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Introduction

On a Saturday morning in December 1971, my parents were married in Coventry register office.[1] My mother wore a long crimson velvet dress; a suitable choice for a cold winter's day, and also a reflection of the fact that those marrying in a register office were advised not to wear white.[2] The register office was located in Cheylesmore Manor, formerly a medieval royal palace, and its stone steps provided an attractive backdrop for the photos. The ceremony itself took place in a small but charming room, in front of a number of guests in addition to their two witnesses. The cost of the entire process was £2.75.[3] Afterwards, they drove to the village where my mother lived for a blessing at her local church. The civil ceremony had clearly taken less time than they expected, as they were too early for the church service and had to go to the pub next door in the meantime. By 12.30 p.m. they were sitting down to a modest lunch with their guests.

This apparently simple example illustrates how far weddings are freighted with history – not just the personal histories of the spouses but also a complex legal, social, and religious history.

The form of the church blessing, and its relationship to the wedding in the register office, was dictated by policy established over a hundred years earlier, in 1856.[4] And the shortness of the earlier civil ceremony reflected the fact that it comprised little more than the repetition of the words that had originally been prescribed by the Marriage Act 1836 when the option of getting married in a register office was first introduced.[5] Fast forward to today, by contrast, and couples marrying in the same room where my parents married can now include their own vows, readings, and music –

[1] Barbara Probert, private unpublished diary, 1971.
[2] Betty Owen Williams, *Planning Your Wedding Day from A to Z* (London: W. Foulsham & Co Ltd, 1964).
[3] This comprised 75p for each to give notice and £1.25 for the attendance of the registrar.
[4] Marriage and Registration Act 1856; see further Chapter 4.
[5] See further Chapters 3 and 7.

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at a cost.[6] Reclassified as 'approved premises',[7] and renamed 'the Black Prince Room', getting married there on a Saturday morning now costs £511, fifteen times more than an increase based on inflation alone.[8]

How a couple can marry, and what they have to do in order to be married, is thus determined by a combination of laws, some recent, some made decades if not centuries ago. How they choose to marry will often be shaped by the social norms of the day, with the idea of a 'proper' wedding taking different forms over time. It may also be influenced by their religious beliefs, or by their lack of belief. But my parents' wedding is also an example of how we cannot necessarily assume that the way in which a couple choose to marry is a true reflection of their beliefs.

Looking at the statistics, it would be easy to assume that my parents were simply following the growing trend for weddings to be celebrated without religious rites. In 1971, a register office wedding was nothing out of the ordinary, with the number of such weddings being almost equal to the number that were celebrated in churches, chapels, synagogues, mosques, gurdwaras, and temples combined.[9] But my parents were not marrying in the register office out of choice. They were unable to marry in the church where my mother worshipped, on account of the fact that my father had previously been married, and his first wife was still alive. Forty years earlier, however, a couple in their position could not have been denied a church wedding; before 1937, Anglican clergy could only refuse to marry a person who had been divorced on the basis of their adultery, not the person who had obtained the divorce.[10] The mid-twentieth century saw the approach of the Church of England to the remarriage of those who had obtained a divorce becoming more restrictive, with consequences for the numbers marrying according to its rites.[11]

[6] www.ceremoniesinsidecoventry.co.uk/cheylesmoremanorceremonysuite.

[7] The concept of 'approved premises' was introduced by the Marriage Act 1994 to enable civil weddings to be celebrated in a wider range of places; on this, and on the reclassification of many former register offices, see further Chapter 9.

[8] This comprises £35 each for giving notice, £430 for the ceremony, and £11 for the certificate: www.ceremoniesinsidecoventry.co.uk/homepage/18/ceremony-fees-from-1-april-2020-31-march-2021, last accessed 10 July 2020. £2.75 in 1971 is roughly equivalent to £37.50 today.

[9] See ONS, 'Marriages in England and Wales 2017' (14 April 2020), table 1: 'Number of marriages by type of ceremony and denomination, 1837 to 2017'; John Haskey, 'Marriage Rites – Trends in Marriages by Manner of Solemnisation and Denomination in England and Wales, 1841–2012' in Joanna Miles, Perveez Mody, and Rebecca Probert (eds.), *Marriage Rites and Rights* (Oxford: Hart, 2015). See further Chapter 8.

[10] See further Chapters 4 and 7.

[11] See further Chapters 6 and 7.

Tying the Knot is about these intertwined legal, social, and religious histories. It has three interconnecting aims. The first is to analyse how the laws governing how couples can marry have evolved, from the 1836 Act that established the basic foundations of much of the current law to the present day. The second is to assess the evidence as to how couples have actually married over that period. And the third is to evaluate how far the law has enabled them to do so in accordance with their beliefs. That phrasing is deliberately broad, intended to encompass not only religious beliefs and non-religious beliefs such as Humanism, but also what might be termed beliefs about marriage itself. A couple's preference for a civil wedding, for example, might be motivated either by a lack of religious belief or by a positive belief that marriage is a civil contract and should be celebrated with civic rites.[12] Alternatively, their choice of a civil wedding may be made independently of their beliefs, on the basis of convenience or a desire for concealment. Or – as in the case of my parents – it might not be a choice at all, but simply the only means of getting married that was available to them in practice.

