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Article Title: The impact of the Clandestine Marriages Act: three case-studies in conformity

Year of publication: 2008

Link to published version:

<http://dx.doi.org/10.1017/S0268416008006759>

Publisher statement: None

The impact of the Clandestine Marriages Act: three case-studies in conformity

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ABSTRACT. This article examines the extent of compliance with the Clandestine Marriages Act 1753 through three parish studies. It demonstrates that the vast majority of the sample cohort of parents whose children were baptized in church, and indeed of couples living together, had married in church as required by the 1753 Act, and shows how the proportion of marriages traced rises as more information about the parties becomes available. Through a study of settlement examinations, the article posits an explanation of why some marriages have not been traced, and argues that researchers should be cautious in inferring non-compliance from the absence of a record in a specific parish. It is also argued that the reason for such high rates of compliance has less to do with the power of statute and more to do with the fact that the 1753 Act was not such a radical break with the past as has been assumed.

In 1753 the Clandestine Marriages Act¹ was passed to put an end to the celebration of marriages outside the established Church in England and Wales. It directed that henceforth the only legally valid form of marriage was one celebrated according to the rites of the Church of England,² in a ceremony preceded either by the calling of banns³ or the obtaining of a licence.⁴ For those under the age of 21, parental consent was required for a marriage by licence,⁵ and a parent could also forbid the banns and so prevent a marriage from going ahead.⁶ Failure to comply with these requirements rendered the marriage void.⁷ The Act also contained detailed provisions relating to the registration of marriages,⁸ but a failure to observe these would have no effect on the validity of a marriage.

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The motivation for the legislation is not hard to find. The Act noted the practice of solemnizing marriages in prisons,⁹ an allusion to the activities of clergymen imprisoned in the Fleet and other London prisons who celebrated marriages in defiance of the prescriptions of the canon law. Such marriages were extremely popular among Londoners: the surviving registers record that 3,547 marriages took place in the Fleet in 1720 and 5,551 in 1740,¹⁰ leading one historian to estimate that by the 1740s over half of London marriages took place within the Rules of the Fleet.¹¹ This increase in clandestine marriages in London undoubtedly played an important part in persuading the legislature that action was necessary.¹² Masterminded by Lord Hardwicke, the then Lord Chancellor who had long been critical of clandestine marriages, the bill passed onto the statute books after heated debate in the Commons¹³ and came into operation on 25 March 1754.

Such evidence of the desire to marry clandestinely – along with the belief among historians that it was possible to marry by a mere exchange of consent before the 1753 Act¹⁴ – has led to a perception that marriages were often celebrated outside the parish church in this period¹⁵ and that therefore the legislation constituted a radical break with the past. It has also been argued, most notably by John Gillis, that it was a failure, and that large sections of the population simply ignored its provisions.¹⁶ This article will demonstrate, through three case-studies of rural and proto-industrial communities, that the Act was largely successful in its aim of channelling marriages into a standard form in such areas. We will suggest that this was largely because it was not such a radical break with the past as has been assumed, since outside London such clandestine marriages as had occurred prior to 1754 departed less fundamentally from the form prescribed by the canon law and tended to be celebrated in church.

The question as to whether couples complied with the Act is of considerable importance for a number of reasons. For lawyers, it raises fundamental issues about the relationship between the individual and the state: were the English an ‘ungovernable people’,¹⁷ who flouted the law, or were they, on the whole, obedient subjects who complied with legal requirements? In particular, the success or otherwise of the Act raises questions about the influence of legislative as opposed to canonical prescriptions, and the extent to which couples complied with formalities that were directory rather than mandatory.¹⁸ After all, the formalities set out in the 1753 Act were not innovations: the canon law had for centuries required that a marriage be preceded by banns or licence and celebrated in the church of the parish where at least one of the parties resided,¹⁹ although a failure to comply with these formalities had not affected the

validity of a marriage. For historians of the family, the issue of compliance poses questions about the very nature of marriage: was it perceived as a personal and private relationship, to be conducted outside the control of the state, or was it a public commitment whereby the parties assumed legally enforceable rights and responsibilities? And for demographers, the extent of compliance is of crucial importance in determining the scope and reliability of the parish registers that form the basis of so much of their work: did the registers capture the lives of the majority of the population, or was there a sub-group who lived and loved without leaving any trace?

It is surprising, therefore, that so basic a question should not have been the subject-matter of detailed scrutiny. Scholars have either been content to adopt Gillis' argument that non-compliance was common²⁰ or have challenged the evidential basis of Gillis' conclusions without providing positive evidence of compliance.²¹ More attention has been paid to the relationship between the 1753 Act and the clear rise in the number of illegitimate births in the second half of the eighteenth century (with differing conclusions about the impact of the Act²²), but trends in illegitimacy offer only tangential evidence about the making of marriage. Illegitimacy may result from a broad spectrum of relationships, from the most transient of liaisons at one extreme to a stable non-marital union at the other, and an increase in illegitimacy does not necessarily indicate an increase in the latter type of relationship.²³ Given that other countries which witnessed a similar increase had *not* made changes to their marriage laws, it would be dangerous to attach too much weight to the evidence of illegitimacy alone.²⁴

One exception to this pattern of neglect is the broad survey conducted by Snell.²⁵ His examination of 18,442 marriages from 69 parishes in eight counties found that after the 1753 Act there was a dramatic reduction in the number of marriages involving parties from outside the parish. In this respect, he notes that 'Hardwicke's Act ... shows itself to have been highly effective over all counties.'²⁶ This finding is important but limited: it could be argued that all it shows is that those who chose to marry in church at least purported to have complied with the residence requirements of the Act, but it is not necessarily evidence that all those who set up home together did so, nor even that they told the truth regarding their residence. As Wall has noted, 'even after the reforms of 1754, the information couples gave the clergymen was largely taken on trust'.²⁷

