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Introduction

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I. OVERVIEW

TWO DAYS AFTER the Marriage (Same Sex Couples) Act 2013 came into force, the BBC sitcom *Rev* showed the vicar Adam Smallbone struggling with the question of just what elements of a wedding ceremony he could allow in blessing the marriage of two of his gay friends.[1] The initial compromise pleased no one: the couple were disappointed by the fact that the words used were not sufficiently close to the wedding they wanted, while his immediate boss (ie the archdeacon, rather than God) was angered by the rumours that Adam had flouted the Church of England's prohibition on performing same sex marriages. The final scene showed Adam putting friendship above legal prohibition and performing the full (albeit legally ineffective) marriage service for the couple behind closed doors.

The episode brilliantly encapsulated how the rites of marriage matter as much as the right to marry. For, after all, what *is* marriage? Lawyers might tend to see it in terms of the rights that flow from it,[2] but the debates over the difference between civil partnership and marriage tell us that it is far more than a passport to legal rights. After all, would a marriage have the same significance if the couple could simply submit their details to the local Register Office and receive a certificate confirming their new status through the post?[3] Lee Badgett, commenting on the situation in the Netherlands, has suggested that same sex couples have 'reject[ed] the dry, accounting-like connotation of "registered partnership" and opt[ed] instead for the rich cultural meaning and emotional value of marriage' (Badgett 2009: 203). This is not to downplay the significance that entering into a civil partnership may have for those involved (see eg Shipman and Smart 2007; Heaphy, Smart and Einarsdottir 2013), but the introduction of this as an option was very much couched

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[1] BBC2, *Rev*, first broadcast 31 March 2014.

[2] See eg, the definition of marriage as 'a contract for which the parties elect but which is regulated by the state … because it affects status upon which depend a variety of entitlements, benefits and obligations' offered by Thorpe LJ in *Bellinger v Bellinger* [2001] EWCA Civ 1140.

[3] For discussion of this option see Peel and Harding (2004: 43).

in terms of state recognition for the purpose of *rights* rather than status, whereas the move to same sex marriage has been much more about status and social recognition.

Yet at the same time the rite *without* the rights has a very different significance. Same sex couples have been engaging in commitment ceremonies with no legal standing for some time, but having the right to the rite makes a profound difference, and not just because of the legal rights that flow from it.[4] As the psychologists Mary and Kenneth J Gergen have pointed out, 'when marriage vows are spoken between witnesses in a *sanctioned* setting, the nature of the relationship is suddenly and compellingly changed' (emphasis added) (Gergen and Gergen 2003: 469; see also Bourassa 2004: 58). The philosopher Elizabeth Brake similarly identifies this element of transformation, suggesting that the level of ritual adopted reflects the importance of the public and institutional aspects of marriage:

> It is because marriage is seen as a private and public transformation, a gateway to unique fulfillment, that it is an occasion for elaborate celebration … it is the translation of love into a specific institutional form that gives the ceremony its meaning. (Brake 2013: 14).

Brake's allusion to 'elaborate celebration' encourages us to move our gaze beyond the legal rite that creates the marriage to the broader social rites associated with it that give the event its cultural and communal significance. Not all aspects of the celebration will merit the term but some helpful indicators are provided by Charlsey, in his study of the wedding industry in Glasgow in the 1980s: he suggests that if there is a perceived 'right way' of performing certain actions 'which is strikingly well known compared to any reason for doing them in that particular way', together with 'numerous sequences of action to be performed', taking the form of 'events which are not necessary for their avowed end', then a particular practice might well deserve the term 'rite' (Charlsey 1991; 179–80).

Serendipitously, at the time that this particular episode of *Rev* was broadcast, a group of lawyers, sociologists, anthropologists, psychologists, demographers, theologians, and art historians were gathering in Cambridge to reflect on the rites *of* marriage, as well as the right *to* marry (or not to marry), and how the two may relate to one another. The timing, of course, was not entirely coincidental. The proposed book that this group was gathering to discuss had been inspired in part by the widespread debates about the meaning of modern marriage that were occurring both in the media and within academia. While the 2013 Act had granted the right to marry to same sex couples, its tripartite distinction between marriages conducted in a

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[4] As compared, for example, to those couples who *could* marry but instead choose a rite that has religious significance but no legal standing (see eg Akhtar, this volume).