Looking at these three issues together provides a different perspective from considering each of them in isolation. It is only by looking at how the law was experienced in practice that its limitations become clear. Equally, without a proper understanding of the legal constraints within which they had to operate, we may misinterpret the choices that couples made, and mistakenly attribute certain beliefs to them. How couples married was not necessarily how they would ideally have married had other options been available. The constraints that I will be examining are not just those that affected remarriage after a divorce, but the whole panoply of regulations about where weddings could take place, and who could conduct them. The path to marriage in the past was just as complex as it is today, with many couples having an additional ceremony before or after their legal wedding. The form of those earlier ceremonies may have differed from those that are celebrated today, but whether they are Christian, Jewish, Muslim, Hindu, Sikh, Pagan, Humanist, interfaith, a blend of different traditions, or completely unique to the parties involved,[13] their existence points to the limitations of the law.

[12] See, e.g., Ben Rogers, 'White Wedding Blues', *The Guardian*, 29 April 2000.

[13] On the rise of bespoke ceremonies, see Stephanie Pywell, 'The Day of Their Dreams: Celebrant-led Wedding Celebration Ceremonies' (2020) *Child and Family Law Quarterly* 177 and 'Beyond Beliefs: A Proposal to Give Couples in England and Wales a Real Choice of Marriage Officiants' (2020) *Child and Family Law Quarterly* 215.

With reform of the laws regulating weddings under consideration at the time of writing,[14] it is all the more important to understand how those laws evolved, how they were experienced, and the problems that they have generated. In disentangling the knots of the current law and reshaping it for the future, knowing the history of each provision, and the purpose that it was intended to serve, is vital. Otherwise, the fact that a particular provision has endured over the decades may lead to an unwarranted assumption that there must have been a good reason behind its introduction and that it worked well in the past. It is all too easy to retrofit apparently convincing explanations. It is also important to know what has worked in the past and what has not, in order to assess what might be necessary to close the gap between what is permitted in theory and what is available in practice.

In this introductory chapter, I first set the Marriage Act 1836 in context by giving some background regarding the process of getting married prior to its passage, setting out its key terms, and explaining how it forms the foundation of the current law. I then go on to look at how the 1836 Act is generally perceived much more positively than the current law regulating weddings, and suggest some reasons for that difference in perceptions. My use of the term 'weddings' here is deliberate; this is a book about getting married, not about marriage itself, and the third section of the chapter explains the difference. Narrowing the focus to weddings is necessary in order to do justice to the richness of the sources about how couples have married, and the evidence about their beliefs, and in the fourth section I set out the range of material on which I have drawn, before closing with a summary of the book's structure and coverage.

The Foundation of the Modern Law

The Marriage Act 1836 was not the first piece of legislation to regulate the process of getting married in England and Wales – that was the Clandestine Marriages Act 1753, over eighty years earlier. Under its terms the only way of getting married had been according to the rites of the Anglican church. Only Jews and Quakers had been exempted from the need to marry in this way; all other couples had been expected to marry in the Anglican church, regardless of their beliefs or lack of them.

[14] Law Commission, *Getting Married: A Scoping Paper* (17 December 2015); *Getting Married: A Consultation Paper on Weddings Law*, CP No. 247 (3 September 2020).

While the 1753 Act was repealed in the 1820s, the Marriage Act 1823 made no change to the options available to couples, merely to the consequences of failing to comply with certain legal requirements.[15]

In my earlier work *Marriage Law and Practice in the Long Eighteenth Century*, I traced the passage of the 1753 Act and how it operated in practice.[16] I showed how other Protestant dissenting denominations, which had not previously developed their own forms of weddings, married in the Church of England without any additional ceremony, while English Catholics tended to navigate the competing requirements of conscience and law by having an Anglican wedding and an additional Catholic ceremony.[17] That background is important to set the scene for the Marriage Act 1836. The passage, terms, and take-up of the 1836 Act cannot be properly understood unless it is appreciated that the previous story of marriage law and practice was overwhelmingly one of conformity with a single set of religious rites.[18]

The story of the 1836 Act is far more complex, as a brief sketch of its provisions will demonstrate. From 1 July 1837, weddings could take place in any certified place of worship that had been duly registered for weddings, or in one of the new register offices. Jewish and Quaker weddings were brought within the framework of the law, rather than simply being exempted from the need to comply with it; they, along with all others marrying other than according to Anglican rites, had to give notice to a new state official, the superintendent registrar. Anglican weddings remained primarily governed by the 1823 Act, but even these could now be preceded by civil preliminaries. And state oversight of marriage was further asserted by stipulating that *all* marriages should be centrally registered. Responsibility for registration was devolved in the case of Anglican, Jewish, and Quaker marriages, but all other marriages had to be attended by a registrar.[19] When combined with the different

[15] See further Chapter 2.

[16] Rebecca Probert, *Marriage Law and Practice in the Long Eighteenth Century: A Reassessment* (Cambridge: Cambridge University Press, 2009).

[17] *Ibid*., ch. 9; see also Rebecca Probert and Liam D'Arcy-Brown, 'Catholics and the Clandestine Marriages Act of 1753' (2008) 80 *Local Population Studies* 78.

[18] A rather different view was previously advanced by John Gillis, *For Better, For Worse: British Marriages 1600 to the Present* (Oxford: Oxford University Press, 1985) and Stephen Parker, *Informal Marriage, Cohabitation and the Law, 1750–1989* (Basingstoke: Macmillan, 1990), both claiming that there was widespread evidence of non-compliance with the 1753 Act. For my rebuttal of such claims see *Marriage Law and Practice*.

