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THE DEAD HAND IN *MIDDLEMARCH*

by David Clifford

Edward Casaubon dies early in Book V of *Middlemarch*. Occurring where it does, it effectively bisects the novel; and indeed, it is a pivotal event in Dorothea's history. His will erects her central dilemma. She faces a choice, forced upon her by her deceased husband, between his money and his cousin. The significant detail is that even in death, Mr Casaubon continues to exert control over the options open to Dorothea, and the locus of that control is her property.

The title of Book V, 'The Dead Hand', is taken as referring explicitly to this immortal control by Mr Casaubon over his widow. It has a sinister ring to it: the notion that the dead can manipulate the living by means of the law is a distinctly chilling one. For George Eliot's legal information is quite accurate: the laws of testacy that constrain Dorothea were described in a book she read in 1853.¹ But in the title of Book V she recalls a more obscure, equally insidious law.

In feudal England, property held by the tenant of a fiefdom was subject always to the will of his Lord. If that tenant's legal circumstances changed in any way whatever – if he married, for instance, or died, or committed a crime – then that property reverted and the Lord could chose what fief to replace it with. However, this liberty was denied when tenants made a gift of their property to a religious corporation. Land belonging to a monastery was owned by an institution which did not die, marry, or change its legal status in any way to the Lord's advantage, and the tenant was free to keep it under the aegis of the religious body.

This situation was, understandably, deeply unpopular with the feudal lords. To protect their interests, in 1279 Edward I passed the statute of De Viris Religiosis. This prevented property from being transferred to a religious corporation without the express permission of the landlord, and of the king. Not surprisingly, landlords rarely granted licenses for their tenants' property to pass out of their lease.

What of all this and Dorothea? Well, land transferred to a religious corporation transferred to a tenant who suffered none of the vicissitudes of mortal existence. It was said to have come into a *mort main* – a dead hand, in the vernacular. The De Viris Religiosis was known as the first statute of mortmain. The laws of mortmain were extant in England from the thirteenth century until they were finally repealed in 1960;² though after feudalism declined, various Acts distilled off the irrelevant elements denying the transfer of property to corporate bodies.

The Dead Hand which oppresses Dorothea, then, refers not to the benign hand of the mediaeval religious corporation, but to the laws governing the feudal notion of double proprietorship. The property rights of the feudal lord were superior to those of the tenant.

Needless to say, the testacy law which Casaubon exploits in 1830 applied only to women, whose property rights were likewise secondary to men's. But the title of Book V draws a parallel between Dorothea's relationship with her husband, and the vassal's with his lord. The laws were almost as ancient, after all; though what matters is that whereas the latter relationship had utterly disintegrated by the 1830s, the former would last until the Married Women's Property Acts of 1870 and 1882.

The connection George Eliot makes here might have emerged from her reading of another book while she was planning *Middlemarch*. Between 1 November and 17 December 1869, she read Henry Maine's *Ancient Law: its connection with the early history of society and its relation to modern ideas*.³ In his book, Maine develops an evolutionary history of English law, reaching back to Roman and even ancient Hindu laws for the roots of the principles of English law. He discovers elements of double-proprietorship in Roman property law, follows it through to feudal England, and says that even in 1868, 'the land-law of England . . . is certainly much more closely allied to the land-law of the Middle Ages than that of any Continental country'.⁴ By applying the same principle herself, George Eliot makes a connection between the laws she read of in Wharton and the defunct laws of the mediaeval vassal. Dorothea is indeed subject to the law enforced by a dead man, but by evoking the statutes of mortmain, George Eliot removes Dorothea's case from isolation and locates it in the history of oppressive property laws.

Notes

1. John Jane Smith Wharton, *An Exposition of the Laws Relating to the Women of England* (London 1853). GE refers to her reading the volume in a letter to Mrs Taylor on 1 February 1853. See Haight, *The George Eliot Letters*, II, 86.
2. By the Charities Act of that year.
3. We know this from GHL's diary for these dates, cited in John Clark Pratt & Victor A. Neufeld (eds.), *George Eliot's Middlemarch Notebooks* (California, 1979), p. xlii.
4. Henry Sumner Maine, *Ancient Law: its connection with the early history of society and its relation to modern ideas* (4th edn, London, 1870), p. 226.