

TYING THE KNOT

The Marriage Act 1836 established the foundations of modern marriage law, allowing couples to marry in register offices and non-Anglican places of worship for the first time. Rebecca Probert draws on an exceptionally wide range of primary sources to provide the first detailed examination of marriage legislation, social practice, and their mutual interplay, from 1836 through to the unanticipated demands of the 2020 coronavirus pandemic. She analyses how and why the law has evolved, closely interrogating the parliamentary and societal debates behind legislation. She demonstrates how people have chosen to marry and how those choices have changed, and evaluates how far the law has been help or hindrance in enabling couples to marry in ways that reflect their beliefs, be they religious or secular. In an era of individual choice and multiculturalism, *Tying the Knot* sign posts possible ways in which future legislators might avoid the pitfalls of the past.

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The Formation of Marriage 1836–2020

REBECCA PROBERT

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*For Mum, who was unable to marry in accordance with her
beliefs, in the hope that others will be able to do so.*

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PREFACE AND ACKNOWLEDGEMENTS

I have always enjoyed weddings. From the age of nine I sang in the choir of my local village church, and from the front row of the choirstalls I had by far the best view of what was going on. Barely a yard away from the bride and groom, I could see their smiles and their loving glances as they exchanged their vows, while their family and friends could only watch the backs of their heads. When I got married to my husband, Liam, in 2006, we filled the choirstalls with our nearest and dearest so that they too could see and share in that moment.

It was very easy for us to get married. All we had to do was speak to the vicar and to the parish office. The banns were duly called, although as relative newcomers to the parish and the church nobody knew who we were. For other friends and family it was not quite so simple. One friend wanted to marry in the Catholic church she had attended as a child, but, having moved away in the meantime, she had to establish residence in the district in order to be able to do so. Another wanted both an imam and a Lutheran minister to play a part in his wedding, reflecting his and his partner's different faiths, but had to settle for a sequence of ceremonies. These are just two examples of the difficulties that individuals might face in getting married according to their beliefs.

For the past few years I have been closely involved in discussions about how the law might be reformed. In 2015 I was seconded to the Law Commission to work on its scoping study of the law governing how and where people can marry in England and Wales.¹ In 2018 it was announced that the Commission would be asked to undertake a full law reform project in this area,² and I was part of the team that began work on this project in 2019. The Commission's consultation paper putting forward provisional proposals for a new marriage law that

¹ Law Commission, *Getting Married: A Scoping Paper* (17 December 2015).

² The announcement was made by HM Treasury as part of its 2018 Budget: HM Treasury, Budget (29 October 2018), para. 5.52.

would allow for greater choice within a simpler legal structure was published in the autumn of 2020,³ and its final report will follow later in 2021.

Working with the team at the Law Commission – Nicholas Hopkins, Matt Jolley, Elizabeth Welch, and Sam Hussaini – has been a joy and an inspiration, but I should stress that nothing in the pages that follow draws directly on any of the discussions with them, or with the many religious groups, belief organisations, celebrants, registrars, and policymakers with whom we have consulted. Nonetheless, the experience has inevitably influenced my perception of the past. Hearing how the law does and does not work for different groups has made me curious to find the reasons for these differences, to ascertain whose voices were heard in the earlier debates over how the law should be reformed, and whose were not. Listening to the very different views about what form the law should take, and learning about the different practices that need to be accommodated, has also given me a certain degree of sympathy for past reformers tasked with finding a solution that balanced competing interests and desires, even where that solution was far from perfect. That said, certain earlier solutions were clearly politically motivated, others were accepted because no one could think of anything better, and some supposedly fundamental principles seem to have emerged by accident.

That, however, is to anticipate. Here I just wish to thank all of those who have played a part in the making of this book. First and foremost, I want to thank my husband, Liam, for his superlative research assistance, eagle-eyed reading of drafts, and willingness to be a sounding board for ideas. I would also like to thank my father-in-law, *sean* Liam, who was dragooned into providing research assistance during lockdown, and whose review of websites and construction of spreadsheets was very helpful. I am enormously grateful to Professor Chris Barton for reading the entire manuscript in draft and for his helpful comments. The initial seeds of this book were sown when writing an article on the 150th anniversary of the 1868 Royal Commission on marriage law, and I would like to thank Maebh Harding and Brian Dempsey for their collaboration on that piece. Dr Stephanie Pywell of the Open University invited me to work with her on a number of empirical projects on weddings, and I am hugely grateful for her meticulous approach to the collection and analysis of data. The writing of this book overlapped with

³ Law Commission, *Getting Married: A Consultation Paper on Weddings Law*, CP No. 247 (3 September 2020).

work on a Nuffield-funded project on non-legally binding marriage ceremonies, and I benefitted from many stimulating conversations with my colleagues on that project, Dr Rajnaara Akhtar, Dr Vishal Vora, Sharon Blake, and Tania Barton. I would also like to thank Daniel Hill for alerting me to many examples of lockdown weddings that I might otherwise have missed, and Lucy-Clare Windle for sharing her dissertation on wedding dresses with me.

Having presented various aspects of the book as it developed, I am also very grateful for the helpful feedback that I received from attendees at the British Legal History Conference in St Andrews, the Oxford Legal History Forum, Edinburgh Law School, Newcastle Law School, the inaugural conference of the Register of Qualified Genealogists, the Devon Family History Society, the Peak District Family History Society, the Odiham U3A (who added some local context to the tale of the Reverend Lush, discussed in Chapter 4), and Professor Mélanie Methot's enthusiastic history students at the University of Alberta.

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Finally, this book is dedicated to my mother, and it is with my parents' wedding in 1971 that we shall start.

ABBREVIATIONS

ER	<i>English Reports</i>
GRO	General Register Office
HLMP	<i>House of Lords Minutes of Proceedings</i>
JHC	<i>Journals of the House of Commons</i>
JHL	<i>Journals of the House of Lords</i>
ODNB	<i>Oxford Dictionary of National Biography</i>
ONS	Office for National Statistics
PDD	Protestant Dissenting Deputies
PP	Parliamentary Papers
TNA	The National Archives