burglary were considered so heinous; stealth
aggravated the offense and led to harsher judgment.[39]
Hanawalt, too, thinks that conviction rates show jurors'
attitudes to types of crimes, and that the legal system was
used primarily for social control within the local
community. In this view, conflict theory explains the
corruption of justice and the manipulation of law to obtain
power. Still, she suggests that the "acquittal rate was so
high because the punishment for conviction was too severe.
There also seemed to be mutual agreements not to convict in
order to avoid reprisals within the villages."[40] The

conviction rate with benefit of clergy, she suggests, might
indicate what conviction-acquittal patterns would have been
if jurors gave their true opinions.[41] Bellamy feels that the
severity of punishment caused jurors to convict few of
felony but many of trespass. Men hesitated to condemn their
neighbors, but not to fine them. The accused most likely to
be convicted were those taken in the act or with the goods,
notorious men and women with prior records, and strangers.[42]
Bellamy draws attention to a curiousity in a legal system
that relied on exemplary punishment. Rarely did authority
suggest that increasing the severity of sanctions would
better maintain order. Compared to the Continent, and
England in the Tudor age, recourse to torture and physical
punishment in medieval England was negligible. There were
no statutes to limit it, because, according to Bellamy,
sanctions were kept in bounds by custom.[43]

Theories about the administration of justice in early
modern England have been dominated by the work of two
historians, Cockburn and Herrup, whose works contain
essentially opposing views. Cockburn believes that in
mitigation, as in every relationship between judge and jury,
the bench controlled the outcome. Both judge and jury had
discretionary powers, yet the balance of power in the
courtroom was indisputably in the judge's favor.[44] He
attributes the high rate of acquittals and mitigation to
corruption, and general negligence in a system that required
the cooperation of many non-professionals and poor quality

jurors. Yet Cockburn also writes of the mercy shown by jurymen and judges. Juries, though they probably were ignorant and impressionable, did play a significant role in mitigating the severity of capital sanctions. For example, Cockburn believes the behavior of seventeenth-century grand juries indicates that in felonies punishable by death, they preferred just to reject the bill "rather than to hazard the life of the accused by sending him to trial." The bench too showed a "tendency toward compassion" and "practical humanity."[45] For assize judges at least, it seems that they "ordered the execution of the death sentence only if the felony was particularly heinous or after all possibilities for mitigation had been exhausted." Underlying all such merciful behavior, perhaps, was the "sterility of a system which in practice allowed no meaningful punishment short of death."[46]

In contrast to this picture of a rigid and negligent system driven to the extravagances of mercy, Herrup concludes that the common law was in fact operating as it was meant to be. Mitigation was not the result of corruption, but a necessity in administering the law. In a system that relied on many people to enforce the law, she argues, a more practical definition of criminality had developed. This gave weight to the circumstances of the crime and the condition of the accused.[47] The process of selective enforcement "worked to offset the formal rigidity of legal categories." It was assumed that men would apply

these informal standards in passing judgment. In Herrup's

view, legal decisions embodied the social ideals of justice,

and the religious intensity behind those values.[48] The many

opportunities for pardon and mitigation were an intentional

feature of the law. A system of rigid rules and flexible

application was necessary if legal administration was to

"reflect both human potential and human frailty."[49] By the

late sixteenth century the English legal system was driven

by the protestant idea of justice. The lesson of capital

punishment did not consist only in terrifying potential

wrongdoers, but also in "the hope of regeneration."[50] Herrup

comes closest to considering legal administration in a

fuller societal context. Though Cockburn and Herrup reach

very different conclusions about the distribution of power

in the courts and the way law was meant to be used, they

both write from the same perspective, one that conceives of

the legal system in terms of justice--a justice comprised of

sanctions that either succeed or fail in forcing people to

obey.

III

We can approach social and legal questions central to

the history of late medieval England with a greater sense of

dimension and context by including mercy in our

investigation of the law. Asking about the element of mercy

instead of concentrating only on the failures of justice

allows us to take a fresh look at some familiar problems.[51]

For example, in light of what is now known about the extent

of mitigation, the endurance of a harsh penal code of
capital sanctions is puzzling, to say the least. About all
that can be said with certainty is that it served to retard
the development of substantive criminal law and a more
finely calibrated system of punishment appropriate to the
crime.[52] It is difficult to find an explanation for the rise
of universal capital sanctions and their persistence. A
simplistic account is that the Crown believed capital
punishment would be an effective deterrent.[53] There are a
number of flaws in this argument. If the system relied on
exemplary sanctions, we might expect penalties to escalate
with each offense--the logic of the system being that the
offender required a more dire warning since the prior one
had been insufficient--but they did not. And as the level
of crime supposedly rose in the late middle ages, punishment
did not become more frequent or severe. Rarely did
authorities suggest that increased punishment was necessary
for the effectiveness of the system of justice.[54] Some have
concluded that the lavish use of mercy in the face of a law
that presecribed such extreme sanctions was consciously
intended to inspire awe of the rulers.[55] Yet if punishment
was meant to control behavior through both paternal
forgiveness and fear of execution, then repeat felons were
"proof of the system's failure to socialize effectively."[56]
What message would contemporaries find in recidivism? We
might be forced to conclude that from the twelfth century
right through the sixteenth, the administration of criminal

law was consciously organized on the assumption that the
Crown and lay participants would act in certain ways,
regularly using mercy in the courts for particular purposes.
Mitigation and selective enforcement were not flaws in the
legal system but rather intentional practices rooted in
generally shared beliefs.

　　This willingness to pardon, whether born of the
Christian sense of mercy or of customary practices that
became a necessity in legal administration, draws attention
to the systemic tension resulting from the extensive use of
the lay community in royal courts.　The process of
experimentation with the early forms of the jury seems to
indicate a "strong commitment to community lay judging."[57]
We must ask whether the Crown truly had a conscious
commitment to the use of the lay community in royal courts.
Kings might have intended it as a stop-gap measure after
1215, or as part of a long-term plan to operate and control
administration of the law.　One feature of this system
grounded in lay participation is a "screening process"
resulting from the multi-level procedures that lead to
judgment and execution.[58] Community members were required to
report crimes, identify and detain suspects, assist in the
presentation of a case against the accused, and reach a
verdict.　They also served as officials, such as bailiffs,
reeves, and sheriffs, for the locality and the king.　There
were many ways in which gradations of punishment could be
imposed, even in the face of the capital sanction.　For

example, it seems that merely presenting someone was considered a lesser but sufficient punishment, and a warning from the community. In this way the penal code was countered. At the same time, this screening is another possible cause of the severity of the law: the Crown might have preferred harsh sanctions in the effort to override community manipulation.[59] People used participation in the courts for their own purposes, too, whether in regional struggles between magnates or in village disputes between elites.

The question of who controlled the law in English society is the center of a long-running historiographical debate. For some, the multiple ways in which members of each estate could and did turn the law to their own purposes indicate that the law was a much-used mechanism of social control.[60] Others view it in more traditional terms of the struggle for power in the Crown's relationship with the magnates and gentry. Here the basic premise is that the king exercized his rule through mastery of the law; any breakdown or corruption in its administration is therefore the result of weak kingship.[61] From this perspective, the reality of a central royal authority powerfully articulated through the law is an unquestioned given. English history from the twelfth century is a linear process with periodic setbacks resulting when kings were unable to maintain control due to war, fiscal disaster, and incompetent planning. Some historians see legal development as

consciously directed by the Crown; the course is one of a long downward curve following the death of Edward I brought up again only by the brilliance of Henry VII and his son.[62] Yet this vision of legal development requires that the extensive use of the lay community in the process of judgment, and the tension inherent in it, be completely ignored.

Just how misleading it is to gloss over the involvement of the lay community in the courts, and the influence of customary ideas about the process of judgment, becomes clear in works on the crisis of disorder. For the majority of historians, late medieval England is dominated by violence and social disorder, tied to the failure of central authority to meet the demands of changing social and economic structures--changes that caused the disintegration of political order and corruption at every level of governance.[63] Yet studies of the aristrocracy and gentry of the period force us to consider whether the historical processes at work were something considerably more complex than this.[64] The bonds of older forms of social organization, in fact, remained strong in the later middle ages. What we are looking at is not simply the corruption of the aristocracy; it is also the endurance of a world based on ties of obligations and generosity. We can trace the structure of a fragmented society and its archaic practices under the superimposed ideal of central royal authority, exercised through the courts, that reached

throughout the kingdom.[65] We may have been premature in
assuming that royal courts, their laws and practices, had
been solidly established, and more traditional customs and
beliefs supplanted. This is not to deny that there was
corruption and widespread disorder. However, the important
question is why these centuries, the fourteenth and the
fifteenth, saw such vociferous complaints and fears about
order, corruption, and the inability of the king to maintain
the peace.[66] Clanchy has questioned whether the king's
supreme authority in medieval England was anything more than
a claim, and whether the Crown's efforts to exercize
judicial control were more disruptive than effective.[67]
Rethinking the reality of the Crown's central control of the
law, and thus of the kingdom, demands a different approach
to the period, one that allows for the co-existence and
continued development of other social formations and
relationships, and of legal arrangements that were centered
on older, customary practices in local and regional
communities. Studies of arbitration and settlement, and the
role of the great lords in dispute resolution and general
peace-keeping, speak persuasively for such a reassessment.[68]
In fact, conflicting attitudes about the meaning and use of
mercy underlie what seem to be unrelated issues of social
disintegration, legal corruption, and a failure of
authority.

The attempt to uncover the function of mercy opens the
door to a new perspective on the use of law in late medieval

governance, and on the nature of English polity in these centuries. We must look not only at complaints about the failure of justice in the late medieval England, but also at the forms in which a feeling of crisis was expressed, the chronology of those expressions, and the estates and social relationships of those who voiced complaint. We must keep our attention on pardon as generosity, on mercy as largess. The power of forgiveness had a crucial function in law and government in the entire period, at all levels of society, and it is a power too often overlooked by historians. Tracing the language of mercy, its dominating presence and complex uses, will show the importance of the dialectic between Crown and community that took place in the royal courts. Their differing values and notions about the use of the law--and the way these changed over time--had a reciprocal influence which directed the process of legal development in some ways and restricted it in others.[69] This dialectic is clearly played out in the discourse on mercy found in so many forms of literature from the twelfth century through the sixteenth. An analysis of mercy's place in judgment, as represented in these sources, enables us to see the complexity of exchange between Crown and community about pardon, punishment, and their role in governance.

IV

In a violent world in which exemplary punishment was touted as the means to discourage crime, why were men so lenient in their judgments, apparently so willing to help

criminals avoid the gallows? Literature is used here to
uncover contemporary ideas that might have influenced such
behavior. The sources are texts most likely to embody the
social attitudes widely shared by men of the estates which
supplied jurors, judges, and other court officials. The
discussion throughout is limited to men, since women did not
serve in the courts. We can never know with certainty what
medieval men thought as they judged their neighbors, or what
beliefs motivated their behavior, but we do know what these
men read, heard, and wrote.

The long-standing bias among historians of the law
against the use of certain types of texts, though weakening,
is still formidable. The categorization of sources itself
has resulted in confusion about literature's "viability" for
historical study, and a prejudice favoring particular kinds
of documents.[70] Some studies that attempt to describe the
cultural values informing the medieval understanding of law
and justice provoke sympathy with that bias.[71] However,
these are more than balanced by others that have made
estimable use of varied sorts of literature, especially from
the early-modern period, to supplement and flesh out our
knowledge of the intellectual and cultural framework
supporting the legal system.[72] The subject of judgment was
continually worked out in verbal and plastic form by clergy
and laity during these centuries.[73] It is not difficult to
locate sources that focus on justice, mercy and punishment;

all figured so largely in the culture and consciousness of this period that they would be hard to avoid.

These sources are contemporary literature in the broad sense of the word. Legal treatises and clerical authorities have been employed, but are of limited use because they are more likely to represent the views of a small, highly educated sector of society. Much of the literature is referred to as popular, but this is not meant to have class connotations or to signal mass culture. Rather, popular is used here to indicate that these works--or those by which they were influenced--enjoyed wide currency among men who were literate or had frequent exposure to reading of the works. One way of defining medieval literature is by its audience, not its style. Although many people from the educated estates may not have read to themselves for information or entertainment, they often formed an audience for others' reading.[74] Some degree of instruction in the rudiments of reading and writing was available to a large part of the English people, and this portion increased throughout the centuries.[75] Though hardly on par with the literacy rates of modern industrial countries, this was a significant percentage of the population, even in the thirteenth century. The dominant feature of English literacy was pragmatism. These were not cultivated readers but rather people who needed to understand the records-- mainly legal--that continually assumed greater importance in everyday life.[76] At least in the thirteenth and fourteenth

centuries, these writers, readers, and audiences largely
came from the orders of the clergy that served as
adminstrators, not only for the Church but also the Crown
and lesser lords. It is important to undertand the
contemporary meaning of the terms litteratus and clericus.[77]
Sufficient education and exposure to texts were not limited
to clerics; the gentry and nobility kept records and owned
books. The growing estate of well-to-do laymen, most of
them merchants and men practicing law, greatly influenced
book production and the availability of education.

The modern ideal of virtuosity--the value accorded to
works that are aesthetically "superior"--was not a factor in
the selection of texts used in this study of mercy. For the
medieval period, there are not many sources that would
appeal to present-day audiences, although works by Chaucer,
Langland, Gower, Skelton, and Marlowe have been used.[78] This
is not because of a bias against modern aesthetics, but
because the tastes of the day were radically different from
our own. Medieval and early-modern audiences thrived on
didactic works that were moral or religious, though
sometimes only nominally, in orientation.[79] The texts from
the thirteenth through fifteenth centuries come from a
variety of genres: homiletic pieces, sermons, pastoralia,
chronicles, mystery, morality, and academic plays,
devotional entertainment, court poetry. The tastes that
predominated among the medieval reading public continued
long into the sixteenth century. The choices of Caxton and

de Worde, among other early printers in England, are evidence of this. Although the sixteenth-century sermons and morality plays reflect this continuity, influential works by humanist and protestant reformers as well as other innovative forms such as royal propaganda have been included. The selection of sources may appear eclectic or capricious, but the intent has been to use those texts familiar to and favored by audiences that included yeoman jurors, gentry who served as court officials, and the professional administrators in Chancery; texts which embodied the beliefs they shared about the purpose of mercy.

V

Legal historians might have dealt differently with the subject of mitigation if they had begun with the literary tradition regarding mercy. In elite and popular works, in treatments by legal and clerical authorities, mercy featured largely in medieval English culture. Major legal treatises have at least some discussion of mercy, almost always in connection with the king's obligation to ensure that justice is done for his subjects. Mercy is rooted in the duty of the king and his officers to provide justice, and at the same time to temper those judgments with clemency. Mercy is clearly an obligation owed to the people, but it is also the prerogative of generosity, part of the power of royal majesty. Theologians wrote about mercy in three contexts: God's willingness to forgive the repentant sinner; the plan of salvation which turned on the paradoxical operation of

divine justice and mercy; formulations of how mercy operated as a virtue in the human sphere. Scriptural and clerical authorities made it very clear that mercy, in the forms of charitable treatment and forgiveness of others, was essential for obtaining God's mercy and so salvation. The Church's teaching about mercy entered the lives of most people through some aspect of religious instruction or participation in the rituals and sacraments, and especially in relation to the sacrament of penance. Thirteenth-century changes in penitential theology and practice generated a vast literature of mercy for the use of parish clergy, friars, and lay men and women motivated by personal piety.

A popular allegory known as the Four Daughters of God serves as the focus for this study of the literature of mercy in medieval and early-modern England. The allegory about the Christian plan of salvation was also a vehicle for discourse on the function of mercy in the law, and the place of punishment in governance. The allegory originated in Psalm 85:11, "Mercy and truth have met together; justice and peace have kissed each other." There are two basic versions, both patterned on twelfth-century sources. The allegory began its development prior to the Christian era, and acquired currency in both literature and art throughout Europe during the middle ages. It continued to influence drama and poetry in England through the seventeenth century. Here is the framework of the story. God is the heavenly king with four daughters--Mercy, Justice, Peace, and Truth.

They come to plead before their father concerning the fate of the one who transgressed his laws. Justice and Truth argue for strict adherence to the law, and so for man's death; Mercy and Peace beg for clemency. The divine judge always favors Mercy in the end; with the help of his son, a way is devised of satisfying the demands of Justice while pardoning the transgressor.

The two basic versions of the allegory may differ in some points, but both versions and all their variations convey the same meaning in their representation of the Four Daughters' debate. Justice and Truth are often negative characters; sometimes they are severe to the point of cruelty in their zeal to fulfill the letter of the law. As might be expected, Peace and Mercy are gentle and compassionate. The solution that is devised meets the demands of both Justice and Mercy, yet it is clear that the heavenly king seeks an answer that will satisfy both parties because he wants to grant the petitions of Mercy and Peace. He cannot simply release the prisoner in order to please them; some satisfaction, some restitution, must be made for the wrong, or strife will continue to destroy order in the kingdom. The substitution of the son's suffering is a way to placate the demands of Truth and Justice: the king said he would punish an offender and he is obliged to do so. However, his real concern is that order be maintained in the kingdom. These allegories reveal an ideology of mercy: pardon and reconciliation must be preferred over penalty and

strict enforcement of the law as the most effective means
for avoiding strife in society. This subtext in the
allegory reveals the contemporary conceptualization of the
options available to the king and his officers. There were
benefits and dangers in both implementing the prescribed
punishment and mitigating it. Medieval English society
truly felt that royal power would be vain if it lacked the
prerogative to pardon. Yet there was an abiding fear that
the king eventually would be seen as impotent if he did not
rule consistently under the established law. This discourse
insists that the fundamental obligation of justice is to
insure order in the kingdom; competing claims are met when
the king uses his pardon to maintain the integrity, the
peace, of society.

     This ideology of mercy that left its imprint on the
Four Daughters allegory is evident throughout the medieval
literature of mercy. The texts reveal a full description of
what mercy was undertood to be, its role in the relationship
between God and man, and its function in secular society.
But they also provide more. Because this literature
expresses anxiety about mercy's place in the process of
judgment, and about how mercy was used by rulers in the
effort to maintain peace, it reveals contemporary concerns
about the actual effects of putting this ideology into
practice. Although the fear of civil disorder was constant,
and the paradigmatic strategy was to rely on the reciprocal
benefits of pardon and forgiveness, nevertheless the

literature indicates that the definitions of mercy and justice were changing in terms of their relationship to each other, to temporal authority, and to that authority's use of reward and punishment.

Though mercy in the form of charity or almsgiving appears frequently, most representations of mercy involve pardoning the actions of another. Mercy was forgiveness for those wrongs construed as sins, those seen as criminal, and other types of behavior that resulted in a breakdown of social relations. The reciprocal nature of mercy is always emphasized; its benefits included the salvation of the forgiver as well as the restoration of harmony to the community. Though some motivations for mercy are deemed more worthy than others, the texts emphasize that what is important is the end result. The literature repeatedly underlines the complementary character of the Christian obligation to have pity on the unfortunate and to forgive others. At the last judgment, God would pardon only men and women who had shown mercy to those who had wronged them. Salvation could be achieved by extending to others the forgiveness one hoped to secure from God. Self-interest was accepted and even shown as the fundamental reason for being merciful.

New concerns first begin to find forceful expression in these works on mercy in the decades between 1380 and 1420. A rising note of anxiety is heard as questions are raised in the literature about the place of mercy in secular judgment.

The problem was how to justify passing judgment on other members of society when Scripture specifically warns not to judge lest one be judged. With increasing frequency throughout the fifteenth century, there is a tendency to apologize for the fact that the dictates of reality in secular society require men to judge one another. And here the influence of penitential works is very clear. There is advice on how to judge, who ought to do it, and the manner of doing it properly. Not surprisingly, the question who ought to be judged was accompanied by a parallel concern with whether the recipent truly deserved mercy. Late medieval literature reveals a growing anxiety about the detrimental effects of both lax pardoning and overzealous enforcement of the law. This usually took the form of criticism of Crown and Church officials corrupted by bribery, and a king who would pardon anyone for a fee. Yet at the same time there were endless complaints about representatives of Crown and Church who saw only the rules and had forgotten their Christian obligation to be merciful. Despite the challenges that one might say were being made to the ideology of mercy, the traditional wisdom continues throughout the fifteenth century. The fundamental advice given to all who must judge does not vary: justice must be tempered with mercy, and it is better to err on the side of mercy since its rewards here and in the next life are more valuable than those of justice.

However, beginning in the first half of the sixteenth century a transformation appears in the literature. This is a <u>volte</u> <u>face</u>: justice must be chosen instead of mercy. The strategy of reciprocal pardon is abandoned, and instead the strict letter of the law must be enforced by the royal government for the good of the individual soul and the commonwealth. Unmerited pity and forgiveness will bring on social disorder. The anatomy of this change can best be seen in Tudor morality plays in which the allegory of the Four Daughters lived on into the early-modern period. Much of the moralities' appeal came from their use as the public vehicle for social criticism. The pre-Reformation moralities are, at heart, about the salvation available to humankind through Christ's atonement. These earlier moralities are about learning to rule the individual soul, to repent and be saved by God's mercy when overwhelmed by corrupting influences. But the vast majority of sixteenth-century moralities are concerned with maintaining order in the secular world. The focus is on eliminating corruption and securing righteous rule in the commonwealth. Order in the kingdom is achieved through a virtuous ruler. The underlying assumption is that rulers are chosen by God to lead or punish the people. These plays are concerned more with retribution than repentance.

The majority of the moralities contain at least one of the figures of the Four Daughters allegory and something of the structure. The altered importance of each Virtue is

indicated by a number of changes; the most important is that they do not continue to be used with equal frequency. Peace is almost completely gone, Truth found only occasionlly, Mercy recedes in importance, and Justice is the dominant figure. Justice is the king's most valuable advisor; justice, judgment, and punishment secure order for society. The daughters' debate was adapted to new purposes: to Calvinist pieces about faith and good works; to propaganda on the relation of Church and royal government; to farcical works on the corruption at court. But all show evidence of a fundamental concern with the obligation to obey the law, and the necessity of using its penalties. Justice is no longer a personification of theological concepts; instead, she has been transferred to the temporal sphere, and represents the administration of justice in England's courts.

The ways in which both religion and government sought to master cultural anxiety, apparently rooted in social disorder, by replacing an ideology of mercy with an ideology of justice are evident in humanist and reforming texts as well as in other types of literature from the sixteenth century. English society turned to the royal government to execute justice and punish the wicked. In the public's imagination moral struggle no longer took the form of the individual's inner life and the effect his or her actions had on the community. Instead, it was focused on the king's authority to control, to judge and punish, the criminal and

sinful behavior of his people. This ideology of justice
dominates the literature after the 1530s. The medieval, or
perhaps one could say the traditional, ideas about mercy's
role in judgment and in ordering of social life were
transformed. The texts ring with an insistence on the
individual's obligation to obey one authority in both
spiritual and secular matters, and that authority's right to
maintain the peace by enforcing the law. In Tudor
literature we see a stronger emphasis than ever before on
the idea that God's judgment can and will be executed in
this world. We also see the unquestioned assertion that the
Crown is the agent of divine justice. Medieval texts
indicate a need to structure an apology or rationale for the
punishment of one member of society by another. But any
such reservations were swept aside in the Tudor period.

VI

The signs of intellectual and cultural changes embodied
in the texts can be powerfully suggestive about the ideas
that may have motivated or contributed to practices in
court. The sources analyzed here show that in the
thirteenth through fifteenth centuries people were using a
genre and message traditionally associated with religion to
treat secular problems pertaining to mercy and the law. An
inherited ideal of pardon's worth in avoiding the
destruction of vengeance appears again and again in the
allegory of the Four Daughters of God; it also is found
throughout other literature of mercy. There is an obvious

chronological discrepancy between these descriptions of
mercy's role in judgment and actual practices in the courts.
The common law began its gradual process of refinement in
terms of sanctions by the fifteenth century if not earlier--
perhaps these legal changes began about the same time that
the literature of mercy began to express dissatisfaction
with the traditional role of mercy in secular judgment. The
discrepancy was due in part to the fact that literary
expressions concerning mercy and judgment were largely
dictated and controlled by available rhetorical forms and
conventions. Nevertheless, the awareness of a disjunction
in ideals and reality wore through the fabric of rhetoric.
In the early sixteenth century the ideal of law's function
in society had been adjusted; it more closely conformed to
the reality of practice in the courts--to verdicts and
sentences, to the way people chose to sanction wrongdoers.
This adjustment seems to happen quickly because the
discourse on mercy and justice had for so long been
constrained by literary conventions, and because many
changes occurred in English society in the first half of the
sixteenth century--in religion, politics, the economy, and
intellectual life. By the second half of the sixteenth
century, the discourse mimics the fundamental reformulation
of the ideal. It also signals pivotal features in changing
cultural values.

The forms of merciful behavior seen in the courts, the
technical features in legal administration that allowed such

discretion, were hardly static during the period. By 1600, as compared to 1200 or 1300, the common law's system of penalties for felonies had achieved a notable degree of sophistication. A gradation of punishments had evolved, calibrated to the nature and circumstances of the crime and the character of the accused. The law had been adjusted to reflect community attitudes about capital sanctions. The reality of circumstances affecting homicide and theft, and the element of intent, were taken into account, and the defendant sentenced accordingly. By the late sixteenth century, the processes of justice had been placed squarely within the human realm. The Crown, speaking for both God and England, used the common law and the justice it claimed as sovereign, to structure social and political life. The redefinition of mercy's role and relationship to justice had occurred in practice, and judgment had been domesticated. The Church said men had the obligation to instill righteousness in others; serving in the royal courts gave them the authority to judge. The legal system had become more fully refined, so that the means of reward and punishment were better able to reflect community attitudes about just deserts. Mercy could be expressed in controlled degrees by the king, judges, and juries who administered England's laws. This facilitated mercy's redefinition. Conflicts between passing judgment on others and cultural attitudes were muted; in addition, judgment had become a

civic duty. The literature of mercy is a reflection of the course of legal development.

The special language used to justify saving or condemning a person may not be accessible in court records, but it is amply available from more general use in other sorts of literture. From this we can become familiar with the cultural context in which jurors and judges rationalized behavior that was counter to the law. By tracing the development of attitudes about the relationship of mercy and justice in the literature, we can see indications of what generated changes in the administration of the law. The discourse on mercy reflects ideas behind the practices in the courts. There is a convergence in the sixteenth century of legal practice and literature. Consider the parallels between the growth of criminal law and the transformation in the allegory. The sixteenth century sees the culmination of the process in which the Crown finally removes the administration of justice into its own control, and restricts the use of options available to those who serve in its courts. The allegory, too, shows a domestication of Justice, the process of its metamorphosis from a theological to a secularized juridical virtue. Through this, Justice is brought completely into the human sphere and becomes the counsellor of kings. The act of judgment profoundly alters in nature. The medieval versions of the allegory represent judgment as a mysterious act that must be executed by the divine or supernatural powers. However, the morality plays

speak repeatedly of judgment as man's obligation delegated by God. Mercy and Justice, in 1200, are equally powerful-- and opposing--virtues. By 1600 they have been reconciled through redefinition. Mercy has been subordinated to justice; mercy is the equitable or Christian fulfillment of the law. Justice is dominant, and mercy is subsidiary, manifested in the gradations of punishment administered by authority.

It must be emphasized that this does not mean that essential ideas or attitudes about the profound importance of mercy had changed. Not at all. We can see that in actual practice the frequent use of mercy in the administration of the law continued well into the sixteenth century. What had occurred was a very gradual shift in conceptualization that allowed customary notions of mercy to be consistent with newer ideas about authority, about the individual's reliance on the king and his law. The strident demands for vengeance and retribution that pour from the literature do not, in fact, mimic men's behavior or totally obliterate their merciful impulses. This harsh insistence on punishment might be the result of an increasing awareness of a society that was now past, and the desire to enforce a separation from it. The medieval ideal of reciprocal pardon had been gradually converted under the pressure of changing social realities. Mercy was incorporated into a new ideal, that of justice available in this world through the king and his courts.

With an understanding of this convergence between literature and the law in the early sixteenth century, we can move to more speculative historical questions. Using the literature of mercy can help us to trace the development between 1200 and 1600 of a calibrated system of sanctions that more closely resembled the attitudes of those administering the law. The literature also indicates how the dialectic between ruler and ruled in the courts generated justifications for mercy--and then for retribution. Finally, the discourse on mercy is a valuable tool in uncovering the significance of late medieval attitudes to mercy's place in society. The transformation in ideas about mercy signals the factors that engendered the change in governance--a change resulting in a commonwealth and greatly augmented royal authority.

Notes to Chapter 1

[1] Thomas A. Green, "A Retrospective on the Criminal Trial Jury, 1200-1800," Twelve Good Men and True, ed. J. S. Cockburn and Thomas A. Green (Princeton: Princeton UP, 1988) 386.

[2] M. T. Clanchy, "Law, Government, and Society in Medieval England," History 59 (1974): 77.

[3] Much of this debate is summarized in Lawrence Stone, "Interpersonal Violence in English Society 1300-1980," Past & Present 101 (1983): 22-33.

[4] The following includes only a few of the most influential studies: John Bellamy, Crime and Public Order in England in the Later Middle Ages (Toronto: U of Toronto P, 1973); James B. Given, Society and Homicide in Thirteenth-Century England (Stanford: Stanford UP, 1977); Barbara A. Hanawalt, Crime and Conflict in English Communities 1300-1348 (Cambridge: Harvard UP, 1979); Richard Kaeuper, "Law and Order in Fourteenth-Century England: The Evidence of Special Commissions of Oyer and Terminer," Speculum 54 (1979): 734-84; Thomas A. Green, Verdict According to Conscience (Chicago: U of Chicago P, 1985); J. S. Cockburn, A History of English Assizes 1558-1714, Cambridge Studies in English Legal History (Cambridge: Cambridge UP, 1972); Cynthia Herrup, The Common Peace. Participation and the Criminal Law in Seventeenth-Century England, Cambridge Studies in Early Modern British History (Cambridge: Cambridge UP, 1987).

[5] Frederick Pollock and Frederic William Maitland, The History of English Law before the Time of Edward I, 2nd ed., 2 vols. (Cambridge: Cambridge UP, 1968) 2: 466-511.

[6] Given 133.

[7] Ralph B. Pugh, "Reflections of a Medieval Criminologist," Proceedings of the British Academy 59 (1973): 83-103.

[8] Hanawalt 59-61. She notes that the conviction rate was lowest the farthest from London.

[9] Bernard William McLane, "Juror Attitudes toward Local Disorder: The Evidence of the 1328 Trailbaston Proceedings," Twelve Good Men and True, ed. J. S. Cockburn and Thomas A. Green (Princeton: Princeton UP, 1988) 54-55.

[10]The standard work is Naomi K. Hurnard, The King's Pardon for Homicide before A.D. 1307 (Oxford: Clarendon, 1969). There is no single work on the king's pardon in the later middle ages, but see Green, Verdict chapters 1-4, and Bellamy, Crime chapter 6.

[11]Leona C. Gabel, Benefit of Clergy in England in the Later Middle Ages, Smith College Studies in History 14 (Northampton, MA: Smith College, 1929).

[12] Bellamy, Crime 162-98; Richard W. Ireland, "Theory and Practice Within the Medieval English Prison," The American Journal of Legal History 31 (1987): 56-67; Ralph B. Pugh, Imprisonment in Medieval England (Cambridge: Cambridge UP, 1968).

[13] See Green, Verdict chapters 1-4, and his reassessment in "Retrospective."

[14] Chistopher Whittick, "The Role of the Criminal Appeal in the Fifteenth Century," Law and Social Change in British History, ed. J. A. Guy and H. G. Beale, Royal Historical Society Studies in History Series 40 (London: Royal Historical Society, 1984).

[15] For an introduction, see Michael Clanchy, "Law and Love in the Middle Ages," Disputes and Settlements, ed. John Bossy (Cambridge: Cambridge UP, 1983); Edward Powell, "Arbitration and the Law in England in the Late Middle Ages," Transactions of the Royal Historical Society, 5th ser., 33 (1983): 49-67.

[16] Isobel D. Thornley, "The Destruction of Sanctuary," Tudor Studies, ed. R. W. Seton-Watson (London: Longman's, 1924).

[17] This is discussed at greater length below in Chapter 7.

[18] Thomas A. Green, "The Jury and the Law of Homicide, 1200-1600," Michigan Law Review 74 (1976): 415-99; J. M. Kaye, "The Early History of Murder and Manslaughter," Law Quarterly Review 83 (1967): 365-95, 569-601; S. F. C. Milsom, Historical Foundations of the Common Law, 2nd ed. (London: Butterworths, 1981): 417-28; J. H. Baker, ed., The Reports of Sir John Spelman, vol. 2, Selden Society 94 (London: Selden Society, 1978); J. H. Baker, "The Refinement of English Criminal Jurisprudence," Crime and Criminal Justice in Europe and Canada, ed. Louis Knafla (Calgary: Laurier UP, 1981).

[19] Milsom, Historical Foundations 417-28.

[20] J. S. Cockburn, "Introduction," Calander of Assize Records. Home Circuit Indictments Elizabeth I and James I (London: HMSO, 1985) 113-25. Also see Cockburn, History, 127-29. See P. G. Lawson, "Lawless Juries: The Composition and Behavior of Hertfordshire Juries, 1573-1624," Twelve Good Men and True, ed. J. S. Cockburn and Thomas A. Green (Princeton: Princeton UP, 1988) 150-56, for tables and accompanying discussion on assize trial jury verdicts from Hertfordshire between 1573 and 1624; he gives the percentages for convictions, acquittals and partial verdicts. Other figures for acquittals, convictions, and executions in the same general period can be found in Herrup, Common Peace, chapters six and seven.

[21] Marjorie Blatcher, The Court of King's Bench 1450-1550. A Study in Self-Help, University of London Legal Series 12 (London: Athlone, 1978) 81-89.

[22] John G. Bellamy, "Benefit of Clergy in the Fifteenth and Sixteenth Centuries," Criminal Law and Society in Late Medieval and Tudor England (New York: St. Martin's, 1984).

[23] E. W. Ives, "Crime, Sanctuary, and Royal Authority under Henry VIII: The Exemplary Sufferings of the Savage Family," On the Laws and Customs of England, ed. Morris Arnold, et al., Studies in Legal History (Chapel Hill: U of North Carolina P, 1981).

[24] See Philip Jenkins, "From Gallows to Prison? The Execution Rate in Early Modern England," Criminal Justice History 7 (1986): 51-72. Jenkins shows that mitigation could have very practical political motivation.

[25] Cockburn, "Introduction" 65-70.

[26] For works on the character of the criminal trial and the development of prosecution, see: J. S. Cockburn, "Trial by the Book?: Fact and Theory in the Criminal Process, 1558-1625," Legal Records and the Historian, ed. J. H. Baker (London: Royal Historical Society, 1978); Cockburn, "Introduction" 88-112; J. H. Baker, "Criminal Courts and Procedure at Common Law 1550-1800," Crime in England 1550-1800, ed. J. S. Cockburn (Princeton: Princeton UP, 1977); John Langbein, Prosecuting Crime in the Renaissance (Cambridge: Harvard UP, 1974); Bellamy, Criminal Law 33-53; Edward Powell, "Jury Trial at Gaol Delivery in the Late Middle Ages: The Midland Circuit, 1400-1429," Twelve Good Men and True, ed. J. S. Cockburn and Thomas A. Green (Princeton: Princeton UP, 1988).

[27] Baker, "Criminal Courts" 16.

[28] For example, see the chapters by Groot, McLane, and Post in Twelve Good Men.

[29] Bellamy, <u>Criminal</u> 33-53.

[30] Green, "Retrospective" 361-75.

[31] Cockburn, "Trial."

[32] See B. H. Putnam, introduction, <u>Proceedings before the Justices of the Peace in the Fourteenth and Fifteenth Centuries</u>, (London: Spottiswoode, 1938), and Bellamy, <u>Crime</u> 94-98.

[33] Regarding compensation, see Daniel R. Ernst, "The Moribund Appeal of Death: Compensating Survivors and Controlling Jurors in Early Modern England," <u>The American Journal of Legal History</u> 28 (1984): 164-90, and J. A. Sharpe, "'Such Disagreement betwyx Meighbors': Litigation and Human Relations in Early Modern England," <u>Settlements and Disputes</u>, ed. John Bossy (Cambridge: Cambridge UP, 1983); regarding equity, see n. 35 below.

[34] Whittick, "Criminal Appeal;" Daniel R. Ernst, "The Moribund Appeal of Death: Compensating Survivors and Controlling Jurors in Early Modern England," <u>The American Journal of Legal History</u> 28 (1984): 164-90.

[35] See Milsom, <u>Historical</u>; E. W. Ives, <u>The Common Lawyers of Pre-Reformation England</u>, Cambridge Studies in English Legal History (Cambridge: Cambridge UP, 1983) 189-221; Baker, <u>Reports</u> 37-43, 70-74; Alan Harding, ed., <u>The Law Courts of Medieval England</u> (London: Allen, 1973); Margaret Avery, "The History of the Equitable Jurisdiction of Chancery before 1460," <u>Bulletin of the Institute of Historical Research</u> 42 (1969): 129-44; Nicholas Pronay, "The Chancellor, the Chancery, and the Council at the End of the Fifteenth Century," <u>British Government and Administration</u>, ed. H. Hearder and H. R. Loyn (Cardiff: U of Wales P, 1974); J. B. Post, "Equitable Resorts Before 1450," <u>Law, Litigants and the Legal Profession</u>, Royal Historical Society Studies in Legal History Series 36 (London: Royal Historical Society, 1983).

[36] Some take absolutely no notice of it; for example, J. B. Post, "The Justice of Criminal Justice in Late-Fourteenth Century England," <u>Criminal Justice History</u> 7 (1986): 33-50.

[37] Given 105.

[38] Pugh 89-90.

[39] McLane 59-60.

[40] Hanawalt 63.

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[41] Hanawalt 55.

[42] Bellamy, _Crime_ 58-60.

[43] Bellamy, _Crime_ 180-84.

[44] Cockburn, "Introduction" 114-23.

[45] Cockburn, _History_ 121-27.

[46] Cockburn, _History_ 132.

[47] Cynthia Herrup, "Law and Morality in Seventeenth-Century England," _Past & Present_ 106 (1985): 106.

[48] Herrup, "Law" 108.

[49] Herrup, "Law" 111.

[50] Herrup, "Law" 122. For similar conclusions about juries in the eighteenth century, see Peter King, "Decision-Makers and Decision-Making in English Criminal Law, 1720-1820," _Historical Journal_ 27 (1984): 25-58. For quite different conclusions about the use of exemplary punishment and mitigation, see P. G. Lawson, "Lawless Juries: The Composition and Behavior of Hertforshire Juries, 1573-1624," _Twelve Good Men and True_, ed. J. S. Cockburn and Thomas A. Green (Princeton: Princeton UP, 1988); Douglas Hay, "Property, Authority, and the Criminal Law," _Albion's Fatal Tree_, ed. Douglas Hay, Peter Linebaugh, John G. Rule, E. P. Thompson, and Cal Winslow (New York: Pantheon, 1975).

[51] The final chapter in Herrup, _Common Peace_ is a notable example of this approach.

[52] Green "Jury."

[53] Lawson believes this is a sufficient explanation.

[54] Bellamy, _Crime_ 180-84.

[55] Hay came to this conclusion for a later period; one is tempted to see whether this applies to medieval England.

[56] Herrup "Law," 119-20.

[57] Roger D. Groot, "The Early-Thirteenth-Century Criminal Jury," _Twelve Good Men and True_, ed. J. S. Cockburn and Thomas A. Green (Princeton: Princeton UP, 1988).

[58] The works of Herrup and Hanawalt cited above offer excellent descriptions of this process.

[59] McLane 61, 64.

[60] The growing interest in jury composition indicates the importance accorded to this question.

[61] An excellent history written from this perspective is Richard W. Kaeuper, *War, Justice, and Public Order* (Oxford: Clarendon, 1988).

[62] See Harding, *Law Courts*, and more recently, Stephanie L. Mooers, "A Reevaluation of Royal Justice under Henry I of England," *American Historical Review* 93 (1988): 340-58.

[63] Typical of this view is Ailsa Herbert, "Hereforshire, 1413-61: Some Aspects of Society and Public Order," *Patronage, the Crown, and the Provinces*, ed. Ralph A. Griffiths (Atlantic Highlands, NJ: Humanities, 1981).

[64] The work of K. B. McFarlane has been most influential in this regard; some of the pertinent essays can be found in K. B. McFarlane, *England in the Fifteenth Century* (London: Hambledon, 1981). A good example of more recent work in this vein is Christine Carpenter, "Law, Justice, and Landowners in Late Medieval England," *Law and History Review* 1 (1983): 205-37.

[65] See the studies printed in Mervyn James, *Society, Politics, and Culture. Studies in Early Modern England* (Cambridge: Cambridge UP, 1986). This will be discussed at length in Chapter 7 below.

[66] See below, Chapter 6.

[67] Clanchy "Law."

[68] See the following: Simon J. Payling, "Law and Arbitration in Nottinghamshire 1399-1461," *People, Politics, and Community in the Later Middle Ages*, ed. Joel Rosenthal and Colin Richmond (New York: St. Martin's, 1987); Edward Powell, "Settlement of Disputes by Arbitration in Fifteenth-Century England," *Law and History Review* 2 (1984): 21-43; Carole Rawcliffe, "The Great Lord as Peacekeeper: Arbitration by English Noblemen and the Councils in the Later Middle Ages," *Law and Social Change in British History*, ed. J. A. Guy and H. G. Beale (London: Royal Historical Society, 1984).

[69] Green, *Verdict* 366-83.

[70] Even when there are good intentions, it seems, some historians are unable to make a case for employing a variety of sources; for example, see Kaeuper, "Law" 735-37.

[71] See C. M. D. Crowder, "Peace and Justice around 1400: A Sketch," Aspects of Late Medieval Government and Society, ed. J. G. Rowe (Toronto: U of Toronto P, 1986).

[72] A few examples are: W. R. J. Barron, "The Penalties for Treason in Medieval Life and Literature," Journal of Medieval History 7 (1981): 187-202; T. C. Curtis and F. M. Hale, "English Thinking about Crime, 1530-1620," Crime and Criminal Justice in Europe and Cananda, ed. L. A. Knafla (Calgary: Laurier UP, 1981); Natalie Zemon Davis, Fiction in the Archives (Stanford: Stanford UP, 1987).

[73] See the articles collected in Homo, Memento Finis: The Iconography of Just Judgment in Medieval Art and Drama, Early Drama, Art, and Music Monograph Series 6 (Kalamazoo: Medieval Institute, 1985), and Craig Harbison, The Last Judgment in Sixteenth Century Northern Europe (New York: Garland, 1976).

[74] N. F. Blake, "Middle English Prose and its Audience," Anglia 90 (1972): 437-55; Janet Coleman, Medieval Readers and Writers 1350-1400 (London: Hutchinson, 1981).

[75] M. B. Parkes, "The Literacy of the Laity," The Medieval World, ed. David Daiches and Anthony Thorlby, Literature and Western Civilization 2 (London: Aldus, 1973); Jo Ann Hoeppner Moran, The Growth of English Schooling 1340-1548 (Princeton: Princeton UP, 1985); David Cressy, Education in Tudor and Stuart England (New York: St. Martin's, 1976); Nicholas Orme, English Schools in the Middle Ages (London: Methuen, 1973); Nicholas Orme, From Childhood to Chivalry: The Education of the English Kings and Aristocracy, 1066-1530 (London: Methuen, 1984).

[76] M. T. Clanchy, From Memory to Written Record, England, 1066-1307 (Cambridge: Harvard UP, 1979).

[77] Clancy, Memory 175-201.

[78] Some notion of the popularity of compositions during the period may be gained from an appendix in the following text that lists the number of manuscripts remaining for particular works: Carleton Brown and Rossell Hope Robbins, The Index of Middle English Verse (New York: Columbia UP, 1943) 737-39.

[79] H. S. Bennett, English Books and Readers 1485-1557 (Cambridge: Cambridge UP, 1952).

CHAPTER 2

MERCY IN LEGAL AND CLERICAL SOURCES

The literary discourse on mercy found in popular
literature from the period 1200-1600 must be read within the
context of lay and clerical ideas about mercy and justice.
Elite definitions of mercy and its function in temporal and
divine judgment necessarily formed the basis for more
popular representations of mercy's place in English law.
Works of legal and clerical authorities on the nature of
mercy were turned to the purposes of those who sought to
explain, in popular literature, the particular role of mercy
in judgment. The ideas of a well-educated minority served
as the foundation for the general understanding of mercy's
role in law and governance common to the Christian culture
of medieval England. Chancery officals may have thought
about mercy in terms of Bracton's description of a king's
obligation to preserve his kingdom; jurymen may have drawn
on their knowledge of mercy acquired from sermons. All men
who served in the king's courts would have some familiarity
with the notions of mercy preserved and taught by the
country's elite.

In the work of both lawyers and churchmen, two
characteristics of mercy are emphasized repeatedly: mercy

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is an integral part of justice and judgment; mercy is an obligation with a crucial element of reciprocity. Secular traditions of mercy are most evident in the king's obligation to rule with justice, embodied in the coronation oath and some legal treatises. In these sources, mercy and justice almost always appear in tandem. The focus is on the essentially protective character of the king's duty to keep the peace and aid the powerless. The royal obligation to be both merciful and just is frequently presented in terms of its religious aspects; either a parallel is drawn between the earthly and heavenly king, or the king's position as God's vicar is emphasized. Unfortunately, the treatises are practically oriented, concerned largely with procedure. We are forced to glean from only a handful of references an approximation of contemporary attitudes about mercy's place in the law.

This clearly is not the case with works of the clerical elite. Generally speaking, theologians discussed mercy in three ways: as God's readiness to forgive the repentant; as a human virtue; in terms of soteriology. Mercy appears in explanations of the nature of good works and their effect on the last judgment, and in analyses of the importance of God's forgiveness and righteousness in his sacrifice which provided satisfaction for human sins. The authority for this mercy, inextricable from justice and an essential obligation for every Christian, was found in Scripture. The laity became familiar with the clergy's teaching on mercy

through certain prayers, portions of the catechism, discussion of vices and virtues, and the sacraments. The work of only a few theologians supplied the explanations of the operation of mercy that dominated until the later middle ages, when new intellectual developments began to effect the Church's teaching. The growth of penitential theology, and the continued emphasis during the thirteenth, fourteenth, and fifteenth centuries on the importance of participating in the sacrament, significantly affected notions of mercy's role in passing judgment on others. The roots of these changes are found in the penitential obligations instituted by the Fourth Lateran council which also generated a vast amount of related literature. This included aids for the clergy in the guidance of penitents as well as a vast number of works in other genres, all having their origin in the desire to guide the examination of the conscience. Concomitant with the increasing emphasis on the sacrament was the founding and subsequent popularity of the mendicant orders, and the dominance of the sermon as a medium for teaching and encouraging confession.

This promotion of the sacrament of reconciliation gave mercy a prominent place in the consciousness of the English people during the thirteenth through sixteenth centuries. The centrality of the social need to confess and effect amendment with others--and with God--was continually underscored in the Christian life of the community, perhaps more than any other aspect of the Church's doctrine. The

promise of divine mercy ever was held before the people. At
the same time, as audience to the spoken and written word,
they were taught and encouraged to judge, in the attempt to
root out sin, and to evaluate their actions as well as
intentions. The effect these changes had on customary lay
attitudes toward mercy in judgment and the king's
obligations to keep the peace through mercy and justice is a
fundamental question examined in later chapters. Despite
intellectual developments in religion in the later middle
ages, one aspect of mercy always was found at the heart of
the Church's teaching. In sermons, in prayer, and in moral
instruction, the reciprocal function of mercy was endlessly
repeated: For if you forgive men their trespasses, your
heavenly Father also will forgive you; but if you do not
forgive men their trespasses, neither will your Father
forgive your trespasses.[1]

I

Mercy as both a royal obligation and prerogative is
present in the English coronation oath. That mercy was
inseperable from justice, and justice owed to the people, is
plain in the oath. Beyond that we only can conjecture about
how that mercy was to be used and who was to receive it. At
the ceremony that marked the beginning of his reign, the
king made only a few promises. One of them was meant to
insure that mercy would be part of the administration of
justice.[2] The oath was essential in establishing the
kingship of a new man over his countrymen. The exact words

of the oath may have varied, at least through the thirteenth
century; the coronation charters of the twelfth and
thirteenth centuries are elaborations of the promises made
under oath at the coronation. Beginning with Edward II, the
oath was delivered in the vernacular, and may have differed
from the liturgical form. In the oath the king promised to
uphold the laws and customs, protect the people and the
rights of the church, and to exercize justice and mercy in
his judgments. Mercy was considered one of the essential
elements of English kingship. However, as will be seen
below, references to justice and mercy in legal treatises
that echo the form used in the coronation oath suggest that
the protection of merciful judgment was meant not for all in
the kingdom but for poor and powerless men.

In legal treatises the only consistent element in
references to mercy is its pairing with the execution of
justice. Otherwise, references are infrequent and often
ambiguous. For example, a treatise from the later twelfth
century, the Leges Henrici Primi, contains many brief
allusions to the use of justice and mercy; they afford
little more than a frustrating glimpse of contemporary ideas
about mercy and the law.[3] There mercy is described as being
in opposition to a justice that punishes:

> because of the many molestations by evil-doers it
> has been provided by way of a fit ordering of the
> peace that pleas concerning more serious charges
> and meriting greater punishment shall be assigned
> to the justice and mercy of the sovereign alone,
> so that more abundant pardon may be had for those
> seeking it and more abundant retribution for those
> transgressing.[4]

But there is no indication of the circumstances which merit
such mercy, or whether those pardoned were not actually
transgressors. The treatise does suggest at another point
that there are matters which, because they were not criminal
in intent, deserve to be treated mercifully.

> In these and similar cases where a man intends one
> thing and something else results (where what is
> actually done is the subject of the accusation,
> and not the intention) the judges shall for
> preference fix a compensation determined on
> grounds of compassion and intended to repair any
> violation of honor, as appropriate to the
> circumstances.[5]

There are sections that caution us against assuming that we
know what sort of behavior or treatment was indicated by the
word mercy: "If a woman marries two brothers, she shall be
cast out until the day of her death; in her final hour,
however, she shall be taken back into the church as a
measure of merciful humanity."[6] The Dialogus De Scaccario,
probably written between 1176 and 1179, includes two stories
that retail the merciful character of Henry II.[7] Here is a
different kind of royal mercy: we are given examples of
Henry's generosity. In both stories the king refrains from
pushing his advantage and taking vengeance, whether over a
conquered enemy or an encroacher on royal land.[8] Henry's
clemency and largess are defined by reference to the parable
of the Debtor Servant: those whom the king forgives for
debt are warned that they in turn should imitate his
generosity; they must not make demands on their tenants, or
they will be punished many times over.[9] The net of

reciprocal obligations usually can be found with mercy in any of its forms.

The treatise on the laws and customs of the realm of England commonly called Glanvill, which will be referred to here as Glanvill, was written during the reign of Henry II.[10] The Prologue to this highly influential work was frequently adapted and appeared in later treatises. It contains a formulation, which echoes the coronation oath, of the way in which a king ought to keep peace through a combinaton of arms, laws, and justice tempered with mercy.[11] That mercy is not to be shown indifferently. Successful rule involved "crushing the pride of the unbridled and ungovernable with the right hand of strength and tempering justice for the humble and meek with the rod of equity...."[12] Much of the Prologue praises the king's prudence and impartiality in administering the law--though we may assume that he was not impartial toward those who were ungovernable--and his willingness to be guided by those learned in the laws and customs of the kingdom. Fear of favoritism does not trouble those seeking judgment; "indeed, a poor man is not oppressed by the power of his adversary...."[13]

The most influential legal treatise of the middle ages on English common law, On the laws and customs of England, usually referred to as Bracton, was written in the mid-thirteenth century.[14] Glanvill's description of the king's need to rule by arms and just administration of the law is

used here, in an expanded and more sophisticated form.[15]   In

one section, the king's obligation to act as judge is

explained in terms of his coronation oath.   Bracton

elaborates on the reasons a king must be just and merciful.

The king swore at his coronation that

> he will cause all judgments to be given with
> equity and mercy, so that he may himself be shown
> the mercy of a clement and merciful God, in order
> that by his justice all men may enjoy unbroken
> peace.[16]

We hear again the message of the Debtor Servant, and of the

reciprocity involved in obligation to be merciful.

The king exists to do justice. He is God's vicar on

earth; he must surpass in power all his subjects, and have

no peer in doing justice. The king must "put on the bridle

of temperance and the reins of moderation, lest being

unbridled, he be drawn toward injustice."[17] Mercy, in the

guise of compassion and temperance, is an essential part of

royal justice; without it, the king's judgments might be

unjust. This is understood as integral to the meaning of

the most famous lines in Bracton on the king's power: the

king must imitate Christ and the Blessed Virgin, in choosing

always to be subject to established laws. He is not under

any man, but under God and the law, the law that makes him

king and gives him power.[18]

Unlike earlier treatises, Bracton provides a complex

definition of justice, in God and the just man, and in the

appropriate application of mercy. Justice in the world of

men is described by distinguishing it from equity: "Equity

is, so to speak, uniformity, and turns upon matters of fact,
that is, the works and acts of men. Justice, on the other
hand, lies in the minds of the just."[19] Where Bracton
treats the element of intent in crime, we see an interest in
analysis of the practical matters encountered in royal
courts; this is a far cry from the abstract references to
mercy in other treatises.[20] In terms of the practices of
mitigation in court, some passages seem to indicate that
mercy should be preferred to a strict enforcment of
penalties:

> It is the duty of the judge to impose a sentence
> no more and no less severe than the case
> demands;he must seek a reputation neither for
> severity nor clemency but, having weighed the
> circumstances, should determine as each case
> requires. In less serious cases they ought to be
> more inclined to leniency; in the imposition of
> the heavier penalties to temper the severity of
> the law with a degree of benignity. Punishments
> are rather to be mitigated than increased.[21]

Yet this is qualified in a subsequent passage. Mercy must
not become debased by granting it indiscriminately. Given
to the incorrigible it is unjust, and encourages regression
instead of reform.

> Let him therefore be merciful to the unworthy in
> this way, as always to feel compassion for the
> man. And let him not in judgment show mercy to
> the poor man, that is, the mercy of remission,
> though to him there ought to be shown, as to all
> men, the mercy of compassion. And to whom and in
> what fashion a judge should be merciful, the
> merits or demerits of persons shall instruct
> him.[22]

We get some indication, in an unusual treatise, of what
Bracton might have meant about the fashion in which a judge

should show the mercy of remission and the mercy of compassion. The Placita Corone, written about 1275,[23] contains sketches of court proceedings, such as the following exchange between the bench and a defendant accused of stealing a horse. When the defendant asked for advice on how to plead, the justice replied, "tell us the truth in this matter, and we shall be as merciful as we can, according to the law." The defendant thanked him, and admitted that, pressed by great poverty, he stole a horse. In response to questions from the justice, he said he had never stolen before, admitted that he took this as a thief, and had no accomplices. The justice then told the bailiff to let the man have a priest; the passage ends, "let him be hanged."[24] It is a hard mercy that accords with the law here. Presumably the judge slept better knowing he had the mercy of compassion recommended in Bracton. We may ask whether this distinction between types of mercy was in fact a means of justifying a harsh sentence.

The legal treatises from the mid-thirteenth through the mid-fifteenth centuries are mostly reworkings of Bracton, or manuals concerned with the techniques of procedure and land law. The exceptions are two works about England's law and governance by Fortescue, written in the mid-fifteenth century, De Laudibus Legum Anglie and The Governance of England.[25] The treatises address, in part, political questions of the time. There are few direct statements about the operation of justice and the place of mercy.

However, Fortescue does give us one of the rare remarks that concern the use of mercy in judgments by the jury.

> I should, indeed, prefer twenty guilty men to escape death through mercy, than one innocent to be comdemned unjustly. Nevertheless, it cannot be supposed that a suspect accused in this form can escape punishment, when his life and habits would thereafter be a terror to them who acquitted him of his crime.[26]

Unlike discussions of royal mercy, this has the distinct air of practicality about it, though mercy and justice are no less entwined for jurors than for the king's justices. It is a given here that it is possible for guilty men to go free because of jurors' merciful behavior. And for Fortescue, the value of the jury system is that it can spare the accused from undeserved punishment. At the same time Fortescue thought the safeguard of the system was that those who represented the community were unlikely to return to their midst a hardened criminal who would subsequently prey on jurors and others. The passage leaves us with more questions than it answers. What did he think would or should happen to those accused who did not pose a threat after their release? Perhaps these are the potentially guilty who might escape death through the mercy of jurymen. Yet if mercy was an action that involved reciprocal obligations, might jurors mitigate punishment in the expectation that they would receive something in return? These are just the sort of questions unlikely to be answered by elite legal sources alone. All we can say for certain about contemporary attitudes toward mercy reflected in these

works is that mercy was thought an inseperable part of justice, both justice and mercy were fundamental obligations for the king, and people felt the recipient of mercy was required to be merciful in turn.

II

Definitions of mercy, its relationship to justice, and its place in the human and divine worlds abound in clerical works. Theologians discussed mercy in terms of God's readiness to forgive the repenting sinner; they also treated it as a human virtue, and most often as part of the Christian plan of salvation. Religious writers from Augustine to popularizing mendicant preachers of the fourteenth century endlessly stressed the inextricable bond between mercy and justice. And part of this was the belief that in order to receive mercy, one must be merciful to others.

For Augustine, mercy was a necessary part of justice. His _City of God_ defines mercy as one of the human virtues.[27] This is a response to the question of whether mercy as a passion which affects the _anima_ (mind) is a virtue or a vice.[28] Augustine explains that Scripture subordinates the higher mind to God, to be governed and helped by him, and puts passions into the keeping of the mind to be regulated, restrained, and turned to the purpose of justice.

> But what is pity (_misericordia_) except a kind of
> fellow-feeling in our own hearts for the suffering
> of others that in fact impels us to come to their
> aid as far as our ability allows? This impulse is
> loyal to reason when pity is shown in such a way
> that justice suffers no encroachment, whether we

> show it by giving alms to the needy or by
> forgiving the penitent.[29]

For Augustine, mercy is ancillary yet vital to justice. True Christians would punish not with vengeance, but with good will. Although the correction of evil-doers is a duty, it must be performed with benevolence in order to avoid sin. Augustine states that judges must remember that they need God's mercy, and must show mercy to those they have the authority to punish or kill.[30] In this context, mercy relates to his conception of the state as a divine gift to humankind, intended to help secure the earthly sort of peace. The state must be ordered through temporal justice, but those governing are to follow Christ's teaching and example. This, of course, was a familiar concept to readers of Bracton.

Aquinas also contrasts human mercy as the passion pity and divine mercy which lacks pity.[31] In his treatment of agape, the theological virtue translated as charity, he concludes that mercy means compassion for another's misery. The same thing that makes a man merciful makes him sorrowful about another's misfortune. The only reason for God's mercy is love--he loves us as a part of himself. However, people are moved to mercy for another either because of love between them, or the awareness that they might similarly suffer. Those in terrible circumstances or in fear are so consumed with their own feelings they have no care for others. Similarly, those consumed with anger and pride are

not merciful.[32] But mercy is not just an emotion; it is a
movement of the intellective appetite, regulated by right
reason, and so it is a human virtue, opposed to envy. Mercy
is the greatest of the virtues that have to do with one's
neighbor; mercy is the epitome of Christian good works.
Interior charity, in the sense of love, unites us with God
and this outweighs mercy for one's neighbors. We resemble
God through charity in that we are joined with him through
interior affection. This then is greater than mercy, in
which we are similar to God only in external works.[33]

Aquinas' presentation of the relationship between
divine mercy and justice begins by explaining the character
of human mercy. A person is called merciful (misericors)
when he is miserable at heart (miserum cor); that is, as sad
at the misery of another as though it were his own, so that
he tries to dispel the other's misery--this is the effect of
mercy. Though God does not feel sorrow at the misery of
others, it is part of his nature to dispel that misery.
Defects, Aquinas reasons, are only removed by the perfection
of some kind of goodness, of which God is the first
source.[34] And if mercy is understood to mean the removal of
any kind of defect, both mercy and justice are necessarily
found in all God's works. God, out of the abundance of his
goodness, gives his creatures their due more generously than
what is proportionate to their requirements, even when less
would be enough to preserve the order of justice.[35] When
God acts mercifully, he does not go against his justice, but

rather does something more than what is called for by
justice. So it is when one pardons an offense committed
against oneself; in its remission a gift is given. Aquinas,
like Augustine, was very concerned with the potential
problem of God's mercy negating his justice. Aquinas
asserts that mercy clearly does not destroy justice, but in
a sense is its fullness.[36]

The Church often had articulated the characteristics
and purposes of divine mercy in its doctrinal attempts to
address the contradictory demands of mercy and justice in
the Christian plan of salvation. This is the essential
paradox of justice and mercy inherent in the Christian
religion: how can the judgment of Adam (and his
descendents) and the righteousness of the last judgment not
be nullified by the promise of God's forgiveness? The
Church taught that God's goodness and mercy could not be
consumed, and also that his knowledge and power could not
fail in purpose. His mercy and justice both participate in
the mysteries of predestination and salvation. The wicked
who would be saved could be converted to good only by mercy,
and the wicked who would perish could not abide in their
sins except by justice.[37]

Through the centuries the theories of soteriology
reflected changes in societal notions of the crucial
features of judgment. For Augustine, Christ's role as
mediator is paramount, and he describes the redemption as
man's release from Satan's bondage. In the centuries

following Augustine, the common feature is the idea of
recapitulation, of Christ as the loving representative of
the entire race.[38]   Between the fifth and eleventh centuries
salvation was discussed in terms of the predicament of
fallen humankind in the face of God's justice.   Adam had the
obligation not to sin, and in his refusal to obey had
"dishonored" God by sin; so Adam owed a satisfaction greater
than the diminution in honor.   The relative roles of grace
and free will in salvation were often the focus of debate.[39]
It was in the late eleventh century that the Church's
fundamental teaching on the plan of salvation was set.[40]
Anselm, the exiled archbishop of Canterbury, wrote Cur deus
homo in 1098 in an effort to explain the process and purpose
of salvation.   The work proposed to show that salvation was
impossible except through one simultaneously true God and
true man.   Anselm intended to produce a rational view of the
person and work of Christ that conformed to the greater
authority of Scripture and dogma.[41]   This formulation of the
operation of divine mercy and justice in the scheme of
salvation expresses the increasingly christocentric aspect
of the religion.   His work fueled the cultural conception,
which lasted throughout the middle ages, of a more human and
compassionate God, hence as an approachable lord likely to
grant forgiveness to sinners.   Cur deus homo emphasizes the
act of satisfaction, the restitution and amendment, that
Christ provided for humankind.   Christ is presented as a
God-king, a God who treated humanity as a good lord would

his men, so that following Christ's teaching seemed more feasible to both Anselm's contemporaries and later audiences.[42]

The central ideas from Cur deus homo were employed by theologians throughout the fourteenth and fifteenth centuries, but with different emphases and interpretations of the meaning of Christ's life, teaching, and sacrifice.[43] These had a profound effect on the general understanding of the operation of divine mercy. Most important in the later middle ages was the widespread emphasis on the sovereign will of God--his unity, freedom, and omnipotence. Critics said Anselm seemed to subject God to his own justice and law as if they were independent entities. In these later centuries, theologians underscored the idea that God willed whatever he wanted: "The mercy of God was also an expression of that immutable will and completely subordinate to it...." Anselm's image of a dispute between justice and mercy within the councils of the Trinity no longer really was necessary. God willed whatever he wanted, and "both justice and mercy were names for the expression of the will as it was perceived."[44] William of Ockham was influential in promoting the theological emphasis on the doctrine of divine omnipotence. There was a concurrent growth in forms of devotion that featured an intensity of belief and personal religious experience. The writings of those such as Meister Eckhart exemplify a piety that threatened an exclusion of the Church's mediation through its authority

and sacraments.[45] The manifestations of mercy in the human context received emphasis, but from a different quarter. During the fourteenth and fifteenth centuries, devotion to the human aspect of Christ and the imitation of his example became more intense; the Imitation of Christ was one of most widely read books of the period.[46] This shows the influence of the mendicant orders, and partly is due to the fact that Churchmen asserted the sum of Christianity was to fulfill the teaching of him who was worshipped. Following Christ's example and obedience to his teaching had long been seen as a major component of salvation. There was an increasing emphasis on the imitation of Christ's works out of love, not in fear of a strict judgment, or as the means to insure a reciprocal reward.

