WILLMAKING ON THE DEATHBED

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‘I think my master means to die shortly. He hath made his will...’

Christopher Marlowe, The tragical history of Doctor Faustus
(B text, 1616), Act V, Scene 1, lines 1-2.

In the medieval and early modern period the making of a will was generally undertaken when the testator, who, by law, could be a man of twenty-one years or more, an unmarried woman of the same legal age, or a widow, sensed that he or she was close to death. In the popular mind, the making of a will represented an aspect of the ritual preparation for death.¹ The traditional association of the will with the deathbed has its genesis in the early medieval Church, which taught that every dying Christian should prepare for the next world by making amends with God. Final confession was heard by a priest who advised the deathbed penitent to atone for his life’s misdeeds by making an act of restitution to the Holy Church or to charity. The priest then noted the dying person’s final requests, granted absolution and administered the last rites.² The medieval Church protected the will by the spiritual censure of excommunication, as well as by the threat of temporal punishment for fraud or misappropriation of the deceased’s effects.³ Hence the last will and testament was in origin a spiritual document, written upon the deathbed of the testator and devised for the comfort of his soul.

Vestiges of the notion of the will as a religious instrument were still to be found in the sixteenth century. Nearly every will of the period was prefaced with the formal invocation of God’s name, a practice which survived the Reformation changes and continued well into the seventeenth century. Concern with the soul’s immortality was still formally affirmed by the committal of the soul to the mercy of God, its maker and redeemer. Solicitude as to the proper disposal of the testator’s body was still expressed by its commendation ‘to the earthe from whence yt came’, with instructions on the place of interment and on the burial services to be performed.⁴ The conventional expression ‘sick in body’ usually indicated that the testator was close to death and desirous of putting his house in order and preparing his soul for God.

The common practice of making a will on one’s deathbed will be illustrated here by a study of the sixteenth-century wills of Leverton and Grantham, two communities in Lincolnshire. In rural Leverton, a low-lying marshland parish of about 200 souls located six miles to the north of Boston and exposed to cold, piercing winds and periodic flooding from the sea, every willmaker who ex-
pressed the condition of his health noted that he was 'sick of body'. In the more economically diversified town of Grantham, a small urban community of some 1,000 inhabitants that lay in the southwestern corner of Lincolnshire close to the Great North road, only a handful of testators wrote their wills while in good health; the remainder believed death to be at hand, and most died soon after. Half of the willmakers in both communities whose dates of burial are known declared their wills in the week prior to death; the precise figures are given in Table 1 below.

Table 1. Interval between willmaking and burial, 1562-1600

<table>
<thead>
<tr>
<th>Interval</th>
<th>Leverton</th>
<th>Grantham</th>
</tr>
</thead>
<tbody>
<tr>
<td>under 1 week</td>
<td>32</td>
<td>24</td>
</tr>
<tr>
<td>1 week to under 2 weeks</td>
<td>11</td>
<td>7</td>
</tr>
<tr>
<td>2 weeks to under 3 weeks</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>3 weeks to under 4 weeks</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>1 month to under 3 months</td>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td>3 months to under 6 months</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>6 months to under 1 year</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>1 year to under 5 years</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>over 5 years</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>60</td>
<td>48</td>
</tr>
</tbody>
</table>


The following examples cast some light on the circumstances under which the deathbed will was made. Alice Robertson, a gentlewoman of Leverton, died the same day as she made her will: she left her daughter several gifts, including the bed 'whereon I now lie', and rewarded her parson with a bequest of 10s in restitution for tithes forgotten and 'for his painses about this my will'. A Grantham testator, Robert Gregge, declared his will on the day his wife was buried, following her to the grave less than a week later. Only two days separated the formulation of the servant Simon Bower's will from the inventory-taking of the deceased's effects: the appraisers grimly debited his account 'for 7 Shetes that was lost by Rotyng in the tyme of his visitation'. Matthew Peyke of Grantham declared his will while 'laboringe in Extreme Sicknes' and in it requested proper Christian burial 'in such Catholicke solemnitty as the Charite of my Executris shall beste provide'. Distracted by their pain and suffering, some testators made either perfunctory or improvident wills. John Richardson, for example, only had sufficient time before his death to commend his soul to God and to leave his children and all his worldly belongings in the hands of his sister.