Thus in order to assess the extent of compliance with the Act it is necessary to adopt a different methodology. Bearing in mind the records available, the only way to test compliance is to identify a cohort

of couples and establish whether or not each couple had in fact married in church. Three different cohorts in different communities are considered in this article. First, there are those who baptized a child in the Northamptonshire parish of Kilsby in the decades either side of the 1753 Act. Most demographic work in the early modern period is based on parish registers – for the simple reason that little other evidence is available – but it is open to the objection that those who simply cohabited would be less likely to bring their children to be baptized. The second test group addresses this potential problem, being made up of the inhabitants of the Bedfordshire village of Cardington in 1782, conveniently listed by the school-master. This provides a record of the community independent of religious conformity. The third group is different again, consisting of couples who were examined as to their settlement in the Wiltshire town of Bradford-on-Avon. A source of this kind provides evidence about the very poorest members of society, those either claiming poor relief or liable to do so, and so is particularly useful for testing the claim that the poor eschewed legal marriage.²⁸

For each couple within the test groups – whether they embarked on matrimony before or after the 1753 Act – we asked the same question: could a marriage be traced in the Anglican parish registers? Of course, it may be objected that this does not tell us whether all of the requirements of the canon law or the 1753 Act were observed, since even if the record states whether the marriage was by banns or by licence it would not appear whether the banns were called in the correct names or whether parental consent had been given to the marriage of a minor. These finer points of compliance must be set aside for another day; this article is concerned with the broader question of whether the couples married in church. It should, however, be noted that deliberate non-compliance was probably rare, at least after 1754 when it had the potential to invalidate the marriage: for the parties themselves, there would be little point in going through a ceremony that was known to be invalid, while a minister solemnizing a marriage in defiance of the requirements relating to banns or licence would be guilty of a felony and vulnerable to transportation for fourteen years.²⁹ And the risk of accidental non-compliance rendering the marriage void was reduced by the fact that certain requirements were not essential to the validity of a marriage even after 1754,³⁰ by the fact that the onus of proof lay on the person challenging a marriage to prove non-compliance³¹ and by the tough line taken by the courts towards such claims.³² We will adopt the same approach as the courts and presume their validity unless the contrary is apparent.

(i) Kilsby parents

Kilsby in the mid-eighteenth century was a parish of some 650 to 700 inhabitants, many of whom were engaged in weaving and wool-combing.³³ The parish was chosen partly for practical reasons – there is an almost complete set of transcribed records of baptisms, marriages and burials from 1706³⁴ – and partly out of sentiment, since it was where one of the authors grew up. As it was our first reconstruction of this kind, we approached the task with few preconceptions as to what we would find.

It was clear that Kilsby was not a popular location for couples to be wed, although the register did provide evidence of one couple from outside the parish who married there. In the 1720s only 5 marriages are recorded in Kilsby's register, while 8 marriages of Kilsby residents were celebrated in Lilbourne, four miles to the north of Kilsby, and a further 5 in Brockhall, seven miles to the south-east. In the 1730s Long Buckby, five miles to the south-east, was the favoured destination, with 19 marriages there involving Kilsby residents. A number of these marriages clearly did not comply with the canon law requirements relating to residence,³⁵ both bride and groom being from Kilsby or a third parish.³⁶ For the purpose of testing the overall proportion that married in church, we focused on the cohort baptizing children in the twenty years preceding the implementation of the 1753 Act, to maximize the possibility that those who had married in Kilsby would have done so within the period covered by the registers. We found that only 24 per cent of the 70 couples who baptized their children in Kilsby in this period had married there. A further 13 per cent had married in adjacent parishes and 40 per cent elsewhere in Northamptonshire. Adding in a couple of marriages traced further afield, 80 per cent of the 70 couples in this cohort are known to have married in an Anglican church, if not necessarily the correct one.

After 1754 there is no evidence of such extra-parochial marriages occurring, although couples were still likely to marry, as was customary,³⁷ in the bride's parish of residence. But did all couples known to have produced children marry in church? An examination of the baptism register between 25 March 1754 and 24 March 1774 – the first twenty years of the Clandestine Marriages Act's operation – yielded a list of 265 children. By omitting Joseph Russell – baptized in 1755 without either parent being noted in the register – a test group of (quite fortuitously) 100 combinations of parents was drawn up. The term 'combinations' is used in preference to the term 'couples', as some individuals cropped up in different combinations. Ann French, for example, had a child in 1766 by a man named Satchel; two years later she had a child by Thomas Emery, who also appears in the register as the husband of first Mary and then Ruth. For

the most part, however, there is little duplication within the 100 combinations.

There is evidence that some parents were not married to each other: ten children were explicitly described as 'base' in the register. But the evidence does not suggest that the relationship of the nine combinations of parents who produced these children constituted any kind of stable long-term alternative to marriage. Although in most cases the identity of the father was clearly known (in four cases the names of both parents were given, and in a further two cases the child was given a surname different to that of the mother), there is no direct evidence that these relationships involved co-residence. If the parents had been living together in a relationship that was seen as an alternative to marriage, one might expect them to have produced the same number of children as their married counterparts. But while the other 91 combinations of parents produced an average of 4.3 children each,³⁸ those baptized as 'base' tended to be one-offs. Ann French was the only 'repeater' in this sample, with two base children by two different men in two years (hardly suggestive of stability). Another couple, John Hollis and Mary Hiron, had two children baptized at the same time, which could as easily imply twins as a relationship of longer standing. Nor were these illegitimate births necessarily a prelude to marriage: at least two of the fathers and one of the mothers went on to marry a different partner, and no subsequent marriage has been traced for any of the others.

What of the marital status of the other 91 combinations of parents? Forty-four married in Kilsby itself. A search of the adjacent parishes revealed a further 11 marriages. Ending the search there would give the impression that barely half of parents had complied with the Act. However, the compilation of county-wide marriage indexes,³⁹ and in particular the International Genealogical Index,⁴⁰ has considerably facilitated the process of tracing marriages, and it is surprising how far-flung some of the marriages were. The problem, of course, is that if the names of the parties are common it may be impossible to say with certainty whether a particular couple marrying in one parish is the same couple who baptized a child in another. Where one of the parties is recorded in the marriage register as being from Kilsby, or where the names of the parties are unusual, the link can be made with a fair degree of certainty. Even eliminating the less plausible possibilities, a further 22 marriages were traced to more distant Northamptonshire parishes, 7 to Warwickshire, and 2 to Leicestershire. Of the remaining 5, 3 couples appear only once in the registers and appear not to have been resident in the parish.⁴¹ Since there is no means of knowing whether the child that appears in the Kilsby registers was the first or last child of those

parents, and a woman's period of child-bearing could span twenty years or more, the chances of tracing these couples' marriages are virtually non-existent.

