
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¹ Barbara Probert, private unpublished diary, 1971.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.

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.