

INTRODUCTION



Transgressive Unions

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In our time, and on both sides of the Atlantic, barriers to marriage crumble and fall. When the Supreme Court of the United States overturned anti-miscegenation laws in 1967, seventeen states still forbade marriages that crossed the color line. Most of these states had been on the losing side of the Civil War, but such legislation was no Southern monopoly. Only nine states had *never* enacted such laws.¹ Public attitudes toward mixed-race unions have softened as well. At the time of the court's decision in *Loving v. Virginia*, large majorities still disapproved of them; today, among Americans born after 1981, such unions meet with near universal acceptance.² Religious impediments to marriage have eroded, too. In the American experience, such barriers were never as rigid as the legal bans against interracial unions. Nevertheless, throughout the nineteenth century, official antipathy toward interfaith marriages remained intense, even panicky, especially among Catholic clergy and the rabbinate.³ Even so, rates of religious exogamy in the United States have risen steadily among all denominations. Among White Catholics, for example, the rate swelled from 18 to over 40 percent between 1930 and 1980.⁴ In Germany, historically, marriages between the Christian religions were rare, even in confessionally mixed jurisdictions. From the 1850s on, however, their number increased—and in Prussia were up to 10 percent of all unions by 1912.⁵ Where law reinforced social taboos against interfaith marriage, increased rates of conversion could result.⁶ The same goes for barriers to remarriage: over the past century and a half, divorce laws have liberalized throughout Europe and North America, and with that liberalization divorce rates have surged.⁷ To be sure, some taboos have fallen away, only to reemerge. From the mid-eighteenth century through the nineteenth century, for example, cousin marriage enjoyed a degree of respectability that it subsequently lost.⁸ But the broader trend is clear: legal barriers to marriage fall down, and social acceptance grows for unions that once provoked horror and ostracism.

The most dramatic change has been the advent of same-sex marriage, a phenomenon without obvious precedent in European history.⁹ The pace of legalization has been swift: no country recognized such marriages until the Netherlands broke the mold in 2001. As of this writing, same-sex couples enjoy full and equal marriage rights in fifteen countries, and many more recognize some form of protected, same-sex union.¹⁰ In the United States, same-sex marriage has been introduced in seventeen U.S. states and the District of Columbia, all since 2004.¹¹ On 26 June 2013, the U.S. Supreme Court declared unconstitutional the 1996 Defense of Marriage Act, which had restricted federal marriage benefits to opposite-sex unions and forbidden interstate recognition of same-sex marriages. In another decision issued the same day, the Supreme Court effectively reinstated a lower court decision making same-sex marriage legal in the state of California. Compared with interracial marriage, public attitudes on same-sex marriage have evolved even more rapidly than the pace of legal change: since the twenty-first century began, the percentage of Americans who favor full marriage rights for gay couples has grown from 35 to 47 percent—a slender plurality over those who oppose same-sex unions.¹²

Although they culminate a long progress toward the liberalization of marriage law, same-sex unions nevertheless represent a profound departure from an ancient heterosexual norm. That fact reverberates through the vehement language of opponents to same-sex marriage, a rhetoric that draws heavily on arguments once raised in support of anti-miscegenation laws. Thus in the debate surrounding California's Proposition 8—an effort to ban same-sex marriage by plebiscite—many claimed that parents in a transgressive union placed their own children at an unfair emotional or psychological disadvantage.¹³ Others railed against same-sex marriage as a violation of “divine law as expressed in nature.”¹⁴ Both arguments had also been advanced in support of anti-miscegenation laws during the post-Reconstruction era.¹⁵

Deriving continuity and stability from the norm of heterosexual marriage, however, obscures the wide variety of historical forms that marriage has taken. Explicitly or implicitly, the exponents of Proposition 8 assumed that the norm of *heterosexual monogamy* is a historical and cultural constant, self-evident in biblical Scripture and the law of nature. To be sure, the dominance of heterosexual normativity has been overwhelming. In the Holy Roman Empire, for example, the Criminal Constitution of 1532 made sexual relations between two men or two women a capital offense.¹⁶ But the case for monogamy, by comparison, has been surprisingly precarious. As Bernardino Ochino (1487–1565) pointed out in 1563, the Bible neither endorses monogamy to the exclusion of other forms of marital union, nor does it condemn polygamy.¹⁷ Ochino's scripturalist case for polygamy put the lie to Geneva's magistrates, who punished his challenge with exile.¹⁸ Likewise the argument from natural law offers cold comfort at best: while no natural law theorists

advocated same-sex marital unions, they found it difficult to identify any rational justification for upholding monogamy as the sole legitimate form. Hugo Grotius (1583–1645) and Samuel Pufendorf (1632–1694) agreed that both nature and Scripture permitted a man to marry multiple wives; the great jurist Christian Thomasius (1655–1728) argued that natural law allowed women to engage in plural marriage. As Stephan Buchholz and others have observed, their deliberations reflected a systemic differentiation of religion from law and politics that began when evangelical reformers deprived marriage of its sacramental status.¹⁹

