

**Sex in Two Cities:
The Formation and Regulation of Sexual Relationships in
Edinburgh and York, 1560 to 1625**

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Abstract

Through a comparison of two early modern cities, Edinburgh and York, this thesis brings together the literature on social reform, transition and change in post reformation England and Scotland and the growing body of work examining the construction of gender identities. It examines how ideas about sexual interaction shaped the language of insult, the ways in which men and women constructed social identities through their choice of sexual partners, how they carried out their roles as parents and spouses, and how they were affected by marriage and its disintegration. This thesis uses the institutions of religious and moral reform, the church courts of York and the Kirk Session in Edinburgh, to examine not only how men and women contested their social identities with each other but also with these institutions. The depositions of the York courts and the minutes of the session provide a unique insight into the local disputes that caused friction between men and women, and the ways that men and women employed the language and rhetoric of the courts to their own ends. This thesis argues that the negotiation of sexual identity was a social enterprise in which individuals, communities and the church all participated, each asserting or assigning sexual responsibility and culpability.

Within the legal systems of Edinburgh and York men and women were, theoretically, held equally accountable for sexual transgression. However, women found that it was their reputations that were damaged by extra-marital sex, that it was their behaviour that formed the basis of household honour. This thesis shows that this double standard could both empower women as they negotiated courtships and disempowered them in the language of reputation and popular culture. Rather, men and women negotiated sexual and social identities, using the courts to form and dissolve relationships, and to negotiate and contest responsibility for the reputational, disciplinary and parental consequences of sex. This thesis demonstrates how, within both cities, the language of sex manipulated ideas about gender and the body. Insults used animal imagery and the language of sexual infection to attack reputations. Women were attacked using distinctly sexual words, whilst male insults more frequently encompassed economic and domestic honour. Yet this thesis argues that these words could also be used across gender, for example, men were frequently called whore. It goes on to argue that, for men, the recognition of fatherhood was made distinct from their marital responsibilities to the mothers of their children. For many fatherhood was based on social rather than biological connections to the child, connections that were ascribed by the community who observed behaviour and assigned parental status. Ultimately this thesis argues that, whilst the reformation had a distinct impact on the institutional, religious and social cultures of each city and nation, the causes and disputes that brought men and women before the church courts of each nation remained remarkably similar.

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All mistakes and flaws contained herein are, of course, my own.

Abbreviations and Conventions

Throughout this thesis I have not anglicised the lowland Scots within the session minutes, though I have endeavoured to make the meaning of the sources as clear as possible. In accordance with this I have kept the form of numbers recorded within the documents, only modernising in my own analysis.

The year has been taken to start on 1 January.

<i>APS</i>	<i>Acts of the Parliament of Scotland 1124-1707</i> , 12 Vols., Edinburgh: For George III, 1814-1875.
Borthwick	Borthwick Institute for Archives
<i>BUK</i>	<i>Booke of the Universall Kirk of Scotland</i> , 3 Vols., Edinburgh: The Bannatyne Club, 1839.
<i>DSL</i>	Dictionary of the Scots Language, Online, 'http://www.dsl.ac.uk/dsl/'
<i>Ed. Recs. I</i>	<i>Extracts from the Records of the Burgh of Edinburgh: AD 1403-1589</i> , 4 Vols., Edinburgh: Scottish Burgh Records Society, 1892
<i>Ed. Recs. II</i>	Marguerite Wood (ed.), <i>Extracts from the Records of the Burgh of Edinburgh: AD 1589 to 1603</i> , Edinburgh: Oliver and Boyd, 1927.
<i>Fasti</i>	<i>Fasti Ecclesiae Scoticae: the succession of ministers in the Church of Scotland</i> , New Ed., Vo 1., 'Synod of Lothian and Tweeddale', Edinburgh: Oliver and Boyd, 1915.
<i>Knox, Works</i>	John Knox, <i>The Works of John Knox</i> , D. Laing (ed), 6 Vols, Edinburgh: for The Wodrow Society, 1895.
NAS	National Archives of Scotland
<i>DNB</i>	Oxford Dictionary of National Biography, Online, 'http://www.oxforddnb.com/'
<i>OED</i>	Oxford English Dictionary, Online 'http://www.oed.com/'
<i>Raine, YCR</i>	Angelo Raine (ed), <i>York Civic Records</i> , Vol. 6-9, York: The Yorkshire Archaeological Society, 1946.
<i>TRHS</i>	<i>Transactions of the Royal Historical Society</i>

Introduction

Although there want not (good Christian people) great swarmes of vices worthy to be rebuked (unto such decay is true Godliness, and vertuous living now come:) yet above other vices, the outrageous Seas of adultery (or breaking of wedlocke) whoredome, fornication, and uncleannesse, have not only burst in, but also overflowed almost the whole world unto the great dishonour of GOD, the exceeding infamy of the name of Christ, the notable decay of true Religion, and the utter destruction of the publique wealth, and that so abundantly, that through the customable use thereof, this vice is growne unto such an height, that in a manner among many, it is counted no sinne at all, but rather a pastime, a dalliance, and but a touch of youth: not rebuked, but winked at: not punished, but laughed at.

*A Sermon Against Whoredome and Uncleannesse*¹

Through an analysis of two broadly comparable cities, Edinburgh and York, this thesis brings together two historiographical traditions: the extensive literature on social reform, transition and change in England and Scotland throughout the sixteenth and seventeenth centuries and the growing body of work examining the construction and negotiation of gender identities within each country. It does so in order to explore the social and institutional understandings of, and attitudes towards, the relationships formed between men and women. It examines how ideas about sexual interaction shaped the language of insult, the ways in which men and women constructed social identities through their choice of sexual partners, how they carried out their roles as parents and spouses, and how they were affected by marriage and its disintegration. This thesis situates these elements of sexual and social interaction in relation to the institutions of religious and moral reform, the church courts of Edinburgh and York. It examines not only how men and women contested their social identities with each other but also with these institutions.

In asking how early modern reputation was gendered this thesis thus builds upon the work of Gowing, Shepard, Capp and Ingram. Drawing on the analyses of both Wrightson and McIntosh it asks how far a moral code was enforced through institutional and hierarchical mechanisms. And, following on from the continental

¹ 'Against Whoredome and Uncleannesse', *Certaine Sermons or Homilies Appointed to be read in Churches. In the time of the Late Queene Elizabeth of Famous Memory* (London, 1635), 78.

studies of Roper and Scribner, this thesis assesses the role of Protestantism in the construction of a new moral order. However, it also asks how men and women participated in this moral programme and how they engaged in the construction and interpretation of gender identities.

The concern for sexual morality, reputation and honour in the cities of early modern Europe was played out in ecclesiastical and civic courts where men and women asserted, contested and shaped their relationships with the opposite sex and with their communities. In both England and Scotland reform impacted upon all sections of society, as institutional and moral structures were reshaped in the light of the new religious ideology. This re-forming of social and moral discipline was particularly felt in Scotland as the Calvinist ideals of reformers such as John Knox became enshrined in civic and ecclesiastical ordinances and as the Kirk came to dominate religious and political cultures after 1560. The role of the congregation in shaping the godly community was central to this new Presbyterian system. Yet the political and religious reform of the 1560s did not bring stability and there was a constant tension in the ensuing hundred and fifty years between the reformers' ideals and Scottish political reality. In England meanwhile, the accession of Elizabeth to the throne in 1558 marked a reinvigoration of a Protestant political, social and religious agenda. English reform was more centralised than their Scots neighbours, maintaining an Episcopal Church structure that kept the monarch and social elites at the centre of religious decision making, whilst adopting the forms and morals that underscored the Protestant movement more broadly.²

However, in both England and Scotland the reformation of religion was about more than elite religious and political machinations or theological debates. Reform was a means by which to draw the population into a religious movement that was a moral, cultural and social enterprise, which sought to reform the behaviour of the whole population. This thesis draws on the work of Roper, Scribner, and Ozment and Todd's excellent study *The Culture of Protestantism in Early Modern Scotland* to produce a

² A limited Episcopacy was maintained in Scotland, though the power of Bishops was heavily curtailed under the new Kirk. However, this did lead to a growing tension between Presbyterian and Episcopal factions within the Kirk and Scottish politics, particularly in the initial decades of the seventeenth century. Alan R. MacDonald, 'James VI and I, the Church of Scotland and British Ecclesiastical Convergence', *Historical Journal*, 48:4 (2005), 885-903.

moral history of the reformation, a social, rather than just a theological history of religion, thereby assessing the cultural impact of religion. Reform reshaped the institutions through which ordinary men and women were monitored and regulated, and through which they could participate in a dialogue with their religion.³ In both Edinburgh and York the men and women who sought out the courts and those presented before them participated in a process of reforming both religion and behaviour. They did so by co-operating with their churches, by rebelling against them and by engaging in a dialogue with the rhetoric espoused by men such as Knox and Melville, and by English ministers as diverse as William Whately, William Gouge and Henry Smith.

The dominant discourse of heterosexuality in both England and Scotland ensured that male and female gender identities were interconnected. The relationship between male and female sexual and social identity has frequently been subordinated to more discrete analyses of “female” and “male” genders. These studies have been necessary to set the terms by which we can understand how male and female experiences differ and how those experiences and identities can be thought about in relation to each other. However, as Bailey has observed, ‘[t]o understand female experience and identity formulation ... it is necessary to investigate gender relationships between women and men, and to explore men's identities and their ability to achieve and exercise patriarchal power over women as well as over each other.’⁴

Gowing's work on middling- and lower-status women has not only provided a solid methodology by which to assess plebeian sexual cultures but has also situated women's experiences firmly within the urban marketplace as well as within the

³ Lyndal Roper, *The Holy Household: Women and Morals in Reformation Augsburg* (Oxford, 1989); idem, *Oedipus and the Devil: Witchcraft, sexuality and religion in early modern Europe* (London, 1994); Robert W. Scribner, *For the Sake of Simple Folk: Popular propaganda for the German Reformation* (Oxford, 1994); idem, *Popular Culture and Popular Movements in Reformation Germany* (London, 1987); idem, ‘Reformation, Carnival and the World Turned Upside-Down’, *Social History*, 3:3 (1978), 303-329; idem, ‘Reformation and Desacralisation: From Sacramental World to Moralised Universe’, in R. Po-Chis Hsia and R. W. Scribner (eds), *Problems in the Historical Anthropology of Early Modern Europe* (Wiesbaden, 1997), 75-92; Steven E. Ozment, *The Reformation in the Cities: The appeal of Protestantism to sixteenth-century Germany and Switzerland* (New Haven, 1975); idem, *When Fathers Ruled: Family Life in Reformation Europe* (Cambridge (Mass.), 1983); Margo Todd, *The Culture of Protestantism in Early Modern Scotland* (London, 2002).

⁴ Joanne Bailey and John Arnold, ‘Is the Rise of Gender History ‘Hiding’ Women from History Once Again?’, *History in Focus*, issue 8, Spring (2005), [<http://www.history.ac.uk/ihr/Focus/Gender/articles.html>] (29 November 2006).

domestic sphere. Her work both challenges and contextualises the ways that women were subjugated under the ideology of patriarchy.⁵ In addition to Gowing's work, the experiences of women in England have featured prominently in the historiography of the period.⁶ The transition from Women's History to gender history has been accompanied by an interest in male identities and has produced complementary though distinct studies by Shepard, Foyster and others. Foyster's work in particular, which focuses on the seventeenth and early eighteenth centuries, situates male identities in relation to marriage, the family and sex: in other words to women.⁷ The regional studies of Ingram and Adair situate illicit sexual relationships within demographic and institutional contexts, providing a firm basis on which to ground

⁵ Laura Gowing, *Common Bodies: Women, Touch and Power in Seventeenth-Century England* (London, 2003); idem, *Domestic Dangers: Women, Words and Sex in Early Modern London* (Oxford, 1996); idem, "'The Freedom of the Streets': Women and social space, 1560-1640", in Paul Griffiths and Mark S. R. Jenner (eds), *Londinopolis: Essays in the cultural and social history of early modern London* (Manchester, 2000), 130-151; idem, 'Gender and the Language of Insult in Early Modern London' *History Workshop Journal*, 35 (1993), 1-21; idem, 'Language, Power and the Law: Women's slander litigation in early-modern London', in Jennifer I. Kermode and Garthine Walker (eds), *Women, Crime and the Courts in Early Modern England* (Chapel Hill, 1994), 26-47; idem, 'Ordering the Body: Illegitimacy and female authority in seventeenth-century England', in Michael J. Braddick and John Walter (eds), *Negotiating Power in Early Modern Society: Order, hierarchy, and subordination in Britain and Ireland* (Cambridge, 2001), 43-62; idem, 'Secret Births and Infanticide in Seventeenth-Century England', *Past & Present*, 156 (1997), 87-115.

⁶ Anne Laurence, *Women in England, 1500-1760: A social history* (London, 1994); Lynn Botelho and Pat Thane (eds), *Women and Ageing in British Society Since 1500*, (Harlow, 2001); Bernard Capp, *When Gossips Meet: Women, family, and neighbourhood in early modern England* (Oxford, 2003); Lindsey Charles and Lorna Duffin (eds), *Women and Work in Pre-Industrial England* (London, 1985); Kenneth Charlton, *Women, Religion, and Education in Early Modern England* (London, 1999); A. Clark, *Working Life of Women in the Seventeenth Century* (London., 1968); Amy Louise Erickson, *Women and Property in Early Modern England* (London, 1993); Valerie Fildes (ed), *Women as Mothers in Pre-industrial England: Essays in memory of Dorothy McLaren*, (London, 1990); Lorna Hutson, *The Usurer's Daughter: Male Friendship and Fictions of Women in Sixteenth Century England* (London, 1994); Sarah Mendelson and Patricia Crawford, *Women in Early Modern England, 1550-1720* (Oxford, 1998); Christine Peters, *Patterns of Piety: Women, gender and religion in the late medieval and reformation England*, (Cambridge, 2003); Mary Prior (ed), *Women in English Society, 1500-1800* (London, 1996); Margaret R. Sommerville, *Sex and Subjection: Attitudes to Women in Early-Modern Society* (London, 1995); Tim Stretton, *Women Waging Law in Elizabethan England* (Cambridge, 2004); Joy Wiltenburg, *Disorderly Women and Female Power in the Street Literature of Early Modern England and Germany* (Charlottesville, 1992).

⁷ Alexandra Shepard, *Meanings of Manhood in Early Modern England* (Oxford, 2003); Elizabeth Foyster, *Manhood in Early Modern England: Honour sex and marriage* (London, 1999). See also: Anthony Fletcher, 'Men's Dilemma: The Future of Patriarchy in England 1560-1600', *TRHS*, 6th ser, 4 (1994), 61-81; idem, "Manhood, the Male Body, Courtship and the Household in Early Modern England", *History [GB]*, 84: 275 (1999), 419-436; Thomas A. Foster, 'Deficient Husbands: Manhood, Sexual Incapacity, and Male Marital Sexuality in Seventeenth-Century New England', *William and Mary Quarterly*, 3rd series, 56: 4 (1999), 723-744; Andrew P. Williams (ed), *The Image of Manhood in Early Modern Literature: Viewing the Male* (Westport, Conn., 1999); Susan Dwyer Amussen, "The Part of a Christian Man": The cultural politics of manhood in early modern England", Susan Dwyer Amussen and Mark A. Kishlansky (eds), *Political Culture and Cultural Politics in Early Modern England: Essays Presented to David Underdown* (Manchester, 1995) 213-233; Karen Harvey and Alexandra Shepard, 'What Have Historians Done with Masculinity? Reflections on Five Centuries of British History, circa 1500-1950', *Journal of British Studies*, 44: 2 (2005), 274-80.

studies such as this.⁸ Meanwhile the more recent work of O'Hara and Bailey's study of the later seventeenth and eighteenth centuries have used the formation and dissolution of relationships as a means to bring together male and female experiences in early modern England, locating gendered sexual interaction within the marital narrative that was so dominant in contemporary understandings of appropriate sexual behaviour.⁹ Whilst spanning a period of time that saw many changes in the legal and cultural position of women, religion and marriage, these studies add to a rich historiography of sex, marriage and separation in early modern England.¹⁰

As far as Scotland is concerned much work remains to be done, not only to construct a gendered understanding of the period, but also to look across the social strata. The records of the early modern church courts, an invaluable resource in English social and cultural history, are only beginning to be mined for their insights into the living, working, religious and sexual lives of the Scots population, the fullest study so far having been conducted by Todd.¹¹ Whilst Ewan is conducting valuable research into gender and social control during both the fifteenth and sixteenth centuries,¹² and

⁸ Richard Adair, *Courtship, Illegitimacy, and Marriage in Early Modern England* (Manchester, 1996); Martin Ingram, *Church Courts, Sex and Marriage in England, 1570-1640* (Cambridge, 1990).

⁹ Joanne Bailey, *Unquiet Lives: Marriage and marriage breakdown in England, 1660-1800* (Cambridge, 2003); Diana O'Hara, *Courtship and Constraint: Rethinking the making of marriage in Tudor England* (Manchester, 2000), and 'The Language of Tokens and the Making of Marriage', *Rural History*, 3 (1992), 1-40. See also, Jennifer, McNabb, 'Ceremony Versus Consent: Courtship, Illegitimacy, and Reputation in Northwest England, 1560-1610', *Sixteenth Century Journal*, 37:1 (2006), 59-81

¹⁰ Catherine Bates, *The Rhetoric of Courtship in Elizabethan Language and Literature* (Cambridge, 1992); John R. Gillis, *For Better, For Worse: British marriages, 1600 to the present* (New York, 1985); Alan Macfarlane, *Marriage and Love in England: Modes of Reproduction 1300-1840* (Oxford, 1986); Lawrence Stone, *The Family, Sex and Marriage in England 1500-1800*, Abridged ed. (London, 1990); David M. Turner, *Fashioning Adultery: Gender, Sex and Civility in England, 1660-1740* (Cambridge, 2002); Cf., Phillips, Roderick, *Untying the Knot: A short history of divorce* (Cambridge, 1991); idem, *Putting Asunder: A history of divorce in Western Society* (Cambridge, 1988); R. B. Outhwaite (ed), *Marriage and Society: Studies in the social history of marriage* (London, 1981), this collection contains one essay on Scotland, T. C. Smout's 'Scottish Marriage, Regular and Irregular 1500-1940', 204-36. On comparative studies see also, Wiltenburg, *Disorderly Women and Female Power in the Street Literature of Early Modern England and Germany*.

¹¹ Todd, *Culture of Protestantism*; Michael F. Graham, *The Uses of Reform: 'Godly Discipline' and popular behaviour in Scotland and Beyond, 1560-1610* (Lieden, 1996); Leah Leneman, and Rosalind Mitchison, *Girls in Trouble: Sexuality and social control in rural Scotland 1660-1780* (Edinburgh, 1998); idem, *Sin in the City: Sexuality and social control in urban Scotland 1660-1780* (Edinburgh, 1998); John G. Harrison, 'Women and the Branks in Stirling, c. 1600 to c. 1730' in *Scottish Economic and Social History*, 18: 2 (1999), 114-131.

¹² These include the online bibliography, <http://www.uoguelph.ca/~ewan/>, and an ongoing research project, 'Misbehaviours and Gender in 16th-Century Scottish Towns'. Elizabeth Ewan, 'Crime or Culture? Women and Daily Life in Late Medieval Scotland', Brown and Ferguson (eds), *Twisted Sisters: Women, Crime and Deviance in Scotland since 1400*, (East Linton, 2002), 117-36; idem, "For

Graham's invaluable *Uses of Reform* has demonstrated the wealth of material available to the historian of the Scottish reformation and the comparative potential of the Scottish consistory,¹³ the sorts of gendered studies that abound in English historiography have not yet been published with regard to Scotland. As Graham laments, church court sources have generally been used to provide illustrative episodes in 'a handful of local or regional studies'.¹⁴ A number of studies have tied Scottish religious and political experiences of this era into broader Continental or Isle narratives of the period.¹⁵ However, these comparative approaches need to be pushed further to develop our understandings not only between countries, but also within them. This is not an exclusively Scottish problem. Both Graham and Ewan champion a comparative approach to Scottish History. Yet, there has been a relatively small output on the gender history of early modern Scotland, let alone work that integrates the English or Continental narratives of gendered experiences.¹⁶ Even the groundbreaking studies of sexual and social regulation of Leneman and Mitchison¹⁷ lack the comparative analysis that this material cries out for.

