Creator(s)

Greer, Germaine (1939-)

Title

16th Century Background: Part 1

Date

1964-1967

Description

Item: 2014.0044.00106

Preferred Citation

University of Melbourne Archives, Greer, Germaine (1939-), *16th Century Background*, 2014.0044.00106

Bottom drawer - 16 Background

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It is obvious that marriage, the essential pivot of a social system based upon hereditary rights, must have been involved in the struggle to establish a uniform body of laws out of the varying traditions of common and canon law, confronted by their newer rival, civil law. The evidence of legal confusion in marital matters is widespread, but thinly; for example, there were various ways of giving and settling dower and jointure, and various ways of inheriting for a widow.

> And few there be that bee not made at the death of their husbands eyther sole or chiefe executrices of his last Will and Testament, and haue for the most part the gouernment of the Children and their portions except it be in London where a peculiar order is taken by the Cittie much after the fashion of the Ciuill Lawe.[1]

The pronouncement is typical in that the actual legality of the situation is only hazily conceived, and Sir Thomas Smith refers with smiling optimism to the fate of women left to the benevolence of their husbands - as soon as a rival claimant for the inheritance put in an appearance, benevolence was a dead letter, and one of the most fruitful lines for a disputant to follow was that of her marriage having been invalid. If invalidity was hard to prove, validity was even harder.

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1. The / Common- / wealth of England / and the maner of / Gouernment therof./ Compiled by the honourable / Sir Thomas Smith, Knight, Doctor of Lawes, / and one of the principall Secretaries vnto Bothe two most worthy / Princes, King Edvvard and Queene / Elizabeth./ With newe additions of the chiefe Courts in England / and the Offices thereof by the said Author....London / Printed for John Smethwicke.... 1609. Book II P. 117

The confusion made itself most painfully felt in the disputes surrounding the royal succession, and one of the baldest statements comes from the motion of Parliament in 1572 about the succession to the crown according to Henry's will.

> The canon law saith, if a man beget a child of a woman not maried, and after the birth of the child do marry her, the child shall be accounted legitimate and as if it had been born in matrimony. But the laws of Engl and be, and ever have been, contrary; that it shall not be taken for legitimate albeit that great suit hath been made to the comtrary: And to bring the laws of the realm to agree with the common laws on this point as appeareth in he Statute of Marton, cap.9. So in like manner albeit the common law alloweth the child born in second marriage, the first not being dissolved to be lawful, if any of the parents think the marriage good; yet do not the laws of the realm allow the same. But because the first marriage was never lawfully disallowed, but that one man can have but one wife at once, it accounteth the second marriage void; and the child born therein it judgeth bastard: as appeareth by Glanvile, Bracton and Britten.[2]

The situation is a difficult one, for the legitimacy in question is that of the queen. Mary had been allowed to succeed as a legitimate daughter of Henry VIII, although the marriage was annulled on the grounds of incest. If the marriage was a marriage than Elizabeth was a bastard: on the other hand, Henry had tried to annul his marriage with Anne Boleyn by accusing her of a prior contract with the Marquess of Northampton, which, if it had existed, would have invalidated his marriage to Anne and also bastarded Elizabeth.

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2. Strype: Annals of the Reformation VOL.II,ii. Appendix of Original Papers no. VIII

It was to take more than a century to iron out these confusions, and the only solution at the time was to learn the official interpretation of the facts and stick to it.

> To the end therefore that all scruple might be remoued out of the king's mind, and his soul so many yeares polluted with incest, vnburdened, and withall the safety of the Realme, by vndoubted succession of lawfull issue prouided for, she (Catherine) was to be diuorced.[3]

Behind the innocent face of that unruffled pronouncement lurk myriad confusions. It was not known whether the sickly sixteen years old prince had managed to consummate his unhappy union before he died, or what significance it would have had if he did, seeing that the contract might or might not be enough to constitute affinity and hence incest. Barrenness has never been a condition for annulment in English or canon law, and besides Catherine was not barren and her child occupied the English throne. A papal dispensation had been granted for the marriage in any case, but papal dispensations were a matter for bargaining it could be argued, and nothing to do with English justice and legality. At all events, the way to ensure legitimate heirs is not, whatever it be, to put off one wife and take another.

A contemporary view of the problem strikes a quite different note, and indicates a popular disapproval of the machinations of the court, here directed at scapegoat Wolsey. In this case the marriage of Catherine and Henry is taken as valid.

> Laufull wedlocke to diuorce/
> He geueth very lytle force/
> Knowinge no cause wherfore.

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3. Camden. The Historie of the most renowned and Victorious Princess Elizabeth....Composed by way of Annals. 1630. A Sig. B4v.

He playeth the deuill and his dame/
All people reporting the same/
Coursse the time that euer he was bore.
¶ It cannot syncke in my mynde/
That the Cardinall is so blynde/
To make eny soche diuorcement.
Though it be nott in my belefe/
¶ I tell the to put it in prefe/
He doth all he can inuent.
¶ Bitwixte whom dost thou wene?
Bitwixte the Kynge and the Quene/
Which haue bene longe of one assent.
¶ Some cause then he hath espyed/
Which asonder them to deuyde
Is necessary and vrgent.
¶ Nothynge but the butcher doth fayne/
That the good lady is barayne/
Lyke to be past chylde bearynge.
¶ Had the kynge neuer chylde by her?
¶ Is there eny of them alyue?
Ye a Princes / whom to descryue
It were herde so an oratoure.[4]

The legal disputations were carried on in public, and a tremendous flow of polemic literature appeared, much of it under the king's aegis, when the question was being disputed; the conclusion was foregone, especially as the King had married himself to Anne before the decision of the courts was formally reached, and fear of disorder together with fear of the king decided ~~the issue.~~[5] Few wished to die on the stake like Thomas Abell, the author of Invicta Veritas and accomplice of the nun of Kent. However it must be understood that the defenders of Henry's action were also defending a vexed principle, and attempting to distinguish truth as a basis for a new legality. For the Catholic hierarchy the law had always been flexible in its application to human cases, and at worst a decision ex cathedra could, for all practical purposes, relieve the individual conscience of responsibility. But for the earnest Northern reformers there had to be a law which could be ministered without doublethink.

4 Rede mee and be nott Wrothe...Arber Reprint, 1871. From edition of 1528, printed at Strasbourg by John Schott. P.51.

He playeth the

Royal marriages were not the only ones to be disputed in public polemic. Robert Beale, the famous champion of marriage, as befits his pronounced puritan bias, produced arguments on two other celebrated cases, Argument touching the Validity of the marriage of Charles Brandon, Duke of Suffolk, with Mary, Queen Dowager of France, and the legitimacy of Lady Frances, their daughter, in MS in the Cambridge University Library, and A large discourse concerning the marriage Between the Earl of Hertford and Lady Catherine Grey. On a humbler level, Borgarucci, a court physician was involved in a court case lasting several years with Sir William Cordell, in whose house his wife, or the woman he thought was his wife, was living, to find out whose wife she in fact was. There are many more examples, easily traceable in exalted levels of society, which give to wonder how much confusion must have prevailed among the ignorant who could not afford, or were not allowed, or did not know how to follow the law in these matters.

The causes of this confusion are of course manifold and some of them very distant indeed from our subject. The early Church had established a working compromise between local marriage customs and canon law and church doctrine, themselves largely based upon Roman law. In the North a vastly dissimilar system to the Roman one prevailed. A Saxon bride, for example, had no thought of consenting to her marriage or of loving her husband. The property transfer was the most important part of the ceremony, and the Church, unable to remodel it entirely, gradually managed to increase her hold over the institution, even to the point of absorbing the old pagan ritual in her own.

The confusion between both sorts of influence and their meaning can be illustrated again from the worthy Sir Thomas Smith, who delved about with the Renaissance anthroplogists interest into some of the vestigial traces of another ritual and morality in the wedding service...

> I thinke amongst the old Romans those marriages which were made per coemptionem manum, and per aes and libram made the wife in manu et potestate viri, whereof ~~xxxxxxxxxxxxx~~ also wee had in our old lawe and ceremonies of marriage, a certain memerie as a view and vestigium. For the woman at the Church doore was given of the Father or some other manne of next her kinne into the hands of the husband, and he laid down gold and silver for her upon the Booke, as though he did buy her, the Priest belike was in steed of lipréens: our mariages be ~~xxxxxxxxxxxx~~ estemed perfect by the lawes of Englande when they be solemnised in the Church or Chappell, in the presence of the Priest and other witnesses. And this only maketh the husband and the wife capable of all the benefites which our lawe doth giue vnto them and their lawful children.5

Hooker on the other hand, sees the gift of gold and silver, carefully preserved in the Marriage Service in the Book of Common Prayer, which he was defending from the extremists, quite differently,

> The custom of laying down money awemeth to have been derived from the Saxons, whose manner was to buy their wiues,5a.

and his editor, Keble, adds the relevant citations from Saxon Law, and a contemporary German legal historian.

The question of ~~x~~survivals in the ritual is a trivial one, except in so far as it illuminates the unsatisfactory nature of the fusion between the ancient common laws of England and canon law, begun by slow Augustine and his gormless colleagues and never satisfactorily finished.

5. op.cit. Sig. Q4 5a. Ecclesiastical Polity Book v, ch. lxxiii - in Keble P.548.

If we look at the form of espousal laid down in 946 we can see the very contract on which the law of dower and succession in England was based, and nothing is more unlike it than the common practice of the sixteenth century.

Too big a jump! Insert 4th Law Council

1. If a man will marry a Maid or a Woman, and she and her Friends so please, then it is fit that the Bridegroom, according to God's law, and common Decency, do first covenant and promise with him that acts for her, That he desires to have her on condition to retain her according to the Divine Right, as a Man ought to retain his Wife; and let his friend give caution for that.

2. Let it be known, who is bound to maintain (them) and let the Bridegroom promise this, and afterward his Friend.

3. Let the Bridegroom declare with what he endows her, and on Condition that she chuse (to comply to) his will.

4. And with what he endows her, if she outlive him. If it be so agreed, it is just that she have right to half his Estate, and all, if there be a Child between them, unless she marry another Husband.

5. Let him finish with a pledge of his promise, and let his Friend be surety for it.

6. And if they are agreed as to all the Particulars, then let the Kindred take their Kinswoman and wed her to him that woo'd her for a Wife, and an honest Life: And let him that was principal in making this Match take Surety to this Purpose.

7. If they will marry(her) put of her land, into the land of another Thane, then her expedient is, that (the Bridegroom's) friends give her security that no hurt be done unto her, and that, if she incur any forfeiture, they are capable to perform the part of Kindred in making Satisfaction; if she has not Wherewithal to do it herself.

8. The Mass-Priest shall be at the Ceremony Marriage, who shall, according to Right, celebrate their coming together with God's Blessing, with

xxx all Solemnity.

9. It is good to take care that it be known that they are not afar off related; lest they be again separated, who were at first wrongfully put together. 6

This is the situation that the protestant pleaders sought to reestablish in the sixteenth century. The Church here has no room for the enormous body of legislation and subsequent dispensation that the decay of this rigid settled social order enabled her to develop. The marriage is a public action, acutely conscious of its legal role, and only dimly aware of its spiritual one. The mass-priest was to be at the marriage, it was not to come to him at the church door, and he was not to join the parties, but merely to bless them. It has always been canon law that the ministers of the sacrament of matrimony are the bride and groom, but in this case it seems rather that the kinsfolk and friends are in control. Vestiges of this situation remained in local secular ritual right up until the Interregnum, and even afterwards in isolated areas, in the carrying of the spouses to church by bride-knights, and the declaration of espousal to the dayesman. But, at the same time, it was impossible to turn the clock back: the bride and groom were too important in their own right for the Puritans to succeed in passing legislation that marriage without consent of parents was invalid, and the antiquarianism of the Renaissance remained strictly circumscribed by their own requirements and motives for pillaging the past. Moreover the social context of the institution was now quite altered.

Book of Common Prayer

6 Johnson's Canons (i.e. A Collection of All the Ecclesiastical Laws, canons, Answers or Rescripts with other Memorials concerning the Government Discipline and worship of the Church of England from its first foundation to the conquest... and all the Canons since the Conquest... by John Johnson M.A..... LONDON printed for Robert Knaplock... and Samuel Ballard... MDCCXX.) Sig. T4.

The unsatisfactory nature of the compromise was most evident in the unsatisfactory relations between the legal and canonical exponents of marital law, and attempts were made throughout the English Reformation to break the hold of the ecclesiastical courts and effectively to take control of the insitution out of the hands of the Church altogether, even to the point of treating it as a civil contract pure and simple. The attempts, of which the 39 Articles of 1552 were not the first, were in the long run unsuccessful, for a variety of reasons, not the least being the reactionary attitude of the Queen to all religious and specifically marital questions, and the sheer difficulty of marriage legislation which will affect the already married before its benefits can be felt.

For the common lawyer marriage was a simple contract and its legality and publicity were its most important features.

