

## Salvation by Statute: Magna Carta, Legislation, and the King's Soul

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# SALVATION BY STATUTE: MAGNA CARTA, LEGISLATION, AND THE KING'S SOUL

Thomas J. McSweeney\*

## INTRODUCTION

When I was trying to choose a topic for my doctoral dissertation, I actively avoided Magna Carta. With all that has been written on that text, I figured there couldn't be anything new to say about it. As I entered the academy shortly before the 800th anniversary, I was sucked into the Magna Carta vortex, which claimed most of us who work on English law in the thirteenth century (admittedly a relatively small group). I'm glad I was. I found that, even after several hundred years of commentary on the Charter, there are certainly new things to be said about it. As much as we have tried to flee from the long-dominant Whig narrative of Magna Carta, a narrative that relegates Magna Carta to a predefined role as a predecessor to the American Bill of Rights,<sup>1</sup> that narrative still affects the way historians approach the Charter and blinds us to things that have been staring us in the face for centuries. For instance, the preamble of Magna Carta contains a curious phrase that has never received any serious commentary. The second sentence of the Charter states that King John issued it "for the salvation of our soul and for the souls of all our ancestors and heirs[.]"<sup>2</sup> By this language, John announced that Magna Carta could contribute not only to his own salvation, but to the salvation of those who came before him and those

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<sup>1</sup> See U.S. CONST. amends. I–X.

<sup>2</sup> MAGNA CARTA (1215) pmb., reprinted in DAVID CARPENTER, MAGNA CARTA 36–37 (2015) (“*pro salute anime nostre et omnium antecessorum et heredum nostrorum*”).

who would come after.<sup>3</sup> Sir Edward Coke, one of the earliest commentators on the Charter, avoided comment on these words. Although he dissects the Charter line-by-line, when it comes to the “salvation of our soul” language, Coke merely paraphrases the words of the Charter, writing that of the “four notable causes of the making of this great Charter[,]” one is “the health of the Kings soul.”<sup>4</sup> William Sharp McKechnie, in his detailed analysis of the Charter, simply tells us that all four of the causes recited in the Charter’s preamble were pretexts, and that “[t]he real reason [for the Charter’s issuance] must be sought in another direction, namely, in the army of the rebels[.]”<sup>5</sup> He does not analyze the “salvation of our soul” language or ask why it is there. Despite all of the writing on Magna Carta that accompanied the 700th, 750th, and 800th anniversaries, I have been unable to find any literature on the Charter that scrutinizes this language. Is it boilerplate?

This Article will suggest that the language “for the salvation of our soul and the souls of all our ancestors and heirs” was placed in the Charter quite deliberately. The royal chancery used the language “for the salvation of our soul and the souls of all our ancestors and heirs” only in particular contexts.<sup>6</sup> Far from being mere boilerplate, this salvific language is one piece of evidence that thirteenth-century English kings and their chanceries could view lawgiving as an act that could save their souls.

Whoever placed the “salvation of our soul” language in the Charter need not have had any sincere concern for King John’s soul, or those of his ancestors and heirs. John was in a weak position in June of 1215,<sup>7</sup> and language that presented his position as one of pious strength would have worked to his benefit. The salvation language could serve as a reminder to the barons, some of whom were clothing their rebellion in the language of piety, that John had recently placed himself under the protection of the pope and had become a special son of the Roman Church.<sup>8</sup> The fact that this language was regularly used when the king made gifts of alms may have added to

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<sup>3</sup> The first-person plural “we” and “our” in the clause refer to John. English kings began to refer to themselves in charters using the first-person plural—the “royal we”—during the reign of John’s brother and predecessor, Richard I. Pierre Chaplais, *Introduction* to ENGLISH ROYAL DOCUMENTS: KING JOHN-HENRY VI, 1199–1461, at 13 (Pierre Chaplais ed., 1971).

<sup>4</sup> SIR EDWARD COKE, *INSTITUTES OF THE LAWE OF ENGLAND* (1642), *reprinted in* 2 THE SELECTED WRITINGS OF SIR EDWARD COKE 755 (2003) (second part of the *Institutes*).

<sup>5</sup> WILLIAM SHARP MCKECHNIE, *MAGNA CARTA: A COMMENTARY ON THE GREAT CHARTER OF KING JOHN* 190 (2d ed. 1914).

<sup>6</sup> See, e.g., Thomas J. McSweeney, *The King’s Courts and the King’s Soul: Pardoning as Almsgiving in Medieval England*, 40 *READING MEDIEVAL STUD.* 159, 165 (2014) (noting that this language was used especially in the context of almsgiving).

<sup>7</sup> W.L. WARREN, *KING JOHN* 217–32 (1961) (detailing John’s need to appease the pope and avoid open rebellion in England).

<sup>8</sup> Robert Fitz Walter, one of the baronial leaders, styled himself “marshal of the army of God and Holy Church.” CARPENTER, *supra* note 2, at 290. For John’s relationship with Pope Innocent III, see *id.* at 297–98.

its rhetorical effect.<sup>9</sup> It places John in the position of the beneficent almsgiver, bestowing gifts upon his needy subjects. The language may, on the other hand, have been added by the baronial party. It may have been intended to highlight the impiety of John's actions up to that point or to remind John that he was ultimately responsible to God. It may also be one of the devices the barons inserted into the Charter to ensure that John held to its terms. By maneuvering John into a spiritual obligation on behalf of himself and his ancestors and heirs, the barons might have sought to impress upon him that discarding the Charter would imperil the souls of all those in John's line.<sup>10</sup> This Article is not concerned, however, with why the language was added to the Charter. Rather, it is concerned with why anyone in 1215 would have thought it plausible that Magna Carta, a charter of liberties, could save the soul of the king, as well as those of his ancestors and heirs.

This Article will examine the many contexts in which the language "for the salvation of our soul and the souls of all our ancestors and heirs," or similar language, appears in the context of royal justice. It will present several possibilities for understanding the language in the context of Magna Carta. The language "for the salvation of our soul" could be used in several different, but related, ways. First, it could be used when the king was doing something that prevented him from falling into sin.<sup>11</sup> The act of taking land unjustly constituted a sin. Magna Carta promises that John will not take land without a proper judgment of his court.<sup>12</sup> John was essentially making a promise not to commit this sin in the future. Magna Carta may also be read as John's promise to avoid the sin of perjury. At his coronation, the king swore an oath that included, among others, promises to do justice, to eliminate bad customs, and to protect the Church.<sup>13</sup> All of these promises are implicated in Magna Carta.<sup>14</sup> Magna Carta, therefore, may have been understood as a long and detailed reaffirmation of the coronation oath, a promise to uphold it properly. Foreswearing an oath constituted

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<sup>9</sup> See McSweeney, *supra* note 6, at 165.

<sup>10</sup> I suspect that this language, along with the rest of the preamble, was added by John. As we will see, the preamble echoes language in another charter, the Charter of Free Elections, that issued from John's chancery a few months before Magna Carta. See generally CHRISTOPHER R. CHENEY, POPE INNOCENT III AND ENGLAND 168–70 (1976). Sophie Ambler has recently suggested that, in the preamble, the witness list of people from whom John took counsel before issuing the Charter was added by John and his ministers to indicate that he would henceforth be taking advice from his magnates before making important decisions. Sophie Ambler, *The Witness Lists to Magna Carta, 1215–1265*, MAGNA CARTA PROJECT (July 2014), [http://www.magnacartaresearch.org/read/feature\\_of\\_the\\_month/Jul\\_2014](http://www.magnacartaresearch.org/read/feature_of_the_month/Jul_2014) [<http://perma.cc/FM3W-CA4G>]. Notably, none of the barons who were in rebellion against John were included on the list, suggesting this list was the work of John's side. D.A. CARPENTER, *The Dating and Making of Magna Carta*, in THE REIGN OF HENRY III 9–10 (1996).

<sup>11</sup> See *infra* Part II.C.

<sup>12</sup> MAGNA CARTA (1215) ch. 39, reprinted in CARPENTER, *supra* note 2, at 52–53.

<sup>13</sup> H.G. Richardson, *The English Coronation Oath*, 24 SPECULUM 44 & n.4 (1949).

<sup>14</sup> MAGNA CARTA (1215).

perjury, a very serious sin.<sup>15</sup> The Charter could save the king's soul because it constituted a promise not to fall into sin in the future. Second, this language could be used when the king was making reparation for sin he had already committed. John's promise not to take land except by proper judgment did not come out of nowhere; he had been accused of taking land from his barons unjustly.<sup>16</sup> In addition to promising not to take land unjustly in the future, John also promised to return land that he had taken in the past, an act of restitution, which was considered a precondition for the remission of sin.<sup>17</sup>

The royal chancery also used this salvation language in a third way, however. The words "for the salvation of our soul" appear in association with meritorious acts that could contribute towards the king's salvation. The chancery used the language "for the salvation of our soul and the souls of all our ancestors and heirs" when the king made gifts of alms to the Church or to paupers.<sup>18</sup> These gifts of alms could atone for sin, but in a different way than restorative acts, such as returning land that was taken unjustly, could.<sup>19</sup> Gifts of alms, when made to the right people, could atone for sins that were completely unrelated to the gift.<sup>20</sup> There has been little work drawing connections between the administration of royal justice and the administration of royal alms, but the two were related in the thirteenth century. I have argued in prior work that the king and his counselors understood pardoning to be a form of almsgiving.<sup>21</sup> The king therefore understood certain aspects of the adjudicative process as acts that could atone for his sin. Might he have understood acts of legislation in the same way?

This Article will suggest that English kings of the thirteenth century could conceive of the law and their administration of it, both through acts of judgment and acts of lawgiving, as a treasury of potential alms from which they could draw for their own salvation.<sup>22</sup> They treated pardons, reversals of outlawry, and even the provision of justice itself as acts that could save not only their own souls, but those of their ancestors, successors, and relatives.<sup>23</sup> I will present evidence that English kings and their chanceries could perceive acts of lawgiving, such as Magna Carta and the later statutes, as acts of almsgiving, as well.<sup>24</sup>

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<sup>15</sup> 40 THOMAS AQUINAS, *SUMMA THEOLOGIAE* II-II, q. 98, arts. 1–3, at 101–09 (Thomas Franklin O'Meara & Michael John Duffy trans., 1968).

<sup>16</sup> J.C. HOLT, *MAGNA CARTA* 93–94 (3d ed. 2015).

<sup>17</sup> *MAGNA CARTA* (1215) ch. 52, reprinted in CARPENTER, *supra* note 2, at 56–57; CARPENTER, *supra* note 2, at 145; MARIE DEJOUX, *LES ENQUÊTES DE SAINT LOUIS: GOUVERNER ET SAUVER SON ÂME* 335–36 (2014).

<sup>18</sup> McSweeney, *supra* note 6, at 165.

<sup>19</sup> *See id.*

<sup>20</sup> *See generally* McSweeney, *supra* note 6.

<sup>21</sup> *See generally id.*

<sup>22</sup> *See infra* notes 86–90 and accompanying text.

<sup>23</sup> *See infra* Part II.A.

<sup>24</sup> *See infra* Part III.C.

## I. THE KING'S SOUL AND THE FRENCH CONNECTION

The king may have had two bodies, as Ernst Kantorowicz famously put it, but he also had a soul to look after.<sup>25</sup> As the proto-bureaucracies of administrative kingship developed in the twelfth and thirteenth centuries, the function of safeguarding the king's soul actually seems to have become one of the duties of the king's ministers.<sup>26</sup> Parts of the powerful and efficient royal administration were directly responsible for almsgiving for the soul of the king and his relatives, and the majority of the king's almsgiving had been institutionalized by John's reign.<sup>27</sup> The king's almoners made gifts to the poor; the chancery and exchequer processed distributions of land and money to religious houses for the king's soul; and sheriffs paid established alms to religious houses in their counties out of the county farm.<sup>28</sup> Scholars have not incorporated the royal courts into the picture of royal almsgiving, however. To paint in very broad strokes that do not do full justice to the rich literature on medieval England, the framework for debate about medieval English government was essentially built to answer the question, "how did we get to limited monarchy?" Historians of the medieval English constitution started off by looking for the rise of representative institutions, such as parliament.<sup>29</sup> As nineteenth-century constitutional history gave way to twentieth-century administrative history, historians began to ask different questions, but the end in sight was the same. T. F. Tout, in his *Chapters in the Administrative History of Medieval England*, moved away from study of the great councils and parliaments and towards the administrative apparatus of royal government that operated in-between these infrequent meetings of the magnates.<sup>30</sup> In asking questions like when certain administrative departments, such as the royal courts and the exchequer, moved "out of court" and became independent of the person of the king, Tout was asking questions about the move towards limited government, as well, just in a different way.<sup>31</sup>

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<sup>25</sup> ERNST KANTOROWICZ, *THE KING'S TWO BODIES: A STUDY IN MEDIAEVAL POLITICAL THEOLOGY* 3–6 (1957).

<sup>26</sup> Virginia A. Cole, *Royal Almsgiving in Medieval England: A Study in the Ritual and Administrative Construction of Kingship 181–206* (2002) (unpublished Ph.D. dissertation, Binghamton University) (on file with Binghamton University Library).

<sup>27</sup> Christopher Harper-Bill, *John and the Church of Rome*, in *KING JOHN: NEW INTERPRETATIONS* 289, 299 (S. D. Church ed., 1999).

<sup>28</sup> Cole, *supra* note 26, at 181–206; Sally Angharad Dixon-Smith, *Feeding the Poor to Commemorate the Dead: The Pro Anima Almsgiving of Henry III of England, 1227–72*, at 30–31, 37–38 (unpublished Ph.D. dissertation, University College London) (PQDT 10010404).

<sup>29</sup> For an excellent historiographical essay on England in the thirteenth century, see ALAN HARDING, *ENGLAND IN THE THIRTEENTH CENTURY* 16–67 (1993).

<sup>30</sup> *See id.* at 47. *See generally* T. F. TOUT, *2 CHAPTERS IN THE ADMINISTRATIVE HISTORY OF MEDIAEVAL ENGLAND: THE WARDROBE, THE CHAMBER, AND THE SMALL SEALS* (1920).

<sup>31</sup> HARDING, *supra* note 29, at 47.

Historians of France have never been quite so focused on the growth of representative institutions; they don't have constitutional monarchy in the backs of their minds when they turn to the Middle Ages. Instead, they have royal absolutism and its violent rejection during the French Revolution to look forward to. Historians of medieval French government have been concerned with the medieval origins of 1789, not 1689.<sup>32</sup> Historians of medieval French government have, therefore, tended to focus on the institution of kingship.<sup>33</sup> This choice is not entirely dictated by subsequent history; the medieval evidence also points towards kingship as key to understanding government in medieval France. Where the English in the Middle Ages could measure the worth of their royal government by looking to whether it abided by the limits placed upon it by Magna Carta, the French tended to use the memory of a royal saint, St. Louis, or King Louis IX (r. 1226–1270), as their benchmark for good government.<sup>34</sup>

Marc Bloch's *The Royal Touch*, on the king's ability to cure scrofula as a mark of his sovereign power, is a key example of literature that focuses on the practices of kingship.<sup>35</sup> As Bloch demonstrates, kingship had a mystical side to it.<sup>36</sup> The kind of appreciation for the personal and mystical aspects of kingship that we can see in *The Royal Touch* has even transferred over to studies that focus on the growing royal bureaucracy of thirteenth-century France, such as William Chester Jordan's *Men at the Center*<sup>37</sup> and Marie Dejoux's *Enquêtes de Saint Louis*.<sup>38</sup> Jordan paints a picture of a royal administration under Louis IX tasked with the salvation of the entire realm.<sup>39</sup> Dejoux examines King Louis' campaign to make amends for the misdeeds of his own reign as well as those of his predecessors, and the bureaucracy he constructed to carry it out.<sup>40</sup> Louis' hagiographers emphasized his attention to justice.<sup>41</sup> The hagiographers emphasize the king's devotion to justice through stories in which

<sup>32</sup> There is a long tradition in France of understanding the Middle Ages in relation to the French Revolution. See, e.g., ALEXIS DE TOCQUEVILLE, *THE OLD REGIME AND THE FRENCH REVOLUTION* 38 (John Bonner trans., 1856) ("The Revolution was designed to abolish the remains of the institutions of the Middle Ages[.]").

<sup>33</sup> See, e.g., MARC BLOCH, *THE ROYAL TOUCH: MONARCHY AND MIRACLES IN FRANCE AND ENGLAND* (J. E. Anderson trans., 1961); M. CECILIA GAPOSCHKIN, *THE MAKING OF SAINT LOUIS: KINGSHIP, SANCTITY, AND CRUSADE IN THE LATER MIDDLE AGES* (2008).

<sup>34</sup> GAPOSCHKIN, *supra* note 33, at 237.

<sup>35</sup> See BLOCH, *supra* note 33, at 3 (discussing the widespread medieval belief that physical contact with a sovereign could cure a variety of diseases). Bloch discusses touching for scrofula by English kings, as well as French. *Id.* It took a historian of France, however, to notice this aspect of kingship.

<sup>36</sup> *Id.* at 108 ("[I]n common opinion, kings were not simple laymen. The very dignity belonging to them was generally believed to endow them with an almost priestly character.").