[19] See further Chapter 2 for the details of these provisions.

forms of preliminaries that were recognised,[20] there were no fewer than ten different routes to a legally recognised marriage.[21]

Both the 1823 and 1836 Acts were amended before being consolidated in the Marriage Act 1949, and the 1949 Act has been much amended since. In particular, those marrying in a registered place of worship may now do so in the presence of an 'authorised person' appointed by their own religious group,[22] and, as noted earlier, there is now the option of having a civil wedding on a wide range of 'approved premises' rather than just in a register office. Nonetheless, much of what the 1836 Act set in place still forms part of the current law. The distinction between Anglican and civil preliminaries remains. So too does the separate treatment of Anglican, Jewish, and Quaker weddings. The 1836 Act thus forms the logical starting point for any consideration of the current law governing how couples can marry. But as the next section will discuss, how it has been viewed may differ depending on whether it is seen against the backdrop of the earlier restrictions or the diversity of England and Wales today.

Perceptions of Past and Present

While the 1836 Act has attracted surprisingly little commentary,[23] the story told about it has generally been a positive one in that it has been seen as an important liberalising measure that recognised the religious (and irreligious) diversity of nineteenth-century England and Wales.[24]

[20] There were four different forms of preliminary to an Anglican wedding, two for weddings in register offices or registered places of worship, and (initially) one for Jewish and Quaker weddings: see further Chapter 3.

[21] Olive Anderson, 'The Incidence of Civil Marriage in Victorian England and Wales' (1975) 69 *Past & Present* 50, put the figure at eight, but this was excluding Jewish and Quaker weddings, presumably on the basis that these options were not available outside those religious groups.

[22] As a result of the Marriage Act 1898; see further Chapter 5.

[23] The best account is that by Stephen Cretney, *Family Law in the Twentieth Century: A History* (Oxford: Oxford University Press, 2003). Joseph Jackson's *The Formation and Annulment of Marriage* (London: Butterworths, 2nd ed. 1969) has a lengthy chapter on the history of marriage law, but the 1836 Act is consigned to a short section listing the provisions of the various Acts passed between 1822 and 1899 (see pp. 67–69). Scot Peterson and Iain McLean devote a few pages to it (*Legally Married: Love and Law in the UK and the US* (Edinburgh: Edinburgh University Press, 2013), pp. 100–02). Stephen Parker provides a little more detail in his *Informal Marriage*, although he dismisses the provisions of the Act as being 'as dry as old bones' (p. 72).

[24] See, e.g., Anderson, 'Civil Marriage', p. 50 ('[i]f the central characteristic of democratic capitalist society is mass choice, then democratic capitalist marriage arrived in England

This, however, stands in stark contrast to the verdict on the current legislation, the Marriage Act 1949; here, the emphasis has been on its limitations and failure to accommodate different beliefs.[25] This difference in perceptions can in part be explained by the fact that the population of England and Wales is far more religiously diverse than it was in 1836, with individuals espousing a far wider range of religious and non-religious beliefs. But there are in addition three other reasons why the 1949 Act is widely regarded less favourably than its predecessor. The first two relate to a tendency in at least some of the scholarship to exaggerate the extent to which the 1836 Act liberalised the law; and to underestimate the extent to which the 1949 Act made provision for different faiths. The third reason, however, is that some of the changes that have been made in the intervening years have in fact *removed* choices; to this extent, the perceptions of the 1836 Act as liberal and the current law as restrictive are entirely justified.

While the full details will be explored in the chapters that follow, it is necessary to say a little more about all three points here, not least because they raise some important issues about terminology. First, the liberalising effects of the 1836 Act have been exaggerated by accounts that imply that it allowed couples to be married in any chapel and by any minister of religion.[26] Had this been the case, the take-up of the new options might

on 1 July 1837'); Parker, *Informal Marriage*, p. 49, contrasting it with 'the rigid provisions of Lord Hardwicke's Act'; Cretney, *History*, p. 12, describing the Act as a 'brilliant compromise'; Jennifer Phegley, *Courtship and Marriage in Victorian England* (Santa Barbara: Praeger, 2012), p. 117, noting 'the widening options for legal marriage'. Peterson and McLean, *Legally Married*, are more negative, describing the process of getting married in a register office as 'unpleasant' (p. 102), but they do also suggest that there was 'substantial demand' for the new forms of marriage introduced by the Act (p. 103).

[25] See, e.g., Peter W. Edge and Dominic Corrywright, 'Including Religion: Reflections on Legal, Religious, and Social Implications of the Developing Ceremonial Law of Marriage and Civil Partnership' (2011) 26(1) *Journal of Contemporary Religion* 19; Prakash Shah, 'Judging Muslims' in Robin Griffith-Jones (ed.), *Islam and English Law* (Cambridge: Cambridge University Press, 2013), 144–156, Valentine Le Grice and Vishal Vora, 'Nikah: Principle and Policy' (2017) *Family Affairs* 56; All-Party Parliamentary Humanist Group, *'Any Lawful Impediment?' A Report of the All-Party Parliamentary Humanist Group's Inquiry into the Legal Recognition of Humanist Marriage in England and Wales* (2018).

[26] Gillis, *For Better, For Worse*, p. 219, referring to the 'legalization' of chapel marriage, without setting out the requirements with which places of worship had to comply before legal weddings could be solemnised there; Lawrence Stone, *Road to Divorce: A History of the Making and Breaking of Marriage in England* (Oxford: Oxford University Press, 1995), p. 133, referring to the possibility of marrying in 'a sacred religious ceremony conducted by a minister in holy orders in a church or chapel'; John Witte Jr, *From Sacrament to*

have been far greater,[27] and the law would operate very differently today. In fact, the exacting criteria for places of worship to be registered for weddings meant that many were not,[28] and the 1836 Act conferred no direct authority on ministers at all. Even after 1898, when it was possible for registered places of worship to appoint their own 'authorised persons', their authority derived from their appointment, rather than whether they held a particular ministerial post, and their role was to register the marriage, not necessarily to conduct the wedding.[29] Right through to the present day, many registered places of worship have not appointed their own authorised person and remain dependent on a registrar attending and registering any weddings that take place there.[30] Throughout the book I have therefore used the more precise, if cumbersome, terminology of 'registered place of worship', in preference to the more colloquial 'chapel', to keep the limitations of the law at the forefront of readers' minds.[31]

