

## The Genealogy of Marriage

DOES MARRIAGE HAVE A HISTORY? And if so, is it only the history of alliances between men and women? Social historians have answered the first question with a resounding yes, and in the past several decades have traced marriage's evolving relationship to the state, civil society, and private life, to friends and kin, to consent, contract, and pleasure. But most have also taken for granted that until very recently, marriage has been defined as the union of male and female.<sup>1</sup> In 2004, when legalization of same-sex marriage in Massachusetts sparked awareness that many same-sex couples were eager to wed, those on all sides of the ensuing debate viewed gay marriage as a sudden development with relatively shallow historical roots. Opponents charged that same-sex marriage lacked a past and would be the end of history, calling it a threat to "the most fundamental institution of civilization."<sup>2</sup> Supporters saw it as a new phenomenon made possible only by the very recent intersection of a gay civil rights movement and the modernization of heterosexual marriage. As Stephanie Coontz put it in a defense of same-sex unions, "Gays and lesbians simply looked at the revolution heterosexuals had wrought and noticed that with its new norms, marriage could work for them, too."<sup>3</sup>

Changes in heterosexual marriage have made lesbian and gay unions possible, but the influence has not been unilateral. For over a century, same-sex unions have also affected innovations in heterosexual marriage. To be sure, until very recently legal marriage has only been available to opposite-sex couples, most people have long taken it for granted that marriage takes place between men and women, and for decades, lesbian and gay activists have focused more on criticizing marriage than on demanding the right to it (as many continue to do). But the meaning of marriage is not exhausted by its legal definition, and socially accepted forms of marriage that exist outside the law have long informed legal changes to the institution. Far from having to wait for heterosexuals to make marriage more flexible, same-sex couples helped create that flexibility by using marriage as a model for their relationships and by actively working to change the laws governing unions between men and women.

Same-sex unions have been part of the history of marriage since at least the nineteenth century. As we saw in chapter 1, the female relations of Victorian England included women who lived together, owned property

together, made vows of fidelity to one another, and were described as spouses by themselves and by others in their social networks. Women in female marriages created relationships that, like legal marriage, did the work assigned to sexuality in the nineteenth century: the management of shared households, the transmission of property, the expression of emotional and religious affect, and the development and care of the self.<sup>4</sup> Through individual, customized legal agreements, women in female couples obtained some of the rights that the state automatically conferred on married couples. Their legal status as unmarried women allowed them to have a socially recognized spouse and to keep the economic autonomy that legally married wives relinquished under the doctrine of coverture. Women in female marriages were thus in the vanguard of the movement to modernize marriage, for their relationships anticipated the increasing equality of husbands and wives gradually written into law over the course of the nineteenth and twentieth centuries. More concretely, several women in female marriages played a small but pivotal role in advocating for civil divorce, the property and custody rights of wives, and expanded opportunities for unmarried women. Although female marriages were the exception, not the rule, women in them were able to play a significant role in the history of marriage because they belonged to social networks that included legislators, journalists, activists, and anthropologists. They were, to use Michael Lucey's terms, agents "who both *work within* and *do work on* . . . social forms."<sup>5</sup> The pressures exerted by forms of kinship outside the law but inside the social were a crucial factor in making marriage a plastic institution.

Just as the "homosexual" is a recent invention, so too is the opposition between marriage and homosexuality. Nor is the history of same-sex unions congruent with the emergence of lesbian and gay identity, for same-sex unions existed long before sexology invented the "invert." Only once medical writers and social thinkers in the 1880s began to equate inversion with the infantile, the primitive, and the undoing of a civilization premised on monogamous, heterosexual marriage did homosexuality come to seem antithetical to marriage. Since then, many have perpetuated the association between homosexuality and primitivism by warning that gay marriage will lead to an undifferentiated presocial state in which anything goes. As United States senator Rick Santorum notoriously put it in 2002, if the right to privacy were extended to gay sex, then "you have the right to bigamy, you have the right to polygamy, you have the right to incest, you have the right to adultery. You have the right to anything."<sup>6</sup> In that view, gay sex is so external to the social order that it has the power to reverse the course of civilization by catapulting culture into a state of nature.

In the service of a diametrically opposed political vision, Gayle Rubin made a similar argument in her pathbreaking 1995 essay, "The Traffic in Women," when she famously observed that a critique of anthropological and psychoanalytical theories of culture relegate homosexuality to a precultural realm: "[T]he incest taboo presupposes a prior, less articulate taboo on homosexuality. A prohibition against *some* heterosexual unions assumes a taboo against *nonheterosexual* unions." Prefiguring a point that Judith Butler developed in *Gender Trouble* and subsequent writings, Rubin showed that anthropological theories of kinship that posit the incest taboo and male exchange of women as necessary for the emergence of culture also exclude homosexuality from civilization, and thus establish an implicit equivalence between them.<sup>7</sup> Psychoanalysis and structural anthropology, by emphasizing that the incest taboo and the taboo on homosexuality make social and psychic coherence possible, raise the specter that to legitimate homosexuality would dissolve the very structure of kinship.

Homosexuality does indeed haunt Claude Lévi-Strauss's *The Elementary Structures of Kinship* (1949), one of Rubin's key texts, but interestingly, Lévi-Strauss does not associate homosexuality with incest or with the precultural. One can see the case for Rubin's argument that Lévi-Strauss's concept of the incest taboo assumes a prior taboo on homosexuality, for Lévi-Strauss's theory is not overtly hospitable to the possibility of formalized same-sex relationships and there is little in it to salvage for progressive sexual politics today. "[T]he rules of kinship and marriage," Lévi-Strauss wrote, "are not made necessary by the social state. They are the social state itself."<sup>8</sup> The rule of marriage is the prohibition on incest, which regulates the relation between the sexes as a dictate that men must exchange women (23). It would thus follow that sexual relationships that do not involve male exchange of women could not be part of the social state. Lévi-Strauss accordingly dismissed theories of kinship that depended on what he called "feminism"—by which he meant any explanation that assigned agency and autonomy to women. In this sense, 1940s structuralist anthropology proved less willing to recognize the possibility of female autonomy than its Victorian avatars, with their accounts of early matriarchy and polyandry. Victorian anthropologists, however, also argued that primitive societies lacked incest taboos. By asserting that the incest taboo was universal, Lévi-Strauss conferred structure and sociality on primitive society—and simultaneously aligned "the social state" with marriage, defined as male authority over women, and with culture, posited as a set of rules that require men to exchange women.

Surprisingly, however, Lévi-Strauss was also willing to recognize the sociality of homosexuality. He noted that homosexuality and fraternal polyandry can both be "solutions" to the scarcity of wives (38).<sup>9</sup> Re-

sponding to Brenda Seligman's argument that blood-brotherhood "disputes that the woman is the sole or predominant instrument of alliance," Lévi-Strauss conceded, "It is far from our mind to claim that the exchange or gift of women is the only way to establish an alliance in primitive societies" (483). He even claimed that before Seligman did so, he himself had already shown that among some groups, the cross-cousin and potential brother-in-law "is the one with whom, as an adolescent, one indulges in homosexual activities" (484). That is, he glossed, brothers-in-law are the same "whether they play the role of the opposite sex in the erotic games of childhood, or whether their masculine alliance as adults is confirmed by each providing the other with what he does not have—a wife—through their simultaneous renunciation of what they both do have—a sister" (484).

Lévi-Strauss recognized homosexuality only to the extent that he could subsume it within heterosexuality, but in the process he characterized homosexuality as cultural, as a form of alliance within the social, not banished from it. The universality of the incest taboo means not that homosexuality is equally taboo, but rather that even homosexuality is ultimately governed by the prohibition on incest and the imperative to exogamy. Hence the assertion that homosexual relationships are governed by the same rule of exchange as heterosexual ones: "[M]arriage serves as model for that artificial and temporary 'conjuality' between young people of the same sex in some schools and on which Balzac makes the profound remark that it is never superimposed upon blood ties but replaces them" (480). An artificial, temporary, imitative conjuality—Lévi-Strauss barely conceded the existence of homosexuality as such. But precisely because he could barely see it as different from heterosexuality, he did not distinguish between heterosexuality and same-sex alliances, nor did he locate homosexuality in a primordial state of nature before incest was prohibited.

#### FEMALE MARRIAGE IN THE NINETEENTH CENTURY

Members of respectable Victorian society were also able to perceive women as married to one another, and they rarely confounded female marriages between white, middle-class women with the polygamous or incestuous arrangements they attributed to the peoples they sought to subjugate, using Christian ideals of marriage to justify the imperial mission. The life of Charlotte Cushman (1816–1876), documented in letters and memoirs, shows that even a woman who did have an illicit affair with her daughter-in-law differentiated between that illicit, quasi-incestuous affair and a more marital relationship, conducted in full view of

her friends and the public, with a woman she called her wife. Charlotte Cushman was one of the most acclaimed and financially successful American actresses of the nineteenth century, best known for playing Romeo in the 1840s. Born in the United States, she lived outside it for most of her life, first in England and then in Italy, but returned often to play sold-out national tours. As Lisa Merrill has shown in a brilliant biography, Cushman used the language of marriage to conceptualize many of her sexual relationships with women, which after her rise to stardom usually consisted of a primary relationship with a peer and a secondary, clandestine relationship with a much younger woman, often a fan.<sup>10</sup> Cushman described her primary relationships as marriages that created a spousal bond and kinship network. In 1844, she noted in her diary, "Slept with Rose," and the following day wrote "'R.' Saturday, July 6<sup>th</sup> 'married.'" (9). As in heterosexual marriage, sex made marriage and marriage created kinship: Cushman called Rose's father "Father," as though he were her father-in-law, or as though in marrying Rose she had become her sister (74).