> Our law considers marriage in no other light than as a civil contract. The holiness of the matrimonial state is left entirely to the ecclesiastical law: the temporal courts not having jurisdiction to consider unlawful marriages as a sin, but merely as a civil inconvenience. The punishment therefore, or annulling, of incestuous or other unscriptural marriages, is the province of the spiritual courts: which act pro salutae animae .7

Blackstone's Commentaries were written long after this period, and the laws had settled into a working relationship less confused and exacting than that which prevailed in time of popery. The difficulty arises when the Church is the legislator as to the validity of any match, so that the common lawyers' decision must be based upon it. It is significant that much of the legislation he quotes dates from

7 BLACKSTONE'S Commentaries on the Laws of England in 4 books... 14th Ed. London 1803 - (Openings numbered) 433.

the sixteenth century. Henry passed a great deal of marital legislation, one act in particluar preventing the ecclesiastical courts from annulling any match after the death of the parties, and another limiting the impediment of consanguinity to the Levitical degrees. A valiant attempt was also made to abolish pre-contract as grounds for voiding of marriages, if it was not followed by consummation and issue,[8] but oddly enough such a desirable piece of legislation was repealed by the statute 2 & 3 Edward VI, c.23. with a strongly reactionary preamble sounding oddly from the fast workers of the Edwardian Reformation. To deepen the confusion, Mary I repealed all the Henrician marriage legislation, and Elizabeth reinstated all but that repealed by Edward VI. The ability of the state to legislate now in matters of validity is evidence of the advantage of having a king who is also head of the Church, but all his difficulties were not to be resolved so easily: the doctrine of marriage had to be sifted with the object of arriving at a cheaply and efficiently administrable kernel, exactly the opposite of mother churches desideratum.

The canonists, at any rate the Catholic ones, and those who wished to base the teaching of the national church upon what they had learnt as churchmen trained in the old manner, insisted upon matrimony as a sacrament, having its chief field of operation in the soul. For sacramental sign there were the words spoken between the contracting parties, reflecting the inner consent, and the sanctifying grace ~~which~~ accompanied it which accompanies all sacraments, and the special actual grace to live together in Chastity and the fear and love of God.

8 25. Henry VIII. C. 22 . 32. Henry VIII. 38.
28. Henry VIII c. 7

The difficulties inherent in this view were rather unfairly expounded by Calvin in The Institution of Christian Religion -

> For, whē they haue ones set out Matrimonie with title of a Sacrament, afterward to call it vnncleannesse, defyling and fleshly filthinesse, how giddy lightnesse is this. How great an absurdity is it to debarre priests from a Sacramēt. If they deny yt they debarre them fro ye Sacramet, but fro the lust of copulation they escape not so away frō me. For they teache yt the copulaciō is part of ye Sacramēt & that by it alone is figured the writing that we haue with Christ in conformitie of nature; bicause man and woman are not made one but by carnall copulatiō. Howbeit some of thē haue here founde two Sacramentes: the one of God and the soule in the betrouthed man and woman: the other of Christ and the Chirch, in the husband and the wife. Howsoeuer it be, yet copulation is a sacrament, from which it was vnlawfull that any christian should be debarred: Vnlesse peraduenture the Sacramentes of christiās do so yll agree, that they cannot stand together. There is also another absurditie in their doctrines. They affirme that in the Sacramente is giuen the grace of the Holye Ghoste: they teache that copulation is a Sacrament: and they deny that at copulation the Holy Ghost is at any time present.
>
> And because they would not simply mock the Church, how long a roaw of errors, lyes, deceites, and wickednesses haue they knitted to one error? So that a mā may say, that they did nothing but seke a denn of abhominations, when they made of Matrimonie a Sacrament. For when they ones obteyned this, they drew to themselues the hearing of causes of matrimonie:... then they made lawes wherby they established their tyrannie , but those partlye manifestly wicked against God, and partlye most iniust toward men. As are these: That mariages made betweene yong persones without consent of their parentes should remayne of force and stabylished. That the mariages be not lawfull betweene kinsfolkes to the seuenth degree: and that if any such be made, that they be diuorced....That spirituall

k kinsfolkes not bee coupled in mariage. That there be no mariages celebrate from Septuagesima to the vtas of Easter, in three weeks before Midsommer, nor from Aduent to Twelftide. And innumerable other like, which it were longe to reherse... 9

The statement is succinct to the point of crypticness and it is necessary to fill in between the lines to explain Clavin's line of reasoning. Calvin is primarily concerned with allowing marriage to priests, and it damages his argument that he must complain that making marriage a sacrament ~~and~~ is wrong at the same time as that forbidding a Sacrament to priests is nonsense. It must be argued however that the connection that Calvin sees between the belief that marriage is a sacrament and the subsequent social abuses is justly perceived, and argues a great deal for Calvin's penetration.

The fact is that as long as the effects of marriage were principally metaphysical they were no fit basis for legal action. An unscrupulous man needed only to consult a canonist to find that he could put away his wife by claiming that he did not give "inner consent" to the match, or that he had contracted affinity previous to the marriage by sexual intercourse with someone actually or spiritually related, (who might be dead at the time of pleading), or that he had contracted himself per verba dei presenti to someone alive at the time of the public and consummated wedding.

Not all such precedents in the ecclesiastical courts were ~~krumped~~ trumped up, of course. There is ample evidence of cases where young people troth-plighted, who had consummated their union, were later forced to marry the object of the parents' choice, and lived in guilt and misery until an ecclesiastical visitation could hear their cause.

9. CALVIN - The Institution of The Christian Religion... LONDON Reynolde Wolfe and Richard Harison. 1561. FOL 159 v

The fact remains that under the Papal system divorce was always possible, if the plaintiff went about it intelligently, and could get the religious authorities to co-operate, and since it was always a matter of annulment re-marriage was allowable; in cases of adultery, it was divorce a mensa et a thoro, the only kind of separation of validly married people which the Church recognises, which is simply permission to live apart. The situation reflects the unsavoury diplomatic wisdom of the Renaissance Church and monarchs were not slow to avail themselves of it, until it became a field for bargaining between the Crown and the papacy, as it did in the case of Henry VIII.

By a proliferation of impediments, then, it had become very difficult to marry validly in the sixteenth century, although to marry was very easy indeed.

For example marriage was forbidden to all those related within the seventh degree, who are not to be "coupled in marriage, nor cohabit in marriage" which meant that such an alliance had to be annulled.[10]

The law was difficult for ordinary men to interpret for the ways of calculating consanguinity were legion, as William Clerke pointed out rather testily in The Triall of Bastardye .

> This compilation(verily) in degrees (of consanguinity) in this kind inconsiderately, that is to say, without regard of the laws and canons, how they repute the same, begat in former ages no small error in Genealogies, the Holy Fathers numeration, and ancient computation of the

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10 e.g. Anselm's Laws at Westminster 1102 and the relevant section 17 in Corboy's Canons of 1125 which indicates what disorders had arisen from this enactment.. vide Johnson's Canons Sig. B4v and B8v.

Church.[11]

I have already quoted the enactment of Henry VIII to limit consanguinity to the Levitical degrees, repealed by Mary and reinstated by Elizabeth, but it was not enough to set aside doubt, and in 1563 the Archbishop of Canterbury published a table, to which a pamphlet of 1584 rather exasperatedly refers the faithful.

> Item, that no persons be suffered to marry with in the Leuiticall degrees mentioned in a table set forth by the Archbishop of Canterbury in that behalfe, Anno Domini 1563, and if any such be, to be separated by order of law.[12]

In 1576 the Bishops put out a Bible in which the matter was expounded in a table, for familiar reference...

> In Leuiticus at Chap.xviii are set two Tables in columns, the one entitled degrees of kindred which set matrimony as it is set forth. Levit.xviii. The other column is entitled Degrees of Affinity, which set matrimony as it is set forth.[13]

But the confused faithful had seen too many changes to be so easily reassured: as John Selden

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11. The Triall of Bastardie: That part of the second part of Policie, or maner of gouernment of the Realme of England: so termed spirituall or Ecclesiasticall. Annexed to the end of this treatise, touching the prohibition of marriage, a table of the Leuiticall. English and Positiue canon Catalogues, their concordance and difference, By William Clerke. n.d. London, printed by Adam Islip. n.d. 4v. The inclusion of the table, which is incomprehensible, is itself evidence of confusion.
12. Advertisements given partely for due order in the publique administration of Common Prayers and using the Holy Sacraments. London, pri. Thomas Danson, 1584.B2
13. Strype: Annals, Vol.II,ii, p.77.

observes, generations later, in Table Talk:

> Some men forbear to Marry Cousin Germans out of this kind of scruple of Conscience, because it was unlawful before the Reformation, and is still in the Church of Rome. And so by reason that their Grandfather, or their Great Grandfather did not do it; as some men forbear flesh upon Friday, not reflecting upon the Statute, which with us makes it unlawful, but out of an old Score....But for the lawfulness there is no colour but Cousin-Germans in England may marry, both by the law of God and man: for with us we have reduc'd all the degrees of Marriage to those in the Levitical Law and 'tis plain there's nothing against it. As for that that is said Cousin-Germans once remov'd may not Marry, and therefore being a further degree may not, 'tis presum'd a nearer should not, no man can tell what it means.[14]

To complicate the question of consanguinity, affinity was incurred by sexual intercourse with any one, affinity directly parallelling consanguinity with all her blood relations. The Council of Trent recognised the evil inherent in this, despite its obvious handiness as a source of revenue, and declared that affinity was thenceforth only contracted by valid matrimony. But in England the confusion remained, and its genuineness springs partly from the fact that the nowadays obvious rationale behind prohibition of marriage of blood relations was as good as unknown to the Elizabethans, whose opinions on the question were directly Aristotelian, so that the arguments of affinity held. However they were not so metaphysically oriented that they could accept the decrees on spiritual affinity promulgated in England in the twelfth century.

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14. John Selden: Table Talk. 1689, carefully edited by Edward Arber. London, Murray and Son, 1868. p 70.

> Let no child be held at Confirmation by its Father or Mother, Stepfather of Stepmother, and our will is, that this Prohibition be often publish'd in the Church by the Priests that Parents and others who hold children at Confirmation may know that a spiritual Relation is contracted at this Sacrament as well as at Baptism. [15]

This means that as well as the relations the child has by blood, and by affinity, he has two whole sets of spiritual relations into whose family within the seventh Levitical degree he may not marry. This might well mean that a whole village could not afford him one opportunity of marrying that did not involve incest. Of course it could be put aside by dispensation, but Jack and Joan understand very little of this. Apparently the legislation was originally designed to prevent the ingrowing of narrow feudal familial groups, and of forcing greater intercourse between Lord and Lord, but by the sixteenth century any advantage of the system had long since vanished from popular view, and they saw it only as a means of filling the treasury, or forcing young folk to fornication, or what was worse, religious celibacy.

In 1571 the Reformatio Legum Ecclesiasticarum, ex autoritate primum regis Henrici 8 inchoata; deinde per Regum Edouardum 6, provecta, adauctaque in hunc modum, atque nunc as plenorum ipsarum reformationibus in lucem edita, as the title illustrates, sought to pursue the lines of legal reform already begun and abolish among other things spiritual affinity, which was done, but other reforms already advised were not to come to pass until the late eighteenth century.

Archbishop Reynolds Constitutions 1322 from Johnsons Canons, 1720 ~~Z2~~ Z2v

It is of course law that no contract entered into under coercion is valid, but the ecclesiastical law needed far less proof of coercion than does the common law. Because of the the sacramental nature of matrimony, the solemn avowal that consent had not been freely given was enough to invalidate it, for matters of the conscience are unseeable and undivinable by any other means.

In Laurence Vaux's Catechism, he outlines the Church teaching on inner consent...

> If any man and woman speake the formall wordes of Matrimony for feare of their parentes or frindes or for any euill purpose, without consent of hart: they be no man and wife before God. If either of the do vse carnall cpoluatio with other that gaue no cosent in hart they commit fornication, as long as he or she continue in the same minde: wherein the next remedy is, to geue consent of hart to that which was spoken before in wordes, and so be they man and wife before God.[16]

It is clear to see that the disposal of property and establishment of lawful inheritance cannot be left to the discretion of Churchmen upon such curiously unverifiable and even unstable evidence, which in all honesty could be terribly difficult to establish for an innocent and scrupulous soul, especially as many a marriage was clapped up by parents and friends and many a bride cajoled, threatened or beaten into accepting her husband.

The well-worn plea of pre-contract was another stumbling block for the legal reformers. The words of taking to wife in the present tense, spoken with full consent constituted matrimony, and the promise

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Laurence Vaux: A Catechisme or christian doctrine necessarie for children and ignorant people.....in the Catholic Church. 1583. p.73.

of eventual matrimony together with carnall commerce also did so. Any marriage contracted later, with full publicity, parental consent, <u>in facie ecclesiae</u>, could be annulled by it. On the other hand, if there were no witnesses living, and one of the partners denied it, the Church retreated into human fallibility and left the whole matter to the individual conscience. Small wonder that the legal reformers swept it away in the ~~untrammelled onward career of the Reformation under Edward, but Elizabeth stoutly reconstituted~~ reign of Henry, but in Elizabeth's reign it was just as troublesome as ever. Laurence Vaux, Catholic apologist and adviser to Popish recusants under Elizabeth, states the Church teaching in a way to stress its flimsiness...

> If carnall copulation followe the spousage or truth-plight, with this mind to be one to the other, as man & wife, it maketh matrimony: but if it be for the intent of fornication, it is no Matrimony.[17]

But the Church defended its right to legislate in such matters regardless, and there is evidence that they had been challenged in earlier times.

> As the Conjugal Covenant being instituted by God is not subject to human power, so ought not the solemnisation of it in the sight of men... be open to the opposition of any man. Therefore we strictly forbid any man to hinder the solemnisation of Matrimony (lawfully contracted) in the face of the Church. And let the Bishops whose concern it is to protect what is sacred, take care duly to punish such presumers.[18]

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17 Vaux. op.cit. p.41.