As for theological constants, the opponents of same-sex marriage invoke an ideal that has its modern origins in the Protestant Reformation, with its elevation of the married estate, its spiritualization of affective bonds between husband and wife, and its concomitant downgrading of clerical celibacy.²⁰ But as David Whitford notes in his contribution to this volume, Luther's thoughts on heterosexual monogamy were anything but simple or consistent. To be sure, the Wittenberg reformer heartily endorsed monogamous marriage. But he also assigned to heterosexuality an ontological position in the order of creation anterior to that of original sin, lending it a disruptive potency that, under the right pastoral circumstances, might warrant polygamy as the best constraint on male sexual urges.²¹ For this reason Luther secretly endorsed the bigamous marriage of Landgrave Philipp of Hessen to Margarete von der Saale on 4 March 1540. Thus in William Rockwell's memorable phrase, "the first political protagonist of German Protestantism was, with Luther's blessing, a bigamist."²²

Marriage, in other words, never possessed the unity and stability in law, theology, or social practice that the modern defenders of tradition assume. Indeed, if there is any constant in the history of marriage, it is *variety*—the sheer number and diversity of sexual pair-bonds that Western societies have recognized, formally or informally. The essays assembled here expose that variety by exploring the margins of marriage during the three centuries that began with the Protestant Reformation—a period, like the present time, of rapid cultural pluralization in which parameters of marriage were redrawn. All of them draw on evidence from the German-speaking lands, where the Reformation began, but their focus is not confined to the effects of religious reform. Nor is the goal to erect a new teleology to replace the current opposition between tradition and liberalization. Rather, the aim of these essays is to explore the variety of early modern marriage by examining unions that violated some sort of taboo—be it religious, social, ethnic, or related to kin. "Only by historicizing," writes Ruth Mazo Karras, "can we see the inherent illogic of claims that there is only one 'real' form."²³

As the first three chapters show, the Protestant Reformation, far from defining marriage more clearly, superimposed new marital norms on communities that were at best half-ready to accept them in full. The trouble began almost

as soon as evangelical reforms were introduced. Reluctantly, Luther allowed divorce on the grounds of adultery, desertion, and sexual impotence. But as Whitford reminds us, Protestants who divorced and remarried became bigamists to those who did not accept the evangelical doctrines: in their eyes, serial monogamy punctuated by divorce was no less bigamous than concurrent marriage to multiple spouses. The Protestants' introduction of clerical marriage, similarly, raised fundamental questions of spiritual authority. Wolfgang Breul analyzes the impact of clerical marriage on the Hessian town of Hersfeld, which in 1523 issued a municipal decree—the first of its kind—against priests who lived in sexual union with concubines, obligating them to marry their partners or abandon them. Such unmarriages (*Unehen*) were nothing new, of course: the papal archives bulge with petitions from the sons of priests seeking retroactive legitimation.²⁴ Nor had civic authorities been lax in prosecuting clerical sexual misconduct.²⁵ But no medieval town had forced priests to marry or depart if they refused. Hersfeld's decree, and many more that followed it, constituted an assault both on ecclesiastical jurisdiction and on the canonical principle of clerical celibacy. By legalizing clerical marriage, Hersfeld erased status distinctions between laity and clergy, assimilating the latter into communal polity and the "priesthood of all believers."

This appropriation of ecclesiastical jurisdictions had been deliberate and intentional. But clerical marriage also stirred a hornet's nest of unintended consequences. As Beth Plummer's chapter reveals, few experienced those consequences more keenly than monks and nuns who, like Luther himself and his wife, Katharina von Bora, had abjured vows of celibacy that bound them as in marriage to God. Although the unmarriages of parish clergy frequently aroused indignation, their ubiquity also eased the integration of priests as husbands and citizens into the secular world. Monastics enjoyed no such advantage. Abjuration made them "whores and knaves"; by marrying they became bigamists. Because vows of chastity bound them in spiritual kinship, moreover, ex-nuns who married ex-monks compounded bigamy with incest.²⁶ The practical difficulties they faced were legion—some of which anyone in a same-sex marriage today would recognize. Imperial law still forbade monastics to marry, for example, even if individual Protestant jurisdictions allowed it. Would the marriage be regarded as valid in a Catholic territory?