<sup>37</sup> WILLIAM CHESTER JORDAN, *MEN AT THE CENTER: REDEMPTIVE GOVERNANCE UNDER LOUIS IX* (2012).

<sup>38</sup> DEJOUX, *supra* note 17.

<sup>39</sup> JORDAN, *supra* note 37, at 36.

<sup>40</sup> See generally DEJOUX, *supra* note 17.

<sup>41</sup> GAPOSCHKIN, *supra* note 33, at 42–43.

Louis meted out justice in person, sitting on a cushion or under a tree dispensing justice to the rich and poor.<sup>42</sup> Things were not, in reality, this simple. Louis was at the top of a vast legal bureaucracy, which included institutions like the *parlements* and royal officials in the provinces known as *baillis*, *sénéchaux*, and *prévôts*, who dispensed high and low justice in the king's name.<sup>43</sup> Louis sent out teams of *enquêteurs* who were tasked with collecting complaints against the king's officials and correcting their abuses.<sup>44</sup> Louis instituted the inquests as much out of concern for his soul as out of concern for good government.<sup>45</sup> In his letters commissioning the *enquêteurs* of 1268, Louis tells us explicitly that he commissions them "desiring to provide for the salvation of our soul, concerning restitutions and emendations from our deeds . . . ."<sup>46</sup> Louis was concerned that the misdeeds of his royal bureaucracy were placing his soul in peril, and he created a bureaucracy to make restitution.

I do not mean to imply that historians of medieval England have ignored the practice of kingship completely. Helen Lacey's *The Royal Pardon* has shown that English kings often used royal pardons to demonstrate their sovereignty, with little attention paid to the justice of those pardons.<sup>47</sup> Karl Shoemaker has demonstrated that rights of sanctuary were closely connected to the exercise of kingship, and the ability to grant sanctuary was an important mark of sovereignty in medieval England.<sup>48</sup>

Some historians have even begun to look more closely at the mystical side of royal administration in England. James Q. Whitman's *Origins of Reasonable Doubt* argues that certain practices of the English royal courts were designed to prevent the damnation of judges.<sup>49</sup> Whitman discusses the ways local communities avoided moral responsibility for inflicting blood punishment by shifting the responsibility for conviction onto God's shoulders in the ordeal; later, when the ordeal was unavailable, judges, not wanting to bear the risk of damnation for a bad judgment, shifted the responsibilities onto juries.<sup>50</sup> Although Whitman focuses on the salvation

<sup>42</sup> *Id.* at 42–43, 54, 121.

<sup>43</sup> JOHN W. BALDWIN, *THE GOVERNMENT OF PHILIP AUGUSTUS: FOUNDATIONS OF FRENCH ROYAL POWER IN THE MIDDLE AGES 125–27* (1986); DEJOUX, *supra* note 17, at 191–92.

<sup>44</sup> DEJOUX, *supra* note 17, at 2. I have left the term "*enquêteurs*" untranslated. The English equivalent would be "inquisitors," but that term has taken on connotations in English that are not implicated in Louis' inquests, which had nothing to do with the trial of heretics.

<sup>45</sup> *Id.* at 75–76.

<sup>46</sup> "*Notum facimus quod nos, saluti anime nostre providere volentes, circa restitutiones et emendationes a nobis faciendas in Ambianensi, Viromandensi et Silvanectensi balliviis . . . .*" 24 M. LÉOPOLD DELISLE, *RECUEIL DES HISTORIENS DES GAULES ET DE LA FRANCE* 7 (1904); *see also* DEJOUX, *supra* note 17, at 75–76, 331.

<sup>47</sup> *See generally* HELEN LACEY, *THE ROYAL PARDON: ACCESS TO MERCY IN FOURTEENTH-CENTURY ENGLAND* (2009).

<sup>48</sup> KARL SHOEMAKER, *SANCTUARY AND CRIME IN THE MIDDLE AGES, 400–1500*, at 113–14 (2011).

<sup>49</sup> *See generally* JAMES Q. WHITMAN, *THE ORIGINS OF REASONABLE DOUBT: THEOLOGICAL ROOTS OF THE CRIMINAL TRIAL* (2008).

<sup>50</sup> *Id.* at 55–57, 82, 122, 128.



of the judge and jury, his story could also be told as a story of royal government. Judges were the king's delegates who were appointed "to rule in the realm and sit in the royal chamber, on the very seat of the king, on the throne of God, so to speak, . . . in the place of the king," as one royal justice of the thirteenth century put it.<sup>51</sup> Ordeals and juries may have allowed the king to dodge a certain amount of his moral responsibility and avoid the possibility of damnation.

Indeed, English kings of the thirteenth century may have seen their courts as even more directly related to their salvation than French kings did. Where Louis' concern for his soul stemmed from a fear that his judges were committing wrongs in his name, English kings appear to have treated their courts as treasuries of merit, from which they could draw to atone for sins unrelated to the courts themselves.<sup>52</sup> As we will see, King John thought that pardoning accused felons could save his mother's soul.<sup>53</sup> Henry III used pardons to save the souls of his sister and his nephew, who was, incidentally, Louis IX's son.<sup>54</sup> When they pardoned amercements, felons, and outlaws, English kings understood their act of pardoning to be an act of merit that could wash away the stain of sin and help them towards salvation.<sup>55</sup>

## II. ALMS IN THE KING'S COURTS<sup>56</sup>

### A. John's Blanket Pardon

In 1204, King John issued letters patent to his sheriff in Dorset, instructing him to release "all prisoners, whatever the cause for which they may have been detained, whether for murder, felony, or larceny, or breaking the forest laws, or for any other accusation brought against them whatsoever."<sup>57</sup> He instructed them to do so "for the love of God and the salvation of the soul of our very dear mother," Eleanor of Aquitaine, who had died a few months earlier.<sup>58</sup> Some provisos were attached. The prisoner was required to find sureties for his future good behavior if he wanted to

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<sup>51</sup> 2 BRACTON ON THE LAWS AND CUSTOMS OF ENGLAND 20 (George E. Woodbine ed. & Samuel E. Thorne trans., 1968) [hereinafter BRACTON].

<sup>52</sup> See *infra* Part II.B.

<sup>53</sup> See *infra* note 58 and accompanying text.

<sup>54</sup> See *infra* notes 78–80.

<sup>55</sup> McSweeney, *supra* note 6, at 163–67.

<sup>56</sup> The following discussion is derived, in part, from McSweeney, *supra* note 6.

<sup>57</sup> "[L]iberasse et quietos clamasse . . . omnes persones incarceratos pro quacumque causa detenti fuerint sive pro murthero sive feloniam sive latrocinio sive pro foresta sive pro quocumque alio recto . . ." 1 ROTULI LITTERARUM PATENTIUM IN TURRI LONDINIENSI ASSERVATI, pt. 1, at 54 [hereinafter RLP] (Thomas Duffus Hardy ed., 1835); McSweeney, *supra* note 6, at 171–72.

<sup>58</sup> "[p]ro amore Dei et salute animae karissimae matris nostrae." 1 RLP, *supra* note 57, pt. 1, at xvii, 54. I would like to thank Karl Shoemaker for bringing this pardon to my attention.

remain within the realm.<sup>59</sup> If he could not, he would still be set free, but would be required to abjure the realm, leaving England, never to return on pain of death.<sup>60</sup> Murderers had to make amends with the families of their victims.<sup>61</sup> Jews and prisoners of war taken in the recent war with France would not be released.<sup>62</sup>

A pardon could, of course, be understood as an act of justice. Gratian's *Decretum*, one of the major textbooks used by students of canon law in the twelfth and thirteenth centuries, contains a letter of St. Jerome titled "The duty of the king is to suppress the evil and to lift up the good."<sup>63</sup> In the letter, Jerome explains that it is the king's duty to do justice, to make judgments, and to protect the oppressed.<sup>64</sup> Gratian added at the end of the letter that "it is necessary, however, that faith and reverence be preserved by them, the princes and the potentates, because he who will not have offered them to God will not attain rewards," presumably referring to the rewards of Heaven.<sup>65</sup> In England this duty was reflected in the oath the king took at his coronation. By the thirteenth century, that oath included a promise to do justice.<sup>66</sup> Many of the pardons of the thirteenth century were granted for self-defense or killing by misadventure, cases where the killer was seen as less culpable than one who killed in cold blood.<sup>67</sup> The king may simply have been doing his job when he pardoned a person who killed in self-defense, preventing the unjust execution of a person who was not actually culpable. Moreover, medieval theologians warned the judge about the spiritual perils of an unjust execution.<sup>68</sup> The judge who unjustly condemned a

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<sup>59</sup> *Id.*

<sup>60</sup> *Id.*; WILLIAM CHESTER JORDAN, FROM ENGLAND TO FRANCE: FELONY AND EXILE IN THE HIGH MIDDLE AGES 115–16 (2015).

<sup>61</sup> 1 RLP, *supra* note 57, pt. 1, at xvii, 54.

<sup>62</sup> *Id.* The reason for this was probably economic. Prisoners could be ransomed. Jews in the king's custody were probably there so the king could tallage them. See Robert C. Stacey, *The English Jews Under Henry III*, in THE JEWS IN MEDIEVAL BRITAIN: HISTORICAL, LITERARY AND ARCHAEOLOGICAL PERSPECTIVES 41, 42–45 (Patricia Skinner ed., 2003) (describing John's levying of tallages on the Jewish population in 1207 and 1210).

<sup>63</sup> "*Malos conprimere, et bonos sublevare regum officium est.*" DECRETUM MAGISTRI GRATIANI, C. 23, q. 5, c. 23, in 1 CORPUS IURIS CANONICI 937 (Aemilius Friedberg ed., 1879) [hereinafter DECRETUM]. Despite the appearance of new collections of papal decretals around the turn of the thirteenth century, the *Decretum* remained an important part of the canon law curriculum at the University of Oxford throughout the century. L. E. Boyle, *Canon Law Before 1380*, in 1 THE HISTORY OF THE UNIVERSITY OF OXFORD 531, 534–35 (J.I. Catto ed., 1984).

<sup>64</sup> DECRETUM, *supra* note 63, at C. 23, q. 5, c. 23.

<sup>65</sup> "*Ipsis autem principibus et potestatibus fidem et reverentiam servari oportet, quam qui non exhibuerit apud Deum premia invenire non poterit.*" *Id.*; McSweeney, *supra* note 6, at 166.

<sup>66</sup> H. G. Richardson, *The English Coronation Oath*, 23 TRANSACTIONS ROYAL HIST. SOC'Y 129, 129 (1941).

<sup>67</sup> See LACEY, *supra* note 47, at 60; Naomi D. Hurnard, *The King's Pardon for Homicide Before A.D. 1307*, at 36–37 (1969).

<sup>68</sup> WHITMAN, *supra* note 49, at 4, 39.

man risked his own damnation.<sup>69</sup> Theologians suggested that, when in doubt, the judge take the safer course and acquit.<sup>70</sup> By pardoning an innocent, the king may simply have been avoiding sin. This may explain why a pardon could be salvific.

John's blanket pardon was not an attempt to discharge the king's duty to do justice, however. John did not choose whom to pardon on the basis of their culpability.<sup>71</sup> Everyone who was held in the royal prisons was to be freed, with the exceptions of prisoners of war and Jews.<sup>72</sup> In fact, John's blanket pardon of countless accused felons, guilty or innocent, could very easily be read by John's contemporaries as an abdication of his duty to do justice. Eleanor of Aquitaine, the beneficiary of John's pardon, had herself issued a similar blanket pardon in 1189 for the soul of her husband and John's father, Henry II.<sup>73</sup> The monastic chronicler William of Newburgh—who attributed the pardon to the newly crowned King Richard, on whose behalf Eleanor was acting<sup>74</sup>—complained that “these pests, coming out of prison on account of his clemency, may perhaps prowl more confidently.”<sup>75</sup>

We find further evidence that the salvific nature of these pardons was unrelated in John's mind to his duty to do justice in the fact that the pardons were not intended to save John's soul. Rather, they were intended to save his mother's.<sup>76</sup> John had a duty to do justice; Eleanor of Aquitaine had no such duty. She had not taken the coronation oath.<sup>77</sup> She could not have been blamed had an innocent person been hanged.

We can see this same disconnect between duty and spiritual benefit in several felony pardons made by Henry III later in the century. In 1260, while Henry was in France to conclude the Treaty of Paris with Louis IX, Louis' son suddenly died at

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *See, e.g.*, 1 RLP, *supra* note 57, pt. 1, at xvii, 54 (indicating that all prisoners, except Jews and prisoners of war, whatever their crime, were to be released).

<sup>72</sup> *Id.*

<sup>73</sup> ROGER OF HOWDEN, 3 *CHRONICA MAGISTRI ROGERI DE HOUEDENE* 4 (William Stubbs ed., 1870); JOHN HUDSON, 2 *OXFORD HISTORY OF THE LAWS OF ENGLAND*, 871–1216, at 473 (2012).

<sup>74</sup> RALPH V. TURNER, *ELEANOR OF AQUITAINE* 259–60 (2009).

<sup>75</sup> “[P]estes illae carcerum per ejus clementiam sunt egressae, confidentius fortasse de cetero grassaturae.” 4 WILLIAM OF NEWBURGH, *HISTORIA RERUM ANGLICARUM*, reprinted in 1 *CHRONICLES OF THE REIGNS OF STEPHEN, HENRY II, AND RICHARD I*, at 293 (Richard Howlett ed., 1894) (footnotes omitted).

<sup>76</sup> *See, e.g.*, 1 RLP, *supra* note 57, pt. 1, at xvii, 54 (“for the love of God and for the salvation of the soul of our very dear mother who is recently dead”) (Author's translation).

<sup>77</sup> Eleanor had exercised royal authority on her son Richard's behalf during some of his absences from England. *See generally* TURNER, *supra* note 74, at 264–75. Richard delegated authority to her upon his succession in 1189, to wield his power in England until he could arrive in person for his coronation. *Id.* at 258. She assumed the reins of power herself in 1193, during Richard's imprisonment on the continent. *Id.* at 269–72. In 1194, she left England for her lands in the duchy of Aquitaine, and remained largely on the continent until 1204. *See generally id.* at 275–95. Although she was involved in politics in her later years, working hard to support her sons, she did not exercise power in England after 1194. *See generally id.*

the age of fifteen.<sup>78</sup> Henry, conducting royal business from St. Denis, outside of Paris, pardoned two convicted felons, “for the safety of the soul of Louis, first born son of the king of France[.]”<sup>79</sup> Likewise, when Henry’s sister Joan died in 1238, his first act for the salvation of her soul was to release two suspected offenders from the county jail in Oxford, where they were awaiting trial for violations of the forest law; only later did he arrange for gifts to religious houses and for paupers to be fed for the salvation of her soul.<sup>80</sup> Edward I appears to have continued this tradition of pardoning for the soul of someone other than the king. After the death of his wife, Eleanor of Castile, in 1290, several outlaws and convicted felons petitioned the king for pardons “for the soul of the queen.”<sup>81</sup>

If John, Henry, and Edward were using the salvation language in the context of pardons because they thought those pardons were helping them to avoid sin, the sin of perjury or of executing an innocent, then we wouldn’t expect the salvific effects of the pardon to be transferrable. English kings seem to have viewed the pardon as an act that actually produced some positive merit, and not just as a prophylactic measure to save the king from damnation.<sup>82</sup> That merit could then be reified and transferred to someone else. But if it was not its connection to justice that transformed John’s blanket pardon into an act that could save his mother’s soul, what was it?

### B. Royal Almsgiving

The royal chancery had been writing charters that purported to save the king’s soul, as well as those of his relatives, for a long time by 1215.<sup>83</sup> An examination of the contexts in which those charters used the language of salvation can help us to understand the use of that language in John’s blanket pardon and in Magna Carta. Charters could be salvific if they made gifts that could be classified as gifts of alms.<sup>84</sup> Thirteenth-century Christians, scholars have argued, increasingly viewed alms in

<sup>78</sup> JACQUES LE GOFF, *SAINT LOUIS 202–03* (Gareth Evan Gollrad trans., 2009).

<sup>79</sup> *CALENDAR OF THE PATENT ROLLS PRESERVED IN THE PUBLIC RECORD OFFICE: HENRY III, A.D. 1258–1266*, at 114–17 (H. C. Maxwell-Lyte ed., 1910) [hereinafter *PATENT ROLLS*] (The National Archives of the UK [hereinafter *TNA*] C66/75, mm. 3 & 4).

<sup>80</sup> Dixon-Smith, *supra* note 28, at 205–06.

<sup>81</sup> Petitioners: Henry de Ardisis et al., TNA SC 8/260/12989 (1295), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9516933> [<http://perma.cc/7SNF-VZ3A>] (petition for pardon); Petitioners: John de la Forthe et al., TNA SC 8/260/12990 (1295), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9516934> [<http://perma.cc/VT8E-BJG7>] (petition for pardon).

<sup>82</sup> See McSweeney, *supra* note 6, at 173.

<sup>83</sup> See, e.g., 2 *ENGLISH HISTORICAL DOCUMENTS*, 1042–1189, at 1189 (David C. Douglas & G. W. Greenaway eds., 1996) (quoting a charter from Stephen “for the soul of King Henry and for my salvation”).