In cases where a scribe was not available at short notice, the dying testator made declaration of an oral, or nuncupative, will before those persons called into the sick-chamber. The nuncupative will only permitted the disposition of the testator's movable estate; by the Statute of Wills (1540), the devise of inheritable lands could not pass by an oral will. Uttered when the testator was
at the point of death, and restricted by law to the disposition of goods and chattels, the nuncupative will was a makeshift, emergency measure, generally undertaken only by the poorest testators.

The Leverton labourer John Temple, in his oral will, ‘declared by him by worde of mowthe’, left to his wife Agnes four sheep and six yards of cloth and to his son Gilbert one cow, three sheep, six yards of cloth, a pair of boots and two items of clothing. He concluded his will by instructing that one calf be sold to pay his debts. The net total of his inventoried estate came to £5. In the haste and confusion of making his oral will, John Temple neglected to appoint or to indicate his executor or residuary legatee. In consequence he was pronounced intestate by the probate court, which deputed his widow as administrator of his goods. ¹³ Prior to his death, Temple had received parish poor relief, and his widow continued to appear as a recipient on the poor books for several years thereafter. ¹⁴ Henry White, an almsman of Grantham, made an oral will on his sickbed and was buried two days later. The two women who heard his will received one quarter of a mark apiece, and White left the residue of his estate to his landlord, whom he made its executor. His inventory revealed a total sum of £7.11s ‘wch he had saued and Collected together and also that did befall to him dewe of the poore man’s boxe in the time of his sicknes before his deathe’. ¹⁵ The deathbed will was upheld in law as long as the meaning of the testator’s declaration remained intelligible, for, as the ecclesiastical lawyer Henry Swinburne put it, ‘the integratie of the minde, and not of the bodie, is required in the testator, and the libertie of making a testament, dooth continue even untill the last gaspe’. ¹⁶

The horror of dying intestate was stressed by religious moralists of the time, whose fears were perhaps best voiced by the Puritan William Gouge in his conduct book Of domesticall duties (1622). Gouge warned not only of the spiritual consequences of dying intestate, but also of the practical inconveniences involved: ‘discredit to the partie deceased’ ‘contentsions among his suruiving children’, ‘wasting a great part, if not his whole estate, in suits of law’, and ‘defeating many creditors of their due debt’. ¹⁷

Contemporary clerical writers and moralists complained of the common practice of deferring the formulation of a will until the deathbed. In the Second Book of Common Prayer (1552) and again in the Elizabethan Book of Common Prayer (1559), the Church of England pressed upon its ministers the importance of admonishing their parishioners to write their wills in good health rather than upon the deathbed. As the rubric for ‘The order for the visitacion of the sicke’ in the Second Edwardian Prayer Book made clear:

And if he [the sick person] haue not afore disposed his goodes, let hym then make hys wyl. But men must be ofte admonished that they sette an ordre for theyr temporall goodes and landes, whan they be in health. And also declare his debtes, what he oweth, and what is owyng unto hym, for discharging of hys conscyence and quietnesse of hys executours. ¹⁸

In treatises and religious discourses, clerics encouraged believers to set their estates in order and to provide in good time an account of themselves before the world and before God. The seventeenth-century divine William Assheton
asserted that the settling and disposing of a man's estate by will was the final and most solemn act of his life, and as such required careful consideration and prudence. And yet, he lamented:

... so inconsiderate are the generality of Men, that if they do not wholly neglect to make their wills, (which too often happens) they then clap it up in hast, and do it in a hurry, amidst the pains and distractions of a Sick Bed; whereby such a Will is not only imperfect and defective in itself, but very disturbing to the Dying Testator.¹⁹

