

## The vis et voluntas of King Henry III: the downfall and punishment of Robert de Ros

In the course of 1254-1255, some very disturbing news began to reach King Henry III. It was about the treatment of his daughter, Margaret. In 1251, at the age of eleven, she had married the ten-year-old King Alexander of Scotland. King Henry had appointed as their guardians two Anglo-Scottish nobles. One of these was John de Balliol, lord of both Barnard Castle in Northumberland and part of Galloway. The other was Robert de Ros, a grandson of King William the Lion, who was lord of Wark on the Anglo-Scottish border and of Sanquhar in Nithsdale. Margaret was unhappy. She was being kept in the gloomy castle of Edinburgh and prevented from sleeping in the same bed as her husband. Henry, and his queen, Eleanor of Provence, were highly affectionate parents. Eleanor, according to Matthew Paris, ‘desired most ardently the safety and prosperity of her daughter, as she did that of [Alexander] her husband, whom she loved as an adopted son.’<sup>1</sup> Henry felt exactly the same way. Nothing was more calculated to cause alarm than news of Margaret’s mistreatment. The result was Henry’s only visit to Scotland, the complete remodelling of Alexander’s minority government, and the savage punishment of Balliol and Ros. The case of Balliol has been well discussed by Amanda Beam in her recent book on the Balliol dynasty.<sup>2</sup> Ros’s fall, by contrast, has not been examined in detail, although it was he who bore the brunt of Henry’s fury. His treatment raises interesting questions about the legality of royal conduct. On the face of it, Henry seems convicted of the kind lawless act of force and will (*vis et voluntas*), which Magna Carta was designed to prevent.<sup>3</sup> This naturally has relevance to the political situation as the great revolution of 1258 approached. Since significant material bearing on Ros’s fall (and that of Balliol) comes from the fine rolls, the whole topic is a fitting subject for a ‘fine of the month’.

There appears to be no record evidence bearing on the appointment of Ros and Balliol, following Alexander and Margaret’s marriage in December 1251. When Matthew Paris first wrote about the wedding (probably not long afterwards), for his *Chronica Majora*, he did not mention them. Indeed, he named as guardians of the queen two household knights, Stephen Bauzan and Robert Norensis, while adding that Henry also promised to send ‘a faithful and wise counsellor who might provide for the affairs of the king and queen with the chief men of the kingdom’. It was in a later emendation to this chapter, made quite probably in the light of the events of 1255, that Paris identified Robert de Ros as the person given custody of the queen.<sup>4</sup> It was likewise only when writing about 1255 itself that Paris was specific about the guardianship (*tutela*) of king and queen being committed to Ros and Balliol.<sup>5</sup> Paris, however, was not wrong in his statements, for record evidence, as we will see, shows that Ros and Balliol had indeed some special responsibility for the welfare of the queen, and were also

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<sup>1</sup> Matthew Paris, *Chronica Majora*, ed. H.R. Luard, 7 vols. (Rolls ser., 1872-83), v, 501. For Eleanor and Margaret, see M. Howell, *Eleanor of Provence: Queenship in Thirteenth-Century England*, 102-3.

<sup>2</sup> A. Beam, *The Balliol Dynasty 1210-1364* (Edinburgh, 2008), 58-70.

<sup>3</sup> The classic study of *vis et voluntas* is J.E.A. Jolliffe, *Angevin Kingship*, 2<sup>nd</sup> edn. (London, 1963), ch. III

<sup>4</sup> Paris, *Chronica Majora*, v, 272.

<sup>5</sup> Paris, *Chronica Majora*, v, 501. In his *Abbreviatio Chronicorum*, Paris refers to Ros and Balliol’s appointment under 1251 but this was probably written in 1255-1256: Matthew Paris, *Historia Anglorum*, ed. F. Madden, 3 vols. (Rolls ser., 1866-9), iii, 322.

members of the king of Scotland's council. That Henry should have chosen them was understandable. As Anglo-Scottish magnates they had a foot in both realms, and were subject to Henry for their English lands. Both too were experienced royal servants. Balliol was sheriff of Cumberland from 1248 until his fall. Ros had done a long stint as chief justice of the royal forests north of Trent.<sup>6</sup>

The first sign that Henry was becoming disturbed about events in Scotland comes in August 1254 when he was out in Gascony. In that month, he suddenly despatched orders to Ros and Balliol commanding them, 'in the faith in which they are held to the king', and on pain of severe punishment, to withdraw entirely 'from the council of the king of Scotland'.<sup>7</sup> There can be little doubt that Henry was acting here on the information or misinformation of Alan Durward. Durward had been ousted by his Comyn enemies from the justiciarship of Scotia at the time of the 1251 marriage, and was to recover the office after Henry's intervention in 1255. Durward had travelled out to Gascony with Queen Eleanor in the summer of 1254, and around the time of the letters to Balliol and Ros, was given an annual fee of £50 a year by the king.<sup>8</sup> Since Henry's letter said nothing specifically about the king and queen, it may be that Durward's accusations related to Ros and Balliol's general role as councillors, although one cannot be sure. Whatever the case, Henry, as so often, changed his mind since Ros and Balliol, for the time being, remained in place.

For the next stage in the story, in which Margaret for the first time features, we are indebted to Matthew Paris. Under the year 1255, he tells how Queen Eleanor had sent her physician, Master Reginald of Bath, to look after Margaret's welfare. He found her in Edinburgh castle, pale and depressed, and blamed her (unnamed) custodians for her plight. Soon after this, Reginald fell terminally ill (poisoned he believed by the Scots), but on his death bed he wrote to the king and queen about their daughter's appalling treatment. There is no reason to disbelieve at least the gist of this story, and there is indeed record evidence for Reginald's death which had taken place by 21 March 1255.<sup>9</sup> Two months later, in May 1255, Henry probably received further disturbing news, for both Alan Durward and his ally David Lindsay (ousted as chancellor in 1250) seem to have been at court.<sup>10</sup> It was around this time that Henry cancelled his plans to visit his new house at Gillingham in the Dorset, and began to think he would have to go north instead.<sup>11</sup>

Initially, Henry moved slowly, probably unclear of the situation, perhaps hoping Margaret might be brought south. For most of June he remained at Woodstock. He then went on to his house at Geddington in Northamptonshire, where he and Queen Eleanor 'took venison as

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<sup>6</sup> *Curia Regis Rolls*, xvi, nos.1484-7 give a fascinating picture of Ros's activities as justice of the forest in Northumberland and his relations with local magnates. I am grateful to Henry Summerson for pointing this out to me.