It might seem, in light of the works of such as Ockham and Duns Scotus, that by the end of the fourteenth century there had been a radical change to the conception of God as an unfathomable deity whose mercy was obscured by his will. Yet the contents of one of the most popular preaching manuals of the fourteenth and fifteenth centuries suggest that this was not the character of divine mercy to the majority of the English people. John Bromyard, an English Dominican, wrote his Summa Praedicantium during the first half of the fourteenth century, and probably completed it by 1348.[47] This massive reference work is the product of half a lifetime devoted to study and practical oratory, and reflects the medicant experience in England in the

thirteenth century.[48] It contains an exhaustive range of topics, providing preachers with material suitable for almost every occasion. And no subject is given short shrift. The manual is regularly punctuated by references to Scripture, canon law, and a diverse collection of other authorities. Exempla, one of the rhetorical devices favored by preachers, frequently are used to illustrate the meaning of the lesson.[49] Within the section titled "_Misericordia_" the refrain of reciprocity and reward is sounded throughout. The following themes are typical of Bromyard's material on mercy: mercy is exalted over judgment; those who are merciful in this life will receive mercy in heaven; there is judgment without mercy for those those who will not be merciful to their fellows. The Summa Praedicantium repeatedly stresses the availability of God's mercy to all except those who trust in it too much, and those who sin in expectation of forgiveness. Bromyard underscores the dangers of procrastination in petitioning for mercy, and details the ways in which the devil deceives humankind about divine and secular mercy. For Bromyard, and probably for the majority of those who preached, the essence of divine mercy had been clearly revealed: God's mercy superseded his justice, and God's pardon could be obtained by those who followed his teaching, living a life of good works and forgiving others.

III

Scripture served as the authority for theologians'

discussions of mercy and justice, and for the Church's
prescriptions for the place of mercy in Christian life.
Mercy would have been more familiar to English women and men
in the Scriptures, in fact, than in the works of
theologians. Through devotional and didactic works, and
most importantly through sermons, the people of medieval
England would have known at least some of the dicta about
mercy found in the Bible.[50] The best-known verses about
mercy are found in the gospels of Matthew and Luke, in the
sections known as the Sermon on the Mount and the Sermon on
the Plain, respectively. Two of Christ's commands were used
to explain why people should treat one another with mercy.
In the "golden rule" Christ said, "You shall love your
neighbor as your self."[51] Christ extended this obligation
in the command to love one's enemies.[52] The reciprocal
nature of the mercy that is everyone's duty in this life is
apparent in most of the statements about mercy's function
and worth. For example, one of the Beatitudes is "Blessed
are the merciful, for they shall obtain mercy."[53] Another
portion of Scripture known as the Pater Noster, taught as a
prayer to the English people, was a basic part of their
catechism.[54] The fifth petition of the prayer is, "forgive
us our debts, as we also have forgiven our debtors."[55] The
importance of forgiveness and the exchange involved are
echoed many times.[56] This obligation to pardon also resides
in corollary teaching: "Judge not, that you be not judged.
For with the judgment you pronounce you will be judged, and

the measure you give will be the measure you get."[57]   The

theme of balance in human relationships is recurring.[58]

Christians must be careful that their treatment of others is

not rooted in evil impulses but rather takes the form of

good works. Scripture warns that acts of vengeance always

belong to God, not to humankind.[59]

     The Bible is also the source of the best-known stories

used to illustrate the mercy people were obliged to show.

These exempla often were employed in sermons and found their

way into many sorts of didactic and devotional literature.

Four of the most common New Testament parables used to

explain the meaning of Christian mercy were those of Dives

and Lazarus, the Prodigal Son, the Good Samaritan, and the

Debtor Servant.[60] The obligation to perform specific works

of corporal mercy, frequently repeated in religous

instruction, also has its origin in Scripture. Christ

instructed his followers to: feed the hungry; provide drink

for the thirsty; welcome strangers; clothe the naked; visit

the sick; attend those in prison.[61] Custom added to this

the obligation to bury the dead. There is a corresponding

tradition for seven spiritual works of mercy. These are the

acts usually listed: instruct the ignorant; counsel the

doubtful; admonish sinners; bear wrongs patiently; forgive

offences; comfort the afflicted; pray for the living and the

dead.[62] Only the duty to chastise the faults of another is

found in Scripture.[63] This work of mercy frequently was

mentioned in the later middle ages to justify judging and

taking vengeance on another; the passage assumed great significance for the Reformation society of sixteenth-century England.

Although there is no Scriptural authority for the iconographic attributes of mercy, they were a valuable means for conveying elite ideas about mercy to the wider public. Literary or pictoral representations of Mercy personified were used to convey an understanding of the characteristics and qualities of mercy. Mercy appeared carved on baptismal fonts, in paintings on church walls, and in illustrated manuscripts, usually as one of the Four Daughters of God or in conjuction with the works of mercy. Particular objects are more likely to be associated with Mercy in such artwork than in verbal descriptions. Often these attributes indicate her qualities of succor and pity; she was presented holding a box or jar of balm.[64] In France, Mercy personified begins to appear with her sisters in similar pictures only in the fifteenth century; there she carries a lily.[65] In the later middle ages in England, the curtana, a sword with the sharp end broken off, often was used as the symbol of mercy. It was carried in pageants in the coronation processions of Richard III and Henry IV, among others.[66] Though not common, there are written descriptions associating Mercy with particular objects.[67] Best known was the appearance of Mercy in the Life of St. John Almoner; he sees her in his dream wearing a Crown of olive leaves or branches.[68] Another instance is Robert Holcot's description

of Mercy's attributes in one of his commentaries. She is wearing a Crown of olive leaves, carrying six lilies in her left hand, and six shining lamps in her right.[69] More idiosyncratic is Lydgate's description of Mercy in The Pilgrimage of the Life of Man. There she has one breast bared and is holding a special cord.[70] Such images of Mercy may well have carried messages about this virtue that would have been more powerful for English people than any analysis of biblical authority.

IV

One feature of Christian life, the sacrament of penance, especially was responsible for the prominent place that mercy had in the religious instruction and culture of medieval England. The sacrament has four elements-- contrition, confession, and satisfaction on the part of the penitent, and absolution from the priest. Satisfaction consisted of the performance of a penance imposed by the confessor. Also known as the sacrament of reconciliation, an important facet of its operation was reintegration on every level possible, not only in the relationship between the sinner and God, but also that between sinner and sinned against. The penitent was obliged to have resolved any differences with his or her enemies prior to confession; for how could one be truly sorry for sins committed when the sin of wrath remained alive? The desire to confess was facilitated by an understanding of the operation and availability of divine pardon, and of the role that works of

mercy played in the attainment of salvation. Clergymen at
all levels, from the parish priest to the bishop, were
expected to devote a significant part of their pastoral care
to encouraging the laity to reconcile with their neighbors
and with God through confession. The mendicant orders
shared the same goal. Striking developments in penitential
theology during the twelfth century saw a practical
culmination in the early thirteenth-century papal program of
reforms. As a result, divine and human mercy received a
prominent place in the religious instruction of the people,
at the individual and community level, for the next three
centuries.

During the first thousand years of Christianity, the
sacrament of penance had been characterized by the
performance of external acts. The deeds of penance required
for satisfaction were often very severe, and confession
might only occur once or twice in a lifetime. Penitential
manuals assigned an atoning punishment gauged to the action
and not the sinner's state of mind.[71] But during the
twelfth century a shift in focus was instigated by some of
the intellectual elite.[72] Theologians showed a concern with
the element of intention in the assessment of conduct.
There was an emphasis on subjective elements in sin such as
circumstance, intent, motive, and will. Similarly, factors
such as genuine contrition and the resolution to sin no more
featured more prominently in theories of the satisfactory
completion of the sacrament. This change in penitential

theology was discussed most fully by Abelard in his
Ethics.[73] Some historians see in this new turn in
penitential theology the origins of the sense of
individuality in western culture.[74] The concern with
interiority also occurs in other theological works on
matters of doctrine. Anselm formulated the theory of
atonement that expressed Christ's personal suffering and the
individual's relationship with Christ.

If the twelfth century saw a notable shift to the
pursuit of an interior religion, at least on an intellectual
level, then the thirteenth century saw the attempt to
introduce the notion and practice of self-examination to all
members of society.[75] The starting point was canon twenty-
one of the Fourth Lateran Council.[76] Omnis utiusque sexus
concerns the obligations of Christians pertaining to
confession, and the manner in which priests should
administer the sacrament. Partly due to the penitential
practices of the early Church, and partly because there was
little importance placed on frequent participation in the
sacraments, the vast majority of Christians had considered
confession to be something belonging to the deathbed and
perhaps the Lenten season. In Omnis utriusque sexus, the
Church made it mandatory, for the first time, for all
Christians to confess to their own priests a minimum of once
a year, to endeavor to fulfill the penance, and to receive
the Eucharist at least at Easter. This canon also addressed
the means in which priests were to hear confessions. They

were enjoined to be as skilled physicians in their healing
of sinners through the sacrament. They were told to be
careful, discreet, and diligent in the attempt to discern
the circumstances of the sinner and the sin.

The episcopate of England not only met the challenge of
enforcing the intent of the reform-minded council;
throughout the thirteenth century English bishops required
even more of the laity and the clergy in terms of the
sacrament and the instruction it required. Diocesan
constitutions issued by Richard le Poore, Bishop of
Salisbury, were used as a model by other bishops. These
state that confession is to be made three times a year, at
Easter, Christmas, and during Pentecost. In subsequent
decades other bishops, such as Walter de Cantilupe and
Robert Grosseteste, adopted this requirement. In addition,
they listed the rudiments of faith in which priests should
instruct their parishioners.[77] The focus of these statutes
was the education of the clergy and the laity. All this was
to aid in administering and receiving the sacrament of
penance; priests were provided with fundamentals designed to
assist their inquiries into the nature of the sins and the
disposition of the sinner; the essentials of catechism were
to be delivered to the parishioners, in the vernacular, at
set intervals. The most popular and influential of these
diocesan statutes in England were those issued by Archbishop
Pecham at Lambeth in 1281; particularly important was canon
nine, known as Ignorantia Sacerdotum.[78] Copies of the canon

were widespread as a single item, popular with later legislators and didactic writers, and the subject of commentaries. It states that priests are obliged to speak to their parishoners four times a year on the following subjects: the fourteen Articles of Faith; the Ten Commandments; the Evangelical Precepts; the seven works of mercy; the seven deadly sins; the seven virtues; the seven sacraments. Archbishop Pecham's list differs from earlier outlines of religious instruction in that it omits commentary on the Pater Noster, Ave Maria, and the Beatitudes, and it added two articles to the creed. One of the ways in which Pecham's Constitutions became familiar to the lay audience was through Archbishop Thoresby's English translation, composed in 1357.[79]

This brief outline may obscure how truly ambitious was the reform program of the English bishops. It demanded profound changes and generated a vast amount of literature and sermons. In order for these reforms to be instituted, the clergy had to be sufficiently educated in the basics of doctrine and pastoral care before they in turn could offer instruction and administer the sacraments. What is important for this study of mercy is not the administrative side of the reform effort, but rather the literature it produced. It would be difficult to overstate the effect that these reforms had on Latin and vernacular literature in medieval England. Beginning in the twelfth century, the clergy began to write and compile pastoralia. This term has

been used to refer to the vast literature of pastoral care produced in Europe until and even through the Reformation, when it changed in character. These works are literary aids and manuals which were provided to help the priest with his own education or that of his people. Though such literature existed prior to 1215, the Fourth Lateran Council gave special urgency and encouragment to its production over the next fifty years.[80]

The two centuries following 1215 have been called the golden age of didactic literature.[81] The works produced covered in great detail the fundamentals of catechism as well as a wide spectrum of devotional subjects. As the demographics of English society changed, and the literacy rate increased, a greater percentage of the laity were interested in reading and hearing about subjects central to Christian culture. By the fourteenth century, manuals concerning sin and the duties of the confessional were being written that had a more practical nature than before, and much wider appeal. They were written in the vernacular, and addressed to "lewed" folk and priests of "mean lore;" this did not mean they were illiterate, but referred to those who could not read and understand Latin. This demand for devotional and didactic literature was met with a variety of works that took many forms, from works of religious instruction such as the Pricke of Conscience, to the moralistic and entertaining stories of the Legenda Aurea, to the court-oriented belletristic pieces of the Confessio

<u>Amantis</u>. A common element in much of the literature produced in England in the thirteenth through fifteenth centuries, as the discussion in Chapter Four will make clear, is the insistence on the necessity for all people to have mercy on others, to pardon wrongdoers and perform acts of corporal mercy in order to achieve salvation.

Mercy was often the subject of sermons.[82] With the instigation of reform at the parochial and diocesan levels, and the founding and immense popularity of the mendicant orders, the early thirteenth century saw the beginning of the ubiquity of the sermon in medieval English life. The <u>cura animarum</u> was, in theory at least, the primary focus for both the parish priest and the friar. The preparation for and administration of the sacrament of penance was one of their most important duties. In sermons delivered at Oxford, at the court, before the urban audience at St. Paul's Cross, from the pulpit of a rural church, or in the marketplace, mercy was an ever-recurring topic. Whether exempla were used to show the rewards of mercy, or a subtle analysis of the Scriptural authority for mercy displayed, people from all strata of English society heard of the availability of pardon from the heavenly king, and the need to pardon their offending neighbors.

V

It was through the total effect of these developments in penitential theory and practice that the "teaching of theologians and others on interiority reached every level of

Christian life...."[83] Literature with a confessional
orientation was intended to assist people in recognizing the
sins they had committed, and in avoiding evil in the future.
It encouraged penitents to discern an inner character, to
consider intent and motivation for behavior. The former,
passive role of the penitent was eradicated by the changes
in penitential theology that had their seeds in the
innovations of Abelard and other clerics of the twelfth-
century renaissance in learning. The confessor in
subsequent centuries had to attend to the "interior
disposition" of the penitent as well as to the sins
confessed. The self-analysis required by the sacrament of
penance and the supposed self-awareness that accompanied it
are reasons why some scholars locate the origin of a sense
of individuality in the twelfth and early thirteenth
centuries.[84] Very gradually through the late middle ages
repentance, a subjective action isolated in the individual,
gained unusual prominence.

> The act of confessing becomes more personal, more
> aware of self. Contriteness of heart is seen to
> be what matters in the long run, for it is by this
> that sins really are expiated. Sin, in the new
> view, is a diminishing of being. One therefore
> recovers one's integrity not by some long process
> of "physical" satisfaction for sin, as had been
> the practice for centuries, but by repentance, by
> a cleansing of the heart which one then presents
> to the priest as the representative of God and the
> Church.[85]

We must ask what intellectual and social changes attendant
upon this interiority, changes rooted in penitential
theology and practice, might have affected secular notions

of judgment.

First, it is possible that this encouragement to scrutinize, evaluate, and condemn one's own actions directly inspired confidence in judging others. People were unlikely to limit such analysis of intent and behavior to themselves alone. Second, the literature discussed in the following chapters suggests one consequence of the separation of intent and behavior was that people accepted the notion that one could judge an act of wrongdoing and piously leave the evaluation of the true intent behind it to God at the final judgment. This facilitated the use of confession to control the religious life of others in the community, and to control the social order.[86] Finally, we must take into account the chronological relationship between changes in penitential theology, and the intense fear of civil disorder that overshadowed England in the later middle ages. The sources used in the following chapters testify to the fact that there was a growing voice in society during the fourteenth and fifteenth centuries approving condemnation and punishment. This occurred at the same time that the structure of many communities, particularly in urban areas, was changing, and expressions of anxiety about outsiders were becoming more common. How did these developments in theories about judgment and interiority effect beliefs about the king's obligation to rule with mercy and justice?

There are other connections, admittedly more speculative, between penitential practice and wider changes

in society. For example, at least one historian has made a
persuasive argument for the transformation in religion from
a personal manifestation of _societas_ in the Christian
community to one that includes a more abstracted and
isolated relationship between the individual and God, an
argument that this transformation reflects profound changes
in the structure of society.[87] Some have seen a correlation
between the movement from a gift economy to a profit
economy, the innovative approach of the friars, and the
altered sense of social responsibility--that shift from
charity in the form of restitution to members of the
immediate community to relatively impersonal acts of
philanthropy.[88] Accompanying such changing patterns of
charity was the notion of the worthiness of the recipient:
the giver ought to evaluate whether another deserved to be
shown mercy. Both of these are themes of notable frequency
in the literary sources. We must question whether one of
the fundamental changes in society was an increased
willingness to condemn, and encourage the royal government
to condemn, others to punishment. Did the Crown gradually
secure greater political power as a result of this
affirmation of its authority, the endorsement of the idea
that public order should be maintained by retribution, by a
justice that was excluding temperance? In the following
chapters we will consider whether securing justice through a
more rigid application of the law's penalties gained
priority in the sixteenth century, or whether the English

truly believed that maintaining public order in the local or
national community--and securing forgiveness in this life
and the next--continued to require mercy for the
transgressor.

Notes to Chapter 2

[1] Matt. 6.15.

[2] "Facies fieri in omnibus iudiciis tuis equam et rectam iusticiam et discrecionem in misericordia et ueritate secundum uires tuas. Respondebit. Faciam." Leopold G. Wickham Legg, ed., English Coronation Records (Westminster: Constable, 1901) xxi. Legg's introduction has a full treament of the subject. Also see H. G. Richardson, "The Coronation in Medieval England," Traditio 16 (1960): 111-202.

[3] L. F. Downer, ed. and trans., Leges Henrici Primi (Oxford: Clarendon, 1972).

[4] Leges 115, c. 11, 6a; see also Leges 189, c. 59, 20.

[5] Leges 285, c.90, 11d; also see Leges 283, c. 90, 11 and Leges 271, c. 88, 6b.

[6] Leges 225, c. 70, 17; also see Leges 291, c. 92, 15.

[7] Richard Fitz Nigel, Dialogus de Scaccario, ed. and trans. Charles Johnson (Oxford: Clarendon, 1983).

[8] Dialogus 75-77, 93.

[9] Dialogus 48.

[10] G. D. G. Hall, ed., The treatise on the laws and customs of the realm of England commonly called Glanvill (London: Nelson, 1965). It was probably composed between 1187 and 1189.

[11] According to Hall's introduction, the Preface to Justinian's Institutes is the basis for the opening words of Glanvill's Prologue; see Glanvill xxxvi.

[12] Glanvill 1: "effrenatorum et indomitorum dextra fortitudinis elidendo superbiam et humilium et mansuetorum equitatis uirga moderando iusticiam...."

[13] Glanvill 2: "Ibi etenim pauperem non opprimit aduersarii potentia, nec a liminibus iudiciorum propellit quemquam fauor uel gratia."

[14] Henry de Bracton, On the Laws and Customs of England, ed. and trans. Samuel E. Thorne, 4 vols. (Cambridge: Belknap, 1968, 1977) vol. 2. Thorne has shown that most of Bracton was written in the 1220s and 1230s; see vol. 3, pp. xiii-lii.

[15] Bracton 19. For an example of how this in turn was used in a later treatise, see H. G. Richardson and G. O. Sayles, eds. and trans., Fleta, 3 vols., Publications of the Selden Society 72, 89, 99 (London: Selden Society, 1955-83) 72: 1-2.

[16] Bracton 304: "ut in omnibus iudiciis aequitatem praecipiat et misericordiam, ut indulgeat ei suam misericordiam clemens et misericors deus, et ut per iustitiam suam firma pace gaudeant universi."

[17] Bracton 305: "tamen cum cor regis in manu dei esse debeat, ne sit effrenata frenum apponat temperantiae et lor moderantiae, ne cum effrenata sit trahatur ad iniuriam."

[18] Bracton 33.

[19] Bracton 23: "Et dicitur aequitas quasi aequalitas et vertitur in rebus, id est in dictis et factis hominum. Iustitia in mentibus iustorum quiescit." See also p. 25.

[20] For example, see Bracton 289-90.

[21] Bracton 299: "Respiciendum est iudicanti ne quid aut durius aut remissius constituatur quam causa deposcit, nec enim aut severitatis aut clementiae gloria affectanda est, sed perpenso iudicio prout quaeque res expostulat statuendum. In levioribus causis proniores esse debent ad lenitatem. In gravioribus vero poenis severitatem legum cum aliquo temperamento benignitatis subsequi. Et poenae potius molliendae sunt quam exasperandae."

[22] Bracton 306: "Sic ergo misereatur indigno ut semper homini condoleat. Item pauperis non misereatur quis in iudicio, misericordia scilicet remissionis, cui tam misericordia compassionis est sicut et omnibus miserendum. Et quibus et qualiter sit miserendum, eum doceant merita vel demerita personarum." Compare this with Fleta 37-38.

[23] J. M. Kaye, ed. and trans., Placita Corone, Selden Society Supplementary Series 4 (London: Selden Society, 1966).

[24] Placita 17; see a similar case on pp. 21-22.

[25] John Fortescue, De Laudibus Legum Anglie, ed. and trans. S. B. Chrimes (Cambridge: Cambridge UP, 1942); John Fortescue, The Governance of England, ed. Charles Plummer (Oxford, 1885).

[26] De Laudibus 65: "Mallem, revera, xx facinorosos mortem pietate evadere quam iustum unum inuste condempnari. Nec tamen reum quempiam sub hac forma reatus sui penam

evadere posse suspicandum est, dum eius vita et onores
timori deinceps erunt eis qui eum sic purgarunt a crimine."

[27] Augustine, <u>The City of God against the Pagans</u>, ed.
and trans. David S. Weisen, Loeb Classical Library, 7 vols.
(Cambridge: Harvard UP, 1968).

[28] Book IX, Chapter V.

[29] Augustine 168: "Quid est autem misericordia nisi
alienae miseriae quaedam in nostro corde compassio qua
utique si possumus subvenire compellimur? Servit autem
motus iste rationi quando ita praebetur misericordia ut
iustitia conservetur, sive cum indigenti tribuitur, sive cum
ignoscitur paenitenti."

[30] For the secular applications of Augustine's
theology, see Herbert A. Deane, <u>The Political and Social
Ideas of St. Augustine</u> (New York: Columbia UP, 1963); this
is based on a discussion of mercy in Deane 142-43.

[31] The following edition of the <u>Summa Theologica</u> is
the one referred to below: Thomas Aquinas, <u>Summa
Theologiae</u>, gen. ed. Thomas Gilby, 60 vols to date.
(Cambridge: Blackfriars, 1964-).

[32] Aquinas 2a 2ae, 30.1 and 30.2.

[33] Aquinas 2a 2ae, 30.3 and 30.4.

[34] Aquinas 1a, 21.3.

[35] Aquinas 1a, 21.4.

[36] Aquinas 1a, 21.3.

[37] Jaroslav Pelikan, <u>The Growth of Medieval Theology
(600-1300)</u>, vol. 3 of <u>The Christian Tradition. A History of
the Development of Doctrine</u>, 4 vols. (Chicago: Chicago UP,
1971-84) 110.

[38] J. N. D. Kelly, <u>Early Christian Doctrine</u> (New York:
Harper, 1958) 375-77.

[39] Pelikan, <u>Growth</u> 113-16.

[40] Pelikan, <u>Growth</u> 106-57. This section of the work
is an excellent introduction to soteriology during the
period. The following statements about <u>Cur deus homo</u> are
drawn primarily from this.

[41] Pelikan, <u>Growth</u> 107.

[42] Pelikan, <u>Growth</u> 108-18.

43 Jaroslav Pelikan, <u>Reformation of Church and Dogma (1300-1700)</u>, vol. 4 of <u>The Christian Tradition. A History of the Development of Doctrine</u>, 4 vols. (Chicago: Chicago UP, 1971-84) 23.

44 Pelikan, <u>Reformation</u> 25-26.

45 Gordon Leff, <u>Heresy in the Later Middle Ages</u>, 2 vols. (New York: Barnes, 1967) 1: 259-307.

46 Pelikan, <u>Reformation</u> 36.

47 John Bromyard, <u>Summa Praedicantium</u> (Basel, 1484). Regarding the date of composition, see Leonard E. Boyle, "The Date of the <u>Summa Praedicantium</u> of John Bromyard," <u>Speculum</u> 48 (1973) 533-37. For the little that is known of Bromyard's life, see A. E. Emden, <u>A Biographical Register of the University of Oxford to A. D. 1500</u>, vol. 1 (Oxford: Clarendon, 1957) 278.

48 G. R. Owst, <u>Literature and the Pulpit in Medieval England</u> (Cambridge: Cambridge UP, 1933) 224. The value of the <u>Summa Praedicantium</u> for historians is indicated by the fact that Owst drew from it repeatedly for this and his other seminal work on preachers and sermons in medieval England, G. R. Owst, <u>Preaching in Medieval England</u> (1926; New York: Russell, 1965).

49 One of them is about the Four Daughters of God appearing to St. Dominic in a storm; only Mercy can save him. Bromyard gives the <u>Legenda Aurea</u> as his source.

50 The Revised Standard Version of the Bible is the one referred to here.

51 Matt. 22:35-40, Mark 12:28-34, and Rom. 13:8-10.

52 Luke 6:27-36, and Matt. 5:43-48.

53 Matt. 5:7. Note also Matt. 5:6 and 9, the Beatitudes about righteousness and peace.

54 See below pp.24-25.

55 Matt. 6:9-15, and Luke 11:2-4.

56 For example, Matt. 18:21-22, and Mark 4:24-25; but note Luke 17:3-4.

57 Matt. 7:1-2, and Luke 6:37-38.

58 As in Mark 4:24-25.

59 Rom. 12:17-21.

[60] Luke 15:11-32, Luke 10:25-37, Matt. 18:23-35, and Luke 16:19-31.

[61] Matt. 25:34-46.

[62] "Mercy, Works of," New Catholic Encyclopedia, ed. staff of Catholic University of America, 17 vols. (New York: McGraw-Hill, 1967-) 9: 677.

[63] Matt. 18:15-17.

[64] Adolf Katzenellenbogen, Allegories of the Vices and Virtues in Medieval Art (1939; New York: Norton, 1964) 40-41. There is also a chapter devoted to the personification of mercy in Samuel C. Chew, The Virtues Reconciled (Toronto: U of Toronto P, 1947). This is useful even though most of it concerns the sixteenth and seventeeth centuries; the book includes five plates of representations of the Four Daughters of God from the twelfth through seventeenth centuries.

[65] Emile Male, Religious Art in France. The Late Middle Ages. A Study in Medieval Iconography and Its Sources, ed. Harry Bober, trans. Mathiel Matthews, Bollilnger Series 90 (New Haven: Princeton UP, 1986) 41-43. An interesting related work that focuses on the virtue as one of the works of mercy is by William Robert Levin, "Studies in the Imagery of Mercy in Late Medieval Italian Art," diss., U of Michigan, 1983.

[66] Chew 119-24; also, Leopold G. Wickham Legg, ed., English Coronation Records (Westminster: Constable, 1901) xxv.

[67] They are discussed below in Chapter 3.

[68] For an English version of this very popular tale, see William Caxton's translation of the Legenda Aurea: Jacobus de Varagine, The Golden Legend, trans. William Caxton, ed. F. S. Ellis, 7 vols. (London: Dent, 1900-1939) 4: 268.

[69] This is described in Beryl Smalley, English Friars and Antiquity in the Early Fourteenth Century (Oxford: Blackwell, 1960) 176.

[70] John Lydgate, The Pilgrimage of the Life of Man, ed. F. J. Furnival, EETS, e.s. 77, 83, 92 (London: Kegan Paul, 1899-1904) 653-57.

[71] The two basic histories on the subject are: Henry Charles Lea, A History of Auricular Confession and Indulgences in the Latin Church, 3 vols. (Philadelphia,

1896), and John T. McNeill and Helena M. Gamer, <u>Medieval Handbooks of Penance</u> (1938; New York: Octagon, 1965).

72   "Its central features may be found in many different circles: a concern with self-discovery; an interest in the relations between people, and in the role of the individual within society; an assessment of people by their inner intentions rather than by their external acts." Colin Morris, <u>The Discovery of the Individual 1050-1200</u> (New York: Harper Torchbooks, 1972) 158.   Morris does state that he is talking about the "urbane and intelligent society" not "the peasantry, the great majority of the population."

73   Peter Abelard, <u>Ethics</u>, ed. and trans. D. E. Luscombe, Oxford Medieval Texts (Oxford: Clarendon, 1971).

74   See note 84 below.

75   Morris 73.

76   Joseph Alberigo, ed., <u>Conciliorum Oecumenicorum Decreta</u> (Basil: Herder, 1962) 221.

77   C. R. Cheney, <u>English Synodalia of the Thirteenth Century</u> (1941; Oxford: Oxford UP, 1968).

78   F. M. Powicke and C. R. Cheney, eds., <u>Councils and Synods with Other Documents Relating to the English Church, part 2 (1265-1313)</u>, vol. 2 (Oxford: Clarendon, 1964) 900-905.   For a discussion of the influence of Pecham's Constitutions, see Decima L. Douie, <u>Archbishop Pecham</u> (Oxford: Clarendon, 1952) 133-42.

79   Thomas Frederick Simmons and Henry Edward Nolloth, eds., <u>The Lay Folks'Catechism</u>, EETS, o.s. 118 (London: Kegan Paul, 1901).   Note that the Wycliffite version added to this edition includes the Pater Noster and other items excluded by Pecham.

80   For studies that describe the character of this genre, and some of the works, see: Alexandra Barratt, "Works of Religious Instruction," <u>Middle English Prose</u>, ed. A. S. G. Edwards (New Brunswick: Rutgers UP, 1984); Norman F. Blake, "Varieties of Middle English Religious Prose," <u>Chaucer and Middle English Studies</u>, ed. Beryl Rowland (London: Allen & Unwin, 1974); C. A. Martin, "Middle English Manuals of Religious Instruction," <u>So Meny People, Longages and Tonges</u>, ed. Michael Benskin and M. L. Samuels (Edinburgh: M. Benskin & M. L. Samuels, 1981); Robert R. Raymo, "Works of Religious and Philosophical Instruction," <u>A Manual of the Writings in Middle English 1050-1500</u>, gen. ed. Albert E. Hartung, vol. 7 (New Haven: Connecticut Academy of Arts and Sciences, 1967-); Vincent Gillespie, "<u>Doctrina</u> and <u>Predicacio</u>: the Design and Function of Some Pastoral

Manuals," <u>Leeds Studies in English</u> n.s. 11 (1980) 36-50;
Leonard E. Boyle, "The Fourth Lateran Council and Manuals of
Popular Theology," <u>The Popular Literature of Medieval
England</u>, ed. Thomas J. Heffernan, Tennessee Studies in
Literature 28 (Knoxville: U of Tennessee P, 1985) 31. This
article by Boyle is a good introduction to the subject, and
has a valuable appendix--an annotated diagram of printed
editions of pastoral works.

[81] Judith Shaw, "The Influence of Canonical and
Episcopal Reform on Popular Books of Instruction," <u>The
Popular Literature of Medieval England</u>, ed. Thomas J.
Heffernan, Tennessee Studies in Literature 28 (Knoxville: U
of Tennessee P, 1985) 47.

[82] The term sermon will be used here largely for ease
of reference; for the distinction between sermon and homily,
and a good introduction to sermon literature in general, see
Thomas J. Heffernan, "Sermon Literature," <u>Middle English
Prose</u>, ed. A. S. G. Edwards (New Brunswick: Rutgers UP,
1984). Owst's two books are still essential sources for the
study of sermon literature in medieval England. For some
recent perspectives on sermon literature, see L. J.
Bataillon, "Approaches to the Study of Medieval Sermons,"
<u>Leeds Studies in English</u> n.s. 11 (1980) 19-35, and Siegfried
Wenzel, "Medieval Sermons and the Study of Literature,"
<u>Medieval and Pseudo-Medieval Literature</u>, ed. Piero Boitani
and Anna Torti, Tubinger Beitrage zur Anglistik 6
(Cambridge: Brewer, 1984).

[83] Boyle, <u>Fourth Lateran</u> 36.

[84] For some examples of how this was manifested in
literature, see: Mary Flowers Braswell, <u>The Medieval Sinner</u>
(East Brunswick: Associated Presses, 1983); Linda
Georgianna, <u>The Solitary Self. Individuality in the</u> Ancrenne
Wisse (Cambridge: Harvard UP, 1981); Robert W. Hanning, <u>The
Individual in Twelfth-Century Romance</u> (New Haven: Yale UP,
1977).

[85] Boyle, <u>Fourth Lateran</u> 34.

[86] Thomas N. Tentler, <u>Sin and Confession on the Eve of
the Reformation</u> (Princeton: Princeton UP, 1977).

[87] John Bossy, <u>Christianity in the West 1400-1700</u>
(Oxford: Oxford UP, 1985). This is a topic throughout the
book, but see especially pp. 153-71.

[88] Lester K. Little, <u>Religious Poverty and the Profit
Economy in Medieval Europe</u> (Ithaca: Cornell UP, 1978),
especially pp. 212-13. Also see Bossy 140-49.

CHAPTER 3

THE ALLEGORY OF THE FOUR DAUGHTERS OF GOD

Elite secular and clerical definitions of mercy, and of
its function in temporal and divine judgment, are embodied
in the allegory of the Four Daughters of God. It essays to
explain the role of mercy in the administration of secular
justice, and at the same time to explore the relationship of
divine mercy and justice. The allegory has particular value
for this study: it enjoyed notable popularity, and may well
represent generally shared attitudes about mercy's role in
judgment. The allegory of the Four Daughters was a familiar
one in medieval England, found in many Latin and Middle
English works from the thirteenth, fourteenth and fifteenth
centuries. There are two versions of the allegory; both
have their origins in the twelfth century. In one, God's
four daughters--Mercy, Peace, Justice, and Truth--come
before him to plead concerning the fate of the transgressor,
man. Mercy and Peace, of course, seek forgiveness, and
Justice and Truth demand punishment. Jesus intervenes, and
the case is settled; God has favored Mercy and Peace. The
other version has essentially the same plot, but it is set
in the court of a temporal king, and the transgressor is one
of his men. For ease of reference these versions simply

will be termed the heaven allegories and the kingdom
allegories. This has been done in an effort to facilitate
the argument as well as to discuss as a group those versions
with a common source or influence. However, it is not meant
to imply that there is any fundamental difference in terms
of the conclusions to be drawn about each. When these works
are carefully read they show themselves as more than simply
an allegorization of a point of theology for general
consumption. All of the Four Daughters allegories contain a
subtext; they share certain features which indicate an
ongoing discourse about the relationship of mercy and
justice in this world, and the place of mercy in human
judgments.

This discourse centers on the conscious parallel drawn
between the conflicting claims of justice and mercy in
Christian theology and the antagonism which manifested when
men attempted to balance those same demands as they occurred
in the context of the administration of justice in the
secular kingdom. The versions of the allegory embodied in
literature disclose an interest in the royal courts' need
for both stringent enforcement of the law and lenient
application of sanctions. They also are very sensitive to
efforts of the Crown to maintain order in the realm through
the operation of its law. The arguments presented by the
Four Daughters are easily recognizable; they concern the
age-old problem of whether it is better to adhere to the
letter of the law and accept the possibility of its

attendant divisiveness, or to seek the spirit of reconciliation and make some compromise in principle. Ultimately, the debate in the allegories casts the question in terms of the demand for revenge versus the need for atonement. In essence, they convey the belief that allowing the transgressor to make satisfaction and be reintegrated into the community was more important than exacting justice as encoded in the law. Mercy was preferred as a means of maintaining peace.

All of the sources reveal some acquaintance with the context, machinery and terminology of the courts of their day. The divine tribunal was imagined to be similar to the courts known to the audience. Contemporary social relationships are mirrored in the fact that God and man are described as lord and liege. The servant's transgression is presented in a framework of treason and betrayal. The settings and language of the allegories indicate that the divine tribunal was conceived of in terms familiar to the audience; it is a world of sureties, and benefit of clergy, and charters of pardon. The descriptions provided of the Four Daughters, and the tenor and intent of their arguments, leave no doubt that in the allegories Mercy and Peace are favored by those in power and should be preferred by all. The sisters are contrasted as adversarial pairs, and the consistent representation of the Virtues suggests that they were understood to work often at cross purposes. Justice and Truth are characterized as possessing none of the beauty

of feature or spirit that their opponents display. Though it is never denied in the allegories that Justice and Truth have valid claims in the confrontation, they are almost invariably presented as unsympathetic figures, at best indifferent to men and at worst cruel. Mercy is always the favorite of her father and brother. With her understanding of the foibles of man's nature she is obviously the most sympathetic to the transgressor. Yet Peace, in the end, is actually the daughter with the pivotal role. Her verbal support of Mercy's position contributes to the solution of the dilemma. The strife resulting from her sisters' determination not to relent prompts Peace's flight from the kingdom, and in response the father and the son devise a compromise in order to secure her return.

The ultimate response of the father and son to the Virtues' pleas illustrates the proper object of the audience's sympathies. These benevolent and persuasive advocates win for man the reprieve from the judge that did not seem possible under the terms of the law. The substance of the Four Daughters' pleas do touch on matters of salvation, yet at heart they are about who shall have dominance in their father's court, and the effect that their sisters' requests would have on the kingdom as a whole. The subtext of the allegory rests in the extension of the sisters' arguments beyond the sphere of religion; adherence to divine justice or fulfilling the promise of God's mercy are not the only issues. The allegory speaks of the need to

secure peace in the realm, the need for the transgressor to achieve atonement so that all in the community may enjoy peace. The demands of Justice and Truth are not presented, in the end, as righteous, but destructive. Their claims are untenable for human society. The king realizes that above all else he must show mercy and pardon the wrongdoer, for without forgiveness there is no peace, and without peace he would have no kingdom.

I

The allegory of the Four Daughters of God had a long and complex development in Judeo-Christian literature.[1] Scholars of the allegory consider Midrashic interpretation of Psalm 84:11 the earliest form of the Virtues' debate, the first time that they were personified for this quarrel.[2] At least three versions are found in Midrash. This is an outline of the first.[3] When God decides to create Adam, the angels form factions for and against. Love speaks for man, Truth against him, Justice for him and Peace against him. An angry God casts down Truth, and the angels ask that he be raised back up. Man is created during the argument, without the angels' knowledge. Another version is similar, differing only in that Truth is allowed to rise after the angels protest, and that God deceives the angels by not telling the whole truth about man: he said that mankind would be pious.[4] A third version is important because here the subject is the judgment of man.[5] When God begins to judge the world Mercy and Justice strive with each other,

Mercy pleading for mankind and Justice demanding the judgment of sinners. In the end, sinners are doomed to everlasting abhorrence and the righteous may go to everlasting life.

The development of the eschatological features of the allegory can be found in Jewish and Christian apocalyptic literature.[6] In these apocalypses one can trace the growing preoccupation with a claim for mercy at the judgment scene, first for mankind and then for the individual soul. The stage is set for trial, with thrones and witnesses, scales for weighing the soul, books of good and evil deeds. These apocalypses often exalt mercy in judgment, and show the tendency to place mediators between man and God, such as intercessory angels or Virtues, Michael the Archangel or Mary the Virgin.[7] The tendency to use juristic ideas in discussions of the atonement began with Tertullian; the Church Fathers discussed the atonement more fully as a reconciliation of justice and mercy.[8] The wide variations in the arguments against mercy are not just the result of varied personal tastes of the authors; they also reflect the developing doctrines of the Church.[9]

The allegory of the Four Daughters found its real popularity in medieval literature as the result of a few influential and much imitated versions of the mid-twelfth century. The introduction of the allegory into Christian theology seems closely tied to the rise of mysticism in the first half of the twelfth century. The wealth of symbolism

and imagery characteristic of this movement is certainly
evident in the versions of the allegory produced by two of
the best known exponents of that mysticism, Hugh of St.
Victor (1097-1141) and Bernard of Clairvaux (1091-1153).[10]
Hugh included the Virtues' debate in his Annotationes in
quosdam Psalmos David.[11] In this commentary God, beginning
to judge man, descends to earth with Truth. Because Mercy
demands a pardon for man, and Truth objects, partial
judgment and pardon are given: Truth remains on earth and
Mercy goes to heaven. Truth enters man's heart and causes
him to repent, then rises to heaven and is replaced by
Justice, who remains on earth with man. Peace is then
called by Justice and they kiss. In Hugh's allegory, peace
is made through man's repentance and confession. In
Bernard's version, resolution is achieved by the
substitution of Christ for the sinner. This is the solution
that would prove the most appealing to imitators in
subsequent centuries. Bernard's version appeared some
twenty years after Hugh's, in his sermon In Festo
Annuntionis Beatae Virginis.[12] This formulation is the one
that underlies the versions referred to as the heaven
allegories. Bernard tells the reader that before his fall,
man was given the four Virtues as companions, but as a
result of his disobedience he lost them all. Strife
occurred between the sisters: Truth and Justice wanted no
pity, Mercy and Peace wanted none of their zeal for
punishment. They all met before the father and presented

their arguments. It was not seen how Peace and Truth could both be maintained. The father sent for the son to give judgment. He did so, and Peace read it aloud: Let it be a good death and both have what they seek. Truth traversed the earth and Mercy the heavens, but they could find no one suitable for such a death. But Peace understood who it would be. The son said he would become man and do penance for the man he created; he then sent Gabriel to Mary. Mercy and Truth came before the King. Justice prepared his throne and Peace came with the king. In the end, Justice and Peace kissed.

Bernard's sermon was one of the two versions that had the greatest influence on later reworkings of the allegory in Middle English literature; the other is known as Rex et Famulus. Although it is generally based on Bernard's sermon, it has some changes especially significant to the interests of this study.[13] This version is behind the kingdom allegories. The departures are evident. The setting is not in heaven, but an unidentified kingdom where a powerful king had four daughters, Mercy, Justice, Peace, and Truth, and a most wise son. He also had a servant, who broke his lord's command and was handed over to four torturers and imprisoned. Mercy heard of the servant's suffering, and begged her father to have pity. Truth then presented an argument against this, and was joined by Justice. Because of this strife, Peace fled the country. The king asked his son for counsel and he promised to

resolve the dilemma. The son took Mercy with him to the prison, where he vanquished death and led the servant back to the king. Each of the daughters felt her demands had been met, and all were reconciled.[14]

Although the versions in Bernard's sermon and the Rex et Famulus were by and large the only forms of the allegory found in Middle English in the thirteenth through fifteenth centuries, they were rarely used as a direct source. Instead, their influence was felt by means of two other works based on them which supplanted the originals in popularity. These are the Meditationes Vitae Christi and the Chasteau d'Amour. Both were translated into English, and they also served as sources--first hand or a number of times removed--for a variety of works. The Chasteau d'Amour is an Anglo-Norman poem, written by Robert Grosseteste, probably bewteen 1230 and 1253.[15] This didactic work actually consists of two allegories, that of the Four Daughters and another concerning the Castle of Love, with passages of religious instruction preceeding and following each. The Chasteau d'Amour is clearly a version of the kingdom allegory.[16] God gives Adam natural and positive law. If these are observed, Adam will preserve his seigneury; if they are transgressed, he will be punished by death. Adam sins, and he and his family lose their freedom. Here the exemplum of the Rex et Famulus is introduced. The king is not capable of keeping peace within his realm without his four daughters. The servant, imprisoned and

tortured, needs to be ransomed because the enemy had
deceived him by false promises. The daughters Mercy,
Justice, and Truth argue, and Peace flees the country
because she cannot bear the dissension. All people are
drowned, with the exception of Noah and his family. Peace
tells the king that this terrible judgment was given in the
absence of Peace and Mercy, and that she will stay by him
until peace is restored. The son is influenced by Mercy,
and devises the solution of suffering in the servant's
stead; then war would be over and the people of the country
saved. The allegory of the Castle of Love follows, and the
poem finishes with a discussion of Christ's qualities, his
contact with the Devil, how he overcame his suffering, and
his role as prince of peace. Grosseteste's major
contribution to the development of the allegory is the focus
on law and feudal relationships. Adam holds paradise in
return for faithful service to his lord; he disobeys his
lord's law and goes over to the enemy, rather like the act
of _diffidatio_ in feudal custom by which one rejected an
overlord in order to submit to another.[17] The notion of the
Devil's rights is evident in the Rex et Famulus. In this
version the transgressor is imprisoned and tortured.
Justice and Truth give a dreadful partial judgment while
Mercy and Peace are absent. Peace reminds the king that the
kingdom cannot be ruled without all four of the daughters.
The son presents his solution as a way to stop war and bring
peace to the people. Grosseteste and his imitators, by use

of the exemplum in the <u>Rex et Famulus</u>, placed these
questions about mercy and justice in a secular context as
well as a theological one.

The author of the <u>Meditationes Vitae Christi</u> did not
make such changes in the pattern of his original. The
allegory is found at the very beginning of a voluminous life
of Christ which is filled with imaginative diversions.[18]
According to this work, mankind was in misery for over 5,000
years due to the sin of the first man. Feeling compassion,
the angels prayed before the throne of the heavenly king for
man's salvation and the reparation of their ranks. Having
heard this, Mercy, with Peace on her side, incessantly
begged her father for aid, but since Truth and Justice
opposed her, a great dispute arose. Mercy and Truth
presented their argument to God, who transferred these
questions to the son. They argued before him, and Peace
said they should cease their strife. The king wrote his
decision and Peace read it out. Truth looked on earth and
Mercy in heaven for one to die the good death, but none was
found. Peace said that he who gave the advice should lend
his help. The king said he must do penance for the man he
had created, and Gabriel was sent to Mary. The allegory in
the <u>Meditationes</u> actually varies little from Bernard's in
outline. Nothing is said about Adam and Eve having been
given the four Virtues as protectors before the Fall. The
author had added an introduction in which the angels
actually instigate this parliament of heaven. This they did

out of compassion and because they longed for the reparation
of their ranks, depleted by the fall of some of their own.
Mercy and Peace then take up man's cause in response to the
angels' request.

II

Let us turn to look at the heaven allegories in
detail.[19] A review of the terminology of the law and
contemporary social relationships found in the sources
underlines the fact that this allegory of atonement was also
a vehicle for anxieties about problems that were often were
treated in secular courts. The transgression by man against
God is discussed in the familiar idiom of a man who has
wronged his lord. The injury is framed in terms of the
relationship between liege and lord, or subject and king: a
man committed a trespass against his lord; he failed to keep
his lord's laws; he betrayed his lord by joining the lord's
enemy. Some of the most detailed statements of this
relationship are found in Piers Plowman. Here the devil, as
the lord's enemy and the new lord to whom the man pledged
himself, and the notion of his rights in the matter between
man and God, figure largely in the event known as the
Harrowing of Hell. This is when Christ, following his death
on the cross, descends to hell to release mankind. The
argument between the Four Daughters introduces a debate
between various devils about whether Christ will actually
come to take back Adam's children. Lucifer claims that if
Christ does, he deprives the devil of his rights, because

Adam had broken the laws given him concerning eating the
fruit of the tree.

> Thus this lord of liht such a law made,
> And sethe he is a lele lord, I leve that he wol nat
> Reven us of oure rigt, sethe resoun hem dampnede.
> And sethe we han ben sesed sevene thousand wynter.[20]

But Satan doubts this, reminding Lucifer, "For thow gete hem
with gyle and his gadyn breke....Thus with treson and with
tricherie thow troyledest hem bothe...."[21] Another devil,
Gobelyn, reminds them, "We have no trewe title to hem, for
thorough treson were thei dampned."[22] Upon his entry into
hell, Christ announces himself as "lord of myhte and
mayne...the kynges sone of hevene," and explains why his
claim for man is just; he has come to guile the beguilers:

> So leve not, Lucifer, agaynes the lawe I feche
> Here eny synful soule sovere ynliche by maistrie,
> Bote thorw riht and thorw resoun raunsome here myn
> liege.[23]

The allegories frequently make reference to the fact
that the lord's enemy had achieved victory over his man, who
was either a willing or unwilling traitor. Man's sin is
presented in the terms of an unfaithful follower who allowed
himself to be drawn into the service of his lord's enemy.
In Vices and Virtues, Justice argues that it is right Adam
should suffer, for he was disobedient and allowed God's
adversary to overcome him without force.[24] Love's Mirrour
of the Blessed Lyf of Jesu Christ gives the setting of the
great council of heaven by stating that it happened

> After the tyme that man was exiled oute of the hige
> Citee of heuene by the rigtwis dome of all mygty god
> souereyne kyng therof for his trespas and his synne

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and so wrecchedly lay in presoun and was holden in
the bondes of that tyraunt the deuel of helle....[25]

Gabriel then reminds God that man was made to restore the
company of the angels after the fall of Lucifer and his
fellows, and claims "oure enemyes hauen the victories and of
hem oure party is noʒt restored...."[26] The same is repeated
in the Life of Christ and the Virgin.[27] In Chaundler's
drama, Liber Apologeticus, God is the king who states that
though man was created to compensate for the fallen angels,
he too transgressed the command and fell as the result of
pride.[28] Peace argues that he was overthrown by the
wickedness of another; the man himself claims to being
somewhat innocent, because he was seduced away from this
lord by another.[29]

Some of the heaven allegories use other terms and
situations which also indicate that the relationship between
lord and man was conceived of in terms of the social and
legal ties familiar to contemporary society. The Charter of
the Abbey of the Holy Ghost states that God deeded paradise
to Adam and Eve, along with the place called Conscience.[30]
In his Meroure of Wysdome, Irlande wrote that Adam and his
lineage were not worthy of God's grace, considering the
great trespass he had committed, "Þe cryme of hurt
maieste."[31] Lydgate, in the Life of Our Lady, describes the
condition of Adam thus:

> That shapen was, in paradise to dwell
> Tyll he alas, was banschede into hell
> Fer in exile, from his possession
> And Þerto abide, stoked in preson
> ....

> And lay full seeke langwyssheng is care
> So fer proscript, oute of his contre
> That by the lawe, ther may noo recoverbe.[32]

Both versions of the allegory make frequent use of the vocabulary of law and the system of enforcement. This is natural, since the settings of the story were a court or an advocacy situation concerning a wrongdoer before a council. Even the sources which least evoke the machinery of justice employ terms associated with the resolution of an injury. For example, the "Parliament of Heaven" section in the _Ludus Coventriae_ closes with this statement fron Mercy: "now is Þe loveday mad of us fowre fynialy / now nay we leve in pes as wc were wonte."[33] After the Four Daughters have made their pleas to the heavenly father in Love's _Mirrour_, he sends them to his son for a decision. "And then the kyng, souereyn wisdom wroot the sentence and the dome in this matere and toke it to his Chauncelere Resoun to rede it in his name...."[34] Some of the heaven allegories are more specific about the fact that this takes place in a courtroom setting. Irlande asked his reader to imagine the godhead sitting as a judge and the four Virtues appearing before him as advocates.[35] Chaundler was very detailed in his representation of the divine judgment as a felon appearing in court. God states that on the complaints of Reason and Conscience he comes to judge man. Because man should not be condemned in absence, Justice is asked to have man appear for judgment. Man requests that Mercy and Peace be allowed to serve as his advocates.[36] Lydgate and Langland made

liberal use of legal vocabulary and succeded in making it part of the fabric of the poem. When the sisters first begin to argue in the Life of Our Lady, Peace insists they proceed "affore the high Iuge" in the "high hevenly consistatory." She later requests that man be delivered from prison and have remission of this thralldom. This was the father's reply to the pleas of Mercy and Peace:

> Ye must consydre, with a prudent eye
> Of Rightwysnesse, it may nat me astert
> Lyke your askyng, by favour to adverte
> Vnto the cause, that is Represent
> But Right and trouth, fully will assent
> With outyn whome, I may not procede
> To execute any Iugement.[37]

When the father gives his verdict, he explains how the son will be sent to Mary:

> And Right shall leve, al his sturdinesse
> And Trouthes sworde, shall no more manace
> And fynally, mercy shall purchace
> A Chartour of pardon.[38]

In Piers Plowman, Peace explains to Justice that she is going to welcome all those who are being released from hell because Love, "such lettres he me sente / That Mercy, by syster, and I mankynde shal save... / Mercy and me to maynprisen hem alle."[39] She then shows the appropriate patent. Probably the most striking equation drawn between the English king, his laws and administration, and the action of the heavenly king is a passage in which Christ refers to hanging felons. He points out that on earth a felon is not hanged more than once if this fails the first time, even if he was a traitor. It was a royal prerogative for the king to grant pardon if he were present. Christ,

calling himself king over kings, compares a king's pardon to his own pardon, and discusses his ability to "do mercy thorough rightwisnesse."[40]

III

Attitudes about these Virtues which may not be explicitly stated can be disclosed through a review of the structure of the allegory. The action of the figures reinforces what is said by and about them. There can be no doubt that Mercy and Peace were viewed favorably, while Justice and Truth were seen in negative terms. This was not simply because Mercy and Peace were the ones to defend man. There was a negative response in these sources to the demands of Truth and Justice and the perils of the sort of judgment they request. This is accompanied by an appreciation of the benefits of a merciful court. Truth and Justice are represented as unpleasant and dangerous figures, while Mercy and Peace are favored by the king and are the dynamic elements in the achievement of both forgiveness for man and reconciliation within the kingdom.

Initiation of the debate over the transgressor's fate is an indication of whether the figure was viewed in a positive or negative light. Mercy instigates the debate between the Four Daughters, though not necessarily the plea itself, in seven of the ten allegories considered in this section. In the remainder, the father initiates the action and Truth is the first to speak; these are the exception to the rule for the allegories in general, since Mercy is

clearly the Virtue most sympathetic to man. The author of
Vices and Virtues began by having Mercy ask Truth for her
counsel concerning Adam and his offspring. When Mercy and
Truth meet outside of hell in Piers Plowman, it is Mercy who
knows what the light means, and explains it to her sister.
In Castle of Perseverance, Mercy states that she heard
mankind cry for mercy in his dying moment; she tells her
sisters that she knows they all heard it, and she is
determined he will get what he seeks. In the Meroure of
Wysdome, Irlande asked his readers to imagine the godhead as
a judge and these four Virtues as advocates: Mercy, knowing
the great ire of the godhead and the miserable state of man,
began the plea for forgiveness. Love's Mirrour and the Life
of Christ and the Virgin Mary show the direct influence of
the Meditationes Vitae Christi. In both, Mercy brings her
request to the father only after the angels have prayed for
man's restoration. Truth is the first to argue in Lydgate's
Life of Our Lady, but only after it was clear Mercy wanted
to be an intercessor for man and Peace began to cry for his
recovery. Although clearly based on the Meditationes Vitae
Christi, in the "Parliament of Heaven" scene in Ludus
Coventriae it is God and not Mercy who begins the discussion
of reconciliation following the angels' plea. Then Truth is
the first of the Virtues to speak. A similar pattern is
found in the Charter of the Abbey of the Holy Ghost, though
the angels' intervention does not occur. Chaundler's Liber
Apologeticus is unusual in that the allegory begins when God

decides to try the transgressor and appoints Truth and
Justice to charge him. Man then brings Mercy and Peace as
his advocates.

Each of the Four Daughters has a basically equal part
in the actual arguments in the majority of the allegories
set in heaven. They are equal participants in the debate in
six of the works.[41] If anyone speaks more than the others,
it is Mercy, either because she introduces the plea, or
responds more often to the statements of Truth and
Justice.[42] However, in the remaining four works, Mercy
clearly has the dominant role, sometimes shared with another
figure. Instead of Justice being in opposition to Mercy as
one might expect, Truth has this role and Justice is the
least significant. Piers Plowman shows that Mercy and Peace
evidently have been favored in receiving an explanation
about Christ's death and the delivery of the souls from
hell. Peace provides additional discussion about Christ's
actions and motivation. Truth is the one to suggest they
listen to the devils and to request a truce among the
sisters. Justice has a relatively insignificant role. This
is also true in the Life of Our Lady, in which Mercy has the
most to say, then Truth, then Peace, but Justice contributes
little. Mercy and Truth are the dominant figures in Vices
and Virtues. Peace and Piety are brought in by Mercy to
argue for her side. Justice seems to make an appearance
just to give the opposing view, since Truth here co-operates
with Mercy. In Irlande's Meroure of Wysdome, the debate is

really between Mercy and Truth. Justice chimes in once to
support Truth, and Charity speaks on behalf of Mercy. Peace
does not take part until after Truth and Justice, ashamed of
their arguments, desire concord.

Statements about which of the Four Daughters is most
favored by God are also indicators of the value accorded to
that Virtue in the scheme of this conflict. Neither Justice
nor Truth are ever, in the end, the recipient of the
father's special consideration, nor do they influence the
father's decision. Only three of the ten allegories make no
reference to one of the daughters being favored; in the
remainder, it is either Peace, Mercy, or both. After the
father has heard the arguments in Castle of Perseverance, he
claims "Ego cogitaciones pacis, non affliccionis. / Fayre
falle Þe, Pes, my dowtyr dere. / On Þe I Þynke and on
Mercy."[43] This same reference to Jeremiah 29.11 appears in
the Life of Christ and the Virgin Mary. Following the
debate, the father responds, "I thynke thouȝtes of pes and
noȝt wickidnesse." Earlier, the author noted that "Mercy
meued the Inwarness of the fadre that he shulde helpe of
remedie Þat mannes soule were delyuered of the peynes of
helle."[44] Chaundler chose to have God give this as his
verdict, and when the decision is put to the son in Ludus
Coventriae, he, too, refers to this portion of Scripture.[45]
Mercy's plea is so convincing in the Life of Our Lady that
when she has finished, "The high Iuge, by mercy is enclynede
/ To condecende, of grace, to hir will."[46] Irlande's

Meroure has God say that Mercy is his best-loved daughter
and child, and after considering each daughter's plea he is
still greatly inclined toward Mercy.[47] Piers Plowman makes
it clear that Peace is the most favored; she is the one who
received letters from Love, explaining that God would show
forgiveness, and that Peace and Mercy were to save
mankind.[48]

When one of the sisters proposes the solution to this
apparent impasse, it also indicates the relative worth of
that Virtue. In the majority of the heaven allegories, the
godhead in any of the persons of the Trinity decides that
atonement can be achieved if one who was wholly innocent
would suffer death out of charity in order to redeem the
transgressor. Two of the allegories patterned after
Meditationes Vitae Christi, Love's Mirrour and Ludus
Coventriae, have the son declare this solution, then Mercy,
Truth, and Justice search for such a man. When they claim
that there is no such being, it is Peace who explains that
the one able to achieve this is he who gave the sentence.
In the Meroure of Wysdome, Peace explicitly requests that
the father send the son to amend the offense and banish
discord. Lydgate chose to have Mercy explain that the death
of one clean of sin was required, and the difficulty of
finding such a one; she then suggested that they pray to
their judge to make this man so that no sister would have
cause to complain.

