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# Married by Law: The Legal History of Marriage and Romantic Partnership

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## Introduction

This book argues that marriage is not merely a private promise but a public technology—an instrument through which states, churches, and communities organize property, labor, lineage, and loyalty. By tracing statutes, court cases, and the political movements that shaped them, *Married by Law: The Legal History of Marriage and Romantic Partnership* shows how legal frameworks have defined the obligations and rights of those who love, live together, and form households. The subtitle—*Marriage law, civil unions, and the politics of love across time*—signals our dual focus on continuity and change: the enduring functions marriage has served and the many reinventions it has undergone.

Our story begins when marriage was principally a religious covenant policed by ecclesiastical authority, then follows its gradual reimagining as a civil contract subject to secular rule. In this transition, the law did not simply reflect social norms; it produced them. Doctrines like coverture, which merged a wife's legal identity into her husband's, reveal how power traveled through the marital bond. So do rules governing dowry and dower, guardianship and custody, and the boundaries of consent. Each reform—whether narrowing church control, expanding women's personhood, or redefining the grounds for divorce—recalibrated the balance between intimacy and authority.

Marriage law has also been a site of exclusion. Legislators and judges drew sharp lines around who could marry whom and on what terms. Age-of-consent statutes, bans on interracial marriage, and rules restricting unions across religious or national boundaries show the state's interest in managing sexuality, citizenship, and racial order. Colonial regimes exported preferred marital forms and criminalized others, even as Indigenous and local communities defended their own legal traditions. In these contests, marriage became a key mechanism for building nations and empires.

Economic policy likewise runs through the marital story. Household labor, property distribution, inheritance, and the provision of care all depend on legal definitions of partnership. Tax codes and welfare programs have rewarded certain family forms and penalized others; the state's "marriage bonus" and "marriage penalty" are not fiscal accidents but political choices. Feminist mobilizations pressed courts and legislatures to confront marital rape, workplace discrimination, and inequities in divorce and custody, while privacy jurisprudence reframed intimate decision-making—from contraception to family planning—as a constitutional concern.

As social practices shifted, so did legal categories. Cohabitation challenged the presumption that intimacy must be licensed; common-law marriage, once a pragmatic

recognition of informal unions, became a battleground over legitimacy and stability. In the late twentieth and early twenty-first centuries, LGBTQ+ advocates advanced domestic partnerships and civil unions as stepping stones toward full marriage equality, even as opponents organized counter-movements and constitutional amendments. The resulting jurisprudence illuminated a core tension of modern democracies: how to reconcile religious liberty with equal protection in the governance of intimate life.

The book takes a comparative view while remaining anchored in the United States, situating American developments within broader global patterns. We examine legal pluralism where religious, customary, and civil systems overlap; debates over polygamy and the regulation of plural households; and the impact of migration on transnational families. Emerging technologies—from assisted reproduction and surrogacy to algorithmic matchmaking—pose fresh questions about parentage, contract, and the commodification of care, reminding us that the law of love is always a law of resources.

Methodologically, the chapters blend close readings of statutes and judicial opinions with analysis of legislative debates, party platforms, ballot initiatives, and grassroots petitions. Political movements—religious revivals, abolitionism, feminism, queer liberation, and contemporary conservative and progressive coalitions—are treated not as backdrops but as engines of legal change. Each chapter centers a set of disputes to show how arguments travel from pulpits and street corners into courtrooms and code books, and how legal victories and defeats reshape everyday life.

Finally, this is a book about stakes. To marry—or to refuse marriage, to leave a marriage, to seek an alternative partnership—has always been to negotiate power: over bodies and property, children and citizenship, recognition and respect. By following the interplay of law, religion, and social change across time, we can see how intimate choices become public policy and how public policy remakes intimacy. Readers will find in the pages ahead not only a history of rules but also a map of the political imagination that continues to define love.

## CHAPTER ONE: From Covenant to Contract: Early Foundations of Marriage Law

Marriage, in its earliest legal guises, was less a romance and more a property transaction with prayers. Long before the term “human rights” entered the lexicon, kinship groups treated unions as strategies for consolidating land, pooling labor, and ensuring the legitimacy of heirs. In the Mediterranean world, the bride’s family often offered a dowry, a capital infusion meant to sustain the new household and entice a capable husband. In return, the groom or his kin might promise a dower—an interest in the husband’s estate reserved for the wife’s support should he die. These arrangements were not mere customs; they were enforceable obligations, recorded in tablets, scrolls, and, later, parish registers.