Cushman was involved in two long-term relationships with women: one with Matilda Hays, an author, translator, and feminist activist, and another with the sculptor Emma Stebbins, whom she met in 1857. Stebbins is best known today for her sculpture *Angel of the Waters*, which stands in Central Park's Bethesda Terrace and features prominently in Tony Kushner's *Angels in America*. Until her death in 1876, Cushman cultivated a public persona as a respectable artist and lived openly with Emma Stebbins in an elegant apartment brimming with friends and pets. After Cushman's death, Emma Stebbins wrote a biography of her former spouse that, with the reticence and impersonality typical of the lifewriting discussed in chapter 1, made only one direct statement about their relationship: "It was in the winter of 1856–57 that the compiler of these memoirs first made Miss Cushman's acquaintance, and from that time the current of their two lives ran, with rare exceptions, side by side." But Stebbins attested to her marital connection with Cushman through the very act of writing the biography as a memoir, in her pointed exclusion of Cushman's other lovers from her account, in her detailed description of their shared apartment in Rome, and in a ten-page inventory of their pets, including dogs named Teddy and Bushie.<sup>11</sup>

One of the women's many pets became the subject of a eulogy by Isa Blagden, a writer who lived in Florence and was close to Stebbins and Cushman, for whom she composed "To Dear Old Bushie. From One Who Loved Her," cited in full in Stebbins's biography. It would be naive to think that the Victorians were so naive as to be unaware of the connotations of "Bushie" as a pet name, so to speak, for female genitalia. The use of pronouns rather than proper names in the subtitle "From One Who

Loved Her” invites us to read the poem symbolically, as a lament for a beloved dog and as an anticipation of the death of a beloved woman. That conflation is facilitated by the poem’s rhetorical decision to apostrophize the absent dog directly in the second person as an unnamed but personified interlocutor: “Much loving and much loved, dare I, / With my weak, faltering praise, / Record thy pure fidelity, / Thy patient, loving ways; / Thy wistful, eager, gasping sighs, / Our sullen sense to reach; / The solemn meaning of thine eyes, / More clear than uttered speech?” The rest of the poem argues that animals equal humans in love and fidelity, and concludes, “A life-long love lies in thy dust; / Can human grave hold more?”<sup>12</sup> In its emphasis on the true devotion of a passionate love that remains tacit, the poem signals Blagden’s genuine affection for Bushie and her appreciation for the “life-long love” between the two women with whom the dog lived.<sup>13</sup>

Cushman herself described her relationship to Stebbins as a marriage when she warned her young lover Emma Crow that she was not a free woman; as she put it, “Do you not know that I am already married and wear the badge upon the third finger of my left hand?” (211). Cushman began a clandestine relationship with the much younger Crow in 1858, soon after she exchanged rings with Emma Stebbins and began living with her. Cushman met Crow while touring the United States; their affair lasted years, spanned continents, and is documented in Cushman’s many letters to Crow, which Crow preserved and bequeathed to the Library of Congress, despite her lover’s many anxious requests that she burn them. In that correspondence, Cushman frequently tried to naturalize her adulterous betrayal of Emma Stebbins by calling the younger Emma Crow her daughter, niece, and baby, as if to suggest that Crow was not Stebbins’s rival but simply an addition to the family. “Never did a mother love her child so dearly. Never did Auntie think so sweetly so yearningly of her Niece. Never did Ladie love her lover so intensely,” Cushman wrote.<sup>14</sup>

Cushman took the incestuous fantasy of sex as kinship to its literal limits when she encouraged Crow to marry Cushman’s nephew and adopted son, Ned Cushman. Cushman’s plan was to have Crow live near her as her daughter-in-law, a situation to which Cushman’s wife, Emma Stebbins, could not object. Crow was so in love with Cushman that she agreed to the arrangement, and she and Cushman continued their affair well after Crow’s marriage to Ned made Charlotte Cushman young Emma’s mother-in-law and aunt to the children Emma had with Ned. After Crow married Ned Cushman, Charlotte continued to address Emma as her lover, but also as a “dear new daughter” who had, in taking the Cushman name, also become in some sense Cushman’s wife. Cushman called Emma’s marriage with Ned her own “ultimate entire union” with Emma, and her letters to a pregnant Emma convey a sense, as biogra-

pher Lisa Merrill puts it, “that she and her ‘little lover’ were having this baby together.” With a grandiosity that came easily to a rich and famous actress, Cushman arrogated to herself the roles of husband, wife, father, mother, aunt, and lover, saluting Emma as “Dearest and Sweetest daughter[,] niece, friend and lover” and referring to herself in other letters as “Big Mamma.”<sup>15</sup>

Cushman’s matrilineal, incestuous, adulterous, polygamous, homosexual household seems to realize the conservative fantasy of the primitive family in which no distinctions are made, no restrictions imposed, and patriarchal monogamy does not contain the promiscuity that results when women reign unfettered. For that very reason, Cushman provides an excellent point of departure for interrogating the equation of homosexuality with primitive sexual anarchy. Her affair with Emma Crow does not in fact show that those who disregard the taboo on homosexuality will also flout the prohibitions on incest and polygamy. Instead it demonstrates that, like most Victorians, Cushman’s desires were shaped by taboos that incited the very desires they prohibited. Vows of monogamy, even when not legally binding, made adultery all the more alluring, and as Foucault shows in the first volume of the *The History of Sexuality*, nothing in the Victorian family was more normative than its obsession with incest. In societies that make “the family . . . the most active site of sexuality . . . incest occupies a central place; it is constantly being solicited and refused; it is an object of obsession and attraction, a dreadful secret and an indispensable pivot. It is manifested as a thing that is strictly forbidden . . . but it is also a thing that is continuously demanded in order for the family to be a hotbed of constant sexual incitement.”<sup>16</sup> The mother-daughter axis was as subject to eroticization as any other aspect of family life, and incest fantasies, veiled and overt, were a prominent feature of Victorian culture (see chapters 3 and 4). Cushman’s letters to Emma Crow blurred the lines between lover and family member in the same way as Dinah Mulock Craik’s 1850 novel *Olive* did when describing a wife’s love for her husband: “She loved him at once with the love of mother, sister, friend, and wife.”<sup>17</sup> Pornographic novels obsessively depicted incest of every variety and in every possible gender configuration (see chapter 3), and Henry James easily translated his acquaintance with Charlotte Cushman’s history into the heterosexual plot of *The Golden Bowl*, in which a father marries his daughter’s husband’s lover, also named Charlotte.<sup>18</sup>

The normative cast of even Cushman’s most hidden desires helps to explain why she was not branded as deviant in her lifetime and why the relationships with women that she did make public were accepted by those surrounding her. Cushman was a recognized and often admired type: a nineteenth-century woman whose financial independence made it relatively easy for her to form a couple with another woman. Cushman

enjoyed playing male roles on stage, and like many middle-class and aristocratic women in female marriages, she adopted masculine dress and nicknames.<sup>19</sup> But she lived openly with other women as a woman, and identified with both feminine and masculine roles. Cushman called Emma Stebbins her better half and described herself as married to her first lover, Rose, but she did not consistently or exclusively see herself as a husband. The language of marriage described the quality of her commitment to a sexual partner rather than a gendered division of roles. In this respect female marriage appears, on the basis of current historical evidence, to have been a primarily middle- and upper-class phenomenon. Working-class women who earned their own money also formed couples with other women, but it was more common for one member of the couple to live as a man. Such alliances were therefore not perceived as female marriages. Although in some technical sense they could be called marriages between women, in the eyes of the law, the couple's community, and even the couple themselves, they were marriages between a woman and a man. If caught or exposed as women, some female husbands were legally censured and mocked in ballads and broadsides for seizing male privileges, but others were not.<sup>20</sup> An 1869 article on "Modern Amazons," for example, wrote approvingly of two women who assumed the roles of "man and wife" and "lived together in good repute with their neighbours for eighteen years."<sup>21</sup>

Examples of two women using the language of marriage to describe their relationships in the relatively private context of journals and letters abound across the nineteenth century. Eleanor Butler referred to her beloved Sarah Ponsonby in her journals as "my better half."<sup>22</sup> Sculptor Harriet Hosmer, one of Cushman's friends in Rome, called the widowed Englishwoman Lady Louisa Ashburton "my sposa" and referred to herself as Ashburton's "hubbie," "wedded wife," and daughter. Writing to Ashburton of a marriage between monarchs, Hosmer added, "They will be as happy in their married life as we are in ours"; in another letter she promised "when you are here I shall be a model wife (or husband whichever you like)."<sup>23</sup> Early in the century, Anne Lister and Anne Walker decided to become "companions for life" in a relationship that would, according to both, "be as good as marriage." Lister sealed her union with Walker by giving her a ring and arranging to receive communion with her, along with a legal ceremony in which each woman willed the other her unentailed property.<sup>24</sup> An 1892 obituary of English-born Annie Hindle in the *Chicago Herald* reported that in 1886 the famous male impersonator was married to her "dresser and faithful companion" Annie Ryan, "a pretty little brunette of twenty-five" by "a minister of the gospel, Rev. E.H. Brooks," who "solemnly pronounced Annie Hindle the husband of Annie Ryan." Hindle married in male dress, using a male name,

but the article noted that following the wedding she lived with Ryan while dressed as a woman: "The neighbors respected them. . . . That they could live together openly as man and wife, the husband always in female attire, and yet cause no scandal, is the best proof of the esteem in which those around them held them."<sup>25</sup>

The idea of female marriage was not simply a private metaphor used by women in same-sex relationships; it was also a term used by the legally married to describe relationships that were conducted openly and discussed neutrally in respectable society. Even among middle-class Victorians, marriages were not defined by law alone, and for couples with no legal status, social acceptance provided legitimation and established rules for beginning and ending relationships.<sup>26</sup> Charlotte Cushman assumed that many in her circle were aware of sexual romance between women, since she warned Emma Crow in an 1860 letter that "there are people in this world who could understand our love for each other, therefore it is necessary that we should keep our expression of it to ourselves."<sup>27</sup> The historical context leaves it surprisingly unclear whether Cushman demanded secrecy because Crow was a woman, or because Cushman was afraid of being exposed as adulterous. There are no similar records of Cushman attempting to conceal her relationships with Eliza Cook, Matilda Hays, or Emma Stebbins, which far from being open secrets were explicitly acknowledged by her social circle and in newspapers. Cushman and her lovers displayed their intimacy for all to see. In the 1840s Cook published a fervent poem, "To Charlotte Cushman," which described the two women as "captive in Affection's thrall," and when Hays published her translation of George Sand's *La Petite Fadette* in 1851, she dedicated it to Charlotte Cushman. On a tour of United States theaters in 1849, Cushman traveled with Hays, and a newspaper article praising Cushman as a "woman . . . worthy of homage and esteem" added, "Miss Cushman will be accompanied by her friend, novelist and translator, Matilda M. Hays."<sup>28</sup>

