MONTANA STATE UNIVERSITY

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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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.[1] 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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[1]Jane E. A. Dawson, "'The Face of ane Perfyt 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.[2]

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.[3]

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[2]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.

[3]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.

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pp. 56-59.

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."[4] 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 prelates for the Catholic faith, and

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[4]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.[5]

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.[6] 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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[5]David Patrick, ed., Statutes of the Scottish Church, 1225-1559 (Edinburgh: Scottish History Society, 1907), p. 143.

[6] 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 occured 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.[7]

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.[8]

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 superstitioun, 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 countrye frome the tirranie

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[7]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.

[8]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 accompleiss these
premisses, is to us unknawin....[9]

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 Churche and

citie of the warld, Geneva."[10]

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.[11]

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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[9]Laing, The Works of John Knox, vol. 2, p. 24.

[10]Ibid, vol. 2, p. 16.

[11]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.[12]

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 greadelie gripped to the possessionis
> of the Kirk; and otheris thought that thei wald
> nott lack thair parte of Christis coat.[13]

There was another reason Members of Parliament hesitated

from taking benefices away from the nobles. Francis II died

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[12]Ibid, pp. 115-116.

[13]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.[14]

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.[15] 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.[16] Kirk-sessions were extremely

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[14]Ibid, vol. 2, p. 110. Also The Acts of the
Parliaments of Scotland, 1424-1707, p. 31.

[15]Laing, The Works of John Knox, vol. 4, p. 240.

[16]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 reproving 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.[17]

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

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.

[17]Cameron, The First Book of Discipline, pp. 165-167.

the same way.[18]

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.[19]

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

[19]Cameron, <u>The First Book of Discipline</u>, p. 170. This view of excommunication is strikingly similar to Calvin's. Calvin calls excommunication "corrective". See: McNeill, <u>Calvin: Institutes of the Christian Religion</u>, 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.[20] 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.[21]

Elders were the first line of defense against moral

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

[21]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.[22]

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 Perfyt Reformed Kyrk"

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

> ...the face of ane perfyt 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.[23]

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[22]"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.

[23]Quoted in Jane E.A. Dawson, "'The Face of ane Perfyt 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.'[24] 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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[24]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.[25] 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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[25]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.[26] 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.[27]

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.[28]

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

[27]"The Presbytery Book of St. Andrews," MS, Rare Books and Manuscripts, St. Andrews University Library, University of St. Andrews, St. Andrews, Scotland.

[28]Jane E.A. Dawson, "'The Face of ane Perfyt 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.[29]

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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[29]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.[30] 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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[30]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.[31] 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.[32] 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.[33]

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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[31]John C. Barry, ed. and trans., William Hay's Lectures on Marriage (Edinburgh: Stair Society, 1967).

[32]Ibid, pp. 257, 275.

[33]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.[34] 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.[35] 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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[34]Sir James Balfour, Practicks: Or a System of the More Ancient Law of Scotland (Edinburgh: Thomas and Walter Ruddimans, 1754).

[35]Barry, William Hay's Lectures on Marriage, p. 285.

with the law.[36] 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.[37] Greed of the jurists

overshadowed Hay's idealistic 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.[38] Betrothal was a contract initiated by the free

consent of the parties.[39] It was a promise to marry in the

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[36]Ibid, p. 285, 287.

[37]Ibid, p. 289.

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

[39]Barry, <u>William Hay's Lectures on Marriage</u>, 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.[40] 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.[41] Although the Church demanded the presence of a priest, there is little evidence that this decree was systematically enforced.[42]

The presence of a church official was not required. Unless there were impediments, nothing prevented couples from contracting a valid marriage secretly.[43] 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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[40]Ibid, p. 7.

[41]A. E. Anton, "'Handfasting' in Scotland," The Scottish Historical Review 124 (October 1958): p. 193.

[42]Brundage, Law, Sex, and Christian Society in Medieval Europe, p. 436.

