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RESEARCH ARTICLE

Mortuary dues in early sixteenth-century England

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Abstract

Mortuaries were death duties owed to parish priests. The early sixteenth century was a pivotal moment in their long history. In 1529, an act of parliament significantly altered these dues. This article explores mortuary practices in the preceding decades. It examines what mortuaries were, who gave them, and what purpose they served. The importance of local custom is emphasised. The article reconsiders the modern view that mortuary dues were generally disliked. A more complex attitude explains both why mortuaries were reformed and why they would survive for centuries thereafter. Mortuary dues exemplify the symbiotic relationship between law and custom.

1. Introduction

The idea of custom occupied a central place in pre-modern societies. Three dimensions of custom stand out: its temporal depth, its geographical specificity and its relationship to formal law. The quintessence of custom was longstanding usage and this was also its source of legitimacy. Custom relied upon tradition, which was known chiefly through popular memory.[1] The idea of custom presupposed continuity and problematised change. The paradox that individual customs nevertheless did change is therefore particularly interesting evidence of how rules and behaviours develop over time. Secondly, custom was intensely local: it was tied to discrete places and often to specific groups within them. What was expected in one town or parish could differ significantly from convention in its nearest neighbour. So study of custom reconstructs the considerable variation within a pre-modern society: the many peculiarities and exceptions that evince its unstandardised character. Thirdly, custom related ambivalently to formal law.[2] On the one hand, custom provided a source of law in the Romano-canonical system and in derivative territorial arrangements, including (and especially) English common law. On the other hand, custom offered an alternative, sometimes a rival, to professional learning and legislation 'from above'. In the most famous manifestation of this conflict, custom 'from below' defended villagers against enclosing landlords, who were assisted by a modernising state that had adopted a 'top-down' definition of law to the exclusion of communal rights.[3] The idea of custom thus reveals how different

kinds of law interpreted and engaged with habitual activities. This article explores the three dimensions of custom through a case-study of one long-lived social practice: mortuary dues.

Mortuaries were death duties owed to parish priests from the estate of the deceased. Such duties arose across Europe.[4] In England, they existed under various names and different guises for a millennium: from the Anglo-Saxon era to the Victorian age. Mortuaries thus exemplify the potential durability of a custom. Yet mortuaries did also change. Within their long history, the early sixteenth century is pivotal, since mortuaries were significantly modified by an act of parliament in 1529.[5] For that reason this period is the focus here. Mortuaries also demonstrate the second dimension of custom: its localised character. Mortuary customs were parochial, burghal or civic, rather than national, provincial or regional. It is not just that dues differed from place to place, but that the peculiar custom of a community provided the rationale for giving mortuaries there. Thirdly, mortuaries were recognised not only by local custom but also by formal law. Studying them illuminates both conceptions of the relationship between law and custom: the one, dialectical, with custom representing an alternative to law; the other, integrative, with custom constituting a kind of law itself. Mortuaries chiefly concerned the Church's jurisdiction, and the position in canon law has been elucidated by Richard Helmholz.[6] Here the main source is William Lyndwood's *Provinciale* (1430), because it was the standard commentary on English ecclesiastical legislation in the early sixteenth century.[7] Common lawyers too mentioned mortuaries in their readings and reports. Particularly informative is the reading on the first chapter of Magna Carta that Richard Snede delivered at the Inner Temple in 1511, which Margaret McGlynn has recently made available.[8] Professional overviews by canon and common lawyers were observational analyses rather than descriptions of the law, if we understand that term narrowly as uniform, binding regulation. In this strict (if anachronistic) sense, there was then no law of mortuaries. The story of the early sixteenth century is how one came to be created.

Therefore this article approaches its subject as an investigation into the interaction between customary practices and formal law. In addition, there is a specific context that needs to be explained. Our period witnessed England's only famous dispute over mortuary dues: the case in 1512 between the London merchant Richard Hunne and the rector of Whitechapel over the mortuary of Hunne's baby son Stephen. Its subsequent escalation won the affair lasting notoriety: Hunne's challenge to ecclesiastical jurisdiction, the counter-allegation of heresy, Hunne's death in episcopal custody, the indictment of his gaolers for his murder, and a contradictory official finding of suicide. However scandalous at the time, this imbroglio might have receded from people's minds were it not for its polemical appropriation by early Protestants, who found in the affair a perfect illustration of the kind of Church that they opposed, and for the subsequent canonisation of their version of events by the Elizabethan martyrologist John Foxe.[9] In 1528, the Lutheran convert William Tyndale conjured up the image of a poor man's family left destitute by the surrender of their only cow as his mortuary.[10] This depiction may have been shared during the debate in the Reformation Parliament, when it opened in the winter of the following year.[11] The result was the passing of the statute that restricted and regulated mortuary dues. This law was one of a trio of

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anticlerical measures enacted in the first session, alongside acts addressing pluralism and probate fees.[12] The three statutes demonstrated to domestic and international audiences that Henry VIII's continuing to fulfil the traditional royal role of protector of the Church's liberties depended upon a satisfactory resolution of his matrimonial problem. A contingency remote from everyday life thus brought about permanent change to an ancient and widespread social practice.

Hunne's case has continued to shape the way that English historians think about mortuary dues generally. The subject of mortuaries is thereby linked to scholarly debate around the popularity of the pre-Reformation Church and the prevalence of anticlericalism before the break with Rome.[13] Whether presented as an actual cause of change or just as the best illustration of the need for reform, Hunne's case has helped to explain why the old system was swept away by parliament: no sooner was the king's protective hand removed than mortuaries became vulnerable to concerted lay hostility. A modern sensibility may be predisposed to regard mortuaries unsympathetically. It is difficult not to empathise with the plight of the poor and recently bereaved having to surrender a vital asset: Tyndale's image still resonates. Even by the standards of that time, mortuary dues appear particularly regressive. While the Church's claims are now thought to have been 'largely acceptable' to the laity, mortuaries remain an exception. They 'seem to have been the most unpopular of the various dues that could be demanded by clerics'.[14] We associate mortuaries with discord between clergy and laity. This is not surprising, since much of our evidence comes from the court cases that followed disputed claims. By its very nature, such litigation was predicated on conflict: hence it tends to substantiate the notion that mortuaries were disliked exactions. Yet other evidence exists, and it implies a degree of consensus and even of voluntarism. As several scholars have observed, mortuaries appeared regularly in wills as testamentary bequests.[15] Thus the nature of mortuary dues may elude us if we think of them only, by analogy, as a kind of 'death tax'. This article does not invert conventional wisdom by maintaining that mortuaries were somehow popular; but it does seek a more nuanced understanding of a duty that was in the main paid without demur.

In sum, this article endeavours to answer the main questions about mortuaries in early sixteenth-century England: what they were, who owed them, who received them, and what purpose they served. Only by tackling the intricacies surrounding mortuary practices can we grasp perceptions of these dues at a crucial moment in their development. Therefore the next section describes mortuary customs at length, balancing generalisation with recognition of wide variation. The following two sections look at lay and clerical attitudes to mortuaries. Next the article compares ecclesiastical and secular jurisdictions by examining their handling of mortuary cases. Then the origins, passage and terms of the statute of 1529 are addressed. An epilogue considers the short- and long-term consequences of this legislation. Through analysing these different aspects of mortuary dues, the article advances an argument for the importance of custom along the following lines. That mortuary practices were peculiar to individual places goes a long way to explaining the apparent legitimacy of these dues. The liability of a particular person for a specific object was at issue, not the validity of the duty itself. Even Hunne's case may be reinterpreted as a dispute over alternative mortuary customs. The customary basis of mortuaries meant that neither canon nor common law could do much to regulate them,

whereas parliamentary legislation might. There is little sign of a concerted effort to abolish mortuaries. Their survival during a period of critical scrutiny principally resulted from a deference to custom and to the property rights that it conferred. Hence the statute of 1529 both altered and endorsed mortuary customs, which as a consequence would endure for centuries, maybe for longer than they otherwise would have done. The interdependence of custom and law was thus sustained.

2. Mortuary customs

Up until 1530, mortuaries were chattels. If money were paid in lieu, then it was given in commutation, in effect for the redeeming of the item. Mortuaries were divided into animals and objects. Richard Snede provided a good working definition: 'A mortuary is always called the best beast of the live cattle that the dead man had, and if he did not have live cattle the best of his other goods, such as a chain, jewel or suchlike'.[16] The emphasis on 'the best' was reflected in an alternative name for a mortuary being a 'principal'.[17] In fact, where a beast was due, the parson often settled for the second-best animal, because the very best was owed to the lord of the manor as a heriot (a duty levied on the estate of a deceased tenant).[18] In places such as Reed (Hertfordshire), the parson took third place, behind not only the lord but also the relict of the deceased.[19] The animals given as mortuaries were horses, oxen, cows and sheep. Parochial custom might restrict mortuaries to a single species.[20] Sometimes, the animal was led before the coffin into church. In 1526, an inhabitant of West Wittering (Sussex) recollected how, 'when olde sodes [Sod's] wif vent [went] to beryng he se a cowe go be fore the corse'.[21] This ritual produced another synonym for a mortuary: 'foredrove'. One animal per mortuary was the norm. In Thirsk (Yorkshire), however, Newburgh Priory (to which the rectory was appropriated) claimed five sheep from parishioners who had owned no other (more valuable) animal.[22] Where available, an animal was preferred to an object. This was the rule in the province of Canterbury, but not York. Margaret Harvey has found that, in the dioceses of Durham and Carlisle (though not York itself), both an animal and an object were widely due.[23] Two items could also be given to a single individual or institution where they held both the rectory and the lordship, though only one of these was a mortuary (the other being a heriot).[24] Similarly, in an unappropriated rural parish, tenants of the glebe owed a heriot to the rector as their landlord by virtue of his manorial jurisdiction over the glebe.

