



The will of the people : popular support for marriage reform, St. Andrews, 1559-1600  
by Jason Keith Nye

A thesis submitted in partial fulfillment of the requirements for the degree of Master of Arts in History  
Montana State University

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Abstract:

Historians have long viewed social discipline in the Scottish Reformation as complete. They believe that the Kirk imposed morals control over all segments of society equally and totally. Most base their theories on the intentions of the Kirk and its officials, while disregarding the lack of control experienced in most regions.

I have chosen to look at the construction of social discipline, while concentrating on the area of marriage reform, in a community where morals control was successful. I searched for reasons for people to support the institutions providing ecclesiastical discipline, the kirk-session and presbytery, by looking at the records of their proceedings. Also taken into consideration were the statements of groups such as guilds, and the proceedings of civil courts.

The Kirk at St. Andrews received much support from the community for social discipline. People cooperated with the administering of discipline, as well as submitted themselves for judgement. The Kirk chose to enforce control in matters which would receive support from the community. It was only because of support from the community that the Kirk was able to effectively administer ecclesiastical discipline. Not all Scottish communities had support for kirk-sessions. Towns with cooperation between civil and ecclesiastical authorities whose kirk-sessions enforced decrees popular with the community were successful in controlling morality. St. Andrews possessed these qualities; therefore, it was successful in controlling immoral behavior.

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MONTANA STATE UNIVERSITY-BOZEMAN  
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This thesis has been read by each member of the thesis committee and has been found to be satisfactory regarding content, English usage, format, citations, bibliographic style, and consistency, and is ready for submission to the College of Graduate Studies.

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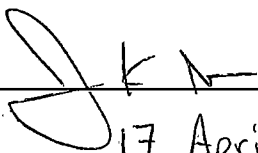
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Abstract

Historians have long viewed social discipline in the Scottish Reformation as complete. They believe that the Kirk imposed morals control over all segments of society equally and totally. Most base their theories on the intentions of the Kirk and its officials, while disregarding the lack of control experienced in most regions.

I have chosen to look at the construction of social discipline, while concentrating on the area of marriage reform, in a community where morals control was successful. I searched for reasons for people to support the institutions providing ecclesiastical discipline, the kirk-session and presbytery, by looking at the records of their proceedings. Also taken into consideration were the statements of groups such as guilds, and the proceedings of civil courts.

The Kirk at St. Andrews received much support from the community for social discipline. People cooperated with the administering of discipline, as well as submitted themselves for judgement. The Kirk chose to enforce control in matters which would receive support from the community. It was only because of support from the community that the Kirk was able to effectively administer ecclesiastical discipline. Not all Scottish communities had support for kirk-sessions. Towns with cooperation between civil and ecclesiastical authorities whose kirk-sessions enforced decrees popular with the community were successful in controlling morality. St. Andrews possessed these qualities; therefore, it was successful in controlling immoral behavior.

## CHAPTER 1

## THE REFORMATION IN SCOTLAND AND ST. ANDREWS

Introduction

When citizens of St. Andrews awoke the morning of 12 June 1559 to a new religion, they would have noticed the absence of idols and images in the churches and cathedral. They would have also noticed the total destruction of the two friars' houses, the Dominicans and the Observant Franciscans.<sup>1</sup> These were the dramatic results of the previous day when a bloodless revolution swept the town.

They did not know they were about to be subject to greater social discipline. A puritanical code of morals control was about to be imposed on the people of St. Andrews. Officers for the kirk-session were elected on 1 October 1559. St. Andrews' kirk-session heard its first case by 27 October 1559. Robert Roger, an adulterer, owns

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<sup>1</sup>Jane E. A. Dawson, "'The Face of ane Perfytt Reformed Kyrk': St. Andrews and the Early Scottish Reformation," in Humanism and Reform: The Church in Europe, England, and Scotland, 1400-1643, Essays in Honour of James K. Cameron, ed. James Kirk (London: Ecclesiastical History Society, 1991), p.416.

the distinction of being the first sinner recorded in its register.<sup>2</sup>

The kirk-session quickly became a close companion of the people in St. Andrews. The session register does not display the support it received from the majority of the people in St. Andrews. Superficially, the session register tells of a group of pious men attacking and correcting the wayward morals of unwilling participants in its proceedings. There is much more to be gleaned from these records. The register's entries do not boast of the session's support with high appearance rates of those called, or persons turning in their neighbours for immorality. Submitting oneself for judgement, and community peer pressure exhibit widespread support for the new social discipline. In the case of St. Andrews, support is overwhelmingly popular.

Before the Reformation, both civil and ecclesiastical court proceedings were expensive and beyond reach for most of the population. Courts were run by nobles out of touch with commoners' needs. Pre-Reformation courts could also take a year, sometimes two or three, to make a decision.<sup>3</sup>

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<sup>2</sup>David Hay Fleming, ed., Register of the Minister, Elders, and Deacons of the Christian Congregation of St. Andrews (Edinburgh: Scottish History Society, 1889), pp. 1-5. Hereafter noted as STAKSR.

<sup>3</sup>Martin Ingram, Church Courts, Sex and Marriage in England (Cambridge: Cambridge University Press, 1987),

Kirk-sessions were run by middle class persons. Decisions came quickly, usually immediately. Justice from the kirk-session was free and non-discriminatory. Common people found personal justice readily available for the first time.

Issues related to marriage will be the focus of this study. Sessions most often addressed marriage for a number of reasons. Adultery could cause doubts over the legitimacy of heirs. Citizens took comfort in knowing the community would guard against their spouses' adultery. Promiscuity, both of married and single persons, could cause suffering in the work place as well as decrease a woman's value in the marriage market. Families enjoyed community support in keeping their sons and daughters celibate and therefore more attractive for marriage. Proper marriage of children meant they would not become financial burdens on their parents or siblings later in life. Other citizens also benefited from people's involvement in marriage. Participants in a self-supporting household did not require help from the community's poor fund, thereby reducing the financial burden on the rest of the town.

The desire for social discipline and justice was hardly the impetus for the Reformation. The Reformers found enough support elsewhere to implement their religious changes.

Regulation of marriage and sexuality were an extra benefit of reform. Few people from St. Andrews went to Geneva to witness the system upon which theirs would be modeled. Yet people quickly realized the benefits once the kirk-session began operation. They expressed support with their regular appearance in response to the summons of the session. Many assisted in the session's search for offenders by offering information against their neighbours. Kirk-session regulation of marriage provided swift, inexpensive, and unbiased justice for people who previously lacked access to any such system. Although kirk-sessions' duties were to regulate morality, officials quickly realized that monitoring sexuality and marriage behavior was the most effective means. The results of their efforts provide the focus for this study.

#### Towards Reform

Scotland began reform in the early 1540s. James V died in 1542, leaving a young Queen Mary on the throne. During her minority, James Hamilton, the Earl of Arran, was appointed regent of Scotland. Arran was a Protestant sympathizer, and passed an act in 1543 allowing access to Scripture in the vernacular. The Tyndale Bible was seen

"lying almaist upoun everie gentilmanis table."<sup>4</sup> This was the first step, and the movement gained speed. Iconoclastic attacks on religious houses raged through the cities. However, Protestants soon lost their chief supporter. Arran was deposed by the "papiste" lords in a palace coup of 1543. Excessive anger displayed in the iconoclastic episodes, coupled to the loss of Arran's support, reduced the Protestant movement to a small separatist group. The situation worsened in 1546, when the movement's leader, George Wishart, was burned at the stake as a heretic. Protestants soon lost the Castle of St. Andrews. The archbishop's castle fell in 1547, and the remaining leaders condemned to serve on French galleys. Any Protestants remaining in Scotland found themselves forced to move underground. A general council of Scottish Catholics felt confident of the Protestants' defeat by 1552:

Many frightful heresies have, within the last few years, run riot in many diverse parts of this realm, but have now at last been checked by the providence of All-good and Almighty God, the singular goodwill of princes, and the vigilance and zeal of prelatés for the Catholic faith, and

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<sup>4</sup>David Laing, ed., The Works of John Knox, vol. 1, (New York: AMS Press, 1966), p.100. For more on the Tyndale Bible and its impact on Scotland, see: David F. Wright, "'The Commoun Buke of the Kirke': The Bible in the Scottish Reformation," in The Bible in Scottish Life and Literature, ed. David F. Wright (Edinburgh: Saint Andrew Press, 1988), pp. 155-178.

seem almost extinguished.<sup>5</sup>

John Knox served on the French galleys after the fall of the Castle. He returned to Scotland for a short preaching tour of the underground congregations in 1556. His visit sparked greater organization among the underground Protestants. After Knox's visit, the congregations regularly read Scripture, heard preaching, and administered communion.<sup>6</sup> Before and after his visit of 1556, Knox was in Geneva with other Scottish exiles. They kept the movement alive by participating in the organized exiled congregations from England. English Protestants fled the atrocities of Mary Tudor beginning in 1553. Exile in Geneva gave Scottish Protestantism its distinctive Calvinist traits.

By the late 1550s, Scottish Protestantism had acquired its Calvinist flavor, and had the support of some important noblemen. Even the queen's half-brother, Lord James Stewart converted. However, the movement still lacked the strength to start a revolution. Protestants needed another banner besides religion to rally support. It came from an unusual

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<sup>5</sup>David Patrick, ed., Statutes of the Scottish Church, 1225-1559 (Edinburgh: Scottish History Society, 1907), p. 143.

<sup>6</sup> Laing, The Works of John Knox, vol. 1, pp. 245-246. Also Michael Lynch, "Calvinism in Scotland," in International Calvinism, 1541-1715, ed. Menna Prestwich (Oxford: Clarendon Press, 1985), p. 226.

source, an unknowing gift from the royal family.

James V's French Queen, Mary of Guise, was named regent in 1554. Mary of Guise married her daughter, the Scottish Queen, to the French Dauphin in 1558. The future promised the union of the Scottish and French crowns. Mary of Guise appointed many Frenchmen to state offices and French policy dominated Scotland. It quickly became apparent that French officials desired to use Scotland as a force against England.

Opposition occurred immediately from a faction of pro-English Scottish lords. These nobles called themselves the Lords of the Congregation in 1558. The Protestant Elizabeth Tudor ascended to the English throne in 1558. The Lords hoped that making Protestant demands to the Scottish crown would gain English support for their cause. Protestant leaders in towns with underground congregations who were allied with the Lords of the Congregation were a viable group of dissenters. However, full scale rebellion would not be possible without popular support. A propaganda campaign against French domination began in 1559. The Lords pleaded:

If religion be not persuaded unto you, yet cast ye not away the care ye ought to have over your commonweal, which ye see manifestly and violently ruined before your eyes. If this will not move you, remember your dear wives, children, and

posterity, your ancient heritages and houses.<sup>7</sup>

Appeals against the French achieved unity, but the movement was still incapable of defeating the professional French army. The final piece of the puzzle came in early 1560, when the Lords of the Congregation, a pro-English movement, received English military assistance. The Treaty of Edinburgh of July 1560 between the French and English, negotiated the removal of both nation's troops from Scottish soil. With the French military out of the way, reform was able to continue on its path. The "Reformation Parliament" met in August 1560 to abolish papal authority and adopt a Protestant Confession of Faith.<sup>8</sup>

Finally succeeding in their goals, the Lords set out to protect their achievements. The Lords wrote to Sir William Cecil, secretary for England in Scotland:

That oure hoille and only purpois (as knaweth God) is to advance the glorye of Chryst Jesus, the trew preaching of his evangell within this realme; to remove superstition, and all kynd of idolatrie; to brydeill to our poweris the furie of those that heirtofoir have cruellie sched the bloode of our bretherein; and, to our utermest, to meanteine the libertie of this oure countrie frome the tirranie

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<sup>7</sup>Quoted in R. Mason, "Covenant and Commonweal. The Language of Politics in Reformation Scotland," in Church, Politics and Society. Scotland, 1408-1929, ed. Norman MacDougall (Edinburgh: John Donald, 1981), p.107.

<sup>8</sup>The Acts of the Parliaments of Scotland, 1424-1707 (Edinburgh: His Majesty's Stationary Office, 1908), pp. 22-38.

and thraldome of strangeris, as God sall assist us. How we [sall] be able to accomplieiss these premisses, is to us unknowin....<sup>9</sup>

With political goals achieved, the Lords needed to set up a framework within which the Protestant religion could operate. Reformers knew they wanted to emulate Calvin's system in Geneva- "the most godlie Reformed Church and citie of the warld, Geneva."<sup>10</sup>

A Book of Reformation was commissioned by the government in April 1560. It was completed by six of the Reformers, "the six Johns," in only three weeks. However, by the time the Reformation Parliament met to adopt the Confession of Faith, the Book of Reformation had not even been presented to them for ratification. The Book was translated into French and German and sent to Calvin, Viret, and Beza in Geneva, and to Bullinger and others in Zurich. Scottish Reformers waited for their approvals before submitting it.<sup>11</sup>

When submitted to parliament for passage, the Book met strong resistance and was not ratified. Most objected to the provision of minister's salaries from the benefices of

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<sup>9</sup>Laing, The Works of John Knox, vol. 2, p. 24.

<sup>10</sup>Ibid, vol. 2, p. 16.