Overall, then, a marriage was traced for 86 per cent of the combinations in the sample; 9 per cent produced an illegitimate child; and no marriage has been traced for the remaining 5 per cent. If this is related to the number of children in the sample the picture of conformity is even sharper: only 4 per cent of the children registered were described as illegitimate, and no marriage has been traced for the parents of only a further 3 per cent.

But is there any way of testing whether those baptizing their children were representative of the parish as a whole? Unfortunately there is no comprehensive listing of Kilsby's inhabitants for the relevant period, and although the marriage register records husbands' occupations between 1755 and 1774 the baptism register does not. A rough comparison can be made with the Militia Lists that were drawn up in 1771, 1774 and 1777, which recorded the occupations of the male inhabitants of the village aged between 18 and 45. These confirm the dominance of weaving and wool-combing in the parish economy: 50 per cent of husbands in the marriage register and between 42 and 46 per cent of those who appear on the Militia Lists were employed in these two categories. More detailed cross-checks are precluded by the differing classifications of occupational status used in these lists⁴² and by the 16 per cent of husbands in the marriage register whose status was not specified. Happily, however, our second sample is not dependent on the parties having brought their children to be baptized in church, and to this we shall now turn.

(ii) *Cardington inhabitants*

The objection that a parish reconstitution gives no information about those who rejected the rites of baptism and marriage can be addressed by comparing the results for Kilsby (based on parish registers) with those for the parish of Cardington (based on a list of inhabitants drawn up in 1782).⁴³ The list takes the form of a house-to-house survey, listing the names (including wives' maiden names), occupations and ages of the occupants of each household. Cardington itself is situated in the middle of the county of Bedfordshire, which has the best collection of transcribed registers in England and Wales. The location is important, since it means that the majority of Cardington couples will have married in Bedfordshire, and the survival and availability of registers means that it is more likely that those marriages can be traced. While the listing may not be perfect as a tool for identifying the total number of inhabitants of

Cardington, the omissions noted by Baker tend to be of single persons – servants and widows – rather than couples.⁴⁴ In any case, the important point for our present purposes is that inclusion on the list was not dependent on compliance with the rites of the Church of England. It is also noticeable that the list is at its most detailed when discussing the poorer inhabitants of the parish, offering more information on labourers and craftsmen than on farmers and those designated ‘Mr’, although some of the very poorest – those resident in the workhouse – receive less detailed scrutiny. A final advantage of the listing is that it enables marriage practice both before and after the 1753 Act to be tested: judging from the age of the parties and their children, around a quarter of those named in the listing would have married before the Act came into force.

A test group of 237 combinations was drawn up from the listing, consisting of three different groups. The first and largest consisted of 148 couples in a subsisting relationship.⁴⁵ Within this group, 24 individuals had been married previously, some of them more than once, which yielded a second group of 30 combinations. The third group consisted of 52 widows and widowers, some of whom had also married more than once, accounting for a further 59 possible marriages. It would have been possible to try to trace the subsequent marriages of children listed as resident in Cardington, but searching for a marriage with the name of only one party poses problems of verification, especially with a young and mobile cohort. It was accordingly decided to include only those children who were themselves resident in Cardington in 1782 and had already partnered: such couples have been included in the first group of 148 couples.⁴⁶

The task of tracing these 237 marriages was greatly assisted by the work already done by Baker, which detailed those marriages that had taken place in Cardington or in the parish where one of the spouses had been born. This research left 31.5 per cent of marriages of household heads untraced.⁴⁷ However, searching a wider range of records electronically enabled all but ten marriages to be traced – already a conformity rate of at least 96 per cent. Significantly, the missing marriages were split more or less equally between those that must – judging from the age of the parties and their children – have taken place before the 1753 Act came into force on 25th March 1754, those that must have taken place later, and those for which inadequate information as to timing is available (see Table 1).

Of the 10 for whom no marriage has been traced, one couple were definitely unmarried. The first version of the list merely describes the abode of ‘John Nesbitt Esqr’ as a gentleman’s house and notes that he had nine children. But in the second copy⁴⁸ the word ‘wife’ was firmly crossed out and the words ‘Children by Sarah Lancaster his Mistress’ substituted. The fact that she was so described indicates that the compiler

TABLE 1
Marriages of Cardington residents as of 1782

	Pre-1754		Post 1754		Date unknown
	Total	Untraced or unmarried	Total	Untraced or unmarried	
Existing couple	22	1	125	3	1
Previous marriage	9	1	20	2	1
Widow(ers) and previous marriages	34	1	25	—	—

Sources: David Baker, *The inhabitants of Cardington in 1782*, Bedfordshire Historical Record Society, vol. 52 (1973), and parish registers in Bedfordshire and elsewhere.

of the list would not have described other couples as married had he known them to be cohabiting. In a further five cases the failure to trace a marriage can be attributed to a lack of information: the anonymous helpmeets of John Wyche and Luke Heywood are merely listed as ‘wife’ and no ages are provided for any of the parties or their children. Similar problems arise in tracing the first marriage of Thamas (*sic*) Frankerling; while the previous marriage of 74-year-old Samuel Butcher to Judith could have taken place any time between the 1720s and Judith’s death in 1764, and, since he was not a native of Cardington, anywhere in the country. The widowed Mary Beckels’ husband’s first name was not recorded, and if she had entered into an earlier marriage the evidence of her maiden name might be misleading. We suspect that the evidence provided regarding the first marriage of Samuel Redman *is* misleading: the Cardington register records his marriage to Sarah, but the wife listed in the baptismal entries of his children is named Hannah. Such mistakes are not uncommon – and other examples have been uncovered in the course of this study – but as a decade separates his marriage to Sarah and the baptism of his eldest daughter, we cannot be sure that there was not another intervening but untraced marriage to Hannah. There are therefore plausible reasons as to why marriages have not been traced for these particular inhabitants.

In the final two cases (‘Date unknown’ in Table 1) it is possible that the marriages took place outside the well-documented Bedfordshire parishes: both spouses came from other parishes and their eldest children were not baptized in Cardington. Electronic databases such as the International Genealogical Index are a boon to the researcher, but do not contain all recorded marriages: we traced one marriage of a Cardington resident that

did not appear on the IGI, and there may well be others.⁴⁹ As our third sample will show, many couples travelled surprising distances between the date of their marriage and their appearance in the sources from which the cohort is derived.