Even though there is an evident element of favoritism

in terms of the father's decision about the fate of the transgressor, generally speaking the father and son are removed from the debate. They do not interfere in the actual arguments presented by the daughters. The active role of the godhead usually is at the beginning and end of the sisters' debate. As mentioned above, God actually initiates the action in three of the works. Ludus Coventriae has the Four Daughters debate only after the father has announced that is is time for reconciliation.[49] In the Charter of the Abbey of the Holy Ghost, God takes pity on mankind, decides to renew the abbey and discusses the Incarnation with the Trinity.[50] Chaundler's Liber shows God initiating the trial of Adam; he appoints Truth and Justice to charge him. Only two of the allegories show God interfering at all once the sisters begin their complaints; in both cases, this reveals his efforts to be impartial. Both Love's Mirrour and Lydgate's Life of Our Lady have him state, after Mercy and Peace begin their requests, that he cannot proceed without Truth and Justice.[51] On the whole, then, we see a godhead which sits in judgment, and keeps its distance while each side presents its case. This God is not, however, a disinterested ineffectual audience. God is sitting in judgment, and after the arguments have been completed either the father or son takes direct action: he gives the verdict, the decision about the Incarnation, and the explanation of why this is a suitable solution.[52]

The only one of these ten allegories that does not

include any additional figures as either pleaders or
counsellors is the Castle of Perseverance. Five of the
works, clearly influenced by the Meditationes Vitae Christi,
have the hierarchies of angels adding their requests for
mercy to those of Mercy and Peace.[53] A number of
personified virtues also make appearances, drawn in to
supplement the pleas of Mercy, as do Charity and Dame
Sapience in the Meroure and Pity in Vices and Virtues; after
the resolution of the conflict, as in Chaundler's Liber,
when man is given into the care of the Four Cardinal
Virtues; in the Charter when the Four Daughters are sent to
the Convent, Mercy and Truth to be Charity's chaplains,
Justice to work with the prioress, Wisdom, and Peace with
the subprioress Meekness. The unusual figures are those of
Reason as the chancellor to Sovereign Wisdom, the son, in
Love's Mirrour, and Book and Love in Piers Plowman, who bear
witness to the statements of Mercy and Peace.

IV

Descriptions of the appearance and characteristics of
the Four Daughters are not especially frequent in those
allegories set in heaven. Such descriptions that do occur,
however, are consistent: Justice and Truth are represented
as unpleasant figures. In fact, comments on personalities
are usually reserved for these two daughters. Lydgate, in
his Life of Our Lady, described only Truth, with her "sterne
face" and "deynous chere." There is no doubt about her
fierce character:

> Trouth be ganne, al most in a rage
> Of cruell Ire, and of malencolye
> And sayde schortely, that man for his outerage
> of verrey Right, moste nedez dey.[54]

Later in the debate, Peace claims she will "helpe faythfully
/ The Grete Ire, and Rancour to alay / Of Iugement, to put
it in delay."[55] The Liber Apologeticus represented Truth
and Justice as having condescending attitudes. At one point
in her argument, Justice states that she must remain silent
concerning her other arguments lest they embarass the
defending sister. Truth claims there are other things she
could say if she did not mind offending Mercy. Peace
accuses Truth of having sharp speech and being full of every
severity of judgement.[56] Irlande had Mercy accuse Truth of
having "cruell entent and stiff argumentis."[57] The
exception among the allegories set in heaven to these
negative characterizations of Mercy's opponents is Vices and
Virtues which, we should recall, is from the earliest part
of the period. Here, Truth is described as being
customarily compliant in response to Mercy's request for
counsel concerning Adam and his offspring, and she readily
offers her assistance.[58]

In Piers Plowman, passus XVIII of the B text and passus
XXI of the C text include one of the most striking
depictions of the Four Daughters in Middle English
literature. Here they appear in the most visual terms and
certainly display some temperament. Each arrives on the
scene from one of the four points of the compass. Mercy,

coming out of the west and looking toward hell, is described as "a mylde thynge with alle, / And a ful benyngne buyrde, and buxom of speeche."[59] Her sister moves out of the east toward the west: "A comely creature and a clene, Treuthe she hihte; / For the vertue that her folewede, afered was she nevere."[60] These two interrupt their discussion when Truth sees Justice running "Out of the nyppe of the north," and requests they wait for her, "For heo woot moore than we--heo was er we bothe."[61] Peace's arrival follows closely; she moves in from the south, clothed in patience. Justice reverences her because of her rich clothing. It is noted that Love long has coveted Peace. Both Truth and Justice have a difficult time gracefully accepting their sisters' explanation of what is about to happen in hell. Truth calls Mercy's analysis a "tale of waltrot," and she dismisses it impatiently: "It is but a trufle that thow tellest."[62] When Peace states that she and Mercy will save mankind, Justice bursts out: "Ravest thou?...or thou art riht dronke!"[63]

The other vivid description of the Four Daughters is found in the stage directions for the Castle of Perseverence. This includes the colors of their mantles: Mercy in white; Justice all in red; Truth in "sad grene;" Peace completely in black.[64] This drama presents Mercy rebuking Justice, and her remarks suggest that Justice is too fierce in her reaction to Mankind's behavior:

> Mercy, my systyr Rythwysnes!
> Ƿou schape Mankind no schonde.

> Leve syster, lete be thi dresse,
> To saue Mankind lete us fonde.[65]

The implications of her rebuke are borne out in the
sharpness of some of Righteousness' statements. The
following abrupt dismissal is typical: "For to be dampnyd
it is hys vre, / On Man I creie wreche." Her nature shows
clearly in that, after she has accepted the forgiveness of
mankind, her ire is transferred to the Bad Angel:

> Go Ƿou to helle,
> Ƿou devyl bold as a belle,
> Ƿerin to dwelle,
> In bras and brimston to welle![66]

V

The actual content of the Four Daughters' arguments in
the heaven allegories consists, essentially, of four issues:
reasons for being merciful; each daughter's justification
for granting her request and so giving her the dominant
position; man's nature and his responsibility for his
transgression; God's verdict. Their arguments allow us to
draw in detail, within the framework already given, the
substance of the attitudes and beliefs about mercy's role in
judgment, at least in contemporary English literature if not
society. The allegory's subtext shows the tension between
the demands for justice and mercy, and notions of how this
ought to be remedied by pardoning the transgressor in order
to reconcile the parties in dispute.

The doctrinal content of the Four Daughters' arguments
in terms of the theology of redemption is not really a
concern here; that has been discussed at length by other

students of the allegory.[67] It is important to note though
that in many of the allegories the explanations of
atonement, the function of the Incarnation, and divine
history do not even come from the Four Daughters; they are
given voice by the father or son, or more peripheral figures
such as the angels, Reason or Book. There is some exception
to this, and it centers on Mercy. In Piers Plowman, Mercy
and Peace are the ones to describe how and why God took
Adam's nature. They also tell what is to happen in the
Harrowing of Hell. Mercy is the one, in the Castle of
Perseverance, to remind her sisters why the Passion serves
as satisfaction for all mankind's deeds. Interestingly,
these two works, along with Vices and Virtues, are the only
ones to emphasize mercy as a virtue which involves one's
fellow man and is not only part of the father's largess and
grace. The allegories generally present mercy only as
something which is shown by God or the king to the
transgressor. But these three sources show a special
concern with drawing a connection between the man who
receives mercy and who has, in turn, been merciful to
others. The section on mercy in Vices and Virtues begins
with examples of Christ showing mercy to Lazarus, the
adulteress, and a thief. Then portions of Scripture are
cited, such as, "Blessed are the merciful, for they shall
have mercy from God, as they have mercy on men."[68] The
allegory follows and the particular sense in which the
writer was thinking of mercy is evident. The Castle of

Perseverance closes with the father's speech to mankind
about mercy: at the great judgment he will ask who did the
seven deeds of mercy; those who do well in this world to
others will do well in the next. This pointed reminder
comes in the closing lines of the play: "To saue ȝou for
synnynge / Evyr at ƿe begynnynge / Thynke on ȝoure last
endynge! / Te Deum laudamus!"[69] Piers Plowman is more
subtle, yet more powerful. The Good Samaritan section
immediately preceeds the Harrowing, and a few passages give
the audience a pointed message about mercy. During the
sisters' argument, Peace tells Justice that she will pay for
man's pain to end. She tries to explain that no one knows
happiness until he has suffered; so God ventured to take
Adam's place and to experience woe and joy. The passus
closes with Peace saying that the sun is brighter after
showers and love more precious after war.[70] Piers Plowman
emphasizes the lack among men of the mercy that springs from
charity. We should show mercy because we understand that
others suffer just as we do. This interpretation of "do
unto others" certainly differs from the practical message in
the other two works--that one must be merciful in order to
earn mercy. Yet these are the only allegories that make
direct statements about how mercy should operate in the
temporal sphere.

     There is an element in the Four Daughters' arguments
that does not concern them but questions of human nature.
First, how would people behave if they knew that mercy was

always available to them, and that they would not be held
strictly accountable to the law that had been declared?
Second, to what extent should men be held responsible for
their actions; should influences and circumstances be taken
into account? Not surprisingly, these considerations are
voiced by Truth and Justice. They refuse to see any benefit
in granting forgiveness after a life of sin. Instead, they
insist, the availability of reprieve would encourage
misdeeds. In the <u>Castle of Perseverance</u>, Truth exclaims:

> Late repentaunce if man saue scholde,
>   Whey ϸyr he wrouth wel or wyckydnesse,
> ϸann euery man wolde be bolde
>   To trespas in trost of forȝevenesse.
> For synne in hope is dampnyd, I holde;
>   Forgevyn is neuere hys trespase.[71]

In this same drama, Justice questions what would happen if
men did no good all their lives, but knowing of the
possibility of mercy still caused grief and strife. In her
opinion:

> Whoso in hope dothe any dedly synne
> To hys lyvys ende, and wyl not blynne,
> Rytfully ϸanne schal he wynne
>   Crystis gret vengaunse.[72]

Chaundler had Truth clearly articulate these concerns in
terms of judges and the law:

> If now Mercy is able to deflect the judge so that
> he passes by the straight and narrow path of
> Justice from which it is suitable to turn aside
> neither to the right nor to the left, the path
> of righteousness will doubtless appear no path at
> all, and the constraint and rigour of the eternal
> law will seem widened to inordinate favors.[73]

There is a range of opinion in the allegories
pertaining to the extent of the transgressor's

responsibility for his wrongdoing. Some of the sources
hearken back to Bernard's version of the allegory, and work
with the notion that the Four Daughters are, or are not,
involved in man's sin because the Virtues had been given to
him by God. Others emphasize the involvement of the devil,
and that man is either a traitor or was lured to another
master. Some of the allegories insist that such was the
situation, and man should get what he deserves. In
Lydgate's Life of Our Lady, Truth maintains that she told
man at his creation the peril for the offense but he gave
her no "audience." Justice then says she tried to rule him,
but he took no heed: "Wherfor of me he getyth noo helpe at
nede." When he listened to the snake he put himself from
Peace, Mercy, and Truth, and would have war.[74] Irlande also
had Truth remind the father that man would not follow the
counsel of the Virtues but instead obeyed the false counsel
of their enemy. Chaundler provided the most detailed
explanation of this view. God states that man was created
to compensate for the fallen angels, but he too fell from an
excess of pride, transgressing the command. Truth explains
that all Four Daughters were first given to man to watch
over him, and he dismissed them of his own free will; he was
not forced to do so. He lost Mercy when he damned his
progeny to death, scorned Truth, as a consequence lost
Justice, and Peace then could not remain.[75] Truth and
Justice are also quick to point out that the sinner had
turned to their father's foe. For example, Justice claims,

in _Vices and Virtues_, that it is right Adam suffers, since
he was disobedient and allowed God's adversary to overcome
him by force. Truth says she warned him that if he broke
the commandment he would die. Yet he had done so, and the
devil had used no force.[76] Irlande's _Meroure_ has Justice
complain that Adam and his lineage are not worthy of God's
grace since he had committed the crime of "hurt maieste."
The _Castle of Perseverance_ claims: "Ful oftyn he hathe Þe,
Lord, forsake / And to Þe Devyl he hathe hym take."[77]

The majority of the heaven allegories characterize
Justice and Truth as being more obviously interested in
their positions and status than the other pair, and they are
harsh in their disregard for any extenuating circumstances
claimed for the wrongdoer. To them, it is a simple matter.
Truth states that God said when man ate the apple he should
die and go to hell; therefore if he delivers man from prison
Truth will be destroyed.[78] Likewise, Justice says that God
is just and loves justice, so he can not save man: it is
just that he gets what he deserves. He forsook the lord of
pity and mercy, therefore he should not receive the same.[79]
Justice reminds Peace, in _Piers Plowman_, that God gave that
doom himself. If they ate of the tree and followed the
devil, their pain would be perpetual: "Forthy let hem chewe
as they chose...."[80] The _Castle of Perseverance_ has Justice
and Truth expressing their summary views just as curtly.
Truth assures Justice that her judgment is good and true.
No man was ever saved or damned by her unless it was due.

"Late hym hys owyn dedys rewe." For Justice it is equally simple:

> Lete hym abye hys mysdede.
> For þou he lye in hell and stynke,
> It schal me neuere ouyrþynke.
> As he hath browyn, let hum drynke;
> þe Devyl schal qwyte hum hys mede.[81]

Another of the dramas, Ludus Coventriae, depicts this stony attitude. Truth reminds her father that man's offense grieved him sorely; he said Adam would go to hell if he sinned. "þat wretche þat was to þe so vnkynde / he may not haue to meche wo / ... þerfore in peynes lete hym evyr more endure." This is Justice's opinion:

> man offendyd hum þat is endles
> Ther fore his endles punchement may nevyr sees
> Also he for soke his makere þat made him of clay
> And þe devyl to his mayster he ches
> xulde he be savyd nay nay nay.[82]

Peace and Mercy make the obvious defenses in an effort to prove that man is not completely responsible for his action or does not deserve the attendant punishment. Responding to the accusation that man was given the Virtues but then cast them off, Peace claims he was despoiled among his foes when the Four Daughters left him alone. Mercy says that he offended more out of ignorance than malice, and that Truth and Justice were absent when he was betrayed.[83] Sometimes it seems that man's advocates are claiming that he is only a pawn, as in Piers Plowman, when Mercy explains that in order to undo the damage of the devil's enticing, God will "bigile the gilour." In trying to make a case for extending pardon to the wrongdoer, Mercy states that the

devil has also gained power over man's offspring; whether
they are good or evil they also are suffering punishment.[84]
A number of the allegories make the point that man should be
reconciled with the father because he has already suffered
for hundreds of years and is truly sorry. "For werldly
veynglory / He hathe ben ful sory, / Punchyd in purgatory /
For all Þe synnys seuene."[85] In fact, his contrition is
such that it has moved almost all creation: "Hym greveth
fful gretly his transgressyon / All hefne and erthe crye /
ffor mercy."[36] Once again, Chaundler's drama provides the
most extensive formulation of why man should be forgiven.
Those unwilling to repent should perish; the pride of the
fallen angels barred their return. They were changed into a
state of wickedness and did not sin through ignorance or
infirmity. But man was created to compensate for them. He
was overthrown by the wickedness of another; the charity of
another should save him. Now is the time to be merciful,
since man has thrown himself in misery. What justice is
greater than to forgive the sins of the contrite?[87]

Most of the Daughters' references to Scripture or
tradition are used to establish their place in the divine
hierarchy and their role in the heavenly kingdom relative to
that of their sisters. They try to fix their credentials to
show why, according to the order already set by the divine
father, one daughter's request should be given more weight
than that of her sisters. The gist of these references can
be briefly summarized. Mercy's claims are that she is

sovereign over all the others, and had been promised to
assist man; hence, she was ordained to reign above all
creatures since without her, paradise would be desolate and
heaven would never increase. Peace states there can be no
end to God's peace, that he can dwell only where she is.
Truth reminds the father that she was ordained to last
without end; she is the beginning of his words, teacher of
the law and the one to weigh man's good deeds and sins at
the time of death. Justice says he made her governor of his
doom. She is perpetual until the world's end, and loved by
the father night and day.

The most noticable element in all of the Daughters'
arguments is that they are much more concerned about
maintaining their own position relative to the others than
they are about man's salvation or the righteousness of
adhering to the father's original judgment. All fear they
will be forced to leave, their power will be destroyed, and
that they will perish in the face of another's triumph. In
some of the allegories, each sister's plea is substantially
only of this sort; this can be seen best in Love's Mirrour,
the Charter, and the Life of the Virgin Mary and Christ.
Love's Mirrour has Truth reminding the father that she was
wedded to man on the condition that when he broke the
father's behest, he and his kind should be damned and done
to death. "Wherefore sithen he forsoke me and betoke him to
ʒoure enemye and myne" she will lose her name and perish
unless he has the death he deserves. Justice then likewise

reminds the father of her role, and accuses Mercy of wanting to destroy Truth and her as part of her pity of the one who greatly forfeited against the father.[88] The statements of the Four Daughters in the Charter and Life of the Virgin are quite similar. Both have Truth stating that the father said man would die and go to hell if he ate the apple, so if he was delivered from prison Truth would be destroyed. She pleads that truth should dwell without end; therefore let him remain in hell and do not forsake her.[89] Justice tells the father that because he is just and loves justice, he cannot save man. He forsook his lord of all pity and mercy, so he deserves none. For the father to be merciful, he would have to forsake her.[90] Lydgate represented Truth, in defense of herself and Justice, as insisting that "our bothe liberty / Goethe vnto nought, and our iurediction / But he be punysshed, for his transgressyon."[91] Since it is impossible for the word of God to err, the "dome of dethe" must stand; no mercy should be shown. The Castle of Perseverance shows Truth and Justice being just as adamant to keep their places. Justice insists that if the father takes Adam's soul, he wrongs these two sisters and puts them from their rights. She begs him not to distrain them by force but to let his judgment put man in hell:

> For Rytwysness dwellys euere sure
> To deme Man aftyr hys deseruiture,
> For to be dampnyd it is hys vre,
>   On Man I crie wreche.[92]

Truth beseeches the father not have mercy, for then she

would have not place at his judgment. She asks him not to

make her power less and have her flee. "I pray Þe, Lord, as

I haue space, / Late Mankynd haue dew dystresse / In helle

fere to be brent."[93]

Truth and Justice are not the only ones to show in

their arguments a concern about maintaining their own place

and power in the kingdom. Some of the sources depict a

Mercy who has the same anxieties about losing her position.

In the Castle of Perseverance, she also reminds the father

that she is his daughter, and asks that she not be lost.

"Ne had mans synne neuere cum in cas / I, Mercy, schuld

neuere in erthe had plas." She also says, in response to her

sister's plea:

> Mercy, my systyr Rythwysnes!
>   Þou schape Mankind no schonde.
> Leve syster, lete be thi dresse.
>   To saue Mankind lete us fonde.
> For if Man be dampnyd to hell darknes,
>   Þanne myth I wryngyn myn honde
> Þat euere my state schulde be les,
>   My fredam to make bonde.[94]

Consistent with her character, Mercy is the only one to

include, in her pleas, the claim that the father must

preserve them all. In the Charter and Life of the Virgin,

she first says that God had stated his mercy was without

end; therefore, if he is true, he must have mercy on man's

soul. Later, in response to Justice's plea for reason, she

claims it is not reasonable God should keep Justice and

forsake her. His mercy is above all his works; if he

forsakes her, he does the same to Justice and Truth. She asks the father to save all three of them and have pity on man's soul.[95] Another example of Mercy's reasoning is found in the Liber Apologeticus. If Justice should win completely, there is no place for Mercy; let Truth win completely and there is no place for Justice. She reminds them all that they are sisters, inseparable, and should cling to man since they were joined inseparably in God. Let Justice and Truth stand firm, but do not let Mercy be stamped underfoot.[96] Mercy asks Justice if she also wishes her to perish. She questions why the Father created her if, because of Justice and Truth, he could not be merciful. She will perish if he does not lift up man.[97]

Peace's arguments in some of the heaven allegories are different from those of her sisters: she is not concerned with the final disposition of the transgressor nor with her own place so much as with returning the divine kingdom to a state of order. This appears in its most basic form in Love's Mirrour. Peace begins by blaming her sisters for their contrary words and strife. She tells them that the Father ordained and made his place only where she is, and she cannot abide where there is dissension. Therefore, she will leave her father, leave them all, unless they cease.[98] In Ludus Coventriae she also explains why she favors Mercy:

> It is not onest in vertuys to ben dyscencion
> the pes of god ovyr comyth all wytt
> Þow trewth and ryght sey grett reson
> ȝett mercy seyth best to my pleson
> ffor yf mannys sowle xulde abyde in helle

> be-twen God and man evyr xulde be dyvvysyon
> And than myght not I pes dwelle.[99]

Aside from the element of self-interest, Peace also counsels
the father to listen to Mercy, since otherwise there can
only be discord. The Castle of Perseverance has her asking
God to never let her flee from him, especially at the time
of man's judgment because Truth and Justice have no pity.
Since she and Mercy will never agree to what the other two
want, there would always be discord. So her counsel is to
have them all reconcile and restore man to his bliss, for if
her sisters have their way, there will always be
opposition.[100]   This same view is put forward plainly in
the Charter and Life of the Virgin Mary:

> ...for als longe as mannys soule is in helle, ther
> is discorde be twyx three; Rightwisnes and treuth
> wille to hem stille and wille to hem enter so Þat
> pes shalle be forsake amonge. Ther shulde also, if
> man were stille in helle, be discord be twix god &
> man and betwix man and aungel and be twix man & hym
> self. so Þat I, pes, shulde be for sake ouer alle,
> and Þat were no resoun.[101]

The allegory is varied a bit in Irlande's Meroure in that
Truth and Justice acquiesce to the insuperable petition of
Mercy and desire concord before Peace ever comes on the
scene. Irlande is quite explicit about the similarity
between the heavenly kingdom and earthly ones. Peace claims
"strif has distroyit Þe gret empyre of the asserianis, or
cartage, or grece, and the nobile empyre of the
romanix....Na realme may lang stand na endure with discord
and diuisione...."[102]   This attitude about Peace's
influence and the overriding importance of living in an

ordered society is more subtle in <u>Piers Plowman</u>. After

Christ has lead his people out of hell, Peace proclaims:

"Was nevere werre in this world, ne wikkednesse so kene, /

That Love, and hym liste, to laughynge ne broughte, / And

Pees, thorough pacience, alle perils stoppede."[103]   The

passus closes with Love singing, "Ecce quam bonum et quam

jocundum est habitare fratres in unum."

Although a few of the heaven allegories do not provide

any reason for God making the decision in favor of Mercy and

Peace, most are explicit about the motivation for his

judgment, and half of them present his verdict in terms of

the same verse of Scripture. Reason, the king's chancellor

in Love's <u>Mirrour</u>, reads out the doom which in this allegory

specifically addresses the need for atonement and how that

is to be achieved.[104]   <u>Vices and Virtues</u> has Truth (who

here is also the second person of the Trinity) state that it

is right God's mercy is ever higher than his right

judgment.[105]   Lydgate had the father simply find that Mercy

had the best case:

> And whan Þat she, had hir reason fyned
> That groundede, was platly vpon skylle
> The high Iuge, by mercy is enclynede
> To condecende, of grace, to hir will.[106]

Five of the ten heaven allegories present the father's

decision in terms of the reference to Jeremiah 29.11. God's

verdict in the <u>Liber</u> is simply, "Sed ego cogito cogitaciones

pacis." Here unity is emphasized. He acknowledges that all

four Daughters are part of him, and requests that they let

their minds be united: "ut misericordia et ueritate
redimatur iniquitas...." This is followed by many
references to the Psalms concerning how God loves both Mercy
and Truth, and about how they are joined together.[107]   In
Ludus Coventriae, the Charter and Life of the Virgin Mary,
the sisters had all decided before the father or son speaks
that Peace's argument was best. It is the son who
announces, in the first of these, "I thynke ƿe thoughtys of
pes and nowth of wykkydnes." He is the one then to explain
how another death is required. In the other two sources,
God makes the statement, then says simply that he will keep
the Four Daughters together and bring man's soul to
bliss.[108]   The father's favoritism and reasoning is more
explicit in the Castle of Perseverance. He announces,
"sedens in trono,"

> Ego cogito cogitaciones pacis, non affliccionis.
> Fayre falle ƿe, Pes, my dowtyr dere!
>   On ƿe I ƿynke and on Mercy
> ....
> To make my blysse perfyth
> I menge wyth my most myth
> Alle pes, sum treuthe, and sum ryth,
>   And most of my mercy.
> Misericordia Domini plena est terra. Amen![109]

The conclusion of the heaven allegories is unmistakable.
Whatever the validity of the claims of Justice and Truth,
the divine king finds that adhering to the absolute letter
of the law is undesirable. The ideal state resulted from
combining something of truth and right, most of mercy, and
all peace.

VI

Now to the kingdom allegories.[110]   The same features

will be discussed in these versions as in the heaven

allegories, and in the same order: the terminology of legal

and social relationships; the structure of the works;

desciptions of the Four Daughters' appearances and

characteristics; the substance of each figure's argument.

Any significant differences between these versions and the

heaven allegories clearly are rooted in the fact that the

kingdom allegories remain in a temporal setting until the

end of the tale when the allegory is explained.

Here the transgression is presented very specifically

in terms of the relationship of a lord and his man. Adam

was a favored follower of the king. The Foure Doughters

succinctly describes the situation:

> Þs kyng had wiþ hym a man
> Þat he mykell avaunce gan,
>   And made hym of gret myght,
> And he betaught hym a gret land
> Tyll haue and holde in hys hand,
>   To be hus trewe knyght.[111]

Cursor Mundi, closely patterned as it was after the Chasteau

d'Amour, depicts a similar scene. Adam was given two laws:

> The first was the law of kynd
> That is to sey kyndly to do
> Alle that yms was dedyn to
> The oþer law hath posetyve to name
> That was fully forbodyn Adam
> Of this fruite god hym seid
> I haue yt in my forbode leid.[112]

The King decided to prove whether his servant loved him: if

he followed these laws, he'd be made a rich king; if he

broke the commandment he would, by right judgment, die for
his deed. Out of pride, he soon broke it.

> For defaute he lefte Þe ioys suete,
> And Þat was skyll: so do men ȝete;
> For defaute euery wyght
> Hys herytage may lese ryȝht.
> At kyngys courte in euery londe
> ȝit men haue sych lawys fonde.[113]

Adam's loss of paradise through sin is again given in
familiar secular terms. "This foule synne was so vnwrest/
That of his season yt gon hym cast."[114]   Castle of Love
explains that a servant and thrall may not claim his
heritage through right; no one need answer him in court.
The question then was, who might speak for this man? This
work is also concerned with the proper court for judging the
transgressor.

> In no court owyÞ thralle be herd
> Ne stond in dome to be answerd
> But in the lordes that hym oȝ
> To deme hym oÞer hie or low.[115]

The form the allegory takes in the Middle English
version of the Gesta Romanorum is very similar to the
exemplum Rex et Famulus. The wise emperor, Agios, had a
servant whom he advanced much, though he did not deserve it.
One day the emperor decided to prove him, and committed to
his keeping a certain country. There would be more
advancement if it was kept well, but the emperor said, "'yf
I fynde in the eny maner of tresoune, Þou shalte suffre
ther-fore Þe foulest dethe.'"[116]   The servant agreed, yet
soon after he went to the country he did trespass against
the lord's will. So the emperor "put a defaute to this

forsaide sarvaunt; the sarvaunte was proude, & sturdy, and yaf but litle credence to him."[117]   The emperor then called in four men to torture him in prison.

The Court of Sapience provides the least discussion of the relationship between king and transgressor, but it was obviously conceived in terms similar to the other kingdom allegories. The language used in the section in which the three hierarchies of angels pray on man's behalf demonstrates the direct equation between the secular kingdom and the divine one. They went to counsel so that man might "come to his old herytage." The first hierarchy claims, "assessours we ben to thyn estate;" the second hierarchy says it was made:

> to observe thy lawe imperyal,
> As worthy lordes that in general
> With besy cure supporten thyn empyre,
> And with knyghthode obeyen thy desyre.[118]

The third hierarchy expresses its wishes in like terms. God is described in this passage as an excellent prince, mighty lord, source of right, noble king, glorious master and sovereign sire.[119]

Legal terms are commonly found in these sources. Cursor Mundi relates that after Adam was created, "ordeynyd was to him and his / lawis ii were set on syse." Adam later is described as a servant in the king's "bayly" who had committed a folly for which he was sent to prison. Justice attempts to remind the king, in the course of her plea, that this punishment is proper:

> deth hym owith to thole for- þy
> The which deth þou hym hight
> In preson is he were by riȝt
> ffor dome hath yeven yt hym in siȝt.[120]

As in many of the sources, the Myrrour of Lewed Men has

Mercy begin her plea by claiming that she is driven by

compassion to "deliuere that prison;" she prays that the

prisoner "may be put til his raunson." Peace's words, too,

show that this argument was imagined as taking place in

court. She says of Justice and Truth:

> Withouten vs thai be thaimself han gyuen a iuggement
> That suld haue ben gyuen trewly with comune assent.
> Therfor hit sal noȝt ben of recorde
> Til we four ben all of on acorde.[121]

A similar passage occurs in the Cursor Mundi:

> And of vs iiiie at this assise
> Right-wysly to do Iustice
> With-outyn our alle comyn assent
> Ow to be no Iuggement
> To haue record no dome ow
> Ar we assent alle a-row
> To oon mote we all concent
> And sithen shape þe Iugement
> Or els ow dome by callid ayen.[122]

Mercy and Peace are not the only ones to frame their

arguments to the father in terms of the need for a king to

adhere to the procedures of his court. In the Court of

Sapience, Truth reminds her father: "Thow must of force

observe thyne owne statute, / And thy promesse fulfylle for

any sute." Justice reaches this conclusion in her review of

the case:

> And yf so were he brake his commandement,
> My fader made a constytucyon
> That prysoned and al quyck flene and rent,
> Dede and devoured, shold be punycyon
> For his trespaas and his transgressyon.[123]

VII

There is much less variation in the structure of the kingdom allegory since all versions are patterned on the Rex et Famulus exemplum. In each, Mercy is the one to initiate the debate, going to plead before the king as soon as she is aware that the servant is in prison. The Four Daughters have fairly equal parts in the debate. The Cursor Mundi and the Middle English versions of Chasteau d'Amour perhaps give Peace somewhat more to say than her sisters. Justice is least active in the debate. Peace definitely has the most active role in Court of Sapience: she has longer speeches and her arguments are crucial to the resolution of the dilemma. However, Peace has no verbal part in the version featured in the Gesta Romanorum. This is not to say that she does not play an important role. Peace's activity is again crucial to the king's decision.

The solution to the impassse reached by the Four Daughters is provided in each of these versions by the son. In the Cursor Mundi and the translations of Chasteau d'Amour, the son volunteers to take the place of the servant after he has heard his sisters' arguments. Both the Court of Sapience and Gesta Romanorum specify that the king turned to the counsel of his son (Sapience takes over this part of the son's role in the former work) so that a solution might be obtained. Each of the kingdom allegories states clearly that the son reached his conclusion because he was moved by Mercy. The special relationship between the son and Mercy

is most explicit in the Court of Sapience and Gesta
Romanorum. In the latter, when the king transfers all his
power to his son, the son calls Mercy to him and together
they travel to the castle where the servant was in prison:
"Thenne he myght not but have pitee of him, for he hadde
mercy wit him, and 'ʒerefore he hadde no power but to take
him oute of presoune...."[124]   In the Court of Sapience,
when the son is ready to do the king's will, he first goes
to Mercy and comforts her:

> Thus shal I doo your herte to recomforte,
> Your soveraynte eke for to magnyfye;
> Ful manfully I shal my payne comporte,
> And thynk on you as on mun owne lady,
> Doo feete in armes, and obteyne vyctory.[125]

After his death, he makes Mary his queen and commends Mercy
to her, saying that if the servant is guilty again, Mercy
can obtain what she wants through Mary who will intercede
with her son. The king is a distant figure in these
allegories; he has no discernible relationship with his
daughters beyond the role of a judge who listens to the
claims of each. He has an active role only in the Gesta
Romanorum and the Court of Sapience. In the former, he asks
his son for counsel when Peace flees the country, and in the
latter he calls upon Sapience. The Gesta states that he
gave all his power to his son and it is clear in these
stories that the son is the dynamic and powerful one. His
decision to suffer in the servant's place is prompted by his
preference for Mercy, and he is the one to instigate the
reconciliation of his sisters.[126]

The structure of the kingdom allegory of the Four Daughters debate differs from the heaven allegory in two important aspects. Peace, and sometimes Mercy with her, flees the country because she cannot live with dissension and strife. Justice and Truth take it upon themselves to sentence man during Peace's absence. In the allegories based on Chasteau d'Amour, this involves the Great Flood and the death of all mankind except Noah and his family. Peace returns to plead with the king after she sees the destruction wrought by their judgment. The king and his son make an effort to resolve the sisters' arguments only as a result of Peace's departure or in response to her plea when she returns.

The Gesta Romanorum contains a rather bare bones version of this. When Peace heard the contention between her sisters, and that Mercy might not prevail, she left the empire for another country. The emperor, hearing she was gone and knowing of the dissent among his daughters, turned to his son for help.[127] The Middle English translations of Chasteau d'Amour and Cursor Mundi provide more detail. The Castle of Love explains what happened:

> And Riht com after wiþ hire dome.
> Wiþ outen Merci and Pees heo con iugge,
> Euer aftur þat Soth wol sugge.
> Ne Pees mot not mid hem be,
> Our of londe heo mot fle,
> For Pees bileueþ in no londe
> Wher þat is werre, nuþ, and onde,
> Ne Merci mot not among hem liue,
> Ac boþe heo beþ of londe idriue.[128]

The Myrrour of Lewed Men states that, for Peace and Mercy,

"When so forgifnes may be, / Thai may noȝt dwelle in cuntre." The composers seem to have had some ambivalence toward the judgment of Truth and Justice; though it had disasterous effects, it was not executed unjustly. "That was Þan a reufull syght, / And ȝit it was bote soth and ryȝht." The author of <u>Cursor Mundi</u> felt this way:

> hyt is much drede to telle
> Of eny dome that was so felle
> And all was right in sothefastnes
> With-outyn mercy or any pees.[129]

Only one of the works suggests that the destruction was not simply the will of Truth and Justice:

> So long wrought Þe kyng of myght,
> Be Sothnes and als be Right,
> Vengeaunce for to tak,
> ꝶat all Þis werld was fordone,
> Saue viii soules all alone.[130]

After seeing the damage wrought by Truth and Justice, Peace returned to the king and complained about their carrying out judgment without her counsel. She claimed that she had returned to end the strife, and insisted to her father that this could not go on. In the <u>Castle of Love</u> she threatened to leave the kingdom until all her sisters were reconciled. The same occurs in <u>Myrrour of Lewed Men</u>. The <u>King and Four Daughters</u> shows Peace determined to stay with the king until peace is among all. The most elaborately worked out version of these themes is in the <u>Court of Sapience</u>. The Four Daughters argue over the servant's fate. Truth and Justice refuse to compromise, and Truth goes to their father, asking for his support. Justice, after

reminding him how the servant offended, concluded: "Wherfor I yeve sentence dyffynytyve: / In forme forsayd that peyne to deth hym dryve." At this, Mercy falls into a dreadful swoon; Peace proclaims that she herself is now exiled, "For Trouthe untrewe and Right unrightwisly / Ayenst us hath yeven sentence of dethe."[131] This prompts the king to call on Sapience for counsel. She in turn explains why his son must die and ransom man. The king is moved by the pleas of his court, Mercy's condition, Peace's exile and his man's incarceration. The son offers to do the king's will, and goes to revive his sister Mercy. When the son has accomplished his task, Peace returns and the sisters are reconciled.

VIII

The sources in which the kingdom allegory is found do not often describe the Four Daughters. The most is said about Mercy and the least about Truth and Justice, though what there is does not make them seem very pleasant characters. Mercy calls herself, in the Castle of Love, one full of humility, pity and sweetness; this also occurs in the Myrrour of Lewed Men and the same description of Mercy is echoed in Cursor Mundi. In the Castle of Love, Truth also says that Mercy has mild speech. In the Foure Daughters, when she sees man in prison, Mercy is so overcome with emotion that she tears at her hair and clothing. Similarly, in the Gesta Romanorum, Mercy tears her garments, pulls at her hair, yells and cries as she runs with all her

might to her father.

The <u>Court of Sapience</u> is exceptional in that it
provides a most vivid description of each of the sisters.
When Mercy saw the servant in prison, her heart bled and she
wept, tears marring her face. She undid her golden braid
and bared her breast to her father. Mercy is described as
having crystal eyes, rosy lips, a shining face and swannish
throat--all marred by her distress.[132]   Peace is presented
thus:

> Whoos persone was patron of portrature;
> Her rosy lyppes, with chereful of grace,
> Offred kyssyng unto eche creature;
> Phebus hymself with al his bemed cure
> May not be lyke the lyght of her vysage
> So pure perfyte was that hevenly ymage.[133]

This, in contrast, is Justice:

> On godely wyse, but ferful to behold
> ...al bemed ful of lyght;
> For she ne spareth for hote ne for cold,
> For hyghe, for lowe, for to fulfylle al ryght.[134]

Truth is not depicted in a similar manner, but her
characteristics are evident in her speech. When the father
explains what Mercy has requested, Truth is quick to
contradict. She condescendingly tells Mercy that her
argument is strong, but disputing is not one of Truth's
arts. Truth's final retort to Mercy's questioning why her
petition should not be granted is sharp and abrupt: "...For
ye aske no reason! / Though ye al day argue for youre
purpoos, / Troughe shal delyver at her owne volunte."[135]

IX

The arguments of the Four Daughters in these sources do

have some features in common with the heaven allegories.
They make little direct use of Scripture. There is notably
no reference to the need to show mercy to others. Again,
the transgressor's behavior does come under discussion in
terms of the extent of his responsibility for his action.
Concern for the prisoner tends to assume secondary
importance. As in the heaven allegories, their pleas focus
on the significance of their roles in the kingdom and their
efforts to maintain their places in the kingdom. Peace's
plea, in the kingdom allegories, centers on the need to
consider the well-being of the entire kingdom over the
individual claims of priority and propriety. Yet the real
difference between these two versions of the Four Daughters
allegory lies in the degree of concern about the need for
the king to secure peace and order for his people. Justice
and Truth are actually seeking a destructive vengeance here,
and the sources attempt to describe the true object of
judgment.

Perhaps because this group of allegories is ostensibly
the story of a conflict in the realm of a temporal king,
there are few instances of use of Scripture in the Four
Daughters' pleas. In fact, in the Middle English
translation of the Gesta Romanorum each Daughter's argument
consists solely of rehearsing the fact that she is the
king's daughter, and shares a particular quality with him;
she threatens to be his daughter no longer if he will not do
as she asks. The translations of the Chasteau d'Amour show

some passing references to the Bible in regard to Mercy.
For example, Mercy tells her father, "kyng of pyte & of
mercy / Thyn eldist dowghter þou wotyst I am / Ouyr alle Þy
werkes is my name."[136]   The Court of Sapience is the only
work to have a Daughter heap up Biblical references while
describing her role. Again, this is done particularly in
relation to Mercy: she is sovereign above all her father's
works, the minister of his godhead, the sustenance that
feeds all mankind, the treasure of his deity.[137]

The Four Daughters in the kingdom allegories do try to
persuade the king that the prisoner should or should not be
held totally accountable for his actions, though not as much
is made of this factor as in the heaven allegories,
Emphasis is given to the fact that the king's servant had
broken this commandment out of pride.[138]   In the versions
of the Castle of Love, the exemplum proper cites the
servant's disobedience while the introduction discusses
Adam's temptation and fall.[139]   Mercy's plea includes the
insistence that the prisoner had been deceived by his
enemies and led into treachery.[140]   Truth and Justice,
however, see no reason to pity the prisoner on this account.
Truth insists it was his responsibility:

> Milce and merci he haþ forloren,
> He was warned þerof biforen.
> Whi scholde me helpe þulke mon
> Þat nedde of himself pity non?[141]

Justice claims that this thrall deserved to be damned, for
when he was free, he had Mercy, Truth and Justice ever with

him until he banished them by his willful sin. In another
version she declares:

> Whyll þat he they hest held,
> We were wiþ hym wiþ spere and scheld,
> Both Mersy, Soth, and Ryght,
> And Pese, my syster, wiþ all oure myʒt.
> Vs all iiii he hath forsake.[142]

Justice and Truth also try to convince the king that his
power would be undermined by granting Mercy's request. If
he were to acquiesce to her pleas for pity, "Neuer schal be
misdede abouht, / And þou, kyng, schalt be douted riʒt
nougt." Justice neatly sums up her view of man's nature in
Foure Doughters:

> No man schuld stand aw for þe,
> Ageyns þe byddyng for to be,
>   Nouþer in word ne dede.
> þei schuld to mykill troit þeron
> þat Mercy schuld þem saue ilkon,
>   Of nothung schuld þei drede.[143]

In the Court of Sapience, Justice's reasoning sets out an
argument for capital punishment familiar from centuries of
use:

> My fader made a constytucyon
> That prysoned and al quyck flene and rent,
> Dede and devoured, shold be punycyon
> For his trespaas and his transgressyon;
> That both pure love and fere this just precept
> Shold hym excyte that it were trewely kept.[144]

Only the Gesta Romanorum features similar arguments
from all four Daughters. There, each one claims the
characteristic they share with the king and threatens to be
his daughter no more if he will not demonstrate this quality
in terms of his servant's imprisonment. Otherwise, the
sisters' pleas involve defining their role in the kingdom

and relationship to their father. Each daughter is
concerned about maintaining her power and position, yet the
claims they make to this end and the way they are presented
reflect their basic characters. The Middle English versions
of the Chasteau d'Amour show Mercy as one whose emotions are
stirred not by the debate itself but rather the prisoner's
woeful circumstances. She reminds the king of her good
qualities, which she shares in common with him and which
also compel her to help the wrongdoer. She is the only one
to mention the felon's extenuating circumstances, that he
was deceived by the king's foe. Finally, she claims that as
the eldest, she takes precedence over the others, and
insists that she will not cease until her petition is
granted. Mercy is determined to achieve her goal, but her
energies are focused on cajoling her father and helping the
prisoner, not accusing or challenging the others.[145]   Only
in the Court of Sapience is her role duscussed for its own
sake. Much of this is done by Peace:

> For trespaas is to Mercy a meryour,
> And ryght as swere hath his apryce by source,
> Soo by trespaas Mercy hath al her myght;
> Withoute trespas Mercy hath lak of lyght.[146]

Mercy herself is moved in the debate to remind the others of
her value:

> And yf so I were adnychylate
> The heavenly court may not restored be;
> My faders royalme were vayne and vacuate,
> power howshold it were withouten me.[147]

    Truth and Justice show a derogatory attitude toward
Mercy and confident insistence on the primacy of their own

roles and hers. Truth does not hesitate to tell the king

what he ought to do:

> ...Fadir, wiþoutyn me
>   Schuld þou do ryght noght,
> Ne owe þou nought till her Mercy
> Bot if Verite be hir by
>   In dede, worde, and thoght.[148]

Mercy's prayers should not be heard by the king unless they

were in agreement with the ideas of Truth. As stated above,

Truth is insistent that the king would not be feared by his

people if Mercy persuaded him to overturn judgments. For

Truth, it is a straightforward matter:

> But þou art kyng evir to last
> Of rightwysnes and alle sothefast
> Thy wille is sothe evir and ay
> This preson that I of say
> That pyte on hym-self had noȝt
> How shuldist þou rew on him ought
> With dome he mote thole for-thy
> Alle his mysdedes þer-with to by.[149]

The <u>Court of Sapience</u> vividly conveys the sense that Truth

is angered by what she perceives as a challenge to her place

in the kingdom. When Mercy finishes her plea, she is quick

to contradict:

> 'Nay, nay,' quod Trough, 'fader it may not be;
> Thow must of force observe thyne owne statute,
> And thy promesse fulfylle for any sute.
> ....
> Thy wyl is lawe, thy promesse is reason.'

She encourages her father to be firm in his just judgment

and put all variance from him. Her response to Mercy is

sharp:

> Trouthe shal delyver at her owne volunte:
> My lyberte in no poynt wyl I loos!
> I am my faders chyld as were as ye,
> And Ryghtwysenes I wote wil holde with me.[150]

And she is certainly correct in believing that Justice will support her view. In the Middle English versions of Chasteau d'Amour, Justice first reminds the king that she is also his daughter and "ƿou art kyng, riht domesman;" all his dooms were righteous. Her address to their father consists of emphasizing the fact that the servant certainly deserved to be found guilty and that she had already delivered the decision, in accordance with Truth. For her, it is a simple matter of her own qualities and a dependence on her relationship with Truth.

> All that sothfastnes tesses to me
> I mot dele to euerilkone,
> Gode or ill after their haue done.
> Thi wikkid seruant is in prison,
> As he was demed with gret reson.
> I may noʒt fro this sentence very
> Bot I to riʒt wald be contrary.[151]

In the Court of Sapience Justice is coolly self-assured. She comes into the debate at the request of Truth. The narrator notes that "she spareth for hote ne for cold, / For hyghe, for lowe, for to fulfylle al ryght." Providing a succinct outline of all the king had done for the prisoner, his commandment and the servant's "ungentylnesse" she concludes: "Wherfor of ryght me thynkyth he must be dede." Justice later explains to her father that this is her office:

> To yeve condygne remuneracyoun
> To evyl and good, to eche vertu and vyce,
> And not to spare for prayer ne for pryce,
> And if I shal thy godhede gloryfye,
> That Troughe askseth, I must nede justyfye.[152]

Justice and Truth blatantly seek revenge against the

transgressor and his kin. The kingdom allegories state this in no uncertain terms. These two sisters do not have a disinterested concern. They seek a destructive retribution, not purely on behalf of the king: they wish to find satisfaction for their own ire. Both plainly express their feelings in the King and Four Doughters. Truth beseeches her father, "Kyng of sothnes, do than ryght / And late avenge Þe of Þat wyght!" Justice then repeats that plea: "Vs all iiii he hath forsake, / Right wyll Þerfor vengeans take."[153] Others recognize their attitude for what it is. When the three hierarchies of angels plead for man in the Court of Sapience, each ends its supplication by saying "For now is tyme of Mercy and of Pees, / And tyme is come that al vengeaunce shold cees!"[154] As Peace bids farewell to Mercy, she exclaims, "So weleaway tha vengeaunce shal prevayle!" The desire for revenge shows in a peculiar twist not found in the Four Daughters of God story set in the heavenly kingdom. Peace leaves the country as a result of the strife (and in some sources, Mercy with her), and while she is gone Justice and Truth take advantage of her absence and take revenge on mankind.

> The dome hem come folowyng in hie
> And Iugid hem in sothefast truÞe
> Wyth-outyn mercy othir reuthe
> Nor pees at home myȝt not lend
> But of lond she must wend
> ffor pees may nowhere abide
> There hate wonnyÞ werre or pride
> Nor of mercy made none mynne.[155]

Justice and Truth decide to carry out their own punishment:
they visit the world with a flood so terrible that Noah and
his family are the only survivors.

> Soth and Ryght wiþouten les
> Went wiþ out Mersy and Pes,
> And be contre as þei wend,
> All þat wreches kynd þei schent;
> So fast þei gan þem doun dryue
> That þei left neuer one of lyue.
> A flode ouer all dyd go;
> viii þat left of lyue and nomo;
> . . . .
> That was þan a reufull syght,
> And ʒit it was bote soth and ryʒht. [156]

<u>Foure Doughters</u> is the only source in which the king is the
force behind their destruction:

> So long wrought þe kyng of myght,
> Be sothnes and als be Right,
>   Vengeaunce for to tak,
> þat all þis werld was fordone,
> Saue viii souldes all alone. [157]

Although the action is somewhat different in the <u>Court of
Sapience</u>, the underlying meaning is the same. Justice
concludes her argument before the king by stating, "Wherfor
I yeve sentence dyffynytyve: / In forme forsayd that peyne
to deth hym dryve." At this, Mercy falls into a swoon and
Peace cries out that she is exiled, "For Trouthe untreve and
Right unrightwisly / Ayenst us hath yeven sentence of
dethe." [158]   The sterner sisters achieved their goal of
enforcing their desire to punish and ridding themselves of
the two who interfered with the rigid order of the king's
law.

     The narrator of one version of the <u>Castle of Love</u>
states the problem very succinctly:

> Sothfastnes and Riȝt has geuen thair iuggement,
> Bot Mercy and Pees were noȝt of that assent.
> If all go bi reddure of Riȝt and Sothfastnes,
> How sall Mercy and Pes sheve the kinges godenes?
> If al be thaim one deme Sothfastnes and Riȝt,
> Mercy and Pece sal loise al thair myȝt.[159]

Note especially that this writer considered the dilemma particularly in terms of the king: the function of mercy and peace is that they demonstrate the quality of a king in his roles as law-maker and judge. None of the kingdom allegories leaves any doubt as to the pivotal role of Peace in the kingdom. Her flight or threatened exile cause the king and his son to act decisively to end the dispute. Her speeches show that she was confident of the crucial task she performed.

> I was the reyne that held yow al togyder,
> I brydled yow and set yow in acord;
> But now I goo, ywys and I not whyder,
> Wherfor of force ye must talle to dyscord.[160]

In fact, in her certainty she almost could be threatening.

> Wiþouten us þer is bale to breme,
> For-þi, fader, þou nime ȝeme!
> ....
> Ne wisdam nis not worþ an haȝe
> þer Pees fayleþ to felawe.[161]

Peace has no doubt about the nature of her relationship with Truth and Justice when it came to the matter of what was best for the country:

> Nouþr Verite ne Iustis
> No schuld wirk on no wys
>   Ought wiþoutyn my rede,
> For all þei schuld do þeir meystry.
> Pese in lande Right schuld gȳ,
>   For þerto wer all nede.[162]

Neither does she waver when it comes to the question of the balance of power between the Four Daughters in court:

> Iustisry is neuer more needful
> Bot when it is to pece spedeful.
> How suld Right and Sothfastnes availe,
> When thai wil noȝt call me to thair counsaile,
> Ne Mercy, my sister, that ay so gode is
> That withouten his no gilt amended is?[163]

Peace does not have such as opinion of her importance

without good reason. The son is the one to decide which of

the Four Daughters was most persuasive in the debate, and in

every one of these kingdom allegories he chooses Mercy, for

the sake of Peace. A concord is sought between the sisters,

and for this to be possible Peace must return, and some

satisfaction be provided for Truth and Justice. In the

Middle English version of the <u>Gesta Romanorum</u>, the son

simply assures the king that "I shalle take good vengeaunce

of this trespassor, and bring home a-yene pes, ȝi dowter."

He calls Mercy to him and they travel to the castle of

imprisonment "& thenne he myght not but have pitee of him,

for he hadde mercy with him, and ȝerefore he hadde no power

but to take him oute of presoune...."[164]   After telling

Sapience that his heart has been pierced by pity, the son

asks her for counsel, because "desolate is thys hevenly

regyon/ But Mercy reygne, and Pees com from exyle." He

later explains to Mercy how he shall become man and die:

> Thus shal I doo your herte to recomforte,
> Your soveraynte eke for to magnyfe;
> Ful manfully I shal my payne comporte
> And thynk on yow as on myn owne lady.[165]

The translations of <u>Chasteau d'Amour</u> are more specific and

direct about the son's decision. "Mersy hath told me reson

clere, / Wherof, fadr, I haue pyte." After explaining how

he will put on the servant's clothing, undergo his
punishment and so reconcile the sisters, he concludes, "I
shal cry Pes wiȝouten mys."[166]   The connection between
choosing Mercy to obtain Peace, and his role as ruler of a
country is made very apparent:

> And al one ichul holde ȝe doom,
> As Iustise ouhte to don,
> And maken ichule Pees to londe come,
> And Pees and Riht cussen and be sauȝt and some,
> And druyuen out werre, nuȝ, and onde,
> And sauen al ȝe fold in londe.[167]

The special relationship between the king and the Four
Daughters is clearly detailed in the beginning of each one
of the versions of <u>Chasteau d'Amour</u>. At the outset of the
allegory the narrator explains who the king's daughters are,
and why they are so important to him:

> Foure Douhtren hedde ȝe kyng,
> And to vchone sunderlyng
> He ȝaf a dole of his fulnesse,
> Of his miht and of his wysnesse,
> As wolde bifallen to vchon,
> And it was al ȝe folnesse on
> ȝat to himself bilay,
> Wiȝoute whom he ne mai
> His kindom wiȝ pees wysen
> Ne wiȝ hit iustisen.
> ....
> Wiȝ outen ȝeos foure wiȝ worschipe
> Mai no kyng lede gret lordschipe.[168]

The allegory is deeply concerned with maintaining the unity
of a kingdom through right rule. And there is no question
that this rule involves all four Virtues, yet also a system
of judgment which allows for flexibility in dealing with
transgression of the law. The allegory declares the primary
goal of simply keeping the community in harmony so that

there will be a kingdom to rule.

> Syth every royalme that hath dyvysyon
> Within hymself must nedes be desolate,
> And we be four for one conclusyon -
> For to sustene the reame and his estate -
> Amon us foure why shold thenne be debate?
> And syth that law wyl rather lessyn peyne
> Than it extende, lete Pees and Mercy reygne.[169]

It is worth remarking that the composer chose to point out

the function of law in particular, rather than referring

again to justice and truth; the purpose of law in the realm

is to reduce discord and distress. This the king can

achieve by allowing mercy to dominate in the administration

of the law.

X

The Middle English poems and prose works portraying the

allegory of the Four Daughters of God speak eloquently.

They afford a perspective on a consuming interest in

medieval society: how was the Crown to answer the

paradoxical claims for the place of mercy and justice in

governing the kingdom? These composers used what is in

essence an allegory of religious doctrine as a means to

express attitudes about the function of mercy that were

deeply rooted in the culture. The sources do present the

theology of salvation and atonement through the use of

Scriptural reference, allegorical figures, and circumstance,

and they are imbued with traditional notions about the

character and value of Christian mercy. Yet this does

nothing to obscure the meaning of the subtext. In fact, the

conceptual vocabulary of Christianity is worn through in

many places with the insistance of the secular vision.

The language of law and contemporary social relationships indicated for the audience that the allegories are concerned with the fate of the transgressor in the earthly realm as much as in the divine one. The competing claims of justice and mercy are imagined in terms of one of the great anxieties of the age--the rebellion of a king's subject. His motivation is ascribed to the sin of pride, and one of the primary issues under debate is the extent of his responsibility for his actions. Is the upstart totally to blame for his rebellion against the king's command? The daughters consider the question of extenuating circumstances; a certain degree of blame may be attributed to the enemy lord, who has beguiled the wrongdoer with false promises. Mercy and Peace seek to find acceptable reasons why the felon should be pardoned and given the opportunity to serve the king once again, and to rejoin the community. Truth and Justice focus their objections on the threat such forgiveness poses to the king's power: this disregard for the established law would undermine others' respect and fear for the king's authority. They attempt to persuade the king of the importance of using exemplary punishment to deter others from similar disobedience. The interest in practical problems with punishment and mitigation in executing the law stands out in every source.

These works also reveal what must have been very deep-seated feelings about the ideas encoded in these allegorical

figures.   There can be no doubt about the cultural attitudes
toward Justice and Truth.   The positive and negative
associations these virtues embodied for the medieval English
audience and composers are unquestionable.   Peace and Mercy
are presented in the best terms.   Their importance is
emphasized in the structure of both the heaven and the
kingdom allegories; they have the close associations with
the father and the son, and they are the ones who influence
the final decision.   Justice and Truth are given a distant
relationship to the father and son.   They have a right to be
there, and an obligation to advocate the opposing view, but
there is no tenderness for them.   In fact, Truth and Justice
are represented as going beyond petitioning for a strict
interpretation of the law: the harsh judgment they impose
on their own nearly results in the destruction of all
mankind.   The descriptions of the appearances of the
Daughters and the characterizations of their personalities
reiterate the value accorded to each virtue.   The sources
present an unambivalent view of the forces considered
detrimental to the interests not only of both the divine and
temporal ruler, but also to all men and women in society.

     To modern sensibilities the debate among the Four
Daughters might be interpreted as a king or judge
considering the options available to him.   There were
benefits and dangers in both implementing the prescribed
punishment and mitigating it.   Medieval English society
truly felt that royal power would be "vain and vacant" if it

lacked the ability to be merciful and exercise the prerogative to pardon. Yet there was an abiding fear that the king eventually would be seen as impotent if he did not rule consistently and righteously under the terms of the established law. The rationalization for the ultimate choice of mercy is given by Peace: Justice's most fundamental obligation is to ensure order in the kingdom. Therefore, the demands of both sides are met when the king turns to pardon as the means of maintaining the integrity of society. Peace voices the most eloquent statement of this ideology:

> Woo worth debate that never may have pees!
> Woo worth penaunce that asketh no pyte!
> Woo worth vengeaunce that mercy may not cees!
> Wo worth jugement that hath none equyte!
> Wo worth that trouth that hath no charyte!
> Woo worth that juge that may no gilty save!
> And wo worth ryght that may no favour have![170]

Notes to Chapter 3

[1] Considering its popularity and influence in both
continental and insular literature, surprisingly few
scholars have worked on this allegory. There are those who
have written on the subject in relation to editing a source
that includes the allegory or to works on theology, yet the
bulk of the work on the historical development of and
influences on the allegory has been done by the following:
Mary Immaculate Creek, "The Four Daughters of God in the
Gesta Romanorum and the Court of Sapience," PMLA 57 (1942):
951-65; Kari Sajavaara, ed., The Middle English Translations
of Robert Grosseteste's Chasteau d'Amour. Mémoires de la
Société Néophilologique de Helsinki 32 (Helsinki: Société
Néophilologique, 1967); Hope Traver, "The Four Daughters of
God: A Mirror of Changing Doctrine," PMLA 40 (1925): 44-92;
Hope Traver, The Four Daughters of God (Philadelphia:
Winston, 1907); Thomas J. Janecek, "The Parliament of
Heaven," diss., U of Illinois, 1975.

[2] Sajavaara 85-90. He cites earlier research that
indicates this psalm had been given literary form in the
first or second century BCE. He tried to trace the origins
even further, and concludes that the tale had its origins in
Egyptian myth.

[3] H. Freedman and Maurice Simon, eds., Midrash Rabbah,
trans. H. Freedman, 10 vols. (London: Socino, 1939) 1: 58.

[4] Louis Ginzburg, ed., The Legends of the Jews, trans.
Henrietta Szold, 7 vols. (Philadelphia: Jewish Publication
Society of America, 1913-1938) 1: 52-54.

[5] Ginsburg, Legends 5: 73.

[6] Traver, "Mirror" 47-58.

[7] Traver, "Mirror" 42.

[8] Traver, "Mirror" 68.

[9] Traver, "Mirror" 45.

[10] Traver felt that only Hugh drew his allegory
directly from Midrash, but she was familiar only with the A
version; see Traver, Four Daughters 13. But Sajavaara
thought it probable that the features of the two allegories
were already combined before Hugh and Bernard became
acquainted with them; Sajavaara 75-76. There is evidence
for other contemporary versions of the Virtues' debate, one
by Julien de Vezelay, another by Peter the Venerable; see
Matthias Tveitane, "The Four Daughters of God: A
Supplement," Neophilologische Mittleungen 81 (1980): 411-14.

Tveitane thought it would be strange if these four
contemporaries independently had created these stories which
are quite different in literary terms but thematically
related. Similar pieces from the same period are discussed
in G. R. Owst, Literature and Pulpit in Medieval England
(Cambridge: Cambridge UP, 1933) 90.

[11] Hugh of St. Victor, Annotationes Elucidatiore in
Quosdam Psalmos David, Patrologia Latinae Cursus Completus,
ed. J. P. Migne, 221 vols. (Paris, 1844-1903) 177, cols.
623-25. Traver estimated that this version was in existence
around 1120.

[12] Bernard of Clairvaux, In Annuntiatione Beati
Mariae, Sancti Bernardi Opera, ed. J. Leclerc and H.
Rochais, 3 vols. to date (Rome: Editiones Cisterciences,
1957-) 5.

[13] This has been printed in Creek's article. She
indicated that the only form in which she had seen the Rex
et Famulus was in transcriptions from manuscripts in the
Bibliotheque Nationale, MS Latin 14886 and MS Latin 5556.
However, Sajavaara found that MS 5556 does not include this.
It is available, though, in Migne, Patrologia Latina vol.
94, cols. 505-7, where it is mistakenly attributed to Bede.
The manuscript from which the pseudo-Bede text had been
printed is now lost. Sajavaara located a new version of the
Rex et Famulus in the British Library, MS Royal 8.D.vi. He
also found three versions that are similar to it: British
Library MS Royal 6.A.xiii; MS Balliol College Oxford 228;
Biblioteque Nationale MS Latin 14958. In Sajavaara's
opinion, it is impossible to know if Bernard's allegory was
the direct source for the Rex et Famulus; see Sajavaara 27.

[14] Creek analyzes the differences between the Rex et
Famulus and Bernard's version, and the possible influence of
another version by Stephen of Tourney; see Creek 955-56.

[15] Robert Grosseteste, Le Chateau d'Amour, ed. and
trans. J. Murray (Paris: Librairie Champion, 1918). See
also Sajavaara 43-48.

[16] Sajavaara 48-53.

[17] R. W. Southern, The Making of the Middle Ages (New
Haven: Yale UP, 1953) 234-35.

[18] Isa Ragusa and Rosalie B. Green eds., Meditations
on the Life of Christ, trans. Isa Ragusa (Princeton:
Princeton UP, 1961). This work was long attributed to
Bonaventura and printed among his works even after the
author was designated a "psuedo" Bonaventura. There is
agreement among scholars that the author must have been a

Franciscan living in Tuscany during the second half of the thirteenth century.

