Why universal civil marriage is not the answer

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Abstract

Universal civil marriage – in the sense of a single, state-ordained, statutorily-defined marriage ceremony that is the only route to a legally recognised marriage – is regularly proposed as a simple means of addressing a number of problems with weddings law in England and Wales. This article explains why universal civil marriage is not the answer. It shows that the number of couples getting married in a register office or on approved premises cannot be interpreted as evidence of couples making an active choice that they wish to be married in a 'civil' ceremony. It also questions the 'universality' of universal civil marriage, showing that only a minority of countries have adopted this option, that religious-only ceremonies continue to take place in such countries, and that many do not make provision for same-sex couples to marry. It acknowledges the force of the argument that only universal civil marriage is likely to ensure absolute equality for same-sex and opposite-sex couples, but shows that there is now room for optimism that a religious wedding is now a realistic option for many same-sex couples. Finally, it rejects the idea that universal civil marriage would be a simple and cheap solution, showing the additional costs that would be involved, both for the state and for couples marrying. It concludes by considering how the rules governing entry into marriage should be reformed to enhance their reach.

Keywords: universal civil marriage, religious weddings, religious-only marriage, same-sex weddings, register office weddings

Introduction

Over the past century, the number of marriages celebrated with a religious ceremony in England and Wales has declined significantly. In 1924, over three-quarters of all weddings were classified as religious.[1] Even twenty-five years ago, religious weddings still accounted for half of the total.[2] By contrast, in 2019 just 18.7 per cent of opposite-sex couples, fewer than one in five, had a religious wedding. Among same-sex couples the percentage was still smaller, at just 0.7 per cent.[3]

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[1] Office for National Statistics, 'Marriages in England and Wales: 2020' (11 May 2023), table 1b.
[2] Ibid.
[3] Ibid. In 2020 the percentage of religious weddings was even smaller, accounting for just 15 per cent of opposite-sex marriages. However, there are obvious difficulties in interpreting the statistics for 2020 given the restrictions imposed as a result of the Covid-19 pandemic, and the 2019 figures will be used for the purpose of analysis. For discussion of the restrictions and their impact on different types of weddings see R Probert and S Pywell, 'Love in the time of COVID-19: a case-study of the complex laws governing weddings' (2021) 41 LS 676; R Probert, RC Akhtar, S Blake and S Pywell, *The impact of Covid-19 on legal weddings and non-legally*

These figures might suggest that England and Wales are edging towards universal civil marriage by popular choice and that it might be time to consider this as an option for reform. There have also been suggestions by various scholars that England and Wales are out of step with other jurisdictions in not requiring all couples to have a civil ceremony[4] in order for their marriage to be legally recognised.[5] Others see universal civil marriage as a simple solution to a range of different problems, including the number of religious-only marriages taking place,[6] discrimination against Humanist couples,[7] and the unequal treatment of same-sex couples.[8]

It is clear that the current laws governing entry into marriage are in need of reform,[9] but it is far from clear that universal civil marriage is the answer. In this article I lay out the problems inherent in the assumptions and claims – both empirical and normative – that underpin the case for universal civil marriage.

First, there is the question as to how we should interpret the statistics on how couples are getting married in England and Wales today. My key point here is a simple one: getting married in a register office or on approved premises cannot be interpreted as evidence of couples making an active choice that they wish to be married in a 'civil' ceremony. Understanding the complex choices that are being made requires an appreciation of what the ceremony entails and the wider constraints within which couples are operating. The first section accordingly brings together historical insights, statistics on religious belief, and empirical findings[10] in order to explain the ambiguity of 'civil' weddings in England and Wales and why couples who might prefer a religious wedding are nonetheless opting for one from which explicitly religious content is excluded.

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binding ceremonies (July 2022); S Pywell and R Probert 'Postponing the day of your dreams? Modern weddings and the impact of COVID-19' (2023) 12 *Families, Relationships and Society* 431.

[4] For the purposes of this article a 'civil' ceremony is defined as a single state-created and secular form of marriage with which couples must comply to secure legal recognition. It should be noted that the term is used in various different ways in the literature, being variously deployed to mean a marriage that is recognised by the state, or a marriage where the state sets the terms under which a marriage will be recognised, or where validity is dependent on compliance with state preliminaries, the presence of a state official, or subsequent registration, or – as here – that the ceremony is secular in nature.

[5] See eg J Herring, Family Law (Pearson, 10th ed 2021), 79; P Ronfani, 'Family Law in Europe' in DI Kertzer and M Barbagli (eds), *The History of the European Family: Vol Three: Family Life in the Twentieth Century* (Yale University Press, 2003), 115, discussed further below.

[6] S Gohir, *Information and Guidance on Muslim Marriage and Divorce in Britain* (Muslim Women's Network 2016). As discussed further below, whether religious-only marriages are perceived as problematic is very much a matter of perspective.

[7] See eg M Welstead, 'No right (as yet) to be married legally in a humanist ceremony: *R (on the application of Harrison and others) v Secretary of State for Justice* [2020] EWHC 2096 (Admin)' [2020] Fam Law 1694, discussed further below.

[8] See eg P Johnson and RM Vanderbeck, 'Sacred Spaces, Sacred Words: Religion and Same-Sex Marriage in England and Wales' (2017) 44 *Journal of Law and Society* 228, discussed further below.

[9] Law Commission, *Getting Married: A Scoping Paper* (17 December 2015), *Getting Married: A Consultation Paper on Weddings Law*, Law Com CP 247 (3 September 2020) and *Celebrating Marriage: A New Weddings Law*, Law Com No 408 (18 July 2022). See also R Sandberg, *Religion and Marriage Law: The Need for Reform* (BUP, 2021) and R Probert, R Akhtar and S Blake, *Belief in Marriage: The evidence for reforming weddings law* (BUP, 2023).

[10] The empirical data is drawn from a project funded by the Nuffield Foundation examining non-legally binding marriage ceremonies. The project included 83 interviews with individuals or couples who described themselves as having had a non-legally binding marriage ceremony, all but 16 of whom had also had a legal wedding, usually in a register office or on approved premises. For a full account of the project see R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies* (Nuffield Foundation, 2022).

The second question – whether England and Wales are out of step with other jurisdictions in not having universal civil marriage – is also at one level a simple question of fact. As the second section will detail, most other jurisdictions also make provision for couples to marry according to religious rites, whether the issue is viewed from a local, European, or global perspective. But there is also a normative question here as to whether England and Wales should align itself with those countries that have adopted universal civil marriage. This requires a closer investigation of which other countries have taken that route and their reasons for doing so. It also requires us to consider the 'universality' of universal civil marriage in these countries, in terms of whether religious-only ceremonies of marriage continue to take place and whether there is any association between universal civil marriage and the availability of same-sex marriage. As I will show, there is evidence that religious-only ceremonies continue to take place in countries that have universal civil marriage. Moreover, while some countries that have universal civil marriage also recognise same-sex marriage, many do not.

That said, the fact that universal civil marriage has not solved various problems elsewhere does not mean that it can be ruled out as an option for reform in England and Wales. The third section therefore focuses more closely on the issues of religious-only ceremonies of marriage, the unavailability of Humanist weddings, and the unequal treatment of same-sex couples. The last of these requires particularly close investigation, since the unequal treatment of same-sex marriage in England and Wales has in recent years provided one of the strongest arguments in favour of universal civil marriage.[11] But my analysis of the most recent data on places of worship registered for same-sex weddings shows that there is room for optimism that a religious wedding is now a realistic option for a same-sex couple.
The final section addresses one of the key assumptions underpinning the case for universal civil marriage – that it would be a simple and cheap solution for all concerned. But this is not supported by the evidence. There would be costs for the state, in terms of the infrastructure that would be required. There would also be additional costs for the couples themselves.

But even if universal civil marriage is not the answer, there is still the question as to how marriage law should be reformed. And the concept does at least identify an important aspiration for marriage law – that it should be as universal as possible. That is not in any way to imply that marriage is an ideal state and that as many couples as possible should be persuaded to formalise their union. It is simply to note that part of the case for marriage to exist at all as a legal institution is its *reach* – in the sense of it being the most convenient way for conferring rights and responsibilities to couples in long-term intimate relationships. In my conclusion, I therefore draw out the connections between some of the bigger debates about whether marriage should continue to exist in any form and the question of how the rules governing entry into marriage should be reformed.

The Ambiguity as to Whether Couples are Choosing 'Civil' Marriage

In order to understand the ambiguity as to whether couples are choosing civil marriage, it is necessary to start with an explanation of the ambiguous nature of 'civil' marriage in England and Wales.[12] It will be shown that there is nothing intrinsically 'civil' about the option of

[11] Johnson and Vanderbeck, above n 8.
[12] The focus in this section is on the nature of what is now termed 'civil' marriage rather than its uptake: for a broader discussion see R Probert, *Tying the Knot: The Formation of Marriage 1836-2020* (CUP, 2021).

getting married in a register office or on approved premises; indeed, the language of the ceremony still contains echoes of the Anglican marriage service. In addition, there is widespread support for allowing couples to include *more* religious content in such ceremonies. Given the disparity between the statistics on the percentage of the population who hold religious beliefs, and the percentage of marriages taking place according to religious rites, it is unsurprising that there is evidence to suggest that some couples who marry in a register office or on approved premises would have preferred to have had a religious wedding. These issues will now be unpacked in turn.

The ambiguity of 'civil' marriage in England and Wales: a brief history

'Civil' marriage, in the sense of having the option to be married in a ceremony without any religious content, was introduced to England and Wales by the Marriage Act 1836.[13] Yet there are reasons to be cautious in using the term 'civil' in this context.[14] The term does not appear in the 1836 Act at all, despite many historians misleadingly referring to it as the 'Civil Marriage Act'.[15] Nor did the initial reports produced by the Registrar General use the term.