<sup>11</sup>James K. Cameron, ed., The First Book of Discipline (Edinburgh: Saint Andrew Press, 1972), pp. 4-5.

the old Church. Many of those supporting the Reformation did so at the Church's expense. The vast wealth amassed by the Catholic Church was absorbed into local secular officials' treasuries. Local lords and officials were not interested in giving up their newly acquired possessions, even for the good of the cause they had recently fought for. Another consideration was the position of sympathetic bishops and leaders of important priories and religious houses. Some pre-Reformation leaders supported the Reformation, others looked like they would. Members of Parliament felt supportive bishops and other leaders should have a place in the Reformed Kirk.

Revision began immediately. Of the two points in the Lords' dissent, the subject of sympathetic Catholic leaders was dealt with easiest. Leading reformers wanted to preach to the masses and vote their views in the General Assembly of the Kirk. Administration of districts with multiple parishes was not a duty they were prepared for nor did they want such a position. The revisions contained a new office in Church governance, that of superintendent. There were to be ten or twelve superintendents. Superintendents were the designated quartermasters of the Reformed church for parishes in their districts. The revised Book described the superintendents:

...to whom charge and commandment should be given, to plant and erect Kirkes, to set, order, and appoint Ministers, as the former order prescribes, to the Countries that shall be appointed to their care where none are now. And by their meanes, your love and common care over all Inhabitants of this Realme, to whom you are equally debtors shall evidently appear, as also the simple and ignorant, who perchance have never heard Jesus Christ truely preached, shall come to some knowledge.<sup>12</sup>

Because they assumed the daily duties of running the Kirk, more pressing matters could receive full attention from other officials.

Logical candidates for these offices were the former Catholic leaders. They had the administrative experience and most were positioned to supervise the polity decided in the General Assemblies for their districts. On this point, Members of Parliament were content with the revisions made.

On the benefices of the old Church, the Reformers did not give an inch. Reformers' fears were confirmed when the Book was turned down a final time. John Knox wrote of those nobles benefitting from seizure of Church lands:

...some had greedelie gripped to the possessionis of the Kirk; and otheris thought that thei wald nott lack thair parte of Christis coat.<sup>13</sup>

There was another reason Members of Parliament hesitated from taking benefices away from the nobles. Francis II died

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<sup>12</sup>Ibid, pp. 115-116.

<sup>13</sup>Laing, The Works of John Knox, vol. 2, p.128.

and the Queen would soon return to Scotland. The staunchly Catholic Queen Mary would not be delighted to arrive and find her nobles wholly embracing a Protestant system. Most nobles were not ready to discover what her impending anger might bring.

Unfavorable political conditions forced the Reformers to accept approval (albeit unofficial) of only their doctrine. The Book received the support required for the Kirk to use and accept its guidance as official ordinances. General Assemblies, synods, and kirk-sessions adopted its guidance. St. Andrews' kirk-session register cites numerous justifications for its decisions from the "Book of Discipline" or the "Book of Reformation". The final edition of the Book laid out doctrine, administration of sacraments, and Church administration. Church administration included definitions of Church officers' duties and provisions for their elections. Of most concern to this study is the final topic, ecclesiastical discipline.

#### Of Ecclesiastical Discipline

Ecclesiastical discipline in the Reformed church had more than the unofficial approval received by the rest of the Book of Discipline. The ratified Confession of Faith

affirmed the importance of discipline. As in Geneva, the Confession included among the three traits of the "trew Kirk of God":

Ecclesiastical discipline uprychtlie ministred, as Godis word prescribed, whairby vice is repressed, and vertew nurished.<sup>14</sup>

Discipline in Calvin's Geneva impressed Knox and the other Reformers during their exile period on the continent. Knox led the English congregation exiled at Geneva. During this stay, Knox witnessed Calvin achieving civil cooperation first hand. Discipline in Geneva centered on the ecclesiastical institution run by laypersons called the consistory. Knox frequently wrote of his approval for Geneva in achieving discipline.<sup>15</sup> Thus it makes sense that the Scottish guidelines for ecclesiastical discipline closely resembled the policies of Geneva. Scottish kirk-sessions surpassed the consistory and others like it with its zealous control. The tribunals of the Inquisition in Spain handled only 20 or 30 cases a year. Kirk-sessions usually handled far more, even though few served more than 3,000 parishioners.<sup>16</sup> Kirk-sessions were extremely

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<sup>14</sup>Ibid, vol. 2, p. 110. Also The Acts of the Parliaments of Scotland, 1424-1707, p. 31.

<sup>15</sup>Laing, The Works of John Knox, vol. 4, p. 240.

<sup>16</sup>Geoffrey Parker, "The Kirk by Law Established and the Origins of the Taming of Scotland: St. Andrews, 1559-1600,"

effective in directing the religious life of Scottish communities.

The section in the Book of Discipline, titled "Of Ecclesiastical Discipline", begins:

As that no Commonwealth can flourish or long indure without good lawes and sharpe execution of the same, so neither can the Kirk of God be brought to purity neither yet be retained in the same without the order of Ecclesiastical Discipline, which stands in reprovng and correcting of the faults, which the civill sword either doth neglect or not punish, Blasphemie, adulterie, murder, perjurie and other crimes capitall, worthy of death, ought not properly to fall under censure of the Kirk; because all such open transgressors of Gods lawes ought to be taken away by the civill sword. But drunkenness, excesse be it in apparel, or be it in eating and drinking, fornication, oppressing of the poore by exactions, deceiving of them in buying and selling by wrang met and measure, wanton words and licentious living tending to slander, doe openly appertaine to the kirk of God to punish them, as God's word commands.<sup>17</sup>

Clearly, the Reformers wished to involve the civil authorities in the administration of discipline. "Sword" alludes to the strong arm of the institution, in this case the "Civill" authority. Calvin's Institutes of the Christian Religion begins its chapter on discipline in much

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in Sin and the Calvinists: Morals Control and the Consistory in the Reformed Tradition, ed. Raymond A. Mentzer (Kirksville, MO: Sixteenth Century Journal Publishers, Inc., 1994), pp. 191-192.

<sup>17</sup>Cameron, The First Book of Discipline, pp. 165-167.

the same way.<sup>18</sup>

Further on, the Book accuses the "accursed Papistry" of fostering mass confusion in the matter of discipline. Because of the wickedness, the Reformed Church was compelled to take action against all offenders and punish them. Kirk-sessions were the vehicle of discipline. Punishment could go as far as excommunication until the sinner repented.

Offenders were given every opportunity to repent, up to the final Sunday when excommunication was pronounced. Excommunication was the strongest sentence at the session's disposal:

After which sentence may no person (his wife and family onely excepted) have any kind of conversation with him, be it in eating and drinking, buying and selling; yea in saluting or talking with him except that it be at commandement or licence of the Ministerie for his conversion, that he, by such meanes confounded, seeing himselfe abhorred of the godly and faithfull, may have occasion to repent and so be saved.<sup>19</sup>

Such a sentence was compelling as it represented a social and economic death sentence for the excommunicated. All public and business dealings were terminated.

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<sup>18</sup>John T. McNeill, ed., Calvin: Institutes of the Christian Religion, trans. Ford Lewis Battles (London: SCM Press Ltd., 1960), pp. 1229-1230.

<sup>19</sup>Cameron, The First Book of Discipline, p. 170. This view of excommunication is strikingly similar to Calvin's. Calvin calls excommunication "corrective". See: McNeill, Calvin: Institutes of the Christian Religion, p. 1238.

Excommunication was published throughout the country. Any children born after pronouncement of sentence were denied baptism. They would only be received when they became of age or when presented by their mother or by friends or members of the Kirk.

The kirk-session also functioned as a compulsory counseling service. It was compulsory because any failure to appear would be accompanied by the label "obstinate irrepentant". Those labeled irrepentantly obstinate would receive excommunication with all the accompanying social and economic sanctions. Kirk-session discipline was also a teaching tool. Because the rules of worship and discipline changed, correction of improper behavior was frequently a matter of trial and punishment. Public involvement ensured the promulgation of the Reformed message. The objective was to instill an appreciation of sin and repentance. Public shaming was the ritual of choice. Following on the mediaeval example of public punishment which served to involve and inform the community, the Reformed Church tamed it into a gentler ritualization for the same effect. The final step in appreciating sin and repentance was the individual's welcome back into the community.

Public repentance involved an ordered series of events. Initially, the congregation had to be warned, and a day was

designated for the sinner to make public confession in church. Often, the sinner would spend the sermon before his/her confession sitting in front of the congregation on the "stool of penitence". The famous "stool" was constructed so it would topple if the sinner did not remain upright. The minister next examined the sinner to determine the sincerity of repentance. The congregation then decided whether he/she should be reintegrated into the community. Finally, the congregation readmitted the penitent in a ritual public reception.

Other penalties were equally compelling. Heavy fines were levied against the guilty. Fines increased dramatically, usually doubling, for each successive offense of the same nature. For example, fornicators received fines of 2 pounds Scots for the first offense. Average wages were only 1 pound Scots per week.<sup>20</sup> Persons unable to recite the Lord's Prayer or the Commandments when seeking permission to marry were fined as well. Their fine was also 40 shillings, or 2 pounds, payable to the poor.<sup>21</sup>

Elders were the first line of defense against moral

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<sup>20</sup>Geoffrey Parker, "The Kirk by Law Established and the Origins of the Taming of Scotland: St. Andrews, 1559-1600," p. 181.

<sup>21</sup>STAKSR, pp. 439, 794, 809, 838-839, 840, 848, 872, 880, 886, 890, 908.

infractions. They were prominent laypersons, often merchants at St. Andrews, who were in charge of keeping a lookout for those people failing to observe proper morality. They reported infractions to the kirk-session. Neighbours often informed elders of the wrongdoings of others, and the elders informed the session who then charged the parties involved to appear for "counseling" about their offenses. Elders were also the judges on the kirk-session benches along with the parish minister. In St. Andrews, there were twelve elders and one minister on the session.

Of the first twelve elected in St. Andrews in 1559, two were civil baillies, town marshals, or policemen. Baillies were consistently elected to eldership, facilitating the swift cooperation between the "Kirk of God" and the "Civill Sword" in matters of social discipline.

The register for the Baillies' Court in St. Andrews demonstrates the cooperation between the two authorities. The kirk-session resolved to judge cases "reserved for the civill sword" because of the confusion caused by the "accursed papistry." In towns like St. Andrews, where strong cooperation existed, the case was heard in the kirk-session. Because the baillies were present on the kirk-session, a second hearing in the Burgh Court was unnecessary. After the Reformation, the register of the

Burgh Court for St. Andrews lists little other than civil pecuniary cases.<sup>22</sup>

In most towns, each elder patrolled a specific neighborhood or quarter under his charge, much like the police precinct in cities today. Elders' terms of office were one year. In their tenure of office, they visited each family in their precincts at least once. As laypersons, elders were more regularly in contact with citizens than higher officials. Citizens were more at ease with elders' involvement in their lives and were more likely to embrace the discipline the town received.

St. Andrews: "A Perfytt Reformed Kyrk"

St. Andrews' kirk-session confidently boasted on the last day of May 1564:

...the face of ane perfytt reformed kyrk hes beyn seyn wythin this cite be the space of fyve yearis, the sacramentis deuly ministrat, all thingis done in the kyrk be comly ordor establesched, disciplyn used and resavit wythowtyn contempt or ony plane contradiccione of ony person.<sup>23</sup>

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<sup>22</sup>"Register of the Burgh Court of St. Andrews," MS-B65-8, Rare Books and Manuscripts, St. Andrews University Library, University of St. Andrews, St. Andrews, Scotland.

<sup>23</sup>Quoted in Jane E.A. Dawson, "'The Face of ane Perfytt Reformed Kyrk': St. Andrews and the Early Scottish Reformation," p. 413. Also STAKSR, p. 198.

They were right to brag of their accomplishment in achieving the three characteristic traits of the Kirk outlined in the Confession of Faith: the right preaching of the Word, the right administration of the sacraments, and the promotion of ecclesiastical discipline.<sup>24</sup> Many congregations claimed proper preaching and administration of sacraments, but few professed proper ecclesiastical discipline. Even if St. Andrews could not politically lead the Reformation in Scotland, it still provided a stellar example of a Reformed town for others to follow.

St. Andrews had many features to establish the Reformed faith that other towns lacked. First, it was far enough from the capital to manage its own affairs without royal interference. The crown at Edinburgh was Catholic and opposed any Protestant activity. Protestants flourished in the capital, but not without a fight. John Knox, as minister at Edinburgh, continually justified his Protestant actions to the young Mary, Queen of Scots, after her return from France in August 1561. Some of these confrontations endangered Knox's life. Reformers at St. Andrews were able to avoid such pressures.

Secondly, St. Andrews' university added wisdom and

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<sup>24</sup>Laing, The Works of John Knox, vol. 2, p:110. Also The Acts of the Parliaments of Scotland, 1424-1707, p.31.

advice to reform. Reformers controlled the university in 1559 and were some of the Reform's greatest supporters in the town. The university also trained preachers at its school of theology. The Superintendent of Fife, residing at St. Andrews, could plant these preachers in areas surrounding the town. Many rural areas did not have preachers. These areas lacked the piety and zeal of the towns controlling them. St. Andrews' hinterland was clearly under better supervision and its cathedral was the most important Church center in Scotland before its abandonment in 1559. Even after its desertion, the ecclesiastical authority that flowed from it remained and served as a major resource for the Reformers.