If an animal was not handed over, then an object was. The kind of object given as a mortuary was more diverse. The usual specification was that it should be the 'best thing' (*optima res*). Implicitly, this seems to have been confined to something worn or at least closely associated with the individual's person.[25] The giving of a gun as a mortuary must have been a rarity.[26] Snede's chains and jewels would have come from well-to-do individuals. In 1514, the abbot of St Mary Graces in London sued for a gold necklace worth the large sum of £20.[27] The less well-off gave clothing, gowns in particular, or bedding. In the case of Stephen Hunne, it was 'A Beryng Shete': here the object was determined not by Stephen's poverty (his father being a wealthy man), but rather by his very young age. When Stephen was only five weeks old, his father had delivered him, wrapped in the sheet, for wet-nursing to a woman who lived in Whitechapel. Stephen died only

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a matter of months after his arrival and was buried in the parish. The rector's claim was for his 'best garment, cloth or vestment or other best thing whatsoever'. The term 'bearing sheet' commonly described the cloth in which a baby was wrapped, especially after childbirth and at baptism. Of some sentimental significance, such a cloth could be regarded as an heirloom. Stephen's sheet was worth 6*s.* 8*d*.: relatively high for a sheet, this sum suggests its fineness and hence its special use.[28] Stephen's father may have been loath to part with something so meaningful. Overall, mortuaries comprised a wide range of objects and animals. They included items of considerable monetary, practical and likely also emotional value.

Most categories of people were liable for mortuaries. Clergymen were not exempt: in particular, a parochial incumbent who died in post owed a mortuary to his bishop.[29] Degrees of personal autonomy and economic independence mattered less than we might expect. The adult male householder usually owed a mortuary, although there were privileged exceptions. Membership of a defined group could confer exemption: for instance, citizens of Hereford did not owe mortuaries.[30] The theory of coverture would imply that married women should have been exempt. But this was a common-law idea, and canon law rejected the absorption of a wife's property-bearing capacity into that of her husband.[31] In practice, mortuaries were widely given for married women. Commonly, the second-best item was due for a wife, rather than the first.[32] Young people living under the roof and rule of a parent or master (as offspring, household servant or apprentice) were also often liable.[33] In certain circumstances, children's mortuaries came out of their 'filial portion': that is, the chattels that they had inherited from their deceased father, which were being kept for them until their majority.[34] An age limit applied in some places: for instance, the under-12s were exempt in Rockhampton (Gloucestershire).[35] A different criterion for liability could presuppose a minimum age. A parishioner of Hexton (Hertfordshire) acknowledged that he owed a mortuary for his daughter 'by custom, because she received the Eucharist', which required her to have been confirmed.[36] Elsewhere, there was no minimum age. In the parish of Lapford (Devon), children who were not yet old enough to walk owed a different mortuary item from those who could walk.[37] The church of St Margaret Pattens in London received 3*d*. for 'A shirt of A lytell childes', which sounds like a mortuary.[38] Thus the rector's expectation of a mortuary for Stephen Hunne was not out of the ordinary.

Where someone died made more of a difference to liability than who they were. This was because mortuary customs were local. Where a mortuary was required in one parish, in the next-door parish it might not be: this was apparently true of Loddon and Chedgrave in Norfolk.[39] The will made in 1510 by Katherine Langley of Rickling (Essex) stated that 'whersoeuer I dy if it be the custome ther that a mortuary muste be paid then I will the mortuary or principall be aftur the custome of the said place in that behalf'.[40] Because mortuaries depended entirely upon custom, a custom not to give mortuaries was just as valid as one to give them. Mortuaries thus differed from tithes, which were mandated by divine law: custom dictated how tithes should be paid (the *modo decimandi*), but not whether they were paid (the *jus decimandi*).[41] In determining liability for mortuaries, location interacted with two other factors: holding burghal or civic freedom and being resident. Citizens of York were exempt. One case revolved around the question of

whether a man who had once been free of the city but no longer lived there, only visiting it to trade, had thereby forfeited his citizenship and so, having died in York, was now liable for a mortuary.[42] Elsewhere, residency in a parish incurred liability, commonly depending upon its duration: a year and a day was one criterion.[43] Mortuary dues were held to be incurred for the rendering of spiritual services: justifications in church courts stated that the deceased had received the sacraments and sacramentals. Nevertheless, travellers who died somewhere they did not normally live might owe a mortuary there. Hence the deceased could be liable for two mortuaries: one in their own parish, the other in their place of death.[44] This duplication was possible because mortuaries were not, strictly speaking, given for burial. Theoretically, even someone who could not be buried (because they had drowned at sea or killed themselves) was liable.[45] In practice, mortuaries must commonly have been elided with burial fees, which were, however, discrete dues. In 1518, Sir Adrian Fortescue gave a mortuary for his wife to the vicar of Pyrton (Oxfordshire) in whose chancel she was buried, and then, seven years later, having moved her body to his new tomb at Bisham Priory (Berkshire), gave another mortuary to the vicar there.[46] Quite understandably, modern scholars have sometimes struggled to distinguish mortuary dues and burial fees.[47]

Location, civic freedom and duration of residency affected liability within London. Richard Snede referred to the city as having a 'special custom'.[48] This custom was that freemen (and, by extension, their families and households) were exempt, but that 'foreigners' (*forensici*) were liable.[49] Thus the rector of All Hallows on London Wall received the gown of 'a young scholar from university', who had happened to die within his parish.[50] On 2 December 1513, in the parish of St Matthew Friday Street where he had fallen sick, Richard Cokkes from Somerset made his will, leaving 'Unto the curet or person there for my mortuari my beste gowne or my hors, after the custome usyd'.[51] A citizen of London, by contrast, would have expected to be exempt; hence very few of them made mortuary bequests.[52] Had Stephen Hunne died within his father's home parish (St Margaret Bridge Street) within the city gates, then most likely no mortuary would have been demanded. But Whitechapel (that is, the parish of St Mary Matfelon), where Stephen did die, lay outside the city's franchises in the suburbs.[53] According to the rector, the custom there was that anyone who died within a year of their arriving in the parish owed a mortuary.[54] Hackney appears to have had a similar custom.[55] Both places were outside the city proper, lying in the county of Middlesex, albeit within the wider metropolitan area. Hence the parish of St Mary Matfelon appears also to have diverged from London's tithing custom.[56] The discrepancy between a suburban mortuary custom and the civic mortuary custom may have meant that the rector of Whitechapel and Richard Hunne both felt themselves to be upholding correct local usage. The perceived legitimacy of a mortuary claim thus depended primarily on a combination of circumstances, rather than on an overarching principle.

3. Lay attitudes to mortuary dues

On one level, mortuaries were given simply because custom required so doing. Testamentary bequests left what custom or law required (the two terms being

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used interchangeably), sometimes without specifying the item.[57] The self-validating character of custom meant that no other justification was needed. A mortuary was due whether or not it had been bequeathed, wherever custom required one. Since bequests were supererogatory, we might therefore wonder why they were so often made. Churchmen held that mortuaries benefited the soul of the deceased.[58] The bequeathing of mortuaries seems to indicate that many laypeople accepted this idea, even if only implicitly. When it came to making a will, the first call on someone's goods and chattels (or personalty) was their own soul, which is why goods and chattels passed to executors or administrators rather than to heirs, who inherited the lands (or realty).[59] Of course, such bequests reflected the influence that priests exercised over the composition of wills. Yet family members also prompted testators on their deathbeds and elderly individuals spontaneously identified the items that would be their own and their wives' mortuaries.[60] Formally, designation as a bequest did not dictate what item was due as a mortuary. The occasional testator acknowledged that the parson was not obliged to accept what they had nominated.[61] A bequest might supplement, but not diminish, the mortuary due. Exceptionally, one testator gave a mortuary 'notwithstanding the local custom'.[62] The vast majority of mortuary bequests, however, followed custom. People left mortuaries because they expected to and because they wanted to.

Mortuary bequests reflected the Church's teaching that testators should discharge their debts, spiritual as well as temporal.[63] Three months before the Reformation Parliament would open, John Front of Colmworth (Bedfordshire) left his mortuary 'in redemption of my greveys offencys to Godward'.[64] Mortuaries could be conceived as compensation for forgotten tithes. Lyndwood acknowledged the currency of this notion, even if he thought it problematic (chiefly because someone whose mortuary was worth less than their outstanding tithes had not given satisfaction and thus their sin could not be remitted).[65] Yet mortuaries and forgotten tithes were seldom explicitly associated in wills. Few testators related the one to the other; many more bequeathed both a mortuary and a sum to the high altar for forgotten tithes.[66] That some testators did think of mortuaries as assisting in the afterlife nevertheless seems probable. In 1525, John Arden of Aston (Warwickshire) gave a mortuary so 'that Almighty God may the rather take my soul unto his mercy and grace'.[67] A mortuary could be seen to oblige the recipient to intercede for the deceased through prayer. Richard Snede suggested that this was the reason why someone who died in a strange parish, where they had owed no tithes, still gave a mortuary there.[68] In some testators' minds, mortuaries rewarded their own parson for past pastoral care as well as for future intercession.[69] Valuable mortuaries procured a long-lasting spiritual benefit and served a commemorative function. In the abbey of St Mary Graces, a silver necklace that William Burton had possessed now hung around the head of the statue of St Anne that was borne in procession on feast-days, and a gilt standing cup that had once belonged to William Belknap was known by his name decades later.[70] The spiritual value attached to mortuaries may be part of the reason why they survived in the legislation of 1529.