The reasons for the postponement of willmaking till the deathbed (or what the testator believed to be his deathbed) are not difficult to find. Some individuals deferred making their wills in the hope of a longer life, or, as William Gouge put it, 'on vaine hope that they may liue longer, and when they are sicke, upon conceit that they may recover'.²⁰ Others deferred out of a desire to add to their estates so that they would have more considerable property of which to dispose, telling themselves: ‘When I have made this Purchase; taken in that Mortgage; concluded such a Bargain; secured and gotten in these and those Debts; then you shall see I‘ll defer it no longer’.²¹ Still others postponed the making of a will in the hope that their wives would predecease them, thus allowing them the opportunity to dispose of their thirds:

Others hauing aged and sickly wiues, or otherwise thinking that their wiuues may, or rather hoping that their wiuues will die before themselves, put off the making of their wiuues of purpose that they might not put in their wiuues thirds, but dispose them some other way.²²

Finally, there were those who put off their wills in the popular belief that willmaking in good health might in itself be sufficient to provoke the death of the testator. As Swinburne noted:

[It is receiued for an opinion amongst the ruder and more ignorant people, that if a man should chance to be so wise, as to make his will in his good health, when hee is strong and of good memorie, hauing time and leasure, and might aske counsell (if any doubt were) of the learned; that then surely he should not liue long after.²³

This idea was so pervasive that a century later William Assheton would observe that the sick man was often averse to declaring his will for fear that doing so would hinder his recovery.²⁴

While the majority of testators postponed their wills until the last, a provident few prepared and drafted their wills in anticipation of death. The prudent testator was mindful of the uncertainty of man’s life in a transitory world and of his duty before God to make a just and careful disposition of the lands and goods with which he had been blessed during his lifetime. The Grantham innholder Christopher Lupton considered ‘the frailtie of man and howe necessarie it is for euerie Christian man to be in a continuale redines
when the good will and pleasure of almightie god is to call'.25 The Grantham tanner William Meyres reflected upon 'ye uncertainye off thyshortte trancytorye and myserable lyffe'.26

Accountability before God was a strong incentive to make one's will well in advance of the deathbed. As William Assheton sternly reminded his readers:

And do not fancy, that because your Estate is your own, that therefore you have liberty to Bequeath it as you please...it is still the Property of Almighty God, the Chief Sovereign of the World; before Whom you must shortly give an Account of your Stewardship, and how you have Distributed and Bequeathed your Estate.27

More wealthy Grantham landowner Richard More recalled that he was 'a miserable and wretched synner having god before myne eys' and disposed of his lands and manors 'wch the Lord hath blessed me wthall w'in the Realme of England'.28 More wrote his will in secret and five days later had it sealed and delivered as his last will and testament before two witnesses who subscribed their names on the outside of the instrument.29

He settled all his lands, manors and hereditaments upon his eldest son and upon his son's male heirs, with the careful stipulation that if male issue should fail, then his own second, third and fourth sons would in turn succeed. The second and third sons were to be entitled to equal shares of certain pasture closes upon the death of their mother, these lands being part of her jointure. The third son was provided with the sum of £20 to be put to his apprenticeship. The fourth, it was hoped, would prove himself a scholar, and his guardian was charged with the custody of his filial portion for his upbringing in virtue and learning and for his placement in one of the Cambridge colleges.30 The two unmarried daughters received their marriage portions, although the elder daughter had incurred her father's wrath by contracting herself, without his consent, to a London silk vendor from Cheapside, and was therefore to be allowed only 40s towards her marriage.31 The more dutiful younger daughter was assigned £200 for her marriage without paternal admonishment. The testator's wife was to enjoy her life estate of her husband's principal dwelling in Grantham, which would revert to the eldest son upon her death, and she was also entitled, during her widowhood only, to the residue of his unbequeathed household goods and implements. In a codicil to his will, More atoned for a past injustice committed against a tenant, and paid him a sum of £20 in reparation for charging him to build a hay barn on the Lincolnshire parsonage of Ingoldsby of which More enjoyed the patronage — a wrongful action for which, More confessed, 'I nowe do make a conscience thincking that I did hym some wronge'. The case of Richard More exemplifies that of the provident testator, making his will in good time and prudently disposing of his property according to the different capacities and circumstances of his family dependents.