The reason why the term was not used lies in the flexibility of the new forms of marriage introduced by the 1836 Act. While these did not need to *include* religious content, there was no option from which religious content was *excluded*. A ceremony in a newly registered place of worship did not need to be conducted by a priest or minister and did not need to include a religious ceremony; all that was required was that the couple should say certain prescribed words in the presence of a civil registrar. The same prescribed words were required if the wedding took place in the office of the superintendent registrar with a registrar also in attendance. But while a register office wedding could be entirely secular in nature, it did not have to be.[16]

This flexibility reflected the fact that 1836 Act was designed to ensure that no one would be obliged to marry in a form that was contrary to their conscience.[17] A wedding in a register office was intended as a neutral option that would be available to everyone. This was why the prescribed words required of couples were so minimal, consisting merely of a declaration by each of the parties that they were free to marry and their agreement to marry each other.[18] These words were, in essence, designed to be included in a ceremony rather than to *be* the ceremony. They were also, it should be noted, a direct lift from the Anglican *Book of Common Prayer*, simply shorn of any references to a deity and with the word 'lawful' added in.[19] In that sense, *every* ceremony conducted under the 1836 Act included an echo of religious rites, even if it was pared down to the bare legal minimum.

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[13] Prior to this, the law had only recognised religious forms of marriage, with the Clandestine Marriages Act 1753 having prescribed that all weddings should take place in an Anglican place of worship, unless authorised by a special licence. Quakers and Jews alone were exempted from this requirement.

[14] See R Probert, 'Secular or sacred? The ambiguity of "civil" weddings in England and Wales, 1836-56' (2022) 43 JLH 136.

[15] See eg S Parker, *Informal Marriage, Cohabitation and the Law, 1750-1989* (Macmillan, 1990), 48; J Phegley, *Courtship and Marriage in Victorian England* (Praeger, 2012), 115; L Taylor, *Constructing the Family: Marriage and Work in Nineteenth-Century English Law* (University of Toronto Press, 2023), 255-56.

[16] Probert, above n 12, ch 3. There is evidence of couples choosing to include prayers and hymns within their register office ceremony, sometimes led by a priest or minister.

[17] For the history of the passage of the 1836 Act, and why the issue of conscience was so important, see Probert, ibid, ch 2.

[18] Marriage Act 1836.

[19] Probert, above n 14.

The option of getting married in a register office was thus very different from the form that civil marriage took elsewhere in Europe. In France, where universal civil marriage was introduced in the wake of the French Revolution, the requirement of a civil ceremony was a means not only to increase the authority of the state – as the *only* legally recognised route into marriage – but also, as Suzanne Desan has explained, to create an emotional bond between the citizen and the *patrie*, law, and society.[20] As she notes, it was argued by Louis-Jérôme Gohier, a key figure in the new Legislative Assembly and Minister of Justice from 1793 to 1794, that civic marriage ceremonies 'would tap into powerful human emotions and encourage citizens to intertwine their most personal feelings with the higher sentiment of loyalty to the public good'.[21] This required a new form of ceremony designed for the purpose.[22] In England and Wales, by contrast, creating a new form of ceremony with any ideological content would have run counter to the flexibility that the 1836 Act had sought to provide.

However, that flexibility was to be of short duration. The option of including religious content in a register office ceremony was removed by the Marriage and Registration Act 1856, which explicitly provided that 'at no Marriage solemnized at the Register Office of any District shall any Religious Service be used'.[23] This, it should be noted, was the side-product of an attempt to clarify the relationship between a register office wedding and any subsequent religious blessing, rather than the result of any change of policy about the appropriate content of register office weddings:[24] there was no attempt to craft a new and explicitly secular form of ceremony.

Despite occasional criticisms by commentators as to the lack of ceremony thereafter involved in a register office wedding,[25] the format of register office weddings remained the same until after the Second World War. Their content was then considered by the post-war *Committee on Procedure in Matrimonial Causes*, which had been set up in response to an increase in the number of marriages ending in divorce. In proposing that the ceremony should be revised to try to send a message to couples about the obligations that marriage entailed and prevent matrimonial problems from arising, the language used by the Committee drew on that of the Anglican marriage service.[26] And while the form of words eventually adopted was less

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[20] S Desan, *The Family on Trial in Revolutionary France* (University of California Press, 2004), 54.
[21] Ibid, 58.
[22] Whether the new form of ceremony succeeded in its aims is another matter: Lloyd Bonfield notes that 'the more romantically inclined complained about the rather uninspired nuptial ceremony that the state had prescribed' (L Bonfield, 'European Family Law' in DI Kertzer and M Barbagli (eds), *The History of the European Family: Volume 2, Family Life in the Long Nineteenth Century, 1789-1913* (Yale University Press, 2002), 129.
[23] Marriage and Registration Act 1856, s 12.
[24] Section 12 was the response to a number of controversial cases in which Anglican clergy had 'remarried' couples who had married according to one of the forms of marriage introduced by the 1836 Act. The amendment prohibiting a religious ceremony in a register office was added to a new provision allowing a religious blessing to take place after a register office wedding. Since contemporaries assumed that section 12 prohibited a subsequent religious blessing if the couple had married in a registered place of worship, the inference has to be that the provision stipulating that no religious service could be used in a register office was designed to ensure that couples could only have one religious ceremony: R Probert 'Rites and Wrongs: Anglican ceremonies after legal weddings, 1837-1857' (2023) 59 *Studies in Church History* 312.
[25] See eg AM May, *Marriage in church, chapel and register office: a practical handbook* (Longmans, Green & Co, 1920), 66, noting that '[i]t must be conceded that there is nothing attractive in a Register Office marriage: it is the bare civil contract and nothing more'; M Cole, *Marriage: Past and Present* (JM Dent & Sons, 1938), 130, describing the ceremony as 'certainly lacking in impressiveness', although she did note that in addition to the prescribed words there was 'sometimes a homily by the registrar thrown in'.
[26] It proposed that 'the form of marriage in Register Offices should be revised so as to emphasise the solemnity of the occasion and clearly to express the principle that marriage is the personal union, for better or for worse, of

explicitly modelled on the *Book of Common Prayer*, it was not entirely free from religious echoes. The guidance issued to registration officers asked them to remind couples that 'marriage, according to the law of this country, is the union of one man with one woman, voluntarily entered into for life, to the exclusion of all others'.[27] This particular 'definition' of marriage had of course originated in the nineteenth-century case of *Hyde v Hyde and Woodmansee*,[28] in which it was prefaced by the words 'as understood in Christendom'.[29]

It is only towards the end of the twentieth century that the term 'secular' made an appearance in the context of weddings law. This followed the Marriage Act 1994, which introduced the possibility of a civil wedding on 'approved premises'. The Act had retained the same prescribed words and the prohibition on including a religious service as part of the ceremony,[30] but the subsequent regulations were more specific, providing that '[a]ny readings, music, words or performance which forms part of a ceremony of marriage celebrated on the premises must be secular in nature'.[31] Again, however, there was no attempt to prescribe any new secular content, and ten years later the regulations were rephrased to simply state that any additional content 'shall not be religious in nature'.[32]

In summary, the terminology of 'civil' marriage should be recognised for what it is: a convenient shorthand to refer to a ceremony conducted in a register office or on approved premises. There was nothing intrinsically 'civil' about the register office wedding introduced by the Marriage Act 1836. Nor was the subsequent restriction, a generation later, on including a religious service the result of any deliberate attempt to secularise the ceremony, and the religious echoes of the Anglican marriage service remained in the prescribed words. The requirement that any additional content included in weddings on approved premises should be 'secular in nature' was short-lived. And as the next section will discuss, the reasons for the change of wording cast light on attitudes to religious content in 'civil' weddings.

Attitudes to religious content in weddings in register offices or on approved premises

By itself, the fact that the form of wedding that takes place in a register office or on approved premises has these religious echoes tells us little about how the ceremony is perceived by couples getting married. Many will not be aware of these echoes,[33] and even those who are so

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one man with one woman, exclusive of all others on either side so long as both shall live' (*Final Report of the Committee in Procedure in Matrimonial Causes*, Cm 7024 (London: HMSO, 1947), 17). The echoes of the *Book of Common Prayer* – in which couples vow to take each other 'for better, for worse', and are asked whether they are willing to promise to 'forsake all others… as long as ye both shall live' – could not have been clearer.

[27] S Cretney, *Family Law in the Twentieth Century: A History* (Oxford University Press, 2003), 36. These words were also printed at the top of the notice form: *The Times*, 9 March 1951.

[28] (1866) LR 1 P&D 130.

[29] At 133; see also R Probert, '*Hyde v Hyde*: defining or defending marriage' [2007] CFLQ 322.

[30] Marriage Act 1949, s 46B(4).

[31] Marriage (Approved Premises) Regulations 1995 (SI 1995/510), Sch 2, para 11 (in force from 1 April 1995).

[32] The Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005/3168), Sch 2, para 11. For discussion see S Pywell and R Probert, 'Neither sacred nor profane: the permitted content of civil marriage ceremonies' [2018] CFLQ 415.

[33] In the Nuffield project, just one interviewee commented on how the prescribed words were 'very much aping' the Anglican *Book of Common Prayer*: see Probert, Akhtar and Blake, above n 9, 31.

aware may feel that they have little choice other than opting for the most pared down version of the prescribed words.[34]

Nonetheless, there is little evidence of any demand for a more explicitly secular ceremony. By contrast, there is evidence that many couples would welcome the possibility of including more religious content in weddings in register offices or on approved premises.

In 2005 the General Register Office carried out a public consultation to review the restrictions on what could be included in a 'civil' ceremony.[35] As it subsequently reported, it found widespread support for ceremonies being able to include readings, songs, or music containing 'an incidental reference to a god or deity in an essentially non-religious context'.[36] This was the reason behind the reversal of the requirement that any additional content in weddings on approved premises had to be 'secular in nature'.

