

The Marriage Crisis and its Many Backlashes in Twentieth-Century America

Author : Angela Fernandez

Date : January 31, 2019

William Kuby, [Conjugal Misconduct Defying Marriage Law in the Twentieth-Century United States](#) (2018).

The rhetoric of a “marriage crisis” is a familiar one. William Kuby’s excellent new book gives us an incisive history of the way that a sense of crisis was invoked in debates about a variety of forms of marital misconduct and the backlash they inspired in the progressive era. Kuby expertly marches us through the way that late nineteenth and early twentieth-century American judges, state legislators, polemicists, and reformers of all stripes relied on ideas of common sense public policy and moral decency to police marriage in each of the five instances of marital misconduct he examines.

The first form of marital misconduct Kuby describes is the use of marital advertisements and state and church marriage bureaus that sought to match bachelors with single women. The latter were used in regions of the West to encourage the formation of stable family units (e.g. in Oklahoma to find wives for lonely farmers). The former, viewed as mercenary and inappropriately commercialized, were generally frowned upon by journalists and academics, such as sociologist and criminologist Arthur MacDonal who labelled the women who responded to them “abnormal.” Even though these advertisements often stated “objective marriage” and “no triflers” (see image on P. 26), they were strongly associated with indecent (and risky) sexual and moral behavior. Innovations in transportation and the wider circulation of newspapers created “new possibilities in courtship,” Kurby writes, “finding partners beyond one’s restricted geographical location - or outside one’s narrow class or racial designations.” (P. 67.) These “expanding geographic and demographic boundaries of mate selection” display what Kuby calls “a crucial feature of modern romance.” (P. 67.)

The second type of controversial conjugal behavior Kuby explores is hasty remarriage after divorce or what was called by its critics “progressive polygamy,” including the attempt by couples to cross state lines in order to circumvent restrictions surrounding remarriage in their home state (waiting times or prohibitions on remarriage where there was adultery to an adulterous partner). The validity of such marriages created particular problems for the legitimacy of children. Kuby explains how the threat of illegitimacy ultimately undermined a policy of invalidating those marriages in Illinois, which for two decades required a one year post-divorce waiting time. “[C]ouples defied it time and again, raising repeated legal and administrative headaches over the fate of illegitimate children. Ultimately, constant disobedience of the law rendered it unsustainable.” (P. 96.)

The third category of noncompliant couples were those seeking to evade state eugenic laws by marrying out-of-state. Kuby explains the challenges that were involved when a legislature incorporated physician examination into a state’s marriage laws in order to weed out those seen to be unfit for married life and, specifically, reproduction (e.g. men with syphilis or men and women categorized as “feebleminded”). In Wisconsin, the \$3 physician charge did not cover a proper examination anyway, and even doctors came to resist co-optation into this form of marriage policing. Kuby concludes that the ways that “concerned lawmakers overextended themselves by seeking overly aggressive, often implausible solutions [such as] stricter premarital health examinations and longer waiting periods, however ill-fated, demonstrate the intensity of the concerns that dysgenic unions and evasive

elopements generated.” (P. 141.) Like hasty remarriage, marriage by those who would not submit themselves to medical examination demonstrate “the passions elopement sparked.” (P. 141.)

Fourthly, Kuby examines the fierce animosity sparked by “trial marriage,” an idea proposed by those who wanted to address the desire people, especially the young and inexperienced, had to try out marriage to a particular partner before having children. The childless conditional marriage was meant to ultimately *improve* the long-term quality and duration of marriages by releasing those who entered into ill-matched unions to form if not divorce-proof but more divorce-immune marriages with someone else. However, conservative critics were unable to embrace any variant of trial marriage given their strong “aversion to [any form of] divorce and a sense of panic over changing gender conventions and sexual morals.” (P. 182.)