Plummer charts the proliferation of their marriages, beginning in 1521 with that of Bartholomäus Bernhardi (1487–1551)—the first monk, as far as we know, to marry on the basis of the new teachings. That Catholics shunned monks who married is not surprising. But even among Protestants, the fate of married ex-nuns and former monks was by no means as easy as Luther's unequivocal endorsement of clerical marriage might have suggested. More fundamentally, married ex-monastics entered a world that depended vitally on the sacrosanctity of vows.²⁷ As self-perjurers, they found themselves the targets of

suspicion from their evangelical coreligionists. All too often their full integration proved elusive.²⁸

The essays of Ralf-Peter Fuchs and Michael Sikora probe a different sort of constraint on marriage, one associated with social inequality. In order to legitimate the social inequalities on which their elevated rank and honor depended, Sikora reminds us, nobles and princes relied on the heritability of their status. And because German society traced status inheritance through women as well as men, the integrity of every noble lineage hinged on the choice of equal or superior inherited rank. As the preoccupation of nobles with documenting lineage intensified during the fifteenth and sixteenth centuries, misalliances became the object of literary fascination—one thinks here of the large corpus of poems, plays, and biographies devoted to Agnes Bernauer, the daughter of a bath attendant whom Duke Albrecht of Bavaria kept as lover and, perhaps, as his clandestine wife from 1428 on.²⁹ So grave was the threat she posed to the Wittelsbach dynasty that on 12 October 1435 Albrecht's father, according to one contemporary account, had her thrown to her death from the Danube River bridge at Straubing.³⁰

Less well appreciated are constraints on misalliances from below. To elucidate them, Ralf-Peter Fuchs analyzes a series of defamation cases brought before the Imperial Chamber Court—one of two tribunals with jurisdiction, theoretically, over the entire Holy Roman Empire. Applying Pierre Bourdieu's concept of *habitus*, Fuchs exposes the risks that socially transgressive misalliances involved. Throughout the sixteenth and seventeenth centuries, the combined pressures of social stratification, sexual disciplining, and the reform of religion heightened the likelihood that matchmaking across the social divide between noble and non-noble would injure the honor of kin-groups on one or both sides, thereby damaging the social capital available to them for subsequent matches. Such were the stakes, Fuchs shows, that when socially transgressive matchmaking fell apart, nobles and commoners alike defended their honor to the top of the empire's judicial hierarchy. Much the same tension between sex and status that doomed Agnes Bernauer kept imperial tribunals busy with trials of honor.

A similar dynamic operated at the top of the social hierarchy, as Sikora shows, in marital ties between princely families and nobles of lesser, non-sovereign rank. Here too, social distinction depended on an exclusivity that sexual attraction sometimes confounded. Concubinage was one solution, but like commoners, the families of noblewomen proved increasingly unwilling to allow sexual unions with princes that, in the absence of any public recognition, impugned their honor. Such pressure helps to explain Landgrave Philipp of Hessen's eagerness to enter a bigamous marriage; it also gave emperors reason to elevate the socially inferior wives of imperial princes. But such interventions were politically difficult and, in Pierre Bourdieu's terms, risked exhausting the

social capital available to emperors who indulged in rank-elevation too liberally. Princely dynasties resolved the conundrum by crafting a new type of marriage—morganatic marriage (*Friedelehe*)—which rather like today's same-sex civil unions, conferred some, but not all the rights of full-fledged marriage. Left out of such unions was the morganatic wife's right to participate in her husband's rank or to claim a portion of his inheritance. But the marriage did not injure the wife's honor or that of her family, and the children were considered legitimate. Thus the innovation granted recognition while shielding princely lineages from the taint of marrying down.

An analogous set of innovations defined marriage across confessional lines—a new barrier to marriage in the sixteenth century, and the subject of three contributions to this volume.³¹ Paradoxically, legal barriers to marriage between Catholics, Lutherans, and Reformed Protestants were few and far between during the sixteenth century. Luther, for his part, had discarded any impediment to marriage on the basis of disparate belief as contrary to the words of the Apostle Paul in 1 Corinthians 7:13.³² A few Protestant states tried to prevent interconfessional marriage by pastoral means, but none banned it outright.³³ Less equivocal was the decree *Tametsi*, promulgated at the Council of Trent in 1563, that stipulated that a valid marriage could only be performed by an ordained Catholic priest. But even the Roman Catholic church also recognized the validity of marriages not performed by its own clergy and regarded as binding unions between Catholics and so-called heretics. The situation was made no clearer by a decision of the Imperial Diet in 1555 to recognize the Augsburg Confession—the basic transcript of Lutheran beliefs—as a lawful form of Christian worship in the Holy Roman Empire. Nevertheless, as a small but growing body of research shows, by 1600 or so confessional divisions had hardened to the extent that confessional endogamy was the norm—even in cities such as Augsburg or territories such as the prince-bishopric of Osnabrück, in which more than one form of Christian observance enjoyed official status. In eighteenth-century Augsburg, for example, the number of confessionally mixed marriages made up barely 1 percent of the total.³⁴ When they formed, such unions posed novel questions of confessional adhesion: Where would the family worship? In what religion would the children be raised?

