STATE AND LAW

All societies have a concept of marriage, and all therefore need rules to determine what counts as a marriage within that particular society and what does not.[1] The creation and application of such rules requires a decision to be made as to the relative importance of the internal and external aspects of marriage: is it the intention of the parties to be married that matters most, or their compliance with certain stipulated rituals or formalities? And most fundamentally of all, who has the power to decide on what the rules are?

Such questions are key to the history of marriage in the nineteenth and early twentieth centuries. Across the globe, as empires rose and fell, the rules as to what was required for a valid marriage in any given place were subject to change. Revolutions and political crises led to the authority to decide what constituted a marriage being suddenly transferred from religious authorities to the state, or vice versa. The creation of new nation-states required decisions to be made as to the relative importance of unity and the perhaps very different religious and cultural traditions of the territories being united. Similar dilemmas as to what should be recognised as a marriage were posed when imperial powers acquired more distant territories with even less familiar practices.[2] Even where a particular country did not experience political upheaval, the impacts of industrialisation, migration, increasing religious diversity, or simply the awareness of changes elsewhere led to changes in the ways marriages were regulated.

These developments raised questions about the role of the state and the law, and about their relationship with religion, and with the individual. The answers, however, differed between different legal cultures. Western legal cultures were seen as being characterised by a strong connection between the law and the state: it was the state, and the state alone, that created law, and law that underpinned the operation of the state. This was the idea of "positive law" as defined by the nineteenth-century English legal philosopher John Austin, which saw law as the commands of a sovereign. Law was understood as an autonomous system, a set of rules that operated according to their own internal logic. Religious influences were not absent, but religion was not an independent source of law. In other legal cultures, by contrast, the law was both less individualistic and less autonomous, with religion playing a more significant role as a source of law.[3]

In order to explore what role the state and the law played in the making of marriage this chapter will focus on the rules governing *how* couples could marry. After all, questions as to when a person is eligible to marry (in terms of their age and economic standing), who they can marry (in terms of gender and degrees of relatedness) and how many people they can marry (whether successively or simultaneously) tell us more about economic, social, and religious influences than about the role of the state and the law.

The chapter is accordingly structured around four different models of marriage regulation. The first model is that of mandatory civil marriage as a form created by the

state alone, whether to signal the authority of the state and downplay that of the church, to separate the functions of the state from the church, or as a convenient way of ensuring neutrality between different religious traditions within the state. The second model is of marriages co-created by state and religion through legislation setting the terms on which religious marriages would be recognized as legally binding. Such developments reflected the cultural importance of religion while reducing the power of religious institutions to determine the validity or otherwise of a marriage. These first two options were more likely to be found within Western legal cultures. Yet the rise of state control was not universal, as the third model of marriages determined by religious rites and authority will show: within Islamic, Asian, and African legal cultures, entry into marriage continued to be governed by the religious affiliation of the couple. The fourth model is that of marriages created by the actions of the parties alone but recognized by the state: jurisdictions where marriages could be created without any ceremony at all were to be found within very different legal cultures, thus confounding any neat categorization or perceived hierarchy.

Within each section the aim is not to provide a comprehensive list of all of the jurisdictions that adopted a particular model but rather to illustrate different ways in which each of these models operated. The details of the precise processes that had to be followed in the making of a marriage will also be kept to a minimum, save where they are particularly illuminating about the aims of the law-makers or the balance that was struck between different religious groups. The extent to which the laws were observed in practice also falls outside the scope of this chapter, save where popular opposition led to a speedy reversal of official policy or where particular cultural practices themselves shaped the law. But by paring down the discussion to the ways in which the balance between the state, the law, religion, and the individual was struck it will be possible to achieve a far greater global reach than would otherwise be possible in a single chapter.

STATE-CREATED MARRIAGE

In earlier centuries Protestant reformers such as Luther and Calvin had championed making marriage a civil matter, and Enlightenment philosophers had declared marriage to be a civil contract.[4] But the introduction of civil marriage did not necessarily reflect a culture of secularism, at least at a popular level. Instead, it could be used tactically, providing a neutral alternative in religiously diverse countries, a means of combating the power of the church within the state or of reducing the influence of supra-national religious organisations outside the state, or as a shorthand for signalling the modernity of the state and its alignment with the individualism and rationalism of Western legal culture. It was thus no coincidence that the advent of civil marriage tended to follow fundamental changes to the state itself, through revolution, renewal, or the reallocation of authority.

Within this section, three different approaches to civil marriage will be considered: first, where it was part of a deliberate policy of secularisation; second, where it was used to create unity; and third, where it was opposed and speedily reversed.

Secularisation and loyalty to the state

In 1791 Revolutionary France had declared that "the law considers marriage to be only a civil contract" and prescribed that civil marriage would be the only legally recognised form of marriage. This was accompanied a year later by civil registration of marriages, as well as of births and deaths.[5] Marriage, it was thought, was "a contract worthy of the keenest interest… because it has individual happiness as its goal and also influences the power and splendour of Empires."[6] The requirement of a compulsory civil marriage was duly enshrined in the Civil Code of 1804, with the aim of using the ceremony to create an emotional link between the citizen and the state being reflected in the incorporation of a degree of ritual, comparable to that of a religious ceremony.[7] The marriage was required to take place at the town hall, in the presence of four (male) witnesses, where the officer responsible for celebrating the marriage would read to the parties the relevant parts of the Civil Code setting out their respective rights and duties within marriage.[8] This provided a means of not only informing the parties but also transmitting the state's ideology of marriage.[9]

The fact that marriage was now "available as a civil right for all rather than as a privilege for those of the same confession"[10] was seen as a marker of progress. Everyone was now equal before the law in terms of their ability to contract a legally recognised marriage, and the state stood as guarantor of the validity of the union. In return, it demanded compliance with a single set of rules and denied recognition to what minority religious communities had regarded as binding unions. This had particular implications for Jewish communities within France. Prior to the Revolution they had been largely autonomous, but civil marriage "became a publicly required contract in a way that religious marriage could not be."[11] The autonomy of religious groups was therefore constrained, and their authority diminished.