Discipline also benefitted from the cathedral's sphere of influence. The archbishop's court was the ecclesiastical court for the whole region before the Reformation. Many Reformed congregations did not have working kirk-sessions. The St. Andrews district was no exception.<sup>25</sup> It was not difficult for the Reformers to provide discipline for the area through the town's kirk-session. In 1581 the General

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<sup>25</sup>For more on the ineffectiveness of rural areas to establish kirk-sessions, see: Michael F. Graham, "Social Discipline in Scotland, 1560-1610," in Sin and the Calvinists: Morals Control and the Consistory in the Reformed Tradition, ed. Raymond A. Mentzer (Kirksville, MO: Sixteenth Century Journal Publishers, Inc., 1994), pp. 129-157.

Assembly made provisions for presbyteries to be held in important towns.<sup>26</sup> Presbyteries provided kirk-session like discipline for the regions surrounding their towns. From 1586, St. Andrews merely moved the cases from its kirk-session to its newly formed presbytery.<sup>27</sup>

The university was not the only place Reformers found support. The baillies, Burgh Council and a large number of leading citizens supported the Lords of the Congregation. Lord James Stewart, one of the leading members of the Lords of the Congregation, and the Queen's half-brother, headed the Augustinian priory. The sub-prior was John Winram, who later became the first Superintendent of Fife. Many of the local Fife lairds were also supporters and attended the Reformation Parliament in August 1560.<sup>28</sup>

There was no serious opposition to the kirk-session in St. Andrews. With support from the baillies and Burgh Council, the session could ensure the enforcement of its

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<sup>26</sup>Thomas Thomson, ed., Acts and Proceedings of the General Assemblies of the Kirk of Scotland (Edinburgh: Bannatyne and Maitland Clubs, 1839-1845), vol. 2, pp. 469, 475.

<sup>27</sup>"The Presbytery Book of St. Andrews," MS, Rare Books and Manuscripts, St. Andrews University Library, University of St. Andrews, St. Andrews, Scotland.

<sup>28</sup>Jane E.A. Dawson, "'The Face of ane Perfytt Reformed Kyrk': St. Andrews and the Early Scottish Reformation," pp. 427-428.

judgements. Baillies were elders in the kirk-session and used their civil power to enforce compliance with the session's decrees. Strong cooperation between the two authorities rendered dissention or organized resistance difficult. There was idle banter against the Kirk, even curses against John Knox, but no one posed a serious threat to the session or the Kirk's authority.<sup>29</sup>

Citizens, ecclesiastical authorities, and civil magistrates alike had strong interests in controlling sexuality and marriage. Whether concerned for property rights, family and community finances, or morality, their goals merged on this issue. St. Andrews had unique cooperation between civil and ecclesiastical authorities in the kirk-session's control of behavior. This cohesiveness gave the town an opportunity to administer discipline effectively. However, cooperation between officials would not be sufficient. Willing participation by ordinary people in the control of sexuality and marriage was the key.

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<sup>29</sup>STAKSR, p. 36.

CHAPTER 2  
THE GOALS OF MARRIAGE REFORM

Goals of Canon Law

The century before the Reformation saw the neglect of preaching and instruction by the clergy. The people's resulting ignorance was famous in both Catholic and Protestant circles.<sup>30</sup> Most people knew little of marriage regulation. If they were exposed to it, their knowledge was so inadequate as to confuse them. Few had access to the expert advice of expensive canon lawyers, or the financial resources to endure a costly court hearing. Records from the pre-Reformation consistorial courts contain the affairs of only a small minority knowledgeable enough to know their marital arrangements were illegal, and wealthy enough to have them resolved in court. The new Protestant kirk-session was the first institution to make marital justice readily available to the public. Much of the legal foundation used by kirk-sessions in marital cases derived

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<sup>30</sup>Patrick, ed., Statutes of the Scottish Church, pp. 124, 171.

from canon law.

Information on canon law taught or practiced in pre-Reformation Scotland is scarce. The lectures of William Hay, a theologian at Aberdeen University, are the best available source of canon law marriage theory in pre-Reformation Scotland.<sup>31</sup> Hay's lectures on marriage, which trace developments up to 1535, examine theological views and canon law practice regarding marriage on the eve of the Reformation. The Lectures view human actions within the context of salvation.<sup>32</sup> Hay was influenced by many important continental thinkers. Hay even attended Erasmus' lectures in Paris. The Lectures tended to be conservative, given the persecution of heresy in Scotland at the time.<sup>33</sup>

James Balfour wrote another treatise, the Practicks, to demonstrate the way law was applied in the courts. Balfour was a canonist who, after the Reformation, was appointed chief Commissary. The commissary court was created in 1563 to assume the jurisdiction vacated by the Bishops' courts. Queen Mary, a Catholic, chartered the commissary to ensure the continuation of canon law in Scotland. The Practicks

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<sup>31</sup>John C. Barry, ed. and trans., William Hay's Lectures on Marriage (Edinburgh: Stair Society, 1967).

<sup>32</sup>Ibid, pp. 257, 275.

<sup>33</sup>Ibid, p. XXX.

were first published in 1579 to instruct members of the commissary on the proper application of canon law and post-Reformation law.<sup>34</sup> The Practicks are problematic because Balfour sometimes cites without distinguishing between material enacted before and after the Reformation.

Emphasis prior to the Reformation was upon providing marital justice to those who could afford it, thereby enlarging the Church's and jurists' coffers. Not only was justice expensive, but dispensations from impediments to marriage were costly as well. Liberal interpretation of the law was allowed for jurists to balance the good of the individual or the good of an individual soul. The jurist must decide whether the legislator would wish the law to be binding if he were present, or whether an observer would consider that an exception should be made.<sup>35</sup> Dispensations were commonly granted for persons within prohibited degrees of relationship. For example, second or third cousins often received dispensations. If the exception were prudent, a dispensation could be granted.

Dispensations were legal exemptions from compliance

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<sup>34</sup>Sir James Balfour, Practicks: Or a System of the More Ancient Law of Scotland (Edinburgh: Thomas and Walter Ruddimans, 1754).

<sup>35</sup>Barry; William Hay's Lectures on Marriage, p. 285.

with the law.<sup>36</sup> Hay admonishes the granter of the dispensation to do so out of charity, in order to achieve a greater good for the individual or the community than the enforcement of the law would allow.<sup>37</sup> Greed of the jurists overshadowed Hay's idéalistic advice on this matter. Loose interpretation of the law allowed for dispensations from nearly every impediment. Bribery was often necessary to persuade the jurist to "realize" that the greater good lay in providing a dispensation. Exorbitant sums required for both the bribe and the dispensation limited access to the wealthy elite.

#### Canon Law and Marriage

The betrothal was a significant element of marriage in canon law. Though not an essential precursor to marriage, betrothal could when followed by intercourse form a valid marriage.<sup>38</sup> Betrothal was a contract initiated by the free consent of the parties.<sup>39</sup> It was a promise to marry in the

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<sup>36</sup>Ibid, p. 285, 287.

<sup>37</sup>Ibid, p. 289.

<sup>38</sup>James A. Brundage, Law, Sex, and Christian Society in Medieval Europe (Chicago: University of Chicago Press, 1987), p. 502.

<sup>39</sup>Barry, William Hay's Lectures on Marriage, pp. 5, 9.

future, termed *per verba de futuro*. Since betrothal was usually the first stage in the formation of marriage, its integrity was ideally ensured by the presence of two witnesses and often the exchange of presents. Hay taught that failure to marry after betrothal was a mortal sin. Unless an impediment existed, marriage should be solemnized.<sup>40</sup> The Church's concern for these vows called for the presence of a priest at the ceremony and for the exchange of gifts to be recorded by a notary.<sup>41</sup> Although the Church demanded the presence of a priest, there is little evidence that this decree was systematically enforced.<sup>42</sup>

The presence of a church official was not required. Unless there were impediments, nothing prevented couples from contracting a valid marriage secretly.<sup>43</sup> The Church condemned clandestine marriages because they were difficult to prove. Children of secret unions might lose the legitimacy which they would have received from a marriage

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<sup>40</sup>Ibid, p. 7.

<sup>41</sup>A. E. Anton, "'Handfasting' in Scotland," The Scottish Historical Review 124 (October 1958): p. 193.

<sup>42</sup>Brundage, Law, Sex, and Christian Society in Medieval Europe, p. 436.

<sup>43</sup>Ibid, p. 31.

publicly solemnized.<sup>44</sup> Children of a public marriage were legitimate even if the union later proved to be invalid.<sup>45</sup> The Church compelled those secretly married to receive the sacrament's blessing in the church before witnesses, or *in facie ecclesiae*.<sup>46</sup> There was legislation against clandestine marriage, but little enforcement or success in suppressing the practice is evident.<sup>47</sup>

People entered marriage secretly for a number of reasons. Impediments such as consanguinity or affinity might prevent the union inside the church. Consanguinity was a relationship by blood. Affinity could be either relationships established through marriage or through godparentage. Prohibitive degrees of relation were common in Scotland. The Archbishop of St. Andrews wrote to the Pope in 1554 that it was nearly impossible to find a spouse in Scotland who was not within the prohibited fourth degree of relationship.<sup>48</sup> The Archbishop also noted that

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<sup>44</sup>From the Fourth Lateran Council of 1215. See Brundage, Law, Sex, and Christian Society in Medieval Europe, p.362.

<sup>45</sup>Barry, William Hay's Lectures on Marriage, p. 31.

<sup>46</sup>Brundage, Law, Sex, and Christian Society in Medieval Europe, pp. 362, 437.

<sup>47</sup>Ibid, p.437. Also see Patrick, Statutes of the Scottish Church, pp. 64, 72, 142-143.

<sup>48</sup>Cameron, The First Book of Discipline, p. 191n.

dispensations were commonly granted. But again, only the wealthy had access to such exceptions. Most of the population lived in ignorance.<sup>49</sup>

The ancient marriage custom in Scotland called for betrothal followed by intercourse. Once intercourse had occurred, the couple was married. There are a number of reasons Scots practiced this custom, known as "handfasting".<sup>50</sup> The Church banned weddings during certain days of the year such as festivals and feast days. These religious holidays were some of a select few times that rural Scots would meet. Others married using this secret ceremony to avoid the limitations of impediments the Church imposed. As has already been noted, dispensations were difficult for most to obtain, and finding a suitable mate outside of the prohibited degrees of relationship was often impossible. Also, one or both of the parties might be under sentence of excommunication, precluding a church marriage. Those of the lower classes were more likely to enter marriage clandestinely. Without property to protect within a marriage contract, there was no need for a notary to record the terms. Persons of wealth were more likely to

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<sup>49</sup>Barry, William Hay's Lectures on Marriage, p. XXXVIII.

<sup>50</sup>Anton, "'Handfasting' in Scotland."

have notaries present at their betrothal ceremonies in order to protect holdings from entering another family.

Scotland's ancient custom also added an escape clause to handfasted marriages. In the words of Sir Walter Scott:

We Bordermen ... take our wives, like our horses, upon trial. When we are handfasted, as we term it, we are man and wife for a year and a day; that space gone by, each may choose another mate, or at their pleasure, may call the priest to marry them for life - and this we call handfasting.<sup>51</sup>

If during the trial period the woman became pregnant, the marriage was considered valid and binding. Children of these unions were considered legitimate, especially in the Highlands where a strong distinction was made between bastard children and those from handfasted unions.<sup>52</sup> There is evidence that others treated betrothal followed by copulation as a trial marriage. If the relationship failed, couples often worked to create an impediment to marriage. Frequently they would become co-godparents of a child, thereby canceling their obligation to marry.<sup>53</sup>

A year and a day was the popular duration in secular law for spouses to gain property rights. If the husband died during the first year and there were no children, his

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<sup>51</sup>Quoted in *ibid*, p. 89.

<sup>52</sup>*Ibid*, p. 89.

<sup>53</sup>Brundage, Law, Sex, and Christian Society in Medieval Europe, p. 436-437.

property reverted to his family. A case from 1506 used death as its example to explain this statute. Balfour cites:

Ane man and ane woman being maryit togidder, gif it happinis the said man to deceis within yeir and day efter the completing of the said mariage, na bairnis beand gottin nor born betwix thame, the said wife sall have na part of hir said husbandis moveabill gudis or geir, be ressoun of the said marriage, and as wife; bot the haill moveabillis aucht and sould pertene to the dispositioun of the deid his airis and executouris.<sup>54</sup>

Here it appears that a year and a day was supported as the customary term for marriage legitimation in the secular law.

Ideally couples announced their betrothal in public and in the presence of a priest and notary. The next step in the Church's prescription for marriage was the proclamation of banns. Banns were statements of a couple's intent to marry and were read in their parish church on three consecutive Sundays. The purpose of banns was to discover any impediments to the proposed marriage. By charging everyone to have their banns proclaimed or suffer a penalty, the Church hoped to reduce the number of clandestine marriages. The Fourth Lateran Council of 1215 made banns a part of law, proposing ecclesiastical penalties and

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<sup>54</sup>Balfour, Practicks, p. 95.

illegitimation of children for those failing to conform.<sup>55</sup>

The Scottish church echoed the decrees of the council:<sup>56</sup>

Let no priest presume to unite in marriage any persons unless a thrice-repeated proclamation, according to the form prescribed by the General Council, have previously been publicly and solemnly made in church, so that any one who will and can may state a legal impediment. And let priests proclaim that on pain of excommunication no one shall maliciously offer impediments to marriage. Let the said priest himself over and above investigate whether any impediment exist, and if there seems to be a probable presumption against contracting the marriage, let the union be expressly interdicted until it shall appear on clear evidence what ought to be done about the matter.<sup>57</sup>

Penalties for those withholding information about someone's impediment while hearing their neighbors' banns proclaimed were also made statute.<sup>58</sup>

Enforcement of statutes on banns was ineffective. Couples desiring to marry without banns and outside the church were still able to find priests willing to help for a fee. This is shown by further decrees of the Church establishing severe penalties for priests taking part in clandestine weddings:

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<sup>55</sup>Brundage, Law, Sex, and Christian Society in Medieval Europe, p. 362.