When grasping for a vocabulary to describe relationships between women, Victorians often, as we saw in chapter 1, resorted to a qualified, hyperbolic lexicon of friendship, but they also applied the concept of marriage to female couples. Elizabeth Barrett Browning wrote to her sister Arabel in 1852 about meeting Matilda Hays and Charlotte Cushman: "I understand that she & Miss Hayes [*sic*] have made vows of celibacy & of eternal attachment to each other—they live together, dress alike . . . it is a female marriage. I happened to say, 'Well, I never heard of such a thing before.' 'Haven't you?' said Mrs Corkrane [*sic*], . . . 'oh, it is by no means uncommon.' They are on their way to Rome, so I dare say we shall see a good deal of them. Though an actress . . . Miss Cushman has an unimpeachable character."<sup>29</sup> Barrett Browning's informant

was the wife of journalist John Frazer Corkran, a correspondent for the *Morning Chronicle*. Browning's reference to vows of celibacy suggests an equation of female marriage with sexual renunciation, but the conjunction of the women's celibacy with their "eternal attachment" to each other redefines celibacy as a mutual vow never to leave one another to marry men, one way of predicating Barrett Browning's next term, "a female marriage." The offhandedness of Barrett Browning's "I happened to say" sits uneasily with the emphatic nature of what she does say—"Well, I have never heard of such a thing"—but suggests her desire to demonstrate that she has already absorbed the lesson in urbanity imparted by her married interlocutor, who remarks, "[I]t is by no means uncommon." Browning's final comment on Cushman's reputation for respectability makes no connection, positive or negative, between her female marriage and her "unimpeachable character." Far from suggesting that she might want to avoid Cushman and Hays, Browning writes that she expects to see a good deal of them—and she did, often bringing along her husband and their young son.

To understand the social position of women in female marriages, it is helpful to distinguish between a subculture and a network. Charlotte Cushman did not belong to a subculture, a type of social group that tends to be organized around a limited number of shared traits and that coheres through its separation from the mainstream. She did, however, belong to a network, a form of social alliance whose strength derives from its relative openness and internal variety and from its links to other networks. Overlapping sets of acquaintances as well as shared identities define networks; the stronger the network, the greater the number and type of groups to which it is linked. Cushman's network thus included women in or interested in relationships with other women and had many links to people who were not in same-sex couples. Her circle overlapped considerably, for example, with the Browning circle, which consisted of highly respected artists who lived in Italy to get distance from their immediate families, access to a warmer climate, and exposure to Italy's historic culture. Charlotte Cushman's integration into multiple networks shows how easily same-sex relationships between women were assimilated to the model of marriage. Indeed, as Merrill notes, Cushman's relationships with Matilda Hays and Emma Stebbins helped incorporate the actress into many networks by giving her an aura of propriety and respectability (190).

Women in female marriages or interested in sexual liaisons with women banded together but also entered social circles organized around legally married couples. Robert and Elizabeth Barrett Browning spent time not only with Cushman and Hays but with several other women whose charged same-sex relationships included giddy flirtations, tempestuous in-

fatuations, short-term love affairs, and long-term partnerships. The Brownings' letters recount numerous dinners, picnics, and excursions with Harriet Hosmer, Isa Blagden, Kate Field, and Frances Power Cobbe, as well as with Cushman and Stebbins. In some cases, the ties were deep: Blagden was one of Robert Browning's chief correspondents, Hosmer made a famous cast of the Brownings' hands, and after his wife's death, Robert gave Field a chain and locket Elizabeth had worn since childhood, adding to it some of his wife's hair.<sup>30</sup> Cushman, Hosmer, and Cobbe were on good social terms with married women such as Jane Carlyle, Mary Somerville, and Margaret Oliphant, and often socialized with their husbands as well. Harriet Hosmer adopted boyish dress and manners and flirted openly with women, but Victorian lifewriting attests that dozens of respectable Englishwomen traveling to Rome were eager to meet her. She knew the Gladstones, Sir William Boxall (director of the National Gallery and portraitist of leading figures of the day), and the Layards (Austen Layard was an archeologist, politician, and ambassador to Madrid in the 1870s; his wife was the daughter of Sir John and Lady Charlotte Guest). Her visitors in the late 1860s included a diplomat's wife, a philanthropic Christian woman, and Anne Thackeray, who traveled to Rome with Lady de Rothschild.<sup>31</sup>

In the 1860s and 1870s, a period when few knew of the sexological idea of inversion and many still associated sodomy with sexual acts absolutely opposed to nature and virtue, the female couple was accepted as a variation on legal marriage, not treated as a separate species. This suggests that Lillian Faderman and Carroll Smith-Rosenberg were absolutely right that Victorians considered love between women to be perfectly normal, whether that love involved intense, sensual friendships that existed alongside marriage to men (Smith-Rosenberg) or lifelong partnerships that replaced marriage to men (Faderman).<sup>32</sup> It also shows how they were wrong. Smith-Rosenberg erred in defining intimacy between women as a supplement to male-female marriage, for women in female marriages did not supplement marriage, they appropriated it. Faderman was wrong to argue that acceptance of female couples depended on the perceived asexuality of their relationships; the use of marriage as a term to describe female couples suggests that people believed sex was involved, for marriage, unlike friendship, was never an asexual term. For Victorians, marriage meant the union of sexual and spiritual impulses, the reconciliation of sexuality with propriety. Marriage was a socially acceptable exhibition of sexual intimacy because it was predicated on fidelity and thus advertised not only the sexuality of spouses but also their acceptance of restraints and limits. For this reason, female marriage was not associated with a savage state of sexual license but instead was readily integrated into even the most restrictive ideas of social order. As we will see, however, female

marriage also differed from legal marriage between men and women in significant ways, and those differences made it a model for reformers seeking to modernize legal marriage.

#### FEMALE MARRIAGE AND VICTORIAN MARRIAGE REFORM

Until 1857, legal marriage in England was defined by its effective indissolubility, since divorce with the right to remarry was prohibitively complicated and expensive. The law of marriage also mandated the formal inequality of husbands and wives, since coverture dictated that they were legally one person, the husband. Serious reform of those laws began when Barbara Leigh Smith submitted a petition to Parliament in 1856, requesting a change to the laws governing married women's property, which belonged entirely to husbands unless protected by the law of equity. Although that petition's immediate success was only partial, it influenced politicians to create a civil divorce law the following year. Eager to collect signatures from women who were not married to men and were therefore considered disinterested supporters of reform, Smith ended up soliciting signatures from several women who at some point in their lives were in female couples, including Isa Blagden, Geraldine Jewsbury, Amelia Edwards, Charlotte Cushman, and Matilda Hays.

That a number of women more interested in relationships with women than in marriage to men signed a petition calling for a Married Women's Property Act suggests an affinity Smith may not have anticipated between same-sex relationships and marriage reform, one that cannot simply be explained in terms of a feminist desire to increase the rights of all women. Hays had always been a feminist, and she remained one well after signing the 1856 petition, but her support for divorce also stemmed from her experience with female marriage. When her relationship with Cushman ended in 1857, Hays returned to her feminist circle in London, where she helped run the *English Woman's Journal* and the Society for Promoting the Employment of Women, and eventually formed another relationship with Theodosia, Dowager Lady Monson.<sup>33</sup> She also supported herself as a translator and writer, and her novel *Adrienne Hope* (1866) included characters based on herself and Lady Monson, Miss Reay and her constant companion, the solicitous, widowed Lady Morton. Miss Reay declares her support for women's rights and notes, "Until quite lately a married woman was only a chattel . . . absolutely belonging to her husband. . . . The new Divorce Court has mended this state of things."<sup>34</sup> In an earlier work, *Helen Stanley: A Tale*, one character makes a didactic speech arguing that divorce is a valid solution to the problem of marital unhappiness and daringly asserting that one could love more than once.<sup>35</sup>

In her political and literary work, Hays developed practical and ethical underpinnings for divorce by working to increase women's economic autonomy and by countering the pervasive accusation that divorce licensed a purely carnal promiscuity.

Hays's feminist vision of laws that would give women legally married to men more freedom incorporated the definition of marriage she had developed in forming and ending her own female marriage. Although women in a female marriage did not have the benefit of a legally recognized union, they already enjoyed two of the privileges that women married to men fought for over the course of the century: independent rights to their income and property, and the freedom to dissolve their relationships and form new ones. They also created unions that did not depend on sexual difference, gender hierarchy, or biological reproduction for their underpinnings, as most Victorian marriages between men and women did in legal theory if not in social fact. Like many who supported new divorce or property rights for wives, Hays asserted that marriage could and should be based on the equality and similarity of spouses. As we will see in the next section, "contract" was the term that summed up the view that legal, opposite-sex marriage should be dissoluble and grant equality and independence to wives—and "contract" was a term that already described most female marriages. Anne Lister and Anne Walker used wills and deeds to formalize their relationship, and Rosa Bonheur drew up detailed wills with her first and second spouses, Nathalie Micas and Anna Klumpke. Like male and female suitors, who combined sexual and romantic passion with economic calculations (think of the negotiations that accompany courtship in Trollope novels), women in female marriages made formal agreements that combined mutual love with financial interests. When Rosa Bonheur asked Anna Klumpke to live with her, she first warmly declared her love, then wrote to Klumpke's mother explaining their decision to "unite [their] existence" and assuring her that Bonheur would "arrange before a lawyer a situation where she [Anna] will be considered as in her own home."<sup>36</sup>

Women like Bonheur and Klumpke modeled their relationships on romantic marriage, defined in terms of love and fidelity, but they also adopted a daringly modern notion of marriage as contract. Radical utopian William Thompson contended in 1825 that marriage was not really a contract because it was an unequal, indissoluble relationship whose terms were determined by the state.<sup>37</sup> By mid-century his critique had been absorbed into liberal and feminist arguments for the reform of legal marriage between men and women, some made by women in female marriages based on contractual principles. Contract marriage was egalitarian relative to legal coverture because it assumed a mutually beneficial exchange in which each side received consideration. Bonheur's will ex-

plained that she was leaving all her assets to Klumpke because she had asked her “to stay with me and share my life,” and had therefore “decided to compensate her and protect her interests since she, in order to live with me, sacrificed the position she had already made for herself and shared the costs of maintaining and improving my house and estate.”<sup>38</sup> Forced by necessity to construct ad hoc legal frameworks for their relationships, nineteenth-century women in female marriages not only were precursors of late-twentieth-century “same-sex domestic partners,” but also anticipated forms of marriage between men and women that were only institutionalized decades after their deaths.

