

The changing nature of marriage

Marriage in Britain has changed profoundly in the last thousand years. A thousand years ago, marriage was a private contract between families, one son married one daughter. Marriage took place for many reasons, such as securing inheritance of property, creating allegiances, financial security and so on, but an essential part was always the intention for children. Children would take care of their parents when they could no longer look after themselves. Children would inherit the property and guarantee security. A thousand years ago marriages did not involve the state or the church.

That eventually changed in the twelfth century when marriages began to be a concern of the church. Initially marriages were at the fringes of the church, literally being carried out in the church porch. At that time a woman was the property of her father until she became the property of her husband in marriage, but her consent for the marriage was necessary. Forced marriages were not valid, so making the marriage service public gave some measure of protection to the woman, her consent was to be witnessed by all who were present. As well as ensuring consent, it was necessary to ensure that the identities of the two parties were who they claimed to be so the church would only permit marriages to take place during the hours of daylight¹, where everyone attending could see the bride and groom and be satisfied of their identity. This was aimed at preventing fraudulent claims for marriage.

The role of the priest was to witness to the marriage, making sure that the people were who they said they were, that there was consent to the marriage and that the 'property transfer' of the woman from the father to the husband was carried out legitimately. It is not the priest who marries the couple, but the couple who marry themselves, the priest will pronounce the couple to be married and give a blessing to the married couple in recognition of their marriage. A record was made of the marriage.

The children of the marriage would have inheritance rights, but any illegitimate children born out of wedlock would not be able to inherit, so it was essential that the marriage was witnessed so it could be proven to have taken place, allowing legitimate heirs to be distinguished from illegitimate ones. It was also a way of ensuring against bigamous marriages, where the children of the second marriage could not inherit.

Since the twelfth century the church's understanding of marriage has developed. The Roman Catholic Church considers marriage a sacrament and some sections of the Church of England see it as a minor sacrament. The Book of Common Prayer

¹ This type of requirement still remains in the church of England's canons. Canon B35 (3) states that 'A marriage may not be solemnized at any unseasonable hours but only between the hours of eight in the forenoon and six in the afternoon.' (4) states that 'Every marriage shall be solemnized in the presence of two or more witnesses besides the minister who shall solemnize the same.'

included services for marriage and gave the threefold purpose of marriage as the procreation of children; a remedy against the sin of fornication and, lastly, for the 'mutual society, help and comfort'.² All three of these were part of the reason for marriage, but procreation was primary. This is still the case in the Church of England's canon B30.

Any problems with a marriage were church matters and dealt with by ecclesiastical courts, if necessary. Divorce was not possible because God had joined the two people together as one entity. However, annulments were possible and they were handled by the church courts. An annulment is not a divorce, an annulment is a way of declaring that the marriage had not legitimately taken place. This preserved the doctrine that marriage was a lifelong union, because annulment did not end a valid union, it ruled that there had been no valid union to begin with.

In the nineteenth century the state began to legislate in church matters in a way that began to curtail the Church of England's monopoly. In respect of marriage the first significant state intervention was the 1836 Civil Marriage Act which allowed Catholics and non-conformists to marry in their own churches, although this needed civil registration. Marriage could also take place in a civil registry office. This separated marriage from the exclusive remit of the churches.

However, a bigger divergence between the Church and the State came with the 1857 Matrimonial Causes Act. This allowed divorce for infidelity and for the remarriage of divorcees. The Church of England opposed this until 2002. Prior to 1857 divorce could only be done by an Act of Parliament, so it was only available to the rich and powerful. The church opposed the remarriage of those who had been divorced on Biblical grounds, that it was adultery. Parliament had legislated to make legal something that was forbidden by canon law. From the perspective of the church, the state was facilitating adultery by providing a mechanism where those whose marriages had failed could marry someone else.³

The next stage of the evolution of marriage came at the start of the twentieth century. The state had made it possible for divorced people to enter into a second marriage, contrary to church understanding of marriage as an indissoluble union which ended only in death. However, some people were forbidden to marry in the first place and there was a list of those forbidden relationships. This list was known as the table of affinity⁴. It included a man marrying the sister of his deceased wife. Towards the end of the nineteenth century this was proving to be controversial.