<sup>56</sup>Patrick, Statutes of the Scottish Church, pp. 39, 44, 63, 71-72, 142-143.

<sup>57</sup>Ibid, p. 39.

<sup>58</sup>Ibid, p. 39.

...we statute and ordain that no priest shall dare to bless or take part in blessing within our diocese the nuptials of any persons .... unless the banns have been first published and proclaimed according to the custom of the church .... But if any priest, unmindful of his own honour, shall dare to transgress this statute, not only shall he be *ipso facto* suspended from office without hope of favour, but he shall also lose all hope of preferment unless of our charity a dispensation be granted to him by us. And parties marrying contrary to this our statute shall underlie canonical punishment.<sup>59</sup>

The clergy certainly took seriously the loss of benefices. It appears that a lack of enforcement of this statute lent to the continuation of the practice.

Even after the Reformation, priests were still performing marriages and other sacraments for pay. The General Assembly of the Reformed Church addressed this question in 1570:

Q. What order shall be taken with such popish priests as are excommunicat for ministration of the Sacraments, and selling of the same, yet will not abstain.

A. Raise letters of caption upon them.<sup>60</sup>

A letter of caption was an order for civil authorities to incarcerate persons for disobeying a previous order. The previous order was obviously to cease the administration of Catholic sacraments. An indictment would have surely

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<sup>59</sup>Ibid, p. 72.

<sup>60</sup>Thomson, Acts and Proceedings of the General Assemblies of the Kirk of Scotland, vol. 1, p. 181.

followed. Old habits died slowly among priests, especially when money was involved.

The final step in the Church's ideal marriage process was the exchange of consents before a priest, called *in facie ecclesiae*. This normally took place the Sunday following the third proclamation of the banns. This step was the only requirement for a valid marriage by the Church. When clandestine unions were discovered, the parties were required to receive the blessing of the Church in the presence of witnesses and a priest. Although other types of marriages were considered valid, they were only officially recognized by the Church after this ceremony.

The Church's main concern was to eliminate doubt concerning the validity of the marriage. Marriages without proven validity could leave a man or woman financially strapped after a spouse's death when the property reverted to the dead spouse's family. Proven validity was the intended effect of one of the Archbishop of St. Andrews statutes:

Item that no one contract marriage or betrothal unless in the presence of lawful witnesses, by whom the marriage can be proved should any doubt arise about it.<sup>61</sup>

Besides, it was bad business to allow marriages to take

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<sup>61</sup>Patrick, Statutes of the Scottish Church, p: 64.

place without witnesses as they were the clergy's informers of existing impediments. Without impediments there would be no income from dispensations. Yet even with potential financial gains from requiring compliance, there was a lack of enforcement by the clergy.

There were many impediments that could invalidate a marriage. They were divided into two types, prohibitive and diriment. Prohibitive impediments were those that were so fundamental that they nullified an attempted marriage.<sup>62</sup> Diriment impediments were those sinful to ignore, but dispensable without losing the validity of the marriage.<sup>63</sup>

Prohibitive impediments were simple. Incestuous persons were prohibited from marrying. Abduction of another man's wife or betrothed forbade marriage with her, even if she later became a widow. Husbands who had killed their wives without "good cause" were forbidden to marry again. Someone who had killed a priest was prohibited from marriage. It was unlawful to marry a professed nun.<sup>64</sup> These conditions were unusual. Because of the rarity of their occurrence, these conditions deserve only a passing

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<sup>62</sup>Barry, William Hay's Lectures on Marriage, p. 49.

<sup>63</sup>Ibid, p. 47.

<sup>64</sup>Stair Society, An Introduction to Scottish Legal History (Edinburgh: Robert Cunningham and Sons, 1958), p.74.

mention.

The diriment impediments were of greater significance. They were divided into three classes: (1) those which arose from a general incapacity for marriage; (2) those cases involving defective consent; and (3) those which were based upon some pre-existing relationship which presupposed mutual incapacity for marriage.<sup>65</sup> Persons who assumed themselves married might find out at a later date that one of these conditions existed. However, such circumstances were repairable if the condition was a canonical creation. A dispensation could remove the impediment, and a renewal of marriage vows would solidify the union.

The first category deals with limitations of individual human conditions, whether chosen or innate. The most obvious was age. Canon law set the age of capacity at twelve for a girl and fourteen for a boy.<sup>66</sup> The focus for age limitations was to ensure the couple was physically able to consummate their union. Dispensations might be obtained if the parties proved their capacity for intercourse.<sup>67</sup>

Impotence was classified as a diriment impediment.

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<sup>65</sup>Ibid, p. 75.

<sup>66</sup>Barry, William Hay's Lectures on Marriage, pp. 111, 155.

<sup>67</sup>Ibid, pp. 113, 155.

Impotence prevented the contracting of a valid marriage if it existed before the attempted marriage, and prevented the possibility of intercourse with anyone.<sup>68</sup> If impotence began before the marriage, the potent party could receive an annulment, giving them permission to remarry.<sup>69</sup> If there was doubt, the couple needed to attempt intercourse for a period of three years before confessing failure. Canon law's position on impotence reinforced the necessity of consummation in forming a marriage.

Bigamy, or the impediment of an existing marriage, was made a penal offence as well as an impediment to marriage. Bigamy existed when intercourse occurred following an exchange of consents.<sup>70</sup> Hay also discusses "interpretative bigamy", committed when a man has intercourse with his adulterous wife while a separation is pending. The only consequence of this action is that the man may not be ordained.<sup>71</sup> The Church was firm in its principle that a person may have only one spouse at a time. Consummated marriage was dissolved only by proven death. Prolonged

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<sup>68</sup>Ibid, p. 109-111.

<sup>69</sup>Ibid, p. 119. The impotent person must then remain unmarried.

<sup>70</sup>Ibid, p. 253.

<sup>71</sup>Ibid, p. 255.

absence or captivity were not sufficient to allow a spouse to remarry.

People's choices could also determine their eligibility for marriage. The Church had long exalted virginity. Therefore, individuals who took a vow of chastity, by a deliberate act of renunciation, were not eligible for marriage. Documented formal proceedings were often required for proof. Dispensations could be obtained by disputing the documentation. Admittance into holy orders also created an impediment.<sup>72</sup>

The second category of diriment impediments consisted of those relating to defective consent. Consent was an essential element of marriage formation. Marriages attempted by parties in a state of insanity were invalid, as insanity precluded the ability to give rational consent. However, during a period of soundmindedness, insane persons were allowed to contract marriage. Marriage was also invalid in cases where persons' consent was forced. Marital consent from persons who lied about their identity or condition was also null and void, with no penalty to the innocent party.<sup>73</sup>

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<sup>72</sup>Stair Society, An Introduction to Scottish Legal History, p. 76.

<sup>73</sup>Ibid, p. 76-77.

The third and final classification of diriment impediments consisted of those with relationships prior to marriage that precluded their union. Constraints were put on three types of relationships: (1) consanguineous, or blood relationships; (2) spiritual relationships, typically established through godparentage; and (3) affinous, or relations through marriage. Affinous relationships could also be established by extramarital intercourse, which brought the outside adulterer into the relationship circle.<sup>74</sup> The Church forbade marriage within the fourth degree in all of these areas. Prior to the Fourth Lateran Council of 1215, unions within the seventh degree were forbidden.<sup>75</sup> All three were interconnected and simultaneous. For instance, a godfather could not marry the sister of his godson. Because of the difficulty for persons in rural Scotland to find a suitable mate outside the prohibited degrees, dispensations were commonly granted.<sup>76</sup> Because dispensations might take two or three years,<sup>77</sup> Some couples chose to have their marriage conveniently annulled,

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<sup>74</sup>Ibid, p. 92.

<sup>75</sup>Ibid, p. 80.

<sup>76</sup>Ibid, p. 78. Also see: Cameron, The First Book of Discipline, p. 191n.

<sup>77</sup>Barry, William Hay's Lectures on Marriage, p. XLIII.

therefore allowing them to remarry, yet bastardizing their children.

Impediments were the most frequently used clause for a couple to receive an annulment. An annulment allowed both spouses to remarry, except in cases where one spouse held an inability to marry. Annulment stated that a valid marriage had never existed.

People desiring separation after a period of valid marriage could only hope for a separation *a mensa et thoro*. Literally, they were separated from table and bed. Separation *a mensa et thoro* should not be confused with divorce in the modern sense. Modern divorces allow people to separate legally for any reason arising during their marriage, and permits both parties to remarry. Separation *a mensa et thoro* did not dissolve marriage and allow persons to remarry, but relieved both spouses of their marital obligations.

Adultery was the most common condition allowing for separation. Adultery was considered sinful conduct deserving of punishment. The punishment was the deprivation of marital rights. It was held appropriate since a man is "justly punished in that domain in which he sinned."<sup>78</sup> The other party was innocent and could petition for separation

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<sup>78</sup>Ibid, p. 61.

on the grounds of his/her spouse's adultery. If both parties were adulterers, the crimes canceled each other out, and neither held the right of redress. People gave up their right to file for separation if they continued to have intercourse with their adulterous spouse, or if they continued to live together. Finally, it should be noted that women who were raped were protected from their husbands' petitions for separation.<sup>79</sup>

Though less common, cruelty was another ground for separation. The motive behind this provision was protection of the innocent party. People were not bound to marital obligations at the risk of their lives. Hay gives two major examples - the contraction of leprosy by one partner and attempted murder of a spouse.<sup>80</sup> Doctors knew that cohabitation could spread leprosy. If the leprosy was of the milder variety, the couple ought to meet for intercourse, even though leprous children might be born.<sup>81</sup> Jurists hoped to minimize the risk from disease to the innocent party, but the marriage was otherwise complete. Attempted murder is an obvious grounds for separation.

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<sup>79</sup>Ibid, p. 63.

<sup>80</sup>Ibid, p. 69.

<sup>81</sup>Ibid, p. 71.

Reformation and Marriage

The single largest change affecting marriage at the Reformation was the enforcement of regulations. One step towards better enforcement was the cooperation between civil and ecclesiastical authorities in implementing reform. The Scottish Parliament supported church discipline from the beginning. St. Andrews is a special case for effective support at the local level. The failure of other areas in achieving local civil support was not the fault of the national government. Parliament supported the Church with its "civill sword" as early as 1 August 1560 when it ratified the Confession of Faith. One section states:

We farther confess and acknowlege that sic personis as ar placit in authoritie ar to be luifit honourit feirit and haldin in maist reverend estimatioun becaus that thay ar the lieutennentis of god in quhais sessiounis god him self dois sit and Juge to quhome be God is gevin the sworde to the praise and defence of gude men and to revenge and punische all oppin malefactouris Mairover to Kingis Princes rewlaris and magistratis we affirme that cheiflie and maist principallie the conservatioun and purgatioun of the Religioun appertenis sa that not onlie thay ar appointit for civile policie bot alswa for maintenance of the trew religioun and for suppressin of Idolatrie and superstitioun quhatsaever.<sup>82</sup>

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<sup>82</sup>The Acts of the Parliaments of Scotland, 1424-1707,  
p. 36.

Although this might seem like an idle or general statement supporting the Kirk, several other actions followed which dealt directly with the enforcement of marriage reform.<sup>83</sup>

In 1567, one of these acts proposed the death penalty for incest and adultery.<sup>84</sup> The effects of this statute were not intended to produce widespread capital punishment. Rarely was this harsh sentence imposed. The likely sentence was:

a ritual of public repentance involving standing in sackcloth in a particular spot in church for several Sundays and perhaps a fine *ad pius usus*.<sup>85</sup>

The statute's effectiveness lay in its strong support for the ecclesiastical jurisdictions. Few kirk-sessions experienced widespread cooperation. St. Andrews was a noteworthy exception, but even with collaboration the possibility of imposing capital punishment was rarely discussed. Public humiliation and fines were usually more than enough to motivate proper behavior.

Civil and Kirk solidarity could be very effective. Some burghs, including St. Andrews, combined the two

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<sup>83</sup>Ibid, pp. 42, 46, 71-73, 74, 92.

<sup>84</sup>Ibid, p. 42.

<sup>85</sup>Michael Graham, "The Civil Sword and the Scottish Kirk, 1560-1600," in Later Calvinism, ed. W. Fred Graham. Sixteenth Century Essays and Studies, Volume 22 (Kirksville, MO: Sixteenth Century, 1994), p. 238.

jurisdictions. Elders on the session would include the local baillies. In the St. Andrews register it is common to see sinners handed over to the civil baillies immediately. The transition was simple since the baillies were already present on the session. The Baillies Court for St. Andrews typically shows no record of cases crossing jurisdictions.<sup>86</sup> There was no need since the kirk-session recorded all the information and served as the forum.

Kirk-sessions in the smaller towns near St. Andrews were less active in administering discipline.<sup>87</sup> However, the burgh court of Crail, which had a working kirk-session by 1561, cooperated with ecclesiastical authorities. On 7 January 1566 the session asked the baillies to imprison Andrew Few for choosing to ignore the session's charge to ask forgiveness for his actions. He was caught boasting of fathering the child of a married woman. The baillies' compliance is confirmed with an entry detailing his incarceration until further instruction by the session.<sup>88</sup>

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<sup>86</sup>"Register of the Burgh Court of St. Andrews," MS-B65-8, Rare Books and Manuscripts, St. Andrews University Library, University of St. Andrews, St. Andrews, Scotland.