Women in female marriages used principles derived from contract to dissolve their unions as well as to formalize them. Indeed, the very act of ending a union depended on the analogy between marriage and contract. As Oliver Wendell Holmes put it in *The Common Law* (1881), the essence of contract was that each party was “free to break his contract if he chooses.” The law did not compel people to perform their contracts, only to pay damages if they did not perform them.<sup>39</sup> After Cushman met Emma Stebbins and her relationship with Matilda Hays began to fray in 1857, Hays threatened to sue Cushman for damages on the grounds that she had sacrificed a literary career to follow Cushman to Italy. Cushman did not take pains to keep Hays’s demand a perfect secret; Harriet Hosmer knew of it, and Anne Brewster, an early lover and ongoing friend of Cushman’s, dilated upon it in her diary. Hays’s demand that Cushman pay some type of alimony may have been a subtle form of blackmail, but the threat Hays wielded was not the revelation of a relationship already open enough to be mentioned in newspapers and known to everyone in their social circle. Rather, the potential source of scandal was the revelation that Cushman’s infidelity was the cause of their rupture. To quiet reports of her adultery and to acknowledge that she was breaking their agreement to live together, Cushman paid Hays one or two thousand dollars, a substantial amount of money at the time, and a sign that she, like Hays, interpreted their union in terms of a basic principle of contract: that the party breaching an agreement must pay damages.<sup>40</sup>

Female marriages had their share of troubles and were as plagued by infidelity, conflict, and power differences as legal ones, but because the state did not bind female couples for life, their unions exemplified the features that British activists fought to import into marriage between men and women: dissolubility, relative egalitarianism, and greater freedom for both spouses. These were matters of some urgency: the doctrine of coverture dictated that a wife’s income and property unprotected by equity belonged absolutely to the husband alone, as did the couple’s children. Until 1891 a husband was legally allowed to hold his wife in custody against her will and there was no legal concept of marital rape.

In the 1850s, feminists seeking to end coverture and obtain independent rights for legally married women joined forces with liberal utilitarians interested in rationalizing the law and transferring authority from church to state. Together they proposed the property act that Hays and Cushman supported and helped to pass the controversial 1857 Divorce and Matrimonial Causes Act, which made divorce available to many more people than ever before by shifting jurisdiction from an ecclesiastical court to the nation’s first civil divorce court.<sup>41</sup> The new law did not end coverture or hierarchical marriage, and it codified a double standard that made it more difficult for wives to sue for divorce than husbands. Nevertheless, it was widely perceived as undermining husbands’ power and prestige. A satiric set of sketches in *Once a Week* portrayed the divorce court as a place where wives tricked and victimized husbands, and the *Englishwoman’s Domestic Magazine* noted in 1864 that “the revelations of the Divorce Court show that there are bad husbands as well as good.”<sup>42</sup> Statistics give some sense of the law’s actual effects: when divorce had to be finalized by parliamentary decree, only 190 were granted between 1801 and 1857, while in the ten years between 1858 and 1868, the new civil court granted 1,279 decrees.<sup>43</sup> The 1857 legislation provided an appealing new option for ending marriage, especially for women: before its passage, only four women had ever obtained a parliamentary divorce decree, but between 1858 and 1868, wives initiated 40 percent of divorce-court petitions and were successful about as often as husbands in dissolving marriages.<sup>44</sup>

The 1857 Act had cultural ramifications that went far beyond its legal ones. As Bessie Rayner Parkes put it in 1866, a “universal discussion of first principles . . . accompanied the passing of the New Divorce Bill.”<sup>45</sup> Abstract debates about marriage as an institution were accompanied by a new public appetite for sensational news about marital breakdown. Divorces were granted to hundreds of spouses, but divorce trials were followed by thousands of readers, and journalistic reports of divorce-court proceedings exposed the variability of marriage as a lived institution.<sup>46</sup> The general public discovered through trial reports that violence, adultery, incestuous adultery, bigamy, and even sex between women (an issue in two notorious divorce trials, the 1864 Codrington trial and the 1885 Dilke-Crawford trial) could be part of married life in Britain. A spate of novels about bigamy, adultery, and divorce, mostly published between 1857 and 1865, also fed the appetite for stories about marriages that broke the rules. Calls to censor divorce reports in order to protect privacy and public morality were ineffectual. One advocate of censorship, W.E.H. Lecky, also wrote a popular history of morals that placed European civilization at the acme of human development because of its Christian concept of lifelong monogamy. His call to suppress accounts of divorce trials sug-



gests that he understood how effectively they exposed the difference between what married couples practiced and what the laws of marriage preached.<sup>47</sup>

The 1857 law of divorce also changed the terms of celibacy, producing much journalistic discussion about whether marriage was necessary at all, especially in light of census figures that showed an increasing number of men and women never marrying. Victorian feminists charged that the social compulsion to marry consolidated male domination, since women entered marriages that made them inferiors only because the unmarried state entailed economic dependence and social death. Those who felt that the only suitable fate for a woman was to become a dependent wife made the unmarried “spinster” an object of pity: “A single woman! Is there not something plaintive in the two words standing together? . . . No woman is single from choice.”<sup>48</sup> Others described the single state as unnatural: “There is nothing single in nature; celibacy was never contemplated in creation.”<sup>49</sup> Feminist John Stuart Mill countered that as a result of such stereotypes, the desire to marry was really a revulsion against the stigma of being unmarried, since a “single woman . . . is felt both by herself and others as a kind of excrescence on the surface of society, having no use or function or office there.”<sup>50</sup> For marriage between men and women to be equal, feminists argued, single women had to be able to lead practicable and pleasurable lives. The demand to reform marriage began as a quest to make it more equal and more flexible, then evolved into a demand to make it less obligatory. To change the quality of life for the unmarried would alter marriage itself.

While some drew attention to the difficulties unmarried women faced, others argued that life was already easier for unmarried women than many believed and that marriage was no longer the only desirable female destiny. In the 1860s, unmarried women became visible as activists, philanthropists, and artists whose labor earned them a place in a society made more porous by a general emphasis on reform. The spectacular effectiveness of single women during the Crimean War increased public respect for them. Imperialist rhetoric exhorting England to live up to its values of democracy and equality at home in order better to disseminate them abroad contributed to an increased appreciation of all women’s social contributions. Feminist Caroline Cornwallis warned readers in 1857 that “to tie the hands of one half of mankind . . . is a suicidal act, and unworthy of a nation whom an omnipotent will seems to have marked out as the great civilizer of the world.”<sup>51</sup> By the 1860s, writing about single women had become enough of a trend for a book reviewer to comment, “If in the multitude of counsellors there is safety, how blest must be the security of single women!” Turning single women into dependents needing guidance from a “multitude of counsellors,” the reviewer concluded that marriage was

the best state, because “[m]an and woman need to be One.” Yet even he granted that women who lacked husbands needed work as an outlet for their talents.<sup>52</sup> Others suggested that single life might be preferable for women, especially in light of the marital miseries publicized by divorce court proceedings. Anne Thackeray noted in her essay “Toilers and Spinsters” (1858) that a single woman “certainly does not envy poor Mrs. C., who has to fly to Sir Cresswell Cresswell [a divorce-court judge] to get rid of a ‘life companion’ who beats her with his umbrella, spends her money, and knocks her down instead of ‘lifting her up.’”<sup>53</sup>

Even passionate advocates of marriage hostile to feminism began to accept that some women would never marry. As an example of this, take the most famous Victorian article about single women, W. R. Greg’s “Why Are Women Redundant?” (1862).<sup>54</sup> Greg’s article is frequently cited as evidence of the contempt Victorians heaped on unmarried women, because his strong commitment to marriage led him to propose sending “redundant” Englishwomen who could not find husbands to colonies where men outnumbered women. But Greg’s article also demonstrates the growing acceptance of single women. Although he pleaded that every woman who could be paired with a man should be, he assumed that because adult women outnumbered adult men, single women were as natural as monogamy. Nature rules that “marriage, the union of one man with one woman, is unmistakably . . . the despotic law of life,” but “she not only proclaims the *rule*, she distinctly lays down the precise amount and limits of the *exception*” (279). Greg quantified the natural exception in terms of census figures showing 106 women over twenty years old for every 100 men in the same age group. What Greg considered a startling anomaly was the census finding that 30 percent of women over twenty were unmarried. By contrast, Greg deemed the “redundant six per cent for whom equivalent men do not exist” (282) a normal exception consonant with “a thoroughly natural, sound, and satisfactory state of society” (282) and proportionate to the “precise percentage of women whom Nature designed for single life” (279). So natural was the single woman for Greg that he personified Nature herself as a single woman, busily making designs and laying down “the despotic law of life” with no husband to guide her.

Greg decried the rising number of unmarried women in England, but he also identified a fixed number of women for whom celibacy was required. He defined those women as “natural anomalies” who lacked femininity, loved independence, wanted to serve humanity, or were “almost epicene” in their genius and power: “Such are rightly and naturally single; but they are abnormal and not perfect natures” (280). The abnormal is imperfect, but it is also natural, and Greg thus asserted that unmarried women (but not unmarried men) were inevitable and socially necessary.

