Marriage: A Meaningful Relationship?

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For family lawyers with an interest in marriage, the latter decades of the 20th century were lean times. Marriage was a settled subject. From the 19th century Married Women's Property Acts, through to no-fault divorce and financial provision in the 1970s and 80s, a century of legal reform had groomed a somewhat aged model and made it suitably modern for contemporary family law.1 Nagging doubts remained about declining social relevance, accompanied by growing interest in alternative relationships, but these were concerns which tended to divert our gaze away from marriage itself and towards the other, newer possibilities: cohabitation, civil union, Pacs,2 mother/child dyad,3 friendship.4 Marriage itself attracted relatively little attention.

Then into that quiet and settled landscape, there blew ‘a perfect storm.’5 At the centre of the storm was same-sex marriage but, caught up along with it, were calls and concerns from every perspective: conservative, liberal, religious, secular, feminist, functional, expressive.6 Far from being calm, settled and slightly overlooked, marriage has become fiercely contested and deeply controversial. Marriage is now at the centre of a struggle between

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conservatives and liberals, those who wish to preserve and those who wish to reform but, no matter the particular perspective or purpose, the predominant message is clear: marriage matters and what is at stake is its value; its essence; its meaning.\(^7\)

**What’s Law Got to Do with it?**

So what is marriage; this concept so closely guarded by some and sought after by others? What does it mean? Not from a romantic, religious, personal or political perspective but from the perspective of family law.\(^8\) In recent commentary on marriage, the point is frequently made that, while marriage is a legal event, it ‘is not only a legal event;’ \(^9\) while it is a legal contract, it is ‘not just a legal contract’. \(^10\) This acknowledgement of wider meaning, however, is often taken as a point of departure from which to explore these other meanings: the broader significance, the value of marriage beyond law. Relatively rarely \(^11\) does reflection turn inwards to scrutinize the ‘legal event’; the ‘legal contract’. Perhaps it is assumed that the legal essence of marriage is so well understood, and so firmly embedded in family law, that it requires no explanation. \(^12\) Value-laden marriage is a difficult institution for contemporary family law, with its preference for private ordering and its stance of apparent neutrality. Family lawyers may simply have lost the necessary language to discuss matters of meaning, in anything beyond the barest words of definition. \(^13\)

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7 The importance of ‘meaning’, particularly within the political debates concerning same sex marriage, is highlighted in C. Johnson, ‘Fixing the meaning of marriage: political symbolism and citizen identity in the same-sex marriage debate’, Continuum: Journal of Media and Cultural Studies 2013, 242.

8 The absence of a statutory definition of marriage in many US states was a point explored by Walter J Wadlington in Cross Currents, Ch. 11. See too N. Barker, Not the Marrying Kind: A feminist critique of same-sex marriage, London: Palgrave Macmillan, 2013, in particular Ch. 1.


11 Although there is increasing interest in revisiting the legal meanings and definitions of marriage: e.g., WJ. Wadlington, note 8 above; N. Barker, note 8 above, 19–20.


13 C.E. Schneider, ‘The Languages of the Law of Marriage’ in Garrison and Scott (eds), note 6 above, Ch. 12.