Whatever Ales Ye': Women as Consumers and Producers in Late Medieval Scottish Towns', in Elizabeth Ewan and Maureen Meikle (eds), *Women in Scotland, c. 1100 - c. 1750* (East Linton, 1999), 125-36; idem, 'Many Injurious Words': Defamation and Gender in Late Medieval Scotland', in Russell Andrew McDonald, *History, Literature, and Music in Scotland, 700-1560* (Toronto, 2002), 163-86; idem, 'To the Longer Liver': Provisions for the dissolution of the marital economy in Scotland, 1470-1550', in Maria Ågren and Amy Erickson (eds), *The Marital Economy in Scandinavia and Britain, 1400-1900* (Aldershot, 2005), 191-206; idem, 'A Realm of One's Own? The place of medieval and early modern women in Scottish history', in Terry Brotherstone, Deborah Simonton, and Oonagh Walsh (eds), *Gendering Scottish History: An international approach* (Glasgow, 1999), 19-36.

¹³ Graham, *Uses of Reform*.

¹⁴ Graham, *Uses of Reform*, 75.

¹⁵ Bruce Lenman, 'The Limits of Godly Discipline in the Early Modern Period with Particular Reference to England and Scotland', Kasper Von Greyerz, *Religion and Society in Early Modern Europe* (London, 1984), 124-45; Keith Wrightson, 'Kindred Adjoining Kingdoms: An English perspective on the Social and economic history of early modern Scotland', R. A. Houston and I. D. Whyte (eds), *Scottish Society 1500-1800* (Cambridge, 1989), 245-260; Macdonald, 'James VI and I, the Church of Scotland and British Ecclesiastical Convergence', 885-903; Michael F. Graham, 'Social Discipline in Scotland, 1560-1610', Raymond A. Mentzer, *Sin and the Calvinists: Morals control and the consistory in the reformed tradition*, (Kirksville, Mo., 1994), 129-58; Geoffrey Parker, 'The "Kirk by Law Established", and the Origins of the Taming of Scotland: Saint Andrews 1559-1600', Raymond A. Mentzer, *Sin and the Calvinists: Morals control and the consistory in the reformed tradition*, (Kirksville, Mo., 1994), 159-97.

¹⁶ Ewan, 'A Realm of One's Own?' 24. The claim that 'Comparative studies have suggested that Lowland women's lives were similar to those of other women in north-west Europe' is left unfortunately unsubstantiated.

¹⁷ Leneman and Mitchison, *Girls in Trouble*; idem, *Sin in the City*. Leah Leneman, *Alienated Affections: The Scottish experience of divorce and separation, 1684-1830* (Edinburgh, 1998); 'Defamation in Scotland, 1750-1800', *Continuity and Change*, 15:2 (2000), 209-34; idem, 'Marriage North of the Border', *History Today*, 50:4 (2000), 20-25; idem, 'Clandestine Marriage in Scottish Cities, 1660-1780', *Journal of Social History*, 26: 4 (1993), 845-861; idem, 'Scottish Illegitimacy Ratios in the Early Modern Period', *Economic History Review*, 2nd ser., 40 (1987), 41-63.

Why Compare?

There is good cause to look more carefully at the social and cultural relationships between England and Scotland in this period, particularly after 1603. Yet it must be remembered that throughout the period of this study these nations remained distinct political, religious and legal entities. Indeed, any concept of 'Britain' was very much in its embryonic stages and was understood in diplomatic rather than social or political terms. Understandings of this 'British' identity were heavily structured by English perceptions of her immediate neighbours during the early modern era, with unity of the Isle being a cause initially championed by Henry VIII.¹⁸ Yet, Scotland remained as separate and distinct from England as France or Spain in terms of social, political and religious ideology and practice. It was only with the accession of James I (and VI) - a Scot - to the English throne in 1603 that the notion of a 'Great Britain' was openly introduced or even talked about in political spheres, in either London or Edinburgh.¹⁹ Yet the geographical nature of the Isles has led some prominent historians, such as Norman Davies, to draw associations between Scottish and English political and social systems as if congruity existed at this time, as if geographical closeness bred political and cultural affinity; or in his configuration, 'all parts of the Isles subordinated in one degree or another to the dominant English Crown'.²⁰ This was not the case. The two nations looked to each other, as good and bad example, as ally and as enemy. However, when it came to the calls for institutional, social and religious development the ideology and implementation of reform in these two nations differed markedly. The needs and desires for change diverged in the two cities of Edinburgh and York. Yet, a comparison of these neighbouring nations can prove useful. As Keith Wrightson has observed 'consideration of the distinctive structures of

¹⁸ Rosalind Mitchison, *A History of Scotland* (London, 2002), 103 ff. Though Henry VIII looked to the Scots more as a means to ensure French alliance than as an ally in their own right.

¹⁹ Jenny Wormald, 'James VI, James I and the Identity of Britain' in Bradshaw, and Morrill (eds), *The British Problem, c. 1534-1707* (London, 1996), 148. On his ascension to the throne of England James VI/I proclaimed that he was 'King of Great Britain, Ireland and France.' This was the first political and royal expression of the empire of the British using such terminology. This article demonstrates how a claim to Britishness, rather than an assertion of English dominance within the Isle, could indeed heighten the importance and position of Scotland within such a political formulation. The article asserts the strength of the Scottish nation at the end of the sixteenth century and highlights the significance of a Scottish King ascending the throne of England.

²⁰ Norman Davies, *The Isles: A History* (Basingstoke, 1999), 411. See chapter 10, 'The Englished Isles, 1326-1603'.

Scottish economic life and its different chronologies of change can illuminate powerfully the alternative possibilities which the period contained'.²¹

The social, cultural and economic links between England and Scotland during this tumultuous period provide the basis for a strong comparative study. Whilst there were linguistic differences which will be explored in the following section, there were also similarities in the language and culture of the north of England and southern Scotland. There were also distinct economic and political similarities in spite of Lynch's observation that 'Edinburgh in the sixteenth century was certainly larger than the important provincial towns of Bristol, York and Exeter'. Lynch choose to compare the demography of Edinburgh with Norwich,²² both cities approaching a population of c. 20,000 in 1600, whilst York's population remained steady at between 9,000 and 12,000 into the seventeenth century.²³ However, using poll tax returns to estimate the population of Edinburgh in the mid to later seventeenth century Dingwall reckons that the numbers within the walls of Edinburgh were nearer York's population at 12,000, with a further 6,000 to 8,000 living in the suburbs of the Canongate, South Leith and St Cuthbert's.²⁴ Edinburgh and York were both centres of political and religious administration in the later sixteenth century, with the Scottish Crown housed at Holyrood,²⁵ and the King's Council in the North established in York.²⁶ In both cities the regional politics of the reformation were played out as burgh courts negotiated and co-operated with the church courts.

The Scottish capital was made up of two main parishes. Within the walls, the central politically important city parish of Edinburgh was administered from St Giles. The suburban parish of St Cuthbert's, or the West Kirk, skirted the walls of the city, breaching the wall on the south-side to include the Potterow and Cowgate. These two parishes co-operated and to some degree shared jurisdictions, as many of the men and women who worked within the walls were officially resident within the suburban

²¹ Keith Wrightson, *Earthly Necessities* (London, 2000). 26.

²² Michael Lynch, *Edinburgh and the Reformation*, (Aldershot, 1993), 11.

²³ Chris Galley, *The Demography of Early Modern Towns: York in the Sixteenth and Seventeenth Centuries* (Liverpool, 1988), 5, 44.

²⁴ Helen Dingwall, *Late Seventeenth-Century Edinburgh: A Demographic Study* (Aldershot, 1994), 27, 39-40.

²⁵ Lynch, *Edinburgh*, 6-7, and 18-19.

²⁶ Palliser., *Tudor York*, 55; Galley, *The Demography of York*, 32.

parish. Yet studies of Edinburgh rarely discuss the social and cultural life of St Cuthbert's in the same way that they do the 'auld enemy' of Leith or the royal burgh of the Canongate. Edinburgh was in many respects made up of an upper and lower city, this division being reflected geographically, socially, financially and culturally. In the later seventeenth century households within St Cuthbert's tended to be smaller and contained fewer servants than those of their intramural neighbours, ninety percent consisting of between one and four people.²⁷ Women headed more households than was the case within the walls, with five percent of St Cuthbert's households headed by single women and a further seven percent headed by widows.²⁸ St Cuthbert's was one of the largest parishes in the Edinburgh area, serving a population of between 2,600 and 2,700 people.²⁹ The session, the primary ecclesiastical court in the Presbyterian legal hierarchy, administered the transgressions of all levels of burgh society, from the elite householders who by employing sexual sinners were perceived to condone such behaviours, to the men and women too poor to have suitable clothing for the Sabbath services. A civil network, comprising Commissaries, Burgh and Sheriff's Courts, supported these ecclesiastical courts.

Galley's study of the demography of York reveals a city comparable in size to the outer suburbs of Edinburgh. The 1665-79 hearth tax returns indicate that there were a between 1,869 and 2,084 households within the city.³⁰ The population in 1548 was calculated at 8,000, rising to 11,000 between 1600 and 1610, and reaching 12,000 by 1630.³¹ York was a city whose fortunes had fluctuated over the course of the fifteenth and sixteenth centuries. By 1560 it was home to the King's Council and the Ecclesiastical Commission and was regaining its status as the most prominent administrative and market centre in the North of England.³² The city was home to Diocesan courts whose jurisdiction extended north to Richmond and Darlington, south to Sheffield and west to Chester, with the Dean and Chapter administering scattered territories even further afield.³³ Within the city itself men and women

²⁷ Of 1,040 households in the parish there were a total of only 405 servants, forty nine apprentices and 273 children. Dingwall, *Late Seventeenth-Century Edinburgh*, 27.

²⁸ Dingwall, *Late Seventeenth-Century Edinburgh*, 39-40.

²⁹ Dingwall, *Late Seventeenth-Century Edinburgh*, 27.

³⁰ Galley, *Demography of York*, 45.

³¹ Galley, *Demography of York*, 43.

³² Galley, *Demography of York*, 32, 44.

³³ Marchant, *Church Under the Law*; Brian Levack, *Civil Lawyers in England, 1603-1641* (Oxford, 1973), 38-41.

brought suits before the consistory court, and were presented at the annual Archdeacon's Visitation and the quadrennial Archbishop's Visitation. The civil courts, the Sessions of the Peace, Quarter Sessions and Wardmote courts, also monitored and regulated social and sexual transgression within the city.

These legal records, given the contextual detail available in the depositions, provide the basis for qualitative as well as quantitative analysis of the courts, and it is the former which will form the main focus of this thesis. Through an examination of the narratives that men and women constructed as they came into contact with the legal and religious institutions of these two cities, the differing institutions of York and Edinburgh are shown to have facilitated culturally similar responses to sexual encounters. In so doing I am not necessarily comparing like sources with like. The institutions of Edinburgh and York differed markedly, as did their records. Rather, this thesis reads across a range of sources to explore popular and institutional responses to sexual misconduct. It examines the stories that couples and individuals constructed and presented to situate and excuse illicit sexual behaviours within the context of the moral reformation and the religious discourse of 'filthie fornication' and 'outrageous Seas of adultery'.

Source criticism

This thesis uses the Minutes Books of St Cuthbert's Kirk session between 1586 and 1629, a sample of the Foul Discipline Book of the parish, taken at five-yearly intervals between 1596 and 1611,³⁴ and the printed records of the burgh to assess the concern for sexual interaction within the ecclesiastical courts of Edinburgh. In addition to this I have utilised the printed and manuscript records of the Canongate, South Leith and intermittent records for the central burgh.³⁵ For York I have surveyed

³⁴ NAS, Edinburgh, CH2/718/52, *St Cuthbert's Kirk Session: Foul Discipline Book (1595-1612)*; CH2/718/1-4, *St Cuthbert's Minute Book, Vol. 1-4 (1586 to 1629)*; CH2/718/234, William Sinne (Recorder West Church), 1834, *Index to the Session Records of St Cuthbert's or West Kirk of Edinburgh (1586 to 1834)*; Extracts of the Buik of the General Kirk of Edinburgh in the years 1574 and 1575' *Miscellany of the Maitland Club, Vol. I, Edinburgh: Maitland Club, 1833-1840; Ed. Recs. I; Ed. Recs. II*

³⁵ NAS, Edinburgh, Consistorial Processes 1580 to 1624, CC8/6/1; Edinburgh Commissary Court Processes (1590ff), CC8/4/1; Edinburgh Commissary Court Processes Boxes 1-4 (c. 1580-1629), CC8/4/587-590; CH2/450/1, *Edinburgh Kirk Session Register (April 1574 to November 1575)*; "Extracts from the Records of the Burgh of Canongate near Edinburgh: 1561-1588" *Miscellany of the*

the cause papers of the consistory court for the period 1560 to 1625, examining those cases that concerned residents of the city.³⁶ In addition I have examined Archdeacon's Visitations for the years 1598 and 1613, the only surviving returns from this period.³⁷ I have also sampled the records of the Sheriff's Court of the city and made use of the printed editions of the York House Books throughout the period.³⁸

All these courts produced heavily mediated texts which were shaped by the legal processes and personnel of each city. Their surviving records were shaped by the intent of the plaintiff or defendant, the memory of the witness, the questions and examination of the lawyers and the record keeping of the clerk.³⁹ These collaborations contributed to a popular awareness of the legal form of the courts and of the modes of representation demanded by the legal systems within each city. These cases may not be representative of general experiences of sex and sexuality in early modern urban culture, but they do represent the extremes of behaviour and social tolerance, thereby allowing one to assess the relative acceptability of certain apparently 'immoral' and 'disorderly' interactions.

The Foul Discipline Book appears to have been created to record in a separate document from the Minute Books of the session the sexual transgressions presented and disciplined by the parish. The Minute Books themselves provide a corresponding account of these presentments, often containing slightly more detail regarding the men and women called or brought before the court, being a daily account of the types of sins and people the Kirk sought to discipline. Within the session men and women were presented for breaches of social, moral and sexual order. They were answerable not only to their minister but also to a body of twelve laymen, the elders who administered the court on behalf of the congregation. The session was not only

Maitland Club, Vol. II (Edinburgh, 1833-1840); Alma B. Calderwood (ed.), *Buik of the Kirk of the Canagait 1564-1567* (Edinburgh, 1961).

³⁶ Borthwick, York, D/C. CP 1560-1625, Dean and Chapter Cause Papers; CP. G 985-3246, Diocese of York Cause Papers; CP. H 1-1655, Diocese of York Cause Papers.

³⁷ Borthwick, York, YV/CB 1, Archdeacon's Visitation Book 1598; YV/CB 2, Archdeacon's Visitation Book 1613.

³⁸ City Archives, York, Minutes of the Sessions of the Peace, F2-F6 (1559-1599); City of York House Books, B23-B34; Angelo Raine (ed.), *York Civic Records*, Vol. 6-9, (York, 1946).

³⁹ David M. Turner, *Fashioning Adultery: Gender, Sex and Civility in England, 1660-1740* (Cambridge, 2002), 143-44; Gowing, *Domestic Dangers*, 41-50; Garthine Walker, 'Rereading Rape and Sexual Violence in Early Modern England', *Gender & History*, 10 (1998), 1-25; Tim Stretton, *Women Waging Law in Elizabethan England* (Cambridge, 1998), 13-18; Martha S. Feldman, *Reconstructing Reality in the Courtroom* (London, 1981).

supported by the regional presbytery of Lothian and Tweeddale, but also by the civic courts, provost and bailies who participated in the reporting and disciplining of transgressive behaviour. The minutes of the session thus recorded the transgressions of men and women, and on occasion their responses to the process of discipline.⁴⁰ They were fundamentally a document of the parochial administration, recording the men and women who ‘compeirit’ and ‘confessit’ their sins before the elders of the session, people who were ‘ordanit’, or ordered, to behave in particular ways. The records of these encounters between the session and the population of Edinburgh were shaped and informed by the ideological and institutional objectives of the Kirk as these relatively new church courts sought, at least initially, to establish their authority within both the parish and burgh. As Graham has observed, the authors of the *First Book of Discipline* ‘were certain that failure to punish sexual sins would bring divine retribution’, prompting the Kirk to adapt the pre-Reformation court infrastructure to their distinctly post-Reformation moral and social aims which focused on notions of communal responsibility and individual behaviour.⁴¹

The cause papers of the York church court by contrast are documents that served as testimony and witness accounts within suits initiated, for the most part, by the men and women of the city. The clerks and advocates of the courts recorded the documents as they questioned the parties and witnesses within each case. These documents, or depositions, were more than simple witness accounts. They were created around the interrogatory, a set of questions set by the court to test the disinterestedness of the depositions and deponents.⁴² Cause paper depositions were not therefore freely discursive narratives but specific responses from individuals chosen by the plaintiff and defendant to recount versions of the event in question. These witness statements were recounted to a clerk of the court, verified and, where possible, signed by the witness in question. Thus these are verbal, textual and legal constructions that recorded the personal disputes, interactions and narratives of individuals.

⁴⁰ NAS, Edinburgh, CH2/718/1-4, *St Cuthbert's Minute Book 1, 1586 to 1594; St Cuthbert's Minute Book 2, 1595 to 1609; St Cuthbert's Minute Book 3, 1610 to 1618; St Cuthbert's Minute Book 4, 1618 to 1629; CH2/718/52, St Cuthbert's Foul Discipline Book 1595 to 1612.*

⁴¹ Graham, *Uses of Reform*, 42-43, 71.

⁴² Ralph Anthony Houlbrooke, *Church Courts and the People during the English Reformation, 1520-1570* (Oxford, 1979), 40-42.

The Archdeacon's Visitation Books present only the briefest of glimpses into the moral social and sexual transgressions of the men and women presented.⁴³ These busy and brief courts, sitting for a matter of days in each parish within the jurisdiction, were designed to return responses to a set of specific questions, or Articles, set by the Archdeacon, with courts of correction established subsequently to address and discipline the transgressions that had been uncovered.⁴⁴ The Visitation returns recorded those men and women who were presented by the churchwardens of their parishes to be disciplined for sexual, social and religious transgressions. These records present only a faint impression of the men and women presented for discipline, often employing Latin legal formulae to abbreviate and categorise both individuals and their transgressions. These records do not recount individual responses to the disciplinary process, only those presented within it.

The cases before the church courts of York and Edinburgh sprang out of the need to regain honour, to gain financial security and to establish the legal as well as social standing of relationships within markedly different social and legal cultures. These differences generated different legal and popular responses to sexual transgression. However, there were cultural trends that were shared by these two cities and countries. The impact of reformed, often Calvinist, theology and morality on the published tracts and sermons of both England and Scotland, fed into the popular languages of sin and sexuality. This thesis is therefore a comparative assessment of the ways in which men and women constructed narratives and identities in the face of differing moral, legal and cultural institutions. In so doing each chapter will present a brief quantitative assessment of the sources I am using. These assessments are of little value in and of themselves, presenting a limited range of data that does not carry enough weight to represent 'popular' behaviours or patterns of behaviour. Rather, as Sharpe has made clear, 'the results of such investigations provide ... the framework within which problems of a more qualitative nature might be formulated.'⁴⁵ Thus these initial analyses provide some idea of the nature and regularity of these cases,

⁴³ Borthwick, York, YV/CB 1, Archdeacon's Visitations, 1598; YV/CB2, Archdeacon's Visitations, 1613.

⁴⁴ Marchant, *Church Under the Law*, 121-28, esp 121-22. In 1598 the correction courts sat in the City of York on the 28th of May. Kenneth Fincham (ed), *Visitation Articles and Injunctions of the Early Stuart Church*, Volume 1, (Woodbridge, 1994), 55-69; Houlbrooke, *Church Courts and the People*, 31-34.

⁴⁵ J. A. Sharpe, *Crime in Seventeenth-Century England* (Cambridge, 1983), 6-7.

situate them within a broadly comparative context, and provide the framework for the qualitative analysis that forms the body of this thesis.

The Language of the Sources

This thesis draws on two distinct verbal and written cultures. It is thus important to pay some attention to the language used within the sources to understand how the personal and communal narratives expressed within them functioned. In York the courts produced documents that incorporated the testimony of the deponent and the legal narrative of the court, using both vernacular English particular to the north of England, and the legal conventions demanded by court process. In Edinburgh the session minutes were more directly administrative documents, recording the briefest accounts of words spoken and acts committed or alleged. The clerk or clerks of the session recorded in the vernacular language the words and deeds that brought men and women before the elders, often taking note of their response to their presentment. Thus, whilst both sets of sources ostensibly record the words and opinions of those individuals in each case, the means of that recording and the degree of mediation involved differed markedly.