[19] The following are the sources used for the heaven allegories: William Langland, _Piers Plowman_, ed. Elizabeth Salter and Derek Pearsall, York Medieval Texts (London: Arnold, 1967); William Langland, _The Vision of Piers Plowman_, ed. A. V. C. Schmidt (London: Dent, 1978); F. Holthausen, ed., _Vices and Virtues_, 2 vols., EETS, o.s. 89, 159 (Oxford: Oxford UP, 1888, 1921); Nicholas Love, _The Myrrour of the Blessed Lyf of Jesu Christ_, ed. Lawrence R. Powell (Oxford: Clarendon, 1908); the version of the allegory referred to here as _The Life of Christ and the Virgin Mary_ is included in Ralph A. Klinefelter, ed., "The Four Daughters of God: A New Version," _Journal of English and German Philology_ 52 (1953): 90-95; Thomas Chaundler, _Liber Apologeticus de Omni Statu Humanae Naturae_, ed. and trans. Doris Enright-Clark Shoukri (London: Mod. Hum. Res. Assn., 1974); C. Horstmann, ed., _Charter of the Abbey of the Holy Ghost_, _Yorkshire Writers_, 2 vols. (London, 1895) 1: 337-62; John Irlande, _The Meroure of Wysdome_, ed. Charles MacPherson, Scottish Text Society, n.s. 19 (Edinburgh: Blackwood, 1926); John Lydgate, _Life of Our Lady_, ed. Joseph A. Lauritis, Ralph A. Klinefelter, and Vernon F. Gallagher, Duquesne Studies Philological Series 2 (Pittsburgh: Duquesne U, 1961); K. S. Block, ed., _Ludus Coventriae or the Plaie Called Corpus Christi_, EETS, o.s. 120 (Oxford: Oxford UP, 1922); Mark Eccles, ed., _Castle of Perseverence_, _Macro Plays_, EETS, e.s. 262 (London: Oxford UP, 1969).

[20] _Piers Plowman_ 166, ll. 305-8.

[21] _Piers Plowman_ 166, ll. 312, 318.

[22] _The Vision of Piers Plowman_ 229, l. 293.

[23] _Piers Plowman_ 170, ll. 392-94.

[24] _Vices and Virtues_ 114.

[25] _Myrrour_ 13.

[26] _Myrrour_ 14.

[27] _Life of Christ_ 92.

[28] _Liber_ 106.

[29] _Liber_ 116, 108.

[30] _Charter_ 348.

[31] _Meroure_ 111.

[32] _Life of Our Lady_ 11. 25-8, 33-5.

[33] _Ludus Coventriae_ 11. 185-86.

[34] _Myrrour_ 17.

[35] _Meroure_ 108.

[36] _Liber_ 106, 108.

[37] _Life of Our Lady_ 11. 185-91.

[38] _Life of Our Lady_ 11. 332-35.

[39] _Piers Plowman_ 161, 11. 185-86, 188.

[40] _The Vision of Piers Plowman_ 232, 11. 380-90.

[41] In _Castle_, _Myrrour_, _Ludus_, _Charter_, _Life of Christ_, and _Liber_.

[42] In _Myrrour_, _Castle_, and _Life of Christ_.

[43] _Castle_ 11. 3560-62.

[44] _Life of Christ_ 94, 92.

[45] _Liber_ 128, _Ludus Coventriae_ 139.

[46] _Life of Our Lady_ 11. 283-84.

[47] _Meroure_ 123, 122.

[48] _Piers Plowman_ 160, 11. 185-86.

[49] _Ludus Coventriae_ 99.

[50] _Charter_ 348-49.

[51] _Myrrour_ 15, _Life of Our Lady_ 11. 185-91.

[52] The exceptions are in the versions of _Piers Plowman_, in which the debate is associated with the Passion, not the Incarnation, and the _Charter_, in which the Trinity reaches its decision before the Four Daughters speak.

[53] _Myrrour_, _Life of Our Lady_, _Life of Christ_, _Ludus Coventriae_, and _Meroure_.

[54] _Life of Our Lady_ 11. 50-53.

[55] _Life of Our Lady_ 11. 101-103.

[56] _Liber_ 118, 124, 112.

[57]   Meroure 112.

[58]   Vices and Virtues 112.

[59]   Piers Plowman 158, ll. 118-20.

[60]   Piers Plowman 158, ll. 123-24.

[61]   The Vision of Piers Plowman 225, ll. 163-65.

[62]   The Vision of Piers Plowman 229, l. 147.

[63]   Piers Plowman 161, l. 193.

[64]   Castle 1.

[65]   Castle ll. 3444-47.

[66]   Castle ll. 3590-93.

[67]   See particularly Creek and Traver, "The Four Daughters of God: A Mirror of Changing Doctrine."

[68]   Vices and Virtues 111, 113.

[69]   Castle ll. 3611-44, 3646-49.

[70]   Vision of Piers Plowman 226, Piers Plowman 162, 173.

[71]   Castle ll. 3275-80.

[72]   Castle ll. 3173-76.

[73]   "Si iam misericordia flectare ualet iudicem ut pretereat strictam et rectam iusticie semitam quam quidem nec a dextris declinare nec a sinistris congruit, nimirum via rectitudinis facile apparebit inuia, districtioque ac rigor legis eterne in inordinatos uidebitur ampliari fauores." Liber 122.

[74]   Life of Our Lady 314-15.

[75]   Liber 106, 110, 112.

[76]   Vices and Virtues 114, 112.

[77]   Castle ll. 3388-89.

[78]   Life of Christ 93.

[79]   Charter 350.

[80]   Piers Plowman 160, l. 206.

81 Castle ll. 3180, 3159-63.

82 Ludus Coventriae ll. 67-68, 73, 92-95.

83 Life of Our Lady 316-17.

84 Vices and Virtues 112.

85 Castle ll. 3336-39.

86 Ludus Coventriae ll. 77-78.

87 Liber 114, 116, 126. Note also that Irlande wrote at length about the equity of the father's sentence and forgiveness; Meroure 113-15.

88 Myrrour 15-16.

89 Charter of the Abbey 349, Life of Christ 93.

90 Charter of the Abbey 350, Life of Christ 93.

91 Life of Our Lady ll. 201-3.

92 Castle ll. 3340-43.

93 Castle ll. 3307-9.

94 Castle ll. 3323-24, 3444-51.

95 Charter 350, Life of Christ 93.

96 Liber 120.

97 Liber 126.

98 Myrrour 16.

99 Ludus Coventriae ll. 114-20.

100 Castle 106-7.

101 Life of Christ 94.

102 Meroure 84.

103 Vision of Piers Plowman 233, ll. 45-71.

104 Myrrour 17.

105 Vices and Virtues 114.

106 Life of Our Lady ll. 281-84.

107   Liber 128.

108   Charter 351, Life of Christ 94.

109   Castle ll. 3560-62, 3570-74.

110   The following are the sources used for the kingdom allegories: Kari Sajavaara, ed., Foure Daughters, King and His Four Doughters, Castle of Love, Myrour of Lewed Men, The Middle English Translations of Robert Grosseteste's Chateau d'Amour, Mémoires de la Société Néophilologique de Helsinki 32 (Helsinki: Société Néophilologique, 1967); Richard Morris, ed., Cusor Mundi, 4 vols. EETS, o.s. 57, 59, 62, 66, 68, 99, 101 (London, 1874-93); Sidney J.H. Herrtage, ed., The Early English Versions of the Gesta Romanorum, EETS, e.s. 33 (London, 1879); E. Ruth Harvey, ed., Court of Sapience, Toronto Medieval Texts and Translations 2 (Toronto: U of Toronto P, 1984).

111   Foure Daughters ll. 37-42.

112   Cursor Mundi ll. 9431-37.

113   King ll. 171-82.

114   Castle of Love ll. 9475-76.

115   Castle of Love ll. 9491-94.

116   Gesta 132.

117   Gesta 133.

118   Sapience ll. 613, 648-51.

119   Sapience ll. 677-79, 701-5.

120   Cursor ll. 9636-39.

121   Myrour of Lewed Men ll. 255-58.

122   Cursor ll. 9707-19.

123   Sapience ll. 237-8, 316-20.

124   Gesta 134.

125   Sapience ll. 757-61.

126   The continental version of the Gesta has the son in an even more significant role, luring his wife to return, and resisting the challange of Truth and Justice. See Hermann Oesterley, ed., Gesta Romanorus (Berlin, 1872).

127   _Gesta_ 134.

128   _Castle of Love_ ll. 346-54.

129   _Cursor_ ll. 9677-80.

130   _Foure Daughters_ ll. 157-61.

131   _Sapience_ ll. 412-13, 430-31.

132   _Sapience_ ll. 192-96, 211-17.

133   _Sapience_ ll. 330-36.

134   _Sapience_ ll. 295-98.

135   _Sapience_ ll. 260-62, 287-89.

136   _Cursor_ ll. 9584-86.

137   _Sapience_ ll. 197-207.

138   _Gesta_ 133, _Sapience_ ll. 226-30.

139   For example, in _Castle of Love_ ll. 167-274, 307-18.

140   _Castle of Love_ ll. 333-42, _King_ ll. 283-86.

141   _Castle of Love_ ll. 389-92.

142   _King_ ll. 335-39.

143   _Foure Daughters_ ll. 145-50.

144   _Sapience_ ll. 317-22.

145   _Foure Daughters_ ll. 80-90.

146   _Sapience_ ll. 368-71.

147   _Sapience_ ll. 281-84.

148   _Foure Daughters_ ll. 103-7.

149   _Cursor_ ll. 9609-19.

150   _Sapience_ ll. 236-38, 243, 289-92.

151   _Myrour of Lewed Men_ ll. 216-22.

152   _Sapience_ ll. 297-98, 400-406.

153   _Sapience_ ll. 643-44, 671-72, 699-700.

154   King ll. 315-16, 339-40.

155   Cursor ll. 9669-76.

156   King ll. 349-56, 361-62.

157   Foure Daughters ll. 157-61.

158   Sapience ll. 412-13, 430-31.

159   Myrour of Lewed Men ll. 241-46.

160   Sapience ll. 477-80.

161   Castle of Love ll. 501-2, 505-6.

162   Foure Daughters ll. 175-80.

163   Myrour of Lewed Men ll. 261-66.

164   Gesta 134.

165   Sapience ll. 502-8, 757-60.

166   King ll. 430-57.

167   Castle of Love ll. 549-54. See also Cursor ll. 9749-52. Note that in the Latin Gesta ruling the country is obviously the issue under dispute.

168   Castle of Love ll. 289-99, 305-6.

169   Sapience ll. 344-50.

170   Sapience ll. 463-69.

CHAPTER 4

THE LITERATURE OF MERCY AND THE IDEOLOGY OF MERCY

The ideology of mercy seen in the versions of the Four

Daughters of God is not limited to the allegory. The

cultural preference, at least in theory, for strategies of

reconciliation to those of retribution is present in

medieval popular literature almost everywhere that mercy or

judgment is the subject. In fact, a survey of England's

literature from the thirteenth through fifteenth centuries

shows us a discourse on mercy's function in society,

especially in secular judgment, and on the deleterious

effects that these traditional attitudes about mercy could

have on the English polity.

There is a vast range of works containing stories about

or discussions of mercy and judgment. Many of the sources

drawn on here are of course religious in nature, such as

sermons and pastoralia. But the sources include too a

substantial portion of chronicles and texts that essentially

were meant for entertainment. As expected, much of the

literature speaks of mercy in its forms of almsgiving and

charity--of the spiritual and corporal works of mercy. Even

more common, however, is mercy as another form of largess,

that is, as pardon and forgiveness. This is mercy as the

antidote to wrath and vengeance, as the unguent of political
life.   Underlying every form of mercy is the element of
reciprocity.   Far from being thought of as an altruistic
act, mercy was was understood to be something done in
expectation of a return: either spiritual salvation or the
restoration of a relationship.

   This discourse allows us to go beyond a static
description of mercy's meaning in medieval England.
Particular elements became the focus of attention,
complaint, and debate even in a body of literature so highly
repetitive and imitative.   Expanded or altered notions about
mercy and its role in judgment never completely displaced
earlier ones during these centuries; but these foci, which
come to the fore in the period between 1380 and 1420,
indicate subjects that were the cause of anxiety for
contemporaries.   Examining them in detail gives us a general
picture of the chronology of change involved, and a sense of
which features of the ideology and actual practices of mercy
were most troubling.   The literature voices questions about
the importance of motivation and intent in merciful
behavior.   There was a marked ambivalence about the matters
of how one should judge and who was justified in judgment
and punishment.   The discourse also allows us to trace the
outlines of the process of redefining the seemingly
polarized entities of lax pardoning or merciless judgment,
and of the notion of that recipients of mercy must be
deserving.   These voices of anger and apology in the

literature come from the recognition that traditional practices of mercy were failing to keep public order.

Piers Plowman is examined here at some length because the central focus of the poem can be described as the relationship of mercy and justice in divine and secular terms, for the individual and for temporal authority. Piers Plowman affords a valuable perspecitve on the complaints of perceived failures and incipient changes. Still, the remedies that the author proposes for society's ills are out of keeping, perhaps in advance, of the general opinions of the times. There is clearly a consensus in this literature from the thirteenth through fifteenth centuries that the traditional use of mercy, pardoning a wrongdoer in order to reintegrate the community, was preferred as the means to maintain order. As in the allegory of the Four Daughters of God, these sources do not demand or endorse retribution but rather reconciliation.

I

Christianity taught medieval men and women that all people of whatever means were expected to contribute to the care of the poor, and there was special emphasis on the obligations of the wealthy;[1] it was not expected that mercy be motivated by pity or true charity. At the very least, the action itself was given credit, as we see in this exemplum. Peter the Toller was very rich, and unmerciful to the poor: he not only did not give alms, he beat the impoverished. A poor man bet his friends that he could get

alms from Peter. One day when Peter was putting rye loaves into the pantry, this poor man asked for alms. Peter threw a loaf at him in anger, and he took it. Two days later Peter was near death and thought he saw Christ as the high judge. Fiends put all his sins on one side of the scale and angels put the loaf on the other. They told Peter he need more almsdeeds to save his soul. On waking, he gave all his goods to the poor and later became a saint. He was given credit for the alms, even though it was done in anger.[2] The theme of balance and exchange was part of an unending refrain, whether the story was about merciful or unmerciful behavior. We see it in Dives and Lazarus, a favorite throughout the centuries. At the gate of a rich man lay a leper, to whom he refused even the crumbs from his table. When they died, the leper went to the bosom of Abraham, and the other to hell. He begged for even one drop of water, and for a warning for his brothers to mend their ways. Abraham denied his requests, and reminded the rich man that each received what he deserved according to his behavior while on earth.[3] A very pointed conclusion is provided in a Wycliffite sermon: "And marke we how þis gospel tellith þat þis riche man was not dampned for extorcion or wrongys þat he dude to hys neyȝbore, but for he faylede in werkys of mercy."[4] Care for the well being of others earned salvation; this was a moral that never lacked emphasis. The characters in these exempla are flawed, even wicked, but they are rewarded for understanding the necessity of aiding

the less fortunate. Consider the message of this one.

Theobald, Count of Blois, had founded the house of Clervas.[5]

"Þis ilk erle disseysed a knight / And toke has land all

with vnright; / Þat werk was noght to Goddes pay." While

riding one day he came across a leper who sought alms. As

soon as he saw the leper, he had pity; he not only gave him

food and clothing for life, but built a place where the

leper remained until death. It happened that, after both

had died, a monk of Clervas saw the following one night.

Many were being judged before Christ in his throne. Next to

Christ was seated the same leper--his reward for suffering

patiently. Then two black dogs hurled Theobald down for

judgment:

> And als sune als Sir Tebaud come
> He was ateynde of tresowne
> And of wrangwise desirysowne,
> For he had, als are said I,
> Desirit a knight wrangwisly.[6]

He was condemned to hell, but the leper asked Christ to

forgive him.

> 'Sen he to me slike dedes did,
> His mede, Lord, lat noght be hid.'
> Of Thebaud had God mercy Þan
> Thurgh prayer of Þat pouer man.[7]

Often the literature of mercy features the suffering,

helpless members of society, and the powerful being taught a

lesson. The latter come to realize the value and purpose of

merciful behavior both for the donor and the recipient.

Such is the exemplum of Constantine and the Innocents.[8] The

Emperor Constantine was told that his leprosy would be cured

by bathing in the blood of children aged less than seven, so

he ordered a sufficient number brought to him. But when he

heard the cries of the children and their mothers, "pite"

was engendered in his heart and through "charite" he

countermanded the order. He forsook all physicians but God.

When the women prayed for him, God responded:

> As he which doth al equite.
> To him that wroghte charite
> He was ayeinward charitous,
> And to pite he was pitous:
> For it was nevere knowe yit
> That charite goth unaquit.[9]

God cured him of his leprosy and sent Pope Silvester to

instruct him concerning salvation.

The elements of motivation and intent became

increasingly important through the fourteenth and fifteenth

centuries. The Parson's Tale, closely patterned after one

of the one of the popular works designed for the clergy,

describes mercy as "a vertu by which the corage of a man is

stired by the mysese of him that is mysesed. Upon which

miericorde folweth pitee in parfournynge of charitable

werkes of misericorde." Mercy leads one to pity and

compassion, "to lene and for to yeve, and to foryeven and

relese."[10] The insistent statement is often found that the

man who does not truly forgive prays against himself when he

says the Pater Noster.[11] Compared to some thirteenth-

century works which describe external works for the

penitent,[12] a late fourteenth century piece insists that for

remission of sins one must be fully contrite, inwardly sorry

for sins, and intend to sin no more.[13] Another sermon, from
the early fifteenth century, enters into some of the finer
meanings of intention and charity during a discussion of
covetousness. One's intent is valueless if the coveting
persists.[14] Jacob's Well treats the subject of contrition
in great detail. Much emphasis is placed on individual
feeling and intent; good intentions must guide one to make
amends.[15] Sometimes this focus on intent almost seems to
negate the value of the good works performed. A man who
sins "haӠ no power to paie it, for in al Ӡis lif, Ӡeyӡ he
myӡt lyue an hundred wynter or more, je ne myӡt not do
sufficiauntly penaunce fo on dedly synne...."[16] The same
work later insists that, in forgiving wrongdoers, it is the
true feeling and not the outward action that has worth, for
"God weieӠ Ӡe ӡifte after Ӡe wille."

Royal men and women are often found in tales about
mercy similar to the ones above; yet they also are
associated with other forms of mercy, too. Medieval
literature abounds with examples of pity and compassion
moving a king or queen to mercy. Chronicles frequently show
royalty whose generosity of heart moves them to help their
subjects. Eleanor of Aquitaine selflessly attempts to
protect her peasants from the dreadful effects of the
interdict.[17] The supplications of a pregnant wife
apparently were known to touch the heart of the king, so
that pardons were given even when the husband was a hardened
criminal.[18] Situations in which a queen begs her husband

for mercy on behalf of others are also common. The case for
royal compassion and mercy in judgment is eloquently put
forward by Alceste in the Prologue to The Legend of Good
Women. She interrupts the god of Love's angry condemnation
of the narrator, reminding him of his obligations in
judgment.

> For he that kyng or lord is naturel,
> Hym oughte nat be tyraunt and crewel,
> As is a fermour, to don the harm he can.
> He moste thynke it is his lige man,
> And that hym oweth, of verray duetee,
> Shewen his peple pleyn benygnete,
> And wel to heren here excusacyouns,
> And here compleyntes and petyciouns,
> In duewe tyme, whan they shal it profre.
> . . . .
> In noble corage oughte ben arest,
> And weyen every thing by equite,
> And every han reward to his owen degre.[19]

Royal mercy could take the form of simple largess.
This is typified in the following anecdote from Walter Map's
De Nuqis.[20] The chamberlain of Henry II drew an amount of
wine for the king every night. Since he rarely asked for
it, the chamberlain and pages drank it. One night, Henry
called for the wine and the chamberlain had to confess the
truth; he begged for the king's mercy. Henry told him to
draw two draughts in the future--one for the king and one
for the chamberlain and pages. His royal mercy was such
that he forgave and then even rewarded his man for his
honesty. More often the mercy of generosity is part of the
complex funtions in the relationships between the powerful
and their supplicants. Mercy appears in chronicles as a
pardon for a social or political offense in the context of

war or power struggles. In the late twelfth-century
chronicle of Jordan Fantosme, all references to situations
involving mercy are are framed within conflict: the
disadvantaged party seeks quarter or attempts to establish a
truce.[21] This sense of mercy lasts down through the
sixteenth century. It is common in the Brut, a very popular
chronicle with continuations in the fourteenth and fifteenth
centuries, later used by Tudor historians. Some portions of
the Brut detail the procedures pursued by those wanting to
re-establish peaceful relations with the king. Here we see
the sort of gifts and promises that were offered, and
expected, to demonstrate good intentions and the desire to
make amends.[22] Devotion or service to powerful indiviuals
also meant that one could call upon them to act as
intercessors when mercy was needed. The Chronica majora has
numerous stories that show the importance of service to a
powerful family able and willing to intercede with the king.
Such is the case of Philip Lovel, who had been in service to
the king and at least twice accused of corruption. He
managed to be restored to his office through the petition of
the King of Scotland, and the second time avoided punishment
through the assistance of the many people for whom he had
done favors.[23] The Westminster Chronicle, a work from the
late fourteenth century, also details such incidents. When
John Northampton faced Richard II on a variety of charges,
he almost ended his life as a result of his undisciplined
behavior. But to his fortune, the queen was present and

chose to plead for his life by throwing herself at the king's feet. Northampton's connections saved him in the end; the chronicle describes how others intervened to secure royal mercy.[24] A passage from Froissart's Chronicles, concerning the surrender of Calais to Edward III, clearly indicates the circumstances in which mercy was granted in political struggles as the result of intercessory pleas. During the course of negotiations, in which six of the city's burghers give themselves up to Edward's will in order to preserve the city, Edward's messengers frequently state that they will ask the king for mercy. The king denies their requests, and the burghers only are spared the execution that Edward demands when Queen Phillipa--advanced in pregnancy--throws herself at her husband's feet, praying for his mercy.[25]

The character of mercy for those seeking divine pardon is not dissimilar in exempla from the twelfth and thirteenth centuries. The Church fostered the notion that one could be saved by devotion to not only God but to heavenly intercessors such as the Virgin and saints. Typically, the emphasis is not on repentance and forgiveness; rather, the sinners persist in their loyalty to a heavenly figure and are rewarded for it. For example, a thief devoted to the Virgin was hanged, but she held him up by his feet for two days until he was finally released; he then became a monk. A corrupt judge, when facing God for judgment, was not only spared from damnation by the intercession of St. Preictus

but restored to life.[26] Actual deeds are given little
weight; it is the fidelity or devotion of the supplicant
that earns the grace.

Almsgiving and charitable works motivated by pity, and
pardons given out of compassion or religious devtion might
seem to dominate the literature of mercy. Yet the most
typical representations of mercy involve forgiving a dispute
and forgoing vengeance. Perhaps this is best characterized
in the exemplum of the Forgiving Knight. Two knights got
into such an argument that they killed each other. Each
knight had a son who swore to obtain vengeance. Eventually
one drove the other into a castle where he was beseiged for
twelve months, so that he was unable to go to church for
mass or matins. On Good Friday the knight in the castle saw
men going barefoot to church, seeking mercy for their
misdeeds. He decided he must do the same. While on the
way, his enemy came against him and declared he must die.
The knight fell on his knees and begged for mercy in
Christ's name. "Y putte me now al yn Ꝑy grace / Ꝑat goddys
grace be on Ꝑe lent / At Ꝑe day of iuggement." The enemy
forgave him and they went to the church together. As was
the custom on that day, each knelt before the cross to kiss
it. When the forgiving knight did so, the figure came loose
from the crucifix to embrace him. This exemplum enjoyed
great popularity throughout the middle ages.[27] All versions
offer at least a brief explanation of the meaning, such as
this one:

> Ye may vndirstonde that oure Lord aboue
> Is highly pleased and best apaid
> Whan men chaitablie togedre loue;
> In the Paternoster ye may it prove--
> Whoso woll forgeve shall haue relese
> Of all his synnes bothe more and lesse.[28]

This commonly shared belief in the value of reciprocal forgiveness of enmity is found untold times in the chronicles. For example, here we see the role of mercy in making peace. The Earl of Pembroke, accused of avenging his brother's death, returned to court to make satisfaction to the king. At the same time, the Justiciar of Ireland, the one accused of killing the earl's brother, also came to court, seeking to be reconciled with him. The king agreed to mediate, with the goal of establishing peace. He told the earl that he was unworthy of his pardon unless he granted the same to the neighbor who was a supplicant, and was willing to clear himself of the crime.[29]

The exemplum of the Forgiving Knight embodies the most common attitude about mercy found in this literature. It is a quid pro quo that all can understand. The story is an embodiment of Christianity's basic teaching about mercy, and one that greatly benefitted society. The modern reader tends to assume that Christian mercy meant charitable alms given out of pity with no thought of reward except the knowledge that such works might assist in attaining salvation. Yet in these works mercy most often appears in the guise of pardon for an injury received or clemency shown to an enemy. The reciprocal element was strongly

emphasized. There was a patent acknowledgement that
granting such forgiveness was motivated not by altruism but
the desire to mitigate the destruction of vengeance and the
intention call on an obligation if necessary in the future.
This is mercy in its social function. Still, the hope of
achieving the spiritual benefit always was there. The
unceasing message behind all these descriptions of the
operation of mercy is that one must be merciful in order to
obtain it oneself. Mercy in its many forms was requisite
for salvation; it paid off in this life as well as the next.

II

The Church acknowledged that there was more than one
reason to be merciful. Ideally, people would imitate divine
mercy out of love and appreciation for the forgiveness God
had extended to man. Yet the clergy fully admitted that
there were other more selfish reasons prompting people to be
merciful. Mercy shown to one's neighbor would earn God's
mercy at the time of judgment. The threat of Doomsday was
used to inspire merciful behavior. As an incentive toward
living a Christian life, all were reminded that the reward
would be great, in this life and the next, for those who
followed Christ's teaching. The expectation apparently was
that most men and women would not be inclined to altruistic
treatment of others; they needed the motivation of reward.

There were exempla meant to inspire a more elevated and
selfless approach to mercy, such as the parable of the
Prodigal Son. More common were lessons, such as that of the

Debtor Servant, that inspired anxiety or fear about one's

fate.[30] The exempla featuring those who despaired of God's

mercy and those who were not properly or timely repentant

were intended to instill the dread of God's judgment and

urged counterbalancing sins with mercy. The Pricke of

Conscience concludes a description of Judgment Day, which

largely focuses on the horror of it all, with this:

> Na man þarfor suld in dispayre be;
> For alle þat has mercy here sal be save,
> And alle þat here askes mercy sal it have,
> Yf þai it sekes whilles þae lyf bodily,
> And trewely trayste in Goddys mercy,
> And amende þam and þair syn forsake,
> Byfor þe tyme ar þe dede þam take,
> And do mercy here and charite,
> þan gette þai mercy and saved sal be.
> Bot if þe dede byfor haf þam tane,
> Ar þai haf mercy, þan gette þai nane,
> Bot reddure of right wysnes anely,
> For þan sal be shewed na mercy.[31]

But the most frequent approach simply was to draw a parallel

between merciful treatment of one's neighbors and God's gift

of salvation. Mercy is one of the most common topics in a

collection of orthodox sermons from the first half of the

fifteenth century, and its value is presented in very plain

language. For instance, a sermon on the theme Redde quod

debes concludes:

> þan and we will haue mercye of God for oure
> detys, we muste haue mercye on oure even-
> cristen of here dettys. And ȝiff we so do,
> þan we shall haue grace here of good lyvynge,
> and whan we goye hens, ioye euerlastynge.[32]

In the Book of Vices and Virtues, there is a discussion of

the things that move a man to mercy, followed by the fruits

of mercy--forgiveness of sins and unfailing profit. "First

in Þat Þat mercy purchaseÞ forȝeuenesse of synnes, wher-of
mercye haÞ Þe lettre of forȝeuenesses and Þe indulgences."
Whatever the motivation used to inspire merciful behavior,
Christianity's demand for mercy was unwavering. The clergy
took an unequivocal stand:

> For, what maner vertu Þat a man haue, but yf he
> be yn charyte, hit stondys hum in no vayle; for
> Þogh he wepe and crye to God: whyll he ys wythout
> charyte to any of hys euen-cristen, God heryth hym
> not.[33]

The reciprocal nature of Christian mercy, this _quid pro
quo_ of consideration for others in return for eternal life,
had concrete results in terms of the well-being of society's
less powerful members. But the Church was not only
interested in the physical welfare of its people. This
persistant goading and demanding was for two types of mercy.
Popular literature did demand charity, but the most common
expression of mercy in these sources involves the reciprocal
pardon of enmity. Although the reward was to be spiritual,
the texts frequently acknowledge that pardoning an enemy or
transgressor also served to stabilize community
relationshipr.

An awareness of the destructive nature of wrath is
prominent in the literature. A verse sermon on the Pater
Noster from the late twelfth century states that if any man
does us wrong, we desire to have him put to death.[34] Mirk's
Festial contains a vivid and detailed explanation of the
fifth petition of the Pater Noster.

> An yn Þat ȝe don mercy, ȝe sleyne Þe foule
> synne of dedly wrath, Þat is so full of

> vengeans and cruelte of maleyse, Þat hit woll
> neuer forȝeue, but algate do Þe vtmast and Þe
> vengeans Þat he may. Wherfor he schall haue
> no mercy yn Þe day of dome....for dome wythout
> mercy schall be don to hym Þat doÞ eno mercy.[35]

Mercy was the antidote to the sin of wrath, the vice that
fomented strife between people and resulted in the
destructiveness of vengeance. Such forgiveness benefitted
the forgiver and the offender. A late twelfth-century
homily suggests, among constructive acts for the penitent,
reconciling with those at enmity as much as possible; this
is true charity, and protects the soul of the penitent and
of the others in conflict with him.[36] Another homily
specifies the spiritual benefits of this mercy Christ
requests. Although many may say that under the old "eye for
an eye" laws, no one would dare to trespass, God set his law
of mercy for our own good. For if you return evil for evil,
the anger between you only grows, each sins more and
reconciliation is delayed. Under Moses' law, a sinner was
tormented to death and unable to expiate the sin. But
Christ gave us a gift--we are able to make amends
willingly.[37]

Here is the means for avoiding strife. People were
asked to treat others as they wished to be treated, and to
resolve contention for the good of their souls and to
benefit the community. There are few exceptions in
devotional literature to this formula for secular harmony.[38]
The sources generally emphasize the corrupting effect of
social discord. A Good Friday sermon, after discussing

Judgment Day in terms of the corporal works of mercy, closes
by reminding listeners to come and kiss the crucifix if they
are in discord. "He who has discord with any man is like
Judas." A sermon for Easter, from the same collection,
states that all must reconcile with those in discord before
receiving the host, or they bring judgment upon themselves.
The priest is shown his obligation here. "In comonynge it
is grete nede þat the prest make a sermon to the peple, in
the whiche he may move þe discordynge vnto a-corde, þat the
discordyng ne comone noȝt til tyme he be reconsilid to his
brother."[39] Not only the priest is obliged to promote
reconciliation. Another devotional work includes in a
lengthy review of venial sins the failure to accord those
"at debate." The author of a Wycliffite sermon was much
more explicit about the form that this obligation to pardon
took in every day life.

> And ȝif þi broþur be fer fro þe, Godes lawe is so
> resonable þat hit suffiseþ þat þow go owt of yre
> and be recounsiled in herte wiþ hym, and in hool
> purpos to maken asseþ also sone as þow goodly maist.
> By þis lore may we see how fer hit is from þe scole
> of Crist for to chiden or to plete or to fiȝte as
> men now doon.[40]

In another sermon collection the preacher acknowledges the
crucial role of restitution in this process of
reconciliation:

> And ȝiff a man haue a-noþur mans good wrongefully,
> þan he is giltye in þis synne. He may neuer forȝeve
> anoþur mans dette þat he awys hym ne trespase þat
> is down aȝeyns [hym], as longe as he so holdeþ oþur
> mens good wrongefully. He þat dose þus may not
> goodly aske forȝeuenes of God for þoȝ trespasses
> þat he haþ don to hym.[41]

This is underscored by following up with the parable of the Debtor Servant.

Jacob's Well, a homiletic collection for the mid-fifteenth century, reveals a particular awareness of contention and disorder in the secular community, of their consequences, and the element of reconciliation. One section analyzes the forms and degrees of wrath: private hatred in the heart, silently biding time until it can be avenged; malice of the mouth; fulfilling wicked will of the heart in vengeance; hasty or fierce vengeance, without any advisement; manslaughter, including defamation; complaining against reasonable chastisement; blasphemy--speaking against God in tribulation.[42] The approach to working out forgiveness between people is more subtle than that found in most sources. For example, it explains that there are two ways to forgive a wrong. First, if there is rancor in the heart against a transgressor, one must let it go, even if not asked for forgiveness. Wrath in word or deed must be forgiven if one is asked for forgiveness. But a man is not bound to drop and forgive a rightful and lawful action against an adversary, though asked for forgiveness, unless the other will "make Ʒe amendys vp his powere." In this last case, one does not need to forgive in order to secure salvation; however, to forgive the quarrel and action, to be the first to forgive and pursue an accord, earns two Crowns in heaven--one for having suffered wrong, the other for being the first to pursue an accord.[43] Jacob's Well

acknowledges the complexities of fitting Scriptural injunction into the realities of life. It contains a forthright statement about those who break the peace. This is not about discord between neighbors, but the excommunication of lawbreakers. Those who trouble the peace of the king and his realm are cursed, as are any who plot or act against the king, queen, or their children. This includes not only common risers against the peace, but all open thieves and others who impugn against law and the right of the king and his realm.[44] This is one of the rare instances in these sources in which anxiety about the violence of life in late medieval England directly showed in a homiletic work.

This use of mercy to maintain peace is not something advocated only by the Church and in devotional works. Time and again, chronicles recorded the circumstances under which men were reconciled with their enemies, the community at large, and the king. The following examples show some of the elements of reciprocal pardon, the important role of restitution, and convincing representatives of the community of one's contrition and good intentions. These entries bear out the reality that the Forgiving Knight tale had for medieval audiences. When the Earl of Pembroke wanted to return, he offered to clear himself of charges and make satisfaction to the king before the whole court. The king's brother interceded for him; it was thought that he also obtained favor by presents to the king. The justiciar of

Ireland was also prepared to clear himself in trial before
king and court. Although he had a clear conscience, for the
sake of re-establishing peace, he promised to found a
convent for the benefit of the soul of the slain. The
passage is concluded by the observation that the
intervention of the king and nobles, and the justiciar
wisely humiliating himself, brought about peace and
concord.[45] The Westminster Chronicle has a more dramatic
scene.[46] Sir John Holland, the half brother of Richard II,
had killed Ralph de Stafford. When brought before the king
he was arm and arm with the archbishop of Canterbury and the
bishop of London. Three times before reaching the king he
flung himself to the ground. Finally, on his knees, he
stretched up his hands, cried and begged the king for mercy.
Some of the observers were in tears. The bishops knelt by
his side. The king, moved by compassion and the prayers of
the nobles present, pardoned him. Holland had come to an
agreement with the family about what he would do for the
soul of the slain youth. Not long after this, Holland was
given all that he had forfeited because of his misdeed. A
chronicle from the late fifteenth century describes a
situation involving a number of people on both sides.[47] The
young lords whose fathers were killed during the battle at
St. Albans came to London, but they had to lodge outside the
city; the citizens would not receive them since they came
with great power and against the peace. The men whom they
sought to destroy were inside the city. Some bishops and

other lords "tretyd betwyxt theym of the pease and accorde, and after long trete bothe partyes submytted theym to the laude and arbytre of the kyng and hin counselle." The settlement included payment and prayer in recompense for the deaths.

The dictates of religion were echoed in social practice, at least so far as believing in the utility of pardoning wrongdoers. We have seen in the descriptions of the practice of mercy the basic forms it took in secular society. The reason why mercy was ceaselessly enjoined is obvious: mercy earned salvation. Not only that, merciful treatment of others sometimes was said to improve even life in this world. Certainly, the literature does show mercy taking the form of almsgiving or pardon motivated by Christian love. However, there is always the blunt assertion that giving alms or pardoning a transgressor will result in a beneficial return on the effort. The currency of stories such as those of Theobald of Blois and the Forgiving Knight reflect a belief in the practicality of mercy, in the rewards that reciprocal pardon had for the individual as well as the community. The ideology of mercy proclaimed in the allegory of the Four Daughters of God is voiced persistently in medieval literature. Nowhere is the reality of this ideology more apparent than in the chronicles. The importance of reconciliation is repeatedly endorsed. The king, especially, serves as a facilitator in the attempt to restore order. When promises of contrition,

restitution, and amendment are ventured, parties can be reconciled and the king may grant his pardon in the effort to maintain peace.

III

This discourse on mercy has a continual interest not only in mercy's role in judgment, but in questions of secular judgment--how to judge, who should judge, when it is appropriate. There is an unexpected intensity of interest in the subject, and its social applications intrigued contemporary writers and audiences to a surprising degree. The relationship of mercy and justice that can be uncovered in this literature has some unexpected facets. Based on what has already been discussed here, it is not unusual to find that they thought mercy should be given precedence over justice, and that mercy should be used to quash vengeance and maintain order. But it is notable that throughout the period men were struggling with the conflict between the necessity for authority to pass judgment on society's transgressors and Christianity's obligation to refrain from judging. They were acutely aware of the problems facing secular judges in a Christian culture. This resulted in recurring apologetic explanations about how people were to judge one another. The literature of mercy contains repeated efforts to determine how punishment might be justified.

The purposes and benefits of forgiving others were clearly given. Whatever one did, or refrained from doing,

to others, one could expect the same in return. This
included not only pardoning those who had transgressed, but
also refraining from judging others. For some, it was a
very simple equation.

> Saint Luke vs kenes, als he wele kan,
> Bese mercifull to ilk a man
> Þat in Þis werld er lifand now,
> Als Þe Fader of heuyn es vnto ȝow.
> And luke ȝe iuge, ne deme no man,
> And ȝe sal noght be demid Þan.
> Als ȝe ȝowre domes till oÞer ȝemid,
> Right so sall ȝoureself be demid.
> Þat mesure sall ȝe haue by dett,
> Als ȝe haue vntill oÞer mett.
> Als ȝe till oÞer men do now,
> Þe same sal be done vnto ȝow.[48]

In this popular literature there is an obvious attempt to
discourage the seemingly inevitable desire to pass judgment
on others. The basic desire for revenge was recognized, and
medieval Christian culture attempted to diffuse the
escalation of reciprocal violence by threatening the
respondent with punishment in the next world. Similarly,
people were encouraged not to assume that they knew the
intent behind another's action. This also was an attempt to
obviate what might well be a very destructive response to a
perceived wrong.

Mercy's part in the efforts to preclude vengeance, or
repair the damage it caused to the community, are obvious in
chronicle narratives that detail destruction following on
the denial of mercy. One such tale concerns the King of
France and his knights while on crusade. A jealous
counsellor derided one of the knights. An argument broke

out; the knight was insulted; his son, in a rage, stabbed
the offender and ran to a church for sanctuary. The father
begged the king for clemency and pardon, and promised to
submit himself to the judgment of the king's court. The
king said he should find proper securities. While he did
so, the son was dragged from the church by the king's
agents, and hanged without trial or judgment. The knight
returned with securities and saw what had happened. He
voiced his shock at the king's lack of reverence for the
church and justice. He resigned his homage and went to join
the army of the pagans, afterward devoting himself to
revenge which did great injury to the king.[49] Another
chronicler described the usurpation by Edward III, and the
later strife between Lancastrians and Yorkists as part of
the great vengeance that came on England; this was the
result of the merciless judgment of Thomas of Lancaster by
the deceived king, who was misgoverned by false
counsellors.[50]

Rejecting the desire for vengeance had spiritual
benefits. One of the early sermons explains, in the context
of patience, the necessity of avoiding revenge. Patience is
defined here in terms of not seeking venegance and
tolerating an enemy's offense; it is a viture that preserves
the soul.[51] The same message is echoed two centuries later
in a Wycliffite sermon. Worldly warriors take it that they
should harass their enemies however they can and hold it
righteous to do wrong to another. But this is wrong in

God's law. Men should render not evil for evil but charity for evil. Men should forgive and not take vengeance. Men should forsake battles and "stryuyngus in ple." God said that he has reserved vengeance for himself.[52] A mid-fifteenth century text instructs that meekness results in benevolence of deeds to one's neighbor; these are part of the composition of peace. Men are not to harm those who harm them, for that would be debate and not peace. Evil should not be returned for evil. It belongs to God to take vengeance. The working of peace will help to find obedience, to God, Church, and superiors.[53] The promotion of forgiveness was an attempt to contain the disasterous effects of a decision to mete out punishment to an enemy or wrongdoer.

However, this hardly means there was a general agreement that judgment and punishment should be witheld. The necessity of judgment was accepted; the sources were engaged with questions of how and when men were to judge one another, and especially how secular officials were to judge others. Focused attention to these questions begins to appear in the sources in the mid-fourteenth century. As usual, the homily collections have the most to say.

> No gude man suld snib his felaw
> With no chisening ne missaw,
> Or he wit wheÞer Þat misdede
> Be done by will or els for nede,
> For many gude dedes euell semes
> To euil men Þat lightly demes.[54]

The most prominent concern was that men would base their
judgments on the wrong grounds, on false or misleading
elements, or really have no understanding of the crucial
issues. And how to avoid these problems? Well, the advice
repeatedly offered, as with mercy, is to pattern one's
actions after God's.

> For many men wenen to be merciful to yppocrites,
> and Þei don harm to men to whiche Þey wenen do
> profiȝt. And many men wenen to iuge Þer breÞren,
> and ȝet Þei iugen falsely and cruelly of many.
> And yche man schulde tempre such iugement aftyr God,
> for God in his iugement may not faylen from
> resoun.[55]

A more useful distinction is made between judging the
actions of a man, and judging what was in his heart. One
preacher treated this subject at length. He informed his
audience that it is foolish to attempt to judge the heart of
another. This is for God, who warns us against it. Men
judge by appearance and out of envy; God judges righteously.
Man can also, if acting in the fear and love of God. But
men are covetous and many judges are bribed.

> Foly demynge is to deme a man of suche Þinges as
> he knaweÞ not of--the privete of mans hert and
> is dedis--for Þer knowes no man to what intent,
> with what temptacion, with what febulnes, or what
> forÞingkynge Þat he hath for itt.[56]

Though intent, motivation, and circumstance receive much
speculation, almost nothing is said about passing judgment
based on the transgressor's behavior. This unelaborated
remark in a sermon is one of the few related comments:

> Ȝe shall vndirstond Þat Þer ben ii maners of
> demynges, Þe wiche men vseÞ in Þis world. Þe
> first ys opon demynge, and Þat is of synnes apertly

> donne. The ii is preyey, and Þat is of synne
> Þat is prevely doo.[57]

This preacher also wanted to clarify how this first sort of
judging was to be done. Christ said that if your brother
trespassed against you, first correct him between the two of
you. "And Þus may euery broÞur deme oÞur when Þat he doÞ
amys and whan Þou knawist Þat he synnes aȝeyns Goddes will."
But there was one crucial factor that would keep judgment of
a neighbor from being folly. "And Þus men may deme
ryghtfully, but euermore with mercy and charite it owith to
be don."[58]

We see here an important facet of the medieval
representation of the relationship between justice and
mercy: the acknowledgement of the need to judge others is
accompanied by a justification for passing judgment. These
sources contain <u>apologia</u> for not always choosing mercy over
justice. Although there is an occasional reference to this
problem even in works from the late twelfth century, they
really are found in force a generation after the Black
Death. Side by side with passages on the command to refrain
from judging the behavior of another are those which try to
provide a rationale for condemning others. The reasoning
takes two tracks. The first is based on Matthew 18:15-17,
which discusses the disciplining of other Christians. The
second presents this as an obligation, curiously enough,
that is one of the spiritual works of mercy. The
bifurcation of the works of mercy into the spiritual and

corporal allowed one to fulfill the injunction to pardon wrongdoers, and at the same time righteously punish them.

This justification is adumbrated in an early thirteenth-century sermon. It solves any difficulties by reminding the audience that what they are to love are the souls of evil-doers. They are to hate the deeds of housebreakers, robbers, and thieves who will not change their ways, and put a stop to it, if possible, according to the law of the land. If the felons will never abstain nor repent, it is proper that they be punished, because it is better their bodies be punished than their souls perish in the devil's hand.[59] But the topic is not given any real consideration until the mid-fourteenth century. Some texts sidle up to the problem. The Pricke of Conscience includes the following in the section on Judgment Day. The inner and outer man are the soul and the body; we must account for both. We must account not only for ourselves, but for those under our care; that is, neighbors one failed to succor, parents for children they did not chastise, lords for their households. We are all the limbs of one body, obliged to render mutual assistance.[60] Other didactic works present chastisment as a spiritual obligation. One sermon informs the audience that since no man knows himself to be without fault, a man should not just keep quiet and let wrongdoers work their will. This is because St. Bernard taught that if you see a man make an error then fail to make amends, you should do as Christ bid in the Gospel: chastise him with

charity privately, and if he ignores this, take two or three

with you to bear witness to this effort. If you do this,

you are not responsible for his sins, and you will be

rewarded for your deeds.[61] In the section on justices, the

Speculum Christiani insists:

> Truly, ʒe be not more innocent if ʒe suffre ʒouer
> brethire to perrysch, which ʒe many correcte in
> schewynge here defautes....He that chastiseʒ not hym
> that erres, he schal be demed of negligence; and he
> that prayeʒ not priuyly for hym schal be condempnede
> of wickednes and noyance.[62]

The chastizing and the punishment of others are presented as

charitable favors. Each man should pity another who is ill,

and help him just as all limbs ease another when it is sore.

> By Þis vnderstand we wele
> Þe slothe of rightwysnes to fele,
> Thurgh whilk men shuld ay be besy
> Þe misdoers for to chasty,
> And Þar sugettys Þat duse ille,
> Men shuld punych by law and skylle,
> And thole is neghbure noʒt be schent,
> Bot bryng him tille a mendment.[63]

Every man should save another for the love he has for him.

But of course there were always warnings about the

importance of the intent that lay behind the punishment. It

was not to be done out of zeal for vengeance or without the

authority of God. It was easy to lose sight of the

Christian way to chastise: "as many seien Þei punyshe men

for loue of Þer amendement, but Þei holden not Þe forme of

punyshyng as Crist heeld. Prechyng and paciense shulde be

menes to scumfite synne."[64]

These rationalizations of the means and circumstances

of judgment took a special form when it came to the topic of

secular judges. Here the problematic relationship of justice and mercy in human society came into focus. Judges were deemed to have specific duties and obligations as representatives of the Crown that distinguished them from all others in society. These sources directly address the question of how justices are to judge. One sermon given in the late fourteenth century underlines the fact that these warnings about judging others applied to those in public office as well as the average man; there were additional strictures as well.[65] At the final judgment those who "kepynge haþ of eny comunyte", such as kings, mayors, sheriffs and justices, must account for themselves and those under their care. Did they oppress the people, did they "take ʒiftes to spare to punysche þilke þat haued trespaced and so makeþ hem partineres of here synnes"? Such men do not think they are the poor men's brethren; some, when judging in the causes of poor men, considered them in a harsher light because of their poverty, or favored the rich man for his wealth. The preacher decried the abuses in the secular and Christian courts. "But it is to drede þe word of Crist: 'In what dom ʒe demeþ ʒe schulleþ be demed' whan ʒe comen to ʒelde rekenyng of ʒoure baylie." Here once again the final judgment and salvation are kept firmly in view. The Speculum Christiani includes a fairly lengthy treatment of the subject.

> It es writen: God schal ʒelde eche man aftyr his werke. If we be iuges, we owen to deme iustily and hardyly. Iustly that we oppresse not the pore man vnryghtfully. And hardyly that we drede not

> vnwarly the myghty and rych man. Iuges ben ordeyned
> to do rygour and veniaunce on wyckede men, and to
> praysynge and defens of gude men.[66]

Therefore no prince should put fools or ungodly or cruel men

to be judges, since a fool cannot distinguish right and an

evil man subverts truth by his covetousness. "Knowe wel

that mannes doome is peruerted by foure maners: bi drede, bi

couetyse, bi hate, and bi loue."[67] Elsewhere the discussion

about the requirements for being a justice comes in the

section devoted to the gifts of knowledge. The audience is

instructed that:

> to iugge wel it bihoueþ þat a man afferme noþing but
> he haue wel enquered, and þat þer be no doute þer-ynne,
> and þat a man entermete hym not to jugge þat þat
> longeþ not to hym, as pryuee þinges, as ententes of
> mennes hertes or wommannes, and þinges, þat a man
> may not fynde on riʒt half ne on lift half þat any
> man may vnderstonde what þei wolde mene, wher-of þis
> spirit bi þis ʒifte makeþ þe resoun jugg wel.[68]

A sermon from the 1380s reminds justices as well as rulers

and their officials "ʒif þyself do vnlawfulliche in demynge

oþer men, þou dampnest þyself siþ þou dost þat þou

dampnest." Repeatedly, they are warned that they themselves

must live good lives if they are going to govern and punish

other people.[69]

Despite this insistance on mercy, the explanation of

the judge's role in society is accompanied by the assertion

that it is righteous for a judge to slay a wrongdoer, and in

fact is was merciful in terms of the whole society. The

notion is found, for example, in the Parson's Tale,

Confessio Amantis, and especially Dives and Pauper. When

the Parson explains how homicide and manslaughter are the
result of wrath, he reminds his audience that there is a
lawful manslaughter: "That oon is by lawe, right as a
justice dampneth hym that is coupable to the deeth. But lat
the justice be war that he do it rightfully, and that he do
it nat for delit to spille blood, but for kepynge of
rightwisnesse."[70] Dives tells Pauper that three things are
needed for the killing ordered by a judge to be right and
lawful. The cause must be just and the man worthy of death;
it must be done in just order and by process of the law; the
death should be because he was convicted of his trespass.
The intentions of the judge and officers must be righteous,
so that they kill him for the salvation and example of
others, and not from vengeance or cruelty. When the guilty
man is killed righteously by the law, man does not slay him
but acts as God's officer and minister. God is the judge
and man only does his bidding.[71] Gower had his Confessor
explain that a judge must carry out the sentence on a man
guilty of treason, murder or robbery:

> For who that lawe hath upon honde,
> And spareth forto do justice
> For merci, doth noght his office,
> That he his mercy so bewareth,
> Whan for o schrewe which he spareth
> A thousand goode men he grieveth:
> With such merci who that believeth
> To plese god, he is deceived,
> Or elles resoun mot be weyved.[72]

The law has been that a king's sword is a sign he shall
defend the "trew" people and make an end to those "as wolden
hem devoure." To succor the law and keep common right, a

man may slay without sin, "And do therof a gret almesse, / So forto kepe rihtwisnesse."[73]

Yet these descriptions of condemnation and punishment as charitable acts stand in direct contradiction to the moral of other tales. One of the most prevalent attitudes about mercy is typified in the exemplum of the Merciless Judge, which enjoyed constant popularity from the thirteenth century through the fifteenth century. Handlyng Synne contains an excellent version. There was a justice about whom everyone said he gave hard and wrong judgments. Good men often asked him, on behalf of the poor, to have mercy on them. "And pyll hem nat but mesurly, / Þat Þey myghte lyur un pees by hym." The justice always said, "'Y shal do hem noÞyng but lawe.'" However, the narrator points out: "And many lawes are out of skyll / But ȝyf Þyr be mercy tyll." Not long after this he fell terribly ill. Those who sat by his bed saw he would die soon. He tossed violently and cried to the Lord for mercy. A voice in the sky spoke and all who stood by heard it: "'Þou haddest neure of man pyte, / Ne y shal neure haue noun of Þe.'"[74] God clearly demonstrated his feeling about those who adhered to the letter of the law. This type of tale also includes judges who were corrupt, who were

> ...in maner of a Iuge in vengeaunce feiers;
> He wrought be wylle, were it right or wrong.
> He had no conscience a true man to honge,
> And suffre a theif his lyf to purchace,
> To put in exile all mercy and grace.

For this they received the eternal "stynkand sauour" of hell without mercy.[75] This condemnation was not reserved only for judges. One section of <u>Handlyng Synne</u> includes others who have the power to pass judgment on their fellows. Mannyng wrote of doomsmen: "Þat man þat demeþ al to þe ryght, / Of mercy get he no plyght." He also told of a bailiff:

> For to do veniaunce he was euer bolde,
> And whan he shulde deme þe ryght,
> To felunnye he dede hys myght.
> . . . . .
> Swyche ys goddys ordynaunce,
> For veniaunce to take veniaunce.[76]

Some didactic works organized around the deadly sins give ample space to the corrupt behavior, not only of judges, but also plaintiffs, witnesses, lawyers, and defendants.[77]

There is a patent ambivalence in a society that told the tale of the Merciless Judge, and also constructed detailed justifications for secular judgment. It seems that by the fifteenth century the tensions generated by the command not to judge and the need to punish wrongdoers had been somewhat relieved by the notion that the Crown and its judiciary were exempt from Scriptural injunctions to be merciful and not judge others because they were fulfilling other divine purposes. Yet the exempla such as the Merciless Judge suggest that whatever the reasons given for the need to administer punishment, the generally shared belief was that judges must err on the side of mercy. Despite all the discussion of and apologies for the need to

judge men in the here and now, medieval popular literature never wavers on the crucial point: the belief that mercy must remain dominant.

> And Þus men may deme ryghtfully, but euermore with
> mercy and charite it owith to be don. Þan, Lord, sethe
> all oure drede hanggyÞ in Þi dome as in Þe last day,
> ȝitt Crist putteÞ Þis dome in-to oure owne will,
> Þat ȝiff so be Þat we deme not folyly oure neyȝbours,
> as muche folke done for hate, envie, and ewill will,
> we shall not be demed. [78]

<div align="center">IV</div>

These sources have the tendency to present the choices available to those judging as only merciless judgment or lax pardoning. They suggest difficulty in conceiving of secular judgment as something that could encompass both mercy and justice. Christianity required men and women to forgive wrongdoers; yet the harsh experience of daily life was often put forward as the reason that laws must be strictly enforced if some level of order were to be maintained. The popular literature of late medieval England indicates that at least a portion of the literate members of society felt the failure of traditional uses of mercy as a means to secure public order. There are occasional but significant changes in the definitions of mercy and justice, and in the king's obligation to safeguard those under his rule.

Throughout the Middle Ages people voiced complaints about serious shortcomings in the administration of justice; these grievances often focused on the royal courts. They are found most often in a particular genre known as

complaint literature. Such pieces must be used with caution because the form required generalized and stereotypical statements about the moral failures of society's estates. We can avoid many of the dangers complaint literature holds for historians by looking instead at chronicles, which also contain commentary on current abuses. For example, here are a few passages that deal with the abuse of the king's prerogative to pardon. The Chronica majora recounts an incident in which Henry III extorted money from the Earl of Kent. Seeing that the earl was growing old, the king accused him of serious wrongs so that if he died with such charges pending, the king could confiscate his property and possessions. Although the earl's clerk skillfully refuted every accusation and proved the earl's innocence to all assembled, the pleaders of the bench tried to prove his guilt. In order to allay the king's anger and for the sake of restoring the peace it was decided that the earl should give the king the four castles most valuable to him.[79] In the same chronicle there is the lengthy story about a corrupt sheriff of Northampton. When first tried, the justices would not condemn him because of his power and authority. The king heard complaints about this and sent his own men to hold an inquiry. Since death by hanging was now imminent, the sheriff's wife begged the King and Queen of Scotland to intercede with Henry III. Even though the sheriff was patently guilty, the king did not want to upset intercessors of such standing. He gave the sheriff his

life, although it offended him and he did it under compulsion.[80] A different sort of misuse of the pardon is indicated in this entry from the fifteenth-century Chronicle of London. Richard II maliciously deceived many in this regard: people who had made great fines and ransoms, and had purchased patent letters for full pardons got no effect until they made new fines and ransoms to keep their lives. Many lost their goods and were destroyed, "which was grete shame and hynderyng bothe to the name and state off the kyng."[81] Such objections about the king's use of his prerogative to pardon do not always assert that venality was the motive; excerpts referred to in this chapter show abuses also could have been prompted by political or familial pressure, or religious conviction. These complaints, and many others like them throughout the chronicles, suggest that people felt there was a common understanding about the proper uses of the royal pardon--though they may have been hard put to define them. Nonetheless, such discourse on the pardon served to flesh out a definition of mercy's role in the law courts and governance of the kingdom.

The medieval sources also suggest that there were widely shared notions about the circumstances in which the sanctions of the law should be applied. The next three exempla (not related to the complaint genre) are representative of some of the more common types of stories about justice; all promote the need to adhere to the law and punish offenders. In addition, they afford other

perspectives on mercy's role in the process of judgment.
Mirk's Festial retells this tale taken from Ranulf Higden.
When St. Wulfstan was visiting his bishopric, men brought
before him another man who would never be at peace. They
asked the holy bishop to chastise him. After the bishop
preached to him all he could, and found him even worse, he
prayed to St. Matthew to give the man what he deserved.
Then, in view of all, two fiends with burning hooks quickly
pulled the man down into hell, "wherby Þe pepull was well
comfortet, and euer aftyr lyued yn pes and rest."[82] If
attempts at reconciliation had been involved, they occurred
before the troublemaker was brought to the bishop. The
people here are interested in the wrongdoer receiving his
just deserts, and securing peace for the community in this
way. Another exemplum features a king in his role as judge.
The steward of King Philip of France coveted a neighbor's
vineyard. When the man died, he went to the grave with two
witnesses, put money in the corpse's hand, then took
possession of the vineyard. The widow complained to the
king; he had the witnesses examined and they gave judgment
against her. She wept; the king pitied her and examined the
witnesses himself. After seperating them, he told one to
say the Pater Noster; this was done. He put him aside and
called to him the other, saying, your fellow said to me the
truth as his Pater Noster; say your truth also--and if you
differ, you will die. Because of the king's words, the
witness thought that the other told the king what really had

been done. So he told the king what went on and begged for
mercy. The king was angry; he restored the vineyard to the
widow; the steward and witnesses were burnt.[83] There is a
noticable lack of mercy in his treatment of the witness who
one might think was worthy of a mitigated sentence since he
cooperated and told the truth. But the story, of course, is
really about obtaining justice for the king's subject.
Another exemplum, this one from the mid-fifteenth century,
also shows the pursuit of justice, but with a notable twist.
A great justice, who showed equity to friend and foe, kin
and stranger, was lying on his deathbed. While there he
heard the crying of a woman in the next room. He asked the
cause, but all were afraid to tell him. He threatened to
put out his son's eyes unless he told him the truth, and so
the son did: the justice's nephew was trying to rape a
woman. Although the justice told them to hang him, the sons
just helped him escape. The nephew came to visit the
justice five days later; as he was embracing his uncle, the
justice slit the nephew's throat. Later, the bishop came to
give the justice the sacraments at the time of death, but
refused him the host since he would not confess concerning
the nephew. The justice explained that he did it not for
wrath or vengeance, but for equity of rightful judgment; for
love of equity and law, and dread of God. Though the bishop
refused him the host, it miraculously went of its own accord
from the box to the justice's mouth.[84] The justice is a
hero, because he chooses to deliver, outside the law, the

punishment that the heart of the law requires. This seems

to warn against the evils of lax pardoning. This is in its

way an apology for administering punishment, an effort to

show the necessity of enforcing the law.

There are occasional instances in sources from the

later Middle Ages of mercy and justice being defined in ways

that indicate a reordering of priorities was taking place.

The ideology of mercy wanes in the ongoing effort to

deliniate the necessity for justice in enforcing the law.

The presentation of mercy does not change in the context of

religion. For example, a sermon states that it behooves us

to run to the court of mercy and beg forgiveness, because by

right in a court of justice man would never be able to amend

for even one deadly sin.[85] Another interprets the psalm

verse about the Four Daughters as representing the change

from the Old Law to the New Law, and mercy is still

triumphant:

> For al þe rigoresnes & te rithwuesnes þat God
> vside e þe Olde Testament, be now i-changed in-to
> mekenes & to mercy to vs, þat ben vnder þe Newe
> Testament! For þat tyme was eȝe for eȝe...hollich
> veniaunce with-owt ani mercy, but now, what so þu
> had don, ha þou synned neuer so sore, trispasid
> neuer so gret lich, þe schalt ha mercy withoute
> ani veniaunce, & te wilt loulich askyn hit.[86]

However, throughout these centuries, it is not unusual to

find in this literature a description of mercy and justice

that reorders their divine roles. Perhaps the contradictory

demands of mercy and justice were met to some extent by

separating their spheres and altering the substance of their

meaning. This division was present even in a twelfth-
century sermon, which contained such statements: the Lord
was merciful when he made Adam lord over the earth as long
as he was obedient, and in righteousness he drove him out of
paradise; God showed mercy in sending his prophet to comfort
the guilty and promising he would deliver them, and God
showed truth when he came and performed his promises and
delivered mankind by his own death.[87] Occasionally we find
the implementation of strict justice rationalized in terms
of the need to save souls. Here, a preacher does just that:

> Þe resoun of mercy stondiþ in þis: þat men
> myȝten do cruelly þei don iustly for Godis sake
> to amendment of men. And so men may mercyfully
> reproue men and punyschen hem, and take of hem
> þer iuste dettis for beturyng of þese detowres.
> On þis maner doþ God þat is ful of mercy, and
> seiþ þat he reproueþ chastisuþ his wantowne
> children þat he loueþ.[88]

God's mercy then consists of passing judgment. Mercy is
also described as part of the manipulations involved in the
display of lordship. Echoes of this are found in a sermon
from a collection that is noticably concerned with the place
of mercy in the secular and divine worlds. In this piece,
the preacher attempts to explain the paradoxical operation
of divine mercy and justice in this manner:

> Syre, þou may asshe why God woll suffre men to
> leffen ill þat ben Cristen and so to deserue
> peyne. Syre, I may sey þe, for to shewe is lorde-
> shippe and þat he ys lorde of all þe werlde.
> Þan in þat, þat he is lorde--quia Dominus vniuer-
> sorum tu es--þan it longeþ to hym to be ryght-
> wisse; þat is to sey to ȝelde goode men good
> þinges, and to ewyll men evyll. Þis longeþ to
> ryghtwysnes. He moste also suffre men to done yll
> to shew ys mercy, þe wiche is chefe of ys werkes,
> as Dauid seyþ; for ȝiffe men trespassed not, þei

neded not to haske mercy. So Þen for ryght and
for mercy and fore oure beste he suffres vs to don
evyll; for and we amende, Þan oure ioye shall be
encresed.[89]

This passage has striking similarities to the Tudor

monarchs' use of kingship's prerogatives: the Crown

demonstrated its lordship through punishment and pardon.