Dagmar Freist shows that ordinary peasants exhibited as much ingenuity as princely dynasts in crafting broadly acceptable solutions to the problems that transgressive unions generated. As with misalliances, the main obstacles to inter-confessional marriage were not legal but social. With respect to the education of children, however, imperial law seemed to assert the right of fathers to determine the religion of their children (the *patria potestas*). In her case studies from the prince-bishopric of Osnabrück, however, Freist finds that mixed couples typically obeyed a customary maxim that held that confessional adhesion should follow gender—that sons would be raised in the religion of

their father, and daughters in the religion of their mother. This solution and the families it generated were not without conflict; they also faced constant pressure from magistrates, kin, and clergy whose interest lay not in preserving domestic peace, but in pressing one confession's advantage over the other. Even so, it is noteworthy that religious difference did not dissuade ordinary parishioners from forming marital unions, if some other rationale made them compelling, and that they found pragmatic and broadly equitable solutions to the problems that inter-confessional marriage posed.

How princely families managed to traverse the confessional gap are the subject of essays by Daniel Riches and Alexander Schunka. Riches examines an attenuated marriage negotiation during the 1630s and early 1640s that, had it succeeded, would have united Queen Christina of Sweden, who at that point had not yet converted to Catholicism, with Elector Friedrich Wilhelm of Brandenburg-Prussia. In the end, a combination of obstacles—confessional difference, divergent customs, inequality of rank, and rumors of Christina's lesbianism—proved insuperable. Of these, religion and rank were the most damaging; owing to the Queen's superior rank, Swedish diplomats demanded that Friedrich Wilhelm, a Calvinist, convert to the Lutheran creed. This he was unwilling to do, but Riches insists that this should not distract us from the transformative potential that such negotiations carried. Marriage negotiations were characterized by a liminality, he argues, that joined all parties to the negotiation in kind of suspended reality, in which everyday constraints are exposed as arbitrary and the potential for radical transformation seems unbounded. In this case, the marriage promised to resolve the two states' competing claims over the Duchy of Pomerania; more fundamentally, it raised the prospect of reconciliation between the two main branches of Protestant faith. That these hopes were dashed is less significant than the fact that between sovereign dynasties, inter-confessional matchmaking was capable of raising them at all.

Indeed, the implications of dynastic marriages that crossed confessional lines reverberated throughout the European political system—as Alexander Schunka shows in his analysis of unions between the British and German ruling houses. The number of inter-confessional dynastic marriages increased significantly after 1700, but unlike similar unions in the seventeenth century, did not necessarily involve conversion. Mixed marriages therefore produced confessionally plural courts and enlivened the hopes of irenicists for reunion among the Protestant faiths. In Berlin, the Calvinist court preacher, Daniel Ernst Jablonski, looked to George I, king of England and elector of Hanover, as a model for reconciliation: If George could be an Anglican in England and a Lutheran in Hanover, what was to prevent his subjects from rapprochement? Perhaps the practices of accommodation that characterized the court of St. James might also function in Berlin, where George's Lutheran sister Sophia Charlotte had reigned as Prussia's first queen. Unfortunately for irenicism, the

softening of confessional barriers to marriage among the high and mighty held little promise for Protestant reunion, and Jablonski's hopes were dashed.

Given the paramount status that race acquired in the nineteenth century, it is ironic that such differences presented relatively minor obstacles to marriage, at least for sailors and merchants overseas, in comparison with the barriers of religion and social inequality. In her contribution to this volume, Antje Flüchter explores interethnic unions between Europeans and South Asians, as they were described in German-language travel literature of the seventeenth and eighteenth centuries—a genre dominated by men of little education, written as much for entertainment as instruction—and in novelistic accounts of South Asia. Even more than ethnicity and social rank, religion placed strict limits on who could marry whom. This is not to say that ethnic difference counted for nothing. Some evaded the problem by taking native women as concubines. But Flüchter warns that we must not assume this was the norm, for to do so would involve viewing interethnic unions anachronistically, from the perspective of a scientific and biological worldview. For contemporaries, only the barrier separating Christianity from so-called heathen religions could not be transgressed: as long as both parties were Christian, the remaining obstacles to marriage—status inequality, ethnicity—were subject to negotiation.