18. Johnson's <u>Canons</u>:the Legatine Constitution of Othobon. 1268.

P8

The plea of pre-contract was a very useful one, Henry invoked it several times, people considered Elizabeth unable to marry because of a pre-contract to Leicester for a time[19], Margaret Tudor, widow of James IV of Scotland nullified her marriage to the Earl of Angus by a fictitious plea of pre-contract and proved that Lord Methuen had been cousin 8 times removed to the Earl of Angus. The examples are too numerous to list, but certain it is that the rich and powerful could manipulate the ecclesiastical courts to suit their dynastic and less savoury purposes. As a glittering example of what could be done, we have the wicked Duke of Suffolk, Charles Brandon, who received the grant of wardship of Elizabeth, sole heiress of Lord Grey, Viscount de Lisle, with whom he rather caddishly made a contract of marriage. The next year he became Viscount Lisle, but when the little girl reached the age of consent she refused to marry him and the patent was cancelled. He was then sent to France to negotiate the marriage of Henry VIII's sister Mary with Louis XII, she being dowager queen of France, but he secretly married her himself and returned, somewhat sheepishly one imagines, to England. However, he had two wives living at the time, ~~Anne Brown to whom~~ to Anne Brown he had been contracted, and ~~of whom~~ he had had himself, her relieved by a dispensation, whereupon he had married a widow, Margaret Mortimer, This match he had invalidated on myriad grounds, just to be on the safe side: she was within the second and third degrees of affinity, and related to his first betrothed within the prohibited degrees of consanguinity and he was the first cousin once removed of his wife's former husband.

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19 Strype: Annals III,i,520.

The annulment granted, he married Anne Brown, by whom he had a child. Then he proposed to Lady Lisle. As Gairdner remarks in the entry in the Dictionary of National Biography, "When all this is considered,,, we can understand pretty well what a feeble bond matrimony was then considered to be," at least, one must add, to an unscrupulous courtier, and evidence seems to indicate that Elizabeth's courtiers found it even feebler.

So the marriage with the dowager queen of France had to be invalid. When she died in 1533 Charles improved his fortune even more by abusing his position as guardian to marry another heiress, Katharine Willoughby, but despite all his machinations the dukedom died with him.

But if the Brandons of the realm could play the game with such ease, the earnest poor were in a different case. Barnabe Googe, wooing his Mary Darrel found himself faced with a prior contract claim by her parents as an impediment to his marrying the girl. The case was eventually brought through Googe's stubbornness before Archbishop Parker who wrote to Cecil -

> "yesterday I haue examined advisedly, hauing not only the yong Gentlewoman before me to vnderstond of herself the state of the case, who remayneth fyrme and stable to stond to that contract which she hath made, as also her father and mother: whom I find the most vernest parents against the the bargaine as I could see.
>
> In fyne I haue sequestered her out of both their handes into the custodye of one Mr. Tufton a right honest gentleman. vntyl, the precontract which is by her parent alleged for one Leonards son, a protonotary be induced. But this may giue occasion to bryng it into the Arches to spend money how be yt I meane to dull that expectation and go plane et summarie to worke, to spare expences which Mr. Leonard and the wilful parents

wuld fayne incur to wery the yong gentleman, peraduenture not superfluously monyed so to sayle the seas with them.[20]

And so the Archbishop circumvented the Court of the Arches and Barnabe Googe, thanks to his connection with the Cecil family, got his girl, probably legally even under canon law, although the puritans would have found the setting aside of the parents' opposition odious in the extreme and a dangerous precedent indeed.

The Archbishop's reference to the expence and tediousness of dragging a case through the ecclesiastical court is one of many in Elizabethan polemical literature. Great scandal was occasioned by the fact that dispensations from many of the impediments could be had quite openly for money, and penances could be turned aside as well, even that of marrying an impregnated woman.

This siluer punishment is it, that defileth honest Matrones, polluteth chast Virgines, and dishonesteth poore Maides, to their vtter shame and vndoyng ~~forever~~ for euer. I saie nothing how the monie receiued for these dispensations is bestowed, how spent, or wherevpon imployed.[21]

While it does not do to take the professional mourning of Stubbes over the state of Ailgna too seriously, this seems a mild enough statement of the woes of poor women who found themselves dispensed of a marriage and left with a flock of bastards.

It seems also quite likely that the poorer folk were forced to wait long periods between visitations in rural areas in order to unravel the marriage tangles that could form so easily, how much worse then, when the only authorities arrived, they declared themselves unable

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20 Barnabe Googe: Eglogs, Epytaphes and Sonettes. 1563 Carefully edited by Edward Arber, London, 1871. P. 12.

21 Philip Stubbes: Anatomy of Abuses. ed. F. J. Furnivall for New Shakespeare Soc. 1877. L6v

to pronounce a verdict which can satisfy the individual conscience, or even assuage the fears of an innocence party as to the legitimacy of his children? For example -

> But nowe what remedye for a manne whyche hath insured and maried him selfe to a woman before God, with a full minde and consent in his hart, and yet forsaketh her afterward, and will not solemnize that mariage, but marryeth another openlye, howe may he saue him selfe from deadly sinne and dampnation, seynge his Prelate by the iudgement of the Churche wyl compel him to continue with the second woman whō he maried openlye...Surely the remedye is very paynfull & daungerous worldlye, howe be it, it is better to fall into the handes of man then into the handes of God. And for so muche as I can learne, the remedye which that man may vse, is this: he must leaue and forsake the seconde woman, and go if he can, and so thynke it good, where he maye escape the paynes of the lawe, and if he be excommuniate, because he wyll not bee with her, and for going from her, then he must suffer it, and so he muste suffer anye other punishment that he shall chaunce to haue therefore...22

Counselling such a move is admirable in one sense, in that it counsells honesty to one's conscience, but its practical repercussions are disastrous, as the parenthetical recommendation to leave the country indicates, and the unfortunate culprit would probably have his goods sequestrated and his children made wards of the crown. Pending the decision of the ecclesiastical court which rests on such curiously intangible evidence, and yet has no inspiration to surmount the necessity of judging from mere externals like the form of words spoken, the ceremony actually witnessed by someone, the Justices could do nothing.

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22 Holsome and Catholyke doctrine concernynge the seuen Sacrementes of Chrystes Church...by the reuerend father in God Thomas Bishop of Lincoln...1558...London, Robert Caly. fol. clxxv - clxxvi.

In a period when church organisation was chronically short of men, due to dissolution of the monasteries, the inroads made by religious persecution in the various reigns, plague and the aftermath of war, and in violent commotion involving complete changes pf personnel and policy, and too often forced to make use of ill-educated men, the confusion of the situation became intolerable.

The Archbishop of Cologne recognised the inherent distress in the situation in 1547.

> But that those cotrouersies, which chaunce ~~xx~~ often about matrimonie may be more commodiouslie delcared and that ignorant persones may be better prouided for, we will appoynt iudgements...[23]

William Aubrey, Professor of Civil Law at Oxford and New Inn wrote a letter to Grindal on "Abuses in the Ecclesiastical Courts" ~~before~~ after the prevailing fever swept him out of office via the arms of a wife in 1559.[23b]

In the reign of Elizabeth the ecclesiastical courts came under heavy fire, although there is ample evidence that the new prelates did their best to circumvent the costly proceedings. In 1569 Master Edward Dering was so bold as to advise the Queen to her face-

> To reforme euyl Patrones, your Maiestie must strengthen your lawes, that they mar rule as wel as lowe... To keepe back the ignorant from the Ministerie....take away your authoritie from the Bishops; let them not thus at their pleasure make Ministers in their Closset, whom so euer as it pleaseth them....Take away Dispensations,

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23. A simple and religious consultation of vs Herman... Archbishop of Cologne and prince Electour...by what meanes a Christian reformation...of doctrine, administration of the deuine sacrementes, of Ceremonies and the whole care of soules... may be begon.....1547...I.D. Fol 248.

23b. In Tanner MS. No. 280 in the Bodleian Library a collection of letters to Grindal in various hands on this subject may be seen. An enquiry was apparently ordered in April 1576.

> Pluralities, Totquots, Nonresidences & other such syns. Pull downe the Court of Faculties the Mother and Nurse of all such abominations.24

In 1571 Strype records an interesting case of matrimony, interesting to us because of the manner in which the church and common lawyers cooperated. One Minn had married a young widow of one Gray, who was barely twelve years old when she married him, and died a few days after. The question was whether she might have a dowry as Gray's widow. The case came up in the Court of Common Pleas at Westminster and was thence referred to the Bishop of Norwich. The Master of Requests, for some reason which does not seem clear, wanted him to agree for Minn, while he himself consulted eminent civilians Dr.Gibbon, Dr.Dale and Dr. Huick. Strype does not record the decision, but the case was much discussed, the husband not having reached the age of consent to the match and thence there being no match in the canon law, and the common law appearing to indicate that the form of words in public was enough to ensure the girl of her share of her child spouse's worldly goods.25 It is interesting that the common lawyers kept their hold om the case, but felt obliged to consult the church all the same.

In 1572 the Admonition to the Parliament listed the loathed ecclesiastical courts among the abuses to be aorrected, in characteristic language...

> You must plucke downe & vtterly ouerthrowe without hope of restitution the Court of Faculties, from whence not only licences to enjoy many benefices are obtained.... but al thinges for

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24. A Sermon preached before the queenes Maiestie By Maister Edward Deering the 25, day of February Anno 1569. Imprinted at London by Iohn Awdeley. Fi

25 Strype Annals p.168. Vol II. pt.i.

for the most parte, as in the courts of Rome are set on sale, licences to marrie, to eat fleshe in times prohibited, to lie from benefices and charges, and a great number beside, of such lyke abominations. 25

Again in the View of Popishe Abuses the charge was levelled again...

This court (the commissaries court) poulleth parishes, scourgeth the poore hedge priestes, ladeth churchwardens with manifest perjuries, punisheth whoredomes and adulteryes with toyishe censures, remitteth without satisfying the congregation, and that in secret places, giveth out dispensations for unlawful mariages, and committeth a thousand such like abominations. 26.

In the Second Admonition to Parliament the accusation was more specific.

Also of spirituall, yea, and many carnall causes also, and that so handled that it would greeve a chaste eare, to heare the bawdie pleading of many proctors and doctors in those courtes, and the dumners, yea, and the registers themselves, master Archdeacon and master Chauncellor, are even faine to laughe it oute many times, when they can keepe their countenance no longer. An unchast kinde of dealing ~~xxxx~~ of unchast matters: when folke maye not marrie: what degrees may not marrie, and much more adoe about divorcements then either God or equitie woulde.... 27

So it was not surprising that, in view of the fact that the ecclesiastical courts served neither God not equity, ~~xxxx~~ a petition should be made to Burghley for a secular register of births, deaths and marriages...

That it shall tend to the great good of many to have certificates either for lawful copplement in matrimony, or in case of bastardy... That it will be a curb for those who pretend to be sundry times married.[28]

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25 Puritan Manifestoes ed. W.H.Frere and C.E.Douglas, London, Society for promoting Xtian Knowledge,1907. p.12
26. ibid. p.34 27. ibid. p.127.
28. Strype, Annals, Vol.IV, p.64 (1590)

Mother Church had finally succumbed to pressure to redress abuses and provide a single marriage form which alone was to be valid at the Council of Trent, in which it was laid down that privy contracts were to be null and of no effect. Laurence Vaux advised the faithful thus-

> Whereas holy churche hath euer detested & forbidden priuie cõtracts, yet vvhen any such haue bene done with cõsent & formall wordes, it hath bene mariage before God, vvhether they haue had vvitnesse or not. Albeit this matter of priuie Contractes, being thøroughly examined at the last generall councell holde at Trent, the inconuenience that did arise therof diligently vveighed & cõsidered: for the netter safeguard of the peoples consciences, & auoiding contention, it was thought good to the holy Ghost and the Fathers assembled in the said generall councell, to make all priuie contracts void and of no strength, except the cõtract be made in the presence of the priest and other vvitnesses: so that sfter the publicatiõ of the said generall councell, all such priuie contractes without the witnes of the priest & others be voide and of no effect, but that the parties so priuily contracting may laufully marry any other.[29]

The tail of this pronouncement contains the sting: all marriage legislation must first affect marriages already contracted, and one shrinks to reflect what effect this must have had upon those folk married by common law ceremonies elsewhere in Europe. The action taken by the Church is a curious one, for the doctrinal principle, which remains unchanged, is here limited by social necessity, a circumstance which goes a long way to prove how extremely the ill effects of the former attitude must have been felt. In England however, the point was never ceded, perhaps because anti-Papist

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29. Vaux: Catechisme (1583) (vide supra) p.42.

feeling ran so high that no leaf could be taken from a Papist's book, but more likely I should think because a tradition of marrying in the face of the community, without solemnisation before the Church had grown up in the times of trouble, and people were simply not sure, anyway, what sort of a priest one was supposed to get married in front of. At all events, while the English church trumpeted its insistence upon banns uselessly throughout the century, the evil of privy contract continued, and some of the most scandalous examples occurred after Elizabeth's death, one being the defection of Essex's son Robert, himself son of a private and hotly disputed union.

However, it seems fair to say that the common law traditions with regard to marriage were absorbed fairly painlessly into Coke's legal reforms, and the hangover from canon law is what proved intractable. Like the Romans, the Saxons had always held that publicity, the giving of the bride to her husband by the family, was what distinguished marriage with full rights from concubinage, wheras the Church had more heavily stressed the principle of consent. "Non concubitus sed consensus facit matrimonium say the civilians" claimed the odd pamphlet Rapta Tatio in 1604,[30] recommending the marriage of England and Scotland, and it was right, except the civil law principle was that no contract entered into under coercion or duress was valid.

