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## THE MEDIEVAL BRAIN

# Mental Health and Homicide in Medieval English Trials

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In medieval England, the crown pardoned persons guilty of homicide if they were found to be mentally impaired at the time of the crime. Judges and juries carefully investigated and described the forensics of mental health defendants in the court record. Those suffering from temporary mental health issues, often a result of an illness, were examined under this same set of laws. Most often the guilty were remanded into the hands of family or those of a keeper, a type of temporary guardian, or they were sent to gaol (medieval incarceration in jail or prison) while they awaited their pardons. Some were kept in gaol until mentally stable enough to return to society. Those cases not dismissed because of an obvious mental health condition (as those of persons with childlike behaviour from birth might be) followed a pattern of having the defendant found guilty of the crime, and, because of a lack of intent, they were pardoned and not physically punished other than possibly spending time in incarceration.

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Medieval England had no 'insanity plea', *per se*. In essence, if there was no intent to kill, the English crown left the person and property of the killer unharmed, other than the occasional prison sentence until an individual was healthy enough to rejoin society. This included homicide by accident, by children, by illness, and by those mentally impaired at the time of a crime. This paper examines mental health in cases of homicide, including how and why proving lack of intent diverted the guilty from the most serious punishments.

Mental health terminology can be confusing, especially given changes in terminology from the Middle Ages to the present. In early Europe, law codes made concessions for children and the mentally incapacitated. For example, this is true for Roman law (Krueger, 1954–59: Code v.70.6, vi.22.9/Digest xxviii. 1. 2: 6–7/Institutes ii. 7, § 1; Trenchard-Smith, 2006: 90; Trenchard-Smith, 2010: 39–56) and early Irish law (O'Mahony, 1865–73: 6–13). Medieval England was no different. In the legal treatise *Leges Henrici Primi* (c. 1108–18) (Downer, 1972: 224–5), for instance, there were provisions for the mentally incapacitated (Wormald, 2001: 411–65). Medieval medicine, while not having the same sorts of mental testing, medicines, or categorizations as twenty-first century medicine, had quite a complex system of categories and terminology to describe conditions of mental health (Turner, 2013b: 134–56; Buhner, 2014: 84–87; Hickey, 2017: 133–57). Court records often declared the type of condition and duration—such as 'without interval' or 'since the age of fifteen when he was hit in the head'—and if such a statement appeared without question, dismissal of punishment followed. A mentally incapacitated individual could be momentarily incapacitated while ill, or he could be a person with any number or combination of long-term mental afflictions: *furiosus* (raging mad person), *lunaticus* (lunatic), *freneticus* (frenetic person), *demens* (deranged), *maniac* (maniac), *insanus* (insane), *ignorans* (ignorant), *non compos mentis* (not mentally competent), *fatuus* (foolish), and/or *idiota* (idiot) (Turner, 2013a: 31–62). These terms were legally used, arguably, in four broad categories: (1) of those mentally impaired who were considered unable to fulfil their obligations (for example, serve on a jury) but who were generally passive (and some descriptive terms for conditions also implied that an individual was 'harmless', such as 'X could not have committed this crime since

he is *idiotia*'), which included the *idiotia*, *fatuus*, *non compos mentis*, and *ignorans*; (2) of those with the potential to be violent, for instance the *furiosus*, *freneticus*, *demens*, and *maniac*; (3) of those with some limited lucidity, such as the *lunaticus*; and (4) of those with a general condition, as with the *insanus* (Turner, 2013b: 134–56).

In terms of medieval English law, the mentally impaired could not make contracts (Bratton, 1968–77, vol. 2: 308). By the time of Henry III (1216–1272), if an individual committed homicide but was not in his right mind and, as such, was unable to intend actions, he could not be held accountable for them. Accidents, as well, were not punishable, although a person could be held accountable for negligence. If negligence was found or if an accident was preventable, a lesser punishment would be applied than if the individual had intended to kill someone (Bratton, 1968–77, vol. 2: 423; Butler, 2007: 114–6; Green, 1985: 53–59; Kamali, 2015: 406; Lyon, 1980: 295; Turner, 2013a: 31–62). Authors of legal commentaries considered the mentally disabled to be like children or animals, without the ability to have malice; in other words, malice, comprehension, and intent were legally considered connected concepts. If the guilty could not comprehend the implications or the consequences of their actions, they also could not have malice or intent. Legal authorities, therefore, deemed the severely mentally disabled incapable of premeditating.

Those mentally impaired who harmed others and became a danger to the public or themselves (especially those with temporary *non compos mentis*) were kept in gaol—the medieval equivalent of jail or prison—until well, even if pardoned or acquitted. While to current sensibilities gaol seems like a punishment, in the Middle Ages incarceration kept an individual 'safe' until such time that she could be transferred to family or freed. A pardon or acquittal did not mean 'not guilty'; on the contrary, the perpetrator would still be found guilty of either trespass or felony, but the sentence would be commuted, or lifted, in the case of pardon. If acquitted *before* sentencing—often done if an individual was found so incapable of intent that she would be confused by the trial or her health further compromised—the *charges* would be dismissed. Most of the time, though, the accused was found guilty but mentally ill or incompetent and therefore had her sentence eliminated.

### **An Instance of Homicide by a Mentally Impaired Individual**

Alice Charles, for example, walking along a path near the shore in Maldon, England on 2 July 1371, met up with Catherine Ronges of Messing, a woman from the next village who was most likely known to her. Whether or not they were friends is hard to say; the jury said nothing about what exchange or argument Alice and Catherine had between them. Perhaps there was nothing between them. Whatever transpired, Catherine killed Alice. The jury record provided all sorts of other details surrounding this horrific homicide:

Qui dicunt super sacramentum suum quod die Mercurii prox' post festum predictum anno supradicto quedam Katrina Ronges de Messyng' non compos mentis obiavit predictae Alicie apud le Hethe in villa predicta et ipsam [Maldon'] Aliciam ibidem cum magnis tegulis et seecol in capita ejus percussit et postea injecit eam in mare ibidem per quod receipt mortem (Gross, 1896: 46–7).

(And they [the twelve jurors named in this record] say on their oath that on Wednesday next after the aforesaid feast, a certain Catherine Ronges of Messing, who was insane, met Alice [Charles of Maldon] at the heath in the aforesaid vill [of Maldon] and struck her on the head with great tiles and with sea-coal, and afterwards threw her into the sea, and thus she came to her death.)