Second, the tendency to underestimate the extent to which the 1949 Act made provision for different faiths is evident in the way that some commentators have contrasted the rules applicable to Judeo–Christian

Contract: Marriage, Religion and Law in the Western Tradition (Louisville: Westminster John Knox Press, 2nd ed. 2012), p. 305, suggesting Catholics, as well as Jews and Quakers, were able to marry 'in accordance with the religious laws and customs of their own communities', and claiming that all that was required was for these marriages to be registered after the fact; Carolyn Lambert, 'Introduction: The Lottery of Marriage' in Carolyn Lambert and Marion Shaw (eds.), *For Better, For Worse: Marriage in Victorian Novels by Women* (London: Routledge, 2018), p. 3, claiming that the 1836 Act 'enabled ministers of churches other than the Church of England to conduct marriages'.

[27] See, e.g., Roderick Floud and Pat Thane, 'The Incidence of Civil Marriage in Victorian England and Wales' (1979) 84 *Past & Present* 146, who rightly highlight the difficulties of marrying in a registered place of worship. The subsequent demolition of their argument that such difficulties might explain the fluctuations in the resort to the register office (see Olive Anderson, 'The Incidence of Civil Marriage in Victorian England and Wales: A rejoinder' (1979) 84 *Past & Present* 155) should not obscure the fact that their basic point holds good: see further Chapter 5.

[28] See further Chapter 2 for the criteria and Chapters 3, 4, and 5 for the proportions of places of worship that were registered.

[29] See further Chapter 5.

[30] Law Commission, *Getting Married: A Consultation Paper on Weddings Law*, para. 5.110, noting that only around 12,000 of approximately 22,500 registered places of worship have their own registers, indicating that an authorised person has been appointed.

[31] The terminology of 'chapel' is in any case problematic, given that there are Anglican chapels as well as non-Anglican ones, that many Christians would refer to their place of worship as a church rather than a chapel, and that adherents of other faiths would tend to use other terms.

groups with those applicable to other faiths.[32] This would be a valid point in relation to the 1836 Act, since under its provisions only certified places of worship could be registered for weddings, and the only places of worship that could be certified as such were Christian ones. But this limitation disappeared in 1855,[33] and ever since then it has, at least in principle, been possible for every religious group in England and Wales to register its place of worship for weddings.[34] It is therefore misleading to suggest that the Marriage Act 1949 does not apply to all faiths.[35] While it does not apply to all faiths *equally*, the dividing line is not between 'Christian' and other faiths. All Christian groups other than Anglicans and Quakers are subject to exactly the same rules as, for example, Muslims, Hindus, and Sikhs as far as the option of marrying in a registered place of worship is concerned; moreover, as we shall see, the differential treatment of Anglican, Jewish, and Quaker weddings has not always been to the benefit of the individuals involved.[36]

The extent to which the statutory scheme – past and present – makes provision for different faiths has also been underestimated by the tendency to describe weddings in registered places of worship as 'civil' ones.[37] But 'civil' is an ambiguous term in this context and may be understood in a number of ways. The 1836 and 1949 Acts did not use the term at all, so there is no statutory definition to which we can turn. For some, 'civil' denotes any marriage that is recognised by the state, whether accompanied by religious rites or not.[38] By that reckoning, Anglican, Jewish, and Quaker weddings are all properly described as 'civil', along with those in registered places of worship or register offices. For others, the dividing line between civil and religious may rest on

[32] See, e.g., Ralph Grillo, *Muslim Families, Politics and the Law: A Legal Industry in Multicultural Britain* (Farnham: Ashgate, 2015), p. 45; *Independent Review into the Application of Sharia Law in England and Wales* (Home Office, February 2018), p. 17.

[33] See further Chapter 4.

[34] For the first registration of a mosque under the 1836 Act, see Chapter 7.

[35] See, e.g., Dame Louise Casey, *The Casey Review: A Review into Opportunity and Integration* (London: Department for Communities and Local Government, 2016), para. 8.50, noting that the review had 'heard strong arguments that the Marriage Act should be reformed to apply to all faiths'.

[36] See further Chapters 3, 5, 6, 7, and 8.

[37] See, e.g., Grillo, *Muslim Families*, p. 45.

[38] See, e.g., A. Bradney, *Religions, Rights and Laws* (Leicester: Leicester University Press, 1993), pp. 40, 42; *Integrated Communities Strategy Green Paper* (March 2018), p. 58, which referred to the possibility of a couple entering into 'a legally recognised marriage through a religious ceremony' but went on to refer to 'the requirement that civil marriages are conducted before or at the same time as religious ceremonies'.

whether any contact with the state is required as part of the process.[39] Which weddings are classified as 'civil' according to that understanding would differ depending on whether the focus is on registration (required of all), the presence of a civil registrar (required only of register office weddings and those in registered places of worship without their own authorised person), or civil preliminaries (required for all non-Anglican weddings). And for yet others 'civil' denotes a wedding that is devoid of religious content.[40]

Those applying the term to weddings in registered places of worship seem to have in mind the fact that couples marrying in this way have to repeat the same prescribed declarations and vows as are required of those marrying in a register office. In the words of one scholar, ceremonies in registered places of worship are 'civil' ones since they 'take place outside the normal place for such ceremonies, namely the Register Office'.[41] Yet the fact that the words are the same does not justify regarding the ceremony in a registered place of worship as simply an extension of that in a register office. Legislators in 1836 saw themselves as primarily making provision for those who dissented from the Anglican church to marry according to their own rites; the option of getting married in a register office was intended for that small subcategory of dissenters who regarded marriage as a civil contract.[42] They would therefore have been surprised by this idea of the register office as the 'normal' place for the making of the prescribed vows. Moreover, while the prescribed words may be 'civil' in the sense of being prescribed by the state, they may also be incorporated into a religious service.

