

ALSO BY THE AUTHOR  
*Dynamic Statutory Interpretation*

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The Case for  
**SAME-SEX MARRIAGE**

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From Sexual Liberty to Civilized Commitment

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### A HISTORY OF SAME-SEX MARRIAGE

**W**e'wha was an important cultural and political leader in the Zuni community in the late nineteenth century. At one point he served as an emissary from that southwestern Native American nation to Washington, D.C.<sup>1</sup> He was the strongest, wisest, and most esteemed member of his community. And he was a *berdache*, a male who dressed in female garb. Such men were revered in Zuni culture for their supposed connection to the supernatural. The most gifted *berdache* were *lhamana*, spiritual leaders. We'wha was the most celebrated Zuni *lhamana* of the nineteenth century. He was married to a man.

Ifeyinwa Olinke lived in the nineteenth century as well.<sup>2</sup> She was a member of the Igbo tribe, situated in what is now eastern Nigeria. She was an industrious and wealthy woman in a community where most of the entrepreneurial opportunities were seized by women. Ifeyinwa socially overshadowed her less prosperous male husband. As a sign of her prosperity and social standing, she herself became a female husband to other women. Indeed, the epithet *Olinke* refers to the fact that she had nine wives.

Sergius and Bacchus were Roman soldiers who lived in the late third and early fourth centuries.<sup>3</sup> They were male lovers, but it was for their Christian faith that they were persecuted by the Romans.

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<sup>1</sup>This chapter is a revised and expanded version of William N. Eskridge, Jr., "A History of Same-Sex Marriage," 79 *Virginia Law Review* 1419 (1993).

According to Christian tradition, Sergius's faith faltered with the death of his lover only to return when Bacchus appeared to him in a vision and said, "I am still with you in the bond of union." Sergius kept faith and, like his friend, died a martyr to the new religion. During the Middle Ages, the relationship of Sergius and Bacchus was considered an exemplar of companionate union, and possibly even marriage, based on *agape* (brotherly love) and mutual respect.

The stories of We'wha, Ifeyinwa Olinke, and Sergius and Bacchus resonate strangely in modern American minds. Most twentieth-century Americans consider marriage to be an institution that intrinsically involves different—rather than same-sex partners. While numerous Americans are willing to tolerate same-sex relationships, and even to sanction them to some extent, few consider them to be marriages. In contrast, historians, social anthropologists, and scholars of comparative literature have been writing about same-sex unions and marriages for most of this century, with a boomlet in the last two decades. Though few critics like to admit it, same-sex marriages are a commonplace in human history and have served civilizing functions, providing couples with social support and integrating them into the larger culture.

This chapter presents a minihistory of same-sex unions. To the modern Western mind it is surprising how common same-sex unions and even marriages have been in other times and other cultures. While there has been plenty of anxiety about these unions as well, they have at least been tolerated in most societies—except in Western society since the thirteenth century. I shall leave it to others to argue why the West became and remained intolerant for so long. Instead, I only wish to put to rest the argument that same-sex marriage is somehow so unnatural or dysfunctional as to be unheard of. Hear of it now.

Several points should be made at the outset. The story I am going to tell is episodic and fragmentary. A thorough history of human relationships in general may never be written because the records of everyday lives of the past no longer exist or exist in hard-to-decipher form. A history of same-sex unions will be even more fragmentary. Moreover, it is perilous to generalize about institutions across cultures as well as time periods. I shall use the phrase *same-sex union* to refer

to any kind of culturally or legally tolerated institution whereby individuals of the same sex are bonded together in relationships for reasons of affinity, economy, or society. Included within the general category of same-sex unions are same-sex relationships, which are culturally but not legally recognized in the society, and same-sex marriages, which have sanction or consequences under the society's legal regime.

I am not using the term *marriage* casually. Although some of the same-sex relationships described in this chapter have marriage-like features, I do not always deem them same-sex marriages. The term is used only when it appears that the same-sex union was treated by contemporaries and legal authorities as about the same as different-sex marriage *and* met one or more of the civilizing functions of marriage, namely, long-term emotional support and bonding between the couple; economic security and division of labor in the household; or legitimacy and support of a family, including children. In cases of ambiguous evidence, I shall indicate the ambiguities, albeit sometimes in the notes.

For narrative convenience this history of same-sex unions will unfold in three segments: the premodern antecedents of Western (European) culture; Native American, African, and Asian cultures, with a focus on the treatment of same-sex unions prior to Westernization; and the modern period, in which Western culture has dominated the world. The first two segments reveal that many communities, including premodern Western society, recognized same-sex unions, including marriages. In the modern period same-sex marriage has been suppressed, forced into a closet from which it has recently emerged.

## PREMODERN WESTERN CULTURES

The early Egyptian and Mesopotamian societies that are considered important antecedents for Western culture apparently tolerated same-sex relationships in their culture, literature, and mythology. Evidence that these societies recognized same-sex marriage is speculative. Later, however, one finds more tangible evidence of same-sex marriage in classical Greece, imperial Rome, and medieval Europe. Same-sex

relations were met in the later cultures with a mix of tolerance and anxiety.

#### *Ancient Civilizations (Egypt and Mesopotamia)*

Because there are so few surviving records pertaining to family and sexual matters, we know little of the specific practices of the most ancient cultures, namely, those of Egypt, Mesopotamia, and their environs. At the very least, one can say that the leading ancient cultures sometimes treated same-sex relationships similarly to marriages involving different-sex partners.

Information about Egyptian unions, whether partners were different or same sex, is indirect but suggestive. Some artifacts have depicted same-sex couples in intimate poses, suggesting that Egyptian society at some points in its history was accepting of same-sex relationships. For example, a tomb for two male courtiers of the Fifth Dynasty (about 2600 B.C.) includes bas-reliefs of the two men holding hands and embracing, with noses touching, poses that are strikingly more erotic than those seen in the depictions in Egyptian tombs of different-sex couples. Social historian David Greenberg argues that the men were lovers whose same-sex relationship was apparently accepted by the state, since the pharaoh provided their tomb.<sup>4</sup> Indeed, the tomb of at least one pharaoh, the renowned Akhenaton (Ikhnaton), contains figures of the pharaoh and his male consort posed even more intimately.

The most interesting evidence of same-sex unions in ancient Egypt is fascinatingly indirect. After living for several generations in Egypt, the Israelites (according to biblical tradition) fled that land, ultimately settling in Canaan near the end of the second millennium B.C. Their religion rejected many Egyptian mores. Chapter 18, verse 3 of the Old Testament Book of Leviticus admonished the Israelites to avoid the “doings of the land of Egypt, wherein ye dwelt . . . neither shall ye walk in their ordinances.” Verses 24 and 27 referred to those “doings” as “abominations” that defiled “the nations,” apparently Egypt and perhaps also Canaan. Verse 22 is more specific: “Thou shalt not lie with mankind, as with womankind: it is abomination.”

The implication that same-sex intimacy was common in Egypt and Canaan is elaborated by the Sifta, a midrashic exegesis of Leviticus. The Sifta says of chapter 18:<sup>5</sup>

- A. If “You shall not copy the practices of the land of Egypt . . . or of the land of Canaan,”
- B. might one think that they are not to build their buildings or plant vineyards as they did?
- C. Scripture says, “nor shall you follow their laws”;
- D. “I have referred only to the rules that were made for them and for their father and their fathers’ fathers.”
- E. And what would they do?
- F. A man would marry a man, and a woman would marry a woman, a man would marry a woman and her daughter, a woman would be married to two men.
- G. That is why it is said, “nor shall you follow their laws.”

Given the parallel references to marriage by a man to a woman and her daughter and by a woman with two men, the author of this midrash was using the term *marry* in its juridical sense. This evidence would suggest that same-sex unions at least functionally similar to marriages were accepted in Egypt and Canaan but not by the Israelites. Sifta is not, however, conclusive evidence of same-sex marriage in Egypt, because it was a biased account of Egyptian culture and was written long after the practices it describes. (Some scholars even doubt the accuracy of the Bible’s account of the escape to Egypt.)

Mesopotamian mores pertaining to same-sex relationships are illustrated in the most celebrated of the Near Eastern myths, the Epic of Gilgamesh. Written through a collective process over several generations, the epic describes the relationship between Gilgamesh, the great powerful ruler of Uruk, and Enkidu, a male created by the gods to divert Gilgamesh from wreaking havoc in the world.<sup>6</sup> Gilgamesh and Enkidu become comrades, friends, and lovers before Enkidu dies at the hands of the fates. Enkidu is often called Gilgamesh’s “brother” (*ahu*), a term connoting family-like intimacy. Significantly, Gilgamesh’s feeling for Enkidu is modeled on sexual attraction. In the two dreams that presage the arrival of Enkidu, Gilgamesh takes pleasure in his vision of Enkidu as in a woman. The Assyrian version of the myth refers to Enkidu, “[I] loved it, and like[ly] a wife I caressed it.”

When Enkidu dies, Gilgamesh mourns for him as a widow (literally, “a wailing woman”) would have mourned and veils his corpse as if it were a bride. Because the Epic of Gilgamesh was a collective project and achieved great popularity in ancient times, one might infer that same-sex relationships had some resonance in the cultures of ancient Babylonia and Assyria. This inference is supported by evidence that several Mesopotamian monarchs (notably Hammurabi, the great Babylonian lawgiver) openly enjoyed male lovers. Moreover, the Almanac of Incantations contained prayers favoring, on an equal basis, the love of a man for a woman, a woman for a man, and a man for a man.<sup>8</sup>

Consider also Mesopotamian statutes, which, unlike Egyptian laws, have been preserved. None of Mesopotamia’s early legal codes—the Laws of Urukagina (2375 B.C.), the Laws of Ur-Nammu (2100 B.C.), the Laws of Eshnunna (1750 B.C.), the Laws of Hammurabi (1726 B.C.) and the Hittite Laws (around 800 B.C.)—prohibited or disapproved of same-sex relationships, even though sex and marriage were otherwise heavily regulated.<sup>9</sup> On the other hand, the legal codes contained no provision sanctioning same-sex marriages, with one possible exception. Table 1 of the Hittite Laws regulated marriage, specifically the husband’s payment of a bride-price to the wife. While it was assumed that this regulation applied to the advantage of free Hittite citizens, special provisions in Table 1 afforded explicit legal authority for slaves to obtain brides in this way; otherwise, slaves apparently could not marry. For example, section 34 stated: “If a slave gives the bride-price to a woman and takes her as his wife, no-one shall [make him] surrender her.”<sup>10</sup> According to one translation, section 36 then stated: “If a slave gives the bride-price to a free youth and takes him to dwell in his household as spouse, no-one shall [make him] surrender him.”<sup>11</sup> There has for generations been legitimate controversy over the correct reading of section 36. If the quoted reading were correct, a male slave with money (the bride-price) to pay for a male spouse could acquire one and could expect that the transaction would be enforceable at law. If a slave were allowed to do this, it went without saying that a free Hittite citizen could do the same.

### *Classical Greece and Pre-Christian Rome*

Classical Greek culture was keenly interested in and developed rich cultural norms for same-sex relationships, some of which were close to marriages. Plato’s *Symposium* is the first recorded essay in “the praise of Love” (line 177E), with love and relationships between men being its primary focus.<sup>12</sup> One of the speakers, Pausanias, delivers an impassioned defense of companionate same-sex relationships:

Those who are inspired by . . . Love are attracted to the male: they find pleasure in what is by nature stronger and more intelligent. But, even within the group that is attracted to handsome boys, some are not moved purely by this heavenly Love; those who do not fall in love with little boys; they prefer older ones whose cheeks are showing the first traces of a beard—a sign that they have begun to form minds of their own. I am convinced that a man who falls in love with a young man of this age is generally prepared to share everything with the one he loves—he is eager, in fact, to spend the rest of his own life with him. (Lines 181C–D)

Likewise, Phaedrus praises unselfish love (*agape*), citing as examples Alcestis’ willingness to die for her husband Admetus (lines 179B–C) and Achilles’ willingness to die for his lover Patroclus (lines 181C–D). This analogy suggests both the companionate feature of same-sex relationships and the formal distinction drawn by the author between same-sex relationships and different-sex marriage.

