INTRODUCTION

On 14 November 1279 the Statute of Mortmain, sometimes known as *De viris religiosis*, was published and recorded in the form of a writ addressed to the justices of Common Pleas, ordering that in future:

> no one at all, whether religious or anyone else, may presume to buy or sell any lands or tenements, or to receive them from anyone under the colour of gift or lease or any other title whatsoever, or to appropriate them to himself in any other way or by any device or subterfuge, so that they pass into mortmain in any way, under pain of their forfeiture.[1]

In these dramatic terms, the long tradition whereby church property grew through gift and purchase was called to an abrupt halt. So at least it appeared, but appearances were more than usually deceptive. That the law was not observed literally is common knowledge; the first of many licences permitting acquisitions, notwithstanding the statute, was granted in 1280.[2] The swift emergence of such licences does not necessarily imply that the statute was impotent, but it raises questions as to the precise nature of its intentions and effects. These need answering before the full complexity of mortmain regulation can be satisfactorily understood. Prominent among the queries are the extent to which contemporaries were determined in their wish to curb the temporal possessions of the church; whether, in the words of Plucknett, 'the flow of property to the church continued much as before, but from every gift the king took such toll as he could get';[3] whether indeed the strict implementation of restrictive

[1] Translated from ed. F. M. Powicke, C. R. Cheney, *Councils and Synods*, 2 vols. (Oxford, 1964), vol. II, pt II, p. 865. For the full text of the statute, see below, pp. 193–4.

[2] *Cal. Pat.*, 1272–81, p. 372.

[3] T. F. T. Plucknett, *Legislation of Edward* I (Oxford, 1949, repr. 1962), pp. 99–100.

legislation was feasible given the administrative resources of the day. Finally, and most important of all, it is essential to know whether the church was engrossing land on a threatening scale by the mid-thirteenth century and whether mortmain legislation was of any significance in the ensuing pattern of accession.

So familiar is the existence of mortmain legislation in England that broad generalisations as to its workings have crept unchallenged into common use. Some are mutually exclusive; whereas one distinguished authority has considered the statute 'almost useless' as a curb on acquisition, another claimed that it exercised a profound impact on the land market.[4] Even where such judgements withstand closer examination, they miss the subtle evolution of practice over time. Economic and social conditions combined at different times to stimulate or depress ecclesiastical acquisition. It has been all too easy to forget this and to assume that the effects of the statute in the late thirteenth century were the same a century or more later, although the conditions within which it operated had changed. Moreover, the church itself was not a homogeneous body. The clergy comprised a diverse group of secular and religious differing widely in rôle and wealth. The statute of 1279 was directed indiscriminately at the richest black monk and the poorest mendicant or parish priest. Where needs and possessions varied so greatly, so inevitably did the impact of the new controls.

Although *De viris religiosis* is generally seen as a move to limit the wealth of the church, its target was not the church as such but the tenure by which its lands were held. Until the late fourteenth century, mortmain tenure was commonly understood as a synonym for ecclesiastical tenure, but technically it denoted tenure by any institution. In recognition of this, borough corporations and gilds were subject to the same restrictions as the church after 1391. A particular problem posed by mortmain tenure in the Middle Ages was that property once acquired by an institution was unlikely to return to the open market. This was emphasised in the case of the church by the stress laid by canon law on the

[4] K. L. Wood-Legh, *Studies in Church Life in England under Edward III* (Cambridge, 1934), p. 61; K. B. McFarlane, *The Nobility of Later Medieval England* (Oxford, 1973), p. 54.

preservation of ecclesiastical endowments as the property of God. Time and again church councils inveighed against the dissipation of ecclesiastical assets.[5] When the Canterbury province met at Oxford in 1222 to promulgate canons which became the basis of English church law for the rest of the Middle Ages, churchmen were enjoined not to alienate ecclesiastical property in any way to their relatives and friends or to anyone else.[6] Such reiteration suggests that observance was hard to secure, but a glance at any monastic cartulary will reveal the fierce tenacity with which the religious could fight to maintain their grasp on property they believed to be their own.