<sup>7</sup> *Close Rolls 1253-4*, 266.

<sup>8</sup> *Close Rolls 1253-4*, 70; *Cal. Patent Rolls 1247-58*, 321, 395.

<sup>9</sup> Paris, *Chronica Majora*, v, 501-2; *Close Rolls 1254-6*, 55.

<sup>10</sup> *Cal. Liberate Rolls 1251-60*, 219; *Cal. Patent Rolls 1247-58*, 410; *Cal. Charter Rolls 1226-57*, 446. Note also the concessions to the earls of Dunbar and Strathearn: *Close Rolls 1254-6*, 81 and *Cal. Patent Rolls 1247-58*, 411.

<sup>11</sup> *Cal. Liberate Rolls 1251-60*, 202, 220; *Cal. Patent Rolls 1247-58*, 412.

they wished' in the park, a rare glimpse of them hunting.<sup>12</sup> The couple then moved to Nottingham, where they stayed from 17 July to 2 August, before travelling on northwards. It was at Nottingham, according to Matthew Paris, that Henry received the accusations against Ros and Balliol.<sup>13</sup> Probably this was the result of the dramatic and daring mission carried out by the earl of Gloucester and John Mansel. Paris tells how the two of them went to Scotland and managed to enter Edinburgh castle, disguised as menial servants of Robert de Ros.<sup>14</sup> They then let in men-at-arms supplied by Patrick, earl of Dunbar.<sup>15</sup> With the fortress secured, Margaret poured out her tearful story. She felt incarcerated in the castle, a sad and solitary place by the sea, out of sight of green fields and lacking healthy air. Queen Eleanor herself sometimes worried about the quality of air and this must have struck an especial chord.<sup>16</sup> Margaret added that she could not choose her own handmaidens and was denied marital congress with her husband. This Mansel and Gloucester remedied at once by placing the couple together in the same bed.

We now turn from the general course of the events to Henry's moves against Robert de Ros. The first of these was on 4 August 1255. On that day, in a letter to Ros sent from Warsop in Nottinghamshire, Henry declared that he was coming north to see Alexander and Margaret.<sup>17</sup> Consequently, Ros was ordered to surrender his castle of Wark to the sheriff of Northumberland, so that the king's wines could be stored there. The implication was that Henry intended to stay at Wark himself, which indeed he did. Henry added that, while he was challenging Ros's legal title to the castle, its surrender would be without prejudice, and it would be returned when the king had finished his business 'in those parts'. The letter was curiously balanced, presumably intentionally so. On the one hand, it made no criticism of Ros, and indeed indicated that the king was coming to see Alexander and Margaret simply because he had not seen them for a long time, and longed to do so. On the other hand, there was a threat both in the intention of seeing the king and queen (for what, might they say?) and in the lawsuit for possession of Wark. This is the first heard of such a plea, and it had surely been got up as a way of attacking Ros. The basis of the claim appears to be unknown, but it probably related to the division of the family patrimony which had seen Robert, a younger son, get Wark, while his elder brother, William, inherited Helmsley in Yorkshire. The arrangement was that Robert should hold Wark from William, which explains why it was against William that the king ultimately brought his action, Robert having called his brother to warrant.<sup>18</sup> Back in 1227 Henry had actually confirmed the charter which had given Wark to Ros, but this was while (as he would have said), he was under the control of the justiciar,

<sup>12</sup> *Select Pleas of the Forest*, ed. G.J. Turner (Selden Soc., xiii, 1899), 113.

<sup>13</sup> Paris, *Chronica Majora*, v, 497.

<sup>14</sup> Paris, *Chronica Majora*, v, 504-6. The annals of Dunstable has a similar account: *Annales Monastici*, iii, 198.

<sup>15</sup> This detail comes from the Melrose chronicle: British Library Cotton Faustina B IX, fo.57v cited from the facsimile on the CD provided with *The Chronicle of Melrose Abbey: A Stratigraphic Edition*, I, ed. D. Broun and J. Harrison (Scottish History Soc., 2007).

<sup>16</sup> *Annales Monastici*, iii, 203-4; Howell, *Eleanor of Provence*, 294.

<sup>17</sup> *Close Rolls 1254-6*, 216.

<sup>18</sup> *Northumberland Pleas from the Curia Regis and Assize Rolls 1198-1272*, ed. A.H. Thompson (Publications of the Newcastle upon Tyne Records Committee, 2, 1922), nos.584,594,596. I am grateful to Henry Summerson for bringing this publication to my attention and pointing out the relevance of some of the cases there.

Hubert de Burgh.<sup>19</sup> There were good reasons to regret what had happened. Since Ros held Wark not direct from the king but from his family's senior line, it was the senior line, not the king, which would control Wark during any minority. It was just this kind of 'sub-infeudation', 'bringing grievous loss and unendurable damage to the crown and royal dignity', that Henry III sought to prevent by legislation in 1256.<sup>20</sup> In 1255, the combination of tact and pressure did the trick and Ros surrendered Wark without fuss. Henry acknowledged its receipt in a letter on 28 August, sent from Newcastle-on-Tyne, and once again stated that Ros would suffer no prejudice as a result.<sup>21</sup> That, however, a heavy cloud hung over Ros is clear from a letter of 4 September which gave him a safe conduct to come to court. No one in ordinary circumstances would have needed that.<sup>22</sup> Meanwhile, the king was also moving against Balliol. On 18 August he was summoned to court and told to surrender his custody of Carlisle castle.<sup>23</sup> His situation was aggravated by another transgression, as revealed by Amanda Beam.<sup>24</sup> This was his outrageous attack in August 1255 on the men of the bishop of Durham in the course of dispute over an advowson.