Definitions of justice show more noticeable--and some

unusual--changes after 1350. The following two examples are

both from fourteenth-century didactic works, taken from

sections that describe the virtues. Justice is presented as

one of the four cardinal virtues: "Rightwysnes es in

ȝeldynge euery man hys due and in helpynge and sustenynge

nedy wreches; and this es to ben had aȝeyn the sotel

wyckednes of the worlde."[90] This definition has certain

unexpected elements; so does the next:

Iustice makeþ a man lyue ordeynliche amonges
oþere. For, as Ploteus seiþ, þat is þe
vertue þat makeþ a man werche alwey as he scholde.
For sche ȝeldeþ reuerence to hem þat beþ aboue,
loue to hem þat beþ bi-side, grace to hem þat
beþ byneþe.[91]

In the first quotation, justice has co-opted one of the

characteristics of mercy, helping the needy, providing

charity in the face of a corrupt world. This is not a

unique formulation of the qualities of justice for the later

Middle Ages.[92] The second passage shows a marked concern

with social hierarchy and behavior, a concern that features

prominantly in two works discussed below, Confessio Amantis

and Piers Plowman.

Let us return for a moment to the Equitable Judge,
which displays an obvious concern for the maintenance of
order in society. The exemplum is found in the chapter on
the sin of anger in <u>Jacob's Well</u>. Here the reader is
encouraged to purge the filth of anger until the secure
ground of "equite or euynhed" is reached. Remember, the
justice tells the bishop that he acted for love of law and
equity. Equity is defined here as the virtue that accords
reason with will; "equite in resoun will gouerne þe, þat in
wretthe þou schalt noȝt demyn ne affermyn a thing, tyl þou
be syker of þe sothe."[93] Pardon and forgiveness were
usually described as the antidote to anger and envy. In
this story the justice's action, which was outside of the
law, is represented as being reasonable and equitable; it
also was given divine approval. The justice's intention was
to insure that true justice was carried out. The exemplum
portrays mercy for a wrongdoer in a negative light, and
counterbalances it by a definition of justice expanded to
include the notion of equity.

New formulations of the relationship of justice and
mercy being developed in some quarters cast their shadow on
analyses of the manner in which the king, who was obliged by
custom to ensure both mercy and justice, balanced those
obligations and administered the law. This is one of the
primary concerns of Gower's <u>Confessio Amantis</u>. An attitude
of impending doom as the result of social disorder informs a
substantial part of this poem. The prologue and closing

condemn the corruption of all estates and discuss the duties of the king.[94] Seven of the eight books are devoted to a highly detailed review of the deadly sins, in the terms of courtly love, and their lethal effects on men both as individuals and as members of society. Book Seven is a speculum principis, and it draws into focus the meaning of the poem as a whole. Here we find a discussion of the virtues a king must have to rule properly, and in this context, of the relationship of justice to mercy. Justice is again presented in terms of equity.

Gower claims that the five principal points of policy for a king are truth (claimed to be the most important, though treated briefly), largess, justice, pity, and chastity.[95] The confessor explains that the king must not go against the law for love nor for hate. He must first make sure his behavior is right in God's eyes, then he can set the balance of justice in governing. In one of the stories in this section, a good king states: "Yit into now my will hath be / To do justice and equite / In forthringe of comun profit; / Such hath ben evere my delit."[96] Justice again is coupled with equity in the section on 'pity.' A king is urged to be merciful and gracious to his people, not to be vengeful or cruel.

> Justice which doth equity
> Is dredfull, for he noman spareth;
> Bot in the land wher Pite fareth
> The king mai nevere faile of love,
> For Pite thurgh the grace above.[97]

But this contradictory stance is the exception in the
Confessio Amantis. Throughout the discussion of 'pity,' the
subject really is the danger of excessive mercy, that is
mercy that interferes with the king's execution of justice
in his realm. Gower insists that the king is righteous if
he slays in the cause of justice; "For if Pite mesure
excede, / Kinghode may noght wel procede / To do justice
upon the riht."[98] The king is obliged, in the interests of
justice, to slay those who deserve it.[99] "Bot above alle in
his noblesse / Betwen the reddour and pite / A king schal do
such equite / And sette the balance in evene."[100] "If" is
a crucial word in the next pasage. The fact that mercy must
be joined to justice indicates that it is not the virtue
which must take precedence in royal rule.

> And every governance is due
> To Pite: thus I mai argue
> That Pite is the foundement
> Of every kinges regiment,
> If it be medled with justice.
> Thei tuo remuen alle vice,
> And ben of vertu most vailable
> To make a kinges regne stable.[101]

There is a marked increase in medieval literature, in
the period after 1350, in expressions of the anger
engendered by the king's misuse of his prerogative to
pardon; there is also anger at his failure to distribute the
justice required of his office. Mercy was valued and
desirable, but not when it was used to despoil, or resulted
in the failure to punish the wicked. In this literature,
the meanings with which justice and mercy, and many

associated terms, were laden are not always clearly
distinguished. However, in late medieval England, the
approval of punishment was moving to the fore. Generally
speaking, the changes are discernible a generation after the
Black Death. Justice is described in a way that justifies
its use to maintain order. Increasingly, the
characteristics of mercy--and other virtues--are co-opted
and made subsidiary to justice. Justice appears in the
light of equity. This sort of justice is presented as an
element of lordship. These newer formulations assert the
necessity for administering judgment and punishment in
ruling the kingdom. Let us turn to a poem that features
justice and mercy among its fundamental concerns so we may
consider these changes in detail.

V

Piers Plowman was one of the most popular works in
England in the later Middle Ages.[102]   Although it is at the
risk of ignoring the spiritual complexity and disturbing
vision of the work, the poem can be read as an attempt to
solve the paradoxes of the relationship of justice and mercy
in the secular as well as the divine sphere.[103]   The writer
was consumed with questions about the failures of justice
and mercy in contemporary England, about their relationship
to salvation, and their contradictory aspects as part of
God's being. This poem echoes the anxieties we have seen in
other popular literature about the problems of lax pardoning
and strict judgment.

None of the major concepts in the poem, mercy and
justice among them, are defined outright. Rather, they are
described over and over again, either in operation, as an
allegorical figure, or in relationship to other principal
concepts. Truth is a good example. An understanding of
truth is necessary for subsequent analyses of human behavior
and Christian society. The word is frequently used in the
sense of <u>leute</u>, that is, loyalty, good faith, honesty.
Truth is how people are to live righteously in order to be
worthy of Christ's pardon. In Passus I, Holy Church shows
Will that the key to his salvation and that of society is in
truth's essence as love and the reciprocal rewards of
showing mercy to others. This latter is emphasized. Holy
Church reminds him: "For the same mesure that ye mete, amys
outher ellis, / Ye shulle ben weyen therwith whan ye wenden
hennes." The importance of deeds are underlined. "That
feith withouten feet is feblere than nought, / And as deed
as a dorenail but if the dedes folwe...." The section
closes with this: "'Date, et dabitur vobis--for I deele yow
alle. / And that is the lok of love that leteth out my
grace.'"[104] This is the same message--each man receives in
spiritual benefits according to works done for others while
on earth--seen in other works popular in medieval England.
This belief is endlessly reiterated in the poem, and
inextricably linked to the requirement of rendering what is
owed. The focus on an economy of 'balance' is intense.

Mercy is depicted in many different ways, and associated with an extensive range of terms.[105]   We come to apprehend the meaning of mercy gradually as it is joined with certain figures and ideas. Pity, compassion, charity in words and alms--Piers Plowman shows us mercy as all of that. What is crucial is its repeated association with repentance and amendment: Piers Plowman presents a righteous mercy, one that in essence must complete a balance. The most vivid representation of mercy is in Passus XVII; this contains the allegory of the Good Samaritan which immediately preceeds the episodes of the Four Daughters of God and Harrowing of Hell. It opens with Moses as Hope, seeking the knight who gave him a patent on a rock with this commandment, "Dilige deum et proximum tuum," and its gloss, "In hiis duobus mandatis tota lex pendet et prophete." In this passus the Samaritan explains to Will what actually heals a man--the mysteries of salvation--and it closes with attempts to explain the operation of grace, why and when mercy is granted, and the essential nature of charity.

> 'So grace of the Holy Goost and the greet myght
>   of the Trinite
> Melteth to mercy--to merciable and to noon othere.
> . . . . .
> So wol the Fader foryyve folk of mylde hertes
> That rufully repenten and restitucion make,
> In as muche as their mowen amenden and paien;
> And if it suffise noght for assetz, that in swich
>   a will deyeth,
> Mercy for his mekenesse wol maken good the
>   remenaunt.'[106]

While reminding Will of the dangers of wanhope, the
Samaritan mentions mercy's primacy, yet underscores its
relationship to justice and satisfaction:

> ...and his mercy is gretter
> Thanne alle our wikkede werkes, as Holy Writ
> telleth--
> Misericordia eius super omnia opera eius--
> Ac er his rightwisnesse to ruthe torne, som
> restitucion bihoveth:
> His sorwe is satisfaccion for swich that may noght
> paie.[107]

Will poses this question: if he had sinned terribly, but at
the time of death was sorry, confessed, and asked for mercy,
could he be saved? The Samaritan once again insists on the
importance of repentance and restitution.

> 'Yis,' seide the Samaritan, 'so thow myghte repente
> That rightwisnesse thorugh repenttaunce to ruthe
> myghte turne.
> Ac it is but selden yseighe, ther sothnesse bereth
> witnesse,
> Any creature be coupable afore a kynges justice,
> Be raunsoned for his repentaunce ther alle reson
> hym dampneth.
> For ther that partie pursueth the peel is so huge
> That the kyng may do no mercy til bothe men acorde
> And eyther have equite, as holy writ telleth.'[108]

Repeatedly, the Samaritan's teaching on the nature of mercy
involves restitution, a just exchange; whether he talks
about Christ's atonement or mundane transgressions, he tells
how mercy must be equitable.

In _Piers Plowman_ mercy is available only to those who
have earned it. Throughout the Harrowing, Christ makes it
clear that he has not come to save all men indiscrimiately.
For example, he tells Satan: "'Lo! here my soule to amendes
/ For alle synfulle soules, to save tho that ben

worthi.'"[109] In Passus XIX, Conscience explains the

consequences of the Passion to Will:

> 'And whan this dede was doon, Dobest he thoughte,
> And yaf Piers power, and pardon he grauntede:
> To alle maner men, mercy and foryifnesse;
> To hym, myghte men to assoile of all menere synnes,
> In covenaunt that their come and kneweliche to paye
> To Piers pardon the Plowman--Redde quod debes.
> . . . . .
> And rewarde hym right wel that reddit quod debet--
> Paieth parfitly, as pure truthe wolde.
> And what persone paieth it nought, punysshen he
> thenketh,
> And demen hem at domesday.'[110]

Passus VII, about Truth's pardon, is often discussed as one

of the most curious portions of the poem. But once we grasp

Langland's concept of mercy, the scene is no longer

perplexing. In fact, it is a densely layered though

forthright description of the operation of God's mercy. The

passus opens with Truth sending a pardon to Piers. The

first one hundred and five lines of the passus seem to be a

gloss on the text, an explanation of the real meaning. The

poem demands a social order based on justice and the

fulfillment of duty by each estate and individual. Not only

the form of law is required, but also its fulfillment in

charity: "Quodcumque vultis ut faciant vobis homines,

facite eis". However, the priest sees only two lines on the

pardon, and declares it is no pardon at all. The dreamer

describes what he sees on the bull: "Et qui bona egerunt

ibunt in vitam eternam; / Qui vera mala, in ignem eternum."

The passus concludes with the dreamer reaffirming his belief

in pardons and penance, yet insisting there is nothing so

certain as Do-Well. Each person will have to yield an account for this: "How thow laddest thi lif here and hise lawes keptest." Its closing advice is to cry to God for mercy, to give us the grace to do such deeds. Piers Plowman contains an innovative solution to the paradox of divine justice and mercy as it was understood in medieval terms. Clearly, this solution had direct repercussions in secular society; as the literature discussed in this chapter has shown, English medieval culture patterned its conceptualization of human justice and mercy on the model provided by Christianity. Langland insists that true or righteous justice is that which finds its origin in true charity. Gratuitous mercy is condemned. A righteous mercy is required, one that operates within the letter of the law and fulfills its true intent. This entails a crucial obligation for the recipient: one must be deserving of a pardon, one must earn it. The essence of the poem can be grasped more easily if the reader organizes the interpretation around the phrase that Langland endlessly demonstrated: redde quod debes.

Langland provides a solution to the paradox of God's mercy and justice by defining mercy as being subsidiary to, or a component of, justice. In the poem mercy operates as part of God's justice. Passus XVIII strives to explain that nothing Christ did as part of the Passion and descent into hell was against the law; rather, he was fulfilling it, and with love. But Christ's atonement does not guarantee

forgiveness for all, not is it extended freely to all.
Rather, it makes it possible for men to receive divine mercy
if they fulfill the attendent obligations. Man must pay
what he owes--make satisfaction--in the scheme of divine
justice. God's grace makes that satisfaction possible. The
same requirement of balance stands in the secular world.
Langland criticizes the reality of the traditional operation
of mercy among his contemporaries. He condemns the
gratuitous forgiveness and reconciliation without regard for
principle or justice. All in society must follow the
dictates of conscierce, and with _leute_, with charity,
conform to God's laws. A king can ensure mercy and justice
in his kingdom only if he enforces the law, complying with
its righteous intent. _Piers Plowman_ offers a model for
keeping peace in the realm that differed in significant ways
from the traditional ideology of mercy. All members of
society must make themselves worthy by meeting their moral
obligations. Justice here is founded in the maintenance of
order and balance, in equity. The poem defines justice as
reason distributing to each what is rightly deserved, not as
blind fulfillment of commandments or custom. Justice is
manifested in that righteous moral action which is
impossible without charity.

VI

Although _Piers Plowman_ attracted a large audience, it
is only one man's vision of the changing relationship
between justice and mercy in late medieval England. We are

justified in assuming that it does reflect the existence of widespread anxieties about the Crown's maintainence of order, about the potential benefits in the strategies of reconciliation or retribution. However, the radical changes proposed by Langland were not generally echoed by the people of the late fourteenth and fifteenth centuries. Yes, there was a deep concern about who was entitled to pass judgment in order to limit crime; yes, there was debate about the largess of mercy and the worthiness of its recipients; yes, there was an increasing tendency to bifurcate both mercy and justice, redefining them. But in viewing the spectrum of opinion embodied in popular literature, one can say that the majority of people in late medieval England still preferred the traditional ideology of mercy that, they thought, functioned to maintain some measure of order in society.

The pastoralia and didactic works never cease to place the interests of mercy above those of justice. A fine example of this is in <u>Jacob's Well</u>. The writer insists that mercy excels three excellent virtues, penance, righteousness and charity: penance offers one's body to God, but mercy offers the soul; mercy is also superior to God's charity, for charity loves only goodness and good folk, but mercy and pity flow to both wicked livers and the good.

> Mercy excellyth ryȝtwysnesse, for ȝif þou synnere
> be a-ferd to fallyn in þi couse in chapitle of
> ryȝtwysnesse, þou mayst apele thens to þe concys-
> torye of mercy, þat is, fro þe ryȝtfull dome of
> god to his mercy.[111]

These statements about divine mercy have their counterparts in discussions of virtues rulers should have. Of the desirable qualities for a king described in the <u>Book of Vices and Virtues</u>, the fourth is to have "rewþe and pitee:"

> ...for he schal more bowe by manhod to mercye þan
> to make hymself harde herted bi strengþe; for
> iustice wiþ-oute mercye is cruelte, dispitousnesse,
> and mercie wiþ-oute iustice is lachesse, þat
> is slowþe; and þerfore on of þes vertues is
> ofte y-felawschiped wiþ þat oþer in holy writ,
> but alwey seiþ holy writ þat mercie ouergoþ
> iustice.[112]

These expressions of the dominance of mercy over justice are not only found in sources originating in religious instruction. Chaucer's <u>Knight's Tale</u> is a good example of the value placed on mercy in a king's character. When Theseus comes upon Palamon and Arcite fighting, they acknowledge he is a rightful judge in this circumstace, and that they deserve death for breaking the conditions they swore to him. But the women intervene, begging for mercy.

> And softe unto hymself he seyde, "Fy
> Upon a lord that wol have no mercy,
> But been a leon, bothe in word and dede,
> To hem that been in repentaunce and drede,
> As wel as to a proud despitous man
> That wol mayntene that he first bigan.
> That lord hath litel of discrecioun,
> That in swich cas kan no divisioun,
> But weyeth pride and humblesse after oon."[113]

In anticipation of the charge that this ideology of mercy was expressed only in religious instruction and the fancy of entertainment, let us consider an excerpt from the <u>Westminster Chronicle</u> that not only describes the actions of the parties at the time of the Peasants Revolt, but even

provides an explanation of the motives for their behavior. The narrator tells us that Richard II left the Tower, where he had been staying with the archbishop and treasurer, and in response to the threats of the mob met with them at Mile End. The mob demanded all kinds of liberty and even amnesty for all offenses up to that time. Fearing what would happen if he refused, the king agreed. Meanwhile, the treasurer and archbishop were beheaded by the mob.[114] Later, at Smithfield, the king met with the leaders of the revolt. It was here that the mayor ran Wat Tyler through with his sword. The king silenced the outcry among the peasants while the mayor brought the commons from London to surround the peasants. Seeing the danger they were in, the peasants discarded their weapons, flung themselves on the ground, and begged for the king's mercy. They sought that the king not punish their guilt as deserved, but show them a mercy they did not deserve. The narrator states why the king showed his grace at this time: "His distaste for civil bloodshed at length secured for them an unmerited forbearance from the king...." He told them to return home or suffer the extreme penalty; the mob left.[115] After the mob had withdrawn, Richard set out with an armed force to punish those in the Essex villages, where the uprising had begun. In spite of the amnesty, they were gathering again to renew the revolt. The king attacked and destroyed many; many others were hanged. The king next went to St. Albans; many prominent inhabitants were hanged. Soon royal judges were in session

everywhere, investigating and giving the guilty short
shrift. More gibbets went up, for there were too few for
the condemned numbers. "The populace shuddered at the
spectacle of so many gibbeted bodies exposed to the light of
day...."[116] Even though the guilty were punished so, the
king's temper was not mitigated. Instead, he increased the
severity of punishment. The narrator was puzzled: "it was
widely thought that in the circumstances the king's generous
nature ought to exercise leniency rather than
vindictiveness...."[117] Yet he also admits that there were
also those who thought the offenders should suffer in equal
measure to that they had caused; this was supreme justice
and would be a warning to others.[118] The chronicle
describes at length how the retribution visited on the
rebellious grew more destructive. This resulted in
prompting some to plot revolts again. The cruelty spread to
the extent that many people charged those they disliked with
conspiracy, using the pitiless treatment of those tainted
with conspiracy as a way to get vengeance on their enemies.
As a result, greed, opportunism, and envy were used to
destroy many on the pretext of involvement in the revolt.
Time seemed to bring no end to this. It was man against
neighbor, wife against husband and subordinants against
superiors. The narrator explained the resolution of such
social disorder in this way:

> In view, therefore, of the fact that the
> ingenuities of greed threatened the overthrow
> of the entire body politic, the king acted on
> the discerning advice of shrewd counsellors

> and mercifully decreed that henceforward nobody
> accused of the crime should suffer the rigour of
> the penalties prescribed by law without having
> been first condemned by the verdicts of three
> juries; in his liberality and sympathy he further
> granted general pardons to those who lay open to
> the charge of conspiracy, excepting only the
> authors of the actual revolt and those who were
> heavily marked by the stains of murder and arson.[119]

The narrator was unusually fair-minded, and his sense

of equity affords a rare perspective on the drama behind

royal pardon and punishment. There is not an inkling of

support for the peasants; neither did he blindly support the

king's actions. It is as though he understood the

motivation for the king's behavior but felt the need to

point out that there was no unanimity of opinion regarding

the results that followed in its wake. This account

illustrates the variety of uses the Crown had for gestures

of mercy and justice. The first time Richard II grants a

general pardon to the peasants, it is in response to

pressure and as a political tactic. When the mob seeks a

pardon again under very different circumstances, the

narrator indicates pardon was given because the king sought

to avoid further bloodshed then. However, he does not take

long to begin administering punishment. The narrator felt

obliged to remark on the scale of punishment and the fact

that at least some were horrified by it. The two camps of

opinion are again described, those so familiar from the

literature: some thought the king ought to show mercy and

not seek vengeance, others felt justice was being shown and

would frighten potential insurgents. The narrator chose to

detail the ways in which this display of power and royal
retribution metastasized into vengeance in many quarters of
society. We see the secondary effects of the state's
decision to wield the sword of justice. Echoes of the
allegorical Mercy and Peace are heard in the concluding
explanation for the resolution of this frightening disorder
and destruction. The Crown chose to employ the ideology of
mercy.

Notes to Chapter 4

[1] Charlotte D'Evelyn, ed., <u>Peter Idlely's Instructions to His Son</u>, Modern Language Association of America Monograph Series 6 (Boston: MLA, 1935) 193-95.

[2] Arthur Brandeis, ed., <u>Jacob's Well</u>, EETS, o.s. 115 (London: Kegan Paul, 1900) 192.

[3] Luke 16:119-31. It is found, among other collections of exempla, in Robert Mannyng, <u>Handlyng Synne</u>, ed. Idelle Sullens, Medieval & Renaissance Texts & Studies 14 (Binghamton: Medieval & Renaissance Texts & Studies, 1983) 68-71.

[4] Anne Hudson, ed., <u>English Wycliffite Sermons</u>, vol. 1 (Oxford: Clarendon, 1983) 226.

[5] This version of the exemplum is from Saara Nevanlinna, <u>The Northern Homily Cycle</u>, Memoires de la Societe Neophilologique de Helsinki, vols. 38, 41 and 43 (Helsinki: Societe Neophilologique, 1973) 193-200. Another edition is by Gordon Hall Gerould, <u>The North-English Homily Collection</u>, diss., Oxford U, 1902.

[6] <u>Northern Homily</u> 197, ll. 12274-78.

[7] <u>Northern Homily</u> 197, ll. 12291-94.

[8] This version on based on the one in John Gower, <u>Confessio Amantis</u>, <u>The English Works of John Gower</u>, ed. G. C. Macauley, EETS, e.s. 81, 82 (1900; London: Oxford UP, 1969) bk. 2, ll. 3173-3507. See also John Mirk, <u>Mirk's Festial</u>, EETS, e.s. 96 (London: Paul, Trench & Trubner, 1905) 37-38.

[9] <u>Confessio</u> bk. 2, ll. 3327-32.

[10] Geoffrey Chaucer, <u>Canterbury Tales</u>, <u>The Works of Geoffrey Chaucer</u>, ed. F. N. Robinson, 2nd ed. (Boston: Houghton, 1957) 254, ll. 806-7, 810. For a detailed discussion of the work on which <u>The Parson's Tale</u> is based, see Siegfried Wenzel, ed., <u>Summa Virtutum de Remediis Anime</u> (Athens: U of Georgia P, 1984).

[11] W. Nelson Francis, ed., <u>The Book of Vices and Virtues</u>, EETS, o.s. 217 (London: Oxford UP, 1942) 203.

[12] For example, Richard Morris, ed., <u>Old English Homilies</u>, EETS, o.s. 26 (London, 1868) 36-38; Roberta Cornelius, ed., <u>Templum Domini</u>, <u>The Figurative Castle</u>, diss., Bryn Mawr, 1930, 102-3.

[13] _Festial_ 74-78.

[14] Woodburn O. Ross, ed., _Middle English Sermons_, EETS, o.s. 209 (London: Oxford UP, 1940) 54-55.

[15] _Jacob's Well_ 168-213.

[16] _Book of Vices_ 112.

[17] Richard of Devizes, _The Chronicle of Richard of Devizes_, ed. and trans. John T. Appleby, Medieval Texts (London: Nelson, 1963) 60.

[18] Walter Map, _De Nugis Curialium_, ed. and trans. M. R. James, rev. by C. N. Brooke and R. A. B. Mynors (Oxford: Clarendon, 1983) 443-45.

[19] Geoffrey Chaucer, _The Legend of Good Women_, _The Complete Works of Geoffrey Chaucer_, ed. F. N. Robinson, 2nd ed. (Boston: Houghton, 1957) 491-92, Text G, ll. 356-64, 383-85.

[20] _De Nugis_ 441.

[21] Jordan of Fantosme, _Jordan Fantosme's Chronicle_, ed. and trans. R. C. Johnston (Oxford: Clarendon, 1981). Note how _merci_ is used on pp. 60, 108, 150, and 120.

[22] F. W. D. Brie, _The Brut or Chronicles of Britain_, EETS, o.s. 131 (London: Kegan Paul, 1906) 129-30, 181, 191; these are only brief references, but what they describe is clearly part of the pattern of behavior in re-establishing order.

[23] Matthew Paris, _English History_, ed. and trans. J. A. Giles, 3 vols. (1852; New York: AMS, 1968) 2: 471-72, 3: 1302-303.

[24] L. C. Hector and Barbara F. Harvey, eds. and trans., _The Westminster Chronicle 1381-1394_ (Oxford: Clarendon, 1982) 93. De la Pole helped him to avoid execution and he was kept in prison until the "king thought fit to show them increased mercy." See p. 97.

[25] Jean Froissart, _Chronicles_, ed. and trans. Geoffrey Brereton (New York: Penguin, 1968) 104-109.

[26] A. G. Little, ed., _Liber Exemplorum ad Usus Praedicantium_, British Society of Franciscan Studies 1 (Aberdeen: Typis Academicis, 1908) 23, 102.

[27] _Handlyng Synne_ 96-99. There are also versions in the following: _Liber Exemplorum_ 123-25; _Festial_ 123-34;

Jacob's Well 252-53; Idlely's Instructions 165-67; Confessio
bk. 3, ll. 2639-2739.

[28] Idlely's Instructions 167.

[29] English History 1: 296-97.

[30] The exemplum of the Debtor Servant was often used;
it is based on the parable in Matt. 18.23-35. A good
version of this is in Middle English Sermons 36-45.

[31] Richard Morris, ed., The Pricke of Conscience,
Philological Society (Berlin, 1863) 170, ll. 6293-6305.

[32] Middle English Sermons 45.

[33] Festial 76.

[34] Old English Homilies 64, 66.

[35] Festial 285.

[36] Old English Homilies 38.

[37] Old English Homilies 14-16.

[38] Festial 81-82.

[39] Edward H. Weatherly, ed., Speculum Sacerdotale,
EETS, o.s. 200 (London: Oxford UP, 1936) 112-13, 122-23.

[40] Wycliffite Sermons 247.

[41] Middle English Sermons 54-55.

[42] Jacob's Well 92-94.

[43] Jacob's Well 97-98.

[44] Jacob's Well 15.

[45] See n. 28 above.

[46] Westminster 159-61.

[47] John S. Davies, ed., An English Chronicle from the
Reigns of Richard II, Henry IV, Henry V, and Henry VI,
Camden Society, o.s. 64 (1856; New York: AMS, 1968) 77.

[48] Northern Homily 290, ll. 15470-81.

[49] English History 3:32-34.

[50] Brut 223-24.

[51] Richard Morris, ed., <u>Old English Homilies of the Twelfth Century</u>, EETS, o.s. 57, 59 (London, 1873) 78.

[52] <u>Wycliffite Sermons</u> 517-19.

[53] <u>Jacob's Well</u> 265-68.

[54] <u>Northern Homily</u> 262, ll. 15536-41.

[55] <u>Wycliffite Sermons</u> 237.

[56] <u>Middle English Sermons</u> 121; see also 139-40, 122.

[57] <u>Middle English Sermons</u> 189.

[58] <u>Middle English Sermons</u> 122.

[59] <u>Old English Homilies</u> 14-16.

[60] <u>Pricke</u> 158-60.

[61] <u>Northern Homily</u> 294.

[62] Gustaf Holmstedt, ed., <u>Speculum Christiani</u>, EETS, o.s. 182 (London: Oxford UP, 1933) 238-40.

[63] John W. Smeltz, <u>Speculum Vitae: An Edition of British Museum Manuscript Royal 17 C.viii</u>, diss., Duquesne U, 1977, 253-54, ll. 4577-84; see also <u>Canterbury Tales</u> 243-44, ll. 517-20, ll. 524-25, and William Langland, <u>The Vision of Piers Plowman</u>, ed. A. V. C. Schmidt (London: Dent, 1978) Passus XI, ll. 91-107.

[64] <u>Wycliffite Sermons</u> 612. Another Wycliffite sermon, however, has a perspecitve on the problem of judgment as vengeance that foreshadows the attitudes of the sixteenth century. In it the audience is told that men should remember all the goods they have are God's and they are his naked servants; so they should be wary to take their own vengeance, but rather revenge the injury to God and intend amendment. <u>Wycliffite Sermons</u> 311-12.

[65] Ione Kemp Knight, ed., <u>Wimbledon's Sermon</u> Redde Quod Rationem Villicationis Tue: <u>A Middle English Sermon of the Fourteenth Century</u>. Duquesne Studies, Philological Series 9 (Pittsburgh: Duquesne UP, 1967) 80-84.

[66] <u>Speculum Christiani</u> 236.

[67] <u>Speculum Christiani</u> 236.

[68] <u>Book of Vices</u> 157; see also 209-10.

[69] _Wimbledon's Sermon_ 84-86. Similar descriptions of suitable behavior for a judge are found in a treatise on the ten commandments, under the fifth commandment; see Priscilla Heath Barnum, ed., _Dives and Pauper_, EETS, o.s. 280, vol. 1 (London: Oxford UP, 1980) 36, 50.

[70] _Canterbury Tales_ 245, l. 517.

[71] _Dives_ 36-37.

[72] _Confessio_ bk. 3, ll. 2216-24.

[73] _Confessio_ bk. 3, ll. 2233-34.

[74] _Handlyng Synne_ 137-38.

[75] _Idlely's Instructions_ 132.

[76] _Handlyng Synne_ 39-40, ll. 1493-94; 37-38, ll. 1454-56, 1461-62.

[77] _Book of Vices_ 35-36.

[78] _Middle English Sermons_ 122.

[79] _English History_ 1: 237-38.

[80] _English History_ 3: 187-91. The opposite is also found. For example, members of the king's household were found guilty of robbery. They had officers tell the king that he is responsible for their deaths since he withheld their pay when they were in need, and so they were obliged to steal. The king is said to have been filled with shame and grief, and still they were hanged. See _English History_ 2: 294-98.

[81] _Chronicle of London_ 28.

[82] _Festial_ 81-82.

[83] _Jacob's Well_ 132-33.

[84] _Jacob's Well_ 95-96.

[85] _Book of Vices_ 112; _Speculum Vitae_ 186-88.

[86] D. M. Grisdale, ed., _Three Middle English Sermons from the Worcester Chapter Manuscript F.10_, Leeds School of English Language Texts and Monographs 5 (Leeds: School of English at the U of Leeds, 1939) 15. Note that justice is equated with vengeance.

[87] _Homilies of the Twelfth Century_ 38, 188.

[88] Wycliffite Sermons 311.

[89] Middle English Sermons 29.

[90] Speculum Christiani 46.

[91] Book of Vices 123-24.

[92] Speculum Vitae 252-53.

[93] Jacob's Well 94. In Passus XIX of Piers Plowman
reason is joined with mercy and justice. Conscience
explains to Will that at the time of Christ's birth, all the
world's wisdom was in three kings, the Magi. "Reson and
Rightwisnesse and Ruthe thei offrede" (1.94).

[94] The prologue refers to the Four Daughters. Lines
93-140 express a lament about how Fortune has turned her
wheel; in the past rulers and all the people were better.
"The poeple stod in obeissance / Under the reule of
goverance, / And pes, which ryhtwisnesse keste, / With
charite tho stood in reste" (ll.107-110). He contrasts the
law of the days of old, when truth was primary, with the
double-faced law of his age.

[95] Confessio bk. 7, ll. 1782-1984. Note that instead
of the virtues of the Four Daughters, largess as an aspect
of mercy has displaced peace, and chastity is joined on as
something of a fifth wheel.

[96] Confessio bk. 7, ll. 2955-58.

[97] Confessio bk. 7, ll. 3125-34.

[98] Confessio bk. 7, ll. 3518-31.

[99] Confessio bk. 7, ll. 3851-59.

[100] Confessio bk. 7, ll. 3918-21.

[101] Confessio bk. 7, ll. 4195-4202. A similar joining
of justice with equity occurs in Passus XIX of Piers
Plowman. Here Spiritus Iusticie is the fourth seed that
Grace gave Piers to sow, along with the other cardinal
virtues. "Spiritus Iusticie spareth noght to spille hem
that ben gilty....He dide equyte to alle evenforth his
power" (ll. 299, 310).

[102] Anne Middleton, "Piers Plowman," A Manual of the
Writings in Middle English, gen. ed. Albert E. Hartung, 7
vols. (New Haven: Connecticut Academy of Arts and Sciences,
1967-86) 7: 2211-18. Also see J. A. Burrow, "The Audience
of Piers Plowman," Anglia 75 (1957): 373-84. The following
are just a few of the more recent valuable studies of the

poem: Anna P. Baldwin, <u>The Theme of Government in</u> Piers
Plowman (Cambridge: Brewer, 1981); John M. Bowers, <u>The
Crisis of Will in</u> Piers Plowman (Washington D. C.: Catholic
U of America P, 1986); Janet Coleman, Piers Plowman <u>and the
'Moderni'</u> (Rome: Edizioni di Storia e Letteratura, 1981);
Margaret Goldsmith, <u>The Figure of Piers Plowman</u>, Piers
Plowman Studies 2 (Cambridge: Brewer, 1981); Lavinia
Griffiths, <u>Personification in</u> Piers Plowman (Cambridge:
Brewer, 1985).

[103] Myra Stokes, <u>Justice and Mercy in</u> Piers Plowman. <u>A
Reading of the B Text Visio</u> (London: Croom Helm, 1984).

[104] <u>Piers Plowman</u> Passus I, ll. 177-78, 186-87,
201-202.

[105] For a good example, see Passus XVI, ll. 4-9.

[106] <u>Piers Plowman</u> Passus XVII, ll. 232-41.

[107] <u>Piers Plowman</u> Passus XVII, ll. 314-18.

[108] <u>Piers Plowman</u> Passus XVII, ll. 300-307.

[109] <u>Piers Plowman</u> Passus XVIII, ll. 329-30; see also
ll. 394, 401-402.

[110] <u>Piers Plowman</u> Passus XIX, ll. 183-88, 194-97.

[111] <u>Jacob's Well</u> 249-50.

[112] <u>Book of Vices</u> 210.

[113] <u>Canterbury Tales</u> 345, ll. 1773-81.

[114] <u>Westminster</u> 6-7.

[115] "Tandem concessit rex indignis indulgenciam,
civilis sanguinis effusionem abhorens...." <u>Westminster</u>
10-13.

[116] "Horruit vulgus videre tot corpora visui solis
exponi suspendio...." <u>Westminster</u> 12-15.

[117] "Quare plurimis visum est quod in consimili eventu
pocius regia benignitas uti deberet clemencia quam
vindicta...." <u>Westminster</u> 14-15.

[118] <u>Westminster</u> 16-17.

[119] Perpendens igitur regalis clemencia ex cupiditatis
ad invencionibus tocius civilitatis imminere jacturam,
provido sensatorum consilio decrevit quod deinceps nullus
pretacti facinoris accusatus aliter legalium penarum

tormenta subiret nisi prius trium duodenarum sentencia
dempnaretur; concessit insuper rex ex sua pietate munifica
universales indulgencias conjuracionis obnoxiis, ipsius
commocionis dumtaxat exceptis auctoribus pariter et aliis
quos cedis aut incendiorum labes multipharie resperserat.
<u>Westminster</u> 18-19.

THE IDEOLOGY OF MERCY IN ENGLISH

LITERATURE AND LAW, 1200-1600

Volume II

by

Patricia Helen McCune

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> Professor Thomas A. Green, Chairman
> Professor Marvin B. Becker
> Professor Thomas Garbaty
> Associate Professor Diane Owen Hughes
> Professor Thomas Tentler

CHAPTER 5

MORALITY PLAYS AND CHANGING SOCIAL VALUES

The intensification in anxiety over judgment found in
the medieval discourse on mercy after 1350 signals a
transformation in values. We can trace the anatomy of that
change by returning to the Four Daughters of God and their
use in sixteenth-century English literature. These
allegorical figures were employed well into the seventeenth
century, though they were often called upon by writers who
were not completely conscious of the Virtues' roles in a
time-worn literary tradition.[1] The reason that the Four
Daughters have a place in English literature through the
Tudor period is that they appear in a particular genre, the
morality play, albeit in a notably transformed manner.
Nonetheless, in the moralities the divine advocates and
echoes of their debate serve to outline a crucial shift in
public attitudes about the function and efficacy of both
mercy and justice in the governance of the kingdom.

The personification of the Four Daughters and the
characterization of their relationships are altered
noticably in the moralities. Their gender has been
changed.[2] The argument or debate has been eliminated, and
each Virtue unquestioningly supports the dominant one. The

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prevailing role had been shifted among the sisters. A
different emphasis in their significance is indicated by a
change in the name of the figure. Often, it is diminished
to only one characteristic of the Virtue's prior totality.
For example, Mercy appears as Charity, and Justice as
Redress. And the Virtues are not used with equal frequency.
Peace is almost completely gone and Truth appears in the
moralities only occasionally. Though Mercy and Justice
often are found in a recognizable form, there is a vital
difference. Mercy has receded in importance, and Justice is
the dominant figure. Justice is the king's most valuable
advisor; it is the justice, judgment, and punishment
administered by the Crown's unifocal authority that secures
order for the whole of society.

These sixteenth-century moralities reveal developments
crucial to the medieval ideology of mercy and its
theoretical place in the royal administration of the law.
As the Four Daughters change, so do the moralities change
their subject: from judgment in the next world to judgment
in this one; from the welfare of the individual soul to that
of the king and commonwealth. This sort of drama moved from
criticism of the sinner to criticism of the social order,
and the stock figures experienced a metamorphosis. Once
placed in a secular context, the plot frequently revolved
around the salvation of a flawed ruler and the maintainance
of a righteous rule beneficial to the kingdom. These
shadows of the Four Daughters recede in importance, taking

their places among the ranks of good counsellors. The plays
are populated by evil counsellors, and thin personifications
of England, its people, and government. No longer is
mankind's redemption the message. Maintaining peace and
good governance is the subject of the majority of these
moralities.

I

The changes in the literary use of the Four Daughters
of God, and the ideas they represent, cannot be fully
appreciated unless they are placed in the context of the
history of the moralities. Because this is not a history of
literature or theater, a definition of the term morality
play is necessary. It is broadly applied, not based on
textual structure or aspects of production, but on the
fundamentals of the plot and the type of characters
presenting it. Moralities are works characterized by the
"use of allegory to convey a moral lesson about religious or
civil conduct, presented through the medium of abstractions
or representative social characters."[3] Usually the plot
also involves the fall, judgment, and redemption of the
protagonist. This definition of moralities accomodates such
seemingly disparate works as the catholic description of
redemption in Everyman, the protestant polemic of King John,
and the warning against tyranny in Cambises. Whether the
moral dilemma is couched in religious or civil terms, it is
expressed as an allegorical conflict.

The development of the morality play and its place in
the history of theater indicate how a genre that originated
in religious drama came to be used as a vehicle for social
criticism.[4] The morality originated not in the
psychomachia, the battle between vices and virtues, but in
the traditions of sermons and penitential literature which
urge repentance and taught about God's pardon for sin. The
genre is based on the archetypal perception, the fall out of
innocence and into experience; the drama is found in the
unfolding of the innocence, fall, and redemption of the main
character.[5] The moralities are not part of a linear
development out of the cyclic mystery plays, nor are they
later in origin. They partly derive from the liturgy in the
sense that, being based on the vernacular sermon, they
feature an argument about ethics. Moralities, like other
medieval entertainment, had a characteristic "ubiquity of
performance." There was cross-influence among the types of
public performance in the fourteenth through sixteenth
centuries. The sermon-type plays of field and market place
migrated indoors, and the interlude moved from courts to
inns and village greens. There were no clear-cut
distinctions between plays with origins in religion,
polemics, and entertainment: "medieval theatre was designed
for the community as a whole rather than for a privileged or
educated section of it. It frequently constituted a venture
in which large sections of the population were active
participants...."[6] The sermon was the cornerstone of the

morality play; the chanson de geste and comic jongleurs added romantic narrative and comic fantasy.[7] All this allowed for a wide range of characters. The structure of moralities accomodated themes of social and political conduct as well as the personal. They eventually antagonized both Church and state in the sixteenth century.[8] The early moralities--eight plays written roughly between the mid-fourteenth century and 1520--are theological in intent, presenting a drama of ideas, not a mimetic representation of life.[9] They seek to evoke the ritual of forgiveness of sin. This is a world in which man must sin and also must be saved. Man cannot avoid the necessity of the fall, yet it can be amended through forgiveness. "The action is thus an affirmation of the life process and the ultimate rationality of the human predicament."[10] The hero is never really allowed to despair or be damned. The theological emphasis on repentance and mercy require redemption. The message of the moralities is that it is never too late to repent. "Their very universality compels them to a happy ending if they are not to shut the gates of mercy on all mankind and renounce thereby the whole gospel of Christianity."[11] In essence, these eight early moralities are about the salvation available to all mankind through Christ's atonement. This is dramatized by means of an allegory of the progress through life of the mankind figure. He is corrupted by vices but always in the end seeks mercy, is repentant, and so is saved. These

moralities teach how to rule the individual soul, and where
to obtain aid when overwhelmed by corruption.

The Castle of Perseverance, discussed at length in
chapter three, is an excellent example of the structure and
purpose of these early moralities.[12] The oldest extant
morality, known as the Pride of Life, exists only in a
fragment; that fortunately includes the Prologue which gives
a summary of the entire play. Rex Vivus suffers from pride,
and his learned Queen warns him to think on the ending of
life. When he pays her no heed, she sends for the Bishop.
He preaches a similar message and is ignored too. Then Rex
Vivus meets Death and is overcome. The Prologue concludes
with references to the prayers and intercession of the
Virgin.[13] Mankind originated in the second half of the
fifteenth century. It differs in that Mercy appears as a
father confessor figure, and Mankind is no aristocrat, but a
laborer sorely tried by four devils. They drive him to the
edge of despair, but finally Mercy convinces him that it is
never too late to seek God's mercy.[14] Youth is quite
similar. In this, Charity is a male figure that, by
explaining the redemption, ultimately persuades the sinful
Youth to leave his wicked life.[15] Everyman, written at the
very end of the century, shows the influence of the disputes
about religion that were becoming more prevalent.[16] The
play is overtly occupied with theological issues, and ones
which affected the presentation of God's mercy and justice.
The play opens with an angry God, disgusted with mankind, to

whom he has offered so much. He sends a messenger, Death,
to bring men to account. Death sees Everyman and gives him
the news. Everyman tries to bribe him, to no avail. He
then searches for someone to accompany him; all reject him
when they discover what this really entails. Though too
weak to help him, Good Deeds offers the aid of Knowledge,
who leads him to Confession. When penance is completed,
Good Deeds is able to accompany him. Everyman is abandoned
by all others on the final journey. He dies with Good Deeds
alone and is taken to heaven. This work shows a God who
seems eager to exercize the rigor of his justice.[17] Mercy
is discussed in the context of the value of good deeds and a
true confession.[18]

These pre-Reformation moralities have been described
because it is crucial to understand the extent of the
transformation that occured in moralities during the
sixteenth century; they must be seen in this context. There
was a process of division and specialization in the figures
of the sixteenth-century moralities. The early moralities
emphasize free will, God's mercy toward a "democracy of
sinners," and the remission of guilt through repentance and
the Church's sacraments. But the later, protestant, plays
promote predestination, justification by faith alone, God's
promises to the elect, and a divine mercy that is ever
mysterious and more difficult to secure. Catholic
moralities move figures through sin to the salvation
available to all; protestant ones manipulate the figures to

show they are damned or saved from the outset. The theme of mercy endures as long as the morality convention, although it is qualified and redefined by the protestant emphasis on grace. The figure of Mankind does not last. Instead, it gives way to the individual character. Protestantism is just one of the intellectual influences on the moralities. Other factors were the forces of change inherent in this dramatic tradition, the influences of classics and continental drama, and the natural tendency of theater toward concreteness and personality which contributed to the disappearance of abstraction and generalization from the popular stage.[19]

The loss of eschatological concentration, and increased emphasis on mortal life and prudential ethics, qualified virtue for reward in this world. These plays also made transgression open to penalty in this life. Adversity afflicts the living in sixteenth-century moralities, and often is used as an omen of future penalties in the afterlife.

> In almost every moral play of the sixteenth century the punishment for the transgressor, whatever else it may involve in the next world, rigorously afflicts his flesh and fortune in this one. With increasing frequency after the middle of the century, moreover, it becomes a punishment imposed by society rather than by God and administered by its agents rather than His.[20]

The striking element is that not all must be saved. As long as the central figure was mankind, a tragic ending was not possible; redeemed by Christ, he must repent and be saved.

But once dramatists bifurcated then individualized the
mankind figure, setting him or her in particularities, the
possibility of a tragic ending occurs.[21]

At their deepest center, these plays are still about
the mysteries of mercy and justice. The paradox of God's
judgment was not removed by the doctrines of the
Reformation.[22] As a result of the influence of Calvin and
Luther, the moralities are layered with new concerns: the
punishment of the reprobate; reward and vengeance
experienced in this life; innovative reasons for redemption
through forgiveness. In the sixteenth century people were
faced with new possibilities; the mysteries always facing
intelligent Christians were unusually forced upon them
during the Reformation.[23]

Throughout the sixteenth century there were moralities
that featured the traditional theme of the fate of man's
soul. But the majority of moralities showed radical
changes, even though their subject was still moral conflict
presented through allegory. The theme of most moralities
became one of social criticism, particularly the
relationship of a ruler and the people. The fusion of
courtly interludes and religious moralities resulted in the
moral content being adapted to the occasions of production.
The potential of this literary form

> lay in the variety of possible arguments which
> the form could contain. Discussion of the state
> of a man's soul could easily be extended to the
> state of the body politic, and from there to
> discussion in allegorical terms of the relationship

of sovereign to subject, of Church to State, of
one nation to another.[24]

Social criticism was hardly at odds with religious drama.

These were combined as early as the mid-twelfth century in

the Play of the Antichrist, which features the first

appearance of Mercy and Justice on the stage.[25] The subtle

possibilities inherent in allegory were fully exploited in

the sixteenth century.

> It is easy to see how the contemporaneity of
> presentation made immediate room in the Morality
> for satire and social criticism; for something like
> the real-life scene is presented, and in a play
> whose business (if it has a moral) is judging the
> ways of the people it presents.[26]

The morality was the ideal vehicle for polemical

issues, with its didactic focus and popular form. There

were efforts by the Crown to control this medium for social

criticism. By an Act of Parliament in 1543, Henry VIII

forbade discussion of religious doctrine on the stage,

though the act was repealed by Edward VI in 1549. Elizabeth

issued proclamations in 1559 demanding that performers not

be licensed to treat matters of religion or the governance

of the state. The moralities were seriously threatened with

extinction because of censorship in the 1560s and 1570s.

But unlike miracle plays, they were able to develop the

farcical element, and absorbed and anglicized older

traditions. The increasing popularity of academic drama

assisted in this process of adaptation.[27] The moralities

certainly did not lose their vigor during Elizabeth's reign.

Of the sixty-one extant English plays from 1558-86, twenty-

eight are connected with the morality tradition. They take many forms, such as the moral comedy, politicized historical play, and homiletic tragedy. We see the emergence of a didactic and ethical drama, concerned with human behavior and earthly justice rather than salvation. The writers applied humanistic and Calvinistic interpretations to social condiditons. They attacked ignorance, injustice, and corruption in an increasingly complex society.[28]

The sixteenth-century moralities constitute a valuable source for tracing ideas about the role of mercy in judgment. They were not obscure plays, performed only for clerics, or academics, or at court. They do not preserve only the remnants of Reformation controversy over the relationship of God's mercy to his justice. Rather, these plays provide us with important clues to the purpose of mercy in secular courts during the Tudor period.

> In the early decades of the sixteenth century the morality drama translates the individual problem of repentance and salvation into the collective problem of commonwealth and government. The central mankind figure emerges as an emblematic ruler and the auxiliary characters of the morality play assume their places easily in the microcosm of a courtly setting. Concurrent with this theatrical development, and related to it, come the historical rise of the Tudor monarchy and the revolutionary events of the English Reformation. Under these circumstances the morality play, like many another religious foundation, is diverted to political purposes.[29]

Let us turn now to examine the substance of these moralities in some detail.

II

Respublica is the last literary work in England to use
the Four Daughters in anything like their traditional
roles.[30] And the similarity to the medieval allegory is
largely superficial. Their use had been greatly affected by
political and religious upheaval. Written for a catholic
sovereign, it contains many features that speak of a
reaction to the reigns of Henry VIII and Edward VI.[31] In
addition, the play exhibits the fundamental changes that had
occurred in the substance of moralities by the mid-sixteenth
century. There are elements of plot and character that are
quite familiar from the medieval allegory of the Four
Daughters of God. The Virtues are brought in at the end of
the tale to participate in rectifying the damage wrought by
Vices on a once innocent figure; they bring all into
conformity with God's laws. However, there is barely a word
of dissent among the sisters. Mercy is no longer the
dominant figure. The divine king has been replaced by
Nemesis, the goddess of redress, a thinly disguised Queen
Mary. The action of the play has been transposed to a
strictly secular context. This affected not only the
personifications used in the morality, but also its very
intent. Beneath the political satire of current events
resides a deeper meaning about the uses of justice and mercy
by the Crown in administering the law and the kingdom.

     The Prologue of Respublica outlines the matter to be
presented, and closes by stating that Queen Mary came to

reform abuses. Act I presents the Vices, all of which masquerade as counselors: Avarice as Policy; Insolence as Authority; Oppression as Reformation; Adulation as Honesty. Avarice secures a place at court and brings in the others. In Act II, Avarice meets the widow Respublica, the personification of England, who is complaining about the state of the government. He gains her favor and introduces the other Vices. She wants them to eliminate vice in the kingdom. People, representing the poor commons, comes in during Act III, and also complains about conditions in the country. He sees the "advisors" for what they are, yet grudgingly accepts Respublica's explanation of their identities. Avarice then berates the other Vices for not bringing in enough money. He warns them to beware of Truth, Time's daughter. Act IV shows Respublica worse off than before; People is again quieted by the Vices. Resolution of the kingdom's ills occurs in Act V, which opens with Mercy explaining divine forgiveness and God's love for his people to Respublica, who is relieved, though Avarice and Adulation are now afraid. Mercy brings in Truth, who shows Respublica her counselors' true natures. Justice and Peace say they will restore order. After an argument with Respublica, the Vices remove their disguises. Nemesis arrives and accuses the Vices; the Four Daughters briefly discuss the Vices' fates. In the end, Nemesis is the one to decide the fate of each false counselor.

Certain changes in this morality are in keeping with developments in English drama that began in the early decades of the sixteenth century. The Vices are no longer deadly sins or devils but evil counselors. Respublica and People are not personifications of the human soul but of human society as a political body. The English ruler becomes joined with the divine; she herself is not corrupted, but instead is able to redress error. The use of the allegory of the Four Daughters still hearkens to the "catholic" traditional desire to mend the factions of society through the symbols of divine pardon; yet this cannot be, because mercy has been devalued as an ideal strategy for social order and control.

At first reading, little seems different in the use of the Four Daughters in this play.[32] Mercy is the first to appear. She gives a long speech about divine forgiveness, punishment, and God's attitude toward the beleaguered Respublica; she then attempts to comfort Respublica.[33] When Respublica meets the other Virtues, they give brief and familiar descriptions of their roles, and of that which they have come to accomplish.[34] Yet the relationships among them--who is the most active, the most powerful--differ noticably from the traditional ones. Mercy does little beyond bring hope to Respublica. On first appearance, she tells her she will go to fetch Truth, who will show Respublica the cause of her downfall and then overthrow the culprits.[35] Basically, this is the end of Mercy's active

role; she recedes into the background as Truth and Justice
take over. Peace has almost no place; she is merely a
figure on stage making up the quartet. She removes herself
even in her own introduction: "I peace whan thuncurable is
clene cutte awaie, / and thyll made goode, shall flourishe
for ever and aie."[36] She will only step in when the others
have corrected the situation. Truth and Justice are the
ones to take on the Vices and their unmasking,[37] and to
bring in Nemesis to punish them.[38]

The elements that flag the crucial difference in the
allegory's meaning is the character of Nemesis, and the
debate the Four Daughters have before her about the fate of
the Vices. Truth states that punishment must be executed by
Nemesis, goddess of correction. She has the power from
above to redress all outrages: "tys hir powere to forbidde
and punishe in all eastates / all presumptuous immoderate
attemptates."[39] There is no question in the minds of Truth
and Justice that the villains must be punished. A remnant
of the traditional allegory remains in the closing scene.[40]
Mercy makes her typical plea for forgiveness:

> Ladie Nemesis now have yee Occasion,
> And matier to shewe youre commiseracion.
> It is muche more glorie and standith with more skyll,
> Loste shepe to recover, then the scabye to spill.[41]

Justice gives the expected response, the demand for the
fulfillment of the law and punishment:

> But howe shall this redresse bee well prosecuted,
> if Iustice with mercye shalbee executed?
> Streight Iustice muste suche greate enormiteis redresse
> Severitee muste putt men in feare to transgresse;
> Iustice muste geve eche manne that he dothe deserve.[42]

Mercy, as usual, turns to her sisters for their support, but both are withdrawn and non-committal. Truth says, "mercie in one place with Iustice sometyme maie dwell, / and right well agree togither. Howe saie youe peace?" She replies only, "where althing is well emended I doo encreace."[43] Nemesis pretends to respect each of the sisters' position, but her speeches and behavior belie that. Her decision is phrased in a politic manner: "But as theye are nowe knowen throughe ladie veritee / so shall theye receyve oure mercie or our Ire, / As the wealthe of Respublica shall best require."[44] Adulation is the only Vice spared punishment. He begs for mercy, promising to amend his behavior and "mooste duelie serve god and the Commonweale." Avarice seeks pardon, but clearly with no sincere attempt to provide restitution. Nemesis declares that People must see he returns every farthing falsely acquired, and then deliver him to the head officer with the authority to administer justice. Finally, Nemesis tells Justice that People will deliver Insolence and Oppression into safe custody, until Justice can call them before her, "and Iudge them by the lawse."[45]

This allegory is about the restoration of order to the community, but not through the use of forgiveness and atonement. Employment of the familiar Four Daughters cannot conceal the subject of the play: the health of the commonwealth, and how the ruler must maintain it.[46] Though Mercy's first speech has familiar elements, at heart it is

about God's concern for the kingdom of England.[47] Mercy and
Peace have deferred to Truth and Justice, who are the ones
to grapple with the social ills affecting the government.
Truth and Justice do not administer the punishment but they
bring the transgressor to the authority. Justice no longer
is a personification of theological concepts. Instead, with
the entire setting of the play, she has been transferred to
the temporal sphere, and represents the administration of
justice in England's courts.[48]

III

The appearance of the Four Daughters in Respublica may
be the last with some semblance to the traditional allegory,
but it is in no way atypical of sixteenth century
developments in the morality. A review of some Tudor
moralities in which the Four Daughters were used illustrates
the dramatic change in the focus of concern: these works
express a sharp anxiety about civil disorder, and the way in
which a king should maintain authority and control.

Of the four Virtues, Justice clearly is deemed the most
essential to king and kingdom. Peace's sharply truncated
role in Respublica is indicative of her fate as an
allegorical figure in these sixteenth-century plays. She
does appear briefly in two moralities, Albion Knight and
Impatient Poverty.[49] Truth similarly recedes into the
background. There are only five moralities in which Truth
is used in any form. In Horestes she is brought in with
Duty at the end to discuss the right way to rule the

kingdom.[50] Truth, along with Chastity and Good Counsel,
helps the king in the Satire of Three Estates to overcome
the influence of the Vices.[51] A female figure, Verity,
appears in King John, but represents religious truth or
perhaps the Reformation spirit.[52] A male figure,
Conscience, along with Justice, attempts to correct the
behavior of the wicked king in Appius and Virginia.[53]
Conscience also has a small role, resembling the usual
function of Truth, in Impatient Poverty. Mercy, as a
personification, continued to be used in moralities, albeit
in a diminished form, or identified only by relict features
and associations. No longer representing the full medieval
meanings of the virtue, but only facets, Mercy can be
detected as Charity and Humility in All for Money and as
Charity in King Darius; as God's Merciful Promises in Lusty
Juventus; as Good Hope in Magnificence; as Sapientia in
Sapientia Solomonis.[54] Only in Warning for Fair Women is
Mercy featured under that name.[55] Justice also continued to
be used in moralities, and appears with a Mercy type in
Magnificence, King Darius, Sapientia Solomonis, and A
Warning for Fair Women.[56] However, except for Sapientia
Solomonis, the personification of Justice was male in these
plays, as well as in Albion Knight, Appius and Virginia, and
Liberality and Prodigality.[57] More than the other three
Virtues, Justice retains a fuller character. The other
names by which the Justice figure is known in the moralities
signal some of the important characteristics of the

sixteenth-century personification: Redress in <u>Magnificence</u> and Equity in <u>King Darius</u> and <u>Liberality and Prodigality</u>.

It is not simply due to chance that Justice is the one virtue used most often in these plays. Twenty-five of the morality plays written between the 1510s and 1580s have as their subject the maintenance of order in society and the manner in which a king ought to rule; both involve the exercize of justice through ecclesiastical law and common law. Although most moralities were influenced in some way by the religious and political ideas of the Reformation, they basically are concerned with authority and contol in this world, not life in the world to come. There is a vital shift in the locus of reward and punishment to the temporal sphere. Some of these plays concentrate intensely on the obligations of the king to maintain the integrity of the Crown and kingdom to the advantage of its people. There was a fundamental shift in the basic message of the moralities: what Rex must do to rule well replaces what Mankind must to do in order to attain salvation. Mercy does have a place in the morality of royal authority. One of the recurring themes in these plays is the damaging effect of uncontrolled royal largess, and there are some curious scenes in which the Vices and wrongdoers are pardoned in the end. But generally mercy only contributes to the amendment of the protagonist; justice becomes the primary virtue required of a king.

John Skelton's _Magnificence_ is one of eight moralities
that can be used to show the evolving focus on the king and
the virtues necessary for maintaining the realm in this new
social criticism. _Magnificence_ was contemporary with
Hickscorner and _Youth_. Skelton used many conventions of the
moral play; these include a complex of abstract evils
indicated by terms combining ethical, political,
psychological, and theological concepts, and the fall of a
weak man corrupted by these vices. He was the first to turn
this inheritance to social satire and criticism of the
Crown.[58] The king and courtly setting were of course
traditional to the morality. The role of humanity was often
compared to the ruler of a kingdom. This is based on the
familiar idea that man's position in the world corresponds
to a king's in state or God's in the universe. _Magnificence_
was written for evening indoor performances before the
nobility. There was a tendency in the sixteenth century
toward a court setting for these plays, removed from the
popular religious context.[59] The development of the role of
ruler did not limit the morality but instead gave a new
dimension of social significance to the play's structure.
As a result, the drama expressed the familiar paradox of the
human condition in the guise of Renaissance statecraft.[60]
This play has long been considered a personal satire against
the counselors of Henry VIII. Yet it is squarely in the
tradition of the _speculum principis_, similar to the one
Skelton wrote for that king when he was his tutor.[61] Surely

he chose the morality genre because it required a moral response in an unambiguous and polemical fashion.[62]

The play begins with a debate between Felicity and Liberty about how the wise ruler handles wealth. Felicity says Liberty must use restraint, but Liberty says Felicity depends on complete freedom. Measure steps in to arbitrate, promoting moderation as the most important quality for a ruler. They agree all three are necessary to a prince. Measure then introduces Magnificence, a prince, to the other two, and Liberty is handed over to Measure. The next section features the Vices--such as Counterfeit Countenance and Courtly Abusion--trying to disguise themselves as counselors and corrupt the prince. Magnificence, ruined by these new courtiers, disdains Fortune and rejects Measure, and acts foolishly. Then Felicity is captured by the courtiers. Adversity comes to reprimand the prince, giving him to Poverty. Despair and Mischief encourage suicide, goading him with the knowledge of his sins. But Good Hope saves him, persuading him that there is no sin that will not be forgiven. Redress leads him to contrition and brings back a true counselor, Circumspection. Magnificence resumes his life of prosperity, guided by these new companions.

