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Excesses and Outrages:
Sexual Cruelty and Marriage in Antebellum America

Five years after her 1847 marriage, Christiana Wadkins appeared before a Texas district court requesting a divorce on the grounds of sexual cruelties, excesses, and outrages. She related a tale of deep discord describing how her husband, Samuel, spent most nights lost in drink, only occasionally getting up from his chair in order to chase her around the house. If and when Samuel managed to catch her he would either drive her from the house or wrap his hands around her neck, applying pressure until she would pass out. Christiana told the court that she tolerated these violent behaviors, but drew the line when Samuel began to make sexual demands that she deemed dangerous, including forcing her to engage in intercourse even when she was “far gone with child.” In these moments of intimate terror, Samuel would proclaim that “if he could not kill her any other way he would in that.”

This paper explores how men and women in communities and households across antebellum Virginia, Texas, and Wisconsin, understood and defined possible situations of sexual cruelty, as found within marriage. Divorce records from this period reveal the degree to which local legal cultures struggled to unify formal law with community norms. In light of expanding conceptions of legal cruelty and a growing awareness of bodily pain, local men and women began to construct nascent definitions of marital rape. In addition, legal communities across America made sexual practices the fodder for public discussion by exploring what constituted a case of sexual excess or sexual perversion. These dialogues revealed that sexual cruelty was not simply an offense gendered male as women could be guilty of improper sexual practices as well, including the willful communication of venereal disease.

Melissa Hayes

“Partially with Her Consent”:
Seduction in Popular Culture and the Law in the Nineteenth-Century Midwest

In summer 1873 James Miner, a migrant farmhand from Kansas, relayed his purported sexual encounter with an unmarried young woman he used to work with before a crowded Illinois courtroom. His recounting of the intimate incident raises fundamental questions about how nineteenth-century Americans understood consent in sexual relations. Miner informed court participants that he engaged in sexual intercourse with Elzina Laws after seeing her stand before a window with nothing but her “chemise” on. Miner claimed he “touched” the girl’s “toe” from outside her window, an act that allegedly provoked no response from her. For the farmhand, Laws’s inaction propelled him to sexual pursuit. Miner testified, “I touched her toe; she said nothing. I thought silence gave consent, crawled in the window and had connection with her.”

Using stories of seduction found in nineteenth-century popular literature as well as those recorded in Midwestern civil and criminal sexual trials such as the bastardy suit brought by Elzina Laws, this paper examines seduction as an evolving legal doctrine and an important element of popular culture. Young women who engaged in sex outside of marriage (whether willingly, because of coercion, or somewhere in between) often drew on literary plots of seduction as a means of ensuring success in a variety of sexual trials. Yet, the seduction script paradoxically sanctioned varied forms of male sexual predation. It also limited the ways in which women and men might narrate their experiences of out-of-wedlock intimacy. In exploring the legal consequences for individuals who stepped outside of plots of male sexual pursuit and female passivity, this paper illuminates the cultural influence of seduction over ordinary Americans’ understandings of consent in sexual relations. It suggests that the new political theories of consent that legal scholars have linked to the Revolutionary-era shaped issues of sexuality less immediately and resolutely.

D. Jeannine Cole

Regulating Sex and Consent in New Orleans, 1890-1917

The traditional narrative of historic New Orleans during its period of legalized prostitution often overlooks how residents found other sites of sexual acts and identities deeply troubling. Although city officials periodically gave Satan “his own address” by legislating a wide spectrum of permissiveness, such supposed tolerance is part of a much larger story in which city officials and other residents worked to reconcile their own anxieties over the inevitability of moral decay.

Seduction and rape cases reveal the many ways in which New Orleanians worked to resolve and sometimes disguise their anxieties. Younger girls often charged men with consensual seduction (the legal precedent for statutory rape) instead of rape even when recounting tales of brutal force, blood, pain, and fear. These violent seduction cases often ended in marriage, which suggests how much tolerance New Orleanians had for violence within marriage. That seducers could choose between prison sentences and marriage also emphasizes the idea that marriages served as socially stabilizing institutions similar to the reformatory and confining nature of prisons. Attorneys frequently blamed mothers for abetting their daughter’s seduction, but their anxieties over gender norms also ensured that they often elided women’s passive and sometimes even active sexual participation in group rapes. Taken together, New Orleans’ seduction and rape cases reveal how residents and legal officials sought to resolve anxieties and find legal justice, and, in the process, created an expanded role for governance within intimate encounters.