There was a similar response to the recent consultation carried out by the Law Commission as part of its review of weddings law. Its provisional proposal that it should be possible to include religious content in civil wedding ceremonies – 'provided that the ceremony remains identifiable as a civil ceremony rather than a religious service'[37] – was warmly welcomed by the majority of consultees, with 74 per cent agreeing with this proposal, and only 15 per cent disagreeing.[38] The bulk of the responses agreeing with the proposal were from members of the public, but the majority of registration officers who responded also supported it, indicating that both those providing these ceremonies and those choosing them would welcome greater flexibility.[39]

Most of those interviewed as part of the Nuffield project examining non-legally binding marriage ceremonies also expressed support for this particular proposal.[40] Some would have welcomed the opportunity to include some religious content in their civil wedding. One, a Christian who had married an atheist, commented that she would have 'liked to have had a reading or a hymn or something done on the day, just to bring in a little bit of me into the ceremony'.[41] Another, whose husband had been brought up a Catholic, noted that although he shared her lack of faith he loved hymns and would have liked to have been able to include them in the ceremony. As she put it, '[i]t's not that we're against religion, so it seemed a shame to have to leave all of that at the door'.[42]

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[34] Alternative versions of the prescribed words were introduced by the Marriage Ceremony (Prescribed Words) Act 1996: Marriage Act 1949, s 44(3A). While the language was simplified and modernised, the structure and echoes of the *Book of Common Prayer* remained.

[35] GRO, *Content of Civil Marriage Ceremonies: A consultation document on proposed changes to regulation and guidance to registration officers* (June 2005).

[36] GRO, *Content of Civil Marriage Ceremonies: A consultation document on proposed changes to regulation and guidance to registration officers: Outcome of Consultation* (November 2005), para 21.

[37] Law Commission, *Getting Married*: *A Consultation Paper on Weddings Law*, above n 9, [6.109].

[38] Law Commission, *Getting Married: A Consultation Paper on Weddings Law: Statistical Analysis of Responses*, available at https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2022/07/Weddings-Statistical-analysis-of-responses.pdf, 60.

[39] See also Pywell and Probert, above n 32, who also found support among registration officers for a more liberal approach.

[40] See R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission* (December 2021), paras 4.78-91. A few, however, were opposed to including religious content on principle, whether from a religious perspective or a secularist one.

[41] Ibid, para 4.86.

[42] Ibid.

For some interviewees, the restrictions on what could be included in a civil wedding had led them to have a separate non-legally binding ceremony. This brings us back to the statistics on the number of civil weddings and why care needs to be taken in interpreting them.

Interpreting the statistics

It should be acknowledged that fundamental changes in religious belief, affiliation, and practice have taken place over the past century.[43] As a result, an increasing number of individuals do not hold religious beliefs and would regard it as hypocritical to marry in a religious ceremony.[44] At the same time, it is important not to overstate the decline of religious belief in England and Wales. Perhaps inevitably, much of the focus of recent commentary has been on the decline in the number and percentage of the population who describe themselves as Christian. According to the 2021 Census, just 46.2 per cent of the population (around 27.5 million people) described themselves as Christian.[45] This was a fall from 59 per cent in 2011,[46] with 2021 being the first census in which less than half of the population formally identified themselves as Christian. There was a corresponding increase in those describing themselves as having no religion (37.2 per cent, equating to 22.2 million people, up from 25 per cent in 2011). However, the decline in Christianity is only part of the story, since there has also been an increase in the percentage of the population describing themselves as belonging to a different religion: there were 3.9 million Muslims (6.5 per cent, as compared to 5 per cent, or 2.7 million, in 2011), 1 million Hindus (1.7 per cent, up from 817,000 in 2011); 524,000 Sikhs (up from 423,000 in 2011); 273,000 Buddhists (up from 247,000), and 271,000 Jews (up from 265,000). A further 348,000 identified themselves as having another religion, with around 95,000 describing themselves as following a form of paganism (Paganism, Wicca, or Shamanism).[47] Overall, then, the majority of the population do describe themselves as having a religious belief.[48]

Of course, such data does not give a straightforward indication of how many couples might be expected to want to marry in accordance with their beliefs. For example, the age profile of those who hold a particular set of beliefs does not necessarily align with that of those getting married. Analysis of the 2021 census data by the Office for National Statistics found that those who described themselves as Christian had the highest median age of any religious group, at 51 years, while Muslims had the youngest median age, at 27.[49] For Hindus and Sikhs, the median age was 37, and for Buddhists it was 43. This compares to a median age of 40 for the population as a whole,[50] and a median age of marriage of 34.3 years for men marrying women and 32.3 years for women marrying men.

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[43] C Field, *Periodizing Secularization: Religious Allegiance and Attendance in Britain, 1880-1945* (OUP, 2019).
[44] See eg J Walliss, '"Loved the Wedding, Invite Me to the Marriage": The Secularisation of Weddings in Contemporary Britain' (2002) 7(4) *Sociological Research Online*.
[45] ONS, 'Religion, England and Wales: Census 2021' (29 November 2022).
[46] ONS, '2011 Census analysis: Ethnicity and religion of the non-UK born population in England and Wales' (2015), table 2.
[47] ONS, above n 45.
[48] Cf the recent British Social Attitudes Survey that asked respondents whether they regarded themselves as 'belonging to any particular religion', to which only 48 per cent replied that they did: D Voas and S Bruce, 'Religion: Identity, behaviour and belief over two decades' in J Curtice, E Clery, J Perry, M Phillips, and N Rahim (eds), *British Social Attitudes: The 36th Report* (Sage, 2019). The difference in the figures reflects how differently phrased questions will yield different answers.
[49] ONS, 'Religion by age and sex, England and Wales: Census 2021' (30 January 2023).
[50] Ibid.

Those numbers suggest that the figures for Muslim, Hindu and Sikh weddings should align more closely with the figures for the percentage of the population describing themselves as Muslim, Hindu or Sikh than those for Christians and Christian weddings. However, this is clearly not the case. In 2019 just 2,143 legally recognised opposite-sex weddings were conducted according to non-Christian rites, accounting for only 5.4 per cent of religious weddings and around 1 per cent of all weddings. There is, therefore, a significant disparity between the percentage of individuals who describe themselves as holding these beliefs and the percentage of weddings being celebrated according to those beliefs.

This aligns with the findings from the Nuffield study that many Muslims, Hindus and Sikhs, along with Buddhists and Pagan couples, have two ceremonies: a civil one that is recognised by the law and a religious one. That in itself is not an argument against universal civil marriage: indeed, if separating the two ceremonies was the preference of the parties then their experiences could offer a model of how universal civil marriage would work for people of faith. For the majority of interviewees, however, the choice to have a separate religious ceremony reflected the constraints of the existing law rather than their ideological preference.[51] Those couples who had an additional – and, inescapably, non-legally binding – Humanist ceremony also expressed a clear preference for a reformed marriage law that would enable them to have a legally recognised Humanist ceremony. One Humanist celebrant also spoke of how it had been 'magical' to be able to conduct such a legally recognised ceremony in Scotland.[52]

There are also other practical reasons that should be taken into account in interpreting the choice of a register office or approved premises as a wedding venue. For much of the nineteenth century, and well into the twentieth, couples married in a register office for speed, secrecy, shame, or cost,[53] or because other options were not open to them.[54] The decision of the Church of England in 1937 that its clergy could and should refuse to conduct the remarriage of any divorced person – rather than, as previously, just the spouse who had been divorced on the basis of their adultery – also led many to marry in a civil ceremony who would otherwise have married in church. That also helps to explain why the number of civil weddings briefly overtook those celebrated with religious rites in the 1970s, with many of the former being second marriages for those who had finally been able to obtain a divorce from their first spouse following the Divorce Reform Act 1969.

That brief surge in popularity apart, when a register office was the only option for getting married in a civil ceremony, most weddings took place according to religious rites. The contemporary popularity of civil weddings only dates back to the mid-1990s and specifically to the introduction in 1995 of the option of marrying on 'approved premises'.[55] It is understandable why this option should have been attractive. Approved premises were almost invariably more attractive venues than register offices. Many, such as hotels, were also able to offer the convenience of holding the ceremony, reception, and accommodation under one roof. The 1994 Act had also given couples the choice of marrying in any register office or approved

[51] Key constraints were the absence of registered places of worship for their particular faith or denomination and the disruption occasioned by the inclusion of the Anglican-inflected prescribed words in the religious ceremony, which was perceived as a separate 'civil' ceremony: see further Probert, Akhtar and Blake, above n 9.
[52] Probert, Akhtar and Blake, above n 9, 103.
[53] R Probert, 'Avoiding attention? Assessing the reasons for register office weddings in Victorian England and Wales' (2023) 26 *Family and Community History* 49.
[54] R Probert, 'Interpreting choices: what can we infer from where our ancestors married? (2021) 5 *Journal of Genealogy and Family History* 75.
[55] J Haskey, 'Marriages in "Approved Premises" in England and Wales: the impact of the 1994 Marriage Act' (1998) 93 *Population Trends* 38.

premises in England and Wales, rather than limiting them to those in their registration district. For anyone who had moved away from their original place of residence but wanted to return to it for their wedding in order to make it easier for friends or family to attend, this provided an additional reason to opt for such a venue.

In short, the fact that a couple are married in a register office or on approved premises tells us nothing about whether they are choosing a 'civil' marriage. Were other choices equally available, the statistics might look very different.

However, a state might have good reasons, other than the wishes of those getting married, for adopting universal civil marriage. The next section turns to consider which other countries have already done so, and whether England and Wales should follow their lead.

A Comparative Perspective on Universal Civil Marriage

A common option?

Rather fewer countries have adopted universal civil marriage than some accounts might imply. Jonathan Herring, for example, describes England as 'unusual' in still recognising at least some types of religious marriages as legal marriages,[56] while Paola Ronfani similarly identifies England (along with the Scandinavian countries) as one of the 'few areas' in Europe where it is 'possible to choose between marriage conducted either by a religious or a civil authority'.[57] Yet as this section will show, England and Wales are far from unusual in recognising religious routes into marriage,[58] whether viewed from a local, European, or global perspective.