Historians of classical Greece and its romantic institutions consider the *Symposium* a reflection of the attitudes toward same-sex relationships prevailing in at least some of the Greek city-states. In Athens and, it appears, other major city states, no law prohibited same-sex relationships. They were, in fact, institutionalized for free male citizens, who were expected to court and have a relationship with a boy in their early adulthood. While historians have not ventured to consider these relationships to be marriages, they have demonstrated that they often followed the same courtship rituals as marriages.<sup>13</sup> A closer link between same-sex relationships and marriage was a ritualized same-sex courtship in Crete. The ancient geographer Strabo described the “peculiar laws regarding love” followed on that island, whereby two men would become “partners” (or “companions”)

after the abduction of one by the other, followed by a feast where the partners announced their mutual intentions before witnesses.<sup>14</sup> Several historians have characterized these Cretan abduction ceremonies as same-sex “marriages.”<sup>15</sup> Another Greek island, Lesbos, gave the Western world the concept of female same-sex relationships, which probably had broader currency. Eva Cantarella believes that some of the lesbian relationships arising out of female collectives (*thiasoi*) were “initiation marriages” similar to the male same-sex unions common in the city states.<sup>16</sup>

The consensus among historians is that republican Rome, like classical Greece, was tolerant of same-sex relationships.<sup>17</sup> Imperial Rome considered some of them marriages. The best documented are the same-sex marriages of Rome’s emperors. Roman historian Suetonius reported, disapprovingly, that the first-century emperor Nero “went through a wedding ceremony with [Sporus]—dowry, bridal veil and all—which the whole Court attended; then brought him home and treated him as a wife. He dressed Sporus in fine clothes normally worn by an Empress and took him in his own litter not only to every Greek assize and fair, but actually through the Street of Images at Rome, kissing him amorously now and then.” Later, a freedman, Pythagorus, “married [Nero]—just as he himself had married Sporus—and on his wedding night he imitated the screams and moans of a girl being deflowered.”<sup>18</sup> Dio Cassius, a historian and contemporary of Suetonius, confirmed Nero’s marriages to these men<sup>19</sup> and also provided a reliable account of the same-sex and opposite-sex marriages of third-century emperor Elagabalus.<sup>20</sup> Indeed, it was said that men seeking advancement in Elagabalus’s imperial court rushed to marry other men to curry favor with the emperor.<sup>21</sup> Second-century emperor Hadrian was renowned throughout the ancient world for his wise and moderate reign and for his love of the tragic youth Antinous. Though not Hadrian’s spouse, Antinous attained the status of legend and was commemorated for generations through sculpture, architecture, painting, and literature.<sup>22</sup>

Other evidence indicates that same-sex marriages were not limited to Rome’s emperors. The satirists Martial and Juvenal sarcastically

noted the casual way in which men married other men by the end of the first century: “I have a ceremony to attend tomorrow morning in the Quirinal valley,” says the interlocutor in Juvenal’s *Satires*. “What sort of ceremony?” he is asked. The reply: “Nothing special: a friend is marrying another man and a small group is attending.”<sup>23</sup> Martial described the marriage of “bearded Callistratus” to the “prawny Afer,” complete with torches, wedding veil, songs, and dowry.<sup>24</sup> The novel *Babylonica*, an early exemplar of the pulp romance, has a subplot involving the passion of Egypt’s Queen Berenice for the beautiful Mesopotamia, who was snatched from her. After one of the queen’s servants rescued Mesopotamia from her abductors, “Berenice married Mesopotamia, and there was war between [the abductor] and Berenice on account of Mesopotamia.”<sup>25</sup> These and other references do not exclude the possibility that same-sex marriages were culturally or legally distinct from different-sex marriages, but they confirm the acceptance of same-sex unions in imperial Rome. The marriages of emperors such as Nero stand as examples of publicly celebrated same-sex marriages in the same period.

### *Christian Rome and the Middle Ages*

The late Roman Empire grew less tolerant of same-sex unions than either the republic or the earlier empire had been. In 342 A.D., Rome adopted a statute that seemingly—but perhaps facetiously—prohibited same-sex marriages:<sup>26</sup>

When a man “marries” in the manner of a woman, a “woman” about to renounce men, what does he wish, when sex has lost its significance; when the crime is one which it is not profitable to know: when Venus is changed into another form; when love is sought and not found? We order the statutes to arise, the laws to be armed with an avenging sword, that those infamous persons who are now, or who hereafter may be, guilty may be subjected to exquisite punishment.

While the statute reinforces the impression that same-sex marriages were not uncommon in the Roman Empire, it also evidences an anxiety about same-sex unions that antedated the fourth century. For example, Plutarch’s *Moralia*, written in the second century, includes

a heated dialogue filled with comments both for and against same-sex relationships, which suggests that their propriety was a matter of controversy. A subsequent anonymous dialogue entitled *Affairs of the Heart* was sympathetic to same-sex relationships but sharply distinguished them from marriage.<sup>27</sup>

Imperial Rome's anxiety about same-sex relations was related to the institutionalization of companionate marriage, in which husband and wife were friends and marital partners in the creation of the family unit. The rise of companionate marriage also involved the linkage of procreation with sexual partnership. There might also be a connection between the aforementioned statute of 342 A.D. and the increasing influence of Christianity during the late Roman Empire. Inspired in part by its Judaic heritage (recall Leviticus, quoted earlier), the early Christian tradition advocated companionate different-sex marriage that served procreative purposes, and was correspondingly ambivalent about same-sex relationships.<sup>28</sup> The major philosophical traditions of the Late Empire—Stoicism, Neo-Platonism, and Manichaeism, all of which influenced Christianity—were intolerant of most forms of sexual pleasure and equivocal about the merits of same-sex relationships. Some of the Manichaeans, for example, thought homosexual pleasures worse than heterosexual ones since they did not reproduce the race, though others viewed same-sex relations more leniently.

The collapsing Roman Empire grew increasingly inhospitable to same-sex unions, and after Rome's fall in 476 A.D. state attitudes toward such unions became more hostile. In the surviving Eastern Empire, the Justinian Code of 533 A.D. flatly outlawed same-sex intimacy, placing it in the same category as adultery, both of which violated the then entrenched ideal of companionate different-sex marriage. In the remains of the Western Empire, the Visigoth state in Spain criminalized same-sex intimacy around 650 A.D.,<sup>29</sup> though most of the other Germanic states showed little interest in either advocating or decrying same-sex relationships. At first glance, it appears that the same-sex unions of the earlier Roman Empire had all but died out during the early Middle Ages. A closer look reveals the story to be more complicated.

The complication owes much to the Roman Catholic and Greek Orthodox Churches' ambivalent responses to same-sex unions. During the early and high Middle Ages, the Church was doctrinally critical of same-sex erotic intimacy because it could not result in procreation and constituted sex outside of marriage. On the other hand, the Church favored same-sex companionate intimacy; *agape* between brothers, such as the love of Sergius and Bacchus, was the Christian ideal. Church practice thrust the faithful into "homosocial" environments (schools, monasteries, nunneries) that were sure to engender what we would today deem sexual responses. Erotic feelings repeatedly arose between teachers and students, clerics and their fellows and acolytes, yearnings that are documented in a proliferation of love letters, poems, and stories written in the Middle Ages.<sup>30</sup>

In the early Middle Ages the Church developed institutions, memorialized in liturgies included in its formal collections, that combined the Church's spiritual commitment to companionate relationships with its members' desire to bond with people of the same sex. The existence of Roman Catholic and Greek Orthodox rituals of "brother-making" or "enfaternization" has been known in the academic literature for decades and was brought to my attention by the Reverend Alexei Michalenko.<sup>31</sup> Ceremonies creating these brotherhoods were performed for same-sex couples (often male missionary pairs) from the fifth century onward. According to Church archives, these early liturgies were typically structured as follows:<sup>32</sup>

- The couple stand in front of the lectern, on which are placed the Gospel and a cross. The older of the brothers stands to the right.
- The ceremony starts off with prayers and litanies celebrating earlier examples of same-sex couples or friends in the early Church. Sergius and Bacchus were the most frequently invoked precedent.
- The couple is girded with a single belt, signifying their union as one, and they place their hands on the Gospel and receive lit candles.
- The priest reads from one of Paul's epistles (1 Cor 12:27 ff.) and the Gospel (John 17:18–16), which are followed by more prayers.
- The assembled are led in the Lord's Prayer, followed by Holy Communion, the Eucharist, for the couple.

- The priest leads the couple, who are holding hands, around the lectern while the assembled sing a hymn.
- The couple exchange a kiss, and the service concludes with the singing of Psalm 132:1 (“Behold how good and sweet it is for brothers to live as one”).

Significantly, this early brotherhood liturgy was acted out in formal terms very similar to the liturgy later developed by the Church for the purpose of performing different-sex marriages.

The main difference between the brotherhood liturgy and the one originally used to wed different-sex couples is that the former emphasizes the companionate (see Psalm 132) rather than the procreative (see Psalm 127) nature of the relationship. Hence, rather than orating on procreation, one version of the enfraternization liturgy read as follows:<sup>33</sup>

O Almighty Lord, you have given to man to be made from the first in Your Image and Likeness by the gift of immortal life. You have willed to bind as brothers not only by nature but by bonds of the spirit Your most celebrated Apostles Peter, the Chief of them all, and Andrew, James and John the Sons of Zebedee; Philip and Bartholomew. You made as very brothers Your Holy Martyrs Sergius and Bacchus, Cosmas and Damian, Cyrus and John. Bless Your Servants united also that, not bound by nature, [they be] joined with bonds of love. Grant them a love mutual and without offense and a brotherhood upset by naught of hatred all the days of their lives, through the might of Your All-Holy Spirit and through the intercession of our All-Holy spotless ever-Virgin Lady. . . .

The precise significance of these enfraternization liturgies remains mysterious. They may have simply been friendship ceremonies or send-offs for missionaries. Medieval historian John Boswell argues for a broader reading, however.<sup>34</sup>

Expanding on earlier academic examinations of enfraternization liturgies and suggestions from Reverend Michalenko, Boswell uncovered a large variety of manuscript versions of Christian same-sex union liturgies in libraries and ecclesiastical collections throughout Europe. Although his earlier claim that these liturgies are identical to same-sex marriages<sup>35</sup> was overstated, he has argued that there are tangible connections between the liturgies of same-sex unions and

different-sex marriages. The same-sex union ceremonies are usually located right after different-sex marriage ceremonies in the liturgical collections Boswell consulted. As previous scholarship had established, the same-sex ceremonies are structurally and thematically similar to the different-sex ones, but Boswell insists on a more ambiguous connection. “[I]n the case of the same-sex ceremony, standing together at the altar with their right hands joined (the traditional symbol of marriage), being blessed by the priest, sharing Communion, and holding a banquet for family and friends afterward—all parts of same-sex union in the Middle Ages—most likely signified a marriage in the eyes of ordinary Christians.”<sup>36</sup> Critics contest this claim and find much of Boswell’s argumentation “tendentious.”<sup>37</sup> Notwithstanding these criticisms, which strike me as fair but not conclusive, it seems likely that the Church did sanction these brotherhood ceremonies and that there is some likelihood that the brothers so joined enjoyed relationships of affinity and erotic possibilities.

#### NON-WESTERN CULTURES

There is strong evidence demonstrating the existence of same-sex unions, including legally recognized marriages, in Native American, African, and Asian cultures. I shall not attempt to survey all the cultures here and shall instead introduce three recurring patterns: same-sex marriages with gender-bending *berdaches*; same-sex unions serving social, economic, and companionate needs; and female same-sex marriages for purposes of maintaining a family lineage.

#### *Same-Sex Marriages with Berdaches*

Accounts by stunned Spanish explorers, missionaries, and bureaucrats provide early evidence of same-sex relationships and marriages in the Americas. Francisco López de Gómara’s *History of the Indies* (1552), one of many examples, reported that “the men marry other men who are impotent or castrated and go around like women, perform their duties and are used as such and who cannot carry or use the bow.”<sup>38</sup> Same-sex unions between women were also reported: Pedro



de Magalhães's *The Histories of Brazil* (1576) described Native American women in northeastern Brazil who "give up all the duties of women and imitate men, and follow men's pursuits as if they were not women. . . . [E]ach has a woman to serve her, to whom she says she is married, and they treat each other and speak with each other as man and wife."