<sup>84</sup> McSweeney, *supra* note 6, at 165–68.

economic terms.<sup>85</sup> As human beings accrued sins on earth, they built up time in purgatory, in which they would be purged of that sin and purified so that they could enter heaven.<sup>86</sup> Masses, prayers, good works, and gifts of alms, when done or given in the correct spirit, could balance out some of the sin and reduce one's time in purgatory.<sup>87</sup> Even at the beginning of the thirteenth century, King John seems to have understood almsgiving as a sort of quid pro quo, in which feeding so many poor for each sin could wipe the sin away. John made a regular habit of hunting on holy days, when hunting was forbidden by the Church.<sup>88</sup> To cancel out the sin John would feed several hundred paupers at his own expense.<sup>89</sup> John broke the prescribed Wednesday and Friday fasts so often that alms to the poor on Wednesdays and Fridays—in groups as large as 1,000—became a regular part of John's administration of alms.<sup>90</sup>

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<sup>85</sup> See, e.g., LESTER K. LITTLE, *RELIGIOUS POVERTY AND THE PROFIT ECONOMY IN MEDIEVAL EUROPE 200–01* (1978). Teofilo Ruiz has demonstrated that Castilian testators of the thirteenth century increasingly asked for specific pious acts—such as a candle lit for a specific period of time or the feeding of a specified number of paupers—in exchange for their bequests to religious houses. TEOFILO RUIZ, *FROM HEAVEN TO EARTH: THE REORDERING OF CASTILIAN SOCIETY, 1150–1350*, at 26–27 (2004).

<sup>86</sup> Peter Lombard's *Sentences*, the foundational textbook for theology in the schools of the twelfth and thirteenth centuries, describes the dead as being purged of venial sins after death, building upon Augustine's metaphor of people who "build wood, hay, [and] stubble" during life. PETER LOMBARD, 4 *THE SENTENCES: ON THE DOCTRINE OF SIGNS* 127 (Giulio Silano trans., Pontifical Inst. of Mediaeval Stud. 2010) (Distinction XXI, ch. 2) [hereinafter *SENTENCES*]. Scholars studying theology at Oxford in the thirteenth century would have heard lectures on the *Sentences* very early in their academic careers. J. I. Catto, *Theology and Theologians 1220–1320*, in 1 *THE HISTORY OF THE UNIVERSITY OF OXFORD: THE EARLY OXFORD SCHOOLS* 471, 477 (J. I. Catto ed., 1984).

<sup>87</sup> These could be done by the sinner, during his life, or by friends and relatives on his behalf after death. See McSweeney, *supra* note 6, at 167–68; Dixon-Smith, *supra* note 28, at 70–71.

<sup>88</sup> W. L. WARREN, *KING JOHN* 140–41 (1961).

<sup>89</sup> *Id.*

<sup>90</sup> Cole, *supra* note 26, at 220. The theologian Peter Lombard would have disagreed with John's understanding of almsgiving. According to Lombard, almsgiving did not produce the required effect of wiping out sin if the giver intended to keep on committing the same sin. In Book Four of his *Sentences*, he quotes St. Augustine's exhortations that

those who live wickedly, and do not care to correct their life and customs, and do not cease, amid their crimes, to give frequent alms, in vain try to comfort themselves with the saying of our Lord: *Give alms, and behold, all things are clean for you*. For they do not understand how far this extends.

. . . .

[They] deceive themselves, who think that, by giving most generous alms of their income or money, they can buy impunity for themselves, while persisting in sins, which they so love that they wish to remain in them.

Almsgiving saved the king's soul in a different way than Louis' inquests did, however. An overriding goal of the inquests was to return goods and lands that the king had wrongly acquired.<sup>91</sup> Ill-gotten gains had to be returned before the penitent could seek absolution.<sup>92</sup> Usurers, for instance, were expected to return their interest if they wished to wash away the sin of usury.<sup>93</sup> Louis' *enquêteurs* were also to see that justice was done in cases where the king or his officials had committed some kind of injustice, once again seeing that the duties of a king were performed.<sup>94</sup> Louis' inquests were making restitution: righting wrongs done by his royal administration and returning land and goods that had been taken unjustly.

This was not the case with John. John expected his almsgiving to atone for sins unrelated to the act of giving. As a well-known passage from the book of Ecclesiastes put it, "Water quenqueth a flaming fire, and alms resisteth sins[.]"<sup>95</sup> The theologian Thomas Aquinas, writing later in the thirteenth century, quoted the Prophet Daniel's exhortation to Nebuchadnezzar to "redeem thou thy sins with alms, and thy iniquities with works of mercy to the poor" so that God would "forgive thy offences."<sup>96</sup> When John fed paupers to atone for his hunting on feast days, the act of atonement was unrelated to the sin committed. This was not an act of restitution. The gift of alms atoned for the giver's sins more generally.

In order for a gift to count as an act of almsgiving, it had to meet certain requirements. The gift had to have been given out of love of God (*caritas*).<sup>97</sup> It also had to be given to the right kind of person. Aquinas tells us that the purpose and motive of alms is "relief of the needy" and that the giver should take the recipient's holiness

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SENTENCES, *supra* note 86, at 81–82 (Distinction XV, ch. 3, no. 9; Distinction XV, ch. 5, no. 1). Indeed, Lombard would not even count gifts made in this spirit as alms. *Id.* at 83 (Distinction XV, ch. 6, no. 1). It seems that theologians and kings could disagree on the proper way to understand almsgiving.

<sup>91</sup> DEJOUX, *supra* note 17, at 331.

<sup>92</sup> *Id.* at 335–36. Peter Lombard, in a discussion of professions that are sinful *per se*, says that "he cannot perform true penance unless he abandon trade or leave his office, and expel hatred from his heart, and make restitution of the goods which he has taken unjustly." SENTENCES, *supra* note 86, at 91 (Distinction XVI, ch. 3, no. 1).

<sup>93</sup> DEJOUX, *supra* note 17, at 335–36.

<sup>94</sup> *Id.* at 86–87.

<sup>95</sup> *Ecclesiasticus* 3:33. I use the Douay-Rheims translation of the Bible, as it is the closest to the Latin Vulgate version that would have been familiar to medieval Christians. Cole, *supra* note 26, at 9. The idiom of alms extinguishing sins just as water extinguishes fire was a common one in documents from medieval Castile. RUIZ, *supra* note 85, at 120.

<sup>96</sup> 34 THOMAS AQUINAS, *SUMMA THEOLOGIAE* II-II, q. 32, art. 1, at 237 (R. J. Batten trans., 1964); "*Quam ob rem rex consilium meum placeat tibi et peccata tua elemosynis redime et iniquitates tuas misericordiis pauperum forsitan ignoscat dilicite tuis.*" *Daniel* 4:24.

<sup>97</sup> Eliza Buhner, *From Caritas to Charity: How Loving God Became Giving Alms*, in *POVERTY AND PROSPERITY IN THE MIDDLE AGES AND THE RENAISSANCE* 113, 115–20 (Cynthia Kosso & Anne Scott eds., 2012); Cole, *supra* note 26, at 3–15 (discussing the development of the concept of *caritas* in medieval theology); *see also* SENTENCES, *supra* note 86, at 73 (Distinction XIV, ch. 3, no. 4).

and poverty into account.<sup>98</sup> In practice, alms were usually given to paupers and to the Church.<sup>99</sup> There was a sense in medieval Christian thought that Christ was present in the poor.<sup>100</sup> Matthew's Gospel was fairly direct about this:

Come, ye blessed of my Father, possess you the kingdom prepared for you from the foundation of the world. For I was hungry, and you gave me to eat; I was thirsty, and you gave me to drink; I was a stranger, and you took me in: Naked, and you covered me: sick, and you visited me: I was in prison, and you came to me. Then shall the just answer him, saying: Lord, when did we see thee hungry, and fed thee; thirsty, and gave thee drink? And when did we see thee a stranger, and took thee in? or naked, and covered thee? Or when did we see thee sick or in prison, and came to thee? And the king answering, shall say to them: Amen I say to you, as long as you did it to one of these my least brethren, you did it to me.<sup>101</sup>

The king's courts, exchequer, and chancery appear to have recognized these rules. The chancery was very careful when it marked gifts with the "salvation of our soul" language, reserving it for gifts to paupers or to the Church. On May 7th, 1215, just a little over a month before his meeting with the barons at Runnymede, John issued three charters in favor of the Knights Templar, a religious order.<sup>102</sup> These charters included a grant of the right to hold a market, a grant of land in free and

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<sup>98</sup> *"Dicendum quod exteriores actus ad illam virtutem referuntur ad quam pertinet id quod est motivum ad agendum hujusmodi actus. Motivum autem ad dandum eleemosynas est ut subveniatur necessitatem patienti[.]"* AQUINAS, *supra* note 96, II-II, q. 32, art. 1, at 238–39. *"Nam multo sanctiori magis indigentiam patienti, et magis utili ad commune bonum, est magis eleemosyna danda quam personae propinquiori[.]"* *Id.* II-II, q. 32, art. 9, at 268–69; *see also* McSweeney, *supra* note 6, at 168.

<sup>99</sup> Medieval English testators generally left pious bequests to paupers and religious houses. MICHAEL M. SHEEHAN, *THE WILL IN MEDIEVAL ENGLAND: FROM THE CONVERSION OF THE ANGLO-SAXONS TO THE END OF THE THIRTEENTH CENTURY* 259 (1963).

<sup>100</sup> Dixon-Smith, *supra* note 28, at 70.

<sup>101</sup> *[V]enite bendicti Patris mei possidete paratum vobis regnum a constitutione mundi esurivi enim et dedistis mihi manducare sitiivi et dedistis mihi bibere hospes eram et collexistis me nudus et operuistis me infirmus et visitastis me in carcere eram et venistis ad me tunc respondebunt ei iusti dicentes Domine quando te vidimus esurientem et pavimus sitientem et dedimus tibi potum quando autem te vidimus hospitem et colleximus te aut nudum et cooperuimus aut quando te vidimus infirmum aut in carcere et venimus ad te et respondens rex dicet illis amen dico vobis quamdiu fecistis uni de his fratribus meis minimis mihi fecistis.*

*Matthew* 25:34–40.

<sup>102</sup> *See* 1 ROTULI CHARTARUM IN TURRI LONDONESI 207 (Thomas Duffus Hardy, 1837) [hereinafter ROT. CHART.].

perpetual alms to the order, and a grant of two serfs, Peter Boyn and his wife, along with their land and their heirs.<sup>103</sup> All three of these charters state that they are made “in contemplation of God and for the salvation of our soul, and the souls of all of our ancestors and successors.”<sup>104</sup>

Gifts of land to churches or monasteries were at the core of the concept of alms.<sup>105</sup> Indeed, land held by a Church entity, such as a parish or monastery, perpetually and without any secular services, such as rent or knight service, reserved in the grantor were said to be held in a type of tenure called “free alms” or “frankalmoin.”<sup>106</sup> The crown could think of grants of liberties, such as the Templars’ grant of the right to hold a market, in the same way.<sup>107</sup>

The crown had no trouble reifying liberties and thinking of them as things in the same way that money and land were things. But grants of land and liberties only worked for the salvation of the king’s soul when they were given for some religious purpose. The charter that immediately precedes these three grants to the Templars on the charter roll, a grant of land made to the Augustinian priory of Welbeck in Northamptonshire, contains the language referring to the king’s soul.<sup>108</sup> The charter just before that, to the burgesses of the town of Swansea, granting their merchants safe passage throughout the kingdom, does not contain such language.<sup>109</sup> Nor does the charter that heads this membrane of the roll, in favor of the men of Cornwall, disafforesting certain land in that county that John had claimed as royal forest.<sup>110</sup> John’s confirmation of all the liberties of the episcopal see of Winchester in 1208 is said to be “with consideration of divine charity and for the salvation of our soul and for the soul of our father King Henry, and for all the souls of our ancestors and successors,”<sup>111</sup> but a very similar confirmation of the liberties of another corporate

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<sup>103</sup> *Id.*

<sup>104</sup> “*Sciatis nos intuitu Dei, et pro salute anime nostre, et omnium antecessorum et successorum nostrum . . .*” *Id.*

<sup>105</sup> Audrey W. Douglas, *Tenure in elemosina: Origins and Establishment in Twelfth-Century England*, 24 AM. J. LEGAL HIST. 95, 107–08, 112 (1980); McSweeney, *supra* note 6, at 165, 168.

<sup>106</sup> Douglas, *supra* note 105, at 95, 112, 122.

<sup>107</sup> See ROT. CHART., *supra* note 102, at 207.

<sup>108</sup> *Id.* at 206.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* The king had special hunting rights in parts of the country designated royal forest. HUDSON, *supra* note 73, at 459. He had a system of laws and eyre courts that enforced these hunting rights. See *id.* at 459–67. The forest eyres produced a great deal of revenue for the crown and were widely resented. *Id.* The scope of the royal forest had been expanded in the twelfth and early thirteenth centuries to cover about one-third of the land in England. *Id.* at 455. Disafforestation, the removal of land from the royal forest, was an important issue at the time of Magna Carta and in the generations after Magna Carta. D.A. CARPENTER, *THE MINORITY OF HENRY III*, at 62–63, 89–91, 145, 150, 168–69, 180–81, 276–77, 337, 384–85, 406 (1990).

<sup>111</sup> “*Sciatis nos divine caritatis intuitu, et pro salute anime nostre et pro anima patris*



body, the city of London, made in 1215, mentions neither charity nor the king's soul.<sup>112</sup> Likewise, the charter of liberties that Peter de Brus issued for his own free tenants of the manor of Cleveland sometime between 1207 and 1209, which may have been a model for Magna Carta, contains no such language.<sup>113</sup> Gifts of land, money, or liberties to churches could be cast in terms of alms. Similar grants to laymen or groups of laymen generally could not.

Alms could produce multiple benefits for their givers. According to Aquinas, alms produced spiritual fruits for the giver in two ways.<sup>114</sup> First, Aquinas tells us, they produce a direct spiritual benefit for the giver on account of their cause.<sup>115</sup> So long as alms are given out of "love of God and neighbour," the giver is following the Biblical injunction to "[p]lace thy treasure in the commandments of the Most High," an act that "shall bring thee more profit than gold."<sup>116</sup> They also produce spiritual benefit in an indirect way, through their effects, in that the recipient "is moved to pray for his benefactor."<sup>117</sup> Alms were not unidirectional; they operated as a sort of gift exchange. This had certainly been the theory behind gifts to monasteries for centuries.<sup>118</sup> Donors' names would be recorded in the house's book so that special prayers and masses could be said for their souls.<sup>119</sup> Indeed, the idea that a gift of alms required prayers in exchange was so strong that Thomas of Chobham, an English cleric who wrote a manual for priests hearing confessions in the early thirteenth century, says that taking alms without repaying the donor in prayers is tantamount to theft.<sup>120</sup>

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*nostris Regis H., et pro omnibus animabus antecessorum et successorum nostrorum . . .*" ROT. CHART., *supra* note 102, at 183.

<sup>112</sup> *Id.* at 207.

<sup>113</sup> HOLT, *supra* note 16, at 82. The "Magna Carta of Cheshire," a charter of liberties issued by Earl Ranulph of Chester in favor of his own tenants during the summer of 1215, lacks any language referring to the salvation of Earl Ranulph's soul. The charter does not contain any provisions on the liberties of the Church. CHARTERS OF THE ANGLO-NORMAN EARLS OF CHESTER, C. 1071–1237, at 388–91 (Geoffrey Barraclough ed., 1988).

<sup>114</sup> AQUINAS, *supra* note 96, II-II, q. 32, art. 4, at 248–51.

<sup>115</sup> *Id.* II-II, q. 32, art. 4, at 248–49.

<sup>116</sup> "*Alio modo potest considerari ex parte causae ejus, inquantum scilicet aliquis eleemosynam corporalem dat propter dilectionem Dei et proximi. Et quantum ad hoc affert fructum spiritualem, secundum illud Eccl., Perde pecuniam propter fratrem. Pone thesaurum in praeceptis Altissimi, et proderit tibi magis quam aurum.*" *Id.* II-II, q. 32, art. 4, at 248–51 (quoting Ecclesiastes 29:14); see also McSweeney, *supra* note 6, at 167–68.

<sup>117</sup> "*Tertio modo, ex parte effectus. Et sic etiam habet spiritualem fructum, inquantum scilicet proximus, cui per corporalem elemosynam subvenitur, movetur ad orandum pro benefactore.*" AQUINAS, *supra* note 96, II-II, q. 32 art. 4 co., at 250–51. I have diverged from Batten's translation here in favor of a more literal reading of the Latin.

<sup>118</sup> STEPHEN D. WHITE, CUSTOM, KINSHIP, AND GIFTS TO SAINTS: THE *LAUDATIO PARENTUM* IN WESTERN FRANCE, 1050–1150, at 26–28 (1988).

<sup>119</sup> See *id.* at 26.

<sup>120</sup> THOMAS OF CHOBHAM, *SUMMA CONFESSORUM* 297 (F. Broomfield ed., 1968). I would like to thank my research assistant, W. Ryan Schuster, for bringing this passage to my attention.