Within the UK, both Scotland[59] and Northern Ireland[60] make provision for couples to enter into a legally recognised marriage by means of religious rites. So too do other neighbouring jurisdictions such as Ireland,[61] Jersey,[62] and Guernsey.[63]

Across Europe more broadly, religious routes into marriage are also recognised in the majority of countries that are members of the European Union: Croatia,[64] Cyprus,[65] the Czech

[56] Herring, above n 5, 79.
[57] Ronfani, above n 5, 115.
[58] There is of course an important difference between recognising religious routes into marriage and recognising religious marriages. In some jurisdictions, the validity of a marriage will be determined by religious laws, but in many others recognition is conditional on certain formalities being observed or limited to specific religious groups. The conditions under which recognition is afforded to religious ceremonies lie outside the scope of the current article, but the analysis that follows is premised on the assumption that the state regulation of these conditions does not by itself make a marriage 'civil'.
[59] Marriage and Civil Partnership (Scotland) Act 2014; for commentary see J Mair, 'Belief in Marriage' (2015) 5 *International Journal of the Jurisprudence of the Family* 63; M McLean, 'Beyond belief: the law and practice of marriage formation in contemporary Scotland' [2018] CFLQ 237.
[60] Marriage (Northern Ireland) Order 2003, SI 2003 No 413; for commentary see F Cranmer and S Thompson, 'Marriage and Civil Partnership in Northern Ireland: A Changing Legal Landscape' [2018] CFLQ 301.
[61] Civil Registration Act 2004; for commentary see K O'Sullivan and S Leahy, 'Changing Conceptions of Marriage in Ireland: Law and Practice' [2018] CFLQ 279.
[62] Marriage and Civil Status (Jersey) Order 2018.
[63] The Marriage (Bailiwick of Guernsey) Law 2020.
[64] V Tomlijenovic, 'The Canonic Marriage – Revision of Croatian Family Law and Its Conflict of Laws Implications' (2003) *International Survey of Family Law* 107.
[65] E Nicolaou, 'Recent Developments in Family Law in Cyprus' (1996) *International Survey of Family Law* 121.

Republic,[66] Denmark,[67] Estonia,[68] Finland,[69] Italy, Greece,[70] Latvia,[71] Lithuania,[72] Malta,[73] Poland,[74] Portugal,[75] Slovakia,[76] Spain,[77] and Sweden.[78] Outside the EU, religious routes into marriage are also recognised in Norway.[79] Indeed, far from compulsory civil marriage being the norm across Europe, there are some states – Greece, Cyprus, and Malta – in which even having the *option* of a civil marriage is relatively recent.[80]

It is, however, understandable why different assessments of the popularity of universal civil marriage have been made in the past, given that the picture has not been a static one. The UK and the Nordic states *are* relatively unusual among European states in that they have always made provision for religious weddings.[81] Other states have introduced compulsory civil marriage at some point in the past but have since reverted to allowing religious weddings. This was the case in Italy, Spain, and Portugal in the late nineteenth and early twentieth centuries.[82] Similarly, in many eastern European countries, weddings were celebrated with religious ceremonies until the mid-twentieth century, when Communist rule or influence led to them adopting universal civil marriage. Since the fall of the Soviet Union and the dismantling of the former Yugoslavia, a number have amended their laws to allow weddings to be celebrated with religious rites once more.[83]

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[66] Z Králíčková, 'New Family Law in the Czech Republic: Back to Traditions and Towards Modern Trends' (2014) *International Survey of Family Law* 71.
[67] KH Johansen and HH Pedersen, 'The Power over the Marriage Ritual: Positions in the Administrative Consultation Prior to the Implementation of Same-Sex Marriages in the Evangelical Lutheran Church in Denmark' (2015) 58 *Journal of Church and State* 731.
[68] See Tomlijenovic, above n 64, noting the treaty concluded between the Republic of Estonia and the Holy See in 1998-99, which provided that 'Marriages celebrated in the Catholic Church, upon registration and for which a certificate of marriage has been issued by the civil registry office, have civil effect'.
[69] S Mustasaari and M Al-Sharmani, 'Between "Official" and "Unofficial": Discourses and Practices of Muslim Marriage Conclusion in Finland' (2018) 7 *Oxford Journal of Law and Religion* 455.
[70] P Tsoukala, 'Marrying Family Law to the Nation' (2010) 58 *American Journal of Comparative Law* 873.
[71] J Vebers, 'Family Law in Latvia: From Establishment of the Independent State of Latvia in 1918 to Restoration of Independence in 1993' (1997) *International Survey of Family Law* 207.
[72] Š Keserauskas, 'Moving in the Same Direction: Presentation of Family Law Reforms in Lithuania' (2004) *International Survey of Family Law* 315.
[73] R Farrugia, 'The influence of the Roman Catholic Church in Maltese family law and policy' in J Mair and E Örücü (eds) *The Place of Religion in Family Law: A Comparative Search* (Intersentia, 2011).
[74] P Fiedorczyk and A Zemke-Gorecka, 'Polish Family Law: Socialist Roots, Astonishing Evolution' (2016) *International Survey of Family Law* 373.
[75] G de Oliveira and N de Salter Cid, 'Family Law in Portugal' (1996) *International Survey of Family Law* 345.
[76] Marriage and divorce (slovensko.sk).
[77] JI De Ussel, 'Family Ideology and Political Transition in Spain' (1991) 5 IJLPF 277.
[78] C Sörgjerd, *Reconstructing Marriage: The Legal Status of Relationships in a Changing Society* (Intersentia, 2012).
[79] J Aslan and P Hambro, 'New Developments and Expansion of Relationships Covered by Norwegian Law' (2009) *International Survey of Family Law* 375.
[80] See respectively Tsoukala, above n 70, Nicolaou, above n 65, and Farrugia, above n 73.
[81] While compulsory civil marriage has been considered as an option in the Nordic states at various times, lawmakers have chosen to prioritise freedom of choice: see D Bradley, 'The Antecedents of Finnish Family Laws: Legal Tradition, Political Culture and Social Institutions' (1998) 19 *Journal of Legal History* 93, 95; Sörgjerd, above n 78; A Bredal, 'Contesting the Boundaries between Civil and Religious Marriage: State and Mosque Discourse in Pluralistic Norway' (2018) 6 *Sociology of Islam* 297, 298.
[82] C Sancifiena-Asurmend, 'The Pattern of Marriages Under Spanish Law' (2014) 5 *International Journal of the Jurisprudence of the Family* 37.
[83] See eg P Eglite, 'Marriage and Families in Latvia' in M Robilia (ed), *Families in Eastern Europe (Contemporary Perspectives in Family Research, Vol 5)* (Emerald Group Publishing 2004); Králíčková, above n 66; Fiedorczyk and Zemke-Gorecka, above n 74.

Globally, too, countries that have adopted universal civil marriage are in the minority. Weddings may be celebrated with religious rites in Australia[84] and New Zealand,[85] as well as in all US states and Canadian provinces.[86] While universal civil marriage remains the norm across Latin America, it is at odds with the Catholicism of many of its inhabitants, and in recent decades both Chile and Brazil have taken steps to allow a religious ceremony to have legal effect.[87] Universal civil marriage is also rare within the Middle East, although Israel is unusual in making no provision for any form of civil marriage at all.[88] Across Asia, while China adopted universal civil marriage after the Communist revolution of 1949,[89] most countries have adopted an 'explicitly pluralistic' approach to the regulation of marriage, within which religions play a key role.[90] The majority of African countries also recognise a range of different routes to legal marriage, although a handful, primarily those that were under the colonial rule of European states that themselves required universal civil marriage, have adopted it since gaining independence.[91]

A preferable option?

Of course, a comparative approach is rarely neutral. Even where it is not made explicit that the writer in question thinks that another jurisdiction's approach is preferable, this may be implicit in their analysis and may indeed have guided their choice of comparator in the first place. Providing a global overview avoids the risk of skewing the analysis towards a particular favoured jurisdiction. Yet at the same time, it is necessary to look beyond the numbers. The mere fact that the majority of countries worldwide do recognise religious routes into marriage does not necessarily mean that this is desirable. Consideration also needs to be given to whether England and Wales should decide to align themselves with those countries that require universal civil marriage.

An immediate objection might be that if England and Wales were to adopt universal civil marriage, then this would make them an anomaly among those jurisdictions with which their legal tradition is most closely aligned. Globally, no common law jurisdiction has universal civil marriage, and very few of the 56 member nations of the Commonwealth have adopted it.[92]

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[84] Marriage Act 1961.
[85] Marriage Act 1955.
[86] On religious marriage in the US and Canada see JL Grossman and LM Friedman, *Inside the Castle: Law and the Family in 20th Century America* (Princeton University Press 2011); S Peterson and I McLean, *Legally Married: Love and Law in the UK and the US* (Edinburgh University Press 2013); RD Elliott, 'The Canadian Earthquake: Same-Sex Marriage in Canada' (2003-4) 38 *New England Law Review* 591.
[87] GG Cantero, 'Marriage and Divorce in Chile' (2005) *International Survey of Family Law* 155; CA Pereira, 'Law and Religion in Latin America: General Aspects of Law and Current Concerns' (2009) 162 *Law & Justice* 62.
[88] See BG Scharffs and S Disparte, 'Comparative Models For Transitioning From Religious To Civil Marriage Systems' (2010) 12 *Journal of Law & Family Studies* 409.
[89] See eg Z Fan and L Xiaobei, 'Marriage and Family Law in China in the Civil Code Era' (2021) *International Survey of Family Law* 115.
[90] W Menski, 'Ancient and Modern Boundary Crossings Between Personal Laws and Civil Law in Composite India' in JA Nichols (ed) *Marriage and Divorce in a Multicultural Context* (Cambridge University Press, 2012).
[91] For an overview of countries that have adopted universal civil marriage globally, see R Probert, 'Universal civil marriage: a blueprint for the future or an idea whose time has passed?' in R Probert and S Thompson (eds) *Research Handbook on Marriage and Cohabitation* (Edward Elgar, forthcoming 2024).
[92] The telling exceptions are Rwanda and Cameroon, which were both previously under French colonial rule, and the Seychelles, which was a single-party socialist state between 1979 and 1991.

Even so, there might be good reason to take the lead in making a change. Universal civil marriage has long been asserted as the more modern, progressive, and liberal option.[93] Writing in 1953, the comparativist Max Rheinstein analysed the ideologies underpinning the shift to universal civil marriage, tracing its roots and commenting on how, following the French revolution, 'the ideas of liberalism and enlightenment spread over large parts of the Western world, where they found expression in those secular marriage laws which the governments came to substitute for the old system of regulation by the church or churches'.[94] In tracing the impact of different cultural models on the development of family law across the globe, Arland Thornton has identified the tendency to see northwest Europe as 'providing a goal or model for modernization'.[95] Adopting universal civil marriage has been used as an easy and obvious way for a state to signal its modernity ever since the nineteenth century. Yet even setting aside whether modernization is something to strive for, or why northwest Europe should be seen as a model, it is worth reflecting on the oddity of associating modernity with the choice made by iconoclastic French revolutionaries in the eighteenth century, and on the range of models of regulating marriage that can be found even in northwest Europe.