If post-Reformation Europe said little about race as an obstacle to marriage, it spoke great volumes on the incest taboo. Here the reformers' interventions were ample and explicit: Luther, characteristically, insisted that a man was forbidden to marry only those enumerated in Leviticus 18:6–13, namely, “my mother, my stepmother; my sister, my stepsister; my child's daughter or stepdaughter; my father's sister; my mother's sister.”³⁵ Anyone else, in his view, was fair game. On the whole, Protestant authorities were more cautious and tended to reinforce existing, canonical prohibitions against marriages within the third degree of consanguinity—and to threaten offenders with capital punishment.³⁶ But as Claudia Jarzebowski shows in her contribution to this volume, we must not conclude that their redefinition of incest taboos was any less profound. On the contrary: the early reformers narrowed the definition of incest by sweeping aside whole categories of spiritual kinship (*cognatio spiritualis*) and focusing instead on questions of consanguinity in marriage, subject to the adjudication of secular authority. The result was a drastic reduction in the number of spiritual impediments to marriage. Shaping the entire discourse, Jarzebowski argues, was a shift in understandings of love and its relationship to sexuality, friendship, and power. Reformers redefined love, separating its godly manifestations from the so-called natural and devil-inspired drives. Thus incest became the proper object of natural law. The Enlightenment redefined incest yet again, this time giving a positive valence to the natural.

The volume concludes with Mary Lindemann's essay on the Guyard affair of 1765—a cause célèbre in Hamburg that raised a host of questions about

the nature of incest, the effects of reading and, ultimately, the meaning of Enlightenment. The incident, which involved the alleged molestation of a young woman by her father—or was it perhaps a consensual incestuous relationship?—threw into turmoil all the parties involved: Charlotte Guyard, her father Denys Martin (a French immigrant), her husband Jean-François, as well as the citizens of Hamburg and their magistrates. Charlotte first embellished the charge of incest, then recanted and accused her newlywed husband of stirring up the trouble. The resulting cause célèbre expressed anxieties that laxer attitudes toward incest taboos had generated. Even more profoundly, it articulated fears over the potentially disruptive effects of reading on sexual morality. Books, especially “dirty books,” were blamed for the corruption of the daughter; worse, it was her father who had put these books into her hands. Thus did the pedagogic initiatives of Enlightenment clash with sexual mores: as never before, fathers were expected to serve as preceptor to their children and cultivate their daughters in reason and chastity through proper reading. The Guyard affair turned such expectations on their head, showing how the wrong books could just as surely be blamed for leading a young woman down a path toward immorality, sin, and sexual depravity.

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With Charlotte Guyard, we stand at the threshold of modern marriage, its freedoms and constraints. Some of the older impediments would soon disappear, or had already. In the nineteenth century, as David Sabeau, Simon Teuscher, and Jon Matheiu have argued, marriage became far more endogamous, in relation both to class and kin.³⁷ Cousin marriage, which the incest norms of the sixteenth century had forbidden, became more common in all social strata as a means of consolidating material resources and conveying them from one generation to the next. Gone too were the impediments of spiritual kinship. With the eclipse of serfdom in its many guises, the ancient obligation of bonded men and women to marry within the circle (*familia*) of persons subject to the same serf-lord likewise disappeared.³⁸ Other constraints were new, or nearly so. Among them was the barrier posed by race—in part because the occasions for interethnic union were more numerous, in part owing to the emergence of race as an organizing category in law, science, anthropology, and social thought. The consolidation of nations and modern citizenship redefined and encumbered the formation of marriages between the citizens of one country and those of another. Still other constraints remained firmly in place: the social barrier to marriage imposed by religious difference, already established by the eighteenth century, persisted well into the nineteenth. Likewise the prohibitions against bigamy and polygamy—however ill-grounded in theology and natural law, and no matter how poorly enforced among the high and mighty—remained in effect. Morganatic marriage continued right along, enabling the

sovereign dynasties of Europe to replenish their supply of child-bearing females without exposing princely lineages to the taint of lesser blood. The most famous morganatic pair—Archduke Franz Ferdinand of Austria and his lower-ranking wife, Sophie von Chotkowa—died at the hand of an assassin in Sarajevo on 28 June 1914.

