Conjugal Misconduct

*Conjugal Misconduct* reveals the hidden history of controversial and legally contested marital arrangements in twentieth-century America. William Kuby examines the experiences of couples in unconventional unions and the legal and cultural backlash generated by a wide array of “alternative” marriages. These include marriages established through personal advertisements and matchmaking bureaus, marriages that defied state eugenic regulations, hasty marriages between divorced persons, provisional and temporary unions referred to as “trial marriages,” racial intermarriages, and a host of other unions that challenged sexual and marital norms. In illuminating the tensions between those who set marriage policies and those who defied them, Kuby offers a fresh account of marriage’s contested history, arguing that although marital nonconformists composed only a small minority of the population, their atypical arrangements nonetheless shifted popular understandings of marriage and consistently refashioned the legal parameters of the institution.

William Kuby is UC Foundation Assistant Professor of History at the University of Tennessee at Chattanooga, where he directs the Africana Studies Program and teaches in the Women’s Studies Program.
Cambridge Historical Studies in American Law and Society

Recognizing legal history’s growing importance and influence, the goal of this series is to chart legal history’s continuing development by publishing innovative scholarship across the discipline’s broadening range of perspectives and subjects. It encourages empirically creative works that take legal history into unexplored subject areas, or that fundamentally revise our thinking about familiar topics; it also encourages methodologically innovative works that bring new disciplinary perspectives and techniques to the historical analysis of legal subjects.

Series Editor

Christopher Tomlins, University of California, Berkeley

Previously Published in the Series

Justin Desautels-Stein, *The Jurisprudence of Style: A Structuralist History of American Pragmatism and Liberal Legal Thought*  
Rebecca E. Zietlow, *The Forgotten Emancipator: James Mitchell Ashley and the Ideological Origins of Reconstruction*  
Matthew Crow, *Thomas Jefferson, Legal History, and the Art of Recollection*  
Anne Twitty, *Before Dred Scott: Slavery and Legal Culture in the American Confluence, 1787–1857*  
Reuel Schiller, *Forging Rivals: Race, Class, Law, and the Collapse of Postwar Liberalism*  
Ely Aaronson, *From Slave Abuse to Hate Crime: The Criminalization of Racial Violence in American History*  
Stuart Chinn, *Recalibrating Reform: The Limits of Political Change*  
Ajay K. Mehrotra, *Making the Modern American Fiscal State*  
Yvonne Pitts, *Family, Law, and Inheritance in America: A Social and Legal History of Nineteenth-Century Kentucky*  
David M. Rabban, *Law’s History*  
Kunal M. Parker, *Common Law, History, and Democracy in America, 1790–1900*  
Steven Wilf, *Law’s Imagined Republic*  
Rebecca M. McLennan, *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776–1941*  
Tony A. Freyer, *Antitrust and Global Capitalism, 1930–2004*