(iii) *Bradford-on-Avon settlement examinations*

Bradford-on-Avon is a large Wiltshire parish, whose eighteenth-century occupants were engaged in both agriculture (dairy and arable) and the manufacture of woollen cloth.⁵⁰ From the 377 settlement examinations for the period between 1725 and 1798, we drew up a test group of 268 couples who claimed to be married. This excludes – for obvious reasons – single men and women, as well as children. It also excludes a few married individuals whose marriage was irrelevant for the purposes of the examination, namely 8 wives who were examined about the settlement of their children from a previous relationship, largely because the evidence was too sparse in such cases. Five cases in which no details of a previous spouse were given have also been omitted, since without a name, date or place of marriage the chances of tracing it are slim indeed.

As an opening observation, it is highly significant that the settlement examinations offer not a single example of couples marrying simply by exchanging consent – a practice that has been suggested by some commentators to have been almost universal among the poor before 1754.⁵¹ A number of single women had given birth to bastard children, but most were ‘one-offs’ and none claimed any kind of informal marriage. In only one case is there evidence of a stable non-marital relationship: Elizabeth Pope, ‘singlewoman’, gave evidence in 1756 that she had previously ‘kept company’ with Thomas Hilliar (since deceased) for many years and had two children by him, although she did not claim that they were in any sense married.⁵² This was clearly an exceptional case, but the fact that it was recorded at all suggests that there was no official policy of ignoring such unions.

Turning to the cohort of individuals who claimed to have married, what evidence is there that they did so in the form required by the Church or the state? A few marriages were definitely irregular: three examinants reported having been married by a minister outside a parochial church prior to the 1753 Act – two in Bath and one (bigamously, as the husband later discovered) in London’s Fleet prison. It is likely that a fourth marriage was also celebrated at the Fleet: the parties claimed to have married in the parish of St Martin Ludgate, but the church register contains no record of their marriage and the certificates issued by at least one Fleet parson ‘described the place of marriage as either St Bride Fleet Street,

St Martin Ludgate or St Sepulchre according to the location of the marriage-house where the wedding was conducted'.⁵³ One acknowledged irregular marriage took place *after* the 1753 Act: Hester Bishop and John Vennell had agreed to marry, and the banns were called in Bradford church. However, John's mother forbade the banns, so the couple went through a ceremony of marriage in a chapel in Bath. That this marriage did not comply with the legal requirements is indicated by the fact that the unfortunate Hester was removed from the parish to her last place of settlement. Putting these 5 cases in the context of a sample of 268 suggests relatively low levels of clandestinity, or at least of those forms of clandestine marriage that took place outside a church. Of course, it might be objected that other couples who claimed to have married in church had not in fact done so. It is thus necessary to check the stories of the other examinants.

The settlement examinations do not follow a standard form – as one would expect, given that they span a period of 73 years – and the detail provided varies enormously. A few recorded the wife's maiden name, the location of the marriage and approximately when the marriage took place, but most recorded only the place and approximate date of the marriage, and some not even this. Nothing, however, should be read into these discrepancies in recording: all they illustrate is the tendency for information to be recorded in different ways at different times, and by different people, rather than any system for differentiating between different forms of marriage. For example, on 6 November 1750 7 men were examined as to their place of settlement. In 6 cases the place and approximate date of the marriage was recorded. Two years later, on 30 October 1752, 6 men were examined about their settlement. In each case the wife's maiden name and the approximate date of the marriage was recorded, but the place was not. It would be too much of a coincidence if these differences in detail reflected different modes of marrying.

Table 2 illustrates how the availability of information affected our success rate in tracing marriages. It should be borne in mind, however, that there is considerable variability even within these five categories of information. Details as to the place of marriage vary from the specific – 'Bradford parish church' – to the unhelpfully vague – 'in the kingdom of Ireland'. Similarly, sometimes the time of the marriage is stated exactly – two couples were actually married on the same day that the settlement examination took place – but often it is expressed more generally – for example 'thirty years ago'. Sometimes it is necessary to work out an approximate date from the chronology provided in the examination, for example by taking into account the ages of any children mentioned, or by taking into account the time spent in different places.

TABLE 2
Bradford settlement examinations: information and confirmed marriages

<i>Information provided</i>	<i>Before 1754</i>		<i>After 1754</i>	
	<i>Frequency</i>	<i>Number untraced (%)</i>	<i>Frequency</i>	<i>Number untraced (%)</i>
Wife's first name only	2	1 (50%)	15	6 (40%)
Evidence as to date of marriage only	11	5 (45%)	11	2 (18%)
Wife's maiden surname plus evidence as to date of marriage	18	7 (39%)	3	1 (33%)
Evidence as to date and place of marriage	30	7 ^a (23%)	142	13 (9%)
Wife's maiden surname plus evidence as to date of marriage plus evidence as to place of marriage	9	2 ^a (22%)	24	1 (4%)

^a Excluding those clandestine marriages of which evidence was given.

Sources: Phyllis Hembry, *Calendar of Bradford-on-Avon settlement examinations and removal orders 1725–98* (Trowbridge, 1990), and parish registers in various parts of England.

Despite such caveats, and the fact that the small numbers in some categories seemingly exaggerate the percentages of untraceable marriages, two clear trends emerge from the data: first, that the percentage of marriages traced increases with the information provided, especially information relating to the location of the marriage; secondly, that the percentage untraced falls dramatically in the wake of the 1753 Act across all categories (and would have been still greater had it not been for the six soldiers examined in 1771 who were accompanied by wives for whom only the first names were recorded and who came from distant parts of the country). Neither is surprising; the more important question is *why* the 1753 Act had this impact. Was it because it effected a shift in the way people married or because record-keeping improved in the wake of the Act?

An analysis of the 26 pre-1754 marriages for which no parochial record has been traced casts some light on this question. As noted above, 4 couples had married outside an Anglican church. In a further 9 cases the most likely reason for the failure to trace a marriage is the absence or incompleteness of the relevant registers. Mary Isick, for example, married in Walcott in 1719, but the marriage register does not begin until 1728, while in a further two cases (for which information about the location of the marriage was lacking) no register survives for the wife's parish of birth.