The message for Skelton's audience concerned the right and wrong way for a king to handle his nation's wealth. The opening scenes of the play present the benefits and disadvantages of royal largess.[63] Note that the promotion of largess as a way to purchase pardon, the king's grace,

and the end to strife is voiced by the chief Vice.[64] The
downfall of Magnificence was not the indulgence in sin, but
the rejection of the principal of measure; measure fends off
disorder and riot, making certain nothing is amiss.[65] His
fatal error was the belief that he could have "welth at
wyll, largesse and lyberte;" he thought he could live
"without a mene."[66] Unlike other contemporary moralities,
the prince's sinful behavior in Skelton's play was punished
by God in this life. Adversity states that he was sent by
God to give Magnificence what he deserved. "For I stryke
lordys of realmes and landys / That rule not be mesure that
they have in theyr handys."[67] Poverty reminds him that if
he conforms his will to God's he may be restored to his
former state.[68]

     Good Hope and Redress take the places of Mercy and
Justice, respectively; both are male. Good Hope acts out
Mercy's traditional functions by proclaiming the truth of
God's forgiveness, reclaiming the protagonist from despair
and returning him to the love of God via the recognition of
his acts and the need for repentance. Redress, along with
Perseverance and Circumspection, instruct the penitent man
as to how a prince may properly rule his kingdom. Though
there is reference to the need to reject sin, these advisors
put more emphasis on a secular virtue: "For of noblenesse
the chefe poynt is to be lyberall, / So that your largesse
be not prodygall....In your rewardys use suche moderacyon /
That nothynge be given without consyderacyon."[69]

King John is another well-known morality composed
during the reign of Henry VIII. Its author, John Bale, was
one of the great polemicists of the English Reformation.[70]
This play also concerns a king, evil counselors, and the
abuse of the kingdom. Here the historical element of the
plot has been twisted in the service of protestant
propaganda. Bale combined the structure of the morality
with the protestant conception of history as the eternal
opposition between Christ and the Antichrist.[71] John is
poisoned by the papists, and evil in this play is punished
in this world, by Virtue and temporal authority. England, a
widow, complains to King John that she has been abused by
the clergy and she seeks redress. A conversation with
Sedition shows that the Pope and Church are much to blame.
John says he will secure help from Nobility, Clergy, and
Civil Order in a Parliament. Sedition claims that Nobility
will not assist him because he is under the control of
Church. John accuses Clergy, Nobility and Civil Order of
troubling England. All swear to obey the king, but Clergy
later says he will stay with his former practices. Sedition
is joined by other vices (Dissimulation, Private Wealth and
Usurped Power) in opposition to the king. They plot the
interdict and excommunication. Rebellion is advanced by
Nobility, Clergy, Civil Order, and Sedition. John tries to
reason with them, while England and her son, blind
Communality, bewail their oppression. The king finally
capitulates to his enemies' demands, for the sake of his

people. Dissimulation then poisons him. The play closes
with Verity praising the king, and leading Nobility, Clergy,
and Civil Order to repentance. Imperial Majesty exiles all
the Vices but Sedition, who is caught and hanged.

Bale emphasizes the role of the king as one appointed
by God to insure law and order in society.[72] King John
describes his worldly purpose in this way:

> For non other cause God hath kyngs constytute
> And geyn them the sword but forto correct all vyce.
> I have attempted this thyng to execute
> uppon transgressers accordyng unto justyce.[73]

Verity takes Nobility, Civil Order, and Clergy to task for
abusing the lawful king sent to do God's will. Verity seeks
to brings them to repentance and to reform their ways; they
are told that if they amend, God will forgive them.
Correction, and reward, are to be found in this life.

In a number of the moralities there are references to
pardoning the wrongdoers. King John contains an odd
juxtaposition of pardons. When King John is the one to
pardon, the scene reflects traditions seen in medieval
literature. He quickly and graciously forgives those who
seem repentant, and even pardons his enemies.[74] However, at
the close of the play, when Nobility calls for the hanging
of Sedition, the Vice says he will tell all if pardoned, and
Imperial Majesty agrees to this so that he will tell the
truth.[75] But when Sedition is finished, Imperial Majesty
tells Civil Order to draw him to Tyburn to be hanged and
quartered, and his head put on London Bridge.[76]

The biblical story of Esther is used, in <u>Godly Queen Hester</u>, to make an unwavering statement about the qualities needed in a strong ruler, and about the king's relationship with his counselors.[77] The play closely follows the traditional tale. However, it does not concern itself only with Esther's virtue, but particularly with justice being shown to the good, and with the proper way to exercize sovereignty. The Esther story is prefaced by a debate before King Assuerus on the merits of riches, noble birth, and virtue; all agree the last is the most desirable, and justice the most important virtue for a king:

> A virtue as excellent as may be.
> For all things it ordereth in such wise,
> That where it is, is peace and tranquility,
> Good order, high honour, wealth and plenty;
> And, where it faileth in the prince or king,
> The commonwealth decayeth without tarrying.[78]

The plainest statement of the role of justice in the king's administration of his realm is given by King Assuerus to Hester when he has chosen her to be queen. He tells her that together they: "All thing in this realm shall compass so, / By truth and justice, law and equity, / That we shall quench all vice and deformity."[79]

One might think that Hester was meant to exemplify the qualities of mercy. When Mardocheus advises her to show the King obedience, true love, kindness, and so on, he reminds her that other queens have been good to the commons when they sought mercy to "temper the fire of rigorous justice." Yet the villain is shown none of it. As soon as Aman is

informed that his deceit has been discovered, he immediately
turns to ask Hester for mercy, acknowledging that he
deserves dread punishment for his offense, and saying it
will increase her heavenly reward. Here the contrast with
medieval notions of mercy is striking: Hester will not even
speak to him, and the King has him taken straight out to the
gallows Aman had constructed for Mardocheus.[80]

     A Satire of the Three Estates was written by David
Lindsay, a member of the Scottish court, but there is little
difference between this work and contemporary English
moralities. The play employs the obvious morality
conventions in the service of social satire. Rex Humanitas
has been corrupted by false courtiers, the Vices Wantonness,
Placebo, Solace, and others; by the end of Part One he has
received Chastity, Good Counsel, and Truth and sought their
aid. Divine Correction demands that the King convene a
Parliament of the Three Estates to reform the country. Some
of the courtiers are pardoned when they claim ignorance and
cite the poor example of the clergy. In Part Two, Pauper
seeks justice against the clergy. John the Commonweal lays
down charges of injustice; he is instated in the Parliament.
The reforms are read and the Vices are punished. The tone
of the play is light, and the protestant influence heavy;
clerics are blamed for almost every woe in the country.
Still, the focus is on the false counselors and the need to
seek justice by sanctioning wrongdoers in order to restore
balance to the kingdom. There is no question that Divine

Correction is the all-controlling figure, and the king a
fairly passive agent, albeit with a very specific function.
The initial description of Divine Correction sums up his
power: he makes reformations in Christian nations; God
sends him to punish all that offend his majesty; he likes to
take vengeance in many ways; when people repent and are
obedient, he gives them grace.[81] The king's office is
repeatedly explained as a tool of divine vengeance.

> Quhat is ane King: Nocht bot ane officiar,
> To caus his leiges live in equitie:
> And under God to be ane punischer
> Of trespassours against his Majestie.[82]

Albion Knight exists only as a frgament, but what
remains of this morality shows that the topic was again the
connection between the sovereign, the use of justice, and
the welfare of the kingdom. In the remaining portion, an
argument is taking place between Justice and Injury,
masquerading as Manhood, about judging a man by his looks.
Justice claims that appearance can indicate certain faults.
Albion Knight intervenes and all swear a pact of friendship.
Injury convinces Albion of the potential for trouble in a
kingdom in which Principality is favored by the law.
Justice suggests they all work to correct current evils.
After all leave but Injury, he tells how he will destroy
Justice and exile his brother Peace. Albion sends Justice
to talk to Principality, and Injury to the Lords Temporal.
Injury turns to Division, who tells how Double-Device will
get Principality to think Commons denies money when he needs

it, and tells how Commons will think Principality acts for
his own benefit. Old-Debate plans to get Lords Spiritual
and Temporal to argue about power and the right to rule.
The Vices also plot to separate Albion from his intended
wife, Dame Plenty who is Justice's niece, and also from Rest
and Peace. Division exhorts Albion to turn to a life of
wantonness. Here the fragment ends. Nothing that is said
by the figures is as important as what they represent, and
the plot of dissension promoted by the Vices. Injury
unfolds his plan to cause mayhem in the government.
Commons, Lords Temporal, Lords Spiritual, and Principality
are all to be set against one another, "That peace amongst
them shall not reign." Principality, especially, is to be
accused of not choosing equity, of following the laws
indifferently, "that the law should be but after his
liking." Again, the message is in stark contrast to that in
medieval literature: Peace is to be obtained by the king's
use of the law and righteous judgment. The fears are not
for man's soul but for the state of a government threatened
by internal strife.

Two other plays from early in Elizabeth's reign also
featured the drama of the king's relationshp to justice and
its effect on his people. Appius and Virginia is about a
tyrant, one which again is punished in this world. As in
certain other plays from the period, it explores the nature
of tyranny; historical and legenday topics were used to
mirror the contemporary world in order to avoid overt

political equation. They negatively define the qualities of
an ideal prince, flattering Elizabeth with the contrast.[83]
In this morality, Virginius, his wife, and daughter Virginia
are a virtuous, happy family. Appius is a wicked judge who
rules the kingdom. He develops a lecherous obsession for
Virginia. Together with the courtier Claudius, he plots a
false charge and trial against her father. The pleas of
Justice and Conscience fail to dissuade him. Claudius
accuses Virginius of having stolen his thrall at birth and
raised her as his daughter. Appius then insists Virginia
must be placed in his own custody. She refuses, and instead
has her father decapitate her. Virginius gives Appius her
head, at the advice of Comfort. Appius is sentenced to
prison by Justice and Reward; there he commits suicide.
Virginius seeks mercy for Claudius.

Justice's true character is easily seen in his
encounter with the lusting, plotting Appius.[84] Justice
holds a sword to Appius' breast and warns him that eternal
fire will destroy his soul. Justice describes himself thus:

> I Justice am, and prince of peers,
> The end of laws and strife:
> A guider of the common weal,
> A guerdon to the poor;
> . . . .
> In the end we shall aspire
> To see the end of these our foes
> With sword and eke with fire.[85]

Justice's companion, Reward, makes plain the belief that
punishment has its virtues. When the Vice is condemned to
death, Reward remarks: "Then those that with you to this

did consent, / The like reward shall cause them to repent."
At the close of the play Justice says he will reward those
who imitate Virginia's viture; Reward promises to "punish
those that move such dames to strife."[86]

An interesting contrast to this sort of drama are plays
performed for Elizabeth that underscored the benefits of
life in a kingdom without dissension. The subject is not
the downfall of a king beset by vicious counselors, but the
security that comes with a virtuous ruler who seeks peace.
Horestes is a retelling of the Greek story of Orestes. The
focus of the play is the breaking of the cycle of revenge
with his marriage to Hermione, and the reconciliation on
personal and national levels. The play concludes with a
speech given by Duty and Truth as they Crown Horestes:

> A kyngdome kept in Amyte, and voyde of dissention,
> Ne deuydyd in him selfe by aney kyde of waye,
> Neather prouoked by wordes or reprehention,
> Must nedes long contynew, as Truth doth saye.
> For desention and stryfe is the path to decaye.[87]

Then they pray for Elizabeth and her council to pursue
virute and correct vice, and also pray for the nobility,
spririruality, lord mayor and commons to do their duties.[88]
In Sapientia Solomonis, Wisdom, Justice, and Peace are the
companions of King Solomon. The play does little beside
extol the virtues of this king and the benefits they brought
to him and his kingdom. The Prologue and Epilogue are to
the Queen, another ruler similarly blessed, "and likewise
administering justice and law to the people whom God have
given her to rule over."[89]

Liberality and Prodigality does not feature a king and
his efforts to rule well, but it does have as its primary
focus the potentially damaging effects of largess. This
time, Virtue, Equity, and Liberality are the ones to restore
order. The play opens with a discussion of the conflict
between Dames Fortune and Virtue, joined by Liberality,
Virtue's chief steward. Prodigality and Tenacity both seek
Money from Fortune; she bestows him on the former, by whom
he is sorely used. Liberality gives a sermon against
Fortune, and urges the Captain and Soldier not to rely on
her. Money, now skin and bones from overuse, goes over to
Tenacity who in turn keeps him locked up. Prodigality tries
to storm Fortune's castle; failing, he murders Tenacity and
steals Money, now fat and flabby. Finally, Money is rescued
and is happy to be given over to Liberality, who then
rightly rewards Captain and Soldier. Prodigality is sent to
trial by Equity and found guilty. Yet the sentence, it
seems, it mitigated when he repents his dreadful life.

Here the woes of the world are not the sins of men and
women, but the conflict between the followers of Virtue and
Fortune:

How seldom is it seen, that Virtue is regarded,
Or men of virtuous sort for virtuous deeds rewarded!
So wonts the world to pamper those that nought deserve,
Whiles such as merit best, without relief do starve.[90]

It may seem curious that Liberality is one of the virtuous
figures in the play, but the speeches make it clear that
this is not a wanton or excess largess, but due and rightful

payment. And more than that, it is the grease that allows the smooth operation of the kingdom:

> Let states therefore, that wish to maintain stately
> dignity,
> Seek to acquaint themselves with Liberality;
> For what is it that wins the subjects' faithful love,
> Which faithful love all harms from them and theirs
> remove.[91]

The struggle between Prodigality and Tenacity shows that there is meant to be a balance in the use of largess within the state. At the beginning of the trial, Virtue and Equity attribute the poor state of government to man's failure to use reason. Equity exhorts the same sense of balance, of measure, promoted in Magnificence: "Where reason rules, there is the golden mean."

At first it does not seem that the meting out of justice here is going to follow this advice. The Sheriff that brings Prodigality into court assumes he will be found guilty, and sees a distinct purpose in his trial: "Praying the party may have the law with speed, / That others may be terrified from so foul a deed." Virtue also assumes his guilt and the outcome: "So horrible a fact can hardly plead for favor."[92] Even Equity has a very particular view of justice: "That Prodigality is guilty of the fact, no doubt. / And therefore for furtherance of justice effectually, / My lord the judge comes to sit upon him presently."[93] The description of the trial is very detailed for the literature of the period.[94] We are given a glimpse of the actual process of mitigation. Despite the fact that all have

condemned him, the defendant's typical plea for mercy may save him. Prodigality confesses and appeals to the prince's mercy. He admits there is no reason why, according to the law, he should not die. When the Judge sentences him to be hanged he asks God for mercy and confesses to a wicked life, admitting and lamenting his "lewd and vile misgovernment." He begs that the Judge "of pity condescend / To be a mean for him that meaneth to amend." He claims that it is because so many have already known the prince's ready mercy that he makes this bold appeal. The play closes with the Judge announcing that he favors this disposition and will petition the prince; the punishment will not be fully remitted but some part of it may be qualified.

IV

There are many other moralities that, although they may not feature a king or figure of justice, express a similar underlying fear about the threats that disorder poses to the welfare of the commonwealth. Though at root they all derive from the morality tradition, the plays take many forms. Some are directly concerned with disturbances in the government of the country. Skelton's Good Order is now only a fragment of a little over one hundred lines.[95] In this, Good Order brings Riot and Gluttony before Old Christmas on charges of rebellion; he later banishes them. Temperance and Humility is an even shorter fragment.[96] Temperance and Humility are questioned by Disobedience, who is powerful throughout the land. They ask God to banish the Vice and

restore Obedience to the country. Disobedience says it will
not happen, and that he will bring in others such as his
brother Adversity. There is a play described by Hall, for
which no written work remains, that is quite similar to the
above moralities. This "goodly disguising" was played at
Gray's Inn at Christmas time. In it, Lord Governance was
ruled by Dissipation and Negligence. Because of their
misgovernance and evil order, Lady Public Weal was put out
from governance. This caused Rumor Populi, Inward Grudge,
and Disdain of Wanton Sovreinty to rise with a great
multitude, expel Negligence and Dissipation, and restore
Public Weal to her estate.[97] Impatient Poverty concerns the
debate between Peace and Envy about whether the country
prospers economically more in peace than in war. Peace
converts Impatient Poverty, who becomes Prosperity. Envy
and Misrule victimize and corrupt Prosperity, who again
becomes Poverty. Finally, he is reformed by Peace.
Gentleness and Nobility is not a morality, but worth
mentioning because it is a pre-Reformation play that
features these topics.[98] It is not an allegory, but a
debate between a Ploughman, Knight, and Merchant about the
substance of nobility and how men come to authority.
Basically, it voices the lowest estates' concerns about the
structure of power. It emphasizes that, though at the
pinnacle of power, the Crown is prone to the evils that all
men are, if the sovereign is not ruled by virtue. The play
closes with eleven stanzas that praise to the heavens

justice, laws, and punishment as the means to enforce order
and authority. <u>Cambises</u>, like <u>Appius and Virginia</u>, depicts
the downfall of a tyrant.[99] It is particularly interesting
because his only righteous act is punish a wicked judge;
this incident was a popular medieval exemplum. Judge
Sisamnes is placed in charge of the country while King
Cambises is in Egypt. On the king's return, Commons Cry
informs him of the judge's oppression, and Commons
Complaint, Proof, and Trial make their case against him.
For his punishment, Cambises has him flayed alive before his
son, who is to be the next judge; so the son is duly warned.
The Epilogue of the play makes this request of the Queen and
her council:

> To practise iustice and defend her Grace eche day;
> To maintain God's woord they may not refuse,
> To correct all those that would her Grace and Grace's
>   lawe abuse;
> Beseeching God over us she may raigne long,
> To be guided by truth and defended from wrong.[100]

<u>Like Will to Like</u> features Vices in the guise of common
criminals.[101]   The play describes their wicked behavior and
authority's final judgment of them. It emphasizes that
God's vengeance is made manifest on earth as certain
punishment, and should be a warning for other lawbreakers.
Both criminals give little scaffold speeches in which they
repent and exhort others to amendment. Indicative of the
basic message of the play is this speech by Severity, the
judge:

> That upright judgment without partiality
> Be minist'red duly to ill-doers and offenders!
> I am one, whose name is Severity,

> Appointed a judge to suppress evil-doers,
> Not for hatred nor yet for malice:
> But to advance virtue and suppress vice.
> Wherefore Isodorus these words doth say:
> Non est Judex, si in eo non est Justicia!
> He is not a judge that Justice doth want,
> But he that truth and equity doth plant.
> Fully also these words doth express,
> Which words are very true doubtless.
> Semper iniquus est judex, qui aut invidet aut favet:
> They are unrightful judges all,
> That are either envious or else partial.[102]

Even a brief description of these morality plays indicates that all attention is on the use of the legal system and the enforcement of law to counterbalance the forces of disorder. There is not an inkling that mercy serves any purpose in governing the country; at best, it may keep a criminal from the gallows, or comfort one facing execution. The authors and audience of these plays were consumed with the questions of maintaining peace in the kingdom, and the solution called on each time is the justice wielded by secular authority in the form of punishment.

One of the most telling indicators of a shift in the locus of concern in these plays is the metamorphosis of personifications from theological to secular. In the sixteenth century the allegorical figures drawn from Christianity were crowded off the stage by those representing the interests of the temporal world. The Virtues of course retain their moral nature; such are Duty, Measure, Circumspection, Temperance, Equity, and Constancy. The Vices undergo a more complete transformation. Many represent social disorder, as do Misrule and Disobedience.

By the time of public theaters, they have become simply
wicked individuals, such as Pierce Pickpurse. Most notable
is that a significant number of the Vices take the form of
Sedition and other false counselors. The bifurcation of the
mankind figure for the purposes of illustrating the fates of
the elect and the reprobate is related to the general
division and multiplication of protagonists. Many take the
form of the country's sovreignty: Magnificence, King John,
Imperial Majesty, Principality, Lord Governance. The truly
striking innovation in the use of personifications is that
of representing the country and the people of England. Not
only do they suffer the actions of the Vices and the
protagonists, they also complain on their own behalf, and
seek satisfaction from the state. Respublica, England,
People, Commons Cry, John the Commonweal, Lady Public Weal,
Communality--all speak for the audience's dominant interest.
The weight of their anxiety had tipped the balance from the
problems of securing salvation in the next life to those of
governing this one.

V

Even moralities that are considered typically
protestant in nature, that is overtly concerned with
Reformation doctrine and accompanying demands for social
reform, exhibit the same cultural anxieties about public
unrest, authority, and social control seen in those
moralities that primarily criticize the royal government.
They equate ordering the civil sphere with that of the

divine. Just a brief consideration of one of these
reforming moralities will show that basic changes in ideas
about the place of mercy in judgment were not limited to
either religion or government. Nice Wanton shows that the
ideology of justice had permeated lay and clerical concerns
and could operate on different levels in the same work. In
form, Nice Wanton is a youth morality, intended to educate
the audience in the proper way to bring up children. It
spells out the moral: "He that spareth the rod, the chyld
doth hate." The plot centers on Xantipe and her three
children, Barnabas, who is good, and Ismael and Dalila, who
are wicked. A neighbor tries to show the mother that she is
harming them by spoiling them, but to no avail. Time passes
and Dalila enters--lame, starving, and ravaged by venereal
disease. Barnabas comforts and forgives her. Ismael is
tried for felony, burglary, and murder; he is hanged.
Dalila dies, and grief-stricken Xantipe attempts suicide.
Barnabas offers her God's forgiveness.

Obedience to religious and secular authority is
demanded in the same breath. The Prologue begins by stating
how children should be educated:

> To be taught to fear God and theyr parents obey,
> To get learning and qualities, thereby to maintain
> An honest quiet lyfe, correspondent alway
> To God's law and the kynges....[103]

The sentiment that this applies to all members of society is
echoed in the judge's response to an attempted bribe:
"...he shall haue the law, / As I owe to God and the kyng

obedience and awe."[104]   The judge sees himself as an agent
of God and king simultaneously. If the law is not followed,
the sanction it prescribes must be used to instill fear.
When the jury has found Ismael guilty, the judge sends him
be hanged tomorrow, "for ensample." This should be a lesson
to those who flout the laws of Church and king. Even the
image of God as the merciful judge has been overshadowed by
that of the royal magistrate strictly enforcing the law.
Barnabas' efforts to console his family reveal concepts
about mercy at odds with those found in medieval literature;
they are bound closely to punishment. As Barnabas
intercedes in Xantipe's attempt at suicide, he asks her not
to exclude God's mercy:

> God doth punysh you for you negligence;
> Wherfore take his correction with pacience
> And thanke him hertely that, of his godnes,
> He bringeth you in knowledge of your trespas.[105]

God is merciful not because he forgives her sins, but
because he made her aware of them. There is no question of
postponing divine justice and punishment until the next
life. Ismael has been punished by God's agents in the
courts, and his sister by natural afflictions. Dalila and
her brother have no doubt that her ravages are the sign of
God's judgment. She claims, "Al this I haue deserued for
lacke of grace, / Iustly for my sinnes God doth plague
me."[106]   Yet this sentence is not irrevocable: Barnabas
then urges her to "repent and amend" while she stil has
time, and God will restore her health and grace.

Mercy has been resoundingly returned and limited to the heavenly realm; the major concern is whether one might be the necessarily undeserving recipient of God's grace. The value of good works in the form of mercy to one's fellows has no place in the protestant moralities. For God's mercy no longer is available to all; forgiveness is not simply there for those who sincerely request it.[107] A contemporary audience would not consider the plight of the reprobate unjust. "For them the need for authority and punishment overrides the claims of equity and generosity."[108] Mercy had to change its image and definition, and its role in secular society, in order to accomodate this hunger for authority and order.

The doctrine of predestination had a striking effect on the morality genre. The division of all society into the elect and reprobate had immediate consequences in the substance and structure of these plays. The mankind figure became bifurcated into representatives of the saved and damned.[109] This leads to a division of both the former Rex Humanitas and Everyman types into multiple figures, all of which may have different fates. As a result of this, the audience is shown characters who merit salvation, and those who deserve punishment. Contrary to the endorsement, seen in medieval sources, of the teaching that one can never know whether one's neighbor deserves mercy or judgment, these sixteenth-century moralities portray men and women who deserve salvation and--more tantalizing--punishment. We

have a parade of transgressors who are visited with God's
vengeance; such are Cambises, Appius, Pierce Pickpurse,
Aman, and Prodigality. "Once the figure of mankind is
reduced to individual human terms, justice insists that
reward, correction or retribution be carried out, according
to the circumstances." The writer is obliged to admonish
the unrepentant and show his or her fate.[110] Two ideas
corollary to predestination embody in the moralities the
force behind the ideology of justice in the administration
of the law: first, that man experiences his reward or
penalty in this life; second, that God's just vengenace can
be administered by his temporal agents. Not one of the
Vices or sinful, criminal characters is left to the judgment
of God after death. Retribution finds them in the here and
now.[111] Often the equation between earthly and divine
justice is drawn to the extent that there is a trial in a
royal court or at least before a judge.[112] Many of the
moralities reiterate the notion that this will serve as a
deterrent to potential wrongdoers: it is meant to both save
souls and keep down the crime rate.[113] Entwined with these
rationalizations for administering sanctions are the endless
demands for obedience to authority; again and again the
claim is made that they are not meting out reward and
punishment as individuals or officials of the Crown, but as
agents of God's will.[114]

The moralities are a map for locating the ways in which
both Church and the English polity sought to master the

cultural anxiety about social disorder by replacing an
ideology of mercy with an ideology of justice.

> The exhortations to viture in the morality drama
> are always contingent on the reward of viture and
> the punishment of vice. As early as "The Castle
> of Perseverance" the maintenance of order in human
> society is seen as dependent on the certainty of a
> justice which punishes the wicked. The history of
> the subsequent morality drama is the history of a
> search for reassurance that such judgement is
> forthcoming. No longer content to await the Last
> Judgement, the sixteenth century sought assurances
> from civil authority.[115]

At the same time society's frame of reference for virtue and

vice shifted from the divine to the temporal; consider the

fact that Vices had become venal counselors and pickpockets.

The transformation of the Four Daughters of God allegory

indicates that sometime in the decades surrounding the start

of the sixteenth century, the public imagination conceived

of moral struggle in a very different way. It no longer

involved only the individual's inner life, the struggle to

control personal behavior, and the effect it had on the

community. Moral struggle was externalized and made widely

public. English men and women sought from the Crown a force

to control violence and discord, an authority that truly

would maintain the peace. Idealized notions of necessary

virtues changed, the balance tipped, and theory favored

secular authorities that consistently used the power to

judge and sanction wrongdoers. The personifications of the

English people and commonwealth mark this externalization

and acknowledge a new relationship between all the people in

the kingdom and one ruler. We can detect the desire for the

individual and community to be absolved from the obligations
to keep order. The English people were strongly attracted
to the idea of investing the king with the absolute
authority and responsibility for reward and punishment, for
the maintenance of peace. So it is that morality plays
presented the struggle of a king threatened by mortal
weaknesses and evil counselors. Justice, representing
judicial and not theological virtues, must be the king's
most valued advisor. Finally, in our reading of these
morality plays, we must not lose sight of the fact that
mercy still has a function. Relegated to the debate over
the value of grace versus good works, or appearing as the
threat of unmerited largess, mercy nevertheless continues to
be shown in judgment scenes when at least some wrongdoers
are pardoned.

Notes to Chapter 5

[1] For use of the allegory of the Four Daughters of God in the sixteenth and seventeenth centuries, see Samuel C. Chew, The Virtues Reconciled (Toronto: U of Toronto P, 1947) and Thomas J. Janecek, "The Literary History of the Parliament of Heaven Allegory from Origination in Christianity to Culmination in the Renaissance Drama of England," diss., U of Illinois, 1976.

[2] The transformation in the figure of Justice is discussed in J. Wilson McCutchen, "Justice and Equity in the English Morality Play," Journal of the History of Ideas 19 (1958): 405-10.

[3] David M. Bevington, From Mankind to Marlowe (Cambridge: Harvard UP, 1962). See also the introduction to Peter J. Houle, The English Morality and Related Drama. A Bibliographical Survey (Hamden: Archon, 1972). Houle divides moralities into five categories, and describes the characteristics of each.

[4] For the history of the morality play, see Glynne Wickham, Shakespeare's Dramatic Heritage (London: Routledge, 1969) 3-23, and Robert Potter, The English Morality Play (London: Routledge, 1975).

[5] Potter 7-9.

[6] William Tydeman, English Medieval Theatre 1400-1500 (London: Routledge, 1986) 202. See also Glynne Wickham, Early English Stages 1300-1660, 2nd ed., 3 vols., (New York: Columbia UP, 1980) 1: 242, and Bevington, Mankind 3-5.

[7] Wickham, Shakespeare's 3-22, 25-28.

[8] The cosmic patterns of fall, redemption, and judgment, and of the ethical conflict of vices and virtues survived to provide Shakespeare and his contemporaries with models. Wickham, Shakespeare's 22-23.

[9] Potter 30-33.

[10] Potter 57.

[11] Bernard Spivack, Shakespeare and the Allegory of Evil (New York: Columbia UP, 1958) 240, 243.

[12] Mark Eccles, ed., The Castle of Perseverance, The Macro Plays, EETS, e.s. 262 (London: Oxford UP, 1969). For descriptions of two early moralities not included here, Mundus and Infans and Hickscorner, see Houle.

[13] Osborn Waterhouse, ed., _Pride of Life_, _The Non-Cycle Mystery Plays_, EETS, e.s. 104 (London: Kegan Paul, 1909).

[14] Mark Eccles, ed., _Mankind_, _The Macro Plays_, EETS, e.s. 262 (London: Oxford UP, 1969). Mercy also appears as a father confessor in a handful of poems in which he persuades a sinful man to believe in God's mercy; see Arno Kurvinen, "Mercy and Righteousness," _Neuphilologische Mittelungen_ 73 (1972): 181-91, and Joyce Bazire, "Mercy and Justice," _Neuphilologische Mittelungen_ 83: (1982) 178-91.

[15] John Farmer, ed., _Youth_, _Six Anonymous Plays_, 2nd ser. (1906; New York: Barnes, 1966).

[16] A.C. Cawley, ed., Everyman _and Medieval Miracle Plays_ (New York: Dutton, 1959).

[17] For example, _Everyman_ ll. 28-29 and ll. 58-62.

[18] _Everyman_ ll. 153-56, ll. 568-72, and ll. 643-47.

[19] Spivack 245-46, 250. The tradition of the Four Daughters allegory and the subject of their debate were not jettisoned or ignored but rather transformed by the concerns of a new age. In terms of the struggle between mercy and justice, at least two of shakespeare's plays quickly come to mind, _The Merchant of Venice_ and _Measure for Measure_. Marlowe's _Doctor Faustus_ is a powerful illustration of the influence of protestant theology on the inheritance of the morality tradition. Faustus is one of the reprobate; his damnation is presented as perfectly suitable for one who has challanged authority, and disregarded the obligations of order and estate. His is a terrifying example of the fate of those who ignore the dictates of justice. The allegory is discussed in Honor Matthews, _Character and Symbol in Shakespeare's Plays_ (New York: Schocken Books, 1962). See also: Roy Battenhouse, "_Measure for Measure_ and the Christian doctrine of the Atonement," _PMLA_ 61 (1946): 1029-59; M. C. Bradbrook, "Authority, Truth, and Justice in _Measure for Measure_," _Review of English Studies_ 18 (1941): 385-99; Tom McBride, "_Measure for Measure_ and the Unreconciled Virtues," _Comparative Drama_ 8 (1974): 264-73; Israel Gollancz, _Allegory and Mysticism in Shakespeare, A Medievalist in_ The Merchant of Venice," _Review of English Literature_ 2 (1961): 51-59; Richard Waswo, "Damnation, Protestant Style: Macbeth, Faustus, and Christian Tragedy," _Journal of Medieval and Renaissance Studies_ 4 (1974): 63-99.

[20] Spivack 243-44.

[21] Potter 117.

[22] "The mystery changes its nature but in the process becomes more intensely terrifying than it was in its Catholic version, for how can we possibly call just the judgments of the God described to us by Calvin?" Robert G. Hunter, <u>Shakespeare and the Mystery of God's Judgments</u> (Athens: U of Georgia P, 1976) 32.

[23] Hunter 33-34.

[24] Wickham, <u>Early English</u> 236.

[25] Bevington explains that "religious drama was the first great sponsor of political dramaturgy. The impulse was natural and inevitable. Political concern was not at first a worldly antithesis of true religion, or forward-looking "secularization," but an expression from within the Church of a desire for reform." David M. Bevington, <u>Tudor Drama and Politics</u> (Cambridge: Harvard UP, 1968) 28.

[26] A. P. Rossiter, <u>English Drama from Early Times to the Elizabethans</u> (London: Hutchinson's, 1950) 87.

[27] Wickham, <u>Shakespeare's</u> 35-39.

[28] Potter 105-107.

[29] Potter 78.

[30] W. W. Greg, ed., <u>Respublica</u>, EETS, o.s. 226 (London: Oxford UP, 1952).

[31] Bevington, <u>Tudor Drama</u> 115; Potter 89-94.

[32] The Four Daughters certainly would have been familiar to Mary Tudor. For instance, they appeared, with other female personifications of virutes, in pageants presented to Mary in Paris in 1514; see Wickham, <u>Early English</u>, 394-95.

[33] <u>Respublica</u> ll. 1169-1208.

[34] <u>Respublica</u> ll. 1395-1430.

[35] <u>Respublica</u> ll. 1236-38.

[36] <u>Respublica</u> ll. 1417-18.

[37] <u>Respublica</u> Act V, Scene 9.

[38] This work has only the briefest of descriptions of the Four Daughters. Avarice warns the other Vices that Truth is Time's daughter, a "long tounged girle" who brings all things to light; if men are praiseworthy she declares it, if otherwise, she does not spare them (ll. 909-14).

After the Vices first encounter the Virtues, Adulation and
Avarice argue about their course of action. Avarice says
maybe they should stand up to them, since they are women and
Peace is quiet. Adulation responds that Truth and Justice
are not for their "diet." Avarice says that he likes Mercy,
but the other replies that she often turns her face away
(ll. 1461-66).

[39] _Respublica_ ll. 1790-91.

[40] _Respublica_ Act V, Scene 10.

[41] _Respublica_ ll. 1856-59.

[42] _Respublica_ ll. 1860-64.

[43] _Respublica_ ll. 1869-71.

[44] _Respublica_ ll. 1875-77.

[45] _Respublica_ ll. 1878-1929.

[46] Bevington, _Tudor Drama_ 115-18.

[47] _Respublica_ ll. 1193-1208.

[48] McCutchen 406.

[49] John Farmer, ed., _Albion, Knight, Six Anonymous_
Plays, 2nd ser. (1906; New York: Barnes, 1966); John Farmer,
ed., _Impatient Poverty, Recently Recovered "Lost" Tudor_
Plays with Some Others (1907; Guildford: Traylen, 1966).

[50] Alois Brandl, ed., _Horestes, Quellen des weltlichen_
Dramas in England vor Shakespeare, Quellen und Forschungen
zur Sprach und Culturgeschichte des germanischen Volker 80
(Strassburger, 1898).

[51] David Lindsay, _Ane Satire of Three Estates_, _Four_
Morality Plays, ed. Peter Happe (1979; New York: Penguin,
1987).

[52] John Bale, _Kynge Johan, Specimens of the Pre-_
Shaksperean Drama, ed. John Manly (Boston: Athenaeum, 1900).

[53] John Farmer, ed., _Appius and Virginia_, _Five_
Anonymous Plays, 4th ser. (1908; Guildford: Traylen, 1966).

[54] Thomas Lupton, _All For Money, Literature of the_
Sixteenth and Seventeenth Centuries, ed. J. O. Halliwell
(London, 1851); John Farmer, ed., _King Darius, Anonymous_
Plays, 3rd ser. (1906; Guildford: Traylen, 1966); John
Farmer, ed., _Lusty Juventus, The Dramatic Writings of_
Richard Wever and Thomas Ingelend (1905; New York: Barnes,

1966); John Skelton, <u>Magnyfycence</u>, ed. Robert Ramsey
(London: Kegan Paul, 1908); Sixt Birck, <u>Sapientia Solomonis</u>,
ed. and trans. Elizabeth Rogers Payne (New Haven: Yale UP,
1938).

[55] Charles Dale Cannon, ed., <u>A Warning for Fair Women</u>
(The Hague: Mouton, 1975). Mercy can also be detected in
the figures of Good Deeds in <u>Everyman</u>, Pity in <u>Hickscorner</u>,
and Charity in <u>Youth</u>.

[56] <u>A Warning for Fair Women</u> is from the latter part of
the sixteenth century. This play is late to be included
here, but it contains marks of the traditional elements of
the morality. Justice and Mercy appear in a dumb show, and
signal the righteousness of pursuing the murderer.

[57] W. Carew Hazlitt, ed., <u>Contention between
Liberality and Prodigality</u>, <u>A Select Collection of Old
English Plays</u>, 4th ed., vol. 8 (London, 1874). The play is
generally known as <u>Liberality and Prodigality</u>.

[58] A. R. Heiserman, <u>Skelton and Satire</u> (Chicago: U of
Chicago P, 1961) 125.

[59] Potter 67, 69.

[60] Potter 77.

[61] F. M. Salter, "Skelton's <u>Speculum Principis</u>,"
<u>Speculum</u> 9 (1934): 25-37.

[62] Bevington, <u>Tudor Drama</u> 56, 58.

[63] For example, <u>Magnyfycence</u> ll. 50-54, ll. 68-75, and
again at ll. 2113-20.

[64] <u>Magnyfycence</u> ll. 264-68, ll. 367-71.

[65] <u>Magnyfycence</u> ll. 121-25.

[66] <u>Magnyfycence</u> ll. 157-63.

[67] <u>Magnyfycence</u> ll. 1877-78, and ll. 1936-39.

[68] <u>Magnyfycence</u> ll. 1995-2003.

[69] <u>Magnyfycence</u> ll. 2487-88, and ll. 2494-95.

[70] For a discussion of the works of Bale and the
background of the play, see the introduction to Barry B.
Adams, ed., <u>John Bale's</u> King Johan (San Marino: Huntingdon
Library, 1969). The edition referred to in the following
discussion is Manly's; see n. 52 above.

[71] Adams 58-60.

[72] Kynge Johan ll. 17-21, and ll. 123-28.

[73] Kynge Johan ll. 1275-78.

[74] Kynge Johan ll. 506-7, and ll. 2141-42.

[75] Kynge Johan ll. 2460-61.

[76] Kynge Johan ll. 2544-49. This is similar to a situation described in the late thirteenth-century legal treatise Placita Corone; see chapter 2, n. 23.

[77] John Farmer, ed., Godly Queen Hester, Six Anonymous Plays, 2nd ser. (1906; New York: Barnes, 1966).

[78] Godly Queen Hester 251.

[79] Godly Queen Hester 259.

[80] Godly Queen Hester 281-82.

[81] Satire ll. 1490-1504.

[82] Satire ll. 1615-18; see also ll. 1892-95 and ll. 3810-13.

[83] Bevinton, Tudor Drama 156.

[84] Appius 20-22.

[85] Appius 22.

[86] Appius 43,45. King Darius has the three figures Charity, Equity and Constancy; however, its plot is a poor patchwork at best, and not worth recounting here. Yet the morality is interesting because the weight of the protestant influence can be detected in the speeches of these three Virtues, and their emphasis on faith and God's grace; see pp. 45-47, 52-54. The spirit of the times can also be felt in the delight they take in the punishment and damnation that God's vengeance visits on the Vice; see pp. 77-80.

[87] Horestes ll. 1164-68.

[88] Horestes ll. 1192-1205.

[89] Sapientia 53.

[90] Liberality 343.

[91] Liberality 344.

92   _Liberality_ 377.

93   _Liberality_ 379.

94   There is another trial scene at the end of John
Manly, ed., _Nice Wanton_, _Specimens of the Pre-Shaksperean
Drama_, vol. 1 (Boston: Athenaeum, 1900).

95   See the summary of the play in Houle 45-46.

96   See the summary of the play in Houle 132-33.

97   Edward Hall, _The Union on the Two Noble Families of
Lancaster and York_ (Menston: Scolar, 1970).   The play is
described under "The xviii yere of Kyng Henry the viii,"
fol. cliiii. Hall wrote that the play was highly praised by
all but the Cardinal who put the author and one of the
actors in the Fleet. Yet Hall insists it was never directed
at the Cardinal.

98   Kenneth Walter Cameron, _Authorship and Sources of
Gentleness and Nobility_ (Raleigh: Thistle, 1941).

99   Thomas Preston, _Cambises_, _Specimens of the Pre-
Shaksperean Drama_, vol.2, ed. John Manly (Boston, 1897).

100   _Cambises_, ll. 1215-19.

101   Ulpian Fulwell, _Like Will to Like_, _The Dramatic
Writings of Ulpian Fulwell_, ed. John S. Farmer (1906;
Guildford: Traylen, 1966).

102   _Like Will to Like_ 350-51.

103   _Nice Wanton_ ll. 5-8.

104   _Nice Wanton_ ll. 364-65.

105   _Nice Wanton_ ll. 492-95.

106   _Nice Wanton_ ll. 275-76.

107   For works that show the operation of divine
mercy, see _Lusty Juventus_, and Lewis Wager, _The Life and
Repentance of Mary Magdalene_, ed. F. I. Carpenter, The
Decennial Publications, 2nd ser., vol. 1 (Chicago: U of
Chicago P, 1904).

108   Alan Sinfield, _Literature in Protestant England
1560-1660_ (London: Croom Helm, 1983) 10. Sinfield also
thinks these beliefs "created a universe of strife and
tension." Perhaps that is the reason that Tudor drama seems
inherently more interesting to most modern audiences.

[109] For a basic example of this, see W. Wager, <u>The Longer Thou Livest and Engough Is as Good as a Feast</u>, ed. R. Mark Benbow (Lincoln: U of Nebraska P, 1967).

[110] Potter 117.

[111] As in <u>Respublica</u>, <u>King John</u>, <u>Magnificence</u>, and <u>Appius and Virginia</u>.

[112] These include <u>All For Money</u>, <u>Appius and Virginia</u>, <u>Cambises</u>, <u>Liberality and Prodigality</u>, <u>Like Will to Like</u>, <u>Nice Wanton</u>, <u>A Satire of Three Estates</u>, and <u>A Warning for Faire Women</u>.

[113] As in <u>Appius and Virginia</u>, <u>Cambises</u>, <u>Liberality and Prodigality</u>, and <u>Like Will to Like</u>.

[114] For example, in <u>King John</u>, <u>Godly Queen Hester</u>, and <u>Like Will to Like</u>.

[115] Julia Dietrich, "Justice in the World: The Background of the Revenger in English Morality Drama," <u>The Journal of Medieval and Renaissance Studies</u> 12 (1982): 110-11.

CHAPTER 6

SIXTEENTH-CENTURY LITERATURE AND THE IDEOLOGY OF JUSTICE

There is a fundamental change in the discourse of mercy
in the sixteenth century. The literature turns from the
themes of the reform and salvation of the individual to the
reform of the commonwealth and the authority of the king;
specifically, to an authority that could save England from
the evils of social and political discord. The movement is
from religious to political concerns, although they are
often clothed in the interests of the Church. Tudor
audiences continually were presented with the importance of
avoiding civil disorder and keeping the king's peace.
Literature voices social criticism in almost every genre or
form; this is condemnation of those in the commonwealth, and
not an examination of sinners who can be saved through
repentance and atonement. Medieval texts express the need
to structure an apology or rationale for the punishment of
one member of society by another. But this is overcome in
the sixteenth-century by the beliefs that God's judgment can
and will be executed in this world, and that the Crown is
the agent of divine justice. These were the ideas behind
the sense of empowerment and obligation for retribution that
resonate in the Tudor literature of mercy and judgment.

Obedience to political authority and the Church it
represented, not the reconciliation of society's members,
became the primary concern when maintaining peace and order
was the subject. In medieval literature, the assumption is
that the temporal world is patterned after the divine:
there may be debate and strife, but ultimately God's plan
requires mercy and reconciliation, satisfaction on the part
of the transgressor and pardon from those in power. Just as
God forgives humankind, the king forgives wrongdoers in
order to achieve the reintegration of the community. That
same assumption holds true in the sixteenth century. The
transformation of the Four Daughters allegory in the
morality plays reflects the development of a very different
conception of the roles of mercy and justice in God's plan,
and in the governance of England. Every genre of literature
shows the mark of this development. The duty to cooperate
with and submit to the Crown's authority is repeatedly
emphasized in plays, chronicles, didactic poetry, sermons,
political propaganda, and refomers' polemic. The vengeance
of God's wrath, in the guise of the administration of royal
justice, was intended to awe a violent and turbulent people
and inspire compliance with the king's law. The theory was
that this authority was best expressed not in pardon but in
punishment.

The survey of literature presented in this chapter is
more selective than in preceeding chapters, though this is
not due to a paucity of relevant texts. A detailed

description has already been provided of the medieval
discourse on mercy and judgment, and the changes that occur
in the fifteenth and sixteenth century as they are signaled
in morality plays. The specific concerns here are to check
whether those major changes are consistent in other forms of
literature, provide a chronology of the transformation, and
trace the continued appearance of themes associated with the
medieval ideology of mercy. This chapter examines
particular representative or influential works in order to
clarify the timing of that shift in prevailing or dominant
ideals. It is possible to indicate the years during which
an ideology of justice found its voice and took a
distinctive public form. The argument is not that popular
opinion changed in toto at one particular time; the purpose
is to identify the markers and contours of that change. The
ideology of justice did not supplant older beliefs and
practices, but the strident promotion of fulfilling the law
as the means to secure order and maintain authority
increasingly overshadowed prior traditional practices of
mercy, especially after the 1520s and 1530s. Interest in
the topics of equity, repentence and the notion of deserved
and undeserved mercy continues unabated in the sixteenth
century. After the first few decades these features of
mercy and judgment assume their forms distinctive of the
culture of Early Modern England. The notion of equity
becomes tied to the typical restatement of the relationship
of mercy and justice: justice dominates and mercy is a

subordinate element in its realization. Sanctioning
wrongdoers has come to be seen as an orthodox form of mercy.
In its improper form, mercy is the unmeasured or
undisciplined generosity of kings, or in fact of any member
of society, whether it takes the form of forgiveness or
material goods. Emphasis is placed on exemplary punishment
as the preferred means to awe the people and perhaps inspire
compliance with the law; the inspiration of mercy, in the
king's pardon and the jury's forgiveness, has been devalued.
As we have seen in the moralities, repentence is still an
important feature in judgment, but now as a sign that the
transgressor may be a worthy recipient of forgiveness.

It would be wrong to assume that, because important
features of the ideology of justice dominate in the
literature after the 1530s, society's centuries-old nexus of
attitudes and beliefs about mercy had disappeared. The
predominating ideal may have shifted to one that promoted
executing the law and maintaining the peace through the
sanctions of royal authority, yet frequent contradictions
are evident in these sources that indicate a very gradual
transformation was in process. This confusion is seen in an
ambivalence about the king's prerogative to pardon which
surfaces again and again. The conflict of values signals
the complexity and interdependence of legal notions of
pardoning wrongs and general cultural values about the
prerogative for generosity. A new ideal had taken hold, but
the people had yet to find ways of instituting the demands

of justice that would accommodate the continuing realities of the English concept of mercy's role in judgment.

I

The development of printing has no small part in facilitating speculation on the identities, extent and tastes of Tudor audiences. It enables historians to draw more reliable conclusions about literacy than are possible for earlier periods, and to correlate popular reading material and popular opinion with more assurance.[1] Sixteenth-century printers addressed a wide variety of interests, and their product was available in forms ranging from cheap pamphlets to large, expensive folio volumes. They met the demands of every kind of taste and audience.[2] Not surprisingly, works of a religious nature, whether didactic, devotional or polemic, heavily dominated the market. The demand for religious texts was continuous; only toward the end of the century did the call for other types of literature equal it. There was a fundamental change in the nature of printed works, however, during the course of Elizabeth's reign. Gone were the saints' lives, breviaries, works of guidance for religious, and the like. Instead there were English Bibles, innumerable guides to its use, manuals for godly living and similar works generated by protestantism. The other categories of books available and in popular demand during the second half of the century also were largely didactic in purpose. These were works for use in law and education, and informative texts of all sorts,

such as those about husbandry, geography, popular science, and history.[3] And of course, there were the belletristic compositions; that is, creative or fictive texts intended, though not solely, for entertainment. For the twentieth-century reader, these are precisely the sort of works that seem to typify sixteenth-century England, familiar in the brilliant drama and poetry from the latter part of Elizabeth's reign. However, it would be very misleading to allow the shadows of Marlowe, Sidney, Shakespeare and the like to extend over all the century and distort our perception of what the public sought and favored in literature. In the first half of the century, medieval compositions continued to be in great demand; the choices for publication of Caxton and his successors bear witness to this. Of contemporary writers, the works of Hawes, Skelton, Barclay and Wyatt went into a number of editions. The trade in cheap romances was also very brisk.[4] There is evidence that before 1560, thirteen percent of all publications were literature in the more restricted, modern sense of the term. But from then until the end of the century this portion rose to twenty-five percent.[5] However, the increased demand was selective in nature; formerly popular forms and their writers rapidly lost favor with the public. There was a sharp decline in the demand for medieval romances; Langland, Gower and Hoccleve went unpublished; Lydgate and Malory appeared only in single editions; even Chaucer was barely published.[6] The citizens of Elizabethan England had lost

interest in works from their country's past and turned to
contemporary authors to fulfill their demand for
entertainment, in which, one must not forget, the didactic
element still featured prominently.

This transformation in the interests of the reading
public, as well as the metamorphosis of attitudes about
mercy and justice, are evident in a comparison of two
popular works, one from the reign of Henry VII, the other
from the time of Elizabeth's rule. Alexander Barclay's
metrical version of The Ship of Fools was printed by Pynson
in 1509.[7] His was not an attempt at a strict translation
but rather was an adaption of Sebastian Brandt's
Narrenschiff, which was first published in 1494 and soon
translated into many languages. This verse satire is very
much in the tradition of the medieval moralist's demand for
reform.[8] It intended to instigate reform through a
rehearsal of the extensive faults of human society. The
loss of virtue is bemoaned and vices are catalogued. This
is not a satire of individual characters but of stereotypes.
The work concludes with verses by Barclay in honor of the
Virgin: he praises her role as merciful mediatrix. He also
occasionally lauds the virtues of Henry VIII. All criticism
in The Ship of Fools is generalized, and anything that could
be construed as an attack on the Crown in notably absent.[9]

In his prologue, and in another exhortation by Barclay,
we find the standard statements of the author's intent and
the work's purpose. He asks the reader: "Amende your lyfe

and expelle that vyce away. / Slomber nat in syn. Amende
you whyle ye may."[10] He echoes the sentiments of Langland
and Gower: "Wysdome is exyled, alas blyne folysshenes /
Mysgydeth the myndes of people hye and lowe / Grace is
decayed, yll governaunce doth growe."[11] The Ship of Fools
opens with the section "Of evyl Counsellours, Juges, and men
of lawe." Such men are berated for their corruption by
riches and favor. The beliefs it embodies are the same
expressed two hundred years before:

> Loke in what Balance, what weyght and what mesure
> Thou seruest other, for thou shalt serued be
> With the same after this lyfe I the ensure.
> If thou ryghtwysly Juge by lawe and equyte
> Thou shalt haue presence of goddes hyghe maistye
> . . . .
> Ill Juges so iuged, Lo here theyr trauayle
> Worthely rewarded in wo withouten ende,
> Then shall no grace be graunted ne space to amende.[12]

This is a work poised at the terminus of a long tradition,
showing earmarks of both the old and new ideals. There is
no mention of the need for a judge to show mercy or pity,
yet neither is there anything about a magistrate's exalted
position, or the legal necessity for administering
punishment. Judges are enjoined to follow law and equity--
those tag words of the ideology of justice--and still the
warning is about the reciprocal aspect of judgment.

There are two other sections dealing with mercy and
justice, "Of them yt synne trustynge vpon the mercy of god,"
and "Of them that gyue jugement on other;" both are typical
of the attitudes and exempla found in medieval sources.[13]
"Of the contempt and dispysynge of pouertye" also has a

familiar ring. It makes no mention of vagabonds or
worthless beggers but decries the lust for material goods
that has spawned a hatred of the poor.[14] A section headed
"Of the erudicion of neglygent faders anenst theyr chyldren"
is notable in that it makes no equation between the need for
familial discipline and the civil disobedience that results
when fathers and other masters are delinquent in their
duties. There is no mention of the damage to society that
comes of failing to punish children; the concern is with the
individual life and soul.

The _Mirror for Magistrates_ was also, like Barclay's
verse satire, intended to instruct its audience in the need
to mend their ways, yet the underlying ideology is markedly
different. The work was conceived as a continuation of
Lydgate's _Fall of Princes_, and its form shows the marks of
tragedy, and of vision literature. William Baldwin was the
editor of sorts; he and three others wrote the nineteen
tragedies of the 1559 version. The _Mirror_ was quite
popular, going into a number of editions over the next few
decades.[15] The work consists of _de casibus_ histories, each
one speaking an individual's story. They are examples of
the patterns of successful and defective behavior for both
people and nations. The speakers urge their fellow men and
women to learn vicariously rather than through hard
experience. The reflections shown in this mirror are
intended to admonish and move the reader to amendment.[16]
However, the work is not solely intended for moral and

spiritual reparation. History here serves as political
instruction. The Mirror does not feature only princes but
those from a variety of estates. The analysis of each
individual's story served "to expound the current political
philosophy, and substituted an analysis of divine justice
for the older philosophizing on the uncertainty of
fortune."[17] Kings and their officers are the agents of
divine vengeance. Each figure's moral failings are used to
describe the operation of God's justice in the temporal
sphere. The paramount importance of justice is evident in
this scheme of human society. Baldwin claims in his
dedication that good governors have never lacked renown nor
the bad escaped infamy. God may suffer them for the
punishment of the people, but he does not allow them to
escape unpunished because they dishonor him.

> For it is Gods owne office, yea his chiefe office,
> whych they beare & abuse. For as Iustice is the
> chief vertue, so is the ministracion therof, the
> chiefest office: & therfore hath God established
> it with the chiefest name, honoring & calling
> Kinges, & all officers under them by his owne name,
> Gods. Ye be all Gods, as many as haye in your
> charge any ministracion of Iustice.[18]

As in the The Ship of Fools, the first segment concerns
judges; here it is Robert Tresilian, chief justice under
Richard II, who tells of his own sorry career. It has some
similarities in tone with the piece in The Ship of Fools,
and Tresilian warns his readers not to be corrupted to serve
man, but instead keep to the service of justice and the law.
Yet there is no word about the reciprocal element in passing

judgment on one's neighbor; the emphasis is on political

corruption. Tresilian had determined, for material benefit,

to serve Richard, a king who had "set his lustes for lawe,

and will had reasons place."[19] The chief justice provides

the moral of his life:

> Ye Iudges and ye Iusticers let my most iust punycion,
> Teache you to shake of bribes and kepe your handes
>   pure.
> Ryches and promocion be vaine thynges and unsure,
> The fauour of a prince is an untrusty staye,
> But Iustyce hath a fee that shall remayne alwaye.
>   what glory can be greater befor god or man,
> Then by the pathes of equities in iudgement to
>   procede,
> So dulye and so trulye the lawes alwayes to skan,
> That ryght may take his place without rewarde or mede,
> Set aparte all flattery and vaine worldly drede:
> Take god before you eyes the iust iudge supreme,
> Remembre well your reckening at the day extreme.[20]

The service of justice has been elevated to the ultimate

glory, and the fulfillment of its laws the issue on which

God will pass judgment. The favor of a prince and the

rewards of office here are cast as corruptions that work

against justice.

The fate of Richard II is employed as an object lesson;

the _Mirror_ tells how he "was for his euyll gouernaunce

deposed from his seat, and miserably murdred in prison."

The evil governance is characterized as disregard for the

law. The whole meaning of his life is summed up in this

lesson: "Thus lawles life, to lawles deth ey drawes. /

Wherfore byd Kynges be rulde and rule by right, / Who

wurketh his wil, & shunneth wisedomes saues / In flateries

clawes, & shames foule pawes shal light."[21] The wicked

king, the evil tyrant, is used as an example of the
consequences of failing to maintain justice and comply with
its rule. Yet the righteous king suffers too. The tragedy
of Henry VI, "a vertous prince," is used to explain the
meaning of suffering in this life. He claims that there are
two causes of our misfortunes:

> The chiefe the wil divine, called destiny and fate,
> The other sinne, through humours holpe, which god
> doth highly hate,
> The first appoynteth payne for good mens exercise,
> The second doth deserve due punishment for vice:
> This witnesseth the wrath, and that the love of God,
> The good for love, the bad for sinne, God beateth
> with his rod.[22]

The section closes by Henry telling the reader to learn how
deeply dangers pierce, how frail worldly honors are, and how
frail good fortune is; men should thus fear to do wrong for
God's judgment is delivered in this life. The _Mirror_
contains a justification for retribution and sanctioning
that suits either the righteous or the sinner.

The opposite side of the coin is shown in the tragedy
of Jack Cade. It underscores the danger in acting against
the ordained hierarchy of obedience and obligation. Kings
and their ministers have been warned by this work of the
price for not following the dictates of justice and the law
of God. Cade warns the audience of the danger of failing to
yield patient obedience to secular authority:

> Full litell knowe we wretches what we do.
> When we presume our princes to resist.
> We war with god, against his glory to,
> That placeth in his office whom he list,
> Therfore was never traytour yet but mist
> The marke he shot, and came to shamefull ende
> Nor never shall til god be forst to bend.

> God hath ordayned the power, all princes be
> His Lieutenauntes, or debities in realmes,
> Against their foes still therfore fighteth he,
> And as his enmies drives them to extremes,
> Their wise deuises prove but doltish dreames.
> No subiect ought for any kind of cause,
> To force the lord, but yeeld him to the lawes.[23]

In the prose section following the story of Cade, the author details how common men are sometimes used as agents of divine justice.[24] As for those killed by Cade, "God would never have suffred him to haue been so used, exept he had fyrst deserved it." Not that God causes such men to be evil: "Although the deuyll rayse theim, yet God alwayes useth them to his glory, as a parte of his Iustice." The Ship of Fools depended on provoking the individual to amend personally his or her moral behavior, assuming the reformation of society as a whole would follow on this. But the Mirror for Magistrates was intended to warn or even frighten the people into compliance with the laws of secular authority through the illustration of the dominance of justice and the working out of divine judgment in this world.

II

The Mirror for Magistrates bears some resemblance to the Tudor chronicles which retail the stories of famous men in order to provide the reader with the lessons of the past. The study of history was promoted as being profitable to those who have authority in the commonwealth; history taught by example how to live and govern. Renaissance historiography is often characterized by those features that

stand in contrast to the chronicle form, but England hardly can be said to have experienced a sharp break with the medieval tradition of narrative history.[25] Chronicles thrived during the fifteenth century, particularly the secular ones such as those compiled in London, and continuations also were created for earlier works, as with the Brut. Most popular works of history written in sixteenth-century England were based on earlier chronicles. Stow and Holinshed drew extensively on their predecessors' works, and so medieval tastes and attitudes influenced the scholars and readers of the English renaissance. Sixteenth-century chronicles encompass many of the familiar medieval values relating to the king's prerogative to pardon; at the same time they are a vehicle for newer messages about obedience, authority and righteous punishment.

In some ways, Tudor propaganda encouraged the study of the past: the fifteenth century was depicted as a prelude to the wondrous reigns of Henry VII and his son. John Rous and Robert Fabyan voiced the official Tudor viewpoint. Their chronicles may be partly genuine in the attitudes expressed, but they voiced political indoctrination, too. Fabyan's New Chronicles on England and France was the main conduit by which the historiographical tradition and factual content of the earlier London chronicles were transmitted to Tudor England. Completed in 1504, the work begins at Creation and ends in 1485. This periodization featuring the Tudor dynasty as its culmination reached its full

development in Edward Hall's chronicle, completed about
1532. He divided his history into seven reigns, beginning
with Henry IV and ending with Henry VIII. The entire
fifteenth century is presented in terms of the theme of
concord moving to discord, and finally achieving
resolution.[26] Tudor historians exploited, more than writers
from any time since the early Middle Ages, the notion of
history as the manifestation of God's will on earth.[27]

Two humanist works, Thomas More's History of Richard
III and Polydore Vergil's Anglica Historia, are excellent
sources for tracing the anatomy of some of the critical
intellectual and cultural changes we have been discussing
that occurred in the early decades of the sixteenth century.
Granted that in some ways these histories are outside the
mainstream of English historiography; later writers used
their factual content, though Vergil's critical approach and
More's literary form were not imitated.[28] Even so, these
humanist works resemble medieval histories in a number of
ways: history is seen as a manifestation of God's will; the
future is predicted by portents; time's passage is described
as the process of Fortune's Wheel. Vergil and More do,
however, put more emphasis on natural causation, and
understanding that God worked through secondary, natural
causes. This approach lead to an analysis of motives, of
psychological and political factors. Humanist historians
still saw past events as exempla, yet with a distinctive
change in focus; events were used more as examples of

political rather than moral behavior. They showed an increasing interest in man as a social and political being and less concern with his salvation. Abstract morality was displaced by political expedience as the indicator of virtuous behavior.[29] These works by More and Vergil especially are revealing about the king's pardon in cultural and political terms.

Thomas More wrote his History of Richard III between 1514 and 1518; the first English version was published in 1543.[30] He probably relied to a great extent on oral first- and second-hand accounts. Some think that his history expresses current sentiments and not More's own politics.[31] The sentiments expressed by figures in the work can be seen as "evidence of the sense of insecurity suffered by the writers in his day." The History returns frequently to the subjects of lawlessness, social disorder and retribution. It emphasizes the transitory nature of success; as an exemplum it concentrates on political rather than moral behavior. This is an apologia for an idea--the nature of tyranny and its evil consequences.[32] It is the story of the political machinations of a criminal mind. The belief that a tyrant will be punished on earth by divine justice is set out here in fine literary form.[33]

The History of Richard III offers a perspective on the place that mercy and pardon had in a political order based on the centrality of law and authority. Yet this is a perspective that affords a view of contrasting and even

conflicting notions of mercy's role. All of the characters
in the history are treated mercilessly by others, and the
few references to mitigation of punishment are in a negative
cast. The one exception is Jane Shore. Among the list of
her good qualities is that she would intercede with those
out of favor for the king's pardon and grace.[34] The text is
layered with questionable meaning, and we are sometimes left
wondering what the work intended to convey about the right
and wrong uses of mercy. For example, Sir Richard Ratcliff,
in directing the execution of Lord Rivers and the others,
brought them on the scaffold and showed them to the people,
"not suffring them to speke & declare their innocence lest
their words might haue inclined men to pity them, & to hate
the protectour & his part...."[35] This hints at what we know
of the Early Modern tradition of scaffold speeches, and its
important element of public repentance; yet it also refers
to the unchristian nature of Ratcliff, and the dangerous
outcome of stirring the people to clemency. Buckingham, in
a speech to the council urging the removal of the boy king
from sanctuary, justifies such an action with a long
diatribe against the abuse of sanctuary. We must question
whether this was simply a condemnation of the villains'
attitude toward this form of mercy, or, more likely, was
meant to convey public attitude to this ecclesiastical
privilege. Another passage shows the use of the king's
pardon to manipulate and direct power, and the different
reactions this prompted. More writes that as part of his

coronation, Richard III placed himself in the court of
King's Bench in Westminster and gave a speech to all estates
of men, but one that especially was directed at lawyers:

> And fynally to thentent that no man shoulde hate
> hym for feare, and that his deceitful clemency
> mighte geat him the good wyll of the people, when
> he had declared the dyscomoditie of discorde, and
> the commodyties of concorde and vnitie, he made
> an open proclamacion, that he did put oute of his
> minde all enmities, and that he there did openly
> pardon all offences committed against him.[36]

Richard then had brought out of sanctuary a man he was known
to hate, and made a show of forgiving him. More states that
the common people praised this, but the wise saw it as a
vanity.[37] Is this a condemnation of custom, or just of
Richard? His mercy is false; false in that there is no true
feeling behind his pardon, that this display of forgiveness
is only an empty, hackneyed gesture used in the hope of
eliminating discord and paving the road to power. More
imagines that the general populace valued this use of the
pardon, but that the "wise" knew it was meaningless in the
attempt to secure authority.