The benefits of alms did not necessarily have to accrue to the giver alone. Indeed, alms were often given for the soul of someone other than the giver.<sup>121</sup> The Dominican friar Jacobus de Voragine, writing in the middle of the thirteenth century, listed almsgiving as one of four acts a living person could perform to reduce a deceased person's time in purgatory.<sup>122</sup> Some wills of the thirteenth century, which usually included pious gifts, state that the gifts are being made not just for the benefit of the testator and his family, but also include the king and the royal family in their list of spiritual beneficiaries.<sup>123</sup> John sometimes made gifts to the Church or to the poor for the soul of his brother and predecessor, Richard I, or his father, Henry II.<sup>124</sup> Under Henry III, grants of land to hospitals, money to feed paupers, funds to build bridges, and gifts to religious houses were made for "the soul of the Empress, late the king's sister,"<sup>125</sup> or "for the soul of I[sabella] formerly queen of England, the king's mother[.]"<sup>126</sup> to give just two examples.

Often these gifts were made for the king and his ancestors and heirs collectively, using the language we find in Magna Carta, as when Henry III granted land to the hospital of St. James in Bordeaux "for the maintenance of the poor of the hospital[ ]" and "for the safety of the king's soul and the souls of his ancestors and heirs[.]"<sup>127</sup>

### C. Pardons as Alms

Apparently, John conceived of felony pardons as almsdeeds or something very much like them. They could atone for sins unrelated to the pardon itself, even the sins of someone other than the king.<sup>128</sup> Felony pardons could have been understood as acts of almsgiving for several different reasons. Perhaps John's blanket pardon contributed to Eleanor's salvation on account of the property the king gave up by

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<sup>121</sup> See WHITE, *supra* note 118, at 26 (noting that donors could designate someone, often a family member, to be the recipient of masses).

<sup>122</sup> Dixon-Smith, *supra* note 28, at 115.

<sup>123</sup> 1 CALENDAR OF WILLS PROVED AND ENROLLED IN THE COURT OF HUSTING, LONDON, 1258–1688, at 23 (Reginald R. Sharpe ed., 1889) (summarizing a will of 1275 made for the good of King Henry III's soul as well as the souls of the testator's parents).

<sup>124</sup> Cole, *supra* note 26, at 220.

<sup>125</sup> 2 CALENDAR OF THE LIBERATE ROLLS PRESERVED IN THE PUBLIC RECORD OFFICE: HENRY III, 1240–1245, at 124 (William H. Stevenson & Cyril T. Flower eds., 1930) (Apr. 1242).

<sup>126</sup> 3 CALENDAR OF THE LIBERATE ROLLS PRESERVED IN THE PUBLIC RECORD OFFICE: HENRY III, 1245–1251, at 71 (William H. Stevenson & Cyril T. Flower eds., 1937) (Aug. 1246). These gifts were usually made for a deceased member of the royal family. See McSweeney, *supra* note 6, at 165.

<sup>127</sup> 3 CALENDAR OF THE PATENT ROLLS PRESERVED IN THE PUBLIC RECORD OFFICE, HENRY III, A.D. 1232–1247, at 341 (1906) (Oct. 1242). For additional examples, see PATENT ROLLS, *supra* note 79, at 195, 430, 434; McSweeney, *supra* note 6, at 169.

<sup>128</sup> See McSweeney, *supra* note 6, at 171–72 (detailing how John issued a blanket pardon "for the salvation of our dearest mother, Eleanor").

making it. A convicted felon not only forfeited his life; he also forfeited his chattels to the crown.<sup>129</sup> In pardoning the felon, the crown was, in essence, forgiving a debt in addition to forgiving a serious crime.<sup>130</sup> This was surely the reason why pardons of amercements—essentially fines owed to the king—were sometimes treated as acts of almsgiving.<sup>131</sup> In 1223 when the prior of Studley was pardoned an amercement, the judicial clerk who wrote the roll of the court noted that it was pardoned “for God and for the king.”<sup>132</sup> Another monastery, the great Cistercian abbey of Meaux in Yorkshire, was pardoned an amercement later in the same year.<sup>133</sup> Two rolls exist for this term of the court. One tells us that the amercement was “pardoned for God” and the other “for the soul of King John,” who had been dead for seven years.<sup>134</sup> In 1218 and 1219, the eyre justices in Yorkshire pardoned many amercements of religious houses in exchange for masses for the soul of King John.<sup>135</sup> In prior work, I have argued that the king and his servants probably viewed the vast bulk of amercement pardons, most of which were granted on account of the party’s poverty, as acts of almsgiving made partly out of a concern for justice and partly out of a concern for

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<sup>129</sup> Hurnard, *supra* note 67, at 146. A felon who fled the king’s justice, even if later acquitted or pardoned, also forfeited his chattels. *Id.* at 145–47.

<sup>130</sup> In the thirteenth century, the Roman idea that certain wrongs constituted crimes—wrongs that harmed the public at large as well as an individual—was taking hold in England. The authors of *Bracton* treated felonies as crimes, for instance. PAUL R. HYAMS, RANCOR AND RECONCILIATION IN MEDIEVAL ENGLAND 222–23 (2003). There were competing views of felony, however. The royal courts also labeled felonies “pleas of the crown,” which implies a wrong that touches the king, rather than the public. *Id.* at 224. The word “felony” itself generally meant a betrayal of one’s lord, and came to be applied to those wrongs so bad that they were tantamount to lord betrayal. JULIUS GOEBEL, JR., FELONY AND MISDEMEANOR: A STUDY IN THE HISTORY OF CRIMINAL LAW 250 (1976). A felony could, therefore, be understood as a betrayal of the king, the paramount lord, so grave that it broke the bond between lord and man.

<sup>131</sup> Historians use the term “amercement” to refer to a payment made to the king for some offense against him. A person who brought a case in the king’s courts and lost, would, for instance, be amerced for making a false claim. McSweeney, *supra* note 6, at 161. The roll would say that that person was *in misericordia* (“in mercy”). Julius Goebel traced this language back to Frankish practices, in which outlaws and people convicted of serious wrongs forfeited all of their chattels to the holder of the court that had jurisdiction. GOEBEL, *supra* note 130, at 238–39. That person was in the courtholder’s mercy. The courtholder could, however, decide to accept something less than the forfeiture of all of the outlaw’s chattels. *Id.* at 239. As Goebel pointed out, the very fact that the word *misericordia* is used to describe the penalty hints at its commutation. The amercement, the acceptance of some payment in lieu of complete forfeiture, was itself originally conceived of as an act of mercy. *Id.* at 242–45.

<sup>132</sup> 11 CURIA REGIS ROLLS OF THE REIGN OF HENRY III: 7–9 HENRY III, no. 404, at 75 (1955) [hereinafter 11 CRR]; McSweeney, *supra* note 6, at 169.

<sup>133</sup> 11 CRR, *supra* note 132, no. 1149, at 234; McSweeney, *supra* note 6, at 164.

<sup>134</sup> 11 CRR, *supra* note 132, no. 1149, at 234 & n.6; McSweeney, *supra* note 6, at 165.

<sup>135</sup> Doris M. Stenton, *Introduction* to ROLLS OF THE JUSTICES IN EYRE FOR YORKSHIRE: 3 HENRY III 1218–1219, at li (Doris M. Stenton ed., 1937), in 56 SELDEN SOC’Y (1937).

the king's soul.<sup>136</sup> Amercement pardons come close to the core of the definition of almsgiving; paupers and religious houses were forgiven certain sums of money for the salvation of the king's soul. Forgiving a debt is not so different from making a payment, and a payment of money to a religious house or a pauper would certainly have been considered an act of almsgiving by the royal chancery.<sup>137</sup>

Perhaps, therefore, it was the king's concession of his right to the felon's chattels, rather than the act of giving the felon his life, that allowed the king to conceive of the pardon as an act of almsgiving.<sup>138</sup> There are reasons to doubt this interpretation, however. The chancery was very careful in its use of the phrase "for the salvation of our soul."<sup>139</sup> As we saw above, chancery clerks used that language in gifts to religious establishments, but not in similar gifts to ordinary laymen or lay corporations.<sup>140</sup> The mere act of giving property was not enough to count as alms; the property had to be given to the right kind of people, namely religious houses and paupers.<sup>141</sup> Felons could potentially have fallen into the category of paupers, since they had forfeited their chattels to the king and their lands to their lord. But I suspect that if the king wanted to give money to paupers, he could have found more effective ways to do it than making accused felons secure in their chattels. Felons' chattels, once confiscated, were sometimes handed over to the king's almoners to distribute to the poor.<sup>142</sup> It would have made more sense for John to look for Christ in the pauper than in the felon.

There are other reasons why John might have chosen this particular method to save his mother's soul. As other scholars have demonstrated, pardoning was a powerful statement of the king's power, his ability to suspend the law, as well as of his mercy.<sup>143</sup> Pardons were part of the theatricality of kingship.<sup>144</sup> When English rulers made concessions of this kind, it was generally at a moment of political significance, when unity was important.<sup>145</sup> When Eleanor of Aquitaine issued the blanket pardon in 1189 for the soul of Henry II,<sup>146</sup> she may or may not have actually been concerned for the soul of a husband who had kept her imprisoned for the last fifteen years of

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<sup>136</sup> McSweeney, *supra* note 6, at 169.

<sup>137</sup> *See id.*

<sup>138</sup> I would like to thank Charlie Donahue for this suggestion.

<sup>139</sup> *See infra* text accompanying notes 246–84.

<sup>140</sup> *See id.*

<sup>141</sup> *See supra* notes 28, 80, 85, 99 and accompanying text.

<sup>142</sup> Dixon-Smith, *supra* note 28, at 37.

<sup>143</sup> LACEY, *supra* note 47, at 70–75, 125–27; NATALIE ZEMON DAVIS, FICTION IN THE ARCHIVES: PARDON TALES AND THEIR TELLERS IN SIXTEENTH-CENTURY FRANCE 20 (1987).

<sup>144</sup> LACEY, *supra* note 47, at 65–68 (discussing the symbolic significance of the pardon and dramatic representations of pardoning in medieval literature); *see* Dixon-Smith, *supra* note 28, at 43–44 (explaining how the virtue of "largesse" played an important role in kingship, especially in regard to ensuring loyalty from subjects).

<sup>145</sup> LACEY, *supra* note 47, at 125–26.

<sup>146</sup> HOWDEN, *supra* note 73, at 4; HUDSON, *supra* note 73, at 473.

their marriage.<sup>147</sup> But even if she would have been happy to see Henry burn in the fires of purgatory, the blanket pardon for Henry's soul was an act of political reconciliation.<sup>148</sup> Henry had just died and Henry's and Eleanor's son, Richard I, was still on the Continent and had yet to be crowned.<sup>149</sup> Eleanor was acting on Richard's behalf and coupled her blanket pardon with a command that all men take oaths "that they will bear faith to the Lord Richard, King of England, son of the Lord King Henry, and to the Lady Queen Eleanor."<sup>150</sup> The promise of pardon for Henry's soul was meant to remind the realm that they owed allegiance to Richard as Henry's heir, as well as to demonstrate Richard's, and Eleanor's, mercy.<sup>151</sup> John's blanket pardon was issued at a crucial point in his reign, as well. He granted the pardon on April 15, 1204.<sup>152</sup> This certainly coincided with the death of his mother, but it also coincided with his loss of Normandy.<sup>153</sup> John had been defending Normandy from King Philip Augustus of France, trying desperately to hold on to his ancestral duchy.<sup>154</sup> In the fall of 1203, however, with his fortunes waning, John left Normandy for England amid suspicion that he was essentially abandoning his armies in Normandy to their fate.<sup>155</sup> He did not return.<sup>156</sup> On March 8, Château Gaillard, the fortress built by his brother at massive expense to protect one of the approaches into Normandy from Île-de-France, had surrendered to King Philip.<sup>157</sup> John's army was in full retreat in April of 1204.<sup>158</sup> This was a time when John, more than anything, needed to reaffirm his power and reconcile with his subjects, who were rapidly losing faith in him.<sup>159</sup> A mass pardon, releasing his subjects from royal prisons, was a grand way to do so.

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<sup>147</sup> See generally TURNER, *supra* note 74, at 231–55 ("Eleanor's detention was not so much comparable to a criminal's treatment as that of a hostage handed over to guarantee [Henry's] son's good behavior[.]").

<sup>148</sup> See *id.* at 259–60.

<sup>149</sup> See *id.* at 258.

<sup>150</sup> "*Et praecepit, quod unusquisque liberorum hominum totius regni jurasset, quod fidem portabit domino Ricardo regi Angliae, filio domini regis Henrici, et dominae Alienor reginae . . .*" HOWDEN, *supra* note 73, at 5.

<sup>151</sup> This tradition of pardoning at moments of political importance carried over into the fourteenth century. Edward III's mass pardon of 1377 was granted at a time when there was strife between the king and the Commons. LACEY, *supra* note 47, at 115–16. It was meant to unify and reconcile the kingdom as much as it was to celebrate the king's jubilee year. *Id.*

<sup>152</sup> 1 RLP, *supra* note 57, pt. 1, at 54.

<sup>153</sup> WARREN, *supra* note 88, at 96–99.

<sup>154</sup> See generally *id.* at 51–99 (covering John's campaign in Normandy).

<sup>155</sup> MAURICE POWICKE, *THE LOSS OF NORMANDY, 1189–1204: STUDIES IN THE HISTORY OF THE ANGEVIN EMPIRE 166–69* (2d ed. 1960).

<sup>156</sup> See *id.*

<sup>157</sup> *Id.* at 255.

<sup>158</sup> See *id.* at 256.

<sup>159</sup> See *id.* at 167 ("John had now decided to leave Normandy. It is possible that he merely desired to rally his English vassals, whose money he had been spending at a ruinous rate."); WARREN, *supra* note 88, at 102–03.

The political goodwill John would garner as a result of a mass act of mercy might explain why he would want to choose this method of saving his mother's soul over others. It still does not explain why the pardon could save her soul, however. To understand why a pardon could save the soul of someone other than the pardoner, we need to look to theological texts. Acts of mercy, such as pardoning, were associated with alms in the thirteenth century. Peter Lombard, in his *Sentences*, quotes St. Augustine's statement that "alms-giving is a work of mercy."<sup>160</sup> Thomas Aquinas went so far as to say that almsgiving's status as an act of mercy "appears from the very name itself[.]"<sup>161</sup> Examining the etymology of the Latin word for alms, "*eleemosyna*," Aquinas points out that it "derives from the Greek word for mercy, just as in Latin *miseratio* derives from *miser cordia*."<sup>162</sup> Ralph FitzNigel, an English exchequer official during Henry II's reign, appears to have agreed when he wrote in his *Dialogue of the Exchequer* that "by devout princes churches are built, Christ is fed and clothed in the poor, and, by pursuing *other works of mercy*, riches are distributed."<sup>163</sup>

Almsgiving encompassed more than giving one's worldly possessions to the poor or the Church. Peter Lombard again quotes Augustine for the proposition that "not only he who gives food to the hungry, drink to the thirsty, and suchlike, but he *who grants pardon to one who asks it* also gives alms."<sup>164</sup> Aquinas lists the act of

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<sup>160</sup> PETER LOMBARD, LIBRI IV SENTENTIARUM 833 (2d ed. 1916) ("Est enim eleemosyna opus misericordiae[.]") [hereinafter LIBRI IV]; SENTENCES, *supra* note 86, Distinction XV, ch. 5, no. 1, at 82.

<sup>161</sup> AQUINAS, *supra* note 96, II-II, q. 32, art. 1, at 238–39.

<sup>162</sup> *Id.* ("Et hoc apparet ex ipso nomine: nam in graeco a misericordia derivatur, sicut in latino miseratio.").

<sup>163</sup> "[A] devotis principibus construuntur basilice, Christus alitur et vestitur in paupere et ceteris operibus misericordie insistendo mammona distribuitur." DIALOGUS DE SCACCARIO, AND CONSTITUTIO DOMUS REGIS: THE DIALOGUE OF THE EXCHEQUER, AND THE DISPOSITION OF THE KING'S HOUSEHOLD 4–5 (Emilie Amt & S. D. Church eds., 2007) (emphasis added); see also Dixon-Smith, *supra* note 28, at 78.