Over the course of the nineteenth century a number of other jurisdictions adopted civil marriage as part of a more general process of secularisation, including the Netherlands and the newly independent state of Belgium.[12] On the other side of the globe, as the Spanish Empire crumbled, its former colonies sought to shake off the influence of the Catholic Church by introducing civil marriage. Mexico made mandatory civil marriage a requirement in 1859, as part of a package of reforms intended to establish a secular state.[13] A political crisis sparked the introduction of civil marriage in Chile in 1884, despite the fact that Catholicism had been adopted as the official religion of the new republic in 1828.[14] And in Brazil, as in Revolutionary France, civil marriage was introduced as one of the first acts of the new Republic in 1889.[15]

Further dramatic change occurred during the early years of the twentieth century. Republican Portugal introduced civil marriage in 1910, following the revolution of that year. And right at the end of our period, civil marriage became the only form of legal

marriage in those parts of Russia under Bolshevik control, just two months after they seized power in 1917.[16] The establishment of a regime that not only sought a separation between the state and religion but was avowedly atheist was very much an imposition on traditional culture, the Russian Empire having "almost completely missed" the reforms to marriage law that were happening elsewhere in Europe in the nineteenth century.[17]

Unification and uniformity

The unification of Italy in 1860 and Germany in 1871 provided the catalyst for the introduction of mandatory civil marriage in both states. In neither was this form of marriage entirely novel. The northern Italian states had fallen under the control of France in the early nineteenth century and had followed its lead in making civil marriage a legal requirement, although religious control over marriage had been largely restored upon the Restoration of the Bourbon monarchy in 1815. Large parts of Germany had similarly been under the control of the French Empire, and over the course of the nineteenth century a number of German states introduced civil marriage either as an option or, occasionally, as a mandatory requirement.

In both Italy and Germany the introduction of a single form of marriage was intended to emphasize the unity of the newly created state. Both enacted new Civil Codes relatively quickly after unification, with the Italian Civil Code being enacted as early as 1865. In Germany mandatory civil marriage was introduced by imperial act in 1875, and confirmed by the newly drafted civil code in 1900, thereby also concluding a long-standing debate as to the appropriate form and function of the law in favour of uniformity as opposed to principles based on different cultural traditions.[18]

However, the religious traditions within the now unified states provided rather different reasons for opting for civil marriage in each case. In predominantly Catholic Italy, civil marriage symbolically emphasised the new state's "liberty from foreign influence and Church domination."[19] In Germany, by contrast, civil marriage was a practical solution, a way of ensuring consistency and neutrality in the face of the mixed Catholic and Protestant heritage of different states.

The justification of national unity could be used even where the state had not gone through any dramatic change in its constitution. In the religiously and linguistically diverse Kingdom of Hungary, the introduction of civil marriage in 1894 was depicted as a symbol of modernity, liberalism, and national unity.[20] This was vividly illustrated by the first civil marriage in the city of Komarom, at which the bride and groom demonstrated their patriotism by wearing Hungarian dress, while the officiant sported a tricolour sash and declared that "[t]he unity of the political nation can only be achieved if the family itself is the basis of state existence, if marriage is placed under uniform state law."[21]

Opposition and reversals

Just as revolutions and political crises might lead to civil marriage being established as a symbol of a break with the past, so too opposition to such changes might lead to an equally symbolic restoration of religious marriage to demonstrate continuity and stability when power changed hands once again.

In Spain, for example, the 1868 revolution led to the introduction of mandatory civil marriage in 1870.[22] Four years later, the new Republic was overthrown, and the possibility of marrying in a religious ceremony was restored.[23] In addition, any marriages that had been solemnised according to religious rites during the period of mandatory civil marriage were retrospectively validated.[24] By this means the state demonstrated its support for those who had adhered to their own religious traditions rather than complying with what had proved to be merely a temporary law. Even establishing civil marriage as an option later proved to be a challenge. In the subsequent Civil Code of 1889, Catholics were required to solemnise their marriage in a religious ceremony; civil marriage was only available for those who declared that they were not Catholics.[25] An attempt was made in 1906 to remove this requirement and make civil marriage available to all, at least as an option, but following opposition this measure was revoked two years later.[26]

In Cuba, too, as it was transferred from being a colony of Spain to a protectorate of the US in 1898, civil marriage was briefly the only form of marriage recognised by the state, the new law being supported by nationalists as "eradicating the Spanish colonial legacy, and verifying national sovereignty."[27] In this case, however, opposition from the Catholic Church led to a swift reversal of policy and the acceptance of religious marriages as equally valid.

Overall, the introduction of civil marriage can be seen as being in opposition to existing cultural practices, but with the aim of shaping a new, modern, and secular system in which the state, rather than a religious authority, formed a third party to the marriage contract. Yet its introduction in a variety of different states, and its absence from other equally developed states, should make us pause before drawing any correlation between particular forms of legal culture and particular forms of marriage. There were still many other states within Western legal culture that did not even offer the option of civil marriage, instead requiring a form of religious ceremony to establish a legally binding marriage. Yet here too the increasing role of the state was to be seen in the way that the legitimacy of the religious ceremony was increasingly established and constrained by law, as the next section will show.

STATES DETERMINING THE STATUS OF RELIGIOUS MARRIAGES

Across the period there was an increasing tendency for states to legislate to set the terms on which religious marriages would be recognized as legally binding. While reflecting the cultural importance of the wedding as a religious rite, this tactic of legislating for religious marriage made it clear that it was the state that was the ultimate arbiter and

guarantor of validity.[28] This was reflected in the definitions of marriage offered by one English judge, Sir William Scott, in the early nineteenth century. He suggested that within civil society marriage became "a civil contract regulated and prescribed by law and endowed with civil consequences" but added—probably mindful of developments across the Channel—that "[i]n most civilized countries acting under a sense of the force of sacred obligations, it has had the sanctions of religion superadded: it then becomes a religious as well as a natural and civil contract; for it is a great mistake to suppose that because it is the one therefore it may not likewise be the other."[29] This acknowledged the importance of religion while subtly downplaying it as something additional to state-made law.

The downplaying of religious authority was reflected in the extension of formal recognition to a number of *different* religious routes, diminishing the importance of any single religious body within the state. Religion was increasingly classified as a private matter, as "classical liberal theory made sense of the diversity of individual religious beliefs by restricting them to the private while freeing the public to be ordered according to secular reason."[30] Such developments also provided a reason for the formal transfer of the jurisdiction to determine what constituted a valid legal marriage from the church and its courts to secular courts: if religion was to be a private matter, and different religions treated alike, it was problematic to leave the courts of any given religion to determine the civil status of a couple.

Within this model, three different approaches will be considered: first, legislating to allow for a number of different religious routes into marriage that had not previously existed; second, recognizing existing religious marriages and bringing them within a formal framework; and third, facilitating mixed marriages.

Legislating for multiple types of religious marriages

The marriage laws of the United Kingdom of Great Britain and Ireland—itself a new political creation—illustrate just how complex the relationship between the state, law, and religion could be. In 1800 there was one state and one Parliament but three different legal systems, multiple religious denominations, and overlapping but distinct approaches to the regulation of marriage.