In any society, the persistent accumulation of landed wealth by certain groups without any prospect of its recirculation must eventually create social imbalance severe enough to provoke remedial measures. So far as the church was concerned this point was reached in much of Europe during the thirteenth century, but many factors might accelerate or retard its arrival. Examples can be adduced from more remote times and places. Tenth-century Byzantium, confronted by similar problems, had also attempted a legislative solution. In 964, the novel of the emperor Nicephorus Phocas, complaining that monasteries had 'turned all the attention of their souls to the care of acquiring daily thousands of measures of land, superb buildings, innumerable horses, oxen, camels and other cattle', forbade 'anyone to grant fields and estates of any kind to monasteries, houses for the poor and hostels, and to metropolitans and bishops, for such grants bring no benefit to them.'[7] At another chronological extreme, one of the first acts of the British when assuming the government of Malta in the early nineteenth century was to impose a mortmain law forcing the church to sell all bequests of land within a year.[8] It is also interesting to note that in modern India, a predominantly non-

[5] *Corpus Juris Canonici*, 2 vols. (Lipsiae, 1879–81), vol. II, bk III, tit. XIII, caps. I et seq.

[6] Powicke, Cheney, *Councils and Synods*, vol. II, pt I, pp. 100, 117, no. 36.

[7] P. Charanis, 'The Monastic Properties and the State in the Byzantine Empire', *Dumbarton Oaks Papers*, 4, 1948, pp. 56–7; R. Morris, 'The Powerful and the Poor in Tenth-Century Byzantium', *Past and Present*, 73, 1976, p. 13.

[8] J. Boissevain, *Saints and Fireworks* (London, 1965), p. 7.

Christian country, the constitution which provides for all religions to own and acquire property also provides that the state may make laws restricting this right in the public interest.[9] Thus, in enacting mortmain legislation in the thirteenth century, the English crown was taking steps which governments before and afterwards recognised as the most appropriate corrective to a widespread tenurial tendency.

Land accumulating in mortmain might not have provoked such opposition had its withdrawal from the market been the only disadvantage involved. This was not the case, however. The term 'dead hand' vividly described land dead to the community because, although individual members of an institution might die, the body itself lived on and tenure was vested in the corporation as a whole. Consequently, an overlord lost all the benefits which normally accrued on the death of a tenant. He could not exact a relief from his tenant's successor, nor exercise his right of escheat should the tenant die without heirs or be convicted as a felon. He also lost all chance of a wardship. This was doubly grievous since an under-age heir permitted the lord to enjoy the fruits of the child's estate and to arrange his or her marriage to his own personal advantage.[10] There can be no doubt that tenure in mortmain entailed a considerable material sacrifice on the part of the immediate lord. This was all the more marked by the early thirteenth century in that inflation had robbed him of a realistic return from regular obligations. Nor were these the only problems confronting the landlord when his tenant in mortmain was the church.

Ecclesiastical lands were commonly held in frankalmoin and, as one might infer from the word itself or its English equivalent of free alms, such tenure entailed spiritual duties rather than more mundane renders like cash or military service. Spiritual obligations might involve nothing more than an undefined duty to pray for the souls of the grantor and his family, although as time went on benefactors often demanded more specific services. These might

[9] J. Duncan, M. Derrett, 'The Reform of Hindu Religious Endowments', in ed. D. E. Smith, *South Asian Politics and Religion* (Princeton, 1966), p. 311.

[10] For a full account of feudal incidents in the context of alienation, see J. M. W. Bean, *The Decline of English Feudalism* (Manchester, 1968), p. 7 et seq.

range from simple obligations like the maintenance of lighted candles before certain altars to the establishment of perpetual chantries with elaborate provision for their upkeep.[11] Because tenure in frankalmoin so often went hand in hand with property held in mortmain, the problems arising from spiritual services came to play an important part in determining attitudes to mortmain itself.

In accepting gifts in frankalmoin, the church was catering for a deeply felt need in society, but at the same time it was raising intractable problems. The grantor of the property was able to calculate whether he and his successors could afford to forgo the secular income which it normally yielded and, if necessary, modify his plans. His overlord was in a more invidious position. True, the obligations to him were not in any way diminished in law unless he voluntarily surrendered them and they were also becoming less valuable in real terms with the passage of time. Nevertheless, he might find them withdrawn against his will if a tenant had miscalculated his ability to fulfil his outstanding obligations once part of the holding had ceased to render its usual returns. Overlords in this predicament might seek legal redress, but they ran the risk of provoking uncomfortable ecclesiastical sanctions. Thus, the situation could arise where the overlord's own tenant now lacked the resources to perform his services himself and the church, as subtenant, had no intention of doing so.