For the sake of clarity, the term 'civil' will be used here to denote weddings that are devoid of religious content. On that basis, weddings in a registered place of worship should (generally) be classified as religious rather than civil. That qualification of 'generally' is necessary because there has never been any statutory requirement that religious rites *have* to

[39] See, e.g., Parker, *Informal Marriage*, p. 48, suggesting that marriages in registered places of worship should be classified as civil because they had to be preceded by civil preliminaries and (until 1898) could only take place in the presence of a registrar.

[40] See, e.g., General Register Office, *Content of Civil Marriage Ceremonies: A Consultation Document on Proposed Changes to Regulation and Guidance to Registration Officers* (June 2005), para. 4.

[41] Thomas Glyn Watkin, 'Vestiges of Establishment: The Ecclesiastical and Canon Law of the Church in Wales' (1990–92) 2 *Ecclesiastical Law Journal* 110, 111.

[42] Stephanie Pywell and Rebecca Probert, 'Neither Sacred nor Profane: The Permitted Content of Civil Marriage Ceremonies' (2018) 30 *Child and Family Law Quarterly* 415, and see further Chapter 2.

be used as part of a wedding in a registered place of worship. This brings us on to the third point, that the Marriage Act 1836 made provision for some choices that have since been removed. As we shall see, it was intended to cater for a wide range of situations: a wedding in a registered place of worship could consist of no more than the prescribed words, while one in a register office could include hymns and prayers.[43] By this reckoning, even weddings in the register office were not originally 'civil' ones, since they did not have to be secular.

Understanding the detail of what the 1836 Act required and permitted, how the scheme it established changed over time, and how people actually married under its provisions is therefore crucial in evaluating the extent to which couples have been able to marry in accordance with their beliefs. That brings us on to another important point about the scope of this book, and the difference between *weddings* law and *marriage* law.

Weddings Law and Marriage Law

This book is about the laws regulating how people married, how people actually married, and how both changed over time. It is not about *whether* couples married,[44] or what happened before or after.[45] Nor is it about the theological, spiritual, or social significance of getting married. It takes as its basic premise the fact that the state recognises a certain set of relationships as constituting a marriage – with consequences for the rights and responsibilities of those concerned – and that this is likely to continue for the foreseeable future.[46] It does not, therefore, venture into

[43] At least until 1857, when the prohibition on religious content accidentally imposed by the Marriage and Registration Act 1856 came into force. See further Chapters 3 and 4, for evidence of the religious ceremonies that accompanied a number of early register office weddings and the unexpected reasons underpinning the prohibition.

[44] On which, see Rebecca Probert (ed.), *Cohabitation and Non-marital Births in England and Wales, 1600–2012* (London: Palgrave Macmillan, 2014) and *The Changing Legal Regulation of Cohabitation: From Fornicators to Family, 1600–2010* (Cambridge: Cambridge University Press, 2012).

[45] For accounts of the process of falling in love and the changing rites of courtship see, e.g., Phegley, *Courtship and Marriage*, and Claire Langhamer, *The English in Love: The Intimate Story of an Emotional Revolution* (Oxford: Oxford University Press, 2013), and for discussion of how expectations and experiences of marriage have changed over time see, e.g., Lucy Delap, Ben Griffin, and Abigail Wills (eds.), *The Politics of Domestic Authority in Britain since 1800* (London: Palgrave Macmillan, 2009) and David Clark (ed.), *Marriage, Domestic Life and Social Change* (London: Routledge, 1991).

[46] These consequences have of course been transformed over the period – on which see R. H. Graveson and F. R. Crane (eds.), *A Century of Family Law* (London: Sweet & Maxwell, 1957); Cretney, *History*; Gillian Douglas, *Obligation and Commitment in Family*

the debates about whether there should be a state-recognised concept of marriage or whether this should be left to religious bodies or to private agreements.[47] It is about getting married, not about marriage itself.[48]

Distinguishing the two is important. I therefore use the term 'wedding' to denote the act of going through a ceremony that results in a legally recognised 'marriage'; in other words, a couple celebrate their wedding, but register their marriage. The term 'marriage' will also be used when discussing issues of validity. Finding an appropriate term for ceremonies that do not result in a legally recognised marriage is more fraught, since many couples will regard their religious ceremony as their wedding, whatever its status in the eyes of the law.[49] I have variously referred to religious-only marriage ceremonies and celebratory marriage ceremonies as the context requires, in order to try to combine legal accuracy with a more positive terminology than appears in the law reports.[50]

Of course, keeping a clear distinction between the laws regulating weddings and those governing marriages is not always easy. Couples' choices as to how they married were often influenced by the fact that they were trying to hide the fact that they were not eligible to do so, or wanted to escape the notice of those who might object to their union. Since the rules on who can marry whom have their own complex history, it is useful to provide an overview of them here, with a brief indication of how they intersect with the story of how couples marry.[51]

Law (Oxford: Hart, 2018) – which in turn may influence whether couples choose to enter into a legally recognised marriage.