Yet people also did not want to give mortuaries, or at least the specific mortuaries demanded of them for the deceased. In 1532, the common lawyer Christopher St German claimed that 'fewe thynges within this realme … caused more varyaunce

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among the people'.[71] Assessing this contention is difficult. The explicit evidence of legal cases needs to be balanced against the implication that many more people gave mortuaries without being taken to court. The depositions provided in such cases actually produced copious testimony of that fact, as witnesses recollected mortuaries presented over previous decades. How willingly these mortuaries had been given was another matter. Defending himself before the church court around 1519, William Taylor maintained that several of Thirsk's parishioners had only surrendered five sheep 'because they did not dare litigate with the prior [of Newburgh] on account of his power'.[72] Such an assertion was intended to counteract unhelpful precedents, which does not mean that Taylor was wrong. The prior himself pointed out that his servants who had taken mortuaries had never been accused of any trespass at the quarter sessions or local court.[73] Even the father of a current chaplain had 'somewhat impugned' the custom, until (so he implied) he had been better instructed.[74] For an individual parishioner, religious houses were formidable opponents; Taylor, however, had the support of a local gentleman, Roger Lascelles. Local government might also assist defendants: a meeting had been organised in the tolbooth at Malton (Yorkshire), so the prior there suspected.[75] Dover's mayor was allegedly leading the town's resistance.[76] In Kingston-upon-Thames (Surrey), 126 burgesses issued a formal protest against their vicar in the name of the whole town.[77]

Such resistance nevertheless also affirmed customs of giving mortuaries. The very act of opposing a particular claim could serve to vindicate another one. In Halifax (Yorkshire), it was maintained, no mortuary was due from unmarried women whose fathers were still alive: ergo a mortuary was due from wives and spinsters.[78] According to the burgesses, Kingston's vicar 'wrongfuly hathe takyne and dayly takethe and withholde the olde Avuncione [ancient] Custume with vs in takynge of mortuarijs'. Laypeople had a proprietorial attitude to a mortuary custom, seeing it not as imposed upon them, but rather as belonging to them. To the modern eye, the surprising feature of Kingston's declaration is its failure to specify the very thing that it set out to defend: the borough's mortuary custom. Custom did not depend on documentation, but resided in collective memory. It was shared within communities between generations. The evidence of inhabitants, the older and the longer resident the better, proved a custom. A 60-year-old man from Moreton Pinkney (Northamptonshire) declared that 'he woll depose in euery court spirituell or temporell that it hathe byne Alwey vsed in his tyme And Also before his tyme[,] that is to sey in his ffaders tyme of long seasone dwellyng' there, as he went on to say what the local custom for heriots and mortuaries was.[79] In his case against Hunne, the rector of Whitechapel produced four male witnesses to testify to the parish's custom.[80] One of them, Robert Kylton, had identified himself the previous year as a haberdasher, aged 67, who had lived in St Mary Matfelon for the past 24 years.[81] Thus the custodians of custom were a community's inhabitants. But they did not always agree. Asked what was commonly believed to be the custom at Thirsk, a chaplain resisted the propensity of other deponents to assert categorically: some say one thing, some another, he replied.[82]

The nature of custom is the reason why a diversity of opinion arose. What validated custom was long and uninterrupted usage: pleadings in church courts invoked both the canon-law idea of prescription over several decades and the common-law phrase 'from a time whereof men's memory does not exist to the

contrary' (*a tempore cuius contrarii memoria hominum non existit*). Of course, customs did change, but tacitly, because they lost legitimacy through doing so. To the opponents of Newburgh Priory, the demand for five sheep was a 'newly usurped' custom; to the priory, it had existed time out of mind.[83] One explanation proffered was that over the last half-century the number of sheep in Thirsk had greatly increased, thereby encouraging the priory's farmer to raise his demand.[84] At Malton, the dispute in 1528 concerned single horses. The issue was whether burgesses owed just the animal or its harness together with their arms and armour as well. In one version, the horse alone was due, but burgesses in their testaments had chosen also to bequeath the accoutrements, whereby the priory had come to expect these as mortuaries too.[85] The custom in Malton hints at the possibility of there being some kind of evolutionary link between the original military heriot, the mortuary duty and the display of arms and armour over tombs.[86] St German was at pains to sever any association between the latter two practices. He referred to a case before the King's Bench in 1469, in which the widow of a former mayor of London had sued the parson of St Margaret Lothbury for taking her husband's coat of armour, banner and sword, which had been hanging beside his tomb.[87] In sum, St German was right in the sense that mortuaries did cause 'variances' in many places. What seems less clear is the degree to which such episodes, being spaced out geographically and over time, would have induced a general critique of this widespread yet also highly localised duty.

4. Clerical attitudes to mortuary dues

Mortuaries ought to be understood from the perspective of the clergy who received them. The recipient's identity depended on a parish's organisation. Where a church had been appropriated to a religious house, university college or cathedral chapter, mortuaries might either be owed to the institutional rector, or be reserved for the ordained vicar, or be divided between them.[88] Where a benefice had been leased, mortuaries were given to the farmer, who could be the vicar, another cleric (such as a chaplain), or a layman. Mortuaries were a right belonging to a church that it was the responsibility of an incumbent to pass on intact to his successors.[89] The mayor of Southampton was assured that a mortuary being sought for a Venetian galleyman 'is my dewte & iff itt wher nott my dewte I wolld nott hafe itt for J[esu]s C[hris]te'.[90] Title occasionally needed to be defended against other clergymen. A priest who ministered to members of another parish threatened the right of that parish's priest to their mortuaries.[91] The abbot of St Mary Graces had disliked the fact that, though John Whittington had lived within the monastery's precinct, he had preferred to worship and take communion in the church of St Peter ad Vincula at the Tower, where he worked; as the abbot might have feared, Whittington's executors withheld his mortuary for that reason.[92] Rights also had to be maintained when parishioners would not settle claims. Clergy would probably have tried informal negotiation or formal arbitration before resorting to the courts.[93] Two years before he prosecuted Hunne, the rector of Whitechapel had pressed a case in the commissary court for a mortuary that was due 'according to the custom of the foresaid parish'.[94] Mortuaries might disappear in the future if they were not demanded in the present.

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Mortuaries were a source of income. How much they were worth in a particular parish will have fluctuated year on year depending upon the death rate. Population growth in the early sixteenth century may have increased their overall value.[95] Only an intensive quantitative study, which is not attempted here, could test this hypothesis. A long series of institutional accounts, such as those of Durham Priory, would be required.[96] An obstacle is that accounts may not give a complete record of mortuaries received. The officer responsible for collecting mortuaries due to the dean and chapter of Wells (Somerset) was apparently allowed to omit some of them from his accounts.[97] The number of mortuaries entered can seem small and their value low in comparison with other receipts. At Bishop's Lynn (Norfolk) in the year 1510–1511, only 4*s*. were received from mortuaries sold.[98] Robert Swanson has suggested that many accounts may have included only mortuaries quickly converted into money through commutation or sale.[99] That might explain the evidence in the accounts kept by Richard Goodman, rector of Helmingham (Suffolk), for the year 1509–1510. Goodman recorded payments received for burials and his income from the lights around coffins, oblations of the deceased, and legacies to the high altar. His accounts show that, over the year, while Goodman buried perhaps 24 people, he received a mortuary (worth 4*d*.) for only 1 of them, Alexander Stogy, together with 5½*d*. for his burial and oblation.[100] Stogy was certainly not the wealthiest parishioner, for that year the rector also buried the lord of the manor.[101] Yet Goodman's accounts do not indicate that he expected any other mortuaries, whereas he did note that a parishioner's personal tithes were outstanding.[102] Parish priests were unlikely to have been negligent about pursuing their dues. The turn-of-the-century vicar of Halifax had the mortuaries that he had received entered into a book, thereby generating both a written record and a memorable affirmation of his entitlement for himself and his successors.[103] In general, mortuaries probably appeared to the clergy as a valuable but potentially vulnerable right. What they meant to a particular priest would have depended on the nature of his benefice and on his position within the parish, as the following example suggests.

Swanson has drawn attention to the notes made by Richard Gosmer, vicar of Basingstoke (Hampshire).[104] Entered into the front- and end-leaves of a copy of the sermons of Jacobus de Voragine, these notes were begun around 1502 and spanned almost a decade.[105] They convey the intimacy of a resident parson's economic relationship with his parishioners. For instance, they disclose Gosmer's vigilance in keeping track of tithes, through monitoring the movement of flocks of sheep in and out of the parish. (Thus they reveal the kernel of truth behind Tyndale's jibe that mortuaries were redundant because, though a parishioner might forget their tithes, their parson would never have done so.[106]) Gosmer reminded himself that he was owed two mortuaries, one for a parishioner's wife and the other for a wife's relative; that both entries have been crossed out implies that he did receive them.[107] Gosmer also negotiated with two fellow executors a mortuary payment of 20*s*. to himself.[108] Gosmer preserved evidence of his rights, noting how, at the Angel Inn on 31 May 1503, Henry Horn had stated publicly that a previous vicar had received Nicholas Draper's best horse (worth 33*s*. 4*d*.) as a mortuary. Presumably, Gosmer wrote down the six witnesses' names so that, if need be, he could call upon their testimony to prove his entitlement.[109] Gosmer's

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relationship to the parochial economy was not only extractive: he doubled as a producer, consumer, hirer, employer and lender. When settling accounts, Gosmer treated mortuaries as credits to balance his debits. In 1504, the mortuary (worth 8*s*. 4*d*.) for which Edward Clerke was responsible was added to his tithes, offset by Clerke's services to Gosmer, evened up through an exchange of coins, and finally quitted.[110] A mortuary demanded on behalf of an absentee or an appropriator seems more likely to have been resented than one sought through this kind of face-to-face settling of accounts. In stark contrast, none of the local people who deposed in a mortuary case brought by the rector of Bolton Percy (Yorkshire) knew him.[111]

5. Jurisdiction over mortuary dues

By hearing cases in its courts, the Church facilitated the exercise of mortuary rights. In judging claims, it deferred to custom. In 1507, the farmer of Broadwater (Sussex) sought mortuaries for two unmarried sisters (aged 16 and 17); their father responded that 'the custom is contrary', whereupon the court told the farmer to prove the custom he alleged.[112] This reliance on custom arose because canon law regarded death duties as morally suspect. As Helmholz has emphasised, mortuaries looked like payments to priests for a spiritual service and thus risked being a form of simony.[113] The way out of this dilemma was to defer to custom: this had been the formal position since the Fourth Lateran Council of 1215.[114] As a consequence, ecclesiastical legislation on mortuaries curtailed itself. For centuries, mortuaries had been the subject of diocesan and provincial constitutions; without a canon-law principle to apply, however, these regulations bowed to convention even as they hoped to reform it. If prelates' injunctions were adhered to, then the poor family forced to give up its only cow should have been a rural myth; but they need not have been followed.[115] No mandatory minimum threshold for liability applied. The nature of Lyndwood's work dictated that he gloss a piece of provincial legislation; otherwise, he might not have chosen to base an analysis of mortuaries around one. Revealingly, the law that he selected was both inconclusive (since it disavowed any intention of changing the status quo) and unauthoritative (since it looked, he thought, to be merely a synodal constitution, in which case it applied only to the diocese of Canterbury).[116] For Lyndwood, the solution to the intractable conundrums that mortuaries presented in law was 'to have recourse to custom used for a very long time'.[117] Hence in 1529, when MPs turned the Church's 'awne lawes and constitucions' against current mortuary practices, spiritual peers fell back on 'prescripsion and vsage' as their defence.[118] Custom cut the Gordian knot.