Within England and Wales, the state had already begun to impinge on the church's control over marriage during the eighteenth century, but the changes that occurred over the course of the nineteenth century were far more radical. The Clandestine Marriages Act of 1753 had done little more than enshrine the requirements of the canon law in statute, albeit with new and harsher penalties for those who failed to comply with certain key requirements. The church courts had retained their power to adjudicate on the validity of marriages, and all except Quakers and Jews were expected to marry according to the rites of the established church, the Church of England.[31] Even in this

period, then, state and religion were very much intertwined in the regulation of marriage.

Changes were motivated by the growth of nonconformity in the nineteenth century, although significantly it was only once adherence to the Anglican church was no longer a prerequisite for participation in public life that Protestant Nonconformists and Catholics were able to marry according to their own rites. These religious developments coincided with a new interest on the part of the state in ensuring better recording of key demographic events, and with a new administrative machinery that would be able to implement it. Reforms to the Poor Law had already divided the country into a number of civil districts that could be used as the basis for a new system. As the state took on more functions, it became all the more important to have such information about its inhabitants.

The resulting Marriage Act of 1836 provides a particularly interesting model of regulation combining increased state power with deference to the established church, recognition of religious diversity, and a desire to allow for a civil option that could be used by those of any religion or none. All those marrying other than according to non-Anglican rites, including Jews and Quakers, had to give notice to a state official, the superintendent registrar. There was even an attempt to introduce universal civil preliminaries, but this was strongly resisted by the Church of England and banns and licences were retained as legal preliminaries to the Anglican service.

When it came to the celebration of the marriage, the degree of regulation differed between different types of marriages. Anglican marriages continued to take place in the parish church, and Jewish and Quaker marriages in their own places of worship. Outside these groups, the diversity of dissent was such that devolving the power to conduct marriages to religious groups was not really an option. The compromise was to license individual buildings that were used as places of worship: if twenty householders confirmed that they used a particular building as their regular place of worship, it could be registered as a place where marriages could be celebrated. In this respect the state could supervise exactly where marriages were being celebrated. Civil marriages, meanwhile, took place in the office of a superintendent registrar.

State control 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, whether civil or religious, had to be attended by a civil registrar. It was not until the close of the century that other religious groups won the right to register their own marriages.

In England and Wales the 1836 Act formed the basis for the evolution of new marriage rites. After all, Protestant Nonconformists—the Quakers excepted—had previously married in the Church of England rather than developing their own nuptial rites outside the legal system. English Catholics, too, had usually gone through an Anglican

ceremony in addition to the Catholic rite, although by the 1830s concern had grown that the increasing number of Irish Catholic immigrants were marrying according to their own rites and were thus not married in the eyes of the law. In this respect the 1836 Act brought new legal and religious practices into existence.

Recognising religious practices

Elsewhere, by contrast, the state began to recognise existing religious practices and bring them within the ambit of legislation. This was the case in Ireland, with its minority established church, majority Catholic population, and strong strand of Presbyterianism. The Marriages (Ireland) Act 1844 was modelled on the 1836 Marriage Act in England and Wales, but differed from the latter in giving Presbyterian marriages special recognition, alongside those conducted in the Established Church or according to Quaker or Jewish rites. Members of other religious denominations were permitted to marry according to their own rites in buildings registered for the purpose,[32] but Catholic marriages were specifically excluded from this provision and therefore remained governed by the canon law. It took another 19 years for Catholic marriages to be brought within the legal framework of the state and even then there was little interference with the actual ceremony. Instead, couples were required to obtain a certificate in advance of the wedding and to register the completed certificate afterwards, although such registration was not essential to the validity of the marriage. In this way the state recognised and extended its authority over existing religious marriages with minimal change to the way in which such marriages were celebrated.

In Scotland, the position was still more complex. While the state recognised a broader range of religious marriages over the course of the nineteenth century, the changes related to what was recognised as a *regular* marriage, rather than what would be recognised as a *valid* marriage. At the start of the nineteenth century the only marriages recognised as regular were those celebrated before a minister of the Church of Scotland after banns had been called. At the same time, the law held that all that was needed for a valid marriage was the freely expressed consent of the two people involved and presumed that such consent had been given where the couple had sex following an earlier promise to marry, or where they lived together and were reputed to be husband and wife. Over the decades that followed, the incursions by the state onto this landscape of restricted options for regularity and almost infinite options for irregularity were relatively limited. Legislation passed in 1834 provided that clergy of any denomination could celebrate a regular marriage, but the requirement that banns be read in the parish church remained in order to provide a degree of uniformity. Civil registration was not introduced until 1855, almost two decades after its advent in England and Wales, and giving notice to the local registrar as an alternative to having banns called only became an option in 1878.[33] Nor was there any formal option of civil marriage, although the option of registering an irregular marriage has been seen as an effective alternative.

The variety of marriage laws within the United Kingdom, and the role played by missionaries of all denominations within the burgeoning British Empire, also meant that it was necessary for Parliament to legislate to ensure the legal recognition of marriages conducted in British possessions overseas according to different religious rites. As early as 1818, legislation established that marriages conducted in India by ordained ministers of the Church of Scotland should have the same force as those solemnized by clergymen of the Church of England.[34] By mid-century a broader approach proved necessary to ensure the validity of marriages conducted by Nonconformist ministers or by laymen acting under the authority of the Governor General.[35] Modelled on the provisions of the 1836 Marriage Act, the 1851 Act for Marriages in India permitted couples to marry "according to such Form and Ceremony as they may see fit to adopt" as long as they had given notice to, and exchanged stipulated vows in the presence of, a Marriage Registrar.[36] This, however, was explicitly limited to marriages "where One or both of the Parties is or are a Person or Persons professing the Christian Religion",[37] so as not to impinge on the privileges of other religious groups to determine what constituted a marriage. Just over twenty years later, further legislation was passed to allow marriage before a civil registrar for those declaring that they did not profess Christian, Hindu, Muslim, Buddhist, Parsi, Sikh, Jaina, or Jewish beliefs,[38] in order to provide an option for breakaway religious groups whose marriage rites did not conform to previous usages.[39]

Issues as to the recognition of marriages according to different religious rites also arose in the new Australian colonies, as the relationship between English law and the different religious traditions of the United Kingdom had to be worked out in the context of a society formed of former convicts and free settlers. The assumption that English law was applied so far as it could be was given statutory effect in legislation in 1828.[40] But an earlier local ordinance had specifically provided that existing marriages solemnised by ministers of the Church of Scotland or Roman Catholic priests would have the same force as those solemnised by clergymen of the Church of England, which would not have been the case in England and Wales at that time,[41] and there is ample evidence of marriages having been conducted according to Catholic or Presbyterian rites with the full knowledge and apparent approval of the colonial authorities.[42] When put to the test—in the context of a prosecution for bigamy—it was held that a Catholic marriage would be recognised as valid. In so deciding, Francis Forbes, the Chief Justice of New South Wales, made a direct link between the nature of the state and the laws that would be appropriate to that state, noting that Parliament could not have intended "to force the whole mass of English laws—the laws of an old and settled society… to apply all… at once to an infant community." The litigation led to more systematic regulation of the law of marriage, with legislation being passed to confirm the validity of existing marriages and set out what was required for future ones. Again, the role of the state here was limited to the recognition rather than the creation of marriage practices.

