Peter T. Leeson*

Trading with the Dead

https://doi.org/10.1515/rle-2021-0036
Published online November 8, 2021

Abstract: Late medieval Englishmen provided for their wellbeing in the hereafter by purchasing intercession for their souls. They traded valuable landed endowments for the promise of posthumous Masses and prayers whose daily observance contractual counterparties agreed to underwrite for decades, centuries, even eternally. Intercessory foundations so contracted were called chantries. Chantry contracts constituted trades with the dead in the sense that the promisees were deceased when the promisors were supposed to perform. I study the special problems that chantry contract promisees faced in enforcing their rights from the grave and analyze the devices they used for that purpose. Chantry founders wary of their fates in the afterlife showed equal concern for the challenges their contracts would encounter in this life long after they were gone. Founders met those challenges by leveraging the economics of incentives to develop a strategy of chantry contract self-enforcement: profit the living, present and future, for monitoring the contractual performance of promisors and promisors' agents, and for punishing them should they breach. Chantry founders' strategy was successful, enabling trade with the dead.

Keywords: chantries, contract enforcement, intercession, purgatory, self-enforcement

JEL Classification: K12, N13

1 Introduction

When Adam Smith observed "a certain propensity in human nature . . . to truck, barter, and exchange" (2019 [1776]: 13), he probably had in mind trade between living humans. Yet Smith's observation also applies to trade with the dead. Such trade may be one of two types: exchange wherein one party is deceased at the time he is supposed to perform his part of the deal, or exchange wherein one party is deceased at the time his counterparty is supposed to perform the counterparty's

***Corresponding author: Peter T. Leeson**, Department of Economics, George Mason University, MS 3G4, Fairfax, VA 22030, USA, E-mail: PLeeson@gmu.edu

part of the deal. Previously I studied an example of the first type of trade with the dead: exchanges between living monks and dead saints in tenth- through twelfth-century Francia (Leeson 2014).[1] There, monks agreed to venerate saints, in consideration for which saints agreed to protect monastic communities' property from strongmen intent on seizing it. Those trades with the dead were mostly successful, hence strongmen mostly were not.

Here I study the second type of trade with the dead, whose most common contemporary manifestation is found in wills. Many testators bequeath property to descendants, in consideration for which descendants agree to fulfill some wish of the testator after he has died. The result is a special kind of contract. Special, because the contractual promisee is deceased and thus powerless to himself enforce his contractual claims against a contractual promisor who breaches.

The trades with the dead this paper considers share important features with wills. They, too, involved contracts that were explicit, promisors who were alive, and promisees who were deceased. Yet the contracts I analyze often concerned wills only tangentially or not at all, and they are not modern but medieval. Enforcing those contracts, moreover, was more challenging than enforcing wills. On the one hand, the contracts were long-term – often the longest-term imaginable, requiring promisor performance for "as long as the world standeth". On the other hand, many of the contracts were illegal. Dead promisees, therefore, often could not expect enforcement help from government.

The contracts in question founded chantries in late medieval England. Between the late thirteenth and early sixteenth centuries, Englishmen provided for their wellbeing in the hereafter by purchasing intercession for their souls. They traded valuable landed endowments for the promise of posthumous Masses and prayers whose daily observance contractual counterparties agreed to underwrite for decades, centuries, even eternally. Intercessory foundations so contracted were called chantries, and the contracts that founded chantries constituted trades with the dead: promisees were deceased when promisors were supposed to perform.

I examine the special problems that chantry contract promisees faced in enforcing their contractual rights from the grave. Those problems, I argue, required promisees to design chantry agreements that were self-enforcing. My analysis of promisees' contractual devices finds that their agreements satisfied such design. Chantry founders wary of their fates in the afterlife showed equal concern for the challenges their contracts would encounter in this life long after they were gone. Founders met those challenges by leveraging the economics

1 My consideration of those trades, however, was indirect. The direct subject of my attention was monks' use of maledictions to protect their property when government could not.

of incentives to develop a strategy of chantry contract self-enforcement: profit the living, present and future, for monitoring the contractual performance of promisors and promisors' agents, and for punishing them should they breach.

Chantry founders applied this strategy in two primary ways. First, their contracts stipulated endowment forfeiture in the event of promisor nonperformance and named the promisor's competitors as reversionary rightsholders should that event come to pass. By this device, chantry founders incentivized the promisor's competitors to keep close watch on him and to hold him accountable if malfeasance were discovered. Second, to improve oversight of chantry contract sub-promisors – promisors' agents – chantry founders construed their intercessory foundations such that contractual fulfillment would benefit not merely the founders' dead selves but also the living persons best positioned to observe the agents. Those persons, too, thus were incentivized to scrutinize chantry contract performance and, if necessary, to act in chantry contract defense. Their vigilance, together with the vigilance of the promisor's competitors, incentivized promisors and promisors' agents to keep their ends of chantry bargains. The result was successful chantry contract enforcement, enabling trade with the dead.

My analysis contributes to two literatures. The first studies mechanisms of contractual self-enforcement in historical contexts. Frey and Buhofer (1988), for example, consider self-enforcing contracts in the market for prisoner ransom in the Middle Ages.[2] Greif (1989) examines self-enforcing contracts that facilitated long-distance trade among medieval Maghribi traders. Anderson and Hill (2004) investigate self-enforcing contracts forged by nineteenth-century settlers of America's western frontier. And in previous work, I study contractual self-enforcement in the context of eighteenth-century Caribbean pirates (Leeson 2007a) and in the context of trade between producers and middlemen in late precolonial west Africa (Leeson 2007b). This paper contributes to the above research by analyzing self-enforcing contractual arrangements that supported trade with the dead in late medieval England.

The second literature to which my analysis contributes uses economic reasoning to explain institutions, practices, and beliefs associated with the historical Catholic church. Hull (1989), for instance, uses economic reasoning to explain changes in attitudes toward Hell, Heaven, and divine retribution in medieval Catholicism. Ekelund et al. (1992) study the development of Purgatory as a market-pull innovation. Ekelund et al. (1996, 2006) and Ekelund and Tollison (2011) analyze the historical church as a profit-maximizing firm. Cassone and Marchese (1999) examine the economics of medieval Catholic indulgences. And in

2 See also Leeson and Nowrasteh (2011), who consider such contracts in the market for ransom and parole in the Age of Sail.

previous work, I study the economics of historical Catholic beliefs supporting trials by ordeal (Leeson 2012), the legal prosecution of vermin (Leeson 2013), and the great age of European witch trials (Leeson and Russ 2018). This paper's analysis contributes to the foregoing work by using economic reasoning to understand the operation of late medieval foundations for long-term posthumous intercession in England.

2 Purgatory and the Demand for Posthumous Intercession

Late medieval Catholic doctrine construed the afterlife as tripartite.[3] There was Hell for the unrepentant mortal sinner, Heaven for the purified repentant sinner, and Purgatory for purifying the repentant sinner. While each part was described as a postmortem place, Purgatory thus was more precisely a postmortem process – the final stage in a penitential program of forgiveness and reconciliation that rendered the faithful departed presentable to God. Preceding stages of that program were undertaken by the faithful before they departed: contrition for sins committed; sacramental confession; priestly absolution and penitential prescription, the penalty due for sins committed; and penitential performance, progress toward satisfaction of the penalty due.[4]

By working this program in life, the penitent could in principle avoid its final stage in the afterlife. One who dies in God's grace having fully expiated his sins has no residual sin requiring purgation, hence no need for Purgatory. He is presentable to God "as is" and may enter Heaven immediately. Managing such a feat in practice, however, was unlikely. Dying in a state of venial sin presented one obstacle, for any unatoned sin with which one passed into the afterlife required purgation. Imperfect confession presented another obstacle: sins might be overlooked; contrition could be incomplete; confessors were sometimes overindulgent. Between the difficulties of plumbing the depths of guilt and the tricky nuances of hereafter accounting, just about anything could go wrong. But perhaps the greatest challenge to dying with one's sins remitted completely was completely discharging one's accumulated penitential debt before death.

The Church's Penitential Canons prescribed seven years' penance for each mortal sin committed (Tentler 1977). That could mean seven years of fasting, almsgiving, or making pilgrimages, multiplied by God-only-knows how many

3 Contemporary Catholic doctrine, of course, also construes the afterlife as tripartite.

4 Annual confession became obligatory from the Fourth Lateran Council in 1215.

sins. And if the sinner relapsed before his task were completed, credit earned might be void, in which case the sinner would have to start his penance over from the beginning. Late medieval confessors exercised discretion in prescribing penances. And the punishments they prescribed were often more lenient than the those laid down in the Penitential Canons. Even still, for all but cloistered clergy, who had all day to perform penitent acts, dying with a penitential balance that would have to be paid in Purgatory was nearly certain.