Within the language of the Kirk several terms are particular to Scots usage, differing in form and meaning from their English equivalents. In Scotland the idea of being *resaved* was a key expression within the penitential vocabulary of the Kirk. This encompassed not only the idea of receiving someone into one's house or company, but also of receiving the penitent back into the godly community. This term is central to understanding the moral programme of the Kirk and sessions. Through penance transgressors were re-saved into the community, whilst householders were punished for resaving, or receiving, the immoral and the corrupt into their houses, for tacitly condoning their behaviour when it was their duty to urge repentance.

Slander was also an important trope in both Scots and English law, though in the Scots record it was a more physical, bodily, action than in the English courts. As will be elaborated in Chapter Two, Scottish legal culture understood *slander* to be not only a verbal insult aimed at a person but also something that a person did or was perceived to do. By behaving inappropriately, by bringing their own reputation into

question men and women *sclandered*, or scandalised, their own reputations. Yet, even this definition retains some parallels with the idea of ‘common fame’ within the Yorkshire courts, whereby the suspicion of fornication became a source of scandal and led to presentments before the Visitation, and occasionally to office prosecutions in the consistory court.

This thesis considers the distinct social and linguistic cultures of Edinburgh and York, examining how they were employed and manipulated to construct narratives of behaviour and identity. It is therefore necessary to consider the phonetics of lowland Scots as it has been used throughout this thesis. Lowland Scots and Yorkshire were different dialects of the same language with local vocabularies and usages. Each had characteristic ways of rendering these dialects on the page. For example, the *wh* sound in English was usually rendered *quh* in Scots. However, differences in orthography should not distract us from the fact that many words were actually identical, for example *huir* and *whore*. Both words carried the same fundamental meaning, the disruption of the social and sexual order, a term of gendered insult, yet they are spelt differently.⁴⁶

Hence, what at first glance appears to have been a language gap was in many instances a vernacular bridge that simply needs to be crossed. The men and women of York and Edinburgh expressed their anger and discontent with each other using language that was similar enough to warrant comparative study. The words and sounds that reverberated through the streets and in the courts of each city reflected a shared language of bitches, witches and whores, though distinctive elements of each dialect remained. There was a verbal as well as cultural dialogue between southern Scotland and the north of England that for many would have been as easy to negotiate as the highland/lowland, north/south divisions within each nation.

⁴⁶ DSL, ‘<http://www.dsl.ac.uk/dsl/>’ (27th October 2006). ‘Hure, Huir, *n.* Also: hur, hwre; huire, huyr, hwir, hwyr; heu(i)r; hour, hour, howr, howir. [Late north. ME. *hure* (1483), ME. *houre*, *hoore* (14th c.), *hore*, OE. *hóre*, ON. *hóra*.] 1. A prostitute, a harlot. Also applied to unchaste women generally’; OED,

‘http://dictionary.oed.com/cgi/entry/50285082/50285082spg1?query_type=misspelling&queryword=huir&first=1&max_to_show=10&sort_type=alpha&result_place=2&search_id=VwJa-GLJwGa-12841&hilite=50285082spg1’ (27th October 2006). ‘whoor(e, whoar, 6- whore; Sc. 4-6 huir, 4-7 (9 *arch.*) hure, (6 hwr, huire); in comb. 2-7 hor-, 5 hoer-, 6 hoor-, whure-, wor-, 6-7 whor-; Sc. 5-7 hur-, 6 huyr-, hwyr-. 1. a. A woman who prostitutes herself for hire; a prostitute, harlot ... b. More generally: An unchaste or lewd woman; a fornicatress or adulteress. *to play the whore* (of a woman), to commit fornication or adultery.

Thesis Structure

This thesis is divided into five chapters. The first chapter establishes the political, institutional, and legal context of reform in each city. Between 1560 and 1625 York and Edinburgh both underwent substantial political, economic and religious shifts. This chapter thus describes the institutional structures of each city, how they were affected by the religious reformation, and how they participated in the implementation of moral reform. Each city adopted a particular religious language, a language of sin and redemption that situated good order and social stability in the domestic and personal actions of individuals and communities. The statutes of Edinburgh and York rooted moral reform within the bodies and households that inhabited each city.

Chapter Two examines how men and women adopted and shaped the language of sex within each city by looking at the ways that sexual activity and sexuality was used in the language of insult. By examining how ideas about sexual interaction were deployed to defame and to damage personal reputations, this chapter argues that this language allowed men and women to participate in the construction of their own social identities. However, those identities were also shaped by communal and social understandings of an individual's behaviour. Certainly within the Edinburgh session the actions of an individual were understood to have repercussions within their communities, and in York reference to 'common fame' was a means by which to both defend and attack reputations.

Chapter Three considers the moral prescription against fornication in the light of Adair's study of illegitimacy in the north of England and O'Hara's study of early modern courtship. This chapter not only looks at the communal interpretation and understanding of male and female sexual encounters and the roles of kin and friends in the making of marriages, but also at the role of individuals in the making and unmaking of sexual and marital relationships. In both Edinburgh and York men and women used interconnected ideas about sex and marriage to explain and account for illicit sexual activity, claiming that any sexual acts had followed a promise of marriage. However, larger numbers of men and women were brought before the session in Edinburgh, some defamed on the streets of York, for engaging in non-

marital sex. These men and women had simply committed fornication. For them physical intimacy, sexual violence and economic necessity competed with the moral dictates of the church. Particularly for those in apprenticeships and service sex was a part of the experience of social and working culture.

Chapter Four examines parenthood and the enactment of both paternal and maternal roles and shows that they were central to the performance of reputation. Concerns about illegitimacy, and distinctly male fears about the social and financial cost of paternity, meant that women had to situate the naming of fathers in particular ways, drawing on gossips, midwives and the community to attest to their honesty. This created unique problems for middling men as they trod the fine line between disassociating from any marital connection to the mothers of children claimed to be theirs and enacting their roles and duties as fathers; between rejecting or accepting paternity. This chapter adopts a social and cultural understanding of the parent-child relationship, focusing on the social and spiritual connections that men and women established with their children, drawing particular attention to the ways in which men reacted to, and participated, in the process of becoming a parent.

Chapter Five draws on the work of Bailey and Foyster to examine how men and women resolved marital tensions through the courts, negotiating disputes and prosecuting adultery. It examines the household as a locus of gender interaction. Yet the pressures on men and women to conform to marital ideals occasionally led to the dissolution of the household, to the informal separation of couples who could no longer inhabit their marriages. Through an examination of desertion, adultery and domestic violence this chapter not only examines the discourses that shaped an ideal of household and marital order but also the circumstances that led to the breakdown of that order. Thus the men and women that throughout this thesis contested and negotiated the formation of their relationships are seen similarly to negotiate its resolution. In the process they negotiated with and manipulated the legal and moral dictates of church and Kirk.

Reform and Discipline

[E]very degree of people in their vocation, calling, and office, hath appoynted to them their duty, and order: some are in high degree, some in low, some kings and Princes, some inferiours, and subjects, Priests and Lay men, Masters and servants, fathers and Children, Husbands, and Wives, Rich and poore, and every one have need of other, so that in all things is to bee loved, and prayed the goodly order if GOD, without the which no house, no City, no Common-wealth can endure or last. For where there is no right order, there raigneth all abuse, carnall liberty, enormity, sinne, and Babylonicall confusion.

*An exhortation concerning good order and obedience*¹

We meane not that sinnes committed in our former blindnesse (which be almost buried in oblivion) shall be called again to examination and judgement. But we require that the law may bee now and hereafter so established and execute, that this ungodly impunity of sinne have no place within this Realme. For in the feare of God we signifie unto your Honours, that whosoever perswades you, that ye may pardon where God commandeth death, deceives your soules and provokes you to offend Gods Majestie.

*First Book of Discipline, 1560*²

Godly discipline in Edinburgh and York established a framework in which men and women could situate their behaviour, both good and bad. It provided a means by which to assess the social and religious acceptability of certain interactions between the sexes, and in the process both prescribed the official contexts of sexual encounters and provided a means by which to redeem unacceptable encounters. Yet, before these interactions can be analysed it is necessary to examine and contextualise the institutional, political, legal and moral framework of reform in each city. From this survey we can establish the terms upon which the men and women of York and Edinburgh contested and/or conformed to the moral, social and cultural norms imposed by church and city. This is especially important as this thesis deals with two at times strikingly different cities. While the very important similarities between Edinburgh and York ensure that a comparative study is both viable and appropriate, there were also significant differences, rooted in national, cultural and religious divergences. How these differences impacted on modes of interaction between men and women and between these men and women and the institutions of discipline will be assessed in subsequent chapters.

¹ 'An Exhortation Concerning Good Order and Obedience', *Certaine Sermons or Homilies Appointed to be read in Churches. In the time of the Late Queene Elizabeth of Famous Memory* (London, 1635), 69. First published in 1562. In later editions the word 'loved' is replaced by lauded.

This chapter establishes not only the timeline of religious and institutional change in each city, but also assesses the meanings of reform in each locale, examining the nature of the disciplinary institutions of Edinburgh and York, and demonstrating how discipline was part of a social, cultural and behavioural, as well as religious, Reformation. In particular this chapter highlights the fundamental difference in the disciplinary mechanisms of the English and Scottish churches. Within Scotland the reformed institutions of the Kirk connected discipline and godly authority directly to the congregation and parish, the adoption of lay elders to some degree circumventing the hierarchy imposed by state and secular discipline in this period.³ The Scottish Kirk took over and adapted a disciplinary jurisdiction that was perceived to have become weakened and corrupted under the Roman church,⁴ with a woefully under-funded though popular network of ecclesiastical courts that required extensive renovation to fit the reformers' vision.⁵ Yet, during the 1570s and 1580s, the sessions, presbyteries, regional synods, and the General Assembly began to form a coherent network of ecclesiastical courts, which built on the inheritance of the pre-reformation Kirk with the introduction of lay elders and deacons to root reform within the communities and burghs of Scotland.⁶ In England there was a greater consistency between pre and post reformation church courts. The institutions of the city and ecclesiastical courts were well established in York by 1560; secular jurisdictions reached north to the Scottish border under the Council of the North;⁷ the church courts heard appeals from the Dioceses of Durham and Chester.⁸ The Minster dominated the city and housed its ecclesiastical courts, the consistory, chancery, and exchequer, all administered by the diocese, but populated by secular practitioners, civilian lawyers.⁹

² James K. Cameron (ed), *The First Book of Discipline* (Glasgow, 2005), 198-99.

³ Heinz Schilling, 'History of Crime' or 'History of Sin'? Some Reflections on the Social History of Early Modern Church Discipline', E. I. Kouri and Tom Scott (eds), *Politics and Society in Reformation Europe: Essays for Sir Geoffrey Elton on his Sixty-Fifth Birthday*, (Houndmills, 1987), 297; Michael F. Graham, *The Uses of Reform: 'Godly Discipline' and Popular Behaviour in Scotland and Beyond, 1560-1610* (Leiden, 1996), 108.

⁴ Schilling, 'History of Crime' or 'History of Sin'?', 299.

⁵ Margo Todd, *The Culture of Protestantism in Early Modern Scotland* (London, 2002) 27-29; Gordon Donaldson, *Scotland: Church and Nation through Sixteen Centuries* (London, 1960) 41-42, 48.

⁶ Jenny Wormald, *Court, Kirk and Community: Scotland 1470-1625* (Edinburgh, 1981), 128-29. On the session as the most local of these courts see: Todd, *Culture of Protestantism*, 8-13.

⁷ D. M Palliser, *Tudor York* (Oxford, 1979), xv, Map 1.

⁸ Carson I. A. Ritchie, *The Ecclesiastical Courts of York* (Arbroath, 1956), 11.

This chapter examines how religious and social reform was tied to these legal, administrative and institutional structures of the ecclesiastical and civil courts of Edinburgh and York in the late sixteenth and early seventeenth centuries. It examines how reformed discipline was understood, enacted and enforced by those institutions as political interests and religious movements competed for the social and cultural capital of the congregation in both nations. This requires us to examine how the institutions of reformed discipline worked within each urban environment, how early modern cities constructed notions of authority and the “Godly community”. The idea of communal spiritual experience, of communal morality, underpinned and legitimated the authority of an elite that controlled the legal and social boundaries of behaviour within each city: discipline was for the “common good”.¹⁰

The question of authority and social control highlights a fundamental point of comparison between York and Edinburgh: the enactment of religious reform. Mathew Parker, first Archbishop of Canterbury under Elizabeth I, wrote of how ‘he hoped that England would be spared the kind of Reformation which John Knox had made in Scotland “The people to be the orderers of things.”’¹¹ The Scottish Reformation was perceived, particularly in England, to have been a process of social inclusion. The reformers of the 1560s and 1570s were viewed as creating a comparatively egalitarian society that would include the lower orders as well as the middling sort and the elite in the running and ordering of that society. Moral rectitude, not social status, was to be the determinant of one’s ability to participate in the reformed, godly, Scottish community. The Scots reformers intended to provide access to education for children of all social status,¹² and to punish the transgression of the laird as well as the whore.¹³

In contrast English reformers had little intention of including the lower orders in the running of society. Reform in England was not necessarily about social inclusion; it was about refining and

⁹ Ronald A. Marchant, *Church Under the Law* (Cambridge, 1969); Brian Levack, *Civil Lawyers in England, 1603-1641* (Oxford, 1973), 62-64.

¹⁰ Martin Ingram, ‘The Reformation of Manners in Early Modern England’ in Paul Griffiths, Adam Fox and Steve Hindle (eds), *The Experience of Authority in Early Modern England* (London, 1996), 48.

¹¹ Patrick Collinson and John Craig, ‘Introduction’, in Patrick Collinson and John Craig (eds), *The Reformation in English Towns* (London, 1998), 15.

¹² James K. Cameron (ed), *The First Book of Discipline*, 129-136; Wormald, *Court, Kirk and Community*, 181-85

¹³ Cameron (ed), *The First Book of Discipline*, 165-173; Mitchison, *History of Scotland*, 154. This process of social disciplining was conducted with increasing royal support, and increasing royal dominance, in the 1590s, as James sought to bring both the Kirk and the nobility under the influence of his royal prerogative.

maintaining a social system that was already in place, a hierarchical system in which status was a key element of social, political and religious participation, as demonstrated in the quote that opens this chapter.¹⁴ The combination of economic, social, and religious pressures led to the application of laws and ordinances that would regulate and ensure the continued ordering of society, as we shall see in the subsequent section. Those who threatened the political, social, or religious order, the young, the poor and women, became the targets of Reform.¹⁵ As a result, the historiography has, at times, portrayed the Reformation as imposed in England and fought for in Scotland, and has suggested that this caused the two systems to be fundamentally different. Yet there have been a number of Scottish historians who contest this distinction, arguing that Scottish reform was as much an elite imposition as English reform.¹⁶

Reform in York

Political Framework

York was subject to multiple agencies of social and cultural regulation from the parish to the King's Council in the North, presiding over both secular and ecclesiastical justice. These structures needed to be attentive to local, regional, and national interests as York made the transition from a down at heel northern city, known for its political and religious conservatism, to the godly corporation and capital of the English north in the later sixteenth and early seventeenth centuries. This section will outline the political infrastructure of York and situate it within the context of a religious shift within the city.

In England, the Henrician Reformation of the 1530s initiated a period of religious upheaval and conflict that continued throughout the three decades leading up to the beginning of this study. The tumultuous reigns of Edward VI and Mary I had marginalized and punished Catholic and Protestant in turn. By the accession of Elizabeth in 1558 there was a perceived need for direction and focus on this 'religious question': what was the faith of the English to consist of? The

¹⁴ Ingram, 'The Reformation of Manners', 74-5.

¹⁵ Ingram, 'The Reformation of Manners', 74-5.

¹⁶ Michael Lynch, *Edinburgh and the Reformation*, (Aldershot, 1993); Alan R. Macdonald, 'James VI and I, the Church of Scotland and British Ecclesiastical Convergence', *Historical Journal*, 48:4 (2005), 885-903; Wormald, *Court, Kirk and Community*.

policies of her father, and her own distinctly Protestant claims to the crown, had left Elizabeth with little choice but to continue the process of religious reform.

Throughout this period the church in England, as in Europe and Scotland, was more than simply 'the keeper of the faith'. It was the moral guardian of the people and comprised a major legal and social network regulating the behaviours of its congregations.¹⁷ This gave the Church as an institution a great deal of authority over the lives of parishioners.¹⁸ The status of the Anglican Church as a key social institution allowed other forms of authority, most notably the crown and its instruments of social control (i.e. the law), to legitimize their actions through the adoption of a distinctly religious moral rhetoric.

The Dissolution of the Monasteries in the 1530s and the appropriation of that land by the Crown which passed it on to local landholders and towns altered the flow of revenue in such regions. Small towns became politically enabled by the increase in revenue and began to seek incorporation.¹⁹ Yet, York was already incorporated, its council acting under the charter of 1517 throughout this period.²⁰ For its urban parishes there was little benefit to be found in the closing of the monasteries.²¹ The 'stripping of the altars' in a heavily Catholic region²² in addition to the general economic downturn in the region in the early sixteenth century combined to make religious and political reform unpopular in York during the mid-Tudor period.²³

¹⁷ Ingram, 'The Reformation of Manners', 57-60; Brian P. Levack, *The Civil Lawyers in England, 1603-1641* (Oxford, 1973), 171. This was an element of continuity from the Catholic pre-Reformation period into the reformed seventeenth century. In practice, the Reformed religious institutions of both England and Scotland continued the primary social functions of their Catholic predecessors through their legal disciplinary functions, although this met increasing resistance with the growing puritan movement in England.

¹⁸ David Harris Sacks, 'Iniquity and Regeneration: Urban Life and the Reformation in England', *Journal of British Studies*, 40: 2 (2001), 276.

¹⁹ Robert Tittler, *The Reformation and the Towns in England* (Oxford, 1998), 79-80.

²⁰ Barbara M. Wilson, *The Corporation of York, 1580-1660* (University of York MPhil, 1967), 19.

²¹ D. M. Palliser, *The Reformation in York 1534-1553*, Borthwick Papers no. 40, (York, 1971), 3; A. G. Dickens, 'Tudor York', in P. M. Tillott (ed), *A History of Yorkshire: The City of York*, VCH (London, 1961), 117-18.

²² Robert Tittler, 'Reformation, Civic Culture and Collective Memory in English Provincial Towns', in *Urban History*, 24:3, (1997), 286-87. See also, Eamon Duffy, *The Stripping of the Altars: Traditional Religion in England, c.1400-c.1580* (New Haven, 1992)

²³ D. M. Palliser, *Tudor York* (Oxford, 1979), 49-50.

York had had a strong relationship with Richard III and so the corporation had been uneasy with the early Tudors.²⁴ There had been further tensions in the 1530s after the disgrace of Cardinal Wolsey, another York favourite.²⁵ York also had strong connections to the Pilgrimage of Grace, and the sustained revolt against the reforming central government in 1536.²⁶ Insurgency resurfaced in the abortive 1569 revolt of the Earls and the attempt to supplant the Protestant English Queen with her Scottish cousin, a revolt that the council of York was this time instrumental in quelling.²⁷ Preceding this, the economic downturn of the mid-century had seen York become increasingly dependent on a tax remittance issued under the Catholic Mary I.²⁸ Factors such as these contributed to York's reputation for sympathy to Catholics. It was thus unsurprising that the 1559 Religious Settlement, the first major act of Elizabeth I, was not well received in 'conservative York'.²⁹ Yet these objections were soon overcome with the revival of the city's political importance as the King's Council in the North was renewed and the Ecclesiastical Commission was established in 1560/1.³⁰

The permanent establishment of the King's Council in the North at the King's Manor, only minutes walk from the Minster, reinvigorated the administrative status of the city making York home to the 'Privy council of the North'.³¹ Under the leadership of Sir Thomas Gargrave (Vice President, 1555-79)³² and the Earl of Huntingdon (Lord President 1572-95)³³ the King's Council was to place York in the centre of an administrative and institutional network that spanned the entire Northern Province. Dickens has observed that '[a]t no time was York more truly the capital of northern England'.³⁴ Under Huntingdon in particular, the secular King's council came to promote the Protestant cause within the city, calling for the adoption of a civic preacher in the

²⁴ Palliser, *Tudor York*, 43.

²⁵ Palliser, *Tudor York*, 49.

²⁶ Palliser, *Tudor York*, 48-50; Claire Cross, 'Tudor York', in Patrick Nuttgens (ed), *The History of York: From Earliest Times to the Year 2000* (Pickering, 2001), 165-67; Dickens, 'Tudor York', 135, 144.

²⁷ Claire Cross, 'Tudor York', 165-67; Palliser, *Tudor York*, 50; Dickens, 'Tudor York', 140. Wilson notes that this incident may have 'shaken' York's 'prestige' on the national stage, Wilson, *The Corporation of York*, 179.

²⁸ Palliser, *Tudor York*, 53.