What these accounts describe is the *berdache* tradition, which was institutionalized in the West Indies and throughout what is now the United States, as well as in the Aztec, Mayan, and Incan civilizations. The Native American *berdache* is a person who deviates from his or her traditional gender role, taking on some of the characteristics and perceived responsibilities of the opposite sex. The *berdache* does not, however, cross gender lines so much as mix them. Indeed, many Native American cultures considered *berdaches* to be a third sex.<sup>39</sup> Most important for the present study, *berdaches* (like We'wha) married individuals of the same sex, and those marriages were recognized by Native American laws and cultures.

Outsiders' depictions of the Native American *berdache* have often been colored by their antihomosexual attitudes. The accounts of Spanish authors such as those quoted above usually expressed shock and offered Native American same-sex unions as evidence of these cultures' barbarism, which they sought to correct. Until the twentieth century, accounts by Western anthropologists suppressed the tradition. The first detailed academic study focusing on Native American same-sex unions was George Devereux's article on the Mohave *berdaches*.<sup>40</sup> Devereux reported that gender-crossing men (*alyha*) and women (*huame*) had long been tolerated by the Mohave and that their same-sex marriages were institutionalized and socially accepted. Thus, under tribal custom and law *alyha* married (and divorced) men and *huame* married (and divorced) women.

Ethnographers and anthropologists studying the culture and evolution of various Native American tribes throughout this century discovered similar *berdache* institutions.<sup>41</sup> In *The Spirit and the Flesh* Walter Williams draws from earlier accounts as well as his own field work and synthesizes existing scholarship probing the Native American *berdache* tradition.<sup>42</sup> Williams concludes that *berdaches* have been an accepted and in fact valued part of culture and law in a large

majority of Native American tribes. Most academic attention has been focused on male *berdaches*, like We'wha, who frequently became revered leaders in their communities. Often, a male child was consciously raised to be a *berdache* who would assume a special role in the community, mediating between the spiritual and physical worlds. Marriages between men and male *berdaches* were widespread among Native American cultures. As a general matter, same-sex marriages tended to conform to traditional Native American marriage patterns, in which labor was divided between the wife, who kept house, and the husband, who hunted and directed the household. The men who married male *berdaches* were usually attracted to women as well as to men and were not themselves considered *berdaches*. Many such men preferred *berdache* wives for economic reasons, as *berdaches* would not only do the housework but also help with hunting and other traditionally male activities. While some men believed that marrying a *berdache* guaranteed greater marital stability, others pursued male *berdaches* on the basis of simple sexual attraction.

Although they have received less academic attention, female *berdaches* represented an important cultural institution in most Native American communities. Like her male counterpart, the female *berdache* assumed many of the responsibilities traditionally performed by the opposite sex, including hunting and heading a household. And she would commonly marry another woman.<sup>43</sup> Female *berdaches* and woman-woman marriages were integral to women's ability to achieve a higher status in most Native American cultures. Thus, a female *berdache* would marry a non-*berdache* woman and would assume a position as head of the household, accepting responsibility for hunting and other traditionally "male" jobs.

Most American scholarship about *berdaches* draws from Native American cultures, but the phenomenon is worldwide. According to an authoritative survey of sexual practices around the world in 1951:<sup>44</sup>

In 49 (64 percent) of the 76 societies other than our own for which information is available, homosexual activities of one sort or another are considered normal and socially acceptable for certain members of the community. . . .

. . . In many cases this [same-sex] behavior occurs within the frame-

female being recognized as a *berdache* and treated as a woman. In other words, a genuine mateship is involved.

Anthropological fieldwork since 1951 has not only confirmed but deeply elaborated on this observation. Particular attention has been paid to the *mingawé* of the Kenyan Meru, the Siberian Chuckchee, Tahitian *mahus*, and the Indian *hijras*.<sup>45</sup> With the exception of the *hijras*, the unions of these *berdachés* to people of the same sex have been treated by their indigenous cultures as culturally and legally recognized marriages.

#### *Functional Same-Sex Unions*

Same-sex unions in non-Western cultures have typically served companionate, economic, or cultural functions. This section will sample several prominent examples of same-sex unions that display different kinds of functions. Often arising in homosocial situations, the following examples involve bonding between two people of the same sex. The bonding may be sexual, but its main functions transcend the partners' intimacy. The unions serve important functions for the partners: economic, professional, or social in nature. The unions may be temporary and are not necessarily legal marriages, though they usually involve marriage-like features and even terminology.

*Military "Wives."* The most common functional union in history involves pair bonding in military settings. Many societies have institutionalized same-sex relationships, akin to the Achilles–Patroclus and Gilgamesh–Enkidu relationships of ancient myth, among warriors or soldiers. The samurai warriors of feudal and Tokugawa Japan went to battle accompanied by apprentice warrior-lovers.<sup>46</sup> Literary sources, such as *The Great Mirror of Male Love* by Ihara Saikaku, depict these relationships as highly choreographed and romantic, with strong loyalty on each side.<sup>47</sup> The beginning of a relationship between an apprentice (*wakashu*) and a samurai involved a formal exchange of written and spoken vows, giving the relationship a marriage-like status. Each participant promised to love the other in this life and the next—one step beyond our “till death do us part.” As in marriage, sex was only one

element of the samurai relationship. The samurai was supposed to provide social backing, emotional support, and a model of manliness for the apprentice. In exchange, the latter was expected to be worthy of his lover by being a good student of samurai manhood.

The warrior tradition epitomized by the samurai can be illustrated in African cultures even more vividly. E. E. Evans-Pritchard documented the institution of “boy wives” for military men among the Azande in what is now Sudan.<sup>48</sup> The Azande considered the relationship a marriage both legally and culturally. The warrior paid bride-price (some five spears or more) to the parents of his boy and performed services for them as he would have done had he married their daughter (if he proved to be a good son-in-law they might later replace the son by a daughter). Also, if another man had relations with his boy, he could sue him at court for adultery. The warrior addressed the boy as *diare* (wife), and the boy addressed the warrior as *kumbami* (husband). The relationship was both sexual (the warrior would have intercourse with the boy between his thighs) and functional (the boy performed traditional wifely duties such as housekeeping). Anthropologists have reported finding similar institutions in other African societies.<sup>49</sup>

*Companionate Unions.* Marriage-like same-sex unions have been documented in China during the Yuan and Ming dynasties (1264–1644).<sup>50</sup> Useful evidence comes from the widely read seventeenth-century stories of Li Yu. Many of his stories speak openly and approvingly of companionate love affairs between men, a practice particularly associated with Fujian and other provinces in southern China. In at least one story Li Yu relates the tragic romance of two men (Jifang and Ruiji) who become “husband and wife.” In describing the couple’s wedding, Li Yu goes out of his way to emphasize that the couple adhered to the formal requisites of marriage (bride-price, the various wedding rituals), giving some indication that similar same-sex marriages were common in southern China and perhaps elsewhere in the region. It has been inferred from Li Yu’s work and other evidence that there were “institutionalized relationships between males in some areas, and that these relationships were often expressed in terms of marriage and carried out in the same social format associated with women.”

marriage.”<sup>51</sup> Same-sex relationships elsewhere were celebrated as “brotherly” unions, “sworn friendships,” and even adoptions, that is, as close but platonic relationships reminiscent of those solemnized in the early Christian Church’s enfraternalization ceremonies. Although the Manchus of the Qing dynasty sought to discourage same-sex relationships, outlawing same-sex eroticism in 1740, these alliances continued for generations after peaking in the seventeenth century.

Less is known of female same-sex unions in China. While some historians credit accounts of woman–woman unions during the Qing dynasty as evidence of marriage-like institutions, the first well-documented unions were those associated with the “marriage resistance movement” in southern China in the nineteenth and early twentieth centuries. The development of China’s international silk industry during this period helped many women attain their economic independence from men. After acquiring this newfound freedom, thousands of women renounced marriage and became *sou hei* (literally, “self-combers”). Upon deciding to become *sou hei*, a woman took a formal ceremonial vow to remain unwed at least for a time, moved out of her parents’ house, and built “spinster houses” with other *sou hei*. These women formed sisterhoods in which small groups of women (typically five to seven) would bond together for mutual support and affection. Andrea Sankar reports that physical as well as emotional bonds often developed between two or three of the sisters.<sup>52</sup> Other scholars believe that sisterhood relationships shared many attributes of marriage, including a ceremony with witnesses and a division of labor within the family unit.<sup>53</sup>

*Initiatory Unions.* Same-sex relationships have also frequently served as social or even sexual initiations prefatory to marriage. An interesting example is the “mummy–baby” games among Basotho girls in Lesotho.<sup>54</sup> In contrast to women in many other African societies, those in Lesotho are particularly vulnerable, both economically and socially, because they are dependent on males who tend to be employed as migrant workers. For these women, relationships outside of marriage serve as important support networks, and young girls are initiated into such relationships beginning with mummy–baby games played in their grade school years. In a mummy–baby relationship an

older girl, acting as “mummy,” develops an intimate, maternal association with a younger one, the baby. Typically, the mummy presents gifts to the baby, who reciprocates by obeying and respecting the mummy. The two share emotional and informational exchanges that are physically, and sometimes sexually, intimate. Rather than displacing marriage, these relationships help to prepare younger girls for marriage, including its rockier moments. Scholars have documented similar female–female friendships in other African societies.<sup>55</sup>

The most interesting example of same-sex initiation relationship the “ritualized homosexuality” developed by aboriginal populations of Australia and the islands of Melanesia. This is the term anthropologist Gilbert Herdt uses to describe the events whereby a boy entering manhood would engage in a short-term sexual relationship with an older man.<sup>56</sup> By implanting his semen within the boy, the older man is thought to empower his younger partner, helping him to complete the journey to virility and manhood. According to Herdt, about fifty Melanesian societies practice some form of ritualized homosexuality. In some communities the ritualized man–boy relationship serves as a prelude to a traditional different-sex marriage. “A most striking aspect of social organization in societies with ritualized male homosexuality concerns the overlap between marriage and homosexual relationships.” That is, by inseminating a boy the older male is believed not only to facilitate the boy’s passage into manhood but also to prepare him for his marriage to a woman. Many of the Melanesian societies institutionalizing this ritual treat marriage not as an exchange relationship involving the payment of bride-price but as a complex method of bonding two families. In keeping with this notion, some of these cultures require a boy seeking to enter into marriage with a woman to submit sexually to the woman’s brother. “Thus, life force (as semen) flows between same-sex and different-sex partners, linking individuals and groups in complex chains of mutual dependency and obligation.”<sup>57</sup>

### *Woman Marriage and Female Husbands*

A form of same-sex union that may be unique to African cultures is

researchers, the institution was not given serious attention until anthropologists Eileen Jensen Krige and Melville Herskovits publicized it in the 1930s.<sup>58</sup> The following is an early description of woman marriage among the Nuer of Sudan:<sup>59</sup>

What seems to us, but not at all to the Nuer, a somewhat strange union is that in which a woman marries another woman and counts as the pater [father] of the children born of the wife. Such marriages are by no means uncommon in Nuerland, and they must be regarded as a form of simple legal marriage, for the woman-husband marries her wife in exactly the same way as a man marries a woman. . . . We may perhaps refer to this kind of union as woman-marriage.

A woman who marries in this way is generally barren, and for this reason counts in some respects as a man. . . . [I]f she is rich she may marry several wives. She is their legal husband and can demand damages if they have relations with men without her consent. She is the pater [father] of their children, and on the marriages of their daughters she receives the cattle which go to the father's side in the distribution of bridewealth. Her children are called after her, as though she were a man, and I was told that they address her as "father."

Krige describes woman marriage as "the institution by which it is possible for a woman to give bridewealth for, and marry, a woman, over whom and whose offspring she has full control, delegating to a male genitor the duties of procreation." She suggests that woman marriage is "closely bound up with rights and duties arising from the social structure" of the culture, a "flexible institution that can be utilized in a number of different ways to meet a number of different situations."<sup>60</sup> For example, in African cultures where women occupy a high position and can acquire property or other forms of wealth, woman marriage is one way that a woman may strengthen her economic position and establish her household. Ifeyinwa Olinke, whose tale was recounted in the beginning of this chapter, was a powerful and prosperous woman in the Igbo society who advanced her position by taking many wives.