Moreover, the perceived liberalism of universal civil marriage should be understood against the context of the time when it was first introduced. In the late eighteenth and nineteenth centuries, it was invariably introduced against a backdrop of universal *religious* marriage – or, more precisely, marriage being under the control of religious authorities that recognised only one religious route into marriage. From that perspective, universal civil marriage could be seen as a means of removing the privileges of certain religious groups and acknowledging religious diversity, if only by ignoring religion altogether.[96] As Jane Mair has noted, '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'.[97]

Legislating for universal civil marriage also had the advantage of speed and simplicity. Here it is worth noting how often the introduction of universal civil marriage was the result of a revolution.[98] In such a context it is understandable that new law-makers would wish to act swiftly and would not have the time or inclination to engage with different religious groups and devise laws to accommodate their practices. Legislating for universal civil marriage also had the added advantage of immediately curtailing the role and influence of religious authorities – often a key concern for revolutionary governments from the late eighteenth century onward.[99] Here it was not so much a matter of religion being confined to the private sphere but rather of revolutionary governments seeking to eliminate its influence entirely. As Masha Antokolskaia has shown, when the Bolsheviks seized power in Russia in 1917, 'they

[93] See eg J Moses (ed), *Marriage, Law and Modernity: Global Histories* (Bloomsbury Academic, 2017).
[94] M Rheinstein, 'Trends in Marriage and Divorce Law of Western Countries' (1953) 18 *Law and Contemporary Problems* 3, 13.
[95] A Thornton, 'International Family Change and Continuity: The Past and Future from the Developmental Idealism Perspective' in M Garrison and ES Scott (eds) *Marriage at the Crossroads: Law, Policy, and the Brave New World of Twenty-First-Century Families* (Cambridge: Cambridge University Press, 2012), 30.
[96] See eg D Novak, 'Jewish Marriage and Civil Law: A Two-Way Street' (2000) 68 *George Washington Law Review* 1059 on how Jews in France navigated the demands of faith and law before and after the introduction of universal civil marriage.
[97] Mair, above n 59.
[98] See further R Probert, 'State and Law: Four Models for Regulating Marriage' in Paul Puschmann (ed), *A Cultural History of Marriage in the Age of Empires* (Bloomsbury, 2020).
[99] Ibid.

declared "militant atheism" as one of the pillars of their ideology', with the main purpose of universal civil marriage accordingly being 'to roll back the influence of religion'.[100]

Indeed, it was somewhat ironic that Rheinstein should have highlighted the 'liberal' credentials of universal civil marriage at a time when it had been forcefully imposed on a large section of the world's population – in China after its revolution in 1949,[101] and across those parts of Eastern Europe and Central Asia that were either absorbed into the Soviet Union or came under its influence in the wake of the Second World War.[102]

So it is clear that universal civil marriage is not the model chosen by the majority of jurisdictions worldwide, and that its history cannot simply be presented as one of liberalism and enlightenment. Nowhere, it should be noted, was universal civil marriage introduced because of the popularity of *optional* civil marriage. Those countries that have introduced civil marriage as an option have tended to keep it as that, rather than making it the only route to a legally recognised marriage.[103] And some of the jurisdictions that have now abandoned universal civil marriage have done so precisely because it does not reflect the preferences of the population.[104] As Carmen Domínguez Hidalgo has noted in relation to reforms in Chile, this is an example of the state finally 'acknowledging that, for many people, religious marriage is the most important'.[105] In others, the requirement of a civil ceremony remains, but is strikingly at odds with the religiosity of the people: in Romania, for example, almost 82 per cent of the population describe themselves as belonging to the Eastern Orthodox church, and a further 11 per cent describe themselves as either Catholic or Protestant.[106]

And that raises a further important question: just how universal is universal civil marriage?

A universal option?

The term universal civil marriage conveys an important aspiration as to the universality of a single state-created mode of marrying. Whether it achieves that aspiration can be assessed by the extent to which non-legally binding religious marriage ceremonies continue to take place without any accompanying civil ceremony. The evidence is that unrecognised Muslim marriages still take place in both France and Germany.[107] In mainland France, for example, research in 2008 found that among interviewees aged between 18 and 50 years old, 8 per cent of married Muslims (ie, those who told the interviewer that they were both married and

[100] M Antokolskaia, '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* (Intersentia, 2011), 105.
[101] J Stacey, *Patriarchy and Socialist Revolution in China* (University of California Press 1983); Z Fan and L Xiaobei, 'Marriage and Family Law in China in the Civil Code Era' (2021) *International Survey of Family Law* 115.
[102] Probert, above n 98.
[103] See eg Sweden, where civil marriage was initially introduced as a means for those of different faiths to marry: Sörgjerd, above n 78.
[104] Cantero, above n 87.
[105] C Dominguez Hidalgo, 'Civil Marriage and Religious Marriage in Chile: Their Relationship and Distance' (2015) 6 *International Journal of the Jurisprudence of the Family* 127, 129.
[106] AC Liefbroer and AJ Rijken, 'The Association Between Christianity and Marriage Attitudes in Europe: Does Religious Context Matter?' (2019) 35 *European Sociological Review* 363.
[107] E Rude-Antoine, 'Muslim Maghrebian Marriage in France: A Problem for Legal Pluralism' (1991) 5 IJLPF 93; M Jaraba, '"Khul" in action: How do local Muslim Communities in Germany Dissolve an Islamic Religious-only Marriage' (2020) 40 *Journal of Muslim Minority Affairs* 26.

Muslim) had had a religious marriage only, as compared to 63 percent who had had both a civil and a religious marriage, and 29 percent who had only a civil marriage.[108]

Elsewhere the prevalence of religious-only marriages is still greater. Juliette Cleuziou's research into marriage practices in Tajikistan, for example, has identified a decline in civil marriages, with many couples opting for religious-only marriages. As she notes, although the state 'has been trying to regulate and "nationalize" marriage … it remains quite absent from what people consider "real" or effective marriage'.[109] More dramatically, it has been estimated that at least half of the population of Gabon are living in a legally unrecognised customary marriage.[110] Even making it a criminal offence to go through a religious ceremony of marriage without having had a prior civil ceremony does not prevent such ceremonies from taking place.[111]

Moreover, 'universality' is inevitably limited by the rules laid down by each country as to who is permitted to marry whom. And in recent decades the supposed inclusivity of universal civil marriage has been called into question by the advent of same-sex marriage. It is clear that universal civil marriage is not necessarily equal marriage in the sense of being equally available to opposite- and same-sex couples. Most countries that have universal civil marriage do not permit same-sex couples to marry.[112]

The experience of such countries also raises questions about the potential for universal civil marriage to provide a solution to various problems within England and Wales, to which the next section will turn.

The Limitations of Universal Civil Marriage as a Solution

As noted in the introduction, universal civil marriage has been put forward as a solution to three distinct problems. But in each case it would only solve the legal problem, not the underlying issue.

Universal civil marriage would certainly remove any legal uncertainty as to what is required for a couple to be regarded as legally married.[113] As such it might seem to be one way of ensuring that couples do not inadvertently enter into a religious-only marriage. But it is not the complexity of the current requirements that results in ceremonies being classified as non-qualifying; after all, as long as a couple have complied with some of the requirements of the Marriage Act 1949, any accidental non-compliance would not affect the validity of their

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[108] P Simon and V Tiberj, 'Sécularisation ou regain religieux: la religiosité des immigrés et de leurs descendants' in C Beauchemin, C Hamel and P Simon (eds), *Trajectoires et origines. Enquête sur la diversité des populations en France* (INED éditions, 2016) 578. I am grateful to Jean-François Mignot for this reference and the suggested text.

[109] J Cleuziou, '"What Does Marriage Stand for?" Getting Married and Divorced in Contemporary Tajikistan' (2020) 100 *Oriente Moderno* 248, 251, 260.

[110] https://data.unicef.org/crvs/gabon/.

[111] A Moors, M de Koning and V Vroon-Najem, 'Secular Rule and Islamic Ethics: Engaging with Muslim-Only Marriages in the Netherlands' (2018) 6 *Sociology of Islam* 274.

[112] Only 13 of the 60 countries that have universal civil marriage have introduced same-sex marriage, with Russia and China being key examples of states that have not.

[113] For discussion of the current uncertainty as to the dividing line between a marriage that is valid or void or a non-qualifying ceremony, see R Probert, 'Determining the boundaries between valid, void and "non" marriages: past, present and future?' in R Akhtar, P Nash and R Probert (eds), *Cohabitation and Religious Marriage: Status, Similarities and Solutions* (Bristol University Press, 2020).

marriage. In general, couples will only inadvertently enter into a religious-only marriage when they do not realise that anything more than a religious ceremony is needed. So any change to universal civil marriage would require a concerted information campaign. But research into the persistent myth that couples living together have a 'common law marriage' shows the limits of such campaigns in changing mistaken beliefs.[114]

Moreover, even where individuals understand what is necessary for a legal marriage, they do not necessarily comply. There is a growing body of scholarship highlighting the many and varied reasons why couples might have a religious-only marriage.[115] For some couples, it will be a conscious choice, agreed on by both parties. Within other relationships, however, there may be power imbalances that enable one party to impose their preference for a non-legally binding ceremony on the other. Universal civil marriage would do nothing to prevent this. Indeed, it has the potential to exacerbate the problem, since it removes even the possibility of a couple having a ceremony that is both in accordance with their beliefs and legally recognised.