The ancient Near East gives us one of the earliest written expressions of marital law. The Code of Hammurabi, compiled in eighteenth-century BCE Babylon, prescribed specific consequences for marital misconduct, dissolution, and inheritance. If a woman was accused by her husband of adultery, she could undergo the river ordeal—a stark ritual designed to resolve uncertainty through divine judgment. Divorce was permitted, but fines and property divisions were meticulously detailed, reflecting a society in which marriage functioned as an economic joint venture. The code’s famous *lex talionis*—“an eye for an eye”—did not spare the household; penalties for harming a wife were calibrated to her status and the social value of her reproductive capacity.

In classical Greece, marriage was primarily a civic duty rather than a private affection. Athenian law tied citizenship to lineage, and legitimate children—born to a wife who met the city’s criteria—were essential for political participation and property holding. The classical era distinguished between the formal wife (*gynē*) and the concubine (*pallakē*), with different rights attached to each. Women typically moved from the guardianship of a father to that of a husband, with limited capacity to own or dispose of property independently. Romantic sentiment could flourish in poetry, but legal doctrine insisted on the household’s stability over individual desire.

Roman law refined these frameworks into a sophisticated system that influenced later European and canon law. Under the early Republic, *manus* marriage placed the wife under the legal authority of her husband, transferring her property to his control. By the late Republic and Empire, most marriages were “free” (*sine manu*), leaving the wife under her father’s *potestas* and preserving her property rights. Formal consent became central: marriage required the will of both parties and the capacity to give it. The jurists also developed the concept of “just cause” for divorce, permitting either spouse to dissolve the union without ecclesiastical interference, a practice that

stunned early Christian observers and would later be reversed.

With the rise of Christianity, marriage acquired a theological dimension that gradually eclipsed its purely civil character. Early Church Fathers debated whether marriage was a sacrament or a concession to human weakness, but by the medieval period, the Church claimed sacramental authority over the marital bond. Canon lawyers articulated essential properties—unity (monogamy) and indissolubility—and required clergy to witness and bless unions to ensure their validity. The Fourth Lateran Council in 1215 centralized marriage jurisdiction in ecclesiastical courts, restricting clandestine marriages while reaffirming consent as the core of the union. The law of love began to look a lot like the law of the Church.

Consent, in canon law, was both revolutionary and fraught. A marriage could be valid if the parties exchanged present consent, even without witnesses, though the Church later encouraged public celebration to discourage fraud. The doctrine of “consummation” conferred a special status on conjugal intercourse, sealing the bond and rendering it indissoluble. Ecclesiastical courts developed procedures for annulment on grounds such as impotence, prior marriage, or prohibited degrees of kinship. These rules were not mere abstractions; they provided pathways out of unwanted unions and tools to challenge inconvenient matches, especially among elites seeking to realign alliances.

Medieval secular rulers did not fully cede the field. Kings and emperors regulated marriage to control inheritance, prevent the concentration of land in problematic hands, and manage diplomatic ties. In England, royal courts would eventually restrict the jurisdiction of ecclesiastical tribunals, but for centuries the Church dominated matrimonial law. On the Iberian Peninsula, the Reconquista and the subsequent establishment of the Spanish and Portuguese Inquisitions policed religious orthodoxy through marriage rules, imposing blood purity statutes that barred individuals with Jewish or Muslim ancestry from marrying “Old Christians.” These racialized regulations previewed modern state interest in using marriage to enforce social hierarchies.

Meanwhile, Islamic legal traditions offered a parallel framework that also balanced religious principle with civil practicality. Under sharia, marriage is a contract (nikah) requiring offer, acceptance, and a mahr (gift) from groom to bride. The contract specifies rights and obligations, and polygyny is permitted within strict limits. Divorce is recognized, with procedures favoring reconciliation but allowing dissolution under specific conditions. The classical Islamic legal system integrates family law into broader principles of property and obligation, creating a coherent structure that has endured, albeit with reforms, across diverse regions. The contrast with European canon law is instructive: both treat marriage as a binding relationship with divine significance, but they distribute authority, consent, and property differently.