"[S]uccessful negotiation of their fate in the afterlife", therefore, "was a matter of paramount concern to the people of late medieval England" (Marshall 2002: 32). Special concern arose from two purgatorial considerations in particular. First, while Purgatory was but a pitstop for saved souls assured of eventual admission to God's Kingdom, the pitstop could be ungodly long. A larger unpaid penitential debt at death, of course, meant a longer purgatorial payment period before reaching heavenly bliss. More disconcerting, however, was the nature of purgatorial time, whose relation to earthly time was rather like the relation of dog years to human years: a large multiple. While the precise multiple was murky, a sermon story popular with late medieval preachers intimated its magnitude. According to that story, the ghost of a monk appears to his friend to complain that the monk has been languishing in Purgatory twenty years. Alas, his friend informs, the monk just expired (Duffy 2005: 342).

The second reason for paramount concern with Purgatory was the nature of purgation itself. In terms of afterlife hierarchy, Purgatory fell somewhere between Heaven and Hell. But in terms of the experience it promised, Purgatory was decidedly nearer the latter. Soul-cleansing purgatorial fire was not intended as a metaphor. Late medieval sermons, visions, and revelations vividly described hellacious torments suffered by souls in Purgatory, from boiling in vats of liquid metal to sex organs impaled on meat hooks. Consider the purgatorial scene revealed to fourteenth-century Saint Bridget of Sweden, which circulated widely in late medieval England:

> Than methought that thar was a bande bonden abowte his hede so faste and sore that the forhede and the nodell mete togiddir. The eyn were hingande on the chekes; the eres as thai had bene brent with fire; the brayne braste out at the nesethirles and hys eres; the tonge hange oute, and the teth were smetyn togyddir: the bones in the armes were broken and wrethyn as a rope; the skyn was pullid of hys hede and thai were bunden in hys neke; the breste and the wombe were so clo[n]gen togiddir, and the ribbes broken, that one myght see the herte and the bowelles; the shuldirs were broken and hange down to the sides; and the bonys were drawen oute as it had bene a thred of a clothe (quoted in Shaffern 2015: 175–176).

According to English cardinal and theologian John Fisher, Purgatory's pains differed from those of Hell only in that while the latter would last forever, the former – eventually – would end.

Understandably given these circumstances, late medieval Englishmen were anxious to minimize their purgatorial ordeals. And in 1274, when the Second Council of Lyons officially defined Purgatory for the first time, the church highlighted how they could do so:

> Because if they die truly repentant in charity before they have made satisfaction by worthy fruits of penance for (sins) committed and omitted, their souls are cleansed after death by purgatorical or purifying punishments, as Brother John [Parastron] has explained to us. And to relieve punishments of this kind, the offerings of the living faithful are of advantage to these, namely, the sacrifices of Masses, prayers, alms, and other duties of piety, which have customarily been performed by the faithful for the other faithful according to the regulations of the church (quoted in The Companion to the Catechism of the Catholic Church 2002: 54).

In other words, dead sinners could have their purgatorial pains commuted if the living would intercede on their behalf – through performing good deeds and, especially, praying for their souls. Posthumous intercession in effect paid down the deceased's penitential debts for them, expediting their release from Purgatory and entrance into Heaven.

How much time one could shave off his purgatorial sentence by such means, naturally, depended on how much posthumous intercession he could drum up: more prayers for his soul were better than less. Intercessory quality, however, was important too. "The prayers of one's friends and relations could help, but a priest was a more efficacious agent of salvation because only a priest could say mass, and in terms of purgatorial accountancy masses were worth more than mere prayers" (Colvin 2000: 169). On the one hand, priests enjoyed a more direct line to God than did laymen. And on the other hand, Masses had audiences. Prayers the celebrant offered for a person's soul thus prompted Mass-goers to offer the same, producing prayerful quality *and* quantity – an intercessory twofer that was hard to beat.

Good policy for late medieval Englishmen eager to ease the arduous afterlife path to Heaven was therefore straightforward if demanding: Avoid racking up penitential debt in the first place by doing your best to avoid sin. Discharge what duty you can manage in life while the penitential exchange rate remains in your favor. And when those efforts fall short, as they almost surely will, brace yourself for Purgatory by arranging for posthumous intercession.

3 Chantries

"In the two centuries or more before the Reformation, the living and, by special arrangements, the dead, spared little expense . . . procuring . . . intercession to ease their ordeal in Purgatory" (Burgess 1991: 2). Some of those arrangements were made in wills. "Across all parts of England the testamentary evidence for the early sixteenth century", for example, "suggests that securing intercessory prayer was a priority for the great majority of those facing death" (Marshall 2002: 20). Indeed, "Hardly a single testator made a will without pious provisions" (Houlbrooke 1998: 115). More elaborate arrangements for posthumous intercession, however, were typically arranged apart from wills before death was imminent, while one could still set the major parts in motion himself. For ambitious late medieval Englishmen, that meant founding a chantry.[5]

3.1 Foundations for Posthumous Intercession

Chantries were foundations that employed one or more priests dedicated to celebrating Mass daily for the benefit of the founder's soul. Short-term chantries sought to keep the succession of daily Masses flowing for only a few years. Longer-term chantries aimed to keep them flowing for a decade or more. And the longest-term chantries of all, perpetual chantries, intended to keep the Masses flowing forever – or at least until the world ended.[6]

Long-term chantries could be one of two types: benefices or services. A priest presented for appointment to a benefice chantry was instituted by the diocesan bishop and inducted by the appropriate ecclesiastical authority under the bishop's mandate. Like a rector, he enjoyed lifetime tenure revocable by only the bishop. All benefice chantries were perpetual, but some perpetual chantries were unbeneficed and therefore were services instead. Like most other priests, priests employed by service chantries could be hired and fired at will by their patrons – the lay or ecclesiastical parties with rights of appointment, called advowson. Unlike perpetual chantries, which might be benefices or services, long-term chantries of limited duration and short-term chantries were always services. But "The purpose of all chantries, whether short-term or perpetual", benefice or service, "was to ensure that prayers and masses were said . . . for the souls of the founder" (Causton 2010: 176) and any others he might name.

---

5 Founding a monastery, college, hospital, or almshouse was still more ambitious, but in a sense these foundations were elaborate chantries.

6 On the origin and development of chantries, see Colvin (2000), Crouch (2001), and Rousseau (2011). For a detailed discussion of chantry varieties, see Wood-Legh (1965).

Chantry sites varied. Some chantries were housed in abbeys. Others were purpose-built as chapel or altar additions in cathedral or collegiate churches. Most chantries, however, were hosted by parish churches at an existing side altar in the church. Normally that would be the church the chantry founder had attended in life, on whose grounds he was buried in death. But "Before the place of a new chantry could be finally fixed, it would, of course, be necessary to secure the approval of those ecclesiastics whom it might affect" (Wood-Legh 1965: 39) – most importantly the ecclesiastical incumbent of the institution that would host the chantry, often the parish priest.

No matter where they were sited, long-term chantries did not come cheap. Although "one needed to be neither blue-blooded nor mitred to profit from a perpetual chantry" (Burgess 1991: 1), one did need to be reasonably affluent. Canonical rules limited priests to the celebration of one Mass per day (excepting Christmas). Hence, a priest who accepted chantry employment couldn't earn income celebrating Mass for anyone else. Employing a cantarist meant paying his full salary, which by the mid-fifteenth century was a little north of £6 per year. The cantarist's salary, moreover, was not the chantry's only expense. Proper celebration of Mass required appropriate liturgical gear: vestments for the cantarist, a pax, censer, paten, chalice, perhaps a breviary, and those could be pricey too.

Founding a long-term chantry thus necessitated setting aside an endowment whose revenue stream would support a cantarist and pay the chantry's other expenses for the chantry's duration. Two principal methods of endowment emerged. In one, the founder devised land and rent to his chantry's cantarist and the cantarist's successors. By 1440, benefice chantries, at least, enjoyed corporate status, so this method of endowment amounted to devising land and rent to the chantry as such. The second method of chantry endowment was for the founder to devise land and rent to a religious corporation, such as a monastery; to a civic corporation, such as the mayor and commonalty; to an assemblage of individuals and their successors, such as the founder's will executors and their heirs; or to the institution that hosted his chantry, such as his church. The devisee was to use endowment revenues to pay a cantarist and to maintain the foundation for the chantry's life.[7] The latter approach to endowing chantries ultimately proved more popular, and when the former approach was adopted de jure – as of necessity it was for benefice chantries – de facto, the endowment was controlled by the institution that hosted the chantry, typically a cathedral or parish church whose administrators managed the properties and paid the cantarist.

7 Occasionally a founder would instead bequeath a lump sum of cash, directing the recipient to invest it in property for the purpose of financing the chantry.

While long-term chantries were expensive, against their cost tallied large intercessional benefits. Even a ten-year chantry that employed a single cantarist provided the founder's soul with 3650 intercessory Masses. And on top of the cantarist's prayers at those Masses would be added the prayers of his Masses' attendees whom, "lest they should forget, the priest was frequently directed to enjoin [with] this duty at the time of his mass". The cantarist serving John Brydde's chantry in the parish church of Marlborough, for example, directed the intercessory attention of his Masses' attendees this way: "For the soul of John Brydde and Isabel his wife my founders . . . say you one Pater noster and one Ave Maria" (Wood-Legh 1965: 294; 295). Although chantries were not the only arrangements for long-term posthumous intercession that late medieval Englishmen might make, they were therefore among the most attractive.[8] "The chantry was the most popular, most widely endowed ecclesiastical institution of the later middle ages" (Rosenthal 1972: 31). Indeed, "the perpetual chantry was the most important of these intercessory institutions", for "it supported a larger share of the clerical population than any other" (Kreider 1979: 5).

