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## What is the 'Truth About Marriage'?

...Right-faction powerbroker Joe De Bruyn said marriage had been the union of a man and a woman "since the dawn of humanity"...

...The Australian Christian Lobby reacted swiftly to the resolution, saying the party - in defiance of Ms Gillard - had chosen to be on the "wrong side of truth".

(The Australian, 3 December, 2011)

These comments by Joe de Bruyn in 2011 piqued my interest. As I've written here before, marriage is, in my view, an institution of the law that seeks to subjugate women. In a related context, in my view, it is a relationship concerning property. Yet there is a very strong notion that marriage is so much more than this.

I have no opinion on private or religious views of marriage within the context of religious practice or how one chooses to celebrate it with one's family and friends. My interest lies in the legal construction of this private relationship - and de Bruyn's comments, as with all comments in the same-sex marriage debate, occur in the context of law-making.

So I've been doing a little reading into the context of marriage and its regulation by the law. I've a long way to go in learning about this complex institution, but even a preliminary overview provides some interesting contrast to the bluster of the political debate.

Is it true that marriage has been between a man and a woman since the dawn of humanity? If you consider this as a moral or religious question, it need not enter the legal debate. In the context of the law, I think that this is the wrong question. I think that the right question is: since when has the law been so certain about its role in marriage, and in what circumstances?

### Marriage as a Question of Class

Historically, whether or not a couple married was not a legal question, but a question of class. The history of marriage in England, from where we inherit our legal system, differs from class to class. For each class, there were in fact many reasons not to marry. For the wealthy, to find someone of equivalent education and income involved affording to maintain that lifestyle and social standing; for the middling wealthy one could not afford to marry until the farm or business was established sufficiently to support a family; and for the poor, a single person could manage on a salary but not a family. For all classes, marrying much later than in traditional societies (around age 26) was the norm.

In spite of this, the notion of marriage for all classes was a private affair within an individualistic system entirely dependent on the consent of the

### ABOUT ME



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parties. The centrality of consent seems to have arisen as early as the mid 6<sup>th</sup> century in the Teutonic law books, under which no woman could be forced to marry against her will.

Indeed marriage was so entrenched in the private realm, that there were for centuries a number of ways to become married including a promise to marry that was not consummated; a clandestine marriage that was; and a marriage sanctioned by the Church. At various stages this became complicated through Church edicts and by attempts by the State to raise taxes on marriage licences. This resulted in a lack of clarity at law about validity of various types of these customary marriages.

#### Clarifying Marriage (for the Law)

Clarity became important, it might be said, because of two things. The first of these was property. While women were ostensibly free before marriage, their marriage resulted in a fusion of their legal identity with their husband - and a fusion of their property. She had certain rights to personal property, but on the whole, during their lives the husband was the property holder. Thus if a clandestine marriage occurred without the consent of the family, the daughter's inheritance might be at stake thus affecting the wider family.

Likewise for the poor, parishes had responsibility to provide for those unable to care for themselves. If an unmarried poor woman had a child, the parish would need to provide for the two of them. Yet if she were married to someone from a different parish, or indeed any man who could provide for her, then the parish would be absolved from this liability.

Secondly was the limited allowance for divorce. (Civil divorce became possible only in 1875.) The fact that a marriage could only be undone by death meant that an unhappy spouse may try to argue that the marriage itself was not valid.

The uncertainty surrounding the marriage itself thus became a legal issue culminating in an infamous case in the mid 18<sup>th</sup> century. Consequently, Lord Hardwicke drafted legislation to regularise the marriage ceremony at law.

What this means, is that while the law had dealt with issues of property arising from marriage, it had not really had a hand in regulating the process of becoming married, until relatively recently. Indeed for centuries, many in society did not marry at all. While perhaps there was an implicit assumption about the man and woman aspect of marriage, this has not been a cornerstone of law since the 'dawn of humanity'.

#### Marriage is Indissoluble

Another important aspect of this is the indissolubility of marriage and its effect on how we came to understand marriage. Because there was effectively no way out, it became important that the foundation of marriage was companionate - that the couple got on together in a relationship that would last. Procreation, while cited by many as the purpose of marriage, had been downplayed for centuries in the English tradition. This resulted in the focus on a deep bond between the parties to a marriage. Historically, the focus on the married couple was heightened by social customs in which children left the house as young as eight or nine to go into service or become a companion to a relative. Children were not in fact central to the idea of family, and became independent at an early age. This custom supported the centrality of the companionate marriage relationship and an individualist approach to property interests - property of the marriage was not commingled with that of children.

Some of the arguments being used now to argue against same-sex marriage revolve around a construct of family and marriage that does not represent

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##### ▼ 2012 (22)

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► August (4)

► June (3)

► May (3)

▼ April (4)

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► February (3)

► January (3)

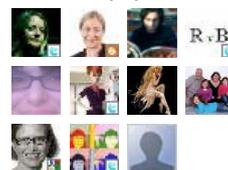
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the entire experience of (Anglo-centric) culture. To pretend that there is one view of marriage that has existed since the dawn of humanity, or one truth to marriage, is not correct. It seems to me to have a fairly dynamic character both within the Church and at law. (Though I might add that women do not necessarily come out ahead within this evolution of marriage - but that's another story.)

#### Thinking Differently about Marriage & Law

The history of marriage, sex and love in England is fascinating and reveals some important ideas that could inform our contemporary marriage debates in the context of law:

- Marriage is about consent
- Marriage is about companionship and a deep and abiding friendship
- Marriage is not solely focussed on procreation - this may or may not be an element in family life
- Marriage is about property, and sharing resources

It seems that one's gender, or the gender of one's partner, need not feature in such a framework.

*This is a brief overview of my own interpretation of Alan Macfarlane 'Marriage and Love in England: Modes of Reproduction 1200-1840 (Blackwell, 1987) ISBN: 0631139923*

Posted by Kate Galloway at 18:38

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