The register for Limpley Stoke records only 25 marriages between 1709 and 1754, and their distribution suggests that this low number is due to a failure to record rather than to an absence of marriages. In the other five cases the inference of incomplete recording rests upon the fact that the couple had claimed to have married in a nearby parish but no record has been found (or it was mistranscribed, as in the case of Humphry Foard⁵⁴). While it is possible that some couples may have falsely claimed to have married, it would be foolish to make such a claim if it could so easily be disproved at no great distance. Parish authorities often demanded verification,⁵⁵ especially if disproving the marriage would save them money by establishing that a claimant's dependents were settled elsewhere and were thus the responsibility of another parish.⁵⁶ For the remaining 13 cases the question cannot be answered because of the lack of evidence as to the location of the marriage. In the light of these small numbers, any conclusions can only be tentative, but it would appear that poor record-keeping by contemporaries or the subsequent loss of such registers might be a more significant explanation for the missing marriages than marriage outside the Anglican church.

That record-keeping improved for marriages that took place after 1754 is clear not only from the increased proportion that were traced but also from the reasons why 12 marriages for which there is concrete evidence of the place of marriage remain untraced.⁵⁷ In 7 cases – a narrow majority – the simple problem is that the register for the relevant period has not survived, whether ‘lost or stolen or strayed’.⁵⁸ In 5 cases one must presume defective recording: 3 of the couples for whom no marriage has been traced claimed to have married in Bradford itself and 2 in not-too-distant churches in Bath and Bristol. It should of course be borne in mind that a failure to register a marriage did not render the marriage void (before or after 1754): the fact that a marriage was unrecorded does not, therefore, mean that the parties were not validly married.

The evidence as to place of marriage provided in the settlement examinations provides another useful perspective on marriage practices in the eighteenth century. While the majority of those claiming relief from the parish had married in Bradford or its surrounding parishes, a number had married much further afield – indeed, some had married so far from Bradford – in Huddersfield, Berwick-upon-Tweed and Cork – that, had it not been for the explicit information in the settlement examinations, any link between the couple marrying and the couple claiming relief would have seemed highly speculative. The Bradford study therefore illustrates the dangers of assuming that couples whose marriages have not been traced within a small radius must have been cohabiting.⁵⁹

TABLE 3
Marriages whose locations have been traced, calculated as a percentage of the cohort

	<i>Parish studied</i>	<i>Adjacent parishes^a</i>	<i>Same county</i>	<i>Different county</i>	<i>% traced</i>
Kilsby 1734–1754	17 (24%)	9 (13%)	28 (40%)	2 (3%)	80%
Kilsby 1754–1774	44 (44%)	11 (11%)	22 (22%)	9 (9%)	86%
Cardington pre-1754	24 (38%)	15 (23%)	22 (34%)	—	95%
Cardington post-1754	86 (50%)	26 (15%)	46 (27%)	8 (5%)	97%
Bradford-on-Avon pre-1754	26 (37%)	10 (14%)	2 (3%)	6 (9%)	63%
Bradford-on-Avon post-1754	100 (51%)	36 (18%)	13 (7%)	24 (12%)	88%

^a Kilsby: Barby, Ashby St Ledgers, Watford, Crick and Hillmorton. Bradford: this includes the chapelries of Limpley Stoke, Winsley, South Wraxall, and Holt, and the adjacent parishes of Westwood, Winkfield, North Bradley, Trowbridge (including Staverton), Whaddon, Broughton Gifford, Atworth (including Chalfield Magna), Box (including Ditteridge), Monkton Farleigh, Freshford, Bathford, Claverton, South Stoke, Hinton Charterhouse, and Monkton Combe; Cardington: Cople, Old Warden, Southill, Haynes, Willhamstead, Elstow, Bedford St Mary, Bedford St John, Goldington.

Sources: Kilsby baptism registers, 1734–1774 (Northamptonshire Record Office, 186 P/1 and P/4); David Baker, *The inhabitants of Cardington in 1782*, Bedfordshire Historical Record Society, vol. 52 (1973); Phyllis Hembry, *Calendar of Bradford-on-Avon settlement examinations and removal orders 1725–98* (Trowbridge, 1990); and parish registers in various parts of England.

CONCLUSION

Table 3 summarizes the key findings of this research. First, in each of the cohorts studied, a high percentage of marriages was traced both before and after the 1753 Act came into force. The differences between the different cohorts should not be taken as confirmation that Cardington couples were more liable to comply with the law than those living in Kilsby or Bradford-upon-Avon; rather, it shows the results that can be achieved when one has adequate information about couples who are resident in a parish with excellent records that is situated in the middle of county with similarly good registers. When these conditions are not fulfilled, the proportion that can be traced is inevitably lower.

Certain points deserve further consideration, since they are crucial to the extent to which the results of these studies may be extrapolated to other parishes. First, it should be noted that the Cardington and Bradford-on-Avon cohorts are comprised of couples, rather than specifically, as in the case of the Kilsby sample, of parents. All three studies suggest that the parents of illegitimate children were not usually residing under the same roof: for Kilsby, there is the evidence that illegitimate

children were one-offs; for Cardington, there is the fact that the mothers of illegitimate children were either living in the workhouse or at home with their parents; and for Bradford-on-Avon there is the absence of examinations for couples – as opposed to individuals – who had produced a child out of wedlock. These confirm other studies that have found that childbirth outside wedlock generally did not occur within the context of a stable co-residential relationship.⁶⁰ Unless there is evidence to the contrary – for example repeated births to the same couple – it would be legitimate to exclude known illegimates from any study examining how people married. For Kilsby, this has the effect of increasing the proportion of post-1754 marriages that have been traced to 95 per cent.⁶¹