Chantries, to be clear, were transactional arrangements.[9] With them "the penitent forged contracts, seeking as material benefactors to become spiritual

8 Other arrangements for long-term posthumous intercession (which were neither mutually exclusive with respect to each another nor with respect to chantries) included almsgiving, anniversaries, and contributions to church fabric. Long-term almsgiving involved setting aside funds to provide doles of bread, money, or even clothes to some number of the poor, usually on an annual basis and potentially in perpetuity. In return, the poor were expected and instructed to pray for the soul of the benefactor, their prayers being considered particularly efficacious given the poor's proximity to God. Often almsgiving was part of anniversary arrangements, discussed below. Alternatively, and more expensively, long-term almsgiving could be arranged by founding an almshouse dedicated to serving the poor. A long-term anniversary, also called an obit or year's mind, was founded via an endowment much as a chantry was founded. Indeed, frequently the two intercessory arrangements were compounded in the same foundation. An anniversary foundation employed a priest – usually the parish incumbent – to reenact the founder's funeral service annually for a period of stipulated years or in perpetuity. Late medieval funeral services were two-day affairs, so anniversaries were as well. On the eve, the priest recited the offices of the dead: *Placebo* (Vespers of the Dead) and *Dirige* (Matins and Lauds of the Dead). On the morrow he celebrated the Requiem Mass. Here the priest would pray for the founder's soul and implore the same from others in attendance, who typically included the poor – induced to attend by the offer of doles – producing a chorus of posthumous intercession for the anniversary founder. Finally, there were contributions to church fabric: financial support for the physical maintenance and embellishment of a church in exchange for having one's soul prayed for by name by the parish at High Mass or other times.

9 Chantries involved "public" intercession led by priests. Some Englishmen, however, sought "private" intercession from laymen. For example, "In 1486 William Davell left 3s. 4d. to William Hambleton for his prayers, and, in 1490, Edmund Copyndale bequeathed an identical sum to

beneficiaries" (Burgess 1988: 75). Given chantries' sacred remit – indeed, their concern for the very fate of one's soul – it may seem crass economism to construe them in such terms. Yet late medieval laymen and clergy who participated in chantry arrangements also considered them contractual. Chantry endowment grantees accepted lands and rents from chantry founders with the explicit obligation to underwrite specific intercessory services. And chantry priests explicitly agreed to perform those intercessory services in exchange for specific payment. Consider the muniments whereby, in 1350, London mercer John de Causton founded his chantry in the Priory of the Holy Cross.[10] As the priory observed:

> Endowments are especially acceptable in return for prayers for the salvation of all faithful Christian souls, and by setting up a perpetual chantry for two priests in our convent church of the Holy Cross at the altar of the Blessed Virgin Mary and endowing it with the rents from your two tenements . . . Two fellow brothers of our aforesaid convent . . . have been chosen, admitted and sworn to your perpetual chantry in our chapter house by us and our said convent and will be by our successors each year forever to celebrate divine office in a praiseworthy manner for the salvation of your soul . . . every day (quoted in Causton 2010: 182).

In compensation for their work as de Causton's cantarists, the "two brother chaplains" agreed to "receive annually forever for their own needs from the said tenements . . . twenty shillings sterling equally shared between them without prevention or hindrance from the said Prior whoever it may be at that time" (quoted in Causton 2010: 188). Chantry founders were therefore contractual promisees. Chantry endowment grantees were contractual promisors. And chantry priests were contractual sub-promisors, agents of chantry endowment grantees.

Often the cantarist's intercessory "obligation [was] sufficiently well established that prescriptive detail was unnecessary" (Burgess 2018: 204). In other cases, however, the details of his contracted services were spelled out in minutia. Roger Home, for example, who circa 1390 founded a seven-cantarist chantry in St Paul's Cathedral, prescribed a specific mass for each cantarist to celebrate every day of the week (Rousseau 2011: 43). One of his cantarists, for instance, was to celebrate the Mass of the Holy Trinity on Sunday, the Mass of the Angels on Monday, the Office of Salus Populi on Tuesday, the Mass of St Mary on Wednesday, the Mass of Corpus Christi on Thursday, the Mass of the Holy Cross on Friday, and the

William Haryngton for an identical purpose; Laurence Swattok, two years later, left his best primer, as well as 6s. 8d., to Thomas Fisher with the same request" (Heath 1984: 222).

10 de Causton's chantry in the Priory of the Holy Cross was one of three he founded. The other two were hosted in the parish church of St Pancras, Sopers Lane and in the parish church of St Mary at Hill in London.

Mass of St Mary again on Saturday. A second cantarist was to celebrate the Mass of All Saints all days of the week, and so on.

3.2 The Problem of Enforcement

Enforcing contracts from the grave is difficult. The dead are notoriously inept defenders of their contractual rights, and the living have limited willingness to defend those rights for them. If affinity is relied on to motivate enforcement help from the living, help will be forthcoming from but a few: the dead promisee's spouse, heirs, closest friends, or kin. Even these individuals, moreover, can be relied on only so far. For it is costly to monitor promisors to ensure that they satisfy their contractual obligations, and it is costly to hold promisors accountable should they breach.

When promisors' contractual obligations are long term, and still more so when their obligations continue for "as long as the world standeth", enforcement difficulties are multiplied. A promisee might reasonably expect to count on close relations to undertake contractual monitoring and defense for one generation after his death, maybe two. But he cannot reasonably expect the same from his great, great, great grandson or grandnephew. Affinity at such remove is ordinarily too weak to motivate descendants to bear the costs of enforcement – and that, assuming the contract even remains part of distant descendants' memories. In many cases, besides, a dead promisee's lineage will end before the promisor's obligations do, or end with the promisee himself when the promisor's obligations have just begun. Some late medieval English marriages were childless, and clergy in major orders were supposed to be celibate by canonical rule.

The central problem for late medieval Englishmen who traded land and rent for the promise of long-term posthumous intercession was therefore contractual enforcement: how to prevent chantry contract promisors from reneging on chantry obligations after they, the promisees, were dead. Promisors' temptation to act opportunistically must have been strong. Instead of hiring cantarists, why not keep all the endowment revenues for oneself? Instead of endlessly celebrating Masses for the benefit of some dead guy, why not skip the Masses and celebrate with the living down at the tavern? Nonperformance immediately after a promisee's death might be unwise: close family or friends who are aware of the arrangement may be living and could be watching. But ten years after the promisee expired, 20 years after he expired, let alone 100 years, who would care or even remember?

Founding a long-term chantry, in other words, was "to build a bridge far out into the future". To have any hope of receiving the posthumous spiritual services they were due, founders thus "had to protect the piers and spans of their 'bridge'

from the onslaughts of rapacity, because its endowment was valuable ... and from apathy, because help and intercession were to be procured from men and women whom a founder could never have known and few of whom could be counted on to feel any personal obligation" (Burgess 1991: 4). The trouble was where to find such protection.

The legal system offered limited help. Aspects of late medieval Englishmen's intercessory arrangements dealt with in their last wills and testaments benefited from the oversight of ecclesiastical courts exercising jurisdiction over the probate of testaments, which technically considered personalty, and of secular courts exercising jurisdiction over the probate of wills, which technically considered real estate. "Basically, to make a dead man's testament legally effective an ecclesiastical judge" or, when land was involved, a secular judge "had to approve it, and entrust its execution to the testator's nominees who remained answerable to the judge until they had discharged their duties" (Archer and Ferme 1989: 7). First the testator's executors presented his will documents to the court or announced the will's terms if it were nuncupative. Next the court examined the will documents and witnesses. If everything seemed aboveboard, the court approved the will and set the executors to their tasks.

While probate could help assure that the deceased's executors would dispose of his willed property as he wished, it was neither intended nor generally useful for assuring that the designated recipients of that property would use it in the manner to which they may have agreed, let alone years after the property had been disposed. Moreover, endowed intercessory arrangements were typically attended to by their founders *in vivo* and thus apart from their wills, to which would be relegated smaller details or lesser provisions that executors should handle. "Many long-term chantries", therefore, "were not established by will, because it was prudent to start making the arrangements for their foundation well before death" (Houlbrooke 1998: 113). Since probate concerned itself with what was in wills, such chantries were outside probate's remit.

Better legal support for the contractual rights of dead chantry founders came from the Second Statute of Westminster. That statute, promulgated in 1285, made grants of land or rent for spiritual services enforceable in common law. If the grantee failed to perform the services owed for two years, the grantor or his heirs could recover the land or rent.[11] In principle the Second Stature of Westminster was a terrific aid for assuring that chantry contract promisors would fulfill their obligations. Property alienated by a chantry founder to a monastery, for instance,

11 See chapter 41.

could be reclaimed if the monastery turned the property to other uses after the founder's death.

