

## BOOK REVIEW

*LAW, SEX, AND CHRISTIAN SOCIETY IN MEDIEVAL EUROPE*

By JAMES A. BRUNDAGE

The University of Chicago Press, 1987, xxiv + 674 pp.  
(Softback £21.50).

A review by Thomas G. Watkin, Senior Lecturer in Law, Cardiff Law School.

Professor Brundage has set out to trace legal regulation of sexual relationships and practices in Europe through the entire period from the conversion of the Romans to Christianity until the demise of catholic Christendom following the Reformation. It is a vast undertaking, and Professor Brundage admits that in reality he has written two books. One (chapters 6-9) is a detailed monograph based on his own extensive researches among the primary sources relating to canon law in the twelfth, thirteenth and fourteenth centuries. The other (chapters 1-5 and 10-11) is a survey based on the published primary sources relating to the development of Christian ideas regarding sex and marriage (chapters 1-5) and the impact of the Reformation upon the same (chapters 10-11). Brundage freely admits that as his approach is chronological, there is of necessity some element of repetition in each chapter as he considers the development in each period of ideas concerning marriage, divorce, clerical celibacy, non-marital sex, homosexuality, masturbation and oral and anal sex. There is a pedestrian predictability in this type of treatment, although arguably it does assist in accounting for changes of perspective on a range of issues caused by any alteration of outlook relating to basic constructs.

Given Brundage's confession that there are two books here, it is in order to point out that much which has disappointed occurs in the survey rather than the monograph. If Brundage had limited his endeavour to tracing the pedigree of the ideas which were of importance in his main period of expertise rather than indulging in a comprehensive survey of the legal and doctrinal position in the earlier periods, he might have avoided some of the pitfalls which mar the progress of his work. For instance, discussing the Roman law relating to marriage. Brundage speaks of the Roman *familia* as being the household, ruled over by the *paterfamilias* and consisting *inter alia* of his wife and children. Nowhere is there a word to suggest that the great majority of Roman wives married without *manus* and therefore did not fall into the power of their husbands. The passage concerned is therefore dangerously misleading to a reader with insufficient critical knowledge of Roman family law, and raises the ugly question for the informed reader of how reliable the author is going to be in areas where the reader lacks a critical background knowledge. Again, in discussing marriage in Germanic law, his statements concerning *Raubehe* on pages 129 and 133 appear to be self-contradictory, which can only leave a reader confused, and more significantly undermines confidence in the author's appreciation of the topic under discussion.

Professor Brundage has written the volume in a style which keeps the reader's interest, and despite his protestation that the structure of the work entails repetition, such repetition as occurs while predictable is never tedious. Some of his presentational devices, however, are questionable, such as the diagram relating to "The sexual decision-making process according to the penitentials" (Figure 4.1; p. 162), which can be seriously criticized for being at variance not only with what the penitentials say but even with what Brundage says they say.

When Brundage moves into the central period of his inquiry, the presentation and argument are both much improved. His account of the antecedents to and compilation of Gratian's *Decretum* is carefully analysed and clearly expounded. He illustrates with great clarity the path by which Gratian reached his views by use of dialectic, and the account of how the synthesis of consensual and coital theories of the requirements for marriage was achieved is particularly rewarding. This section of Brundage's text will be invaluable for those embarking on mediaeval canonical study. Arguably, it also throws light on the defects in the earlier chapters, for it would appear that Brundage had been seeking the precursors of Gratian's ideas in the earlier periods rather than concentrating on the ideas themselves, which concentration has obscured the actual concerns of the earlier writers.

Throughout chapters six to nine, Brundage is consistently at his best in discussing the development of ideas regarding the formation of marriage and the competing theories – Bolognese, Parisian, English and Rhenish. Cumulatively, these amount to the best and most informative section of the book. It is a pity that Brundage has chosen to place this wealth of learning about marriage in the context of the much more repetitive topics he discusses relating to sex. In fact, there are two books here in a sense other than that which Brundage admits; there is a book on the status of marriage and another on the canon law relating to sexual sins. Unfortunately, the former is not easily accommodated within a discussion of the latter, for the question of married or not was of far greater significance than its treatment as an adjunct to sexual sins suggests. In a different context, it would have been very interesting to learn how the competing theories of marriage actually affected other areas of the law and people's lives – regarding dower, succession and the like.

This, however, is not the book Brundage has written, and he should not be criticized for failing to write an entirely different work. He must, however, be criticized for failing to place some of his comments firmly in the context of the times concerning which they were written. He recounts that Gratian regarded fornication as being comparable in seriousness to some types of homicide (p. 247), but he does not indicate that in the twelfth and thirteenth centuries accidental killers were technically guilty of homicide and required, in England, a royal pardon to save them from the gallows. A modern reader will almost certainly equate homicide with murder and manslaughter, which a twelfth century reader would not have done. Likewise, his treatment of the canonical and penitential analysis of sexual sins does not adequately examine the difference between the morality of duty enforced in the ecclesiastical courts and the morality of aspiration encouraged in the confessional, an omission which must put in question his conclusions with regard to sexual purity being the key element in Christian morality (p. 174).

In chapters 10 and 11, Brundage leaves his monograph and returns to his survey. Chapter 10 is particularly magpie-like in its collection of morsels from various sources, and is not at all well-analysed. Brundage considers the views of all the major reformers on marriage and sex, but never adequately expounds the different perspective which the Eastern Orthodox churches have upon marriage, albeit that the Schism between east and west occurs in the middle of his period. The volume ends with a useful recapitulation of its findings, together with reflections and conclusions.

Despite the many negative elements rehearsed in this review, Professor Brundage's book deserves to be read carefully by every student of mediaeval canon law and European legal history. Its discussion of the development of canonist studies is lucid and thorough, while it is excellent in its treatment of the development of the concept of marriage in the canon law of the twelfth and thirteenth centuries. Outside of these areas, its merits are not so apparent. In dealing with the Roman law roots of some Christian ideas, it is dangerously superficial and misleading, while at many points throughout the volume, there is insufficient regard to relating the material to the contemporary legal and social context. In short, the prospective reader needs to beware of being overready to accept Brundage's writing as authoritative. It is a work to be read critically and cautiously, rather than confidently and with assurance; a work to recommend in part rather than as a whole.

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Timothy Briden was a pupil of Garth Moore, and is a practising barrister of the Inner Temple. Brian Hanson is a solicitor and notary, and Registrar of the Province of Canterbury and of York. He is the chief legal officer of the Synod.

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