

Marriage in the United Kingdom: History and Legal History

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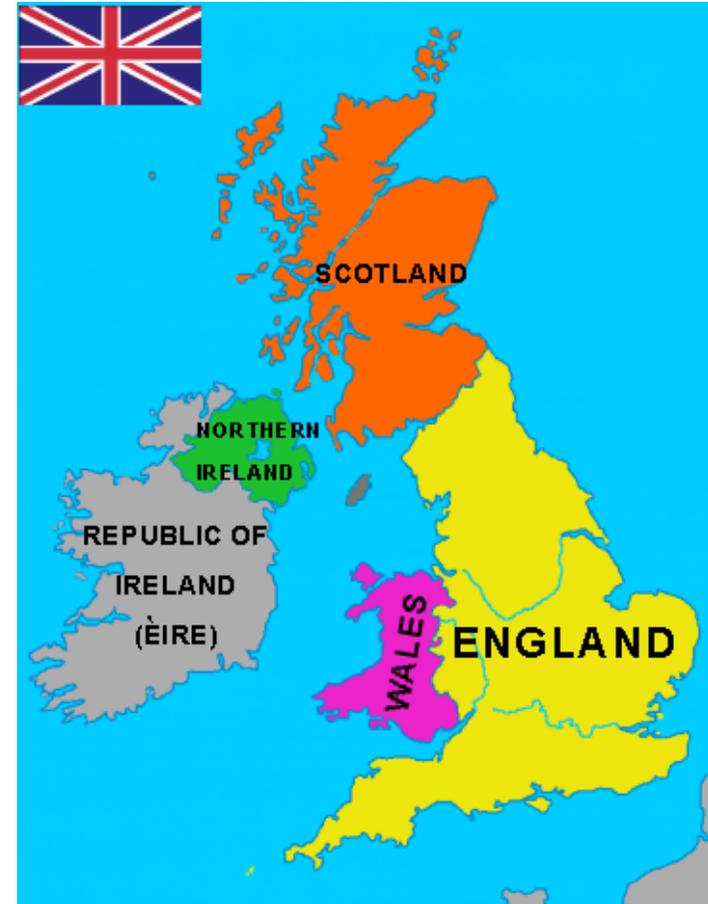
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Subject of Talk

- Not theology or morality of same-sex marriage
- Not customs of marriage
- Instead, marriage law as it has developed in the UK
 - Why we have laws about marriage
 - What historical problems those laws have been designed to address
 - How they have changed over the years
- This raises questions
 - How should the UK state address marriage?
 - What is the relationship between legal marriage and religious marriage?