Legislation was also passed to allow for a range of routes to marriage within British North America. Local conditions heavily influenced the terms of an 1817 statute stating

that marriages in Newfoundland would be void unless solemnised by a person in holy orders, unless they had been celebrated "under Circumstances of peculiar and extreme Difficulty in procuring a Person in Holy Orders to perform the Ceremony."[43] More precise provision was made by legislation in 1824 allowing licences to be granted to religious teachers or preachers to conduct marriages where it was not practicable for the parties to be married in the Anglican church, with those who exceeded their authority and celebrated marriages where no such difficulty existed being subject to fines.[44] Ontario, too, saw the emergence of a number of different routes into marriage. At the start of the nineteenth century it had recognised only marriages conducted according to the rites of the Church of England, but ministers from other Christian denominations acquired the right to solemnise marriages in 1847, and from 1857 all religious marriages were recognised.[45] Upon the confederation of Canada in 1867, its various provinces retained the power to regulate the solemnization of marriages, in order to allay the anxieties of Quebec's Catholic population.[46]

Legislating for mixed marriages

The fact that a state recognised different religious routes to marriage as legally valid did not necessarily ensure that these different routes were available to all. What if the parties to the marriage were of different religious faiths? Many religions had traditionally forbidden mixed marriages: should the state endorse that, override it, or sidestep it by providing a civil alternative? And what if it had simply overlooked the possibility of a particular combination?

Nineteenth-century Irish marriage law provides an excellent case-study of both legislative gaps and changing attitudes to mixed marriages. In the eighteenth century Irish law had taken the step of recognising marriages celebrated by Presbyterian ministers—as long as the marriage was celebrated between two Protestant dissenters.[47] It had not, however, specified the effect of a marriage celebrated by a Presbyterian minister where one of the parties was a member of the established church. In 1844 this omission led to the controversial acquittal of one George Millis in a high-profile bigamy trial: as a member of the established Church of Ireland, his first marriage, having been conducted by a Presbyterian minister in Ireland, was regarded as being no marriage at all.[48] The result caused considerable consternation, and legislation proved necessary to validate the marriages of those who had gone through similar ceremonies and to place the law of marriage on a more certain footing for the future.

The validity of marriages between Catholics and Protestants similarly depended on how it was celebrated. If it was conducted by an Anglican clergyman it was valid; i f it was conducted by a Catholic priest it was void. Those who converted to Catholicism upon marriage might find themselves in a particularly difficult position, since the legislation also invalidated any marriage conducted by a Catholic priest between a Catholic and anyone who had been a Protestant within the year prior to the marriage. Wilkie Collins drew on this particularly harsh provision in his 1870 novel *Man and Wife*. In its opening

pages we see a woman being spurned by the man she believes is her husband upon it being discovered that their marriage in Ireland was invalid, he having converted to Catholicism only shortly before their wedding.

The publication of the novel coincided with legislation finally addressing this particular issue, following a real-life case that had attracted much publicity and a storm of protest about the state of the law. Theresa Longworth, an Englishwoman, claimed that she had actually gone through *two* ceremonies of marriage with Major Yelverton—the first in Scotland, by a private exchange of consent; the second before a Catholic priest in Ireland. But the House of Lords decided that there was insufficient evident of the first and that, as a Protestant, Major Yelverton could not have been validly married by a Catholic priest in Ireland. As one commentator noted, "in a nation of many intermingled creeds, it would surely be wiser to nullify marriages on account of the colour of the hair of the parties than to do so upon the score of their religion."[49] The outcry generated by the case was one of the factors leading to the establishment of a Royal Commission to examine the laws of marriage in 1865. The disestablishment of the Church of Ireland in 1869 provided a further spur to action and the Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1870 finally allowed mixed marriages of Protestants and Catholics to be celebrated according to the rites of either.

Elsewhere, civil marriage was introduced specifically to provide a means for those of different faiths to marry rather than as a neutral option open to all. In Sweden, religious plurality had existed since the late eighteenth century. Marriages had previously been required to be celebrated in the Lutheran church, but first other Christian denominations and then Jewish communities were also authorised to marry couples.[50] When an option of civil marriage was introduced in 1863, it was only for those of different faiths who could not take advantage of any of the existing religious forms.[51]

Yet while in many states marriage was directly regulated through specific legislation, in others religious authorities retained jurisdiction over what made a marriage, as the next section will show.

REGULATION OF MARRIAGES BY RELIGIOUS AUTHORITIES

There were a variety of different ways in which marriages might be regulated by religious authorities. Within any given state, there might be one recognised religious authority or several. That religious authority might be either primarily domestic, associated with just one state, or transnational. The Catholic Church provides a good example of the latter, although its hold over the regulation of marriage in both Europe and South America was diminishing over the course of the period. As European powers expanded their overseas empires in Africa and Asia, the religious diversity of the colonized peoples meant that attempts to impose a single mode of marrying were

unlikely to meet with success, and the personal laws of such peoples largely continued to govern how they married.

This section will consider first the links between religious authority and the identity of the state, then the way in which religious autonomy might both mute and support claims to territorial independence, and finally the intersection between law, religion and custom.

Religion and the identity of the state

The widespread adoption of civil marriage, and the introduction of state laws governing religious marriages, might suggest that there was a smooth and inevitable shift of power from religious authorities to the state. In reality, the relationship was more complex. States might wish to draw strength and support from religious authorities, or make a connection between religious and national identity, as the examples of Austria and the Ottoman Empire illustrate.