<sup>87</sup>For a detailed discussion on the ineffectiveness of rural kirk-sessions, see: Michael F. Graham, "Social Discipline in Scotland, 1560-1610."

<sup>88</sup>"Register of the Burgh Court of Crail," MS-B10-8-4, Rare Books and Manuscripts, St. Andrews University Library, University of St. Andrews, St. Andrews, Scotland, 7 January

Another aspect of reformed discipline that ensured compliance was the inclusion of all persons regardless of rank. The First Book of Discipline states:

To discipline must all the estates within this Realm be subject, as well the Rulers, as they that are ruled; yea and the Preachers themselves, as well as the poore within the Kirk.<sup>89</sup>

This closely echoes the charges of John Calvin in his Institutes of the Christian Religion:

As no one was exempt from this discipline, both princes and common people submitted to it. And rightly! For it was established by Christ, to whom it is fitting that all royal scepters and crowns submit.<sup>90</sup>

However, for the most part Knox and the other Scottish reformers allowed nobles to escape the wrath of discipline. Although they wished to emulate Calvin and his control over Geneva, rarely did they feel their position secure enough to subject many nobles to discipline. Calvin enjoyed much greater control over Geneva.<sup>91</sup>

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1566(no foliation).

<sup>89</sup>Cameron, The First Book of Discipline, p. 173.

<sup>90</sup>McNeill, Calvin: Institutes of the Christian Religion, p. 1235.

<sup>91</sup>Scholars have long accepted that the intentions of the First Book of Discipline became the enforced law of the land. In most cases this is true, but the theory has little or no supporting evidence when testing the enforcement of discipline upon nobles. King James VI complained about the nature of presbyteries, but only in rare cases were nobles subject to their censures. For an in depth study of the

By opening up marital discipline for the entire population minus a few elites, everyone was subject and therefore involved. Scottish kirk-sessions were extremely active, especially when compared to tribunals elsewhere in Europe.<sup>92</sup> People's involvement ensured support for the system. The new system was free and open to everyone, not just those wealthy enough to afford it. Decisions came quickly, usually immediately, leaving no person disadvantaged while awaiting a decision. Its punishments were corrective, with the goal of receiving individuals back into the community once they acknowledged and atoned for their faults. These faults were exposed publicly in order to give others access to instruction on the law. A strong and impartial court, affordable and open to all persons, was appealing. However, it was not sufficient to solidify popular support for the reform of marriage.

People supported the enforcement of the law. Legal prescriptions for marriage were designed to protect the individual and the community. For individuals, statutes

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exemption of nobles from discipline see: Michael F. Graham, "Equality before the Kirk? Church Discipline and the Elite in Reformation-Era Scotland," Archiv für Reformationsgeschichte 84 (1993), pp. 289-309.

<sup>92</sup>Parker, "The Kirk by Law Established and the Origins of the Taming of Scotland: St. Andrews, 1559-1600," pp. 191-192.

guarded family honor, family finances, legitimacy of children, and the right to remarry. Citizens also enjoyed knowing the community would protect them against their spouses' potential adultery. Sessions assisted the community by keeping individuals off the poor rolls. Moral reform also shielded the community from the wrath of God. Reformers spoke out against communities that allowed moral crimes to go unchecked:

For we doubt not, but such enormities and crimes openly committed, provoke the wrath of God, as the Apostle speaketh, not onely upon the offenders, but upon such places where without punishment they are committed.<sup>93</sup>

New laws and their enforcement brought marital security. They also gave communities protection against widespread poor relief and, in many people's minds, the displeasure of God.

Clandestine marriages remained prolific after the Reformation. These secret unions were considered valid for a time. Although punishment was administered, validity was achieved after banns were proclaimed, the couple exchanged their vows before witnesses, and public satisfaction was made before the congregation. Punishment was usually two to three weeks on the stool of penitence on Sundays and a fine paid towards poor relief. The General Assembly quickly came

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<sup>93</sup>Cameron, The First Book of Discipline, p. 194.

up with a solution to the problem of clandestine marriage.

By 26 June 1563 they decreed:

The quhilk day the Kirk pronouncit that no contract of mariage alledged to be made secretly, carnall copulation following, sall have faith in judgement in tyme comeing, untill the tyme that the contractors suffer as breakers of good ordour and slanderers of the kirk; and thereafter that faith sall not be givin unto that promise, unto sick tyme as famous and unsuspected witnesses affirme the same, or els the parties confess it; and in cace that probation nor confession follow not, that the saids offenders be punishit as fornicators.<sup>94</sup>

Noncompliance meant the marriage was invalid, and charges of fornication, a most serious offense, would be raised. If one party wished to get out of the contract, he/she could, providing no witnesses could testify. Many women paid for their failure to have witnesses to the exchange of promises. Their claims of promise followed by intercourse led to a charge of fornication. If the man denied the promise of marriage, the woman's honor was not restored, there was no marriage, and both were punished as fornicators and bore the stigma attached.

The St. Andrews kirk-session required persons making promises to marry or requesting the proclamation of banns to come before the church. The St. Andrews declaration, issued on 3 June 1560, predated the General Assembly's resolution

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<sup>94</sup>Thomson, Acts and Proceedings of the General Assemblies of the Kirk of Scotland, p.32.

by three years. The pastors and elders of St. Andrews declared:

...that all bannes of them, quhai ar contracted, or hes maid promise of mariage, be ressaved be the scribe of the consistoriall court of the minister and eldaris of the said cietie, bayt the parties being praesent before him (gif thai bayth remane within the parochie of Sanctandros);<sup>95</sup>

This resolution was designed to deal with many women's claims that they had consented to intercourse following an alleged exchange of promises. The session typically absolved men from alleged promises on the basis of their denial. It always punished both parties as fornicators, a result neither party desired. On the other hand, if the woman produced the necessary witnesses or the man did not contest her claim of marriage promise, the couple was forced to solemnize their marriage.

With the Reformation, impediments to marriage remained, but were reduced in both number and degrees of severity. The General Assembly provided for legal marriage outside of the second degree of consanguinity and affinity as early as 1560.<sup>96</sup> An act of Parliament in 1567 officially reduced the permissible degrees to two.<sup>97</sup> All persons outside of the

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<sup>95</sup>STAKSR, p. 42.

<sup>96</sup>Thomson, Acts and Proceedings of the General Assemblies of Scotland, p. 5.

<sup>97</sup>Acts of the Parliaments of Scotland, 1424-1707, p.43.

second degree were permitted to marry. The Reformers' intention was to protect the welfare of individuals, especially children. The case of a man who lived with his cousin for seven years and had children with her was heard by the General Assembly in 1565. It ruled on the request to marry:

...because it hes bein publicklye reveilit in this realme, and that diverse inconvenients are perceivit to enseu of this liberty; thinks it good, that it be offered to the civill magistrate, or els to ane parliament, for ordour to be taken therein; in the mean time, that men take not libertie to themselves according to there fleschly filthie affectiouns; notheles that the persones, in whose name this question was proponit, be joynit in marriage after there public repentance for the offences bygane, without any hope that uthers have the like licence, whill farther ordour be tane be the civil magistrat, as said is.<sup>98</sup>

The delegates were concerned about the welfare of the children and realized that the relationship would continue regardless of their ruling. This example served as a teaching tool, in as much as the couple was forced to undergo public repentance. The occasion was also used to reinforce the Church's request for Parliament to reduce the prohibited degrees to two. The parliamentary statute came two years after this case.

The Reformed Kirk continued to insist upon minimum age

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<sup>98</sup>Thomson, Acts and Proceedings of the General Assemblies of the Kirk of Scotland, p. 62.

for marriage. The emphasis upon age limits was to ensure that the parties were old enough to understand the seriousness of their vows, in contrast to the pre-Reformation stress on the ability to have intercourse. The ages remained at 14 for boys and 12 for girls.<sup>99</sup> In 1600, the General Assembly threatened punishment for ministers who performed ceremonies for persons under these minimum ages. Delegates to the Assembly also chose this occasion to petition Parliament to make this a civil statute.<sup>100</sup> The presbytery of St. Andrews dealt with such a case in 1600. The age of a girl petitioning for marriage was disputed. One report claimed that she was as young as nine. The presbytery adhered strictly to the rules of the General Assembly, but was unable to determine the age of the girl. In its frustration, it forwarded the case to higher ecclesiastical authorities:

The quhilk day compeirit Jone day of Saudforde declaring that now he confessis to the contracting of Walter Ramsay & Bessie froster. That notwithstanding the presbyterie not resolvit be reasone of hir age not meit to thair dewties requyrit in mariage referis that mater to the generall or synodall assemblie quhilk of them beis

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<sup>99</sup>Cameron, The First Book of Discipline, p. 194.

<sup>100</sup>Thomson, Acts and Proceedings of the General Assemblies of the Kirk of Scotland, p. 953.

first.<sup>101</sup>

It should finally be noted that the Reformed Kirk of Scotland continued to recognize previous valid marriages and impotency as impediments.<sup>102</sup>

Recognition of parental rights with regards to marital consent was an innovation during the Reformation. Parents' rights were safeguarded by prohibiting minors from secretly entering into marriage. The First Book of Discipline stated:

...that no person under the power or obedience of others, such as sonns and daughters and those that be under curators, neither men nor women, contract marriage privately, and without knowledge of their parents, tutors or curators under whose power they are for the time. Which if they doe, the censure and discipline of the Kirk to proceed against them. If the son or daughter or other, have their heart touched with the desire of marriage, they are bound to give honour to their parents, that they open unto them their affection, asking their counsell and assistance, how that motion, which they judge to be of God, may be performed.<sup>103</sup>

The goals of this instruction were to ensure persons would contract marriages in accordance with their families' wishes and needs. The Church sought to maintain honor and

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<sup>101</sup>"Register of the Minutes of the Presbytery of St. Andrews," MS, Rare Books and Manuscripts, St. Andrews University Library, University of St. Andrews, St. Andrews, Scotland, fo 104r, 7 February 1600.

<sup>102</sup>Stair Society, An Introduction to Scottish Legal History, p. 92.

<sup>103</sup>Cameron, The First Book of Discipline, p. 192.

financial stability for families. The decree also provided an escape for children of obstinate parents. If the parents rejected a request to marry, the child might petition the minister or magistrate. If no credible reason were found to deny the marriage, the official would admonish the parents to accept the proposal. Parents who refused found their authority usurped by officials who then gave consent to the union.<sup>104</sup>

Parents gained another right towards maintenance of their honor, the right of recourse against men who took their daughters' virginity:

But the father or neerest friend, whose daughter being a virgine is defloured, hath power by the law of God to compell the man that did that injurie, to marry his daughter: and if the father wil not accept him by reason of his offence, then may he require the dowrie of his daughter, which if the offender be not able to pay, then ought the civill magistrate to punish his body by some other punishment.<sup>105</sup>

Parents could require the man to marry their daughter, or force him to provide her dowry. The General Assembly later struggled with this provision. In 1570, they reinforced the statute by ordaining that a man who paid a dowry shall be

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<sup>104</sup>Ibid, pp. 192-193.

<sup>105</sup>Ibid, p. 193.

allowed to remarry.<sup>106</sup> By 1575 the General Assembly's position softened. Their answer was:

There is no law establischt, that the man should either marrie her or pay her tocher good.<sup>107</sup>

St. Andrews' kirk-session upheld the first statute until 1571.<sup>108</sup> With the next such case it heard, the session immediately obeyed and cited the General Assembly statute of 1575 by disallowing a request for marriage or dowering.<sup>109</sup>

Adultery also remained an impediment to marriage after the Reformation. It was the one legal ground for divorce. Since the penalty for adultery was supposed to be death, persons who were spared were considered legally dead with regard to their marriage. The innocent spouse had the full right of remarriage, and could form another productive household. From the First Book of Discipline:

...the innocent ought to be pronounced free and the offender ought to suffer death, as God hath commanded. If the civil sword foolishly spare the life of the offender, yet may not the Kirke be negligent in their office, which is to excommunicate the wicked and to repute them as dead members and to pronounce the innocent partie to be at freedome, be they never so honourable before the world. If the life be spared, as it

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<sup>106</sup>Thomson, Acts and Proceedings of the General Assemblies of the Kirk of Scotland, p. 180.

<sup>107</sup>Ibid, p. 345.

<sup>108</sup>STAKSR, pp. 186, 220, 224, 304, 357.

<sup>109</sup>Ibid, p. 411.

ought not to be, to the offenders, and if fruits of repentance of long time appear in them and if they earnestly desire to be reconciled with the Kirk, we judge they may be received to the participation of the Sacraments, and other benefites of the Kirk. For we would not that the kirk should hold them excommunicate, whom God absolved, that is, the penitent.<sup>110</sup>

Since the death penalty for adultery was rarely enforced, excommunication became the prescribed penalty.

Excommunication was essentially corrective. Once public repentance was accomplished, the guilty received full reacceptance into the Kirk, including the right to remarry. Remarriage was allowed in order to keep the guilty from repeating the offence. The General Assembly enacted many decrees prohibiting convicted adulterers from remarrying.<sup>111</sup> Once they repented, they were absolved from guilt. Here the Kirk was both practical and protective. Practicality came with allowing the guilty to remarry to prevent further sin. Protection came by permitting them to reenter productive households.