For many chantry founders, however, there was a barrier to exploiting this legal aid: their chantry endowments were illegal. Just five years after the Second Council of Lyons defined Purgatory and highlighted how the faithful could commute purgatorial pains via posthumous intercession, England's government banned alienations of land into the "dead hand" of the church. The reason was financial. Land that laymen possessed generated feudal incidents for their overlords, including the king. When, for example, a lay landowner died heirless, his land escheated to his overlord. Land the church possessed, however, was not "taxable" in this way. It could not generate escheat, for instance, because the church could not die. Grants to the church therefore threatened overlord interests and crown coffers.

Alarmed by the church's growing portfolio of landholdings in the late thirteenth century, in 1279 King Edward I passed the Statute of Mortmain, which prohibited further alienations to the church. A year later, however, he thought wiser of it: better to regulate and tax such alienations than ban them altogether. Thus, from 1280, laymen desiring to grant land to the church could apply to the king for permission to do so and, if permission were granted, secure a registered and legally valid license for the alienation proposed. In return for the license, the alienor paid a fine to the Exchequer to compensate the king for his loss of taxable property.

License fines varied substantially between the late thirteenth and early sixteenth centuries, at the king's discretion. But especially when fines were high, "they must have been a powerful deterrent to the founding of chantries in the legal manner" (Kreider 1979: 83). Englishmen thus resorted to founding chantries in the illegal manner. There were "large-scale evasions associated with chantries" (Raban 1982: 174) and "countless perpetual chantries for which no crown grant exists" (Kreider 1979: 73).

Some chantry founders simply devised land and rent to the church despite the Mortmain law and hoped their endowments would never come to the government's attention. Other founders, however, endowed their chantries by an extralegal device: enfeoffment to use. Instead of, say, granting his chantry endowment to his parish church, the founder granted it to feoffees – a group of individuals that might include his family members, lay administrators of his parish, even the parish incumbent, and the feoffees' successors – to hold "to the use" of the parish, the endowment's intended and actual beneficiary. This was a cunning contrivance. Feoffees possessed the endowment in legal terms, skirting Mortmain on a technicality. But the parish church possessed the endowment in practice, just as the founder desired – and just as the government did not.

King Richard II therefore outlawed enfeoffment to use with follow-up Mortmain legislation in 1391. From the beginning, however, enfeoffment to use was legally questionable, and its legality was questioned by royal judges who could and sometimes did confiscate land granted in such fashion. Hence, even before 1391, "it was not altogether wise for the church to advertise its activities in that quarter" (Raban 1982: 118). Nor was advertisement wise for other parties to enfeoffment to use, who would be playing with fire if they tried to exercise recovery rights under the Second Statute of Westminster. And there was another problem with the extralegal device: "Quite apart from possible transgression of mortmain legislation, there were legal difficulties attaching to enfeoffment to use in itself. Since the practice was not recognised in common law, the church had no remedy against fraud" (Raban 1982: 118).[12]

It would be a mistake, however, to assess the problem of contractual enforcement that chantry founders confronted solely or even primarily in terms of the availability of judicial aid. For even when such aid was available, it was costly and imperfect. Even if courts could enforce contractual terms, breach had to be detected first, which required costly monitoring of promisors. Those costs had to borne by the indifferent living, voluntarily and far into the future. And – to return to the crux of the matter – the promisees were *dead*. Legal protection or no, it was therefore prudent, indeed essential, to as much as possible make chantry contracts self-enforcing.

4 Governing from the Grave

Chantry founders developed a contractual strategy for that purpose which was both clever and direct: profit the living, present and future, for monitoring the contractual performance of promisors and promisors' agents, and for punishing them should they breach. The directness of this strategy lay in striking at the root of the enforcement problem, which, recall, was that since the founder was dead, he could not hold the promisor or the promisor's agents accountable himself. Its cleverness lay in how, exactly, the founder profited the living for doing that on his behalf.

12 A related tactic of Mortmain evasion was to enfeoff-to-use for a limited but long duration such as 99 years. Even after enfeoffment to use was prohibited, this modified form might be defended as legitimate since it did not alienate land to the church permanently. The illegality of the modification, however, was clarified in 1532 when the government banned limited-term enfeoffment to use of more than 20 years.

4.1 Incentivizing the Promisor's Competitors to Enforce Contractual Performance

Chantry contract promisors agreed to become promisors, of course, because of the profitability of controlling chantry endowments. If expected revenues from granted land and rent did not exceed expected chantry expenses by enough to make accepting the intercessory obligations worthwhile, a potential promisor would decline the chantry contract. In 1368, for example, the prior and convent of Christ church declined a proposal for John de Beauchamp's chantry because de Beauchamp's endowment – the manor of Easole in Kent – was too modest given the intercessory services sought. "Our loss cannot in any way purchase advantage for the aforesaid souls", the prior and convent regretted, for "to bear and perform such a charge for so small a repayment, where there is scarcely any profit, would be too burdensome for us" (quoted in Wood-Legh 1965: 145). Chantry plans thus became contractual realities only when chantry endowments were valuable to promisors.

That value, ironically, was the first boulder in the wall of chantry contract self-defense. For while the endowment's value tempted the promisor to act opportunistically, because the endowment was valuable the promisor did not want to lose it. Chantry endowments could rank among a pious institution's most important sources of income and, in a feudal society where land betokened status, influence. In the early sixteenth century, for instance, the chantry endowments of St Paul's Cathedral comprised nearly a fifth of that cathedral's total property value and "contributed significantly to making the Dean and Chapter of St Paul's one of the most important landowners in the city of London in the later Middle Ages" (Rousseau 2011: 25). Loss of chantry endowments thus threatened significant financial loss and loss of prestige. For some institutions, moreover, endowment loss could threaten their very existence. The "active head of a religious house", for example, "would try to attract benefactions in the form of endowments of chantries" (Wood-Legh 1965: 37) because religious houses relied on pious grants for their livelihood. Likewise, "some parishes had adapted to substantial dependence on income derived from the endowments of dead parishioners" (Burgess and Kumin 1993: 615), chantry founders prominent among them.

The first boulder in the wall of chantry contract self-defense supported a second: the jealousy of the promisor's competitors. Chantry founders had a plethora of possible grantees to whom they might devise their endowments. Potential grantees included the founder's parish church or one of many others; various monasteries; the mayor and commonalty; one of numerous guilds; a cathedral church; a collegiate church; a hospital; and different combinations of friends or

family members and their descendants. Would-be grantees thus competed with one another to attract chantry endowments.

A good way to do that was to develop a reputation for fulfilling intercessory obligations. Founders of intercessory arrangements often "were familiar with the behaviour and responsibility of the recipients of their directions, and they had a basis on which to assess how faithfully their stipulations would be honoured after death" (Rosenthal 1972: 28). That basis might even be firsthand experience, for some pious services that Englishmen purchased were to be performed while the purchasers were still living. Chantries, for example, often began operating while their founders were alive. Instead of celebrating Masses for the benefit of the founder's soul, the cantarist celebrated Masses for the benefit of the founder's good estate – and then, when the founder died, for his soul. Chantry founders no doubt employed this setup to acquire better information about the fidelity of potential grantees and then used what they learned to inform their decisions about who should receive their valuable endowments when they died. If a potential grantee had a spotty record of performance, the founder would search for other hands in which to place his chantry's land and rent.

Of course, even a sterling record of performance while the founder remained alive could not guarantee performance after he died. By then the founder had granted his endowment, and he was no longer around to monitor the promisor. The promisor's competitors were around, however, and they might benefit from the discovery of promisor malfeasance. Such discovery could tarnish the promisor's intercessory reputation, and his falling stock could lead a competitor's stock to rise. Alas, a competitor who incurs the cost of monitoring the promisor has no reason to expect *his* stock to rise if he discovers malfeasance. Instead, one of the other competitors might attract the future endowments that would have been granted to the reputationally tarnished promisor. Despite competing with the promisor, the promisor's competitors thus had only weak incentives to monitor his performance.

Chantry founders remedied that problem by replacing competitors' weak incentives with exceptionally strong ones. The device was simple: "Chantries were endowed under conditional grants" (Rosenthal 1972: 143). If the promisor "failed or delayed in duties toward an intercessory arrangement then the responsibility for the endowment and concomitant profits would pass to another parish or guardian" (Burgess 1991: 5) – one the promisor's competitors – whom the founder named in the chantry contract. Consider the endowment-forfeiture clause to which the prioress and convent of St Helen within Bishopsgate agreed when they accepted land and rent to underwrite John de Causton's chantry in the parish church of St Mary at Hill:

> And if the said ... Prioress and convent, her successors or the occupiers of the said tenements should default in any of the tasks previously mentioned and they neglect to pay for half a year then the permanent chaplain, the rector and the four parishioners [of St Mary at Hill] by agreement should make enquiries. Thereafter I wish and order that all benefits which the tenants had, are wholly removed and those tenements ... shall remain forever the property of the rector and the four parishioners (quoted in Causton 2010: 186–187).[13]

This clause incentivized St Mary at Hill to monitor St Helen within Bishopsgate for malfeasance. And by doing so, it incentivized St Helen within Bishopsgate to fulfill its obligations to de Causton's chantry.