<sup>164</sup> SENTENCES, *supra* note 86, Distinction XV, ch. 4, no. 1, at 82 (emphasis added) (quoting AUGUSTINE, ENCHIRIDION, ch. 72 (Albert C. Outler ed. & trans., 1955) (c. 420)). "[N]on solum enim qui dat esurienti cibum, sitienti potum, et huiusmodi; sed etiam qui dat veniam poenitenti, eleemosynam dat[.]" LIBRI IV, *supra* note 160, at 832. It is important to note that the language used for granting pardon here is not the same as that used in the English royal courts. The king used the verb "*perdonare*" to mark a pardon. See, e.g., 11 CRR, *supra* note 132, no. 1149, at 234 ("*Perdonatur pro anima regis Johannis*."). Lombard uses language that would be more familiar in the clerical context. The word "*veniam*" ("pardon") is related to the concept of venial (pardonable) sins. In a later passage, Lombard uses this same language in a context where he is discussing venial sins. LIBRI IV, *supra* note 160, at 844; SENTENCES, *supra* note 86, at 93. The word translated by Silano as "one who asks for it" is "*poenitenti*," literally a "penitent." The terms are probably not meant in the technical sense of a priest granting absolution at confession here, however. In the later passage, Lombard makes it clear that he is discussing forgiveness granted by an ordinary Christian to one who has harmed him. LIBRI IV, *supra* note 160, at 844; SENTENCES, *supra* note 86, at 93. Thomas Aquinas also placed forgiving injuries on his list of the spiritual works of mercy. AQUINAS, *supra* note 96, II-II, q. 32, art. 2, pr., at 240–41.

redeeming or ransoming captives among the traditional list of the corporal works of mercy that make up almsgiving.<sup>165</sup>

Forgiving injuries and releasing prisoners therefore may have been understood to fit within the framework of almsgiving. Certainly Henry III thought that releasing two men accused of violating the forest law from their captivity in Oxford castle could save the soul of his sister Joan.<sup>166</sup> Forgiving wrongs also appears in contemporary literature as a good work that can have spiritual benefits. In his *Flores Historiarum*, an early thirteenth-century text, Roger of Wendover tells the story of a knight who forgave his father's killer "in my love and reverence for him who, for my salvation and that of all, ascended the cross and consecrated it by his most holy blood," when the killer fled to and embraced a roadside cross.<sup>167</sup> The knight receives a temporal, rather than a spiritual, benefit for this act of mercy. When he approaches King Richard I in a church to beg for the return of his lands, which had been confiscated, the image of Christ on the cross inclines its head towards him and Richard takes it as a sign that this man has done some "good action in respect, and to the honour, of the holy cross[.]"<sup>168</sup> We can see forgiveness related to almsgiving in a case that took place a century-and-a-half later, in 1391, where an act of mercy appears to have, by itself, acted as a good work that could have spiritual benefit. Ranulph del See appeared in a court in York, where Robert of Ellerbeck came before him "with bare feet and an uncovered head" and begged Ranulph's forgiveness for killing his father, Richard del See.<sup>169</sup> Ranulph agreed to support Robert's petition for a royal pardon, "for the salvation of the soul of the said Richard."<sup>170</sup> Ranulph's forgiveness of Robert could thus serve to save his father's soul.

John may have been thinking along similar lines when he issued his blanket pardon. John made it clear that this act of mercy was very personal to him. He was more willing to pardon those who had only harmed the king than those who had caused harm to others, as well. Felonies harmed the king in that they were breaches

<sup>165</sup> AQUINAS, *supra* note 96, II-II, q. 32, art. 2, at 240–41.

<sup>166</sup> Dixon-Smith, *supra* note 28, at 205–06.

<sup>167</sup> 2 ROGER OF WENDOVER, ROGER OF WENDOVER'S FLOWERS OF HISTORY 548–49 (J. A. Giles trans., 1849). Wendover's *Flores* was later incorporated into Matthew Paris' *Chronica Majora*, and this story appears there, as well. 3 MATTHEW PARIS, CHRONICA MAJORA 214–15 (Henry Richard Luard ed., 1876); *see also* Dixon-Smith, *supra* note 28, at 186.

<sup>168</sup> 2 ROGER OF WENDOVER, *supra* note 167, at 548.

<sup>169</sup> 2 YORK MEMORANDUM BOOK (1388–1415) 30 (Maud Sellers ed., 1915) ("nudis pedibus et capite discooperto"); *see also* LACEY, *supra* note 47, at 39. This case took place in 1391 by the modern reckoning, and not in 1390, as the case records. It took place in February. In the fourteenth century, the New Year did not begin until the Feast of the Annunciation, or March 25. A HANDBOOK OF DATES FOR STUDENTS OF BRITISH HISTORY 12–13 (C.R. Cheney & Michael Jones eds., rev. ed. 2000).

<sup>170</sup> LACEY, *supra* note 47, at 40; Sellers, *supra* note 169, at 31 ("pro salute anime dicti Ricardi").

of his peace, but in a felony there was also the victim to consider.<sup>171</sup> Under the terms of the blanket pardon, felons would have to find pledges for their good behavior.<sup>172</sup> If they could not, they would have to abjure the realm.<sup>173</sup> The murderer bore an additional burden. He would only be pardoned fully if he made peace with his victim's family.<sup>174</sup> If he did not, he had a choice: he could either abjure the realm or give surety that he would stand trial for the homicide and remain in the realm, free until the time of his trial.<sup>175</sup> Offenders against the law of the forest, on the other hand, were to be "freed completely" (*omnino liberentur*), without even having to give surety for their good behavior.<sup>176</sup> This is presumably because the forest laws pertain to the king in a way that they do not pertain to his subjects. Where a murder harmed the victim and his family in addition to the king—whose peace had been broken—the forest law protected the king's hunting rights in the royal forest, so its breach harmed no one but the king.<sup>177</sup> Eleanor of Aquitaine's blanket pardon for Henry II's soul distinguishes between felonies and breaches of the forest law even more explicitly. Those in prison awaiting trial for forest offenses were compared to those who had been imprisoned "by the will of the king," and both were to go free without any qualification.<sup>178</sup> Accused felons also received leniency under Eleanor's blanket pardon, but with various qualifications attached to either protect the legal process or the victim and his or her kin. Accused felons could be released, but they would still have to stand trial.<sup>179</sup> Accused felons who had been imprisoned "by common right of the county or of the hundred"—people who had been indicted by a jury of presentment, the ancestor of the modern grand jury<sup>180</sup>—would be released only if they could produce pledges who would guarantee their appearance in court to answer for their crimes.<sup>181</sup> Those who had been imprisoned on account of an appeal—an accusation of felony by a private party—would likewise have to find pledges for their future appearance if they wished to be released.<sup>182</sup> People who had been appealed and who had subsequently fled and been outlawed would have their outlawry lifted only if they made peace with their accusers.<sup>183</sup> It would seem that Eleanor and John treated forest

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<sup>171</sup> HUDSON, *supra* note 73, at 385–86.

<sup>172</sup> See McSweeney, *supra* note 6, at 172.

<sup>173</sup> 1 RLP, *supra* note 57, pt. 1, at xvii, 54; McSweeney, *supra* note 6, at 172.

<sup>174</sup> 1 RLP, *supra* note 57, pt. 1, at xvii, 54.

<sup>175</sup> *Id.*; McSweeney, *supra* note 6, at 172.

<sup>176</sup> The one exception John makes is for those who had been imprisoned for poaching deer, who were required to produce sureties. 1 RLP, *supra* note 57, pt. 1, at xvii, 54.

<sup>177</sup> HUDSON, *supra* note 73, at 458.

<sup>178</sup> HOWDEN, *supra* note 73, at 4.

<sup>179</sup> HUDSON, *supra* note 73, at 473.

<sup>180</sup> See generally R.H. Helmholz, *The Early History of the Grand Jury and the Canon Law*, 50 U. CHI. L. REV. 613 (1983) (providing an overview of the historiography of the jury of presentment and its relationship to the modern grand jury).

<sup>181</sup> HOWDEN, *supra* note 73, at 4.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*



offenses, unlike felonies, as offenses against the king alone. It may therefore be significant that Henry III chose to release two accused offenders against the forest law—and not, say, accused felons—for the salvation of his sister’s soul.<sup>184</sup>

English kings treated pardons, acts of mercy, as if they were gifts of alms. There is some evidence that they took an even more expansive view of the royal courts’ alms-producing capacity. Occasionally a text hints that justice itself could be perceived as a good work or an act of almsgiving that could help the king, or others designated by him, attain salvation.<sup>185</sup> We saw above that Louis IX took his duty to do justice seriously.<sup>186</sup> His desire to do justice was undoubtedly connected to his coronation oath, which required him to do justice or risk damnation for perjury.<sup>187</sup> In England, as in France, justice was required of the king, and failure to do justice was a sin, but in English records the provision of justice is sometimes discussed as if it also produced some kind of special merit that could atone for sin.<sup>188</sup>

A few petitions to the crown, for instance, show us that there is no necessary link between the duty to do justice and the spiritual benefit that might accrue from doing justice. After Edward I’s queen, Eleanor of Castile, died in 1290, many petitions to the king were made for the salvation of her soul.<sup>189</sup> Some can be explained by the fact that the petitioners were asking the king to repay debts that she had contracted during her life,<sup>190</sup> or that the queen had some special connection to the petitioner.<sup>191</sup> Others cannot, however. A group of merchants of Abbeville petitioned the king, sometime after Queen Eleanor’s death, complaining that their goods had been seized by royal officials.<sup>192</sup> They asked for restitution of their goods and for

<sup>184</sup> See Dixon-Smith, *supra* note 28, at 205–06.

<sup>185</sup> McSweeney, *supra* note 6, at 172–73.

<sup>186</sup> See *supra* notes 39–46 and accompanying text.

<sup>187</sup> See Richardson, *supra* note 13, at 44, 53–55.

<sup>188</sup> See McSweeney, *supra* note 6, at 166–67.

<sup>189</sup> See, e.g., Petitioner: Isabella de Wilburgham, TNA SC 8/201/10025 (c. 1290), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9333581> [<http://perma.cc/LK8V-63UT>] (petitioning for grace and a remedy for return of her nephew’s land when her nephew was the queen’s ward); Petitioner: Griffith Lloyd, TNA SC 8/75/3732 (c. 1296), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9107506> [<http://perma.cc/TVD8-Q36C>] (seeking pardon for a man who was imprisoned without knowing the reason why and asking to be given the opportunity to answer any charges against him for the sake of the queen’s soul because he had been in the queen’s service); Petitioners: Executors of Oliver de Ingham, TNA SC 8/262/13062 (c. 1295–1307), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9517006> [<http://perma.cc/VQ4S-42FT>] (requesting that the king pay a debt contracted by Queen Eleanor for the salvation of her soul).

<sup>190</sup> TNA SC 8/201/10025, *supra* note 189.

<sup>191</sup> *Id.*; TNA SC 8/75/3732, *supra* note 189.

<sup>192</sup> Petitioners: Merchants of Abbeville, TNA SC 8/287/14303 (c. 1290–1307), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9735463> [<http://perma.cc/35SSD-R2T9>].

justice, “for God and for the soul of the queen.”<sup>193</sup> There is no indication here that Queen Eleanor had done these people some harm that needed to be set right, and the queen, unlike the king, had no duty to do justice to these people, so their inability to find justice could not be laid at her feet.

There might appear to be an inherent contradiction in this type of thinking about justice. Justice is required of the king. Failure to do justice imperils his soul. How can the act of doing justice be meritorious when justice is only what one expects from the king? The idea that a duty might also bring spiritual benefit was not alien to medieval thinkers.<sup>194</sup> Aquinas and the medieval canonists also discuss alms in this way, for instance. Medieval canonists argued that the faithful had a duty to give alms out of their superfluous wealth.<sup>195</sup> According to Aquinas, “[T]here are times when a man sins mortally if he fails to give alms[,]” when there is someone in need, no one else who can help him, and “the giver possesses things which are superfluous in the sense of being unnecessary for him at the moment[.]”<sup>196</sup> Alms are required in this situation. Giving alms, even when required of the giver, is still an act that generates spiritual benefit, however, even spiritual benefit that one can transfer to a third party.<sup>197</sup> It might not have seemed so strange to a thirteenth-century Christian

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<sup>193</sup> *Id.* There are similar cases, where parties ask for restitution of goods that have been seized by royal officials for the salvation of the queen’s soul. See Petitioner: Henry de Stratton, TNA SC 8/325/E698 (c. 1290), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9682692> [<http://perma.cc/EK2F-CH73>] (requesting remedy for his goods that were seized from Priory of Holy Trinity by the treasurer); Petitioner: William de Stratton, TNA SC 8/325/E699 (c. 1290), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9682693> [<http://perma.cc/8HWC-PQRW>] (again requesting return of seized goods).

<sup>194</sup> See, e.g., BRIAN TIERNEY, *MEDIEVAL POOR LAW: A SKETCH OF CANONICAL THEORY AND ITS APPLICATION IN ENGLAND* 46–47 (1959) (discussing the act of almsgiving as a form of medieval charity).

<sup>195</sup> *Id.* at 34–37.

<sup>196</sup> “*Ad tertium dicendum quod est aliquod tempus dare in quo mortaliter peccat si eleemosynam dare omittat ex parte quidem recipientis, cum apparet evidens et urgens necessitas, nec apparet in promptu qui ei subveniat; ex parte vero dantis, cum habet superflua quae secundum statum praesentem non sunt sibi necessaria . . .*” AQUINAS, *supra* note 96, II-II, q. 32, art. 5, ad. 3, at 254–55; see also TIERNEY, *supra* note 194, at 34–37 (discussing the duty of the wealthy to give to the needy). Medieval canonists even developed a doctrine that held that a starving man had the right to steal from another’s superfluous wealth. TIERNEY, *supra* note 194, at 38. Monastic practices are also a good example of this kind of thinking. Monks were required to abide by the rule of their order. Breaking the rule was a sin, but keeping it produced merit. That merit could benefit others. Parents who offered their children as oblates to monasteries, a practice that continued through the middle of the twelfth century in England, believed that they received spiritual benefit themselves, and the prayers of monks were thought to be especially efficacious because of the holy lives they led. DAVID KNOWLES, *THE MONASTIC ORDER IN ENGLAND: A HISTORY OF ITS DEVELOPMENT FROM THE TIMES OF ST. DUNSTAN TO THE FOURTH LATERAN COUNCIL, 940–1216*, at 420 (2d ed. 1963).

<sup>197</sup> Stephen Langton, who was archbishop of Canterbury in 1215, considered the problem of whether alms that were given out of duty could also produce spiritual benefit for the giver

that the king, by fulfilling his duty to do justice, was also creating spiritual merit that he could transfer to someone else.

### III. MAGNA CARTA AND THE KING'S SALVATION

English kings used administrative processes to save their souls, and may have even taken a more expansive view of the royal bureaucracy's ability to save their souls than their French counterparts did. Even as their courts became more bureaucratic and grew more attenuated from the person of the king, English kings treated the machinery of royal justice as if it produced merit that could save them. They looked to their courts as their own spiritual piggy bank, from which they could withdraw to benefit their own souls and those of their ancestors and heirs. They could imagine pardons and even the provision of justice itself as acts of almsgiving. But why did they think that Magna Carta had the power to save their souls, as well as the souls of their ancestors and heirs?

#### A. The Coronation Oath

One way to read Magna Carta is as a reaffirmation, in a more detailed form, of the king's coronation oath. In his coronation oath, the king made promises to protect the Church, to do good justice, and to "raise up good, approved laws and customs, and to wipe out and completely displace bad ones from the kingdom."<sup>198</sup> The first promise is reaffirmed by Chapter 1 of Magna Carta, which guarantees the English Church's liberties.<sup>199</sup> The second, to do justice, is essentially a promise to be a good judge. Magna Carta reaffirms this element of the oath, as well. The famous Chapters 39 and 40 of the 1215 version of the Charter enshrine promises on John's part to be a good judge in the future.<sup>200</sup> In Chapter 39, John promises to act by judgment in his court rather than by royal will in depriving his people of life, land, and liberty.<sup>201</sup> In Chapter 40, he promises not to sell, deny, or delay justice.<sup>202</sup> In the charter, John also promises to atone for past breaches of his oath. In Chapter 52, John promises to make restitution, as Louis would later do through his *enquêtes*, for his past acts of

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in his theological writings. He argued that they could if the giver gave them in the proper spirit. TIERNEY, *supra* note 194, at 35.

<sup>198</sup> "Debet etiam bonas leges et consuetudines approbatas erigere, pravas autem delere et omnino a regno deponere." H.G. Richardson, *The Coronation in Medieval England: The Evolution of the Office and the Oath*, 16 *TRADITIO* 111, 168 (1960). This version comes from the third recension of the text known as the *Leges Edwardi Confessoris*, a text probably composed sometime in the middle of the twelfth century. *Id.* at 167. It includes additional promises. *Id.* at 167–68.

<sup>199</sup> MAGNA CARTA (1215) ch. 1, *reprinted in* CARPENTER, *supra* note 2, at 38–39.

<sup>200</sup> *Id.* ch. 39, 40, at 52–53.

<sup>201</sup> *Id.* ch. 39, at 52–53.

<sup>202</sup> *Id.* ch. 40, at 52–53.

injustice, when he acted by will rather than judgment.<sup>203</sup> Pope Innocent III may have had acts of restitution in mind when, in March of 1215, he implored John “as he hoped to have his sins remitted,” to deal kindly with his barons and to listen to their petitions.<sup>204</sup> The third promise of the coronation oath relates to the king as legislator. The text of Magna Carta itself could be seen as an act of legislation, of raising up good laws and customs and of destroying bad ones. John indeed specifically promises to eliminate bad customs in parts of the Charter.<sup>205</sup> These three promises might explain why John and his chancery clerks thought the text had the power to save his soul. By spelling out what a good king must do to keep his oath, Magna Carta prevented John from falling into perjury. It was a text that committed John to a path that would avoid sin in the future and that, at the same time, would make restitution for past sins.

If Magna Carta is essentially a gloss on what is required of the king if he wishes to keep his coronation oath, would it have the ability to save John’s ancestors and heirs, as well as John? Contemporaries could have understood it in this way, since Magna Carta reached back into the past and bound the future. In many places, the text bound John to make reparation for the misdeeds of his predecessors in addition to his own.<sup>206</sup> By the early part of Edward I’s reign it was already commonplace, when petitioning the king for justice, to say the request was made for the salvation of soul of the king’s father.<sup>207</sup> Most such requests date from early in the new king’s reign.<sup>208</sup>

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<sup>203</sup> *Id.* ch. 52, at 56–59; DEJOUX, *supra* note 17, at 202.