The record explained that it was 'Johannes Rakyere' (John Raker) who found poor Alice's body (Gross, 1896: 46). He ran, as he was supposed to, and '*nunciavit quatuor vicinis propinquioribus videlicet*' (notified the four nearest neighbours); their names were recorded: Robert Pepper, John Trass, William Bew, and William Arundel. One of them, maybe all of them, '*qui nunciaverunt Galfrido atte Wode*' (went to explain matters to Geoffrey Atwood, the king's bailiff) (Gross, 1896: 46). Geoffrey sent word to '*uni coronator' comitatus*' (one of the coroners of the county), John of Gestingthorpe; he did not attend the body for three more days, and, on Saturday, John arrived and, with John Raker '*inventor*' (the finder), went over the body and organized an inquest

(Gross, 1896: 46). He presented his findings to the jury of twelve with, of course, the finder and neighbours present. The jury must have been acquainted with Catherine Ronges or otherwise someone came and spoke to them about her during the inquest. Either way, following the list of the members of the jury is the statement above, declaring that Catherine met Alice, beat her with heavy tiles and rocks and tossed her into the sea where she drowned. This description of what happened, or, at least, the jury's version of what happened, was followed by pledges for the finder and for the four neighbours. The four nearest townships also recognized the outcome.

The obvious omission is some explanation of how the jury knew that Catherine was the killer. There is no reference to anyone having seen the crime or of Catherine declaring it her fault. The court record makes no mention of Catherine or any of her family having been at the inquest. Yet, somehow, the jury seemed to know what happened (Butler, 2015: 75–83; Green, 1985: 16–20; Green, 2014: 358–400; Green 2015: 427; Powell, 2014, 78–157; Turner, 2010a: 93). For Catherine's continued future, the key phrase '*non compos mentis*' (not of sound mind) made all the difference to her and her family (Gross, 1896: 47). She was obviously guilty if the description of events can be believed. But who knows that someone else did not do the deed and pin the blame on Catherine, whom they knew would not be held culpable? Still, the simple inclusion of 'who was insane' modified any possible outcome for Catherine. Guilty? Yes. Punishable? No.

Safety was foremost in the minds of medieval communities. Even those who were ill, who thrashed around and killed caregivers or children while sick, saw a physician—sometimes at home and sometimes in prison—but kept under lock and key until their trial and then until pardoned or acquitted. (I overlooked this concept in my early work on medieval English treatment of the mentally impaired. I said that it was '*not pro forma* to dismiss cases in which the guilty party was temporarily or historically mentally incapacitated, even when an entire community agreed that a person had been mentally incapacitated at the time of the crime' [Turner, 2013a: 110] because in about 50 cases from 1250 to 1500 the court found the individual guilty and put them in gaol. Yet, later I learned that the crown pardoned nearly 90%

of these people.) Time in gaol was not considered punishment, like it might be in the twenty-first century. In most cases, at least pre-trial, it was used as a safeguard for both the public and the defendant (Butler, 2015: 205; Loughnan, 2012: 69). By limiting the movements of the accused, the public were kept safe if someone dangerous to himself or others indeed had committed a crime. No one wanted a criminal wandering around, especially one who might be mentally impaired and incapable of restraint. And the defendant was safe from angry members of the public, who might have sought retribution against a pardonable individual, one who might later (if mental health returned) go on pilgrimage, seeking atonement for his uncontrolled actions.

In some cases, the jury acquitted the mentally incapacitated, especially those with a history of mental incompetence, such as an intellectual disability (*idiotia* or *fatuitatis*) (on intellectual disability, see Turner, 2018; Metzler, 2018; Goodey, 2011: 126). Much of the time, the court or crown was called upon to issue a pardon for lack of intent and, while many pardons exist, some have been lost over time. Pardons would have been on small slips of parchment, published patent (for public notification) so that all those concerned would know that the accused was essentially un-punishable, which meant that his property was intact and the crime considered an accident, misadventure, or beyond his control. This common law practice to pardon those without the capacity to intend harm covered all cases of mental impairment.

## **Intent**

Medieval English common law was based on intent. 'Excusable homicide' or 'justifiable homicide' were not terms as such in the Middle Ages, but the idea existed that an individual might kill and, on the one hand, his actions might be *excusatio* (excusable) and not requiring pardon since the homicide was not felonious; or, on the other hand, his actions might be felonious and yet pardonable (Kamali, 2015: 397–421; Hurnard, 1969: 88–92). The lines between murder and manslaughter as well as justifiable homicide and excusable homicide were thin and debated in the Middle Ages (Green, 1972: 669; Green, 1985, 53–59; Kamali, 2015: 398). Part of this confusion came from the fact that both people who had killed by accident (such as

in dropping a heavy object on someone) and by misadventure (such as in a brawl) immediately sought pardon upon arrest rather than waiting for the outcome of a trial. As Naomi Hurnard states, '[e]xcusable slaying, defined in this way, included homicides by lunatics (here the author means all types of mental incapacity) and infants' (1969: 68); although, Hurnard admits, these 'excusable' homicides presented problems for medieval English courts. More recently, Elizabeth Papp Kamali suggests that in cases of 'insanity' the lack of sound mental health 'might negate a felony charge' (2015: 405). Most of the time, cases involving the mentally impaired were excusable and therefore pardonable.

Other types of slaying that were excusable included misadventure, accident and self-defence. An individual might have her sentence commuted if there was little or no evidence of intent. In the case of the mentally incapacitated, the felony of homicide would not be punishable in the same way as those with intent—by loss of life or limb as punishment, typically hanging. For the individual who had been ill and committed homicide against his own spouse or children, there are comments in the court records, at times, that the loss of a family member was punishment enough. If and when an unwitting killer was found absolutely to have been out of her mind at the time of the homicide, she was allowed to keep her properties—lands and movable chattels. Because of their normally sane status in society, these individuals were carefully scrutinized by the court, especially in cases concerning those mentally incapacitated persons with known intermittent or cyclical disorders, such as lunacy. Suicides by those with mental incapacity, likewise, were pardoned, and the crown allowed their heirs to claim the inheritances (Kesselring, 2009: 201–8; Murray, 1998: 162–65). Often judges found incidents involving the mentally incapacitated, including suicides, to be deaths by misadventure, since the perpetrators would not have understood their actions.

Homicide was taken quite seriously in medieval England and was often punishable by death. A death sentence, though, would not be imposed if a lack of intent were proved. Therefore, if the individual who committed homicide did so *without* intent—accidentally or while insane—English law said he was guilty but must



have a commuted punishment or none at all (Lyon, 1980: 465). However, when a mentally incapacitated individual lacking the ability to intend killed another person the court or crown would withdraw any punishment, although the guilty party might stay in prison or gaol until such time as officials believed he or she could live in society safely.

Generally, medieval English law viewed an individual's intent as paramount to whether he (or she) was a morally bad or good person and whether guilty or not guilty (Kamali, 2015: 403–13). Certainly, under the law, a person lacking malice such as a child or a *childlike*, intellectually disabled individual—as mentioned above often *idiota* (idiot), *non intellectus* (without intelligence), or *fatuus* (foolish)—would be found *guilty* of having taken a life, but his punishment would be commuted or eliminated and, often, the courts pardoned him (Bratton, 1968–77, vol. 2: 423; Kamali, 2015: 407). The law was simple on this point: if sane when committing homicide, she was guilty; and if mentally disabled during the homicide, she was guilty but pardonable. Although in medieval England there was no modern equivalent to the 'insanity plea', people not in their right mind and a few who faked insanity (such as William Hawkyns, who feigned being *freneticus* to avoid having to confess to his part in rebellion and the counterfeiting of an archbishop's signature in 1552), regularly used the legal issue of 'intent' to get out of punishment even if guilty of homicide (CSP, 1992: 270).