Woman marriages were common in Africa. "The term female husband . . . refers to a woman who takes on the legal and social roles of husband and father by marrying another woman according to the approved rules and ceremonies of her society . . . [and] she may belong to any one of over 30 African populations," writes Denise

O'Brien.<sup>61</sup> She reports that the institution is most popular in three parts of Africa: (1) West Africa, especially Nigeria and Dahomey; (2) South Africa, including the Southern Bantu, on whom O'Brien reported; and (3) East Africa and the Sudan (the Nuer).<sup>62</sup> In contrast to Krige's view that woman marriage empowers women, O'Brien's belief is that the institution helps keep women in their subordinate place. Woman marriage, she argues, is usually a social adaptation by which a male-dominated society allows powerful wealthy women to take a leadership role only if they assume the social role of a man, acting as husband and father. This debate resonates with similar discussions in the feminist, lesbian, and gay communities today. Is same-sex marriage liberating? Or does it ape attitudes that suppress women?

Contrast African woman marriage with the Native American *berdache* marriage, the Azande boy wife, and the Chinese sisterhood described earlier. The aforementioned same-sex unions involved companionate emotional bonds between the partners as well as traditional divisions of labor within the household. Although a woman marriage might occur for those reasons, it more typically occurs so that a woman can have children (heirs) through a surrogate.

#### THE MODERN WEST

Notwithstanding acceptance of same-sex unions in Greece, Rome, and even the medieval Church, modern Western culture is peculiarly hostile toward same-sex unions. The most critical point in the West's attitudes toward same-sex unions or marriages can be located in the thirteenth century.<sup>63</sup> It was then that many secular governments enacted their first laws prohibiting "crimes against nature" and that prior ecclesiastical laws came to be more stringently enforced. The Church took a stronger stand against same-sex intimacy. Leading scholastic thinkers Albertus Magnus and Thomas Aquinas systematized theological arguments against such behavior. In contrast to the relatively open and tolerant attitudes expressed during the eleventh and twelfth centuries, Europe after 1200 acted in an increasingly persecutory manner toward any kind of behavior that transgressed established gender lines, including not just same-sex

intimacy but also aggressive, independent behavior by women such as cross-dressing.<sup>64</sup>

*Henri of Bordeaux*, a thirteenth-century version of an older French romance, illustrates this point. Ide, the work's female protagonist, dressed in men's garb and surreptitiously employed her skill as a warrior with such proficiency as to earn not only a knighthood but also the hand of the emperor's daughter in marriage. Ide went through with the marriage ceremony but later revealed her biological sex to her bride, who snitched to her imperial father. Condemning the possibility of "buggery" between the two women, the emperor decreed that Ide be burned to death. Though Ide was saved at the last minute by metamorphosing into a man, the drastic punishment imposed for her predicament was consistent with the harshened thirteenth-century attitude toward same-sex intimacy and cross-dressing.

Why this shift in attitude occurred is not clear. It can be said that more punitive attitudes coincided with the quickening of a culture in the West that was urban, bourgeois, and statist. The abhorring urban culture created more occasions for people to find, pursue, and enjoy same-sex partners. Increasing economic opportunities available to the bourgeoisie gave substantial numbers of men more freedom to choose and diversify the nature of their sexual liaisons. Urbanization, on the other hand, rendered such activity more prominent or widespread, and perhaps more troubling. At the same time, powerful nation- and city-states were emerging in the West. The political powers taking this new form flexed their muscles against nonconforming people of many stripes; state aggression directed against Jews, heretics, and witches stands out as an important theme in European history after 1200.<sup>65</sup>

During the early modern period (about 1400–1700), Western society's obsession with certain categories of people became more pronounced. Isolated persecutions of individuals engaging in sinful conduct (heresy, witchcraft, sodomy) gave way to hysterical persecutory crazes that swept up throngs of people (heretics, witches, sodomites) in popular, ecclesiastical, and official dragnets. Thus, same-sex unions, which had been viewed as merely problematic during the Middle Ages, were believed in the early modern period to constitute

a severe threat to the social order and the now powerful state. For example, even as Montaigne was reporting that same-sex marriages were performed by Catholic priests in Rome's Church of St. John during the 1570s, other observers reported that some of the male couples married in St. John's were later burned in the city square.<sup>67</sup> The Church and its rival and ally, the state, were becoming officially unambivalent about same-sex unions.

The West's hostility to same-sex unions and its state-sanctioned suppression of them affected other cultures' attitudes toward such unions. As Western nation-states in the early modern period conquered the New World, colonized and enslaved Africa, and cartelized and evangelized Asian cultures, they aggressively suppressed these cultures' indigenous attitudes and institutions concerning same-sex unions. Thus, the Spanish persecuted the *berdache* tradition in what is now Latin America, and the United States supported a less concerted campaign against such relationships as it stripped Native Americans of their land and culture.<sup>68</sup> Slave traders and colonial administrators broke up family institutions (including same-sex family institutions) in Africa and sometimes disrupted the economic patterns that gave women standing and authority to command female marriages. Missionaries in Africa, China, Japan, Melanesia, and other cultures imposed an increasingly rigid, official Christian view of sexuality and marriage on "converted" peoples, discouraging and sometimes persecuting traditional practices, including same-sex unions.<sup>69</sup>

#### *The Survival of Same-Sex Unions in the Modern West*

While the modern turn in Western attitudes and their ascendancy in the world surely threatened same-sex unions, they survived nonetheless. Because the modern West has been almost uniquely intolerant of unions that depart from its norm of different-sex companionate marriage, same-sex unions have occurred primarily in the interstices and at the fringes of society. The following pages present three fascinating contexts within which same-sex unions flourished.

*Women Passing as Men.* Countless female couples married in the modern era. This was accomplished by marriage of one woman to

another woman who was passing as a man. While hundreds of women are known to have "passed" during the early modern era, the story of Elena de Cespedes (1545–1588) is mysterious and unusually interesting.<sup>70</sup> Raised as a girl, Elena escaped from the traditional women's work of weaving by dressing and passing as a man; she became a soldier and then a tailor, adopting the name Eleno. Eventually, Eleno fell in love with a peasant woman and obtained a license to marry her after passing a physical inspection designed to establish manhood. Unhappily, Eleno's former lover challenged the forthcoming marriage on grounds of fraud, asserting that the first inspection was inaccurate and that Eleno was really a woman. In response to this challenge, the Madrid authority ordered a more thorough inspection to be conducted by physicians and surgeons, who once again pronounced Eleno a man. Following the marriage, Eleno was inspected for yet a third time, and on this occasion the examiners determined that Eleno, the husband, was a woman.<sup>71</sup> After the damning verdict was rendered, Elena was referred to the Inquisition, where she was convicted of devilry and promptly immolated.

Elena/Eleno's case was far from unusual in the early modern period. Records kept by the Dutch East India Company reveal hundreds of women who were caught passing as men. The leading study of cross-dressing women concludes that they did so for both economic and personal reasons. Many women not only passed as men in the workforce but enjoyed intimate relationships with and even married other women.<sup>72</sup> Women passed as men just as easily in the United States as they did in Europe, and for a similar mix of economic, social, and personal reasons. As many as four hundred women passed as men in order to serve in the Union Army during the Civil War, for example. Of the women who passed as men a substantial number sought female relationships, and hundreds of passing women

<sup>70</sup>It is a mystery as to why the doctors were fooled. One possibility is that Elena was a hermaphrodite, a person whose genitals are ambiguous. Hermaphroditism is legendary in human history, but modern sexologists have documented it as a medical phenomenon. See John Money and Anke A. Ehrhardt, *Man & Woman, Boy & Girl: The Differentiation and Dimorphism of Gender Identity from Conception to Maturity* (Baltimore: Johns Hopkins University Press, 1972), and Anne Fausto-Sterling, "The Five Sexes: Why Male and Female Are Not Enough," *The Sciences*, March/April 1993, pp. 20–24.

legally married other women.<sup>72</sup> For example, Mary Anderson, who died in 1901, passed as Murray Hall in New York City for thirty years.<sup>73</sup> Hall made boatloads of money; was active in Tammany Hall politics; gained a reputation as a man about town; and married twice, the first marriage ending in separation and the second cut short by her wife's death.

An even more interesting history is that of Nicholai de Raylan, a woman who passed as a man named Nicholas de Raylan; the masquerade proved a success apparently for most of her days. According to one doctor's account of her life:<sup>74</sup>

She was born in Russia and was in many respects very feminine, small and slight in build, but was regarded as a man, and even as very "manly," by both men and women who knew her intimately. She was always very neat in dress, fastidious in regard to shirts and ties, and wore a long-waisted coat to disguise the lines of her figure. She was married twice in America, being divorced by the first wife, after a union lasting ten years, on the ground of cruelty and misconduct with chorus girls[!]. The second wife, a chorus girl who had been previously married and had a child, was devoted to her "husband." Both wives were firmly convinced that their husband was a man and ridiculed the idea that "he" could be a woman. I am informed that De Raylan wore a very elaborately constructed artificial penis. In her will she made careful arrangements to prevent detection of sex after death, but these were frustrated, as she died in a hospital.

According to another account of de Raylan's life, the two wives were incredulous that their husband had been a woman and expressed no regrets about their marriage.<sup>75</sup>

*Female Friendships and Boston Marriages.* Women did not have to pass as men in order to enjoy intimate relationships with other women. Historian Lillian Faderman has documented dozens of examples of intense, marriage-like friendships between pairs of women from the Renaissance to the twentieth century.<sup>76</sup> Such passionate friendships became a social phenomenon in the eighteenth century, when a greatly increased number of women had the economic means to be independent of men (without passing as men). For many, these same-sex relationships generated a great deal more emotional intensity than they could find in marriage. For example, the celebrated "I adires of

Llangollen," Sarah Ponsonby and Eleanor Butler, disguised themselves as men and eloped together in 1778. They settled down in Llangollen Vale in 1780 and shared every moment together for the next 53 years.<sup>77</sup> Their "Davidian friendship" (as poet Anna Steward termed it) became a celebrated romantic ideal, and their friend William Wordsworth, described them in this way:

Sisters in love, a love allowed to climb  
Ev'n on this earth, above the reach of time.

The ladies' union is the best documented of this period, but Faderman has found evidence of many other romantic female relationships occurring throughout the late eighteenth century.

These relationships proliferated in the nineteenth century as expanded economic opportunities gave some women greater freedom to marry or not and to fashion their own personal relationships. This era even came up with a name for a long-term monogamous relationship between two otherwise unmarried women: a "Boston marriage."<sup>78</sup> These relationships were so called because they were similar to the lives of a female couple in Henry James's 1885 novel, *The Bostonians*. Boston marriages were very popular among well-educated, professional women in particular.

*The Love of Comrades*. The emotional, and surely sometimes sexual, needs that Boston marriages filled for women were similarly gratified in male "buddy" relationships during the eighteenth and nineteenth centuries. Men in frontier communities without women tended to form personal and often sexual partnerships with other men. Such intimate buddy or sidekick relationships have been documented for communities of pirates, hoboes, cowboys, and miners. The accounts are striking in the parallels between these informal same-sex relationships and the customs of different-sex marriage.<sup>79</sup> Even in mainstream contexts male relationships were not uncommon in nineteenth-century America. For example, Thomas Wentworth Higginson wrote of his Harvard classmate William Henry Hurlbut: "I never loved but one male friend with passion—and for him my love had no bounds—all that my natural fastidiousness and cautious reserve kept from others I poured on him; to say that I would have died for him

was nothing. I lived for him."<sup>80</sup> Notwithstanding this passionate language, it is not clear that Higginson and Hurlbut engaged in sexual activities, but there is such evidence for other male-bonded friends of that era.<sup>81</sup>

The poet Walt Whitman sought to describe this "marily love," what he called the "love of comrades," in the forty-five *Calamus* poems published in the 1860 edition of *Leaves of Grass*.<sup>82</sup> Although closeted by today's standards, Whitman glorified male companionate relationships:

Clear to me now, standards not yet published—clear to me that my  
Soul,  
That the Soul of the man I speak for, feeds, rejoices only in comrades:  
Here, by myself, away from the clank of the world,  
Tallying and talked to here by tongues aromatic,  
No longer abashed—for in this secluded spot I can respond as I would  
not dare elsewhere,

Strong upon me the life that does not exhibit itself, yet contains all the  
rest,  
Resolved to sing no songs to-day but those of manly attachment,  
Projecting them along that substantial life,  
Bequeathing, hence, types of athletic love,  
Afternoon, this delicious Ninth Month, in my forty-first year,  
I proceed, for all who are, or have been, young men,  
To tell the secrets of my nights and days,  
To celebrate the needs of comrades.