civil ceremony (open to all), marriages conducted in an Anglican ceremony (explicitly limited to opposite sex couples) and marriages conducted according to the rites of other faiths and denominations (which can, but need not, be made available to same sex couples as well as to opposite sex couples) had opened up new questions and possibilities concerning the choice of *how* one can marry. At the same time, we wanted to broaden the focus of the discussion beyond same sex marriage, to think about what marriage means for those who have not had to fight for the right to marry, and who may as a result have devoted more thought to the rites to be followed in the marriage ceremonial. Such discussions in turn prompted consideration of how those who had just acquired the right to marry would exercise it: would the rites usually associated with marriage be embraced, adapted, subverted or rejected? In addition to considering the significance of particular rites of marriage, and how these might repel or attract, we also wanted to look at how the law conceptualises ceremonies that do not fit a particular form, and whether more radical reform is still needed.

Since our intention was to examine these issues from various disciplinary perspectives, we decided to focus solely on England and Wales, in order to explore in depth the specific issues arising from this jurisdiction's Anglican heritage, demographic development, current laws and social practices. We also decided to focus on key contemporary issues relating to marriage rites and rights. The history of particular developments is sketched in where necessary, but the focus is very much on how marriage has changed over the past 50 years, and more particularly in the last decade.

We begin, then, by exploring changes in the rite of marriage over the past decades. John Haskey discusses the significant demographic and social changes that have occurred, analysing not just changes in the numbers marrying, but also how they are choosing to marry. Pre-marital cohabitation, remarriage after divorce and the secularisation of the marriage ceremony all emerge as key changes. Pre-marital cohabitation is also the focus of Rebecca Probert's chapter: drawing on wedding magazines, television programmes and social surveys, she explores the extent to which the moment of marriage still constitutes a rite of passage when couples have been living together in advance of the ceremony. The ritual of giving and receiving wedding presents is another aspect that assumes a different significance where the couple are no longer having to equip a home for the first time, as Louise Purbrick shows in her chapter: it remains, however, an important way for the couple's kin and friends to demonstrate their approval (or not) of the union. The final chapter in this Part, Elizabeth Peel's empirical study of lesbian and gay couples, addresses the phenomenon of civil partnership ceremonies and holds out the possibility of more radical change to come as different groups innovate and perform marriage in different ways.

Part II then goes on to examine the interconnection between the rite of marriage and the rights that flow from marriage. Ayesha Vardag and Joanna

Miles assess whether the making of a pre-nuptial agreement should be seen as an emerging marriage rite in its own right. The possibility of redefining the rights that flow from marriage arguably reflects the degree of choice individuals have over whether to marry, how to marry, and what sort of marriage they want. Helena Wray then addresses the very different situation where immigration status, which may be claimed as a result of marriage, has become a central preoccupation of the state—with the result that not only the rights which flow from marriage, including the right to live in the UK, but also the marriage rites themselves are controlled in ways that would be regarded as unacceptably intrusive if they occurred in another context. For other couples, the rite may be more important than the rights: Rajnaara Akhtar discusses the practice among Muslim couples of going through a religious ceremony that is recognised by the community but which might not have any legal standing. The role of kin and community assumes a rather darker aspect in Perveez Mody's chapter on forced marriages: as Mody notes, there is also a right *not* to marry.

Language, ritual and the meaning of marriage are considered in Part III, with analysis of two very different sources. Sarah Farrimond examines the changing language of the Anglican ceremony and the symbolism of the ritual employed during the service. The very familiarity of the cultural script may often blunt our perception of the underpinning ideologies (for better or for worse). Rosie Harding then engages in a discourse analysis of the recent debates in the House of Lords over same sex marriage. Intriguingly, but perhaps not unexpectedly, the legacy of the Anglican liturgy can be seen in many of the concerns expressed, in particular the perception that husbands and wives have different roles within marriage and that marriage is inextricably linked with the procreation of children.

We close with two radical pieces calling for changes to the very language, performance and meaning of marriage. Peter Edge argues that we need to address the respective roles of religion and state more directly; after all, should a religious rite be capable of generating legal rights? He suggests that we should distinguish between the two both functionally and linguistically: religious organisations would be able to conduct marriage ceremonies, but only the state-organised civil partnership ceremonies would carry legal recognition and rights. Jonathan Herring, meanwhile, is content to retain the term 'marriage' but contends that it should bear a very different meaning: rather than being a union premised on the sexual relationship of two persons, it should be defined by the provision of care by the one to the other.