English legal commentaries on felony support the idea of lack of intent leading to pardon. In the treatise *On the Laws and Customs of England*, Henry Bratton (ca. 1240s–1250s; aka Bracton) explains that the mentally incapacitated, in particular, should not be blamed for their crimes in the same way as those with full mental faculties. Bratton emphasizes, though, that the perpetrator could be held accountable if '*hoc fecerit simulato furore cum dilucidis gaudeat intervallis*' (he acts under pretence of madness while enjoying lucid intervals) (Bratton, 1968–77, vol. 2: 424; Turner, 2013a: 112). During a period of lucidity—for example with lunacy, an affliction understood to have cycles like the moon, perhaps like modern bipolar disorder—an individual would be held accountable for her actions if mentally sane

and healthy at the time of the crime. For instance, around 1300 Robert Clipston, a clerk, *dum ... furore* (while ... insane) and *infirmirate* (by illness) killed his page, Simon de Burgo Sancti Petri (TNA: C 260/12, m 46; Turner, 2013a: 134). After the trial, Robert was in Northampton gaol until his pardon came through later that year. The justices appointed to deliver that gaol, Roger de Brabazoun and William Inge (CPR, 1893: Edward I, vol. 3: 493), echoed the court record, which said that '*Robertus lunaticus est*' (Robert is a lunatic), indicating that he had a cyclical problem, and the rest of the record bears out that assumption. Robert had been a lunatic '*pro quattuordecim annos in eadem infirmitate*' (for fourteen years in the same illness) and killed Simon '*dum laborabat in eadum [sic] infirmitate et in eadem furore*' (while labouring at one time with illness and at another with fury [madness]) (TNA: C 260/12, m 46). Since Robert had an ongoing health condition and 'lunacy', his attorneys argued that Robert's mental condition at the time of the homicide was part of the same illness history—'*eadem x ... eadem y*' (at one time x ... at another y)—to prove that he committed the homicide while mentally incapacitated. In this case, the justices agreed that Robert both had been a lunatic 'for fourteen years' and that he slayed the other person during insanity, '*dum ... in furore*' (while ... in fury). The crown was generous with pardons to the individual who could show a history of mental illness or of intellectual disability. It is in cases of illness with a temporary mental break, or in cases of those mentally impaired persons, such as Robert, who have intermittent conditions that juries, judges and the king (when involved) had to be convinced that the mental incapacity was present at the time of the crime in order for the acquittal, for a remand *ad gratiam* (to [await] pardon), or for pardon to be given.

Evidence that demonstrated a lack of intent included being mentally incompetent or mentally impaired to the point of being nonsensical; or being emotionally unstable or being ill at the time of the homicide. In cases when a mentally incapacitated individual took the life of another, a lack of intent was clear because of a general psychosis. For example, Geoffrey Riche was known in his community to have *furor* (madness). While in *demencia*, he killed Agnes, the daughter of Thomas Fuller, who refused to sleep with him. He cut off her head. He then ran away and hid under a

pig trough and told the neighbour who found him that he was a pig. Later, he tried to reattach Agnes's head with needle and thread (TNA: JUST 1/1109, m 18; Hurnard, 1969: 166–7). Clearly, Geoffrey lived in a confused reality. He probably could not have even understood the concept of life, much less death. Like Catherine Ronges, who also might not have understood the reality of her actions, the impaired Geoffrey Riche was not punished because he was mentally impaired.

Besides demonstrating mental impairment, general emotional instability or having an illness with a component of dementia could prove lack of intent. Emotional instability manifested as either a continual emotion (constant crying, laughing or fearfulness) or an inappropriate emotional response. For example, in 1285, a monk, Brother Walter, went to bed after supper and his roommate, Richard Pessonner, killed him (Turner, 2010a: 81–96). Richard had not dined that evening with the others, since he was ill, which might have been enough to prove lack of intent on its own. Yet, it was Richard's emotional response (laughter) that made clear that he is '*freneticus et furiosus de toto*' (a complete frenetic and raging mad person) (TNA: C 145/44, m 40). Richard awoke from his illness and bashed in the head of Walter with a *formula* (form; what type is not mentioned) and a *trestello* (trestle), which were in the room that might have doubled as a workspace or office. The court description said that he did this while '*freneticus et furiosus*' (frantic and mad) and that he beat Walter badly enough that his *cervices* (brains) came out (TNA: C 145/44, m 40; CIM, 1916–: I.2279; Goodich, 1998: 11; Tracy, 2010: 105–18). Richard expressed amusement as he told his sad tale of homicide. The court deemed the death 'misadventure' and put Richard in prison; a month later he was reportedly still *furiosus* (Turner, 2010; Auffarth & Kerth, 2008). The jurors and court considered Richard's behaviour out of the ordinary and, rather than punishing him with death or bodily harm, he was gaoled and later checked on for a change in his mental state; further, the court found him guilty not of homicide but of misadventure, which carried a lesser charge and was often pardoned.

As well as emotional inappropriateness or nonsensical action and thought, a lack of intent could be proved if the killer had been ill and reacted in the moment while

demented or with another mental corollary at the time of the homicide. Certain phrases, such as *sciens nec bonum nec malum* (knows neither good nor bad [implying no discernment]), prefigured lack of intent. Such phrases include *in furore suo* (in his madness), *quod non est inde culpabit* (this he is not culpable of), and *non pro feloniam aut maliciam* (not for felony or malice); this last often accompanied by 'aforethought', meaning there had been no planning or premeditation. Sometimes a simple rejection of felony with a reference to non-intent sufficed, such as *non de malitia* (not of malice) with a long explanation of illness or mental health condition. All of these phrases summarize the court's impression that, although the person before them committed homicide, there were compelling reasons why the perpetrator should not be punished. A killer, therefore, could not be punished for his or her crime under English law if there were lack of intent; and, the best way to prove no intent was to demonstrate that the individual was mentally impaired and deranged, emotionally inappropriate, or ill. The courts had 'tests' for a person suspected of mental impairment that examined memory, cogitation, and perception, such as stating his name, naming the location of the court, 'counting money, measuring cloth and doing all other things' as asked by the court, and in this case asked of Thomas Grenestede (TNA C 135/63, membr. 8v; Turner, 2013a: 64).