A further difficulty arose in boroughs, where holdings in frankalmoin tended to evade contributions to the *firma burgi* or other seignorial dues. Nor was there always an obligation to share in common undertakings such as defence or public works. Where a considerable proportion of the burgage tenements had fallen into ecclesiastical hands, the burden on the remaining burgesses might be disproportionately heavy. Bitterness about this is typified by the following extract from the laws of Dublin and Waterford *c.* 1300: 'For when religious houses enter upon property, they do nothing for the town, the heirs are reduced to

[11] Just over a third of the licences to alienate into mortmain granted to the nobility between 1307 and 1485 entailed a specific obligation on the part of the recipient. J. T. Rosenthal, *The Purchase of Paradise* (London, 1972), p. 141.

poverty, and the city is deprived of young men for its defence in time of war'.[12] A more specific objection to ecclesiastical tenure was cited by the citizens of London in 1312. They complained that the church controlled an estimated one-third of the rents in the city and that because it claimed exemption from murage, the burden of maintaining the walls fell unfairly on the remaining laymen.[13]

Grants to the church not only occasioned the material losses associated with mortmain and frankalmoin tenure; they also had important social and political concomitants. The conservatism of the church with regard to matters such as labour services from villein tenants is now well known and may have been appreciated at the time. Ramsey Abbey is but one example of a house which retained and even intensified them until a late date. Christchurch Cathedral Priory, Canterbury, continued to exact them on its Kentish estates long after they were generally commuted elsewhere. It is not just an accident of documentation which shows ecclesiastical estates as the prime target for peasant resentment of seignorial demands in the thirteenth and fourteenth centuries.[14] Another aspect of ecclesiastical tenure which certainly held great significance for contemporaries was the military danger of knightly families driven from the land. To some extent complaints about this can be dismissed as rhetoric, but their frequency commands some attention, as indeed does the prominence given to the issue in the statute itself. One of the reasons cited for its enactment was the fear that 'the services owed on such fees which were established originally for the defence of the realm are withdrawn unduly.'[15] Even where ecclesiastical purchasers left lay

[12] C. Gross, 'Mortmain in Medieval Boroughs', *Am.H.R.*, 12, 1907, pp. 733–4.
[13] H. M. Chew, 'Mortmain in Medieval London', *E.H.R.*, 60, 1945, p. 3.
[14] N. Neilson, *Economic Conditions on the Manors of Ramsey Abbey* (Philadelphia, 1899), pp. 26–7, 45 et seq.; R. A. L. Smith, *Canterbury Cathedral Priory* (Cambridge, 1943, repr. 1969), pp. 126–7; E. A. Kosminsky, 'Services and Money Rents in the Thirteenth Century', *Ec.H.R.*, 5, 1935, repr. in ed. E. M. Carus-Wilson, *Essays in Economic History*, 3 vols. (London, 1954–62), vol. II, p. 45 et seq.; R. H. Hilton, 'Peasant Movements in England before 1381', *Ec.H.R.*, 2nd ser., 2, 1949, repr. in *ibid.*, p. 78 et seq.
[15] Powicke, Cheney, *Councils and Synods*, vol. II, pt II, pp. 864–5: 'per quod servitia que ex huiusmodi feodis debentur et que ad defensionem regni ab initio provisa fuerunt indebite subtrahuntur'.

tenants in possession of the land, as must often have been the case, the potent forces of ecclesiastical lordship and the loyalties it might command should not be underestimated. The delineation of lay and spiritual spheres of influence was a perennial medieval issue and any substantial increase in the secular power of the church could only undermine the precarious *modus vivendi* which had been achieved.