By the late medieval period, the tension between ecclesiastical and secular authority

over marriage was palpable. In England, the Church's courts handled matrimony, while royal courts guarded property and jurisdictional boundaries. The development of "spousals"—betrothals that could be either present (*verbum de praesenti*) or future (*verbum de futuro*)—complicated matters. Future spousals, contingent on a condition such as reaching a certain age, sometimes led to disputes when one party reneged. If consummation followed, the union was deemed valid; if not, the jilted party might seek damages or enforcement. The law became a maze of formalities and loopholes, navigable only by those with money and patience.

The Protestant Reformation in the sixteenth century dramatically recalibrated the legal landscape. Martin Luther and other reformers rejected clerical celibacy and elevated marriage to a worldly estate, properly governed by secular authorities. This theological shift facilitated the transfer of jurisdiction from ecclesiastical to civil courts, at least in Protestant territories. Marriage remained sacred but became administratively civil. The English Marriage Act of 1753—Lord Hardwicke's Act—codified this shift by requiring public ceremonies, banns or licenses, and registration, effectively ending the validity of clandestine marriages. The move from covenant to contract accelerated.

Catholic regions resisted this slide into secular control. The Council of Trent's decrees in the mid-sixteenth century mandated the presence of a priest and witnesses for valid marriage, tightening the Church's grip on matrimonial law. The Tridentine form sought to eliminate secret unions and ensure uniformity. In mixed-confession regions, conflicts arose: a Catholic and Protestant marrying without a priest might produce a valid union in one jurisdiction and a nullity in another. These jurisdictional disputes foreshadowed modern pluralism, where religious and civil systems overlap and sometimes collide, generating complex questions of recognition and enforcement.

Alongside these developments, European communities preserved customary marriage practices that coexisted with both canon and civil law. In rural areas, handfasting, bundling, and other informal rites signaled commitments that local courts sometimes recognized as binding. In England, the famous Bess of Hardwick's serial marriages and litigation illustrated how property-minded families navigated ecclesiastical and royal courts to secure advantageous unions. In Scotland, irregular marriages—formed by mutual consent without formalities—remained valid for centuries, creating headaches for later reformers. These practices remind us that the law's reach is often uneven, bending to local norms and strategic maneuvering.

The colonial era exported and blended these legal traditions. In British North America, early settlers brought English common law and canon principles but adapted them to frontier conditions. Puritan communities in New England treated marriage as a civil contract, requiring magistrates' oversight rather than clerical blessing. Meanwhile, Catholic colonies in Spanish and Portuguese America enforced Tridentine rules, with priests recording unions and the Inquisition policing boundaries of faith and blood. Indigenous marriage forms—varied and flexible—were often ignored or suppressed,

though some colonial officials recognized them for purposes of trade and diplomacy. The result was a patchwork of legal regimes.

As the Atlantic economy expanded, marriage law increasingly served mercantile and imperial goals. Ports and trading companies depended on stable households to manage debts, inheritances, and labor. Merchants' wives often held formal authority to conduct business in their husbands' names, reflecting practical necessity more than feminist principle. Maritime law dealt with marriages performed abroad, raising questions about validity when crews married in foreign ports with different rules. Courts developed conflict-of-laws principles to determine which jurisdiction's rules applied—a precursor to modern transnational family law. The politics of love were intertwined with the politics of profit.

Age and capacity became focal points as states sought to regulate entry into marriage more precisely. Canon law had set thresholds for puberty, but secular codes gradually defined the age of consent with an eye to property and morality. In England, the Marriage Act of 1823 raised the minimum age to twelve for girls and fourteen for boys, later increased by the Age of Marriage Act of 1929 after campaigns highlighting child marriage's harms. These reforms illustrate the law's dual role: protecting vulnerable parties and ensuring that unions served public order. The age of consent was never merely biological; it was legal, social, and political.

Debates over consent also intersected with coercion. Ecclesiastical courts recognized force as a ground for nullity, but proving duress was difficult, especially within hierarchical households. Over time, legislatures criminalized certain forms of marital coercion and expanded annulment grounds. In the United States, the "shotgun wedding"—a response to pregnancy—exposed the thin line between persuasion and compulsion. Courts often treated such marriages as valid if consent was formally given, even when social pressure loomed large. The law's insistence on formal consent sometimes masked the substantive inequalities that shaped everyday decisions.