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30. Rapta Tatio The Mirrour of his Maiesties present Gouernment tending to the vision of his whole Iland of Brittonie....At London. printed by W.W. for S. WAterson 1604. Sig.H3

The Roman law had used the distinction to distinguish the marriage of free citizens from the relations involving slaves, and the principle of consent went along with whole social context of the action.[30] The church saw the matter of consent rather more metaphysically, and stressed its utter freeness and sincerity to a point where any decision involving the nature of the consent became very difficult to make. The two poles of such a position can be illustrated from two Catholic publications of rather different kinds, the first, the Bishop of Lincoln's book on the Sacraments of 1558.

> ...the like doubte or ambiguitie may chaunce vpon the other syde, that is, if a man and woman come together to ensure themselues and do day the very formall wordes of the Sacrament before sufficient recorde, and yet the man doth not consent in hys harte... but saith the wordes for feare of displeasing his parentes or frendes, or els for some other noughty purpose, and likewise of the woman, Nowe these two persons be husband and wife by the iudgement of the Churche and before man, and if any of them would forsake the other, and be maried againe ~~and forsake the other~~ they may not so doo, though they bothe graunt that they did neuer consent to be man and wife when they were insured, no nor they bothe agree to forsake other, and yet they be not husbande or wife maried before god, and that is because they did not wyll and consent in their hartes so to be when they said the wordes of matrymonie. 31

Under these circumstances the couple were forced to live together in whoredome in their own consciences, although in fact there are legal precedents for a marriage being dissolved on these grounds. John Bird, the Bishop of Chester was deprived by Mary as a married cleric, but repudiated his wife on the grounds that

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31 Thomas Bishop of Lincoln Holsome and Catholike Doctrine 1558

30b. See Hooker - Ecclesiastical Polity Book V Chap XXIII, §7.

he had married her against his will, and was reinstated, which caused something of a scandal, especially as he is reputed to have kept another man's wife in his house with impunity after his reinstatement.

This attitude toward consent had probably developed as an effort to combat the Germanic customs of bride-selling and bring them more into line with canon law, which had taken Roman customs as its norm. But if girls and boys who had married under duress like poor Margaret Paston who was beaten every day for three months lived through agonies of conscience because they had been forced into whoredom (indeed in many cases the only alternative would seem to have been martyrdom) on the other hand, as John Myrc laboriously instructs his illiterate parish priests in the fifteenth century...

> Yet teche hem a-nother thinge,
> That ys a poynt of weddynge;
> He that wole chuse hym a fere,
> And seyth to hyre on thys manere,
> "Here I take the to my wedded wyf,
> And there-to I plyghte þe my trowþe
> Wyth-outen cowpulle or fleschly dede,"
> He þat wommon mote wedde nede;
> For þaghe he nor ho a-nother take,
> That word wole deuors make. 32

In a sense there is a consistency in this doctrine, yet the real problem arises with the significance of "cowpulle or fleschly dede" (incidently the inverted commas are misplaced in the copy-text). A law was promulgated in England, that after two instances of copulation between the same unmarried pair, both were to be compelled to take oath that the next time would constitute a trothplight, a kind of conditional espousal (where be your arguments of free consent now?) which could be enforced by the local ecclesiastical authority,[33] At the same time the Church had a great reverence for companionate marriage, of which many

32 John Myrc - Instructions for Parish Priests. E.E.T.S 1902 p.6.
33

instances are to be found in Catholic lore, the model of all others of course being that of Joseph and Mary, which the Church stoutly refused to call no marriage, and one of the least popular and most coolly sneered at by Renaissance historians, the disastrous one of Edward the Confessor. At the same time, non-consummation had to be a ground for divorce when powerful princes required heirs. The question was debated several times by canon lawyers, never quite satisfactorily, for the free consent of the parties could never be gainsaid or set aside.[34]

Another question on which church lawyers were unable to decide effectively was that of the age of the contracting parties.

> "Even the Church could say no more than that babies in the cradle were not given in marriage except under the pressure of some urgent need." 35

Urgent need there often was: in the case of a prince he could often barely wait for an infant to be born and its sex to be disclosed before using it to cement an alliance by being promised per verba dei presenti to an ally. Thereafter, until the child reached the age of consent, the alliances might be chopped and changed, with dispensations of course, until it was finally solemnised. Arthur Tudor's marriage with Katharine was arranged before he was 2 years old and several forms of marriage were gone through before her arrival in England. Poor little Edward was betrothed to Mary of Scotland, and Elizabeth daughter of Henri II. Elizabeth of York was contracted to George Nevill, duke of Bedford, when she was 4, until he fell from grace, and then to the Dauphin until he withdrew from the match. Henry Fitzroy was involved in a great series of alliances

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35 A History of Matrimonial Institutions chiefly iin England and the U.S. George Elliott Howard. London.1904. p.358.

able promerei dotem et virum sustinere. Fleta. li.5.cap.22. Litleton lib. primm. cap. 5. which Bracton ~~xxxxxxx~~ loco citato doth notwithstanding limit at 12.yeares. Thirdly at twelve yeares she is able finally to ratifie and confirm her former consent giuen to matrimonie. Fourthly at 14. yeares sge is enabled to receiue her land into her owne hands and shall be out of ward, if she be of this age at the death of her ancestors, Fiftly, at sixteene yeares she shal be out of ward, though at the death of her ancestor she was within the age of fourteene yeres. Instit. Iure com. cap. 24. The reason is because then she may take a husband able to perform knight seruice. Sixthly at Twentyone years she is able to alienate her lands and tenements. 36

Even though these ages seem young enough to us they were not so for the Elizabethans who imagined in the words of the Canons that theirs was a case " of urgent necessity for the good of Peace".[37] Children were married in the arms of servants who spoke the words for them. Little John Somerford was three when he married Jane Brerton; the deponent described the ceremony thus:

> he carried the said John in his armes, being at tyme of the said mariage about iij yeres of age, and spake some of the wordes of Matrimnoye, that the said John, bie reason of his young age colde not speake hymselfe, holdinge him in his armes all the while the wordes of Matrimonie were in speakinge. And one James Holford caried the said Jane in his armes, beinge at the said tyme about ij yeres of age, and spake all, or the most parte of, the wordes of matrimonie for her; and so held her still in his armes. 38

I have found it desperately difficult to establish the ages of ~~marrixxgx~~ spouses in the sixteenth century, mainly because in court records no depositions are usually to be found. Wills are often revealing in that

36. The Interpreter or Booke Containing the Signification of Wordes &c. John Cowell. At Cambridge printed by Iohn Legate. Anno 1607 Sig C 3
37 Archbishop Edmunds Constitution §30. Johnsons Canons Sig. Ib.
38 Chels Matriages Divorces Ratifications in the Diocese of Chester MDLVI-1 ed. Fred. J. Furnivall. E.E.T.S. 1897 p26.

children under the age of consent are often listed as married, but the work in ascertaining the actual practice of marriage for the masses in England in the sixteenth century must await the techniques and the diligence of a better historian than I am.

We do not however have to rely solely upon the evidence published by the indefatigable Furnivall from the Chester records for evidence of child marriages - Thomas Becon, in the Boke of Matrimony wields his best fulminating style against the parents who wed tiny and not so tiny children for their own ends.

> Those Parentes therefore, which take vnto them such and so great authority and power ouer their Children, that they many times marry them to suche for lucres sake, as the children can by no means fauour, nor abyde to dwell with them, moued thereunto peraduenture with good and probable reasons, which make them to abhorre their company) are greatly to be discommended. For to whom is it unknowen, that many parentes at this day, namely such as be of the nobility, do handel their children, as the Grazier doth his oxen and shepe... and that also many times in so tender and yonge yeres, as neither of them bothe knoweth, what Matrimonie meaneth nor what betwene them is concluded and confirmed. But to what point such mariages come, we learne dayly by experyence, vnto the greate derogacion of the glory of holy and honourable matrimony.[39]

He had also mentioned it as a cause of the derogation of matrimony in an earlier worke, the Golden Boke of christen matrimonye of 1542.[40] That the evil persisted is evidenced by Stubbes in 1583.

> Litle infants in swadling clowts are often maried by their ambicious Parents and frends, when they know heither good nor euill; and this is the origene of much wickednesse,& directlie against the word of God, and examples of the primityue age.[41]

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39 The Workes of Thomas Becon...1564..London..Iohn Daye The Boke of Matrimonye Fol.DCXVIIIv.

40. John Mayler for John Cowgh. London 1542 Sig B3 & E1.

41. The Anatomy of Abuses. loc.cit. Sig H5

To counterbalance the evil of espousing children below the legal age of consent, the fact that many a young heiress was free to dispose of herself caused some rather flurried legislation, for at her marriage her inheritance became her husbands and many a young adventurer of the new mould prowled the countryside with his courtesy book and some ready-made sonnets to beguile some giddy maid. The hazards to such a young lady might be even more unpleasant, as Fitzherbert reveals in the Newe Boke of justices of Peace (1554).

> Where as some men by dissimulation and other meanes faine themselues to be louers to women vnmaried as Maydens or wydowes, hauing great possession and substance of goodes, and get such wome into their possessions, and conuey the into such places, fro whence they wyl not suffer the to go at their liberte except they wyl make to the obligacions of great sommes to be payed vnto the, or cause the to be bounden in estatute marchautes or sometyme wil compel the to be maried at their pleasure which if they refuse, the to leuye vpo the ye sumes contained in ye same obligacions & statutes:... the party greued shall haue a writt out of the Chauncery. 42

The trouble was such that Mary was obliged to pass special legislation that whosoeuer married a woman child under sixteen years without consent of parents or guardians would be heavily fined or imprisoned for five years, abd her estate was to pass to the next heir during her husband's life. Feeling on the question ran high and Becon wrote strongly of

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42 The Newe Boke of Iustices of peace made by Anthony Fitzherbard Iudge lately translated out out of Frech inot Englishe and newlye corrected. The yere of our Lorde. 1554. Fol. 135v

43 4 & 5 Ph. & M. c.8. vide Blackstone op.cit. p.437

it in 1541, and put the precise case which was to cause the Puritans to demand that marriage without consent of parents be voidable by law, without success. The legislation which lays down that those under the age of twenty-one may not marry without parental consent was not enacted until the reign of George III.

> When a wicked, sotell & shamelesse woman entyceth an ignoraunte yonge mā frō his father, which with great expenses trauayle and laboure hath brought him up, whan she blyndeth him with loue and at the laste getteth him awaye vnder the title of mariage: Or whan a wanton and fayre-tongued fellowe entycethe a damesel from her ~~fakher~~ mother and than (vnder the tytle of mariage) conueyeth her awaye, what is it elā but menne stealyng. 44

And with a touch of bombast -

> How many bothe younge men and younge maydes haue we knowne in this oure age to be begyled thorowe false, sutle, craftye and flatteringe woordes, and thorowe vyle and tryefling giftes. How many have been craftly stolen away from their parentes...?

and much more in the same vein.

Contemporary legislation on the subject was feeble enough, as witnesses the Booke of Certaine Canons printed in 1571, cum priuilegio, in which it is set down that the Chandellors' Commissaries and officials of the local ecclesiastical courts

> "shall also warne their parishioners, that for great and weightie causes it was appointed in the couocation by the Reuerend father in God, Matthew Arhhbishop of Canterburie and other bishops, that chyldren mary not without consent of their parentes, and that no young man hath power in himselfe to contract marriage before he be xvi. yeares of age, and no mayde before she be xiiij yeares olde. 46

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44 The golde boke of christen matrimonye, loc. cit. fol. xii.

45. The boke of Matrimonye loc. cit. fol. DCXXIII

46. London. John Daye. Sig. C.i.

The utterance is typical of the canon law in that no penalties and no meansures for proceeding when the law is contravened are given and consequently it has little more force than an admonition, which is indeed the form in which it is expressed; moreover the raising of the age of independent consent to marriage from by two years will hardly defeat the clandestine marriage problem, especially as the canon law always relied on the criterion that the spouses be habiles ad matrimonium, and consummation would clinch the case for the illicitly wedded, regardless of age. Juliet, for example, wanted a few days to her fourteenth birthday, as we learn before we see her, and yet the real nature of her marriage is never questioned.

The confusion behind such pronoucements is also evidenced by the fact that their parents and friends continued to marry little people until well into the next century, and the law does not make it clear whether anyone else had power to marry those who had no power to marry themselves, although the sacramental principle should be that the minister act freely and voluntarily.

Elizabeth reinforced Mary's legislation on the carrying off of heiresses in 39. Eliz. 1.cap.9. but there is plenty of evidence that it continued, and that the remedies for the injury once inflicted were not satisfactory, seeing that the young lady, or gentleman could not be unmarried, which was what was wanted.

It might be wondered why exactly England did not profit by the decisions of the Council of Trent to regularise her own marriage legislation. The answer as far as I can ascertain seems to be that in England,

The utterance is typical of the canon law in that no penalties and no meansures for proceeding when the law is contravened are given and consequently it has little more force than an admonition, which is indeed the form in which it is expressed; moreover the raising of the age of independent consent to marriage from by two years will hardly defeat the clandestine marriage problem, especially as the canon law always relied on the criterion that the spouses be habiles ad matrimonium, and consummation would clinch the case for the illicitly wedded, regardless of age. Juliet, for example, wanted a few days to her fourteenth birthday, as we learn before we see her, and yet the real nature of her marriage is never questioned.