Therefore, when mortuaries were contested in church courts, the rules that applied were general ones. Because executors assumed responsibility for administering the goods and chattels of the deceased, they were answerable for mortuaries. Mortuary claims thus ran in tandem with probate proceedings (such as requirements to produce a testament, prepare an inventory, or render an account).[119] Testamentary regulations also applied. A deathbed disposal of assets that had been designed to deprive creditors ought to be reversed: the same went for an alienation intended to defeat a mortuary claim.[120] Two Londoners pleaded that disputed objects were their own property: one that he had loaned his garment to the deceased, the other that the deceased had given him his garment.[121] The latter

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kind of transfer, however, was suspicious. A prior action that prevented a mortuary being handed over was presumed fraudulent, unless it could be shown that a sound motive (such as immediate want) had existed.[122] This principle extended to will-making: you could not bequeath to somebody else an item that would be due as your mortuary.[123] The question of ownership was complex. Lyndwood held that the deceased had to have been the sole owner of a mortuary, rather than someone who had merely enjoyed the use of it (the usufructuary).[124] Hunne's objection, that the bearing sheet belonged to him rather than to his son, was thus potentially valid; if accepted, it could, however, have barred many mortuary claims.[125] Mortuaries therefore raised questions about possession and title that were the domain of the common law and for that reason, primarily, they engaged the royal courts.

The central common-law courts did not hear mortuary claims; however, some local courts did. In 1500, the prior of Lenton (Nottinghamshire) brought an action of detinue for his mortuary in the borough court of Nottingham.[126] Manor courts may have had more of a role in dealing with mortuaries because of the interface with heriots. In 1508, the abbot of Whalley (Lancashire) sued for his mortuary as a debt in the manor court of Ightenhill.[127] But it was mainly those resisting mortuary claims who involved royal courts, and Robert Palmer has identified several such cases.[128] A dispute at the beginning of the sixteenth century in the London parish of All Hallows Barking shows how several different jurisdictions could become engaged. The vicar's chaplain had demanded a parishioner's 'violet gowne furred with blak lambe' from his widow (also his executrix). The widow had the vicar cited to the diocese's consistory court, where the judge found against her. She then brought an action of detinue (asserting the detention of the gown) against the chaplain in the mayor's court. Alleging that the jurors trying this case would be partial against him, the chaplain petitioned the lord chancellor (who happened also to be the bishop of London) for relief.[129] Around the same time, a complaint was made to the diocese's commissary court against the vicar, for having refused to bury the parishioner 'until he had received and extorted a mortuary, although none was due to him in this case, according to custom in the city of London'.[130] The vicar had doubly offended, because he had demanded the mortuary before burial, thereby (in canonists' eyes) committing simony.[131] Laypeople were thus willing to contest demands in church courts. A counter-suit in a secular court might follow when the ecclesiastical forum proved unreceptive.

Before the 1530s, it was not argued that the common law should adjudicate mortuary claims as a matter of principle.[132] The royal ordinance *Circumspecte Agatis* of 1286 had established that such claims were reserved for church courts.[133] Disputes came before lay courts because one party re-described the issue in another way. Usually, this was as the trespass of forcibly taking someone else's goods and chattels.[134] (The supposedly forcible nature of the trespass was 'colour', that is, only for form's sake.[135]) Trespass was how the executor of two parishioners of Ewell (Surrey) presented the seizing of their horse and ox by the farmer of Guildford Priory.[136] Common lawyers compared mortuaries to heriots, since neither was required by law or general custom, but both might be due by local custom.[137] Hence the parson, like the lord, was entitled to seize his duty without waiting for its delivery by the executor.[138] The order of priority between heriots and mortuaries caused litigation in the lay courts. Whether the rector or the lord was

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entitled to the best beast was contested at Kennington (Berkshire) in 1529.[139] The difference between heriot custom and heriot service mattered: in the former, only one item was due to the lord; in the latter, as many items as the number of tenancies.[140] Thus, if the deceased held two tenancies, then the mortuary could have been the third-best, rather than the second-best, beast: on that basis, the prior of Canons Ashby (Northamptonshire) had to defend taking the deceased's second-best animal (an ox) at Moreton Pinkney.[141] The purpose of the pleadings in court was to reduce the dispute to a single issue that could be tried by a jury. That issue could be the correct mortuary custom, as in the case from Moreton Pinkney.[142] An alternative was the ownership of an item. A jury was asked to determine whether the cow in dispute at Huttoft (Lincolnshire) had belonged at the time of her death to the deceased or to the plaintiff.[143]

The common law allowed the Church's jurisdiction to be contested. A writ of prohibition enabled this to be done while a case was in progress, on the basis that the church court was improperly hearing a temporal matter (that is, a plea concerning goods and chattels). The common-law judges were then able to grant a 'consultation', by which the case could resume in the church court once it had been demonstrated that a mortuary was in dispute.[144] In 1517, the vicar of Preston on Wye appeared in the King's Bench to seek such a consultation so that his suit before the sub-dean of Hereford Cathedral for the second-best animal of a parishioner's wife could proceed.[145] Mortuary cases could also be disputed after a church court had given its verdict. In 1507, Cumberland's quarter sessions presented the vicar of Aspatria for having obtained an award in the diocesan court of Carlisle for a mortuary that was properly the manorial lord's heriot, thereby bringing the lay fee into question.[146] Hunne's *praemunire* action was likewise brought after the church court (the archiepiscopal court of audience) had delivered its judgment. The rival pleadings did not resolve into an issue that could be put to a jury and, for eight terms, the King's Bench declined to rule on their sufficiency, until the action was terminated by Hunne's death.[147] In bringing a provocative action that raised a sensitive jurisdictional question, Hunne appears to have overbid. He might have fared better had he sued for trespass and taken the issue of the sheet's ownership to a jury. Since the chaplain of All Hallows Barking had feared that in his case he would 'vndoubtedly be condempned' by a jury of Londoners, Hunne might well have obtained a favourable verdict.[148] The court, however, resiled from his direct assault on the Church's jurisdiction. In sum, neither common law nor ecclesiastical law would reform mortuary dues. This was because both laws interpreted their role as identifying and upholding local custom.

6. Parliamentary reform

The early sixteenth century established that mortuary dues could be changed through parliament. St German held up the statute of 1529 as an *ex post facto* demonstration of parliament's competence over matters hitherto considered to fall under the Church's jurisdiction.[149] Yet a draft petition (of unknown provenance) among the State Papers suggests that legislation was being sought in advance of the Reformation Parliament.[150] Censuring the 'cruell and vncharitable' behaviour of some parish priests, this petition proposed exempting from liability the regular

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clergy, married women, children (defined in an emendation as those under 14), anyone else lacking discretion, and those without goods in the parish. Three criteria for exemption were thus implied: immaturity, inability to own property (through coverture or profession), and non-residence. The rationale may have been that only people who owed tithes and oblations to the parish should be liable. It was presumably on account of the Hunne affair that, in the nineteenth century, this petition was dated to 1514 or 1515.[151] The petition's contents do not clinch the connection. Although they would have exempted anyone of Stephen Hunne's age, children were not singled out for greater notice than any other group. The petition additionally would have required curates to bring the sacrament to the sick and to bury anyone who had died within their parish. The concern expressed about the risk of infection from corpses left unburied might have been a response to the epidemic that had struck London in 1513.[152] Even so, the petition remains of uncertain date and cannot be proven to have ever been presented to parliament. It does indicate, however, that the possibility of nationwide regulation of mortuary customs through legislation had already been recognised.

The statute of 1529 has also been thought to have originated with the city of London. On 15 October, preparing for parliament's opening in a few weeks' time, the Mercers' Company complained 'howe the kynges poore subgiectes, pryncipally of London, been polled and robbed without reason or conscience by th'ordenarys in probatyng of testamentes and takyng of mortuarys'.[153] On the basis of such evidence, Christopher Haigh has argued that the legislation, over probate fees as well as mortuaries, voiced the grievances of particular sections of society that were not universally shared.[154] In the case of mortuaries, the mercers' complaint is surprising because of the exemption of London's citizens from liability. This civic custom had been acknowledged in February 1529, when seven parish priests presented to the city's common council 18 articles, most of which concerned tithes.[155] Article nine requested, on the authority of custom and of an old constitution, 'all Persons which do not enjoy the Liberties and Freedom of the City to pay a Mortuary'. However, the next article may have given a particular ground for the mercers' complaint: it asked, on the basis of the same constitution and as an exception to the general rule, 'That every Alderman pay a Mortuary'.[156] At that time, 7 of the city's 25 aldermen were mercers, more than for any other livery company.[157] So a select group of citizens might have raised a very specific objection to mortuary obligations. Given how little is known about the statute's development, however, the significance of the mercers' grievance for the subsequent enactment cannot be evaluated. Memories of the Hunne affair, which Richard's family had recently been stoking, might also have informed parliament's deliberations.[158] Yet the role of Londoners in promoting the legislation in no way precludes others from having advocated reform. As we have seen, mortuary dues provoked objections across the country, and, while most remained individualised, some disputes did involve members of the gentry and borough communities who were well represented in the Commons.