The portions of Polydore Vergil's Anglica Historia
concerning Henry VII and Henry VIII contain many references
to and descriptions of their use of the prerogative to
pardon. In these we see suggestions of conflicting ideas
about mercy's function. Vergil had received a commission
from Henry VII and started work on a comprehensive history.
This first version, which goes down to 1513, was completed
in 1531 and dedicated to Henry VIII. The subsequent

continuation, rewrites and editions were due to the author's careful attitude about politics and those in power.[38] In its treatment of events down to 1400, the Anglica Historia is fairly objective; the remainder is biased, and includes some willful misrepresentation. For Vergil, the fifteenth century was intended to serve as a prelude to the awe-inspiring reign of Henry VII. Yet his criticism of this king worked its way through. Though initially praiseworthy of his son, the history came to express Vergil's bias against Henry VIII and his ministers.

> But the value of the Historia as a source is not
> confined to the facts it preserves, and the
> reasonable explanations it offers. It is also
> important as an indication of popular opinion.
> Even Vergil's caution is revealing--it is evidence
> of the awe in which the new monarchy was held,
> evidence corroborated by Thomas More who showed
> similar circumspection as an historian.[39]

The Anglica Historia is peppered with references, albeit brief, to the king's pardon being widely granted for political ends, usually with the aim of securing the obedience and submission of his subjects. The pardon was used in a variety of circumstance and in different ways, as we see in these examples involving Henry VII: as part of taking the crown, he pardoned all who would swear obedience; a rebellion is avoided when he pardons those who would put down their arms; he was prudent to initially offer pardons to a group involved in treason and revolt; he had the leaders of an uprising hanged, but the other captives were spared due to their "rustic simple-mindedness;" Empson and

Dudly were executed, but others involved were treated
leniently since they were considered less guilty.[40]
Occasionally Vergil's description of a series of events
reveals more of what he considered to be the reasons for
granting pardon. For exampe, he writes that when Lambert
Simnel and his mentor were captured, both were granted their
lives since the boy was considered innocent and too young to
have committed an offense, and the other was a priest.[41] In
the case of Peter Warbeck, Vergil states he had left
sanctuary on Henry's promise of clemency, and was given over
to be permanently guarded. He later escaped and fled to a
monastery. A priest interceded for his life with the king,
and obtained it. Warbeck was placed in the Tower, then
later tried to escape. This was too much for Henry, and
Warbeck was hanged.[42] Another conspirator was not given
such latitude. When his guilt was discovered, William
Stanley admitted his offense and hoped his open confession
would prompt the king to pardon. Vergil thought that Henry
might have done so, partly moved by clemency and partly to
avoid alienating William's brother. But the king feared
leniency in this case, thinking that William would never be
truly reconciled and others might be encouraged to similar
acts. Henry had him beheaded.[43] One of Vergil's statements
neatly sums up one of the primary purposes the prerogative
to pardon served for Henry VII: "Henry was a lover of peace
whenever it could be secured without much damage to himself,

and especially desired it at that time when he was
embarrassed by treason among his people."[44]

Vergil did not hesitate to describe the more unpleasant
facets of Henry's approach to pardon and punishment;
notably, these all were instances of what Vergil perceived
as the misuse and perversion of royal generosity. He tells
of the Cornish uprising in support of Peter Warbeck, and how
the people were severely punished by the imposition of
fines. "Thus, on account of the crimes of a few, it is the
custom to ruin indiscriminately the whole population."[45]
Typical of Vergil's attitude is a very lengthy aside
concerning a negative change in Henry's character toward the
end of his life. He wrote that after subduing the final
conspiracy and making peace with other countries, Henry
began to treat his people with more harshness and severity.
Henry said this was to secure their complete obedience. But
the people attributed it to greed. He eventually set aside
moderation and sank into avarice. The king said he sought
to obtain obedience through fear. He severely punished all
who committed any crime, and the punishments were drastic
fines. This eventually spawned evil informers, who had the
king's ear. He gradually lost all sense of measure and
moderation.[46] Vergil suggests that Henry had been
contemplating reform when he was overtaken by death.

The portion of the history that concerns the reign of
Henry VII ends with a description of the man and his
character. There is not a word about mercy or clemency.

Vergil praised his prudence, shrewdness, hospitality and majesty. Henry was "more inclined to peace than war. He cherished justice above all things; as a result he vigorously punished violence...."[47] The descriptions of Henry VII's use of the prerogative to pardon has the distinct color of pragmatism about it. Unlike earlier kings whose use of the pardon was often presented in terms of religious devotion, Vergil clearly presents Henry's pardons as political tools in the effort to maintain sovereignty. Henry VII is a man who was careful to limit the severity of his judgment through royal mercy and yet also is one who zealously seeks retribution against those who violate the law. This sanction, however, was seen as taking an unsuitable pecuniary form. That Vergil attributes this to avarice is indicative of the wide-spread transformation in values pertaining to generosity and obligation that pervaded English culture.

III

Tudor sermons demonstrate perhaps more clearly than any other type of contemporary literature the change that had occurred in the ideal of mercy's place in judgment. The influence of protestant reformers obviously accounts for the theological differences between most sixteenth-century sermons and those discussed in chapter four. The doctrines at issue still resulted in frequent discussion of the nature and operation of mercy. For example, reformation beliefs about the function of good works included the command to

love one's neighbor. The debate on predestination called up
the need to define the relationship of God's justice and
mercy. Criticism of the sacrament of confession required an
explanation of God's forgiveness and merciful pardon.
English sermons also exhibit an intense concern with
authority and obedience, endlessly pursuing civil order by
means of the power of the Crown, which has become the
unquestioned agent of God's vengeance. Sermons reflect the
same development that moralities do: justice increasingly
appears as a juridical virtue essential to the operation of
the English commonwealth. The virtue mercy has been
relegated almost entirely to the divine realm.

We can see this development by comparing representative
sermon collections. The works of John Fisher, Bishop of
Rochester, can be considered typical of those from the
reigns of Henry VII and Henry VIII who declined to
participate in the latter's reformation; honored as a
Catholic martyr, he was executed in 1535.[48] His sermons
speak of an all-forgiving God, familiar from medieval
sources, whose mercy dominates all. His descriptions of the
character that mercy assumes in temporal life are similar to
others we have seen in fifteenth-century sources. For
example, he claims that nothing is more likely to prompt a
man to be merciful than an offender humbly submitting
himself, acknowledging fault and begging forgiveness.[49]
Fisher's expectations of the behavior of powerful men and

judges are found in an analogy to the vengeance that God

could demand in response to man's sins:

>   For grete men in power of this worlde the more
>   myghty and ryghtwyse they be so muche the more
>   they exercyse and use vengeaunce and punysshement
>   upon them that be wycked and brekers of the lawe.
>   Therefore syth almyghty god is moost ryghtwyse and
>   moost myghty of all, how maye he haue mercy and
>   not auenge his quarell....[50]

Only God has such pity and no malice. He is merciful, and

being above his laws is not subject to them, so he can

forgive whom he will. Yet Fisher clearly thinks that those

who exercize authority will punish criminals. This passage

states that the powerful, if righteous, are obliged to

punish transgressors. Greater value is not placed on

pardoning wrongdoers. God's mercy, however, still surpasses

his vengeance. Fisher contrasts the nature of divine and

human judgment:

>   Iuges of thys worlde (yf ony be without
>   falsnes and malyce) be so obedyent and subgecte
>   unto the lawes whiche alwaye they must obey, that
>   it is not lawfull to them at theyr owne wyll and
>   arbytrement to forgyue suche as shall please them.
>   Also many of them and almoost all haue so muche
>   cursednes and malyce set in theyr myndes that yf
>   they myght they wyll not forgyue those that hath
>   offended them in ony condycyon. For why they haue
>   but lytell mercy and almoost none.[51]

Nevertheless, he feels mercy still should be foremost. Note

that although Fisher thinks that judges cannot be merciful

because their first obligation is to the law, he also

believes that they would not show clemency even if they were

able--an expression of some ambivalence about their duties

and behavior. Fisher's attitudes about mercy essentially

are traditional. Instead of using the divine virtues of truth and justice to justify the subjection of mercy, as often occurs in sixteenth-century sermons, Fisher tells how they actually insure forgiveness for penitents. They seem to indicate God will not forgive sinners, but actually his truth guarantees grace to penitents; it promises pain but also forgiveness. God will not call to mind the sins of the sorrowful. Those who live by his laws and are repentant will be saved through God's righteousness.[52]

His definition of equity is one of the most intriguing elements of Fisher's sermons on the psalms. It is similar to those cited in late medieval sources in that he seperates justice and equity, making the former harsh and the latter charitable. This definition comes in the course of an explanation of the parable of the Prodigal Son; the son was revived by the equity of his father. "Equitas...is proprely the mynde of the lawe. A Iuge ought rather to folowe the mynde of the lawe than the extremyte of the wordes wryten in it." He gives an example of a circumstance in which the letter of the law calls for the execution of the innocent. "Thus after Iustyce wryten he sholde dye, but accordynge to equyte he were worthy to haue a grete reuarde."[53] This suggests that the demands of Fisher's society involved the increasing expectation that the law--God's and man's--would be strictly enforced in the effort to maintain the peace. Yet mercy was not banished entirely; it was being worked

into a definition of how justice was to operate within the law.

Robert Latimer, Bishop of Worcester, was a protestant reformer who shared Fisher's fate; he was executed as a heretic by Mary in 1555. His preaching was favored both by the general public and by King Edward VI. The content of his sermons stands in contrast to those of Fisher.[54] They do show a particular interest in the crucial role of restitution and amendment in the forgiveness of sins.[55] But this concern with the obligation to love one's neighbor is the only aspect similar to the more traditional theology. In a sermon on the petitions of the Lord's Prayer, he insists that works cannot earn salvation; loving one's neighbor is a way of measuring the likelihood that one has been saved. For if one is able to love one's enemies, it indicates that faith is very strong, and helps one to imitate Christ.[56] Latimer explains that the works of mercy include forgiving those who do you wrong as well as admonishing those in error and bringing them to the right way. This may seem that malefactors ought not to be put to death. God does require private mercy, but he requires differently from the king and his magistrates. They must not bolster wickedness but punish evil-doers according to their deserts.[57] Just as Latimer meets the dilemma involved in forgiveness by bifurcating a Christian's obligation to be merciful, he explains the need to reconcile with others in the context of re-ordering priorities. He states that we

should seek to be peace-makers, to eliminate discord between neighbors.

> Therefore let us set by unity; let us be given to love and charity; but so that it may stand with godliness. For peace ought not to be redeemed <u>jactura veritatis</u>, with the loss of truth; that we would seek peace so much, that we should lose the truth of God's word.[58]

Here the order of virtues set out in the Four Daughters allegory is turned around: peace must now give way to truth. Truth carries this importance because of the function it has in establishing political authority. Foremost among these truths is the obligation to render total obedience to the king and his magistrates who have been placed in authority by God.[59] The people must be content to suffer whatever the king, parliament and magistrates say. In addition, the people must not rebel against hard laws but wait until God corrects them.[60] Latimer often emphasizes the obligation of those in authority to be righteous, do no harm, and not be subject to their own wills. He voices a concern for the proper administration of justice, criticizing judges, officials and juries, and exhorts the king personally to redress these problems. The people, however, were to do nothing more than pray to God that this corruption might be eliminated.[61]

Reformer's attitudes about mercy and justice, such as those of Latimer, became those of the Anglican state. The sermons of Edwin Sandys, Archbishop of York from 1576 until his death in 1588, are typical in this regard.[62] Sandys

presents the Anglican God, one which continues to have a

loving and merciful side.[63]   Yet this God has a notably

vengeful aspect.   Human suffering has been provoked by sin;

God's wrath and indignation must be appeased by repentance,

craving pardon and promising amendment.[64]   In sermons that

treat the reciprocal aspects of mercy, the virtue is

presented in terms of almsgiving, not pardon and

reconciliation.   These good works are accepted by God and

rewarded because the person is faithful.[65]   The rare

occasion on which mercy and justice are given equal weight

is when they are used in the rhetoric of majesty.   Sandys

praises these virtues in the Queen; in his opinion, she

desired that all men in authority under her

> give to every man his own according to justice,
> matching always with justice mercy; which two are
> so linked and coupled together, that they may not
> be severed. Justice without mercy is too sharp
> and rigorous; and mercy without justice is not
> mercy but folly.[66]

Yet this notion of the relationship of justice and mercy is

contradicted when the Queen is not the subject.   For

example, he insists that for those who judge, affection "is

the cut-throat of all justice."   Pity and commiseration will

corrupt justice.[67]   A magistrate is meant to be the minister

of God's wrath.[68]   Sandys' essential attitude toward the

role of mercy in judgment can be seen in a sermon preached

at an assize, which states that judges must not favor the

rich or the poor.   "The judge may not give place to

commiseration: his place is a place of equity, and not of

foolish pity." They should not be partial to the mighty or
the powerless. "Spare not traitors, murderers, or thieves,
lest you be partakers of their sins. Your lenity towards
them is cruelty towards the commonweal, the enemies of whose
peace they are."[69] Sandys explains that <u>nolite judicare</u>
refers to the forbidding of uncharitable private judgment,
not that of public ministers, parents or masters. Although
forgiveness is a fruit of mercy, "such as sit in judgment
ought to correct and not to remit; because they deal not
with injuries done to themselves, but to the laws and
commonwealth, or church...."[70] In a sermon preached before
the Queen, Sandys explains that Moses was a "worthy
magistrate," no less severe in God's cause than gentle in
his own.

> He did wisely consider that, as it is a point of
> mercy to pardon private wrongs, so not to punish
> public transgressors against God and the state
> were great injustice; it being in doubt whether
> their deeds were more pestilent, or their example,
> if it were strengthened by impunity, would be more
> pernicious.[71]

The root of this degradation of expressions of mercy can be
found in the consuming fear of social disorder that haunted
the sixteenth century, and the ideology of justice it
spawned that bolstered the Crown's power. Sandys' fear, the
rationalization of punishment it produced, and the
empowerment of political authority, frequently surface in
his sermons:

> For if laws be not executed without respect of
> person, if sin be not severely repressed, if the
> people be not kept in order, it will shake the
> state, all will be in an uproar, no man shall be

master of his own, or in any safety of his life,
all iniquity will abound, all honesty will be
exiled, and the magistrate shall bear the sword
in vain. To neglect it is to neglect that thing
for which this ordinance of God was first appointed.
For if men without these means might be kept in
order, surely God would never have established
government to keep them in order by these means.[72]

Sandys' sermons are not at all unique in presenting

this vision of justice, in the form of retribution, as the

only way to obviate social chaos. In the earliest stages of

the English reformation, the Crown understood the value of

promoting this vision of the king as the agent of divine

vengeance, and vengeance as the only way to secure social

cohesion. And the Tudors made direct and explicit use of

sermons as one of the vehicles for this ideology of justice.

Henry VIII and his children were convinced of the worth of

promulgating official statements from the new church on a

variety of controversial issues.[73] Certain Sermons or

Homilies was one of the most influential instruments of the

Henrican Reformation.[74] It was very much a settlement

between extremes in the English reformation. The sermons

were divided into short portions and were intended to be

read on successive Sundays. The Book of Common Prayer, the

use of which was compelled by the Elizabethan Act of

Uniformity, required the use of these sermons. They were

not simply intended to supply sermons for those parishes

that lacked a preaching ministry; they were the standard for

measuring confomity and were a means of controlling

preachers.[75] These homilies, read in every church along

with the Book of Common Prayer, were probably as well known and influential as any other writing produced between 1547 and 1640.[76] Generally speaking, the language found here does not indicate a particularly different conception of God's mercy (and its relationship to his just punishment) than that found in the preceeding two centuries.[77] The prayerbook contains the basic petition for pardon and forgiveness to a God whose mercy is primary and infinite.[78] The Book of Common Prayer however does include an innovative emphasis on the notions that the king is God's direct agent whom all must obey, and that one may suffer God's punishment in this world. The obligation to obey secular authority is repeatedly stressed; a righteous life consisted of duties to fulfill, and the prayerbook constantly stresses the command to obey secular and divine authorities.[79]

In these sermons some features of God's mercy and justice, and the salvation of man, are similiar to sermons from preceeding centuries. There are many references to the need to forgive and even love one's neighbor, to give alms, to secure amendment and reconciliation with man and God. Yet the sermons never cease to interject explanations of the proper understanding of the relationship of faith to works: faith alone saves the soul.[80] These sermons not only were meant to convey the substance of doctrinal changes; obedience to secular authority and the avoidance of civil disorder receive equal emphasis. "A Sermon against contention and Brawling"[81] is concerned with the effects

that the sin of wrath has on English society, not just on the soul of the offender:

> And because this vice is so much hurtfull to the society of a common wealth, in all well ordered cities, these common brawlers and scoulders be punished with a notable kinde of paine....And they bee unworthy to liue in a commonwealth.[82]

In another of the sermons punishment is defined as charity; the concern here is also for the well-being of society as a whole, not just with the correction of the sinner. We see the endpoint of the redefinition of mercy that apparently began in the late fourteenth century. Charity is described as having two offices: to cherish, defend and not oppress good men; to rebuke, correct and punish vice without regard to person. Punishments are not evil in themselves, but necessary and good for an evil man. Unless punishment is given in due time, offenders fall into other mischief and draw others to sin with them. The preacher with the word and the governor with the sword must fight against the kingdom of the devil. True Christian charity includes seeking the correction of the evil, "that they may thereby either bee brought to goodnesse, or at the least that God and the commonwealth may be lesse hurt and offended."[83]

Certain Sermons and Homilies demands total obedience to secular authority. Justifications for this are frequent. For example, the tenth sermon in the collection, "An Exhortation concerning good Order, and obedience to rulers and Magistrates," begins with a description of the chaos that would result if the order in which God has arranged the

world was disturbed. Without this order no house, city or
commonwealth could endure. If kings and their magistrates
were removed no man could go unrobbed on the highway, or
unkilled in his house, or keep his wife, children and
possessions in quiet. All things would be in common and
souls, bodies, goods and commonwealths be destroyed. God is
to be blessed because the kingdom of England does not feel
this disorder, thanks to the king he has given, and the
estates arranged in godly order.[84] The sermon explains why
all owe duty and obedience, submission and subjection to the
high powers ordained by God. It describes the origin and
powers of that authority, making parallel, again and again,
the obligation to keep God's laws and the king's laws, and
to submit to the king's punishment which is nothing less
than divine judgment.[85] The final sermon in the collection,
written in response to the Northern Rebellion, is perhaps
the most patent political application of these religious
teachings. Elizabeth understood their value and promoted
the use of the sermons. It was she who had commissioned the
"Homily against Disobedience" following the Northern
Rebellion. The polemical purpose was obvious. "To include
it among the other sermons was to concede more or less
openly that the government conceived of homilies, first and
foremost, as political measures."[86] The audience is told
that obedience is the principal virtue, the root of all
virtue and the cause of felicity. When it is breached, vice
overwhelms the world. Therefore, rebellion is the first and

greatest of all sins, the principal cause of worldly miseries and of eternal damnation. Evil kings as well as the good reign by God's ordinance and all must obey them. A good king is a blessing of God's mercy to his people; the evil king is the plague of God's wrath and punishment of his justice. The people must either deserve a good one or patiently suffer and obey the wicked king they deserve.[87]

This message in the final sermon in the Anglican collection is not simply something that evolved from decades of change following the institution of the English reformation. This ideology was fully formed even in the 1530s. A similar crisis for the Crown in another uprising forty years earlier, known as the Pilgrimmage of Grace, prompted numerous propagandistic tracts. In 1536, shortly after Richard Morison had obtained a post in Cromwell's service, he was called upon to produce two pieces that represented the Crown's response to the insurgents' demands and the situation at large. The second of these, "A Remedy for Sedition..." contains the same arguments for the nature of the Crown's rule, and the same description of society, seen in later sermons.[88] Morison said that the commonwealth is the product of a divinely ordered existence; each should be content with his or her estate and glad to profit the "quietness of the realm" even at the expense of the individual; people are ignorant and must be content with the rulers appointed by God. God, nature, and all humanity are trampled where there is civil dissension.[89] The tract

concludes with a paean to the benefits of concord, something
of an unusual expression in a literature that tends to focus
on the horrors of discord.[90] Here we see once more the
ambivalence toward the function of mercy in society
indicated by contradictory stances in the same text. What
is most striking about Morison's "Remedy" is the solution
that he suggests Henry will use to meet the turmoil caused
by the insurgents: it is not punishment, but instead total
pardon. The tract includes the story of the traitor Lucius
Cinna who had conspired in the death of Augustus.[91] Morison
wrote:

> His Grace will, I doubt not, follow the clemency
> of Augustus. He seeth his noble progenitors have
> oft punished rebels and done no more but cut away
> the branches of sedition; for their time His
> Highness intendeth to put away the root.[92]

We encounter the same paradoxical approach seen in other
sixteenth-century sources. When political and social
control was discussed in the abstract, in terms of the ideal
approach, the ideology of justice was vigorously promoted;
when actual means were retailed to resolve the circumstances
at hand, we see a tendency continually to rely on the
customary practice of pardoning in the effort to achieve
concord and reintegration within society.

IV

     We have seen strong indications in the literature
discussed so far that during the course of the first half of
the sixteenth century, in theory, the administration of
secular justice and the execution of divine judgment firmly

became fixed in the king. The sources frequently endorse the idea that all efforts to eradicate sin and secure civil concord were to be directed by the Crown. Let us turn now to three texts that deal specifically with the vitures and qualities desirable in a ruler, and the preferred means for maintaining peace. They speak directly to the problems of the relationship of mercy and justice in governance, and of the function of mercy in the context of judgment. These are the works of humanists, three of the most influential from the reign of Henry VIII. This dissertation has not considered many elite sources, but these three are valuable for focusing on the chronology of change. They show the intensity of opinion involved in the shifting ideologies, and the ambivalence that remained. They highlight a remarkable change in attitude that occurred between the second and fourth decades of the century, at least among men of their estate, a movement away from beliefs that endorsed pardon and reconciliation as the means to secure civil order to those that promoted the execution of justice through the law. Although the work of these writers might not be representative of social attitudes at large among their contemporaries, they do illuminate the roots of a vital development that gradually affected the whole culture during the next half century.

Though a work generated by religious reform and not a political treatise, William Tyndale's The Obedience of A Christian Man, written in 1521, contains very strong

statments about authority and yet still conveys many of the
traditional attitudes to mercy.[93] This work was the source,
for many writers during the English reformation, of the
archetypal statement of the genesis of a ruler's power in
God's ordinance, and of the hierarcy of authority and
submission in English society. For example, the sections on
the obedience of subjects to rulers, and on the duty of
kings and their officers, set out in detail how princes rule
the world in God's stead; the Crown and its officers alone
are empowered to pass judgment and enforce punishment.[94]
Yet for all the thunder about the rigorous demands of
justice, the work echoes time-honored statements about the
mercy available to the contrite, and the need to forgive
one's neighbor in order to obtain the mercy of God.[95] Of
note are the few passages on reconciliation and merciful
judgment which break through the reformers' rhetoric and
indicate a discrepancy between theory and practice. In a
discussion of the duties of sheriffs and other legal
officers, Tyndale instructions are that they "may let no man
that hurteth his neighbor scape, but that they bring them
before the judges; except they in the mean time agree with
their neighbours, and make them amends."[96] In the context
of the duty of landlords, Tyndale advises that they should
not favor one tenant over another, whatever the business.
Tenants should be treated as though they were sick people:

    as a merciful physician, heal them with wisdom
    and good counsel. Be pitiful and tender-hearted
    unto them, and let not one of thy tenants tear out
    another's throat; but judge their causes indiffer-

ently....For if such an order were not, one should
slay another and all should go to waste.[97]

Protestant reformers exerted a controlling influence on the
political ideology that was used to secure power in the
first half of the sixteenth century, but this did not
obliterate accustomed notions remained of forgiveness and
reconciliation as the way to keep civil order.

The genre of the speculum principis enjoyed a continued
popularity in the sixteenth century. Despite radical
developments in the intellectual underpinnings the form
continued to show similarities with its medieval
antecedents.[98] Both Erasmus' Education of a Christian
Prince and Thomas Elyot's The Boke Named the Governour are
in this tradition. Such works, if short on the
particularities of political analysis, do set out the ideal
means of personal rule in a kingdom, and maintaining peace
and civil order was one if its most important elements. The
relationship or balance between the exercize of the virtues
of justice and mercy in personal rule continued to be one of
the primary topics in this genre. A comparison of the
advice on governing given by these two men, whose works were
so influential, can narrow the chronological frame for the
period during which a crucial theoretical change occurred.

Erasmus wrote the Education of a Christian Prince in
1516 while in service to the young Charles V. This work was
popular with the general public; it went into a number of
editions in the next few years.[99] In essence, it presents a

prince the source of whose abilities is his supremely
virtuous nature.[100]   Erasmus felt that the teacher who
instructs the prince should present an idealized portrait of
a man more divine than mortal: "who holds the life of each
individual dearer than his own; who works and strives night
and day for just one end--to be the best he can for
everyone...."[101]   The lengthiest section is the first,
which details the qualities of a Christian prince and the
education he should have. The objective in guiding a state
is plainly put: "A king has this one interest: to foster
peaceful relations between his subjects and straightway to
adjust such dissensions among them as chance to arise, for
he believes that they are the worst menace to the state that
can happen."[102]   There is no question but that the best
means of maintaining the state is to have a truly Christian
king, a moral man who himself obeys the law, who rules by
law.[103]

The subject of good laws and their administration
occupies a central place in Erasmus' theory. Balance and
reason--a sense of equity--are vital to securing peace in
the kingdom. He is careful to define equity.

> Neither is it a state of servitude to live according
> to the letter of just laws. Nor is that a peaceful
> state in which the populace bows to every whim of
> the prince; but rather [it is peaceful] when it
> obeys good laws and a prince who has a keen regard
> for the authority of the laws. Equity does not
> lie in giving everyone the same reward, the same
> rights, the same honor; as a matter of fact, that
> is sometimes a mark of the greatest unfairness.[104]

This formulation of equity attempts to remove the
destructive image of the fulfillment of the letter of the
law by using equity to color the law, softening it as just,
moral and righteous. The character or nature of just laws
receives careful attention. For Erasmus, the key is the
morality of the operation of the whole system of justice.
Laws were meant to see that wrongs are done to no one.
However, this did not remove clemency or empathetic pity.
"But they should lean more in the direction of leniency to
the weaker, for the lot of those in lower stations is more
exposed to injuries. What is lacking in the protection of
fortune, that the humanity of your laws should equalize."[105]
The laws proposed by the prince should not punish only the
source of the crime, but work against the sin itself; the
law should restrain crime by reason, not punishment.[106]
The orientation of the system of justice should not simply
be to punish transgressors but also to reward good conduct
in the service of the state.[107] It was the obligation of
the state to enforce penalites, yet the line between
forgiveness and retribution was a fine one. The prince had
a duty to inhibit wrongdoing by inspiring a fear of divine
vengeance and by threatening to sanction transgressors. If
punishment was necessary, the less severe should be
employed; if nothing was effective, the "incorrigible must
be sacrificed by the law...so that the sound part is not
affected." Capital punishment was to be the last resort.[108]
Though the prince was obliged to inhibit crime, the law

should always be more prone to pardon than punish: this
more nearly accords with the law of God; an escaped criminal
can be brought back for punishment, but nothing can help the
innocent man who was condemned. "Even if he does not lose
his life, who can judge the suffering of another?"[109]

The importance that law and a system of justice had for
Erasmus should not overshadow the fact that his concept of
governance still centered to a significant degree on the
king's use of mercy. The qualities of a suitable king
listed here include wisdom, justice, moderation,
magnanimity, temperance and integrity.[110]   Clemency or
mercy may not be in this list, but the value he placed on
this virtue is apparent. Twice an analogy is made to the
"king bee," which was said not to have any sting. "Nature
did not want him to be cruel and seek vengeance appropriate
to a great personage, and so she witheld his weapon and left
his wrath ineffectual. This should be a great pattern to
mighty kings."[111]   The character of a prince's mercy
generally is put in terms of his lack of vengeance. A
prince should be generous and magnanimous; vengeance is
proof of a small and weak character, and nothing is less
appropriate in a prince. There are indications of the
nature of this generosity in some of the statements about
the king's pardon: "out of respect for his own position he
will sometimes pardon an unworthy man and with a thought for
his own reputation will be lenient to those who deserve no
clemency."[112]   Erasmus emphasized that one who ruled with

Christian virtue would lose no prerogatives. He believed
that the real subjects were those who would yield obedience
of their own accord. Those oppressed by a prince were not
really his, for it is common agreement that makes a prince:
"when you hold people bound to you through fear, you do not
possess them even half. You have their physical bodies, but
their spirits are estranged from you...."[113] The practical
aspects of pardon and mitigtion had great value for Erasmus.
He advised that a prince who wants to avoid the people's
hatred and encourage their affection should delegate "odious
duties" to others and keep for himself the ones that win
favor. This is because gratitude for granting favors
appears quickly. If there was need to refuse a favor, it
should be done affably, and without offense. "If it is
necessary to impose a punishment, some slight diminution of
the penalty presecribed by law should be made, and the
sentence should be carried out as if the prince were being
forced [to act] against his own desires."[114] For Erasmus,
the prince who would succeed to maintaining his own
sovereignty and peace in his kingdom was one who exemplified
mercy's finest qualities--generosity, clemency, empathy,
forgiveness.

Thomas Elyot's description of and guidebook for the
consummate ruler contains a strikingly different opinion
about the functions of mercy and justice. The Boke Named
the Governour probably is known best as a treatise on the
education suitable for gentlemen, those who would wield

authority in an England increasingly dominated by a class of "new men."[115]   Actually, only the first of its three books deals with the subject of education as we now think of it; the other two define and give examples of the virtues and character befitting those who rule. The work begins with a definition of what he terms the "publike weale" which is ordered by equity and governed by reason.[116]   This is followed by a justification for why there ought to be only one "governor" for every such state. The arguments are familiar from other coeval sources, calling on the order of divine providence and the natural tendency of the commons to violent disorder.[117]   The recommended virtues are also well-worn, bearing the mark of classical influence and contemporary notions of the sort of chivalry suitable for men of this estate.[118]   Justice and mercy still appear as virtues necessary in those who rule; the crucial difference from earlier works of counsel is that both have been carefully redefined, so that mercy is something to be nearly avoided, and justice through the law is the keystone in the structure of English governance.

Book Three begins by discussing justice.

> The moste excellent and incomparable vertue called iustice is so necessary and expedient for the gouernour of a publike weale, that without it none other vertue may be commendable ne witte or any other manner of doctrine profitable.[119]

It is divided into two categories: distributive and commutative justice; Elyot treats only the former. According to him, there are three precepts that persuade man

to receive and honor justice, and knowledge of justice is
not so difficult to obtain if they are used. "Reason
bedynge him to do the same thinge to an other that thou
wouldest haue done to the" is the first, and the second is
almost the same: "Thou shalte loue thy neyghbor as they
selfe." The third precept is "know thyself." The religious
injunctions that usually were applied to mercy appear in a
new guise here; once again we see customary aspects of mercy
being appropriated and made subordinate to justice as that
virtue is newly construed.[120] Elyot believes the virtuous
leader need have no concern that his "benevolence" will be
extinguished by executing punishment according to the law.
Condemnation and retribution are for the purpose of aligning
wrongdoers with virtue, or to preserve the multitude by
causing fear in those prone to offend--both righteous and
reasonable objectives.[121]

A story Elyot uses to illustrate the virtue of
placability actually reveals much about his attitude toward
the administration of justice and the centrality of its role
in England's government. It is supposed to show how Henry V
could control his anger; set in the context of the court, it
also gives an indication of the primary value placed on a
sense of justice that was rigid and would vary for no
cause.[122] When Henry was still a prince, one of his
favored servants committed a felony and was arraigned at the
court of King's Bench. Henry came in a fury to the bar and
demanded this man's liberty. All were intimidated except

the chief justice who told him the man must be treated
according to law unless he could obtain the king's pardon.
Henry was angered and tried to take the prisoner; the judge
commanded him to depart. He would not, and the judge
reprimanded him and sent him to prison for contempt. The
prince complied, impressed with the judge's behavior. When
the king was told of the whole affair, he thanked merciful
God for a judge who did not fear to administer justice, and
a son who would obey the command of the law.[123]

Elyot first mentions mercy in Book Two, in the section
on placability: a man with this quality, though moved to
anger, either by his own reason or persuaded by counsel,
does not seek revenge, and often receives the transgressor
into more favor following reconciliation. Elyot wrote that
nothing becomes a noble and honorable man more than mercy
and placability. Its value is best known by its opposite,
ire or wrath, the ugliest vice in humanity. So far this
echoes the medieval description of mercy and its opposing
vice.[124] The section devoted to mercy per se begins much
the same way. He writes that mercy always has been so
esteemed by man, that not only reason persuades but
experience proves that in one who lacks mercy all other
virtues are lost and lose their "iuste commendation." The
vice cruelty, the opposite of mercy, is the most odious of
vices. Governors must consider the peril they would be in
if God was not full of mercy but instead took vengeance when
offended. The most noble emperors conquered the hearts of

their enemies by showing mercy beyond expectation.[125] The

story of the pardon of Lucius Cinna is given at this

point.[126] Elyot praises the emperor for putting the pardon

to brilliant use: he vanquished an enemy and eliminated any

rancor in the city which might have fueled further treason.

However, as Elyot continues with the definition of

mercy, it becomes obvious that this is not mercy as men

understood it a century or two earlier. The real meaning it

had for Elyot becomes apparent in the complaint it provokes:

> He that hastily punissheth, ofte tymes sone
> repenteth. And who that ouer moche correcteth,
> obserueth none equitie. And if ye aske me what
> mercye is, it is a temperaunce of the mynde of hym
> that hath powar to be auenged, and it is called
> in latine _Clementia_, and is alway ioyned with
> reason. For he that on euery litle occasion is
> meued with compasion, and beholdynge a man
> punisshed condignely for his offence lamenteth or
> waileth, is called piteous, whiche is a sicknesse
> of the mynde, where with at this daye the more
> parte of men be disseased. And yet is the sikenesse
> moche wars by addyng to one worde, callyng it
> vaine pitie.[127]

He begins by defining mercy in terms of equity. Elyot

quickly turns to the issue that occupied him--what he saw as

the misuse of mercy, a misplaced compassion for those who

deserve punishment. In fact, this section is really devoted

to "vain pity." Elyot continues by claiming that he could

explain what this is, based on his daily experience. An

infinite number of English men and women were wandering

throughout the realm, as brute beasts, abandoning

occupations, service and honesty. He wondered how many

"semely personagis" were induced to theft, robbery and

sometimes murder, disturbing good men and finally destroying themselves. There existed statutes, ordinances and acts, noble and enacted by mature consultation, for the punishment of idle people as well as the moderation of unlawful games and reducing apparel. Yet he questions how many were proclaimed and not obeyed. Good laws were being frustrated by disobedient subjects and negligent governors. Elyot was disturbed by the behavior of his fellow men when they were faced with lawbreakers. He claims that a man, first hearing of a crime against his neighbor, abhors it and thinks punishment by law is due. But when he beholds the transgressor, he changes his opinion and prefers his condition or person before the example of justice, condemning a good and necessary law, excusing a damnable offense. And this is done not only by the common people, but also by those in authority committed to executing the laws. Those who excuse wrongdoers see the ever-increasing number of vagabonds, and the obstinate resistance of those who daily transgress the laws. Yet if a commissioner is moved with zeal to duly execute a law which involves sharp punishment some of his companions rebel, saying he is a flatterer or ambitious and so they try to make the people hate him. This is called vain pity, "wherein is contayned neither iustice not yet commendable charitie, but rather therby ensueth negligence, contempte, dissobedience, and finally all mischiefe and incurable misery."[128]

The specter of social chaos appears again. Although
Elyot initially is content in his scheme of instruction to
repeat the old adages about the function of mercy in ruling
a kingdom, the anxieties that characterized his age forced
their way through. Even though he found it suitable to
repeat the familiar tale about treason and the prerogative
to pardon, he contradicts its message by belittling the
merciful impulses of his fellow citizens, which he perceived
as dangerous and pervasive. Elyot sees mercy as a
corrupting influence that must give way to the law, to the
justice of society's authority, and ultimately to God.

V

The literature discussed here expresses the underlying
cultural realization that the vicissitudes of crime and the
civil disorder that accompanied political and religious
dissent could no longer be countered simply by attempts at
reconciliation of the parties and their reintegration with
the community. Although it ran counter to centuries of
religious instruction, the members of English society had
accepted the idea that they could judge others and need not
have mercy on wrongdoers, at least in the form of mitigating
punishment. Medieval sources indicate that in the late
fourteenth century people began structuring an argument for
investing one segment of the community--the Crown, its
officers, and the jurymen who represented the community--
with the right to pass judgment on others, and to exact
retribution for offenses. Those in the secular

administration of justice were to be exempt from the
obligation to pardon others for their transgressions. This
reconstruction of Christian teaching assumes its full-blown
character by mid-sixteenth century: secular authority
voices the judgments of the divine, and is invested with the
sword of vengeance.

The medieval sources also show a keen awareness of the
improper uses mercy, and the destructive effects that misuse
of the virtue could have. Bestowing personal favor could
result in pardon for heinous crimes; excessive mercy, or
mercy motivated by the wrong intent, added to the corruption
that seemed to threaten people of each estate. In Tudor
literature, these concerns appear in the guise of social
criticism and of moral education for those in authority.
They are focused not on the reformation of corrupt
individuals, so much as on a fear of wicked counselors, of a
king who cannot observe moderation, and on the damage done
to the commonwealth by wrongdoers. We see in works from the
late fourteenth century that the notion of the worthy
recipient of mercy begins to come to the fore, especially in
connection with corporeal alms. This anxiety about what
eventually is described as unreasonable charity becomes the
fear and hatred of the poor so pervasive in the Tudor world.
Just as the ideal of reciprocal pardon is being abandoned,
so is the belief that unfettered charity for the poor will
benefit the provider's soul. The needy no longer are
imagined as the special recipients of God's grace; instead,

they are idle vagabonds who destroy the order of the realm.[129] By 1550, the qualities of mercy have been strained, diminished, and relegated to the province of the divine. In literature, the virtue of justice was no longer an idea in the mind of God which mysteriously ordered creation; nor was it only a theological virtue after which human governance should be patterned. Justice was entrusted to the Crown, and expected to temper, through law, judgment and punishment, the excesses of an increasingly changed society.

We have seen the domestication of justice in this analysis of the allegory of the Four Daughters of God and other literary sources that hold the discourse of mercy. We traced the literature of mercy, following the course of ideas about mercy's role in judgment and function in society. And the texts disclose the medieval ideology of mercy, and its displacement by an ideal that features a justice achieved through the fulfillment of the law. The paradoxical demands of the virtues had been reconciled, not by preferring mercy, but by chosing justice and subordinating mercy to its interests. Beyond that, justice had been removed from the exclusive orbit of the divine, and taken into the hands of the men who governed in this world, to use for their purposes as well as for those of the Anglican God. The next chapter will show that this process of domestication and rise of a new ideology was not something that occurred only on an intellectual plane. In

fact, when this domestication is placed in the context of legal practices and developments between 1200 and 1600, we see that it reflects widespread cultural changes. The perspective of legal history also shows that although an ideology of justice may have been set in theory, the behavior of kings, justices and juries did not change radically to suit that new ideal, at least not in the sixteenth century. Yet traditional attitudes about mercy's role in judgment were able to be accommodated to the new ideology of justice. The ideal means of governance does not change in England because of the religious reformation; the same deep transformation in social values underlay them both.

Notes to Chapter 6

[1] For a work that discusses literacy in the social context of the fourteenth through sixteenth centuries, see Jo Ann Hoeppner Moran, <u>The Growth of English Schooling 1340-1548</u> (Princeton: Princeton UP, 1985).

[2] The following remarks on the printed literature favored in Tudor England are drawn mainly from H. S. Bennett, <u>English Books and Readers 1485 to 1557</u> (Cambridge: Cambridge UP, 1952), and H. S. Bennett, <u>English Books and Readers 1558 to 1603</u> (Cambridge: Cambridge UP, 1965). Bennett felt that a general figure of 6,000 volumes was not an overestimate of the number of books published prior to 1557, and that publications on this scale are evidence of a "considerable reading public." Bennett, <u>1485 to 1557</u> 20.

[3] Bennett, <u>1485 to 1557</u> 54-151, and Bennett, <u>1558 to 1603</u> 112-258.

[4] Bennett, <u>1485 to 1557</u> 146-50.

[5] Bennett cites Edith Klotz, "Subject Analysis of English Imprints for Every Tenth Year from 1480 to 1640," <u>Huntington Library Quarterly</u> 1 (1937-38) 417.

[6] Bennett, <u>1558 to 1603</u> 249-50.

[7] The edition used here is Sebastian Brant, <u>The Ship of Fools</u>, trans. Alexander Barclay, ed. T. H. Jamieson, 2 vols. (Edinburgh, 1874).

[8] The definition of this genre is a complicated and sometimes contentious one. Works in this tradition have been termed estates literature, complaint literature, the literature of social unrest and of contemporary conditions. The substance of these definitions and debates can be found in the following: Janet Coleman, "The Literature of Social Unrest," <u>Medieval Readers and Writers</u> (New York: Columbia UP, 1981); John D. Peter, <u>Complaint and Satire in Early English Literature</u> (Oxford: Clarendon, 1956); Rossell Hope Robbins, "Poems Dealing with Contemporary Conditions," <u>A Manual of the Writings in Middle English, 1050-1500</u>, gen. ed. Albert E. Hartung, vol. 5 (New Haven: Conn. Academy of Arts and Sciences, 1975).

[9] More than once Henry VIII is praised for securing peace; "In hym is iustyce with petye sociate / Vpon the poor he spareth no expence." <u>Ship</u> 2: 17.

[10] <u>Ship</u> v.1, 2.

[11] _Ship_ 1: 11.

[12] _Ship_ 1: 27.

[13] _Ship_ 1: 84-87 and 153-55.

[14] _Ship_ 2: 99-107.

[15] Lily B. Campbell, ed., <u>The Mirror for Magistrates</u> (Cambridge: Cambridge UP, 1938). The 1559 version is the one referred to here. Eight more tragedies had been added in 1563; the new edition of 1571 simply rearranged the text; editions in 1574, 1575, and 1578 were each enlarged; the edition of 1587 had even more additions and further rearrangement. _Mirror_ 9-19.

[16] _Mirror_ 65-66.

[17] _Mirror_ 48-51, 56.

[18] _Mirror_ 65.

[19] _Mirror_ 77.

[20] _Mirror_ 79-80.

[21] _Mirror_ 118.

[22] _Mirror_ 214.

[23] _Mirror_ 176-77.

[24] _Mirror_ 178-79.

[25] For background on sixteenth-century historiography, consult F. J. Levy, <u>Tudor Historical Thought</u> (San Marino: Huntington Library, 1967), and May McKisak, <u>Medieval History in the Tudor Age</u> (Oxford: Oxford UP, 1971).

[26] Denys Hay, introduction, <u>The</u> Anglia Historia <u>of Polydore Vergil</u>, ed. and trans. Denys Hay, Camden Society, n.s. 74 (London: Royal Historical Society, 1950) xxxvii.

[27] Antonia Gransden, <u>Historical Writing in England ii. c. 1307 to the Early Sixteenth Century</u> (London: Routledge, 1982) 475-77.

[28] Gransden 469.

[29] Gransden 427-28.

[30] Thomas More, <u>The History of King Richard the Third</u>, ed. Richard S. Sylvester, The Complete Works of St. Thomas More 2 (New Haven: Yale UP, 1963). More wrote two versions,

one in Latin and one in English; they are not translations one of the other. The edition used here is based on the 1557 version.

31 Hay lxv-lxxx.

32 Gransden 444-45.

33 For example, see the description of how he began to suffer after the "abhominable deede" of murdering the boys (p. 87). His downfall soon arrives in the form of the "conspiracy or rather good confederacion" headed by the Duke of Buckingham.

34 History 56.

35 History 57.

36 History 81.

37 History 82.

38 Gransden 431-32; see also Hay's introduction.

39 Gransden 442.

40 Anglica Historia 5, 11, 17, 97-99, 153.

41 Anglica Historia 25.

42 Anglica Historia 111, 115, 117, 119.

43 Anglica Historia 75, 77.

44 Anglica Historia 101.

45 Anglica Historia 109.

46 Anglica Historia 128. This has the distinct echo of the same complaint in some of the morality plays, such as Magnificence and Liberality and Prodigality.

47 Anglica Historia 145, 147.

48 The edition of his sermons used here is John Fisher, English Works, ed. John Mayer, EETS, e.s. 27 (1876; Millwood, NY: Kraus, 1973). These sermons include: one against the doctrines of Luther, written at the request of the Cardinal of York and published in 1521; two written while imprisoned in the Tower; a series on penitential psalms, written for Margaret of York and published in 1509. The following references are from the sermons on the penitential psalms.

[49] English Works 161.

[50] English Works 95.

[51] English Works 95.

[52] English Works 237-38.

[53] English Works 261.

[54] The edition of his sermons used here is Hugh Latimer, The Works of Hugh Latimer, ed. George Elwes Corrie, The Parker Society 27, 28 (1844; reprinted, New York: Johnson, 1968).

[55] For example, see Works 13, 404, and 452-53.

[56] Works 413-27.

[57] Works 474-89.

[58] Works 486-87.

[59] As did nearly every Tudor preacher that discussed the topic, he cited Romans 13 as the authority regarding this duty.

[60] For a discussion of this, see the "Fourth Sermon on the Lord's Prayer."

[61] For example, see "The Fifth Sermon before King Edward." In another sermon before the king, he referred to the story of Cambises flaying the wicked judge, and remarked that this sign would be a good thing in England. However, he urged prayer and obedience, and reminded that we are not to judge judges, for they would have their own accounts to make; Works 146-48. In another sermon on the parable of the wicked judge, he defined charity in the context of not judging the acts of judges; Works 160.

[62] The first publication of his sermons was in 1585. The edition referred to here is Edwin Sandys, The Sermons of Edwin Sandys, ed. John Ayre, The Parker Society 41 (1841; New York: Johnson, 1968).

[63] This is found in a description of man's reconciliation with God; Sermons 153.

[64] Sermons 346-69.

[65] See Sermons 256-92 and 92-111 for treatment of these themes.

[66] Sermons 58.

[67] _Sermons_ 202-202.

[68] _Sermons_ 198-99.

[69] _Sermons_ 226, 227.

[70] _Sermons_ 228-29.

[71] _Sermons_ 147.

[72] _Sermons_ 85.

[73] _The Book of Common Prayer 1559_, ed. John E. Booty (Charlottesville: UP of Virginia, 1976).

[74] It was the fruit of Cranmer's effort that began in 1539. The First Book, consisting of twelve sermons, was published in 1547. The Second Book, with twenty-one sermons, was published in 1563, then the final piece, "A Homily against Rebellion," was added in 1571. They actually were not printed all together until 1623.

[75] See the introduction to the edition referred to here: _Certaine Sermons or Homilies_, ed. Mary Ellen Rickey and Thomas B. Stroup (Gainsville: Scholars Facsimilies, 1968). The Crown's political use of these sermons is also discussed in Ronald B. Bond, introduction, _Certain Sermons or Homilies (1547) and A Homily Against Disobedience and Wilful Rebellion (1570)_ (Toronto: U of Toronto P, 1987).

[76] _Certaine_ viii.

[77] The dissimilarities in the representation of mercy shown by the Church of England and that shown in contemporary drama are analyzed in James A. Reynolds, _Repentance and Retribution in Early English Drama_, Jacobean Studies 96 (Salzburg: Institut fur Anglistik un Amerikanistik, 1982). He argues in part that the Church was able to continue presenting divine mercy as available to all because the darker side of reformation theology was shown in the theaters.

[78] For examples, see: portions of Scripture chosen to begin the morning prayer (49-50); the instructions for the administration of communion (247); statements to the congregation during communion service (257); portions of the visitation of sick (303,304). "A Commination Against Sinners" particularly features this ever-merciful God.

[79] This is notable in passages in the communion service (250, 254), and the confirmation service (286).

[80] This joining of themes from medieval and Tudor sermons are seen in "Of the misery of all mankinde" (7-12); "A Sermon of the salvation of mankinde..." (13-20); "An Homilie of Almes deedes, and mercifulnesse toward the poore and needy" (154-66); "An Homilie for good Friday..." (175-80); "An Homilie of Repentance, and of true reconciliation unto God" (256-74).

[81] *Certaine* 89-98.

[82] *Certaine* 97-98.

[83] *Certaine* 43-45.

[84] *Certaine* 69-70.

[85] *Certaine* 71-77.

[86] Bond 11.

[87] *Certaine* 275-80.

[88] David Sandler Berkowitz, ed., *Humanist Scholarship and Public Order. Two Tracts against the Pilgrimage of Grace by Sir Richard Morison* (Washington: Folger, 1984).

[89] Berkowitz 112, 117, 121-22.

[90] "Concord brought them together that wandered without places ever in fear one of the other. Concord made laws, concord builded cities, increased and conserved them. Concord brought in all honest crafts. Concord bringeth riches which by dissension we seek madly. In time of peace wits attain unto learning, virtue, and wisdom. Concord maketh us the friends of God, the inheritors of heaven, partakers of all the joy that God hath prepared for them he best loveth." Berkowitz 145.

[91] Elyot also uses this story; see below n.126. The emperor knew the details of this treason but was unsure of the best course of action. His wife Livia told him that since punishment so far had achieved nothing, he should forgive the traitor "and see what clemency may do," since Cinna could not hurt him now, and it might redound to the emperor's honor. Callling Cinna before him, Augustus reminded him he had already pardoned him once, restored his patrimony, and given him offices and authority. Yet now he pardoned him again and hoped for friendship. Following this, Cinna was a true friend, and eventually was made heir.

[92] Berkowitz 125-26.

[93] William Tyndale, <u>The Obedience of a Christian Man.</u> <u>Doctrinal Treatises and...Portions of Holy Scripture</u>, ed. Henry Walter, The Parker Society 42 (1848; New York: Johnson, 1968).

[94] <u>Obedience</u> 173-88, 202-31.

[95] See the sections on penance; <u>Obedience</u> 265, 267.

[96] <u>Obedience</u> 204. Yet just following this he states: "If any man have broken the law or a good ordinance, and repent and come to the right way again, then hath Christ power to forgive him: but license to break the law can he not give; much more his disciples and vicars, as they call themselves, cannot do it." <u>Obedience</u> 205.

[97] <u>Obedience</u> 202.

[98] For a detailed comparison of medieval works of counsel and complaint to those of the first half of the sixteenth century, see Arthur B. Ferguson, <u>The Articulate Citizen and the English Renaissance</u> (Durham: Duke UP, 1965).

[99] The edition used here is Desiderius Erasmus, <u>The Education of a Christian Prince</u>, ed. and trans. Lester K. Born (New York: Columbia UP, 1936).

[100] <u>Education</u> 189.

[101] <u>Education</u> 162.

[102] <u>Education</u> 164.

[103] "The best laws under the best princes make a city or a kingdom most fortunate. The most felicitous condition exists when the prince is obeyed by everyone, the prince himself obeys the laws, and the laws go back to the fundamental principals of equity and honesty, with no other aim than the advancement of the commonwealth." <u>Education</u> 221.

[104] <u>Education</u> 212.

[105] <u>Education</u> 227-28.

[106] <u>Education</u> 222.

[107] <u>Education</u> 223.

[108] <u>Education</u> 224-25.

[109] <u>Education</u> 231.

[110] <u>Education</u> 140, 151.

111   Education 166; also see 141.

112   Education 232.

113   Education 179-80.

114   Education 210.

115   The edition referred to here is Thomas Elyot, The Boke Named the Governor, ed. Ernest Rhys (London: Dent, 1929).

116   "A publike weale is a body lyuyng, compacte or made of sondry astates and degrees of men, which is disposed by the ordre of equite and gouerned by the rule and moderation of reason." Boke 1.

117   "For lyke as the communes, if they fele some seuerite, they do humbly serue and obaye, so where they imbracinge a licence refuse to be brydled, they flynge and plunge: and if they ones throwe downe theyr gouernour, they ordre euery thynge without iustice, only with vengeance and crueltie: and with incomparable difficultie and unneth by any wysedome be pacified and brought agayne in to ordre." Boke 8.

118   Note that largess and charity have been weaned away from mercy, and here benevolence, beneficence, and liberality are the subjects. They are only vitues if used in moderation, and they require "good election and iugement." The ingratitude of one who fails to acknowledge receiving a benefit, who lies and does not give recompense, is the "moste damnable vice and moste agayne iustice." Boke 147-48, 158-61, and 186.

119   Boke 195.

120   Boke 202-202. Note that in a discussion of counsel he states that every counsel ought to be approved by three things; reason and justice are joined here, too: "that it be ryghtwyse, that it be good, and that it be with honestie. That which is rightwise is brought in by reason. For nothing is right that is nat ordred by raison." Boke 292.

121   Boke 150.

122   Boke 139-41.

123   Another interesting use of a story is a variation of the Wicked Judge tale. Elyot intended it to show the value of affability in a ruler. Instead of showing the role mercy can have in passing judgment, in this version the judge finds the woman had been wronged, and reverses the

judgment, "and accordynge to truthe and iustice gaue to her that she demaunded."   Boke 135.

124 Boke 136.

125 Boke 141.

126 Boke 142-45.

127 Boke 145.

128 Boke 145-47.

129 There are many references to the problem of the poor and vagabonds in the sources treated in this chapter. For instance, "An Homilie Against Idlenesse" (Certaine 249-55) explains how this repugnant sin destroys the commonwealth through the corruption of the individual.   It paints vagrancy and its attendant poverty and crime as a great threat to the well-being of the country.   The sermon justifies the severe laws and punishments designed to curb the problem, and insists that to ignore it all would be to kindle God's wrath against the nation.   Erasmus did not see the problem as residing with those who were already poor; he saw idleness as the root of corruption (Education 225).   He wrote of the need to keep down the number of idlers at a prince's court, to keep them busy or banish them: "The great mass of the worthless crowd in every state is created through idleness, which they all seek in different ways. Those who have once become accustomed to [an idle] life will resort to any evil course, if they have no other means of supporting it."

CHAPTER 7

CONCLUSION: AN INTERPRETIVE ACCOUNT OF THE RELATIONSHIP
BETWEEN MERCY IN LITERATURE AND IN THE COURTS

The allegory of the Four Daughters of God was a
suitable metaphor for society's need to resolve conflicts in
the Christian plan of salvation, and in the Crown's use of
law; it also speaks of conflicts between the two. The ruler
is faced with discordant obligations in fulfilling the law,
and also in the prerogative for mercy. Although the ruler
has claimed to secure order in the kingdom through the
judgment his law demands for transgressors, fulfillment of
the law threatens to destroy rather than restore the peace.
The entire literature of mercy wrestles with the dilemmas
that arise when either sanction or pardon is used to
maintain order. Contemporary literature records the
articulation of changing cultural values during the period
1200 to 1600, showing us the movement of ideas and how those
ideas changed the way society functioned. That the shift in
values pertaining to mercy was fundamental and had a
profound effect on society is evident in the fact that both
Christianity and secular governance abandon an ideal of
reconciliation for one that threatens retribution. This
change in cultural values did not follow from the English

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reformation and humanism, but actually set the groundwork
for the rapid social change of the sixteenth century.

In order to understand the significance of the late
medieval conflicts about mercy, we must begin with the
process at work in the allegory of the Four Daughters of God
and in the discourse of mercy generally. This is a movement
that ends in a kind of domestication--the Virtues are drawn
within the human ambit and become part of English secular
culture--that involves the reconciliation of justice and
mercy and the redefinition of their relationship.

The medieval ideology of mercy was the paradigmatic
strategy for maintaining social and political order by
relying on the reciprocal benefits of pardon and
forgiveness. Mercy was valued as the antidote to the
destructive nature of wrath, and functioned as the unguent
for political and social life. The medieval sources
emphasize the reconciliation of the parties involved, and of
the offender with the wider community. In the medieval
versions of the allegory, the Virtues are placated, but the
judgment is always in Mercy's favor, and the sisters
continue to embody the opposing views that brought them into
conflict. Justice and Truth often are shown as remote and
threatening. Yet there are suggestions, in the apologies
for the need to judge others and fears about improper and
corrupt forms of charity, that Mercy does not have an
untarnished character. Despite its endorsement of an
ideology of mercy, the literature reveals an awareness that

the definitions of mercy and justice were changing in terms of the relationship of mercy and justice, and of authority's use of reward and punishment.

The seemingly abrupt <u>volte</u> <u>face</u> to an ideology of justice evident in the first half of the sixteenth century involves more than the simple substitution of justice for mercy by those who believed that mercy no longer had a role in keeping the peace. In popular literature the emphasis on reciprocal relationships between individuals and the associated community is replaced by an insistence on the obedience owed by all to a single secular authority which in return enforces the peace. Mercy and justice are no longer in opposition: mercy has been brought under the control of law, and in this way the forces are reconciled. Justice, in its metamorphosis from a theological to a juridical virtue, is politicized, becoming the counsellor of kings. In the sixteenth-century remnants of the allegory, judgment is solidly within human jurisdiction, wielded under the aegis of a God infinitely more distant than a heavenly father or king.

Tracing the evolution of cultural attitudes toward mercy allows us to see the growing response of late medieval England to the complex forces of religious, political, economic, and social change that had emerged since the thirteenth century. By 1600 we can see the congruence between popular attitudes about punishment and pardon and the Crown's use of the law to govern England. Both centered

on an ideology of justice that did not preclude forgiveness
for an offender, but still made clemency subordinate to--or
in the service of--the law. Among these popular attitudes
was the conviction that mercy was to be given only to the
deserving individual who showed repentence and the intention
to conform. Punishment of the truly wicked bettered the
commonwealth. We see in the literature of mercy that in the
second half of the fourteenth century those who perceived a
failure of mercy began to argue for the right of one segment
of the community, the Crown and its representatives, to
judge others and exact retribution. The gloss on mercy's
function contained in the literature shows the process in
which the cultural ideal of reciprocal pardon gradually lost
dominance.

Ideology was reformulated, giving primacy to the
obligations of members of the commonwealth to their king and
his church. By tracing the conversion of the allegory and
discourse of mercy we can uncover at least part of the
process of a profound restructuring of society. Historians
often mark the beginning of the early modern era with the
"new monarchy" of Henry VII. But in England this
formulation of the points of contact and separation between
the spiritual and temporal worlds took place during the
fifteenth century. The English Reformation and wide scale
introduction of humanism provided the impetus for the final
structure of that formulation, and the voice to insistently
announce it.

This chapter recapitulates in brief the course of legal development outlined in the first chapter; however, it is an interpretation, retold in light of the process revealed in contemporary texts. In the medieval period the ideal of reciprocal pardon voiced in the literature of mercy only partly fit the actual practices in the courts. By the sixteenth century there was a greater degree of correspondence between values expressed in literature and the administration of the law. Divine and temporal justice both had their source in the king. The Church said men had the obligation to instill righteousness in others; serving in the royal courts gave them the authority to judge. The Crown, speaking for both God and England, used the common law to structure social and political life. The legal system had become more articulated: crime was defined with greater sophistication and detail; the array of sanctions imposed were multiplied and refined. The means of reward and punishment were better able to reflect community attitudes about just deserts. Mercy could be expressed in more controlled degrees by the king, judges, and juries who administered England's laws. By 1600 the Crown, and the men who assisted in administering the law, had control over justice in theory as well as in practice.

When we conceive of law in England between 1200 and 1600 as something imposed from above that should have been controlled by the Crown and counsellors, ensuring order through sanctions, we are inhibited in other

conceptualizations of the function of law and the development of legal procedure. If we think of the law as originating in and being administered by the Crown, we are required to explain discrepancies as signs of a disordered and failing government. The historical imagination is dominated by the characterization of a late medieval failure of justice and crisis of disorder. But the gaps that exist within this account of the law should prompt us to look for other explanations. The literature used here suggests we should be asking if contemporaries also conceived of the troubling changes in society as a failure of mercy, if they had begun to doubt the values associated with generosity and the reciprocity it traditionally had engendered. There was anger and confusion over indulgences, royal pardons for felony, the obligation to forgive an enemy, the possibility of earning salvation through charity, the need for a measured exchange in restitution, and the duty to return a lord's mercy and favor. Sources that call for the use of pardon and forgiveness are matched by those that complain of the corruption of justice and the need to sanction wrongdoers. The preceding analysis of the literature revealed a cluster of anxieties about the manifestations of mercy in English society that centered on three themes: who was entitled to judge others, and how that judgment should be carried out; how to define justice and mercy, and their relationship to each other; how to gauge whether the recipient was worthy of mercy. They indicate where we

should look for the nature of the cultural metamorphosis
that resulted in a new ideal for maintaining order.