Canon law allowing separation for cruelty survived the Reformation. Persons could petition for a separation *a mensa et thoro* for cruelty. In keeping with this view,

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<sup>110</sup>Cameron, The First Book of Discipline, pp. 196-197.

<sup>111</sup>Thomson, The Acts and Proceedings of the General Assemblies of the Kirk of Scotland, pp. 91, 98, 197, 308, 377, 855, 937, 953.

violence or the threat of disease were grounds for separation. Both violence and the threat of disease, while not considered a breach of the marriage relationship, were in extreme cases considered a threat to life and required separation.<sup>112</sup>

Kirk-sessions were ultimately concerned with illiciting community support. Pastors and elders instituted marriage reform in a manner which enacted the doctrine of the Kirk and propagated it by making examples of select people. The protection of the individual served to protect the community. On the face of it, kirk-sessions seemed grim and unwavering in their dedication to the letter of the law. In reality, sessions used conventional wisdom to achieve the best results for all involved - the church, the individual, and the community. The ritual of public repentance was a strong method to get across the messages of the Kirk. The parishioners were generally content with the order and security that resulted from the kirk-sessions' rulings and they therefore tended to support the institution. Clearly, the control of morals would have been difficult without continuing public support.

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<sup>112</sup>Stair Society, An Introduction to Scottish Legal History, pp. 97-98.

## CHAPTER 3

## MARRIAGE REFORM AT ST. ANDREWS

Cooperation with the Kirk-session

The largest changes affecting marriage reform during the Reformation were enforcement of regulations and winning support from the general populace. St. Andrews kirk-session received support for its decisions from a variety of sources. The civil baillies gave bite to the session's judgments with civil power. Guilds openly stated their support for the session and urged their members to adhere to its decrees. Common people backed the session with their appearance rates and by turning in their neighbors for engaging in immorality. Common people also voiced their consent to the session's decisions through their power to elect the elders on the session. St. Andrews' kirk-session was a model for social discipline in Scotland. Without continuing support from the people and community institutions, moral regulation would have been difficult.

Cooperation with civil authorities was an important element of successful moral reform. Elders were the first

line of defense against moral infractions. They were prominent lay persons who were in charge of keeping a lookout for those people failing to observe proper morality. Neighbors often informed elders of the wrongdoings of others, and the elders informed the session who then charged the parties involved to appear for "counseling" about their offenses. Elders were also the jurors on the kirk-session benches along with the parish minister. In St. Andrews, there were twelve elders and one minister on the session.

Of the first twelve elders elected in St. Andrews in 1559, two were civil baillies, town marshals, or policemen. Baillies were consistently elected to eldership, facilitating the ready cooperation between ecclesiastical and civil authorities in matters of social discipline. The register for the baillies' court in St. Andrews demonstrates the cooperation between the two authorities. In towns like St. Andrews, where strong cooperation existed, cases involving both jurisdictions were heard only in the kirk-session. Because the baillies were present on the kirk-session as elders, a second hearing in the Burgh Court was always unnecessary. The kirk-session recorded all the information and served as the forum.

Baillies took an active role in administering ecclesiastical discipline. Baillies were asked by the

session to enforce punishments. 26 October 1597 was just another day for the baillies on the St. Andrews session. First, the session ordered the baillies to administer corporal punishment to Androw Scott until he agreed to answer the session's summons:

The quhilk day, Androw Scott quarior becaus he wes warnit to this day and conperit nocht, he is ordanit, in cais he be nocht stayit be seknes, his body to be punisit be the magistratis till he find caution to obey: the magistratis to report thair diligens this day aucht dayis.<sup>113</sup>

Baillies were called both magistrates and baillies in the register.

The same day, the session ordered the baillies to threaten Margret Stevinsoun, a third offense fornicator, with the punishment of banishment:

The quhilk day, Margret Stevinsoun callit and conperit, and being demandit quhat sche will gif for to releif hir of the civile punischement, sche being now thryis relappis in fornicatioun, offerit iii lbs., quhilk the magistratis acceptit. Sche is ordanit be the session to mak publict humiliatioun thre owkis, keipand the haille precheingis, tua owkis in hir awin habeit and the thrid in the adulteraris: and if sche fail agane in the lyke syn the magistratis ordanis hir to be banisit the boundis of this citee for evir.<sup>114</sup>

Fornication was also a civil offense, for which Margret was fined 3 pounds. Her ecclesiastical punishment was three

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<sup>113</sup>STAKSR, p.836.

<sup>114</sup>Ibid, pp.836-837.

weeks of public humiliation, probably on the stool of penitence. The first two weeks she was allowed to wear her own clothing, the third she wore the attire of an adultress. Adulterer's gowns consisted of sackcloth.<sup>115</sup> If Margret had fornicated again, she would have been banished by the civil baillies from the city. There is no record of Margret fornicating again. Margret's case is a good example of how the baillies used the kirk-session as their forum. Margret's civil fine of 3 pounds was her only civil punishment. The Burgh Court of St. Andrews does not list her fine in its register.<sup>116</sup> The session register served to record the cases crossing both jurisdictions. The baillies also fined two other couples for fornication on 26 October 1597.<sup>117</sup>

It is apparent that common people were aware of the close association between the kirk-session and the baillies. On 1 August 1599, David Broun knew where to turn to ask for the magistrates help. The session summoned David, but he feared for his safety while traveling to town. David sent a friend to the session with his request:

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<sup>115</sup>Ibid, p.lii.

<sup>116</sup>"Register of the Burgh Court of St. Andrews," MS-B65-8.

<sup>117</sup>STAKSR, p.837.

The quhilk day, Daid Broun in Coupar being chargeit to compeir this day be Mr. Adame Michell minister, to ansuer for his sclander in shedding of William Ednam his blude, comperit James Philp; and declarit that the said Daid wald compeir this day aucht dayis, if the sessioun wald request the magistratis that he mycht return without trubill or warding. The magistratis being present promittit that he sall have *tatum accessum et recessum*.<sup>118</sup>

David wished to answer the session's summons, but he feared for his safety in the city. He requested the escort of the baillies, and it was granted. Clearly, David knew that the best place to contact the baillies on this matter was at the session.

Guilds also expressed their support for the kirk-session. On 5 May 1567, the Hammermen, or blacksmiths, professed to: "gif up the practes of haldyn court for offensis governit be uthir courts jurisdictionis."<sup>119</sup> Although guild courts typically dealt with economic issues, this statute gave support to the kirk-session's power over its jurisdiction, moral regulation. By giving up the right to judge other jurisdictions, the Hammermen surely meant to honor the decisions of the kirk-session regarding moral issues. As a group without ecclesiastical or civil power,

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<sup>118</sup>Ibid, p.898.

<sup>119</sup>"The Book of the Statutes and Ordinances of the Hammermen of St. Andrews," MS DA890.S1H2, Rare Books and Manuscripts, St. Andrews University Library, St. Andrews University, St. Andrews, Scotland, fo24v.

the Hammermen's endorsement is a clear example of popular support for the kirk-session and its rulings.

In 1572 the session made use of guild cooperation and the guilds' power over their members. The kirk-session enlisted the guilds' support to compel their members to obey the session's rulings. The ministers and elders of St. Andrews stated:

*Item, siclik, it is statut and ordinat, anent the punischement of adulteraris and fornicatoris in tyme cuming, that the session send their supplication to the magistratis of this citie, to execut the actis and ordinances of the seat, and also to tak ordour wytht thame that ar warnit to compeir befoir the seat and comperis nocht; and George Blak to present the supplication and to report ansueir to the seat. And siclik the sessioun desyris the actis aganis the brakeris of the Sabbat day to be put to executioun be the magistratis in general and particular, and aganis nocht frequentaris to the sermonis, and decane of gild to do his deutie conserving the sam, [as well as] utheris magistratis and maisteris of howsis.<sup>120</sup>*

The session expected to receive full support from the civil magistrates on a daily basis. The baillies were involved in administering punishment directly from their seats on the session. It appears that the session also received enough support from the guilds to expect them to order their members to answer the session's summons as well as obey its rulings.

Common people voiced their support in a variety of

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<sup>120</sup>STAKSR, pp.373-374.

ways. The most obvious manifestation of public approval was the high rate of appearance of those called before the session. The session held no reservations about calling in the baillies to force people to appear. Rarely did it have to use this power. Only in the most obstinate cases was the baillies power invoked.

Jhone Quhitted refused several times to answer the session's summons for adultery with Bessie Gilcryst, who implicated him in her confession.<sup>121</sup> When Jhone finally appeared on 5 December 1599, the session took precautions to ensure he attended his hearing before the presbytery:

The magistratis ar desyrit to ward him quhill he find cautioun to compeir befoir the Presbiterie upon Thurisday nixt, and obey the injuncciones to be inflictit for his repentance, being ane very ignorant and unrewlie man.<sup>122</sup>

Jhone was quite simply imprisoned until his appearance before the presbytery. The presbytery heard his confession on 14 December 1599:

Compeirit Johne Quhittet in Dundie befoir wrettin and confessit the horrible fact of adulterie committit be him with Agnes Gilchrist in Sanctandros, and thairfoir the Presbyterie ordanit him to make his repentance in the kirk of Sanctandros according to the ordour.<sup>123</sup>

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<sup>121</sup>Ibid, pp.906,907,909.

<sup>122</sup>Ibid, p.911.

<sup>123</sup>"Register of the Minutes of the Presbytery of St. Andrews," MS, fo102v, 14 December 1599.

The presbytery ordered Jhone to do public repentance in the kirk of St. Andrews. Jhone's obstinacy was the exception, not the rule.

The session's register does not point out cases where neighbors brought immorality to the elders' attention. In most cases it probably wished to protect the informant's anonymity. Pressure from neighbors is evident from sinners turning themselves in for judgement without being called by the session. People certainly felt pressure from their peers to observe proper morality. The other explanation for this is the possibility of public rumor bringing knowledge of illicit actions to the session.

On 8 October 1596, George Winchister certainly felt pressure from his peers. The session had never summoned George for any matter before. George appeared of his own volition to beg forgiveness from the Kirk and his father. Without being asked or questioned about his sins, he:

...promisit nevir to hant agane in the hous of Kingkell, nor in the companie of Elspott Kingzow, and to leif godlie and honeistlie heireftir, and to use the advys and counsell of the sessioun and his father in all doingis.<sup>124</sup>

George was afraid of being disciplined for what was apparently illicit sexual dealings with Elspott Kingzow. George's fear compelled him to give his confession on his

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<sup>124</sup>STAKSR, p.821.

knees.<sup>125</sup> Obviously, the will of the community was behind the kirk-session regarding regulation of sexual morality.

Common people also gave their consent to the session's decisions through their power to elect the elders on the session. In St. Andrews, there were twelve elders on the session, each elected annually. Electors were important civil officials, university officials, and all free burgesses. Because their election was voted annually by a large spectrum of laypersons in the community, their activities regarding moral regulation reflected the wishes of the general population.<sup>126</sup> If they failed to enforce the will of the people, they simply lost re-election.

Rarely did the public object to an elder's candidacy. The rector of the university and the town's provost prepared a list of nominees before each election. In 1589, Patrik Dudingston objected to Alexander Jarden's nomination. The ministers and elders noted:

Patrik Dudingston portioner of Kyncapill,  
allegeand Mr. Alexander Jarden nicht nocht stand  
in election of ane elder, seing he wes dischargit  
be the Prisbittre fra all function in the kirk,  
and speciale to presche the Word, the sessioun  
ordanit the electioun to proceid upon the rest  
that ar nominat, and deletit the said Mr.

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<sup>125</sup>Ibid, p.821.

<sup>126</sup>Ibid, pp.1-2.

Alexander furth of the nominatioun.<sup>127</sup>

Clearly the session was concerned with the sentiments of all its parishioners. Because of only one man's objection, albeit a landowner and elder, the session struck Alexander's name from the list of those up for election. Common people held power in selecting who administered moral regulation. Electoral power gave laypersons the right to decide how discipline was applied. Because elders were frequently re-elected, it can be assumed that parishioners approved of elders' activities in regulating morality.

#### Clandestine Marriage

During the early stages of the Reformation, the ancient practice of handfasting led to a large number of clandestine marriages. Handfasting involved a promise to marry followed by intercourse and constituted a valid marriage. Still, determining validity of secret unions could be difficult. If one party denied the existence of a marriage promise, there was no valid marriage. The other party frequently had no witnesses to the exchange of marriage promise, and therefore no proof of a binding agreement. Many women promised to marry a man and subsequently consented to.

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<sup>127</sup>Ibid, p.648.

intercourse. When they could not prove the exchange of marriage promises, they had no marriage, and their honor was blemished.

Reformers set out to curb the problem of clandestine marriage in a number of ways. First, they required all marriage promises to take place in front of a church official. Promises of marriage were still binding if they took place in front of other witnesses, but the Kirk punished the parties desiring to marry for their disobedience. Secondly, the Kirk required persons to solemnize their marriage before intercourse. If people had intercourse prior to the solemnization of marriage, they were punished as fornicators. The Kirk also shortened the time between the exchange of promises and solemnization. Reducing the time was an effort to reduce the opportunity for illicit intercourse before marriage was complete. Thirdly, the Reformed Kirk made promises to marry legally binding. Apparently this was another effort to curb the sexual desires of men who lured women into bed with promises of marriage. Stained honor reduced potential for a favorable marriage. If children were born and the father denied promising marriage, the mother or her family would take full responsibility for the child. The focus of all these efforts was to protect people and their families.