Joel Harrington's afterword to this volume summarizes the transformations that span the preceding period, between the late Middle Ages and the Enlightenment, and suggests how these essays adjust our understanding of them. For present purposes, then, it is enough to stress again that if there is a constant in marriage since the Reformation, it is the persistence of change. Definitions of marriage, its purpose and ideal constitution, have altered radically over time, leaving behind older forms with each transformation. The Reformation changed marriage profoundly, giving rise to an ideal that the modern protagonists of traditional take for eternal. The Enlightenment, too, exposed marriage to thorough-going critique. Since the nineteenth century, we have been in an era in which the impediments of race, religion, and sex have slowly but surely withered away. One can only guess what the future will bring.

Notes

1. The seventeen states that in 1967 still forbade interracial marriage were Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. Maryland repealed its law in 1967, after the Supreme Court had begun deliberations on the Loving case. The nine that never enacted miscegenation laws were Alaska, Connecticut, Hawaii, Minnesota, New Hampshire, New Jersey, New York, Vermont, and Wisconsin. On the Loving decision, see Fay Botham, *Almighty God Created the Races: Christianity, Interracial Marriage, and American Law* (Chapel Hill, 2009); and Peter Wallenstein, "Interracial Marriage on Trial: Loving v. Virginia (1967)," in *Race on Trial: Law and Justice in American History*, ed. Annette Gordon-Reed (Oxford, 2002), 177–96. On the enactment and repeal of racial barriers to marriage generally, see Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America* (Oxford, 2009).
2. According to a survey conducted in 2010 by the Pew Research Center for the People and the Press, 85 percent of Americans born in or after 1981 "would be fine with a family member's marriage to someone of a different racial or ethnic group." See "Almost All Millennials Accept Interracial Dating and Marriage," Pew Research Center Publications (1 February 2010), <http://pewresearch.org/pubs/1480/millennials-accept-interracial-dating-marriage-friends-different-race-generations>.
3. Anne C. Rose, *Beloved Strangers: Interfaith Families in Nineteenth-Century America* (Cambridge, UK, 2001), 50–66.
4. Allan McCutcheon, "Denominations and Religious Inter-marriage: Trends among White Americans in the Twentieth Century," *Review of Religious Research* 29 (1988): 213–27.

5. See Christopher Clark, "Religion and Confessional Conflict," in *Imperial Germany, 1871–1918*, ed. James Retallack (Oxford, 2008), 83–105, here 94–95. On the near disappearance of interconfessional marriage during the eighteenth century, see Étienne François, *Die unsichtbare Grenze: Protestanten und Katholiken in Augsburg, 1647–1806* (Sigmaringen, 1991), 190–204.
6. Among the highest rates of conversion from Judaism to Christianity, for example, were in Austria, where law forbade such unions; see Avraham Barkai, "Bevölkerungsrückgang und wirtschaftliche Stagnation," in *Deutsch-Jüdische Geschichte in der Neuzeit*, ed. Michael A. Meyer, Michael Brenner, Avraham Barkai, Paul Mendes-Flohr, and Steven M. Lowenstein, 4 vols. (Munich, 1996–2000), vol. 4, 37–49, here 39; and Steven M. Lowenstein, "Jewish Inter-marriage and Conversion in Germany and Austria," *Modern Judaism* 25 (2005): 23–61.
7. Roderick Phillips, *Putting Asunder: A History of Divorce in Western Society* (Cambridge, UK, 1988), 185–251.
8. David Warren Sabean, *Kinship in Neckarhausen, 1700–1870* (Cambridge, UK, 1998).
9. John Boswell argued, famously, that medieval liturgies for "brother-making" attest to formal recognition for affective, personal unions between males that were parallel to heterosexual marriage; see Boswell, *Same-Sex Unions in Premodern Europe* (New York, 1994). Boswell's critics argued that his analytic language obscured alternative interpretations of "brotherhood" in favor of marriage-like sexual union; see Joan Cadden's review in *Speculum* 71 (1996): 693–96. Better documented is the quasi-legal recognition accorded to same-sex male households in southern France through the device of *affrèment* contracts; see Allan Tulchin, "Same-Sex Couples Creating Households in Old Regime France: The Uses of *Affrèment*," *Journal of Modern History* 79 (2007): 613–47.
10. These are Argentina, Belgium, Brazil, Canada, Denmark, France, Iceland, the Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden and Uruguay. In Mexico, same-sex unions are recognized everywhere but performed only in the capital city. The parliament of the United Kingdom passed a bill legalizing same-sex marriage in July 2013 that will take effect in mid-2014. Israel recognizes same-sex unions, but does not allow them to be performed.
11. The thirteen states are Massachusetts (2004), Connecticut (2008), Iowa (2009), Vermont (2009), New Hampshire (2010), New York (2011), Maine (2012), Maryland (2012), Washington (2012), Rhode Island (2013), Delaware (2013), Minnesota (2013), California (2013), New Jersey, (2013), Hawaii (2013), Illinois (2014), and New Mexico (2014). Another three states—Nevada, Oregon, and Wisconsin—have passed "domestic partnership" or "civil union" laws that confer rights similar, but not equal, to marriage.
12. "Religion and Attitudes toward Same-Sex Marriage," The Pew Forum on Religion and Public Life (7 February 2012), <http://www.pewforum.org/2012/02/07/religion-and-attitudes-toward-same-sex-marriage/>.
13. "Official Prop. 8 Proponent Claims Same-Sex Marriage Can Harm Children," *Los Angeles Times* (22 January 2010), <http://articles.latimes.com/2010/jan/22/local/la-me-prop8-trial22-2010jan22>.
14. Thus a pamphlet by Paul Thigpen, "Same-Sex Unions: A Catholic Response" (2004); accessible at http://www.paulthigpen.com/?page_id=522.
15. Pascoe, *What Comes Naturally*, 69–74.