The mortuaries legislation underwent modification during its progress through parliament in November and December 1529.[159] According to the MP Edward Hall, the bill prepared by the Commons could not pass the Lords, whereupon the king caused a new bill to be drafted, which was 'so resonable' that the spiritual

peers had to assent.[160] The tenor of the Commons' bill must have been less favourable to the clergy than the supposedly temperate measure that took its place. Since the first bill has not survived, only the contents of the final act can be analysed. According to the preamble, the principal problem to be alleviated was the 'over excessyve' value of mortuaries, which was recognised as having a disproportionate effect on the poor. The statute therefore capped the value of mortuaries on a sliding scale based on the deceased's moveable goods. At the bottom end, people whose goods were worth less than £6 13*s.* 4*d.* were exempted; at the top, the maximum value of any mortuary was to be 10*s.* By implication, the statute commuted mortuaries into money. It also exempted married women, children and non-householders (that is, domestic servants and apprentices). It made mortuaries due only in the primary place of residence, thereby protecting those who died on the road and also those domiciled in more than one parish. Nevertheless, the statute did not change the geographical component of liability: wherever custom had previously required them, mortuaries were still obligatory and remained enforceable in church courts. Local custom thus continued to be the primary determinant of liability. The clergy were free to receive bequests, not only as money offered to the high altar, but also as other things. Overall, the statute moderated mortuaries. Its provisions brought together the different ideas surrounding the duty: qualified endorsement of local custom, appropriate kinds of liability (conforming to notions about property ownership and personal autonomy), the principles of charity and reciprocity, and beliefs about the afterlife. The statute superseded prior ecclesiastical legislation; it would have replaced the provincial constitutions in the new canons drafted for the English Church.[161] Thus the statute put mortuary dues on a new footing, but without changing everything about them, for it could only be interpreted in the light of pre-existing practices.

7. Epilogue: mortuary dues after 1529

The statute's makers presumed that it would lower the value of mortuaries. A quantitative study of the changing contribution of mortuaries to clerical incomes could establish whether the legislation did indeed lead to a net reduction. Anecdotal evidence of individual clergymen's reactions is suggestive. The vicar of Halifax, who had vindicated his right to receive mortuaries from household servants as recently as April 1529, purportedly said that the act had cost him more than £50 a year and so wished the king a short reign.[162] To the prior of Alvecote (Warwickshire), mortuaries had been 'one of the gretest profittes & avauntages commyng or growyng' out of the deanery of the collegiate church of Tamworth, which he had been farming.[163] The vicar of Haverhill (Suffolk) supposedly questioned the legitimacy of a law made without the clergy's consent; St German wrote to refute that view.[164] In his church on 3 May 1531, the same vicar of Aspatria who had been troubled two decades earlier allegedly cursed parishioners who refused to give mortuaries in the old manner.[165] In 1532, the Commons complained that clergy had responded to the statute by increasing the tithes that they demanded and by suing for mortuaries without asking for them first (in order to recover legal costs as well).[166] A bill that would have replaced mortuaries with fixed annual payments possibly represented the proposed solution.[167] However reluctantly, the

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clergy did comply with the statute, in part because of the deterrence of prosecution. Juries at assizes and quarter sessions were possibly charged with presenting offending clergymen.[168] Priests were occasionally sued by those from whom they had allegedly sought mortuaries in the traditional form. Two cases were brought in the court of the Exchequer during the first five years of the statute's operation.[169] The vicar of Hinxton (Cambridgeshire) was prosecuted in Common Pleas for having demanded a gown worth 20*s*. three weeks after the legislation came into force.[170] The vicar of Loddon (Norfolk) admitted that he was 'not perfightly knowynge the contents of the said estatute' when he requested a mortuary for a man who had been buried in his own church, but whose principal residence had been in another parish.[171] In 1538, the prior of Launceston (Cornwall) maintained that he had seized a stranger's horse as his heriot, rather than as a mortuary.[172] By the end of the decade, the new rules seem to have been generally observed.

Presumably, many laypeople welcomed the new limitations. In the Lindsey area of Lincolnshire, they supposedly appreciated being relieved from 'mortuaries in ther ould ffassyone'.[173] Some allegedly took advantage: at South Hill (Cornwall), a leading parishioner wilfully misconstrued the statute by 'sayng that they be not bound to paye any mortuaryes'.[174] But mortuaries did not instantly lose their spiritual value to every layperson. Albeit in smaller numbers, testators continued to bequeath mortuaries: some explicitly complied with the statute, others silently applied its terms, and a few gave more than was required, availing themselves of the proviso in the legislation.[175] St German complained that priests were getting around the law by telling dying parishioners that they 'can nat be saued, but they restore them as moche as the olde mortuarie wolde haue amounted to'.[176] So long as testators remained convinced that it was in their own interest to give mortuaries, however, they would not have needed much persuading. What put paid to the bequeathing of mortuaries may thus not have been the statute, but rather the fundamental change in beliefs about the afterlife that would take hold during the Reformation.[177] Mortuaries lost their reciprocal character: they ceased to benefit the donor spiritually as well as the recipient materially. Protestant dissenters who objected to their superstitious ('popish') antecedents were now answered that mortuaries had been preserved solely 'for maintenance of the Ministerie'.[178] Mortuaries could survive because they were not only religious offerings but also customary duties. Statutory sanction helped to ensure that they did survive. Mortuary dues remained property rights. Hence early modern parsons continued to receive their mortuaries, while lay impropriators claimed those that had been owed to the dissolved religious houses.[179] The church courts absorbed the statute into their proceedings and went on judging cases. The common-law courts intervened, as they had before 1529, when the nature of a local custom was disputed. Opinion was divided over whether, under the statute, actions of debt could be brought for mortuaries in these courts.[180]

In point of fact, mortuaries would be paid long after they had become unenforceable. In 1882, a parliamentary committee found that in 'the great majority of parishes' the duty had lapsed. The last mortuary at Beaconsfield (Buckinghamshire) had been presented in 1797 for the statesman Edmund Burke. Nevertheless, in some places mortuaries carried on being given roughly in accordance with the legislation. In the 1530s, inhabitants of Lindsey had welcomed

the new rate; in the 1880s, some of them were still paying it. The current vicar of Wootton (Hampshire), the committee heard, collected the statutory 10*s*., but then chose to return the money. At Frome (Somerset), people were still observing 'the custom of the parish' by giving the same amount. Such evidence came as a surprise to senior members of the Church of England, who had assumed that the duty was obsolete.[181] Although the committee recommended it, the repeal of the Henrician statute would be delayed until 1963.[182] Mortuaries had lasted for such a length of time because of the legislation supporting local usage. This longer chronology alters our perspective on the statute of 1529. The short-term contexts for the legislation were negative: Hunne's case, Protestant criticism and the king's matrimonial difficulty. At close hand, it is the objections to current mortuary practices, which the statute went on to remedy, that loom large. Surveyed at a greater distance, however, the early sixteenth century appears also to have sustained mortuary dues. The statute had reflected the basic acceptance of mortuaries at the time, and it would prolong that view even after the original rationale for giving them no longer held. Mortuaries evolved according to multiple historical tempos. Different kinds of law – jurisprudence, litigation, legislation and also custom – blended to support a remarkably long-lived social practice. Though the balance tipped in the early sixteenth century towards positive law, mortuary dues retained this historic eclecticism. Custom remained constitutive of law and so what emerged was a new kind of synthesis between them.

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Notes

1 E.g. Bronach C. Kane, *Popular memory and gender in medieval England: men, women, and testimony in the church courts, c.1200–1500* (Woodbridge, 2019); Andy Wood, *The memory of the people: custom and popular senses of the past in early modern England* (Cambridge, 2013).

2 Emily Kadens, 'Custom's two bodies', in Katherine L. Jansen, G. Geltner and Anne E. Lester eds., *Center and periphery: studies on power in the medieval world in honor of William Chester Jordan* (Leiden, 2013), 239–48. There is a large secondary literature on the subject: e.g. Amanda Perreau-Saussine and James B. Murphy eds., *The nature of customary law* (Cambridge, 2007).

3 R. H. Tawney, *The agrarian problem in the sixteenth century* (London, 1912); E. P. Thompson, 'Custom, law and common right', in Thompson, *Customs in common* (London, 1991), 97–184. For recent reconsiderations, see Jane Whittle ed., *Landlords and tenants in Britain, 1440–1660: Tawney's Agrarian problem revisited* (Woodbridge, 2013); J. P. Bowen and A. T. Brown eds., *Custom and commercialisation in English rural society: revisiting Tawney and Postan* (Hatfield, 2016).

4 R. H. Helmholz, *The ius commune in England: four studies* (Oxford, 2001), 139, 149, 162–3. The term *mortuarium* did not refer only to a specific item due to the parish priest. It could denote any legacy beneficial to the testator's soul (including funeral expenditure): e.g. J. Donald Cullington and Stephen Bowd eds., *Vainglorious death: a funerary fracas in Renaissance Brescia* (Tempe, 2006), xvi–xvii, 40–1, 64–5, 68–9, 178–81.

5 21 Hen. VIII, c. 6, printed in Alexander Luders and others eds., *The statutes of the realm*, 11 vols. (London, 1810–1828), iii, 288–9.

6 Helmholz, *Ius commune*, ch. 3.

7 William Lyndwood, *Provinciale (seu constitutiones Angliæ)* (Oxford, 1679), 19–22.

8 Margaret McGlynn ed., *The rights and liberties of the English Church: readings from the pre-Reformation Inns of Court*, Selden Society, 129 (London, 2015), 122–3.

9 Stefan J. Smart, 'John Foxe and "the story of Richard Hun, martyr"', *Journal of Ecclesiastical History* **37**, 1 (1986), 1–14.