The table of affinity had been drawn up based on the Old Testament lists of who may or may not marry. It did not specifically state in the Old Testament that a man may

² Book of Common Prayer, 1928 edition p 432

³ In 2014 33% of marriages that took place in England were second or subsequent marriages for at least one of the parties.

⁴ The original table of affinity can be found in older versions of the Book of Common Prayer, for example page 771 in the 1928 edition.

not marry the sister of his deceased wife, but the relationship was understood to be incestuous based on the idea that in marriage the husband and wife became one. This is a concept known as consanguinity. In this understanding, as the husband became one with his wife then her sister became his sister too, therefore making it a forbidden marital relationship.

It was the case that many young wives died during childbirth and from other medical complications, leaving their husband with young children to bring up. It was not unusual for a female relative to take on the maternal responsibility for bringing up the children. In some cases this meant an unmarried relative, often an unmarried sister, moving into the family home for childcare purposes. For some, this led to a desire for the widower and the sister to marry. The reasons they would want to marry may have been romantic, but may also have been to do with propriety, at the end of the nineteenth century it was not considered appropriate for an unmarried man and an unmarried woman to be living in the same household together. Yet the table of affinity prevented them marrying.

In 1907 the government passed the Deceased Wife's Sister Act which allowed a man to marry the sister of his deceased wife. The male version of this, the Deceased husband's brother Act was not passed until 1932. There was not the same societal pressure for this act, partly because when a father died the family tended to make financial provision for the widow and children, so it was less likely that a male family member would move into the household to help with child rearing. In 1947 the church revised the affinity tables and removed the theological objections to these marriages.⁵

It would be the twenty first century before the state and the church were in opposition again, first with the 2004 Civil Partnership Act and then the 2013 Marriage (Same Sex Couples) Act which allowed the first same sex marriages to take place in England in March 2014.

There were profound changes in society taking place between 1947 and 2004 that would put Church and State on opposite sides of the debate about the nature of marriage. One of the most significant developments was the increased availability and use of contraception. The use of contraception within marriage had been approved, in limited circumstances, by the 1930 Lambeth Conference, but at that time the methods of contraception available were barrier methods.

At the 1908 Lambeth conference the use of contraception had been rejected, relying on medical evidence of the adverse effects of using contraception, as well as theological and moral grounds. The 1920 Lambeth Conference debated the issue again because medical advice had moved on and was now far more positive about

⁵ . The modern table of affinity can be found in newer editions of the Book of Common Prayer, for example page 630 in the 2004 edition. This is given legal force by being part of canon B31.

the benefits of contraception and had allayed many of the fears about negative effects of contraception. The discussions were wide ranging and included imperialistic, patriarchal and eugenic points of view, which disappeared from the debate in 1930. When the bishops discussed family planning resolutions at the 1958 Lambeth Conference there was an underlying assumption that some sexual activity within marriage would not be open to the possibility of procreation and was a matter for the consciences of the people involved.⁶ This was also contrary to the Book of Common Prayer where procreation was the first reason for marriage and represented a shift from the primacy of procreation and the recognition that sexual activity between a couple could be a good in itself.⁷

After 1958's Lambeth Conference churchmen could recommend contraception 'for those engaged in promiscuous sexual encounters with no pretence of reference to married life at all.'⁸ In fact this change in doctrine was sufficiently momentous that for a couple of years England's largest manufacturer of contraceptives included a copy of the Lambeth resolutions in each packet.⁹

The essential theological link between marriage and childbirth had been broken at the highest levels of the church and this led to a greater acceptance in society of the use of contraception. This shift towards understanding that sexual activity could be a positive without the need for procreation also weakened the link between sexual activity and marriage. In 2014 47.5% of live births took place outside marriage.¹⁰ This figure has increased every year since 1970. In 1970 the percentage of live births outside marriage was 8.3%.

Once procreation was lost as the primary reason for marriage, whether through contraception, intentionally childless couples or post-menopausal marriage, then the other goods of marriage described by the Book of Common Prayer assumed greater importance. The goods of mutual support and comfort and a remedy against sin are just as relevant to same sex couples as to opposite sex couples.

As well as the link between childbirth and marriage being weakened in society, another change has taken place which undermined a longstanding Christian interpretation of marriage, that of headship. Scriptures such as 1 Peter 3.1, 5 – 6, Colossians 3.18 and Ephesians 5.22 – 24 make it clear that the husband is the head of the wife and that wives should obey their husbands. The traditional marriage service included a vow for a wife to obey her husband. In the 1920s there were amendments made to the Prayer Book marriage service to allow couples to make vows that did not include a vow from the wife to obey her husband. Instead it was

⁶ See for example 1958 Lambeth Conference resolution 115.