The confusion behind such pronoucements is also evidenced by the fact that their parents and friends continued to marry little people until well into the next century, and the law does not make it clear whether anyone else had power to marry those who had no power to marry themselves, although the sacramental principle should be that the minister act freely and voluntarily.

Elizabeth reinforced Mary's legislation on the carrying off of heiresses in 39. Eliz. 1.cap.9. but there is plenty of evidence that it continued, and that the remedies for the injury once inflicted were not satisfactory, seeing that the young lady, or gentleman could not be unmarried, which was what was wanted.

It might be wondered why exactly England did not profit by the decisions of the Council of Trent to regularise her own marriage legislation. The answer as far as I can ascertain seems to be that in England,

as the feudal system decayed, and it became a matter of the marriage of free men rather than serfs, the common folk had been marrying themselves in a public and perfectly satisfactory way. This privilege, especially in a time of religious dissension, when the appointed pastor might not be of the same persuasion as the marrying folk, was jealously clung to, although no-one dared dispute the necessity for a uniform recognition of valid marriage. The existence of fairly widespread secular marriage would explain the request recorded by Strype, in 1590, to issue certificates for marriage, although a register of births, deaths and marriages had been kept compulsorily in every parish since Elizabeth's accession.

The form of the sacrament had always indicated that going to church was an ornament to the contract but not its essential element: indeed, in a typically dog in the manger fashion, the church had celebrated marriage in the church porch, and admitted the couple to the church for the nuptial mass and blessings. The ideal of the secular marriage was thus described in a sermon by the learned divine Bullinger.

> But that this holy know may be the surer it is auaylable that marriages be made holilie, lawfully, & with discretion in the feare of the lord. Let them not be vnwillinglie agreed vnto and made vp by cõpulsion. First let the good liking of their consenting mindes be ioyned in one, whom the open profession of mutuall consent & outward handfasting must afterwarde couple together. Let them be matched together that are not seuered by alliance of bloud and nighnesse of affinitie. Let them couple in one that may marrie together by the lawes of God and theire countrie with the consent & cõusel of their friends & parents. [47]

47 Fiftie godlie and learned Sermons...by Henrie. Bullinger... translated out of latine into English by T. T. student in diuinitie. Imprinted at London by Rolph Newberie.... 1577. p. 227

In less reverent fashion, an old ballad refers to the custom among the lower orders of circumventing the expences and delays of marrying in the venal eyes of the church.

> Faith Boys and Girles, Knaues and trulls,
> ther can be no diuiding,
> They must be matcht and will be pitcht,
> somewhere to haue a biding.
> Tush quoth old Rule, man you're a foole.
> don't those so that haue riches;
> But now they'll preuent the impediment
> for downe goes Cloack & bag & breeches. 48

The canon law had recognised the marriage of the common folk under their own conditions from very early. Pope Nicholas I commented with rare mercy and insight in 866.

> We do not say that any sin is involved if not all this is observed in a marriage...especially since it often happens that some are hampered by such extreme poverty that no help is forthcoming to enable them to prepare such celebrations: and on this account let the simple consent of those whose wedding is in question be sufficient, as the (civil) laws prescribe. 49

Often the public secular contract was regarded as the preliminary to the church ceremony, and the couple were not to cohabit until the church ceremony was concluded, but it must have happened fairly often that no cleric happened by within a convenient interval who would be willing to solemnise the match, and cohabitation occurred often without any church sanction, especially in times of plague and disruption. Obviously marrying in this fashion avoided the nuisances of prohibited times and the multiplication of impediments, all of which cost money to evade, and it is this which canonists refer to when they lament the large number of incestuous marriages contracted in England in this period. (eg. Stryppe Annals vol. 1. p.382

48. The Pepys Ballads ed. H.R. Rollins. Harvard U.P. i. "The Contrymans Chat" p. 235 (no date)
49. cited in Xtian marriage: an Historical and Doctrinal Studie G.H. JOYCE. London 1933 P. 74.

The puritans and radicals seized upon this tradition as the ground for disputing that marriage is a sacrament, but their anxiety to remove it from the field of metaphysical speculation and superstition was not generally parallelled in actual practice. The common folk did their best to give the public contract "in the street" a sacramental character of its own. A multiplicity of little ceremonies clustered around the simple act of consent in order to give it weight and a dramatic form. Not only were rings, execrated by the Puritans, exchanged, but the couple also exchanged gifts, relics of Anglo-Saxon practice, and usually money, perhaps a broken coin or one rare and prized in those parts, kissed and ate and drank, (perhaps the bride cup or muscadine) publicly together, and were often bedded in public. They clung to the belief that a poetic formula was necessary, although the one essential factor of the formula, that it be in the present tense, they could never grasp. In establishing the validity of such matches (always the duty of the ecclesiastical courts) the whole complex had to be taken into account, gifts, eating, drinking, words, cohabitation.

In the evidence of Christian Grimsdiche v. John Smith it appeared that "he hath lett

> ChristianGrimsdiche haue a pece of mony and he hath had of her a sate of siluer and a handcheuerchefe. 50

Ann Yates and George Johnson plighted their troth in company, hand in hand...

> "and thereupon they did drinke together but he doth not remember they kissed, & so this contract was made toward eueninge nere the fireside and when they had done this the deponent eate a cowple of wodcokes with them. 51

The community suffered them to live together; another witness added that they had exchanged tokens, a "Spanish vid."

50- Clandestine marriages loc. cit. P. 11.
51. Ibid.

Roger Bybbye married Eleanor Mainwaring because he wanted to have someone to look after his house while he went to sea. He said the wordes as near as he could that are said in church marriage, then they

> afterwards kissed together, and callid together man and wief, and dronke a cup of Ale together in the Maiores house house and so departed.52

John and Alice Brotherton were married because she was pregnant, and the witness of the match took them outside and they "stode before the strete dore, on the grene", John took out a book, which they did not open although the deponent thought perhaps it was a psalter. John was obliged to pronounce the words twice because Alice was uneasy.

> I take thee Alice to be my wife, and non other woman so God me helpe and the contents of this boke,

he had said at first, and more than adequately, since the first eight words suffice. At Alice's request he tried again-

> Here I take thee, Alice Juce, to my wief, before all other woman, so God me helpe and holidame, and bie this boke.53

And so they kissed the book, their right hands joined.

All the evidence of exchange of gifts, kisses, tokens and so on, was used by the church presumably as evidence of intention, although it had no precise legal implication, but often the essential point is too confused to permit of action - when asked if the words used were de presenti one deponent replied...

> 'He is vnlernid and knewe not thos wordes; but he said, yf he had knowne any other wordes of more effect...he would haue spoken them,for,. his mynd was to haue made them as sure as he cold.54

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52 ibid. p. 67
53 ibid. p. 69
54 ibid. p 186

As the Mass fell into disrepute with the course of the Reformation, its role in the marriage ceremony was also disputed. As the authors of Rede me and be nott wrothe jeered in 1528...

> Masse solemniseth mariage/
> And kepeth people from domage/
> Causynge also wedder to be fayre.55

Hermann of Cologne had also his spouses to come before the pastoure to "signifie their handfastinge, and require the blessing of the congregation" who shall ascertain that the marriage has been contracted in godly wise before giving it. They must come to the congregation at the ordinary time of worship in all sobrietety, to publicise ~~it~~ 56 the contract already made.

In the Institution of Christian Religion the sacramental character of marriage was denied absolutely.

> No man vntill the tyme of Gregorie euer sawe that it was geuen for a Sacrament. And what sober man would euer haue thought it. It is a good and holie ordinãce of God: so tyllage, carpentrie, shoemakers craft, barbers craft, are lawfull ordinances of God, and yet they are no Sacramentes. 57

In the Puritan manifesto of 1572, the extremist case was put again, with a zeal for simplicity and strighforwardness by no means characteristic of all thinking Englishmen of the period.

> It was wonte to be compted a sacramente, and therefore they use yet a sacramentall signe, to which they attribute the vertue of wedlocke. I meane the wedding ring, which they fowly abuse & dally withall, in taking it up, and laying it down: In putting it on, they abuse the name of the Trinitie, the make the newe marryed man, according to the Popish forme, to make an idol of his wife, saying: with this ring, I thee wedde, with my body I thee worshippe etc. And bicause in Popery, no holy action might be done without a masse, they enjoine the marryed persones to

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55 loc. cit. p. 64 56. loc. cit.

RE receiue the communion....other pettie thinges out of the booke, we speake not of, as that women contrary to the rule of the Apostle come, and are suffered to come, barehearded, with bagpipes and fidlers before them to disturb the congregation.57

Robert Browne, leader of the Brownists, laid downe the method of marrying for truw Christians in 1582 thus.

(true Christians)	(Turkes and Papistes)
How must they be duely ioined in mariage? Their betrothing and espousing must be further made known vnto witnesses Their friends must be glad and reioyce together in some ioyfull and seemelie maner.	How do they come together by some wrong and disorder? They haue grant of secret licenses to marie, or their popish banes are asked in churches, and without a ringe and babling praiers, and the minister to marie them, they can not be maried. And so they make it a sacrament.58

When John Greenwood was examined by the High Commissioners and Lords of the Council, he was accused of celebrating an unlawful marriage in the Fleet.

Question: What say yow of mariage: did not yow marye one Boman and his wife in the Fleet?
Answer: No, neither is mariage a part of the ministers office.
Question: Who did use prayer?
Answer: I think I at that time did use prayer.
Question: Who ~~dixx~~ ioyned their hands together?
Answer: I know no such thing. They did publickly acknowledge their consent ~~toxxxher~~ before the assemblie.
Stanup: I wil makethem to do penance for it.
Answer: Ther be some had more need shew open repentance than they.
B(ishop): They may make such mariages vnder a hedge, and it hath bene a long receiued order to be maried by the minister.
Answer: No, ther wer many faithfull witnesses of their consentes: and if it were not lawful, we haue many examples of the ancient fathers who by your iudgement did amisse. 59

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57 The Institution of Christian Religion loc. cit. Fol. 158v

58. A Booke which sheweth the life and manners of all true Christians...Robert Browne, Middleburgh, Richarde Painter 1582 64 N4v

59. Elizabethan non-Conformist Texts vol. IV. p.24.

Dudley Fenner in a book printed under the auspices of King James in 1592 put forward a more orthodox doctrinal view, based upon an accepted protestant theological distinction...

> ...they cannot shew vs that Matrimony is an instrument wherby God doth applie Christ and his benefits & this is not a comon instrument of the cõmon saluation and benefits which al haue in Christ. 60

As John Selden remarked with characteristic asperity-

> Marriage is nothing but a civil contract, 'tis true 'tis an ordinance of God: so is every other Contract. God commands me to keep it when I have made it. 61

The view developed that the sacraments were but two in number, and that marriage was not one of them. THis was not of course to mean that it was a godless union: it was to be undertaken for motives of the highest as we shall see elsewhere, and God was to be everpresent in it. As the doughty champion of mariage in the Church of England, Thomas Gataker, was to put it in 1624-

> It is the worst clandestine mariage when God is not inuited to it. 62

and according to Dudley Fenner God was to be treated as directly present even in the nost intimate functions of marriage, a view which indicates the growing but hardly overt conviction that the sexual act lawfully performed was totally innocent and even good.

> the vse of marriage must be sanctified with the word of God and prayer. 63

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60 Certaine godly and learned treatises written by.... M.Dudley Fenner. Edinburgh. Printed by Robert Waldegraue printer to the Kings maiestie. 1592. Cum priuilegio regali.
61. Table Talk 1689 loc.cit. p.69
62. A Mariage Praier by Thomas Gataker B.of D. and pastor of Rother hithe. Printed by John Havilland for Fulke Clifton 1624
63 Fenner. Loc.cit. p.183. see also A Treatise of the Ministry of the Church of England. n.d. (Syn 7.59.68.)

Unfortunately even the publicly celebrated secular marriage was of dubious legality. The church would be required to ratify it in the event of any dispute, and then the canonical criteria of consent in the words de presenti and freedom from the multitudinous impediments would apply. As the Church of England developed its own views on marriage and modified legislation, the dangers inherent in ecclesiastical marriage became less, but the absence of any adequate, impartial recording system was acutely felt. In her old age Eliza Dillon brought a case regarding an old love, Morgan Edmund, to salve her conscience. Unfortunately it is unlikely that the salve was forthcoming, for in the evidence she was called a priest's whore, and her marriage to Dillon was called secret and outside the parish and repudiated by her lawful husband.[64]

The case seems to have collapsed in confusion, and this must have happened fairly often, when folk were attempting to reconstruct what had happened perhaps twenty or thirty or forty years before, out of malicious gossip and hearsay. The most competent critics of ecclesiastical courts mentioned the slipshod techniques of interrogation and the low and unreliable character of many of the witnesses, as well as ~~xxxxxx~~ "negligence, ignorance and long delays" and "toleration of offences in great persons." 65 Unfortunately few depositions have been preserved, and I am unwillingly compelled to rely too heavily on those gleefully marshalled by Furnivall from the Chester records as more representative than they are likely to be. The evidence seems to indicate that local practices varied very widely. But the note of confusion and near panic in some of the depositions, and the bewildered waiting for guidance seems likely to be characteristic.

The question arises why the sixteenth century should have revealed the inadequacies of marriage legislation. I do not think that I am obliged to provide a complete answer, but some fairly obvious causes occur. For one thing, it was not the first time the church's policy had been attacked, but it was the first time it had been attacked to any purpose. Moreover, there was a legal upheaval in progress, and all the existing anomalies were being dragged out, and the long and thankless task of reconciling them begun. Marital legislation was one point on which the reformers could hope to catch the hated ecclesiastical courts on the hip. The power of the church as an ultramontane arbiter of domestic affairs had been broken, and although too outspoken criticism could now be considered treason, the church could no longer deny its local, social function.