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10 William Tyndale, *Doctrinal treatises and introductions to different portions of the Holy Scriptures*, ed. Henry Walter, Parker Society (Cambridge, 1848), 338.
11 Henry Ellis ed., *Hall's chronicle* (London, 1809), 765.
12 21 Hen. VIII, cc. 5, 13.
13 This is illustrated by the way in which Hunne's case sets the scene as the opening chapter of G. W. Bernard, *The late medieval English Church: vitality and vulnerability before the break with Rome* (New Haven, 2012).
14 Felicity Heal, *Reformation in Britain and Ireland* (Oxford, 2003), 72–3.
15 Peter Marshall, *The Catholic priesthood and the English Reformation* (Oxford, 1994), 222–3; John A. F. Thomson, *The early Tudor Church and society, 1485–1529* (London, 1993), 289.
16 McGlynn ed., *Rights and liberties*, 122.
17 Lyndwood, *Provinciale*, 196l; A. F. Cirket ed., *English wills, 1498–1526*, Bedfordshire Historical Record Society, 37 (Streatley, 1957), 63 ('the pryncipall byest of myne for the princypall'); Patricia L. Bell ed., *Bedfordshire wills, 1484–1533*, Bedfordshire Historical Record Society, 76 (n. p., 1997), no. 198 ('my best and principall best').
18 Lyndwood, *Provinciale*, 20c; John Fitzherbert, *The boke of surueyeng and improumentes* (London, 1523), fo. 25r.
19 London Metropolitan Archives, London (hereafter LMA), DL/C/0206, fos. 425v–426v.
20 E. D. Stone and B. Cozens-Hardy eds., *Norwich consistory court depositions, 1499–1512 and 1518–1530*, Norfolk Record Society, 10 (n. p., 1938), no. 352.
21 West Sussex Record Office, Chichester, Ep/I/10/4, fo. 10r.
22 Borthwick Institute, York (hereafter BI), CP.G.87, CP.G.94.
23 Margaret Harvey, 'Some comments on northern mortuary customs in the later middle ages', *Journal of Ecclesiastical History* **59**, 2 (2008), 272–80.
24 E.g. Charles Fonge ed., *The cartulary of St Mary's Collegiate Church, Warwick* (Woodbridge, 2004), 246–8.
25 In a case from Eastrington (Yorkshire), it was disputed whether custom required of someone who had no animals their best other thing (*optima alia res*) or only their best garment (*optimum indumentum*): BI, CP.G.31 (defendant's articles).
26 BI, CP.G.140 (deposition of John Lyster).
27 LMA, DL/C/0206, fos. 239r–241v, 248r–249r.
28 The National Archives, UK, Kew (hereafter TNA), KB 27/1006, rot. 37.
29 Historical Manuscripts Commission, *Calendar of the manuscripts of the dean and chapter of Wells*, 2 vols. (London, 1907–1914), ii, 124, 241; A. Hamilton Thompson ed., *Visitations in the diocese of Lincoln: 1517–1531*, 3 vols., Lincoln Record Society, 33, 35, 37 (Lincoln, 1940–1947), i, 130; Margaret Bowker, *The secular clergy in the diocese of Lincoln, 1495–1520* (Cambridge, 1968), 150; 21 Hen. VIII, c. 6, s. 6. Some religious orders claimed exemption for themselves and their tenants: W. T. Mitchell ed., *Registrum cancellarii, 1498–1506*, Oxford Historical Society, n. s., 27 (Oxford, 1980), 141–2; Arthur Thomas Bannister ed., *Registrum Caroli Bothe, episcopi Herefordensis. A.D. MDXVI–MDXXXV*, Canterbury and York Society, 28 (London, 1921), 91.
30 Mary Bateson ed., *Borough customs*, 2 vols., Selden Society, 18, 21 (London, 1904–1906), ii, 85.
31 Lyndwood, *Provinciale*, 21–2q, 22e; Christopher St German, 'A treatise concerning the division between the spiritualty and the temporalty', in Thomas More, *The apology*, ed. J. B. Trapp, Complete Works of St. Thomas More, 9 (New Haven, 1979), 194.
32 For a single person, compare E. M. Elvey ed., *The courts of the archdeaconry of Buckingham, 1483–1523*, Buckinghamshire Record Society, 19 (Welwyn Garden City, 1975), no. 224.
33 Andrew Clark ed., *Lincoln diocese documents, 1450–1544*, Early English Text Society, o. s., 149 (London, 1914), 7; Harvey, 'Northern mortuary customs', 278.
34 BI, CP.G.31, CP.G.103, CP.G.162.
35 TNA, CP 40/978, rot. 605.
36 Hertfordshire Archives and Local Studies, Hertford, ASA7/2, fo. 13r.
37 Thomson, *Early Tudor Church*, 133.
38 LMA, P69/MGT4/B/004/MS04570/001, fos. 88v, 91v. That this receipt was a mortuary is suggested in Susan Brigden, 'Tithe controversy in Reformation London', *Journal of Ecclesiastical History* **32**, 3 (1981), 286.
39 TNA, C 1/1086/61.

40 LMA, DL/A/A/005/MS09531/009, fo. 203v.
41 Lyndwood, *Provinciale*, 97h, 190r, 192a, 199r; Year Books, Mich. 8 Edw. IV, plea 13, fo. 14a. The Year Books are cited from the vulgate edition: *Les reports de cases*, 11 vols. (London, 1678–1680). This edition can be accessed online through 'Seipp's Abridgement' (http://www.bu.edu/law/faculty-scholarship/legal-history-the-year-books/).
42 BI, CP.G.868.
43 Stone and Cozens-Hardy eds., *Norwich consistory court depositions*, no. 127.
44 One Norfolk parish may have had a custom peculiar to residents who had died away from home: ibid., no. 353.
45 McGlynn ed., *Rights and liberties*, 122.
46 TNA, E 101/519/17A, fos. 3v, 5r. The first mortuary was 'an ambelyng nagg'; the second, the sum of 6*s.* 8*d*.
47 E.g. Bowker, *Secular clergy*, 149 (nn. 1–2), 151 (n. 6). The source refers, I think, to burial fees: Thompson ed., *Visitations in the diocese of Lincoln*, i, 121, 139.
48 McGlynn ed., *Rights and liberties*, 122.
49 In 1386, this custom had been invoked by the parson of St Alban Wood Street: Robert C. Palmer, *Selling the Church: the English parish in law, commerce, and religion, 1350–1550* (Chapel Hill, 2002), 45, citing TNA, CP 40/503, rot. 627d.
50 LMA, DL/C/0207, fos. 38r–42v.
51 F. W. Weaver ed., *Somerset medieval wills*, 3 vols., Somerset Record Society, 16, 19, 21 (London, 1901–1905), ii, 173.
52 Register Palmer, comprising 95 testaments proved in the diocesan consistory court between 1492 and 1520, contains a single civic bequest (that of a priest): Ida Darlington ed., *London consistory court wills, 1492–1547*, London Record Society, 3 (London, 1967), no. 52. The same edition also prints 150 separate wills from 1507 to 1547, none of which contains a civic bequest. Nevertheless, in 1529 a citizen (Robert Wade) bequeathed a mortuary 'according to the custume': TNA, PROB 11/23/135 (noted in Thomson, *Early Tudor Church*, 289).
53 St Mary Matfelon was listed under London's parish churches 'withowte the fraunches in the Subbarbys' in a contemporary citizen's commonplace book: British Library, London, Harley MS 2252, fo. 11r.
54 TNA, KB 27/1006, rot. 37.
55 LMA, DL/C/0001, fo. 234v.
56 TNA, SP 1/238, fo. 150r, calendared in J. S. Brewer, James Gairdner and R. H. Brodie eds., *Letters and papers, foreign and domestic, of the reign of Henry VIII*, 21 vols. in 36 pts. (London, 1862–1932), addenda, i, pt. 1, no. 878.
57 L. R. Poos ed., *Lower ecclesiastical jurisdiction in late-medieval England: the courts of the dean and chapter of Lincoln, 1336–1349, and the deanery of Wisbech, 1458–1484*, Records of Social and Economic History, n. s., 32 (Oxford, 2001), 504; Elvey ed., *Courts of the archdeaconry of Buckingham*, no. 406; G. J. Piccope ed., *Lancashire and Cheshire wills and inventories from the ecclesiastical court, Chester*, 3 vols., Chetham Society, 33, 51, 54 (Manchester, 1857–1861), i, 16.
58 Lyndwood, *Provinciale*, 21o.
59 Year Books, Pas. 39 Edw. III, plea 15, fos. 9b–10a; J. H. Baker ed., *Reports of cases from the time of King Henry VIII*, Selden Society, 121 (London, 2004), 369.
60 BI, CP.G.70 (tenth position), CP.G.145 (deposition of Robert Colynson); Ralph Houlbrooke, *Death, religion, and the family in England, 1480–1750* (Oxford, 1998), 81–3, 92–8.
61 Poos ed., *Lower ecclesiastical jurisdiction*, 468; J. T. Fowler ed., *Acts of chapter of the collegiate church of SS. Peter and Wilfrid, Ripon, A.D. 1452 to A.D. 1506*, Surtees Society, 64 (Durham, 1875), 326; Weaver ed., *Somerset medieval wills*, ii, 251–2.
62 Susan Flood ed., *St Albans wills, 1471–1500*, Hertfordshire Record Society, 9 (Linton, 1993), no. 255.
63 Eamon Duffy, *The stripping of the altars: traditional religion in England, c.1400–c.1580* (New Haven, 1992), 354–7.
64 Bell ed., *Bedfordshire wills*, no. 247.
65 Lyndwood, *Provinciale*, 19f, 21c, 21i. Some testators may have supplemented their mortuaries for this reason: Piccope ed., *Lancashire and Cheshire wills and inventories*, i, 23, 64.
66 C. W. Foster ed., *Lincoln wills registered in the district probate registry at Lincoln*, 3 vols., Lincoln Record Society, 5, 10, 24 (Lincoln, 1914–1930), i, 119, 254; Foster ed., *Lincoln wills*, ii, pp. xxiv, 127; Cirket ed.,

English wills, 6–7; Darlington ed., *London consistory court wills*, no. 41; A. V. Peatling ed., *Surrey wills*, 2 vols., Surrey Record Society, 4–5 (London, 1915–1921), ii, nos. 119, 186, 219, 222–3, 226; Peter Heath, *The English parish clergy on the eve of the Reformation* (London, 1969), 153.