Or consider the terms under which, 57 years later, John Weston founded his chantry, also in St Mary at Hill but by endowing the parish itself, for which purpose he devised a tenement to the parish's parson, wardens, and leading parishioners. Should St Mary at Hill "willfully defayle in doing & fullfillyng of my willes," Weston stipulated, "the forsaid tenement ... shall goo & remain to the Mayre or Wardeyn & Comenaltye of the Citee of London & to their Successors, to the use & sustentacion of the brigge of London, & to fynde an honest Preest of newe" (quoted in Wood-Legh 1946: 56).

Other chantry contracts provided for a sequence of competitors to whom the endowment would revert if the current promisor failed to perform. When, for example, in 1423 St Bartholomew's Priory accepted an endowment to underwrite Thomas Stowe's chantry hosted in St Paul's Cathedral, the priory agreed that should it neglect its chantry obligations, rights to the endowment would revert to the fraternity of St Mary and St Giles in the church of St Giles Cripplegate. If that came to pass and the fraternity neglected its obligations, rights to the endowment would revert to the Dean and Chapter of St Paul's (Rousseau 2011: 55). This arrangement not only motivated the fraternity to monitor the priory – it motivated St Paul's to do so as well, for discovering priory malfeasance would move the cathedral one step closer to getting the endowment for itself. Facing scrutiny by its competitors and the threat of endowment loss to them if the priory was an unfaithful promisor, the priory was incentivized to fulfill its obligations to Stowe's chantry.

Whether endowment forfeiture could be pursued through the legal system or not, the very fact of its contractual provision must have been a powerful stimulus for the promisor to mind his chantry obligations. The endowment-forfeiture clause coordinated the expectations of promisor and named competitor(s) on how the latter would view his endowment rights if the former were to breach. Both

---

13 While I have omitted it here for brevity and to aid comprehension, the chantry endowment was first to go to de Causton's chief will executor, Thomas de Langeton, and then, when Langeton died, to St Helen within Bishopsgate.

parties thus appreciated that the competitor would pursue his claim however he could, perhaps even forcibly if the breaching promisor did not surrender the endowment to him. Indeed, in the chantry agreement considered above between de Causton and the Priory of the Holy Cross, the priory explicitly acknowledged – nay, welcomed – endowment forfeiture to its competitor, the parish church of St Mary at Hill, should the priory breach:

> We also wish that we and our successors should be compelled to carry out your wishes by your executors while they live and after their decease by the chaplain of your perpetual chantry founded in the parish church of the Blessed Virgin Mary atte Hill London ... The executors and chaplain acting as our supervisors for all the aforementioned, may compel us and our successors by the collection and retention of the said rents whenever we fail to faithfully observe all and each of the things above and below written (quoted in Causton 2010: 183).

The threat of endowment forfeiture was one way to ensure that promisors kept their end of chantry bargains. But that penalty was severe and final, best reserved for when the threat of more flexible penalties failed to keep promisors in line. Lesser penalties, after all, could similarly incentivize promisor performance as long as they respected the logic that made the threat of endowment forfeiture effective. Namely, enforcing the chantry contract against a nonperforming promisor should redound to the purse of one or more parties living.

The easiest way to achieve that was to contractually stipulate fines for promisor negligence collectible by his competitors. Thus, for example, "when in 1400 the prior of St James, Bristol, accepted from John Stone ... two messuages and a shop on condition that henceforth a monk of the house should daily celebrate ... in the church of St James, it was agreed that for every day when the mass was omitted without reasonable cause the convent should forfeit forty pence, twenty to the mayor, and twenty to the wardens of the parish church, and ... the mayor of Bristol was authorized to enter the messuages and shop to distrain and retain the distress until the penalty had been fully paid" (Wood-Legh 1965: 145–146). In short, Stone's chantry contract profited his promisor's competitors for discovering and punishing neglect by the promisor, who consequently did not want to be neglectful.

4.2 Incentivizing Incumbents and Parishioners to Enforce Contractual Performance

Because of competitor vigilance, promisors would want to try their best to satisfy chantry obligations. Promisors' efforts, however, would deliver the posthumous intercession that founders paid for, only if cantarists also kept their part of chantry bargains: daily celebration of Mass for the benefit of the founder's soul. The

promisor, as endowment grantee, recall, was to fund a cantarist, who was therefore the promisor's agent. As such, the cantarist himself required oversight to ensure that he performed.

A self-enforcing solution to this problem was in one sense easier to come by than in the case of securing oversight of the endowment grantee. For unlike the endowment grantee's principal – the chantry founder – who was dead, the cantarist's principal – the endowment grantee – was living. An endowment grantee thus had incentive to hold the cantarist accountable and, in principle, the ability to do so himself. Still, monitoring the cantarist was not costless, and it might be especially costly when, as was often the case, the endowment grantee was not the institution that hosted the chantry. A parish church endowed to support a chantry on its own premises might easily observe the cantarist to make sure he fulfilled his obligations. But a monastery endowed to support a chantry in a parish church, for example, might find observing the cantarist difficult. In either case, from the chantry founder's perspective, the more eyes that could be put on the cantarist the better. More scrutiny of the cantarist meant less opportunity for cantarist malfeasance, hence more reliable intercession for the founder's soul.

To that end, chantry founders composed their contracts to profit the individuals best positioned to monitor cantarists: the ecclesiastical incumbent and parishioners in the chantry-hosting church. A cantarist whose diligence benefited these individuals would warrant their observation lest they forego the benefits dependent on the cantarist's diligence. By construing cantarists' contractual obligations to create such benefits, chantry founders could thus further improve the likelihood of intercessory performance.

The first way founders did that was by rendering their "chantry priests . . . a corporate amenity" (Burgess 2011: 124). The cantarist for whom a founder's contract provided "was expected constantly to assist the incumbent in saying the divine office. Ideally he should be in the chancel daily, clad in his surplice, to say the canonical hours with the rector or his deputy, and most founders emphasized the importance of his attendance at matins, vespers and high mass, on all Sundays and festivals . . . And he was not merely to be present, but to assist by reading the gospel and epistle at mass and by helping to sing. Often, too, cantarists were required . . . to take part in person in all processions that were made" (Wood-Legh 1965: 276). Consider, for instance, the extra-chantry obligations contractually required of John de Causton's cantarist in the church of St Mary at Hill: "the same chaplain should attend every single day [during] the canonical hours for divine office in the same church of St Mary at Hill . . . and as mentioned previously he should attend the same church every day after the hour of Vespers for the singing of the *Salve Regina* and by singing, assist as much as possible in honour of the glorious Virgin unless there is a

legitimate reason preventing [this]" (quoted in Causton 2010: 186). When not occupied celebrating Masses for the souls of chantry founders, chantry priests thus were at the incumbent's disposal for performing daily religious duties in the parish.

A cantarist who did not show up daily to celebrate Mass for the founder's soul would not be available daily to perform religious duties for the parish either. And in that case the incumbent or parishioners would have to hire an auxiliary cleric at their own expense to perform the duties instead. "To satisfy the basic requirements of the Sarum Use", for example, "the seemly celebration of High Mass on Sundays and more important feasts depended ... upon a plurality of clergy" (Burgess 2018: 391–392). Chantry priests lessened the host parish's financial burden of providing for that plurality and so were "extremely useful to parochial clergy and parishioners alike" (Kreider 1979: 43) – but only if they showed up for work.[14] The parish therefore had a vested interest in seeing that they did so. If a cantarist missed a day, his absence would surely be noticed. And since a cantarist so closely monitored had to show up anyway, he had little to gain by skipping his Mass for the founder's soul.

Should the cantarist nevertheless try to skip celebrating that Mass, he would confront another obstacle: parishioners who relied on his Mass would have none to attend. Chantry masses were often early morning ones or otherwise celebrated at different times from the Masses that incumbents celebrated. For parishioners such as artisans and laborers, whose jobs prevented them from attending the incumbent's Mass most days of the week, the cantarist's Mass was therefore a boon, "a matter of real importance when the daily hearing of mass was a common practice" (Wood-Legh 1946: 50). Hence "the provision of additional opportunities of attending this service might be very welcome", and "to provide a mass in the parish church at some time other than that when the incumbent normally celebrated, might also be a great convenience for the parishioners" (Wood-Legh 1965: 291). Not only, then, would a cantarist who shirked his Mass almost certainly be detected; the parishioners who detected him would likely complain to the incumbent.