The idea that universal civil marriage could be used as a means to tackle discrimination similarly reflects a legalistic conception of the problem. Mary Welstead, for example, has proposed universal civil marriage as the solution to the discrimination currently faced by Humanist couples, who do not have the option of marrying according to their beliefs under the current law.[116] It is true that removing the option for *anyone* to marry according to their beliefs would solve the issue of discrimination. But it is far from clear that this is what Humanist couples themselves want.[117]

The same point could be made about universal civil marriage as a solution to the unequal treatment of same-sex couples.[118] Here, however, the issues are more complex than they are for Humanist couples. The current discrimination against Humanist couples could be resolved by allowing non-religious belief organisations to conduct legally binding weddings. For same-sex couples, by contrast, the issue is not that a religious marriage is not possible. Under the Marriage (Same Sex Couples) Act 2013, only the Church of England and the Church in Wales were precluded from conducting same-sex weddings altogether. Other religious groups were given the option to do so via an opt-in procedure. But when the position was reviewed by Paul Johnson, Robert Vanderbeck, and Silvia Falcetta in 2017, they found that only a tiny number of places of worship were registered for weddings.[119] Johnson and Vanderbeck were thus

[114] For discussion of the persistence of the myth, see A Barlow, 'Modern Marriage Myths: the Dichotomy Between Expectations of Legal Rationality and Lived Law' in Akhtar et al, above n 113.
[115] RC Akhtar, 'Unregistered Muslim Marriages: An Emerging Culture of Celebrating Rites and Compromising Rights', in J Miles, P Mody and R Probert (eds) *Marriage Rites and Rights* (Hart, 2015); RC Akhtar, 'Modern Traditions in Muslim Marriage Practices, Exploring English Narratives' (2018) 7 *Oxford Journal of Law and Religion* 427; R Probert and S Saleem, 'The legal treatment of Islamic marriage ceremonies' (2018) 7 *Oxford Journal of Law and Religion* 376; I Uddin, 'Nikah-only marriages: Causes, motivations, and their impact on dispute resolution and Islamic divorce proceedings in England and Wales' (2018) 7 *Oxford Journal of Law and Religion* 401; R Parveen, 'Religious-only marriages in the UK; Legal positionings and Muslim women's experiences' (2018) 6 *Sociology of Islam* 316.
[116] Welstead, above n 7.
[117] See eg Probert, Akhtar and Blake, above n 9.
[118] See eg S Falcetta, P Johnson and RM Vanderbeck, 'The Experience of Religious Same-Sex Marriage in England and Wales: Understanding the Opportunities and Limits Created by the Marriage (Same Sex Couples) Act 2013' (2021) IJLPF doi: 10.1093/lawfam/ebab003, whose interviewees spoke of the importance they attached to being able to marry in a place of worship.
[119] P Johnson, RM Vanderbeck, and S Falcetta, *Religious marriage of same-sex couples: A report on places of worship in England and Wales registered for the solemnization of same-sex marriage* (University of York and University of Leeds, 2017).

justified in claiming that same-sex couples were as a result 'almost completely denied access to a mainstream social and cultural practice'.[120] In their view, short of abolishing marriage as a legal institution altogether, the only way to achieve equality would be either to compel those religious groups that solemnize opposite-sex weddings also to solemnise same-sex weddings or to end the power of religious groups to solemnise marriages altogether – that is, to introduce universal civil marriage.

The charge that same-sex couples are effectively denied the option of having a religious wedding provides perhaps the strongest argument in favour of universal civil marriage. It therefore requires careful consideration. When we re-examine the position some six years on from the original research by Johnson et al, the statistics have changed significantly. As of September 2023, 1,018 places of worship were registered for same-sex weddings.[121] Moreover, while that is only a small percentage of the total number of registered places of worship, analysis of the nature and distribution of these places of worship suggests that most same-sex couples are now able to access a place of worship where they can marry. To show this, it is necessary to look beyond the overall number or percentage of places of worship registered for same-sex weddings and consider how 'access' to the option of a religious wedding is affected by issues of religious allegiance, legal-geographical availability,[122] and practical accessibility.

In order to consider how access is affected by religious allegiance, the first step is to establish which denominations have registered their places of worship for same-sex weddings. Table 1 provides an overview of the main denominations that have registered at least some of their places of worship for same-sex weddings.[123] As it shows, the vast majority of places of worship registered for weddings belong to Christian denominations,[124] with most being Methodist.[125]

Table 1: Denominations and places of worship registered for same-sex weddings

Denomination	**No of places of worship registered for same-sex weddings**
Methodist	675
United Reformed Church	133
Unitarians	95
Spiritualists	63
Baptists	23
Congregationalists/Independent	17

[120] Johnson and Vanderbeck, above n 8.
[121] Places of worship registered for marriage - GOV.UK (www.gov.uk), last updated 14 September 2023.
[122] This term reflects the way in which access is primarily determined by the parties district of residence, since those seeking to marry outside that district face further hurdles, discussed further below.
[123] Since the focus here is on allegiance, the data is presented by denomination rather than by place of worship. This means that any place of worship that is shared by two different denominations that have opted in is counted for each separately.
[124] A number of the 28 classified in Table 1 as 'Other Christian' were ones that did not provide a more precise description of their denomination (eg simply describing themselves as 'Christian', 'Protestant Dissenters', 'Christian Evangelicals' or 'Christians not otherwise designated'). There were also a number of denominations that had only a few places of worship registered for same-sex weddings such as the Community of Christ (3). The remainder were primarily foreign Protestant churches (Danish and Swedish Lutherans, Swiss Protestants, and the Reformed Church of the Netherlands). The three classified as 'Other, undesignated', had all opted to record that they objected to being designated by any distinctive religious appellation.
[125] This is a relatively recent development: it was only in June 2021 that the Methodist Conference resolved that same-sex couples could be married on Methodist premises by Methodist ministers (on which see https://www.methodist.org.uk/media/23066/history-of-pilgrimage-of-faith.pptx).

Other Christian	28
Non-Christian	4
Other, undesignated	3

In addition, the Society of Friends has also opted in to conduct same-sex weddings,[126] as have the relevant governing bodies of Liberal and Reform Judaism.[127] Their places of worship do not appear on the Registrar-General's list, since Quaker and Jewish weddings are subject to a different set of regulations and their buildings therefore do not need to be registered.

For the couple themselves, the ideal position would be one where their own place of worship was registered for same-sex weddings, or at least one belonging to a denomination to which they felt some allegiance. While this has not been the experience of most same-sex couples to date,[128] it may well now be changing with the change of policy by the Methodist Church, the fourth largest Christian church in Britain.[129]

In assessing how religious allegiance may affect a couple's access to a religious same-sex wedding, another question that needs to be asked is whether one or both of the parties have to be members of that particular denomination or even specific place of worship in order to marry there. The main Christian denominations that offer same-sex weddings do not require those whom they marry to be members of their church, although the extent to which they are open to non-members varies. The Unitarians, for example, proudly proclaim that they 'welcome and marry all cultures and religious faiths'.[130] The website of the Methodist Church more tentatively notes that 'people wishing to marry in a Methodist church do not need to be church members', although it adds that ministers will ask the couple why they wish to be married in a church and that most 'will look for a genuine desire on the part of a couple to take their marriage seriously along the lines set out in the service'.[131] In short, denominational allegiance is not a key consideration for the majority of Christian places of worship that offer same-sex weddings.

By contrast, weddings conducted according to Jewish usages are limited by statute to couples where both parties are Jewish.[132] However, there would be nothing to prevent a Jewish group from registering its synagogue for weddings; if it did so, it would be subject to the same rules that apply to any other registered place of worship.[133] The Society of Friends similarly does not require those marrying according to its usages to be members, but does nonetheless emphasise that 'Quaker marriage is not an alternative form of marriage available to the general public, but is for members and those who, whilst not in formal membership, are in unity with

[126] For the history of the Society's support for same-sex marriage see F Cranmer, 'Quakers and the Campaign for Same-Sex Marriage' in R Sandberg (ed) *Religion and Legal Pluralism* (Routledge, 2016).
[127] Law Commission, *Getting Married: A Consultation Paper on Weddings Law*, above n 9, [9.18]
[128] See Falcetta et al, above n 118, noting that one common experience of their interviewees was that 'none of them had their marriage solemnized in a church that was associated with a religious tradition in which either member had been raised or involved with prior to adulthood'.
[129] Overview (methodist.org.uk)
[130] https://www.unitarian.org.uk/your-special-event/weddings/. This was also reflected in the study by Falcetta et al, above n 118, with almost all of the interviewees having married in a Unitarian ceremony.
[131] https://www.methodist.org.uk/our-faith/life-and-faith/ life-events/weddings/.
[132] See Marriage Act 1949, s 26, which, in setting out the types of weddings that may be conducted on the authority of a schedule issued by a superintendent registrar, refers to 'two persons professing the Jewish religion'.
[133] The option of registration has been used by a number of synagogues in the past where their particular strand of Judaism was not recognised as such by the body or bodies named in the legislation as responsible for nominating secretaries to register weddings: see Probert, above n 12.

its religious nature and witness',[134] and non-members must have the support in writing of two adult Friends, who cannot be relatives.[135]

However, when we turn to our second measure, that of legal-geographical availability, those restrictions are offset by the lack of any legal constraints on where Jewish or Quaker ceremonies can take place. Couples getting married according to the usages of these groups are not limited to doing so in their district of residence. For those seeking to marry in a registered place of worship, by contrast, this is a key constraint. Couples are normally limited to marrying in the registration district in which at least one of them has been resident for seven days prior to giving notice.[136] This means that careful consideration needs to be given to the issue of legal availability, assessed by reference to the number of registration districts that have at least one place of worship registered for same-sex weddings.

In this respect, the recent trend towards the amalgamation of registration districts into larger entities is beneficial in increasing the likelihood that there will be *some* place of worship within the district in which a same-sex couple can marry, even if they may have to travel some distance in order to do so. Across England and Wales, only 28 of the 175 registration districts have no place of worship registered for same-sex weddings.[137] When combined with the fact that the main denominations offering same-sex weddings do not require those whom they marry to be members, the conclusion is that most Christian same-sex couples in England and Wales will now have access to a Christian place of worship that is registered for same-sex weddings in their own registration district. Moreover, most will have a choice: 130 registration districts have more than one place of worship registered for same-sex weddings (Appendix 2), and in 107 of these at least of those so registered are from different denominations.[138]

When we turn to practical accessibility, the large size of many registration districts becomes something of a disadvantage. There are considerable disparities between registration districts in the provision of places of worship offering same-sex weddings. But the majority of the larger registration districts – for example those that are coterminous with counties – do now have multiple places of worship registered for same-sex weddings. Lancashire heads the list with 38, followed by North Yorkshire with 31 and Kent with 26 (Appendix 1).