On 13 February 1576, the ministers and elders of St.

Andrews decreed:

The said day, it is thocht gude that the parteis that ar to mak promis of mareage cum befoir the seat, and gyf up thair names in wryte, quhilc salbe deliverit to the redar, and the promis to be maid *per verba de futuro* in tyme cuming.<sup>128</sup>

On 26 October 1595, the session further explained its position:

Item, if ony persoun salbe knawin to gif sklender be carnall copulation befoir solemnizatioun of thair mariage, quhidder thai haif maid promis or nocht, [thai] salbe haldin to mak publict humiliatioun befoir thai be mariit, sittin upon the penitent stuill, betuix the pulpeit and publict place of repentans; and if the copulation be befoir the contract, thai salbe punisit as fornicatouris conforme to the ordour.<sup>129</sup>

The kirk-session wanted to eliminate questions of validity regarding marriage promises. Church officials were the witnesses, and the information was recorded with the Kirk. Any failure to comply would result in a charge of fornication.

People continuing to make their promises of marriage away from the Kirk were punished for their disobedience. The birth of a child to Henry Scot and Agnes Meffen brought the attention of the session. The session's questioning discovered a promise of marriage between the two. The

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<sup>128</sup>Ibid, p.422.

<sup>129</sup>Ibid, p.809.

session ordained:

The said day, Henry Scot alias Kilmoun grantis and confessis hym to have maid, and be the tenour heirof in presence of the seat makkis, promis of mariage to Agnes Meffen, be deliverance of his hand to the said Agnes; and to solempnizat the band and promis of mareage maid be hym to hir in face and visage of the kirk, opinlye, withtin yeir and day, or soner as sal pleas the kirk, quhen he sal be requirit thairto; and to mak his repentance at the sycht of the kirk according to the ordour quhenevir he salbe requirit thairto, undir al hiest paine and chaarge that eftir may fallow: and heirfor the seat ordenis the bairn, last begottin and borne betuix the saidis Henry and Agnes, to be resavit to baptisme upon Sunday nixt to cum.<sup>130</sup>

Even though Henry and Agnes had already promised each other marriage, the session made them recite their promises again, this time in front of the session. The session also ordered Henry to do public humiliation for his offense. Through his punishment, the rest of the congregation learned of the consequences for such action. Limiting the amount of time they were living in sin, the session also gave Henry and Agnes a deadline for the solemnization of their vows.

There was another effect of requiring marriage promises to be made before the Kirk. The longer people waited to solemnize their marriages after they exchanged promises, the more likely they were to have intercourse out of wedlock. Since people were required to make their marriage promises before the Kirk, the Kirk knew when promises were exchanged.

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<sup>130</sup>Ibid, pp.429-430.

Solemnization of marriage was also made before the Kirk.

When people waited too long before completing their marriage vows, the session called them in for questioning. Without a sufficient reason for delay, the session ordered couples to accomplish their union.

On 17 October 1589, the presbytery called Jon Patersoun to inquire why he had not solemnized his marriage with Elen Lermonthe:

The quhilk day Ordanis jon Patersoun younger and to solemnize his marriage w[ith] Elen Lermonthe sister to the Lard of balremy or ellis to compeir the day aucht dayis and schaw ane ressonable cause quhy he suld not do the same.<sup>131</sup>

Jon appeared on 13 November 1589 with his explanation:

The quhilk day comperit Jon patersoun younger in anser befor the presbitrie and Being examinat upon the headis of ane complaint gevin in agains him be beatrix ramsay dochter to the guidman of pittachup confessis he maid ane privat promeis of mariage To the said beatrix Incase sche bere him ane bairn and had carnall daill of hir betuix Laimbess and Michelmes wes ane yeir and forder confessis he had carnall daill with her sen the contract of mariage maid betuix him and elen lermonthe sister [to] The lard of balremy.<sup>132</sup>

Jon had a legitimate reason for stalling his marriage with Elen Lermonthe. Jon's family probably held some status in the community in order for him to be contracted in marriage

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<sup>131</sup>"Register of the Minutes of the Presbytery of St. Andrews," MS, fo 28r, 17 October 1589.

<sup>132</sup>Ibid, fo 29r, 13 November 1589.

with the sister to the Laird of Balremy. Marriages between families of status were frequently arranged by parents, or in Elen's case, her brother. Jon's family apparently was unaware of his previous promise of marriage to Beatrix. Jon probably hoped that Beatrix would give up her claim to his promise of marriage. Most likely, Beatrix was either pregnant or had witnesses to their exchange of promises. Jon's delay to the presbytery's summons suggests that he was attempting to find an alternative solution to this delicate situation. Since marriage promises were binding under the Reformed Kirk, Jon would have likely been charged to marry Beatrix. The presbytery would have punished Jon as well. Elen Lermonth would not have been punished, and would have been permitted to marry someone else. Unfortunately no further discussion of this case appears in the register.

Most cases involving delays of marriage solemnization contained no difficulties. Johne Smytth was also taking his time completing his union. The session charged him to proceed with his marriage:

The quhilk day, the seat ordenis officiar of the assembly to warne and charge Johne Smytth, cordonar, to celebrat the band of matrimony witht [blank], betwix this and Michaelmes, under paine of excommunication.<sup>133</sup>

Johne's choice was to marry or face excommunication.

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<sup>133</sup>STAKSR, p.426.

Unfortunately the scribe never came back to this entry to fill in the name of Johne's betrothed.

Reformers made promises of marriage legally binding. Because of this, persons were more likely to take marriage promises seriously and not as a method of satisfying their sexual desires. If the promise could be proven, the couple was forced to marry. Proof usually came through the testimony of witnesses. If a child was born under a woman's agreement to promise of marriage, the burden of proof fell heavily on the man. The couple was often forced to marry if the man could not offer proof against the existence of a marriage promise. Furthermore, if men made promises of marriage to multiple women, only the first promise was binding.

On 24 April 1566, Begis Watson and Walter Skaythlok were called before the session to answer to charges of fornication. Begis alleged Walter made her a promise of marriage. The session noted:

The quhilk daye, Walter Skaythlok, walcar, inhabitant in Sanctandrois, and Begis Watson, in the new myll upon Edyn, delated as fornicatoris, summond, callit and accusit. Bayth the parteis confessis carnall dayll; and Begis allegis the sam to have beyn under mutuall promys of mariaig mayd betuix tham befoyr famos wytnes, and for verificacion of the sam exhibit ane sufficient testimoniall in wryt recognoscit. In respect of the quhilk, the Superintendent, wyth avyis of the ministerie, monesis bayth the parteis to proceed

in solemnizacion of thar mariaige wythin xl dayes  
under pane of excommunicacion.<sup>134</sup>

Begis apparently suspected Walter might deny promising her marriage. She collected written proof of their promise of marriage and presented it to the session. The session's decision was easier because of the documents. After the Reformation, promises of marriage became legally binding, thereby forcing the two to marry. Also note the time frame of 40 days they had to complete their marriage. Since they had already sinned, reducing the time to marriage reduced the opportunity for them to sin again.

If a child was born after a woman agreed to a promise of marriage, the burden of proof shifted towards the man. The Kirk often forced couples to marry if the man could not offer proof against the existence of a marriage promise. On 4 April 1560, Catherine Tweddell alleged Walter Ramsay made her a promise of marriage. After the promise, she consented to intercourse, which eventually resulted in the birth of a child. According to her testimony, she consented because:

...he gaif me his fayth that he suld fulfill the  
band of mariage in faice of the congregatioun, or  
Haly Kirk, quhilk promise he diverss tyme iterate  
and renewed to me, be giving me his rycht hand,  
before I wald consent to his desyres.<sup>135</sup>

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<sup>134</sup>Ibid, pp.277-278.

<sup>135</sup>Ibid, p.29.

In cases where children were born, men were required to prove there was no promise, or marry the woman. The kirk-session attempted to look out for the children first in these cases. Walter Ramsay had no defense against Catherine, although he clearly did not wish to marry her. On 11 April 1560 the ministers and elders heard his response and made their decision:

...according to the law of God, decerness the said Walter to complete the said band with the said Catheryne, because the woman alleaget hir to haif beyne ane virgine or he gat hir, and he culd say na thing in the contrare therof, tyme and place being offered to him to object to the contrare and prief the samyn, and Walter Ramsay being demanded give he wald use ony forthir defenss in this mater, and give he knew ony lauchfull caus quhareby he mycht be absolved fra hir petitioun, he said he wald use na thing against hyr. &c.<sup>136</sup>

There is no evidence that Catherine provided any proof that Walter was the baby's father, or that he promised her marriage. Catherine held the benefit of the doubt, because the welfare of a child was at stake.

Men who made promises of marriage to more than one woman were bound to honor the first promise. The other woman was allowed to marry anyone else without restriction. Andro Lamb promised marriage to Besse Skirling and subsequently had intercourse with her. Later, he made another promise of marriage to Margaret Lamb. On 1 June

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<sup>136</sup>Ibid, pp.29-30.

1569 the session gave its decision:

...ordinat and decernit Andro Lamb to compleit the band of matrimonie wytht Besse Skirling, according to the promis thairof maid be hym to the said Bessie wytht carnal deal following thair upon, nochtwythtstanding the pretendit contract of mareage maid betwix hym laetlie and Margaret Lamb, undir panis to be injunit thairintil.<sup>137</sup>

Andro and Bessie probably received public repentance for their fornication. Margaret would have received no punishment or restrictions for her actions, as she was an innocent victim in this case.

#### Parental Rights

Recognition of parental rights with regards to marital consent received enormous emphasis during the Reformation. The Kirk safeguarded parent's rights by prohibiting minors from secretly entering into marriage. The Kirk sought to maintain honor and financial stability for families. Minimum ages for marriage were set at 14 for boys and 12 for girls. These were the ages at which they were deemed nubile. Parents were allowed to veto their children's proposed marriages if the children were still under their control. Families held the right of recourse for men taking their daughters' virginity. Family honor could be salvaged

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<sup>137</sup>Ibid, p.318.

by forcing the man to marry the daughter or pay her dowry. The Kirk's goals with all of these issues were to ensure people would contract marriages in accordance with their families' wishes and needs.

Rarely did the issue of minimum ages for marriage arise. In chapter 2, we already witnessed the case of Bessie Froster's petition to the presbytery of St. Andrews. There were reports of Bessie being as young as nine. She was not permitted to marry because of her youth. On 1 September 1568, Robert Alexander and Agnes Wischert desired to marry and petitioned the kirk-session. The session decided to:

inhibit the solemnization of mariage betwix thame, quhill the said Robert Alexander yownger war fourtein [yeris] of aige compleit; becaus the said Robert Alexander yownger confessit hymself to be bot of threttein yeris of aige at Sanct Laurence day last bipast.<sup>138</sup>

Robert and Agnes would have to wait less than a year to marry. The session held fast on the doctrine of 14 as the minimum age for marriage for men.

Children also needed their parents' permission to marry if they were still living at their parents' house. On 28 May 1572, Andro Ramsay and Jonet Smytht desired to marry. The kirk-session called Andro's father, Patrik, to ask him

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<sup>138</sup>Ibid, p.300. St. Laurence Day is the 10th of August, about three weeks prior to this entry.

if he gave his consent to the union. Andro's father's answer and the session's decision follows:

Patrik refused aluterlie to gyf his consent thairto. In respect of the quhilk, the seat ordained the said Andro to travel alwais to have his father consent for performing of his promis, uthirwayis to use the libertie that God he gevin to hym, according to the ordinance of the kirk and and privilege grantit in sic casis be the samin kirk.<sup>139</sup>

The session always supported parents' wishes. The privilege granted to Andro by the Kirk was the right of review. This right allowed children of obstinate parents to petition Church or civil officials to intervene. If the official found no legitimate reason to stop the marriage, they admonished the parents to consent to the union. If the parents further refused, the official could step in and consent to the marriage.<sup>140</sup>

Curiously, the same advice about the rights of children was not given to David Turnbill. On 17 July 1587, David's father appeared before the session to answer if he consented to his son's marriage:

The quhilk day, David Turnbill elder conperand befor the sessioun, and requerit to gif his consent to David Turnbill younger his sone to marie Cristene Mwrray, he refusit to gif the

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<sup>139</sup>Ibid, p.367.

<sup>140</sup>Cameron, The First Book of Discipline, p.192.

samyn.<sup>141</sup>

The session adhered to the requirement of parental consent for marriage. The elder David declined to give consent. The lack of future register entries suggests that his wishes were upheld.

Families held the right of recourse against men who took their daughters' virginity. Family honor was salvaged by forcing the man to marry the daughter or pay her dowry. If children were born out of a marriage promise, the man might also be forced to take responsibility for raising and educating the child.

On 2 January 1571, the session called Johne Kenlowy to answer Margaret Gibson's complaint against him. Margaret accused Johne of taking her virginity, resulting in the birth of a child. The ministers and elders of St. Andrews announced:

The said day, in the terme assignat to Johne Kenlowy to ansueir to the complent of Margaret Gibson aganis hym, comperit Johne, declaring that it was of trewtht that Margaret buir ane bairn to hym, and that he deflorit hir virginite; and thairfoir, according to the law of God, promittit to tochir hir at desyire of hir parentis, and to accept the cuir and cair on hym for upbrynging of the bairn.<sup>142</sup>

The session ordered Johne to pay Margaret's dowry, as well

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<sup>141</sup>STAKSR, p.595.