67 William Dugdale, *The antiquities of Warwickshire* (London, 1656), 678.

68 McGlynn ed., *Rights and liberties*, 122; Lyndwood, *Provinciale*, 20e; TNA, KB 27/980, rot. 72 ('for celebrating sacramentals for the same person so dying').

69 R. N. Swanson ed., *Catholic England: faith, religion, and observance before the Reformation* (Manchester, 1993), 254; Marshall, *Catholic priesthood*, 18.

70 LMA, DL/C/0206, fos. 239r–240r.

71 St German, 'Treatise concerning the division', 194.

72 BI, CP.G.87 (answer to prior's fifth position).

73 Ibid. (objections to Taylor's witnesses).

74 Ibid. (deposition of Thomas Day). The chaplain Thomas Buscy deposed that Day had made 'some difficulty' about giving a mortuary, 'but without any prosecution of an action'.

75 BI, CP.G.190 (prior's sixth interrogatory).

76 K. L. Wood-Legh ed., *Kentish visitations of Archbishop William Warham and his deputies, 1511–1512*, Kent Records, 24 (Maidstone, 1984), 22–3.

77 Kingston History Centre, Kingston-upon-Thames, KG2/5/1, partly printed in Historical Manuscripts Commission, *Third report* (London, 1872), app., 333. The names of the bailiffs and constables correspond with those serving in the year 1509–1510: Kingston History Centre, KE1/1/5, p. 517.

78 BI, CP.G.140 (answer to tenth article).

79 TNA, E 111/27.

80 TNA, KB 27/1006, rot. 37d.

81 LMA, DL/C/0206, fo. 80v.

82 BI, CP.G.94 (deposition of Henry Baland).

83 Ibid. (deposition of Richard Holden).

84 Ibid. (depositions of Henry Baland and John Cawton).

85 BI, CP.G.190. Compare Fowler ed., *Acts of Ripon*, 94, 153, 330; Harvey, 'Northern mortuary customs', 275–6.

86 In 1380, the Commons had petitioned against the claiming of armour as mortuaries: John Strachey and others eds., *Rotuli parliamentorum; ut et petitiones, et placita in parliamento*, 6 vols. (London, 1767–1777), iii, 82.

87 Christopher St German, *Doctor and student*, ed. T. F. T. Plucknett and J. L. Barton, Selden Society, 91 (London, 1974), 317–19, citing Year Books, Trin. 9 Edw. IV, plea 8, fo. 14a.

88 E.g. Janet H. Stevenson ed., *The register of Edward story, bishop of Chichester, 1478–1503*, Canterbury and York Society, 106 (Woodbridge, 2016), 164.

89 Lyndwood, *Provinciale*, 51b, 51e, 258d.

90 R. C. Anderson ed., *Letters of the fifteenth and sixteenth centuries, from the archives of Southampton*, Southampton Record Society, 22 (Southampton, 1921), no. 18.

91 LMA, DL/C/B/043/MS09064/009, fo. 62r, printed in William Hale Hale ed., *A series of precedents and proceedings in criminal causes, extending from the year 1475 to 1640; extracted from act-books of ecclesiastical courts in the diocese of London* (London, 1847), no. 266.

92 LMA, DL/C/0206, fos. 239r–241v, 248r–249r; TNA, PROB 11/17/396. The Cistercian monastery was extra-parochial: hence the abbot's claim.

93 The refusal of parishioners to abide by arbiters' awards led two priests to bring common-law actions of debt upon the obligations: Palmer, *Selling the Church*, 44–5, citing TNA, KB 27/975, rot. 63 (East Peckham (Kent)), and CP 40/999, rot. 546 (Ridge (Hertfordshire)).

94 LMA, DL/C/B/043/MS09064/010, fo. 51v.

95 Julian Cornwall, 'English population in the early sixteenth century', *Economic History Review* **23**, 1 (1970), 42–4; E. A. Wrigley and R. S. Schofield, *The population history of England 1541–1871: a reconstruction* (London, 1981), 736–8.

96 Margaret Harvey's study of the priory, which extends from the fourteenth century to the 1520s, comments on changing income only in relation to the statute of 1529: Harvey, 'Northern mortuary customs', 279–80.

97 Historical Manuscripts Commission, *Calendar of Wells*, ii, 175. The entry was subsequently vacated.

98 Peter Heath, *Medieval clerical accounts*, Borthwick Papers, 26 (York, 1964), 4–6, 50, 52; Swanson ed., *Catholic England*, 157–62.

99 Robert N. Swanson, 'Standards of livings: parochial revenues in pre-Reformation England', in Christopher Harper-Bill ed., *Religious belief and ecclesiastical careers in late medieval England* (Woodbridge, 1991), 165–6.
100 British Library, Add. MS 34786, fo. 7v.
101 Ibid., fo. 5v (John Tollemache).
102 Ibid., fo. 10r.
103 BI, CP.G.140 (depositions of John Waterhowse and Thomas Gledhyll).
104 R. N. Swanson, 'Profits, priests and people', in Clive Burgess and Eamon Duffy eds., *The parish in late medieval England* (Donington, 2006), 157–9.
105 Cambridge University Library, Cambridge, MS Ll.2.2, fos. 1v–4v, 257r–259r.
106 Tyndale, *Doctrinal treatises*, 237.
107 Cambridge University Library, MS Ll.2.2, fos. 2r, 3r.
108 Ibid., fo. 1v; TNA, PROB 11/13/325 (Joanna Burley).
109 Cambridge University Library, MS Ll.2.2, fo. 259r.
110 Ibid., fo. 1v.
111 BI, CP.G.70.
112 West Sussex Record Office, Ep/I/10/1, fo. 73v.
113 Lyndwood, *Provinciale*, 238–9a, 278e, 279–80g; Helmholz, *Ius commune*, 151–3.
114 Norman P. Tanner ed., *Decrees of the ecumenical councils*, 2 vols. (London, 1990), i, 265.
115 Lyndwood, *Provinciale*, 21m, 196r.
116 Ibid., 19e, 19k, 22l. Lyndwood believed this law to have been enacted by Archbishop Langham (1366–1368). Modern scholarship, however, has identified it as originally having been made by the bishop of Salisbury in 1257: F. M. Powicke and others eds., *Councils & synods, with other documents relating to the English Church*, 2 vols. in 4 pts. (Oxford, 1964–1981), ii, pt. 1, 550, 558–9.
117 Lyndwood, *Provinciale*, 20a, 21c.
118 Ellis ed., *Hall's chronicle*, 766.
119 LMA, DL/C/B/043/MS09064/011, fo. 187r; Poos ed., *Lower ecclesiastical jurisdiction*, 317; Robert N. Swanson and David Guyatt eds., 'The visitation court book of Hartlebury, 1401–1598', in *Noble household management and spiritual discipline in fifteenth-century Worcestershire*, Worcestershire Historical Society, n. s., 24 (Bristol, 2013), 199; A. Percival Moore ed., 'Proceedings of the ecclesiastical courts in the archdeaconry of Leicester, 1516–1535', *Associated Architectural Societies' Reports and Papers* **28**, 2 (1906), 628, 645; Stone and Cozens-Hardy eds., *Norwich consistory court depositions*, no. 192.
120 Lyndwood, *Provinciale*, 161m–s.
121 LMA, DL/C/B/043/MS09064/010, fo. 57v (Hale ed., *Series of precedents*, no. 290); DL/C/B/043/MS09064/011, fo. 17v.
122 Lyndwood, *Provinciale*, 20d, 20g, 21h; St German, 'Treatise concerning the division', 194.
123 Lyndwood, *Provinciale*, 20d; Anderson ed., *Letters of the fifteenth and sixteenth centuries*, no. 18.
124 Lyndwood, *Provinciale*, 19–20p.
125 TNA, KB 27/1006, rot. 37.
126 W. H. Stevenson and others eds., *Records of the borough of Nottingham: being a series of extracts from the archives of the corporation of Nottingham*, 9 vols. (London and Nottingham, 1882–1951), iii, 76–9.
127 William Farrer ed., *The court rolls of the honor of Clitheroe, in the county of Lancaster*, 3 vols. (Manchester and Edinburgh, 1897–1913), ii, 22.
128 Palmer, *Selling the Church*, 42–6, 203.
129 TNA, C 1/269/75.
130 LMA, DL/C/B/043/MS09064/009, fo. 36v (Hale ed., *Series of precedents*, no. 255).
131 Lyndwood, *Provinciale*, 278e; Helmholz, *Ius commune*, 160–1, 179.
132 McGlynn ed., *Rights and liberties*, 74, 85, 93, 159, 166.
133 Luders and others eds., *Statutes of the realm*, i, 101; Year Books, Mich. 10 Hen. IV, plea 2, fo. 1b; Trin. 12 Hen. VII, plea 2, fo. 23a; McGlynn ed., *Rights and liberties*, 123.
134 An action in Common Pleas in 1494 concerning Littlemore (Oxfordshire) is transcribed and translated in J. H. Baker ed., *Reports of cases by John Caryll*, 2 vols., Selden Society, 115–16 (London, 1999–2000), i, 203–4. The form of action is discussed in Morris S. Arnold ed., *Select cases of trespass from the king's courts, 1307–1399*, 2 vols., Selden Society, 100, 103 (London, 1985–1987), i, pp. l–lxii.
135 St German, *Doctor and student*, 298–9.