Whitman was the century's master of a male eroticism barely concealed beneath the language of comradeship.

In 1869, German psychiatrist Carl von Westphal published a case study of a woman who cross-dressed and was attracted to other women sexually. While such preferences presented nothing new, Westphal's prognosis did: the woman, he concluded, was a "congenital invert" whose abnormality was not an adaptation to the boring lot women faced day in and day out but was instead a result of physical degeneration and mental neurosis. Westphal's study and subsequent ones conducted by Richard von Krafft-Ebing and Havelock Ellis contributed to a popular as well as medical sensation. Once the category of the "true invert" (soon popularized as the homosexual) gained currency among the American middle class, same-sex relationships became newly problematic. Same-sex intimacy, once



stigmatized as sodomy, was now evidence of "inversion" or "homosexuality." Everyone now had a sexual identity, some healthily normal, others abominably "perverted." In this context Whitman's *Calamus* poems took on a different kind of meaning. Whereas his late-nineteenth-century contemporaries were alternately impressed, mystified, and scandalized by Whitman's erotic romanticism, early-twentieth-century medical critics used it to expose Whitman's homosexuality, his passive inversion, and his "thorough consciousness of abnormality."<sup>83</sup> Just as male comradeship grew problematic, so too did intimate female friendships; Boston marriages had become objects of suspicion by 1920.<sup>84</sup> After World War I, the phenomenon of same-sex unions became joined with America's increasing hysteria about homosexuality.

### *Homosexual Marriages*

The West's obsession with sexual identity yielded results that the new inquisitors did not desire. In the face of (and perhaps even because of) increased scrutiny of sexual practices, more and more people attracted to those of their own sex gravitated to underground communities inhabited by like-feeling residents, namely, subcultures of inverts in urban areas. Such subcultures existed in London; Paris; most major Dutch cities, including Amsterdam; most major Italian cities, including Venice; and elsewhere by the early eighteenth century.<sup>85</sup> Same-sex relationships were not uncommon once these subcultures became established. On occasion such couples were legally married. Same-sex male and female couples repeatedly sought legal marriages in the Netherlands in the sixteenth and seventeenth centuries. At least one female couple obtained a marriage authorization, and other couples entered into marriage contracts that might have been binding.<sup>86</sup>

In the United States discernible subcultures of inverts were well established in New York City, Chicago, San Francisco, Washington, D.C., and other cities before World War I.<sup>87</sup> The subcultures were built around gathering places for people who recognized themselves as inverted: YMCAs, tenements, bars and pool halls, private bathhouses, and public streets and parks. Socializing beyond the margins of society and united primarily by sexual interests, these early deni-

zens of "the life" did not create many lasting relationships. For men in particular, the characteristic activity was "cruising" for sex partners, and the common enemy was the vice squad and its decoy cops. Apart from the fun of sex, these men often reveled in the cat-and-mouse games they had to play with potential partners ("Is he one of us?"), family ("What excuse can I give tonight?"), and cops ("Is this a trap?"). Strong social disapproval of inversion and uneven legal surveillance contributed to a community of outlaws and lone rangers.

The culture of cruising did not satisfy the emotional needs of the abhorring homosexual community, however. The feelings of many in that community were similar to those Washington's Jeb Alexander confessed to his diary in 1921: "I want love and affection. Damn it!"<sup>88</sup> Jeb was not able to hold on to his true love, C. C. Dasham, but some homosexuals were able to form lasting relationships, especially after World War I. Expatriates Gertrude Stein and Alice Toklas are probably the best-known example of an American same-sex couple in this era, but others less noted by history were able to come together within American borders. In Harlem's thriving subculture, butch-femme lesbian couples married each other in large wedding ceremonies replete with bridesmaids and attendants. "Real marriage licenses were obtained by masculinizing a first name or having a gay male surrogate apply for a license for the lesbian couple. Those licenses were actually placed on file in the New York City Marriage Bureau. The marriages were often common knowledge among Harlem heterosexuals."<sup>89</sup> Similar stories can be told for homosexual people in other cities. Lesbians in particular were able to combine same-sex socializing in bars and streets with the formation of companionate relationships.<sup>90</sup> Men attracted to other men were less successful even when, like Jeb Alexander, they strongly desired commitment from one other person.<sup>91</sup>

World War II stimulated a major expansion of homosexual subcultures. The growth of these communities made it easier to find partners, and with more support from friends these partnerships lasted longer. The upswing in same-sex partnering fueled interest in homosexual marriages (see chapter 3). As early as 1953 the Mattachine Society (the leading early homosexual organization) was debating the issue.<sup>92</sup> Many same-sex couples engaged in what Donald



Webster Cory and John LeRoy described in 1963 as “mock weddings,” events at which “all the formalities of an actually legally certified and religiously sanctioned ceremony are carefully copied.” According to Cory and LeRoy:<sup>93</sup>

Cases have been known of an all-male couple, one of whom will don an expensive bridal gown, or if they are both females, one of the women will wear a tuxedo. Engraved invitations are sent out, an elaborate cake is baked, and a banquet is prepared. If a “gay” (homosexual) religious official is known, his services may be sought. . . .

With or without the aid of a religious official, however, some form of ceremony may take place in which the partners vow lifelong devotion to each other, and the wedding rings are put in place. The bridal march is played, while the guests follow the patterns of normal weddings.

In 1963 it went without saying that these “marriages” enjoyed neither legal recognition nor the prospect of legal recognition. Not only were homosexuals still socially marginal, but they were politically despised. At the same time homosexuals were congregating together in greater numbers, mainstream culture was seeking to reaffirm traditional gender and family values. The predictable result was a political era of panicked reaction. The craze of the McCarthy persecution of political “subversives” focused equally on sexual “deviates.” Far from tolerating open homosexual relationships, this era sought out homosexuals simply to persecute them. It was a period where employer investigations (especially in the public sector) rooted out homosexual employees, police dragnets emptied lesbian and gay bars, and military witch-hunts purged thousands of homosexuals from the armed services.<sup>94</sup>

### *The Gay Marriage Movement*

The June 1969 riots triggered by a police raid of the Stonewall Bar in Greenwich Village did for homosexual citizens what lunch counter sit-ins did for African Americans: they galvanized an excluded community and alerted mainstream society that the excluded were prepared to resist oppressive social practices. People came out of the closet in droves and organized in hundreds of social and legal action groups. The homophile movement of the 1950s and early 1960s

became, literally overnight, “gay liberation,” with an ambitious agenda of social and legal demands. The ramifications of “gay lib” are deep and complex. Three are relevant to the history of same-sex marriage.

*A Demand for Gay Marriage.* As lesbians, gay men, and bisexuals became more open about their sexuality, more long-term same-sex relationships than ever before in human history were established. Empirical and other surveys in the decade after Stonewall found that lesbian, gay, and bisexual people coupled in a range of patterns, with a strong trend toward close-coupled unions. The partners in such unions overwhelmingly considered themselves committed, and many considered themselves “married.”<sup>95</sup> In spite of continued social prejudice, legal disadvantages, and economic discrimination, more and more lesbians, gay men, and bisexuals were openly coupled with partners of their own sex. Studies in the 1980s and 1990s have found an even more pronounced tendency for the unions of lesbian and gay couples to involve long-term commitment. For just one example, Overlooked Opinions, a company that surveys several thousand lesbians and gay men periodically, found in 1990 that 75 percent of the lesbians and 60 percent of the gay men were in an “on-going intimate” relationship.<sup>96</sup> The 1990 Census reported that 157,400 same-sex couples identified themselves. In short, more same-sex couples have been openly bonding in patterns resembling different-sex marriage. This is wholly unsurprising. Lesbians and gay men are a cross section of America. With their relationships more open, one would expect them to resemble more closely those of other Americans.

As this chapter has tried to show, the foregoing development is not new in human history. The gay and lesbian marriages of today bear resemblance to the same-sex unions associated with classical Lesbos and Crete, the same-sex marriages of imperial Rome, the brotherhood unions of the early Church, Native Americans’ *berdache* marriages, woman marriage in Africa, and Chinese male marriages and sisterhoods. What is similar about all these unions is that they are a response to the human desire for companionate relationship. What is new is that a community defined solely by its members’ “sexual orientation” (a concept that is uniformly Western) is seeking recognition.

of their unions by the larger community that for centuries persecuted them. Also distinctive is the way in which same-sex marriage is a barometer of the "cross-civilization" of gay and straight culture.<sup>95</sup> Few gay people aspired toward lifetime commitment when they were social and political outlaws. Now that being lesbian, bisexual, or gay is better tolerated, gays view marriage not only as more conceivable but more desirable.

*The Religious Debate.* Richard John Baker and James Michael McConnell fell dead in love with one another while they were graduate students. When Baker matriculated as a law student at the University of Minnesota in 1970, they moved to Minneapolis; McConnell got a job as a cataloguer at the university. They attended religious services at the university's Newman Center Chapel. One Sunday, Baker asked the priest, "Do you feel that if two people give themselves in love to each other and want to grow together with mutual understanding, that Jesus would be open to such a union if the people were of the same sex?"<sup>97</sup> After thinking for a moment, the priest reportedly said, "Yes, in my opinion, Christ would be open." Baker and McConnell purchased wedding rings and were married in a religious ceremony. Since then, thousands of lesbian and gay couples have similarly petitioned for religious blessing of their unions. Perhaps surprisingly, their marriages have been sanctified by representatives of virtually all of America's leading religions. The appendix to this book includes letters in support of same-sex marriages by a variety of religious figures in the United States.

Many of the gay marriages have been performed by religious groups formed specifically for the gay, lesbian, and bisexual faithful. One such group, the Universal Fellowship of Metropolitan Community Churches (MCC), has been conducting Holy Union ceremonies for same-sex couples since 1968. The MCC estimates that its ministers perform more than two thousand gay marriages each year.<sup>98</sup> Temple Beth Chayim Chadashim in Los Angeles (founded 1972),

Congregation Bet Mishpachah in Washington, D.C. (founded 1975), and other lesbian and gay synagogues have regularly performed ceremonies of *kiddushin* (sanctified holy union, usually translated as marriage) for same-sex couples within the Judaic tradition.

The situation is more complicated among mainstream religious denominations. A few are openly supportive of gay marriages or unions. Following a vote on the matter in 1984, the Unitarian Universalist Association now "affirms the growing practice of some of its ministers of conducting services of union of gay and lesbian couples and urges member societies to support their ministers" in this practice.<sup>99</sup> The Society of Friends leaves all issues to congregational decision, and thousands of same-sex marriages have been sanctified in Quaker ceremonies since the 1970s (see the representative Quaker letters in the appendix). The General Assembly of the Union of American Hebrew Congregations (Reform Jewish synagogues) adopted a resolution in 1993 advocating legal recognition of same-sex unions.

Other denominations are still studying the issue. The validity of same-sex marriage has been debated at the national level by the Presbyterian, Episcopal, Lutheran, and Methodist Churches. A committee of Episcopal bishops proposed in 1994 that "[homosexual] relationships need and should receive the pastoral care of the church," but the church diluted and downgraded the report.<sup>100</sup> After intense debate, also in 1994, the General Assembly of the Presbyterian Church (U.S.A.) adopted a resolution that its ministers are "not permitted" to bless same-sex unions.<sup>101</sup> The Lutheran Church in 1993 debated but did not adopt a report advocating the blessing and legal recognition of same-sex unions.<sup>102</sup> The Methodists followed a similar path in 1992.<sup>103</sup> The pattern in these denominations has been the following: An individual church will bless a same-sex union or marriage, and the ministers and theologians then call for study of the issue. A report is written that is open to the idea. The report ignites a firestorm of protest from traditionalists in the denomination. The issue is suppressed or rejected at the denomination level. Local churches and theologians again press the issue some years later, and the cycle begins again. My guess is that one or more of the foregoing denominations will tilt toward same-sex unions or marriages in the next five to ten years.

<sup>95</sup> Recall my insistence in chapter 1 that same-sex marriage serves to "civilize" straights as well as gays. Cross-civilization, therefore, is a phenomenon by which each group is illuminated, educated, and even domesticated by values the other group has to offer.