The kind of social mobility which had made banns asking an inadequate safeguard because the persons concerned might be from different parishes, or within London, quite unknown to other members of the same parish, had been gradually developing as the feudal system disappeared, and with the increasingly centralised administration of the realm in other matters, the absence of a single authority in this one also appeared unsatisfactory. The plight of the common orders became more important with the progressive democratisation of religion, and the development of what Louis B.Wright calls rather misleadingly, a middle class culture. Printed polemic literature certainly carries more of their grievances and points of view than it does of the nobility's, and the latter clung to their particularly hated brand of marrying until the interregnum and probably afterwards. The new morality was that of the protestant, middle class household.

The philistine characteristics of the protestant middle class household were as well marked then as they are now. Here there was no place for dreaming idealism, or for violent and transfiguring passion. The love of ideally wedded couples in this mythology was comfortable, self righteous and peaceful. The great threat to it was the love that laughed at locksmiths, that made the world go round, that drew young people together to plight their troth in the spring time under the moon or the maypole, that attracted the young ~~together~~ irresistibly and drew around them the pernicious web that the solid middleclass broke their heads against, the sinful passion that inspired the clandestine marriage.

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A marriage is clandestine if it is conducted furtively. It may in fact be solemnised by a priest, or in front of witnesses or neither. The essential thing is that it is not acknowledged to the community at large, and it is not conducted with the consent of parents nor are the banns announced. It differs from pre-contract in that the couple believe themselves married, and permit themselves the use of marriage.

From the earliest times the church had endeavoured to combat the evil of clandestine marriage. Gratian called marriage without consent of parents rape; the Council of Winchester enacted in 1176 that marriage without the priest's blessing was fornication, and, more dangerously the next year at Westminster

> That promises of marriage made between Man and woman without witness, be null, if either party deny them. 1

In 1215 the Lateran Council decided that banns must be published before the congregation on three holy days before the date of the intended wedding, and Alexander III forbade ~~them~~ marriage without them on pain of excommunication, and any priest blessing a clandestine union was to be suspemded for three years.

But none dared to declare a clandestine marriage invalid until the Hardwick act of , which caused a bitter outcry even then. Luther, Melancthon, Calvin and Beza all demanded that marriages without parental consent be voidable, but they were disregarded; the evils had long been understood, but despite the repetition of repressive measures in English canon law, the practice continued. If we examine some of yhis legislation, we may see why.

In 1328 Archbishop Mepham laid down that

> Because inconveniences have happened, and do daily happen from Contracts of Matrimony made without preceding Publication of Banns; we streightly charge all and singular our Suffragans, that they cause the Decretal (cap.51, Lateran Council 1216) by which it is forbid that any contract of matrimony without Banns first published in every Parish and Diocese to whic they belong on several solemn Days when the greatest number of people is present) to be explained in that vulgar tongue, and firmly to be obserued by inflicting that Penalty of Suspension from office for three years on all Priests, whether they belong to those parishes, or not, who presume to be present at Marriages contracted before solemn Publication of Banns, and due punishment on those who do so contract Marriage, altho' there be no Impediment. And let every Priest whether Regular or Secular, who dares celebrate, or be present at the Solemnisation of Marriage anywhere save in the Parish Church, without the Special Licence of the Diocesan, must be suspended from his office for a whole eyar. [2]

The wording is too vague and imprecise: due punishment is not specified, and certes is it that the marriage is to stand. It had the effect principally of causing the ~~married~~ priest to deny the matter when questioned, and of deepening the confusion still further. With promise of money, or a physical threat the wilful could still marry clandestinely with impunity. The matter of belonging to a diocese was to become more and more difficult to decide as time went on, and itinerant friars who made a great deal of money out of this sort of thing were hard enough to trace. And it was a known fact that the rich could buy the right to marry privately without announcing of banns and usually did so. Less than twenty years later the next Archbishop was vainly reiterating the same injunction.

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2. Johnsons Canons op.cit. Sig.Aa3^{v}-4^{v}

The lust of men is most prone to that which is forbidden: therefore Persons too near akin or who cannot de jure be married on account of other impediments, often desire to be married de facto, that under colour of lawful Matrimony they may fulfil their unlawful Desires; and yet being sensible that the Impediments are known in the Parishes where they dwell, because they find the Priests of that Parish not disposed to solemnise the Mariage, on account of the notorious Impediments, or the vehement Rumour of them, they remove for a time to places far distant, and especially to cities or populous towns there procure Marriage to be celebrated between them de facto, sometimes without publishing of Banns, and at unseasonable hours, and Times, in Churches, Chapels or Oratories, and continuing there, or afterwards returning to their proper home, they cohabit together as Man and Wife, in an unlawful Manner, to the Perdition of their souls: because the Ordinaries of the Places, and others among whom they dwell, for fear of too much trouble and charge, will not or dare not impeach them for their unlawful Coupling, nor publickly denounce their Crimes: We therefore desiring to extirpate this evil Practice, by Authority of thid Council do ordain, that they who from this time forward do contract and solemnise marriage, while they know, or have a probable suspicion of such Impediments; and the Priests, who knowingly make solemnisation of such prohibited Marriages, or even of such as are allowed, between such as do not belong to their Parish, without having first obtained the Licence of their Diocesans or the Curates of the Parties contracting, and they who, by force or fear, cause Marriages to be clandestinely celebrated in Churches, Chapels or Oratories, and such as are present at such Solemnisation, though conscious of the premisses, do incur the Sentence of Excommunication ipso facto.3

But only four years later Archbishop Zouche was complaining that clandestine marriages are procured "every day, in a damnable manner" and he rules that

...if any Objection or probable Suspicion do appear against their Coupling together, let the Contract in no wide be celebrated, but expressly forbidden, until a competent Judge have declared in a legal manner what

3 Johnson's Canons. Eig. Dd. iii v

> ought to be done; or else till the contracting parties are dispensed with by the licence of the superior Ordinary, as to the intervals of time and the publication of banns.[4]

Despite its ineffectuality Zouche's legislation was later modified and excommunication was only incurred if the impediment was known. When we reflect that the impediments were many, and many of them ersatz and pointless, and that a suspected impediment would be based upon the gossip of the village of a precontract, or affinity contracted by sexual intercourse, or the hysterical malice of a rejected suitor, we can have some sympathy with the culprits who defected from the scenes of their childhood. The licence, of course, would cost money, and one of the most persistent abuses laid at the door of the ecclesiastical courts was the selling of licences to marry without banns.

The York Manual gives the English form of Banns asking, and it would seem to lend itself readily to gossip and malice...

> I charge you on Goddes behalfe and holy chirche, that if there be any of you that can say any thinge why these two may not be lawfully wedded togyder at this tyme, saye it nowe, outher pryuely or appertely, in helpyng of your soules and theirs bothe. 5

The reminder of this still couched in the Book of Common Prayer is less encouraging - "speak now or forever hold your peace."

The Salisbury manual included a warning to the priests and supplied two reasons for condemning clandestine marriages

> videlicet, ne sub spe matrimonii commitatur fornicatio: et ne matrimonialiter conjuncti injusti separentur. 6

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4. Johnson's Canons loc.cit. Gg4
5. Monumenta Ritualia ed. Rev.W.Maskell, London, 1846.p.42
6. ibid. p.44.

This legislation continued to be reiterated right up until and throughout the sixteenth century, but as long as the Church regarded marriage as a matter primarily of the consent of two individuals which once given, under any circumstances, is to be respected and never to be set aside, attempts to make it socially responsible and perfect could, under extreme temptation, be disregarded.

John Myrc instructed the parish priests to

> Loke also that they make non odde weddynge
> Lest all ben curséd in that doynge.
> Preste & clerke and other also,
> But thylke serues huydeth so;
> But do ryȝt as seyn the lawes,
> Aske the banns thre halydawes.
> Then lete hem come and wytnes brynge
> To stonde by at here weddynge;
> So openlyche at the chyrche dore
> Lete hem eyther wedde othere. 7.

One of the most celebrated clandestine unions was that of Elizabeth Woodville and her king, whom she met when suing for witheld dowry when widowed. All her ~~xxxxxx~~ ignoble relatives were raised to lofty positions, including her 20yearold brother John who was to marry the Duchess of Norfolk who was nearly eighty. Richard III declared the match of Elizabeth and Edward invalid, and bastarded their daughter Elizabeth of York, but nonetheless would have married her himself, if she came out of sanctuary. Henry, as befits such an astute politician went for her after Bosworth field, but deferred the marriage for five months until his own claim was legitimated. The marriage of Elizabeth Woodville with King Edward was most unpopular with the commons, and its result seems to have borne out their disapproval.

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7. John Myrc. Instructions for Parish Priests loc.cit. p.186.

The reforming divines puzzled over the question of clandestine marriage but at first there seemed no way of circumventing the matter while retaining the conventional doctrinal view of marriage as a sacrament. In 1538, Cranmer wrote in answer to pressure from Cromwell,

> I and my doctors that are now with me are of this opinion, that this matrimony contracted per verba dei presenti is perfect matrimony before God. 8

This was not much help in finding a criterion that would be adequate fora law which was not administered by the omniscient.

As if to reinforce his words Catherine Howard was married secretly to the King, probably because of a number of curious associations beforehand, including an ambiguous liaison with a musician in which tokens were exchanged, and a definite handfasting to Francis Dereham in the retinue of the Duke of Norfolk, and an engagement to her cousin Culpepper. The bearing of the much coveted son would probably have magically dissolved all these impediments, and the unfortunate girl visited her former lovers, possibly with the intention of obliging the crown, and lost her head for it in 1542.

Theodore Basille (the alias of Thomas Becon) wrote angrily in 1542 of the doctrine that countenanced clandestine marriage, and indicated the lines that all subsequent criticism was to take.

> And I wonder what the papisticall bokes ~~dyd meane~~ & learned men dyd meane whan they taught that the consent only of both the parties doth faste the matter, & coupleth the togither in mariage. The cosent of ye parētes also, say they is good with all, but whan they two haue cosented, & one hath take the tother, the knot can not be unknyt, neyther may the parentes seperate the fro asunder. Where as lawes both

naturall (diuine specially) and ciuile require the parentes consent to the chyldrens mariage: In so much yt they iudge the promise to be of no value, whiche is made withoute the knowledge of the parētes: yea & that also those chyldren which as yet are not come to theyr yeares, & are yet under the tuicion of their elders.... As for priuy cōtractes which are not made accordinge to the lawes, they haue euer bene reiected, neyther were they acceptable to any man, saue vnto such as were ignoraunt and wycked. For why: for the moost part they are made of some fond affecciō, yea, knauery, falshood & dyceate is commōly the doer, to persuade & by wordes to take yonng folkes in the snare, Many priuy cōtractes be brought to passe wt flattery, wyth dronkennes, withe rewardes and promises....9

Indeed there is one record one case of a boy being enticed away to a church to marry a strapping lass, by the bribe of two apples, and he had to wait until the bishops' visitation to be freed. Becon shows the typical distrust of the parents for the wooer who steals away a child's heart from duty and happiness to folly and misery; for at a clandestine marriage, where the daughter was not given, her dowry and joynture were not settled, and she was, after all, marrying a stranger or one whom her parents could not approve, and the result could be financial ruin for her. A son thus enticed away, could ruin his chances of an advantageous match and ally himself with a woman beneath his station, and of light demeanour, who would cheat and cuckold him. In any case the motives for clandestine marriage were sinful, being impatient lust and amorous folly, and against the chastity of marriage, for otherwise they would be content to wait and win parental consent, or to conquer love for someone unworthy.

In 1547 Hermann Archbiship of Cologne repeated Becon's condemnation and suggested measures to control it which did have some influence upon the subsequent practice of the church.

> Furthermore greuous offences and many periuries grow of this that yonge persones promise matrimonie one to another rashly and priuily, with out witnesses. For it sone chañceth (sic) that they forsweare their promisses we wil therefore that no promisse of matrimoni bee ratified that is made without the parentes not knowinge of it, or not consentynge ther vnto or agaynst the myndes of their kinsfolk or tutors, if theyr parentes be absẽte or not able to rule themselues. But if the parentes, kinsfolke or tutors, wil haue yonge men or maidens being of ripe age, to differre mariage, or dryue them to vnpleasaunte mariages... than they that be so burdened, shal bringe the matter before the pastours and officers which shal labour to asswage the rigorousnes of the parentes, kinsfolk or tutors with a frendlie exhortacion, and if they can preuaile nothinge with that exhortacion they shall referre the matter to an ordinarie officer....10

Likewise, if the contracting parties have no parents, the match must be acknowledged by them both, and will be of no effect unless witnessed by three or four witnesses,

> for marriage is an holie thinge, and therefore we must go aboute the same with good aduisement, and with the feare of God, not thorough anie passion, or desire of the flesh, raschnes, gylte, deceyte and naughtie craftes. 11

While asserting the rights of the parents to control the mating of their children to an extent, Hermann also cousels them to be just and humane, and not prevent a match between a child and the spouse of his choice because a better might be had, in worldly terms. We have already seen the case of Barnabe Googe, whose suit was aided by Archbishop Parker, and according to Googe his love for the maiden was virtuous,

for he wrote in his wooing poem Of Maistres D.S.