²⁹ Palliser, *Tudor York*, 53.

³⁰ Palliser, *Tudor York*, 55; Chris Galley, *The Demography of Early Modern Towns: York in the Sixteenth and Seventeenth Centuries* (Liverpool, 1988), 32.

³¹ Galley, *Demography of York*, 32.

³² Ian W. Archer, 'Gargrave, Sir Thomas (1494/5-1579)', *DNB*, Oxford University Press, Sept 2004; online edn, Jan 2006, '<http://www.oxforddnb.com/view/article/10383>' (14 December 2006).

³³ Claire Cross, 'Hastings, Henry, third earl of Huntingdon (1536?-1595)', *DNB*, Oxford University Press, 2004, '<http://www.oxforddnb.com/view/article/12574>', (14 December 2006).

early 1570s, a move first rejected by the civic council, but embraced by 1608 as the corporation considered a petition for not just one but four civic preachers.³⁵ The permanent establishment of the Council in 1561 had brought with it a degree of stability to those employed within the courts and to the service industries that came to thrive off of the increased legal traffic within the city. This stability began toward the seventeenth century to be reflected in the economic recovery of the city.³⁶

In addition to the Council, the Ecclesiastical Commission, whose job it was to 'enforce the religious settlement following the accession of Elizabeth in 1588',³⁷ in combination with the already broad geographical reach of the five established church courts, the Consistory court, the Exchequer, the Chancery, Prerogative, and Delegate's courts,³⁸ made York 'the most important provincial administrative centre' outside London.³⁹ The Commission situated York at the centre of religious as well as secular administration within the north, again attracting a broad range of legal visitors and workers into the city. However, the presence and status of the courts also caused some tension within the city. Ecclesiastical and secular jurisdictions sometimes clashed; men privileged by the corporation's institutions were, from time to time, prosecuted in the peculiar courts of the Dean and Chapter, apprehended by the Churchwardens in the Minster Yard as they attended services.⁴⁰ The corporation was put under increasing pressure throughout the latter sixteenth century not only to accept the reformed, Protestant, faith but also to become an instrument in the enforcement of that faith.⁴¹ As the Aldermanic bench became increasingly Protestant so too did the city.⁴² However, there remained, particularly during the 1580s, a strong Catholic current running through York's social and political elite.⁴³

³⁴ Dickens, 'Tudor York', 135-36; Wilson, *The Corporation of York*, 2.

³⁵ Palliser, *Tudor York*, 254-56.

³⁶ Palliser, *Tudor York*, 261-64; Galley, *Demography of York*, 148.

³⁷ Galley, *Demography of York*, 36-37.

³⁸ Ritchie, *Ecclesiastical Courts of York*, 11-13.

³⁹ Galley, *Demography of York*, 31-2.

⁴⁰ Wilson, *The Corporation of York*, 102-3; Claire Cross, 'Conflict and Confrontation: The York dean and chapter and the corporation in the 1630s', in David Marcombe and Charles Stephen Knighton (eds), *Close Encounters: English cathedrals and society since 1540* (Studies in Local and Regional history, 3) (Nottingham, 1991), 62-71.

⁴¹ Palliser, *Tudor York*, 249-49. See also, D. M. Palliser, *The Reformation in York 1534-1553*, Borthwick Papers no. 40 (York, 1971), 18-21.

⁴² Palliser, *Tudor York*, 247-48

The establishment of political, legal and religious bodies within the city was an acknowledgement that there were interests in northern England that simply could not be served by the geographically remote institutions of London and the south east, and that the running of the nation required the involvement of increasingly active and important regions. Its status as provincial capital gave York a greater affinity with cities such as Edinburgh, and placed it at the centre of an extensive regional legal and religious network in addition to its local institutions.

During the second half of the sixteenth-century the economic fortunes of the city were also revived in the wake of legal and political growth. York transformed itself into a thriving service city offering not only more stable employment to those resident in the area, but also a rapidly expanding eating, sleeping and victualling industry catering to the numerous visitors entering to the city for the courts and trade.⁴⁴ There was also a significant increase in the 'professional' population of the city, albeit transient at times.⁴⁵ This made York an important urban social centre as well a legal one, with a new role to play for the mercantile population who housed, fed and clothed the men who administered the vast jurisdiction of Northern England.⁴⁶

By 1600 York was reinvigorated as a northern capital. Alongside other major cathedral cities, such as Exeter and Norwich, York was a leading city in the urbanization of England and in the 'moral reformation' that these growing communities were seen to need.⁴⁷ According to Tittler largely autonomous oligarchies grew up within these cities, taking on the administrative roles of London within their regions.⁴⁸ Thus cities such as York increased their local mechanisms of influence, control, and discipline by participating alongside the centralised government.

Institutions of Government and Law

The Elizabethan revival with the establishment of the King's Council and the Ecclesiastical Commission not only made York an important political and legal centre, but also allowed the

⁴³ Palliser, *Tudor York*, 247-60, esp. 256; J. C. H. Aveling, *Catholic Recusancy in the City of York, 1558-1791* (St Albans, 1970).

⁴⁴ Galley, *Demography of York*, 34-37; Palliser, *Tudor York*, 262-63.

⁴⁵ Dickens, 'Tudor York', 155-59. Wilson, *The Corporation of York*, 6.

⁴⁶ Galley, *Demography York*, 35.

⁴⁷ Ingram, 'The Reformation of Manners', 50.

⁴⁸ Tittler, *The Reformation and the Towns*, 337-39. This was a gradual process, which developed out of the early Tudor centralisation of government.

city and its population to grow and develop. The appellate courts in York served an area that stretched north to the Scottish Border, and southwest to Chester.⁴⁹ On a more local scale the Consistory court of the Dean and Chapter of York covered thirty-five local parishes, with influence in sixty-five further afield.⁵⁰ The Dean and Chapter and Consistory courts housed in the Minster and the secular courts on Ouse Bridge, alongside the council chamber, ensured that York as a city and a diocese was instrumental in the institutional and administrative running of the English north. It also meant that, legally, its influence and jurisdictions became involved and entangled in the continuing border disputes of the 'rough wooing' of the 1550s as well as the politics of the Scottish Civil War during the 1570s.⁵¹

The city was governed by an annually elected Mayor, who was perceived to wield 'absolute power within the city'. However, as Barbara Wilson has demonstrated that power was significantly curtailed by the Aldermen and the Twenty-Four, the Sheriff, and the Common council.⁵² An individual could only hold the office of mayor for a maximum of two times at intervals of six years. He was elected from a selection of three Aldermen, and was to administer the corporation of the city.⁵³ In so doing he could call on the assistance of the Aldermen and the Twenty-Four. The Aldermen were largely derived from the mercantile elite of the city, not least because the position itself incurred some expenses for the holder.⁵⁴ Twelve of these men administered the local civic Quarter Sessions and were Justices of the Peace.⁵⁵ The Sheriff was also an annually elected post and administered his own court adjacent to the civic council chamber on Ouse Bridge, in which cases concerning disturbances of the peace, illegal gaming, issues of taxation and civic fines were dealt with. At the end of his term the Sheriff went on to become a member of the Twenty-Four.⁵⁶ According to Palliser the Twenty-Four 'were to attend all meetings of the mayor, aldermen and sheriffs. But were to have no share in electing to any of

⁴⁹ Marchant, *Church Under the Law*, 40-41.

⁵⁰ Marchant, *Church Under the Law*, 41

⁵¹ Michael Lynch, *Scotland: A New History* (London, 1992), 205ff. During the 'rough wooing' English troops made it to the very gates of Edinburgh. This is in addition to the on going trouble caused by both English and Scottish interests in the Border regions. This was an area that was almost constantly in flux and certainly caused problems for Edinburgh, London, and, no doubt York, when it came to any attempt at controlling the warring and sparring factions.

⁵² Wilson, *The Corporation of York*, 20-30.

⁵³ Wilson, *The Corporation of York*, 20-22.

⁵⁴ Wilson, *The Corporation of York*, 22-24, 43-45.

⁵⁵ Wilson, *The Corporation of York*, 23.

⁵⁶ Wilson, *The Corporation of York*, 24-27.

those three categories.’⁵⁷ The corporation had one final administrative body, the Common Council, made up of representatives of the thirteen principal crafts of the city, though it probably accommodated representatives of the smaller crafts also. This was essentially an advisory body with little legislative power of its own.⁵⁸

The corporation came to acknowledge and work alongside institutions such as the King’s Council and the Ecclesiastical Commission, embracing the city’s role in the regional economy and politics, and its growing national status from the 1570s. The status of the city was further enhanced by its religious infrastructure, with the Archbishop and the Minster central to the religious administration of both the city and Northern Province. Archbishops such as Edmund Grindal⁵⁹ in the 1570s and Tobie Matthew⁶⁰ in the early seventeenth century oversaw and supported the network of ecclesiastical courts that not only ordered the population, but was also utilised by that population to settle disputes. Yet the church courts and their administration were limited by a primarily religious, moral, agenda. There were those courts that invited party suits such as the consistory court, but the diocese also oversaw a broader network of disciplinary institutions such as the Archbishop’s and Archdeacon’s Visitations which surveyed religious compliance and the moral rectitude by asking the clergy of each parish to respond to a set of questions, or articles. These quadrennial and annual Visitations monitored the state of religion within the diocese.⁶¹

The Minster housed the courts, with their administrative offices in an adjacent building.⁶² The city comprised four administrative wards containing a total of twenty-four churches, in addition to this the liberty of the Dean and Chapter, comprising the Minster Yard and the Bedern, or the College of the Vicars Choral, formed a discrete jurisdiction within the city, independent of civic

⁵⁷ Palliser, *Tudor York*, 66.

⁵⁸ Wilson, *The Corporation of York*, 28-30.

⁵⁹ Patrick Collinson, ‘Grindal, Edmund (1516x20–1583)’, *DNB*, Oxford University Press, 2004; online edition, May 2005, ‘<http://www.oxforddnb.com/view/article/11644>’, (14 December 2006).

⁶⁰ William J. Sheils, ‘Matthew, Tobie (1544?–1628)’, *DNB*, Oxford University Press, 2004, ‘<http://www.oxforddnb.com/view/article/18342>’, (14 December 2006).

⁶¹ Kenneth Fincham (ed), *Visitation Articles and Injunctions of the Early Stuart Church*, Volume 1 (Woodbridge, 1994), 55-61.

⁶² Ritchie, *Ecclesiastical Courts of York*, 15. Ritchie points out that the exact location of the courtroom is lost, but that there was an adjacent ‘scriptorium’ in which the minutes were recorded.

authority.⁶³ The Dean and Chapter operated its own consistory court alongside the more general court that heard suits from both the population of the city and the larger diocese.

The consistory court in York was not primarily a disciplinary court but an instance court, dealing with party litigation and appeals in which men and women sued each other for defamation, and prosecuted breach of contract, tithe and matrimonial disputes. As Sharpe has observed, the period 1580 to 1640 'saw the emergence of defamation as the most important single area of business, challenged only by tithe causes.'⁶⁴ Secular judges administered the court,⁶⁵ with the cases prosecuted by lawyers and advocates employed by the individuals prosecuting and defending each case, the court sitting on Thursday and Saturday mornings.⁶⁶ Due to the nature of the court procedure it did take longer for suits to pass through these church courts than their civil counterparts, on average nine months from incident to sentence. As Marchant has demonstrated, this was because 'much of the preparatory work that is now done before the case is heard would then be done while it was proceeding through the court.'⁶⁷ However, as Sharpe has made clear, the cases initiated within the courts 'were rarely fought through to a conclusion.'⁶⁸

Alongside this almost civil court, the Archdeaconry of York administered a yearly round of Visitations popularly known as the 'bawdy courts' at which, like the Scottish session, men and women were presented and disciplined who had breached the moral code endorsed by the ecclesiastical administration and set out in the Visitation articles.⁶⁹ The churchwardens of each parish within a diocese produced returns, or responses to those articles, which cited the men and

⁶³ Palliser, *Tudor York*, 89.

⁶⁴ J. A. Sharpe, *Defamation and Sexual Slander in Early Modern England: The Church Courts at York*, Borthwick Papers no. 58 (York, 1980), 8; Marchant, *Church Under the Law*, 61, 62-65.

⁶⁵ Ritchie, *Ecclesiastical Courts of York*, 64-66. Through the course of the sixteenth century the religious and even legal standing of the judges within the York courts was eroded. However, in 1571 the canons of the Minster ordained that all men appointed as judges within the ecclesiastical courts would have a strong background in both the law and the official religion, being required to take the oath of supremacy and subscribe to the articles of religion, as well as being twenty six years old, hold a good history of legal practice within the York courts, and be of good report. Due to their lay status the Judges were advised to refer any sentence of excommunication to the Bishop. These requirements were reiterated by the canons in 1604.

⁶⁶ Marchant, *Church Under the Law*, 61. Marchant notes that prior to 1560 the consistory court also sat on Tuesday mornings. However, this was altered under the Chancellorship of John Rokeby who sought to streamline the operation of the courts. Marchant also notes that the courts were documented as lasting from 9 am to 11am on these selected days, and rightly questions the reliability of this timing for a court that at the end of the sixteenth and into the seventeenth centuries would have dealt with 'a hundred or more cases ... for a single session'.

⁶⁷ Marchant, *Church Under the Law*, 65.

⁶⁸ Sharpe, *Defamation and Sexual Slander*, 7.

women who either had been disciplined or were to be disciplined by the Visitation. These Visitation returns were a valuable, if intermittent, means by which the church could monitor religious and moral conformity. Men and women were presented for recusancy, for suspected adultery and fornication, for illegitimate pregnancy and for other offences against the moral order. Yet these Visitations monitored the effectiveness of the religious infrastructure, ministers and churchwardens, their interaction with their parish community, and the extent of religious conformity. The Visitation imposed penance on the men and women who breached the church's moral order. For example 'sexual offenders had to appear twice, once in each of the parish churches of the couple concerned, or if both came from the same parish, then on two successive Sundays.'⁷⁰ In the application of such penance and public apologies Marchant has noted that the 'York courts were generally stricter than those in the Norwich Diocese ... The Northern Province was to enforce penance on drunkards, swearers and similar offenders, while at Norwich they often escaped with an admonition'.⁷¹

The activities of the courts have been recorded in the treatises of York's best-known legal practitioner, Henry Swinburn, a civilian raised in the city. Swinburn came to prominence not only within York for his active role as a notary, lawyer, judge and commissioner of the various civil and canonical courts, but also amongst the broader legal community of England for his two books, *A Brief Treatise of Testaments and Last Willes* (1590)⁷² and *A Treatise of Spousals or Matrimonial Contracts* published nearly a century later.⁷³ The *Treatise of Testaments* was dedicated to Archbishop Tobie Matthew, Swinburn's 'worthie Patron'. Both texts took a special interest in the forms of law and legal procedure that predominated in the courts and province of York.⁷⁴ In dealing with testaments and spousals, Swinburn utilised his knowledge of the court system in York, and directed his writing to the areas of apparent need addressing the two topics that most contributed to the 'stream of litigants' entering the York courts both ecclesiastical and

⁶⁹ Marchant, *Church Under the Law*, 122-28.

⁷⁰ Marchant, *Church Under the Law*, 137-38.

⁷¹ Marchant, *Church Under the Law*, 138.

⁷² Henry Swinburn, *A Brief Treatise of Testaments and Last Willes* (London, 1590).

⁷³ Henry Swinburn, *A Treatise of Spousals or Matrimonial Contracts* (London, 1686). Published posthumously. Of equal significance, *Testaments* was also the first legal text to be written in the vernacular, Swinburn stating in his introduction to the reader, 'that those marginall notes especially proper [were] ... to be left in Latin: The rest, because it belongeth to all, meete it is that it be written in such a language, as may be understood of all.'

⁷⁴ J. Duncan M. Derrett, *Henry Swinburne (?1551-1624), Civilian Lawyer of York*, Borthwick Papers no. 44 (York, 1973), 19.

secular.⁷⁵ His text books thus illuminate the operation of the range of York courts during this period and can in some way also reflect the attitudes of both the ecclesiastical and civic court system as these two court networks co-operated and clashed on the various issues addressed.

The religious and civic institutions of York were administered by an elite of merchants and lawyers. These men were instrumental in the shift that occurred in the late sixteenth and early seventeenth century from conservative city to “godly” corporation. The benefits of the new Protestant regime came to be reflected in the city’s economic and political status. This shift in the religious tenor of the city was championed by a succession of strong political and religious figures within the city, such as the Earl of Huntingdon and Archbishops Grindal and Matthew. These men facilitated the popularity of the church courts as a forum in which the men and women of both the province and city could contest relationships and reputations.

Legal and Moral Framework

Throughout the sixteenth century the Crown and parliament were particularly busy expanding and amending the statute law of England, statutes that were to be enforced and publicised in the civic councils and Sessions of the Peace. Sumptuary legislation during the reigns of Henry VIII and Elizabeth I preserved the social order through visual and bodily representations.⁷⁶ Such legislation was echoed in the preaching of the period with the sermon *Agaynst Excesse in Apparell* (1563) published and disseminated widely.⁷⁷ Local and regional enforcement imprinted the religious and social reforms of the church and parliament onto the physical appearance of the population. Raffield has observed that, ‘[s]umptuary legislation effected the manipulation of the image to facilitate a particular vision of order and reason.’⁷⁸ Yet, in the wake of the accession of James I in 1603 these laws lapsed, and increasingly texts such as *Hic Mulier* (1620)⁷⁹ and its respondent piece *Haec Vir* (1620)⁸⁰ challenged and satirised attitudes to both fashion and gender as expressed through apparel. Texts such as these drew on the preoccupation with fashion as well

⁷⁵ Derrett, *Henry Swinburne*, 8.

⁷⁶ Paul Raffield, *Images and Cultures of Law in Early Modern England: Justice and Political Power, 1558-1660* (Cambridge, 2004), 157ff.

⁷⁷ ‘Agaynst Excesse in Apparell’ *Certaine Sermons or Homilies Appointed to be Read in Churches. Book 2* (London, 1563), f. 112-121

⁷⁸ Raffield, *Images and Cultures of Law*, 165.

⁷⁹ Anon., *Hic-Mulier or, the Man-Woman* (London, 1620).

⁸⁰ Anon., *Haec-Vir or the Womanish-Man: Being an Answer to a Late Book Intituler Hic-Mulier* (London, 1620).

as the religious and legal shifts to characterise the social disjuncture of the early seventeenth century; the newly assertive woman and the weakened and intimidated man reflected just some of the gendered anxieties of the early seventeenth century.⁸¹

Yet laws that proscribed dress and physical appearance were also used to enforce and shape the social, religious and moral standing of more ordinary members of the population. York itself passed an ordinance ‘Against monstrous apparel’ on the first of June 1562, calling on the population of the city to refrain from wearing ‘hosez, trusses, swords, daggars and other things’, these ‘other things’ being specified in the Queen’s proclamation.⁸² Within the context of the city, this order was as much about maintaining good order as status, calling on the male population to remove their militaristic attire and weaponry. The ‘hosez, trusses, swords, daggars’ specified were for many men a means by which to perform their status and masculinity,⁸³ particularly in time of military or civil strife. The city was thus trying to use such legislation to limit the posturing and potential aggression that could ensue. Therefore it is unsurprising that three years later there was a further proclamation against extravagant and militaristic apparel,⁸⁴ and four years later the makers of ‘hoses’ and ‘long rapiers’ were brought under the regulation of the Tailors, ensuring that their trade came under the civic gaze.⁸⁵ However, the frequency at which such legislation was issued brings into question its effectiveness.

Reflecting this concern over aggressive behaviour and good order, the city’s courts focused on the causes of marital and household disorder, fornication and adultery. In late July 1572, York witnessed that most archetypical early modern punishment for sexual misconduct, the carting of an adulterous couple, and their co-conspirators.⁸⁶ The wrongdoers were paraded about the city in demonstration of their crime and their sin, they were made an example to the population, shamed by the civil authorities whilst almost certainly facing religious censure for their actions. Ten years later, in 1582, the city ordered Barbara Simpson to be set on a barrel on the Pavement for

⁸¹ Susan Dwyer Amussen, ‘The Part of a Christian Man’: The cultural politics of manhood in early modern England’, Susan Dwyer Amussen and Mark A. Kishlansky (eds), *Political Culture and Cultural Politics in Early Modern England: Essays Presented to David Underdown* (Manchester, 1995), 215.

⁸² Raine, *YCR*, Vol. 6, 37.

⁸³ Amussen, ‘The Part of a Christian Man’, 220.

⁸⁴ Raine, *YCR*, Vol. 6, 88. July 1564.

⁸⁵ Raine, *YCR*, Vol. 6, 112. March 1566.

