

BOOK REVIEWS

MARRIAGE, FAMILY AND LAW IN MEDIEVAL EUROPE: Collected Studies by Michael M. Sheehan, EDITED BY JAMES K. FARGE; Introduction by Joel T. Rosenthal. University of Toronto Press and University of Wales Press, Cardiff, 1996, xxxi+330 pp. (£30) ISBN 0-7083-1354-X.

A review by Professor C. N. L. Brooke, Gonville and Caius College, Cambridge

Few topics in medieval religious, social and legal history have flourished more abundantly in recent years than the history of marriage and the family; and few documents have been studied with such avidity in Britain as late medieval and early modern wills. The death of Michael Sheehan in 1992 deprived the scholarly world of one of the most respected experts in the history of marriage and the study of wills. It was a very happy inspiration which has led to the publication of this memorial volume of sixteen of his best known articles; for apart from his book of 1963 on the early history of the will—and collections of studies edited by him and two valuable bibliographies—his published creative work lay in articles. Some of those reprinted here have long been compulsory reading for all students of medieval society, and of the borderlines of social and legal history. Three examples will illustrate their quality and their message.

All students of medieval marriage law had long known something of the paradox that medieval society gave little freedom of choice to heirs and heiresses entering marriage—but canon law made the consent of the partners the heart and core of the sacrament. In 'Choice of marriage partner in the middle ages' (1978) Sheehan showed that this was no idle theory of the schools, but a legal—and theological—doctrine developed and expanded by the twelfth and thirteenth century Church: he traced its definition in Gratian and the decretals of Alexander III through to the manuals for confessors of the early thirteenth century. In 'Marriage theory and practice in the conciliar legislation and diocesan statutes of medieval England' (also 1978) he showed how entry to marriage was hedged about with legal constraints and formulae designed to preserve existing customs indeed—but also to ensure that consent was a real thing understood by the partners and the community in which they lived. These studies are characteristic of Sheehan's approach by relating legal texts to the wider range of pastoral and theological documents; and also in seeing entry to marriage as part of a much wider social and religious conspectus—as part of the history of the family. All this is now so familiar to historians it is hard to recapture the world of only twenty years ago in which Sheehan was a pioneer in such studies.

Sheehan valued decretals and diocesan statutes; but he sought above all to study marriage theory in action. 'The formation and stability of marriage in fourteenth-century England: evidence of an Ely register' (1971) showed how the records of a consistory court of the late fourteenth century open a window into the ordinary lives of folk of modest social standing—it prepared the way for the fundamental study of Richard Helmholz of 1974: *Marriage Litigation in Medieval England*, based on a much wider conspectus of the evidence. But the value of Sheehan's article and of his shrewd insights remains. 'It is evident, first of all, that where difficulties led to court proceedings most of the marriages were clandestine. . . . Second, the court was primarily a body for the proof and defence of marriage rather than an instrument of easy annulment'—a surprising conclusion strongly reinforced by Helmholz. 'The third conclusion is much less precise: it is based on an impression rather than on a series of statistics. Yet, from the point of view of long-term social change, it may be the most important. The reporting of matrimonial suits in the Ely register reveals an astonishingly individualistic attitude to marriage and its problems. Familial and

seigniorial decisions as to the betrothal and the choice of spouse . . . are simply not found in the register' (p. 76). This is a good example of the reflective vein which runs through all these articles. Also characteristic of the breadth and humanity of his interests is the chapter (9) on women's life in the age of Chaucer—which draws on the *Canterbury Tales* indeed, but also on the legal evidence of women's role in marriage and the upbringing of children.

In the study of wills the articles in this book are part of a larger enterprise, left incomplete at Sheehan's death. But there is enough here to make a useful harvest of his very deep study of wills and their effect. In the final chapter (16) he considered the conflict or friction between the secular courts which tried to prevent bequest of land away from legal or natural heirs, and the church courts which tried to help good Christian folk to follow their own wishes and interests. It is briefly sketched; and shows how the inclination of landowners to make bequests of land found new outlets within the sphere of the secular courts—most obviously in the development of the use. But as in many chapters in the book, there is a subtler agenda—the question is being asked whether the spiritual or temporal courts produced the more humane justice. Sheehan never quite brings this into the open: he liked to dwell on the wider aspects of his themes, but never forgot the limitation of his sources. At one time the tendency of experts on the medieval common law was to raise a prejudice against the Church courts; many readers of Sheehan may come away with a different perspective—there is little doubt that the influence of papal and episcopal justice (with all its shortcomings)—even of the courts of archdeacons—could have a beneficent effect on the workings of royal and secular justice. But indeed the difference was perhaps often more apparent than real—as has been observed by those of us accustomed to reading the records of the late twelfth century royal court administering advowsons. The court may be presided over by an archbishop and a bishop or two; and evidently in practice royal and ecclesiastical courts were acting together and differing only in the types of record they kept.

We must be very grateful to the editor of this volume and the author of the Introduction, which justly appraises Sheehan's achievement. The editor might have made cross-references more consistent and complete, and it would have helped the reader if he had been told with each chapter where it was originally printed—we have to search acknowledgements and bibliography to find out. And there is no index. But the book is beautifully printed; and our final word must be of thanks to those who made it possible for us to enjoy renewing our acquaintance with a valued friend and justly admired colleague in such comfort, and to such good purpose.

DIBDIN AND THE ENGLISH ESTABLISHMENT, E.E.S. SUNDERLAND, with a Foreword by Owen Chadwick, 1995, The Pentland Press Ltd, 109 pp. (£7.50) ISBN 1-85821-304-5.

A review by Judge John Colyer, QC

The author, a retired priest in the American Episcopal Church, a graduate of Harvard Law School and a former assistant Chaplain at Trinity Hall, Cambridge, discloses that this slender volume is the fruit of work and research over a thirty year period. His twenty-five pages of footnotes (which leave only eighty-six pages of text) are a monument to Herculean effort and to the determined penetration of a variety of sources, some not easy to achieve. Unlike George Bernard Shaw ('I hadn't time to prepare a short talk, so I've prepared a long one') this author had time to, and has whittled down his text to a level of condensation and summarisation that makes it difficult for a reader unversed in the subject to evaluate the materials uncovered by the author's researches and to