<sup>204</sup> MAGNA CARTA (1215), ch. 1, *reprinted in* CARPENTER, *supra* note 2, at 298.

<sup>205</sup> *See, e.g., id.* ch. 48, at 54–57.

<sup>206</sup> Chapters 52 and 53 deal directly with disseisins and afforestations made by John’s father and grandfather. *Id.* ch. 52, 53, at 56–59.

<sup>207</sup> *See* Petitioner: Wymarc de Nevile, TNA SC 8/129/6415 (c. 1272), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9208594> [<http://perma.cc/BMF5-WRHT>] (requesting a remedy for the salvation of King Henry’s soul against a man who falsely disseised her and broke into her house); Petitioner: Alice de Witney, TNA SC 8/79/3904 (c. 1272), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9107680> [<http://perma.cc/D3PC-XD4U>] (petitioning for a writ of oyer and terminer to bring certain men to justice who had beaten the petitioner, causing her to lose her child, for the soul of Henry III); Petitioner: Alice Reneward, TNA SC 8/69/3405 (c. 1282), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9107176> [<http://perma.cc/8V3P-LVN7>] (seeking “grace and a remedy” for a debt the petitioner has been unable to collect from another private party “for King Henry’s soul”); Petitioners: Roger de Attelborough et al., TNA SC 8/31/1512 (c. 1272), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9061706> [<http://perma.cc/DS8T-BR9C>] (requesting a writ that protects the petitioners from writs of prohibition that might issue against their case in the ecclesiastical court for the salvation of King Henry’s soul); Petitioners: Hugh Maunsel and Margery Maunsel, TNA SC 8/126/6297 (c. 1290), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9208472> [<http://perma.cc/457Z-R8Q5>] (describing a suit for inheritance and asking for a remedy for the soul of King Henry).

<sup>208</sup> *See, e.g.,* TNA SC 8/129/6415, *supra* note 207 (c. 1282–1290); TNA SC 8/79/3904, *supra* note 207 (1272–1300). *See generally* F. M. POWICKE, KING HENRY III AND THE LORD

The implication is presumably that the deceased king had failed to do justice in the petitioner's case and had therefore defaulted on his royal duties. The new king would have to remedy the situation if he wanted to get his predecessor out of purgatory. When Emma Tailard petitioned King Edward II, she complained that during his father's reign the king's sheriff in Hampshire had brought in a false and foreign jury to hear her case, had quashed writs improperly, and had perhaps had some hand in having a false charter made to her detriment.<sup>209</sup> She asked for the king, who is "obliged to do justice," to hear her case "for God and His mother and for the soul of your father."<sup>210</sup> The implication appears to be that Edward I, who was also "obliged to do justice,"<sup>211</sup> had failed in his royal duty, as specified in his coronation oath. His son and successor would be fulfilling that duty on his behalf. This idea that the new king is simply easing his late father's salvation by repairing sinful errors made during his lifetime, which the deceased king can no longer handle himself, is certainly behind certain petitions that ask a newly crowned king to pay the debts of his deceased predecessor.<sup>212</sup> In these cases, the language the petitioners use is often "for the discharge of the [king's] soul," a phrase also used by executors of estates when they were paying the decedents' debts.<sup>213</sup> Unpaid debt could imperil the decedent's soul, so it was important to repay those debts promptly.<sup>214</sup>

Magna Carta also purported to bind John's royal successors to its terms in perpetuity. Chapter 1, on the liberty of the church, twice says that John grants these liberties for himself and for his "heirs in perpetuity[.]"<sup>215</sup> Immediately after Chapter 1, the

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EDWARD: THE COMMUNITY OF THE REALM IN THE THIRTEENTH CENTURY 586–96 (1947) (covering the first years of the reign of Edward, who succeeded Henry III in 1272 but was not crowned until 1274).

<sup>209</sup> The petition is fragmentary, so it is difficult to tell whether she accuses the sheriff or someone else of having the false charter made. Petitioner: Emma Tailard, TNA SC 8/339/15965 (c. 1282), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9736446> [<http://perma.cc/FA8V-CKGR>].

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> Petitioners: Richard & Thomas de Turplyngton, TNA SC 8/176/8795 (c. 1330), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9294663> [<http://perma.cc/L9G8-F48V>] (seeking return of chattels taken during Edward II's reign); Petition, TNA SC 8/342/16128 (c. 1310–1330), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9736609> [<http://perma.cc/EY46-8JA5>] (seeking payment for victuals taken for prior king's use).

<sup>213</sup> Compare TNA SC 8/262/13062, *supra* note 189 (petitioning for payment of a debt incurred by Queen Eleanor for the discharge of the Queen's soul), with Petitioner: Arnold William de Marsan, TNA SC 8/291/14520 (c. 1305), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9735682> [<http://perma.cc/DJD7-SD6V>] (requesting payment from the king for military service so the petitioner can pay his late father's debts, in discharge of his soul).

<sup>214</sup> SHEEHAN, *supra* note 99, at 260–61.

<sup>215</sup> CARPENTER, *supra* note 2, ch. 1, at 39.

Charter makes it clear that the liberties spelled out in the following chapters are also granted for “our heirs in perpetuity[.]”<sup>216</sup> This could explain why the preamble states that the Charter is given for “the salvation of our souls and the souls of all our ancestors and heirs[.]”<sup>217</sup> John is keeping his coronation oath, but is simultaneously making reparation for his ancestors’ failure to keep theirs and promising that his successors will do what is necessary to keep theirs.

### *B. Magna Carta, Church Liberties, and Alms*

The Charter could be understood as a text that forced the king to make restitution for past sins and that made provision for holding the king to his coronation oath in the future. It could also be understood as an act of almsgiving, however. Magna Carta was an act of lawgiving, a work of legislation that made new rules for the realm, but it was also written in the form of a charter. As we have seen, the chancery had been producing charters that were said to save the king’s soul, as well as the souls of his relatives, for quite some time by 1215.<sup>218</sup> Charters that granted land or liberties to the Church usually contained this language, and Magna Carta granted liberties to the English Church.<sup>219</sup> In fact, the most immediate context for the inclusion of this salvation language in Magna Carta was probably John’s longstanding battle with the English Church over its liberties.<sup>220</sup> It may have been included because the Charter, in its first chapter, confirms those liberties.<sup>221</sup>

In 1205, Hubert Walter, the archbishop of Canterbury, died.<sup>222</sup> Although bishops were supposed to be elected by their cathedral chapters, John was used to effectively selecting them himself and often placed loyal servants of the crown on England’s

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<sup>216</sup> *Id.*

<sup>217</sup> *Id.* at 36–37.

<sup>218</sup> *See supra* Part II.B.

<sup>219</sup> Although the royal chancery appears to have been very sparing with the “salvation of our soul” language, only using it when the gift made in the Charter was made to churches or for the use of the poor, monastic charters could be very free in the ways they exploited divine power. Monastic charters often cursed anyone who broke the terms of the charter. LESTER K. LITTLE, *BENEDICTINE MALEDICTIONS: LITURGICAL CURSING IN ROMANESQUE FRANCE* 54–57 (1993). Magna Carta provides for something similar to the monastic curse. It provides, in Chapter 61, that everyone in the kingdom will take an oath to obey the twenty-five barons selected to enforce the Charter. CARPENTER, *supra* note 2, ch. 61, at 64–65. In 1225, 1237, and 1253, England’s bishops pronounced sentences of excommunication against anyone who violated the terms of the Charter. *Id.* at 422.

<sup>220</sup> *See generally* WARREN, *supra* note 88, at 154–73, 206–16 (detailing King John’s disagreements and political battles with the pope and the English Church and their subsequent reconciliation).

<sup>221</sup> CARPENTER, *supra* note 2, ch. 1, at 38–39.

<sup>222</sup> WARREN, *supra* note 88, at 158.

episcopal thrones.<sup>223</sup> John tried to press John de Gray, part of his inner circle of royal administrators, upon the Canterbury cathedral chapter, but some members of the chapter resisted and elected their own candidate.<sup>224</sup> Both John and the chapter appealed to Rome and, after the pope quashed the contested elections, the representatives of the chapter who were in Rome chose Stephen Langton, a close associate of the pope, as their new archbishop.<sup>225</sup> Langton, a professor of theology at the University of Paris who was close to the king of France, was unacceptable to John, who refused to allow him to take up his see.<sup>226</sup> To try to force John to comply, Innocent placed an interdict upon England in 1208, meaning that clergy were forbidden to perform most of the sacraments.<sup>227</sup> But far from forcing John to admit Langton to his see, the interdict only caused John to double down. He seized the pope's benefices in England and the lands of priests who would not perform the sacraments.<sup>228</sup> Innocent went a step further and excommunicated John in 1209.<sup>229</sup> Most of England's bishops fled overseas at this point.<sup>230</sup> John seems to have seen this as an opportunity rather than a crisis, however. He declared their sees vacant and took the lands of those sees into his own hands, their income adding over eighty-thousand pounds to the royal income in one year alone, according to one estimate.<sup>231</sup> John needed to restore the royal treasury, depleted by his costly war with King Phillip Augustus, the war that had lost him his possessions in Northern France.<sup>232</sup> He still wanted them back, and the campaign to recover Normandy would require a massive outlay. The excommunication, therefore, worked to his advantage.

By 1213, John was feeling pressure to submit. There were fears that the king of France would invade under the pretext of bringing England back into the Christian fold.<sup>233</sup> John struck a deal with the pope.<sup>234</sup> He would allow Langton to take up his see.<sup>235</sup> Moreover, he would surrender England to Innocent and receive it back as a papal fief.<sup>236</sup> John would transform himself from the pope's enemy to his vassal and special son. After John's surrender, the pope quickly changed course and became the king's best friend and staunchest supporter, even supporting John against the English

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<sup>223</sup> *Id.* at 159–60.

<sup>224</sup> *Id.* at 161.

<sup>225</sup> *Id.* at 162–63.

<sup>226</sup> *Id.*

<sup>227</sup> *See id.* at 166–68; *see also* CHRISTOPHER R. CHENEY, POPE INNOCENT III AND ENGLAND 308 (1976).

<sup>228</sup> CHENEY, *supra* note 227, at 308–09.

<sup>229</sup> *Id.* at 319–20.

<sup>230</sup> WARREN, *supra* note 88, at 169.

<sup>231</sup> Harper-Bill, *supra* note 27, at 307.

<sup>232</sup> *See id.* at 307–08.

<sup>233</sup> *Id.* at 307.

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*

Church at times.<sup>237</sup> Although the core of the dispute between the king and the pope had been about John's attempt to interfere with an episcopal election and his refusal to accept one that had been, at least in the pope's view, properly conducted, once John was his vassal, Innocent was more than happy to allow John some leeway in placing royal functionaries and crown loyalists in England's sees.<sup>238</sup>

The English Church was angry at both John and Innocent.<sup>239</sup> When it appeared that the barons might rebel, however, John tried to prevent the bishops from allying with them by issuing a new charter, in November of 1214, which guaranteed that elections of abbots and bishops would henceforth be free.<sup>240</sup> That charter's preamble is remarkably similar to Magna Carta's in some respects.<sup>241</sup> Most importantly for our purposes, it evinces concern for the king's soul and those of his ancestors and successors. John notes that he has come to agreement with the bishops, listing them by name, as to "damages and thefts in the time of the interdict."<sup>242</sup> He goes on to state that

through the grace of God, of both our pure and free will, we wish not only to satisfy them as much as we can according to God, but indeed also to provide profitability and usefully for the whole English Church forever: thence whatsoever custom was observed in the English Church in our time and in the time of our predecessors till now, and anything of right that we have vindicated up to now, in the elections of any of the prelates, we, at their petition, *for the salvation of our soul and the souls of our predecessors and successors, kings of England*, generously, by pure and spontaneous will, of common consent of our barons, concede and constitute and confirm in this, our present charter.<sup>243</sup>

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<sup>237</sup> WARREN, *supra* note 88, at 211–12.

<sup>238</sup> CHENEY, *supra* note 227, at 176; WARREN, *supra* note 88, at 211–12; Harper-Bill, *supra* note 27, at 309–10.

<sup>239</sup> See WARREN, *supra* note 88, at 210–11.

<sup>240</sup> CHENEY, *supra* note 227, at 168, 364. Christopher Harper-Bill also points out that this charter was issued around the same time that John and his ministers were, under the terms of John's agreement with the pope, collecting claims for restitution from religious houses that had suffered harm during the interdict. The Charter may have been a ploy to placate the monasteries and prevent them from making any claims. See Harper-Bill, *supra* note 27, at 308–09.

<sup>241</sup> See 1 STATUTES OF THE REALM 5 (Record Comm'n 1810).

<sup>242</sup> *Id.* (Author's translation).

<sup>243</sup> *Id.* (emphasis added) (Author's translation):

*Per Dei gratiam de mera et libera voluntate utriusque partis plene convenit: Volumus non solum eis quantum secundum Deum possumus satisfacere, verum eciam toti Ecclesie Anglicane salubriter et utiliter in perpetuum providere: Inde est quod qualiscunque consuetudo, temporibus nostris et predecessorum nostrorum hactenus in Ecclesia Anglicana fuerit observata, et quicquid juris nobis hactenus vendicaverimus in*



Although the introductory language is not identical to that in Magna Carta, it is undoubtedly the inspiration for the king's soul language in the Great Charter. A new version of this charter was written up and sent to the pope for confirmation in January of 1215, just six months before John issued Magna Carta.<sup>244</sup> Innocent's letter to John confirming the Charter, which would have arrived in England in April or May, just weeks before Magna Carta was issued, was effusive in its praise of John for granting freedom of election.<sup>245</sup> This may explain why the first chapter of Magna Carta—which, as David Carpenter points out, is severable from the rest of the text and is the only part of Magna Carta that claims to have been made “by our free and spontaneous will”—confirms John's commitment to free Church elections and even references the Charter of Free Elections.<sup>246</sup> If John thought that he might appeal to the pope at some point to annul Magna Carta, it would help to ingratiate himself to Innocent by reminding him of the earlier charter that had pleased the pope so much.

The drafters of the preamble were almost certainly looking back to this charter, which had been on their minds quite a bit over the previous few months, when they included the salvation language in the preamble to Magna Carta. The salvation language, therefore, may have been included in both for the same reason. Both charters grant liberties to the Church, and grants of Church liberties were generally considered grants of alms that could save the king's soul and the souls of his relatives. The “salvation of our soul” language may, therefore, have been intended to refer specifically to the first chapter of the Charter.

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*electionibus quorumcunque prelatorum, Nos ad petitionem ipsorum pro salute anime nostre et predecessorum ac successorum nostrorum regum Anglie liberaliter mera et spontanea voluntate de communi [consensu] Baronum nostrorum concessimus et constituimus et hac presenti Carta nostra confirmavimus . . . .*

<sup>244</sup> CHENEY, *supra* note 227, at 364–65.

<sup>245</sup> *Id.* at 365.

<sup>246</sup> CARPENTER, *supra* note 2, ch. 1, at 38–39. After John grants these liberties to the Church “by our free and spontaneous will” in Chapter 1 of Magna Carta, the Charter then essentially restarts. Immediately after the grant of Church liberties, it reads, “We have also granted to all the free men of our kingdom . . . all the below written liberties . . .” *Id.* at 39. Carpenter has argued that the first chapter was probably written in this way—to be severable and to emphasize that it was given freely—at the urging of Stephen Langton, the Archbishop of Canterbury, who knew that the Charter was likely to be quashed by the pope and wanted the section on church liberties to be severable from the rest in the event that that happened. *See id.* ch. 1, at 351. I see no reason why Chapter 1 could not have been added by John, however. As I have argued elsewhere, John knew very well how to manipulate a pope, and if, in June of 1215, he thought he might appeal to the pope to have the Charter annulled, as he eventually did, he could very well have included this chapter, and made it clear that it was severable, as well as based on earlier charters that were still in force, as a way of emphasizing his piety and his role as a special son and protector of the Church. *See* Thomas J. McSweeney, *Magna Carta, Civil Law, and Canon Law*, in *MAGNA CARTA AND THE RULE OF LAW* 281, 299–300 (Daniel Barstow Magraw et al. eds., 2014).

*C. Statutes and the King's Soul*

As we have seen, the salvation language may have referred to the entire document as an act that prevented the king from falling into the sin of perjury, or it may have made its way into Magna Carta for a very limited reason: one of the charter's chapters grants liberties to the Church, and those liberties were perceived by the royal chancery as alms. One major piece of evidence cuts against this second, more narrow interpretation of the salvation language, however. This language was also used in the Charter of the Forest, a text that Henry's guardians issued in 1217 along with Magna Carta and that was combined with Magna Carta in every subsequent reissue.<sup>247</sup> The Charter of the Forest did not contain anything like Chapter 1 of Magna Carta. Archbishops and bishops are listed among the recipients of the liberties contained in the Charter, but the Church is not benefitted in any way that the rest of the realm is not.<sup>248</sup> The last chapter of the Charter specifically mentions that its terms apply to persons "both ecclesiastical and secular" and that it is to be observed by all, "both clerics and laymen."<sup>249</sup> There are other possible explanations for the appearance of the salvation language in the Forest Charter. The Charter includes a general pardon for all those who have been outlawed for forest violations from the time of Henry II up to Henry III's coronation.<sup>250</sup> And of course the drafters of the Forest Charter may not have been thinking too deeply about why they included this language. The preamble appears to be a direct copy of the preamble of Magna Carta.<sup>251</sup> The explanation for the appearance of this language in the Forest Charter may, therefore, be as simple as that. The narrow reading, that this language was included in Magna Carta because its first chapter granted liberties to the Church, the same liberties granted in another charter that uses this language, may be the correct way to understand its inclusion in Magna Carta.