The gendered division of marital property evolved unevenly across Europe and its colonies. The common law system in England and its empire generally excluded married women from owning property under coverture, a doctrine later addressed in Chapter Three. Civil law jurisdictions, particularly those influenced by the Napoleonic Code of 1804, recognized community property regimes that treated spouses as co-owners of marital assets. These differences mattered for inheritance, taxation, and liability. They also influenced migration patterns, as families chose jurisdictions—or adapted practices—to maximize economic advantage. Property law and family law were inseparable.

Religion continued to shape the substance of marital law even as states assumed administrative control. In Ottoman territories, Islamic courts handled marriage and divorce, while secular reforms in the nineteenth and early twentieth centuries

introduced civil codes that sometimes superseded sharia for certain populations. In India, the British enacted the Indian Marriage Act of 1865, applying to Christians, while Hindus and Muslims remained under their personal laws—a plural system that persists today. The colonial state often claimed neutrality but effectively elevated some religious norms over others, particularly through procedural requirements and evidentiary standards.

The development of registration systems became a key state technology for tracking and regulating marriage. Civil registries, established in France after the Revolution and gradually adopted elsewhere, created centralized records that facilitated property rights, citizenship claims, and statistical analysis. In places where religious authorities retained control, states often required supplementary registration to achieve legal effects like inheritance or social benefits. The act of recording marriage transformed it from a private rite into a public fact, a piece of data that could be leveraged for taxation, conscription, and welfare distribution. The ledger became as important as the vow.

One overlooked dimension of early marriage law is its role in managing migration and belonging. In many jurisdictions, marriage conferred citizenship or its equivalent on women and children. Rules about “marrying out” could strip nationality or alter legal status. In British India, for example, the British government debated whether Indian women marrying Europeans retained their legal identity under personal law or fell under colonial statutes. These questions echoed in the United States, where marriage to an immigrant could anchor residency or trigger exclusion under race-based quotas. The marital bond operated as a conduit for state power.

Conflict-of-laws problems multiplied as mobility increased. A marriage valid in one place might be deemed invalid in another due to differences in form, age, or prohibited degrees. English courts in the eighteenth and nineteenth centuries developed the concept of “lex loci celebrationis”—the law of the place where the marriage was celebrated—to promote stability in transnational unions. This principle, still influential, balanced certainty against local policy preferences. It acknowledged that people moved, loved, and married across borders long before modern globalization made such crossings commonplace.

The relationship between marriage and economic policy grew more explicit with the rise of modern taxation and welfare systems. Early modern states did not offer “marriage bonuses,” but they did use marriage to allocate land and tax obligations. In England, inheritance taxes and settlement acts influenced who married whom and when. In colonial America, headrights—land grants per person—encouraged family formation to secure territory. These incentives, while not as sophisticated as later income tax rules, demonstrate that the state has long manipulated marital choices through economic levers. The politics of love have always been about the politics of money.

The legal architecture surrounding marital error—annulment, separation, and divorce—also matured during this period. Ecclesiastical courts in England granted separations “a mensa et thoro” (from bed and board) for cruelty or adultery, but not full divorce allowing remarriage. Civil courts later took over, culminating in the Matrimonial Causes Act of 1857, which transferred jurisdiction to secular judges and expanded remedies. In the United States, states varied widely: some adopted no-fault divorce only in the 1970s, while others permitted divorce on fault grounds like adultery or desertion. The trajectory shows a gradual shift from theological indissolubility to secular manageability.

The formalization of marital promises also affected the social meaning of engagement. Breach of promise actions—common in England and parts of the United States—allowed jilted lovers to sue for damages, blending law and emotional injury. These suits, often sensational, reflected the legal system’s assumption that marriage involved not just hearts but economic and reputational stakes. Over the twentieth century, courts abandoned breach of promise, deeming it an inappropriate intrusion into private affairs. The decline of such actions marks the transition toward a privacy-oriented view of romance, but early marriage law treated broken engagements as public wrongs requiring compensation.

Evidence rules in marital cases reveal the era’s priorities. Canon and civil courts required witnesses for validity, but clandestine marriages thrived in the absence of documentation. Litigation frequently turned on testimony about consummation, consent, and conduct, with judges weighing the credibility of neighbors and kin. The “best evidence” principle pushed parties toward written contracts and registrations. Over time, standard forms and certificates reduced disputes, but they also narrowed the space for informal unions. The law’s increasing appetite for paperwork reflected a desire for certainty, even at the cost of flexibility.