16. "Straff der Unkeuschheit / so wider die Natur geschicht," §116, *Peinliche Halßgericht des . . . Keyser Carols deß Fünfften und des Heyligen Romischen Reichs peinlich Gerichts ordnung, auff den Reichstag zu Augspurg und Regenspurg in den Jaren dreyssig und zwey und dreyssig gehalten auffgericht und beschlossen* (Frankfurt, 1609), 54.
17. Bernardino Ochino, *Dialogi XXX in duos libros diuisi* (Basel, 1563), translated as *A Dialogue of Polygamy, Written Originally in Italian* (London, 1657).
18. On Ochino, see Roland H. Bainton, *The Travail of Religious Liberty; Nine Biographical Studies* (Philadelphia, 1951), 139–76.
19. See Stephan Buchholz, *Recht, Religion, und Ehe: Orientierungswandel und gelehrte Kontroversen im Übergang vom 17. zum 18. Jahrhundert* (Frankfurt, 1988), 27 and 374–406; and Paul Mikat, *Die Polygamiefrage in der frühen Neuzeit* (Opladen, 1988), 8 et passim. See also Manuel Braun, "Tiefe oder Oberfläche? Zur Lektüre der Schriften des Christian Thomasius über Polygamie und Konkubinat," *Internationales Archiv für Sozialgeschichte der deutschen Literatur* 30 (2005): 28–54.
20. Steven Ozment, *When Fathers Ruled: Family Life in Reformation Europe* (Cambridge, US, 1983); for a more sober assessment, see Joel F. Harrington, *Reordering Marriage and Society in Reformation Germany* (Cambridge, UK, 1995).
21. Martin Luther, *Vom Eelichen Leben* (Wittenberg, 1522), Aiii"; translated as "The Estate of Marriage," in Helmut T. Lehmann, ed., *Luther's Works*, vol. 45, *The Christian in Society II* (Philadelphia, 1962), 11–49.
22. William W. Rockwell, *Die Doppelehe des Landgrafen Philipp von Hessen* (Marburg, 1904), 1. See also Buchholz, *Recht, Religion, und Ehe*, 382–86.
23. Ruth Mazo Karras, *Unmarriages: Women, Men and Sexual Unions in the Middle Ages* (Philadelphia, 2012), 1.
24. See Ludwig Schmutge, Patrick Hersperger, and Béatrice Wiggenhauser, *Die Supplikenregister der päpstlichen Pönitentiarie aus der Zeit Pius II (1458–1464)* (Tübingen, 1996). On medieval concubinage see most recently Karras, *Unmarriages*, 115–64.
25. Marjorie Elizabeth Plummer, *From Priest's Whore to Pastor's Wife: Clerical Marriage and the Process of Reform in the Early German Reformation* (Farnham, UK, 2012), 11–50.
26. See Claudia Jarzebowski's contribution to this volume.
27. See the essays collected in *Glaube und Eid: Treuformeln, Glaubensbekenntnisse und Sozialdisziplinierung zwischen Mittelalter und Neuzeit*, ed. Paolo Prodi and Elisabeth Müller-Luckner (Munich, 1993); and in *Serment, promesse et engagement: Rituels et modalités au Moyen Âge*, ed. Françoise Laurent (Montpellier, 2008).
28. See also Amy Leonard, *Nails in the Wall: Catholic Nuns in Reformation Germany* (Chicago, 2005).
29. On noble obsession with documenting lineage, see the essays contained in *Dynastie und Herrschaftssicherung in der Frühen Neuzeit: Geschlechter und Geschlecht*, ed. Heide Wunder (Berlin, 2002). For a case study, see Erica Bastress-Dukehart, *The Zimmern Chronicle: Nobility, Memory and Self-Representation in Sixteenth-Century Germany* (Aldershot, UK, 2002).
30. Andreas von Regensburg (1380–1442), "Chronica de principibus terrae Bavarorum," in *Andreas von Regensburg, Sämtliche Werke*, ed. Georg Leidinger (Munich, 1903), 503–87, here 583–84. Literary treatments commence with Hans Sachs' "Die ertrenkt Jungfrau" (1546); see Alfons Huber, "Ein bislang unbekanntes Meisterlied, die älteste faßbare literarische Bearbeitung des Bernauerstoffes," *Jahresbericht des Historischen Vereins für Straubing und Umgebung* 86 (1984): 453–66.