The church might have been forgiven both its tenacity in retaining property and its eagerness to acquire more, notwithstanding the problems inherent in its tenure, had it not been so enormously wealthy. Just how wealthy is a question which has exercised numerous scholars with no very precise result. Calculations based on Domesday Book suggest that in 1086 the church held some twenty-six per cent of the land in England as tenant-in-chief of the king.[16] On the basis of the surviving 1279 Hundred Rolls, Kosminsky put forward a somewhat higher figure of one-third; an increase probably accounted for as much by the geographical distribution of the existing rolls as by continued acquisition, even allowing for the new foundations of the twelfth century.[17] At both periods far less land was actually held in demesne, because of extensive subinfeudation. No simple computation can account for the varied interests in land which the church came to hold, quite apart from its extra-territorial possessions.[18] If its aggregate wealth was something less than the figures based on holdings in chief would suggest, it was nevertheless sufficient to explain the frequent identification of the church with mortmain tenure and why initial curbs on alienation into mortmain were addressed to the church alone. Some anti-clerical sentiment doubtless contributed to the enactment of the 1279 statute, and it grew stronger with the passing years. Nevertheless to regard control over amortisation as a straightforward attack on the church is once more to oversimplify.

To raise further questions about mortmain legislation and its

[16] R. Lennard, *Rural England 1086–1135* (Oxford, 1959), p. 25.

[17] E. A. Kosminsky, *Studies in the Agrarian History of England in the Thirteenth Century* (Oxford, 1956), p. 109.

[18] A good account of their range is given in A. Savine, *English Monasteries on the Eve of the Dissolution* (Oxford Studies in Social and Legal History, 1, 1909), pp. 83–6.

workings is not to devalue earlier work of great distinction. Problems posed today would prove insoluble but for the existing foundation of knowledge. Indeed, they often arise because of it. Central to this heritage is the work of K. L. Wood-Legh, whose account of the law in action under Edward III is unsurpassed in its detail and lucidity.[19] Two further studies have been significant in placing the legislation in its social context: T. F. T. Plucknett's *Legislation of Edward I* and J. M. W. Bean's *The Decline of English Feudalism*.[20] A rich literature on more specialised aspects of the subject has also grown up.[21] Lawyers were the first to devote serious attention to mortmain legislation, tracing its evolution from medieval beginnings to their own day.[22] Since then it has steadily attracted some of the most notable medievalists working on English history, without, it must be admitted, ever provoking untoward controversy or excitement. Recently there has been a new flowering of mortmain scholarship. There is no evident explanation or focus for this apparently spontaneous revival of interest. It has embraced the circumstances surrounding the enactment of *De viris religiosis*, as well as the impact of the statute on different members of the church, and trends in ecclesiastical patronage.[23] Yet despite this industry, Plucknett's comment in

[19] *Studies in Church Life*, ch. 3.

[20] Bean, *Decline of English Feudalism*, p. 49 et seq.

[21] Gross, *Am.H.R.*, 1907, p. 733 et seq.; J. N. L. Myres, 'Notes on the History of Butley Priory, Suffolk', *Oxford Essays in Medieval History Presented to H. E. Salter* (Oxford, 1934), p. 190 et seq.; S. J. A. Evans, 'The Purchase and Mortification of Mepal by the Prior and Convent of Ely, 1361', *E.H.R.*, 51, 1936, p. 113 et seq.; Chew, *E.H.R.*, 1945, p. 1 et seq.; E. Miller, 'The State and Landed Interests in Thirteenth-Century France and England', *T.R.H.S.*, 5th ser., 2, 1952, pp. 123–6.

[22] E.g. W. F. Finlason, *An Essay on the History and Effects of the Laws of Mortmain* (London, 1853); T. Bourchier-Chilcott, *The Law of Mortmain* (London, 1905).

[23] P. A. Brand, 'The Control of Mortmain Alienation in England 1200–1300', in ed. J. H. Baker, *Legal Records and the Historian* (London, 1978), p. 29 et seq.; L. Desmond, 'The Statute *De Viris Religiosis* and the English Monks of the Cistercian Affiliation', *Cîteaux*, 25, 1974, p. 137 et seq.; E. D. Jones, 'The Crown, Three Benedictine Houses and the Statute of Mortmain, 1279–1348', *Jour. of Brit. Studies*, 14, 1975, p. 1 et seq.; Rosenthal, *Purchase of Paradise*. Other recent studies, not specifically devoted to mortmain, have incidentally added to our understanding, notably: K. L. Wood-Legh, *Perpetual Chantries in Britain* (Cambridge, 1965), p. 43 et seq.;