The professionalization of legal actors shaped marital jurisprudence. Ecclesiastical lawyers, civil attorneys, and local magistrates each developed specialties. Reports of cases—like those in English ecclesiastical courts—created a body of precedent that guided future decisions. Law schools and treatises systematized doctrines, making marriage a distinct field within private law. This professionalization increased the distance between lay couples and the legal process, which now required intermediaries. The romantically inclined needed a lawyer.

Marriage law also interacted with criminal law. Bigamy, for example, became a statutory offense in many jurisdictions as the state sought to prevent fraudulent unions and protect property lines. The line between polygamy—as practiced in some religious communities—and criminal bigamy was often drawn by politics rather than theology. In the United States, the federal Morrill Anti-Bigamy Act of 1862 targeted Mormon plural marriage, asserting federal authority over family formation. The

criminalization of marital fraud underscores the state's interest in policing the boundary between permissible diversity and perceived disorder.

Technological and administrative changes mattered. The printing press enabled standardized marriage licenses; the telegraph and railway facilitated the movement of marriage celebrants and the verification of records. These infrastructures made it easier to enforce consistency and harder to evade formalities. In the eighteenth and nineteenth centuries, the state's capacity to police marriage increased alongside its capacity to count citizens, collect taxes, and manage borders. Law did not simply regulate marriage; it leveraged new technologies to expand its reach.

The language of the law itself evolved. Terms like "covenant," "sacrament," and "contract" carried different connotations, signaling whether marriage was primarily a spiritual bond, a civil obligation, or a market exchange. Legal texts increasingly adopted the language of contract—offer, acceptance, consideration—describing marriage in secular, economic terms. This linguistic shift did not erase religious meanings, but it reframed them, giving courts a vocabulary for adjudicating disputes in a plural society. The vocabulary of law helped transform the practice of marriage.

We must also recognize the limits of legal change. Even as states formalized marriage, informal unions persisted, especially among the poor, the mobile, and the marginalized. Where registration systems were expensive or inaccessible, people relied on community recognition and customary rites. Courts sometimes validated these unions, especially if children were involved, but the trend was toward stricter formalism. The tension between formal and informal marriage remains a constant theme in the history of love, reflecting the gap between legal ideals and lived realities.

One striking feature of early marriage law is its silence on emotion. Statutes and court opinions rarely mention love, except as a rhetorical flourish. Instead, they dwell on property, consent, capacity, and ceremony. This is not to say emotion was absent; rather, the law focused on what it could regulate—external forms and economic consequences. In later centuries, privacy doctrine and feminist advocacy would bring intimacy and affection into legal view. But at the foundations, marriage appears as a structure of obligations more than a vessel for sentiment.

The global dimension of early marriage law includes missionary activity and empire. Christian missionaries in Africa and Asia promoted monogamy and church weddings, sometimes in tension with local polygynous practices. Colonial administrators sought to standardize family law to facilitate taxation and labor control. In some cases, they recognized customary marriages for limited purposes while pushing civil registration. These layered systems—customary, religious, and civil—created legal pluralism that persists today. The politics of love in these contexts involved not just personal choice but cultural survival and imperial governance.

Marriage law's relationship to slavery and coerced labor is a critical part of its early history. Enslaved people in many jurisdictions were legally barred from marrying, or their unions were held null and void. When emancipation arrived, the state often refused to recognize prior relationships, requiring newly freed families to formalize unions under rules that favored patriarchal control. In the United States, the "slave marriage" debates and the Freedmen's Bureau's efforts to register marriages reveal the extent to which marital law served labor control and racial hierarchy. Love could not be separated from the politics of freedom.

In sum, the foundations of marriage law lie at the intersection of covenant and contract, ritual and record, sentiment and strategy. The movement from ecclesiastical to secular authority did not eliminate the sacred but relocated its administrative power. Property rules, consent norms, and age thresholds created a lattice of obligations that framed romantic partnership. The state's growing capacity to register, tax, and police marriage made it an instrument of governance as much as a private bond. These early structures would be challenged and remade over time, but they set the terms for the conflicts to come.

As we move forward, we will see how these foundations—covenantal, contractual, and communal—were contested by reformers and defended by traditionalists. The transition from church to civil courts, from informal consent to formal license, from custom to code, reshaped the possibilities of love and obligation. The politics of marriage emerged not merely as a debate about intimacy but as a struggle over who gets to define the rules of domestic life. In tracing this history, we uncover the legal architecture that continues to influence how couples commit, how families form, and how states govern the heart.

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