Secondly, the dangers of inferring non-compliance from the absence of a record in the registers of a particular parish are made evident. It is clear that the percentage of marriages traced rises with the information available – both the information about the individual couple and the state of the registers in a particular locality. It is also obvious that the Act led to an improvement in the recording of marriages, as John Rickman noted at the start of the nineteenth century: ‘the solicitude of the female and her kindred, aided by the precision and security of the marriage act, leaves no occasion to suspect any deficiency in the marriage register from negligence and the deficiency from other causes cannot be very important.’⁶² In Bradford, of the 200 cases for which information as to the place of marriage is provided (excluding the 5 known to have been celebrated clandestinely), no marriage has been traced for 11 per cent of the cohort. For pre-1754 marriages, this percentage rises to 26 per cent; after the Act it falls to 8 per cent. Yet registration was still far from perfect,⁶³ and a further allowance needs to be made for lost and defective registers. In the Bradford sample, if the number of marriages that have not been traced on account of missing or incomplete registers is added to the number actually traced, then the minimum rate of compliance rises to 76 per cent for those who married before 1754, and 95 per cent for those who married after this date. And of course a further allowance has to be made for cases in which we lack information as to the location of the marriage and therefore cannot ascertain whether our failure to trace a marriage is due to the absence of a register or the fact that the marriage did not take place in church. Once again, of course, the findings cannot be transposed to other contexts without modification, as a contrast with the results for Cardington – situated in a county with excellent records – makes clear. Any allowance for missing registers must be calculated according to the percentage of missing registers in the locality. In the absence of explicit information as to the location of the marriage, such a calculation can only

be an estimate, but any study that does not at least make the attempt will over-estimate the extent of non-compliance.

Thirdly, it is clear that the 1753 Act had an impact on *where* people married, as is evident from the higher proportion of each cohort marrying in Cardington, Bradford-on-Avon and (especially) Kilsby after the Act came into force, but that it had little impact on *how* they married, since the vast majority of marriages took place in a church even before 1754. The settlement examinations for Bradford-upon-Avon make no mention or insinuation of marriage by exchange of consent, and there are only a few examples of pre-1754 marriages being conducted by Anglican ministers outside the parochial church. The evidence supports Schofield's conclusion that even prior to the 1753 Act 'all but a few people married and had their marriages recorded in the parish registers'.⁶⁴ After the Act came into force, couples continued to marry in church, but paid more attention to the requirement that they should marry in their parish of residence.

Of course, the facts that a couple baptized a child in a particular parish, were living there at a particular date, or were examined as to their settlement there, do not mean that they must have been resident there at the time of their marriage, but the increase in the proportion of marriages celebrated in each of the parishes is nevertheless highly suggestive that the residential requirements of the 1753 Act had a greater impact than the equivalent provisions of the earlier canon law. That a significant proportion still took place *outside* these three parishes does not necessarily indicate irregularity: after all, the law only stipulated that *one* of the parties should be resident in the parish where the marriage took place, and the mobility of the population must be taken into account. All three of the studies show that an allowance must be made for marriages occurring not only outside the parish, or those immediately adjacent, but even outside the county. Of course, the proportion of extra-county marriages cannot simply be transposed to other studies as much will depend on the position of the parish, as the contrast between Kilsby and Bradford – both parishes situated at the edge of counties – and Cardington – situated in the middle of Bedfordshire – illustrates. Topography and transport links will also have played a part, as will the economic conditions prevailing at any given time.⁶⁵

The increase in the proportion of couples observing the residential requirements also explains why demographers have found an increase in recorded marriages in the wake of the 1753 Act. In the 404 parishes that form the basis of Wrigley and Schofield's calculations, 32,728 marriages were recorded in the decade before the Act came into force (1744–1753) and 39,339 in the decade after (1754–1763).⁶⁶ This 20 per cent increase could not be accounted for either by population growth or by the effect of

improved recording. But it does match the increase in the proportion of marriages recorded in Cardington and Bradford after the Act (and Kilsby, of course, saw a larger proportionate increase). One might expect the relative popularity of different parishes to cancel each other out over a larger study of that kind, but unless a realistic proportion of the parishes studied had been popular destinations for clandestine marriage before 1754, it is almost inevitable that one would find an increase in marriages in the Anglican church after March 1754 (and the characteristics that made an incumbent willing to flout the canon law and celebrate marriages clandestinely might not be conducive to diligent recording of parish events, which would have led to such a parish being excluded from Wrigley and Schofield's study). Of course, as our studies show, some allowance does need to be made for clandestine marriages occurring outside any church before 1754, especially in relation to parishes close to the metropolis and the Fleet parsons. But the results for Cardington – with marriages for almost 100 per cent of the cohort having been traced for those marrying before the Act – suggest that the increase chiefly occurred not because more inhabitants were marrying in church after 1754 but because more people were marrying in their own parish church. Obviously further studies of this kind are necessary to confirm these trends, but it would appear that (deficiencies in recording apart) marriages before 1754 are likely to have been recorded in *a* parish register, and marriages after that date in the *correct* parish register, at least in the rural and proto-industrial parishes of the type considered in this article. Demographers can therefore be reassured that the registers of such parishes do record the marriages of the vast majority of those who lived there.

We noted in the introduction that the issue of compliance is of importance for lawyers and historians as well as for demographers. What do these three case-studies have to offer each of these different constituencies? The evidence indicates that the shift from canonical prescriptions to statutory requirements did have an impact on behaviour, at least in encouraging couples to marry in their parish of residence. This evidence of conformity is not necessarily inconsistent with other evidence of opposition to law in the eighteenth century: a few anarchists apart, people rarely exist in a state of constant opposition to all laws. Eighteenth-century individuals might well have lacked respect for laws that prevented and indeed criminalized the means by which they had previously subsisted,⁶⁷ but if they wished to achieve a particular end – to make a valid contract, will or marriage – there would be little point in flouting the law. Conformity may also have been encouraged by the restriction of alternatives: under the Act the penalty for 'knowingly and wilfully' marrying a couple without banns or licence was transportation

for 14 years, which no doubt made clergymen more cautious in their practice.⁶⁸

The evidence also casts light on the nature of marriage: the positive evidence of compliance, coupled with the absence of evidence that couples contracted in private, suggests that marriage took the form of a public commitment both before and after 1754. It also suggests that it was important for couples – of whatever social class – that their marriage would be legally recognized: questions of validity apart, legal rights and responsibilities depended on marriage before an Anglican minister even before 1754.⁶⁹ But this is not to rob the ceremony of personal significance.⁷⁰ Rather, one could argue that – then as today – its significance to the individual parties lies in the fact that it is a public and binding commitment rather than one that depends solely on the joint will of the individuals concerned.