continues after index...
Conjugal Misconduct

Defying Marriage Law in the Twentieth-Century United States

WILLIAM KUBY
University of Tennessee at Chattanooga
Contents

List of Figures page vii
Acknowledgements ix

Introduction 1

1 Matrimonial Advertisements, Matchmaking Bureaus, and the Threat of Commercialized Courtship 25

2 Hasty Remarriage, Out-of-State Elopement, and the Battle against “Progressive Polygamy” 68

3 Eugenic Marriage Laws and the Continuing Crisis of Out-of-State Elopement 109

4 Trial Marriage and the Laws of the Home 146

5 Black-White Intermarriage, the Backlash against Miscegenation, and the Push for Racial Amalgamation 186

6 Averting the Crisis: The Birth of the Marriage Education Movement 230
   Epilogue 266

Index 289
Figures

1.1 “Personal,” San Francisco Call, 10 Jan. 1909  page 26
1.2 Illustration of Marion Grey, in Clifton W. Wooldridge, Twenty Years a Detective in the Wickedest City in the World, 1908  50
1.3 Belle Gunness depicted as “The Death Harvester,” in Clifton W. Wooldridge, Twenty Years a Detective in the Wickedest City in the World, 1908  55
2.2 Mary Pickford and Douglas Fairbanks at the White House, 1920  104
4.1 Otho Cushing’s “Trial Marriage” cartoon, Life magazine, 1906  155
4.2 “Noted Novelist and ‘Friend Husband’ Confess of Their Experimental Marriage.” Photo of Jacques Danielson and Fannie Hurst, 1920  160
5.1 Helen Lee Worthing and Eugene C. Nelson, 1933  197
5.2 Margaretta McClintock, 1934  204
6.1 Ernest Groves teaches his marriage course, 1940  236
This book arose from my fascination with the personal advertisements in the *New York Review of Books*, and my realization that those outlandish sources just might lend themselves to meaningful historical study. Since that epiphany I have lived in five different cities, taught at four universities, and ever so gradually turned my initial musings into a full-length book. Along the way I have received encouragement and support from so many wonderful people whose inspiration manifests itself on every page.

The project took its earliest form at the University of Pennsylvania, and I am indebted to the many professors who helped me to shape it. I am most grateful to Kathy Peiss, who, simply put, taught me how to be a historian. Her academic guidance, encouragement, and creative insights allowed me to bring my own ideas to light. Moreover, her boundless compassion and generosity motivate me to be a better professor and scholar on a daily basis. I also offer thanks to Barbara Savage, Eve Trout Powell, Walter Licht, Antonio Feros, Stephanie McCurry, Sally Gordon, Sarah Igo, Steven Hahn, and the late Sheldon Hackney for their mentorship and support throughout my graduate school years.

I was fortunate to spend my time at Penn alongside terrific classmates who have gone on to do exceptional things. For their friendship and intellectual companionship, I give thanks to René Alvarez, Dan Amsterdam, Heather Bennett, Marie Brown, Joanna Cohen, Erin Park Cohn, Abby Cooper, Julie Davidow, Elizabeth Della Zazzera, Jack Dwiggins, Rob Goldberg, Cassandra Good, Adam Goodman, Julia Gunn, Richara Heyward, Matt Karp, John Kenney, Reena Krishna, Freddie LaFemina, Zain Lakhani, Jessica Lautin, Andrew Lipman, Erik Mathisen, Jaffa
Acknowledgements

Panken, Chase Richards, Sarah Rodriguez, Brian Rouleau, Matt Schauer, Katrin Schreiter, Maryan Soliman, and Nicole Myers Turner.

The early years of my post-graduate career were somewhat circuitous, but the chaos allowed me to meet superb students and scholars whose support has made this book stronger. I would like to recognize the Women and Gender Studies and African/African-American Studies programs at Eastern Kentucky University, as well as the department of history at Miami University, for research support, mentorship, and camaraderie. Special thanks to Lisa Day, Salome Nnoromele, Sara Zeigler, Tom Appleton, Kathryn Burns-Howard, Gael Montgomery, and Yaroslav Prykhodko.

A stroke of luck brought me to the department of history at the University of Tennessee at Chattanooga, where I have found a vibrant community of creative and compassionate colleagues. I want to thank them for their friendship, patience, and emotional and intellectual support as I have slowly brought this book to completion. I offer special gratitude to Mike Thompson, John Swanson, Susan Eckelmann Berghel, Michelle White, Kira Robison, Aaron Althouse, Fang Yu Hu, Ryan Edwards, Annie Tracy Samuel, and James Guilfoyle. I am also grateful to the nonhistorians in my UTC world: Joseph Jordan, Aaron Shaheen, Jordan Amirkhani, Linda Frost, and Allison Stone. Additional thanks go to UTC’s College of Arts and Sciences, Office of Equity and Diversity, and Faculty Grants Committee for generous research support, and to UTC’s Office of Research and Special Programs for a Faculty Pre-Tenure Enhancement Grant.