Even the religions that are most prominently opposed to gay marriages have clergy who perform gay marriage ceremonies. The Roman Catholic Church firmly opposes gay marriage,<sup>104</sup> but its celebrated priest John J. McNeill says that he and many other Catholic clergy have performed same-sex commitment services.<sup>105</sup> Although Father McNeill's position is marginalized within the Catholic Church, it reflects the views of many devout Catholics. Support for same-sex marriage is probably most scarce among Baptists in the South. When the Pullen Memorial Church of Raleigh, North Carolina, blessed a same-sex union, the Southern Baptist Convention expelled the church.<sup>106</sup>

In short, most religious groups in the United States have confronted the issue of same-sex marriage or union in the last twenty-five years. The religious leaders who have been most engaged in ministering to areas with sizable gay and lesbian populations have been the most accepting of same-sex unions and marriages. Their view is that same-sex marriage is a wonderful (civilizing) link between the gay community and the church. By sanctifying gay unions, the church is civilizing gays into the deep emotional and spiritual traditions of religion. By going to a church for celebration of their unions, lesbian and gay couples are civilizing straights as to the heterogeneity of marriage's companionate bonds.

*The Legal Debate.* With the blessing of their minister, Jack Baker and Mike McConnell applied for a state marriage license on May 18, 1970. The clerk of the Hennepin County District Court, Gerald Nelson, denied their request on May 22, after obtaining an opinion from the district attorney that same-sex couples were not allowed such licenses under Minnesota law. Baker and McConnell sued Nelson on the ground that denying them a marriage license is unconstitutional. They lost. The Minnesota Supreme Court's 1971 decision in *Baker v. Nelson*, affirming the state's refusal, was the first appellate decision in the United States on the issue of same-sex marriage.<sup>107</sup> Since 1971, lawsuits by other same-sex couples in other states have steadily pressed constitutional objections to the law's exclusion of gay and lesbian couples from the institution of marriage. The plaintiffs lost in all the cases<sup>108</sup>—until the Hawaii Supreme Court

told the state that it was required to demonstrate a compelling reason to deny Nina Baehr and Genora Dancel a marriage license.<sup>109</sup> Chapter 3 will introduce you to more of the plaintiffs in these cases. Chapters 4 through 6 will analyze the arguments pressed in those cases and will suggest reasons why the state must recognize same-sex marriages under the United States Constitution or under state constitutions.

The legal debate over same-sex marriages has also been conducted in legislatures. In connection with a bill revamping the District of Columbia marriage laws in 1975, Councilman Arrington Dixon included a provision authorizing same-sex marriages in the District. Gay activist groups supported the Dixon bill, but the Catholic Archdiocese of Washington and other opponents raised such a fuss that Dixon withdrew the proposal.<sup>110</sup> Bills to allow same-sex marriage have occasionally been introduced in state legislatures (e.g., California in 1991), but none has made any progress. On the other hand, some recognition of same-sex unions has been accorded by domestic partnership laws adopted in more than thirty cities, counties, and municipalities. These laws provide for same-sex couples to register their "domestic partnerships" and for a few legal benefits, mainly hospital visitation rights (see chapter 3). In July 1995, Mayor Benjamin Nichols and a unanimous Common Council of Ithaca, New York, fleetingly went on record in favor of same-sex marriage under New York law. Do the Hawaii Supreme Court's decision and the action of Ithaca demonstrate that legal resistance to same-sex marriage is weakening? Evidence from other parts of the world suggests that this might be the case.

Legal recognition of same-sex unions has made greater progress in Europe.<sup>111</sup> In 1987, Sweden adopted a nationwide law providing many legal benefits (fewer than those of marriage but more than those specified in American domestic partnership laws) for cohabiting couples. In 1989, Denmark enacted the Registered Partnership Act,<sup>112</sup> which provides same-sex couples with almost all the rights and obligations of different-sex marriages. The act applies only to same-sex couples (section 1), and at least one partner must have his or her permanent residence in Denmark and be a Danish citizen (section 2[2]). To obtain the benefits of the act, the partners must

register according to rules laid down by the minister of justice (sections 1, 2[3]). Once registered, the partners have most of the rights, benefits, and obligations of married spouses (section 3). The main exception is that registered partners do not enjoy the same rights of adoption that married couples enjoy (section 4[1]). Danish divorce law generally governs the terms by which a registered partnership is dissolved (section 5). Norway adopted a similar statute in 1993, and Sweden expanded its cohabitation law to the same effect in 1994.

The Scandinavian laws come close to recognizing a same-sex union as marriage. Other European countries may take the final step. The European Parliament in February 1994 passed a resolution calling for study and, ultimately, adoption of a European Community recommendation to end “the barring of lesbians and homosexual couples from marriage or from an equivalent legal framework.”<sup>113</sup> As this book goes to press, the Netherlands is debating the issue; among the options are simply extending Dutch marriage law to include same-sex couples or creating a Danish-style partnership registry extending most or all marital benefits and obligations to registered same-sex couples. Whatever the outcome of the Netherlands’ deliberations, you can be assured that same-sex marriage is an issue that has arrived worldwide and that efforts to head it off will only be successful in the short term. Indeed, even laws such as the Danish statute, which uses a euphemism rather than the word *marriage* for the union of a same-sex couple, may be unstable solutions in the longer term. The argument of this book is that Western culture generally and the United States in particular ought to and must recognize same-sex marriages.

6. Loving v. Virginia, 388 U.S. 1 (U.S. Supreme Court, 1967), discussed in chapters 5 and 6.
7. Zablocki v. Redhail, 434 U.S. 374 (U.S. Supreme Court, 1978), discussed in chapter 5.
8. Turner v. Saifey, 482 U.S. 78 (U.S. Supreme Court, 1987), discussed in chapter 5.

#### Chapter 2. A History of Same-Sex Marriage

1. For an account of We'wha's life, see Will Roscoe, *The Zuni Man-Woman* (Albuquerque, NM: University of New Mexico Press, 1991).
2. For an account of Ifeyinwa's life, see Ifi Amadiume, *Male Daughters, Female Husbands: Gender and Sex in an African Society* (London: Zed Books, 1987).
3. For an account of Sergius and Bacchus, see John Boswell, *Same-Sex Unions in Pre-Modern Europe*, 146–156 (New York: Villard Books, 1994).
4. See David F. Greenberg, *The Construction of Homosexuality*, 130 (Chicago: University of Chicago Press, 1988).
5. Jacob Neusner, *Sifra: An Analytical Translation*, volume 3, p. 74 (Atlanta: Scholars Press, 1988), translating chapter 193 of "Parashat Ahare Mot Parashah." I am indebted to Yair Chamudat for bringing this material to my attention.
6. The account in text is drawn from David M. Halperin, *One Hundred Years of Homosexuality*, 81 (New York: Routledge, 1990).
7. This is the translation according to Jeffrey H. Tigay, *The Evolution of the Gilgamesh Epic* (Philadelphia: University of Pennsylvania Press, 1982).
8. See Greenberg, *Construction of Homosexuality*, 124–125.
9. *Ibid.* Several of the statutes are translated in Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor* (Atlanta: Scholars Press, 1995).
10. Ephraim Neufeld, *The Hittite Laws*, 10 (London: Luzac, 1951).
11. This is the reading of John Boswell, *Christianity, Social Tolerance, and Homosexuality*, 20–21 and note 39 (Chicago: University of Chicago Press, 1980), who disputes the reading preferred by Neufeld, *Hittite Laws*, 10–11: "If a slave gives the bride-price to a free youth and takes him to dwell in his household as husband [of his daughter], no-one shall surrender him." The bracketed portion is an interpolation by Neufeld, who admits as much. Neufeld (p. 151) also reports that earlier scholars had interpreted § 36 as a state sanction for "homosexual" relations among slaves and that "such a relationship among free men did not require any special legal provisions." Boswell (pp. 20–21) rejects Neufeld's speculations as a strained effort by a modern historian to read his own prejudices into another culture's text. Boswell's reading, in turn, is rejected by Roth, *Mesopotamia and Asia Minor*, 222.

12. Quotations in the text are from *On Homosexuality: Lysis, Phaedrus, and Symposium* (Buffalo, NY: Prometheus Books, 1991, translated by Benjamin Jowett, with selected retranslation, notes, and introduction by Eugene O'Connor). Plato's views about sex are complicated by his *Lysis*, which is ambivalent about same-sex attraction. See Eva Cantarella, *Bisexuality in the Ancient World*, 61–63 (New Haven, CT: Yale University Press, 1992, translated by Cormac Ó Cuilleáin), and Gregory Vlastos, *Platonic Studies*, 40–41 (Princeton, NJ: Princeton University Press, 1981).
13. Kenneth J. Dover, *Greek Homosexuality*, 89–91 (London: Duckworth, 1978), argues for "common ingredients" between different-sex marriages and Greek same-sex relationships. For the latter he describes a formal "courtship" by the dominant party (the husband/man) toward the receptive party (the wife/boy), including the expectation that the receptive party will respond to advances coyly. As was often the case in a traditional marriage, the family was involved in the receptive party's decision on whether to accept the dominant party's advances. Both types of relationships met with social disapproval if sexual relations occurred outside of the accepted courtship-to-wedding-vow relationship.
14. Strabo, *The Geography* 10.4.21. H. L. Jones's translation, *The Geography of Strabo*, volume 5, 155–159 (London: W. Heinemann, 1917–1933), renders this as "peculiar customs." Boswell, *Same-Sex Unions*, 89 and note 175, renders the Greek more literally as "peculiar laws." In the text I follow Boswell's translation of the relevant passages.
15. Boswell, *Same-Sex Unions*, 189–190. See L. R. de Poge-Castries, *Histoire de L'Amour Grec dans L'Antiquité*, 42–46 (Paris: Stendahl, 1930); Bernard Sergent, *Homosexuality in Greek Myth* (Boston: Beacon Press, 1986, translated by Arthur Goldhammer); and Mark Golden, "Slavery and Homosexuality at Athens," 38 *Phoenix* 308, 319 note 49 (1984).
16. Cantarella, *Bisexuality in the Ancient World*, 81–83.
17. Contrary to earlier belief, it is now clear that republican Rome did not prohibit same-sex relationships. See Cantarella, *Bisexuality in the Ancient World*, 106–114; Saara Lilja, *Homosexuality in Republican and Augustan Rome*, 130–131 (Helsinki: Societas Scientiarum Fennica, 1983); and Paul Veyne, "Homosexuality in Ancient Rome," in Philippe Ariès and André Béjin, editors, *Western Sexuality* (Oxford: B. Blackwell, 1985, translated by Anthony Foster).
18. Gaius Suetonius Tranquillus, *The Twelve Caesars*, 223 (Sporus), 224 (the freedman) (London: Penguin, 1957, translated by Robert Graves). Book 15 of Tacitus's *Annals* reports Nero's marriage to the freedman Pythagorus. See *The Complete Works of Tacitus*, 376 (New York: Modern Library, 1942, translated by Alfred John Church and William Jackson Brodribb and edited by Moses Hadas).