Having sketched out the approach of this collection and the content of the different chapters, it will be useful at this point to identify some of the common themes that have emerged and locate them in the existing literature on the topic.

II. CHOICE, INDIVIDUALITY AND IDENTITY

Fifty years ago, the exercise of choice as to whether and where to marry was rather more limited than it is today. At the most basic level, most couples who wanted to make a life together would not have seen themselves as having a 'choice' whether or not to marry. Marriage was expected, and those who lived together outside marriage would often face disapproval from kin and community—if, indeed, they even dared to make their unwed status known (Probert 2012). Those who did marry might choose to do so in a variety of ways—if, that is, they were marrying for the first time. Those who had gone through a divorce would find their options curtailed: as Haskey demonstrates in his chapter, some denominations were willing to conduct second marriages where one or both had been divorced, but the Church of England and the Roman Catholic Church were not, on the basis that marriages once entered into were indissoluble. Choosing a civil wedding, on the other hand, meant the local Register Office. Even wedding guides were prescriptive in tone: one 1964 wedding planner stipulated decisively that '[a] bride who has been previously married should not wear white' (Owen Williams 1964).

Fast-forward to the present day, and we find a very different picture. While it is still true that most couples who share a home are married, an increasing number are choosing not to marry (or even not to share a home: Haskey 2005; Haskey and Lewis 2006; Duncan and Phillips 2012) and the vast majority of those who do marry will have lived together beforehand (Haskey, chapter two of this volume). For those who have done so, marriage no longer operates as a rite of transition in the same way, since it is no longer marks the point at which it is assumed that couples will begin their joint lives together (Kalmijn, 2004: 583; Smock, Manning and Porter 2005: 680; Probert, chapter three of this volume; Heaphy, Smart and Einarsdottir 2013: 87).

Against this backdrop, all but a few now enjoy a genuine choice as to whether or not to marry, and so have to make a conscious decision to tie the knot (Lewis, 2001: 144). But given the degree of commitment that exists within many long-term cohabiting relationships (van Hooff 2013: 53), what does getting married actually signify? One couple pondering whether to marry identified the support which marriage provided to their existing commitment and concluded that it 'can promote stability (and from that mutual growth) within a relationship supported by formal commitment and peer acceptance' (Torien and Williams 2003: 435). Mary and Kenneth J Gergen similarly saw the public nature of marriage as contributing to the commitment being made, suggesting that '[b]y including within our "we" the relational tie of state and church, we emphasize the holding power of our vows' (Gergen and Gergen 2003: 470). While the state will no longer

hold individuals to their vows, the act of marrying is at the very least a declaration of one's future intentions; a signal to the other spouse and the rest of the world that the relationship is intended to be lifelong (Fitzgibbon 2002; Garrison 2007; McGowan 2007; Farley 2007). As Milton C Regan notes, marriage 'still has powerful cultural power as the paradigm of intimate commitment' (Regan 1999: 7).

The importance attached by the state—and, perhaps, by one's family, partner and partner's family—to marriage as a signifier of commitment is clearly an important context within which individual choice is exercised. Of course, pinning down the motivations for the decision to marry may be difficult even in individual cases: Charlsey noted that the Glaswegian couples he observed marrying in the 1980s were doing so 'for a variety of perhaps typically tangled reasons, acknowledged and unacknowledgeable, admitted to all or not even to themselves' (Charlsey 1991: 27); as he added, this had always been the case. Some, even in the 1980s, were marrying to be married, and Eekelaar and Maclean's study of couples who had for the most part been entering into partnerships in that decade similarly found that a number gave conventional reasons for marrying, indicating 'an acceptance of the prescriptions of religion, cultural practices or family expectations as sufficient reason to enter marriage' (Eekelaar and Maclean 2004: 520). Even more recent research suggests that certain expectations still need to be navigated, with unmarried status being constructed as a temporary condition and women who had remained single into their late 30s and 40s needing to account for their status while younger single women were seen as 'not married yet' (Sandfield and Percy 2003). Clearly, 'choice' has to be seen in context.