These measures against Ros and Balliol, taken in August and September 1255, are the last record evidence of the king's actions until well into the following year. The Dunstable annals say that the king impleaded both Ros and Balliol in London, and accused them of many transgressions.<sup>25</sup> That some legal action was brought against Balliol is clear from the conclusion of the affair, as revealed in the fine rolls. In August 1257, he fined in £500 for admission into the king's grace and for remission of any actions against him 'by occasion of his trespasses against Alexander, king of Scotland, or also (*aut etiam*) Margaret, daughter of the king his consort, concerning which the king caused him to be impleaded in his court'.<sup>26</sup> Paris opined that one reason for Henry moving against Balliol was to get hold of his fabled wealth.<sup>27</sup> The fine of £500 was certainly large, and the great bulk of it was paid. Balliol made an immediate cash down payment of £100 into the wardrobe. Then in March 1258, he paid in another £266 both towards the fine and an amercement of 100 marks (£66 13s 4d) for convictions on the 1256 judicial eyre in Northumberland.<sup>28</sup> The £200 balance of the two debts was then pardoned. The king had, therefore, in three years extracted £366 from Balliol, a striking indication of his power when he chose to use it.

If Balliol's treatment was severe, Ros's, on the face of it, was far worse. The Dunstable annals, as we have seen, say that both Ros and Balliol were impleaded by the king in London and accused of many transgressions. Paris states that Ros was 'strictly' summoned to come,

<sup>19</sup> *Cal. Charter Rolls 1226-57*, 56.

<sup>20</sup> *Close Rolls 1254-6*, 429.

<sup>21</sup> *Cal. Patent Rolls 1247-58*, 423.

<sup>22</sup> *Cal. Patent Rolls 1247-58*, 424.

<sup>23</sup> *Close Rolls 1254-6*, 220.

<sup>24</sup> Beam, *Balliol Dynasty*, 50-3, 64-5.

<sup>25</sup> *Annales Monastici*, iii, 198.

<sup>26</sup> *Cal. Fine Rolls 1256-7*, no.894 (available at [http://frh3.org.uk/content/calendar/roll\\_054.html](http://frh3.org.uk/content/calendar/roll_054.html)); Beam, *Balliol Dynasty*, 67.

<sup>27</sup> Paris, *Chronica Majora*, v, 507, 528.

<sup>28</sup> [http://aalt.law.uh.edu/AALT4/H3/E372no101/aE372no101fronts/IMG\\_1402.htm](http://aalt.law.uh.edu/AALT4/H3/E372no101/aE372no101fronts/IMG_1402.htm); *Cal. Fine Rolls 1257-8*, no.374 (available at [http://frh3.org.uk/content/calendar/roll\\_055.html](http://frh3.org.uk/content/calendar/roll_055.html)); *Cal. Patent Rolls 1247-58*, 620; Beam, *Balliol Dynasty*, 67.

prepared to answer the complaints against him in ‘the court of the king of England’. At first, ‘fearful’, he withdrew, only afterwards ‘humbly’ (*humiliter*) to appear. In a second version of the same episode, Paris has Ros promising ‘under a certain form’ to come to the king’s court ‘to answer concerning everything’. ‘However’, Paris added, ‘the king, by the counsel of his fair-weather (*fortunalium*) friends caused Robert’s lands to be seized and placed in the harshest custody’.<sup>29</sup> It may be that Ros’s first misdemeanor was failing to come to court under the safe conduct issued him in September 1255. Perhaps he also failed to turn up at the parliament held at Westminster in that October. There, according to another strand from Paris, Henry had a furious exchange with Roger Bigod, earl of Norfolk, when the latter spoke up for Ros.<sup>30</sup> In the event, it was not till May 1256 that Ros did appear at court. On 6 May, Henry forgave his absence at the start of the Northumberland eyre on 24 April since he had then been on his way to court ‘to answer to those things that the king has against him’.<sup>31</sup>

This in itself was a conciliatory gesture, and in fact, despite Paris’s implication to the contrary, at this stage there seems to have been no seizure of Ros’s lands. There is thus no indication that they were in the king’s hands at the time of the Northumberland eyre. That, however, Ros was in disfavour may be reflected both in the cases which went against him on the eyre and in his treatment by the judges. Perhaps his position was somewhat akin to that of the Cistercians in May 1256, following their refusal to contribute to the taxation for the Sicilian enterprise. The sheriffs were to give them ‘common justice which the king wishes to deny to no one’, but were to do them ‘no grace’ without the king’s special order.<sup>32</sup> The Northumberland eyre, from which Ros suffered, opened at Newcastle-upon-Tyne on 24 April 1256. It was headed by the distinguished and reputable professional judge, Roger of Thirkleby.<sup>33</sup> Two cases were brought against Ros by the prior of Kirkham. One reached no conclusion through Ros’s failure to appear, and the sheriff was ordered to produce him at Carlisle later in the circuit.<sup>34</sup> In the other case, the jurors, chosen by consent of the parties, were charged with deciding whether Ros, back in May 1254, had caused two oxen and two horses of the prior to be taken to his castle of Wark, where they were kept until delivered by order of the king. Since Ros was not present at the eyre, his agreement to the jury must have been given either by an attorney or at some prior hearing of the case. It was an agreement which did him no good, for the jurors said that the seizure had indeed been made by Ros’s men on his orders. Accordingly, he was placed in mercy (which meant he was liable to be amerced), and was sentenced to pay damages. The judges assessed these at £20, and ordered them to be raised by the sheriff without delay from Ros’s lands and chattels.<sup>35</sup> This procedure was quite normal, but damages of £20 for the detention of two oxen and two horses do seem on the large side.

<sup>29</sup> Paris, *Chronica Majora*, v, 506.

<sup>30</sup> Paris, *Chronica Majora*, v, 530.

<sup>31</sup> *Close Rolls 1254-6*, 414.

<sup>32</sup> *Close Rolls 1254-6*, 418; see Paris, *Chronica Majora*, v, 553-4.