[47] For such debates, see Elizabeth Brake, *Minimising Marriage: Marriage, Morality, and the Law* (Oxford: Oxford University Press, 2013); Gary Chartier, *Public Practice, Private Law: An Essay on Love, Marriage and the State* (Cambridge: Cambridge University Press, 2016); Daniel Hill, 'The State and Marriage: Cut the Connection' (2017) 68(1) *Tyndale Bulletin* 95; Julian Rivers, 'Could Marriage Be Disestablished?' (2017) 68(1) *Tyndale Bulletin* 121.

[48] Brief reference is made to civil partnerships below (and see further Chapter 9), but the focus is on getting married rather than formal relationships more generally.

[49] See, e.g., Rajnaara C. Akhtar, 'Religious-Only Marriages and Cohabitation: Deciphering Differences', 69–84, and Rehana Parveen, 'From Regulating Marriage Ceremonies to Recognizing Marriage Ceremonies', 85–101, in Rajnaara C. Akhtar, Patrick Nash, and Rebecca Probert (eds.), *Cohabitation and Religious Marriage: Status, Similarities and Solutions* (Bristol: Bristol University Press, 2020).

[50] See, e.g., the terminology of 'non-qualifying ceremony' adopted by the Court of Appeal in *AG* v. *Akhtar* [2020] EWCA Civ 122.

[51] The rules as to when a marriage may be *voidable*, by contrast, do not affect how couples marry and so are not considered here.

Minimum Age and Parental Consent

For much of the nineteenth century it was hardly necessary for any checks to be made as to whether those seeking to marry had attained the minimum age at which it was possible to do so. The minimum was set at so low a level – 12 for a girl and 14 for a boy – that virtually no one married under it. Even if they did, the marriage could be ratified once the relevant age had been reached.[52] From the late nineteenth century, this low age was at odds with the measures put in place to protect girls against sexual exploitation,[53] and attracted increasing criticism. But only in 1929 was the minimum age set at 16, and marriages under that age classified as automatically void.[54]

More significant in terms of shaping couples' choices about how they married was the age at which it was possible to marry without parental consent – or, more accurately, without either claiming to have parental consent or running the risk of parental dissent, since a lack of parental consent did not affect the validity of the marriage. Until 1969, this was set at 21, but it was all too easy for individuals to claim to be of age at a time when no documentary evidence of age was required. In 1969, when the age was lowered to 18,[55] it was expressly provided that a superintendent registrar could refuse to issue the necessary authority for the marriage to go ahead 'unless satisfied by the production of written evidence' that the necessary consent had been obtained.[56] Only in 1999, however, were superintendent registrars given the power to require documentary evidence of age,[57] by which time the rising age of first marriage had rendered the issue of parental consent redundant in all but a small number of cases. It was, however, to re-emerge as a focus of policy concern in the twenty-first century, the issue now being the risk of teenagers being forced into unwanted marriages.[58]

[52] Cretney, *History*, p. 58.
[53] Laura Lammasniemi, '"Precocious Girls": Age of Consent, Class and Family in Late Nineteenth-Century England' (2020) 38(1) *Law and History Review* 241.
[54] Age of Marriage Act 1929; see now Marriage Act 1949, s. 2; Matrimonial Causes Act 1973, s. 11(a)(ii).
[55] Family Law Reform Act 1969, s. 2(1)(c).
[56] *Ibid*., s. 2(3).
[57] Immigration Act and Asylum Act 1999, s. 162.
[58] For an overview of whose consent was required at different times, and how it had to be given, see Rebecca Probert, 'Parental Responsibility and Children's Partnership Choices' in Rebecca Probert, Stephen Gilmore, and Jonathan Herring (eds.), *Responsible Parents and Parental Responsibility* (Oxford: Hart, 2009), 237–54.

Prohibited Degrees

Marriages might, however, be void for a range of other reasons. From 31 August 1835, any marriages within the prohibited degrees were void, rather than voidable.[59] Controversially, these prohibitions encompassed not only close blood relatives but also former in-laws. The biblical idea that husband and wife were one flesh meant that the relatives of one were deemed to be the relatives of the other, even after death, so a man was prohibited from marrying the sister of his deceased wife (or the widow of his deceased brother) just as he would have been prohibited from marrying his own sister.[60] Despite these prohibitions, many couples did manage to go through a ceremony of marriage, often choosing a location where they were unknown or marrying in a form that assured them a degree of privacy.[61] Such prohibitions on marriages between those related by 'affinity' were abolished one by one over the course of the twentieth century.[62] All that remains are rules against marrying a small set of close blood relations and anyone who has been a child of the family.[63] Eligibility to marry did not, however, necessarily mean that the couple could marry as they chose; as we shall see, Anglican clergy were given the right to refuse to conduct the marriages of those who were within the formerly prohibited degrees.[64]

Prior Marriage

Throughout the period a marriage might also be void on account of a prior marriage. The significance of this prohibition changed over time

[59] Marriage Act 1835.

[60] For an excellent account of the prohibitions, see Sybil Wolfram, *In-law and Outlaws: Kinship and Marriage in England* (London: Croom Helm, 1987).

[61] For an example of one such wedding, see Jenny Paterson, 'Married in a Register Office – or were they?' (2021) JGFH (forthcoming).

[62] See the self-explanatory Deceased Wife's Sister's Marriage Act 1907 and Deceased Brother's Widow's Marriage Act 1921; the Marriage (Prohibited Degrees of Relationship) Act 1931 (which removed the prohibitions on marrying the niece, nephew, aunt, or uncle of a deceased spouse); the Marriage (Enabling) Act 1960 (which removed the restrictions on marrying such relations where the first marriage had ended in divorce rather than death); the Marriage (Prohibited Degree of Relationship) Act 1986 (which allowed marriages between a former step-parent and step-child, or between a parent-in-law and son- or daughter-in-law, subject to certain conditions) and the Marriage Act 1949 (Remedial Order) 2007 (which removed those conditions insofar as they related to marriages between a former parent-in-law and son- or daughter-in-law).