### **Protection**

Courts worked to protect the mentally impaired, even when not involved in a crime. Erratic or irrational behaviour on the part of the mentally impaired, if not yet violent but seeming as if it might become violent, led some people to strike out when not yet under attack. There are times at which a *furiosus* attacked another person and that person killed his mentally impaired attacker; in these cases, judges and juries scrutinized the intent of the sane killer, not wanting to allow the public randomly to kill local 'problematic' individuals (such as a *furiosus*) without clear evidence of self-defence or defence of another (Kamali, 2015: 409–10; Olson, 2000: 185–86). The fact that these cases have such scrutiny of killers of the mentally impaired, even those with witnesses, is good evidence that the mentally incapacitated were likely vulnerable to attack, especially if behaving oddly, such as the man who tried to make

a hole in a woman's front door. The woman killed him, thinking he was trying to break into the house (TNA: JUST 1/463, m 4d; Turner, 2013a: 127). Although there is no record of pardon for this woman, the court summary is quite clear that the man frightened her, and she killed the intruder. Typically, in circumstances like the woman defending her home, a killer argued that she acted in self-defence. There were also occasions when self-defence was argued as necessary because of a misunderstanding between person A and person B who was *non compos mentis* and who frightened person A into reacting with violence. If a sane person was defending against a *non compos mentis* or *furiosus* individual and killed him, the guilty party again would be pardonable if his reaction was to defend against harm and not premeditated.

The courts also granted pardons to those acting to protect their communities from insane persons. For example, in 1203:

Robertus de Herthal' captus pro morte Rogeri filii Swein qui quinque homines occiderat per insaniam se defendendo commissus est commissus est vicecomiti ita quod sit in tali custodia qua prius fuit, quia loquendum est inde cum domino [Rege]. Catalla occisoris v. hominum fuerunt ij. sol. unde Ric' etc. (Maitland, 1888: 31).

(Robert of Herthale is arrested for the death of Roger son of Swein who killed five men during his insanity, killed in self-defence; he [Robert] is committed to the sheriff such that he may be in custody as before, until the lord [King] is consulted. Chattels of the killer of five men: two shillings for which Richard, etc. [the sheriff must account].)

Robert was in custody and the sheriff, presumably knowing the circumstances and possibly having had trouble from Roger in the past, released Robert without trial (Turner, 2013a: 138). Later, Robert was called back into *custodia qua prius fuit* (custody as before) to stand trial in the presence of the king, who in the early thirteenth-century still personally oversaw many cases as part of his itinerate court structure, including the King's Bench and some eyre and assize courts (Maitland, 1888: 31). There must have been some question about why there had not been a trial

when at least one party to the massacre of six persons was alive. This might seem odd if Roger's ailment was not generally known. Robert claimed self-defence, since Roger, out of control in his physical and mental rage, had already killed five of Robert's friends and neighbours. Robert argued that he was compelled to defend the town against further deaths. Certainly, Robert had a case to make. Because the case record was worded awkwardly—suggesting rather than *directly* saying that Robert had no choice, which would have been a more definitive statement of his innocence—the court had to consult the king in 1203. The king would have wanted a full accounting of the matter from the town with such a large number of dead persons and no guilty party. Most likely, Robert was pardoned of the felony charges, perhaps even lauded as the hero of the town, once the crown had more information. Moreover, the crown would have returned the chattels of 'Roger, Swein's son' to his heirs because of his mental health condition and clear lack of intent to commit homicide. The trial of Robert in the death of Roger implies that Robert's pardon was not a foregone conclusion in the eyes of the crown or the law. He needed to stand trial so that not just the local community knew and understood that his actions were necessary, but also so that the populations of surrounding towns would know that Robert had been pardoned of the homicide; and so that Robert and those in his town did not think themselves above the law, nor of the law as superfluous.

### ***Summary of Intent***

Judges and juries were by no means stupid. They watched and questioned witnesses carefully, alert for those feigning madness to get out of punishment. It was rare but possible for juries to find guilty individuals claiming to be mad when they were not. The judge and jury would sentence them to be executed, usually by hanging. In 1240, Sabina de Oretinche claimed at first that her child was stillborn and later that she killed her one-day-old '*temporis demencia fuit*' (while she was demented) (TNA: JUST 1/818, m 47). The jury apparently did not trust the switched explanation of the matter and found that the woman had killed her child *temporis fuit in bano [sic] sensu et bane memorie* (while she was of good sense and good memory), sentencing her to death by burning (TNA: JUST 1/818, m 47). This case is shocking for several reasons. First, it

was rare for anyone claiming mental derangement not to get an acquittal or at least a pardon. Second, if not given a pardon, those claiming mental incapacity normally had their sentences commuted or remanded to another court in case the judge and jury were wrong. Third, extra punishment, such as burning, was normally reserved for women killing the patriarchy—their husbands, fathers, or others in the hierarchy. There seems to be more to the story than is in the record: perhaps this was the male heir, but that, too, seems overly simple for such extraordinary punishment. Perhaps she killed the child out of '*de odio et atia*' (hate or spite) (Olson, 2000: 186). Burning was not common in England no matter the crime and such a violent end raises further questions of intent; of the father's or of the mother's mental state; and of why the king was not consulted (which was often the case under Henry III), especially in such a questionable case of mental incapacity. The case provides evidence that there were exceptions to the way claims of mental incapacity were treated and suggests that courts took great care in determining guilt or innocence, culpability or incapacity.

### **Pardon**

In most trials where there were lingering questions about the guilt of those claiming mental incapacity at the time of the homicide such that acquittal or remand were not deemed possible, the judge notified the king, who looked into the case and found the killer guilty, dismissed the charges or pardoned him or her of wrong-doing. Before 1250, upon occasion, Henry III gave lesser sentences rather than dismissal or pardon, but later in his reign, he granted pardon to all killers who were mentally incapacitated, which continued for all other English monarchs until at least 1550. Kings became less involved with cases of the 'mad' over the fourteenth and fifteenth centuries, only concerning themselves later with cases involving the wealthy. Instead, the royal administrative arm took charge, using sheriffs and bailiffs in tandem with officials from the royal court system, such as judges or commissioners, or, in some cases, employing assistance from Chancery officials, such as an escheator (a royal official who investigated all lands that might escheat [revert] to the crown). This change institutionalized and, with time, bureaucratized the treatment and care of the mentally incapacitated at court.

Pardon did not mean turning these persons loose on society, no matter the medical reason for their mental derangement. If the individual posed a threat, he was given a *custos* (keeper) or was kept in gaol or prison. While not all pardons have been recovered, extant records show that judges and juries implied pardon or acquittal through their choice of words. In some cases, the court remanded mentally impaired killers *ad gaolam ad expectandam gratiam* (to gaol to await pardon)—later abbreviated to *ad gratiam* (to [await] pardon)—because their mental states and the circumstances of the crimes anticipated a pardon. Naomi D. Hurnard suggests that '[t]he boundary between homicides from which acquittal was in order and those which required pardon was not very well defined ... Moreover, final decisions are not always on record' (1969: 109). Judges sometimes remanded the defendant into the hands of his family or a keeper, replacing *gaolam* (gaol) with *custos* (keeper), or to a different court. The courts' actions might have been in part mercy for individuals who would have only mentally deteriorated in gaol cells rather than recovering. In other cases, when an individual reappears in a later administrative or court record, she must have been either pardoned or acquitted from the lesser court to which she was remanded for the earlier homicide (Kamali, 2015: 416; Hurnard, 1969: 152).