Despite his vehement promotion of marriage, he noted dispassionately that some women “deliberately resolve upon celibacy as that which they like for itself” (281). In a footnote Greg even suggested that single life was the happier choice for many women: “In thousands of instances [maiden ladies] are, *after a time*, more happy [than wives and mothers]. In our day, if a lady is possessed of a very moderate competence, and a well-stored and well-regulated mind, she may have infinitely less care and infinitely more enjoyment than if she had drawn any of the numerous blanks which beset the lottery of marriage” (299). Greg’s acceptance of single life as natural transformed marriage from a fatal necessity into a lottery, a game of chance whose risks women could rationally choose not to incur.

The changing view of single women indicated the burgeoning of new ideas about marriage. Across the political and rhetorical spectrum, writers in the 1860s testified to the growing awareness that marriage between men and women was not a universal element of social life. In “What Shall We Do with Our Old Maids?” (1862), Frances Power Cobbe used the same statistics as Greg to show that single women were becoming a constitutive and transformative element of England’s social landscape.<sup>55</sup> Cobbe and others argued that single women were happier than they had ever been, and that when unmarried women enjoyed the good life, marriage itself would also change. The suggestion that people could survive independent of marriage also undid the notion of marriage as the union of opposite sexes, each requiring the other in order to supplement a lack, and harmonized with a modern understanding of companionate marriage based on similarity and friendship. Feminist John Stuart Mill, one of Cobbe’s many personal acquaintances, echoed her sentiments when he wrote in *The Subjection of Women* (1869) that “likeness,” not difference, should be the foundation of true unions, and that marriage should be modeled on what “often happens between two friends of the same sex.”<sup>56</sup>

If marriage was defined by love and patterned on same-sex friendship, then what happened between two friends of the same sex could also be understood as a marriage. In an 1862 essay, “Celibacy *v.* Marriage,” Frances Power Cobbe wrote that women who did not marry men could still be happy by forming “true and tender friendships”; the celibate woman need not fear “a solitary old age” since she could easily “find a woman ready to share” her life.<sup>57</sup> In later lectures on *The Duties of Women*, Cobbe mused, “I think that every one . . . must have the chance offered to them of forming a true marriage with one of the opposite sex or else a true friendship with one of their own, and that we should look to such marriages and friendships as the supreme joy and glory of mortal life,—unions wherein we may steep our whole hearts.”<sup>58</sup> Cobbe subtly shifts her use of conjunctions, from “marriage . . . or . . . friendship” to “marriages *and* friendships” (emphasis added), thus transforming mar-

riage and friendship from mutually exclusive alternatives into interchangeable bonds for which the sex of the partners makes little difference to the quality of the union.

The triumph of companionate marriage as an ideal not only changed the relationship between husband and wife, but also transformed the status of unmarried people and provided grounds for valorizing same-sex unions. The belief that without love it was better not to marry made those who refused to wed out of expediency spiritually superior beings. Cobbe argued that women would marry for love only if the single state were “so free and happy that [women] shall have not one temptation to change it save the only temptation which *ought* to determine them—namely, love.”<sup>59</sup> Her reasoning shrewdly framed her rejection of compulsory heterosexuality as a desire to improve marriage, and called on defenders of virtuous marriage to support the unmarried woman’s right to happiness. Implicitly, Cobbe also rallied those who believed in marriage to ratify any union based on affection. In doing so, she may have had in mind a union like her own. As we recall from chapter 1, although Cobbe never legally wed, for over thirty years she lived with a woman she publicly called her “beloved friend,” sculptor Mary Lloyd.<sup>60</sup>

Cobbe’s life is an example of how social networks and informal, extra-legal relationships affected the political and the legal. Because female marriage was not a marginal, secret practice confined to a subculture, but was integrated into farflung, open networks, women like Cobbe could model their relationships on a contractual ideal of marriage and propose that legal marriage remodel itself in the image of their own unions. Cobbe belonged to a network of feminist marriage reformers that included John Stuart Mill, Barbara Leigh Smith, Charlotte Cushman, and Geraldine Jewsbury, as well as to a wider network of politicians, philanthropists, and journalists that comprised Walter Bagehot, Matthew Arnold, Lord Shaftesbury, Cardinal Manning, and Lady Battersea, whose memoirs remarked on Cobbe’s short hair and unconventional dress but also described her as “one of my most honored friends.”<sup>61</sup> Cobbe was even friends with W. R. Greg, her antagonist in the debate about unmarried women.<sup>62</sup> Through her writings and her professional and personal connections, Cobbe was able to shape legislation and policy. Her article on “Wife-Torture in England” (1878) led to the passage of laws making it easier for poor women to obtain separation orders from husbands convicted of assaulting them.<sup>63</sup> Cobbe achieved all this while living openly with another woman in a relationship that she and others perceived to be modeled on marriage. The important role she played in Victorian debates about celibacy, marriage reform, domestic violence, and women’s work is further evidence of the influence female marriage had on the changing forms of marriage between men and

women. Although Cobbe herself could not vote and was legally bound to Mary Lloyd only by individual agreements such as wills, her writings in the public sphere and her secure position in a highly ramified social world contributed to legal and political change.

The traffic between female couples and the legal institution of marriage ran in two directions. Because relationships between female couples were understood as marriages, they provided models for more flexible, egalitarian, and voluntary marriages between men and women. Conversely, the drive to change the laws governing marriage between men and women showed that the institution of marriage was already relatively plastic, one that could be molded into a permanently new shape without fracture or rupture. As a result, female couples and their friends found it plausible to use the language of marriage to describe their relationships. English society in the 1850s and 1860s did not perceive female marriages as dangerous or unspeakable, even at a time when most saw sodomy as a sexual act completely at variance with nature or virtue. Female couples were not a separate species but rather a middle-class equivalent of bigamous working-class couples whose alliances were illegal but nonetheless regulated by informal rules, marked by some form of wedding ritual, and recognized by the couple's peers, who knew that at least one member of the couple was legally married to somebody else.<sup>64</sup> Marriages were not defined by the law alone, and for couples with no legal status, social acceptance replaced law as marriage's legitimating sign. Victorians who applied terms like "wife" or "marriage" to female couples accepted them as a variation on legally married couples and conferred respectability on same-sex unions.<sup>65</sup> At the same time, to describe two women as married turned marriage, the supposedly stable ground of the comparison, into a plastic figure flexible enough to embrace the female couple.

#### THE DEBATE OVER CONTRACTUAL MARRIAGE

The features of contract that created a common ground between female marriage and reformed marriage between men and women were equality and dissolubility. The debates about the 1857 Matrimonial Causes Act hinged on whether or not marriage should be a contract, and if it were a contract, what that should mean. By and large, those who supported greater equality between wives and husbands advocated understanding marriage as a contract. In 1890 feminist Mona Caird summed up decades of feminist argument when she wrote, "As soon as the principle of equality between the sexes is sincerely accepted, there remains no valid reason against the immediate adoption of contract-marriage."<sup>66</sup> An 1857 article opposed to changes in "the greatest, oldest, and most universal of all

social institutions, the great institution of marriage," argued that only a "lower conception of marriage" treated "it as a purely civil contract between individuals," that Christianity defined marriage as "a lifelong compact . . . which never can be rightfully dissolved"; and that "the principle of divorce" was "handed over from Paganism" and "barbarism." Arguing that marriage "derives its essential and specific character from restraint: restraint from the choice of more than a single wife; restraint from choosing her among near relatives by blood or affinity; restraint from the carnal use of woman in any relation inferior to marriage; restraint from forming any temporary or any other than a life-long contract," the author equated Christian marriage with civilization because it prohibited certain acts (incest, polygamy, divorce) associated with a state of nature in which men had the freedom to treat women as instruments of their pleasure.<sup>67</sup>

Although those who upheld traditional hierarchical marriage believed that promises to marry required mutual consent, and that Christian marriage made men and women spiritual equals, they also insisted that marriage was defined by the difference between the sexes and was transcendent and irrevocable in ways that contracts were not. As one opponent of reform put it, the "common law of England . . . in entire accordance with the principles of Christianity, made a man's wife and children completely dependent upon him,—placed them, both as to person and property, completely under his control."<sup>68</sup> A judge ruling in an 1869 divorce case made a similar point when he explained, "The law . . . recognizes the husband as the ruler, protector, and guide of his wife; it makes him master of her pecuniary resources; it gives him, within legal limits, the control of her person; it withdraws civil rights and remedies from her, save in his name."<sup>69</sup> To argue for coverture was to take a stand against divorce and its implications of contractual marriage. In an unsigned 1856 article, Margaret Oliphant wrote, in an almost parodically uxurious voice, that the "justice which means an equal division of rights has no place between those two persons whom natural policy as well as Divine institution teach us to consider as one. . . . Marrying is like dying—as distinct, as irrevocable, as complete."<sup>70</sup>

Contract is a crucial term in both British political history and in contemporary feminist theory, and it is worth recalling those contexts when studying Victorian marriage debates. Since the seventeenth century, contract has defined the political relationship between individuals and the state in terms of a balance between freedom and obligation. This political history helps to explain why contract became such an important term in Victorian discussions of marriage and divorce. In a study of natural law, Ernest Bloch argues that philosophers since Epicurus have identified the essence of contract with the fact that it can be terminated.<sup>71</sup> Victoria Kahn points out in her study of seventeenth-century writing that contracts were

considered distinct from promises because only contracts could legitimately be broken.<sup>72</sup> Contracts have signified freedom in English political thought most clearly when they have been equated with ongoing consent; even John Milton, who advocated that wives submit to husbands, recognized that to define marriage as a contract rather than a covenant meant granting wives more freedom.<sup>73</sup> But as Kahn also shows, the formative political debates of the seventeenth century often posited contract as the antithesis of a married state based on natural, divinely ordained differences; indeed, the absolute sovereignty of a king over his people was often compared to the unquestioned dominion of a husband over a wife.