<sup>33</sup> *Records of the General Eyre*, ed. D. Crook (London, 1982), 121-2. The roll is printed in *Three Early Assize Rolls for the County of Northumberland*, ed. W. Page (Surtees Soc., lxxxviii, 1891), 1-133.

<sup>34</sup> *Three Early Assize Rolls*, 51-2. The Cumberland roll does not survive.

<sup>35</sup> *Three Early Assize Rolls*, 33.

The prior of Kirkham was a powerful opponent, but Ros also lost two cases to men seemingly of much less consequence. One of these may have been a disaffected servant, Ralph de Pratis, since he claimed he should be paid £2 a year from Ros's chamber. The jurors agreed, and the judgement, therefore, was that Ralph should recover the payment, plus £8 10s. worth of arrears. Ros himself was 'in mercy' for 'unjust detention'.<sup>36</sup> In the other case, Simon son of Roger of Horsley, accused Ros of disseising him of two bovates in Pressen just south of Wark. Again, Robert did not come, but since this was an assize of novel disseisin his absence could not delay the case. Perhaps for that reason, he was represented by his bailiff, Robert of Cargo (probably Cargo north of Carlisle). Cargo, however, was able to say nothing to prevent the jurors convicting Robert of disseisin. The judgement accordingly was that Simon son Roger should recover possession, plus damages of £2, while Robert again was 'in mercy'.<sup>37</sup>

All these cases came under the civil pleas business of the eyre. There was also a case under the pleas of the crown, in which Robert of Cargo again featured. A local jury testified that, as Ros's constable of Wark castle, he had arrested one William de Hilderescalf on the royal road between Pressen and Learmouth, and then imprisoned him in the castle for two days until released by William de Latimer, a local landholder and at this time sheriff of Yorkshire. Afterwards, the record continues, the jurors said on oath that Robert de Ros, although informed of the arrest, did not wish to put the matter right. The judgement, therefore, was that Robert was once again 'in mercy', while 'the constable' (Robert of Cargo) was to be arrested.<sup>38</sup>

The pipe rolls (recording the annual audit of money owed the crown), and Ros's eventual pardon, reveal that his convictions for unjust detention and imprisonment, landed him with an amercement of 100 marks, so the same size as Balliol's.<sup>39</sup> One would like to know more about how both amercements were imposed. Magna Carta laid down that earls and barons were to be amerced by their peers and only according to the nature of the offence ('*secundum modum delicti*').<sup>40</sup> In practice, this was interpreted as meaning amercement either in the court held in the king's presence (where peers of earls and barons might be in attendance) or by the exchequer, where the chief officials were called barons and were regarded as having baronial status.<sup>41</sup> Technically, Ros (unlike Balliol) was not a baron since he did not hold Wark direct

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<sup>36</sup> *Three Early Assize Rolls*, 66. For an earlier stage of the case, and a subsequent action for the same rent, see *Northumberland Pleas*, nos.517, 610.

<sup>37</sup> *Three Early Assize Rolls*, 51.

<sup>38</sup> *Three Early Assize Rolls*, 115. For Latimer's land at Dunston, see *Book of Fees*, ii, 1128. William de Hilderescalf surely took his name from Hinderkelfe, nowadays better known as Castle Howard, in the North Riding of Yorkshire (with thanks to Henry Summerson for this).

<sup>39</sup> [http://aalt.law.uh.edu/AALT4/H3/E372no101/aE372no101fronts/IMG\\_1402.htm](http://aalt.law.uh.edu/AALT4/H3/E372no101/aE372no101fronts/IMG_1402.htm);  
*Cal. Fine Rolls 1258-9*, no.60 (available at [http://frh3.org.uk/content/calendar/roll\\_056.html](http://frh3.org.uk/content/calendar/roll_056.html)).

<sup>40</sup> Chapter 14 of the 1225 Charter: J.C. Holt, *Magna Carta*, 2<sup>nd</sup> edn. (Cambridge, 1992), 505. For the statement that the Northumbrian baron, Roger Bertram, was amerced not before the forest justices in Northumberland 'since he is a baron of the lord king' but 'before the lord king at Windsor like all other barons who commit a trespass in the forest': *Curia Regis Rolls*, xvi, no.1484, p.284.

<sup>41</sup> Holt, *Magna Carta*, 332-4.

from the crown, but it is likely that he was treated as one.<sup>42</sup> The actual size of the amercements seems large, but it was actually quite common for great men to be saddled with such penalties, even for quite trivial offences, although often pardons were ultimately forthcoming.<sup>43</sup> It may be, therefore, that while the number of cases going against Ros on the 1256 eyre owed something to his disgrace, there was nothing exceptional in the way he was punished. It may be, but one cannot be sure. The king, as we will see, was quite capable of ignoring judgement by peers and imposing amercements himself. After the revolution of 1258, Ros was pardoned all but £5 of the amercement.<sup>44</sup> Does this represent what Ros's peers, in the new circumstances, felt was the amount commensurate with his offences?

Whatever the truth here, the amercement Ros suffered for his convictions on the Northumberland eyre pales into insignificance against his punishment for his Scottish offences. We have seen that Ros appeared before the court *coram rege* in May 1256 to answer the charges against him. Unfortunately the rolls of that court, like those of the bench at Westminster, are lost between 1255 and 1258, so we have no record of the case. At first, however, things seem to have gone well. Ros was let off any penalty for failing to appear at the start of the Northumberland eyre, and better was to follow.<sup>45</sup> On 12 May, the king, at Ros's request, ordered the sheriff of Northumberland, William Heron, to restore him to Wark, although this was to be without prejudice to the king's claims.<sup>46</sup> So far so good, but disaster now followed. The story, as given in Ros's eventual pardon, issued by the reform council in November 1259, was as follows. Ros 'was accused before the king and his council on the charge of causing trouble and vexation to Margaret queen of Scotland, the king's daughter, while the said Robert was of the council of Alexander, king of Scotland, and being called on that charge was amerced in the sum of 100,000 marks (£66,666) for such trespasses'.<sup>47</sup>