Conversely, a number of the registration districts that still lack any place of worship registered for same-sex weddings are geographically small. Over a third – Barking and Dagenham, Bexley, Brent, Hammersmith and Fulham, Haringey, Harrow, Havering, Hounslow, Southwark, and Tower Hamlets – are located in Greater London. This makes access to a place of worship in another district a realistic possibility. Under the Marriage Act 1949, a schedule can be issued to authorise a wedding outside the parties' district(s) of residence if the intended location is the usual place of worship of one or both of the parties.[139] So, for example, a same-sex couple living in Haringey or Harrow could be married in a place of worship in Barnet if

[134] *Quaker Faith and Practice*, para 16.17, available at https://qfp.quaker.org.uk/chapter/16/.
[135] Ibid, para 16.19(c).
[136] Marriage Act 1949, s 34.
[137] See Appendix 1.
[138] In 29 registration districts, the only places of worship registered for same-sex weddings were Methodist; in the remaining 11 they were primarily Unitarian (6), followed by Spiritualist (2), and one each for URC, Unitarian, and 'other Christian'.
[139] Marriage Act 1949, s 35(2).

one of its three Methodist churches was their usual place of worship. While such a workaround is hardly ideal, it is at least an option.[140]

That said, the position is very different for same-sex couples who belong to other faiths. With the exception of two Buddhist places of worship, the Pagan Temple of the Goddess People of Avalon, and the spiritual Church of the White Eagle Lodge,[141] no non-Judeo-Christian places of worship offer same-sex weddings.[142]

Viewed purely in terms of legal availability, Pagan same-sex couples are in a better position than others. The Marriage Act 1949 includes an additional scenario in which a schedule can be issued to authorise a wedding in a different district – that is, if the couple wish to be married according to a 'specified form, rite or ceremony, being a form, rite or ceremony of a body or denomination of christians or other persons meeting for religious worship to which one of them professes to belong'[143] and 'there is not within the registration district in which one of them resides any registered building in which marriage is solemnized according to that form, rite or ceremony'.[144] In such cases a schedule can be issued authorising the celebration of the marriage in the nearest registration district in which there is a registered place of worship in which marriages can be solemnized according to that form, rite or ceremony.[145] This provision allows any Pagan couple in England and Wales to marry in the one Pagan place of worship, in Glastonbury, that has been registered for weddings.[146]

In summary, England and Wales is still a long way from achieving equal marriage for same-sex and opposite-sex couples, but there is room for some cautious optimism about the direction of travel. Given that hundreds of places of worship were registered for same-sex weddings in 2023 alone, moving to universal civil marriage would deprive same-sex couples of an option that they have only just acquired and that is hugely valued by those who have availed themselves of it.[147]

In any case, as the final section will show, the costs of introducing universal civil marriage have been underestimated by those who advocate it as a solution.

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[140] Another option would be for one of the parties to establish the requisite seven-days residence in a district where they are able to marry in a place of worship according to the rites of their choice. Again, this is far from ideal.

[141] Home | White Eagle Lodge (white-eagle.org.uk).

[142] This would mean that the alternative proposal put forward by Johnson and Vanderbeck (above n 8) – that of making the power to conduct weddings dependent on a willingness to conduct same-sex weddings – would deprive *all* Muslim, Hindu and Sikh couples of the option of marrying in any registered place of worship. In any case, in their subsequent research, their interviewees did not support compelling religious groups to conduct same-sex weddings.

[143] Marriage Act 1949, s 35(1)(a)

[144] Marriage Act 1949, s 35(1)(b).

[145] Marriage Act 1949, s 35(1)(c).

[146] The same argument could be used to allow same-sex couples from elsewhere in England and Wales to marry in one of the two Buddhist places of worship registered for same-sex weddings – or spiritual couples to marry at the Church of the White Eagle Lodge – but only if they offered a form of ceremony that was not available elsewhere. The test is whether there is a place of worship within the registration district in which marriage can be solemnised according to a particular form. It is not whether any given couple have access to a place of worship where they can marry in a particular form. See also Probert, Akhtar and Blake, n 9 above, on the practical obstacles that may lead couples to opt for separate legal and religious ceremonies instead.

[147] See Falcetta et al, above n 118.

The Costs of Universal Civil Marriage

Those advocating universal civil marriage generally envisage that all marriages would have to take place in a register office in order to be accorded legal recognition.[148] As Mary Welstead puts it, the parties would then be 'free from State interference to enjoy a follow-up ceremony in any form, and in any place, which they feel is appropriate to their beliefs, religious or otherwise'.[149]

It is likely that the popularity of 'civil' marriages as a category has led commentators to underestimate the massive degree of investment that would be required from the state if all weddings had to take place in a register office. At present, few civil weddings take place in register offices: the vast majority take place on approved premises. Moreover, there are very few register offices for weddings to take place in: most former register offices have been converted to approved premises, allowing local authorities to charge a higher fee.[150] Even if all of these were redesignated as register offices, issues of capacity would still arise, as well as the cost of providing additional registration officers to conduct an additional 40,000 or so ceremonies each year.[151]

Questions would also arise as to the cost of a register office ceremony. Its current low cost ensures that virtually everyone can afford to get married if they so wish, even if the ceremony that is offered is pared down to the bare minimum of the prescribed words in the presence of a superintendent registrar, registrar, and two witnesses. But that low cost is achieved only because it is provided at less than cost recovery.[152] It is unlikely that this could be maintained if *every* wedding were to be a register office wedding. As a result, the most likely outcome is that the cost would have to rise for everyone.

Nor should the costs to the parties of holding two ceremonies be underestimated. A number of the participants in the Nuffield study had had a separate register office wedding before having the ceremony of their choice. Very few had been able to keep this as a bare legal formality with no accompanying expenditure. In most cases, there was a different dress for the bride, and a meal with the select number of family and friends invited to the occasion.

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[148] See eg Welstead, above n 7, 1702, suggesting reform to the effect that 'all marriages, if they are to be legally recognised, should take place by way of a civil ceremony in a register office or, exceptionally, in a couple's home or in hospital or in prison'. The reference to weddings at home is presumably to deal with the contingency of death-bed weddings.

[149] Welstead, above n 7, 1702.

[150] See R Probert, S Pywell, R Akhtar, S Blake, T Barton and V Vora, 'Trying to get a piece of paper from City Hall? The availability, accessibility, and administration of the register office wedding' (2022) 44(2) *Journal of Social Welfare and Family Law* 226.

[151] Based on the 2019 figures for weddings in the Church of England or the Church in Wales, according to Jewish or Quaker usages, and in registered places of worship. Given that every wedding in a register office or on approved premises currently requires the presence of two registration officers (Marriage Act 1949 ss 45(1) and 46B(1)(b)), every additional civil marriage would require time to be allocated by usually two and at least one additional registration officer. At present registrars are not required to attend Anglican weddings or those conducted according to Jewish or Quaker usages but one may be required to be present at a wedding in a registered place of worship if no authorised person is present. On the reasons why not all registered places of worship have appointed their own authorised person see R Probert, R Akhtar, S Blake, V Vora and T Barton, 'The importance of being authorised: the genesis, limitations and legacy of the Marriage Act 1898' (2021) 10 *Oxford Journal of Law and Religion* 394-417.

[152] Law Commission, *Celebrating Marriage*, above n 9, paras 12.30 and 12.35.

The costs of holding a separate ceremony were not merely financial. There was also the emotional cost. Most of those who had a ceremony conducted in accordance with prescribed religious rites saw that as the point at which they were married, regardless of whether it came before or after the legal wedding, and regardless of their religion. The corollary of this was that the legal wedding was not the 'real' wedding, particularly where it took the form of a civil wedding in a register office. For some this sense of unreality was exacerbated by the fact that the form of such a wedding was unfamiliar to them. Far from creating any kind of emotional bond between the couples and the state, the separation between the two ceremonies largely served to deprive the legal ceremony of meaning, leaving it as simply an unwelcome bureaucratic process.

Conclusion

The law governing entry into marriage in England and Wales is clearly in need of reform. But universal civil marriage is not the answer. The apparent popularity of the existing 'civil' routes needs to be assessed in the light of the constraints that apply to the various religious routes into marriage: many of those who currently marry in a register office or on approved premises cannot be said to be choosing 'civil' marriage. Nor does a comparative review of countries that have adopted universal civil marriage suggest that it is the model to follow, whether in terms of the countries that have adopted it, their motivations for doing so, or its 'universality'. Moreover, it offers only a very limited and legalistic solution to the issues that have arisen as regards religious-only marriages or discrimination against Humanists or same-sex couples. And finally, it would cost more, both for the state and for the parties.

So what is the answer? For some, of course, the question as to how the rules governing entry into marriage should be reformed is irrelevant, being overtaken by more basic questions as to whether marriage will or even should continue to exist as a legal institution.[153] As regards the first point, it can be taken as a given that marriage will continue to exist. It is inconceivable that any democratic government would 'abolish' it, and claims as to its inexorable decline and (in some cases) imminent risk of extinction are overstated.[154] Moreover, in recent years, many of the arguments that have been advanced to advocate the replacement of marriage by an alternative such as civil partnership have been linked to the availability – or, rather, the then non-availability – of same-sex marriage.[155] With the introduction of same-sex marriage, much of their force has been blunted.

Nonetheless, it is useful to think about the alternatives – not least because they also help us to think about what a good marriage law would look like. Various commentators have advocated that marriage be replaced by civil partnerships or privately negotiated agreements. But leaving

[153] There is a vast literature on this topic: see eg T Metz, *Untying the Knot* (Princeton UP 2010), M Fineman, *The Neutered Mother* (Routledge, 2014), E Brake, *Minimizing Marriage* (OUP, 2012), C Chambers, *Against Marriage: An Egalitarian Defence of the Marriage-Free State* (OUP, 2017).