Most of the time when a homicide was committed a bailiff took possession of and assessed the lands, goods and chattels of the accused, which would be confiscated from the person and heirs if found guilty. The sheriff would often hold the properties until such time as the crown or administrator reassigned them. In Lincolnshire in 1370 one such killer was William Belle. The bailiffs of Lincoln had custody of William's goods and chattels since he *furiosus in furiositate sua* (a madman in his madness) killed 'Johan' Geppe de Axay alias doni Johan' Belle' (John Geppe of Axay otherwise called John Belle), a possible relative (CCR, 1896-, Edward III, vol. 14; 165). Further, the writ on the close roll states that: '*furiosi crimina in furiositate sua committentes ultimum suppliem subire aut bona seu catalla sua forisface de nire non debent et etiam pro eo*' (madmen committing crimes in their madness ought not by law to undergo the extreme penalty nor to forfeit their goods or chattels) (TNA: C 54/208, m 4). The writ reads as a lesson for the bailiff, and it might well



have been intended as such because it was sent sealed. William was fortunate to have such friends and neighbours that they would stand up for his right to a fair trial in court, especially given the circumstances. In this case, William would have had to appear after recovering his sanity before the case could be decided. Similar statements in cases include the homicide of John de Bristoll by John del Marche in 1293 while he was mentally incapacitated (TNA: C 260/7, m 46b; Turner, 2013a: 127, 138); Walter Makepays, who while mentally incapacitated about 1325 killed Adam de Grenhamerton in York (TNA: C 260/37, m 5, C 260/35, m 9, & C 260/34, m 29; Turner, 2013a: 126–7, 138); and, Robert Angot who, while mentally incapacitated, slew William Maillie and Thomas de Riston in 1310 (TNA: C 260/20, m 27; Turner, 2013a: 127; Hickey, 2017: 140–43). Most likely the king later sent a pardon since the matter had already gone to trial. Acquitted and pardoned individuals as well as those remanded *ad gratiam* (to [await] pardon) for later trial or into the custody of a keeper recovered their properties later when the pardon came through. There was no fine or other punishment, yet, like William, some spent time in gaol until they could be trusted in society. This might be anywhere from a few weeks to several years depending entirely on the circumstances, including the type of crime, the mental health of the perpetrator and his or her status in society.

Individuals without control; those who might unwittingly harm or kill others in society; and those with intermittent conditions, who had yet to convince a jury that they were insane at the time of a crime, were kept in gaol or prison. If pre-trial and mental incapacity was already known or established, the judge or king could simply grant a remand *ad gratiam* into the hands of a court-trusted family member or *custos* (keeper) and turn the individual over to him. The family member or *custos* was to keep an eye on the person. If during a trial, the jury determined that the accused had mental incapacity, they could acquit and the prisoner might be freed or be given gaol or prison time until they 'were well'. Finally, if the trial was over and the individual had been found guilty and mentally incapacitated at the time of the crime, the crown could pardon the individual (and often did), and the person would wait in gaol or prison until the pardon arrived. In 1278, for example, the crown wrote to inquire

about a man in Nottingham gaol and his case in Flint. The crown was investigating its next step, having questions about the accused's mental state at the time of the crime. The reply said that there had been an inquisition before four men who found that on Thursday after St Lucy's Day (15 December 1278), Hugh de Mysin of Selverton hanged his daughter Cecily, then attempted to take his own life 'while in a frenzy and not feloniously' (CIM, 1916: 1.2220; Hurnard, 1969: 162; Turner, 2013a: 119–20). The next step, now that this question had been answered, would have been to issue a pardon and release Hugh once he was well enough to go home. In another case, in 1364 (nearly a century later), William Bene of Gerlethorp killed Alan, the vicar of Walton (TNA: C 260/75, no 37). Three years after his trial, he must have been pardoned (although the pardon is not extant) for the crown granted him permission to leave the country 'on pilgrimage beyond the seas by the king's licence' and named two men as William's attorneys in his absence (CPR, 1893-: Edward III, vol. 13: 373; Turner, 2013: 138–40, 221–6). William was obviously free to travel and not in gaol or in anyone's custody. His earlier transgression must have been pardoned and, if in gaol, he was then released and able to gain a license to travel abroad. Most likely, his pilgrimage was, in part, atonement for the homicide.

Pardons appeared patent, for everyone to read, declaring the change in status from 'guilty' to 'guilty but forgiven'. The original case appeared as a court summary and was copied onto the court roll. There might also have been an entry among the gaol deliveries or on the fine roll, if one was paid, but pardons were for public consumption. Pardon did not just mitigate or commute a sentence; it remitted the legal consequences of the conviction, offering exculpation. As Bryce Lyon explains, '[v]ery young children, for example, could not be held guilty of felony and individuals of unsound mind or those who killed by misadventure or in self-defence were pardoned' (Lyon, 1980: 465; cf. Butler, 2007: 116, 205; Butler, 2006: 141–66; Hurnard, 1969: 166–7). For example, sometime in 1309/10 Nicholas le Stut of Bray killed Isabella, the wife of Peter at Pyry, when *insaniuit* (insane) (TNA: C 260/21, m 10; Turner, 2013a: 123, 127). Later, his pardon appeared patent in December 1310, restating the case in brief and explaining why the pardon had been issued: 'Pardon to

Nicholas le Stut for the death of Isabella, late the wife of Peter ate Pyrye, as it appears by the record of John de Foxle and William de Haredene, justices of gaol delivery for Windsor, that he killed her while he was insane' (CPR, 1893-: Edward II, vol. 1: 304). The pardon explains what happened—'the death of Isabella'—and why the crime was to be pardoned: 'as it appears by the record' of trusted individuals that Nicholas had been insane at the time of the homicide. Other court records fill in the story with the important detail that Nicholas killed Isabella *temporis infirmitate ... et ... furiosi* (by illness ... and ... insane) (TNA: C 260/3, m 19). Since his actions took place during a mental break while ill, the court and country released him once he was well.