However, despite the obvious wisdom in making early wills, those Grantham townsers who in their last testaments declared themselves to be in good health numbered no more than seven; they were: two vicars, two glovers, a town landowner, a carpenter and a merchant. Three of the lay testators also held high political office as burgesses and former aldermen of the town.32
Members of the clergy were perhaps more likely to make early wills, both as an example to their parishioners and as a personal safeguard against provoking God’s ire by dying intestate. John Clark, vicar of the north side of Grantham, wrote his own will in 1569 while ‘whole in body’ (he died five years later). He stipulated that he wished to be buried in his parish church ‘in the chancell before my seate’ and requested that a sermon be preached at his burial by one of his closest friends. He remembered the poor of Grantham, leaving them a gift of 20s to be distributed amongst the most destitute the following Lent, and made a similar legacy of 6s to the poorest in Braceborough, a parish outside Stamford. But the main concern of his lengthy will was the disposition of his worldly estate almost entirely in favour of his dependent son. The vicar entrusted the young boy’s tuition to Master John Still, an eminent don of Christ’s College, Cambridge, and the son of a Grantham alderman, requesting that his son be brought up ‘in the Nurture & doctrine of Jesus Christe unto whom I be-queathe & dedicate him’. The son was made heir to the vicarage provided he did not sell it before he reached the age of twenty-four. But if he were recalled from ‘the face of this miserable earthe’ before entering his worldly inheritance, then the house was to pass to the master and fellows of Christ’s College, Cambridge, for the purpose of augmenting the Lincolnshire scholarships so ‘yf allways from time to time some pore mans sone of Grantham may therafter be preferred to some one of these Schollershipps’. The vicar carefully itemised the household furnishings to be awarded as legacies to his son. Only if he died before attaining his majority were the legatee’s brother, sister and mother to obtain a share of his portion, or indeed to be major beneficiaries of the will at all. The heir was nominated executor, the wife a residuary legatee, and the daughter was simply left the sum of 10s ‘to by her a pettycote’.

The other vicar of Grantham, Symon Clarkson, declared himself ‘hol in bodye and mynde [and] stronge in faith’ when he drafted his will in 1557. Opening with a prolix and edifying profession of his faith, the vicar assigned his two young children to the guardianship of the present alderman of the town, Master James Wallys, ‘desyringe him for the tender blud of Jesus Christe and as one faithfull freend maye and oughte to do for an other to se them veruoulye broughte upp in the feare and knowledge of the Lorde’. A Merchant of the Staple of England and himself a powerful political figure in the town, James Wallys later wrote his own will ‘beinge in good health’ while sojourning in London in 1577. In a personal prayer he thanked God for his good fortune and asked for the remission of his sins and for the hope of eternal life. He requested that all his goods and lands be first evaluated and then, in what was an unusual instruction, that they be divided equally amongst his six children, with those who had already received their marriage or filial portions being taken into account. No witnesses were called to attest this will, and it remained unopened until Wallys died more than eleven years later.

The advantages of making an early will in good health were obvious. A secret written will be avoided the possibility of scenes of importunate relatives pressing round the sickbed. It allowed the testator to reflect upon the just and prudent disposition of his worldly estate without the distractions of physical suffering, the remonstrations of relatives and friends, and the final ministrations of the parson. An unhurried early will also reduced the likelihood of committing one’s last will and testament to an incompetent or
ill-experienced scribe, summoned in despair of finding anyone more suitable. Moreover, a provident will left the dying person free to concern himself with the more important business of preparing his soul for God and for the eventual possession of his spiritual inheritance. For the devout Christian, the spiritual sanctity of the deathbed was not to be disturbed by the unseemly production of parchments, the declaration of debts, or the calculation and disposition of one's worldly goods.37

Yet most testators, contrary to the advice of moralists and lawyers, made their wills just prior to death. For centuries the act of willmaking had traditionally been connected with the preparation for death and with the need to render an account before God. Viewed thus, as a part of the ritual of death, willmaking carried a connotation of black foreboding and was regarded by the populace as an ill omen which in a sense sealed a person's fate. Popular opinions and beliefs of this kind probably accounted for the general reluctance to make a will until the last moment, by which time it was frequently too late.