⁸⁶ Raine, *YCR*, Vol. 7, 52.

one hour and then whipped out of the city for ‘misusing of hir bodie’.⁸⁷ Simpson’s misbehaviour saw the York authorities expel her from the city following a ritualised and extremely public humiliation. These punishments were enshrined in law and allowed the city to enforce a moral and sexual agenda that was in line with religious concerns. Two of the key homilies ministers were to read throughout England in the reign of Elizabeth, and which continued to be popular under the Stuarts, were *Against Whoredome and Uncleaness*,⁸⁸ and *Of the State of Matrimony* (1567)⁸⁹ These texts chiefly cautioned against adultery, advising both men and women to choose their marriage partners wisely, so as not to become swept up in ‘outrageous Seas of adultery’, a sin which had come to be, ‘a pastime, a dalliance, and but a touch of youth: not rebuked, but winked at: not punished, but laughed at.’⁹⁰

Yet, marital and sexual disorder came second in the city’s legislative concerns to the question of good communal order.⁹¹ The most frequent ‘evil doers’ of the civic record were the dispossessed: vagrants⁹² The indigent were divided into two key categories in early modern communities: the legitimate or ‘worthy’ poor, and the ever-growing vagrant population, the masterless men and women who roamed the country taking work from legitimate householders and artisans. In March 1570 the city made an ordinance for the ‘Punishment of strong beggers’, in an effort to expel the ‘beggers and vacabunds targeting this Citie’. The ordinance called upon city wardens to catch and fine all those they found in breach of the statute ‘without any forgyvenes.’⁹³ This distinction, between worthy and unworthy, or ‘evil’, poor had been firmly established at the beginning of the period, and long before.⁹⁴ In May 1561, a decade before national legislation, the ordinance for poor relief made parishes responsible for providing for those members of communities who were unable to sustain themselves for valid reasons.⁹⁵ Yet,

⁸⁷ Raine, *YCR*, Vol. 8, 58.

⁸⁸ ‘Against Whoredome and Uncleaness’, *Certain Sermons or Homilies*, f. 44-86.

⁸⁹ ‘Of the State of Matrimony’, *Certain Sermons or Homilies*, Book 2, f. 255-266.

⁹⁰ ‘Against Whoredome’, 78.

⁹¹ Raine, *YCR*, Vol. 6, 65. See in particular the ‘order for the execution of laws against various disorders’, of October 1563, which began with the lines, ‘... and where there be sundry good lawes and statutes ordained for good ordre and quyete of our loving subjects, ...’, and went on to reiterate and reinforce these very laws and social ideals.

⁹² Wilson, *The Corporation of York*, 151-66, esp. 152-57; Dickens, ‘Tudor York’, 132-35.

⁹³ Raine, *YCR*, Vol. 7, 5

⁹⁴ Steve Hindle, ‘Civility, Honesty and the Identification of the Deserving Poor in Seventeenth-Century England’, in Henry French and Jonathan Barry (eds), *Identity and Agency in England, 1500-1800* (Basingstoke, 2004), 38-39. The poor laws were nationally codified in 1598 and 1601.

⁹⁵ Dickens, ‘Tudor York’, 133.

this same statute was also made with the intention that it would ensure the ‘mayntenance of good ordre ageynst vacabandis’,⁹⁶ discouraging them from settling in those communities and parishes where there would be no aid or work forthcoming. In March 1570 the city reiterated its stance against beggars and vagabonds with a local statute for the ‘bettar punishment of mighty beggars and vacabunds frequenting this Citie’.⁹⁷ Beggars were to be fined 6 shillings 8 pence, and vagabonds 3 shillings 4 pence, the fines ‘to be levied upon theym according to the statute without any forgyvenes’. This was followed a year later by further ordinances calling for the stocks and whipping to be used against persistent offenders.⁹⁸

Such ordinances were intended to preserve the social hierarchies of cities and towns and enforced codes of behaviour at all social levels. Masters were required to treat servants and apprentices properly, housing and feeding them ‘according to the Statutes’,⁹⁹ though as Amussen has observed, ‘[s]tandards for the proper treatment of servants were difficult to enforce’.¹⁰⁰ In turn servants and apprentices were required by statute to see out the term of their contract or legally extricate themselves therefrom, as was made clear to Ralph Aslabye by the Session of the Peace when he entered into an apprenticeship with William Watson.¹⁰¹ Yet, as we shall see in the subsequent chapters, whilst many did attempt to live up to the legal, moral and social obligations, there was often a disparity between the expectations of the law and the happenstance of every-day life. For many men and women the emotional, social and at times sexual burden placed on them by the close confines of the early modern household and city took its toll.¹⁰²

As part of the drive to maintain economic and working conditions within the city through the regulation of social interactions, these statutes restricted householders in the use of their private premises, warning them neither to misuse their houses by turning them into dens of immorality and illegality, nor to harbour unsavoury men or women, nor to permit them to enter their houses

⁹⁶ Raine, *YCR*, Vol. 6, 13-14.

⁹⁷ Raine, *YCR*, Vol. 7, 5.

⁹⁸ Raine, *YCR*, Vol. 7, 35. July 1571.

⁹⁹ Palliser, *Tudor York*, 205; Paul Griffiths, *Youth and Authority: Formative Experiences in England 1560-1640* (Oxford, 1996), 321-24.

¹⁰⁰ Susan Dwyer Amussen, *An Ordered Society: Gender and class in early modern England* (Oxford, 1988), 160, 159-162; Griffiths, *Youth and Authority*, 322-24.

¹⁰¹ York City Archives, Quarter Sessions F2-6, Vol. 3, 78

¹⁰² Griffiths, *Youth and Authority*, 324-341, The ‘Disorderly Servant’.

as guests or residents.¹⁰³ Ordinances such as these were tied not only to the fear of vagrants and itinerant workers, but also to the growing regulation of the alcohol trade into the seventeenth century, targeting illegal brewing, drinking and gaming in particular.¹⁰⁴ Notably these statutes and regulations recognised drunkenness and the excessive consumption of alcohol as a personally and socially destructive vice.¹⁰⁵ This was reflected in the homily, *Against Gluttony and Dronkenness*.¹⁰⁶ Increasingly the courts, both secular and ecclesiastical, were making the connection between drinking and violence, in addition to the established connection between drinking and sexual misconduct.¹⁰⁷ Such statutes were not simply made to prevent inebriated misconduct, but also to preserve the victualling economy of the city.¹⁰⁸ The statutes called for the enforcement of alcohol licenses and brewing restrictions,¹⁰⁹ directly tapping the city authorities into an important and growing trade within the city throughout this period, one that grew and declined in line with the fortunes of the city's courts.¹¹⁰ Brewers, tipplers and innholders were not only taxed by the city. The social conduct of alehouse keepers and innholders was monitored, and they were subject to chastisement and fines for any illegal activity such as gaming and illicit sexual encounters on their premises.¹¹¹ This increased regulation particularly impacted on the presence of female brewsters within the city.¹¹²

These concerns for social order, poverty and the right to work and live in towns became heightened during the mid 1580s and 1590s as grain shortages caused concern both for the city

¹⁰³ York City Archives, Quarter Sessions F2-6, Vol. 3, 317.

¹⁰⁴ Steve Hindle, *On the Parish? The Micro-Politics of Poor Relief in Rural England c. 1550-1750* (Oxford, 2004), 60. Hindle draws a direct connection between the poor in Yorkshire and unlicensed brewing which was one means of obtaining a small income for otherwise impoverished families. A. Lynn Martin, *Alcohol, Sex and Gender in Late Medieval and Early Modern Europe* (Houndmills, 2001), 62-66; Michelle O'Callaghan, 'Tavern Societies, the Inns of Court, and the Culture of Conviviality in Early Seventeenth-Century London', in Adam Smyth (ed), *A Pleasing Sinne: Drink and conviviality in seventeenth-century England* (Cambridge, 2004), 38-39, 40.

¹⁰⁵ Martin, *Alcohol, Sex, and Gender*, 45-51; Foyster, *Marital Violence*, 3-4, 68; Ingram, *Church Courts, Sex and Marriage*, 31, 99-100; Martin Ingram, 'The Reformation of Manners', 76.

¹⁰⁶ 'Agaynst Gluttony and Dronkenness', *Certaine Sermons or Homilies, Book 2*, f. 103-112.

¹⁰⁷ Martin, *Alcohol, Sex, and Gender*, ch. 5; Amussen, *An Ordered Society*, 168-70; J. A. Sharpe, *Crime in Early Modern England 1550-1750*, 2nd Ed. (London, 1999), 39.

¹⁰⁸ Wilson, *The Corporation of York*, 124.

¹⁰⁹ Raine, *YCR*, Vol. 6, 35. York ale sellers to be licensed, April 1562.

¹¹⁰ Galley, *Demography of York*, 37.

¹¹¹ Wilson, *The Corporation of York*, 124 and 147-48; Amussen, *An Ordered Society*, 169-70; Marjory Keniston McIntosh, *Controlling Misbehaviour in England 14370-1600* (Cambridge, 1998), 74-78; Judith M. Bennett, *Ale, Beer and Brewsters in England: Women's Work in a changing World, 1300-1600* (Oxford, 1996), 132-33.

¹¹² Bennett, *Ale, Beer and Brewsters*, 107-11.

and the Privy Council in London.¹¹³ Many of these fears resurfaced in the early seventeenth century as plague once again threatened the city. York averted the threat of infection through trade restrictions in the outbreaks of 1563-64 and 1579-80. The House Books recorded on 16 December 1563 that, 'no maner of carier of this Citie shall venture to London or to any other suspect place southward for any wares to be brought to this Citie upon payne of imprisonment.'¹¹⁴ However, the city was not so successful in stemming the tide of infection in 1603-4.¹¹⁵ York was hit hard by the outbreak. By April 1605, 'up to a third of York's population had died from the disease',¹¹⁶ though no more cases were recorded until a minor outbreak in 1610, followed by another one in 1625-26.¹¹⁷

One of the few surviving sermons specifically written for and read in York during this period related to this particularly difficult moment in the city's history. Thomas Pullein's sermon, *Jeremiah's Teares, or, A Sermon Preached at York-Minster Trinity Sunday 1604, when the sickness was begunne in the Citie*, was not only a rallying call to a city besieged by a seemingly all pervasive illness, but also a caution to that city to be aware of the causes of that illness and the lessons that it taught. It cautioned against the prevalence of sin within the city and called for greater love amongst the population, and devotion to the established religion and God. Mere minutes into the sermon Pullein read,

Though he give his people a long time to repent, & sende his servants to call them, to invite them, to intreat them, & to wo them, ... promising that he wil be merciful to their sins, and not remember their iniquities, that he will deal with them in the greatness of his love, & not in the rigour of his judgement that he will receive and embrace them as his dear children, ... if they will amend their lives, & turn unto him; yet when they will not be reformed, when they remaine impenitent & incorrigible, and do harden their harts against al these loving & gracious admonitions, how can the lord do lesse then make them know and feele, that as he hath aboundance of sweet mercies ..., so his treasure is not without

¹¹³ Galley, *Demography of York*, 87-90, esp. 88.

¹¹⁴ Raine, *YCR*, Vol. 6, 70.

¹¹⁵ Galley, *Demography of York*, 77.

¹¹⁶ Galley, *Demography of York*, 80-81; William J. Sheils, 'Seventeenth Century York', in Patrick Nuttgens (ed), *The History of York: From Earliest Times to the Year 2000* (Pickering, 2001), 177 -78.

¹¹⁷ Galley, *Demography of York*, 81. There were two further minor outbreaks in 1636-37 and 1645. In the later case the presence of troops garrisoned in the town and the over-crowding this caused was perceived to have exacerbated the problem. See 81-86

sharpe arrows, swords, and al kind of weapons, to gore the harts of all his enemies?¹¹⁸

Whilst the divine ‘weapon’ of the plague dealt the city a great blow, and could be used within the religious rhetoric of the period as the embodiment of God’s punishment for the sinfulness and immorality of the population – a topic that will be further discussed in the following chapter – Galley notes that ‘York recovered from the epidemic [of 1604] remarkably quickly’, with marriage rates doubling in the ensuing years and baptisms quickly exceeding pre-plague rates.¹¹⁹ This upsurge was also aided by significant migration to the city in the post-plague decade which reinvigorated the local economy.¹²⁰

The legal and social regulation of York was not solely focused on the sexual interactions of its population. The corporation and church demonstrated a concern for the broader behaviours of the population, for drunkenness, for vagabonds and poverty and for the regulation of material exchange and trade within the city. The ordinances of the city, like those nationally, focused on the physical appearance of individuals, on the preservation of status, and on good order, in particular monitoring the interactions of those within households: the treatment and behaviours of servants and householder alike. The means by which the men and women of the city engaged with these sorts of ordinances and the ways that the population of the city used and rejected the reformed moral code, were as pragmatic and imaginative as the courts were in dealing with their transgressions.

Reform in Edinburgh

Political Framework

To understand the impact of religious and political reform within Edinburgh it is necessary to have a brief overview of the progress of reform on a national stage. As the leading city of Scotland much of the political tussling of the Scottish reformation was played out within the burgh, the roles of Kirk and crown being negotiated on the High Street, within St Giles, and at the palace of Holyrood. Edinburgh was at the centre of political and religious shifts in Scottish

¹¹⁸ Thomas Pullein, *Jeremiah’s Teares, or, A Sermon Preached at York-Minster Trinity Sunday 1604, when the sickness was begunne in the Citie* (London, 1608), C4.

¹¹⁹ Galley, *Demography of York*, 81.

¹²⁰ Galley, *Demography of York*, 81.

society and culture during these sixty-five years. The population of the burgh, and the parish of St Cuthbert's, not only came to accept these shifts but also to participate in them. The population not only managed to exist within a city that was physically wracked by the impact of civil wars and political intrigue, not to mention plague and foreign military intervention, but also engaged in the usual interactions of life, forming and dissolving personal relationships, whilst falling under the moral gaze of the reforming Kirk and burgh.

In spite of the steady growth of Protestantism in the universities and towns of Scotland prior to 1559,¹²¹ the beginning of the Scottish Reformation is most often dated to the acceptance of the *Confession of Faith* in parliament, if not necessarily in the halls of Holyrood.¹²² At this same time the *Book of Discipline* was completed which provided a blueprint of the Kirk's social reforms.¹²³ The leading Scottish reformers, prominent amongst whom were Johns, Knox,¹²⁴ Willock¹²⁵ and Spottiswood,¹²⁶ wrote these texts to present a clear agenda for the reformation of Scottish religion, constructing a new model for the religious practice of Christian Scotland.¹²⁷ The reformers called for the creation of a distinctly Scottish Kirk that could, with better authority and knowledge of God, meet the parishioners' educational, moral, and pastoral needs, needs that had been neglected by the previous Popish regime. This reformed Kirk, whilst heavily influenced by the religious changes occurring on the Continent, in Geneva and England in particular, drew on the Scots notion of a unique covenant with God, a covenant that gave the Scottish people a

¹²¹ Lynch, *Scotland*, 187-89; Wormald, *Court, Kirk, and Community*, 102-05. Throughout the latter 1530s and into the 1540s George Wishart became a vocal advocate for the Protestant cause, embarking in a public preaching tour of 'Montrose, Dundee, Ayr and Mauchline, Leith and Haddington', in 1544-45. He like the other budding reformers of his generation, were either tried in Scotland or forced to leave the country. Wishart was put to death in 1546 for his heretical preaching. Mitchison, *History of Scotland*, 106.

¹²² Lynch, *Scotland*, 186.

¹²³ Cameron (ed), *The First Book of Discipline*. It outlines the structures of clerical training and needs, as well as outlining a comprehensive educational network, intended for the sons and daughters of rich and poor alike. It also indicates the rights and responsibilities of the Parish, indicating what would constitute a godly household in the Reformed model. As well as this there is a brief exposition on the role, function and enactment of Church discipline.

¹²⁴ *Fasti*, 49-50; Jane E. A. Dawson, 'Knox, John (c.1514-1572)', *DNB*, Oxford University Press, 2004, '<http://www.oxforddnb.com/view/article/15781>' (15 December 2006)

¹²⁵ *Fasti*, 50-51; Duncan Shaw, 'Willock, John (d. 1585)', *DNB*, Oxford University Press, 2004, '<http://www.oxforddnb.com/view/article/29596>' (15 December 2006)

¹²⁶ *Fasti*, 175-76; James Kirk, 'Spottiswoode, John (1509/10-1585)', *DNB*, Oxford University Press, 2004, '<http://www.oxforddnb.com/view/article/26166>' (15 December 2006)

¹²⁷ Cameron (ed), *The First Book of Discipline*, 4-8.

distinctive place within the Godly community.¹²⁸ Thus 1560 began a period in which the Kirk envisaged itself to be the primary provider of welfare and education, as well as of spiritual guidance for the population of Edinburgh and Scotland.¹²⁹ Within this model the Kirk was not subordinate to, but ranked alongside the crown in the ordering of the Godly community.¹³⁰ The enactment of the Reformation in Scotland has been interpreted in terms of an ‘organic’ or ‘popular’¹³¹ movement, Scottish reform, whilst driven by an educated elite, carried with it the desire and intention to reform social and religious institutions in the interests of the broad population.¹³²

The Crown under the Regency of Mary of Guise and later her daughter Mary I was forced to accept the authority of this Reformed Kirk through the pressure of parliament, the nobility, and the apparent support of the population.¹³³ Upon the death of her mother in 1560, the absentee queen was unable to counter the argument that she had grown up without the knowledge or habits of her own people having been kept at the French court for the vast majority of her youth, arguments that were only strengthened by her marriage to the French Dauphin in 1559.¹³⁴ Yet, as Lynch has shown, instead of railing against the increasingly Protestant councils in burghs such as Edinburgh, Mary I’s ‘interference was all the more difficult to deal with because it took the form of infiltrating the council not, for the most part with Catholics, but with moderate, trustworthy Protestants’.¹³⁵ The policy of the young queen throughout the 1560s to her deposition in 1567

¹²⁸ Ian B. Cowan, *The Scottish Reformation: Church and Society in Sixteenth-Century Scotland* (London, 1982), 183; Lynch, *Scotland*, 186. Lynch, *Edinburgh*, 9-14; John Knox, *On Rebellion*, Roger A. Mason (ed) (Cambridge, 1994), xxiii-xxiv.

¹²⁹ Mitchison, *History of Scotland*, 113.

¹³⁰ Mitchison, *History of Scotland*, 118; Macdonald, ‘James VI and I, the Church of Scotland’, 885-903. This article deals with a number of key points surrounding the tensions this generated between the Kirk and crown, particularly after 1630 when the religious policy of James VI turned distinctly in favour of the English model.

¹³¹ By the term ‘popular’ I certainly do not mean that the majority of the population was calling or demonstrating in favour of the Reformation of the Scottish church in this period. Rather that the policies of the reforming ministers were intended, in the long term, to appeal to the general population of the burgh. I also use this term ‘popular’ to indicate that a significant proportion of the nobility and gentry supported the reform of the Church and the establishment of the Kirk, though there were differences in how different factions conceived of such reform.

¹³² Mitchison, *History of Scotland*, 117.

¹³³ Mitchison, *History of Scotland*, 117; Donaldson, *Scotland*, 53-5; Wormald, *Court, Kirk and Community*, 102. Though the policy of Protestant toleration that was to be a feature of her daughters reign was initiated by Mary of Guise, who despite the Catholic pressures of France and Marian England, maintained her own policy of religious acceptance.

¹³⁴ Donaldson, *Scotland*, 53.

¹³⁵ Lynch, *Edinburgh*, 19.

was thus to 'ignite underlying conflict between different shades of Protestants'.¹³⁶ Whereas in England the monarchy, with the exception of Mary Tudor, had rejected the supremacy and authority of Rome, in Scotland and Edinburgh there was a 'popular' outcry, led by churchmen and the disaffected nobility, against, not only the perceived corruptions of the Popish church,¹³⁷ but also the French, Catholic, domination of a royal court that was perceived to be out of touch with the needs of the country.¹³⁸

This disaffection found expression in the civil strife of the 1540s through 1560s. The rise of a Scottish nationalism in the 1540s and 50s drew on the call for reform as a means of distinguishing and removing Scotland from the influence of the Catholic French.¹³⁹ This need for national autonomy also prevented the Scots parliament from simply handing their protection over to the English when the temptation arose, as it did in July 1560 when the Treaty of Edinburgh spelled out a pro-Protestant programme of reform, followed a month later by the renunciation of Rome and the ratification of the *Confession of Faith*.¹⁴⁰ It was not the intention of those nobles who endorsed reform to simply shift from being dominated by the French to being ruled by the English, despite any apparent similarities in vernacular language.¹⁴¹

Throughout the period 1540 to 1587, civil strife and political instability wracked Scotland, and Edinburgh, the nation's capital, was greatly affected. The English 'rough wooing' of 1544-7 reasserted the English threat to Scottish sovereignty, but also ensured that large numbers of French soldiers were garrisoned in Edinburgh and around the Firth of Forth, as well as in the borders.¹⁴² Thirteen years later the English once again made their presence felt in the Scottish capital after the treaty of Berwick saw English troops promise to remove the ensconced French in support of the reformed parliament against the newly married Queen.¹⁴³ Yet, as Knox's

¹³⁶ Lynch, *Edinburgh*, 7, 18-19.