[43]Ibid, p. 31.

publicly solemnized.[44] Children of a public marriage were

legitimate even if the union later proved to be invalid.[45]

The Church compelled those secretly married to receive the

sacrament's blessing in the church before witnesses, or *in

facie ecclesiae*.[46] There was legislation against

clandestine marriage, but little enforcement or success in

suppressing the practice is evident.[47]

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.[48] The Archbishop also noted that

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[44]From the Fourth Lateran Council of 1215. See
Brundage, Law, Sex, and Christian Society in Medieval
Europe, p.362.

[45]Barry, William Hay's Lectures on Marriage, p. 31.

[46]Brundage, Law, Sex, and Christian Society in Medieval
Europe, pp. 362, 437.

[47]Ibid, p.437. Also see Patrick, Statutes of the
Scottish Church, pp. 64, 72, 142-143.

[48]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.[49]

The ancient marriage custom in Scotland called for
betrothal followed by intercourse. Once intercourse had
occured, the couple was married. There are a number of
reasons Scots practiced this custom, known as
"handfasting".[50] 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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[49]Barry, <u>William Hay's Lectures on Marriage</u>, p.
XXXVIII.

[50]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.[51]

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.[52] 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.[53]

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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[51]Quoted in ibid, p. 89.

[52]Ibid, p. 89.

[53]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.[54]

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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[54]Balfour, Practicks, p. 95.

illegitimation of children for those failing to conform.[55]

The Scottish church echoed the decrees of the council:[56]

> 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.[57]

Penalties for those withholding information about someone's

impediment while hearing their neighbors' banns proclaimed

were also made statute.[58]

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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[55]Brundage, Law, Sex, and Christian Society in Medieval
Europe, p. 362.

[56]Patrick, Statutes of the Scottish Church, pp. 39, 44,
63, 71-72, 142-143.

[57]Ibid, p. 39.

[58]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.[59]

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.[60]

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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[59]Ibid, p. 72.

[60]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.[61]

Besides, it was bad business to allow marriages to take

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[61]Patrick, <u>Statutes of the Scottish Church</u>, 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.[62]

Diriment impediments were those sinful to ignore, but

dispensable without losing the validity of the marriage.[63]

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.[64]

These conditions were unusual. Because of the rarity of

their occurrence, these conditions deserve only a passing

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

[63]Ibid, p. 47.

[64]Stair Society, <u>An Introduction to Scottish Legal
History</u> (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.[65] 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.[66] 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.[67]

Impotence was classified as a diriment impediment.

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[65]Ibid, p. 75.

[66]Barry, William Hay's Lectures on Marriage, pp. 111, 155.

[67]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.[68] If impotence began before the marriage, the potent party could receive an annulment, giving them permission to remarry.[69] 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.[70] 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.[71] 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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[68]Ibid, p. 109-111.

[69]Ibid, p. 119. The impotent person must then remain unmarried.

[70]Ibid, p. 253.

[71]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.[72]

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.[73]

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

[73]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.[74] 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.[75] 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.[76]
Because dispensations might take two or three years,[77] Some
couples chose to have their marriage conveniently annulled,

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[74]Ibid, P. 92.

[75]Ibid, p. 80.

[76]Ibid, p. 78. Also see: Cameron, The First Book of
Discipline, p. 191n.

[77]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."[78] The other party was innocent and could petition for separation

[78]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.[79]

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.[80] 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.[81]
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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[79]Ibid, p. 63.

[80]Ibid, p. 69.

[81]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 acknawlege 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
> mantenance of the trew religioun and for
> suppressin of Idolatrie and superstitioun
> quhatsaever.[82]

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[82]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.[83]

In 1567, one of these acts proposed the death penalty

for incest and adultery.[84] 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*.[85]

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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[83]Ibid, pp. 42, 46, 71-73, 74, 92.

[84]Ibid, p. 42.

[85]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.[86] 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.[87] 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.[88]

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[86]"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.

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

[88]"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.[89]

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.[90]

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.[91]

1566(no foliation).

[89]Cameron, The First Book of Discipline, p. 173.

[90]McNeill, Calvin: Institutes of the Christian Religion, p. 1235.

[91]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.[92] 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 acknowleged 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

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.

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