Austria provides a good example not only of how power struggles between state and church might lead to jurisdiction being transferred back and forth, but also of how a state might be pursuing its own agenda in ceding jurisdiction to religious authorities. Jurisdiction over marriage had been transferred to the state in the late eighteenth century, and the Civil Code of 1811 maintained this approach. Marriages continued to be conducted by priests, but it was the state that decided what constituted a marriage. After the revolution of 1848, however, the Concordat of 1855 transferred jurisdiction back to the Catholic Church. As Ulrike Harmat has described, the close co-operation between state and church at this time meant that each began "to identify with the respective aims of the other", with the Crown and government beginning "to conceive of Austria as 'the Catholic great power.'" A little over a decade later, however, jurisdiction over marriage was transferred back to the state once more following a new constitution in 1867.[52]

Religion was also central to the identity of the Ottoman Empire, which operated under Islamic law, and religious norms were particularly important in regulating entry into marriage. Islam regarded marriage as a contract, rather than as a sacrament, and the presence of an imam was not required in order for it to be regarded as valid. Nor was any particular ceremony or ritual necessary. While the nineteenth century saw reform in a number of areas of law, with codes inspired by European models being introduced, these did not extend to the area of family law.[53] In that context, "the claims of the state as the originator of authoritative norms were attenuated by a proclaimed subordination to the norms of the *shari'a* as extrapolated, mostly, from the established and diverse jurisprudence (*fiqh*) of Muslim jurists."[54] By the start of the twentieth century, however, questions were raised about the need to reform the laws relating to marriage, and with the 1917 Ottoman Law of Family Rights "the state stepped up its regulation of the marital institution and self-consciously sought to bring the marriage practices of its

citizens into sync with its vision of modernity."[55] In this case the role of religion was diminished not by internal or external power struggles but by a desire to project a different image of the state.

Religious plurality

While individuals within the Ottoman Empire had access to Islamic courts, this was not their only option. Given that "religious diversity was the norm rather than the exception"[56] across its territories, the "millet" system had long been in operation. This left the regulation of marriage and other elements of family life were to be governed by the religious laws of the different religious communities, through agreements negotiated with their leaders.[57]

While this permitted the exercise of cultural autonomy by these different communities and so muted potential opposition to the state, it could also be used to make claims for territorial autonomy. When Greece gained its independence from the Ottoman Empire in 1832, a strong link was made between religious and national identity: the Greeks were portrayed as a separate people "unified under the 'garb of religious difference'" within the Ottoman Empire.[58]

Religion, law and custom

The ways in which marriages were regulated across the developing British Empire demonstrate the complex relationship between law, religion and custom. In India, for example, it had been established by the end of the eighteenth century that the regulation of marriage would be governed by the laws of the Qu'ran in the case of Muslims and, in the case of Hindus, by Sanskrit texts which the British colonial rulers called the Shaster.[59] In the decades that followed, however, the limited understanding of the way in which Muslim and Hindu law had operated led to what was effectively a new body of law emerging,[60] within a "a plural legal order that replicated the main features of European jurisdictional boundaries between canon law and state law."[61]

Religious plurality was if anything even greater in Africa. In those parts that came under British control, it had been the "multitude of indigenous tribal systems" that determined what constituted a marriage, with norms differing between tribes.[62] African customary law was initially "dismissed by the early missionaries and colonial officials as a barbarous and inferior system of law."[63] Such attitudes were illustrated in the 1887 case of *Re Bethell*,[64] in which the question to be decided by the English Court of Chancery was whether a marriage had taken place between an Englishman, Christopher Bethell, and a member of the Baralong tribe, named Teepoo. Christopher had travelled out to South Africa and taken up residence at Mafeking, among the Baralong tribe. He indicated that he wished to be part of the tribe, and to marry according to their customs. Evidence was given to the court that marriage according to Baralong custom required the bridegroom to slaughter a sheep, ox, or cow and give the head and hide to the bride's

parents before the marriage was consummated, but that no further ceremony was required, and that custom had been followed in this case. Those arguing for the validity of the marriage rested their case on the well-established legal principle that the validity of a marriage was to be determined by the law of the place where it took place. On the other side, however, it was argued that "[t]he *Baralong* tribe have not laws but only customs when they marry"—in other words, that the principle could not apply—and that unless there was a mutual exchange of consent "there cannot be that which English law recognises as marriage."[65] The judge, Justice Stirling, made it clear where his sympathies lay by interrupting on more than one occasion to ask whether the relationship described "was a marriage at all"[66] and held that there was no marriage that the court could recognise, since the union described was "a marriage in the Baralong sense only".[67]

Despite such attitudes, with the adoption of the policy of "indirect rule", African customary law was held to have a place within the formal legal system.[68] But as in India, the process of recognition and incorporation was not value-neutral, whether in substance or in form, or in the way that it was transmitted, understood, or applied. Male elders who were identified as "chiefs" had a privileged position in describing customary law, and their version often enhanced their own authority.[69] Colonial administrators translated fluid practices into specific rules.[70] Practices that were regarded as "repugnant to justice and morality" were simply disregarded.[71] A further layer of complication was added by the enactment of legislation creating optional procedures for entering into a marriage that would exist alongside customary and religious law.

In New Zealand, meanwhile, ideas about law and marriage were entwined with a particular view of the emerging nation-state. Local ordinances were passed to regulate marriage relatively soon after it became a British colony but did not extend to the native Maori population, the assumption being that the latter would continue to marry according to their own laws. Yet before long, as Nan Seuffert has shown, there emerged a view of Maoris as primitive and uncivilised, without a system of law. The result was that the validity of Maori marriages fell to be determined by colonial laws: as one judge put it, "[t]here is only one marriage law in New Zealand for all races… and the so-called marriage according to Maori custom is no marriage in law."[72] When the English courts were called upon to consider the validity of a marriage between an Englishman and an Aboriginal woman in *Armitage v Armitage*, the discussion of the pre-colonial position was decidedly cursory, it simply being noted that the "alleged husband" had said "that he was married according to the customs and usages then in force in New Zealand" but "there is no evidence before the Court of what those customs or usages were."[73] Further justification for non-recognition of Maori marriages by the state was found by linking Maori marriage laws with concubinage and polygamy, supposedly pre-modern concepts that could be unfavourably contrasted with "notions of civilisation and progress associated with the modern nation-state."[74]

Somewhat ironically, the perception of certain lands as "barbarous" also led to the English courts developing a concept of marriage which harked back to the "law of nature" and which was in many respects akin to a form of personal or religious law, albeit one justified in more nationalistic terms. In *Ruding v Smith*, Sir William Scott invoked the idea that there was a law higher than the law of the land, an *ius gentium* or a custom common to all nations. This, he thought, provided the basis for the recognition of Anglican marriages between English men and women "settled in countries professing a religion essentially different".[75] In that particular case the marriage had been celebrated at the Cape of Good Hope by the chaplain of the English forces, but the idea that the British took their own law with them was nonetheless quickly extended beyond British troops fighting overseas to all cases where there were deemed to be "insuperable difficulties" in complying with the local law,[76] or where the British were establishing themselves in a country that was deemed to be "uninhabited" or "barbarous". The validity of marriages conducted in such places fell to be determined by English common law, at least until it was supplanted by local regulation. Yet in holding that all that was required was an exchange of consent in words of the present tense, nineteenth-century judges misinterpreted what the English common law had required for a valid marriage before legislation was passed in 1753. It was nonetheless a convenient mistake, since it neatly side-stepped the requirement that marriages be conducted by an Anglican clergyman and recognised the role played by missionaries and ministers of all denominations across the British Empire.[77]

So the recognition of religious marriages within a plural legal system was not confined to Asian, Islamic, and African legal cultures. But it operated very differently within the imperial context, as those versed in Western legal cultures tended to understand religious laws and customs through a particular lens. Religious laws were crystallized as formal law, while redefining the laws of indigenous peoples as "customs" enabled them to be displaced as a source of law altogether. The emphasis on personal laws also created barriers to intermarriage between those of different faiths.

