A MANUSCRIPT OF HENRY SWINBURN'S TREATISE ON SPOUSALS
(c. 1620-3)

by

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Lovers of Shakespearian English have neglected Henry Swinburn's works1 perhaps because their highly technical subject-matter seems to make them heavy going. In fact, as he says on the title-page to his Testaments (1590–1), he aimed to be clear (and he is certainly very systematic), bright, and at times amusing, and he is so. The charming style, and the hoary anecdotes, certainly helped the student then; but by bad luck the more useful of his works for readers of Elizabethan and Jacobean drama2, viz. his Spousals, was not printed in his lifetime. No doubt the master copy came into the hands of his son Toby Swinburn, who was admitted a member of the College of Advocates in 1652; but it was the custom for practitioners to allow their original works, or works of others in their possession, to be copied by or for their colleagues. It does not follow that either of our surviving sources was derived from the master copy, for each of them possesses material not in the other. 'A' manuscript (now lost) came into the hands of one Richard Clavell, who had it printed in 1686. By that time, as his preface remarks, the style was not only antiquated but even quaint, and he apologises for it. The beauties of the language contemporary with Shakespeare were then felt to be incompatible with legal authorship. The question was open how far Clavell (or someone who devilled for him) tampered with his text. We have Swinburn's first and second editions of the Testaments, which he saw through the press personally, and something can be learned, from the methods he employed there, as to the manner in which his Spousals was compiled. As was the case with his contemporary, Francis Clerke, whose writings were not published in his lifetime, we are ready to expect copies from the master-copy to have been taken off at intervals during its life, while the author was still able to make successive changes to it. Clavell's copy need not have been Swinburn's last draft: from the only known surviving manuscript it seems neither of them was. It will be appreciated that the dearth of manuscripts of Swinburn's works is due solely to the fact that they were printed and went into more than one edition. A score of manuscripts of Clerke's works are accessible, simply because he was never published2a.

To understand, and indeed to use intelligently, the 1686 edition the exact relationship between the English text and the Latin marginal notes must be

1. J.D.M. Derrett, Henry Swinburne (?1551-1624), Civil Lawyer of York [Borthwick Papers, No. 44] (Borthwick Institute, York 1973). The name is spelt in both ways. In cause-papers at York (in the Borthwick Institute) Swinburn is found constantly signing his name without the final e.


known. Swinburn worked to combine (and he was a pioneer: no one had attempted this before) a smooth, complete statement of the law, without being repetitious, giving their due to the discordant authorities he was compelled to consult, without becoming confused or garrulous. Whereas any of the great digests of the seventeenth century supplies annotation for each point as bulky as Swinburn gives for a whole page, the latter’s intention was to give the best, most authoritative references in the most compact form, so that any of his readers (e.g. parish clergy acting as surrogates, or officials of the many “peculiar” jurisdictions, not to speak of more exalted ecclesiastical judges) could be sure that if he followed the text he would have blameless canonical or statutory authority behind him. Now many intricate points of the canon law of marriage are codified in Swinburn, and a reader upon whom, for example, the chief irony in the Duchess of Malfi would otherwise be completely lost can safely consult this treatise. Thus ideally it should be annotated to show the printed edition’s divergences from the manuscript. This tedious process may be helped by a series of notes which I supply, the chief practical function of which must be to alert potential critical students of the treatise to the extent and nature of the task. I confess that a word-by-word comparison and rectification, restoring the Shakespearian style, would be time-consuming and only marginally interesting: but it would bring us back into touch with a peculiarly English mind of exceptional originality. The utterly unreadable notes which I provide at least explain the strengths and weaknesses of the manuscript. Some conclusions may be stated with confidence.

1. – The manuscript, Lincoln’s Inn Ms. Misc. 577, is derived from a copy very close to Swinburn’s master copy. It bears material entered, presumably by Swinburn himself, later than the point of departure of the ancestor of Clavell’s text – though the “Clavell” text contains some material which was not deliberately omitted by our copyist.

2. – The employer of our copyist (or rather copyists, for a second hand was at work for a short while) ordered the omission (for economy’s sake) of all English versions of Latin citations. The copyists sometimes stumbled in doing this, and so betrayed the instructions3. Swinburn made it a policy to give Latin originals where required but to leave nothing untranslated. Foolishly the copyists sometimes omitted the Latin, and thus doubly disobeyed their employer.

3. – The employer had puritanical inclinations, or was mean about “garrulity”, and some matter was childishly omitted as unnecessary or unseemly4.

4. – The copyists had before them a master copy designed as Swinburn’s

3. XI § 26 (p. 97) oppositii erased, § 29 (p. 104) praeterque followed by a blank; XII § 21 (p. 125) “legal conditions” erased. Examples: X § 9 (p. 64), XI § 26 (p. 99), §§ 36, 39. At XI § 6 a considerable part of the Latin also is omitted. Substantial omissions occur at IX § 7 (pp. 50–1), X § 7 (p. 61), § 9 (pp. 64, 65), XI § 6 (p. 78), XII § 21 (p. 125), § 33 (p. 140). Substantial omissions occur at IX § 7 (p. 50–1), X § 7 (p. 61), § 9 (pp. 64, 65), XI § 6 (p. 78), XII § 21 (p. 125), § 33 (p. 140). At XI § 21 r and § 26 (pp. 97–8) Latin is omitted. Other omissions: XI § 25 q; XII § 8 e the greater part of the quotation; XIII § 28 y, XVI § 19 e; some words from XVI § 5 f. It is odd that “to have the use of her body carnally, or” (required at p. 150) is omitted at XII § 43 (p. 148).

4. From “inconveniences” at p. 46, line 2 to “wade” is omitted; and from “answer” at p. 48 (§ 3) to “beget” (p. 49). At pp. 52–3 the story of the lusty nurse is greatly shortened. VIII § 6 after “and they will not” the ms omits “and so every day, In Dock out Nettle”. XIII § 32 “lest he himself be caught for a simple cony” is omitted (out of a false sense of propriety?).