In recent years important critiques of liberal notions of contract have emphasized the exclusions and inequalities built into contract theory to such an extent that it now seems difficult to conceive that women once used contract to press claims for freedom.<sup>74</sup> P. S. Atiyah, for example, has argued that because nineteenth-century liberal politics mandated a separation of public and private, contract law could be applied only to the public marketplace, never to private, familial relationships such as marriage.<sup>75</sup> In fact, nineteenth-century judges frequently applied contract law to promises to marry and to agreements between spouses.<sup>76</sup> In one 1886 case, a judge asserted that marriage was indeed a generic contract, whose “validity . . . must be tested and determined in precisely the same manner as that of any other contract.”<sup>77</sup>

While some have argued that the liberal public sphere excluded marriage from the contractual realm, others have warned that to include marriage within the purview of contract is to misrepresent women’s coercion into sexual subjugation as consensual. For Carole Pateman, the social contract of political participation presumes a sexual contract that defines women as naturally deficient in the rationality, autonomy, or equality a subject must possess to enter a contract freely. Marriage is the one contract women are required to enter, she claims, because it is the contract most reducible to the hierarchical structure defining all contracts.<sup>78</sup> Yet Pateman’s argument about contract is contradictory, for she defines contract as freedom when women are excluded from it, and as subjection when they are included in it (135–36). Because Pateman cannot decide if contract is essentially free or unfree, she cannot determine whether marriage should be made more or less contractual (156, 165), nor whether sexual difference is dangerous (167) or desirable (185). Monique Wittig provides a contrasting view of contract theory’s relation to gender and sexuality in “On the Social Contract,” where she distinguishes between the heterosexual contract and the social contract and argues that women must break the heterosexual contract in order to become part of the general social contract. Since the category of sexual difference is crucial to the heterosexual contract, its disappearance is

one necessary component of what Wittig understands as an ongoing process of constantly remaking the social contract.<sup>79</sup>

Readings of canonical political theory alone cannot establish the valence of a term like “contract” in Victorian discourse, but the differences between Pateman and Wittig can shed some light on why Victorian feminists used “contract” as a watchword in their fight for equality between husbands and wives. Nineteenth-century writers associated contract with the marital relationship between men and women; according to the narrator of Wilkie Collins’s novel *Man and Wife* (1870), marriage was the ultimate contract, “the most important contract of civilized life.”<sup>80</sup> Victorian feminists used the tension between the social and sexual contracts identified by both Pateman and Wittig to draw attention to women’s ambiguous position in marriage, which required their free consent to a relationship that was hierarchical and difficult to dissolve. Mary Shanley points out that Victorian feminists “drew heavily on liberal principles of individual liberty and bodily autonomy” in seeking to reform marriage, and many of the male politicians who supported marriage reform did so because they wanted to extend the liberal principles of self-government to private as well as public life.<sup>81</sup> While many feminists accompanied demands for equal rights with equally fervent support for the idea that women were essentially different from men, others acknowledged that to make marriage more egalitarian necessarily involved making good on the premises of liberal universalism by undoing differences between male and female.

When feminists argued that marriage should become more contractual, they understood contract in terms of the *social* contract, as a voluntary agreement between equals that either party could terminate. Feminists argued that marriage was not yet truly contractual, because in marrying under English law, women gave away equality (wives were not equal to husbands), autonomy (wives were absorbed into their husband’s legal personality), and freedom (wives could obtain a divorce only under very limited conditions).<sup>82</sup> Dissolubility became the definitive feature of contractual marriage, because it was a legally necessary element of any contract and contained within it the ideas of consent and equality. The ability to exit from contracts was as crucial to their definition as the ability to enter them freely, and those who advocated contractual marriage thus expressed strong support for divorce. In an 1830s essay on marriage laws, John Stuart Mill asserted that women were “ripe for equality” but that it was “absurd to talk of equality while marriage is an indissoluble tie.” Mill imagined divorce as the logical corollary of a radically voluntary marital relationship: “[A] woman ought not to be dependent on a man, more than a man on a woman, except so far as their affections make them so, by a voluntary surrender, renewed and renewing at each instant by

free and spontaneous choice.” Like “the other relations voluntarily contracted by human beings,” marriage should “depend for its continuance upon the wishes of the contracting parties.”<sup>83</sup> In *The Subjection of Women* (1869), Mill repeated that marriage should be like a business contract, with each “free to cancel the power [of the other] by withdrawing from the connexion.”<sup>84</sup> The dissolubility implied by contract came to represent the freedom, consent, and equality that feminists believed should define marriage as an ongoing process.

Opponents and proponents of contractual marriage alike shared the assumption that contractual marriage needed to be understood in terms of a progress narrative of civilization. Some saw liberalized divorce laws that created greater equality between spouses as a step back in time. William Lecky, for example, criticized the Romans for making marriage a “coequal partnership,” “merely a civil contract, entered into for the happiness of the contracting parties, its continuance depend[er] upon mutual consent,” an agreement that “[e]ither party might dissolve . . . at will.”<sup>85</sup> Lecky unfavorably compared dissoluble contract marriage to Christian marriage, which by imparting an “essentially religious and even mystical character . . . to marriage” also insisted on the “absolute sinfulness of divorce” as a repudiation not only of one’s spouse, but of one’s faith in God (351–52). Feminists demanding the right to be included in the liberal English polity often reproduced Lecky’s belief that certain social customs were incompatible with civilization, even if they disagreed about what those customs were. Caroline Cornwallis called laws depriving married women of rights relics of an earlier “state of semi-barbarism.” In an 1846 review of books about the condition of women, Anna Jameson wrote that each proved “that the chief distinction between savage and civilized life, between Heathendom and Christendom, lies in the treatment and condition of women . . . that on her power to exercise her faculties and duties aright, depends . . . the progress of the species.”<sup>86</sup>

The writings of John Stuart Mill exemplify what we might call a feminist civilizational framework that made women’s equality the key to development and progress.<sup>87</sup> In his earliest writings on divorce, Mill placed contractual marriage in an anthropological narrative: “When women are merely slaves, to give them a permanent hold upon their masters was a first step towards their evolution. That step is now complete: and in the progress of civilization, the time has come when women may aspire to something more than merely to find a protector” (“Early Essays,” 83). In *The Subjection of Women*, Mill translated his liberal belief in unfettered individual development into the anthropological idiom of social plasticity. Dismissing attempts to fix women’s nature, Mill wrote that it was impossible to generalize about sexual characteristics given “the extreme variability of those of [human nature’s] manifestations which are supposed

to be most universal and uniform” (149). But Mill sought to give that variability a linear direction in which change would increase the good of an ever-increasing number of people. As part of that utilitarian liberal framework, he argued that changing women’s position in marriage was part of the shift from primitivism to civilization. Over and over again, Mill stated that married women’s inequality in the present was a “relic of the past,” an instance of “the primitive state of slavery lasting on,” a survival that seemed compatible with “modern civilization,” but in fact impeded progress toward a society based on consent, freedom, equality, and unconstrained self-development (*Subjection*, 136, 132). In the kind of move Nietzsche later overturned (see chapter 6), Mill argued that modernity begins when superiors make and keep promises to inferiors and thus create a realm of equals who make contracts with one another. To make marriage contractual, in that view, was to differentiate it from the savagery that all sides in the marriage debates identified as anathema.

#### VICTORIAN ANTHROPOLOGY AND THE HISTORY OF MARRIAGE

Victorians disagreed about whether contractual marriage represented civilization or savagery, and about whether civilization had already been achieved or had yet to be attained, but even thinkers as dissimilar as Mill and Lecky agreed that it was possible to demarcate the line between the primitive and the modern and that modernity was the superior state. Nineteenth-century imperial powers divided societies into stages, identifying Christianity and the West with the acme of human development and dismissing other religions and regions as stuck in a primitive past. That mode of thought is often described as anthropological, because many of the nineteenth-century writers who first began to compare cultural and social forms presented their findings as narratives charting the evolution of one set of customs and laws into another. One school of nineteenth-century anthropology sought to make the nascent discipline more scientific by measuring racial differences, while another produced theoretical accounts of language, myth, law, religion, and kinship.<sup>88</sup> Those who elaborated narratives about the origins of culture, society, and the state studied symbolic systems, religious thought, political structures, and economic exchange. Their speculative histories distinguished primitive societies based on myth, force, enslavement, fixed status, and clan rule from modern societies based on reason, equality, promises, consent, the rule of law, and state formations distinct from kinship ties.

As marriage underwent radical changes in the Victorian present, writers began to conjecture about the forms it had taken in the past, and many anthropologists who wrote comparative histories of kinship posed the

question with which we began: does marriage have a history? The 1860s saw the publication of major studies of marriage and kinship customs by Henry Sumner Maine, Johann Bachofen, Lewis Morgan, and John McLennan, leading Friedrich Engels to comment in his own study of *The Origin of the Family, Private Property and the State* (1884) that “[b]efore the beginning of the sixties, one cannot speak of a history of the family.”<sup>89</sup> The temporal coincidence of divorce reform and family studies is one reason that scholars have suggested a connection between the 1857 Matrimonial Causes Act and early anthropology, but anthropology and marriage law reform were also linked in remarkably concrete ways. Sir James Wilde, later Lord Penzance, was both a divorce-court judge and a member of the Anthropological Society.<sup>90</sup> Many of the writers now called Victorian anthropologists were trained as lawyers, and their interest in cross-cultural studies of marriage and kinship was inspired by their engagement with contemporary legal codes. Henry Maine (1822–1888) began his career as Regius Professor of Civil Law at Cambridge and after 1861 was a legal member of the Viceroy’s Council in India. His work in comparative jurisprudence influenced early anthropological and sociological theorists by defining law as a form of social expression and then studying its temporal evolution.<sup>91</sup> Johann Bachofen (1815–1887) was a Swiss jurist and historian of Roman law, and Lewis Morgan (1818–1881) studied and practiced law, as did John McLennan (1827–1881), who described his study of *Primitive Marriage* (1865) as a branch of his work on the “early history of civil society.”<sup>92</sup> All of these writers were interested in the connections between laws past and present. Maine viewed legal codes as replete with archaisms that survived even when the social formation to which they corresponded no longer existed and believed that those relics from the past held the keys to its reconstruction. McLennan focused on a primordial past that antedated written law but also contended that one could use the “legal symbols” of the present as clues to the past (12).