After about 1250, homicides by the mentally incapacitated were routinely acquitted or pardoned, and, while personalized with the name and condition of each individual, the wording of acquittals and pardons became formulaic to a great degree and only digressed into such detail for unusual cases. One example of a formulaic record from 1284 is that of Maud Levying, who awaited her pardon in prison. When Maud, wife of Walter, killed their children, she was so *infirmitate* (ill) that she became *furiosa et frenesi* (furious and frantic) until through some horrible thrashing or accident, she killed John and Alice (TNA: C 260/3, no 19; CPR, 1893-: Edward III, vol. 2: 146; Hurnard, 1969: 162; Turner, 2010b: 24). The case for pardon was clear. Matilda was in prison at Windsor at the time the pardon came through: 'Pardon to Matilda, wife of Walter Levying of Buriton, in prison at Wyndesor for the death of John and Alice, her children, as it appears by the record of Salomon de Roff and his fellows, justices in eyre in the county of Berkshire, that she killed them while in a state of fever and madness' (CPR, 1893-: Edward I, vol. 2: 146). From prison, she (now sane) would have had to face the judge again and collect her pardon, which had already been granted; the judge needed to assure himself of her sane conduct before setting her free. Other examples of those who killed their children while ill and awaited pardons in gaol include John Argent of Strutton. He was held in St Edmund gaol for the deaths of his sons, John and Roger, while *furiositate passione ... et non pro feloniam* (suffering with fury ... and not by felony) (TNA: C 260/53, m. 59; Turner, 2013a: 120). His pardon came through in April 1343 and, 'as it appears by the record of John de Shardelowe and his fellows, justices of oyer and terminer in the county of Suffolk that

he (John Argent) killed them in a frenzy of madness' (CPR, 1893-: Edward III, vol. 6: 15). The court or commission of 'oyer and terminer', a Legal French term from Anglo-Norman that literally means 'to hear and determine', was a court in which the judges of the assize would hear felonies and misdemeanours and which, in this case, found that John killed his boys *furiositate passione*. In 1256, Matilda, daughter of Henry, had been put in the Hereford prison for the death of her two sons. The king, when he finally returned to Hereford in his court circuit, pardoned her since she killed them *pro furiam et non pro feloniam aut pro malaciam* (by madness and not by felony or by malice) (TNA: PRO C 66/70, m 5; CPR, 1893-: Henry III, vol. 4: 491). In a 1290 case, John Beneit of Wodenese remained in prison in Oxford, having killed his wife, Alice, and their two daughters, Mariota and Alice, until the officials confirmed that he had killed them '*ratione ... frenesimus morbo acuto laborans et non pro feloniam aut maliciam*' (by reason of ... frenzy while labouring under acute disease and not by felony or malice) (TNA: C 66/109, m. 6; CPR, 1893-: Edward I, vol. 2: 390; Turner, 2013a: 120, 136–7). In each of these cases, the defendant was pardoned because it had been proved to the court and crown that they had killed unwittingly. These individuals, deemed not normally prone to madness, had killed family members while temporarily ill and mentally impaired. Both medical professionals and civil jurists understood *frenesis* (frenzy) as both a symptom and disease. People could suffer frenzy with high fever or acute pain, and a few of those thrashed in their misery until they injured those around them, but they could not be held responsible for their actions.

### ***Securing a Pardon***

At times, family and friends advanced letters and pleas to secure a pardon even before a trial started. In other cases, gaolers and judges wrote to inquire after awaited pardons with long stays in prison (Geltner, 2006 & 2014). Richard Blofot, for example, was in prison for killing his family while experiencing 'frenzy' in 1270. In 1276, his gaolers wanted to let him out—he had been in long enough—but they hesitated because they were not certain he could be trusted in society. The crown sent John de Lovetot, in charge of prison deliveries in Norwich, a commission 'to enquire whether Richard [Blofot] of Cheddestan, said to be imprisoned at Norwich for killing his wife

and two children six years ago in a frenzy, was then mad, and whether he may now safely be released' (CIM, 1916-: vol. 1: 2202). A fuller account in the return indicated that Richard was 'charged with the death of his wife and two children', and he had pleaded not guilty:

[A]s Richard and his wife came from Refham market and came by a marl-pit full of water, Richard was taken with a frenzy, threw himself in and tried to drown himself, but his wife dragged him out with difficulty. Afterwards, being taken home and there behaving quietly, when his wife went out to get necessaries, he was taken with a frenzy and killed his two children. His wife came home and found the children dead and cried out for grief, and tried to hold him, but he killed her in the same frenzy. When the neighbours heard the noise and came to the house they found Richard trying to hang himself, but prevented him. They say that Richard committed all these acts in a frenzy and that he was subject to it (CIM, 1916-: vol. 1: 2202).

John de Lovetot and Hervey de Stanho also added that Richard '*satis mature modo se habet*' (he has enough sense) for the present, but they were not sure that he was 'so far restored to sanity as to be set free without danger, especially in the heat of summer' (CIM, 1916-: vol. 1: 2202). Richard probably pleaded not guilty because, as a man with a history of mental issues, either he could not remember the event, or he was aware but could not help himself or he was counselled to enter a plea of not guilty and let his attorney argue for leniency based on mental incapacity. The jury's emphasis on Richard's frenzy multiple times indicates both that they believed him to have been mentally incapacitated at the time and that they did not want him punished. He was in prison for his own safety as much as that of the community. The duration of his condition, as indicated by 'he was subject to it', covered a long time and presented his condition as a known malady. Richard was pardonable; the commissioners and the crown, however, were unsure he could be trusted in society or in the stressful heat of summer even six years after the event.

In court forensic investigations, like that of Richard's crime, the information and timeline are spelled out uniquely and thoroughly. Richard's case was quite involved;

he grew more violent and out of control on the day of the deaths. In other cases, the timing invoked by particular words gives a sense of the duration and breadth of an individual's condition. In one example from a 1285 writ to the sheriff of Suffolk, James de Ardern, '*furia inventus*' (having been found, or having found [himself], in a fury), killed Eve de Carleton and remained *furiosus* long after (CIM, 1916-: vol. 1: 2275; Hurnard, 1969: 162–3; Turner, 2013a: 124). The wording indicated that this either normally sane person or mentally impaired person who had not normally been violent, suddenly 'found' himself raging. James was not of a right mind when he killed Eve. Perhaps he had a mental break, which led to a period of insanity. The combination of the long duration of the condition and an insistence that James was not of sound mind at the time of the homicide indicates to all parties that he should be pardoned. James probably should have had a *custos* to keep an eye on him for signs of a shift in his mental state. To a great degree, the courts, even after rather formulaic language had been adopted, continued to personalize each case, as it did here with James' '*furia inventus*', demonstrating that medieval English courts looked at each accused with new eyes, making sure that the mental health issue was real, that the accused was indeed guilty and that the right path forward for that individual was taken, whether it was to prison, *ad gratiam* to family, acquittal, or another mode of response.