¹³⁷ Donaldson, *Scotland*, 59-60.

¹³⁸ Donaldson, *Scotland*, 52.

¹³⁹ Mitchison, *History of Scotland*, 121; Wormald, *Court, Kirk, and Community*, 118.

¹⁴⁰ Wormald, *Court, Kirk and Community*, 117. A number of leading reformers, including John Knox, saw Scottish political and religious interests lying in the hands of the Protestant English in the wake of Mary Tudor's death. This was by no means a universally popular sentiment and generated some tension on their return to Scotland in the later months of 1559.

¹⁴¹ Wormald, *Court, Kirk and Community*, 100.

¹⁴² Mitchison, *History of Scotland*, 106.

¹⁴³ Lynch, *Scotland*, 196-7.

History recorded, though their presence was supported by a population wanting to remove the French forces, the English seemed a little too at home as they approached the Scottish capital, briefly turning popular support against them until their final withdrawal in July 1560.¹⁴⁴

The following decade came to be marred by political rivalries leading to civil war between 'Scottish' supporters of the infant 'godly' prince and French loyalist supporters of his mother Mary I.¹⁴⁵ By 1571 the war was firmly focused on the capital, Edinburgh losing half its population to the relative safety of Leith, and its minister, Knox, to St Andrews, whilst the remaining inhabitants faced a bitter fifteen-month siege. When the armies of the King took back the city in July 1572 there began a long period of public punishment and repentance for the Marian supporters who were paraded through the burgh shaven headed and in sackcloth en-route to St Giles, Edinburgh's parish church.¹⁴⁶

In the 1590s, a newly independent James VI, having removed himself from the apparently manipulative influence of his Regents and nobility, was able to secure Scotland's political stability and to promote economic growth.¹⁴⁷ Yet this growth was by no means unproblematic. James's moves to stabilize the economy resulted in the continued devaluation of the currency, an economic practice inherited from his Regents. This, however, resulted in uncontrollable inflation, which led to further devaluation.¹⁴⁸ Yet, trade did slowly and steadily increase with the merchants of the burgh expanding their business at home and abroad into the seventeenth century.¹⁴⁹

¹⁴⁴ John Knox, *The Ecclesiasticall History of Scotland: the Historie of the Reformation of the Church of Scotland* (London, 1644), 202-10; Wormald, *Court, Kirk and Community*, 117.

¹⁴⁵ Lynch, *Scotland*, 207.

¹⁴⁶ Lynch, *Scotland*, 221. Whilst St Giles was Edinburgh's principal church within the city walls, St Cuthbert's serviced a parish of comparable size outside the walls of the city, providing the key service industries to those who could afford to live within the overcrowded Medieval walled city. Helen Dingwall, *Late Seventeenth-Century Edinburgh: A Demographic Study* (Aldershot, 1994), 45; Lynch, *Edinburgh*, 9-13. Yet the rapid increase in the population within the walls did mean that a substantial building programme was begun in the latter sixteenth-century to support St Giles with a further three churches constructed within the city parameters, Trinity College completed 1584, Upper Tollbooth completed 1598 (replaced by New Greyfriar's upon its completion in 1620). Todd, *Culture of Protestantism*, 10n.

¹⁴⁷ Mitchison, *History of Scotland*, 148-150; Lynch, *Scotland*, 234. After removing himself from the influence of his regents James refused, for the rest of his reign, to take on another first minister. In his eyes such politicians had continually showed their self-interest and advanced their own political ends rather than work for either him or the nation.

¹⁴⁸ Lynch, *Scotland*, 183-85; Mitchison, *History of Scotland*, 144-5.

¹⁴⁹ Lynch, *Scotland*, 172-74.

In civil and legal matters James allowed the Kirk to regulate *all* strata of Scottish society. It was vital for the newly empowered king to assert his authority over the apparently unruly and somewhat brutal nobility. It was in the late 1580s and 1590s that the authority of the Kirk was made statute,¹⁵⁰ though the Edinburgh session had been functioning long before this.¹⁵¹ This ratification of the Kirk court structure increasingly subjected the Kirk to the will of the monarch.¹⁵² James VI sought to bring not only the unruly nobility under his authority but also the presumptuous and imperious Kirk hierarchy.

While the trading economy was doing well and the new legal infrastructure was taking on a new coherence, the bulk of state income was co-opted by the parliament and Kirk. By 1603 the Scottish crown was, in effect, bankrupt; year on year taxation was the means by which funds were found, before and after 1603.¹⁵³ It is unsurprising that the king was enticed by the comforts and relative financial stability of the English crown after his accession in 1603, only managing to return 'home' once, in 1617, despite almost constant assurances that he wished to do so.¹⁵⁴

In his early reign James VI did much to codify and support the social role of the Kirk in providing, where possible, schools, poor relief and social control through its ever-growing disciplinary mechanisms. On his return from Denmark in 1590 James VI addressed the General Assembly in Edinburgh, stating

As for our neighbour Kirk in England, it is an evill said masse in English, wanting nothing but the liftings. I charge you, my good people, ministers, elders, doctors, nobles, gentlemen, and barons to stand to your puritie, and to exhort the

¹⁵⁰ Lynch, *Scotland*, 228-9; Mitchison, *History of Scotland*, 152. It was not until 1592 that the presbytery system was given full legal authority, the Kirk session having been given full authority several years previously, in the late 1580s.

¹⁵¹ The Session Register of Edinburgh dates back to 1574. The Presbytery had been in operation since the mid 1580s. Graham, *Uses of Reform*, 106, 130-32. Though some form of session had been functioning within the burgh since 1554.

¹⁵² Mitchison, *History of Scotland*, 143. This is not to suggest that the Kirk became any less popular as a legal forum, but that its autonomy was compromised. James assumed supreme authority over the Kirk, calling Assemblies in such locations as to draw the authority and dominance of the Ministers away from the capital where they were able to assert a greater influence on politics.

¹⁵³ Lynch, *Scotland*, 226-27.

¹⁵⁴ Mitchison, *History of Scotland*, 167.

people to do the same; and I, forsuith, so long as I bruike my life and crowne, sall mainteane the same against all.¹⁵⁵

However, twenty-six years later as James VI and I, King of Scotland and England, he instead assured the Star Chamber that the English Church was the ‘most pure and nearest the Primitive and Apostolicall Church in Doctrine and Discipline.’¹⁵⁶ Some historians have interpreted James as having brought closer the practices of the English and Scots churches, creating a middle way, an assimilation of the two practicing institutions.¹⁵⁷ However, as Macdonald has argued, there was little assimilation of Scottish practice into the English church, and the tension generated in Scotland by a religious policy that alienated the national Kirk in favour of their Episcopal southern neighbour, generated fears throughout the Presbyterian network in the first decades of the seventeenth century.¹⁵⁸ This political destabilising of the Presbyterian infrastructure allowed burgh authorities, which had worked so well alongside the ecclesiastical courts, to play an increasing role in the legal and disciplinary life of cities like Edinburgh.¹⁵⁹ This in turn allowed James and his parliament to hold a greater perceived power over both the Kirk and the population. Yet, try as he might, many of the efforts of James VI to reinstate the authority of the crown at the top of the Scottish hierarchy, particularly after 1606, ran contrary to the wishes and goals of the increasingly Presbyterian burgh and Kirk, and even some elements of the parliament.

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Institutions of Government and Law

With a population that has been estimated at between 9,000 and 30,000, Edinburgh incorporated both a broad geographical area and a diverse polity. The central walled burgh, with a population of c. 12,000 by the mid-sixteenth century was surrounded by the suburbs and satellite burghs, of

¹⁵⁵ Macdonald, ‘James VI and I, the Church of Scotland’, 886.

¹⁵⁶ Macdonald, ‘James VI and I, the Church of Scotland’, 887.

¹⁵⁷ Jenny Wormald, ‘James VI, James I and the Identity of Britain’ in Brendan Bradshaw and John Morrill (eds), *The British Problem, c. 1534-1707* (London, 1996), 168-70. Cf. Lynch, *Scotland*, 242-4.

¹⁵⁸ Macdonald, ‘James VI and I, the Church of Scotland’, 887.

¹⁵⁹ Lynch, *Edinburgh*, 19-21, 42-45.

¹⁶⁰ In 1606 Bishops were officially returned their spiritual revenues as James began to officially support a limited episcopate in Scotland. Bishops had been re-introduced as parliamentary representatives of the Kirk in 1598, though without their pre-reformation powers. The ‘tenor’ of their status was seen to shift on James’s ascension to the English throne, by 1610 Archbishops sat on the High commissions of Glasgow and Saint Andrews, and by 1612 the act of royal supremacy forgot ‘to place the episcopacy under the authority of the General Assembly, and other small omissions.’ Macdonald, ‘James VI and I, the Church of Scotland’, 889-91; Wormald, *Court, Kirk and Community*, 129-30; Lynch, *Scotland*, 242-43. Lynch illustrates how this poorly judged religious policy was matched by a

the Canongate, or Royal Burgh, South Leith, the port of North Leith, and most significant to this study, the suburban parish of St Cuthbert's with which it was most closely allied politically, socially, and economically.¹⁶¹ The population of St Cuthbert's is hard to judge accurately as it intermingled with that of the central burgh where their parish boundaries blurred, along the Potterow and Cowgate, though Dingwall calculated that in the later seventeenth century the parish population exceeded 2 600.¹⁶² Throughout this period the population of the burgh swelled despite an outbreak of plague in 1584 that is estimated to have cost in excess of 1 400 lives.¹⁶³

The burgh was administered by a town council that grew along with the population, though Lynch has found it to have been, not unlike the York council, 'a paternalistic and privileged body with exclusive control over all aspects of burgh life, still concerning itself with the minutest details of trade and craft regulations and policing the burgh.'¹⁶⁴ The council met on Wednesdays and Fridays in the morning after the sermon, and from 1584 it also began to sit on a Thursday. It was made up of, again like York, a 'fairly small and select oligarchy controlled by the merchants.'¹⁶⁵ The burgh council would annually elect a provost, four bailies, a treasurer and dean of Guild whilst at the same meeting electing two representatives of the city's crafts to sit on the council for the following year.¹⁶⁶ The council was primarily concerned with the maintenance of order within the burgh, its courts spending much of their time negotiating trade and personal disputes. In the later sixteenth century, under pressure from the session this manifested in a concern for the poor and in attempts to establish a weekly collection in much the same way that many English towns and cities behaved prior to the introduction of the Poor Laws. This move was not well received in the 1580s as all sectors of the population were caught in the grip of not only plague and scarcity of food, but also inflation.¹⁶⁷ It was not only the civic coffers that were stretched in the closing decades of the sixteenth century.

violent and fruitless attempt to 'civilise' the Highlands. Neither venture could be considered 'successful'. Both pulled taught the Stuart religious settlement leading into the Reign of Charles I.

¹⁶¹ Lynch, *Edinburgh*, 9-11.

¹⁶² Dingwall, *Late Seventeenth-Century Edinburgh*, 27, 39-40.

¹⁶³ Lynch, *Edinburgh*, 11.

¹⁶⁴ Lynch, *Edinburgh*, 14.

¹⁶⁵ Lynch, *Edinburgh*, 15. Unlike York, Edinburgh did see a lot of dynastic office holding with son following father onto the town council.

¹⁶⁶ Lynch, *Edinburgh*, 15-17. Even those representatives of the crafts elected to the council in the later sixteenth century were often craft employers, more closely allied to the merchant guild. Lynch deals with the tensions between the crafts and merchants in more depth in chapter 4, 49-66.

¹⁶⁷ Lynch, *Edinburgh*, 20-22.

The Protestantization of the burgh council whilst apparently swift was not entirely coherent. For much of the 1560s and 1570s the council remained an amalgam of differing shades of Protestantism, permitting Mary to foster political dissent through the factions. By the mid 1580s the Melvillian controversy, which saw leading ministers of the burgh, including St Cuthbert's two ministers Nicol Dalgleish¹⁶⁸ and the influential Robert Pont,¹⁶⁹ cast out of the burgh for several years before their return, also impacted on the council.¹⁷⁰ Increasingly, in the later decades of the sixteenth and into the seventeenth century former councillors came to participate in the administration of the Kirk.

The reformers who championed the Protestantization of Edinburgh and Scotland were not 'common men'. They were highly educated and respected members of a privileged group in society, the university-educated and elite-sponsored clergy. Men such as Knox¹⁷¹ and Andrew Melville,¹⁷² who had spent time on the Continent and in England shaping their political and social aims, preaching and building reputations,¹⁷³ sought to make the newly reformed Kirk central to the moral, social and political life of Scotland.¹⁷⁴ These reformers gained the support of influential parliamentarians and nobles who witnessed the religious, social and political development of England and the Continent, and wanted to make Scotland a part of that

¹⁶⁸ *Fasti*, 99.

¹⁶⁹ *Fasti*, 93; James Kirk, 'Pont, Robert (1524–1606)', *DNB*, Oxford University Press, 2004, 'http://www.oxforddnb.com/view/article/22507' (15 December 2006)

¹⁷⁰ Lynch, *Edinburgh*, 18-19.

¹⁷¹ There is some debate as to Knox's place as the leading minister of the Scottish Reformation. Not only were his writings seen as damaging to the cause of reform in Scotland, in particular his ill timed *First Blast of the Trumpet Against the Monstrous Regiment of Women*, written in 1558 on the eve of the death of Mary Tudor and ascension of Elizabeth I, but he was the only central figure of the movement to record his perspective on the events of the 1550s '60s and early 1570s in his *History*. As Wormald observed, '[t]he author of the *First Blast of the Trumpet*... had done himself as much damage in the eyes of a crucially important contemporary [Elizabeth I] as the author of the *History* was to do himself good in the eyes of posterity.' Wormald, *Court, Kirk and Community*, 110. Mitchison sees the roll of Knox and his *First Blast of the Trumpet* in more positive terms, as the articulation of a political opposition and the equality, if not pre-eminence, of the Church in relation to the Monarch. Mitchison, *History of Scotland*, 118.

¹⁷² James Kirk, 'Melville, Andrew (1545–1622)', *DNB*, Oxford University Press, 2004 'http://www.oxforddnb.com/view/article/18543' (15 December 2006).

¹⁷³ Wormald, *Kirk, Court and Community*, 102-3. Knox's journey is perhaps best known, largely through his own prolific recording of his experiences both with the English Congregation in Geneva in the mid 1550s and as a preacher in England. Indeed Knox was the last of the three men to return to Scotland in May 1559. Wormald, *Kirk, Court and Community*, 112. Though Melville too came to prominence in the 1570s as Principal of St Mary's in St Andrew's and a leading thinker and teacher of reformed ministers, lending his name to a particular brand of Presbyterian reform. He had been educated in Paris and travelled extensively on the continent, but left an abysmally small literary output, unlike his contemporary, Knox. Lynch, *Scotland*, 228.

process.¹⁷⁵ However, the enactment of reform generated a number of tensions as the reformers sought to include in moral leadership of the burgh all social ranks, the ‘good of heart’ rather than just the good of birth, though the traditional elites would again come to dominate the parochial institutions.¹⁷⁶

Election to the eldership of the sessions within each parish was the most significant form of lay participation in the reformed Kirk and was, according to Knox, to have been decided on the principle of ‘congregational democracy’. The twelve elders were elected on the basis that ‘if a poor man exceed the rich man in votes, he precedes him in place’.¹⁷⁷ Certainly in the early 1570s men of varying social status were elected to sit as elders. As Lynch has observed, ‘[i]t was a most unlikely collection in a society so conscious of rank and privilege – minor merchants, a craftsman, craft apprentices... none with any experience of burgh office’.¹⁷⁸ Yet, in the following years many of the merchants that dominated the burgh council progressed through the political and religious institutions of the burgh to seek election to eldership of the session, and were accompanied in that journey by lawyers and elite men of the crafts.¹⁷⁹ As Graham has observed, ‘by the mid-1570s the Edinburgh Kirk session, particularly the eldership, had become a rather select fraternity.’¹⁸⁰ In both the parish churches of St Cuthbert’s and St Giles, the elders sat three times a week, following service on Sunday, Tuesday and Thursday to administer the Kirk’s councils and courts, judging the actions, and dictating the behaviours of their peers through the enforcement of Kirk ordinances and canon law at the parochial level.¹⁸¹ The reformed practice of electing men of all rank to eldership and the dominance of the burgh’s merchants within both civic and ecclesiastical institutions of the burgh, generated a tension for the nobility and the

¹⁷⁴ Mitchison, *History of Scotland*, 213.

¹⁷⁵ Wormald, *Court, Kirk and Community*, 112-14, 123-25.

¹⁷⁶ Cameron (ed), *The First Book of Discipline*, 174. Todd, *Culture of Protestantism*, 8-9.

¹⁷⁷ Knox, quoted in Lynch, *Edinburgh*, 38.

¹⁷⁸ Lynch, *Edinburgh*, 38.

¹⁷⁹ Lynch, *Edinburgh*, 40-41.

¹⁸⁰ Graham, *Uses of Reform*, 108.

¹⁸¹ Ian B. Cowan, *The Scottish Reformation: Church and Society in Sixteenth Century Scotland* (London: Weidenfeld and Nicholson, 1982), 183; Walter Ronald Foster, *The Church Before the Covenants* (Edinburgh, 1975), 72-3; Todd, *Culture of Protestantism*, 372. In return elders themselves were carefully monitored by the parishes in which they served, being held to higher account for their actions due to their morally and socially prominent status within the congregation. They were doubly answerable for their actions.

crown as plebeian authority was not only endorsed by the Kirk but was called upon to criticise elite behaviours.¹⁸²

The lack of a coherent, popular and affordable legal system in Scotland prior to the reformation has been noted by historians,¹⁸³ and, though there remains a need for a more thorough history of secular legal practice in the wake of 1560, there is a strong body of work examining the shifts in ecclesiastical legal practice instigated by the reformed Kirk.¹⁸⁴ When the parliament accepted the *Confession of Faith* it also accepted that the reformed Kirk and its lay elders and deacons would work alongside ministers and the civil authorities in the ordering of Scottish society. What neither Kirk nor crown anticipated was the extent to which the same types of men who formed the burgh councils would come to dominate the Kirk sessions.¹⁸⁵ In the light of this, *The Second Book of Discipline* was drawn up in 1578 as a companion to the 1560 book. It elaborated the administrative policies of the Kirk and articulated the relationship between the civil and ecclesiastical 'swords' much more carefully than its 1560 precursor, distinguishing the two systems and underlining the need for the co-operation and interdependence of these parallel legal networks.¹⁸⁶ The interaction between the city and religious courts came to be both complex and visible.¹⁸⁷ Those called before their session to answer for their behaviour would have been aware that they could easily be referred to and censured by the burgh courts if found to have done

¹⁸² Wormald, *Court, Kirk and Community*, 127-28.

¹⁸³ Ollivant, *Court of the Official*, 145-147; J. Irvine Smith, 'The Transition to the Modern Law', in *An Introduction to Scottish Legal History*, Stair Society 20 (1958), 25; Wormald, *Court, Kirk and Community*, 177-78.

¹⁸⁴ On some of the changes in legal practice and institutions in Scotland at this time see: Ollivant, *Court of the Official*; Geoffrey Parker, 'The "Kirk by Law Established"', 159-97; W. D. H. Sellar, 'Marriage by Cohabitation with Habit and Repute: Review and Requiem?', in D. L. Carey Miller and D. W. Myers (eds), *Comparative and Historical Essays in Scots Law* (Edinburgh, 1992), 117-36; idem, 'Marriage, Divorce and the Forbidden Degrees: Canon law and Scots law', in W. N. Osborough (ed), *Explorations in Law and History: Irish Legal History Society Discourses, 1988-1994* (Dublin, 1995), 59-82; idem, 'The Common law of Scotland and the Common law of England', in Sir Robert Rees Davies (ed), *The British Isles, 1100-1500: Comparisons, Contrasts and Connections* (Edinburgh, 1988), 82-99; Gordon Donaldson, 'The Church Courts', in *An Introduction to Scottish Legal History* (Edinburgh, 1958), 363-373; W. J. Windram and H. L. MacQueen, 'The Sources and Literature of Scots Law: A select critical bibliography, 1936-1982', *Journal of Legal History*, 4:3 (1983), 1-20; Angelo D. M. Forte, 'Some Aspects of the Law of Marriage in Scotland: 1500-1700', in E. M. Craik (ed), *Marriage and Property* (Aberdeen, 1984), 104-18.