19. Dio Cassius, *Ephemeris*, book 62; Earnest Cary's translation, *Dio's Roman History*, volume 8, pp. 135–137 (London: W. Heinemann, 1914–1927). According to Dio, the Greeks celebrated “even to the extent of praying that legitimate children might be born of them” (*Ephemeris*, book 62.13; Cary translation, 159). Dio was not amused. Nero asked one of his associates if he approved of the marriage to Sporus. The associate replied, “You do well, Caesar, to keep the company of such wives. Would that your father had had the same ambition and lived with a similar consort!” (*Ephemeris*, book 62.28; Cary translation, 135–137). Dio liked that response. See also Edward Gibbon, *The Decline and Fall of the Roman Empire*, chapter 4 (London: Penguin, 1952, edited and abridged by Dero A. Saunders).
20. Elagabalus married Hierocles, but not before some nice palace intrigue. Zoticus was desired by the emperor because “in particular he greatly surpassed all others in the size of his private parts.” Hierocles bribed the cup bearers to drug Zoticus to induce impotence. Hierocles thereby won the hand of the emperor (Dio Cassius, *Ephemeris*, book 80; Cary translation, volume 9, pp. 465–471).
21. Lampridius, *Antoninus Elagabalus*, book 11; David Magie's translation, *Scriptores Historiae Augustae*, volume 2, p. 129 (London: W. Heinemann, 1922–1932). Lampridius's account of Elagabalus's same-sex marriage is in book 10; Magie's translation is on pp. 125–129.
22. See Royston Lambert, *Beloved and God: The Story of Hadrian and Antoninus* (New York: Viking, 1984) and Marguerite Yourcenar, *Memoirs of Hadrian* (New York: Farrar, Straus, 1954).
23. Juvenal, *Satires*, book 2; G. G. Ramsey's translation, *Juvenal and Persius*, 132–135 (Cambridge: Harvard University Press, 1950). The reference is to the marriage of Gracchus.
24. Martial, *Epigrams*, book 7.42; Walter C. A. Ker's translation, 347–349 (Cambridge: Harvard University Press, 1950).
25. Translated in Boswell, *Same-Sex Unions*, 82.
26. The text is from the Theodosian Code 9.vii.3 and is translated in Greenberg, *Construction of Homosexuality*, 229. Cantarella, *Bisexuality in the Ancient World*, 175–176, argues that the statute only penalized passive anal sex.
27. The ancient sources in the text are discussed in Michel Foucault, *The Care of the Self*, 72–80 (New York: Vintage, 1986, translated by Robert Hurley, volume 3 of Foucault's *The History of Sexuality*).
28. See Peter Brown, *The Body and Society: Men, Women and Sexual Renunciation in Early Christianity* (New York: Columbia University Press, 1988).
29. *The Visigothic Code*, title V, § VI (Boston: Boston Book Co., 1910, edited and translated by Samuel P. Scott).
30. See the sources collected in Boswell, *Christianity, Social Tolerance and Homosexuality*, 186–194.
31. They are reported in William N. Eskridge, Jr., “A History of Same-Sex Marriage,” 79 *Virginia Law Review* 1419 (1993), which has as an appendix my translation of one of the services of “spiritual brotherhood.” In a public speech and in a telephone conversation with me in the early 1990s, the late John Boswell confessed that a priest gave him the critical leads for his book on *Same-Sex Unions*. Father Alexei was that priest.
32. For example, Pavel Florenskij, *La Colonna e il Fondamento della Verità*, 521–525 (Milan: Rosconi editore, 1974, translated into Italian by Pietro Modesto, introduction by Elenire Zolla). Boswell, *Same-Sex Unions*, 283–344, appends translations of a variety of liturgical ceremonies resembling the one in the text.
33. *Ritinale Graecorum Complectens Ritus et Ordines Divinae Liturgiae*, 707 (Milan: Rusconi Editore, 1974, originally edited and translated by R. P. Jacobi Goar).
34. Boswell, *Same-Sex Unions*, chapters 5 and 6.
35. John Boswell, “Homosexuality and the Religious Life: A Historical Approach,” in Jeannine Gramick, editor, *Homosexuality in the Priesthood and the Religious Life*, 3, 11 (New York: Crossroad, 1989), and John Boswell, “1500 Years of Blessing Gay and Lesbian Relationships: It's Nothing New to the Church” (videotape of lecture to the Washington, DC, chapter of Integrity, a gay and lesbian Episcopal group).
36. Boswell, *Same-Sex Unions*, 191. See pp. 192–198 for Boswell's doubts about other interpretations of the same-sex union ceremonies.
37. Brent D. Shaw, Book Review, *New Republic*, July 18, 1994, p. 33, is a scholarly critique of Boswell, *Same-Sex Unions*. Ralph Hexter responds to Shaw and Shaw responds to Hexter in *New Republic*, October 3, 1994, p. 39. Reviews by scholars more favorable to Boswell include Marina Warner, “More Than Friendship,” *New York Times*, § 7 (Book Review Supplement), August 28, 1994, p. 7; Wendy Doniger, “Making Brothers,” *Los Angeles Times* (Book Review Supplement), July 31, 1994, p. 1. I found all of these reviews informative and thoughtful. Although Shaw's review may be contentious (as Hexter claims), its main charge, that Boswell overreads or misreads some or many of his sources, strikes me as just. It is a charge that has been repeatedly and persuasively made against Boswell's earlier work; see, for example, Bruce Williams, “Homosexuality and Christianity: A Review Discussion,” 46 *The Thomist* 609 (1982).
38. Alvar Cabeza de Vaca also witnessed unions between same-sex couples, stating in *Narrative of the Expeditions and Shipwrecks of Cabeza de Vaca* (1542) that he “saw a man married to another man.” Juan de Torquemada, in the *Monarchia Indiana* (1615), described a common custom whereby “parents [gave] a boy to their young son, to have him for a woman and to use him as a woman; from that also began the law that if anyone approached the

- boy, they were ordered to pay for it, punishing them with the same penalties as those breaking the condition of a marriage." These original sources are collected in Francisco Guerra, *The Pre-Columbian Mind* (New York: Seminar Press, 1971). See also the documents collected in Jonathan N. Katz, *Gay American History*, 281–334 (New York: Meridian, 1992, revised edition).
39. See Charles Callender and Lee M. Kochems, "Men and Not-Men: Male Gender-Mixing Statutes and Homosexuality," in Evelyn Blackwood, editor, *The Many Faces of Homosexuality: Anthropological Approaches to Homosexual Behavior*, 165 (New York: Harrington Park Press, 1986).
40. George Devereux, "Institutionalized Homosexuality of the Mohave Indians," 9 *Human Biology* 498, 513–515 (1937).
41. Other leading monographs include Charles Callender and Lee M. Kochems, "The North American *Berdache*," 24 *Current Anthropology* 443 (1983); Donald G. Forgey, "The Institution of *Berdache* Among the North American Plains Indians," 11 *Journal of Sex Research* 1 (1975); W. W. Hill, "The Status of the Hermaphrodite and Transvestite in Nalayo Culture," 37 *American Anthropologist* 273 (1935); Nancy O. Lurie, "Winnemago *Berdache*," 55 *American Anthropologist* 708 (1953); Elsie C. Parsons, "The Zuni La'Mana," 18 *American Anthropologist* 521 (1916); James S. Thayer, "The *Berdache* of the Northern Plains," 36 *Journal of Anthropological Research* 287 (1980); and Harriet Whitehead, "The Bow and the Burden Strap: A New Look at Institutionalized Homosexuality in Native North America," in Sherry B. Orner and Harriet Whitehead, editors, *Sexual Meanings: The Cultural Construction of Gender and Sexuality*, 80 (New York: Cambridge University Press, 1981).
42. Walter L. Williams, *The Spirit and the Flesh: Sexual Diversity in American Indian Culture* (Boston: Beacon Press, 1986). A second edition was brought out in 1992, but my citations are to the first edition.
43. *Ibid.*, 246–247; Evelyn Blackwood, "Sexuality and Gender in Certain Native American Tribes: The Case of Cross-Gender Females," 10 *Signs* 27 (1984).
44. Clellan S. Ford and Frank A. Beach, *Patterns of Sexual Behavior*, 130–131 (New York: Harper & Row, 1951).
45. See Waldemar Bogoras, *The Chukchee* (New York: AMS Press, 1975, reprint of an earlier edition); Greenberg, *Construction of Homosexuality*, 58–60; Serena Nanda, *Neither Man Nor Woman: The Hijras of India* (Belmont, CA: Wadsworth, 1990); and Robert I. Levy, "The Community Function of Tachitian Male Transvestism," 44 *Anthropological Quarterly* 12 (1971). See also Greenberg, *Construction of Homosexuality*, 60–61, where the *berdache* tradition is also attributed to the Dinka and Nuer of Sudan, the Konso and Amhara of Ethiopia, the Otoro of Nubia, the Fanti of Ghana, the Thonga

of Zimbabwe, the Tanala and Bara of Madagascar, the Wolof of Senegal, and various tribes in Uganda.

46. See Greenberg, *Construction of Homosexuality*, 260, and Stephen O. Murray, *Oceanic Homosexualities*, 111, 130 (New York: Garland, 1992).
47. See Paul Gordon Schalow, "Introduction" to Ihara Saikaku, *The Great Mirror of Male Love* (Stanford, CA: Stanford University Press, 1990).
48. E. E. Evans-Pritchard, "Sexual Inversion Among the Azande," 72 *American Anthropologist* 1428–1430 (1970).
49. For example, Walter Cline, *Notes of the People of Siwah and el Garah in the Libyan Desert* (Menasha, WI: George Banta, 1936, edited by Leslie Spier).
50. See Bret Hinsch, *Passions of the Cut Sleeve: The Male Homosexual Tradition in China* (Berkeley, CA: University of California Press, 1990), and James McGough, "Deviant Marriage Patterns in Chinese Society," in Arthur Kleinman and Tsung-Ti Lin, editors, *Normal and Abnormal Behavior in Chinese Culture*, 171 (Boston: D. Reidel, 1990).
51. McGough, "Deviant Marriage Patterns," 187–188. See also Hinsch, *Passions of the Cut Sleeve*, 129; Jonathan D. Spence, *The Memory Palace of Matteo Ricci*, 226–231 (New York: Viking, 1984); and Vivien W. Ng, "Homosexuality and the State in Late Imperial China," in Martin B. Duberman et al., editors, *Hidden from History: Reclaiming the Gay and Lesbian Past*, 76 (New York: Penguin, 1989).
52. Andrea Sankar, "Sisters and Brothers, Lovers and Enemies: Marriage Resistance in Southern Kwangtung," in *The Many Faces of Homosexuality*, 69.
53. For example, Hinsch, *Passions of the Cut Sleeve*, 176–177.
54. See Judith Gay, "'Mummies and Babies' and Friends and Lovers in Lesotho," in *The Many Faces of Homosexuality*, 97.
55. For example, John Blacking, "Fictitious Kinship Amongst Girls of the Venda of the Northern Transvaal," 59 *Man* 155 (1959).
56. Gilbert H. Herdt, *Guardians of the Flutes: Idioms of Masculinity* (Chicago: University of Chicago Press, 2d edition, 1994), and Gilbert H. Herdt, "Ritualized Homosexual Behavior in the Male Culs of Melanesia, 1862–1983," in Gilbert Herdt, editor, *Ritualized Homosexuality in Melanesia*, 1 (Berkeley, CA: University of California Press, 1984).
57. Shirley Lindenbaum, "Variations on a Sociosexual Theme in Melanesia," in *Ritualized Homosexuality*, 337, 343 (first quotation in text), 345 (second quotation).
58. See Melville Herskovits, "A Note on 'Woman Marriage' in Dahomey," 10 *Africa* 335 (1937), and Eileen Jensen Krige, "Note on the Phalaborwa and Their Morula Complex," 11 *Bantu Studies* 357 (1937).
59. E. E. Evans-Pritchard, *Kinship and Marriage Among the Nuer*, 108–109 (Oxford, UK: Clarendon Press, 1951).