Thy fyled wordes,
yat from thy mouth did flow
Thy modest looke
With gesture of Diane.
Thy curteous mynde,
and althynges framed so
As answered well,
vnto thy vertuous fame,
The gentlenes
that at thy handes I founde
In straungers hou(s)e,
all vnaquaynted I,
Good S.... hath
my Hart to the so bounde,
That from the can
it not be forced to flye,
In pledge wherof,
my seruice here I gyue
Yf thou so wylte
to serue the whylst I lyue. 12

The opponents of clandestine marriage combat it in the name of marriage, for the greater glory of marriage perfect and honourable, and nothing does their case more harm than the blinding influence of Cupid, and the antisocial consequences of the headstrong égoisme à deux of young lovers. Meanwhile their crusade was not being helped by goings-on among the great and notable.

In 1550 Robert Dudley married Amy Robsart, and thus a chain of scandalous events was begun. He next came to notice as a suitor for Elizabeth's hand, and less than a year after her accession, poor Amy, who had been kept sequestered in the country fell down stairs and broke her neck. Throughout Elizabeth's reign the doings of the Earl of Leicester were a cause of scandal. Elizabeth elevated him to the nobility in preparation for a match with Mary Queen of Scots, who married Darnley before arrangements were concluded. In 1571

12. Googe: Eglogs, Epytaphes and Sonettes 1563 loc.cit. p.99

he contracted himself to Douglas Sheffield, widow of John, second Baron Sheffield, and in May secretly married her at Esher, two days before her son, Robert, was born. He never acknowledged this match, but insulted her by offering her £100 a year to ignore the relationship, which she indignantly refused. He then tried to poison her, but succeeded only to the extent that her hair and nails fell out. After a liaison with Lady Frances Howard, in 1578 he married the widow of Walter Devereux, Earl of Essex (without the Queen's knowledge) who, when he died in 1588 in circumstances which rumour held to be suspicious, replaced him immediately with Christopher Blount. His son Robert adduced evidence to prove that Leicester had actually married his mother, in the presence of nine named witnesses, and struggled to prove his legitimacy from 1597-1605, but powerful voices squashed his appeal, which was only recognised after his defection from his own wife and country, and the selling up of his estates, in 1645.

The reactionary nature of Mary's marriage legislation seems to have had its effect on current practice in these matters, for we find her Bishop of Lincoln speaking of clandestine marriage in a positively encouraging way after the rigorous denunciations of the protestants.

[redacted]

> although the solemnization of Matrimonye, and the benediction of the parties marryed, is made and geuen in the face of the church by a Priest... yet the contract of Matrimonye, wherein this Sacrament consisteth, may be, and is commonly made by the layman and woman whiche be marryed together. And because for lacke of knowledge how

HE CONTRACTED HIMSELF

> suche contractes ought to bee duely made, and for omittinge of such thinges as be necessary to the same, it chaunceth oftentimes that the parties change theyr myndes, and will not kepe that promyse of marryage which seemed to haue passed betweme theym before, whereuppon commeth nand groweth betwene such persones and theyr frendes great grudge and hatred, and greate sute in the lawe.13

So the worthy and obliging bishop supplies the correct form of words to avoid all such dissension in future, and goes on the reassure people marrying in this fashiom that

> ...the parties so contracting, may without scruple or euyll conscience for so muche lyue together in Godlye and chast Matrimonye, to the good wyll and pleasure of almighty God.14

It occurs to him also to point out that it is as well to be sure that there is no impediment before proceeding, and perhaps to have some record of the matter so that they be married before man as well as before God, otherwise some confusion might result. Such slipshod arguing can only be defended in terms of the predicament in which the artificially revived catholic administration of England found itself. The depredations of Henry in the regular and secular clergy, and the inroads made on parochial service by Mary's wholesale deprivation of all married clergy, probably meant that a state of emergency existed, and to avoid worse abuses the church actually counselled a secular form of marriage, only a few months before the council of Trent was to invalidate it for all Catholics. We know that many parishes were left unattended at the end of Mary's reign by the mass ordinations so frequently complained of in Elizabeth's time.

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13. WHolsome and Catholyke doctryne concernynge the seuen Sacramentes...by...Thomas byshop of Lincolne. Anno 1558. Lonodn. Robert Caly.Fol clxxii

14. idid. Fol.clxxii^{v}

Upon Elizabeth's accession, steps were immediately taken to deal with parochial disorder. A Visitation was ordered, and the articles to be enquired were published several times so that evidence could be prepared to expedite matters.

> Item, whether they haue giuen open monition to their Parishioners to detect and present to their ordinary all Adulterers and fornicatours, and such men as haue two wiues ~~ky~~ liuyng within their Parishes....
>
> Item: whether you knowe any to be maried within the degrees prohibited by the lawes of God, or to be separated or diuorced without the degrees prohibited by the lawes of God, and whether any suche haue maried againe.
> Item; whether you know any to haue made priuie contractes of Matrimonie, not callyng two or more witnesses thereunto, nor hauyng thereto the consent of their parents.
> Item, whether they haue maried solemnely, the banes not first being lawfully asked. 15

The measures to be taken will also apparently include remarrying those separated because they were within degrees of consanguinity or affinity, spiritual or real, as defined by the Catholic church, outside the Levitical canons, which would probably include those who took the liberty of Henry's legislation, in his reign and Edward's, only to be separated and punished under Mary when the Henrician legislation was revoked. In order to expedite its delivery to all parishes the pamphlet was printed, with minor differences by a number of printing houses. With it went the Queen's injunctions, one being for the establishment of a register of births, deaths and marriages to be kept in euery parish.16

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15 Articles to be enquired in the visitation in the first yere of our most dread soueraigne lady Elizabeth, Ec. 1559. A3^{v}-4, B1^{v}.
16. I$_{n}$iuncions giuen by the Qeenes Maiestie.....1559 A4

William Clerke in The Triall of Bastardy outlined the precise legal situation with regard to clandestine marriage while warning his readers away from it.

> Clandestine marriages we call them Quae clam contrahuntur, that is to say, that bee contracted so priuily that they cannot be lawfullie proued by witnesses, shall that be bastarded? I saie not so, without exception, but I counsell thee to trust it not, for I assure thee,(howsoeuer the matrimonie holdeth before God and the World) if the parties shall both of them acknowledge it, incurring only a corporal pennance, and the clerke that shall celebrate the same, but 3. yeares suspention from his office, yet if the one confesse it not, or that which is more, renounce it the mariage and the other proue it not (for in this case the partie is adioyned to proue which pleadeth the matrimonie) verily proued, holdeth coram Deo et ecclesia i, Before God and the Congregation, otherwise Coram Deo qui corda scrutatur &c that is to say, before God it shall stand: the searcher of all the secreats of all hearts: but Ecclesia non indicat de occultis, It is to secreat for the Church to determine...
>
> Let us wade but a little further, and suppose by the way but that that falleth out indeed oftentime viz Thou contractest thyself and marriest (priuely) with a woman who afterwards contracteth and marrieth ppenly with another, whose wife shall she be? 17

And so Clerke continues, endeavouring to instil fear and distrust of the expedient of clandestine marriage, because it is an instrument of legal and social confusion, but unable to say that a marriage so contracted is invalid. These sour warnings cannot be expected to wash with lovers who believe that they will love and trust each other forever, despite the rigours of poverty, parental indignation and the ravages of time, and childbearing.

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17. The Triall of Bastardie loc.cit.Sig.F4^{v}

The evil continued, needless to say, partly because of the spread of religious dissension. The marriage of the faithful with Papists and infidels was a hotly debated question, many trying to have it invalidated, and the marriage of recusants and dissenters according to their own lights must often have been clandestine. Moreover, the peculiar attitude of the Queene to marriage resulted in a series of court scandals and instances of clandestine marriage which kept the pernicious romantic ideal in the forefront of popular consciousness.

Katharine Grey, formerly married to the Earl of Pembroke, but lawfully divorced, was confined to the tower great with child. She claimed to be married to Edward Seymour, Earl of Hertford whom Elizabeth had sent to France. He was recalled and sent to the tower too. They were accused of unlawful copulation because they could not produce witnesses to their marriage and John Hales hotly defended them. The story had a tragic ending, which must have appealed strongly to popular imagination. The lovers managed to be together in the tower, and Katharine bore another child there. The Queen was furious, and had the hea d jailer imprisoned for his negligence. Katharine died, of a broken heart, and Hertford was incarcerated nine years, for deflowering a virgin of the blood royal in the Queen's house. In fact, Henry's law that no one could marry into the blood royal without the consent of the sovereign had been repealed, but Elizabeth's claim to the throne could not be jeopardised by strong dynastic marriage, even if it was relatively disinterested, as Katharine's may have been. Her mother, Frances of Suffolk incurred the royal displeasure by marrying Adrian

Stokes " a mean gentleman, to her dishonour, yet for her security", and her only surviving daughter married a groom-porter at the court, for the same reason.[18]

In 1562 General Notes of Matters to be moved by the Clergy in the next Parliament and synod were prepared, including a series of motions De Matrimonius including one to have clandestine marriage invalidated.

> That all cladnestine contracts be judged in law as no contracts.
> That marriages made between young persons, without some reasonable consent of parents, if they be alive, or else of some other friend, as may be limited by this order, may be void in law. 19

But there is no record that they got their way in this matter, although they did in some of the othrs. At about the same time an archetypal case occurred in the diocese of Chester. Henry Price married Mawde, who was pregnant to a nother man, to whom she had been contracted by due form, but without parental consent, and to whom she had already borne two children.

> Mawde was compelled by hir parentis and other hir frendis to marrie the said Henrie, for bie cause she wept the same day she shuld be maried, afore this deponent, and said "bie her owne minde she wold rather haue drowned hir, then maried the said Henrie Price."

On the wedding night poor Mawde told her new husband, "he should not haue any pleasure of her for vij yeres", and he, realising she loved another, left her sorrowing. The court counselled Gregprie, her clandestine husband,

> "either to take her, or to absteyne from mariage during her lief, because he was married to her in gods sight."20

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18. Camden's Annals Sig, J4^{v} see also Strype Annals of the Reformation Vol.I, pt.ii.p.88
19. Strype, Annals of the Reformation.Vol. I pt.i.p.484
20. Child Marriages etc ed Furnivall. p.78.

In 1563 the case was heard of Thomas and Margaret Southworth who eloped on Michaelmas night to the chamber of a priest whom they forced to marry them on his deathbed at about midnight. They were then bedded at a firend's house, and ate and drank together. After this they cohabited for eighteen months. Their match had been disapproved of by a kinsman, and now they were seeking the ratification of their illicit union.[21]

In 1566 appeared one of the first of the dangerous champions of clandestine marriage and the rights of lovers, the romantic love story. In story 34, of a young man who married a king's daughter who had disguised herself as a monk to escape an unwanted match arranged by her father, we have a description of a clandestine match which would have caused the worthy champions of parental rights to gnash their teeth...

> She thenne sitting vp in her bedde, hauing a litle table (wherin the picture of Christ was painted) indowed him with a ringe, doing the order of espousalles, and afterwards embracing one an other, to their greate contentacion and pleasure, thei joyfully continued together that night.[22]

The lady continued on her journey to the Pope to ask help in avoiding a sinful match arranged for her with an older prince, and presented him with the fait accompli of her clandestine marriage, and

> "knowing that the same could not be undoen he was content to satisfy her requeste.

On the other hand there was the sad story of Violenta's marriage to Didaco which was celebrated in her mothers house at about four in the morning, before witnesses. He repudiated her and married again publicly. She tries but cannot find the priest who married them, and is unable to prove the former match

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21. Childmarriages etc. p.
22. The Palace of Pleasure...by William Painter, 1566 Imprinted at London by Henry Denham for Richard Tottell and William Jones Sig. S.3.

especially as her lord is powerful.[23]

In the story of Aleran and Adelasia there is another example of a secret marriage, contracted only in the presence of a maid and immediately consummated.[24]

In 1567 Fenton's translations of Bandello appeared, moralised in a mnner that the Italian storyteller would hardly have approved of, especially in the story of Livio and Camilla which becomes a denunciation of inordinate passion. The lovers are to wait for the return of Camilla's brother from Rome, but, sure of his approval, Camilla allows her lover rather too intimate familiarities.

> Wherein being ouercharged with intoleration of desire, and finding the abode of Claudio longer than they had imagined, they passed unhappily a privy contract between themselves; with expectation to consummate the full of the matter...at the return of Claudio from Rome.

Alas, when Caludio returns, he does not give his consent, and works on their father to renegue. Livio endeavoured to persuade Camilla to consummate their love secret ly—she agrees and reiterates his arguments...

> ...for as much as our consents have concluded a marriage, and that in the breach of our promise appeareth a peremptory prejudice to our consciences, that we seal the articles of the contract with a full consummation of the secret ceremonies in marriage: both to take away all occasion of offence, and also to mortify the malice of my brother, maugre his heart.

Fenton permits himself a good deal of moralising on the issue whichn his model would have found intolerable.

> Like as it happeneth oftentimes that those bargains redound to the harm of such as be the parties; who albeit, do alledge a certain respect of honesty in their doings by a pretence of a marriage, yet God being the judge of their offence, will not suffer the wrong to the obedience of parentes in concluding privy contracts, unpunished, and that

with such a penance as the remembrance is notorious in all ages.[23]

Fenton sees the privy contract, itself no more than a betrothal, as a lascivious bond which naturally leads to clandestine marriage, because it cannot be set aside without sin. Poor Livio paid the price of death from inordinate pleasure upon the night of the illicit consummation, and his clandestine bride died shortly after of sorrow.