In addition to being influenced by the ways in which marriage was changing in contemporary society, anthropologists were also strongly influenced by Darwin’s *The Origin of Species* (1859) and its emphasis on variation and evolution.<sup>93</sup> Darwin’s *Origin* did not theorize variations in the sexual instinct, and his study of sex, *The Descent of Man*, presented human sexuality as uniformly heterosexual.<sup>94</sup> But *The Origin of Species* did theorize development as flux and defined nature itself in terms of successive variations, positing the reproductive system as a source of individualizing changes rather than as a mechanism for identical replication. For Darwin the identity of any species was ephemeral, since distinct species had shared origins in the past and “not one living species will transmit its unaltered likeness to a distant futurity.”<sup>95</sup> Even monstrosities—“a considerable deviation of structure in one part”—were on a continuum with the

variations essential for natural selection, and could not “be separated by any clear line of distinction from mere variations” (101, 72). *The Origin of Species* thus provided a way of thinking about change over time in which commonality and difference were intertwined. When Darwin famously wrote that “our classifications will come to be . . . genealogies,” he meant that those who studied species over time would have to study both their common origins and their constant transmutations (456). In *Ancient Law* (1861), Maine adopted a Darwinian approach to the history of marriage by arguing that it followed two historical axes of change: one legal, one social, and each moving at a different pace. Contemporary social opinion was “always more or less in advance of the Law,” and legal fictions, equity law, and the passage of new legislation were needed to coordinate laws and social practice (23).

Under Darwin’s influence, anthropologists saw monogamous marriage as only one of many variations. I began this chapter by citing contemporary associations of homosexuality with fantasies of primitive disorder—incest, promiscuity, polygamy. Victorian anthropologists helped to invent those fantasies of sexual savagery, yet many also affirmed the continuities between early and modern societies, and in so doing, affirmed that there was no fixed, natural form of marriage law.<sup>96</sup> The Darwinian understanding of life as variable led to an understanding of law and social customs as equally adaptable and plastic. Anthropologists writing conjectural histories of marriage often saw intimate links between Christian Europe and the primitive past, thus investing savage customs with the prestige of origins. In *Primitive Marriage*, McLennan wrote that promiscuity was “the most ancient form of kinship” (160) and that forms of marriage considered barbaric in nineteenth-century England, such as polyandry, “must be accepted as a stage in the progress towards marriage proper and the patriarchal system” (225).<sup>97</sup> Bachofen’s *Mother Right* corrected historians who rejected the theory that “lower, unregulated sexual relations” preceded marriage, and warned that a “bitter surprise is in store for those who look on marriage as a necessary and primordial state.”<sup>98</sup> In *Kamilaroi and Kurnai* (1880), a study of group marriage, Lorimer Fison and Alfred Howitt argued that “some of the more important institutions of civilized states must be sought, in their rudimentary forms, in this very condition of savagery from which they originate.” In a chart that used the quintessentially English names John, Jane, Smith, and Brown to diagram Turanian and Ganowanian kinship patterns, the authors even suggested that primitive and civilized marriage systems were interchangeable.<sup>99</sup> Edith Simcox, the professional author and labor organizer encountered in chapter 1 as George Eliot’s unrequited lover, proclaimed in an erudite study of *Primitive Civilizations* (1894) that no aspect of “modern family life . . . can be put forward as

so pre-eminently and absolutely natural as to be universal.”<sup>100</sup> Simcox argued that primitive civilization was not only as natural as modern life, it was in some respects superior. Demonstrating that wives in the past had owned property, possessed rights to their children, and enjoyed legal autonomy, Simcox implied that wives could enjoy the same independence in the present without undermining the social fabric.<sup>101</sup>

If primitive society began with incest, consanguine marriage, promiscuity, communal marriage, infanticide, and polygamy, then one could not universalize the incest taboo, nor argue that indissoluble, monogamous, hierarchical marriage was fundamental to human nature or human society. Because anthropologists acknowledged that multiple forms of marriage could constitute a cultural and social system, those who believed that monogamous, indissoluble marriage represented an advance in civilization over primordial promiscuity were put in the extraordinary position of having to explain what made it more civilized than its antecedents. In so doing, they also had to take a stand in contemporary debates about marriage as contract, and their positions were often discordant. In *Kinship and Marriage in Early Arabia* (1885), W. Robertson Smith wrote that patrilineal monogamy advanced “progress towards civilised ideas of conjugal fidelity” because it placed a woman “specially under the protection of one man,” a position that presumed that in civilized marriage, the husband remained stronger than the wife.<sup>102</sup> For others, polygamy was primitive because it depended on men’s violent capture of women, and monogamy was civilized because it was more likely to involve the woman’s consent. Although Engels famously contended that monogamy, far from being “the reconciliation of man and woman,” was “the subjugation of one sex by the other,” his contrarian remark set out to overturn the received wisdom that only in monogamous marriage “does woman assume the position of the equal of man.”<sup>103</sup> In the *History of European Morals* (1869) Lecky thus wrote, “[T]he whole tendency of civilisation is to diminish the disparity between the different members of the family”; in the shift to monogamy, “the wife from a simple slave becomes the companion and equal of her husband.” Only with the end of wife purchase and the establishment of monogamous marriage did the wife “cease to be [the husband’s] slave, and become in some degree a contracting party.”<sup>104</sup> Lecky thus agreed with Maine’s famous formulation of the course of history as a move from status to contract, the “free agreement of individuals” (163).

Just as anthropologists debated whether monogamous marriage meant that spouses became contractual equals, they also divided over whether monogamous marriage was compatible with legal definitions of contract as a dissoluble agreement between individuals who retained the right to terminate their agreement at will. Maine made a strong stand for the

individual rights of wives when he charged that Christian marriage laws “deeply injured civilisation” by consolidating “the proprietary disabilities of married females” (152–53) and making it more difficult for wives to obtain divorces. Others believed that contractual marriage undid civilization, because dissolubility militated against the equality created when Christian law made the marriage bond equally permanent for husband and wife, restrained the sexual passions of both sexes, and made it impossible for husbands to repudiate wives at will. In an article on “Marriage and Modern Civilization” (1901), W. S. Lilly called Christian marriage “the Magna Charta of woman in modern civilisation” because it established marriage as the “lifelong union of two equal personalities.” Lilly warned “that to degrade indissoluble marriage to a *mere* dissoluble contract . . . will be to throw back modern civilisation to that wallowing in the mire from which she rescued it.”<sup>105</sup>

In some cases, a single author divided against himself on the question of whether dissoluble marriage elevated women and advanced civilization. Robertson Smith described a pre-Islamic form of contractual marriage, *mot’a* marriage, as more primitive than forms that assigned unequal status to husbands and wives. In *mot’a* marriage the woman was called “Sadica,” or “female friend,” an apt term for a contract in which “the wife is not under her husband’s authority but meets him on equal terms” (93). Smith defined *mot’a* marriage as “a purely personal contract, founded on consent between a man and a woman, without any intervention on the part of the woman’s kin” (84). In *mot’a* marriage, both spouses have divorce rights, the woman stays near her kin, and any children born belong to her (83, 85). The woman’s right to dissolve her marriage is linked to “her right to dispose of her person” (91), which she loses in a subsequent form of marriage that Smith translated as “marriage of dominion,” in which a husband owns a “subject wife” (93). On the one hand, Smith criticized marriage of dominion for its basis in capture or purchase, opining that Islam “set a permanent seal of subjection on the female sex” by abolishing *mot’a* marriage (121). On the other hand, he himself relegated *mot’a* marriage to a primitive, rudimentary matrilineal stage that predated patrilineal kinship (37).

Kinship includes parenthood as well as marriage, and anthropologists also debated where to place various forms of generational affiliation on the scale of civilization. Those who saw biological reproduction as the aim of marriage made sexual difference a constitutive element of wedlock. Others were willing to entertain the possibility that contract rather than sexual difference should define the relationship between parents and children as well as the relationship between spouses. Maine, for example, was particularly interested in the ancient Roman law of adoption, “which permitted family relations to be created artificially” (125), thus making

kinship and citizenship independent of biological reproduction. Adoption law emerged from the confluence of *patria potestas* and the idea that the family was the basis of the state. To absorb new people into the state required that they be thought of as biological kin, but in a society that defined the family solely in terms of paternal authority, being of the same blood became less important than being under the same paternal power (144), and adopted children thus had the same status as biological offspring. Over time, *patria potestas* lost ground, but the legal fiction of adoption—what Maine called “factitious extensions of consanguinity” (127)—remained a way to perpetuate and enlarge the family by means other than marriage and heterosexual reproduction (125). Because the family, adoptive and biological, remained a basis for imagining social bonds, adoption also became a model for making political communities that were not based on shared blood.

Maine viewed adoption as crucial to civilization and suggested that to equate the family with heterosexual reproduction was a relic of primitive culture: “[W]ithout . . . the Fiction of Adoption which permits the family tie to be artificially created, it is difficult to understand how society would ever have escaped from its swaddling clothes, and taken its first steps towards civilisation” (26). Adoption shows that “the composition of the state uniformly assumed to be natural, was nevertheless known to be in great measure artificial. . . . The earliest and most extensively employed of legal fictions was that which permitted family relations to be created artificially, and there is none to which I conceive mankind to be more deeply indebted” (125–26). In her laudatory study of *Primitive Civilization*, Edith Simcox also noted that adoption was prevalent in ancient Babylonia, where women had many civil rights, egalitarian marriage was idealized, and “deeds of adoption [were] executed with formalities closely resembling those of marriage contracts” (377). For Maine and Simcox, the progress of civilization depended on conceptualizing the relationship between parent and child, like that between husband and wife, as a legal form that made kinship into a constructed agreement between individuals. Perhaps not surprisingly, adoption was also associated with same-sex love; in the 1840s, a sophisticated pornographic periodical published an essay on “The Loves of Sappho” that cited examples of Roman patricians who formalized their “personal love” for attractive male youths by adopting them.<sup>106</sup>

#### SAME-SEX UNIONS AND THE HISTORY OF CIVILIZATION

Tracing how anthropological texts understood the relationship between marriage and contract has returned us to the question of same-sex unions.