By contrast, developments elsewhere involved the emergence of a new form of marriage created with no ceremony at all, as the final section will demonstrate.

LEGITIMACY WITHOUT STATE INTERVENTION

In *The History of Human Marriage*, published in 1891, Edward Westermarck loftily proclaimed that "among primitive men marriage was, of course, contracted without any ceremony whatever; and this is still the case with many uncivilised peoples."[78] The linkage of "civilisation" and "ceremony", and the assumption of a clear line of progression, was however complicated by the possibility of marrying in Scotland by a simple exchange of consent and by developments in the United States.

At the start of the nineteenth century the newly independent United States was beginning to forge a new and distinctive American family law.[79] Most states already provided for a choice of civil or religious marriage rites, but new developments were to make marriages even easier to enter into, with the concept of "common-law marriage" emerging in the New York case of *Fenton v Reed* in 1809. In allowing marriages to be entered into entirely informally, this new type of marriage both prioritised the choice of the couple over the laws of the state, and widened the state's reach in terms of the imposition of obligations on husbands and wives.[80] Its radicalism was obscured by the fact that it was presented as being rooted in English law, but while English law would indeed have regarded the fact that a couple had cohabited and were reputed to be married as evidence from which it might be presumed that a ceremony of marriage had taken place, it would not at the time have regarded a simple exchange of consent as amounting to a valid marriage.[81]

Despite the novelty of the doctrine, a number of states subsequently adopted a concept of common law marriage[82] and in *Meister v Moore* the US Supreme Court held that there was a "common-law right" to form a marriage by a simple exchange of consent. Acknowledging that statutes in many states regulated "the mode of entering into the contract", it held that statutory provisions requiring a formal licence and ceremony were to be construed as merely directory unless the legislation made it explicit that a failure to observe such formalities would result in the invalidity of the marriage.

Not all US states adopted the view that marriage laws were directory rather than mandatory. Massachusetts, Tennessee, North Carolina, and Maine never recognised any form of common law marriage. Even amongst those that did, there was a distinct lack of uniformity in how the courts determined when precisely a common law marriage might be held to have come into existence,[83] and indeed in the types of states to adopt the concept.[84] Over the course of the nineteenth century, statutory requirements were gradually relaxed only to be tightened again at its close. New provisions for the giving of notice before marriage and its registration once it had taken place were introduced by legislation.[85] From the last quarter of the nineteenth century, states began to abolish common law marriage, and by 1920 it was only fully recognized in 26 states, and partially recognized in a further six.[86]

The growing importance attached to the role of the state in the making of marriage was reflected in an 1892 decision of the Supreme Court of Washington, in which it was asserted that "[b]y adhering to the statutory provisions… parties are led to regard the contract as a sacred one, as one not lightly to be entered into, and are forcibly impressed with the idea that they are forming a relationship in which society has an interest, and to which the state is a party."[87] In other words, the ties to the state were sacred.

CONCLUSION

In the early years of the nineteenth century, the German jurist Friedrich Carl von Savigny had argued that law could only be understood as part of culture: in his view, law was "first developed by custom and popular faith, next by jurisprudence—everywhere, therefore, by internal silently-operating powers, not by the arbitrary will of a law-giver." The Age of Empires saw many challenges to this idea of law as evolving in line with culture. New states might deliberately use laws as an instrument of modernization, of nation-building, or of authority.[88] Where the deep religiosity of the people within a particular state clashed with the desire of the state to impose a single form of marriage, the result might be opposition and swift repeal, grudging acceptance, or the continuance of religious ceremonies with no formal recognition.

As this chapter has shown, while the pace and extent of change varied between different legal cultures, there was a very clear shift towards according a greater role to state laws. This process was only accelerated by the First World War. Henceforth the state was to play a far greater role in the regulation of everyday life, and it is no coincidence that two of the Empires within which marriage law had changed very little over the previous century—the Russian and the Ottoman—both made changes to their marriage laws in 1917.

While the move to greater regulation by the state has brought greater certainty, this has been at the expense of making compliance with certain stipulated formalities the touchstone of what makes a marriage that will be recognised by the state. But even the most innocuous-seeming regulations as to notice and registration are not value-neutral. The often unintended effects of the laws of marriage upon individuals has long engendered a debate—one which continues down to the present day, with widespread cohabitation outside formal marriage and the modern practice of religious-only marriages—as to whether this focus on formalities offers sufficient protection to those members of society whose voices are least readily heard.

BIBLIOGRAPHY

Antokolskaia, Masha. 2011. "Family Law and Religion: The Russian Perspective, Past and Present." In J Mair and E Örücü (eds) *The Place of Religion in Family Law: A Comparative Search*. Antwerp: Intersentia.

Barkey, Karen and Gavrilis, George. 2016. "The Ottoman Millet System: Non-Territorial Autonomy and its Contemporary Legacy." Ethnopolities, 15(1): 24-42.

Benton, Lauren. 2001. *Law and Colonial Cultures: Legal regimes in world history, 1400-1900*. Cambridge: Cambridge University Press.

Bonfield, Lloyd. 2002. "European Family Law." In D Kertzer and M Barbagli (eds) *Family Life in the Long Nineteenth Century, 1789-1913*. New Haven: Yale University Press.

Bowman, Cynthia Grant. 1996. “A Feminist Proposal to Bring Back Common Law Marriage.” *Oregon Law Review*, 75: 709-

Bradley, David. 1990. “Radical Principles and The Legal Institution Of Marriage: Domestic Relations Law And Social Democracy In Sweden.” *International Journal of Law and the Family*, 4: 154-85.

Caulfield, Sueann. 2017. ‘”From Liberalism to Human Dignity: The Transformation of Marriage and Family Rights in Brazil.” In J Moses (ed) *Marriage, Law and Modernity: Global Histories*. London: Bloomsbury Academic.

Chanock, Martin. 1989. “Neither Customary Nor Legal: African Customary Law in an Era of Family Law Reform” *International Journal of Law and the Family* 3: 72-88.

Chatterjee, Nandini. 2010. “English Law, Brahmo Marriage, and the Problem of Religious Difference: Civil Marriage Laws in Britain and India.” *Comparative Studies in Society and History* 52(3): 524-552.