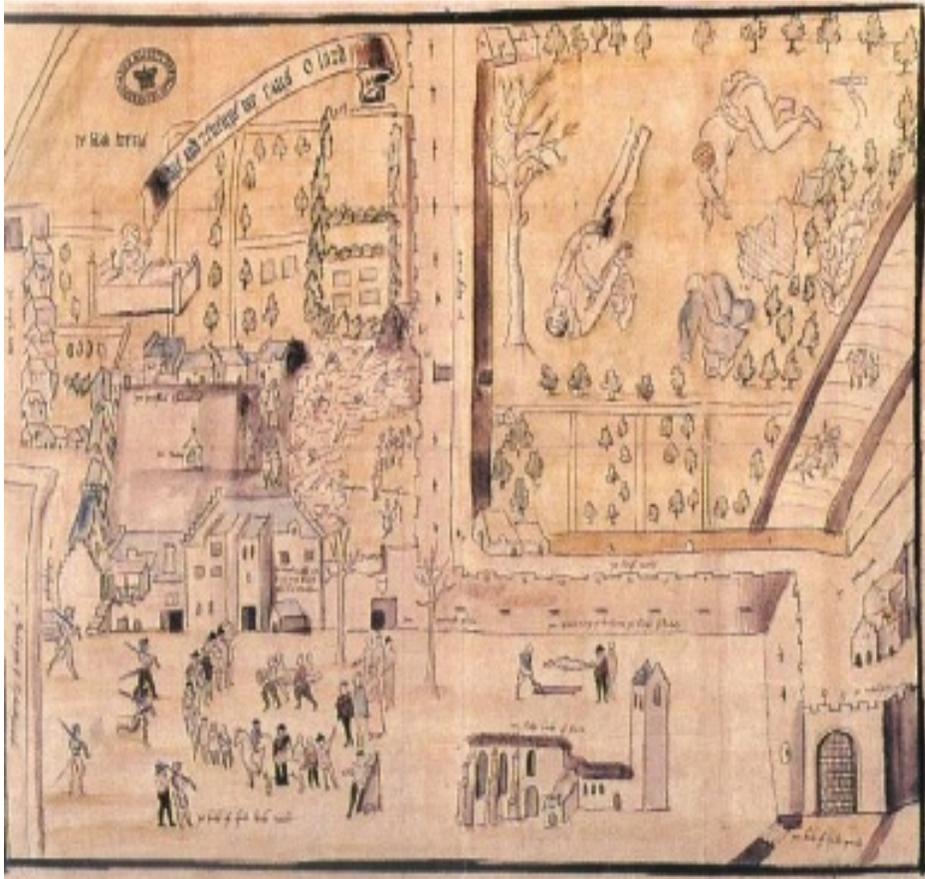
Three Facts

- The UK is made up of four nations: Scotland, Ireland, Wales and England; each has its own history.
- Normally, the law of England and Wales is different from the law of Scotland.
- The Church of England is established in only one of these nations. It was disestablished in Ireland in 1871; in Wales in 1920. Never established in Scotland, although James I and VI and Charles I tried.



Two Postulates (These are Generalizations)

Royal weddings are potentially dangerous



Kirk o' Field, 1567

Men can be jerks



Richardson, Pamela 1742

Loose Regulations and a Problem

- Ecclesiastical law of marriage before the reformation had roughly five steps
 - A written contract between the parents specifying financial arrangements
 - A formal exchange of oral promises (*de futuro*): spousals, hand-fasting, betrothal
 - Public proclamation of the intent to marry on three Sundays in Church
 - A church wedding with words *de praesenti*
 - Sexual consummation (necessary)
- These could be collapsed or take place in a different order (Henry VIII and Anne Boleyn)
- But this complexity caused problems...
- And (again) Scotland is different

Marriage Law has Differed (esp. in Scotland)

- Lord Hardwicke's Act, 1753
 - Requires parental permission for those under 21
 - Requires banns to be read
 - Marriage only in the Church of England (except for Quakers and Jews)
 - Tightens up record-keeping
 - Abolishes enforceable promises to marry
- No similar law in Scotland, although Lord Hardwicke tried



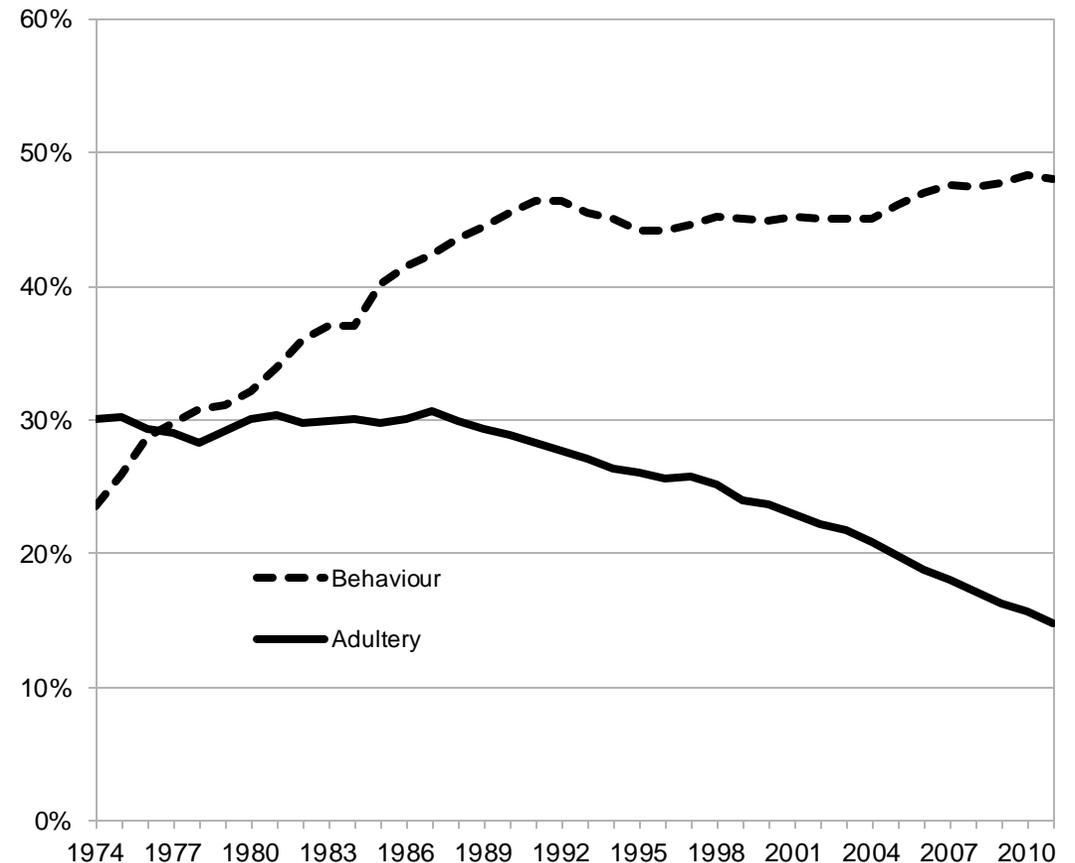
Philip Yorke, first earl Hardwicke (1690-1764)