Understanding the transformation in mercy's function in
society, the gift of mercy, helps us to conceive of the law
in medieval and Early Modern England in an alternative way.
English law in these centuries remained a law of custom,
rooted in the way the bonds of society were regulated,
despite the ever-increasing extent of royal cooptation.
What follows in this chapter is conjecture based on the
assumption that English men and women saw a failure of mercy
pervading their culture in the late middle ages; that what
underlay contemporary expressions of fear about disorder and
corruption was the disintegration of a centuries-old system
of traditional values centered on reciprocal mercy and
generosity. These anxieties were a response to the
evolution of a society newly configured, reflecting the
belief that the archaic bonds once ordering English society
would no longer function, and uncertainty about the nature
of the law that would replace them. At the same time,
English kings sought to establish, with periods of greater
and lesser success, a system of central courts through which
to exercise sovereignty. This required the accomodation of
behavior originating in the dominant ideology of mercy.
Throughout these centuries the Crown continually tried to
fashion the customary practices and premises of English law
into the means for securing their immediate goals and
increasing royal authority. The shift toward an ideology of

justice facilitated the growth of a law that could meet
expectations about just deserts and further the interests of
the Crown.

I

In order to understand generally shared attitudes about
the use of law, and the function that mercy had in the law,
during the thirteenth and fourteenth centuries, we must go
back to the centuries before Henry II. For English kings
exercised their authority through the manipulation of
customary law, and we see this most notably beginning in the
reign of Henry II.[1] It is during this time, too, that we
can see the origins of the conflicts that arose from the
differing goals and values of the Crown, on the one hand,
and, on the other, the men who administered the law. The
tendency is to think of law only as a creation of the Crown,
"rather than something which grew from below by the
extension and reinforcement of bonds of affection beyond the
immediate family."[2] But traditional law has its origins in
the community and its needs, not in the legislation of a
sovereign and his advisors.[3] This community was not an
idyllic one of cooperation and solidarity, but rather one of
tension, driven by the need to control social relationships
through mutual obligation. Law was normative custom,
practices that evolved from the needs of the community,
usually relying on some kind of collective judgment. The
goals of reconciliation and justice were not polarized in
this social context; the administration of justice was not

limited to vengeful punishment. In the framework of small communities bound by reciprocal ties between kin and neighbors, the meaning of justice may well have been satisfaction for the wronged parties, though this certainly would not preclude the execution of one who had gone beyond the pale of community norms. The concern with the injuries of the victim, as well as with vengeance, was appropriate in this social context, though it may seem irrational to later societies unaware of contemporary realities.[4] Legal practices cannot be labeled irrational "simply because they responded to needs which we do not know, or took for granted values which we do not share."[5] The late twelfth century often is presented as a period of drastic change because we see procedures imposed by the king. Customary law and practices from the twelfth century and earlier seem rooted in an irrational nature: methods of proof were often based on physical ordeals; slayers bought off the victim's family and suffered no court-imposed punishment; the king was a figurehead rather than a force for securing the peace. An elite conception of law as centered on the king and organized around rational procedure may overshadow the continuing presence of traditional practices and the way they shaped the growth of the common law.

Consider the use of the ordeal in criminal trials, and its replacement by the jury.[6] The character of these means of community judgment, and the process by which the jury was absorbed into the Crown's peacekeeping efforts, typify the

dynamic at work to maintain order in English society. The
essential question in understanding the place of the ordeal
is, who was being satisfied in its use?

> The greatest explicit ideal of the early Middle
> Ages is a minimal one of peace and, above all,
> concord: this amounted to the maintenance of a
> minimal consensus in a face-to-face society built
> up of evenly balanced family groupings. In such a
> society the ordeal takes on its meaning as an
> instrument of consensus and as a theatrical device
> by which to contain disruptive conflict.[7]

The nature of the ordeal allowed participants to manipulate
the effects. The issue involved was the status of the
individuals or groups in conflict. The ordeal functioned
best in small communities where the character and standing
of each were public knowledge and affected the well-being of
the others. The goal was to reestablish balance in the
community, redress grievances, and obtain a workable peace.
There were varying strategies, from an honorable compromise
to the final elimination of the offender. The criminal
ordeal worked at times not as an investigation of the truth
but as a public sanction. It was based on the subjective
perceptions of the participants rather than on an objective
reality. The ideal was to publicly secure a practical
solution acceptable to the people at large. God's judgment
was being sought on the righteousness of the claims
involved, not the facts of a particular crime. Recourse was
made to the general judgment of the supernatural in a ritual
intended to avoid the ambiguity and tension of law courts.
A verdict given by God was more likely to be accepted as a

final authority and provoke a lasting settlement in cases most difficult to resolve.

That the use of the ordeal atrophied is usually attributed to the twelfth-century renaissance in the use of logic. But rationality is not necessarily the motivation for public decisions in legal change. The twelfth-century saw the beginning of the shift from consensus to authority. Old ordeals were transformed by political needs within communities on a local and national scale, and the dominant political need was to control others. The thirteenth-century outcome was that the "ruler was no longer a peacemaker in this old-fashioned manner; he was the imposer of law and order."[8] The world in which the ordeal had originated withered; new political and legal arrangements were devised as the social and economic boundries of communities gradually were enlarged. What had been rational in the context of the old system was eventually rejected because of a new perspective. The ordeal was gradually replaced through the twelfth century; the Fourth Lateran Council delivered the final blow.[9]

The Angevin use of the jury can be seen in the light of the transformation of proofs: the jury was in a sense a new type of ordeal. The origins and continuation of trial jury discretion--its merciful practices--might be found in its development out of earlier forms of community judgment. The traditional view is that the ordeal asked God a factual question, and such questioning fell out of favor with the

Church by the early thirteenth century. The increased use
of the jury is seen then as the outcome of a jurisdictional
change: the question of guilt no longer was put to God but
to the neighbors of the accused. But a jury's verdict was
in the present tense and may have been concerned with guilt
largely in the sense of the moral standing of the offender
in the community. Thus jurors might take into consideration
such elements as the offender's past record of behavior and
attempts to make satisfaction. This would be consistent
with prior forms of proof. In this theory that sees
continuity and not disjunction in late twelfth century use
of the jury in royal courts, the presentment jury was not a
feature of jurisdictional change, not strictly an
alternative to but a supervisory mechanism for appeals.
Therefore the bench would not be surprised that the juries
functioned largely as the ordeal had, and that the royal
interest in facts "would generate some tension." However,
it does represent a change in jurisdiction in the sense that
when the king exerted control by means of supervision he
asserted the increased power of his sovereign authority.
There was a change from private to public restitution and
revenge. The reforms that evolved from the Assize of
Clarendon in 1166 came to overshadow the practices
associated with the private compensation of wergild, and
even extended royal authority to the lesser felonies such as
casual theft. When the Crown seized the responsibilty for
controlling crime, it also began the process of usurping the

discretion embodied in the community's collective judgment.
The discord between the jury's and Crown's understanding of
judgment began when kings insisted that factual questions
were the most important, and the rights and rewards of
prosecution belonged to the Crown.[10]

The conflict between the royal courts and the juries
who passed judgment on their neighbors originated in the
Angevin efforts to supervise the existing customary law.
The use of the jury did not make an immediate difference.
It was because jurors could ask and be asked questions, do
injustice and be seen to do it, that trial by jury began to
"demystify the process of adjudication."[11] At the outset,
however, jury verdicts would have operated in the same way
that the ordeal and other forms of community proof,
judgment, and sanction did. The jury could act as a vehicle
for enforcing the traditional values of the community,
pursuing the goal of reconciliation, and acting as a means
of social control to persuade transgressors to conform to
traditional norms. And, of course, to eliminate those whose
crimes were unforgivable. As time went by, the jury also
might embody the goal of the royal courts: to control crime
by means of harsh laws that relied on the sweeping
application of exemplary punishment. The law was
transformed in the long term by the strengthening of
government; the only source of authority and law enforcement
was to be the king--a king who meant to maintain the peace.
Throughout the twelfth and thirteenth centuries, an

increasing number of crimes came in for formal punishment, overshadowing or curbing mutual negotiations, at least as far as we can determine from the records. Maintenance of the law was still dependent on collective action, but it was the king's peace that was violated. [12]

The Crown increasingly made its presence known through the legal machinery devised to articulate the royal prerogative to ensure justice. Governing the realm consisted in large part of keeping the peace by resolving civil disputes and attempting to suppress crime. The king provided everything from the chancery in which to sue out a complaint, to the judge and jury which tried the matter. Though the common law courts operated on the king's writs, officals, and records, they still relied for decisions on the jury. Collective decision-making was an ancient responsibility, and twelfth-century legal changes were not very influential in regard to that duty. Intellectual developments in the law did not create new legal norms but did clarify old ones. The impact of the imposition of royal jurisdiction and administration was not so much in revolutionary principles as in clarity of distinctions. Even taking into consideration all the changes that had occurred by 1200, we can assert, with one historian, that people still believed "reconciliation was better than conflict, that wise and honourable men should be able to harmonize apparently conflicting interests, and that justice should therefore be attainable." [13]

Although it can only be guessed at from the records, conflicts in thirteenth century England could be settled effectively by informal means, without having to charge and try a person for felony or some lesser offense. The mediation of friends and neighbors could be as productive as prosecution in the royal courts.[14] The informal mechanisms for peacefully solving conflict however required a small, closely knit community in which pressures for dispute resolution might be intense. And the character of these communities was subject to pressure even in the thirteenth century. The institutional and political innovations that formed the foundation for the incipient state, the growth of royal jurisdiction and administrative innovation in the twelfth and thirteenth centuries, are important but they tell only one side of the story. The emphasis on these changes tends to obscure the effects that contemporary social and economic developments had on the law; patterns of differentiation gave some groups more power and made others marginal. "English society was evolving in such a way as to produce new groups of people who were often beyond the reach of these mechanisms of dispute settlement."[15] They were less likely, though, to be beyond the reach of the Crown. Yet in the thirteenth century it was still true that legal innovations and ancient custom were all employed to the same end: "a single principle can be seen as informing the legal sensibilities of the English villager: the obligation for maintaining peace was a personal one, incumbent on the whole

community."[16]

The Crown did not impose an alternative system of justice that eliminated prior practices; instead, it supervised peace-keeping operations and provided an additional--and successful, judging by the clamor for royal justice--means of dispute resolution that utilized many features of traditional law. But the reforms of Henry II, and the ensuing changes they spawned, did not only have positve effects. We also could interpret the changes as having "the long-term effect of weakening and straining the bonds of affection existing in feudal lordship and kindred loyalties and putting nothing as adequate in their place."[17] At least those new bonds and loyalties were very gradually formed. Royal courts were an alternative to more ancient ways of dealing with wrongdoers, and a popular alternative, but it does not necessarily mean that all people were enthusiastic about this forum; neighbors in a community who would have to live together for years to come did not always welcome the snap judgments that came from the king's courts in which the winner took all.[18] The introduction of royal courts was a source of tension as well as satisfaction. It was only one way in which the law was used to resolve conflicts that gave rise to civil and criminal actions.

> The peace was kept, in so far as it was kept, by whatever means were at hand: sometimes by royal authorities and lawcodes; at other times by the moral and social pressures of kindred groups and feudal loyalties reinforced by the sanctions of the church.[19]

The continuing use of collective judgment and lay officials
within the framework of the royal courts ensured the
survival, to some degree, of traditional values and
customary practices. Older customary practices and
expanding royal authority had been modified, each by the
other. Mercy, in its varied forms of mitigation, remained a
feature of legal practice, even in the face of a system of
Crown pleas that relied on capital punishment. Avoiding the
destruction of vengeance may have been as important as
obtaining retribution. Although the English clamored for
crime to be punished, another concept to the purpose of law
endured: "And syth that law wyl rather lessyn peyne / Than
it extende, lete Pees and Mercy reygne."[20]

II

We can see now how the allegory of the Four Daughters
of God would have suggested to some English men and women an
appropriate metaphor for the state of law in England in the
thirteenth century. There were conflicts between the
recently imposed and burgeoning system of royal justice and
the more traditional practices and values of customary
law.[21] The figure of Mercy would be an apt representative
for older practices based on reconciliation, and the
disturbingly zealous Justice for the law enforced by the
king's courts. With the widening of royal jurisdiction that
drew many felonies into the ambit of the king's peace, the
severe sanctions and minimal consideration given to
circumstance and intent may have fostered the negative

attitude toward Justice seen in the literature. The
extension of royal authority that began under Henry II was
seen, at least by some in society able to articulate their
views, as a dangerous proclivity for attending to the voice
of a justice that had become more demanding and more
extreme. Through the thirteenth century we can follow the
ascendency of the Crown in its formation of a centralized
government that operated through the royal courts. Kings
voiced their intentions and needs by claiming to provide
justice in criminal, civil, and administrative matters; yet
it was a government that relied on older, local processes
and personnel. Private restitution, and the values it
involved, continued, even if they are now lost from sight in
official records. A reaction to the growing power of the
king's courts, and the harsh punishment delivered, could
account for the allegory's subtext which calls for continued
adherence to the traditional ideology of mercy as the means
to resolve conflict.

That growing power of the central royal courts can be
seen in the institution of the general eyre. Initially
sovereigns were overseeing their private interests and that
of the men and women in their protection. They advanced
their financial interests through royal servants in the
counties and hundreds, and gradually expanded the king's
peace by extending royal protection in piecemeal fashion.
The general eyre was instituted under Henry II, when he sent
itinerent justices on circuits throughout the realm. These

royal justices heard both civil and criminal pleas. The
legal machinery used, particularly the inquest which put
questions to a panel of local men, was easily turned to
administrative purposes. By means of the eyre the Crown
intensively cultivated its income. The justices collected
what was due to the king in everything from feudal profits
to all the fines and fees deriving from criminal and civil
suits. The centralizing features of the eyre grew. By the
middle of the thirteenth century the obligations of the
sheriff, coroner, and other royal agents outweighed their
other work in importance. There was an increased use in
professional justices from the central royal courts of
Common Pleas and King's Bench. The eyre also was used to
implement the growing number of parliamentary statutes that
governed criminal and civil matters. But the eyre began to
break down in the decades around 1300 as a result of all the
burdens it had assumed. Poorer litigants in ever greater
numbers brought oral and written complaints to the justices,
and these bills in eyre poured into the royal courts. Many
such querelae concerned maladministration by the king's
servants. Under Edward I, the general eyre made even more
extensive inquiries into royal rights, official abuses,
land-holding, and crime. It was too much.

        The justices of the general eyre were first relieved of
their administrative duties in the late thirteenth century.
The remaining responsibilites were transferred to special
commissions in the first few decades of the fourteenth

century.[22] The commissions to take assizes assumed many of
the centralizing functions the eyre had performed. Less
ponderous and more frequent than the general eyre's seven
year circuit, the assize, consisting of two professional
justices from Westminster and four local knights, visited
the counties twice a year. They were empowered, after 1285,
to hear all civil cases pending in the central courts, and
often were instructed to deliver the gaols. Most of the
business that had been handled by the eyre was, by the mid-
fourteenth century, the responsibility of men who had
special commissions as justices for gaol delivery, oyer and
terminer, and trailbaston. In contrast to the justices of
the assizes who were predominantly professionals from
Westminster, these men were more often prominent knights and
great landholders of the county. The extent to which the
character of royal courts had changed as a result of
empowering local men of influence to act as royal judges can
be seen in the ascendancy of gentry as justices of the
peace.[23]

The tension caused by the expansion of royal authority
in the twelfth and thirteenth centuries and the Crown's use
of local laymen to administer the law is crucial to our
understanding of the course of legal development in the
later middle ages. As the administrative apparatus that had
developed through the thirteenth century weakened in the
decades surrounding 1300, the administration of justice,
which had seemed destined to be the domain of professional

justices and bureaucratic ranks of clerics, depended to a
greater extent than ever on the co-operation of the upper
ranks of society. In the thirteenth and fourteenth
centuries, royal courts still were dominated by royal
servants from Westminster who presided over the
administration of justice in the localities, using customary
practices and officials. When the promise of the law
wielded by Henry II and Edward I failed to be realized on a
continuing level of development, the features of lay
administration moved to the fore again. Local gentry
assumed much greater power through their commissions and as
justices of the peace. In the view of one historian, when
the coercive power of central courts was weak the function
of justice would have been mediatory rather than punitive.[24]
Of course, the greater extent of local control over the
courts also meant an increase in local manipulation and
corruption of the law. Juries of local men gave their
verdicts before local gentry who held commissions as
justices. The courts were staffed by local men who held the
offices of sheriff and the like. However, it was here that
members of the community worked out their feelings about the
guilt and just deserts of accused felons; all this was done
in the framework of the king's law, and in his courts.

In part because of the physical separation of the
king's government from his subjects, rulers often had
claimed powers that exceeded what in fact they were able to
implement. Perhaps punishments of extreme harshness were

used as deterrents because the Crown was uncertain of its
ability to enforce its intentions.[25] The allegorical
presentation of justice as remote and even cruel makes sense
in terms of the sanctions administered. The erosion of
centralization indicates the insupportable strain imposed by
the extension of royal authority--an authority not
translated into the necessary bureaucratic capacity.
Another factor contributing to a shift in the momentum of
state development was the increased emphasis on warfare.
State ambitions and programs devised in the thirteenth
century were never carried out in the fourteenth because of
the scale of wars entered into with France. Given the
Crown's limits on time, treasure, and administrators, the
devotion to warfare had inevitably reduced the attention
accorded other areas of government. This was most evident
in the realm of justice and public order. It has been
suggested that this altered political course can be
epitomized in the image of the king in late medieval
England: the dispenser of justice yielded to the warrior
king.[26] In addition to an altered program of political
priorities and institutional development, fourteenth-century
kings had to contend with the overwhelming devastations of
nature: overpopulation, famine, and plague. No wonder that
we see, in such works as the Confessio Amantis, a notable
switch to recommending punishment as the means of keeping
the peace.

     But by then new expectations of royal justice had been

fostered. Even in the early fourteenth century there was a considerable voice of complaint: English men and women thought there was a reasonable level of order the courts were failing to maintain. Whether this perception corresponded in reality to an increase in crime and social disruption is impossible to ascertain. It is possible that, in relation to other countries, more was expected of the king's justice in England because through the twelfth and thirteenth centuries more had been claimed and achieved there.[27] The Crown's claims for what it could provide, and its demands in return for keeping the peace, outstripped its administrative abilities, and the Crown's objectives were deflected by political and demographic needs. Subsequently, as ad hoc commissions of local men were used and local power struggles were involved, there was decreasing control from the center of government in the legal system that had been devised through the thirteenth century. The increasing disjunction between what the royal courts claimed they could provide for their suitors and what was actually achieved was becoming a major social and political problem. The hatred of lawyers that surfaces everywhere in the literature of late medieval England is only one illustration of this.[28] However, landowners of every estate must have thought that at least the king potentially could deliver what they sought--or at least that recourse to royal courts was worth the effort--because they never ceased to call for the king's justice.

This should lead us to question what else might have been involved in the widespread perception of corruption in the courts. Remember that the adaptation of some existing practices to new purposes had not obliterated the character of the practices, nor did ideas about the way in which law should operate in society fade rapidly. The Crown's attempts to supervise land disputes and repress crime clearly drew wide support. We often exaggerate, though, the degree to which royal justice was expected to be a disinterested source of justice. Twelfth and thirteenth century kings sought to attract suitors to their courts and so strengthen their authority over English subjects, their lands, and their goods. Those subjects, in turn, tried to secure the king's aid in his courts, just as they had always sought his help in gestures of favor and grants of privilege. Even after those involved in the disputes that resulted in the Great Charter tried to end the king's use of the law as a political or financial weapon, landowners continued to demand that he adjust the laws to their purposes.[29] In the fourteenth and fifteenth centuries royal courts relied more than ever on the power of local magnates. The landowners who held various offices or were commissioned as justices were, in many ways, the authority behind the law. The prominent role of jurors and lay officials ensured a mixture of public justice and the machinations of private interest. Through the later middle ages the Crown

> continued to rely on the social and political
> networks that these courts had used and

> strengthened. Inevitably private relationships
> became an integral part of the public system,
> because without the existence of the vertical
> and horizontal links between minor and major
> landowners no government of any sort would have
> been possible.[30]

More law meant more delegation, and legal authority was

given to those who most actively sought the king's justice.

Excessive focus on the Crown's role in the growth of the

common law overshadows our vision of the dialectic in ideas

and practices that continually shaped English law. We lose

sight of the fact that, although a new standard of justice

was being forged, the social practices associated with a

belief in the values of reciprocal generosity endured.   In

fifteenth-century sermons we can see the continuing

insistence on the traditional forms and uses of mercy.

However, within courts that were increasingly sophisticated

and directed by the Crown, the largess and practicalities of

mercy could look like corruption.

The extent of the Crown's success in attracting

litigants, and in providing, through the thirteenth century,

a burgeoning system of competent administration, invites us

to see royal justice as an achievement that very nearly

failed because of the involvement of self-interested,

feuding magnates and an increasingly violent population.

However, the elements of continuity are there, in the royal

courts and in how they were used by the Crown. We can see

the strategies and processes of change in the survival and

adaptation of other means of judgment outside the common law

courts. The devolution of some measure of power into the
hands of local landowners and their social affinities, and
the thriving presence of other forms of settling conflict,
indicate the strength and adaptability of medieval English
law. The Crown slowly but consistently adopted, once again,
informal and customary practices to its own purposes. Two
of the best examples of this are the continued use of
arbitration and the rise of the conciliar court in Chancery.
Arbitration was used alongside or in conjunction with royal
--as well as local, private, and Church--courts. In the
attempt to preserve some measure of authority, the Crown
acquiesed in the methods and values of more traditional
dispute resolution. Arbitration usually involved the
network of private relationships among the upper gentry and
magnates, and relied on the social pressure of affinities
and communities to convince the parties to agree on terms
satisfactory to all involved.[31] The common law courts were
becoming increasingly rigid and rule-bound, frequently
delayed by the complexity of procedure. The need was felt
for a court that would more reasonably address the actual
circumstances of the issue, operate with more flexible
procedure, and still be under the aegis of the king's
justice. The Crown's response came in the form of the
conciliar courts, especially that of Chancery.[32] And those
of the ruling estates were persuaded to bring their suits,
as in the past, because they felt that the royal courts held
something for them.

The necessity of using multiple networks of private
relationships in administering the law did not result in a
shift in the locus of political authority. This delegation
meant participation in the power exercized by the Crown.
Despite the changing fortunes suffered by the kings of late
medieval England, the Crown managed to draw support. It not
only developed new courts; it offered the opportunity to
join in its authority and control. The inducements to share
in political authority included increased legislation,
especially following the devastations of the mid-fourteenth
century. Yet this also was old wine in new bottles. That
is, the Statute of Laborers and associated legislation
"could function as a more rigorously pursued and formalized
successor to previous communal sanctions."[33] Governmental
authority was expanded over many new areas, and the gentry
easily stepped up to exercise that power. The intent behind
this unification was social control: forcing the laboring
people--as well as merchants and gentry--to meet their
obligations and live by traditional standards. Authority,
though shared among the upper estates, was still directed by
the Crown. By the late fourteenth century the structure of
English social and political relationships had changed
irrevocably.

> The gentry and magnates looked to the central
> government to preserve the society they were
> accustomed to against unprecedented pressures.
> The central government vigorously asserted its
> control over everyday life and incorporated the
> gentry decisively into the sphere of governance.
> In a full sense, English governance and law
> became paternalistic.[34]

This is again the adaptive process involved when the royal government shaped its goals to long-standing behavior; it is related to other forms of the co-optation of criminal law in general. The Crown, acknowledging cultural values and customary ways in which the law was employed, adjusted its methods to those who administered the law. Those men, in turn, co-operated with the efforts of royal government in their attempt to keep control over a changing world. It was at the same time, generally speaking in the last two decades of the fourteenth century, that we see in the literary discourse of mercy the emerging sense of the need for secular authority to administer justice in a way that would compensate for the failures of traditional practices of mercy.

The belief that the king was the origin of justice and order remained, as had the belief that his landholding subjects had the right to give him council. It is a paradox that while there was such fluctuation in the power and fortune of individual kings in late medieval England, the institution of kingship remained the locus of authority. The inherited ideals of the king as the source of justice, and of his fundamental obligation to keep the peace--elusive though they may be to us now--apparently made it possible for the Crown to maintain authority during an extended period of troubled reigns. Whether individual kings were compelled by Christian teaching about their essential role in the public peace, even in the midst of their

preoccupation with domestic and international conflict, or whether the tradition of kingship was a cultural icon invaluable to the workings of English constitutionalism, the ideal of the king's justice was a cornerstone of legal and political development in the later middle ages.[35] For those who had property to lose, a clear rule of law was a necessity. The increasing complaints about self-help and corruption in all walks of life may well indicate a real respect for the king's law. The exemplum of the Equitable Judge indicates the growth of respect for the abstract values behind the law, and a decreased emphasis on personal bonds. The absolute standards imposed by the king's courts gradually became valued because they were seen as a means to measure the actions of the subjects--and the king, too.[36]

The Crown made a continuing effort to bring all legal practices within its compass as the means for extending its authority and control. This was done very gradually over the long term; it is only apparent during the reigns of those kings who were able more rapidly and forcefully to adopt existing legal forms to their own purposes, and then intentionally fashion legal practice. One factor never changed: the Crown was the source of the machinery needed to revitalize the common law. In the late twelfth and thirteenth centuries the common law courts were rapidly developed, in part, because of the tradition that the sovereign was the font of justice. The same happened with the conciliar courts in the late middle ages. By the end of

the fifteenth century England had a legal system that could more easily accommodate a scheme that included degrees of sanction and mitigation.

III

During the sixteenth century, it seems, the community values involved in judgment came closer than ever before to converging with the Crown's goals in the administration of criminal law. Studies of English law and society done in the last few decades, and the sources analyzed here, suggest the following course of development.[37] As a result of centuries of exchange that occurred in the process of judgment, mitigation, and sanction, it is possible that the dialectic between ruler and ruled had generated first justifications for mercy, and then for retribution. Popular literature indicates that governing elements in society may well have been nursing a powerful new ideology that began to emerge in the mid-fourteenth century; by the late fifteenth century, those who administered the law came to adopt this ideology--they believed that the salvation of society lay in obedience to a single, secular, authority. During the centuries between Henry II and Henry VII, a rapprochement between traditional law and its values, and the use of this customary law by the Crown, had become feasible. The change in attitudes about the role of mercy in the criminal law was not, of course, an abstract intellectual development, rising in isolation. New beliefs about the function of mercy were due in large part to institutional growth and procedural

innovation that facilitated a more sophisticated law, one better able to calibrate the process of judging and sanctioning the wrongdoer. By the end of the sixteenth century, the reality of mercy in English courts might well be characterized in this way: mercy was understood as equity, a controlled and necessary element of English secular justice, meant to be administered by governing authorities. Those who served on both bench and jury over the centuries had been involved in the gradual redefinition of the place of law, and of mercy, in English life. Even by the early sixteenth century we can detect a national law of shared powers and purposes.

When did this ideology of justice emerge? When were intellectual foundations set and legal practices developed that enabled bench and jury to believe they shared the same attitudes and goals? The traditional position of legal historians is that crucial legal reform occurred from the late fifteenth century to the mid-sixteenth century. However, the outline of changing ideas about justice, judgment, and mercy presented here, admittedly speculative, does suggest that we should see the century or so preceding the reign of Henry Tudor as the age during which the cultural groundwork was set that resulted in formal legal change. This would mean that what is usually seen as the period of law reform is actually the endpoint, the final manifestation of long-term transformations.[38] The emphasis on the very gradual nature of these legal developments

eliminates the unnecessary insistence on the the first two
Tudors as the sponsors of revolutionary reform. Even those
inclined to discern features of continuity that blossomed
into sixteenth-century law reform still tend to mark its
initiation with the Tudor state. But why must legal change
hinge upon the conscious action of innovating kings?
Instead, we should be aware of the extent to which the
transition was initiated between 1350 and 1450. Henry VII
and his son capitalized on beliefs that had already evolved.

The first four decades of the sixteenth century were a
period of enormous change in England. It strains the
historical imagination to think that novel legal practices
came rapidly with the spirit of a new age and were quickly
adopted. The powerful obsession with order in the
commonwealth that dominates the morality plays could not
emerge in only a few years. Rather, we should see,
concerning the relationship between the intellectual ferment
and this age of legal reform, that "the humanist
intellectual climate made it easier for the legal profession
to react promptly and creatively to the new range of
potentially lucrative problems thrust upon it by social,
economic, and jurisdictional forces."[39] Those forces and
the resultant problems, however, were long in coming, and
were not initiated in 1485. The focus on humanism and
reformation in the first half of sixteenth century, and
search for merely anticipatory features in the fifteenth
century, has distracted attention from other long-term

political and legal developments that enabled Henry VII and
Henry VIII to rule as they did: the growth of the legal
profession; national courts and a concomitant national
identity; the paternalistic social control exercised by the
gentry and aristocracy through the courts and Parliamentary
legislation; the tradition that Parliament had a share in
the measure of the real authority of the Crown. Henry VII
and his son capitalized on existing laws and attitudes about
the place of law in English life. Both kings needed the
power of the nobles and also needed to control them. They
squeezed the last drop from every fruitful source of
political power and social control.[40]

The typical understanding of early sixteenth century
criminal law reform requires a legal system that is vague
and primitive. The reality was otherwise. As we have seen
above in Chapter 1, development in the substantive law of
felonies occurred as a result of cases being discussed among
judges and lawyers, legislation, and the emerging influence
of Star Chamber and other conciliar courts. Though
admittedly difficult to trace, nonetheless we can see
throughout the fourteenth, fifteenth, and early sixteenth
centuries the gradual refinement of the scope of felonies
and the element of culpability. Much of the growth of
substantive law and the calibration of sanctions was the
result of regularizing the forms of mitigation. One of the
striking peculiarities of the common law in the criminal
context is that legal development came most often in late

medieval England from statutes which "elaborated the
evasions instead of reforming the law."[41] The law was made
more sensitive by the emphasis on mitigation. Remember,
too, that by the sixteenth century popular literature
reflects the justification for judgment and punishment:
sanctioning one's neighbor is a form of mercy.

There are indications that, just as in the definition
of felonies and appropriate punishments, more general
changes which also effected the administration of criminal
law and seem to come in the first half of the sixteenth
century actually began long before. These, too, were
discussed in Chapter 1. For example, the king's prerogative
courts denote something of the nature of legal development
in these centuries. The conciliar courts met the need for a
forum for justice that ran on a different, simplified, and
more efficient procedure. Such procedural experiment bore
fruit not only for the legal system but for the general form
of governance as well. We can see that the use of bills
promoted the establishment of the conciliar courts, and
facilitated more complex forms of adminstration. The use of
bills eventually resulted in a productive amalgam of private
wrongs and royal interests. The king's prerogative could
only benefit when bills were used to by-pass local powers
and address complaints directly to the king's council.

The debate over the origins, composition, and control
of the jury has raised very useful questions about the rate
of procedural development in the criminal trial, with

particular attention given to the indictment process, and
the initiation of certain practices in the Crown's
prosecution. If it is true that late medieval changes in
the administration of the law were crystalized, and did not
originate, in early sixteenth century "reform," then we may
be justified in presenting the process outlined here of
calibration in judgment, sanctioning, and mitigation. That
is, that society had reached a general consensus about the
definitions of felonies and appropriate gradations of
punishment by the early sixteenth century. The anxieties
expressed in the fourteenth and fifteenth century literature
of mercy about who and how to judge are gone. These widely
shared attitudes were only encased in the law during the
sixteenth-century reform because the shift in ideals had
already occurred, and this new ideology invested the Crown
with total authority to direct the use of the law. "For as
Iustice is the chief vertue, so is the ministracion therof,
the chiefest office....Ye be all Gods, as many as have in
your charge any ministracion of Iustice."[42]

Mercy was now a part of this law, not something outside
or in opposition to it that must be used by Christian men
and women. A striking indication of this basic
reconceptualization of the relationship of mercy and
justice, and the place of each in English law, can be seen
in Christopher St. German's definition of equity. This is
found in the beginning of the First Dialogue of Doctor and
Student, which was written in 1523.[43] The work is part of a

debate on the relationship of the spirituality and temporality. It is also an apology for the common law. St. German claims that the common law is in accordance with conscience; therefore the common law, and not Church decrees, should govern English consciences.[44] The definition of equity follows similar chapters on the laws of God and man, on the fundamental grounds of the laws of England, on reason, and on conscience.[45] Equity, as described by St. German in this treatise, bears startling similarity to the formulations given in fifteenth century literary sources.

> Equyte is a ryghtwysnes that consideryth all the pertyculer cyrcumstaunces of the dede the whiche also is temperyd with the swetnes of mercye. And such an equytye must alway be obseruyd in euery lawe of man and in euery generall rewle therof & that knewe he wel that sayd thus. Lawes couet to be rewlyd by equytie. And the wyse man sayth: be not ouer moch ryghtwyse for the extreme ryghtwysnes is extreme wronge....

Mercy and justice have been reconciled in the notion of equity. The relationship of the law to the essence of justice also has been clarified and refined:

> And therfore to folowe the wordes of the lawe were in some case both agaynst Iustyce & the common welth: wherfore in some cases it is good and even necessary to leue the wordis of the law & to folowe that reason and Justyce requyreth & to that intent equytie is ordeyned that is to say to tempre and myttygate the rygoure of the lawe.[46]

It appears here that the letter of the law has been given the harsh character justice had in the early thirteenth century. Justice is now domesticated, fellow to reason and counsellor of the commonwealth. Equity is a merciful, human

justice.[47]

In the first few decades of the sixteenth century we
see what are the final stages of a transformation in
cultural values that profoundly affected the law. The
dovetailing of what had previously been conflicting ideals
becomes evident at this time. Unusually able sovereigns
exploit available legal procedures and traditions that favor
royal prerogative, and capitalize on the inchoate ideals
that have shifted the locus of authority, formerly divided
between the divine and the temporal--an authority that
ruling estates feel they share in--entirely to the king.
Through the remainder of the century the door is firmly
closed on the remnants of the medieval vision of mercy and
justice in opposition, of opposing goals in divine and
temporal judgment. This has been replaced by a new ideology
featuring a king who wields the sword of divine vengeance.

Through the reign of Mary the fear of disorder--a fear
driven by the tumult associated with the English
Reformation--fuels the establishment of the secular state's
power. The rapid legal and political consolidation of
authority is the culmination of the ruling estates' identity
with the Crown. This identification is evident throughout
the sixteenth-century sources discussed above. Those
political orders that were vital to the Crown, the gentry
and urban groups, came to equate their interests with the
ideology of justice and its social discipline. The economic
benefits enjoyed by the ruling estates distanced them from

the commons. Eventually the elites were persuaded that all
shared the dominant notion of the properly structured social
order and the means to achieve and maintain it.
Disobedience was labeled an activity of the brutal commons,
people that must be controlled through the law's
retribution.[48] The Tudor achievement of order was not
possible without the "collaboration of the majority of the
governing class, who controlled the principal order-keeping
forces available." And those governing needed to be
assimilated and given compelling moral force. The changes
in mentality resulted in the internalization of social
controls and moral sanctions.

The administration of criminal justice continued to
depend to a great extent on the involvement of non-
professionals, on jurymen, local officials, witnesses and
victims. The process relied on a pattern of decisions, on
the way that the local community used the common law against
those who had broken the king's peace. And though mercy was
still an important component in the process of judgment, it
was a different mercy than Englishmen knew in 1200, or 1300,
or 1400. Men were not mitigating the Crown's sanctions with
the reciprocal generosity intended to facilitate a web of
social relationships in the local community. Mercy had been
narrowed to the confines of religion, a religion that had
different requirements for God's forgiveness, a different
understanding of the nature of mercy in human and divine
society, to a Church firmly in control of the Crown. Men

need not be as concerned with attempts to spare wrongdoers from an unsuitably harsh fate. The bench was no longer operating within a stunted range of extreme sanctions; judges had the machinery now to mitigate punishment with a gradation of responses that were more consonant with public expectations. It is no wonder that some historians see, during the last half of the sixteenth century, a jury controlled by the bench. If juries were not simply submissive, then they shared in the belief that punishment was the preferable and necessary tool for securing order through obedience to the Crown and the Church it represented. Men of the estates that administered criminal justice thought they shared in the goals and in a fundamental way the power of the Crown. Reciprocal mercy was no longer central to the language of social exchange. Mercy increasingly was limited to theological matters. The ideology of justice allowed men to think that retribution would best serve the interests of the commonwealth. This transformation of cultural values happened gradually but continuously throughout the sixteenth century. The litigiousness of Early Modern England has been claimed as a sign of a society increasingly conscious of "class" and fragmented by strife. Yet it is possible that many suits, predominantly civil but including criminal, still were initiated to secure extra-curial settlements and reconciliation, that they are a sign of the flexibility of the system for maintaining peace.[49] We might be justified

in locating the origins of a new era in the last decades of
the sixteenth century, as the social ties among all levels
of society that had softened the face to face relations of
the ruling estates and the commons disintegrated.[50] The
integration of secular and religious powers in the authority
of the monarchy, and authority shared by the upper estates,
marks the end of medieval English society.

IV

The emergence of a national instead of local political
consciousness in the later middle ages is difficult to
identify; the variety of ways in which this national
consciousness was created and nurtured gives some sense of
its complexity. For example, the opportunities for social
and economic mobility available to all estates, beginning in
the late thirteenth century, contributed to a familiarity
with other communities and to the diffusion of ideas at many
levels throughout the country. The web of connections that
resulted from geographic and status migrations helped to
form an integrated nation.[51] The subjects of the English
Crown formed a network of interrelated communities, yet they
also had a common identity. This self-definition during the
fourteenth and fifteenth centuries was shaped by such
factors as the colonization of the Celtic countries and
resultant focus on status, the Great Schism, kings'
financial woes, and the end of the Hundred Years War.[52]
Perhaps as important were intellectual developments such as
the growth of a consciously formed and directed body of

public opinion, and a royal ideology that made the English king God's most favored, a legate over subjects.[53]

     We cannot identify an abrupt change in political structuring or a discrete time during which a reformulation into a national political life was accomplished. The long-running debates on the role of the English gentry and aristocracy during the fifteenth and sixteenth centuries underscore the fact that there can be no simple delineation of the mechanics of change in social and political structures. Sometimes in the anticipation and search for the features of change we fail to see the continued operation of the old order, or to grasp its effects on the emerging order. So it may be that some of the very features of late medieval society that we consider the marks of disorder and corruption are actually the sinews of archaic society. In many ways the reciprocal mercy that pervaded medieval society--lordly largess, Christian generosity, forgiveness and reconciliation--were positive qualities of the old order. They shaped and informed the loyalties that were the focal points of stability and integration in a society organized on local bonds of dependence. These mutual ties exerted a strong influence and served as a source of identity longer than usually is thought. Instead of interpreting the fourteenth and fifteenth centuries only as a long period characterized by corruption, by the domination and mayhem of aristocrats and their liveried followers, we might expand that interpretation to include

the survival of the traditional ethos and organizational
forms that were not completely overshadowed by strong
kingship. Society long had been structured on ties of
kinship, blood, and lineage. Aristocratic clienteles were
often characterized by bonds of hereditary dependence on
great aristocratic houses in the region. Good lordship,
with its many uses of mercy, could be as constructive as it
was destructive.

Why then do we find the final passing of this old order
and its ideology of mercy in the first half of the sixteenth
century? The high value once placed on honor and used to
legitimize a politics of violence gave way to new attitudes.
The state emerged with a monopoly over both honor and
violence; there was a "moralization of politics." The Tudor
public order was not possible without the assimilation and
cooperation of the governing estates. In the late middle
ages, the political culture of honor was still pluralist:
there was no total sovereignty or unconditional obedience.
One could change masters if that master could no longer
freely and honorably be served. Under the Tudors, there was
a "nationalization" of the honor system; the community of
honor and the realm became the same. The Crown's authority
was the only lordship, the source of honor, dignity, and
gentility. Civil order depended on the internalization of a
code of obedience by the governing estates. The moralistic
and didactic character of late medieval literature in
England signals the formation of a theory that encouraged

obedience and order. "The total emphasis was on conformity to law as the likeliest guarantee of political and social stability, and on obedience was the best insurance of personal survival."[54]

This formulation of the political and social theory providing the basis for the Tudor monarchy can be found in the idea of the commonwealth. In the commonwealth we see the resolution of conflicts that had surfaced in the literature of mercy, questions such as who is entitled to judge, and how that judgment should be carried out. An authority that formerly belonged to the divine was invested in temporal government, in the king and his ministers. The late medieval literature of counsel, advice, and complaint formed the basis of the ideal of a national community's wellbeing that must be maintained.[55] In the fifteenth century, the commonwealth was represented as something to be recaptured through morality; however, by the end of the sixteenth century many Englishmen thought the good of the commonwealth could be achieved through an active policy.[56] The existence of public forums for debate on the political questions of the mid-fifteenth century saw the development of a new vocabulary about the commonweal to express those ideas about the reform of governance. Significantly, the use of the word commonweal expanded from its use in reference to politics and government in the fifteenth century to encompass in the sixteenth century the reform of society in general.[57]

The political concepts associated with the ideal of the commonwealth typify the basic shift in ideology that is seen in the sixteenth century. An allegory that bears the mark of the Four Daughters of God strongly suggests that this transformation in cultural values occurred before and not during the sixteenth century. Edmund Dudley wrote <u>The Tree of the Commonwealth</u> while imprisoned in the Tower during the year before his execution in 1510.[58] This palest of allegories uses the figure of a tree to treat the structure of the English body politic. He begins by claiming that the principal root in every Christian realm must be the love of God, and the kingdom's prince must be the chief ground for this root. The four roots that form the basis of the commonwealth are justice, truth, concord, and peace. Mercy has not disappeared, but has been displaced by concord in this quartet. The roots are described in terms of the obligations of the king and each estate.

The definition of justice here is inseparable from the English king: "And this roote of iustice must nedes come of our souereigne lord hym self, for the whole auctoritie therof is gyven to hym by God, to mynister by hymself or by his deputies to his subiectes."[59] The second root, truth, is nothing other than a man being true and faithful in all promises, covenants, and words.[60] The third root is called "concord or Vnitie." The greatest attention is devoted to concord; he discusses the obligations of the king, the clergy, the nobility, and the commons. The tree of

commonwealth cannot flourish where there is discord, which brings conspiracy, murder, riot, and rebellion.[61] To establish concord, the king must administer justice and keep hospitality. The fourth root is peace. Since concord has taken the place of mercy and is used to describe the sort of peace that mercy was traditionally thought to bring, peace is no longer the resolution of the offense of wrongdoing, but is the absence of war with other princes and their realms.[62] Just as mercy has been absorbed by the civic virtue of concord, and so defined as part of the administration of justice, it has also been displaced to a description of the right rule of the king, where it is joined with the proper use of the virtue of liberality.

> And for that he wilbe content with his owne trew righte, and not to wrong and oppresse his subiectes, but be to them marciable, liberall and plentuous, as reason shall require, god will reward hym not only with sufficient plentie of worldlie riches but also with the louing hartes of his subiectes.... And for yt he is mercifull and piteous god him self will ponysshe his enemyes, perchaunce sorer than he hym self would, or at the least will induce them to be his true subiectes and seruantes....[63]

The description of how the root of concord begins and grows in the king betrays concord's medieval origin in mercy.

> And in cawses toching hym self to mynister his Iustice discretly medlyd with marcye, or els his iustice wilbe sore, yt it will oftetymes appere to be crueltie rather then iustice. And I suppose ther is no christen kinge hath more nede so to do than our prince and souereigne lord, consydering the greate nomber of penall Lawes and statutes made in his ralme for thard and straighte ponyshement of his subiectes.[64]

In terms of the reorientation of allegiance to a king who spoke for God and men, of ever more closely defined obligations to the commonwealth, mercy had to be carefully controlled. The ideal of maintaining social order and the king's peace was rooted in adherence to an increasingly refined law and the divine sword of vengeance held by the king to punish in this world. The amorphous power of reciprocal largess and pardon belonged to another world.

Mercy in this world was much more carefully defined and belonged in large part to the Crown, to be administered prudently with the country's natural rulers for the good of the commonwealth. Tracing the rise and fall of dominant attitudes about the place of mercy can significantly flesh out our vision of the contours of late medieval social change. The complaints about the failure of justice in the literature of these centuries are inextricable from those about mercy. Modern historians have focused almost exclusively on the failures of the administration of the law, on the fears of crime and disorder; it may well be that for contemporaries, the failure of mercy was deemed the more serious problem. Except within the more limited terms of theology, we have failed to ask why mercy was tied to the endless anxiety about corruption, why mercy needed to be redefined. The failure of existing forms of mercy to meet the needs and expectations of society was often described in economic terms, and certainly the evolution of a market economy beginning in the twelfth century was a significant

factor. Corrupt uses of mercy by the Church and courts were inevitably tied to money.[65] However, the problem is not rooted only in economics, emerging bureaucracies, and "class" structure. During the fourteenth and fifteenth centuries, law had replaced largess as the language of social obligation.

And so we have the dual complaints and anxieties about the functions of justice and mercy in society. In a world increasingly governed by abstract and measured exchange, by laws that were quickly losing the flexibility of customary law, how could the value of mercy, and the worth of the recipient, be calculated? The depth of the intellectual and cultural change that caused the restructuring of society is suggested by the echoes of contemporary developments in the sacrament of penance and soteriology.[66] Penitentials and related pastoralia show an intense concern with the elements involved in passing judgment. Beginning in the early thirteenth century there is an ever-increasing focus on intent and circumstance in the act of wrongdoing, on the objective and subjective aspects of sin, its effect on the individual and the community. Through familiarity with teaching about the sacrament of penance, men and women were encouraged to evaluate their own behavior, and inevitably that of others.[67] From a social perspective, sin had basically been embodied in defective human relations, and penance was restitutive justice. But the shift from penance to discipline diminished consciousness of this, and the

sacrament eventually disappeared as a social ritual. The
emphasis on the examination of the sinner's conscience
resulted in the change in sacramental penance from
satisfaction subsequent to the confession to interior
discipline preceding it. The goal was no longer
reconciliation with others but obedience to the sovereign
authority.[68]

   This social imperative for obedience is clearly seen in
the phenomenon of scaffold speeches in Tudor and Stuart
England. These speeches are a pointed indication of the
extent to which a new cultural understanding of mercy had
been made subservient to the ideology of justice.[69] The
practice became common, probably by the mid-sixteenth
century, of insisting that felons be publicly penitent and
contrite before their executions and acknowledge the
justness of their execution from the gallows.[70] Such
speeches were perhaps common at executions for treason for
some time before they were regularly given by felons
immediately prior to execution. These confessions were
given by men and women of all estates, common thieves,
political zealots, and religious martyrs. There was a
general pattern to this form of final address. Those facing
execution announced they came to die, acknowledged they had
been judged by law, and accepted the penalty. The speakers
emphasized that their fate was representative of that in
store for others who sinned against God and the king; often
they confessed their guilt for a lifetime of wrongdoing.

They declared their true repentance and sought forgiveness.
The reasons for a penitential address by the condemned may
well have included duress and fear, and the genuine belief
that such a confession was a necessary part of dying well.
Belief in divine predestination, and the accompanying
providentialist view that shaped the understanding of the
course of private lives and history in general, meant that
failure was the proof that one had disobeyed God, and
therefore deserved retribution. Confession, repentance, and
begging for forgiveness was then the only possible response
in the final attempt to save one's soul. God revealed his
divine will through the king, his Parliament, and the law:
what other conclusion was there for the condemned but that
he or she broke God's ordinances and so deserved this
fate?[71] Mercy had not been totally abolished from the
theater of judgment. The accused felon had passed through a
number of stages at which mitigation had been possible;
however, throughout the process of the administration of
justice, such mitigation had been understood as the
equitable application of the law, a law the must be followed
to preserve the state and adhere to God's will. By the time
a felon had reached the point of execution, mercy was
something that one could only hope would follow death.
Mercy was relegated to the afterlife. Judgment in this life
belonged to the Crown.

Notes to Chapter 7

[1] For a clear and eloquent description of this view of medieval law, see Susan Reynolds, <u>Kingdoms and Communities in Western Europe, 900-1300</u> (1984; Oxford: Clarendon, 1986) chapter 1.

[2] M. T. Clanchy, "Law and Love in the Middle Ages," <u>Disputes and Settlements</u>, ed. John Bossy (Cambridge: Cambridge UP, 1983) 50.

[3] Reynolds 2:   "The kind of community...is one which defines itself by engaging in collective activities-- activities which are characteristically determined and controlled less by formal regulations than by shared values and norms, while the relationships between members of the community are characteristically reciprocal, many-sided, and direct, rather than being mediated through officials or rulers."

[4] Reynolds, 36-38.

[5] Rebecca V. Colman, "Reason and Unreason in Early Medieval Law," <u>Journal of Interdisciplinary History</u> 4 (1974): 590. For another opinion about medieval mentality and the law, see Charles M. Radding, "Evolution of Medieval Mentalities: A Cognitive-Structural Approach," <u>American History Review</u> 83 (1978): 577-97.

[6] For works on the nature of the ordeal and its decline in use, see: Robert Bartlett, <u>Trial by Fire and Water</u> (Oxford: Clarendon, 1986); Peter Brown, "Society and the Supernatural: A Medieval Change," <u>Daedalus</u> 104 (1975): 133-51; Paul R. Hyams, "Trial by Ordeal: The Key to Proof in the Early Common Era," <u>On the Laws and Customs of England</u>, ed. Morris S. Arnold et al. (Chapel Hill: U of North Carolina P, 1983).

[7] Brown 137

[8] Brown 143.

[9] Hyams 100-17. Bartlett concludes that for contemporaries the ordeal was rational--intellecutally coherent, not contradicted by available evidence, and suited to attaining its ends. In the twelfth century, then, the real issue "was not whether God <u>could</u> <u>have</u> ordained the ordeal but whether he <u>had</u> <u>in</u> <u>fact</u> done so." The debate was about authority, not rationality; Bartlett 164-65, his emphasis. Radding, however, attrtibutes twelfth-century legal change to the development of logic, a new "moral consciousness," and "the rediscovery of an ethic based on

intent." Radding 588-97. For a different perspective on the state of English law pre-1100, see Patrick Wormald, "Charters, Law and the Settlement of Disputes in Anglo-Saxon England," <u>The Settlement of Disputes in Early Medieval Europe</u>, ed. Wendy Davies and Paul Fouracre (Cambridge: Cambridge UP, 1986). Wormald states that English justice in the tenth century resembled that in the age of Henry II far more than supposed.

[10] Robert C. Palmer, "Conscience and the Law: The English Criminal Jury," <u>Michigan Law Review</u> 84 (1986): 787-800.

[11] J. H. Baker, "The Refinement of English Criminal Jurisprudence," <u>Crime and Criminal Justice in Europe and Canada</u>, ed. Louis A. Knafla (Calgary: Lauritis U, 1981) 19.

[12] For discussions of this transformation, see: Reynolds 39-66; Frederick Pollock and Frederic William Maitland, <u>The History of English Law before the Time of Edward I</u>, 2nd ed, 2 vols. (Cambridge: Cambridge UP, 1968) 2.462-511; R. C. Van Caenegem, <u>The Birth of the English Common Law</u> (Cambridge: Cambridge UP, 1973) 1-28.

[13] Reynolds 45.

[14] James B. Given, <u>Society and Homicide in Thirteenth-Century England</u> (Stanford: Stanford UP, 1977) 207.

[15] Given 210.

[16] Patricia M. Hogan, "Medieval Villany: A Study inthe Meaning and Control of Crime in an English Village," <u>Studies in Medieval and Renaissance History</u>, n.s. 2 (1979) 214.

[17] Clanchy, <u>Law and Love</u> 62.

[18] Clanchy, <u>Law and Love</u> 57.

[19] Clanchy, <u>Law and Love</u> 65-66.

[20] E. Ruth Harvey, ed., <u>Court of Sapience</u>, Toronto Medieval Texts and Translations 2 (Toronto: U of Toronto P, 1984) ll. 349-50.

[21] The best description of this may be found in Thomas A. Green, "Societal Concepts of Criminal Liability and Jury Nullification of the Law in the Thirteenth and Fourteenth Centuries," <u>Verdict According to Conscience</u> (Chicago: U of Chicago P, 1985).

[22] For a detailed analysis of the effects of the use of special commissions, see Richard W. Kaeuper, "Law and Order in Fourteenth-Century England: The Evidence of Special Commissions of Oyer and Terminer," Speculum 54 (1979): 734-84.

[23] This is discussed above in Chapter 1, pp. 27-28.

[24] Edward Powell, "Arbitration and the Law in England in the Late Middle Ages," Transactions of the Royal Historical Society, 5th ser., 33 (1983): 50.

[25] Christine Carpenter, "Law, Justice, and Landowners in Late Medieval England," Law and History Review 1 (1983): 213-14.

[26] Richard Kaueper, War, Justice, and Public Order (Oxford: Clarendon, 1988) 383-90. See the second chapter for a detailed consideration of this relationship.

[27] Kaeuper, War 175.

[28] See E. W. Ives, "The Reputation of the Common Lawyers," University of Birmingham Historical Journal 7 (1960): 130-61.

[29] Carpenter 211.

[30] Carpenter 214.

[31] See Powell, "Arbitration;" Edward Powell, "Settlement of Disputes by Arbitration in Fifteenth-Century England," Law and History Review 2 (1984): 21-43; M. T. Clanchy, "Law and Love in the Middle Ages," Disputes and Settlements, ed. John Bossy (Cambridge: Cambridge UP, 1983); J. W. Bennett, "The Medieval Loveday," Speculum 33 (1958): 351-70.

[32] See below, Chapter 1, pages 32-34.

[33] L. R. Poos, "The Social Context of the Statute of Labourers Enforcement," Law and History Review 1 (1983): 27-52.

[34] Robert C. Palmer, "The Black Death and English Law." I thank Prof. Palmer for very graciously sharing this unpublished paper with me, and allowing me to make reference to it in my dissertation.

[35] Kaeuper 392; E. W. Ives, The Common Lawyers of Pre-Reformation England Cambridge Studies in English Legal History (Cambridge: Cambridge UP, 1983).

[36] Carpenter 210-15.

[37] For a sophisticated account of this process from the legal perspective, see Thomas A. Green, "Retrospective" <u>Twelve Good Men and True</u>, ed. J. S. Cockburn and Thomas A. Green (Princeton: Princeton UP, 1988) 359-75, and Green, <u>Verdict</u> 105-52.

[38] Baker, in his introduction to <u>Spelman</u>, sets the crucial period of law reform between 1490 and the 1540s; for Ives, in <u>Common Lawyers</u>, it is from 1450 to 1530.

[39] Baker, <u>Spelman</u> 51.

[40] For some detailed analyses of this Tudor pursuit, see J. R. Lander, "Attainder and Forfeiture, 1453-1509," and "Bonds, Coercion and Fear: Henry VII and the Peerage" <u>Crown And Nobility 1450-1509</u> (Montreal: McGill-Queen's UP, 1976).

[41] The phrase is from Baker, <u>Introduction</u> 279.

[42] Lily B. Cambell, ed., <u>The Mirror for Magistrates</u> (Cambridge: Cambridge UP,1938) 65.

[43] J. L. Barton and T. R. T. Plucknett, eds., <u>St. German's</u> Doctor and Student, Seldon Society 91 (London: Seldon Society, 1975).

[44] Barton xi-xlvi.

[45] The classical English notion of equity has been described as the use of "conscience" that bypassed known but unwritten rules to administer justice in a particular situation, and so required procedures for investigating individual circumstances. Baker, <u>Spelman</u> 37.

[46] St. German 95, 97.

[47] Milsom 80-81.

[48] A succinct description of this is found in the introduction to Peter Clark and Paul Slack, eds., <u>Crisis and Order in English Towns 1500-1700</u> (London: Routledge, 1972), especially pages 13-14.

[49] See J. A. Sharpe, "'Such Disagreement betwyx Neighbors'? Litigation and Human Relations in Early Modern England," <u>Settlements and Disputes</u>, ed. John Bossy (Cambridge: Cambridge UP, 1983), and Keith Wrightson and David Levine, <u>Poverty and Piety in an English Village: Terling, 1525-1700</u> (New York: Academic, 1979). Note Wrightson 139: "It was the possibility of activating networks of personal connection of this kind and touching off a small explosion of conflict within the village that made prosecution of any but the most notorious of offenders so dangerous to local harmony."

[50] For treatments of this change, see the introduction to Anthony J. Fletcher and John Stevenson, eds., Order and Disorder in Early Modern England (Cambridge: Cambridge UP, 1985), and Keith Thomas, Man and the Natural World (New York: Pantheon, 1983).

[51] Michael Bennett, "Careerism in Late Medieval England," People, Politics and Community in the Later Middle Ages, ed. Joel Rosenthal (New York: St. Martin's, 1987).

[52] Ralph A. Griffiths, "The English Realm and Dominions and the King's Subjects in the Later Middle Ages," Aspects of Late Medieval Government and Society, ed. J. G. Rowe (Toronto: U of Toronto P, 1986).

[53] "We ought to think, then, of a public opinion which was constantly being fed by directives, information and legislation sent down from Westminster, and of a local audience for the government's pronouncements not only in county courts but in some 200 county towns as well. It is one mark of the political awareness thus created that petitioners for redress, often men of no particular social importance, are frequently able to cite the statutes in support of their pleas to king and Council." This description of the public opinion of the time is from J. R. Maddicott, "The County Community and the Making of Public Opinion in Fourteenth-Century England," Transactions of the Royal Historical Society, 5th ser., 28 (1978): 36. Also see Charles Ross, "Rumor, Propaganda and Popular Opinion during the Wars of the Roses," Patronage, the Crown and the Provinces, ed. Ralph A Griffiths (Atlantic Highlands, NJ: Hunamities, 1981), and John W. McKenna, "How God became an Englishman," Tudor Rule and Revolution, ed. De Lloyd J. Guth and John W. McKenna (Cambridge: Cambridge UP, 1982).

[54] Mervyn James, "English Politics and the Concept of Honour, 1485-1642," Society, Politics and Culture. Studies in Early Modern England, Past and Present Publications (Cambridge: Cambridge UP, 1986).

[55] For the best discussion of this literature of advice and complaint, see Arthur B. Ferguson, The Articulate Citizen and the English Renaissance (Durham: Duke UP, 1965). Note that Ferguson would not credit any pre-1530 writers with being anything other than moralists. He waits for the "applied humanism" and constructive policy that follows in sixteenth-century England.

[56] Ferguson 408-409.

[57] David Starkey, "After the 'Revolution'," Revolution Reassessed, ed. Christopher Coleman and David Starkey (Oxford: Clarendon, 1986) 208. The use of the idea

of a commonweal is treated in more detail in his chapter
"Which Age of Reform?" in the same text.

58 Edmund Dudley, The Tree of Commonwealth, ed. D. M.
Brodie (Cambridge: Cambridge UP, 1948).

59 Dudley 34-36

60 Dudley 37-39.

61 Dudley 42-48.

62 Dudley 48-50.

63 Dudley 30.

64 Dudley 41.

65 Just a few of the sources that treat interesting
aspects of this are: R. W. Southern, Western Society and
the Church in the Middle Ages (1970; New York: Penguin,
1977); John A. Yunck, The Lineage of Lady Meed,
Publications in Mediaeval Studies 17 (Notre Dame: U of Notre
Dame P, 1963); Felicity Heal "The Idea of Hospitality in
Early Modern England," Past & Present 102 (1984): 66-93; E.
W. Ives, "The Reputation of the Common Lawyers in English
Society, 1450-1550," The University of Birmingham Historical
Journal 7 (1960): 130-61.

66 John Bossy, Christianity in the West 1400-1700
(Oxford: Oxford UP, 1985); Thomas N. Tentler, Sin and
Confession on the Eve of the Reformation (Princeton:
Princeton UP, 1977); Alister E. McGrath, Iustitia Dei: A
History of the Christian Doctrine of Justification, vol. 1
(Cambridge: Cambridge UP, 1986).

67 Some historians have suggested that this may be
related to the beginning of the Western sense of the
individual, defined not only in the context of kin and
community but also in the wider world. For a discussions of
the origins of individualism, see Caroline Walker Bynum,
"Did the Twelfth Century Discover the Individual?" Journal
of Ecclesiastical History 31 (1980): 1-17; Alan Macfarlane,
The Origins of English Individualism (New York: Cambridge
UP, 1978); Colin Morris, The Discovery of the Individual
1050-1200 (New York: Harper Torchbooks, 1972); Walter
Ullmann, The Individual and Society in the Middle Ages
(Baltimore: Johns Hopkins, 1966).

68 Bossy 126-40.

69 Charles Carlton, "The Rhetoric of Death: Scaffold
Confessions in Early Modern England," Southern Speech
Communication Journal 49 (1983): 66-79; J. A. Sharpe,

"'Last Dying Speeches': Religion, Ideology and Public Execution in Seventeenth-Century England," <u>Past & Present</u> 107 (1985): 144-67; Lacey Baldwin Smith, "English Treason Trials and Confessions in the Sixteenth Century," <u>Journal of the History of Ideas</u> 15 (1954): 471-98).

[70] An example of such a scaffold speech can be found at the end of <u>Like Will to Like</u>.

[71] For examples of other works that use cultural artifacts to interpret social attitudes to punishment, see Samuel Y. Edgerton, Jr., <u>Pictures and Punishment</u> (Ithaca: Cornell UP, 1985), and Steven Mullaney, <u>The Place of the Stage</u> (Chicago: U of Chicago P, 1988).

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