⁷ For a fuller discussion of contraception and the Lambeth Conferences, see Jones, Timothy Willem (2013) *Sexual Politics in the Church of England 1857 – 1957*, Oxford University Press. Chapter 5.

⁸ Edward Norman (2004) *Anglican Difficulties*. Morehouse Publishing. Page 57.

⁹ Ibid.

¹⁰ Office of National Statistics <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-370345> accessed 14th November 2015.

proposed that she should take the same vow to 'love, comfort and honour' that the man would take¹¹. This modest move towards equality provoked a determined and negative response from some sections of the Church of England. The amendments were initially rejected, but the revised Prayer Book was eventually accepted by the Church Assembly in 1927.

Moves towards marriage equality between the spouses continues. One very visible example is surnames following a wedding. An increasing number of women are keeping their own surnames after getting married.¹² For some women it is the establishment of their own name as their 'brand', for others it is the preserving of a family name or a statement of their own independence and identity. Some men are also changing their names by taking their wife's surname.¹³

The increasing trend of seeing marriage as a partnership between equals has changed society's understanding of marriage. It is no longer seen as hierarchal, with male headship. Raising the children is no longer the sole responsibility of the wife. The sense of preserving individual identity after a wedding is a move away from the church's understanding of marriage as 'two become one'. It is into this sense of equal partnership that the question of same sex marriage gains acceptability. A union between two people of the same sex has an intrinsic equality that resonates with society's understanding of marriage.

As marriage has moved from being a hierarchal and patriarchal institution to a more egalitarian one that is not primarily a means for procreation, then same sex marriages can be seen as not only socially acceptable, but as a vehicle for God's grace. Society has embraced the concept of same-sex marriage as simply 'marriage', but churches have been slower to respond to these changes.

This has always been the pattern. Churches have consistently tried to define marriage according to their own traditions, but has consistently failed to make a strong theological argument for their position at any stage. There is no clear understanding of what marriage actually is, so any arguments based on how long it lasts or who can do it or the reasons for doing it do not address the fundamental question of what marriage actually is.

There is an argument to be made that we **recognise** a marriage, when we come across it. There are those who have the legal paperwork, but whose relationship does not seem to be a marriage in anything but law. There are also those couples who 'everyone' recognises as married but who do not have the legal paperwork. Marriage as a relationship is something that the law cannot codify nor the church control, but society can recognise and value.

¹¹ Book of Common Prayer, 1928 edition p 443

¹² Claudia Goldin and Maria Shim, *Making a Name: Women's Surnames at Marriage and Beyond*, Journal of Economic Perspectives—Volume 18, Number 2—Spring 2004—Pages 143–160

¹³ Bennett, Rosemary, *Men break with tradition and take their wife's name*, The Times 13th June 2015 page 17.

It is this recognition of marriage that can be Biblical. A church wedding requires a reading from scripture. One standard reading for weddings is the reading from Ruth chapter 1 verses 16 – 17

*'Do not press me to leave you
Or to turn back from following you!
Where you go, I will go;
Where you lodge, I will lodge;
Your people shall be my people,
And your God my God.
Where you die, I will die –
There will I be buried.
May the Lord do thus and so to me,
And more as well,
If even death parts me from you!'*¹⁴

When this is used at weddings, there is a recognition that the words are a declaration of commitment, which the couple have recognised as speaking to their own marriage commitment. The fact that the words were spoken by one woman to another does not matter to them. Society can recognise something that they understand as marriage in the relationship between same sex couples.

So far the churches have resisted this change, either by refusing to carry out same sex marriages or by refusing to bless couples who have had a civil marriage or a civil partnership. Some churches, such as the United Reform Church or the Baptist Union, allow congregations to decide for themselves how they will respond on an individual congregational basis.

The Church of England has been willing to accommodate previous changes in marriage and amend its liturgy and rituals accordingly. In the Church of England, there is a practice of *lex orandi lex credendi*, which is that what it prays is what it believes. This means that the liturgy that is used defines the doctrines of the church, so a change in liturgy is accompanied with a change in doctrine.