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NOTES

1. Preparations for death and the notion of death forewarned are discussed in P. Ariès, Western attitudes toward death: from the Middle Ages to the present, 1974, pp. 4-13.
4. For instance, Richard More, esquire, Grantham, in his will dated 29/3/1595, invoked the Holy Trinity in Latin, commended his soul to God and his body to the ground, 'in hope that from thence yt shall arise agayne and appeare a glorious and an ymortall bodye....' Public Record Office, London, Prerogative Court of Canterbury (hereafter PRO, PCC), Prob. 11/86, fo. 197r.
5. Out of a total sample of 135 Leverton wills, 1501-1600, fifty-five willmakers expressed the condition of their health. The ecclesiastical census for the archdeaconry of Lincoln, made by its archdeacon, Thomas Aymer, in 1563, recorded forty-eight households in the parish of Leverton. (British Library, Harleian MS 618, fo. 7r.) A breakdown of the willmakers of Leverton, as described in their wills or inventories, shows 1 gentlewoman, 2 gentlemen, 18 widows, 1 widower, 2 singlewomen, 3 bachelors, 14 yeomen, 12 husbandmen, 7 labourers, 1 carpenter, 1 fisherman and 2 clerics. For an antiquarian account of the parish of Leverton, see Thompson, The history and antiquities of Boston, and the villages of Skirbeck, Fishtoft, Frieston, Butterwick, Benington, Leverton, Leake, and Wrangle comprising the Hundred of Skirbeck in the county of Lincoln, 1856, pp.549-75.
6. Out of a total sample of 153 Grantham wills, 1501-1600, ninety-seven willmakers expressed the condition of their health; only seven reported themselves to be in good health. The 1563 ecclesiastical census noted 252 households in the parish of Grantham. (Harl. MSS 618, fo. 5r.) A breakdown of the willmakers of Grantham, as described in their wills or inventories, shows 1 esquire, 4 gentlemen, 17 widows, 1 married woman, 1 singlewoman, 2 bachelors, 9 yeomen, 5 husbandmen, 3 comburgesses, 2 Merchants of the Staple, 9 grovers, 2 saddlers, 5 shoemakers, 5 tanners, 1 blacksmith, 1 plumber, 1 cooper, 2 carpenters, 1 freemason, 6 bakers, 4 butchers, 3 innkeepers, 1 servant, 2 weavers, 1 tailor, 2 woollendrapers, 3 mercers, 1 barber, 1 surgeon, 1 almsman and 2 clerics. Political control in Grantham was invested in an oligarchy of twelve life-tenured comburgesses, while the town's alderman was elected annually from their number. The twelve were also the justices of the peace whose
Jurisdictional authority extended over the soke of Grantham — an area of special jurisdiction enjoyed by the town over several villages and hamlets in the locality. The parish church, St Wulfram's, was the spiritual focus of the town, its soaring steeple a testimony to civic pride and late medieval prosperity. For details of the town of Grantham, see Turnor, Collections for the history of the town and soke of Grantham, 1806, and G. H. Martin (ed.), The Royal Charters of Grantham 1463-1688, 1963, pp. 9-18.

7. Alice Robertson, gentlewoman, Leverton (will made 23/9/1591). Lincolnshire Archives Office, Lincoln, Lincoln Consistory Court (hereafter LAO, LCC) 1601/i, fo. 39r.; Inventory 94/138.


9. Simon Bower, servant to Mr Wright of the George Inn, Grantham (will made 12/1/1557). LAO, LCC 1553-6, fo. 178r.; Inv. 25/130.

10. Matthew Peke, Grantham (will made 29/12/1557). LAO, LCC 1558/ii, fos. 55v. - 56r.

11. John Richardson, Grantham (will made 1557). LAO, LCC 1557/iii, fo. 161r.

12. Statute of Wills (1540), 32 Hen. VIII c. 1. Lands and tenements devisable by custom, such as those held in burgage tenure, could, however, pass by a nuncupative will. See Godolphin, The orphans legacy: or a testamentary abridgment in three parts, 1685 (3rd edn.), pp. 11-12.