[63] Marriage Act 1949, s. 1 and sch. 1.

[64] See further Chapter 6. The current exemption applies only to those marriages permitted as a result of the 1986 Act and the 2007 Order: Marriage Act 1949, s. 5A.

as divorce became easier,[65] but this in turn raised a whole set of new issues about how those who had been divorced could remarry.[66] For those who had not obtained a divorce, escaping detection and prosecution for bigamy generally required individuals to put some time and distance between their marriages and thus also shaped how they married. As cohabitation became more common in the 1960s, fewer couples ran this risk. In more recent decades, however, the need to identify intended marriages that may be void on account of a prior marriage has re-emerged in the context of polygamous marriages.[67]

Sex and Gender

The most significant change to the laws governing marriage in the past decade has of course been that allowing same-sex couples to marry.[68] The 1990s saw an increasing number of countries across the world making provision for same-sex couples to enter into a legally recognised relationship, and from 5 December 2005 same-sex couples could enter into a civil partnership in England and Wales too. Despite the common tendency to refer to civil partnerships as 'marriages', the law was clear that the two were not the same.[69] In late 2010, the Equal Love campaign publicly challenged the limitations of the law by sending same-sex couples seeking permission to marry, as well as mixed-sex couples seeking permission to enter into civil partnerships, to their local register offices. The coalition government subsequently announced its support for legalisation of same-sex marriage, the Marriage (Same Sex Couples) Act was passed in 2013, and from March 2014 same-sex couples were able to marry. With civil partnerships becoming available to opposite-sex couples from the

[65] On the transformation in the ease of untying the knot, see Roderick Phillips, *Putting Asunder: A History of Divorce in Western Society* (Cambridge: Cambridge University Press, 1988); Stone, *Road to Divorce*; Colin Gibson, *Dissolving Wedlock* (London: Routledge, 1994); Daniel Monk, Joanna Miles, and Rebecca Probert (eds.), *Fifty Years of the Divorce Reform Act 1969* (Oxford: Hart, forthcoming 2022).

[66] See further Chapters 4 and 7.

[67] For discussion of polygamy, see Anthony Bradney, *Law and Faith in a Sceptical Age* (Abingdon: Routledge, 2009), pp. 109–12.

[68] For a helpful overview see Nicola Barker and Daniel Monk, 'From Civil Partnership to Same-Sex Marriage: A Decade in British Legal History' in Nicola Barker and Daniel Monk (eds.), *From Civil Partnership to Same-Sex Marriage: Interdisciplinary Reflections* (Abingdon: Routledge, 2015), 1–26.

[69] The most obvious manifestation of this was the classification of overseas same-sex marriages as civil partnerships: Civil Partnership Act 2004, s. 215; *Wilkinson* v. *Kitzinger* [2006] EWHC 2022 (Fam).

end of 2019,[70] a person's legal gender no longer determines their ability to marry or enter into a civil partnership.[71] Again, however, this does not mean that all couples can marry as they choose, with most types of religious weddings still being unavailable to same-sex couples.[72]

Sources

As set out earlier, the aim of *Tying the Knot* is to evaluate the relationship between law and practice, with a particular focus on how far the law has enabled couples to marry in accordance with their beliefs. Addressing each of these elements requires a range of different sources to be used.

In terms of understanding the evolution of the law, it is necessary to go beyond the terms of what was eventually enacted. Every Act was preceded by numerous draft bills, and scrutinising them shows what options were being considered, which proposals were unsuccessful, and how the terms of the successful ones had evolved over time. It is also necessary to go beyond the debates recorded in *Hansard*; in the early nineteenth century, it was far from being a verbatim account of what was said in Parliament, being compiled from newspaper reports rather than by a dedicated team of transcribers. In addition to recording what was said in Parliament, national, regional, and even local newspapers also debated how the law should be reformed and recorded reactions to new laws, providing insights into the concerns of the time. Periodicals published by specific religious denominations proved to be a particularly fruitful source of information about what reforms different groups wanted, while the petitions that were presented to Parliament reveal who was calling for reform.

In examining how couples married, essential background information about the number and type of weddings each year is provided by the detailed reports published by the Registrar-General from 1839 onwards, and by the more recent publications of the Office for National Statistics. Depictions of weddings in novels and plays, and, later, in TV shows and films also help to illuminate how different options were perceived. While such sources need to be treated with care, even the most wildly inaccurate

[70] Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019; Civil Partnership (Opposite-sex Couples) Regulations 2019, SI 2019/1458.

[71] In addition, the Gender Recognition Act 2004 allowed individuals to obtain legal recognition of the fact that their gender was not as recorded on their birth certificate and marry in their 'reassigned' gender.

[72] See further Chapter 9.

of such depictions has a valuable role to play in illuminating popular misconceptions about the law – and perhaps what people think *should* be possible.