The incumbent's responsiveness to such complaint could be counted on because his income depended on offerings from parishioners, and parishioners' offerings depended on their satisfaction with the incumbent. Mandatory tithes were late medieval parish priests' primary income source, but parishioners

14 Occasionally a cantarist was hired from the ranks of the host institution's existing clerics rather than by adding a new cleric hired externally. Even then, however, the host institution's financial burden was lessened since the founder's endowment paid the cantarist and thus subsidized the cost of the existing cleric to the host institution.

might evade tithes if they were unhappy. Still more important, "The income of most parish priests" also "depended in no small measure on the customary offerings made at baptisms, funerals and other ecclesiastical ceremonies" (Wood-Legh 1932: 43), and those were voluntary. Satisfied parishioners would be willing to make more offerings, and dissatisfied parishioners, fewer. In addition to keeping an eye on the cantarist to avoid needing to hire someone to assist with parish religious duties, the incumbent therefore would mind parishioner complaints about the cantarist to avoid sacrificing personal income. Indeed, by ensuring the cantarist celebrated his Masses, the incumbent might even add to his income. Satisfied parishioners would be willing to make more offerings, and the cantarist's Masses would present more opportunities for parishioners to do so.[15]

Service-chantry patronage – the right to hire and fire cantarists – often came with the chantry endowment. Thus, unless the endowment had been granted to the parish (or, independently, the incumbent had rights of advowson), the incumbent might not himself be able fire a negligent cantarist. The incumbent could, though, if necessary, take the matter to the endowment grantee, and the grantee would want to listen. The grantee's endowment rights might be threatened if the chantry's intercessory services ceased because of his failure to act. Indeed, if the chantry founder named the host parish among the competitors with reversionary endowment rights, by ignoring the incumbent's complaint, the grantee's claim might even come under threat from the incumbent.

In the case of benefice chantries, recall, authority to fire the cantarist was the bishop's. But he, too, had reason to take complaints about negligent cantarists seriously. The bishop's income and influence depended partly on the income and landholdings of the ecclesiastical institutions under his jurisdiction. Chantry endowments, as discussed above, were a major source of both. Parishioners who observed that cantarists were permitted to shirk would be reluctant to endow chantries in the bishop's jurisdiction when their time came, since the same fate would likely befall their own arrangements for posthumous intercession. The bishop, then, was eager to correct cantarists about whom he received complaints from incumbents or parishioners. And, if necessary, he or one of his representatives could replace a negligent cantarist with a new cantarist presented by the chantry's patron. Chantry founders clearly anticipated this mechanism of monitoring and disciplining cantarists, and some founders even articulated it in their chantry contracts. To wit:

15 Chantry priests were not permitted to keep parishioner offerings, which belonged to the incumbent exclusively.

> And if the said chaplain [in the parish church of St Pancras Sopers Lane] behaves badly or sins outrageously, and has been warned . . . and he does not mend his ways, then it is lawful for . . . the rector and the four trustworthy parishioners [of St Pancras] or anyone who is a member of a chapter, to go to the same reverend Dean [of the church of the Holy Mary Arches of London] or his representative, to clearly explain the offences and excesses of this chaplain, and the reverend Dean himself, having ascertained the truth of the suggested transgressions or his offences . . . should proceed against the offending chaplain. And if it appears that this chaplain has seriously transgressed he should be removed by the Dean himself and another chosen in his place (quoted in Causton 2010: 185).

In addition to valuing improved Mass availability made possible by cantarist performance, late medieval English parishioners valued particular Masses. The possibilities were profuse. There was the Mass of the Trinity; the Mass of the Angels; the Mass of St Thomas the Martyr; the Mass of All Saints; the Mass of Corpus Christi; the Mass of the Cross; the Mass of the Blessed Mary; the Mass of the Name of Jesus; and the Mass of the Five Wounds, to name but a few. Of course, "whatever mass the chantry priest might celebrate, he was expected during it to offer special prayers for the founder" (Wood-Legh 1965: 288). But parishioners had their favorites, and the incumbent, like all priests, was limited to celebrating just one Mass per day. This situation presented chantry founders with another opportunity to create benefits for parishioners that parishioners could enjoy only if they made sure the cantarist fulfilled his intercessory obligations.

Excepting days when the cantarist's and incumbent's Mass were the same, the cantarist's Masses, if celebrated, doubled the Mass options available to parishioners. Further, insofar as a chantry founder's contract required his cantarist to celebrate certain Masses – the "greatest hits" in the founder's parish – the founder could attract various parishioners' attendance at and special interest in his cantarist's Masses. If the cantarist failed to celebrate the Masses, these parishioners would therefore know, care, and likely make inquiries. Seen from this perspective, the detailed Mass instructions of chantry founders such as Roger Holme, who, recall, enumerated a specific Mass his cantarists should celebrate for each day of the week, reflect more than founder eccentricity. They reflect a contractual device that founders employed to improve parishioner monitoring of their cantarists.

Parishioners who were uninformed about a cantarist's obligations would have found it difficult to monitor his behavior with respect to them. Chantry founders thus saw to it that parishioners were well informed. "Men of the locality would normally be in a good position to know both the regulations laid down for the chantry and how it had recently been served" (Wood-Legh 1965: 198). Indeed, to escape such knowledge would have required effort.

A cantarist began his duties by being sworn into the position, at which swearing-in he took a biblical oath to faithfully observe the founder's regulations. As John de Causton contractually required of his cantarists in the Priory of the Holy Cross, for example: "And any brother received and admitted to the said convent and observant in his profession should take a corporal oath touching the Holy Gospels on his faith so that he could contribute to the said perpetual chantry as far as possible so that he will foster, maintain, grant and support [it] forever according to my wish as noted above" (quoted in Causton 2010: 188). The cantarist's oath ceremony was "a public occasion . . . attended and remembered by the parishioners" (Wood-Legh 1965: 64), during which the cantarist's obligations were read aloud to those assembled. Should a parishioner miss that opportunity to learn about the cantarist's obligations, he could nevertheless learn about them when the obligations were read annually before his parish – if another parishioner had not informed him of them already. And should a parishioner somehow manage to miss those opportunities for becoming informed too, he could read the cantarist's obligations for himself when, as some founders required, a copy of the chantry deed was posted publicly and permanently in the church.

Besides monitoring the cantarist to make sure he celebrated the Masses he was contracted to celebrate, there was the matter of monitoring him to make sure he did not misappropriate the chantry's valuables. Chantry founders, recall, financed not only the cantarist's salary but also his vestments, books, and equipment for celebrating Mass, whose market value could be considerable. John and Katherine Leynell's ten-year chantry, for example, supplied its cantarist with a mass book worth more than £6, a double gilt chalice worth more than £7, silver cruets, a pair of latten candlesticks, and velvet vestments worth £25 (Burgess 2009: 211). The yearly salary of the Leynell's cantarist was £6. He thus had in his possession chantry valuables that, if sold, would yield him more than six years' worth of income. Lest such valuables "go missing", an easy and tempting thing given daily use by the cantarist, they therefore required safeguarding.

Chantry founders' method was to require that valuable chantry equipment and spare monies be kept under lock-and-key – or rather, under lock-and-several-keys. Each key was kept by a different party: one by the cantarist, another by the incumbent, another by maybe a churchwarden, and perhaps yet another by, say, the chantry patron. Like a medieval Voltron, when all keys were united the chantry chest could be unlocked. Thomas and Joan Halleway, for instance, required that "the said mayor and his successors have one" key to their chantry's chest, "the vicar of the said church another, the worthiest man of the parish the third, and the said proctors [churchwardens] and their successors the fourth" key so that the chest's contents "shall be surely kept for the welfare of the said chantry

and the good maintenance thereof and all things thereto belonging" (quoted in Burgess 2018: 243).

With this device, chantry valuables were protected and their oversight by multiple parties was secured. A keyholder who designed to misappropriate chantry-chest contents would require the connivance of the other keyholders to pull it off. Even if every keyholder were amenable to the scheme, the chest's contents would have to be divided three or four ways, raising doubts about whether attempting to steal them was worth the trouble. Moreover, at least one keyholder would probably demure, in which case misappropriation would be impossible. In the case of long-term chantries of fixed duration, like the Leynell's, chantry equipment became the parish's equipment when the chantry ended. A keyholding-incumbent's return from participating in misappropriation might therefore be negative. Furthermore, keyholding parishioners desired cantarists in their parish to be well-equipped for the same reason they desired the incumbent to be well-equipped: it improved the liturgy. Should chantry equipment be stolen, its absence would thus redound partly to keyholding parishioners, diminishing their prospective gain from complicity in the equipment's theft.

If chantry equipment vanished, the fact would be obvious. The cantarist was to use the equipment daily when celebrating his Mass, and parishioners who attended his Mass observed daily what equipment the cantarist used during his service. In contrast, if chantry monies "went missing", that would not be obvious since, unlike chantry equipment, parishioners did not observe incoming and outgoing flows of chantry endowment revenues and expenses. Tenements that composed chantry endowments required maintenance, and rents required collection from tenants. Maintenance and collection were ultimately responsibilities of the chantry contract promisor, the endowment grantee. As a practical matter, however, the cantarist often seems to have been expected to assist with those responsibilities, probably because of his proximity to the endowment properties, which were usually located in the precinct of institution hosting him, and because of his ability to focus on the concerns of a single chantry – the chantry he served. Unless chantry revenues and expenses were monitored, those which passed through the cantarist's hands but were not, like his wages, destined for him personally might therefore find their way into his pocket through embezzlement or fraud, jeopardizing the chantry's long-term existence and with it the founder's intercessory services.