In conclusion, the evidence suggests that in these three communities the vast majority of couples married in church as required by the 1753 Act. It would also appear that almost as many had married in church prior to 1754 – although, as the results for Kilsby in particular illustrate, not necessarily in the *right* church. Once one has factored in the loss of registers, defective recording, and the possibility of a marriage having taken place further afield, the proportion that did not marry in church can be assumed to have been even smaller, indeed vanishingly small in some instances. Whether these three cohorts – comprising almost 700 couples – were typical in their willingness to comply with the law is a question that needs to be confirmed by further studies of this kind. The evidence does suggest, however, that it may be necessary to revise existing estimates of the number of clandestine marriages that were not celebrated in an Anglican church – at least outside London, where the facilities for such marriages were more plentiful. If marriage in church was the practice of the majority even prior to 1754, then the Act was not the radical break with the past that has been claimed, and one would expect – as one finds – conformity.

ENDNOTES

- 1 26 Geo II c. 33.
- 2 Save for Quakers, Jews and members of the Royal Family: see Sections 28 and 27.
- 3 Section 1.
- 4 Section 4.
- 5 Section 11.
- 6 Section 3.
- 7 Sections 3, 8 and 11.
- 8 Sections 14–16.

- 9 Section 8.
- 10 Roger Lee Brown, 'The rise and fall of the Fleet marriages', in R. B. Outhwaite ed., *Marriage and society* (London, 1981), 123.
- 11 T. Benton, *Irregular marriages in London before 1754* (2nd edn, London, 2000), 30.
- 12 On the failure of previous attempts at reform, see R. B. Outhwaite, *Clandestine marriage in England, 1500–1850* (London, 1995), ch 3. See also Leah Leneman, 'The Scottish case that led to Hardwicke's Marriage Act', *Law and History Review* 17 (1999), 161–9, on the case that precipitated the legislation.
- 13 For an analysis of the arguments, see David Lemmings, 'Marriage and the law in the eighteenth century: Hardwicke's Marriage Act of 1753', *Historical Journal* 39 (1996), 339–60.
- 14 On the validity of this belief see Rebecca Probert, 'Common-law marriage: myths and misunderstandings', *Child and Family Law Quarterly* (2008, forthcoming). The 1753 Act provided that contracts of marriage were no longer enforceable in the church courts.
- 15 See for example Outhwaite (*Clandestine marriage*, ch 2), who identifies no fewer than seven types of 'clandestine marriages', and Stephen Parker (*Informal marriage, cohabitation and the law, 1750–1989* (Basingstoke, 1990), 27), who argues that there was a 'plurality' of marriage forms prior to 1754.
- 16 John Gillis, 'Married but not churched: plebeian sexual relations and marital non-conformity in eighteenth-century Britain', in Robert Maccubin ed., *'Tis Nature's fault: unauthorized sexuality during the Enlightenment* (Cambridge, 1987), and see also his *For better, for worse: British marriages 1600 to the present* (Oxford, 1985), 219. The basis for his claims has, however, been challenged: see Rebecca Probert, 'Chinese whispers and Welsh weddings', *Continuity and Change* 20 (2005), 211–28.
- 17 See for example John Brewer and John Styles, *An ungovernable people: the English and their law in the seventeenth and eighteenth centuries* (London, 1980).
- 18 A failure to comply with formalities that are merely directory does not invalidate a marriage, but a failure to comply with mandatory formalities does.
- 19 E. Gibson, *Codex juris ecclesiastici Anglicani* (London, 1713), canon 62, 100–4.
- 20 Douglas Hay and Nicholas Rogers *Eighteenth-century English society: shuttles and swords* (Oxford, 1997), ch. 3; W. R. Cornish and G. de N. Clark, *Law and society in England, 1750–1950* (London, 1989).
- 21 Outhwaite, *Clandestine marriage*, 139; Lawrence Stone, *Road to divorce: a history of the making and breaking of marriage in England* (Oxford, 1990), 64–5.
- 22 Jona Schellekens, 'Courtship, the Clandestine Marriage Act, and illegitimate fertility in England', *Journal of Interdisciplinary History* 25 (1995), 433–44; see also Peter Laslett, *Family life and illicit love in earlier generations* (Cambridge, 1977), 132.
- 23 G. N. Gandy, 'Illegitimacy in a handloom weaving community: fertility patterns in Culcheth, Lancashire, 1781–1860' (unpublished DPhil dissertation, University of Oxford, 1978), 21, 170.
- 24 See Peter Laslett, 'Introduction: comparing illegitimacy over time and between cultures', in P. Laslett, K. Oosterveen and R. Smith eds., *Bastardy and its comparative history* (London, 1980).
- 25 K. D. M. Snell, 'English rural societies and geographical marital endogamy, 1700–1837', *Economic History Review* 55 (2002), 262–98.
- 26 Snell, 'English rural societies', 274.
- 27 Richard Wall, 'English population statistics before 1800', *History of the Family* 9 (2004), 81–95. For an example of a couple being economical with the truth, see *Nicholson v Squire* (1809) 16 Ves Jun 259; 33 *English Reports* 983.

