

involving the manuscript sources. Sadly, for ecclesiastical and canon lawyers, as mentioned earlier, there is no equivalent volume for those wishing to pursue research in the Civilian or Canonist sources. It is to be hoped that it will not be too long before someone is prepared to accept this challenge which Professor Kantorowicz declined over sixty years ago, and the even greater challenge now of producing a volume which can complement the work reviewed here.

*CLANDESTINE MARRIAGE IN ENGLAND 1500–1850* by R. B. OUTHWAITE.  
London, The Hambledon Press, 1995 (£25) ISBN 1-85285-130-9

A review by the Revd Roger L. Brown

In his introduction, Outhwaite makes quite clear this is not a history of marriage. His concerns are narrower. Rather 'They focus on the law relating to the formation of marriage, a law that tolerated clandestine ceremonies; on the sustained efforts of church and state to enforce upon society more public modes of entry into marriage; and on the determination of many English couples to marry in private, away from the public gaze.'

Clandestine marriage was a continual problem to the Church until the Clandestine Marriages Act 1753, which, Outhwaite clearly demonstrates, was a consequence of the problems associated with these irregular marriages. Indeed, his book is a study of the interaction between society and law about what constituted marriage; perhaps not marriage as such, but rather as to which marriages would be supported by the state. The distinction is a necessary one, and caused much theological heart-searching at the time of that Act, for the church had followed Roman law which saw consent as the essence of marriage, and although it had endeavoured to regulate the performance of matrimony it was never able to proclaim, as the 1753 Act did, that any ceremony contravening its requirements would be regarded as null and void.

A large section of the book is a study of these clandestine marriages. The majority of people interested in this subject would readily point to the Fleet [Prison] marriages as the major example, but recent research has indicated that such marriages could be obtained at many other regional centres, such as Fledborough in Nottinghamshire, while local clergy were not averse to obliging their parishioners in this way. There were also considerable abuses in the granting of marriage licences by surrogates. An estimate is quoted that between half, and possibly three quarters, of all marriages in London by the 1740s were clandestine in origin.

Although the reasons why these marriages were popular were often genuine enough (in general the convenience of a quick and possibly private ceremony, although the need for secrecy in the case of minors and apprentices or of pregnancy, together with a dislike of banns, were also significant), they caused so many personal and family tragedies that the courts were forced to take notice. A marriage once entered, however base its origin and unequal its partners, could not be ended if the principle of free consent could be proved. The abuses in the Fleet registers (though not emphasised sufficiently by Outhwaite), by which good marriages could be erased and false marriages inserted, attracted considerable judicial comment and was, I believe, the main concern of Lord Chancellor Hardwicke in his campaign to outlaw them.

Outhwaite notes the many attempts made by both church and state to end this state of affairs, which culminated in the successful passing of the 1753 Act. He details the course of the parliamentary debates on the Bill, and the substantial opposition made against it; many seeing it as an aristocratic plot designed to ensure that the wealth of the country passed into the hands of a limited number of families. It

was an act engineered by the judicial bench (in particular by Hardwicke, who almost saw it as a personal crusade) and, as its full title suggests, *An Act for the Better Preventing of Clandestine Marriages*, was designed specifically against this marrying trade. Ironically its origin was a Scottish case, but the opposition to the Bill forced its promoters to exclude Scotland, Quakers and the royal family from its provisions. The eventual result was the promotion of Gretna Green as a clandestine marriage centre.

A final section considers the many defects in the Act, and the attempts made to remedy these, particularly the clause that marriages could only take place in those churches where banns had hitherto been called before 1753, thus voiding all marriages in churches built or rebuilt subsequent to that date, and also in such places as St Paul's Cathedral. This, and other similar concerns, prompted Parliament to pass amending Acts legalising these unions, the House of Lords being particularly concerned at the threat to property rights posed by the 1753 legislation. Equally, after a long and sustained campaign, nonconformist marriages were permitted, by the Marriage Act 1836 (*An Act for Marriages in England*), in any place of licensed worship or in the registrar's office using a prescribed form of words. As Outhwaite comments, 'Hardwicke's Act was not, therefore, the enduring monument that some have described.' By 1836 the Church's monopoly on marriage had been ended, and the elements of Hardwicke's Act which endured derived largely from the church's canons. 'Hardwicke's achievement', writes Outhwaite, 'was to put teeth into these by simply invalidating marriages that disobeyed them.'

Noting the work of Lawrence Stone in this field, notably his *Road to Divorce*, Outhwaite considers that 'Professor Stone is a hard act to follow'. In the opinion of this reviewer he has done so admirably, and his claim that he has written 'the most detailed discussion of the 1753 Act, its antecedents and consequences, is more than justified. My only reservation is that he has not taken enough note of the conflict between the civil and ecclesiastical lawyers about the formation of marriage during the end of the seventeenth century, and in particular how the civil lawyers took as their criteria a marriage solemnised before a priest. This is possibly the reason why the marriages at the Fleet survived for so long, in spite of censure, thus ensuring that Hardwicke was forced to adopt such draconian measures to end them, and ensuring the wrath of the mob who saw the Bill as an attempt to end a long cherished folk rite.