31. On the novelty of confession as an impediment to marriage, see David M. Luebke, "Making Marriages Mixed: Religious Pluralization, Ritual, and the Formation of Intra-Christian Marriage Barriers in Germany," in *Gemischte Eben im Europa: Politik und Praxis der religiösen Pluralität (14.–19. Jh.)*, ed. Cecilia Cristellon (forthcoming); and Dagmar Freist, "One Body, Two Confessions: Mixed Marriages in Germany," in Ulrika Rublack, ed., *Gender in Early Modern Germany* (Cambridge, UK, 2002), 275–304.
32. Luther, *Vom Eelichen Leben*, Bii.
33. See, for example, "Des . . . herrn Augusten, herzogen zu Sachsen u.s.w. Ordnung" (1580), in *Die evangelischen Kirchenordnungen des XVI. Jahrhunderts*, vol. 1/1, *Sachsen und Thüringen nebst angrenzenden Gebieten*, ed. Emil Sehling et al. (Leipzig, 1902), 359–457, here 436.
34. François, *Die unsichtbare Grenze*, 192. See also Paul Warmbrunn, *Zwei Konfessionen in einer Stadt: Das Zusammenleben von Katholiken und Protestanten in den paritätischen Reichsstädten Augsburg, Biberach, Ravensburg und Dinkelsbühl von 1548 bis 1648* (Wiesbaden, 1993), 332–55; and Peter Zschunke, *Konfession und Alltag in Oppenheim: Beiträge zur Geschichte von Bevölkerung und Gesellschaft einer gemischtkonfessionellen Kleinstadt in der Frühen Neuzeit* (Wiesbaden, 1984), 102–4. See also Elisabeth Homing, "Konfession und demographisches Verhalten: Oberkassel, 1670–1810," *Historical Social Research / Historische Sozialforschung* 23 (1998): 275–98. On confessional intermarriage rates in the prince-bishopric of Osnabrück, see Jürgen Schlumbohm, *Lebensläufe, Familien, Höfe: Die Bauern und Heuerleute des Osnabrückischen Kirchspiels Belm in proto-industrieller Zeit, 1650–1860* (Göttingen, 1994), 419; and Dagmar Freist's contribution to this volume.
35. Luther, *Vom Eelichen Leben*, Aiv^v.
36. On Protestant marriage law in general, see Hartwig Dieterich, *Das protestantische Eherecht in Deutschland bis zur Mitte des 17. Jahrhunderts* (Munich, 1970); and John Witte Jr., *Law and Protestantism: The Legal Teachings of the Lutheran Reformation* (Cambridge, UK, 2002), 214–55. For the ban against incest, see "Straff de Unkeuschheit mit nahenden Gesipten Freunden," §117 in *Peinliche Halsgericht des . . . Keyser Carols*, 54.
37. David Sabean, Simon Teuscher, and Jon Mathieu, "Outline and Summaries," in their *Kinship in Europe: Approaches to Long-Term Development (1300–1900)* (New York, 2007), 187–92.
38. See Peter Blickle, *Von der Leibeigenschaft zu den Menschenrechten: Eine Geschichte der Freiheit in Deutschland* (Munich, 2003). For the particulars of servile marriage prohibitions, see Walter Müller, *Entwicklung und Spätformen der Leibeigenschaft am Beispiel der Heiratsbeschränkungen: Die Ehegenößsame im alemannisch-schweizerischen Raum* (Sigmaringen, 1974).