Divorce has Differed, too

- Scotland from 1573:
 - Allows divorce for adultery, 'wilful desertion'
 - Remarriage for 'innocent party'
- England before 1857:
 - Ecclesiastical courts
 - Three-step divorce (w/remarriage)
 - Divorce from bed and board (no remarriage)
 - Private agreements (no remarriage)
- England after 1857:
 - Central divorce court in London
 - Grounds for divorce differ:
 - Men can divorce for adultery
 - Women must show 'aggravated circumstances'
 - Reduces the cost of divorce
 - Clergy exempt from re-marrying divorcees
- Different laws in different lands:
 - *R. v. Lolley* (1812)
 - *Warrender v. Warrender* (1835)

More Recently

- Divorce Equalized for Men and Women (1937)
 - Also broadens grounds for divorce
 - Maintains exemption for clergy
- Matrimonial Causes Act 1973
 - Irretrievable breakdown as a basis
 - But facts must still bear it out
 - Adultery
 - Desertion (two years)
 - Separation (two years w/consent)
 - Separation (five years)



Or, 'that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.'

Consequences for Marriage

- England: location-based weddings, either churches (Church of England or licensed places of worship) or licensed premises
- Scotland: greater emphasis on who performs the ceremony (true of the US, too)
- Quakers and Jews still different
 - Quakers and Jews still need no license for places of worship
 - Quakers and Jews still maintain their own registers of marriage, independent of the state
- Muslims: Another category of difficulties
- Differences still exist between English and Scottish laws of marriage (although now mostly technical ones)

Solution and Possible Scenarios

Quadruple Lock

- Denominations like the Church of England must opt-in to same-sex marriage
- Until they do so, any same-sex marriages celebrated by clergy will be void
- Even if they do, then individual clergy will have the right to refuse to do so
- Equality law will not be used to force them to participate in such marriages

Other Routes

- European Method
 - Separates Civil and Religious Marriage
 - Supported by C.S. Lewis
 - Now supported by Ephraim Radner Christopher Seitz and others
- Is the quadruple lock a step in this direction?

Conclusions

- Laws of Marriage are Political
 - Depend upon political circumstances
 - Depend upon compromise, insincere arguments and pressure from different groups (politics is messy!)
 - Cannot simply follow the religious doctrine of one group or another
- Circumstances Change
 - Rapid change in attitudes toward homosexuality has led to rapid changes in the law (decriminalization, 1967; authorization of same-sex marriage, 2013 in England and Wales and 2014 in Scotland)
- Church of England (and other denominations and religions) need not recognize change but cannot stop changes in the law
- Key underlying value for *legal* marriage is ***predictability***: what structure offers the best security so that parties know their *legal* rights and responsibilities

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