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In the workshop of a legal historian, one of the most difficult challenges is the proper balance between the analysis of legal norms itself and its embedding in the reality in which these norms were created and applied. In her monograph on the formation of marriage in England and Wales over the last two centuries, Rebecca Probert shows how this challenge must be met. Based on her many years of research and taking into account the achievements of other experts in the subject, she shows how legal, social, and religious threads were and are intertwined in the English and Welsh wedding law (p. 3). What is not without significance is that she does so in a concise and possibly accessible narrative in the classically published volume *Cambridge Studies in English Legal History*.

As the author herself points out in the “Introduction” (pp. 1–20), the basic element of the reviewed monograph is the analysis of the adoption and application of the Marriage Act 1836, which is the key to understanding not only recent history, but also the present law of marriage in England and Wales (p. 18). Therefore, the first two chapters of the book are devoted to these issues, i.e. “Conception, Design, and Implementation, 1819–1837” (pp. 21–53) and “Reactions to the Act, 1837–1854” (pp. 54–84). The author then guides us through a chronological analysis of the evolution of the solutions adopted in the Marriage Act 1836 in the 19<sup>th</sup> and 20<sup>th</sup> centuries, in subsequent chapters indicating its milestones: in the chapter “Amendments Enacted and Reform Deferred, 1855–1872” (pp. 85–114) the effects of the Marriage and Registration Act 1856, in the chapter

“Differences, Divisions, and Dispensing with the Registrar, 1873–1899” (pp. 115–46) the way to the adoption of the Marriage Act 1898, in the chapter “Competing Conceptions of Marriage, 1900–1919” (pp. 147–69), the question of the Christian definition of marriage adopted in the jurisprudence of the time, and in the chapters “Consolidating Complexity, 1920–1949” (pp. 170–97) and “Convergence? 1950–1993” (pp. 198–227) factors that led to the unification of the marriage law in the Marriage Act of 1949, which, however, did not lead to its actual reform. The last chapter of the monograph “The Rise of the Wedding, 1994–2020” (pp. 228–60), as well as the ending itself, as indicated by its title “The Legacy of the Past and Lessons for the Future” (pp. 261–74), is devoted to this last issue in the context of contemporary challenges.

The adoption of the chronological structure of the reviewed monograph is fully justified both in the context of its title and the objectives intended by the author, i.e., the analysis of the evolution of the law governing the formation of marriage, its actual application by marrying couples, and the assessment to what extent the law in force has enabled them to marry in accordance with their religious beliefs (p. 3). In the following chapters, skillfully divided into thematic subsections, Probert smoothly guides the reader through these three main issues. It is particularly useful to close each of the chapters with a conclusion that organizes the narrative and allows you to find yourself among numerous substantive threads. In addition, the monograph contains a factual index that is helpful in the search for individual issues. The only insufficiency in this respect is the fact that the adopted time frame excluded from the presented analysis the Clandestine Marriage Act 1753 referred to several times (e.g. pp. 5 and 23). After all, the issue of this act is well known to the author<sup>1</sup>, and a little more space could have been devoted to it, especially in the context of explaining the contemporary effects of Hardwicke’s Act in terms of the legal recognition of exclusively Anglican, Jewish, and Quaker religious vows (pp. 265–6).

As expected, taking into account the achievements of the author so far, both the richness and diversity of the source material used to prepare the reviewed monograph (pp. 16–7), as well as the extent to which she took into account the achievements and consultations of her colleagues, are impressive (pp. X–XII). On their basis, Probert convincingly presents his findings, which will interest both the specialist in the subject and any other legal historian<sup>2</sup>. Among them it is of particular importance to demonstrate the actual nature of the form of marriage in the register office introduced by the Marriage Act 1836 (pp. 52–3). Contrary to the common understanding of this term, which especially the continental jurist associates with the secular form of marriage introduced in Revolutionary France and maintained in the Napoleonic Code (as mentioned by Probert on page 97), in the first two decades of its operation, weddings in the registry office could and were held in a religious form, subject to the need of making declarations and vows in the prescribed form.