Another possibility I would like to explore is that Magna Carta, in its entirety, could be conceived of as an act of almsgiving or something analogous to it. The immediate context and source for the "salvation of our soul" language suggests that it was placed there because the drafters understood Magna Carta to fit into the overall framework of royal almsgiving, but also that the language referred to a very specific part of the text. The chancery clerks, who were so careful to mark off gifts of land and liberties to the Church with the "salvation of our soul" language and to leave it out of charters making similar grants to laymen, understood the grant of Church

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<sup>247</sup> CHARTER OF THE FOREST, A.D. 1217, *reprinted in* SELECT CHARTERS AND OTHER ILLUSTRATIONS OF ENGLISH CONSTITUTIONAL HISTORY 344 (William Stubbs ed., 9th ed. 1913).

<sup>248</sup> *Id.* ch. 4, 11, at 345, 347.

<sup>249</sup> *Id.* ch. 17, at 348.

<sup>250</sup> *Id.* ch. 15, at 347.

<sup>251</sup> *Compare id.* at 344–45, with CARPENTER, *supra* note 2, at 36–37.

liberties to be a grant of alms.<sup>252</sup> Given the fact that the king, his justices, and his chancery clerks took such an expansive view of what counted as alms in other contexts, such as pardoning and judging, however, is it possible that the king could think of a legislative act, solely because it improved the law of the realm, as a gift of alms that could save his soul? Is it possible that English kings of the thirteenth century could perceive their power to make law as a sort of gift to the realm that would garner spiritual merit and reduce their time in purgatory?

The king could certainly imagine his actions in the adjudicative context, such as pardoning, as alms and the line between judgment and legislation has always been a permeable one. The Anglo-Saxon word *dom* could refer both to a law of general applicability and a judgment in an individual case.<sup>253</sup> A legislative act can be characterized as a judgment written in general terms, and in modern common law, judgments in individual cases are often treated as acts of general application. In the thirteenth century, canonists characterized papal decretals in just such a way.<sup>254</sup> Decretals were essentially decisions in particular cases.<sup>255</sup> Litigants and judges in the ecclesiastical courts would write to the pope for his advice in deciding a case before the court, describing the facts and asking for a ruling on the proper law to apply.<sup>256</sup> The pope would write back with a decision and, usually, a detailed rationale.<sup>257</sup> The pope's ruling applied to the case at hand, but also applied to analogous cases.<sup>258</sup> Decretals acted somewhat like modern case law in this respect. If the king's decisions in individual cases could be perceived as alms, perhaps legislative acts could be, as well.

The evidence that statutes could be perceived as acts of almsgiving is admittedly thin. The "salvation of our soul" language appears only occasionally in reference to royal statutes.<sup>259</sup> It did remain part of Magna Carta throughout the thirteenth century. This language remained in the 1216, 1217, and 1225 versions of Magna Carta, even as the preamble was heavily revised.<sup>260</sup> When the young Henry III's guardians reissued

<sup>252</sup> See *supra* notes 102–13 and accompanying text.

<sup>253</sup> See THE LAWS OF THE EARLIEST ENGLISH KINGS 114–15 (F. L. Attenborough ed. & trans., 1922) (reproducing laws of Edward the Elder, which refer both to *domas* as judgments and to the *dombec*, or book of legislation); DICTIONARY OF OLD ENGLISH, s.v. *dōm*, definitions 1.a.vii, 1.a.viii, 1.e.i, 2, <http://tapor.library.utoronto.ca/doe/dict/indices/headwordsindexd.html> [<http://perma.cc/4VTY-Y6Y3>].

<sup>254</sup> JAMES A. BRUNDAGE, MEDIEVAL CANON LAW 52–53 (1995).

<sup>255</sup> *Id.* at 53.

<sup>256</sup> See *id.*

<sup>257</sup> *Id.*

<sup>258</sup> In his discussion of the authority of decretals, Gratian quoted Pope Stephen V as saying "whatever [the Roman Church] decrees and ordains is to be perpetually and inviolately observed by all." DECRETUM, *supra* note 63, at D. 19, c. 4; GRATIAN, THE TREATISE ON LAWS WITH THE ORDINARY GLOSS 79 (Augustine Thompson & Katherine Christensen trans., 1993).

<sup>259</sup> See generally 1 STATUTES OF THE REALM, *supra* note 241.

<sup>260</sup> See *id.* at 14, 17, 22.

the Charter in 1216, the preamble was largely unchanged.<sup>261</sup> The list of ecclesiastical and secular lords who had given counsel to the king was, of course, different, as different people were present at the issuance of the Charter than had been at Runnymede in 1215.<sup>262</sup> Indeed, some of the counselors to the 1215 Charter were fighting against the king in 1216.<sup>263</sup> The salvation language appears in the preambles to the 1216 version in the slightly modified form “for the salvation of our soul and the souls of all our ancestors and *successors*.”<sup>264</sup> This was not a substantive change. “Heirs” and “successors” were both used in charters granting alms for the salvation of the king’s soul, seemingly interchangeably.<sup>265</sup> The word “heirs” is used elsewhere in the 1216 version; the Charter still says “by this our present charter we have confirmed for us and for our *heirs* forever,” suggesting that the use of *successors* in the phrase about the king’s soul was no more than careless copying.<sup>266</sup> *Successorum* is a more obvious antonym to the Latin *antecessorum* (ancestors), used in the text, than *heredum* (heirs).<sup>267</sup> Some changes were made to the preamble of the 1217 Charter, but no major ones.<sup>268</sup> The “for the salvation of our soul and those of our ancestors and successors” language was kept, and even appeared in the separate Charter of the Forest, which was issued at the same time.<sup>269</sup>

The 1225 Charter contained some major, substantive changes to the preamble. Henry III’s guardians seem to have been concerned to show, in the 1225 version, that Magna Carta was issued under the king’s authority and no one else’s.<sup>270</sup> Henry makes a point of saying that the Charter is gifted not on the advice of anyone, but “of our own spontaneous goodwill.”<sup>271</sup> Where the preambles of the 1215, 1216, and 1217 charters had included lists of councilors whose advice the king had ostensibly taken in issuing the Charter, this disappears from the preamble to the 1225 version, replaced by a more conventional list of witnesses at the end.<sup>272</sup> Someone clearly thought about the drafting of the preamble when he wrote the 1225 Magna Carta, but the language about the salvation of the king’s soul and those of his ancestors and

<sup>261</sup> See *id.* at 14; HOLT, *supra* note 16, at 314–16.

<sup>262</sup> See HOLT, *supra* note 16, at 314–16.

<sup>263</sup> *Id.* at 316–17.

<sup>264</sup> 1 STATUTES OF THE REALM, *supra* note 241, at 14 (emphasis added).

<sup>265</sup> Compare 1 ROT. CHART., *supra* note 102, at xiii, 207, with PATENT ROLLS, *supra* note 79, at 430, 464.

<sup>266</sup> 1 STATUTES OF THE REALM, *supra* note 241, at 14 (emphasis added) (Author’s translation).

<sup>267</sup> I would like to thank Paul Hyams for this observation.

<sup>268</sup> Compare 1 STATUTES OF THE REALM, *supra* note 241, at 14, with 1 STATUTES OF THE REALM, *supra* note 241, at 17.

<sup>269</sup> 1 STATUTES OF THE REALM, *supra* note 241, at 17.

<sup>270</sup> HOLT, *supra* note 16, at 420, 427–28.

<sup>271</sup> *Id.* (“*spontanea et bona voluntate nostra*”).

<sup>272</sup> *Id.* at 427–28.

successors remained.<sup>273</sup> Indeed, given their association with the practice of almsgiving, they may have even buttressed Henry's assertion that the Charter was given of his own spontaneous goodwill. Henry III wrote the salvation language into his *parva carta*, the short charter he issued in 1237 confirming Magna Carta and the Charter of the Forest.<sup>274</sup> It was not used in the writs issued for the 1265 confirmation of Magna Carta, but it appears again during the reign of Edward I in the 1297 and 1300 reissues of Magna Carta.<sup>275</sup>

And yet, none of the other "legislative" texts—called variously constitutions, provisions, and statutes—that would become part of the English statutory tradition by the end of the thirteenth century adopted this language in their preambles. Henry III's statute of Marlborough of 1267 contains no pious invocations, but instead makes reference to the king's duty.<sup>276</sup> The statutes of Edward I's reign focus on the king's duty, sometimes referencing his piety, but never his soul.<sup>277</sup> In Edward's statute of Wales, we find, "So we, wishing with God's blessing our said land of Snowdon . . . to be governed to the honour and praise of God and holy church and from love of justice with due guidance[. . .]"<sup>278</sup> In the statute of Gloucester of 1278 we find "providing for the betterment of his kingdom and for more fully doing justice, as the well-being of the kingly office requires," again stressing the king's duty to do justice.<sup>279</sup>

The salvific language does not even appear in contexts in which we would expect to find it. Charters that purported to protect Christians from the ills of Jewish usury often contain this language. Simon de Montfort's charter expelling the Jews from Leicester in the 1230s, which he said he did to protect the people of Leicester from the evils of usury, was explicitly said to be "for the salvation of my soul and those of my ancestors and successors."<sup>280</sup> Across the channel, the only examples of thirteenth-century French legislation I have been able to find that explicitly mention the king's soul are two *ordonnances* of Louis IX, dating to the early 1230s, in which the king grants concessions related to Jewish debt. The first is said to be made "for the salvation of our soul, and [the souls] of King Louis of illustrious memory, our

<sup>273</sup> *Id.* at 420.

<sup>274</sup> 1 STATUTES OF THE REALM, *supra* note 241, at 28.

<sup>275</sup> *Id.* at 31, 33, 38.

<sup>276</sup> *Id.* at 19.

<sup>277</sup> See 1 STATUTES OF THE REALM, *supra* note 241, at 33–44.

<sup>278</sup> 3 ENGLISH HISTORICAL DOCUMENTS, 1189–1327, at 422 (Harry Rothwell ed., 1975) [hereinafter Rothwell]. "*Nos itaque nutu divino volentes praedictam terram nostrum Snaudon . . . ad honorem et laudem Dei et Ecclesie Sancte ac zelum justicie sub debito regimine gubernari[.]*" 1 STATUTES OF THE REALM, *supra* note 241, at 55.

<sup>279</sup> Rothwell, *supra* note 278, at 414. "[P]urveant mesme le Rei, pur Le amendement de sun reaume, e pur [plus] plenere exhibicion de dreit, si com le profit de office regal demaunde . . ." 1 STATUTES OF THE REALM, *supra* note 241, at 45.

<sup>280</sup> See J. R. MADDICOTT, SIMON DE MONTFORT 15–17 (1994) (Author's translation) ("*pro salute anime mee et antecessorum et successorum meorum*").

father, and of our ancestors . . . .”<sup>281</sup> The second uses similar language.<sup>282</sup> We might expect to find similar language in Edward I’s 1275 statute of the Jewry, which prevented Jews from lending at interest in the future, but it is not there.<sup>283</sup> That statute was said to be made, “for the Honour of God and the common benefit of the people,” but it contained no invocations of the king’s soul and those of his ancestors and heirs.<sup>284</sup> Even the preamble to the Dictum of Kenilworth of 1266, dripping in piety, contained no mention of the king’s soul or those of his ancestors and heirs:

In the name of the holy and indivisible Trinity, Amen. To the honour and glory of almighty God, the Father, the Son and the Holy Ghost, of the glorious and preeminent mother of God, the Virgin Mary, and of all the blessed, by whose merits and intercessions we are guided on earth; of the holy, catholic, and apostolic Roman church, which is the mother and instructress of all the faithful; of our most holy father and lord, Clement, supreme pontiff of that universal church; to the honour and well-being, prosperity and peace of the most Christian prince, the lord Henry, illustrious king of England, and of the whole realm and the English Church, we [a list of the drafters and a recitation of their authority to draft the text on behalf of the king follows] have indeed with the help of divine grace provided what according to the paths of righteousness and equity we consider accords with God’s will and the peace of the realm, in this matter not listening to the representations of anyone but keeping God alone in mind; acting therefore above all as if in the sight of God Almighty and most fittingly mentioning in order head before members[.]<sup>285</sup>

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<sup>281</sup> 1 M. DE LAURIERE, *ORDONNANCES DES ROYS DE FRANCE DE LA TROISIÈME RACE* 53 (1723) (“*pro salute anime nostre, et inclite recordationis Regis Ludovici genitoris nostri, et antecessorum nostrorum*”).

<sup>282</sup> *Id.* at 54.

<sup>283</sup> See 1 *STATUTES OF THE REALM*, *supra* note 241, at 221.

<sup>284</sup> *Id.*; Rothwell, *supra* note 278, at 411.

<sup>285</sup> Rothwell, *supra* note 278, at 380–81.

*In nomine Sancte et individue Trinitatis Amen. Ad honorem et gloriam Omnipotentis Dei Patris et Filii et Spiritus sancti, et gloriose et precelse Dei Genitricis Virginis Marie, et omnium beatorum quorum in terris meritis et intercessionibus gubernamur; [sacrosante Catholice atque Apostolice Romane ecclesie, que est omnium fidelium mater et magistra; sanctissimi patris et domini nostri Clementis ipsius universalis Ecclesie Summi Pontificis];*

*Ad honorem et bonum prosperum et pacificum statum Christianissimi Principis domini Henrici Regis Anglie illustris et tocius Regni et*

The Dictum was written by a committee appointed at the parliament at Kenilworth to recommend measures to reconcile the king with former rebels in the wake of Simon de Montfort's rebellion.<sup>286</sup> The committee, which was appointed at the urging of the papal legate,<sup>287</sup> obviously drew on religious language for its authority. But although it mentions the king's duty to uphold Magna Carta, the Charter of the Forest, and ecclesiastical liberties, nowhere does it mention the king's soul.<sup>288</sup>

Was the language in Magna Carta a fluke? Perhaps. There is some surviving evidence, however, that people in the thirteenth century could view statutes as salvific. One chronicle associates the "salvation of the king's soul" language with the provisions of Merton of 1236.<sup>289</sup> Eleven years after Henry's last reissue of Magna Carta and one year before his first confirmation of it, Henry called a great council of the realm to be held at Merton priory.<sup>290</sup> There he presented certain changes to the law for the assent of the bishops and magnates and issued a text containing provisions on the rights of widows and the operation of the writs of novel disseisin and mort d'ancestor, among other things.<sup>291</sup> We have no "original" of this text, if there ever was such a thing, but the royal chancery sent copies of the provisions to all the sheriffs with instructions to read them in the county courts.<sup>292</sup> A copy of those instructions was recorded on the close roll, which recorded royal correspondence sent by letters close.<sup>293</sup> The version of the provisions that appears on the close roll does not say that the provisions were made for the salvation of the king's soul, only that they were made for the "common utility of the whole realm."<sup>294</sup> But while the version that issued from the king's own writing office did not indicate that these laws were made for the king's salvation, another version does.<sup>295</sup> The chronicler Matthew Paris, of St. Albans Abbey, supplied a version of the provisions in his

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*Ecclesie Anglicane: Nos . . . ea quidem gracia divina favente providimus que secundem juris et equitatis Dei beneplacito et paci regni putavimus convenire: nullius in hac parte acceptantes personam, sed habentes pre oculis solum Deum ante, Omnia igitur tanquam in conspectus Dei omnipotentis facientes et ex ordine capud membris aptissime premittentes.*

1 STATUTES OF THE REALM, *supra* note 241, at 12.

<sup>286</sup> PAUL BRAND, KINGS, BARONS, AND JUSTICES: THE MAKING AND ENFORCEMENT OF LEGISLATION IN THIRTEENTH-CENTURY ENGLAND 185 (2003).

<sup>287</sup> *Id.*

<sup>288</sup> *See id.*

<sup>289</sup> *See* PARIS, *supra* note 167, at 341.

<sup>290</sup> POWICKE, *supra* note 208, at 148, 770.

<sup>291</sup> 1 STATUTES OF THE REALM, *supra* note 241, at 2.

<sup>292</sup> POWICKE, *supra* note 208, at 769.

<sup>293</sup> *Id.*

<sup>294</sup> 1 STATUTES OF THE REALM, *supra* note 241, at 2.

<sup>295</sup> The version of the provisions found in the annals of Burton Priory likewise says that the laws were made "for the common utility of all England." 1 ANNALES MONASTICI 249 (Henry Richards Luard ed., 1864).