This is a statement as curious as it is extraordinary. It does not claim that the amercement was a product of the king's will. On the contrary, in saying that Ros was summoned and accused before the king's council, it implies that it was the council which imposed the amercement. Given the composition of Henry's council (to which we will return), the amercement may well have been imposed by Ros's peers. Yet its size seems utterly extraordinary, going way beyond anything related to Magna Carta's 'according to the nature of the offence'. Indeed, there seems to be no precedent for it. Balliol's fine, as we have seen, was only £500. Under John, the fine made by Matilda de Braose for the lives and limbs of herself, her husband and her family was 50,000 marks, half the size of Ros's amercement.<sup>48</sup> Otherwise, even the

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<sup>42</sup> The place of the amercements of both Balliol and Ros on the pipe roll is compatible with these having reached the exchequer by a route different from that of the estreat roll sent by the justices themselves: [http://aalt.law.uh.edu/AALT4/H3/E372no101/aE372no101fronts/IMG\\_1402.htm](http://aalt.law.uh.edu/AALT4/H3/E372no101/aE372no101fronts/IMG_1402.htm).

<sup>43</sup> See D.A. Carpenter, 'Magna Carta 1253: new light on the negotiations and the ambitions of the church', the fine of the month for August 2011, paragraph 22 to be found at <http://www.finerollshenry3.org.uk/content/month/fm-08-2011.html>.

<sup>44</sup> *Calendar Fine Rolls 1258-9*, no.27 (available at [http://frh3.org.uk/content/calendar/roll\\_056.html](http://frh3.org.uk/content/calendar/roll_056.html)).

<sup>45</sup> *Close Rolls 1254-6*, 414.

<sup>46</sup> *Cal. Patent Rolls 1247-58*, 473.

<sup>47</sup> *Cal. Charter Rolls 1257-1300*, 25. I am grateful to Jessica Nelson for checking the 100,000 marks for me in the original roll.

<sup>48</sup> *Foedera*, I, i, 107-8.

highest amercements and fines for grace which John demanded seem to have been around 1000 marks.<sup>49</sup> Under King Richard, Ros's father, Robert de Ros, had to pay 1200 marks to recover his lands seized into the king's hands for allowing a French prisoner to escape.<sup>50</sup>

There is, therefore, room for scepticism as to whether Ros's amercement was really 100,000 marks. Unfortunately, there is no documentary evidence either to confirm or contradict the statement in the pardon. The debt is not on the pipe rolls and evidently the exchequer was never informed about it, presumably because Henry intended to deal with it himself, and have the money paid direct into the wardrobe. There is, however, evidence from a different source which seems at odds with the astronomical 100,000 marks. The contemporary chronicle of the St Albans monk, John of Wallingford, states under 1256 that 'Robert de Ros gave the king 1000 marks that the grace of the king might be restored to him'.<sup>51</sup> A fine for the king's grace is not technically synonymous with an amercement but it seems highly probable that the same impost is being referred to here. Wallingford was a colleague of Matthew Paris, and based his chronicle on Paris's work, although, as here, he included information not found within it. He belonged, of course, to a school of history at St Albans where the exactions of Henry III were never knowingly understated. In normal circumstances, of course, one would always prefer record to chronicle evidence, but the circumstances in which Ros's pardon of November 1259 was issued were not normal. The council imposed on Henry III by the reforms of 1258 was governing the realm and very much in the business of deriding Henry's government.<sup>52</sup> Perhaps, for that reason, it may just have accepted Ros's angry claim that he had been amerced 100,000 marks, without bothering whether it was actually true. Having said that, it seems unlikely that the statement could have been made without some basis in fact. What happened, I would suggest, is this. Henry, at Ros's trial, sought to impose an amercement of 100,000 marks; he was, however, prevented by the council which instead assessed the penalty at the 1000 marks mentioned by John of Wallingford.

This version of events gains some colour from two parallel episodes. In 1241, in a case in the court *coram rege*, Henry sought judgement on his claim that through the conduct of Gilbert Marshal, earl of Pembroke, he had suffered damage to the tune of 10,000 marks. This claim was dismissed outright by the twenty named magnates and ministers (headed by the archbishop of York, two bishops, and two earls) who were sitting in judgement on the case.<sup>53</sup> The king, they said, had failed to provide any details of his losses. Here, then, it is clear that Henry had wished to impose a huge penalty, and had been prevented by his court. The record indeed rather hints that he was acting in an emotional way. 'The king says that he has been so

<sup>49</sup> J.C. Holt, *The Northerners. A Study in the Reign of King John* (Oxford, 1961), 177-8.

<sup>50</sup> *Pipe Roll 9 Richard I, 1197*, 61.

<sup>51</sup> R. Vaughan, 'The chronicle of John of Wallingford', *English Historical Review*, lxxiii (1958), 74.

<sup>52</sup> There may be a parallel here in the statement in the eyre roll of the justiciar, Hugh Bigod, that Henry, when John fitzGeoffrey complained to him about the conduct of the bishop elect of Winchester, 'did not wish to hear him and wholly denied him justice'. Matthew Paris's account of the incident, by contrast, has the king pleading with John not to pursue his complaint: TNA/PRO Just 1/ 1187, m1 (forthcoming in a Selden Society volume edited by Andrew Hershey); Paris, *Chronica Majora*, v, 708.