- 28 As to which see for example Schellekens, 'Courtship'; Parker, *Informal marriage*. For a discussion of the poor relief background, see Phyllis Hembry, *Calendar of Bradford-on-Avon settlement examinations and removal orders 1725–98* (Trowbridge, 1990), xiii–xiv, and see generally Lynn Hollen Lees, *The solidarities of strangers: the English poor laws and the people, 1700–1948* (Cambridge, 1998).
- 29 Section 8.
- 30 For example those relating to residence (in that a marriage could not be challenged on the basis that the parties had married in a parish where they were not resident) and registration (in that non-registration did not affect the validity of the marriage: see *St Devereux v Much Dewchurch* (1762) 1 W Bl 367; 96 *English Reports* 205).
- 31 See for example *Diddear v Faucit* (1821) 3 Phillim 580; 161 *English Reports* 1421.
- 32 See Rebecca Probert, 'The judicial interpretation of Lord Hardwicke's Act of 1753', *Journal of Legal History* 23 (2002), 129–51.
- 33 Gren Hatton, *Kilsby: the story of a village* (Rugby, 1989), 66.
- 34 Northamptonshire Record Office, Northampton, 1998/145, 186 P/1 and P/4.
- 35 Gibson, *Codex*, canon 112.
- 36 This was definitely the case for 27 of these 32 marriages, and may be the case for a further three of those who married in Lilbourne, whose marriages are recorded in the form 'A. and B. of Kilsby'.
- 37 Snell, 'English rural societies', 277.
- 38 In addition to the 255 children born to these parents during the period under review, the couples in question had a further 136 children born outside this period.
- 39 Primarily Alan Clarke and Marilyn Ponting's electronic database, 'The Northamptonshire marriage index, 1700–1837', finished in 2004. We are also grateful to Gwen Wilkins, who is responsible for co-ordinating the Warwickshire Marriage Index, for allowing us to search both the card index and the electronic version.
- 40 A non-profit service sponsored by the Church of Jesus Christ of Latter-day Saints.
- 41 The three couples all had a son baptized in Kilsby in 1771 or 1772 but none of the men appear on the 1771 Militia List.
- 42 The marriage register records more subtle gradations of status, for example distinguishing between farmers, shepherds, husbandmen and yeomen rather than classifying them all as 'farmers'. There are also variations between the Militia Lists: that drawn up in 1777 employs different definitions from the 1771 and 1774 lists. For example, there is no separate category of 'servant' in the 1777 list, although (unlike apprentices) they were not expressly excluded. Four men classified as 'servants' in 1774 appear as labourers in 1777, which would explain why the overall proportion of labourers in the 1777 list is the same as that of servants and labourers together in the two earlier lists.
- 43 Bedfordshire and Luton Archives and Records Service, Bedford, P38/28/1. See David Baker, *The inhabitants of Cardington in 1782*, Bedfordshire Historical Record Society, vol. 52 (Amptill, 1973), 5, on the way in which the list was drawn up.
- 44 Baker, *Inhabitants*, 12.
- 45 This includes one soldier's wife whose husband was absent and another woman whose husband had 'eloped' (sic).
- 46 Some were resident with their parents; others had set up a new household in the parish. To exclude them from the study on the basis that they might not be typical would be out of step with most parish reconstitutions, which focus, for obvious reasons, on the reconstitutable minority who were baptized, married and died in the same parish.
- 47 Baker, *Inhabitants*, 18.

- 48 We were offered two versions (both drawn up for some reason by the same person in 1782) by the helpful archivists at Bedfordshire and Luton Archives and Records Service, who mentioned that Baker had not been informed of the second version.
- 49 William Tomas married Mary Stock at Great Gransden, in Huntingdonshire: Huntingdon County Record Office, HP 36/1/3/1.
- 50 Hembry, *Bradford-on-Avon*, xi.
- 51 Schellekens, 'Courtship'; Alison Diduck and Felicity Kaganas, *Family law, gender and the state: text, cases and materials* (2nd edn, Oxford, 2005), 59.
- 52 Hembry, *Bradford-on-Avon*, 15.
- 53 Benton, *Irregular marriages*, 32.
- 54 He stated that he married Eleanor Dainton in the parish church of Bradford-upon-Avon. The register in fact records the marriage of Humphry Foard to Mary Banks on 29 October 1711 and that of Eleanor Dainton to Samuel Porch on 9 December, suggesting that the incumbent muddled these two couples up when writing up the marriages at a later date.
- 55 See for example Warwickshire County Record Office, Warwick, DR 296/46, 29 December 1733, 9 July 1735.
- 56 A wife took her husband's settlement on marriage, and legitimate children took their father's settlement. If the couple were unmarried, then the woman would derive no settlement through the man, and the children would be settled where they were born.
- 57 A thirteenth took place in the 'English chapel' in Aberdeen, but we have not been able to determine the location of this, nor that of the marriage that took place 'in the kingdom of Ireland.'
- 58 Marriage registers are missing for Ston Easton (before 1813); Monkton Combe (1666–1792); Westwood (1754–1812); South Wraxall (1769–1778), and Woolverton (pre-1837 register stolen).
- 59 See A. Newman, 'An evaluation of bastardy recordings in an east Kent parish', in Laslett, Oosterveen and Smith eds., *Bastardy*, 151.
- 60 Gandy, *Illegitimacy*.
- 61 Unfortunately it is not possible to make the same calculation for pre-1754 marriages as the register did not record any children as illegitimate between 1734 and 1754. This cannot, however, be attributed to there having been a looser definition of marriage before the 1753 Act, since earlier examples of children being recorded as illegitimate do exist in Kilsby.
- 62 Quoted in W. Edwards, 'National marriage data: a re-aggregation of John Rickman's marriage returns', *Local Population Studies* 17 (1976) 25–41.
- 63 J. S. Burn, *The history of the parish registers in England* (2nd edn, London, 1862), 40. By contrast, E. A. Wrigley and R. S. Schofield, in *The population history of England, 1541–1871: a reconstruction* (Cambridge, 1989), found that the percentage of months with defective marriage registration fell from 4.6 per cent in the first half of the eighteenth century to 0.6 per cent after the 1753 Act, but the parishes studied were chosen on the basis of the completeness of their registration.
- 64 R. Schofield, 'Review of *Clandestine marriage in England*', *Journal of Economic History* 56 (1996), 712–13, 713.
- 65 On population mobility, see for example Moira Long and Bessie Maltby, 'Personal mobility in three West Riding parishes, 1777–1812', *Local Population Studies* 24 (1980), 13–25; David Souden, 'Movers and stayers in family reconstitution populations', *Local Population Studies* 33 (1984), 11–28.
- 66 Wrigley and Schofield, *The population history of England*, Table A4.1.

- 67 See for example Hay and Rogers, *Eighteenth century English society*, 96, and see generally chapter 7.
- 68 Section 8. Merely marrying a couple who were not resident in the parish would not have this effect, although whether or not a clergyman was subject to ecclesiastical censure in this situation remained a moot point: see the discussion in *Wynn v Davies* (1835); 1 Curt. 69; 163 *English Reports* 24.
- 69 See *Wigmore's case* (1707) Holt KB 460; 90 ER 1153; *Haydon v Gould* (1711) 91 *English Reports* 113.
- 70 See Sarah Emsley, 'Radical marriage', *Eighteenth-Century Fiction* **11** (1999) 477–98, 486; L. O'Connell, "Matrimonial ceremonies displayed": popular ethnography and enlightened imperialism', *Eighteenth-Century Life* **26** (2002), 98–116, 99.