This was due to the fact that in the Marriage Act 1836 marriage at the registry office was provided as an alternative to those Dissenters who could not or did not want to marry in registered places of worship either of their own or other denomination, and only ex-

<sup>1</sup> See Probert, *Marriage Law and Practice*.

<sup>2</sup> In this context, it is painful to have not a final bibliography that would be particularly helpful for the latter.

ceptionally for the very few supporters of civil marriage at that time (pp. 71–6, 266–7)<sup>3</sup>. It was not until the Marriage and Registration Act 1856 that marriage was prohibited in the registry office in the religious form, introducing in England a secular form of marriage in which “no longer was it possible for a wedding to be celebrated in the register office with prayers or readings from scripture, or even with a «God bless you» from the registrar” (p. 96). At the same time, the reason for introducing this ban was not the desire to eliminate religious elements from the wedding in the registry office, but an attempt to eliminate the practice of double marriages, resulting from the opposition of some Anglican clergy to recognize the validity of vows taken in the registry office (pp. 91–9).

Particularly noteworthy are also findings regarding the effects of the Marriage Act 1898 on the possibility of appointing an authorised person to replace a registrar in Christian and non-Christian places of worship. The obvious effect of this law was to allow Christian denominations to marry in their registered buildings without a registrar being present, which was long awaited, among others, by Catholics (pp. 135–41). At the same time, however, the reference to the Marriage Act 1836 instead of the Place of Worship Registration Act 1855 led to the exclusion of non-Christian denominations from the possibility of appointing an authorised person, since the Act of 1836 did not provide for the possibility of marrying in a non-Christian building of worship (p. 146). As the author states, this limitation initially went unnoticed (p. 146). However, it is difficult to resist the impression that the caution in assessing this regulation, repealed only by the Marriage Act 1949 (p. 196), results from the lack of sources that would clearly indicate that its purpose was to ensure state control over marriages of growing numbers of non-Christian inhabitants of England and Wales (the first Muslim marriage in England took place probably in 1891 – p. 126). This is indirectly indicated by the analysis of sources presented in the chapter “Competing Conceptions of Marriage, 1900–1919” (pp. 147–69).

The reviewed monograph presents the analysed issues almost exclusively from the Anglo-Welsh perspective. There is no doubt that this was the aim of the author, who consciously gave up comparative elements. This is an undoubted advantage of the monograph, which thus preserves the brevity and coherence of the narrative necessary to present such a complex issue. However, on the other hand, the lack of comparative threads sometimes makes it easier for the Probert to assess too harshly the native achievements in the field of marriage law, e.g. as regards the Marriage Act of 1949, which unified regulations dating back to the times of Henry VIII (p. 192). It is hard not to agree with the statement that “so much of current law regulating weddings has come about by chance” (p. 261), but from the perspective of a continental legal historian, the question arises whether this is not the specificity of the evolutionary development of law in England and Wales, where the conservative continuity of law is intertwined with liberal openness to social change?

Recapitulating her reflections, the author unequivocally advocates the need for a contemporary reform of the weddings law, rightly emphasizing that “the law should reflect how twenty-first-century couples wish to marry, rather than how nineteenth-century law-makers thought they should” (p. 274). According to Probert, a solution to enable this

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<sup>3</sup> See also Probert, “Secular or Sacred?”.

would be to replace the building-based system adopted in the Marriage Act 1949 i.e., the system based on the permitted wedding places, with a system based on the authorised persons officiate at weddings i.e. a celebrant-based system (pp. 259–60). The arguments presented by the author are convincing, and the system proposed by her was in principle adopted in the report of the Law Commission which prepares the current reform of the wedding law in England and Wales.<sup>4</sup> Undoubtedly, it testifies to the exceptional importance of Probert's research and makes the reading of the reviewed monograph compulsory. However, whether the result of the expected reform will be a coherent system of law guaranteeing simplicity and certainty on the one hand, and equality and flexibility on the other, will still remain the subject of research by future legal historians.

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<sup>4</sup> Rebecca Probert is a special consultant to the Law Commission, which is preparing a draft of marriage law reform in England and Wales on behalf of the HM Treasury. The Law Commission's report submitted to Parliament on 18 June 2022 broadly incorporates the results of her research. Law Commission, "Celebrating Marriage", 24.