<sup>53</sup> *Curia Regis Rolls*, xvi, no.1493 (pp.289-90).



damaged that he would not wish to have the damage nor the shame for 10,000 marks'. We know of the second case from a writ issued in June 1256, which was enrolled on the fine rolls. It referred to an amercement which the bishop of Bath had lately incurred in the court *coram rege* for seizing the beasts of the abbot of Glastonbury and unjustly detaining them 'whereupon the king sent a certain estreat of £100 to the exchequer'. This meant that the king had informed the exchequer of the size of the amercement which it was to collect, namely £100. However, then things changed. 'Afterwards', the writ continued, 'by consideration of the peers of the bishop in the king's presence (*coram rege*), the amercement was assessed at 50 marks'. This was now to be paid into the wardrobe, and the exchequer was to quit the bishop of the £100.<sup>54</sup> In this case, therefore, the king by an act of will had actually imposed an amercement of £100. He was then, however, reigned in, and the amercement was assessed, in accordance with Magna Carta, by the bishop's peers and at a sum (50 marks) commensurate to the offence. It may be that these two cases have parallels with what happened to Robert de Ros.<sup>55</sup> Henry, even more emotional than with Gilbert Marshal, demanded or even imposed an amercement of 100,000 marks, only for it to be reduced by his court to 1000 marks. The court could easily have included men who were Ros's peers for in May 1256 (beside the king's Poitevin half brothers), the earls of Cornwall and Gloucester and the curial magnate John fitz Geoffrey were at court, as quite probably were the earls of Norfolk and Surrey, Norfolk's brother Hugh Bigod and the great marcher baron, Roger de Mortimer.<sup>56</sup>

Why though did Henry demand this gigantic sum in the first place? One thing which may have aggravated Ros's offence was his demand to defend himself in a trial by battle rather than suffer the judgement of his enemies, 'an unwise reply', as Paris acknowledged.<sup>57</sup> Perhaps this was a reason why things shifted against him after their promising start in May 1256. But Ros's central offence was clearly his treatment of Queen Margaret. This alone was mentioned in the pardon as the reason for his trial. The rights and wrongs of their quarrel are impossible to recover. It may be that Margaret was prone to complain about her entourage. Just before he left for Gascony in July 1253, Henry had removed Anketil Mallore from her service.<sup>58</sup> But one can understand her feelings, far from home and faced perhaps with a rigid governor, very concerned to stick to the letter of his instructions. In preventing the royal couple sleeping together, Ros (again according to Paris's testimony) justified himself on those grounds: he was obeying orders and waiting till 'a certain term which was not yet

<sup>54</sup> *Cal. Fine Rolls 1255-6*, no.657 (available at [http://frh3.org.uk/content/calendar/roll\\_053.html](http://frh3.org.uk/content/calendar/roll_053.html)).

<sup>55</sup> As Henry Summerson reminds me, another example of the king rushing ahead in anger and then being restrained is provided by the case of the justice, Henry of Bath: see Paris, *Chronica Majora*, v, 213-5, 223-4, 240.

<sup>56</sup> On 7 May a new writ was formed in the presence of the king, the earls of Cornwall and Gloucester, the judges Bath, Mara and Bracton, the senior clerk Walter of Merton, and other unnamed members of the council: *Close Rolls 1254-6*, 414-5. For concessions in the month to Roger Bigod, earl of Norfolk, John de Warenne, earl of Surrey, Hugh Bigod, John fitz Geoffrey and Roger de Mortimer, see *Close Rolls 1254-6*, 297, 299, 300, 307, 309, 417; *Cal. Liberate Rolls 1251-60*, 292 For John fitz Geoffrey, see also *Cal. Patent Rolls 1247-58*, 474. The charter roll does not survive for this year so we do not have its evidence from witness lists.

<sup>57</sup> Paris, *Chronica Majora*, v, 569

<sup>58</sup> *Cal. Patent Rolls 1247-58*, 237, 152.

proved to have come'.<sup>59</sup> Quite probably, this meant he was waiting till Alexander's fourteenth birthday which fell on 4 September 1255. Beyond that, Margaret resented being confined in Edinburgh castle and being denied her own handmaidens.<sup>60</sup> No doubt she supplied her father with a long list of other complaints about treatment which may just have been insensitive but which she felt was downright cruel. Did Henry regard Ros's conduct as amounting to treason? Paris says that both he and Balliol were accused of behaving 'unfaithfully and dishonourably' (*infideliter et inhoneste*). Paris also says Ros was accused of a crime for which his life was threatened.<sup>61</sup> If so, the huge penalty which Henry wished to impose becomes more understandable, although still (even on the Braose analogy) wildly excessive.

Ros's amercement brings us on to the final stage of his punishment. There is no evidence that he was deprived again of Wark. It was not till March 1258, with fresh trouble brewing in Scotland, that the king demanded its renewed surrender, again promising that no prejudice to Robert should arise from it.<sup>62</sup> Ros's lands were another matter. Before his trial, as we have seen, these were not apparently in the king's hands. Afterwards they certainly were. There is every sign, moreover, that Paris and John of Wallingford were right in saying that the lands were ruthlessly exploited, with the chattels and woods found upon them being sold off for the king's benefit.<sup>63</sup> On 8 July 1256, the sheriff of Northumberland, William Heron, paid into the wardrobe £108 10s. from Ros's chattels.<sup>64</sup> This was followed, in September, by instructions to pay all the money he received from Ros's lands into the wardrobe without delay.<sup>65</sup> At the end of December he was credited with raising £53 6s. 8d., and another £10 soon followed.<sup>66</sup> Later, in 1259, the king pardoned an amercement imposed on Ros's serjeant, Robert of Cargo, because of 'the utmost damages and losses of livestock and other property' he suffered from the king's bailiffs in Northumberland by reason of the dispute with Robert de Ros.<sup>67</sup> It was not till November 1258 that the king, acting on the instructions of his new counsel, respited all demands made against Ros 'for the affair of Scotland' and allowed him to cultivate and profit from his lands without any hindrance from royal officials.<sup>68</sup>

The whole question of seizure of lands into the king's hands was, of course, acutely sensitive. Magna Carta, in its most famous clause, had laid down that no free man was to be disseised of his free tenement 'save by the lawful judgment of his peers or the law of the land'. Henry frequently acknowledged the principal, although sometimes he had to be restrained from

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<sup>59</sup> Paris, *Chronica Majora*, 569.

<sup>60</sup> The Dunstable annals say that Margaret had been denied access to the king by Ros, although she had asked her father that she be allowed it: *Annales Monastici*, iii, 198.

<sup>61</sup> Paris, *Chronica Majora*, v, 501, 530.

<sup>62</sup> *Cal. Patent Rolls 1247-58*, 621.

<sup>63</sup> Paris, *Chronica Majora*, v, 569; Vaughan, 'John of Wallingford', 74.