¹⁸⁵ Todd, *Culture of Protestantism*, 176; Lynch, *Edinburgh*, 14-16.

¹⁸⁶ *Books of Discipline and of Common Order* (Edinburgh, 1836), 99-103; Donaldson, *Scotland*, 51.

¹⁸⁷ Bruce Lenman, 'The Limits of Godly Discipline in the Early Modern Period with Particular Reference to England and Scotland', in Kasper Von Greyerz (ed), *Religion and Society in Early Modern Europe* (London, 1984), 135.

wrong, or if they were simply non-compliant.¹⁸⁸ Similarly, the civil courts recommended those found guilty of crimes punishable under Kirk law to the session to face public repentance in addition to the fines and whippings they were able to impose.¹⁸⁹

The growth of the Edinburgh presbytery provided a solid infrastructure to support the Kirk sessions within the city. The Presbytery, General Assembly, and regional synods provided institutional back up for the session and a hierarchy from whom local sessions and elders could seek advice, could deal with matters the sessions were unable to resolve, for example multiple offences and contemptuous excommunicants, and liaise with other regional and urban centres. Within all these bodies there was a strong lay presence, through the election of elders and superintendents, who consulted with ministers to provide the best moral guidance, aid, and discipline for the parish populations.

Yet for the Kirk's social policies to become effective they also needed a secure source of revenue. The reformers looked to the state to fund their plans as the old church financial structures, including teind or tithe, proved insufficient.¹⁹⁰ It was the insistence that the parliament and crown, already financially stretched themselves, were duty bound to support the Godly community through the Kirk that prevented the *Book of Discipline* from being ratified by the parliament in 1560.¹⁹¹ The book's ambitions for the reform of religious practice and education throughout Scotland were largely accepted by the parliament and Lords, and it set the template for change in the decades following 1560.¹⁹² Whilst the reformed Kirk took on the old ecclesiastical institutions of the Scottish Church and restructured them, reconfiguring their basis for authority and power within the social networks of cities such as Edinburgh, they demanded a high price, both financially and politically from their allies and their government.

¹⁸⁸ Todd, *Culture of Protestantism*, 11, 176; Julian Goodare, *The Government of Scotland, 1560-1625* (Oxford, 2004), 193.

¹⁸⁹ Todd, *Culture of Protestantism*, 142, 176.

¹⁹⁰ Wormald, *Court, Kirk and Community*, 124-5.

¹⁹¹ Wormald, *Court, Kirk and Community*, 124-5.

¹⁹² Cameron (ed), *The First Book of Discipline*, 70-75.

Legal and Moral Framework

As T. C. Smout has observed, Scotland effectively saw a theocracy come to power in the decades after 1560, with the Kirk acting as the legal, moral and social arbiter of interpersonal interaction.¹⁹³ Yet, James's religious and social policies ensured that by 1603 the parliament, Kirk and courts in Edinburgh were increasingly complicit in his own vision of reform.¹⁹⁴ In spite of this the Kirk grew strong as a social and religious institution, particularly after the difficult 1570s when the *Second Book of Discipline* revised the scale of reform to take account of the somewhat limited resources available.¹⁹⁵ Increasingly the populations of cities like Edinburgh appeared to accept and indeed participate in its processes of moral reform, and discipline. Thus in the seventeenth century the initiatives of both the Kirk and parliament increasingly focused on the untouched 'lawless' and Catholic highlands.¹⁹⁶

The *Confession of Faith* and the *Books of Discipline* established an agenda for reform and for the institutional, social, and moral development of the Scottish Kirk. The first element of the reformed Kirk was of course to be Doctrine, the opening lines of the first chapter of the *First Book of Discipline* reading

Seeing that Christ Jesus is he whom God the Father hath commanded onely to bee heard and followed of his sheepe, we judge it necessary that his Gospell be truly and openly preached in every church and Assembly of this realme, and that all doctrine repugnant to the same, be utterly repressed as damnable to mans salvation.¹⁹⁷

¹⁹³ T.C. Smout, *A History of the Scottish People, 1560-1830* (London, 1970), 73.

¹⁹⁴ Wormald, *Kirk, Court and Community*, 156-59. Wormald observed that whilst James did establish a strong parliament to act for him in his absence after 1603, his lack of physical presence did have a negative impact on his personal rule in Scotland.

¹⁹⁵ Lynch, *Scotland*, 229-30. The compilation of the Second Book of Discipline

¹⁹⁶ Mitchison, *History of Scotland*, 138.

¹⁹⁷ Cameron (ed), *The First Book of Discipline*, 87. Many attribute the Scottish preoccupation with sexual sin to a similar preoccupation in the Calvinist model. Graham, *Uses of Reform*, 20. Though Calvin's inclusive model of a Reformed society and disciplinary system that incorporated both those who chose the protestant path and those who were swept up in the political and institutional changes was also a strong influence on Knox, and formed the subsequent model for Scottish reform, establishing a state religion alongside and co-operating with the civil authority. Geoffrey Parker, 'The 'Kirk by Law Established', and the Origins of the Taming of Scotland: Saint Andrews 1559-1600', in Raymond A. Mentzer (ed), *Sin and the Calvinists: Morals control and the consistory in the reformed tradition* (Kirksville, Mo., U.S.A, 1994), 161-62; Cameron (ed), *The First Book of Discipline*, 173. See also: Cameron (ed), *The First Book of Discipline*, 91, which cites the Zwinglian influence on the Scottish reformers as they called on both the minister and the congregation, male and female and of all social ranks, to take communion together, seated. Knox having stated in 1550, in his *Vindication of the Doctrine that Mass is Idolatry*, that, 'In the Lordis Supper, all sit at ane tabill: na difference in habit nor vestament betweene the minister and congeratioun.' Liang, *Knox Works*, 3: 68, 4:195. On the influence of Bucer, particularly with regard to education, as he called for the establishment of locally run and monitored schools in each parish left, a call that and indelible mark on the

Alongside the 'truly and openly preached' Gospel, the Kirk instituted a programme to educate both the population and its own ill-trained ministers, calling on the state to provide funds for better schools and Universities.¹⁹⁸ Within this document the Kirk outlined an ambitious educational plan that desired every child to become proficient in catechism, grammar, logic, and rhetoric, with a basic understanding of Greek.¹⁹⁹ Unrealistic though this may have been, this type of education was intended to produce an adult population that would 'within a few years serve it self [the realm of Scotland] of true preachers and of other officers necessary for the commonwealth.'²⁰⁰

Within the domestic spaces of the burgh, marriage and baptism were the key means by which the Kirk encountered and shaped the lives of almost all inhabitants of the realm. It was in the Kirk that banns were proclaimed, marriage disputes were heard and mediated, and in which children were made a part of the Godly community through baptism. The Kirk sought to regulate marriage practice in Scotland and to ensure that all partners entering to a marital union did so without fear of duress, either by parents or prospective partner.²⁰¹ The Kirk praised marriage as the most holy of unions yet accepted the social reality of marriage breakdown, allowing for divorce in cases of desertion and adultery.²⁰² The sessions and elders encouraged arbitration and ensured that those couples that could not resolve their differences made financial settlements. As a part of the Kirk's policy towards families, baptism was considered to be an integral rite inculcating families, mother, father and child, in the morality and welfare of the Kirk, as we shall see.²⁰³ This 'welfare network' investigated cases of spousal or child abuse, and enforced any

Scottish reformers. The seventh section of the *First book of Discipline* specifically placed the education of children, boys and girls at the top of the social agenda for reform, see: Cameron (ed), *The First Book of Discipline*, 129; Graham, *Uses of Reform*, 12.

¹⁹⁸ Cameron (ed), *The First Book of Discipline*, 129-155.

¹⁹⁹ Bob Scribner, 'Reformation and Desacralisation: from Sacramental World to Moralised Universe', in R. Po-Chia Hsia and R.W Scribner (eds), *Problems in the Historical Anthropology of Early Modern Europe* (Wiesbaden, 1997), 86-87.

²⁰⁰ Cameron (ed), *The First Book of Discipline*, 135.

²⁰¹ Cameron (ed), *The First Book of Discipline*, 192-94. This same concern was legally evident in England, with non-consent a key means by which women and men extracted themselves from marriage contracts. See Chapter Three.

²⁰² BUK, 1: 91 1566; 1: 171 1569; 1: 267 1572.

²⁰³ Todd, *Culture of Protestantism*, 119-121. This is discussed much more fully in Chapter Four

support agreements,²⁰⁴ taking on many of the roles provided by the civil authorities in English cities such as York.

The *Books of Discipline* spelled out the jurisdiction of the Kirk in the regulation of behaviour, stating that

... Ecclesiasticall Discipline, ... stands in reprovng and correcting of the faults, which the civill sword either doth neglect or not punish; ... crimes capital worthie of death, ought not properly to fall under the censure of the Kirk ... [but] ought to be taken away by the civill sword. But drunkenness, excesse... fornication, oppressing of the poore ..., wanton words and licentious living tending to slander doe openly appertain to the Kirk of God to punish them, as God's word commands.²⁰⁵

Discipline was a means by which to unite and reform the congregation, as men and women were encouraged by the Kirk to confess sinful activity, to participate in the repentance of that sin and to embrace the truly penitent. At all stages of disciplinary practice the community was to be involved, encouraged to report and chastise the unrepentant sinners within the community. The congregation was the primary means through which penance was enacted and redemption sought, for in any offence against God it was the community, the congregation, which was understood to have suffered.²⁰⁶ Yet, there was also a much more discrete side to the practice of reformed discipline, allowing those whose sins were minor and more a 'suspicion than ... manifest probation' to be privately admonished by the minister or elders.²⁰⁷ Such admonishments were accompanied by the warning that any future impropriety would result in a full and public reprimand.²⁰⁸

In Edinburgh, like York, ordinances were passed that sought to reflect the social and moral standing of the population in their physical appearance and dress. Women in particular could be deprived of the signifiers of their status if they were to 'fall in the filthie cryme of fornicatioun'. A 1601 statute ordered that they be 'degradet of the busk of ane burges wife and discharget to

²⁰⁴ Todd, *Culture of Protestantism*, 266-67.

²⁰⁵ Cameron (ed), *The First Book of Discipline*, 165-67. This echoes the passage on discipline, 'The form of prayers and ministration of the sacraments, &c., used in the English congregation at Geneva, 1556,' in Knox, *Works*, 4: 203.

²⁰⁶ Cameron (ed), *The First Book of Discipline*, 168-72.

²⁰⁷ Cameron (ed), *The First Book of Discipline*, 167-68

²⁰⁸ Cameron (ed), *The First Book of Discipline*, 168

weir the same publictlie or privatlie'.²⁰⁹ This echoed a 1556 statute calling for the adulterous wives or fornicating daughters of honest burghers to have their hats marked or cut so as to make their sin visible to the community.²¹⁰ In 1574 Jonet Cadie, servant to Alexander Bruce, was brought before the General Kirk of Edinburgh for 'disagysing of hir in welvot breikis, and dansing in menis clething'.²¹¹ In an episode evocative of *Hic Mulier* or *The Roaring Girl*, Jonet disrupted notions of status and gender by donning male attire and dancing.²¹² Thus it seems that the women of Edinburgh were made a focus of not only sexual, but also gender and status anxiety in the burgh. Yet, unlike York, Edinburgh, with its experience of war and siege, did not necessarily want to prevent men from wearing militaristic attire. On the contrary, in the 1560s and 70s in particular, the men of the burgh were encouraged to possess and at times display their weaponry for use in the defence of the city.²¹³ However, the concern about bloodfeud and violence on the streets of the burgh did lead to a condemnation of acts of bloodwrite in 1567, in the wake of the Civil War.²¹⁴

The concern about sexual disorder within the burgh was bound up with a concern for communal order. Like York, Edinburgh expressed concern about unlicensed traders, the dispossessed, and the poor. The notions of worthy and unworthy were as pronounced in Scotland as in England, with the burgh and Kirk allocating poor relief and fines respectively on the basis of religious and civic participation and 'moral' behaviour.²¹⁵ As early as September 1560 a statute was made against 'idill men desolait of maisters' inhabiting the city and causing 'greit apperand danger of the common weill gyf thay be sufferit and nocht suddanlie expellit'.²¹⁶ The tone and message of this statute was repeated throughout the latter sixteenth century, with the city's crafts and trades

²⁰⁹ *Ed. Recs. II*, 295, November 1601.

²¹⁰ *Ed. Recs. I*, iv, 248-49.

²¹¹ 'Extracts of the Buik of the General Kirk of Edinburgh in the years 1574 and 1575' *Miscellany of the Maitland Club*, Vol. I (Edinburgh, 1833-1840), 104-5; Michael F. Graham, 'Women and the Church Courts in Reformation Era Scotland,' in Elizabeth Ewan and Maureen M. Meikle (eds), *Women in Scotland, c. 1100 - c. 1750* (East Linton, 1999), 193.

²¹² David Cressy, 'Gender Trouble and Cross-Dressing in Early Modern England', *Journal of British Studies*, 35: 4 (1996), 159-162.

²¹³ *Ed. Recs. I*, iii, 198 June 1565; idem, iii, 272, May 1570.

²¹⁴ *Ed. Recs. I*, iii, 242, October 1567.

²¹⁵ Michael F. Graham, 'Social Discipline in Scotland, 1560-1610', in Raymond A. Mentzer (ed), *Sin and the Calvinists: Morals control and the consistory in the reformed tradition* (Kirksville, Mo., U.S.A., 1994), 137.

²¹⁶ *Ed. Recs. I*, iii, 79, September 1560.

becoming increasingly wary of unlicensed traders entering the burgh.²¹⁷ Concern about the corruption of the population was expressed through statutes warning householders to monitor their servants, children and even wives who could fall under evil influence.²¹⁸ They were similarly warned, like their English counterparts, not to allow the lewd or wicked into their houses, on pain of punishment for condoning immoral behaviour.²¹⁹ Yet these statutes and concerns were by no means new: often they simply reiterated fears and concerns that had long been present in the city.²²⁰

The imposition of discipline in disorderly households was a means of re-establishing and reasserting both domestic and social order and authority. The interventions of the session and city authorities in cases of domestic disruption demonstrate not only how the 'power' of the household head was reinforced by the Kirk,²²¹ but also how that power was monitored and on occasion restricted. The policy of the session was to intervene in cases of domestic disorder only after the household head had failed to resolve the problem.²²² The language of the Kirk presented the household as a microcosm of the Godly community.²²³ Within the household the marital partnership was considered to be the linchpin guaranteeing domestic harmony and authority, with wives subject to their husbands, just as children were subject to parental authority, like the congregation to the Kirk.²²⁴ Knox clearly articulated this reciprocity in his advice to wives, 'as the church is subject to Christ, even so be thou subject to thy husband in all lawfull things'.²²⁵ To children he declared, 'obey your parents with great humilitie; love, feare, and honour them', and to servants, 'obey your carnall lords and maisters, with feare and trembling, with simplenesse of

²¹⁷ *Ed. Recs. I*, iii, 231, June 1567; *Ed. Recs. II*, 18 (April 1590), 51 (October 1591), 86 (April 1593).

²¹⁸ *Ed. Recs. II*, 63, 19 April 1592; Todd, *Culture of Protestantism*, 265. In a case from Linlithgow brought before the Synod of Lothian and Tweeddale in April 1591 the parish minister was forced to remove his own daughter from his house for her fornication, committed with Patrick Kinloch. In so doing he also demonstrated the grief that such an action caused him, as appropriate of a good father. He was then to order his daughter perform the appropriate penance. James Kirk (ed), *The Synod of Lothian and Tweeddale, 1589-1596 and 1640-1649* (Edinburgh, 1977), 24.

²¹⁹ 'Extracts of the Buik of the General Kirk of Edinburgh', 105-6, September 1574; *Ed. Recs. II*, 47 (September 1591; idem, 196 (August 1597).

²²⁰ *Ed. Recs I*, ii, 40, September 1530, statute against allowing vagabond to dwell in the houses of legitimate burgh members. Idem, ii, 80, October 1536, called on householders not to serve 'nightwalkers'.

²²¹ Amussen, "Being Stirred to Much Unquietness", 70-71.

²²² Knox, *Works*, 3: 540-41.

²²³ Knox, *Works*, 3: 535-39; Todd, *Culture of Protestantism*, ch. 6; Amussen, "Being Stirred to Much Unquietness", 73.

²²⁴ Knox, *Works*, 3: 535-37; Todd, *Culture of Protestantism*, 299; Bound, 'An 'Uncivil' Culture', 53.

²²⁵ Knox, *Works*, 3: 536.

hart, as it were unto Christ'.²²⁶ Within these relationships the need for humility, love and honour were considered paramount.

As in York, ideas of good order and godliness were closely connected to the household, with the relationship between masters and servants coming under particular scrutiny. Edinburgh's masters were warned to house, sustain and protect their servants, facing fines and imprisonment if they neglected their responsibilities in any way.²²⁷ Servants in turn were held to the same contractual terms as their English counterparts, only able to remove themselves from service in cases of neglect, abuse, or mutual agreement. The relationship between master and servant was not unlike that between father and children, and as we shall see in the following chapters, in this relationship too the burgh and Kirk sought to ensure both lasting relationships and good order.

The statutes that sought to order the city often corresponded with craft and guild attempts to regulate trade within the burgh. Edinburgh, like York, was dependant on a constant flow of mercantile, legal and ecclesiastical trade to keep the city's accounts in the black. However the censures against revelry and excess in both food and drink did have an impact on the victualling economy, with harsh fines doled out to both the consumers and providers of excessive banquets.²²⁸ In 1595 the city issued an ordinance against the 'vyce of drukkyennes [that] abounds within this burgh for laik of punishment'.²²⁹ Statutes such as these had a particular impact on the female economy of the city. Women had long played a significant role in the production and distribution of alcohol.²³⁰ Reformed rhetoric not only chastised the excessive consumption of alcohol, but also cast scorn on the reputations of women involved in the trade.²³¹ A statute of 1560 proclaimed that 'the iniquitie of wemen taverneris within this burgh hes bene ane greit occasioun of huirdome within this burgh, swa that it apperis and bordall to be in euey

²²⁶ Knox, *Works*, 3: 540-41.

²²⁷ *Ed. Recs. II*, 196, August 1597; Graham, 'Women and the Church Courts', 191-92.

²²⁸ 'Extracts of the Buik of the General Kirk of Edinburgh', 104 August 1574, 'riotus excess of banqueting', 114, January 1575; Todd, *Culture of Protestantism*, 213

²²⁹ *Ed. Recs. II*, 145, November 1595.

²³⁰ Elizabeth Ewan, 'For Whatever Ales Ye': Women as Consumers and Producers in Late Medieval Scottish Towns', in Elizabeth Ewan and Maureen M. Meikle (eds), *Women in Scotland, c. 1100 - c. 1750* (East Linton, 1999), 128-29. Women were also involved in the York brewing and victualing trades, though there is less evidence of the women of York owning and operating their own businesses. Rather they were associated with their husband's and families' business ventures. Galley, *Demography of York*, 34.

taverne'.²³² In combination with the move from ale to beer and increasing regulation within the industry, culminating in the founding of the male dominated Society of Brewers in 1596, female participation in the brewing of all kinds of 'commercial' alcohol diminished in the wake of 1560.²³³

Yet, such regulations against drunkenness also sought to help the numerous female victims of domestic abuse who came before the session and burgh.²³⁴ The Kirk and civic authorities in Edinburgh, as in York, saw a clearly visible connection between alcohol and domestic violence.²³⁵ The statutes to regulate and restrict the trade in wine, ale and even whisky were thus a means to protect delicate female reputations and bodies. Yet men too fell victim to the violence of alcoholic excess and there was a broader social agenda at work here than merely protecting weak women. The Kirk and burgh were regulating an industry that could have been perceived as a root cause of the ills of the city – slander, fornication, whoredom, violence and blasphemy. It is certainly no surprise that the largest proportion of indictments for drunken excess were issued for incidents that occurred on the Sabbath when the good burghers should have been at church.