To protect against that possibility, chantry founders exploited a familiar contractual device: the annual audit. Founders required cantarists to account yearly for chantry revenues and expenses, thereby rendering misappropriation easier to detect. Consider the auditing arrangements for William Canynges' chantries. In the 1460s, Canynges founded two benefice chantries in the parish church of St

Mary Redcliffe, Bristol. Every year "on the day after All Soul's Day, the mayor [of Bristol] was to walk to Redcliffe, accompanied by the town clerk, where he was to sit in audit upon William Canynges's two chantries, the vicar and churchwardens [of St Mary Redcliffe] with them. After the audit, the town clerk was to enter the account in a book there, called *Canynges Leger*, and the mayor, town clerk, the sword bearer and sergeants were all to be paid for their attendance" (Burgess 1991: 19).

Bristol's mayor was paid for auditing Canynges' chantries, and presumably Canynges employed the mayor for this job because of his reputation as a diligent auditor. But by virtue of shrewd contractual provision, the mayor was given additional incentive to sniff out any cantarist financial misdeeds: Canynges' chantry muniments also named Bristol's mayor the patron of his chantries. "[T]he patronage of chanties was much valued" (Wood-Legh 1932: 27) because employment as a cantarist was valued. "Prayers for the dead were a good bargain, financially" (Rosenthal 1972: 29), for the priests contracted to say them. Patronage of benefice chantries was especially valuable because work as a beneficed cantarist meant guaranteed employment and income for life. Through exercising their rights of cantarist appointment, patrons could thus benefit friends, family members, and powerful people such as bishops by presenting these individuals, their relations, or their employees for chantry induction. Of course, patrons had opportunity to exercise their advowson rights only in the event of chantry vacancy. In the case of a benefice chantry, that occurred when the current cantarist died, retired – or was removed from his position for malfeasance. By naming Bristol's mayor the auditor *and* patron of his chantries, Canynges thus gave the mayor extra motivation to scrutinize Canynges' chantry accounts in his audit.

4.3 Robustness to Collusion

The contractual devices that late medieval Englishmen used to render their chantry agreements self-enforcing were robust to potential threats of collusion. The lock-and-several-keys device used to secure chantry valuables, discussed above, furnishes an obvious example. Multiple keyholders with varying interests in the fate of the chest's contents, the theft of which, moreover, would be detected by numerous parishioners the next day, could not have found colluding to steal the chest's contents easy and may not even have found colluding for that purpose remunerative. Yet broader and more fundament aspects of chantry founders' contractual arrangements also were robust to possible collusion, if less obviously so.

First consider collusion between cantarist and promisor, the endowment grantee. Since the latter was charged with using endowment revenues to support

the former, who was charged with final delivery of the intercessory services, a mutually beneficial collusive agreement between them is easy to imagine: the grantee keeps, say, half the cantarist's annual salary for himself, in return for which the cantarist gets the other half and is permitted by the grantee to skip performance of the intercessory services and be on his way. Because of how chantry founders fashioned their contracts, however, collusion of this kind would not work.

If the cantarist's host institution and the endowment grantee were different parties, say a parish church and a monastery, respectively, cantarist-grantee collusion would result in the parish incumbent's loss of the "free" labor that the cantarist was contractually bound to provide in the form of performing parish religious duties. The incumbent would therefore know and care that the cantarist was AWOL. And if the parish did not itself have reversionary rights to the chantry endowment, the incumbent could bring the matter to the attention of the monastery's competitor who did have those rights, leading the monastery to lose the chantry endowment.

Chantry founders, unsurprisingly, were aware that cantarists and grantees might try to collude – and nipped that prospect in the bud. Consider the agreement between chantry founder Robert de Hilton and the abbot and convent of Meaux, which de Hilton endowed with land and rents to support his cantarist hosted in the church of Winestead. In that agreement "it was laid down that, if the chaplain or any of his successors should remit or release this rent to the abbot and convent", de Hilton's "heirs might distrain for the rent on the lands he had assigned to the convent" (Wood-Legh 1965: 144–145).

Next, consider collusion between the endowment grantee and the incumbent of the parish church hosting the chantry. Here the grantee might offer to remit to the incumbent, say, half the endowment revenues intended to support the cantarist, in return for which the incumbent gets to pocket the revenues remitted. But collusion of this kind would not work either for the simple reason that it would result in the cantarist losing half the payment he was owed. The cantarist would therefore know and care that the chantry contract's terms were not being fulfilled, and he could bring the matter to the competitor of the grantee who had reversionary rights to the endowment, resulting in the grantee's forfeiture.

Finally, consider three-way collusion between the endowment grantee, the incumbent of the parish church hosting the chantry, and the cantarist himself. In this case the collusive bargain would look like that between the cantarist and grantee from above, except now the incumbent would get a cut of the endowment revenues intended to support the cantarist – compensation for his loss of the cantarist's "free" labor and payment to look the other way when the cantarist disappeared. Yet even if such three-way collusion were somehow managed, it

would nevertheless result in parishioners' loss of the cantarist's Masses: some parishioners would no longer have a Mass they could attend daily, and others would forego access to the specific Mass they valued most. Parishioners would therefore know and care that the cantarist was absent. They could punish the incumbent by withholding offerings or even tithes. And if a parish competitor had reversionary rights to the chantry endowment, parishioners could bring the matter to his attention, leading the grantee to lose the chantry endowment. The same checks and balances, moreover, would torpedo cantarist-grantee collusion if the grantee and the cantarist's host institution happened to be one and the same, say a parish church.

5 Concluding Remarks

Late medieval Englishmen sought to provide for their wellbeing in the hereafter by purchasing intercession for their souls. They traded valuable landed endowments for the promise of posthumous Masses and prayers whose daily observance contractual counterparties agreed to underwrite for decades, centuries, even eternally. These chantry contracts constituted trades with the dead: promisees were deceased when promisors were supposed to perform. Promisees thus needed to enforce their contractual rights from the grave. For that purpose, chantry founders leveraged the economics of incentives to develop a strategy of chantry contract self-enforcement: profit the living, present and future, for monitoring the contractual performance of promisors and promisors' agents, and for punishing them should they breach.

Chantry founders applied this strategy in two primary ways. First, their contracts stipulated endowment forfeiture in the event of promisor nonperformance and named the promisor's competitors as reversionary rightsholders should that event come to pass. By this device, chantry founders incentivized the promisor's competitors to keep close watch on him and to hold him accountable if malfeasance were discovered. Second, to improve oversight of their cantarists, chantry founders construed their intercessory foundations such that contractual fulfillment would benefit not merely the founders' dead selves but also the living persons best positioned to observe cantarists: the ecclesiastical incumbent and parishioners in the chantry-hosting church. Incumbents and parishioners, too, thus were incentivized to scrutinize chantry contract performance and, if necessary, to act in chantry contract defense. Their vigilance, together with the vigilance of the endowment grantee's competitors, incentivized grantees and cantarists to keep their ends of chantry bargains.

How should we judge the effectiveness of the contractual devices that chantry founders used to protect their contractual rights after they were dead? Several evaluative standards present themselves as possibilities. One considers the extent to which perpetual chantries have in fact endured perpetually. Judged by that standard, chantry founders' contractual devices were a failure. The "world still standeth", yet England's perpetual chantries do not – not operationally, at least. While evaluating the effectiveness of chantry contract enforcement in this fashion may be tempting, it is also inappropriate. On the one hand, chanty operation until the end of time was always a bit overly optimistic. And on the other hand, it is hardly reasonable to measure the success of chantry contract enforcement by the standard of chantry perpetuity when Catholicism in England itself was not perpetual.

In 1534 King Henry VIII broke from the Catholic Church, and in the late 1530s Parliament passed a series of acts dissolving and expropriating England's monasteries. By the late 1540s, England's government denounced Purgatory and posthumous intercession as dangerous superstitions of the old faith. And from 1559 until 1791 (save the short reign of James II), Catholicism in England was criminal. Chantries, obviously, could not endure in this environment, no matter how effective their contractual devices for self-enforcement. And they did not: "In England the history of the chantry was brought abruptly to an end in the middle of the sixteenth century. The endowments were confiscated by the state" (Colvin 2000: 172), which abolished chantries legislatively in 1547.[16]

A second standard for evaluating the effectiveness of chantry founders' contractual devices considers the extent to which chantries founded between the late thirteenth century and Henry VIII's break with Rome survived operationally until the chantry dissolution acts of the 1540s. This standard is problematic because the data on chantry survivorship, described below, are for chantries with Mortmain licenses whose records happen to remain. Not only were most chantries founded extra-legally, hence without Mortmain licenses, but receipt of a Mortmain license did not always result in chantry foundation. Some license recipients never went through with their intercessory plans.