<sup>64</sup> *Close Rolls 1254-6*, 329.

<sup>65</sup> *Close Rolls 1254-6*, 444.

<sup>66</sup> *Cal. Fine Rolls 1256-7*, no.245 (available at [http://frh3.org.uk/content/calendar/roll\\_054.html](http://frh3.org.uk/content/calendar/roll_054.html)); *Cal. Liberate Rolls 1251-60*, 354.

<sup>67</sup> *Cal. Fine Rolls 1259-60*, no.60 (available at [http://frh3.org.uk/content/calendar/roll\\_057.html](http://frh3.org.uk/content/calendar/roll_057.html)).

<sup>68</sup> *Close Rolls 1256-9*, 460; *Cal. Fine Rolls 1258-9*, no.27 (available at [http://frh3.org.uk/content/calendar/roll\\_056.html](http://frh3.org.uk/content/calendar/roll_056.html)).

acting contrary to it. The Charter, however, hardly met Ros's case. He *had* been convicted in the king's court, quite probably by a judgement of his peers. His punishment had been an amercement and it is easy to see how his lands might have come into the king's hands as a result. Doubtless harsh terms were set for the repayment of the 1000 marks. When Ros failed to meet them, then the sheriff could distrain on his chattels; if that failed, it was lawful to take land into the king's hands. So much had been acknowledged by Magna Carta itself. The Charter stipulated that the king and his bailiffs were not to seize land or rent provided the chattels of the debtor sufficed to meet the debt and the debtor was ready to pay up.<sup>69</sup> The implication, therefore, was that, if this was not the case, land and rent could be seized.<sup>70</sup> Doubtless Ros was deemed both unwilling and unable to raise the 1000 marks, and so Heron entered his lands and staged the great sell off so graphically described by Matthew Paris and John of Wallingford. The lawfulness of such a procedure would have been reinforced, if Ros had pledged his lands and chattels as security for payment of the debt, as often happened under John.<sup>71</sup> Even Paris acknowledged the seizure was not simply an act of royal will. It had been made 'by the counsel of [the king's] fair-weather friends'. None of this happened by accident for Henry was well aware of the power he had through distraint of debt. When Roger Bigod, having spoken up at the October 1255 parliament, asked Henry what could lawfully be done to harm him, Henry had replied that he could seize his corn and cause it to be threshed and sold. He was referring here to Bigod's large debts for which indeed he then ordered distraints to be made.<sup>72</sup>

It was only with the revolution of 1258 that Ros secured redress. In November 1258 the king's new council, as we have seen, respited all demands against him and conceded that he could now profit from his lands. Very unusually, the chancery clerk noted on whose authority the resulting letter to the sheriff of Northumberland was enrolled, namely the senior minister Walter of Merton. Evidently he wanted cover against future recriminations from the king.<sup>73</sup> At the same time as this concession, Ros was pardoned all but £5 of the 100 mark amercement for his various offences on the 1256 Northumberland eyre.<sup>74</sup> A year later, in November 1259, Ros at last secured a full pardon embodied in royal charter. He was declared to be wholly guiltless of the trespasses alleged against him. The king, accordingly, pardoned him the 100,000 mark amercement, and all the rancour and indignation conceived against him. Finally, the king also released Robert, and his elder brother William, from all action and claim for the castle of Wark 'considering that the king has no just cause against the said brothers'. The solemnity of the charter was emphasised by its witnesses, namely the

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<sup>69</sup> Chapter 8 of the 1225 Charter: Holt, *Magna Carta*, 504. The chapter went on to stipulate that the *plegii* of the debtor were only to be liable if the debtor did not have the will and the wherewithal to pay the debt. If they did become liable then they could have the lands and rents of the debtor till the debt was paid.

<sup>70</sup> As Holt observes, *Magna Carta*, 335.

<sup>71</sup> Holt, *Magna Carta*, 192, and see 109-10.

<sup>72</sup> Paris, *Chronica Majora*, v, 530; *Close Rolls 1254-6*, 238; for the episode, see M. Morris, *The Bigod Earls of Norfolk in the Thirteenth Century* (Woodbridge, 2005), 48-51; D.A. Carpenter, *The Reign of Henry III* (London, 1996), 89-91.

<sup>73</sup> *Close Rolls 1256-9*, 460.

<sup>74</sup> *Cal. Fine Rolls 1258-9*, no.27 (available at [http://frh3.org.uk/content/calendar/roll\\_056.html](http://frh3.org.uk/content/calendar/roll_056.html)).

justiciar, Hugh Bigod, and nearly all the members of the ruling council of fifteen, some of whom may well have been involved in the original judgement in the first place.<sup>75</sup>

Ros's treatment was, therefore, much harsher than Balliol's. His amercement, even if it was only 1000 marks, was larger than Balliol's fine by £166. His lands were seized where Balliol's apparently were not. The contrast may partly have been because Balliol avoided Ros's 'unwise answer' and was generally more submissive. He was anyway closer to the king. He was in Gascony for the first phase of Henry's campaign in 1253-1254. He attested a royal charter at court as late as April 1255.<sup>76</sup> That his eventual fine was made at Chester in August 1257, suggests that he had rallied to Henry's campaign in Wales. That the writ recording the fine was authorised by Fulk Basset, bishop of London, shows he had friends at court.<sup>77</sup> It is also clear that Balliol had been less directly involved with Margaret. Whereas his fine mentions his trespasses against Alexander 'or also' Margaret, Ros's pardon was for his offences against Margaret alone. It was Ros who was in command of Edinburgh castle, not Balliol. Perhaps Balliol's sins were rather those of omission rather than commission.