Many pardons came through for individuals who killed those nearest to them—spouses or children—but there were also a number of pardons or acquittals for those incapacitated with a mental condition who killed neighbours, caregivers, employers, employees or (quite rarely) strangers. The clerk Robert Clipston, for example, killed his page, Simon; Robert had a fourteen year history of mental impairment and was gaoled while awaiting his pardon after he killed Simon (TNA: C 66/120, m 26; C 260/12, no. 46; Turner, 2013a: 125). In another example, Drew de Henle, killed two neighbourhood boys—like Matilda—*pro furiam et non pro feloniam* (by madness and not by felony) (TNA: C 66/70, m 13; Turner, 2013a: 122). Drew's pardon went to the sheriff of Kent who was to deliver him 'out of prison, taking from him security that he will do no such damage anymore' (CPR, 1993-: Henry III, vol. 4: 471). In a quite different case, the 1251 pardon of Emma Hereward was conditional. She was

*demenciam* (demented) when she killed the daughter of Emma Wolurich, three-year-old Maud, *pro furiam* (by fury [madness]) (TNA: C 66/62, m 6; Turner, 2013a: 122). The pardon was to be granted 'on condition that she make peace with the relatives (of Maud) and stand her trial if any will proceed against her' (CPR, 1893: Henry III, vol. 4: 100; Hurnard, 1969: 161). It was quite normal to be told to stand trial 'if any proceed against' the party. Drew de Henle as one example was much the same; yet, in the case of Emma, the addition of 'making peace' is interesting, implying that if she gained forgiveness from the family, there would be no subsequent trial.

Many extant court and gaol records now residing with the Chancery Rolls imply pardon with a phrase beginning *temporis* (at a time of), *dum* (while) or *ratione* (for the reason), accompanied by an explanation for the perpetrator's extraordinary behaviour outside acceptable conduct. Many of these persons were ill with delirium accompanying an illness at the time of the homicide(s). There are several examples: Robert Angot killed William Maillie and Thomas Riston '*dum ... lunaticus est*' (while ... he is a lunatic) (TNA: C 260/20, m 27). William Bachelor of Mentestede killed Juliana, wife of Warin Soutere, '*dum ... furiosus*' (while ... insane) (TNA: C 260/36, m 1; Turner, 2013a: 123). Richard Boche killed his wife, Almarica, '*racione ... non fuit compos mentis sue*' (for the reason ... he was not of sound mind) (TNA: PRO C 260/11, m 27; Turner, 2013a: 119). Amy Brumman cut short the life of her son, John, '*dum ... Amyia remansit in eadem rabie pro xv dies*' (while ... Amy remained in the same rabid state for fifteen days) (TNA: C 260/2, no 41). Agnes Burley killed her daughter Rose after a '*canis rubeus*' (red dog) ran inside and jumped on Agnes in the house: Agnes suffered '*plagam incapite*' (a wound on the head) and became '*frenesis*' (frenzied), killing Rose '*dum ... infirmitate frenesis detenta fuit*' (while ... she remained ill with frenzy) (TNA: C 260/16, no 24). Walter Makepays killed Adam Grenhamerton '*dum ... Waltrus detentus fuit quadam magna infirmitate que dicit frenesis unde freneticus fuit*' (while ... Walter was detained with a serious illness that they say he was mad in his madness) (TNA: C 260/35, m 9). Margaret Talbot killed her two daughters, Agnes and Matilda, '*pro [faded word] tempus antea et post furia continuos*' (for ... the time before and after [the homicide in] continuous madness) (TNA: C 260/20, no 9;

Turner, 2013a: 122). Henry Brumman killed Hugh Faucombe in 1298; he was '*frenesis ... in illa infirmitate*' (mad ... in this infirmity) when he killed Hugh (TNA: C 260/11/m 1a; CCR, Edward I, vol. 2: 143; Turner, 2013a: 123, 137). John Marche killed John Bristoll in Southampton '*dum ire furiosus ... temporis ... insaniam*' (while going insane ... at the time of ... his insanity) (TNA: C 260/7, m 46b). John Bauchun of Sudbury slew his wife, Alice, and the court record says he '*non est inde culpabilus*' (is not culpable) because of '*quadam infirmitate quo dicat lunatic astritus [ascritus?] qua quandem Johannes in eadem infirmitate existens ...*' (a certain illness that he says is [ascribed as (?)] lunacy which when John [killed Alicia] he existed in the same illness) (TNA: C 260/20, m 27). Matilda Carson, in a justice roll record, is described as '*laborans frenesy*' (labouring with frenzy) when she killed her two sons (TNA: JUST 1/909, m 27; Turner, 2013a: 121). Nigel Coppedene, the killer of Henry Rosselyn of Broadwater, is described a bit differently in a Chancery record since he was '*in continuus dementia et furore d(uellum?) persecu(tionem?)* [faded] ... *demencia gesta furiose*' (in continuous dementia and madness [from] persecutions as a prisoner of war ... [experiencing] demented events as a madman) (TNA: C 260/16, m 5; Turner, 2008).

Husbands, fathers, mothers and neighbours, all these people lashed out and accidentally killed their loved ones or friends *dum insaniam* (while insane). Aside from Nigel Coppedene, all appear to have been ill, meaning the reason for the homicide gave the court pause. The common thread is their lack of intent—x killed y while insane and not of felony or malice—deployed in the hope that the judicial authority would accept that reason as a plausible defence for the criminal act committed.

### ***Pardon for Suicide***

Suicide was both a metaphysical as well as a legal issue in the Middle Ages, and while it was not much different from homicide, it had its own set of issues (Murray, 1998: 162–65). In one of his works, Bratton writes, '*Eodem modo quo quis feloniam facere poterit interficiendo alium, ita feloniam facere poterit interficiendo se ipsum, quæ quidem felonia dicitur fieri de se ipso*' (Just as a man may commit a felony by slaying another so may he do so by slaying himself, the felony is said to be done to himself) (Bratton, 1968–77, vol. 2: 423). Normally, if a person committed a felony by suicide,



his assets—chattels, property and goods—would have been forfeit to the crown, just as with homicide or any other felony (Olson 2000: 185–86). Yet Bratton explains that the mentally ill who take their own lives do so by accident, '*nec hereditatem forisfaciunt nec catalla*' (nor do such persons forfeit their inheritance or their chattels) (Bratton, 1968–77, vol. 2: 424). Just as with other pardonable felonies, once pardoned (even if dead) their lands, chattels and other goods passed through the normal channels of inheritance. If they lived, they would retain their own properties, and if they were landlords, they would be granted royal guardians. Since those who would have inherited would have been deprived under circumstances of mental culpability, if their relative was found mentally ill, then not only would the heirs inherit but the accused sometimes could also have a consecrated burial, even if only on the edge of the churchyard. Therefore, when a *post mortem* record of a killer says that goods or lands were passed to other relatives, the guilty person must have been pardoned or otherwise had his sentence absolved. Edmund Mordant, for example, killed his wife then took his own life in 1372. The coroner's inquest was brief, including as much information as necessary about Edmund Mordaunt and how '[o]n Sunday before SS. Simon and Jude in the said year he killed Ellen his wife at Turveye while insane, and on the same day drowned himself while insane in a pond at Turveye' (CIPM, 1904: vol. 13, no. 270: 245; CIM, 1916: v. 11: 8; TNA: C 258/17, m 26, C 258/20, m 31; Turner, 2013a: 115–17, 120). Later, when the king granted to his clerk, Master Simon de Multon, the marriage of 'Robert son and heir of Ellen late the wife of Edmund Mordaunt who held by knight's service of the heir of John Mowbray, 'chivaler', who held in chief, the king's ward', Edmund's estate was intact (CPR, 1893: Edward III, vol. 15: 287). It is interesting that Robert was named as the child of Ellen, implying that he was a child of a previous marriage for her, and Ellen and Edmund had no children. In that case, Robert inherited from both his mother and stepfather with no mention of Edmund's troubles. The crown pardoned Edmund, even in death, and allowed his heirs to inherit because Edmund had not intended to commit homicide or suicide; he had no capacity to intend and, therefore, was blameless.