Cole, Laurence. 2009. “The Counter-Reformation’s Last Stand: Austria.” In C Clark and W Kaiser (eds) *Culture Wars: Secular-Catholic Conflict in Nineteenth-Century Europe*. Cambridge: Cambridge University Press.

Cott, Nancy. 2000. *Public Vows: A History of Marriage and the Nation*. Cambridge, Mass: Harvard University Press.

De Koker, Jeanne. 1998. “African Customary Family Law in South Africa: A Legacy of Many Pasts.” In J Eekelaar and T Nhlapo (eds) *The Changing Family: Family Forms and Family Law*. Oxford: Hart.

De Ussel, Julio Iglesias. 1991. “Family Ideology and Political Transition in Spain.” *International Journal of Law & Family* 5: 277-295.

Derrett, J. Duncan M. 1968. *Religion, Law and the State in India*. London: Faber & Faber.

Desan, Suzanne. 2004. *The Family on Trial in Revolutionary France*. Berkeley: University of California Press.

Dodd, Ian. [forthcoming] “Marriage in Early Colonial New South Wales: Currey Revisited.”

Douglas, Gillian. 2015. “Who Regulates Marriage? The Case of Religious Marriage and Divorce.” In R Sandberg (ed) *Religion and Legal Pluralism*. Aldershot: Ashgate.

Elliott, R Douglas. 2003-4. “The Canadian Earthquake: Same-Sex Marriage in Canada.” *New England Law Review*, 38: 591-620.

Garipova, Rozaliva. 2017. “Married or Not Married: On the Obligatory Registration of Muslim Marriages in Nineteenth-Century Russia.” *Islamic Law and Society*, 24, 112-141.

Glendon, Mary Ann. 1977. *State, Law and Family: Family Law in Transition in the United States and Western Europe*. Amsterdam: North-Holland Publishing Company.

Gordon, Eleanor. 2013. “Irregular Marriage: Myth and Reality.” *Journal of Social History* 47: 507-525.

Grossberg, Michael. 1988. *Governing the Hearth: Law and the Family in Nineteenth-Century America*. University of North Carolina Press.

Harding, Maebh. 2018. Title tbc.

Harmat, Ulrike. 2017. "'Till Death Do You Part": Catholicism, Marriage and Culture War in Austria(-Hungary)." In J Moses (ed) *Marriage, Law and Modernity: Global Histories*. London: Bloomsbury Academic.

Ipaye, Oluwatoyin A. 1998. "The Changing Pattern of Family Structure in Nigeria: Issues, Problems and Strategies for Family Support." In J Eekelaar and T Nhlapo (eds) *The Changing Family: Family Forms and Family Law*. Oxford: Hart.

Kabeberi-Macharia, Janet and Nyamu, Celestine. 1998. "Marriage by Affidavit: Developing Alternative Laws on Cohabitation in Kenya." In J Eekelaar and T Nhlapo (eds) *The Changing Family: Family Forms and Family Law*. Oxford: Hart.

Keller, Morton. 1994. *Regulating a new society: public policy and social change in America, 1900-1933*. Cambridge, Mass: Harvard University Press.

Khazova, Olga. 1998. "The New Codification of Russian Family Law." In J Eekelaar and T Nhlapo (eds) *The Changing Family: Family Forms and Family Law*. Oxford: Hart.

Lind, Göran. 2008. *Common Law Marriage: A Legal Institution for Cohabitation*. Oxford: Oxford University Press.

Logan, Enid Lynette. 2008. "The 1899 Cuban Marriage Controversy: Church, State and Empire in the Crucible of Nation." *Journal of Social History*, 42(2): 469-94.

Mair, Jane. 2014. "Belief in Marriage." *International Journal of the Jurisprudence of the Family*, 5: 63-88.

Majumdar, Rochona. 2009. *Marriage and Modernity: family values in colonial Bengal*. Durham, N.C.: Duke University Press.

Menski, Werner. 2012. "Ancient and Modern Boundary Crossings Between Personal Law and Civil Law in Composite India." In J Nichols (ed) *Multi-tiered Marriage and the Boundaries of Civil Law and Religion*. Cambridge: Cambridge University Press.

Mody, Perveez. 2002. 'Love and the Law: Love-Marriage in Delhi' *Modern Asian Studies*, 36(1): 223-256.

Moses, Julia. 2017. "Making Marriage 'Modern.'" In J Moses (ed) *Marriage, Law and Modernity: Global Histories*. London: Bloomsbury Academic.

Nemes, Robert. 2009. "The uncivil origins of civil marriage: Hungary." In C Clark and W Kaiser (eds) *Culture Wars: Secular Catholic Conflict in Nineteenth-Century Europe*. Cambridge: Cambridge University Press.

Newbigin, Eleanor. 2013. *The Hindu Family and the Emergence of Modern India.* Cambridge: Cambridge University Press.

Novak, David. 2000. "Jewish Marriage and Civil Law: A Two-Way Street." *George Washington Law Review*, 68: 1059-78.

Phillips, Roderick. 1988. *Putting Asunder: A history of divorce in western society*. Cambridge: Cambridge University Press.

Probert, Rebecca. 2008. "*R v Millis* reconsidered: binding contracts and bigamous marriages." *Legal Studies*, 28: 337-355.

Probert, Rebecca. 2009. *Marriage Law and Practice in the Long Eighteenth-Century: A Reassessment*. Cambridge: Cambridge University Press.

Probert, Rebecca. 2017. "English Exports: Invoking the Common Law of Marriage across the Empire in the Nineteenth Century." In J Moses (ed) *Marriage, Law and Modernity: Global Histories*. London: Bloomsbury Academic.

Rheinstein, Max. 1953. "Trends in Marriage and Divorce Law of Western Countries." *Law and Contemporary Problems*, 18(1): 3-19.

Rodriquez, Maria Sara. 2014. "Marriage is a Basic Good, Discernable through Reason, and Is Entitled to Recognition and Protection by the State." *International Journal of the Jurisprudence of the Family*, 5: 111-144.

Sancifiena-Asurmend, Camino. 2014. "The Pattern of Marriages Under Spanish Law." *International Journal of the Jurisprudence of the Family*, 5: 37-61.

Scharffs Brett G, and Disparte, Suzanne. 2010. "Comparative Models For Transitioning From Religious To Civil Marriage Systems." *Journal of Law & Family Studies* 12: 409-430.

Seuffert, Nan. 2003. "Shaping the Modern Nation: Colonial Marriage Law, Polygamy and Concubinage in Aotearoa New Zealand." *Law Text Culture*, 7: 186-220.

Seymour, Mark. 2006. *Debating divorce in Italy: marriage and the making of modern Italians, 1860-1974*. Basingstoke: Macmillan.

