

is on General Synod's current agenda but that was not anticipated when he was researching and writing. The indications so far are that in the future misconduct will not be defined by reference to particular ecclesiastical 'offences' but by taking account of a number of factors which will be identified in guidance documents. Given the current episcopal toleration of same-sex relationships as evidenced in the several letters of advice to offending clergy that Patterson has been given access to and from which he quotes, it is difficult to see 'legal liberalism'— which he has identified as the prevailing mindset and culture of the Church of England—being upset.

All in all, this is a well-written account with an abundance of well-researched material which gives real insight into cases old and recent. Of particular value is Patterson's putting into the public domain material which has hitherto been unavailable. Although he is driven by an acknowledged personal agenda, his arguments are all well made.

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Tying the Knot: The Formation of Marriage 1836–2020

REBECCA PROBERT

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Readers of this *Journal* will already be familiar with Professor Rebecca Probert's recent work, from her paper at the Ecclesiastical Law Society's 'Solemnization of matrimony: past, present and future' day conference in 2021 and her subsequent article, 'Getting married: the origins of the current law and its problems'.³ Probert is the leading scholar on the history of marriage and family law and her previous significant works include *Marriage Law and Practice in the Long Eighteenth Century* and *The Changing Legislation of Cohabitation*.⁴ She is also a specialist consultant to the Law Commission on their current Weddings Project. The commission's final report and recommendations for reform of the law on how and where couples can get married is expected this summer. The commission's consultation paper observed that the current law 'restricts how couples are permitted to celebrate their weddings, for historical rather

³ (2021) 23 Ecc LJ 255–266.

⁴ R Probert, *Marriage Law and Practice in the Long Eighteenth Century: a reassessment* (Cambridge, 2009); R Probert, *The Changing Legislation of Cohabitation: from fornicators to family* (Cambridge, 2012).

than current policy reasons'.⁵ Understandably, that consultation paper did not devote significant space to analysis of the legal history of weddings. *Tying the Knot: the formation of marriage 1836–2020* undertakes that important task admirably.

The volume has three aims. First, it provides an analysis of the evolution of the laws governing how couples married from 1836 to the present day. Second, it considers the evidence as to how couples actually married in this period. Third, it assesses to what extent the law has facilitated couples getting married in accordance with their own beliefs. There is a very clear structure, with an introductory chapter and eight chronological chapters, together with a final chapter summarising the legacy of the past and lessons for the future. This final chapter is a reflection to 'inform' rather than 'advise' (p 20). The work is meticulously prepared, with extensive footnotes and connections to assist those reading for research purposes. References to presentations of marriage in contemporary literature are woven throughout.

Chapter 2 analyses the original conception, design and implementation of the Marriage Act 1836 and the campaign to allow dissenters the means to marry outside the rites of the Anglican Church set out in the Marriage Act 1823. Probert argues that the wide drafting of the 1836 Act, which granted dissenters their wish for an alternative but did not provide for denomination-specific solutions, has been one of the reasons for the longevity of the provisions in the legislation. The practical challenges of the introduction of the new civil registrars and the impetus that the close administrative links gave to the New Poor Law are explored in detail. Chapter 3 considers the immediate responses to the reforms between 1837 and 1854, differing in terms both of faith between Catholic and Protestant dissenters, and of previous practice and geography. The varied and rich sources used provide wonderful human details throughout this book. In this chapter there is the joy of places of worship newly registered for weddings holding their first weddings (including the chapel that presented their first couple with 'a handsome set of china' to mark the occasion in 1837; p 65). Chapters 4 and 5 consider the periods 1855–1872 and 1873–1899 and include fresh analysis of the Marriage Registration Act 1856 and the Marriage Act 1898. Probert demonstrates how some of the 1856 provisions, which were originally responses to contemporary practical problems, still survive. The Marriage Act 1898 and its provision for the appointment of an 'authorised person' for a place of worship registered for weddings has been considered further by Probert and others recently in the *Oxford Journal of Law and Religion*.⁶

5 Law Commission, 'Getting married: a consultation paper on weddings law', Consultation Paper no 247 (2020), para 1.5.

6 R Probert, R C Akhtar, S Blake, V Vora and T Barton, 'The important of being authorised: the genesis, limitations, and legacy of the Marriage Act 1898', (2021) 10 *Oxford Journal of Law and Religion* 394–417.

The twentieth-century chapters focus on a wide variety of themes, including increased use of registry offices, differing conceptions of marriage, the relationship between civil weddings and religious capacity, and the status of religious-only marriage ceremonies for non-Christian faiths. Of particular interest is the consideration of the Anglican Church's attitude to the remarriage of those who have divorced and the 'rush to marry' on the eve of the Second World War. Chapter 7 finishes with the consolidating legislation that was the Marriage Act 1949. Probert sees this as a 'missed opportunity' for reform but observes that the passage of the Act 'made the law easier to find' and 'easier to see how incoherent it was' (p 196).

Chapter 8 explores the huge social change with respect to expectations of weddings in the period 1950–1993. Social change was not matched by changes to the law, and reform that did occur was linked to discrete issues. Evidence shows that in this period, as in the others before, some couples married in registry offices because they were still unable to marry in accordance with their beliefs. The final chronological chapter, 'The rise of the wedding, 1994–2020', focuses on changing practice. The Marriage Act 1994, allowing weddings on 'approved premises', inevitably resulted in a decline in weddings in places of worship and registry offices. This book was completed in 2020 and the author ends with thoughtful reflection on the impact of the pandemic on weddings and the ability of couples to marry as they choose. The Church of England's Faculty Office is noted for the speed of its responses during the early pandemic. Further subsequent reflection can be found in a recent article by Probert and Pywell, 'Love in the time of COVID-19: a case-study of the complex laws governing weddings'.⁷

The final chapter draws together themes of the book as they relate to reform, and returns to its original aims. The provisions of the Marriage Act 1836, subsequent efforts to respond to individual issues and then consolidation of those (sometimes accidental) changes have left a situation which the author describes as 'overly complex, restrictive, outdated, and in desperate need of reform' (p 273). Probert observes that 'it is hardly surprising' that the 1836 structures 'do not work for all faiths' as 'some faiths had no opportunity to shape them' (ibid).

This excellent book will be much enjoyed by legal historians and historians of religion and family. It will be a valuable read for those whose current ministry includes officiating at weddings. This analysis of weddings celebrated over the last 200 years should inform our response to change as we stand on the brink of significant legal reform.

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7 R Probert and S Pywell, 'Love in the time of COVID-19: a case-study of the complex laws governing weddings', (2021) 41 *Legal Studies* 676–692.