At the same time, it should be borne in mind that the idea of two individuals choosing to make a commitment to each other is rooted in a Western view of marriage that presupposes a particular view as regards the position and agency of the individual. Other cultures do not necessarily share this view, but the dominance of the language of 'choice' in all aspects of marriage—from non-marriage, to cohabitation, ceremony, and rites—makes it perhaps unsurprising that a discourse of alterity in the shape of 'forced marriage' (characterised by assertions that in such marriages there is *no* choice) has simultaneously emerged as a pressing social and moral concern. The communities in which there may still be pressure not to cohabit before marriage, or to marry an approved spouse, now stand out, as the chapters by Rajnaara Akhtar and Perveez Mody show.

A second dramatic change has been from marriage as a religious rite to marriage as a largely secular rite. As John Haskey shows, civil marriages accounted for under a third of all marriages in 1964, and over two-thirds today. Significantly, it is the possibility of marrying on 'approved premises' that has proved popular, accounting for more than half of all weddings today. What has also changed is the *perception* of civil marriages. In Leonard's

survey of 50 couples marrying in Swansea at the end of the 1960s, most reported that they wanted a 'proper' wedding, by which they meant a wedding in church (Leonard 1980). Significantly, even those who were not able to do so reported this as an aspiration. The idea of a 'proper' wedding still had a strong resonance for those getting married on the eve of the 1980s (Mansfield and Collard 1988: 102); indeed, religious marriages, which had been overtaken by civil marriages during the second half of the 1970s, narrowly reverted to being the choice of the majority during the following decade. Walliss, however, found a greater variety of views among those marrying in the final decade of the twentieth century. While the majority of couples who had chosen to marry in church justified this on the basis of it being the proper thing to do, this was often due to the influence of their parents (see also Farrimond, chapter ten of this volume). Those who married in a civil ceremony, by contrast, 'had tended to give the matter more thought than those who simply married in church because of some vaguely articulated notion of "tradition"' (Walliss 2002: 3.14). While a lack of any religious belief was a common reason, a desire 'to exercise a high level of control over their wedding' was another. Marrying on 'approved premises' offered the opportunity 'to make "their big day" an expression of their individuality rather than conforming to what they perceived as the "one size fits all" church ceremony'.

This idea that the rite of getting married (as well as, of course, choosing whether to marry at all) is increasingly about reflecting one's own individuality and identity has been noted by a number of writers (Gillis 1999: 52; Leeds-Hurwitz 2002; van Hoon 2013: 133). Wedding guides no longer dictate what should be done, but offer suggestions on how to personalise the occasion and make it 'different' and 'unique' (see eg ffitch 2000: 1). In recent years, the scope for customising one's wedding has been demonstrated through high-profile celebrity nuptials splashed in the pages of *Hello* magazine, an unprecedented number of magazines devoted to all aspects of the wedding, and popular television series such as *Don't Tell the Bride*, *Arrange me a Marriage* and *Wedding House*.

Yet there is perhaps an interesting distinction to be drawn between choice and individuality, in that couples are in many cases simply choosing from a range of options provided by the wedding industry. This can be seen in the changing attitudes to both the wedding dress and catering for the reception. The 1964 guide to *Planning Your Wedding Day From A to Z* assumed that '[m]any brides, for sentimental as well as economical reasons, will want to make their own wedding gown' (Owen Williams 1964). The guide also included a number of recipes as suggestions for catering at the reception. By contrast, a few decades on, Charlsey noted the ritualisation of the process of buying the wedding dress and the emergence of dedicated shops 'designed to celebrate the specialness of the wedding dress and to draw maximum profit from it': a bride was expected to identify with 'her' dress, but simply

because it was the dress that would make her a bride, not because it represented her taste, personality or choice in the same way that her other clothes would (Charlsey 1991: 71). Similarly, while he commented that a keen baker might make the wedding cake at home, 'providing it with decoration of the expected elaboration and polish would defeat most home cooks' (ibid: 54).[5]