Legal commentaries of the thirteenth century, like Bratton, support the idea of returning property to those committing murder of the self (suicide), whether

accidentally or because of a mental health condition. Bratton found the mentally incapacitated incapable of felony generally, including suicide. They could not commit suicide if they were intellectually disabled or mentally impaired at the time of an incident since they would have no understanding of their actions. In this legal expert's view, self-murder was beyond such individuals' understanding. Bratton states that whether *mente captus*, *freneticus* or *infantulus* (deranged, frantic, or childlike), those persons who killed themselves did not commit felonies since '*eo quod sensu carent et ratione, non magis quam brutum animal iniuriam facere possunt nec feloniam, cum non multum distent a brutis, secundum quod videri poterit in minore, qui si alium interficeret in minori ætate, iudicium non sustineret*' (they are without sense and reason and can no more commit an *injuria* or a felony than a brute animal since they are not far removed from brutes, as is evident in the case of a minor, for if he should kill another while under age he would not suffer judgment) (Bratton, 1968–77, vol. 2: 424). The passage continues to say, '*[e]t hæc vera sunt quod furiosus non tenetur*' (that a madman is not liable is true) (Bratton, 1968–77, vol. 2: 424). Bratton obviously categorized children, the mentally incapacitated and animals in the same way; that is, he deemed none of them capable of the knowledge and understanding necessary to make sound judgments as fully capable adult humans. For example, when the '*freneticus*' (frantic person), Richard Upton, died three days after he '*percussit seipsum in ventre cum cultello suo*' (stabbed himself in the stomach with his knife), court officials found this death to be '*infortunium*' (misadventure) (Harding, 1981: no. 798; Turner, 2013a: 116). Joan, in another example, '*Trove fut par Roule de Coroner qu un J. fut arage et corut [sic: currebant, fr. curro] en sa ragerie a Tamise et la se neia meime*' (It was found by the corner's roll that one J. was mad and in her madness ran to the Thames and there drowned herself), committing suicide. Because she was '*en sa ragerie*' (in her madness), Joan was not punishable. In all likelihood, no pardon was issued, but the rest of the transcript was clear that while she had no relatives, the crown did not take her chattels, as they would have in normal suicide cases:

[E]t cez chatex furent prisez a iij s. des quex le visconte qe adonqe fut r(epo)  
ndi. Et pur ceo qe la court vit par inspeccion de roule de Coroner et auxi par

les Jurez qe ceo tesmoignent qe ele fut de tel estat qe ele ne poout forfere ceux chatex pur la noun saunte, comande fut a visconte etc. que ceux chateux fuser donez en almoun pur lalme meime cele Jone, et le Roi de ceux chateaux ne se entre mett' plus etc. (Maitland, 1903–88: no. 85, p. 93).

([A]nd her chattels were valued at three shillings, for which the sheriff then [in office] answered. And because the court saw by inspection of the coroner's roll, and also by the jurors who witnessed to this, that she was in such a state that she could not forfeit those chattels because of her illness, the sheriff was commanded etc. that those chattels should be given in alms for the soul of the same Joan, and the King would concern himself no more with those chattels etc.)

Her chattels, since they had no heir to receive them, were given as alms so that those in the church would pray for her. The lack of an official pardon did not matter, not because she had no family to receive it, but because of her mental condition, '*le Roi de ceux chateaux ne se entre mett' plus*' (the King would concern himself no more with those chattels) since he had no basis on which to collect her property (Turner, 2013a: 117). The jury, then, seems to have found the fairest solution they could under the circumstances and the crown was content with their creative resolution. By law, the crown was not entitled to keep her chattels, and, without an heir, the court wanted the best solution for the individual, which in the Middle Ages meant caring for her soul.

## Conclusion

English judges and juries recognized that mentally impaired persons—whether learning disabled, cognitively impaired, or ill—could not formulate, premeditate or ponder the crime of homicide. They acquitted, pardoned, sometimes gaoler or imprisoned until well, but did not execute or bodily harm impaired killers. While extant pardons are not always easy to find, there is strong evidence that most were pardoned since many show up years later in administrative or court records. It would be difficult to say how many individuals with mental health were not aided to make a legal argument based on the limitations of their mental capacity. Those who were assisted were either acquitted or pardoned, even of suicide. Those without self-control or still raging from illness or despair were kept in prison until well and

healthy. Some were held in gaol or prison for years, until such time as they were lucid and could be questioned by a crown representative as to their guilt, innocence and intent. And, while many pardons are missing from the records, the legal language of the time indicates that juries and judges alike were ready to pardon. Sometimes, legal or administrative records surface, indicating that a pardon did come through since the person in question can be found in other records later going about his or her life in quite an ordinary fashion. Medieval English law safeguarded the rights and privileges of the mentally incapacitated using the royal pardon to great extent, but also acquittal or dismissal of the case.

Often judges acquitted the learning disabled and those with clear lack of intent before a case went to trial. However, if the perpetrator had a cyclical disorder, phasing in and out of mental awareness, the judge and the jury wanted to ascertain whether or not he was aware at the moment of the crime. They regularly waited until the individual regained sanity before they asked him, under oath, if he were guilty and for details of the case. Some individuals were ill, suffering from temporary *demencia* when they unknowingly took the lives of their caregivers or children. Still, even though an individual normally had all of his mental functions when healthy, if at the moment of homicide he was *non compos mentis* (out of his mind), such as *acuto morbo laborant* (labouring under acute disease), the judge and jury would wait until he was healthy before continuing the trial. If he were ill at the time of the homicide, he would not be held accountable.

The consequences, then, for homicide were that the trial could be dismissed or the accused could be acquitted, found guilty and sent to prison *ad gratiam*, be remanded to family or a *custos ad gratiam*, pardoned at any step in the process or a combination of the above. A judge or sometimes the gaoler released the guilty party once a pardon was in hand and the person could be trusted in public. If there was doubt concerning a person's behaviour, he or she was guided and watched over by a *custos* or remanded into the hands of relatives, who were to serve in the same capacity as 'keepers'. At the heart of all of this non-punishment was the medieval English concept of intent—and a need to intend a crime in order for punishment to follow—and further, an understanding that those without the ability to conceive or conceptualize could not intend.

## Competing Interests

The author has no competing interests to declare.

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