These changes in doctrine can be seen in the history of the liturgical changes in the marriage services. The vow to obey the husband is still part of the Book of Common Prayer marriage service, but is not in the Common Worship marriage service, although it is still available as one of the authorised alternative vows. Likewise the introduction of liturgy for the exchange of rings, rather than just the husband giving a ring to his wife, showed an acceptance of the mutuality and equality of the married couple, the woman was not given to the man by her father, but they gave themselves to each other.

¹⁴ NRSV translation.

The role of the bride's father was to give away his daughter. This is seen in early forms of the marriage service¹⁵ which has the following:

Then shall the Minister say,

Who giveth this woman to be married to this man?

This section is absent from the current common worship marriage service, although it is still in the book of common prayer service. The role of the bride's father has changed from a legal giving away of the woman as property to another man, into a ceremonial role of accompanying the bride on her walk down the aisle.

It may also be the case in modern weddings that it is somebody other than the bride's father who walks her down the aisle, it may be another male or female member of the family or a friend or even one of the bride's children. With the change of doctrine from a property transaction to a mutual match, the role is one of support and anyone suitable can do it. In the same way that the role of 'best man' can be taken by a woman.

Most couples who come to the church to get married are already 'sharing an address'. Some of these couples have already had children together and have chosen to get married for reasons other than procreation. Those couples who come with children of a suitable age often want their children to have a role in the service, some may be old enough to be bridesmaids, but newer roles have been created and allowed, such as page boys or flower girls etc, which allow younger children to be part of the wedding ceremony.

Up until 2002 the Church of England opposed the remarriage in church of those who had been divorced and had a former spouse still living. There is still a conscience clause that allows clergy who feel it is against their principles to refuse to conduct the ceremony, but they are obliged to find a priest who will conduct the ceremony.

In 2003 the Church of England discussed the status of trans people. It decided that trans people can be ordained in their legal gender. It also decided that they can be married in their legal gender, provided that one of the couple is legally male and the other is legally female. Again, there is a conscience clause for clergy.

Common Worship has also developed liturgy for 'An Order for Prayer and Dedication after a Civil Marriage'. The church recognises that when a couple are married in a civil ceremony, that did not take place in church, they are married in the eyes of the church and the church will bless those marriages.

Yet the Church of England refuses to authorise the blessings of a same sex couple after a civil partnership or after a civil marriage. One argument is that this would require new liturgy and that would mean a change of doctrine. However, as we have

¹⁵ Book of Common Prayer, 1928 edition p 434

seen, the church does not initiate change, instead it responds to changes that come from society and it tends to permit rather than require.

It is interesting to contrast the situation in the Church of England with the situation in the Methodist church in Britain. In the Church of England, entering into a same sex marriage would mean that person was barred from ordination. If they were already ordained they could have their licence withdrawn or be refused a licence or permission to officiate licence. Being in a same sex marriage is no bar to ordination in the Methodist church and Methodist ministers who are already in same sex marriages can continue to hold their licences as 'ministers in good standing'.

It will be interesting to see the effect of this as the Methodists and the Church of England continue to explore the possibility of common ordination. While these plans are at the early stages of discussion, it is possible that the practice will develop where ordination would be by both the Church of England and the Methodist Church, with recognition by both churches. At some point there would need to be a compromise decision on clergy in same sex marriages.

As the Methodist Church continues to explore the possibility of allowing those parishes that want to do so to conduct same sex weddings, the pressure on the Church of England to find a way forward will grow. Churches that have allowed same sex marriage to be conducted in church, whether in England¹⁶ or abroad¹⁷ have all taken the position that each church congregation must choose for themselves whether to conduct same sex marriages. This is likely to be the model that some would want the Church of England to adopt.

Heterosexual civil partnerships (more correctly opposite sex civil partnerships) are likely to become law later this year. Because these are civil ceremonies they cannot be conducted in churches. The question of whether they can be blessed by clergy will arise very quickly and it will need a decision.

The legalisation of heterosexual civil partnerships is just the latest evolution in the nature of marriage. As marriage evolves further and further from the idea of a legal contract for having children, so it becomes more and more an institution that will be open to couples of any gender.

¹⁶ The Baptists, United Reform Church, Quakers, Congregational church, Unitarians etc.

¹⁷ Such as The Episcopal Church in the United States.