14. John Temple received 22d at divers times in the account year ending July 1569, while his widow Agnes obtained supplementary benefits amounting to 3s between the account years ending June 1572 and June 1583. LAO, Leverton Overseers of the Poor accounts, 1563-98, Leverton Par. 13/1, fos. 13v. and 20v. - 37r.


18. ‘The order for the visitacion of the sick’ in The boke of common prayer, and administracion of the sacramentes, and other rites and ceremonies in the Churche of Engelande, 1552, sig. Pi. Jackson STC. 16282.3.


23. Swinburne, op. cit. fo. 24v.


25. Christopher Lupton, innholder, Grantham (will made 4/7/1594; burial 26/7/1594). LAO, LCC 1594/ii, fo. 181r. It would be misleading to believe that all such deliberations upon the certainty of death and the frailty of life were necessarily the sentiments of provident willmakers; usually they were part and parcel of conventional will phraseology. The Grantham burgess Ralph Locco, for instance, professed the necessity of being prepared for death in almost the same words as were used by his fellow townsman Lupton, and yet Locco died within five days of making his will. Ralph Locco, burgess, Grantham (will made 9/10/1597; burial 14/10/1597). LAO, LCC 1597, fo. 256r.

26. William Meyres, tanner, Grantham (will made 7/12/1546; inventory taken 27/12/1546; probate granted 3/1/1547). LAO, LCC 1547, fos. 52r. - 53r.; Inv. 15/4.


29. One of the advantages of a written, as opposed to an oral, will was that the testator could conceal the contents of the will from the witnesses, which of course was impossible in a nuncupative will. It was sufficient in law for the testator to take the will in his hands and say before the witnesses: ‘This is my last will and testament’. See Godolphin, op. cit. p. 11.


31. However, if the groom consented to put in guarantees to pay the bride thirds equivalent to £400 in goods for her widowhood, then the executor was charged by the testator to pay the groom £200 for the portion of the testator’s daughter.

32. These were John Brotherton, Glover, alderman of Grantham 1563-4 and 1572-3 (will made ‘in perfect health’ 12/3/1588; burial 6/4/1590). LAO, LCC 1590, fo. 104r., Inv. 78/79; Robert Gybbon,
comburgess, alderman of Grantham 1559-60 (will made ‘whole of bodye’ 2/5/1579; burial 30/7/1581). PRO, PCC Prob. 11/63, fo. 227v.; and James Wallys, Merchant of the Staple of England, alderman of Grantham 1556-7 (will made ‘in good health’ 27/4/1577; burial 24/11/1588). LAO, LCC 1588/ii, fo. 42r.; Inv. 75/301.


34. The guardian Mr John Still was born at Grantham in 1543, the son of the alderman William Still. He matriculated pensioner from Christ’s College, Cambridge, in November 1559 and pursued a highly successful academic career, receiving the B.A. in 1562, the M.A. in 1565. He was a Fellow of Christ’s College between 1562-72, the Lady Margaret Professor from 1570 to 1573, Master of St John’s 1574 to 1577, Master of Trinity 1577 to 1593 and twice Vice-Chancellor, 1575-6 and 1592. A contemporary at Christ’s College described John Still as ‘an excellent philosopher, a reasonable good historian, a learned divine, and a wise man’. See J. Peile, op. cit. pp.70-1 and J. and J. A. Venn, op. cit. pt. I, vol. 4, p.163. A John Clark matriculated pensioner from Christ’s College in November 1569, became B.A. in 1574 and was later ordained deacon and priest at Lincoln in 1580. It is not clear, however, whether he was the son of the Grantham vicar. See J. and J. A. Venn, op. cit., vol. I, p.342.

35. Symon Clarkson, vicar, Grantham (will made 12/7/1557; inventory taken 20/4/1558; probate granted 4/5/1558). The vicar specially desired his son to get his grammar and then go immediately up to Oxford to pursue godly learning. There is no evidence that his wish was fulfilled. LAO, LCC 1558/ii, fo. 8r.; Inv. 31/931.

36. James Wallys, op. cit.