Simotta, Daphne-Ariane. 1995-1996. "Marriage and Divorce Regulation and Recognition in Austria." *Family Law Quarterly*, 29: 525-540.

Sörgjerd, Caroline. 2012. *Reconstructing Marriage: The Legal Status of Relationships in a Changing Society*. Antwerp: Intersentia.

Todorova, Velina. 2000. "Family Law in Bulgaria: Legal Norms and Social Norms." *International Journal of Law, Policy and the Family*, 14: 148-181.

Torfs, Rik. 2005. "The Permissible Scope of Legal Limitations on the Freedom of Religion or Belief in Belgium." *Emory International Law Review*, 19(2): 637-84.

Tsoukala, Philomila. 2010. "Marrying Family Law to the Nation." *American Journal of Comparative Law*, 58(4): 873-910.

Tucker, Judith. 2008. *Women, Family, and Gender in Islamic Law*. Cambridge: Cambridge University Press.

Vlaardingerbroek, Paul. 1995-96. "Marriage, Divorce, and Living Arrangements in the Netherlands". *Family Law Quarterly*, 29: 635-44.

von Sachsen-Gessaphe, Karl August Prinz. 1989. "Concubinage In Mexico" *International Journal of Law and the Family*, 3: 40-57.

Waddington, Mark and van Hoecke, Mark. 1998. "Legal cultures, legal paradigms and legal doctrine: towards a new model for comparative law" *International and Comparative Law Quarterly*, 47(3): 495-536.

Welchman, Lynn. 2007. *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy*. Amsterdam: University of Amsterdam Press.

Westermarck, Edward. 1891. *The history of human marriage.* London: Macmillan.

Witte, John. 2012. *From Sacrament to Contract: Marriage, Religion and Law in the Western Tradition*. Louisville: Westminster John Knox Press.

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[1] Douglas 2015
[2] Chanock 1989.
[3] Warrington and Van Hoecke 1998.
[4] Witte 2012.
[5] Phillips 1988, 180.
[6] Vergniaud, quoted by Desan 2004, 57.
[7] Glendon 1977, 56.
[8] Civil Code 1804, arts 63 and 75.
[9] Glendon 1977, 57.
[10] Moses 2017.
[11] Novak 2000, 1070.
[12] Vlaardingerbroek 1995-6; Torfs 2005.
[13] von Sachsen-Gessaphe 1989.
[14] Rodriguez 2014.
[15] Caulfield 2017.
[16] Antokolskaia 2011.
[17] Antokolskaia 2011, 105; Rheinstein 1953; Garipova 2017.
[18] Bonfield 2002, 143-44.
[19] Seymour 2006, 13.
[20] Nemes 2009, 333.
[21] Quoted by Nemes 2009, 335.
[22] De Ussel 1991.
[23] Sancifiena-Asurmend 2014.
[24] De Ussel 1991; Sancifiena-Asurmend 2014.
[25] Rheinstein 1953.
[26] De Ussel 1991.
[27] Logan 2008, 470.
[28] Witte 2012.
[29] *Dalrymple v. Dalrymple* (1811) 2 Hag Con 54; 161 ER 665.
[30] Mair 2015
[31] Probert 2009.
[32] For a detailed account see Harding 2018.
[33] By the Marriage Notice (Scotland) Act 1878.
[34] An Act to remove Doubts as to the Validity of certain Marriages had and solemnized within the British Territories in India, 1818, 58 Geo. III, c. 84, s. 1. Certain conditions applied, including that the ministers had been 'appointed by the United Company of Merchants of England trading to the East Indies to officiate as Chaplains within the said Territories.'
[35] Hansard, 13 May 1851 vol 116 col 935.
[36] An Act for Marriages in India, 14 & 15 c. XL, s 9.
[37] Ibid, s 1.
[38] An Act to Provide a Form of Marriage in Certain Cases, 1872.
[39] See Mody 2002; Majumdar 2009, Chatterjee 2010; Newbigin 2013.
[40] 9 Geo IV c 83 s 24.
[41] 5 Geo IV No 2.
[42] Dodd [tbc].
[43] An Act to regulate the Celebration of Marriages in Newfoundland, 57 Geo III, c 51.
[44] The Marriages Confirmation (Newfoundland) Act 1824, ss 3-4.
[45] See An Act to Extend the Provisions of the Marriage Act of Upper Canada to Ministers of All Denominations of Christians, 1847, 10 & 11 Vict c 18; An Act to Amend the Laws Relating to the Solemnization of Matrimony in Upper Canada, 1857, 20 Vict c 66.

[46] Elliott 2003-4.
[47] 21 & 22 Geo III c. 25.
[48] *R v Millis* (1843-44) 10 Cl & F 534; 8 ER 844. See further Probert 2008.
[49] 'The *Yelverton* Marriage Case' (1861) 11 Law Mag & L Rev Quart J Juris 3rd Ser 215.
[50] Sörgjerd 2012, 44.
[51] Sörgjerd 2012.
[52] Simotta 1995-1996.
[53] Tucker 2008; Scharffs and Disparte 2010.
[54] Welchman 2007, 12.
[55] Tucker 2008, 70.
[56] Barkey and Gavrilis 2016, 30.
[57] Barkey and Gavrilis.
[58] Ibid, 884.
[59] Derrett 1968; Newbigin 2013.
[60] Newbigin 2013, 32-35; Chatterjee 2010, 539.
[61] Benton 2001, 139.
[62] Ipaye 1998, 34.
[63] De Koker 1998, 324.
[64] *In Re Bethell* (1887) 38 Ch D 220.
[65] Ibid, 229.
[66] Ibid, 224.
[67] Ibid, 236.
[68] Kabeberi-Macharia and Nyamu 1998; De Koker 1998.
[69] Charnock 1989; De Koker 1998; Parsons 1999.
[70] Charnock 1989; De Koker 1998.
[71] Kabeberi-Macharia and Nyamu 1998.
[72] Quoted by Seuffert at 206.
[73] *Armitage v Armitage* (1866) LR 3 Eq 343
[74] Seuffert 2003, 186.
[75] *Ruding v Smith* (1821) 2 Hag Con 371; 161 ER 774, 385.
[76] *Ruding*, 394; *Kent v Burgess* (1840) 11 Sim 361; 59 ER 913, 376.
[77] Probert 2017.
[78] Westermarck 1891, 417.
[79] Grossberg, x.
[80] Cott 2000.
[81] Probert 2008, 2009.
[82] Bowman 1996, 721.
[83] Lind 2008.
[84] Bowman 1996, 722.
[85] Grossberg 1985.
[86] Keller 1994, 18.
[87] *In re Estate of McLaughlin v. Mclaughlin*, 4 Wash. 570; 30 P. 651 (1892).
[88] Todorova 2000.