A still more problematic feature of chantry survivorship data for the purpose of evaluating the effectiveness of chantry contract enforcement is that those data do not speak to why chantries that did not survive failed to do so. A failure of contract enforcement, such as endowment embezzlement by the grantee, is one possible cause of chantry cessation. But another cause is changing economic conditions. Chantry endowments composed of land and rent could support the

16 This was achieved with two parliamentary acts. The first, which was less sweeping, was promulgated in 1545. The second, which was encompassing, was promulgated in 1547.

intended intercessory services only so long as land and rent values remained high enough to cover chantry expenses. Unfavorable changes in economic conditions thus threatened chantry survival. The Black Death, for example, which reached England in 1348, caused land values to fall and the price of labor – priestly and other – to rise. Chantry endowment grantees could therefore find themselves in the untenable position of needing to pay higher cantarist salaries from dwindling endowment revenues. If the situation became dire enough, the chantry would go belly up, and as the endowment's value dwindled, so did the threat of endowment forfeiture along with the incentive of the grantee's competitors to monitor his contractual performance. In one sense, chantry failure resulting from such forces might be construed as a failure of chantry founders' contractual devices. But in another sense that construal seems unwarranted, for fluctuating land values and wages were outside chantry founders' control, and medieval Englishmen could not foresee the Black Death.

Data on chantry survivorship must therefore be taken with a mound of salt. They are assembled by historian Alan Kreider, who reports survivorship for 554 licensed chantries founded between 1279 and 1534 in four English counties (Essex, Warwick, Wiltshire, and Yorkshire). Two hundred fifty-three of these chantries, or approximately 47 percent, were still operating on the eve of dissolution. Further, of the 232 chantries in Kreider's sample that were founded before 1349, 88 of them, or approximately 38 percent, were among those still operating, meaning that these chantries survived for at least two centuries before the government shut them down.

A final standard for evaluating the effectiveness of chantry founders' contractual devices considers the behavior of late medieval Englishmen. This standard seems most sensible. Contemporaries, after all, had the best information about whether chantry contracts were reliably enforceable: they observed the fate of their friends' chantries, the fate of their family members' chantries, and the fate of their fellow parishioners' chantries. If enforcement often failed, chantry foundation should have been a fleeting phenomenon. Englishmen seeking posthumous intercession but anticipating the unenforceability of chantry contracts would seek other means of providing for their wellbeing in the hereafter. If, on the other hand, chantry contract enforcement was generally successful, chantry foundation should have been an abiding phenomenon, continuing apace until state expropriation and abolition.

Judged by this standard, chantry founders' contractual devices were successful. Englishmen began founding chantries in the thirteenth century, and they continued to do so for nearly 300 years, right up until governmental dissolution: "numerous founders were still endowing chantries in the first half of the sixteenth century" (Kreider 1979: 90). Moreover, it was not just laymen who

founded chantries year after year for almost three centuries. Ecclesiastics did too – chantry endowment grantees and cantarists alike. If anyone had insight into the enforcement effectiveness of chantry contract devices, these individuals did, for they were subject to the devices as chanty contract promisors and agents. The fact that chantry endowment grantees and cantarists founded chantries throughout the centuries in question thus evinces their confidence that in death their rights as chantry contract promisees would be enforced. Imperfections of chantry contractual devices notwithstanding, the behavioral evidence therefore suggests that those devices must have secured reasonably effective enforcement, enabling trade with the dead.

Acknowledgment: I thank the editors, whose invitation prompted me to write this paper, and Plasencia A. Fuerte for stimulating thoughts.

References

Anderson, T.L. and Hill, P.J. (2004). *The not so wild, wild west: property rights on the Frontier*. Stanford: Stanford University Press.

Archer, R.E. and Ferme, B.E. (1989). Testamentary procedure with special reference to the executrix. Read. Mediev. Stud. 15: 3–34.

Burgess, C. (1988). A fond thing vainly invented': an essay on purgatory and pious motive in later medieval England. In: Wright, S.J. (Ed.), *Parish, church and people: local studies in lay religion, 1350–1750*. London: Hutchinson, pp. 56–84.

Burgess, C. (1991). Strategies for eternity: perpetual chantry foundation in late medieval Bristol. In: Harper-Bell, C. (Ed.), *Religious belief and ecclesiastical careers in late medieval England*. Woodbridge: Boydell Press, pp. 1–32.

Burgess, C. (2009). An afterlife in memory: commemoration and its effects in a late medieval Parish. Stud. Church History 45: 196–217.

Burgess, C. (2011). Chantries in the parish, or through the looking-glass. J. Br. Archeol. Assoc. 164: 100–129.

Burgess, C. (2018). *The right ordering of souls: the parish of all saints' bristol on the eve of the reformation*. Woodbridge: Boydell Press.

Burgess, C. and Kumin, B. (1993). Penitential bequests and parish regimes in late medieval England. J. Eccles. Hist. 44: 610–630.

Cassone, A. and Marchese, C. (1999). The economics of religious indulgences. J. Inst. Theor. Econ. 155: 429–442.

Causton, A. (2010). The will and chantries of John de Causton, a London mercer, died 1353. Trans. Lond. Middlesex Archeol. Soc. 61: 175–190.

Colvin, H. (2000). The origin of chantries. J. Mediev. Hist. 26: 163–173.

Crouch, D. (2001). The origin of chantries: some further anglo-norman evidence. J. Mediev. Hist. 27: 159–180.

Duffy, E. (2005). *The stripping of the altars: traditional religion in England, c.1400–c.1580*. New Haven: Yale University Press.
Ekelund, R.B. and Tollison, R.D. (2011). *Economic origins of roman christianity*. Chicago: University of Chicago Press.
Ekelund, R.B., Hébert, R.F., and Tollison, R.D. (1992). The economics of sin and redemption: purgatory as a market-pull innovation? J. Econ. Behav. Organ. 19: 1–15.
Ekelund, R.B., Hébert, R.F., Tollison, R.D., and Anderson, G.M. (1996). *Sacred trust: the medieval church as an economic firm*. New York: Oxford University Press.
Ekelund, R.B., Hébert, R.F., and Tollison, R.D. (2006). *The marketplace of christianity*. Cambridge: MIT Press.
Frey, B.S. and Buhofer, H. (1988). Prisoners and property rights. J. Law Econ. 31: 19–46.
Greif, A. (1989). Reputation and coalitions in medieval trade: evidence on the Maghribi traders. J. Econ. Hist. 49: 857–882.
Heath, P. (1984). Urban piety in the later middle ages: the evidence of hull wills. In: Dobson, B. (Ed.), *The church, politics and patronage in the fifteenth century*. New York: St. Martin's Press, pp. 209–234.
Houlbrooke, R. (1998). *Death, Religion and the Family in England, 1480–1750*. Oxford: Oxford University Press.
Hull, B.B. (1989). Religion, afterlife, and property rights in the high middle ages. Stud. Econ. Anal. 12: 3–21.
Kreider, A. (1979). *English chantries: the road to dissolution*. Eugene: Wipf and Stock.
Leeson, P.T. (2007a). An-*arrgh*-chy: the law and economics of pirate organization. J. Polit. Econ. 115: 1049–1094.
Leeson, P.T. (2007b). Trading with bandits. J. Law Econ. 50: 303–321.
Leeson, P.T. (2012). Ordeals. J. Law Econ. 55: 691–714.
Leeson, P.T. (2013). Vermin trials. J. Law Econ. 56: 811–836.
Leeson, P.T. (2014). God damn: the law and economics of monastic malediction. J. Law Econ. Organ. 30: 193–216.
Leeson, P.T. and Nowrasteh, A. (2011). Was privateering plunder efficient? J. Econ. Behav. Organ. 79: 303–317.
Leeson, P.T. and Russ, J.W. (2018). Witch trials. Econ. J. 128: 2066–2105.
Marshall, P. (2002). *Beliefs and the dead in reformation England*. Oxford: Oxford University Press.
Raban, S. (1982). *Mortmain legislation and the English church, 1279–1500*. Cambridge: Cambridge University Press.
Rosenthal, J.T. (1972). *The purchase of paradise: the social function of aristocratic benevolence, 1307–1485*. Toronto: University of Toronto Press.
Rousseau, M.-H. (2011). *Saving the souls of medieval London: perpetual chantries at St Paul's cathedral, c.1200–1548*. Farnham: Ashgate Publishing.
Shaffern, R.W. (2015). Death and the afterlife in the middle ages. In: Swanson, R.N. (Ed.), *The routledge history of medieval christianity 1050–1500*. New York: Routledge, pp. 173–184.
Smith, A. (2019[1776]). *An inquiry into the nature and causes of the wealth of nations*. New York: Mineoloa.
Tentler, T.N. (1977). *Sin and confession on the eve of the reformation*. Princeton: Princeton University Press.
The Companion to the catechism of the catholic church (2002). San Francisco: Ignatius Press.

Wood-Legh, K.L. (1932). Some aspects of the history of the chantries during the reign of Edward III. Camb. Hist. J. 4: 26–50.
Wood-Legh, K.L. (1946). Some aspects of the history of chantries in the later middle ages. Transactions of the Royal Historical Society 28: 47–60.
Wood-Legh, K.L. (1965). *Perpetual chantries in britain*. Cambridge: Cambridge University Press.