1949 that 'there has been little detailed study as yet upon the actual working of the statute' remains substantially true.[24] S. A. Standen went some way towards remedying this in his unpublished Ph.D. thesis, analysing particularly the development of procedure after 1279, but this is not generally available and further issues need to be explored.[25] In particular, there is no general survey of the response of the church to the legislation and to any impression it may have made on ecclesiastical acquisition, except for my own brief article.[26] The omission is all the more serious when understanding of the land market and the distribution of landed wealth is growing so fast in other directions and periods.[27] Professor Postan has suggested that the balance of landholding in the later thirteenth century was shifting in favour of larger landlords at the expense of older knightly families, a trend mitigated only by the purchases of career officials consolidating themselves in county society.[28] The transactions of churchmen are central to any exploration of this possibility, quite apart from their intrinsic interest. Thus it can be seen that mortmain studies as they stand at present are highly fragmented with some major points of current enquiry untouched. This study is designed to provide the synthesis and further investigation which are clearly needed.

A. Kreider, *English Chantries: The Road to Dissolution* (Harvard and London, 1979), p. 71 et seq.

[24] *Legislation of Edward I*, p. 100.

[25] 'The Administration of the Statute of Mortmain' (unpublished Ph.D. thesis, Washington University, 1973).

[26] S. Raban, 'Mortmain in Medieval England', *Past and Present*, 62, 1974, p. 3 et seq.

[27] For later periods, see H. J. Habakkuk, 'English Landownership, 1680–1740', *Ec.H.R.*, 10, 1939–40, p. 2 et seq.; *idem*, 'The Long-Term Rate of Interest and the Price of Land in the Seventeenth Century', *Ec.H.R.*, 2nd ser., 5, 1952, p. 26 et seq.; *idem*, 'The Market for Monastic Property, 1539–1603', *Ec.H.R.*, 2nd ser., 10, 1958, p. 362 et seq.; F. M. L. Thompson, *English Landed Society in the Nineteenth Century* (London, 1963); *idem*, 'The Social Distribution of Landed Property in England since the Sixteenth Century', *Ec.H.R.*, 2nd ser., 19, 1966, p. 505 et seq. and more specialised articles in recent numbers of *Ec.H.R.* For the medieval period, it is the peasant land market which has attracted most attention. See P. R. Hyams, 'Origins of a Peasant Land Market in England', *Ec.H.R.*, 2nd ser., 23, 1970, p. 18 et seq.

[28] M. M. Postan, *The Medieval Economy and Society* (London, 1972), pp. 161–3.

Information about alienations into mortmain comes from two main categories of material: the public records and those of the church itself. Central in importance to this study is the evidence drawn from the licences to alienate enrolled on the royal patent rolls, inquisitions *ad quod damnum*, escheators' accounts and entries on the close rolls. These together with associated records provide a profile of amortisation on a countrywide basis as well as much of the evidence for the evolution and efficacy of its regulation. Judicial proceedings, the year books and occasionally narrative sources also yield some useful supplementary information. Almost all these records, however, look at mortmain through the eyes of the crown and its agents. For the attitudes and response of the church one turns principally to its own records. The most rewarding of these are charters, usually in the form of cartulary copies. As a rule, monastic versions of licences have nothing to add to those recorded on the patent rolls, but copies of deeds belonging to transactions preceding the licence often cast a completely new light on what was taking place.[29] Other deeds, such as leases, can also illustrate the means by which the church sometimes by-passed the law altogether. In the privacy of their domestic records, churchmen were sometimes disarmingly frank about their motives and machinations. More than one plot is laid bare in an expansive rubric.

It is plain that the subject suffers from no shortage of source material. Indeed, a major difficulty has been to reduce the volume of evidence emanating from crown and church to manageable proportions. With this in mind, certain aspects of the study have assumed a pronounced regional bias. In order to minimise the disadvantages of this, the area comprising Lincolnshire and the old East Midland counties of Bedfordshire, Northamptonshire, Huntingdonshire and Cambridgeshire has been chosen with care. These counties offer a fair contrast of both geographical conditions and ecclesiastical foundations. In addition to a host of minor churchmen, both regular and secular, the institutions to be found there included two cathedral bodies, one secular and one monastic, several of the oldest and richest monasteries in the country and a

[29] Occasionally cartulary copies of licences can alert one to significant omissions in the calendaring. See below, p. 49.