Black-white intermarriage is the fifth form of matrimonial misconduct Kuby explores. Here he examines situations in which the disapproving family or friends of an interracial couple could successfully push for annulment of the marriage on the grounds of fraud and deceit relating to the race of the black spouse. In Northern states which lacked anti-miscegenation laws, interracial marriage “was legally permissible but culturally intolerable in most circles.” (P. 199.) Here are some of the most poignant stories in the book, including one of a white woman in Michigan in 1929, who after finding out her husband of five years was black, won a divorce from him on the grounds of “extreme cruelty” and surrendered all parental claims to their two children, agreeing with the judge that a white woman could not parent a nonwhite child. (P. 202.) Parents turned on adult children in these cases, often at great cost to their child’s reputation and standing in the world. (P. 207.) Family interference in interracial unions went so far as to include charges of mental illness premised on the idea that “only psychologically unsound white individuals wed across the color line.” (P. 210.) Despite the controversial status of interracial marriage in black communities, “accusations of insanity did not, however, fall on black partners in interracial unions.” (P. 213.)

Kuby’s book strongly demonstrates the sheer tenacity progressive-era Americans showed in their insistence on marriage and the great lengths to which they would go in order to marry and remarry the person of their choice. A recurring theme is the way that divergent rules in different states were used by couples to effectuate their strong desire to be wed. The behavior was often strategic on the part of those desiring the marriage and those seeking to provide the service, as marriage mills would form in one state for out-of-state clientele, be shut down, and pop up again in another state eager for the business. Time and again we see out-of-state couples seeking to evade rules on wait times before obtaining a marriage license or having to post banns at home where friends and family might object and intervene, circumventing eugenic clearance procedures in their home state, or avoiding rules relating to minimum periods between divorce and remarriage. In my favorite line of the book, Kuby quotes a Pennsylvania minister who stated about a shotgun wedding law: “It’s a great law ... It won’t stop elopements though. Love always finds a way. It has lots of loopholes, too.” (P. 145.)

That very real sense of (successful) persistence comes through, as against conservative legal forces which seemed to be more successful at moving a problem around than really solving it. The law often had only limited effect. Initiatives to organize uniform marriage law were largely unsuccessful. A rising divorce rate seemed to be impervious to anything anyone was doing about elopements and remarriage wait times. People were coming to view marriage as impermanent and when disappointed about one marriage as a vehicle for individual physical and psychological fulfillment, they were eager to contract another (too much “free love” as some of the judges put it). The marriage education movement, the topic of the book’s final chapter, arose out of the realization that the law had a limited role to play in the face of seismic shifts in gender relations and attitudes towards sexuality and life-long monogamy. Yet still people desired the legitimacy marriage provided and were willing to go to great lengths to obtain it.

The highlight of the book is probably the Epilogue in which Kuby explains how marriage has been systematically privileged in American law and society as the ideal form of social organization, ironically reinforced by those engaged in different types of conjugal misconduct as they sought legitimacy for their unions. Kuby argues that this privileging has stigmatized single life and other forms of human connection. Moreover, all the predictions about the demise of matrimony by socially conservative critics responding to each of the forms of “misconduct” involved in hasty/evasive marriage actually allowed marriage’s “supreme reign to persist.” (P. 288.) Kuby writes: “Again and again, acts of conjugal misconduct have sparked perceptions of a national marriage crisis, yielding a mixture of backlash and accommodation to shifting marital trends. But ultimately the biggest victor in these crises is the institution of marriage itself.” (P. 287.) This is an important insight, very much on display in the late twentieth-century same-sex marriage debate, which Kuby deftly analyzes. The ultimate aim? The “historical knowledge of backlash in the face of perceived marriage crisis should give us all pause in our assessments of what constitutes proper marital and familial arrangements.” (P. 287.)

Cite as: Angela Fernandez, *The Marriage Crisis and its Many Backlashes in Twentieth-Century America*, JOTWELL (January 31, 2019) (reviewing William Kuby, **Conjugal Misconduct Defying Marriage Law in the Twentieth-Century United States** (2018)), <https://legalhist.jotwell.com/the-marriage-crisis-and-its-many-backlashes-in-twentieth-century-america/>.