It is perhaps not surprising, then, that the last 50 years have also seen a significant change in the scale of the celebrations associated with marriage: as cohabitation has increased and the social significance of the wedding has diluted, there is a sense that weddings have become more elaborate to generate their own rationale (Charlsey 1991: 13; Probert, chapter three of this volume), while at the same time the availability of hotels, stately homes and castles means that many weddings are played out against a grand backdrop. The shift can be seen by looking back to an empirical study of weddings conducted before this period of change. Pierce, analysing marriages celebrated in the 1950s, noted that the white wedding, reception and honeymoon had 'become increasingly popular over the period in all social classes'; even so, only 57 per cent of weddings involved a white bridal dress and a reception (Pierce 1963: 219). By contrast, Otnes and Pleck speak of the right to the rite in modern North American culture, noting that 'except on the lowest rungs of the socio-economic ladder, the decision to plan and execute elaborate weddings is rarely questioned' (Otnes and Pleck 2003: 3). On this side of the Atlantic, Boden has identified the phenomenon of the 'superbride', responsible for project-managing the big day while she herself is 'picture-perfect' (Boden 2001): as she notes, the current emphasis is on the wedding as 'a cultural event or performance which generates its meaning primarily through consumption'. As Louise Purbrick shows in her chapter, this extends to the presents that guests are increasingly asked to give to the couple.

Some, understandably, are alienated by what they see as the emptiness of consumer weddings and either decide to eschew the ceremony altogether or opt for a more pared-down version.[6] Yet the exercise of choice is still inevitably constrained to a certain extent. For one thing, restrictions remain on where and how one can legally get married and on what can be included within the ceremony (see eg Edge and Corrywright 2011). In addition, quite apart from the legal aspect, certain elements are seen as so intrinsic to the process of getting married that without them the wedding would not be recognised as such. As Helena Wray notes in her chapter, weddings that do not fit the perceived norm may be more likely to be deemed to be 'sham' where they involve those subject to immigration control. Family members may equally have strong feelings about what constitutes a 'proper' wedding (see eg Peel, chapter five of this volume). The clear continuities between religious

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[5] One of the authors, who did make her own wedding cake, can confirm this. But the icing was at least 'individual'.

[6] See eg V Elizabeth (2003: 428) noting that 'weddings seem such "show and tell" affairs'.

and civil weddings illustrate the hold of certain ideas: a number of couples marrying on 'approved premises' in the late 1990s revealed how they wanted a 'traditional' wedding ceremony but without the religious elements:

> As with couples marrying in church, this is also influenced by ideas of what is the 'correct' thing to do and also by cultural ideas of what is romantic and meaningful, such as walking down an aisle of some sort, being 'given away' and exchanging vows between loved ones. (Walliss 2002: 3.18; see also Farrimond, chaper ten of this volume).

Being 'given away' is of course one very obvious way in which the marriage ceremony continues to highlight gender differences,[7] which raises questions as to which aspects same sex couples might choose to adopt (or ignore). Smart, commenting on the then new option of civil partnership and the older but non-legal alternative of a commitment ceremony, noted that such decisions 'involve considerations of wider sexual politics, personal aspirations and desires, and ideas about how to retain integrity and principles concerning life-styles' (Smart 2008: 762; see also Heaphy, Smart and Einarsdottir 2013: 101). As Elizabeth Peel explains in her chapter, the participants in her study of new civil partners were 'creatively and reflexively adopting and remodelling ceremonial ritual'.

Yet Leeds-Hurwitz's study of inter-cultural weddings in the United States identified the dilemma faced by couples who want a different form of wedding: noting that the power of ritual comes from recognition, she commented that '[i]n an important way, it doesn't count as a "proper" wedding if few of the details match what you've experienced previously' (Leeds-Hurwitz 2002: 190). In her study of inter-cultural weddings, the parents of one bride did not even realise the nature of the event that was being planned and so did not attend. As the bride later reported:

> when they saw the photos, and they saw we had spent money on it … they were surprised, and they said, oh, they didn't realize, and if they had known they would have come, but … they didn't realize it was going to be a wedding, they just thought it was going to be a party, so they didn't come. (Leeds-Hurwitz 2002: 80; see also Peel, chapter five of this volume).

This brings us on to the important role that family and community play in the process of getting married.

III. FAMILY AND COMMUNITY

The rite of marrying is to some extent always a public one. Even the most pared-down ceremony still requires a third person to officiate, and the legislation directs that witnesses should also be present and should sign the

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[7] Assuming that the parties want it to: it is not a required part of the ceremony.

register. In addition, marriage also offers the opportunity for the couple to make a public statement—to friends, family and the wider community—of their personal commitment (Eekelaar 2007). It also enables them to seek approval and guidance from those social networks: Kalmijn, for example, suggests in his study of marriages in the Netherlands that

> By celebrating the marriage in an elaborate fashion, newlyweds are helped to define their new identity; they obtain information on how to act in the new role, obtain approval from the social network in which they are embedded, and reduce the uncertainty they may feel about the new step they have taken. (Kalmijn 2004: 582).

