

Review of 'Marriage Rites and Rights' for *Australian Journal of Family Law*  
Edited by Joanna Miles, Perveez Mody and Rebecca Probert

What *is* marriage? At face value, this appears a simple question; perhaps even a question capable of producing a relatively uniform set of answers. These answers are likely to mention public expressions of commitment, the sharing of lives and ceremonial celebrations of love. But have these answers focussed too much on the publicised, symbolic rites of marriage, which are redolent with rich cultural meaning, and overlooked the initial right to marry and the important rights flowing from that status? After all, even the most lavish ceremony may lose some of its significance if it has no legal standing or is not validated by the conferral of rights. In addition, how do these ceremonial celebrations of love underpin, refine and even redefine our understanding of the institution of marriage more generally? These questions form the basis of a new interdisciplinary collection, *Marriage Rites and Rights*, edited by Joanna Miles, Perveez Mody and Rebecca Probert. Bringing together eminent scholars from law, sociology, anthropology, theology and many other disciplines, this collection interrogates the relationship between the rites of marriage, the right to marry (or, indeed, *not* to marry) and the rights flowing from the status of marriage.

The collection's focus on the value of marriage today is undoubtedly timely. In the past decade alone, societies have been constantly confronted by multiple narratives of marriage and repeatedly forced to reflect upon whether some of its foundational tenets such as its lifelong duration, its exclusion of others, its purpose and its heterosexual nature require revision. This reflection has, of course, been taking place for some time. Academics have long queried the actual value of marriage to society and even imagined a society without it (see, *inter alia*, EM Clive, Katherine O'Donovan, Martha Fineman). However, it is clear that there is now an intensity and urgency to this questioning which is a sentiment captured quite effectively by this collection. One explanation is the fact that, across the globe, several countries have debated and, for some, legally recognised same-sex marriage through referenda, legislative enactment or judicial decision. Yet having now opened up the access rights to marriage, what does this change mean for the intrinsic meaning of marriage and how its associated rites are perceived and performed? In the foreword to this collection, Dr Rowan Williams, former Archbishop of Canterbury, acknowledges the challenge in answering these particular questions and concedes that finding a 'single core of significance [of marriage] is remarkably difficult'. However, he asserts that 'social institutions *ought* to be conservative'. Therefore, and applauding the collection's ambition in doing exactly this, 'we ought to be able to ask whether this or that change alters their character fundamentally' and 'whether we are now talking about something that is different from what we started with'. Other explanations for this modern, intensified critique explored in this collection are the interface between marriage and civil partnerships coupled with the exponential rise in couples rejecting or delaying marriage by cohabiting.

Even with extensive scholarship already undertaken in this area, this collection does not merely contribute to the volumes on same-sex marriage. Indeed, its focus is much broader as it interrogates the meaning of marriage for those that

have never had to fight for access to that institution, those that have rejected it and those forced into marriage against their will. What it also skilfully does is locate the discussion of marriage rites and rights within the Anglican heritage, current laws and social practices of England and Wales. Whilst this narrower focus may deter a broader readership, the decision taken by the editors was a correct one as this jurisdiction has a particularly complex legislative framework that could have received more superficial treatment had a comparative approach been selected. Similarly, this jurisdiction is unique. Not only did England and Wales introduce same-sex marriage through the Marriage (Same Sex Couples) Act 2013, thereby creating a complicated tripartite regulatory system for ceremonies, it also has retained the ability for same-sex couples *only* to form civil partnerships. This somewhat dubious legal position gives same-sex couples more options to formalise their relationship than heterosexual couples but, more importantly, allows this collection to explore the continued borrowing, rejection and potential creation of new 'marriage-like rites' for civil partners.

The collection is comprised of four Parts. The first part explores the historical development of marriage rites. The chapter by Haskey provides a meticulously detailed analysis of the dwindling uptake of religious marriage. In particular, he traces the secularisation of marriage as a trend running alongside the increase in cohabitation and individualism. Probert's chapter builds upon these findings by exploring the possible 'rite' of pre-marital cohabitation. Drawing upon a wide range of sources that map changes in societal attitudes, Probert asserts that marriage is no longer seen as the transition ceremony to adulthood but as an event that occurs much later in life. Despite its later occurrence, Probert shows that for some it still possesses a transformative effect. In a fascinating chapter, Purbrick analyses the rites of marriage through the increasingly commercialised tradition of giving wedding gifts and re-emphasises a key aspect of this collection; namely, that whilst rights may have profound legal ramifications, rites are equally 'important and meaningful'. Noting the gendered aspect of sourcing and giving wedding gifts, she opines that gifts provide 'material endorsement' to a union and 'embody the idea of marriage'; indeed, not to give is to shun the wedding ritual. Building further upon the traditions of marriage, Peel juxtaposes the long-established norms of marriage with the ceremonial rituals performed in a relatively new institution of the civil partnership. Interestingly, Peel illustrates some borrowing of the language of marriage by civil partners but also many instances of a 'fracturing of heteronormativity' through couples 'cherry-picking' aspects of the traditional wedding ceremonies.