60. Eileen Jensen Krige, "Woman-Marrriage, with Special Reference to the Lovedu: Its Significance for the Definition of Marriage," 44 *Africa* 11 (first quotation in text), 29 (second quotation) (1974).
61. Denise O'Brien, "Female Husbands in Southern Bantu Societies," in Alice Schlegel, editor, *Sexual Stratification: A Cross-Cultural View*, 109 (New York: Columbia University Press, 1977).
62. *Ibid.*, 110. For other studies supporting the observation in text, see Amandi, *Male Daughters, Female Husbands*; Laura Bohannan, "Dahomean Marriage: A Reevaluation," in Paul Bohannan and John Middleton, editors, *Marriage, Family, and Residence*, 85 (Garden City, NY: Natural History Press, 1968), reprinted from 19 *Africa* 273 (1949); H. Huber, "'Woman Marriage' in Some East African Societies," 63/64 *Anthropos* 745 (1969); Krige, "Woman Marriage"; and Regina S. Oboler, "Is the Female Husband a Man? Woman/Woman Marriage Among the Nandi of Kenya," 19 *Ethnology* 69 (1980).
63. See Boswell, *Christianity, Social Tolerance and Homosexuality*, 269-332; Greenberg, *Construction of Homosexuality*, 268-292, 301-346; Judith Brown, "Lesbian Sexuality in Medieval and Early Modern Europe," in *Hidden from History*, 67, 72.
64. See Vern L. Bullough and Bonnie Bullough, *Cross Dressing, Sex, and Gender* (Philadelphia: University of Pennsylvania Press, 1993); H. R. Trevor-Roper, *The European Witch-Craze of the Sixteenth and Seventeenth Centuries and Other Essays*, 90 (New York: Harper & Row, 1969); and Vern L. Bullough and James Brundage, editors, *Sexual Practices and the Medieval Church*, 206 (Buffalo, NY: Prometheus Books, 1982).
65. *Hyon of Bordeaux* (London: G. Allen, 1895, translated by Sir John Bouchier and Lord Berners).
66. In addition to the sources in note 64 above, see Guido Ruggiero, *The Boundaries of Eros: Sex Crime and Sexuality in Renaissance Venice* (New York: Oxford University Press, 1985); this is a case study of state repression of same-sex intimacy in Venice.
67. Compare Michel de Montaigne, *Journal de Voyage en Italie par la Suisse et l'Allemagne en 1580 et 1581*, 231, 481 note 515 (Paris: Société des Belles Lettres, 1946, edited by Charles Devedyan), with Spence, *Matteo Ricci*, 226.
68. See Williams, *Spirit and the Flesh*, 175.
69. See Spence, *Matteo Ricci*, 227-232.
70. See Bullough and Bullough, *Cross Dressing*, 94-112.
71. *Ibid.*, 97-98 (see also 100-103, 134-138, 164-168). One eighteenth-century passing woman married three different wives, each of whom was persuaded she was actually a man.
72. See Katz, *Gay American History*, 209-279 (an entire section entitled "Passing Women: 1780-1920"); The San Francisco Lesbian and Gay History Proj-

- ect, "She Even Chewed Tobacco": A Pictorial Narrative of Passing Women in America," in *Hidden from History*, 183-194. For examples of marriages between women and passing women, see Katz, *Gay American History*, 225-226, 232-238, 240-242, 248-249, 250-251, 254-279.
73. Bullough and Bullough, *Cross Dressing*, 164.
74. Reprinted in Katz, *Gay American History*, 250.
75. *Ibid.*, 251.
76. Lillian Faderman, *Surpassing the Love of Men: Romantic Friendship and Love Between Women from the Renaissance to the Present* (New York: Morrow, 1981).
77. See Elizabeth Mavor, *The Ladies of Llangollen: A Study in Romantic Friendship* (London: Joseph, 1971).
78. Faderman, *Surpassing the Love of Men*, 190-230. See also Letitia Rupp, "Imagine My Surprise: Women's Relationships in Mid-Twentieth Century America," in *Hidden from History*, 395.
79. See B. R. Burg, *Sodomy and the Perception of Evil: English Sea Rovers in the Seventeenth-Century Caribbean* (New York: New York University Press, 1995, 2d edition) (pair bonding among pirates were male unions); Williams, *Spirit and the Flesh*, 162, 169-174 (cowboy sidekicks formed "male marriages"); Joshua Flynt, "Homosexuality Among Tramps," in Havelock Ellis, editor, *Studies in the Psychology of Sex*, 359 (London: W. Heinemann, Medical Books, 1946); and T. Dunbar Moodie, "Migration and Male Sexuality in the South African Gold Mines," in *Hidden from History*, 411 ("mine marriages").
80. Quoted in Robert K. Martin, "Knights-Errant and Gothic Seducers: The Representation of Male Friendship in Mid-Nineteenth Century America," in *Hidden from History*, 169.
81. For example, Martin B. Duberman, "Writing Bedfellows in Antebellum South Carolina: Historical Interpretation and the Politics of Evidence," in *Hidden from History*, 153.
82. On Whitman's sexuality, see Justin Kaplan, *Walt Whitman: A Life* (New York: Simon & Schuster, 1980).
83. W. C. Rivers, *Walt Whitman's Abnormality* (London: George Allen, 1913), excerpted and supplemented with contemporary correspondence in Martin B. Duberman, *About Time: Exploring the Gay Past*, 106, 109 (New York: Meridian, 1991, revised edition).
84. See Faderman, *Surpassing the Love of Men*, 239-253, 297-313.
85. See Kent Gerard and Gert Hekma, editors, *The Pursuit of Sodomy: Male Homosexuality in Renaissance and Enlightenment Europe* (New York: Harrington Park Press, 1989), and Robert P. MacCubbin, editor, *It's Nature's Fault: Unauthorized Sexuality During the Enlightenment* (New York: Cambridge University Press, 1987).



86. Dirk J. Noordam, "Sodomy in the Dutch Republic, 1600-1725," in *The Pursuit of Sodomy*, 207, 212-213, 217.
87. See George Chauncey, Jr., *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890-1940* (New York: Basic Books, 1994); Lillian Faderman, *Odd Girls and Twilight Lovers: A History of Lesbian Life in Twentieth-Century America* (New York: Columbia University Press, 1991); Allan Bérubé, "Lesbians and Gay Men in Early San Francisco" (unpublished paper on file with the San Francisco Gay History Project); and Ina Russell, editor, *Jeb and Dash: A Diary of Gay Life, 1918-1945* (Boston: Faber & Faber, 1993).
88. Russell, *Jeb and Dash*, 33. Jeb Alexander is a pseudonym adopted by the editor.
89. Faderman, *Odd Girls and Twilight Lovers*, 73. See also Eric Garber, "A Spectacle in Color: The Lesbian and Gay Subculture of Jazz Age Harlem," in *Hidden from History*, 318.
90. Exemplary of this emerging literature is Elizabeth Lapovsky Kennedy and Madeline D. Davis, *Boots of Leather, Slippers of Gold: A History of a Lesbian Community* (New York: Penguin, 1993).
91. The best documented example is Donald Vining, whose published diaries describe in detail his efforts at relationship: *A Gay Diary: 1933-1946* (New York: Peppy Press, 1979); *A Gay Diary: 1946-1954* (New York: Peppy Press, 1980); *A Gay Diary: 1954-1967* (New York: Peppy Press, 1981); *A Gay Diary: 1967-1975* (New York: Peppy Press, 1983).
92. See E. W. Saunders, "Reformers' Choice: Marriage License or Just License?" *One, Inc.*, volume 1, issue 8, pp. 10-12 (August 1953).
93. Donald W. Cory and John LeRoy, "Homosexual Marriage," 29 *Sexology* 660, 661 (1963). Cory is a pseudonym, and LeRoy probably is also.
94. The legal story of this hysteria is documented in William N. Eskridge, Jr., *Gaylaw*, chapter 2 (Cambridge, MA: Harvard University Press, forthcoming 1997).
95. The leading investigations are Alan P. Bell and Martin S. Weinberg, *Homosexualities: A Study of Diversity Among Men and Women* (New York: Simon & Schuster, 1978), which finds "close-coupled" relationships to be the happiest; Philip Blumstein and Pepper Schwartz, *American Couples: Money, Work, Sex* (New York: Morrow, 1983), a study of lesbian, gay, and straight couples that finds lesbian couples to be the most stable and least materialistic; Joseph Harry and William B. DeVall, *The Social Organization of Gay Males*, 80-100 (New York: Praeger, 1978), which includes a section on "Marriages Between Gay Males"; and Mary Mendola, *The Mendola Report: A New Look at Gay Couples*, 48-53 (New York: Crown, 1980), which is a nonempirical survey of lesbian and gay couples, most of whom considered themselves "married," that is, in a relationship involving "commitment between two people."
96. "Looking Over Lesbians," *Partners Newsletter for Gay and Lesbian Couples*, November/December, 1991. The Northstar Project in Minnesota found that 64% of the lesbians and 31% of the gay men surveyed lived with their partners. Northstar Project, *Out and Counted: A Survey of the Twin Cities Gay and Lesbian Community*, 12 (Minneapolis, MN: Northstar, 1991). Surveys of gay men (August 1994 issue) and lesbians (August 1995 issue) by *The Advocate* reported similar findings.
97. This dialogue is reported in Don Kelley, "Homosexuals Should Get Rights," *Los Angeles Collegian* [the student newspaper of Los Angeles City College], March 3, 1971, p. 2. For a contemporary report on this couple see Kay Tobin and Randy Wicker, *The Gay Crusaders*, 135-155 (New York: Arno Press, 1975, 2d edition).
98. See letter from the Reverend Troy D. Perry, founder of MCC, to the Honorable Shellie Bowers, August 8, 1991. The Service of Holy Union attached to the letter is included in the appendix to this book.
99. Resolutions of the General Assembly of the Unitarian Universalist Association, "Gay and Lesbian Services of Union" (1984).
100. See Gustav Niebuhr, "Episcopalians Soften Stance on Sexuality," *New York Times*, August 25, 1994, § A, p. 13. As adopted, the document skirted the issue of same-sex marriage and included a statement (added to appease conservatives) that homosexual activity is "a denial of God's plan."
101. See "Presbyterians Vote for Unity," *Christian Century*, June 29-July 6, 1994, pp. 633-634. The Presbyterians had already forbidden their ministers to perform same-sex marriage ceremonies.
102. The report is described in Peter Steinfels, "Lutherans Balk on a Sex Policy," *New York Times*, November 26, 1993, § A, p. 21.
103. See Peter Steinfels, "Methodists Again Say No to Homosexuality," *New York Times*, May 13, 1992, § A, p. 19.
104. Pope John Paul II, "Letter to Families," February 2, 1994, reprinted in *Origins*, March 3, 1994, p. 637 (Catholic News Service), not only reiterates the Church's refusal to recognize same-sex unions but calls on Catholics to oppose legal recognition of same-sex marriages on the grounds that they are "a serious threat to the family and society" and "inappropriately conferring an institutional value on deviant behavior" (Letter, p. 20).
105. Letter from John J. McNeill to the Honorable Shellie Bowers, no date [1991].
106. See "Two Churches Ousted by Baptists' Vote," *New York Times*, June 11, 1992, § A, p. 16.

107. *Baker v. Nelson*, 191 N.W.2d 185 (Minnesota Supreme Court, 1971), appeal dismissed, 409 U.S. 810 (U.S. Supreme Court, 1972).
108. Leading judicial decisions rejecting arguments for same-sex marriage are *Jones v. Hallahan*, 501 S.W.2d 588 (Kentucky Court of Appeals, 1973); *Singer v. Hara*, 522 P.2d 1187 (Washington Court of Appeals, 1974), review denied, 84 Wash. 2d 1008 (Washington Supreme Court, 1974); *Adams v. Howerton*, 486 F. Supp. 1119 (U.S. District Court for the Central District of California, 1980), affirmed on other grounds, 673 F.2d 1036 (U.S. Court of Appeals for the Ninth Circuit, 1982). Other decisions by judges and state attorneys general are listed in chapters 3 (note 24) and 5 (note 18).
109. *Baehr v. Lewin*, 852 P.2d 44 (Hawaii Supreme Court, 1993), clarified in response to the state's motion for reconsideration, 852 P.2d 74 (Hawaii Supreme Court, 1993).
110. The story of the Dixon amendment is told in *Dean v. District of Columbia*, 653 A.2d 307 (District of Columbia Court of Appeals, 1995) (opinion of Ferren, J., concurring in part).
111. See Deborah M. Henson, "A Comparative Analysis of Same-Sex Partnership Protections: Recommendations for American Reform," 7 *International Journal of Law and the Family* 282 (1993).
112. Danish Act Number 372, June 7, 1989 (Registered Partnership Act); Danish Act Number 373, June 7, 1989 (amending the Danish marriage, inheritance, penal, and tax laws to conform to the Registered Partnership Act). See Linda Nielsen, "Family Rights and the 'Registered Partnership' in Denmark," 4 *International Journal of Law and the Family* 297 (1990), as well as Henning Bech, "Report From a Rotten State: 'Marriage' and 'Homosexuality' in 'Denmark,'" in Ken Plummer, editor, *Modern Homosexualities*, 134 (London: Routledge, 1992).
113. Resolution on Equal Rights for Homosexuals and Lesbians in the EC, paragraph 14, p. 40 of the 1994 *Official Journal of the European Communities* (February 28, 1994).

*Chapter 3. The Debate Within the Lesbian and Gay Community*

1. E. W. Saunders, "Reformers' Choice: Marriage License or Just License?" *One, Inc.*, volume 1, issue 8, pp. 10-12 (August 1953).
2. "2 Girls Held After Marriage to Each Other," November 1947 (news-paper article in the file "Marriage and Relationships" at the Lesbian Her-story Archives, Brooklyn, New York).
3. Donald Webster Cory, *The Homosexual in America: A Subjective Approach*, 135 (New York: Greenberg, 1951). The quotation in text opens chap-