Historical hindsight reveals that contract undermined the idea that kinship depended on sexual difference, but did Victorian histories of marriage ever explicitly discuss same-sex unions, and if so, where did they place them in their evaluative scales? We can begin to answer this question by pointing out that several anthropologists who argued that marriage was not essentially defined by sexual difference belonged to social networks that included women in female marriages. Edith Simcox never lived with another woman, but she knew women in female couples and triangles (see chapter 1). Charles Darwin and Henry Sumner Maine both knew Frances Power Cobbe well enough to be aware that she lived with Mary Lloyd. Darwin’s father had known the Ladies of Llangollen, another famous female couple, and Darwin himself lived near Cobbe and Lloyd while writing *The Descent of Man*. During that time, Lloyd lent her neighbor Darwin a pony, and he, like others in their circle, treated her as part of a unit, referring to “you and Miss Lloyd” when he wrote to Cobbe.<sup>107</sup> Though scholars today question whether Maine’s liberal individualism produced a conservative or progressive view of marriage, Cobbe identified him as a feminist ally whose “interest in the claims of women and . . . strong statements on the subject, made me regard him with much gratitude.”<sup>108</sup>

A handful of participants in the Victorian marriage debates explicitly discussed the role that same-sex relationships played in progress narratives of kinship. Some perceived same-sex relationships in exactly the terms Gayle Rubin’s reading of anthropological theory would lead us to expect: as a practice antithetical to kinship, permissible only in states of presocial, precultural savagery and primitive promiscuity. Lecky, for example, equated polygamy and pederasty. His natural history of morals anatomized the “virtues . . . appropriate to each successive stage of civilisation” (ix) and warned that “[w]hen the passions of men are altogether unrestrained, community of wives and all eccentric forms of sensuality will be admitted” (103). Lecky linked the proliferation of courtesans in ancient Greece to male involvement with “that lower abyss of unnatural love, which was the deepest and strangest taint of Greek civilisation,” named in a footnote as “paiderestia” (294), and identified with the story of Harmodius and Aristogeiton, “united by an impure love” (295). Engels made the inverse point in *The Origin of the Family, Private Property and the State*, which valorized the collectivism of primitive social forms over the individualism of modern ones. Where Lecky saw homosexuality as indicative of society before Christianity, Engels depicted homosexuality as an artifact of the rise of private property and the monogamous family. Noting that historically monogamy had always been “for the woman only, but not for the man,” Engels criticized ancient Greek marriage for sullyng wives and encouraging sodomy among husbands: “[T]his degra-



dation of the women was avenged on the men and degraded them also till they fell into the abominable practice of sodomy and degraded alike their gods and themselves with the myth of Ganymede" (128).<sup>109</sup>

Although Engels shared Lecky's negative view of Athenian pederasty and wrote scathingly about "Urnings" in a letter to Karl Marx, he inadvertently proposed that same-sex marriage was an element of the stage of kinship he found most promising: the era "[b]efore incest was invented," when the family was structured by "the principle of promiscuity—the absence of any restriction imposed by custom on sexual intercourse" (101). Engels described an early kinship structure called the consanguine family, in which "[b]rothers and sisters, male and female cousins of the first, second, and more remote degrees, are all brothers and sisters of one another, and *precisely for that reason* are all husbands and wives of one another" (102). "All husbands and wives of one another"—Engels takes it for granted that only men can be husbands to women, only women wives to men. But precisely for that reason he produces a phrase that literally states that in the primitive family, everyone is *both* husband and wife to everyone else, without regard to sex. When Engels writes "[b]rothers and sisters . . . are all brothers and sisters of one another," he deploys kinship terms that are not limited by the sex of their object: women are sisters of both women and men. That gender inclusiveness extends grammatically to the sentence's final clause, which turns to sexual relationships; syntax transforms semantics, so that "husbands and wives" can be defined like the siblinghood that determines them. Women are the wives of their sisters and brothers, men the husbands of their brothers and sisters.

Engels makes the same grammatical slip when he comments on the punaluan family, in which several sisters are the common wives of common husbands, who unlike those in consanguine marriages are neither each other's brothers nor brothers of the sisters whom they marry. The term "punalua" refers not to different-sex relationships but to same-sex ones: "husbands . . . no longer called themselves brothers, for they were no longer necessarily brothers, but punalua—that is, intimate companion, or partner. Similarly, a line of natural or collateral brothers had a number of women, *not* their sisters, as common wives, and these wives called one another *punalua*" (104). In this "classic form of family structure . . . whose essential feature was the mutually common possession of husbands and wives within a definite family circle," wives are the intimate partners of other wives, husbands the intimate associates of other husbands (104), and marriage establishes relationships between women and between men as well as between men and women.

Where Engels unwittingly suggested that same-sex relationships were a component of primitive group marriage, and thus equated same-sex

unions with a form of incest that he valued for its group harmony, Johann Bachofen explicitly described same-sex unions as a feature of civilization and modernity. In *Mother-Right* (1861), Bachofen described sexual relations in primordial nature as reproductive, fecundating, fulfilling the needs of the material world alone, and exclusively heterosexual. Civilization advances only when women and men move away from the primitive state Bachofen calls "hetairism," in which sexuality is violent and concerned only with biological reproduction. In a lengthy discussion of Sappho, unusual in its day for its frankness about her sexual relationships with women, Bachofen calls Sappho "chaste," defining chastity not as sexuality's absence but as its idealizing regulation:

The love of women for their own sex [in Lesbian poetry] was equivalent to Orphic [male homosexuality]. . . . Sappho's striving to elevate her sex was the source of all her sorrows and joys, and it was Eros who inspired her in this attempt. Her ardent words flowed not from maternal solicitude but from amorous passion, and yet this enthusiasm, which seized upon the sensuous and the transcendent, the physical and the psychic, with equal vigor, had its ultimate and richest source in religion. Love and identity of sex, which had seemed exclusive, were now united.<sup>110</sup>

For Bachofen, lesbianism, like monogamous marriage, is a form of culture because it requires a degree of self-restraint; both convert materialist lust into spiritual love without abandoning sensuality. By interpreting sapphic love as an advanced stage of civilization, Bachofen implicitly argued against any absolute equation of civilization with heterosexual monogamy and reproduction.

. . .

If nineteenth-century Europeans did not uniformly assume that the union of man and woman was the only civilized form of marriage, it was due in part to the antic heterogeneity of public opinion about what form the institution should take. The 1850s and 1860s were defined by arguments, not agreement, over what constituted marriage and family, and same-sex relationships informed those debates. Participants in those debates had varying degrees of familiarity with women in female marriages, and several historians of marriage explicitly and implicitly deemed same-sex relationships compatible with values such as respectability, civilization, and progress. This does not redeem the empirical and ethical flaws of systems that relentlessly discriminated among religions, nations, and eras. But it does alert us to crucial differences between the twentieth-century concept of homosexuality and the nineteenth-century custom of female marriage. The homosexual and the lesbian were defined by secrecy, stigma, and their

asocial deviance from married couples, while those in female marriages had a place in a social system as acceptable variations on legal spouses.

For decades, scholars hampered by twentieth-century prejudices obscured the facts of nineteenth-century female marriage, and as a result it has only recently become possible to identify the role that female marriage played in political, social, and intellectual life. Until the 1990s, biographies of Charlotte Cushman, Frances Power Cobbe, Anne Lister, and Emily Faithfull never mentioned their relationships with women unless to protest too much that they were utterly asexual friendships. Subsequent scholarship established the sexual nature of those relationships, but in the process reclaimed them for lesbian history by insisting on their marginality and opposition to marriage. Rosa Bonheur and Charlotte Cushman were, however, international stars beloved by the public, connected to artistic and intellectual luminaries, who lived openly with women they considered spouses. Frances Power Cobbe never feared that her well-known relationship with Mary Lloyd might compromise her status as a champion of women's rights inside and outside marriage. Writers like Henry Sumner Maine and John Stuart Mill advocated definitions of marriage that asserted the benefits of equality and likeness between spouses. Johann Bachofen explicitly linked lesbianism to modern enlightenment.

One of the great lies of present-day narratives of civilization is that in the past, values were fixed, and that until very recently there was an unbroken consensus that marital relationships could exist only between a man and a woman. One hundred and fifty years ago, however, Victorian values were already in flux. Legislators, journalists, and anthropologists debated the legitimacy of divorce and the meaning of marriage. While many warned that civilization was coming to an end, many also believed that dissoluble unions between legally equal spouses were the future of marriage—not least because of the example offered by the female marriages of their day.

## Contracting Female Marriage in *Can You Forgive Her?*

AS ONE OF VICTORIAN LITERATURE'S most assiduous and complacent manufacturers of marriage plots, Anthony Trollope may seem a startling focus for a chapter about female marriage and the Victorian novel. A self-proclaimed conservative who voiced antifeminist views and sought to please his middle-class readers, Trollope produced the literary equivalent of the status quo. His position in the mainstream of Victorian literature and society makes him an excellent example for testing the previous chapter's argument—that Victorian debates about divorce and marriage indicate a general awareness of the plasticity of marriage. From the 1850s through the 1870s, as legislators, activists, and journalists acknowledged that it was possible to change the legal terms of marriage between men and women, historians of the family similarly recognized that marriage could be the name for a bond between two women or two men. Social recognition also played an important role in expanding the vernacular meaning of marriage, and acquaintances, friends, relatives, and colleagues conferred marital status on female couples who could not marry under the law but whose relationships exhibited marital features such as cohabitation, financial interdependence, physical intimacy, and agreements about fidelity.

Even Anthony Trollope knew women in female marriages, and a novel he began writing in 1863, *Can You Forgive Her?* (1864–1865), suggests that he understood that some women without husbands did not reject marriage altogether but instead chose a variation on it. Trollope wrote realist narratives of courtship, and many of his works deployed the plot of female amity analyzed in chapter 2, in which female friendship generates marriage between women and men. As I have shown throughout this book, however, female friendship and female marriage were distinct social relationships, and Trollope's interest in the plot of female amity would not necessarily promise a corresponding curiosity about unions between women. *Can You Forgive Her?* is unique among Trollope's many novels for its sustained engagement with female marriage, for it depicts courtship between a man and a woman as coterminous with one woman wooing another. Trollope wrote the novel in the wake of 1857 legislation that established England's first civil divorce court and spawned heated