Pettie in A Petite Pallace of Pettie his Pleasure specially addressed to gentlewoman readers is also attracted by the problems of prior contract, in the story of Icilius and Virginia, and clandestine marriage, in the Admetus and Alceste story.[24]

Meanwhile in the real world continuing legislation is evidence that the problem had in no wise abated; in 1569 Interrogatories for parish administrative officers reiterated the demands of the Visitation in greater detail.

XXVIII. Whether they have married any without banesasking; or if the parties maryed by of divers parishes, whether they have marryed them without certificate from the person or persons where they were asked; or hath maryed any that be out of theyr own paryshe not lycenced thereunto; or hath not openly denounced their certificate or lycence accordingly at the tyme of marriage; or hath maryed any person not in due place or convenient time, or no?

XXVIIII. Whether they have exhorted yong folke to abstayne from privy contracts and not to mary without the consent of their parents and friends as have auctority over them, or no?[25]

In 1579 a scandal grew up involving the Queen. Camden's account of the situation reveals the curious confusion of contemporary thought on the subject

23. ibid. Broadway Translations. Bandello Tragical Tales The Complete Nouels translated by Geoffry Denton (1567) ed. Hugh Harris, Lonodn, 1925, p. 143 & 151 & 152

24. A Petite Pallace of Pettie his Pleasure

25. Camden. Annals. Strype-Annals of the Reformation op. cit. Vol. I p. I p. 496

of love and marriage.

> In the meane time Simier ceased not amorously to wooe Queene Elizabeth and though she stiffly refused the marriage a long time, yet he drew her to that passe, that Leicester (who from his heart opposed the matter) and others, spred rumours abroad, that by amorous potions and vnlawfull artes hee had crept into the Queens mind and intised her to the loue of Aniou. And Simier, on the other side left no means unassayed to remoue Leicester out of place and grace with the Queene, reuealing vnto her his marriage with Essex his widow: Whereat the Queene grew into such a chafe, that she commanded Leicester to keep him selfe within the Tower of Greenwich, and thought to haue committed him to the Tower of London... But Sussex...disswaded her, whilst out of a sound judgement and the innated generousness of a noble mind, hee held opinion that no man was to be molested for lawfull Marriage, which amongst all men hath euer been honest and honoured...26

The French suitors to the Queene did in fact woo her with poetry and compliment, in the best pseudo-Petrarchan manner which had long been associated in the minds of Protestants with an immoral mode of proceeding which they did not want to encourage. It was easy enough for Leicester and Co. to imply that Simier was seeking to bewitch the Queen, and so to get the realm under the sway of a smooth French husband. The Queen's womanly vanity had caused her to entertain the French suitors rather more generously than pleased English intriguers, and of all her matches none was more hotly opposed than the French. Sussex's defence of Leicester on the other hand is ironic when we reflect that his marriage with Lettice Devereux was in fact bigamous.

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26 Camden Annals Book IIp.95 (See also ibid.p.90... "Simier...a most choice courtier exquisitely skilled in loue toyes, pleasant conceiptes and court dalliance."

Meanwhile the literature of true love triumphant despite policy, reason, common sense, ambition and repressive parents continued to flourish... as Gosson fulminated in 1579 if more than a little mysteriously, because not many plays answering his description would seem to have survived-

> Here I doubt not but some Archplayer or other that hath read a little; or stumbled by chance vpon Plautus comedies, will cast me a bone or ii. to pick, saying, yat whatsouer these ancient writers haue spoken against plaies is to bee applied too the abuses in the old Comedies, where Gods are broughte in, as prisoners too beautie, rauishers of virgins, and seruantes by loue, todearthly creatures. But the Comedies that are exercised in our daies are better sifted. They shewe no such branne: The first smelt of Plautus, these tast of Menander; the lewdenes of Gods, is altered and changed to the loue of young men; force, to friendshippe; rapes too mariage; wooing allowed by assurance of wedding; rpiuie meetinges of bachelours and maidens on the stages not as murderers that deuour the good name eche of the other in their kindes, but as those that desire to be made one in hearte. 27

The point is not immediately obvious that for Gosson the difference is merely that an antisocial form of behaviour nearer home is vividly represented and made attractive, and that marriage under the conditions seen so often on the stage, of wilful youth defeating age and sageness, is not better than whoredom, and more seductive. Your modern tasteful play encourages an effeminate and epicurean taste, and thus by subtle delights ravishes the conscience. Now every maid will think it her right and destiny to fall in love.

Stubbes, with characteristic exaggeration, sees the nation as sunk in an abyss of love in beggary.

you shall haue euery sawcy boy of x, xiiij, xvi,

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27. Stephen Gosson: The Schoole of Abuse (1579) ed. Arber London, 1868. pp.30-31.

> or xx yeres of age, to catch vp a woman and marie her, without any feare of God at all, or respect had, either to her religion , wisdom, integritie of lyfe, or any other vertue; or, what is more, without any respecte how they may liue together with sufficient maintenance for their callings and estat. No,no; it maketh no matter for these things so he haue his pretie pussie to huggle withall, it forceth not, for that is the only thing he desireth. Than build they vp a cotage, though but of elder poals, in euery lane end, almost, wher they liue as beggers al their life....
>
> What if a restraint were made yt none (except vppon speciall and urgent causes) should marie before they come to xx or xxiiij yeeres, or, at ye least, before they be xiiij or xviii yeeres old, would not this make fewer beggers than now there are?
> Sp. But if this were established, than should we haue moe Bastards; and of the two, I had rather we had many legittimats than many illegittimates.[28]

Spudeus' objection may seem unlikely, but when the Hardwick act forbidding marriage without parental consent until the attainment of majority was passed, this very idea caused a tremendous outcry. Actually the situation as described by Philoponus is an Arcadian idyll translated into real life, and one hopes that no-one was really so deluded by contemporary literary fantasy.

The poet laureate of sentimental artisans, Deloney, shared the prevailing weakness for questions of clandestine marriage, and has Crispine contract a really impudent one in The Gentle Craft. It is actually a masterful if totally irresponsible piece of narration.

> And at this time there was in Canterbury a blind Frier that in many yeers had neuer seen the Sun; to this man did Crispine, thinking him the fittest Chaplain to chop vp such a marriage, who, meeting with him at Christ Church one euening after the Antheme, broke with him after this

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Stubbes Anantomie of Abuses ed. F.J.Furnivall for the New Shakespeare Society, Series VI, No 4. London, 1877-9. R. Sig. H5.

manner.

Good speed good father: there is a certain friend of mine that would be secretly married in the morning betimes; for which purpose he thinks you the fittest man to perform it in all the Cloyster: and therefore if you will be diligent to do it, and secret to conceal it, you shall haue foure angels for your pains.

The Frier being fired with desire of his gold, rubbing his elbow and scratching his crown, swore by the blessed Book that hung by his knee, that he would be both willing and constant to keep it secret. Tush young man, you may trust me, I haue done many of these feats in my dayes. I know that youth are youth, but they would not haue all the workd wonder at their doings: and where shall it be, said the Frier.

(Quoth Crispine) At Saint Gregories Chappell; and because you shall not make your boy acquainted therewith, I my selfe will call you in the morning. Good father be not forgetful to obserue the time, at two of the clock is the houre, and therefore look you be ready when I shall call you.[29]

Crispine lied about the chappel, for in fact he led the old priest to the park. Deloney's fine narrative instinct turns the rather unsavoury incident into something different, as when the old friar puts his spectacles on his nose and calls for his book, because he has never been able to say mass without them. The ceremony over, he had his gold and was led home, and Crispine returned to consummate the match with the princess on a bank of primroses.

But if in the idyllic past of Crispine, a shoemaker could seduce the daughter of a king with impunity, when Deloney moves into the world of London and Sim Eyre, the wuestion of clandestine marriage is treated rather differantly.

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29. The Works of Thomas Deloney ed.F.O.Mann, oxford 1912 p.98.

In the household of Sim Eyre, John the Frenchman and Haunce the Dutchman are both angling for the hand of Florence. John treats her in a tavern and asks her to go to Islington the following Sunday to be merry, but Haunce turns her aside to go to Hogsdon to eat a mess of cream with him on a feigned excuse. After this, he made a tryst with her in the garden, "and to bring with him a bottle of wine, and there in the presence of a maid or two more, to make themselves sure together: and she for that purpose had carried with her a good corner of a venison pastry." The function of eating and drinking together was important still. The Frenchman and Nicholas, an English journeyman who is also interested in her, break the party up by pretending that the master and mistress are coming into the garden(for apprentices are not allowed to marry). They succeeding in estranging the lovers for a while, but eventually they agree to clap up a secret marriage...

> The matter was grown so forward, that the performance of their marriage was forthwith appointed, which they intended should be celebrated at the Abbey of Grace, on Tower Hill. Notwithstanding this matter was kept so close, but that their secret dealings were known, and Nicholas, purposing to deceiue the Duchman, made Iohn the Frenchman priuie thereunto, saying; Iohn, it is so, that this night, at midnight Masse, Florence and Haunce do intend secretly to be married, and they haue appointed the Frier to do it as soon as ~~xxx~~ the tapers are all put out, because they will not be seen of any: Therefore Iohn, if now you will be my friend, I do not doubt but to marry her myselfe, and so to giue the Duchman the slampam.30

They entice Haunce to an inn and get him drunk, and Nick prepares to take his place, but John reveals everything to the constable and Nick is clapped into jail, while John goes off to the abbey.

30. Ibid. p. 129.

While he is pleading his own case to Florence, his wife newly arrived passes by in search of him. Florence is not slow to discern the moral.

> O good Lord, how was I blest to escape him: nay, now I see that Haunce may haue a wife in Flaunders too, although he be here: and therefore by the grace of God, I will not marry a stranger...31

Eyre hears of the matter and gets Nick out of prison,

> And Florence being called before him, he made vp the match between her and his man Nicholas, marrying them out of his house with credit, giuing them a good stock to begin the world withall...32

and so the ideal situation was brought about in immediate contrast to the peril of a clandestine marriage.

However another scandal forces us to realise that in actual fact, not everyone was saved from disgrace as Florence was. Of all people, Sir Edward Coke, barely five months after the death of his first wife, married Lady Elizabeth Hatton, without banns or licence, and in a private house. He had powerful opposition for Bacon was suing for the lady, supported by Essex. Whitgift had just issued a circular forbidding private marriage[33] and all concerned in this one were prosecuted in the Archbishop's court, even though they were in fact married some days before the publication of Whitgift's proclamation. The story was a sordid one, for in fact the lady was said to be pregnant, and poor Coke was a notorious cuckold all his life and henpecked to boot.

In the same year Dickenson's Greene in Conceipt appeared, in which a clandestine marriage was portrayed in most unattractive guise, between the wanton Valeria,

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31. ibid.
32. ibid.
33 - See Strype - Works, Vol VII, p. 400.

intiially prostituted by a marriage for money to an old man, which turned her into a depraved hedomist, and, when she was at last widowed, made her a susceptible and valuable prize, and the calculating Arthemio, who plays on her weakness with a display of pseudo-Petrarchan passion. Arthemio is already her lover, but his aim is to get control of her fortune, so he takes advantage of her lust...

> But hauing finisht, and Valeria being now in the veine, Arthemio, deeming it pollicie to strike while the iron was hote, least fortune should not euer rest so friendly, left her not, till before sufficient witnesses, they had to each other solemnly made themselues sure. Immediately after which contract, their marriage was, in a morning betimes, hastily huddled vp at a lawlesse churche: whose leaning Pulpit, (a monument of many yeares but of lesse vse than a Cipher in Arithmetique) had fallen so farre at odds with preaching that, whether through age or ignorance I know not, it had long been like a bell without a clapper. The wedding thus dispatcht, shee vaunting to herself, her soules delightes, deem'd this her Comedies catastrophe, changing all her former discontents into the fulnesse of her desires accomplishment.[34]

Of course she discovers that she has married only to finance her lovers coarse amours, and he brings his trulls home and forces her to wait on them at her own table, and so she is duly punished.

It was about this time that an eminent whore made her appearance in real life. Mary Fitton, a maid of honour in 1595, came to public notice performing in the wedding masque of Anne Russell and the son of the Earl of Worcester. She became the mistress of the young earl of Pembroke, and in 1601 was discovered to be with child. The earl utterly renounced all marriage, and was sent to the Fleet. The child died.

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34. Prose and Berse by John Dickenson ed. A.B.Grosart, privately printed 1878. P.144.

There followed for her a series of liaisons, two of which were called at various times, marriages, although the truth remains unknown. It seems likely that she was clandestinely married to the Earl, and was therefore only capable of irregular alliances there after. One wonders if it were not another personal tragedy brought about by the queen's strange loathing for matrimony.

In 1601 Essex married Sir Philip Sidney's widow, secretly, and kept her vitually incarcerated, while he wooed various ladies of the court, so the precedent of clandestine marriage was faithfully observed in court circles.

The language of love was still that of impatiende and rebellion despite the attempts of the protestant reformers to tame it, apparently. As a seventeenth century ballad has it...

> Then sweeting pray come
> I, long till 'tis donne,
> To Church let us hie with speed,
> I can when I list,
> Procure a blind Priest,
> Which for us will do this same deed.[35]

Poets and playwrights were still fascinated by its potential as a dramatic situation, and as a reaction against the philistine politicness of the ideal protestant arrangement. The poet who understood most deeply the moral and metaphysical issues involved in terms of the new consciousness was, inevitably, Shakespeare, and the relevance of some of the dramatic situations in his plays to contemporary social unease and confusion is only beginning to be realised.