This project has benefited from the help of numerous librarians and archivists. I am grateful to the staff at the University of Pennsylvania, University of Tennessee at Chattanooga, and Howard University libraries, as well as the American Antiquarian Society, American Philosophical Society, Wisconsin Historical Society, American Heritage Center, Social Welfare History Archives, University of Pennsylvania Archives, and the Arthur and Elizabeth Schlesinger Library on the History of Women in America. In addition to offering research aid, the Schlesinger Library awarded me a dissertation grant, which was critical to the project in its early stages. Special thanks also go to Agnes Fellner at the UTC Library’s Studio for her friendship and her indispensable help with image scans.

Many kind readers have given me valuable feedback on portions of the manuscript. I received particularly helpful comments from participants in the University of Pennsylvania’s Annenberg Seminar in History, and later from participants in the Gender Seminar at the University of Kansas’s
Acknowledgements

Hall Center for the Humanities; thanks to Marie Brown for inviting me to KU, and to Brian Donovan and Katie Batza for their sharp insights. I am indebted to Christina Simmons, who graciously offered commentary at various stages of this project. I have also received valuable feedback from Mathew Kuefler, Robert Lockhart, and Kate Marshall. Thanks as well to my conference co-panelists and commentators, who have given me countless ideas for how to make this book stronger: Ryan Anderson, Alexis Broderick Neumann, Kristin Celello, Rebecca Davis, Megan Elias, Carol Faulkner, Lauren Kaminsky, Alison Lefkowitz, Susan McKinnon, Elizabeth Pleck, Sarah Potter, Susan Randolph, Kimberley Reilly, Renee Romano, Honor Sachs, Christina Simmons, and, especially, Nick Syrett.

It has been a pleasure working with Cambridge University Press. Debbie Gershenowitz and Chris Tomlins saw the potential in this book from the start. As a first-time author, I have appreciated their aid in navigating the publication process, as well as their unyielding trust in my ability to bring the project to fruition. I am also grateful to Kristina Deusch, Josh Penney, Amy Lee, Ishwarya Mathavan, Stephanie Sakson, and to the two anonymous Cambridge University Press readers, whose feedback has been instrumental.

So many other friends and family members have kept my spirits up as I have inched my way toward finishing this book. Special thanks to Chad Simmons, whose love and companionship ensured that the final stretches of manuscript completion would be a joyful time, and not a stressful one; I am so fortunate to have met him. Thanks also to Megan Stevenson, Tom Grosheider, Shannon Riffe, Matt Burton, Catherine Clinton, Renee Romano, Marcus Bachhuber, Mollie Firestone, Rebecca Kirchheimer, Katherine Hill, Amanda Pettit-Shaheen, George and Becky Macko, and Kathy Coykendall for their friendship and loyalty. Additional thanks to Meghan Katzenberger and the entire staff at Niedlov’s Breadworks, who have endured my constant presence through the years. I can think of no better workspace, and no kinder souls.

This book would not exist without Mike Macko, who has been my most reliable editor, critic, and cheerleader for nearly a decade. He has read more incarnations of each chapter than any reasonable human should be expected to do, and his unwavering enthusiasm for the project has been its secret lifeline. While our relationship has transformed through the years, my devotion and gratitude remain steadfast.

My brother-in-law, Brian Bockelman, and my sister, Emma Kuby, have been the best sibling-colleagues a young historian could ask for. It has been a particular privilege to tackle the daunting steps of first book
production in tandem with Emma, whose encouragement (and commiseration) helped me to push through time and again. Last, I want to acknowledge my parents, Pamela Goldberg Kuby and Mark Kuby. A few lines could never do justice to the two people who have given me everything I have. But for the purposes of this specific project, I want to thank them for showing me the beauty of a loving and selfless marriage while also wholeheartedly embracing my own predilection for conjugal misconduct. This book is for them.