<sup>142</sup>Ibid, p.358.

as to pay for the raising of the child. It is unclear if the child remained with Margaret or went to live with John and his family.

By 1575 the General Assembly decided that the statute requiring men to pay a dowry or marry a woman after taking her virginity was invalid.<sup>143</sup> By 1582 it is apparent that the practice continued to survive without the law. On 14 February 1582, Alexander Caid paid Jonet Dewar's dowry so that he might marry Margret Crawford. The session noted the settlement:

The quhilk day, Alexander Caid oblisit him to pay to Jonet Dewar iii lbs money, befoir he be mariit with Margret Crawford; and for the samyn sche remitis him all promis of mariage maid to hir.<sup>144</sup>

Although this was essentially a buying out of marriage promise, the principles were largely the same. Alexander reduced Jonet's value in the marriage market by virtue of contracting a marriage promise with her. His payment towards her dowry was a way of restoring her value for marriage. Alexander was not legally bound to pay her dowry sum, but his payment ensured she would not contest his proposed marriage to Margret Crawford. The session showed its ability to be practical in this case and both parties

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<sup>143</sup>Thomson, Acts and Proceedings of the General Assemblies of the Kirk of Scotland, p.180.

<sup>144</sup>STAKSR, p.498.

were able to seek marriage with partners they desired.

### Adultery and Divorce

Adultery was the one legal ground for divorce. Theoretically, the penalty for adultery was death. Persons who were spared were considered legally dead with regard to their marriage. The innocent spouse had the full right of remarriage. Since the death penalty for adultery was rarely enforced, excommunication became the prescribed penalty. Excommunication was essentially corrective. Once public repentance was accomplished, the guilty received full reacceptance into the Kirk, including the right to remarry. Remarriage was allowed in order to keep the guilty from repeating the offense. Once they repented, they were absolved from guilt. By 1563 the Kirk no longer dealt with divorce issues. In 1563 the newly created commissary court in Edinburgh usurped the Kirk's authority in divorce cases.

On 20 January 1562, the session heard Archibald Philp's petition for divorce from his wife, Anne Thomson, an admitted adulterer. The ministers and elders decreed:

fyndis the sayd Archibald and Anne to have beyn mareit and that Anne hes committit adulterie; and heyrfor decernis hyr and adultrix, and the sayd Archibald to be seperated and divorciat fra hyr, and liberte to Archibald to mary ony other lawfull

wyf according to the law of God; and committis the sayd Anne be supplicacion to the magistratis of this cite, to be punest accordyng to ordor resavit and used in the same.<sup>145</sup>

Adultery was also a civil offense, therefore Anne was punished for sins by both civil and ecclesiastical authorities. Archebald for his part was relieved of his duties as Anne's husband, and was entirely free to marry any other woman he wished.

Divorce for adultery was equally available to women as men. Archebald Dundas committed adultery with two different women. Gelis Scrimgeor, his wife, desired to divorce him "wyth liberte to hyr to mare in the Lord, and he to underly disciplyn for his transgression."<sup>146</sup> Once both of Archebald's adulterous acts were proven, the ministers and elders gave their decision:

in the accione and caws of divorce intentat be Gelis Scrimgeor aganis Archebald Dundas, hyr husband, for the fylthy crym of adultery committed be hym wyth Anne Duncan and Catren Cragdenny ..... discernis the said Archebald ane adulterar; and tharfor accordyng to the law of God the sayd Gelis Scryngeour seperated and divorciat fra hym, wyth liberte to hyr in the Lord to mare ony other man, according to the law of God; and the said Archebald be supplicacion to be committed in the handis of his magistrat quhom to he is subject.<sup>147</sup>

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<sup>145</sup>Ibid, p.150.

<sup>146</sup>Ibid, p.140.

<sup>147</sup>Ibid, p.140.

Gelis received the full right of remarriage. Archebald was submitted to both ecclesiastical and civil punishments. The session feared that Archebald would not appear before the baillies. Later in this same decree, the elders ordered Archebald's son to ensure his father made his appearance.

Persons did not have to be married to commit adultery. Persons who promised to marry and later had intercourse with someone other than their betrothed were considered adulterers. The kirk-session treated betrothed persons in much the same way as if they were married. On 12 December 1565, Mathow Duplyn was called before the session. He and Eleyne Smyth had made a promise of marriage together. After the betrothal, Mathow had intercourse with another woman, Gressell Angus. Both Mathow and Gressell admitted to intercourse. From this information, the ministers and elders made their decision:

In respect of the quhilk, the sayd Mathow, as ane adulterar, and Gressell, as ane fornicatrix, ar committit to the magistratis of this cite, to be punist civile according to the municipall lawis of this realm. And the sayd Eleyne Smyth at hyr desyr decernit fred of hyr promys fra the said Mathow, and liberte to mary in the Lord wyth ony lawfull parte.<sup>148</sup>

Mathow was punished as an adulterer, not just a fornicator. The language used to describe Eleyne's freedom to contract

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<sup>148</sup>Ibid, p.254-255.

another marriage is identical to the language used for divorces involving solemnized marriages.

### Separation for Cruelty

In St. Andrews, marital squabbles were rarely perceived as dangerous enough to either party to warrant a separation. The kirk-session frequently gave couples a cooling down period before they were ordered to continue with normal marital relations. Marriage was the preferred state for adults in society. Married couples could support themselves financially. Marriage also gave persons an outlet for their sexuality. Without an acceptable outlet for sexuality, persons might seek illicit sexual liaisons.

On 27 August 1572, William Prat and Gelis Tullow were admonished by the session to assume their marital responsibilities:

The said day, William Prat is decernit be the seat to resave Gelis Tullos his spous in bed and buird, and to intrait hir as becummis ane Christiane man to intrait his spous; and als the Gelis to serve hir said spous as becummis in al tyme cuming, undir paine of excommunication.<sup>149</sup>

William and Gelis' differences must have been mild enough to warrant the immediate rejoining of their lives. The kirk-

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<sup>149</sup>Ibid, p.368.

session felt the marital state was important enough to warrant excommunication for its disruption.

Other couples' differences must have been more severe. Henry Forsyth and Marioun Paty were granted a cooling off period before they were ordered to reconcile:

The quhilk day, Henry Forsyth and Marioun Paty his spous, baith present befoir the sessioun, grantis that thai ar laidfullie mariit, thairfor thai ar decernit to adheir to gidder, as becummis mariit personis in the feir of God, in bed and buird, within xv dayis, under the pane of excommunicatioun.<sup>150</sup>

The session gave the couple two weeks to prepare themselves for reconciliation. The ministers and elders hoped that this time would soften the couple's difficulties so they could once again live together peacefully.

St. Andrews' kirk-session needed support from the general populace for moral regulation. People backed the session's decisions because they served the interests of the community. Marriage was the issue with the most common threads among all sections of society. Regulations that solidified marriages provided for stable families, and therefore a stable community. Citizens of St. Andrews desired financial and social stability. Kirk-session reform of marriage provided the community with these securities. Because of its utility to the town, marriage reform elicited

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<sup>150</sup>Ibid, pp.552-553.

a considerable level of reinforcement from the people for the session's activities.

## CHAPTER 4

## CONCLUSIONS

In St. Andrews, the kirk-session established a considerable level of regulation over marriage. The key was popular support for enforcement of good statutes. Like most early modern towns, St. Andrews was a hierarchical community. Even though this was a hierarchical society, there was strong support for the kirk-session. All sectors of St. Andrews' society backed the sessions' decisions. Merchants, artisans, and civil officials supported the session because it created an ordered society that fulfilled their needs. Merchants and artisans businesses benefitted from a stable marketplace. Good order made civic officials' jobs easier by reducing incidences requiring their involvement. Marriage reform aided families by maintaining honor and financial stability. Communities benefitted from social stability. The community also enjoyed the resulting economic stability of individuals which reduced the strain on the community poor fund. Marriage reform was the issue that found the most common interests among all these groups. Popular interests in controlling marriage led to popular

support for the kirk-session and its decrees. Without continuing popular support, the control of marriage would have been difficult.

Merchants and artisans' personal interests lay in the maintenance of a stable business market. St. Andrews' kirk-session sought to maintain a strong marketplace. In order to make ends meet, most households in sixteenth-century Scotland required the labor of both husbands and wives. When people worked together in marriage, they consumed goods and services that merchants and artisans provided. The session's work towards keeping households together benefitted business in the town. Merchants and artisans responded in kind by serving on the session's benches as elders. Elders' jobs required them to act as the investigative officers and judges in all matters of ecclesiastical discipline. Elders discovered a large amount of cases heard before St. Andrews' kirk-session and handed out punishments for offenses. Merchants and artisans made up the majority of elders on the St. Andrews session. Their diligence in administering marriage reform suggests they approved of its aims and results.

Civil authorities were equally interested in ensuring social stability. Baillies received their salaries from the taxes paid by the town's citizens. Therefore, baillies'

allegiances were to the citizens and enforcing the community's will. Baillies' elections to the session as elders made their jobs easier. The session obviously benefitted from their civil power in the enforcement of its decrees. The baillies found their jobs easier with the Kirk lending its wisdom towards the punishment of offenses that crossed both jurisdictions. Their unity enabled an efficient and successful maintenance of order toward the regulation of marriage. The combination of the two authorities gave impetus for popular compliance with matters under their collective control. Neither the Kirk nor the baillies could have united their strength without the will of the people behind them.

Support from common people for the session and its decrees was crucial for marriage reform. Without the will of the people behind it, the session's summons and rulings could have been dismissed by individuals. Like all early modern regulatory bodies, their power derived from a consensus of the recipients of their control. Popular support gave the baillies the freedom to engage actively in the session and the enforcement of its decrees. The baillies' civil power provided the strong arm for the session. Their presence allowed the session to call on them to force people to answer its summons and enforce its

decisions.

Individuals and families' concerns for marriage reform were the maintenance of family honor and finances. Stained family honor came from children marrying below their social status. Young women might be forced to marry below their station if they lost their virginity prior to contracting marriage. Families of modest means whose daughters lost their virginity often lost the prospect of marrying their daughters at all. If daughters had children out of wedlock, their value in the marriage market dropped considerably. The woman's family bore the brunt of the burden for raising the child. A single woman could not hope to earn enough to support a child. If the family lacked the means to support their daughter and her child, the burden fell on the community to support them through its poor fund.

St. Andrews' kirk-session consequently met individual and family needs for marriage reform. Parental rights with regards to marital consent served to protect families from their children marrying below their station. After the Reformation, parents could nullify their children's marriage contracts if they were made without parental permission. Parents also gained the right of recourse against men who took the virginity of their daughters. Forcing men either to marry or dower women they deflowered reduced the

families' burden to support their daughters or children born from these sexual liasons. If the daughter received a dowry, she had an opportunity to overcome her reduced value in the marriage market. If she received marriage, she had the opportunity for support within a productive household. Men could also be charged to take on the burden of raising the child or paying the mother an appropriate sum. This way the burden shifted away from the woman and her family to the child's father. Conventional wisdom prevailed as men could earn a larger salary and could provide a better existence for the child.

The protection of individuals served to protect the interests of the community. Individuals' concerns were for the maintenance of honor and finances. The community desired financial stability for individuals in order to reduce the burden on the community through its poor fund. Marriage was the state most likely to ensure financial stability for a man or woman. The community desired the kirk-session to protect the state of marriage in an effort to provide financial means for the greatest number of people.

The kirk-session protected people in an ordered hierarchy based on their ability to provide for themselves. The first order of protection was children. In all cases of

children born out of wedlock, the session took a more serious look. The session was more likely to force a couple to marry in cases involving children. Children had no means to provide for themselves; therefore, they were bound to be someone else's burden. Communities pushed for protection of children by attempting to keep their parents together in marriage. Without parental responsibility, the community was forced to assume responsibility.

The second order for protection was women. The burden of proof in disputes over marriage promises fell more heavily on the man if the woman lost her virginity in the process. Women likely received marriage in virginity cases when the man could not prove her claims wrong. The validity of the woman's claim was rarely contested. Loss of virginity made women less attractive for marriage. Women were more likely to burden their families or the community if they were unable to marry. Women's opportunities to earn enough to support themselves were fewer than men; therefore, the community desired greater economic protection for women than men.

Finally, men were protected. The session protected men from women's alleged marriage promises. Men received the benefit of the doubt when there were no children born or no loss of virginity. The burden of proof for the promise of

marriage then fell on women. The session did not force men to marry women who alleged a promise of marriage when it felt the alleged promise came about as a defense against fornication. Both parties received charges of fornication, but were not compelled to marry. Because men were more able to earn enough to support families, the community was more likely to ask them to take responsibility.

In St. Andrews, order and regulation of relationships and morals was deemed vital for social cohesiveness and harmony of the community. The kirk-session did much to satisfy this benevolent arrangement. Popular support gave the kirk-session the ability to subject persons to discipline. The will of the community lent peer pressure to adhere to the session's decisions. Those failing to adhere to the session's authority suffered sanctions within the community. Popular support also provided the session with its strong arm, the civil baillies, to enforce its decisions with civil authority. Without the community behind them, cooperation with baillies in the enforcement of marriage control would have been difficult. The key was the attempt to enforce regulations that benefitted the community. The town likely would not have supported the session if its regulations were outside of the people's interests. All institutions that attempt to enforce regulations outside of

popular interests are doomed to fail. St. Andrews' kirk-session served the interests of the community, and it flourished for centuries after the conclusion of this study. Without the beneficial nature of the session's relationship with the community, marriage reform would have been less successful, and perhaps a failure.

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