The second part analyses the connections between the rite and legal consequences flowing from its performance. In the chapter by Vardag and Miles, the process of contracting prior to marriage is unpicked and shown to have a longer legacy than perhaps previously thought. The fascinating observations on the Jewish *ketubah* and the contractual processes inherent within continental community of property regimes show that England and Wales is somewhat catching-up when delineating the extent of contractualisation permitted in marriage. Their closing remarks have particular resonance for this collection: 'in defining their own rights of marriage, the couple individualise and privatise the rite of marriage'. The chapter by Wray offers a much-needed exploration of an

under-researched yet increasingly relevant aspect of marriage, namely cross border marriages and its relationship to immigration controls. In particular, she analyses how the rules relating to sham marriages often go further than just policing marriages aimed at getting an immigration advantage and thereby concludes that 'sham marriage is a deeply troubling concept'. Akhtar's chapter explores Muslim marriage rights and the prevalence of unregistered Muslim marriages. Highlighting the elaborate and public rituals of these marriages, she posits some of the explanations for the subsequent failure to register these marriages. Several reasons are provided ranging from ignorance of the legal framework to the fact that an impetus to register has not yet materialised such as, for example, the arrival of children or tax considerations. Here we see an area where the celebration of marriage rites seems to have great value for the participants with the acquisition of rights being of 'lesser importance'. The darker side of marriage is explored in the concluding chapter of this part. Mody's chapter analyses the difficulty of identifying and defining consent in British South Asian marriages particularly in light of the blurred boundaries between force and agreement alongside coercion and choice. This chapter effectively reinforces the findings of previous chapters by emphasising the role played by families in many of the rites associated with marriage.

The third part of the collection explores the importance of language in the celebration and societal acceptance of marriage, particularly same-sex marriage. Farrimond reflects upon the role of the Church of England and asks some difficult questions. For example, is the Church of England's involvement in marriage 'a vehicle for gentle, pastoral companionship with people on their life course' or a 'means of maintaining a didactic and controlling influence on society'? In light of the vast symbolism, is the Church's involvement in a significant minority of marriages a way of 'keeping holy stories and sacred places...alive'? Harding's chapter continues the exploration of language by tracing its use in the civil partnership and same-sex marriage Parliamentary debates. Noting the decrease in explicitly homophobic language, she carefully shows how 'heterosexist tropes' still made an appearance. Her conclusion is especially persuasive. As marriage is now open to all, there is an important opportunity, particularly for feminism, to interrogate its operation, to understand its meaning and ask the difficult question of whether it offers the 'best or most appropriate way to distribute societal benefits'.

The final part of the collections provides some relatively radical re-imaginings of marriage. Edge provides a compelling view that the battleground in marriage is no longer legal rights but rather ~~than the~~ 'symbolic and ceremonial side of the creation of marriages'. Questioning the 'co-production' of legal marriage by religion and the state, Edge advocates for a 'single category of legal civil partnerships, with marriage ceasing to be a legal construction in England'. Whilst the practical realisation of this project is questionable, this is a particularly insightful yet radical reimagining of formalised relationships. Finally, and building upon his work elsewhere on the provision of care in intimate relationships, Herring calls for the supplanting of consummation as the basis of marriage and its replacement with 'care-based marriage'. Although questioning the procreation justification of marriage has been a prominent theme running

through this area for some time, Herring's chapter usefully highlights the inconsistencies and discrepancies that were brought into sharp focus when England and Wales legislated for same-sex marriage.

This is an important edited collection that showcases the benefits of interdisciplinary reflections. Whilst the editors are correct to highlight the fact that marriage still remains popular, they carefully expose its darker side and offset any romanticised views with more critical accounts of the institution. However, the aspect that is particularly enjoyable is the targeted focus on rites as it enables this book to connect with other disciplines, offers a clear sense of originality and differentiates the work from other contributions in this area. As lawyers it is often easy to become obsessed with the minutiae of statutory provisions. The message this collection conveys quite strikingly and convincingly is that the only way to truly understand these specific legal rights of marriage is through appreciating the elaborate, dynamic and ever-changing system of rites underpinning them.

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