Evaluating whether the way in which couples married reflected their beliefs is inevitably more challenging. There are obvious challenges in talking about what past generations believed, or even how they behaved.[73] That said, much work has been done on the history of religion, and comparing the percentage of the population who could be classified as belonging to a particular religious group with the percentage of weddings taking place according to the rites of that group gives some indication of whether there might have been a mismatch between beliefs and practices. In assessing the beliefs of individual couples, wedding announcements in local newspapers proved to be a particularly fruitful source of information about the content of weddings, and also showed how some couples had an additional ceremony before or after their wedding. From the 1960s, the burgeoning range of wedding magazines provides insights into couples' aspirations and choices. And particularly valuable information about couples' beliefs and choices was provided by almost 200 family historians who replied to my request for information about register office weddings and weddings involving Nonconformist or Catholic ancestors.[74] Between them, they provided data relating to over a thousand weddings across England and Wales that had been celebrated between 1837 and the present day, with examples from 44 counties and 288 registration districts.[75] Many also shared stories about their ancestors and were able to provide information about the religious affiliation of the couples in question, which enabled their choice of wedding to be evaluated.[76]

[73] For a helpful discussion of the differences between believing, belonging, and behaviour, and between church attendance, religious allegiance, and formal membership: see Clive Field, *Periodizing Secularization: Religious Allegiance and Attendance in Britain, 1880–1945* (Oxford: Oxford University Press, 2019), ch. 1.

[74] The request for information was issued via the Lost Cousins network and a number of family history societies. Family historians were asked to supply data about ancestors who had married in a register office and about the marriages of any ancestors who were Nonconformist or Catholic. The phrasing of the second question was designed to elicit information about those who had not married in a registered place of worship as well as those who did.

[75] Data were provided about 607 register office weddings, 345 weddings in registered places of worship, and 69 Anglican weddings that had involved parties at least one of whom was Catholic or Nonconformist. A full list of all those who responded is included in the acknowledgements.

[76] Some of these stories will be referred to in the chapters that follow, and a set of them will be published in the *Journal of Genealogy and Family History* (JGFH).

Structure

While each route into marriage has its own history and its own distinct trajectory, analysing each separately would miss the broader connections between them. The structure is therefore chronological rather than thematic, with each chapter telling a set of stories about a specific period of time. This means that the coverage of each route into marriage differs between chapters; at certain times there may be a considerable amount to say about a particular type of wedding, while at others it may fade into the background. Stories about change always need more explanation than ones about continuity.

We begin with the conception, design, and implementation of the 1836 Act. Chapter 2 shows how the way in which demands for reform were framed – the plea to be relieved from compulsory conformity with the rites of the Anglican church when marrying – shaped the solution adopted in 1836. This insight is crucial to understanding the whole subsequent history of marriage law and practices and the problems with which reformers are grappling today. The 1836 Act was based upon the negative principle that no one should be compelled to marry in a form that ran counter to their beliefs, rather than any positive principle that everyone should be able to marry in a form that reflected their beliefs. It gave those campaigning for reform what they had asked for, but not in the form they had wanted, largely because they had no existing practices that could give shape to a possible solution.

The legacy of this is clear from Chapter 3, which analyses the take-up of the new law and how its limitations were quickly revealed. It explains how take-up differed as between Catholics and Protestant Dissenters, and reveals how many of those marrying in a register office had a religious ceremony of some kind before, after, or even during that wedding. Chapter 4 shows how controls over the form of the ceremony were tightened in 1856, almost it seems by accident, thereby removing some of the options that had been available to couples in the early years. It also analyses the proposals of the 1868 Royal Commission; had these been enacted, the subsequent history of weddings would have been very different. In the absence of wider reform, the final decades of the nineteenth century saw a campaign to dispense with the need for registrars to be present at marriages in registered buildings. Chapter 5 explores the divisions within Dissent that made finding a replacement for the registrar so difficult, and

shows how the solution that was adopted in 1898 generated protests in turn.

This is a less positive take on the process of reform than that which appears in many other accounts. The 1856 Act has generally been seen as removing many of the practical obstacles that might otherwise have deterred couples from availing themselves of the types of weddings introduced in 1836, and the 1898 Act has been seen as completing the process. But the additional restrictions imposed by the one, and the limitations of the other, are crucial to understanding how constraints on couples' choices continued through the twentieth century and into the twenty-first.

New constraints emerged at the start of the twentieth century as the result of competing conceptions of marriage. As Chapter 6 shows, there were cases in which the law refused to recognise certain religious ceremonies, and also ones in which individuals disdained to recognise weddings as binding on them on account of their religion. Further complexities developed as the century progressed, with a new divergence between the Church of England and the now disestablished Church in Wales; as Chapter 7 analyses, the passage of the Marriage Act 1949 only served to consolidate that complexity rather than making any revisions to the law.

The period between 1950 and 1993 saw the number of civil and religious weddings gradually converging, with civil weddings briefly overtaking religious weddings in the 1970s. As Chapter 8 shows, there was also a limited degree of convergence in the rules applicable to different types of weddings, as well as numerous proposals for reform being advanced. One of the specific proposals was implemented by the Marriage Act 1994, and Chapter 9 analyses how the following years saw a transformation of marriage practices. While couples were making different choices, the rise of the purely 'celebratory' ceremony suggested that the legal options still fell short of ensuring that couples could marry in accordance with their beliefs. The legacy of the choices made in 1836, 1856, and 1898 were still being felt, with renewed concern about religious-only ceremonies. And in 2020, the inflexibility of the law governing weddings, combined with the restrictions necessitated by a global pandemic, meant that many couples could not get married at all.

Throughout the book, readers may see parallels between past concerns and campaigns and those of the present day. I have generally avoided drawing those parallels in the main body of the book, since this is likely to become confusing for those who are reading it as a work of history, rather

than for its relevance to current policy debates. But they are nonetheless important, and so *Tying the Knot* closes by drawing together the strands from earlier chapters and reflecting on how the past can inform current policy debates about how the laws regulating weddings should be reformed. It is not my intention to set out a blueprint as to how that should be done, but simply to illuminate the problems that have arisen in the past and which continue to affect the choices of couples getting married today; to inform, rather than advise.

And with that, let us step back two hundred years to where the campaign for reform began.

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