Whatever the differences in degree, Henry had demonstrated his power. He had laid low two great Anglo-Scottish barons with little resistance. In the process, in a time of great financial need, he had raised £537, £366 from Balliol's fine and £171 from Ros's chattels. Quite probably, for we have no comprehensive records, the amount coming from Ros was much larger.<sup>78</sup> In all this, Henry had shown himself worthy of his father. Indeed, Paris precisely drew the parallel with John's own treatment of the Northerners.<sup>79</sup> Yet there is also another parallel. '*Voluntas*, meant little except in contrast to *lex*', wrote J.C. Holt in a typical aphorism.<sup>80</sup> In other words, an act of will, of '*voluntas*', was only really opprobrious and challengeable when it broke the law. 'Will' could be good or bad depending on what it was doing. In fact, as Holt argued, many of King John's oppressive measures did not blatantly conflict with law. Either there was no law for him to break or he had acted with some colour of due process.<sup>81</sup> Henry, of course, was in a different situation. Thanks to Magna Carta, the law, once vague, was now, in some areas explicit. Thus the relief of an earl and baron was fixed at £100. This was a rule Henry was careful to obey. Yet when it came to the treatment of Ros and Balliol, Henry was not blatantly in breach of the Charter either, at least if we accept that the former's amercement was indeed 1000 marks. Both men were brought to trial, and Ros may have received judgement by his peers. When it came to the seizure of Ros's

<sup>75</sup> *Cal. Charter Rolls 1257-1300*, 25; *Royal Charter Witness Lists of Henry III*, ed. M. Morris, 2 vols. (List and Index soc., 291-292, 2001), ii, 127; *Northumberland Pleas*, no.596. As well as Hugh Bigod, the charter was attested by the earls of Gloucester and Norfolk and Roger de Mortimer.

<sup>76</sup> Beam, *Balliol Dynasty*, 61-2; *Charter Roll Witness Lists Henry III*, ii, 95.

<sup>77</sup> [http://www.finerollshenry3.org.uk/content/fimages/C60\\_54/m03.html](http://www.finerollshenry3.org.uk/content/fimages/C60_54/m03.html). This is omitted at the moment from the translation but that will be corrected.

<sup>78</sup> Although the writs, which acknowledged the money received into the wardrobe from Heron, told the exchequer to give him due allowance or quittance, no account for the issues of has yet been found in the pipe rolls. There is certainly no account in the roll of 1258-1259, as Richard Cassidy (who is editing the roll for the Pipe Roll Society) informs me.

<sup>79</sup> Paris, *Chronica Majora*, v, 569.

<sup>80</sup> Holt, *Northerners*, 187.

<sup>81</sup> Holt, *Northerners*, ch.x, 'The law of the exchequer and the custom of the realm', a chapter which well repays re-reading.

lands, the Charter, as we have seen, hardly offered adequate protection. It tried to prevent seizure of lands and rents if the debtor's chattels sufficed and he was willing to pay, but who was to be the judge of that? Even worse, while the Charter said that the amercements should match the offence, it said nothing at all about the terms on which they should be paid. Conceivably the appropriateness of the amercement could be thought to include the terms, but that was not stated.<sup>82</sup> Henry could certainly claim that, as far as the Charter went, he could demand Ros pay his 1000 marks all at once.

It is difficult to be sure what bearing the treatment of Ros and Balliol had on the revolution of 1258. By then Balliol had already made his peace. Indeed, his final pardon in March 1258 was linked to his setting off for Scotland in the king's service. He remained conspicuously loyal during the civil war.<sup>83</sup> Ros's case was different. He seems to have played no part in the civil war (he was by this time quite elderly), but his complaints in 1258-1259 clearly struck a chord. The reforming council, standing together, was making a point against Henry's government in proclaiming that the amercement had been an outrageous 100,000 marks. On the other hand, as we have seen, it did not hold the king directly to blame. The pardon, moreover, seems tardy, coming after the new government had been in power for well over a year. Nor was Ros offered any compensation for his losses. One wonders just how much sympathy there was either for him or Balliol, which may explain why no one had lifted a finger in their support, for all Bigod's bluster. As Marc Morris has pointed out, Bigod's own relations with Henry III soon straightened out.<sup>84</sup> Indeed, he may well have been present at Ros's trial. Even if we are right, and the council reduced Balliol's amercement to 1000 marks, that was still a large amount. Perhaps Ros's 'unwise reply' won him no friends amongst his judges. In all this there is, moreover, an important contrast with the situation under King John. Under John the kind of treatment meted out to Ros and Balliol was common. Under Henry it was exceptional. In the fine rolls of 1207-1208, there were twelve fines to escape the rancour or regain the benevolence of the king. The total owed was £5580.<sup>85</sup> In the whole of the fine rolls between 1236 and 1257, there appear to be only four comparable fines. Balliol's, as we have seen, of £500; the clerk Walter de Burgh's of 400 marks for various transgressions as keeper of the king's demesnes; Henry of Bath's fine of 2000 marks for malpractices as a judge; and Peter de Mauley's of 60 marks for failing to send knights to the 1257 campaign in Wales.<sup>86</sup> When it came to his great men, the revolution was caused much more by Henry III's incompetence than his oppression.

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<sup>82</sup> This is not an issue covered in Holt's discussion of the chapter: *Magna Carta*, 332-4.

<sup>83</sup> *Cal. Fine Rolls 1257-8*, no.374. (where the note about going to Scotland has been omitted from the translation); *CR 1256-9*, 300; Beam, *Balliol Dynasty*, 70-8.

<sup>84</sup> Morris, *The Bigod Earls*, 48-51.

<sup>85</sup> *Rotuli de Oblatis et Finibus Tempore Regis Johannnis*, ed. T.D. Duffus Hardy (Record Commission, 1835), 382, 384, 386-7, 396, 398, 412-4.

<sup>86</sup> *Cal. Fine Rolls 1250-1*, nos.359, 822 (available at [http://frh3.org.uk/content/calendar/roll\\_048.html](http://frh3.org.uk/content/calendar/roll_048.html)); *Cal. Fine Rolls 1257-8*, no.37 (available at [http://frh3.org.uk/content/calendar/roll\\_055.html](http://frh3.org.uk/content/calendar/roll_055.html)). I have established this by putting 'rancour', 'grace' and 'benevolence' into the search facility: [http://www.finerollshenry3.org.uk/content/search/search\\_text.html](http://www.finerollshenry3.org.uk/content/search/search_text.html). For the case of Henry of Bath, see above note 55.