*Chronica Majora*.<sup>296</sup> In that version, he says that “Henry III, for the salvation of his soul and the emendation of his realm, led by a spirit of justice and piety, established certain new laws . . . .”<sup>297</sup> Matthew was well-connected and may have known something that did not end up in the close rolls’ version of the provisions.<sup>298</sup> Henry III was an aggressively pious king<sup>299</sup> and may have made some statement at Merton about the provisions being for the salvation of his soul. Even if Henry did not say something to that effect, Matthew shows us that it was plausible in the 1230s that a series of provisions modifying the law for the emendation of the realm could save the king’s soul.

Matthew Paris’ account of the Statute of Merton only demonstrates that contemporaries could conceive of statutes as salvific. It does not reveal why they could conceive of statutes as salvific. For that, we have to look to other texts. A few texts of the twelfth and thirteenth centuries suggest that the act of improving the law could, by itself, be thought of as an act of almsgiving, or something analogous to it. Several texts use language associated with gift-giving to describe acts of royal lawgiving. The *Glanvill* treatise, written in the late 1180s, calls the new judicial procedure, known as the grand assize, a “royal benefit [*beneficium*] granted to the people by the goodness of the king acting on the advice of his magnates.”<sup>300</sup> The language suggests that the unknown author of *Glanvill* viewed this new legal procedure as a gift granted as a matter of royal grace. The *Bracton* treatise, largely written in the 1220s and 1230s by a royal justice, makes similar statements about the assize of novel disseisin and other writs, referring to them as *beneficia*.<sup>301</sup>

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<sup>296</sup> See PARIS, *supra* note 167, at 341.

<sup>297</sup> “*Diebus etiam eisdem rex Henricus III, pro salute animae suae et emendatione regni sui, spiritu ductus iustitiae et pietatis, quasdam novas leges constituit.*” *Id.* (emphasis added) (Author’s translation).

<sup>298</sup> See Simon Lloyd & Rebecca Reader, *Paris, Matthew (c.1200–1259)*, OXFORD DICTIONARY NAT’L BIOGRAPHY (2004), <http://www.oxforddnb.com/view/article/21268> [<http://perma.cc/BNJ7-TMED>] (“Despite his seclusion, Matthew Paris was by no means isolated from the world. He had access to papal bulls, imperial *acta*, royal writs and charters, news reports and correspondence from a wide range of sources, English and continental, secular and ecclesiastical; his closest informants, many of whom knew him personally, included Richard, earl of Cornwall (*d.* 1272), a number of Henry III’s councillors and *curiales*, and a variety of clerics and nobles, apart from the king himself. Some of these are known to have visited St Albans in this period, a direct and personal means for the transmission of documentary material, as well as gossip and news, which Paris then worked upon for inclusion in his various historical works.”).

<sup>299</sup> See generally Dixon-Smith, *supra* note 28.

<sup>300</sup> “*Est autem assisa illa regale quoddam beneficium clemencia principis de consilio procerum populis indultum . . . .*” THE TREATISE ON THE LAWS AND CUSTOMS OF THE REALM OF ENGLAND COMMONLY CALLED GLANVILL, bk. II, ch. 7, at 28 (G. D. G. Hall ed., reprint ed. 1983).

<sup>301</sup> *Bracton* says that a person who has been disseised “by favour of the prince [*beneficio principis*] . . . is aided by the recognition of the assize of novel disseisin, excogitated and contrived after many night watches, for recovering the possession the disseisee lost wrongfully



The First Statute of Westminster of 1275 provides us with the best evidence that the act of improving the law could be thought of as an act of almsgiving. The final chapter of that text reads

And because it would be great charity to do right to all people and at all times, when there is need, by the assent of the prelates assizes of novel disseisin, mort d'ancestor, and darrein presentment may be taken in Advent, Septuagesima, and Lent, just as it is done with inquests; and the King asks this of the bishops.<sup>302</sup>

Up to 1275, these assizes could not be taken during these three seasons of the Church calendar because oaths, which were part of the procedure used in the assizes, were forbidden during Advent, Septuagesima, and Lent.<sup>303</sup> The king thus asked the bishops to relax the ecclesiastical rule on oaths, and permit them for assizes during these three seasons.<sup>304</sup> He put this change in the language of charity (*charité*).<sup>305</sup> *Charité* was the French equivalent of the Latin *caritas*, a term used in theological tracts to refer to a human being's love for God.<sup>306</sup> *Caritas* was closely connected with the act of almsgiving. In the Latin Vulgate version of the Bible, a passage from Paul's first letter to the Corinthians, now a staple at weddings, draws a direct connection between almsgiving and *caritas*: "And if I should distribute all my goods to feed the poor, and if I should deliver my body to be burned, and have not charity, it profiteth me nothing."<sup>307</sup> But, as Eliza Buhner has pointed out, Paul does not identify *caritas* directly with the act of giving to the poor.<sup>308</sup> Rather, *caritas* is "a

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and without judgment . . . ." 3 BRACTON, *supra* note 51, at 25. When the treatise discusses a special writ for common of pasture that applied because an assize of mort d'ancestor was not available, it tells us that "[s]ince he is so forbidden [to bring an assize of mort d'ancestor], he is aided, by favour of the prince [*beneficio principis*], by this writ, not by way of an assize but by a jury." *Id.* at 326. The treatise likewise uses this language to describe the accused felon's right to come to court and defend himself, and not to be outlawed without an appearance if possible. 2 *Id.* at 352.

<sup>302</sup> 1 STATUTES OF THE REALM, *supra* note 241, at 39 (emphasis added) (Author's translation):

*Et pur ceo que grant Charite serroit de fere dreyt a tuz, e en tuz tens [ou] mest[ier] serroyt, que par assentement des Prelaz, Assises de Novele Deseisine, de Mort Dauncester, de Drein presentment, feussent prises en ladvent, e en septuagesine, e en quaremmes, ausi bien com lem fet les Enquests; e ceo prie le Rey as Eveskes.*

<sup>303</sup> MICHAEL PRESTWICH, EDWARD I, at 271 (1988).

<sup>304</sup> *See id.*

<sup>305</sup> *See supra* note 302 and accompanying text.

<sup>306</sup> Buhner, *supra* note 97, at 114.

<sup>307</sup> *Id.* at 115 (quoting 1 *Corinthians* 13:3). The word St. Jerome translated, in his Latin Vulgate version of the Bible, as "*caritas*" was "*agape*" in the original Greek.

<sup>308</sup> *Id.*

quality of the giver's soul" that is defined "in explicit opposition to external acts[.]"<sup>309</sup> *Caritas* is not the act of giving; it is the spirit in which the giving must be performed to have spiritual benefit. Aquinas, who died the year before the Statute of Westminster was issued, followed in Paul's footsteps in separating the corporeal act of giving and the state of the giver's soul, arguing that "the love of one's neighbor is not meritorious, except by reason of him being loved for God's sake."<sup>310</sup> And *caritas* was absolutely necessary for an act to have spiritual benefit. As Peter Lombard put it, "those things alone are alive which are done in charity . . . . But as for those things which are done without charity, they are born dead and vain . . . ."<sup>311</sup> Thus, alms needed to be given in a state of *caritas*, out of love for God, to be spiritually efficacious for the giver.

By the middle of the thirteenth century, French-speakers in England were already referring to "works of charity," a phrase that appears in Latin in the writings of the Church fathers.<sup>312</sup> In stating that "it is great Charity to do right,"<sup>313</sup> the text of the statute implies that justice is a work of charity, a work done for the love of God. Moreover, the act of justice referred to in this text could not be interpreted as something that helped the poor or the Church specifically, and it offered no pardon. It was a modification of the law designed to give the king's subjects more convenient access to his courts and his justice.

Edward I may not have been genuinely concerned about the First Statute of Westminster's effect upon his soul when he characterized its last chapter as a work of charity. Thirteenth-century statutes were written with several audiences in mind.<sup>314</sup> In the process of making statutes more palatable to the magnates, the Church, or the realm, kings could even resort to a certain amount of deception in the drafting, hiding the real purpose behind a provision or creating a spurious one.<sup>315</sup> These words may have been placed in the statute for rhetorical reasons, to bring the bishops on board with the king's policy. The king was petitioning the bishops to make an exception to the ordinary rules of canon law, to allow oaths that would ordinarily not be allowed.<sup>316</sup>

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<sup>309</sup> *Id.*

<sup>310</sup> *Id.* at 118.

<sup>311</sup> SENTENCES, *supra* note 86, at 73 (Distinction XIV, ch. 3, no. 4).

<sup>312</sup> *Opere*, ANGLO-NORMAN DICTIONARY, <http://www.anglo-norman.net/D/opere> [<http://perma.cc/L9ZF-WSNV>]; *Ovraigne*, ANGLO-NORMAN DICTIONARY, <http://www.anglo-norman.net/D/ovraigne> [<http://perma.cc/VKF5-MGYA>]; HILDING KJELLMAN, LA DEUXIÈME COLLECTION ANGLO-NORMANDE DES MIRACLES DE LA SAINTE VIERGE 245 (1922) ("Entre les overaines de charité/Ke ad fet la reine par sa pité/Un duz fet vus cunterai[.]").

<sup>313</sup> 1 STATUTES OF THE REALM, *supra* note 241, at 39.

<sup>314</sup> See Paul Brand, *Rhetorics and Realities: the Making of English Medieval Legislation*, in DROIT ET SOCIÉTÉ EN FRANCE ET EN GRANDE-BRETAGNE (XIII–XXE SIÈCLES): FONCTIONS, USAGES, ET REPRÉSENTATIONS 39, 40–41 (Philippe Chassaing & Jean-Philippe Genet eds., 2003).

<sup>315</sup> *Id.*

<sup>316</sup> See *supra* notes 303–04 and accompanying text.

It is no surprise that he posed the request in religious terms. These words may not tell us much more than that.

They may, on the other hand, represent the tip of an iceberg; it is possible that they represent a way of understanding statutes in the thirteenth century that was not spelled out explicitly in most. Perhaps acts of royal lawgiving could be viewed as works of charity, as alms to the realm that could save the king's soul. This was certainly not the only, or even dominant, way of understanding statutes. Language associated with alms appears only infrequently in relation to English statutes, and even more rarely in French *ordonnances*.<sup>317</sup> The evidence suggests, however, that the discourse of almsgiving was connected, in the minds of thirteenth-century people, with legislation.

It is even possible that Magna Carta was the source of the belief that statutes could save the king's soul. As Magna Carta was reissued throughout the thirteenth century, chancery clerks copying the Charter and subjects reading and hearing the charter would have seen and heard those words "for the salvation of our soul and the souls of all our ancestors and successors,"<sup>318</sup> usually associated with acts of almsgiving, at the very beginning of the Charter.<sup>319</sup> The second half of the thirteenth century, a period when Magna Carta was being reissued and confirmed, was also the period when it was being assimilated to the new English statutory tradition in the minds of English lawyers, appearing in lawyers' statute books and eventually the first statute rolls.<sup>320</sup> Perhaps some of those who heard and read Magna Carta in the 1250s, 1260s, and 1270s came to the conclusion that a statute was also a gift of alms.

#### CONCLUSION

If Magna Carta and its successors, the great statutes of the thirteenth century, were perceived by contemporaries as acts of almsgiving, that, by itself, probably doesn't change our understanding of how Magna Carta fits into our modern tradition of fundamental rights all that much. Alexander Hamilton long ago, in *The Federalist No. 84*, laid out the argument that Magna Carta made a poor foundation for the understanding of rights in a democracy:

It has been several times truly remarked that bills of rights are, in their origin, stipulations between kings and their subjects, abridgements of prerogative in favor of privilege, reservations of rights not surrendered to the prince. Such was MAGNA CARTA, obtained by the barons, sword in hand, from King John. . . . It is evident, therefore, that, according to their primitive signification, they have no application to constitutions, professedly founded

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<sup>317</sup> See *supra* Part III.C.

<sup>318</sup> CARPENTER, *supra* note 2, at 36–37.

<sup>319</sup> Magna Carta was disseminated widely in the thirteenth century through the public proclamations that usually accompanied its reissues and confirmations. *Id.* at 430–32.

<sup>320</sup> *Id.* at 432.

upon the power of the people and executed by their immediate representatives and servants.<sup>321</sup>

Hamilton was making the argument against a Bill of Rights by pointing out that such documents had historically been concessions from the sovereign to the people, not statements of natural rights retained by the people.<sup>322</sup> If anything, the knowledge that John and his successors may have understood Magna Carta as a gift that could save their souls only demonstrates that Hamilton didn't quite know how right he was.

What this exposition of the “salvation of our soul” language should show us, however, is how much we still allow the Bill of Rights to cloud our understanding of Magna Carta in its original context. No one in the past century has thought to comment on the words “for the salvation of our soul and the souls of all our ancestors and heirs,”<sup>323</sup> one of the first things anyone reading the text encounters. The Whig narrative still blinds us to words that are right before our eyes. Where today we would fit Magna Carta's guarantees into the framework of fundamental rights, thirteenth-century monarchs and their subjects would have understood the text through the idiom of kingship. Magna Carta tells the king what he must do to be a good king; it is in those terms that it places limits on royal government.<sup>324</sup> When we understand Magna Carta in this way, we can make sense of the salvation language in its preamble. Magna Carta could be understood either as an act that prevented the king from falling into sin, an act that helped him attain the merit necessary for salvation, or perhaps both.

It is doubtful that anyone in the years after John's death in 1216 would have thought that Magna Carta had saved his soul. John, of course, did not keep to the terms of Magna Carta.<sup>325</sup> Whether he ever intended to do so is open to debate.<sup>326</sup>

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<sup>321</sup> THE FEDERALIST NO. 84, at 420 (Alexander Hamilton) (Lawrence Goldman ed., 2008).

<sup>322</sup> *See id.*

<sup>323</sup> CARPENTER, *supra* note 2, at 36–37.

<sup>324</sup> Cary Nederman has argued persuasively that when ecclesiastics spoke of the liberty of the Church, they were actually speaking of something closer to our modern idea of fundamental rights or liberties than to the medieval concept of liberties as privileges granted to specific people by the king. Cary J. Nederman, *The Liberty of the Church and the Road to Runnymede: John of Salisbury and the Intellectual Foundations of the Magna Carta*, 43 POL. SCI. & POL. 456, 458 (2010). It was, in Nederman's words, “a general form of liberty that did not depend on any grant from a secular dominion.” *Id.* Nederman is undoubtedly correct that learned clerics thought of Church liberty as an abstract political concept. When he issued the Charter of Free Elections, however, John clearly thought that he was making a grant of liberties, privileges reified as if they were property rights, rather than recognizing a liberty that the Church already enjoyed. As we have seen, John appears to have interpreted his grant of liberties as a gift of alms that could save his soul. *See supra* Part III.A. These charters were subject to different interpretations even in the thirteenth century.

<sup>325</sup> John did comply with some of its chapters before the collapse of the peace between the royal party and the barons in August of 1215. CARPENTER, *supra* note 2, at 373–75, 388, 398.

<sup>326</sup> *See id.*

Some contemporaries, at least, believed he had not gone directly to hell, however. Roger of Wendover, a chronicler at St. Albans Abbey, recorded a story about a monk who was visited by King John's ghost in 1224.<sup>327</sup> John explained to the monk that he was being tormented in purgatory, where he wore heavy, burning robes.<sup>328</sup> He was suffering the torments of purgatory so that he might, one day, be purged of his sins and attain salvation.<sup>329</sup> In 1232, the bishop of Rochester reported that he and others had had visions that confirmed that John's elder brother, Richard I, and John's archbishop of Canterbury, Stephen Langton, had both been released from purgatory on the same day.<sup>330</sup> We have no such story for King John.

Magna Carta might help him yet. Portions of the 1225 Magna Carta are still binding law. Magna Carta was understood to be a statute by the end of the thirteenth century, and as a statute, it entered into the law of many of Britain's colonies.<sup>331</sup> Although much of the Charter has been repealed or modified by statute, Chapter 1, on the liberty of the Church, is good law in present-day England, and Chapter 29 (which combines Chapters 39 and 40 of the 1215 version of the Charter, the guarantees of good justice), has remained on the books, without repeal, in many parts of the former British Empire.<sup>332</sup> The 1225 Magna Carta was issued by John's son, Henry III "for the salvation of our soul and the souls of all our ancestors and successors."<sup>333</sup> John would probably be happy to know that, eight centuries after his death, the statute law of numerous countries is still working towards his salvation.

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<sup>327</sup> Dixon-Smith, *supra* note 28, at 260–61.

<sup>328</sup> *Id.*

<sup>329</sup> *Id.* at 261.

<sup>330</sup> *Id.* at 185.

<sup>331</sup> William Hotchkiss' 1845 codification of Georgia's statutes included English statutes that had been imported and were still considered binding law in Georgia at the time. WILLIAM A. HOTCHKISS, A CODIFICATION OF THE STATUTE LAW OF GEORGIA (1845). The first text included in the collection is an English translation of Edward I's 1297 confirmation of the 1225 Magna Carta. *Id.* at 5.

<sup>332</sup> RALPH V. TURNER, MAGNA CARTA THROUGH THE AGES 190 (2003).

<sup>333</sup> The version in Hotchkiss' 1845 codification of Georgia statutes includes this language, using the word "progenitors" instead of "ancestors," in its English translation of the Charter, which Hotchkiss took to be binding law in Georgia at that time. HOTCHKISS, *supra* note 331, at 5.