136 TNA, KB 27/980, rot. 72.
137 G. D. G. Hall ed., *The treatise on the laws and customs of the realm of England commonly called Glanvill* (London, 1965), 79; Samuel E. Thorne ed., *Bracton on the laws and customs of England*, 4 vols. (Cambridge, Mass., 1968–1977), ii, 178; Year Books, Mich. 2 Ric. III, plea 7, fo. 3a.
138 Year Books, Hil. 16 Hen. VII, plea 3, fos. 4b–5a; Baker ed., *Reports of Caryll*, i, 202–3.
139 TNA, CP 40/1069, rot. 541. The parish is now in Oxfordshire.
140 Year Books, Hil. 8 Hen. VII, plea 3, fo. 10b; Hil. 21 Hen. VII, plea 15, fo. 13a; Baker ed., *Reports of Caryll*, i, 288; Baker ed., *Reports of Caryll*, ii, 512, 520–2, 636.
141 TNA, CP 40/997, rot. 430; Year Books, Pas. 7 Hen. VI, plea 16, fo. 26b.
142 The general rule was stated in St German, *Doctor and student*, 71.
143 TNA, CP 40/934, rot. 337; T. F. T. Plucknett ed., *Year Books of Richard II: 13 Richard II: 1389–1390*, Ames Foundation (London, 1929), 35–6.
144 David Millon ed., *Select ecclesiastical cases from the king's courts, 1272–1307*, Selden Society, 126 (London, 2009), xix–xlii, lix–lx.
145 TNA, KB 27/1024, rot. 86. The court's response was not recorded.
146 TNA, KB 9/961/58–9. The vicar pleaded Henry VIII's accession pardon and was discharged: KB 27/1001, rex rot. 1.
147 TNA, KB 27/1006, rot. 37.
148 TNA, C 1/269/75.
149 St German, *Doctor and student*, 317. This passage was added in 1531.
150 TNA, SP 1/12, fo. 20r (Brewer, Gairdner and Brodie eds., *Letters and papers*, i, pt. 2, no. 3602; Brewer, Gairdner and Brodie eds., *Letters and papers*, ii, pt. 1, no. 1315).
151 P. R. Cavill, 'Anticlericalism and the early Tudor parliament', *Parliamentary History* **34**, 1 (2015), 19.
152 Paul Slack, *The impact of the plague in Tudor and Stuart England*, rev. edn. (Oxford, 1990), 57, 61.
153 Helen Miller, 'London and parliament in the reign of Henry VIII', *Bulletin of the Institute of Historical Research* **35**, 92 (1962), 144.
154 Christopher Haigh, 'Anticlericalism and the English Reformation', *History* **68**, 224 (1983), 394–6 (reprinted in Christopher Haigh ed., *The English Reformation revised* (Cambridge, 1987), 60–2).
155 Brigden, 'Tithe controversy', 295–6.
156 Bryan Walton, 'A treatise concerning the payment of tythes in London', in Samuel Brewster ed., *Collectanea ecclesiastica* (London, 1752), 95. I have been unable to identify this constitution. It may have been a synodal constitution made by a bishop of London, like that of Roger Niger (1229–1241) on which the city's tithing custom was based.
157 Alfred B. Beaven, *The aldermen of the city of London*, 2 vols. (London, 1908–1913), i, 331, 337.
158 Susan Brigden, *London and the Reformation* (Oxford, 1989), 172–3.
159 Stanford E. Lehmberg, *The Reformation Parliament, 1529–1536* (Cambridge, 1970), 82, 84, 87, 91–2.
160 Ellis ed., *Hall's chronicle*, 765–7.
161 Gerald Bray ed., *Tudor church reform: the Henrician canons of 1535 and the reformatio legum ecclesiasticarum*, Church of England Record Society, 8 (Woodbridge, 2000), 118–19.
162 TNA, E 36/120, fo. 85r (Brewer, Gairdner and Brodie eds., *Letters and papers*, ix, no. 404). The defendant in that case (BI, CP.G.140), John Northend, signed a collective petition against the vicar in 1535: TNA, SP 1/97, fo. 40r (Brewer, Gairdner and Brodie eds., *Letters and papers*, ix, no. 463/2).
163 TNA, C 1/666/34. The prior had been required to surrender the farm under 21 Hen. VIII, c. 13, s. 2, and was disputing his continued liabilities.
164 Ralph Houlbrooke, *Church courts and the people during the English Reformation, 1520–1570* (Oxford, 1979), 125; St German, *Doctor and student*, 317–20.
165 TNA, C 1/819/19.
166 TNA, SP 2/L, fo. 176r (Brewer, Gairdner and Brodie eds., *Letters and papers*, v, no. 1016/2). Robert Palmer links this complaint to a contemporaneous case in Common Pleas: Palmer, *Selling the Church*, 200, 305, citing TNA, CP 40/1073, rot. 553 and CP 40/1075, rot. 560.
167 TNA, SP 1/74, fo. 129r (Brewer, Gairdner and Brodie eds., *Letters and papers*, vi, no. 120/1).
168 John Baker ed., *The reports of William Dalison, 1552–1558*, Selden Society, 124 (London, 2007), 103; William Lambarde, *Eirenarcha* (London, 1581), 338.
169 J. J. Scarisbrick, 'The conservative episcopate in England, 1529–1535' (unpublished Ph.D. thesis, University of Cambridge, 1955), 88; Palmer, *Selling the Church*, 305.

170 Palmer, *Selling the Church*, 199–200, citing TNA, CP 40/1067, rot. 523.
171 TNA, C 1/1086/62.
172 TNA, C 1/719/25–8.
173 TNA, SP 1/152, fo. 48r (Brewer, Gairdner and Brodie eds., *Letters and papers*, xiv, pt. 1, no. 1094).
174 TNA, C 1/666/8. Other disputes from Cornwall and Devon are discussed in Robert Whiting, *The blind devotion of the people: popular religion and the English Reformation* (Cambridge, 1989), 132–3, 225.
175 Foster ed., *Lincoln wills*, ii, 126–7, 186, 190, 200; Foster ed., *Lincoln wills*, iii, 7, 16, 19, 26, 40, 50, 68; Piccope ed., *Lancashire and Cheshire wills and inventories*, i, 64, 77, 94, 188; Marshall, *Catholic priesthood*, 222–3.
176 St German, 'Treatise concerning the division', 193–4; St German, *Doctor and student*, 339.
177 Peter Marshall, *Beliefs and the dead in Reformation England* (Oxford, 2002), chs. 2–4.
178 Henry Barrow, *A brief discoverie of the false Church* (Dordrecht, 1590), 58, 61–2; George Gifford, *A short treatise against the Donatists of England, whome we call Brownists* (London, 1590), 12–13.
179 Swanson and Guyatt eds., 'Visitation court book of Hartlebury', 262 (around 1589); D. M. Barratt ed., *Ecclesiastical terriers of Warwickshire parishes*, 2 vols., Dugdale Society, 22, 27 (Oxford, 1955–1971), i, 5, 8, 12, 20, 68, 136, 139, 146; Barratt ed., *Ecclesiastical terriers*, ii, 6, 77, 98, 126, 128, 150, 185 (for the years 1617 and 1714); Thomas Siderfin ed., *Les reports des divers special cases argue & adjudge en le court del bank le roy et auxy en le co. ba. & l'exchequer en les premier dix ans apres le restauration del son tres-excellent majesty le roy Charles le II.* (London, 1683), 263.
180 Francis Clarke, *Praxis* (Dublin, 1666), 183; *The third part of modern reports, being a collection of several special cases in the court of Kings-Bench; in the last years of the reign of King Charles II. in the reign of King James II. and in the two first years of his present majesty* (London, 1700), 268; Simon Degge, *The parson's counsellor, with the law of tithes or tithings* (London, 1676), 254; Edmund Gibson, *Codex juris ecclesiastici Anglicani*, 2 vols., 2nd edn. (Oxford, 1761), ii, 710s.
181 *Report from the select committee on ecclesiastical and mortuary fees*, House of Commons Papers 1882, no. 309 (London, 1882), iv, xviii–xix, xxv–xxvi, 19–20, 34, 62, 66, 78, 116–17, 121–2, 125, 132–3, 196–8, 200–1, 206, 249–50, 314, 344.
182 Ecclesiastical Jurisdiction Measure 1963, s. 87 (referring to fifth schedule).

French Abstract

Lors des funérailles, des offrandes étaient dues aux prêtres. Le début du XVIe siècle correspond, en Angleterre, à un moment-clé de leur longue histoire. En 1529, une loi du Parlement modifia considérablement ces contributions. Cet article explore les pratiques mortuaires au cours des décennies qui précèdent. L'auteur y examine ce qu'étaient ces dons, qui devait cotiser et à quoi cela servait. Il souligne l'importance de la coutume locale et reconsidère l'idée reçue selon laquelle ces offrandes faites à l'occasion d'obsèques à l'église étaient généralement pratique détestée. Une vision plus complexe permet d'expliquer à la fois pourquoi ces contributions furent réformées et pourquoi elles survécurent ensuite pendant des siècles. Les participations aux funérailles illustrent la relation symbiotique entre législation et coutume.

German Abstract

Die beim Tod anfallenden Bestattungsgebühren (*mortuaries*) standen dem Gemeindepfarrer zu. Das frühe 16. Jahrhundert war ein entscheidender Moment in ihrer langen Geschichte, denn 1529 wurden diese Gebühren durch ein vom Parlament beschlossenes Gesetz erheblich verändert. Dieser Beitrag untersucht Bestattungspraktiken in den vorangegangenen Jahrzehnten, fragt danach, was Bestattungszahlungen überhaupt waren, wer sie entrichtete

und welchem Zweck sie dienten, und betont dabei die Bedeutung lokaler Bräuche. Der Beitrag unterzieht auch die moderne Auffassung, dass Bestattungsgebühren allgemein abgelehnt wurden, einer kritischen Betrachtung. Durch eine komplexe Herangehensweise lässt sich erklären, warum Bestattungsgebühren reformiert wurden und warum sie anschließend über Jahrhunderte hinweg erhalten blieben. Bestattungsgebühren sind ein Beispiel für die symbiotische Beziehung zwischen Recht und Brauch.

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