[154] Cf the alarmist claim by F Young, *Reform the Marriage Allowance: The case for recognising marriage In the tax system and why we should keep the Marriage Allowance* (Civitas, November 2022), 1 that there will be 'almost no new marriages in England and Wales by 2062'. This prediction was based on calculating the decline in marriage since 1972 – a choice of starting point guaranteed to skew the picture, for the simple reason that an exceptionally high number of marriages took place in that year.

[155] See eg M Lyndon Shanley, 'Afterword' in M Lyndon Shanley (ed), *Just Marriage* (OUP, 2004), 112; LG Torcello, 'Is the State Endorsement of Any Marriage Justifiable? Same-Sex Marriage, Civil Unions, and the Marriage Privatization Model' (2008) 22(1) *Public Affairs Quarterly* 43; RT Thaler and CR Sunstein, *Nudge: Improving decisions about health, wealth and happiness* (Penguin 2009), 211; P Edge, 'Let's Talk About a Divorce: Religious and Legal Wedding' in Miles et al, above n 115.

every couple to negotiate their own rights and responsibilities poses obvious problems. The fact that so few cohabiting couples currently enter into contracts does not give much cause for optimism that couples would actually make an agreement. Moreover, the limited case law on such contracts – and the more extensive case law on pre-nuptial agreements – indicates the risk that an agreement would be detrimental to the more vulnerable partner. All this suggests that private negotiation would need to be underpinned by a set of default rules to apply where no agreement had been made or where the agreement that was made breached certain basic standards of fairness. This in turn would require an assessment of what the default rules should be and how unfair an agreement would need to be in order to justify its being displaced. Nor is it clear what would be gained by making civil partnerships the only legal option.[156] Adding civil partnerships as an option has enabled couples who might not otherwise have formalised their relationship to do so. But the numbers choosing to register a civil partnership remain small, at least in England and Wales.[157] This suggests that civil partnerships would not have the same reach as marriage. No doubt more couples would register a civil partnership if that were the only way of formalising their relationship, but others might prefer to travel to a jurisdiction where they can still get married in their preferred form, or simply opt for a religious-only ceremony of marriage.

Thinking through the complexities of abolishing marriage in fact brings one of the key benefits of marriage into sharper focus. Marriage remains a convenient way of channelling legal rights and responsibilities. The two conditions identified by Eric Clive back in the 1970s – that most married couples are living together and most couples living together are married[158] – still hold good. This is not to suggest that it should be the *only* way of channelling rights and responsibilities. But it does mean that if any alternative were to be chosen to displace marriage entirely, it would have to be shown that it could perform the same function as marriage as well or better – in other words, that it should have the same reach.

For others, the question is not how the rules governing entry into marriage should be reformed but rather whether religious-only marriages should be reclassified as legal marriages.[159] This is easier to say than to do. If recognition as a legal marriage were to be contingent on a whether a ceremony accorded with certain religious rites, then questions immediately arise as to which religions would fall within the ambit of the law, and who would be responsible for deciding whether any given ceremony conformed with its rites. If decisions about validity were to be delegated to, or at least informed by, religious authorities, then there would also be questions as to which authorities would be recognised for this purpose, and, if more than one, what the status of a ceremony would be if different religious authorities disagreed. As Patrick Nash has noted, delegating decisions to religious groups would have the effect of privatising marriage and would run counter to the basic principle that 'the state retains an interest both in the formation and the termination of marriage as a public rite'.[160]

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[156] See J Miles and R Probert, 'Civil partnership: ties that (also) bind' [2019] CFLQ 303 for a discussion of whether opposite-sex civil partnerships will be any more equal than opposite-sex marriages.

[157] On the limited take-up of civil partnerships in England and Wales, see eg N Palazzo and N Kornet, 'A closer link: Recent trends on registered partnerships and modern families in Europe' [2023] CFLQ (forthcoming).

[158] EM Clive, 'Marriage: An Unnecessary Legal Concept?' in JM Eekelaar and SN Katz (ed) *Marriage and Cohabitation in Contemporary Societies: Areas of Legal, Social and Ethical Change* (Butterworths, 1980)

[159] See eg P Shah, 'Judging Muslims' in R Griffith-Jones (ed), *Islam and English Law* (CUP, 2013).

[160] PS Nash, 'Sharia in England: The Marriage Law Solution' (2017) 6 *Oxford Journal of Law and Religion* 523, 535. See also R Probert, 'Religious-Only Marriages in England and Wales: Taking the Long View' in S Bano (ed), *The Sharia Inquiry, Religious Practice and Muslim Family Law in Britain* (Routledge, 2023), for discussion of how religious rules on recognition do not necessarily result in the recognition of all religious marriages.

But the difficulties in recognising religious marriages in and of themselves should not obscure the more fundamental point underlying such proposals. The recognition – or non-recognition – of religious marriage ceremonies has a significance that goes beyond the status of any given ceremony. It conveys a deeper message about the place of that couple and of their religion within the state.

And that sense of recognition is also important to the reach of marriage law. In order for a system of marriage law to have as great a reach as possible, it needs to be aligned as far as possible with what people recognise as a marriage. Such alignment does not mean recognising all religious marriages, but it does mean that it should be as easy to enter into a religious marriage as into a civil marriage. It also means that while it is valid for the state to establish a framework within which a marriage must take place in order to have legal recognition, the state should not prescribe the content of the marriage ceremony. Removing the need for couples to repeat the Anglican-inflected prescribed words would benefit both those who wish their religious rites to be respected and those who want a genuinely 'civil' ceremony free from religious echoes.

As we have seen, the 'universality' to which universal civil marriage aspires relates not just to its reach but also to the fact that everyone is treated equally. That should also be the aspiration of a reformed marriage law.[161] The current differences in treatment between different religious groups should ideally be eliminated or at the very least minimised. A reformed marriage law should also make it easier for same-sex couples to marry in a religious ceremony, for inter-faith couples to have a ceremony that genuinely reflects both faiths, and for those who hold non-religious beliefs to be able to marry in a form that respects those beliefs.[162] In short, the way to achieve universality lies with increased choice rather than less.

Appendix 1: Number of places of worship registered for same-sex weddings, by registration district

Number registered	Number of RDs	Names of RDs
0	28	Barking and Dagenham, Bexley, Blaenau Gwent, Bracknell Forest, Brent, Bridgend, Denbighshire, Gwynedd, Hammersmith and Fulham, Haringey, Harrow, Havering, Hounslow, the Isles of Scilly, Luton, Merthyr Tydfil, Monmouthshire, Powys, Slough, Southwark, St Helens, Thurrock, Tower Hamlets, West Berkshire, Wokingham, Wrexham and Ynys Mon
1	17	Conwy, Darlington, London City, Ealing, Hackney, Kensington and Chelsea, Lambeth, Newham, Redbridge, Portsmouth, Isle of Wight, North East Lincolnshire, Knowsley, Sefton, Neath Port Talbot, Newport, Torfaen

[161] See also M Antokolskaia, *Harmonisation of Family Law in Europe: A Historical Perspective: A Tale of Two Millenia* (Intersentia, 2006), 301, who notes that having a system whereby there are both civil and religious routes for entry into marriage 'could be attributed to respect for pluralism and religious tolerance', but that there are certain pre-conditions to regarding such a system as modern and democratic, namely that no one dominant religion should be privileged to the detriment of others and there must be 'uniform, State-determined, minimal preconditions for the celebration of both civil and religious marriage'.

[162] See Law Commission, *Celebrating Marriage*, above n 9, for a scheme that would achieve these aims.

2	20	Bedford, Reading, Peterborough, Halton, Warrington, Hartlepool, Cumberland, Derby, Flintshire, Westminster, Kingston upon Thames, Lewisham, Sutton, Waltham Forest, Wandsworth, Pembrokeshire, Rhondda Cynon Taf, Rotherham, Sandwell, Solihull.
3	20	Central Bedfordshire; Caerphilly; Carmarthanshire; Torbay; Bournemouth, Christchurch and Poole; Barnet; Enfield; Greenwich; Hillingdon; Islington; Rochdale; Salford; Tameside; Herefordshire; Blackburn with Darwin; West Northamptonshire; Telford and Wrekin; Gateshead; Coventry; Wolverhampton.
4	16	Bristol; Dorset; East Riding of Yorkshire; Hull; East Sussex; Richmond upon Thames; Wigan and Leigh; Southampton; Medway; Leicester; Wirral; Bath and North East Somerset; North Somerset; Newcastle upon Tyne; North Tyneside; Swindon.
5	13	Milton Keynes; Plymouth; South Gloucestershire; Croydon; Merton; Oldham; Blackpool; Middlesbrough; Redcar and Cleveland; Swansea; South Tyneside; Sunderland; Wiltshire.
6	9	Windsor and Maidenhead; Southend-on-Sea; Bromley; Bolton; Liverpool; Nottingham; Doncaster; Stoke-on-Trent; Dudley.
7	5	Brighton and Hove; Camden; York; North Northamptonshire; Vale of Glamorgan
8	7	Cardiff, Manchester, Trafford, Stockton-on-Tees, Somerset, Birmingham, Walsall
9	5	Westmorland and Furness, Bury, Lincolnshire, North Lincolnshire, Calderdale
10	4	Essex, Norfolk, Northumberland, Worcestershire
11-15	9	Buckinghamshire (11), Ceredigion (11), Stockport (11), Shropshire (11), Derbyshire (12), Warwickshire (12), Cambridgeshire (13), Cheshire West and Chester (13), Sheffield (13)
16-20	14	Hertfordshire (16), Nottinghamshire (16), Surrey (16), Bradford and Keighley (16), Kirklees (16), Hampshire (17), Barnsley (17), Suffolk (17), Gloucestershire (18), Cornwall (19), Oxfordshire (20), Staffordshire (20), Leeds (20), Wakefield (20)
21-25	4	West Sussex (21), County of Durham (22), Leicestershire (22), Cheshire East (24)
26-30	2	Devon (26), Kent (26)
31-35	1	North Yorkshire (31)
36-40	1	Lancashire (38)