Such approval may be all the more important for those who were previously barred from entering into a marriage: thus Kitzinger and Wilkinson, explaining why they had wanted to marry rather than enter into a civil partnership, felt 'that our continuing (and reaffirmed) centrality in each other's lives now stands some chance of being protected—even facilitated—by governments and states that have previously marginalized and condemned us for loving women' (2004: 139).[8]

Otnes and Pleck, musing on the meaning of 'ritual' in this context, noted the importance of the wedding as enabling those involved 'to feel connected to others' (Otnes and Pleck 2003: 4; see also Brake 2013: 14). Of course, the very fact of the marriage creates connections even between those not physically present: each spouse acquires a new set of 'in-laws'. But the role of kin in the making and shaping of marriages goes deeper than this. Family expectations may still play a role in influencing whether or not a couple marry (see eg Eekelaar and Maclean 2004: 520). For some, indeed, such expectations may determine the outcome: as the chapter by Perveez Mody illustrates, coercion may be most powerful when it is rooted in love on both sides.

Such expectations may also play a role in instigating and shaping a prenuptial agreement (see Vardag and Miles, chapter six of this volume). As we have already noted, the expectation of members of the family that a wedding should be celebrated in a particular way may also exercise an important influence on where and how it takes place (see eg Walliss 2002; Farrimond, chapter ten of this volume); in the case of Church of England weddings, family links to a particular parish may facilitate the couple's wedding in a church that is particularly meaningful to them even though they neither live in the locality nor worship there (see Farrimond, this volume). For other couples, meanwhile, the expectations of the family and community may

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[8] At the time this was written, this was perhaps premature, as the UK government did not recognise their Canadian marriage as such, instead categorising it as a civil partnership, and their legal challenge to this failed (*Wilkinson v Kitzinger and Others* [2006] EWHC 2022 (Fam)). As a result of the Marriage (Same Sex Couples) Act 2013, Sch 2, Pt 3, para 5, however, they will be recognised as married.

mean that more weight is given to the religious rite than the state-sanctioned legal rights (Akhtar, chapter eight of this volume).

Members of the family also play an important role in the celebration of the marriage. The reactions of family members will be accorded particular significance: as Elizabeth Peel shows, some couples planning to register a civil partnership used the language of marriage to ensure that the nature of the event was understood and supported by their family (see also Shipman and Smart 2007). Close family will usually expect, and be expected, to attend the wedding: a decision whether or not to invite a particular relative is a statement of the perceived closeness of the relationship, while a refusal to attend is often rooted in disapproval of the union (see eg Heaphy, Smart and Einarsdottir 2013: 105). The father of the bride was once expected to foot the bill for the wedding (see eg Webley 1991), although increasingly the cost has been shared with the groom's family or assumed by the couple themselves. But support for the couple may still be demonstrated in tangible form by the giving of presents, and by what is given (see Purbrick, chapter four of this volume). The wedding itself will usually involve different members of the family in different ways, with the parents of the bride in particular having expected roles (see eg Charlsey 1991). Members of the family are often called upon to sign the register as witnesses of the marriage (Haskey, chapter two of this volume). During the wedding itself, the families of the bride and groom are symbolically separated on either side of the aisle but expected to mingle thereafter, reflecting the new relationship between them.

Identity, community and ritual are thus all intermingled in the marriage ceremony and accompanying celebrations: as Leeds-Hurwitz puts it:

> we use rituals as a way of telling ourselves stories about our identities (who we are), and our communities (the groups within which we find ourselves) … Rituals have meaning for us because we conveniently forget that we ourselves have designed them. (Leeds-Hurwitz 2002: 29).

But even if '[w]e all love a good wedding'—as the MP Yvette Cooper claimed during the debates on the Marriage (Same Sex Couples) Act 2013—should we not be asking, as Harding suggests in the conclusion to her chapter, what is it ultimately about?

IV. LOVE AND LAW

Those who spoke in favour of extending marriage to same sex couples in the course of the debates in Parliament tended to celebrate its role in uniting two persons in love; those who spoke against, by contrast, argued that love could not be the sole defining feature and that the law (together with society and religion) had an important role to play in regulating who could marry. At the end of the Second Reading in the House of Commons, Hugh Robertson,

the Minister of State at the Department for Culture, Media and Sport, managed to combine the two subtly by identifying the straightforward (if question-begging) proposition at the heart of the Bill as being that '[i]f a couple love each other, the state should not stop them from getting married *unless there is a good reason*' (emphasis added).[9]

Of course, as a number of commentators have pointed out, the idea of 'love' being integral to marriage is itself of relatively recent origin. Rosemary Auchmuty, for example has identified the modern form of marriage as being 'one that originates in romance and proceeds to companionship in a nuclear setting' (Auchmuty 2004: 122; see also Evans 2003: 21; Collins 2003; Stone 2007) and described this as being of relatively recent construction. It is also worth noting that for many British South Asians (pre-marital) love is not usually or necessarily a motive for marriage; instead, questions of suitability in terms of education, kinship, status and ethno-religious factors are important considerations for arrangement. The 'traditional' cultural expectation is that love flows between the couple after suitable marriage, not before.

An even more difficult issue was raised in the course of the Parliamentary debates by the Labour MP Robert Flello as to why the state should even be interested in registering and recording committed sexual unions.[10] The same basic question, with a rather different answer, has been posed by a number of commentators. Brake, for example, has coined the term 'amatonormativity' to challenge the assumption 'that a central, exclusive, amorous relationship is normal for humans, in that it is a universally shared goal, and that such a relationship is normative, in that it *should* be aimed at in preference to other relationship types' (Brake 2013: 89–90). Others have similarly questioned the need for the sexual relationship within marriage to be exclusive (Jackson and Scott 2004) or even to exist at all (Herring, chapter thirteen of this volume).

Brake's proposal was for a form of 'minimal marriage' which would allow individuals 'to select from the rights and responsibilities exchanged within marriage and exchange them with whomever they want, rather than exchanging a predefined bundle of rights and responsibilities with only one amatory partner' (Brake 2013: 156). She is not the first to talk of breaking marriage down into its constituent parts and assessing both the need for any given right and the needs of the would-be recipient (see eg Clive 1980, Krause 2000; McK Norrie 2000; Eichner 2007). Other commentators have focused on providing different forms of institutions for different purposes, whether this involves a menu of options for all couples (see eg Lifshitz 2012: 261), or limiting legal recognition to one neutral form such as civil partnership or civil union and leaving marriage as a matter for religious organisations (see eg Shanley 2004: 112; Thaler and Sunstein 2008: 224;

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[9] Hansard, HC Deb, 5 March 2013, col 230.
[10] Ibid, col 146.

Presser 2012; Edge, chapter twelve of this volume). In some accounts, form and function are both challenged: Fineman, for example, has argued that legal regulation and protection should be focused on the 'caretaker-dependent' relationship rather than sexual unions, leaving marriage as a purely social or religious institution (Fineman 2004).

Such alternatives are, of course, easier to suggest than to implement. John Eekelaar, reviewing some of the more radical alternatives, gently suggested that 'given the benign nature of contemporary marriage in Western societies, and the fact that individuals can attribute to it as many meanings as they wish, it is hard to see how society would gain by losing it' (2012: 323). A more sustained defence of legal marriage comes from Hartley and Watson, who have evaluated it within the same terms of political liberalism that underpin Brake's work but have come to a rather different conclusion. They argue that arrangements other than marriage could support and recognise the caring relationships that commentators have identified as needing priority, but that there are good reasons[11] to recognise legal marriage 'to protect caregivers of dependents from problematic vulnerabilities that can result from domestic partnerships' (Hartley and Watson 2012: 203).

Whatever conclusions commentators come to on the purpose of, or need for, marriage, every year hundreds of thousands of individuals choose to tie the knot in England and Wales alone, and it is estimated that many tens of thousands travel overseas to marry (ONS 2010). That it remains an institution that so many individuals value is in itself good reason why it should be a matter of serious study, and we hope that the chapters that follow will illuminate why both rites and rights matter.

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[11] In the language of political liberalism, 'public reasons' that are 'justifiable in terms that can be shared by citizens as free and equal persons' (Hartley and Watson 2012: 185). See further Peterson and McLean (2013), who also analyse marriage from a perspective of political liberalism.

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