These notions of excess, sexual looseness and 'filthie vice' were perceived to have their impact on the entire population of the city, not simply on the reputations and lives of the perpetrators.²³⁶ Edinburgh faced its last major outbreak of plague during the mid to late 1580s.²³⁷ However, throughout the period of this study there was a fear of the 'sickness' returning. As we shall see in the next chapter a key cause of any suspected outbreaks was perceived to be the immorality and licentious living of the burgh. Calderwood recorded in his *History of the Kirk of Scotland* the

²³¹ See: Judith M. Bennett, 'Work in Progress: Misogyny, Popular Culture and Women's Work', *History Workshop Journal* (UK), 31 (1991), 180.

²³² *Ed. Recs. I*, iii, 86 30 October 1560; *APS*, 2:43, 1567. This attitude is also reflected in some English sources of the seventeenth century, Amussen, *An Ordered Society*, 169.

²³³ Dingwall, *Late Seventeenth-Century Edinburgh*, 140; Elizabeth Ewan, 'Crime or Culture? Women and Daily Life in late medieval Scotland', in Yvonne Galloway Brown and Rona Ferguson (eds), *Twisted Sisters: Women, Crime and Deviance in Scotland since 1400*, (East Linton, 2002), 127; Lynch, *Scotland*, 176-8. See also, Bennett, *Ale, Beer and Brewsters*, 95-96

²³⁴ Alma B. Calderwood (ed), *Buik of the Kirk of the Canagait 1564-1567*, (Edinburgh, 1961), 78 1564; NAS, CH2/718/2, f. 146, 11 February 1602; NAS, Edinburgh, CH2/718/52, 165, February 1611; *Ed. Recs. II*, 160, June 1596.

²³⁵ Cameron (ed), *The First Book of Discipline*, 168; Todd, *Culture of Protestantism*, 286-86.

²³⁶ Todd, *Culture of Protestantism*, 174-75.

²³⁷ Graham, *Uses of Reform*, 29; Lynch, *Edinburgh*, 3. Beginning in 1584 and ending in 1588.

desire to remove the plague by suppressing and further punishing vice within the city.²³⁸ This last major outbreak of plague was accompanied by a national famine which lasted from 1585-1587, followed by further famine conditions a decade later and at the end of this study, in the years 1621-1624.²³⁹ Time and time again in the face of natural disasters the Kirk and council called on the entire burgh to fast, to repent sin, and redeem not only personal reputations but also communal ones. However, Edinburgh, like York, recovered quickly from its losses, the population almost doubling in the decades to 1640.²⁴⁰

Edinburgh was at the heart of Scottish reform. As the largest urban centre within Scotland its role in shaping Scottish cultural and political life was significant. But within its own confines, a blurry line demarking the suburbs of the capital from its nearest neighbour and 'aunt enemy' Leith, the burgh itself needed to adapt to a steadily growing population, to the shifts in political loyalties and government which were played out within its walls, and to the economic and religious changes of the period. The Kirk did not completely discard the medieval church that had preceded it, but rather adapted many of its core values and institutions, reinvigorating and refocusing them onto a population that had become, in the reformers eyes, distanced and isolated from the true meaning of religion. The session became a focal institution in the life of many burghers, a forum in which to assert, contest, deny and formalise many of their key relationships. The institutions of the burgh itself were reinvigorated by these shifts, becoming a part of a tiered and popular legal system, settling disputes, regulating trade and enforcing specific modes of behaviour.

Conclusion

The institutions of reform in each city rooted ideas of order and morality in the household and in the bodily conduct of individuals. The ecclesiastical courts and civic authorities of both Edinburgh and York focused on the household as the locus of moral regulation by calling on householders to monitor and correct those within their domain. Yet, in each city that moral regulation was enforced in distinct ways, the Kirk in Edinburgh focused on sexual disorder and

²³⁸ David Calderwood, *Calderwood's History of the Kirk of Scotland*, 8 vols (Edinburgh, 1843), 2: 425.

²³⁹ Laura Stewart, 'Poor Relief in Edinburgh and the Famine of 1621-24', *International Review of Scottish Studies*, 30 (2005), 5-41; Wrightson, *Earthly Necessities*, 198.

immorality, whilst York focused on social disorders such as illicit gaming and drinking, and verbal disputes. Yet both cities understood disorder to be a domestic as well as civic and religious concern. Thus the men and women of these cities were made to demonstrate their conformity to this moral order through their relationships with the Kirk, household and each other. It was in physical interaction, bodily and social contact, that each city represented its moral corruption and reform.

The institutional and political shifts that accompanied reform in each city introduced a distinctly Protestant morality to the legal cultures.²⁴¹ This thesis examines the impact of that morality on the ways that men and women represented their sexual relationships within these legal and religious institutions, how they used and utilised the ideas of good order, morality and sexuality that were dominant in each city. In so doing it questions the extent to which the institutions themselves adapted to the needs and behaviours of the population, taking into account how men and women used the courts, how language was constructed within the legal framework to convey specific meaning and how actions and behaviours abhorrent to the religious order, but necessary within certain social contexts, were accommodated.

Certainly in Edinburgh the sheer dominance of the Kirk in daily life, as a provider of poor relief and free education as well as a means by which to right a perceived legal or moral wrong, saw its grass roots popularity rise in the course of the seventeenth century, as the population of the city came to use the session to achieve certain social aims. In York those who utilised the church courts would have become familiar with the languages and modes of storytelling necessary to achieve certain legal and social ends, often without having to complete the legal process. In both cities the church court structures were re-invigorated by the reformation and this was accompanied by a wave of statute law that supported moral and institutional reform. This chapter does not seek to suggest that the Reformation immediately took hold and was an overarching success. In neither Edinburgh nor York was Catholicism wiped away by a single act of Parliament. Rather, both cities maintained strong and enduring Catholic influences that continued to resist the 'progress' of Reformed religion well into the seventeenth century.

²⁴⁰ Lynch, *Edinburgh*, 11.

²⁴¹ In both England and Scotland the particular adoption and adaptation of religious reform became symbolic of a type of national identity.

Marc Bloch has observed that 'It is in time and, therefore, in history that the great drama of sin and redemption, the central axis of all Christian thought, is unfolded.'²⁴² It is within this context of changes in Christian thought, that attitudes to and interpretations of issues regarding gender, sex, and sexuality take on a profound significance, as they can shed light on how these 'power' relationships, between neighbours, genders, lawyers, church and state, developed or simply continued to reassert themselves in traditional forms. This relationship between 'sin and redemption' illustrates an important aspect of reformed mentalities in 'British' history and historiography. Martin Ingram has pointed to the significance of continuity in this arena, emphasizing that the reformation of the church did not create the disciplinary structures that are so often the focus of studies such as this.²⁴³ Rather, both the English Church and the Scottish Kirk adopted and adapted the existing mechanisms of religious authority and discipline established under the Roman Catholic administration and claimed churches, courts, and parishes as their own. They redrew and redefined these institutions as Reformed without actually changing their primary function: to ensure the moral probity of the congregation, of the parish.

²⁴² Marc Bloch, *The Historian's Craft* (Manchester, 1976), 5.

²⁴³ Ingram, 'The Reformation of Manners', 56-59.

Bitches, Witches and Whores: Slander and Social Interaction

In 1622 Ewphame Lowder was brought before the session of St Cuthbert's parish, the extramural parish that surrounded Edinburgh. She was called to answer for her slanderous accusation that John Broun, resident of Gorgie Mylnes, a nearby town, had 'had carnall daill or copulatioun with the foirsaid Ewphame' causing her to become pregnant by him and not her 'guidman' Walter Brock. It transpired Ewphame Lowder had lied. One month later the minute book of the parish recorded that she had,

confest that scho was wt bairne to hir awin gudman callit walter brock and being posit quhy was ye ground and caus that scho fatherit hir bairne upoun Johne Broun in gorgie mylne scho anserit because the said Johne broun said yt he suld cut the lugs[*ears*] out of hir gud manis heid And scho lykwyis confest that hir awing gudman had cumpamie wt hir as uther men hes wt thair wyfis and cummis and layis into hir hous everilk aucht dayes¹

This chapter examines why a woman such as Lowder would wilfully damage her own reputation, as well as that of her 'guidman', Walter Brock. Was it simply about wreaking revenge on a man she had possibly never met, John Broun? Or did slander draw on a more complex network of social signifiers and linguistic markers of respect and status that were employed to assert types of relationships and modes of authority? This chapter analyses why Lowder's words were considered so harmful, and how that harm was perceived to impinge on her own status, that of the man she slandered and that of her family. It further reveals how such slanders were perceived by the parish community. By examining the ways that slanderous language was thought about, employed and deployed by men and women in Edinburgh and York, I highlight the importance of language and social perceptions in the construction of early modern identities and relationships.

Defamation suits and slander cases have proved a popular resource for historians of early modern behaviour, crime and religion. Sharpe established the richness of such material in the York records over twenty years ago, highlighting the insights church court records can offer into 'ordinary' experiences of social discipline and the law.² Since then English court records

¹ NAS, Edinburgh, CH2/718/4, f. 126-9, 12 December 1622 to 16 January 1623.

² J. A. Sharpe, *Defamation and Sexual Slander in Early Modern England: The Church Courts at York*, Borthwick Papers no. 58 (York, 1980).

of numerous jurisdictions, including the church courts, have been used in studies of youth,³ women,⁴ and misbehaviour,⁵ and are still continuing to yield stories and secrets.⁶ Ingram has highlighted the ways in which relationships between English men and women were regulated through the religious disciplinary system,⁷ and Walker has examined the connections between gender, sin and concepts of criminality, and criminal behaviour in England.⁸ However, despite a number of important studies into slanderous and “injurious” words, the Scottish historiography of insult and slander is much less developed.⁹ This may owe something to the distinct meaning of slander in Scots law.

Within the session slander [or *sclander*] was understood in two ways. Firstly it was conceived as a verbal dispute between two or more parties, often referred to as both slander and ‘flyting’.¹⁰ Secondly, slander was understood to be a physical transgression by which men

³ Paul Griffiths, *Youth and Authority: Formative Experiences in England* (Oxford, 1996); Ilana Krausman Ben-Amos, ‘Reciprocal Bonding: Parents and their offspring in early modern England’, *Journal of Family History*, 25:3 (2000), 291-312; idem, *Adolescence and Youth in Early Modern England* (New Haven, 1994).

⁴ Laura Gowing, *Common Bodies: Women, Touch and Power in Seventeenth-Century England* (London, 2003).

⁵ Marjorie Keniston McIntosh, *Controlling Misbehaviour in England, 1370-1600* (Cambridge, 2002)

⁶ Fay Bound, ‘An Angry and Malicious Mind’? Narratives of Slander at the Church Courts of York, c.1660-c.1760’, *History Workshop Journal*, 56 (2003), 59-77; M. Lindsay Kaplan, *The Culture of Slander in Early Modern England* (Cambridge, 1997); Barbara Hanawalt, ‘Of Good and Ill Repute’: Gender and social control in medieval England (Oxford, 1998); Karen Jones, *Gender and Petty Crime in Late Medieval England: The Local Courts in Kent, 1460-1560* (Woodbridge, 2006); Lawrence R. Poos, ‘Sex, Lies and the Church Courts of Pre-Reformation England’, *Journal of Interdisciplinary History*, 25:4 (1995), 585-607; Laura Gowing, *Domestic Dangers: Women, words and sex in early modern London* (Oxford, 1996); idem, ‘Gender and the Language of Insult in Early Modern London’ *History Workshop Journal*, 35 (1993), 1-21; Steve Hindle, ‘The Shaming of Margaret Knowsley: Gossip, gender and the experience of authority in early modern England’, *Continuity and Change*, 9: 3 (1994), 391-419.

⁷ Martin Ingram, *Church Courts, Sex and Marriage in England, 1570-1640* (Cambridge, 1987); idem, ‘Law, Litigants and the Construction of ‘Honour’: Slander suits in early modern England’, in P. Coss (ed) *The Moral World of the Law* (Cambridge, 2000), 134-160; idem, ‘Ridings, Rough Music and the ‘Reform of Popular Culture’ in Early Modern England’, *Past & Present*, 105 (1984), 79-113; idem, ‘The Reformation of Manners in Early Modern England’, in Paul Griffiths, Adam Fox, and Steve Hindle (eds), *Experience of Authority in Early Modern England* (Houndmills, 1996), 47- 88.

⁸ Garthine Walker, *Crime, Gender, and Social Order in Early Modern England* (Cambridge, 2003).

⁹ Elizabeth Ewan, ‘Many Injurious Words’: Defamation and Gender in Late Medieval Scotland’, in Russell Andrew McDonald (ed), *History, Literature, and Music in Scotland, 700-1560* (Toronto, 2002), 163-86; John G. Harrison, ‘Women and the Branks in Stirling, c. 1600 to c. 1730’ *Scottish Economic and Social History*, 18: 2 (1999), 114-131. Defamation and language are addressed to some extent in Margo Todd, *The Culture of Protestantism in Early Modern Scotland* (London, 2002), 244-49; Michael F. Graham, *The Uses of Reform: ‘Godly Discipline’ and Popular Behaviour in Scotland and Beyond, 1560-1610* (Leiden, 1996), 290-98; Leah Leneman, ‘Defamation in Scotland, 1750-1800’, *Continuity and Change*, 15:2 (2000), 209-34. For brief mention of ‘sclanderous’ behaviour, which will be addressed in the following section, see, Leah Leneman and Rosalind Mitchison, *Girls in Trouble: Sexuality and social control in rural Scotland 1660-1780* (Edinburgh, 1998), 91-92; idem, *Sin in the City: Sexuality and social control in urban Scotland 1660-1780* (Edinburgh, 1998), 41-2; Leah Leneman, ‘Defamation in Scotland, 1750-1800’, *Continuity and Change*, 15:2 (2000), 209-34.

¹⁰ DSL, ‘<http://www.dsl.ac.uk/dsl/>’, (01 November 2006), ‘Flytting,...1. The action of quarrelling, scolding, or employing abusive language.’ Ewan, ‘Many Injurious Words’, 164-65. Cf. Todd, *Culture of Protestantism*, 235-42, points out that flyting could be distinct from scolding in that it was often an exchange of words, in which communal intervention and arbitration was necessary to avoid subsequent violence.

and women endangered their own reputations.¹¹ This notion of slander was closely tied to the idea of scandalising oneself, of behaving, or being perceived to have behaved, in such a fashion as to damage one's reputation.¹² This definition of slander was related to keeping questionable company and, for women in particular, was closely tied to notions of sexual integrity. In the English courts slander and defamation related specifically to verbal slights. However, a defamation suit could be defended by proving that the plaintiff had indeed indulged in that act at the heart of the insult, committed fornication or acted in the manner of a whore. Within the English courts only those words and utterances that could inflict damage on one's social standing were actionable.¹³ Under the Scottish system there was no need to engage in a verbal contest with another person: the reporting or common suspicion of the community could bring 'slander' upon an individual. Yet, we must challenge the extent to which slander was about specific acts of sexual and social misconduct and consider the extent to which they expressed communal concerns and perceptions about an individual's, or family's, behaviour, and about the system that was in place to regulate that behaviour. Slander in Edinburgh revealed the inconsistency of Kirk punishment, its fallibility and its flexibility, as the Kirk questioned and challenged its own assumptions about popular behaviour and morality.

This chapter begins with an overview of defamation and slander in Edinburgh and then York, establishing the numbers and types of cases I am examining. It then develops the detailed historiography on the use of the word 'whore' with regard to women,¹⁴ by examining the slandering of men, testing the assumption that there was no way to call a man a whore.¹⁵ It

¹¹ DSL, '<http://www.dsl.ac.uk/dsl/index.html>', (02 October 2006). Slander; '3. Disgrace or shame falling upon a person or persons, an institution or a thing in consequence of some alleged reprehensible act; ill-repute; opprobrium.' Further defined as, 'c. A discreditable act; a wrong; a crime.' This is in line with the OED's definition of slander, 3., OED, 'http://dictionary.oed.com/cgi/entry/50226981/50226981spg1?single=1&query_type=misspelling&queryword=sclander&first=1&max_to_show=10&hilite=50226981spg1', (02 October 2006).

¹² Leneman and Mitchison, *Girls in Trouble*, 91-92.

¹³ R.H. Helmholz, *The Oxford History of the Laws of England: Vol. 1, the canon law and ecclesiastical jurisdiction from 597 to the 1640s* (Oxford, 2004), 576-77, 585-86, 595-96.

¹⁴ Gowing, *Domestic Dangers*, chapters 3 and 4, esp. 79-85. See also her article 'Gender and the Language of Insult', an earlier version of chapter 3. See also, G. R., Quaife, *Wanton Wenches and Wayward Wives: Peasants and Illicit Sex in Early Seventeenth-Century England* (London, 1979); Anna Clark, 'Whores and Gossips: Sexual reputation in London, 1770-1825', in A. Angerman, G. Binnema, A. Keunen, V. Poels, and J. Zirkzee (eds), *Current Issues in Women's History* (London, 1989), 231-48; Faramerz Dabhoiwala, 'The Pattern of Sexual Immorality in Seventeenth- and Eighteenth-Century London', in Paul Griffiths and Mark S. R. Jenner (eds), *Londinopolis: Essays in the cultural and social history of early modern London* (Manchester, 2000), 88.

¹⁵ Gowing, *Domestic Dangers*, 63-4. Ingram, 'Law, Litigants and the Construction of 'Honor'', 153-57, raises a challenge to this assertion, citing his own work, *Church Courts*, 302, 304-6; Sharpe, *Defamation and Sexual Slander*, 10, 16, and Susan Dwyer Amussen, *An Ordered Society: Gender and class in early modern England* (Oxford, 1988), 102-4, among those who saw the issue of sexual reputation as central to male concepts of respectability, as well as female ones.

then examines the use of animal imagery in insult, unpacking the ways that animals were used to represent both the basest elements of sex, and forms of social transgression. In particular I draw out the ways that animal insult was gendered. I then move on to the ways that diseases, particularly the pox, were figured and employed in the language of insult. I show that such insults created a connection between filth and moral debauchery, and drew on the language of plague, infection, and divine judgement. I then examine the role of the family and household in the construction and meaning of these insults, arguing that they reveal the interrelatedness of family, status, honour and sexual identity in both Edinburgh and York. In the final section I examine the form of the language of insult, looking particularly at the verbal and written use of the rhyme bitch/witch. These words were used, and recounted, in narratives of defamation both for their meaning and their sound. Ultimately these records demonstrate how the language of sex in early modern cities was visceral, both malleable and corporeal, and how it rooted sex and reputation in the body.

Many slanderous allegations drew on the language of sex and gender, often in creative ways. The records of Edinburgh and York reveal a complex world of stereotypes and gendered tropes, in which men could be depicted as to possessing womanly characteristics and women masculine ones in order to caricature and defame individuals, and even families. Within this gendering of insult there was a range of tropes that could be employed in the symbolic construction of an identity, from the virgin to the whore. These types of insult spoke of deviance and wantonness as a characteristic of female sexuality, even when used against a man.

The malleability of early modern gender and identity in insult evokes, to some degree, the one-sex model proposed by Thomas Laqueur.¹⁶ However, his model is not representative of everyday experience during this period. His work has rightly been criticised as being too much an exploration of ideas, an intellectualisation of sex and gender that does not match the conceptual world those of lower and middling social status.¹⁷ Instead this chapter draws on the work of Laura Gowing to situate early modern sex and sexual encounters within the

¹⁶ Thomas Laqueur, *Making Sex: Body and gender from the Greeks to Freud* (Cambridge, Ma., 1990).

¹⁷ Katherine Park and Robert A. Nye, 'Destiny is Anatomy', *The New Republic* (Feb, 1991), 54. Whilst I appreciate the value and significance of Thomas Laqueur's work, these records reveal a more definite sense of solidity and understanding, that is not a modern construction of sexual difference, but which is not as unstable and unclear as he at times makes early modern sex. The theorists and physicians he prioritises do not appear in the court records, but men and women with their own stable concepts of sex and gender do, Gowing, *Common Bodies*, 19-20.

sphere of plebeian experience and understanding, using the words and language recorded in the courts to access popular ideas about early modern sexual identities.¹⁸

Despite their different religious and legal cultures, one finds similar language and similar cultural references to families, sexual behaviour, social responsibility, and animals in the courts of Edinburgh and York. The Edinburgh minute books indicate the language and behaviour of men and women called before the lay elders of the Kirk, recording only brief accounts of transgressions and the punishments imposed. These presentments are similar to office cases within the English church courts. Yet the minute books can also indicate the concerns of neighbours and the community who reported and responded to deviant or contentious behaviour. The depositions within the York church courts record in greater detail the reasons why men and women prosecuted each other in instance cases, or individual suits, for moral and social transgressions. Witness accounts were constructed as specific responses to the enquiries of the court; they situate behaviour and language in the context of space and social relations, demonstrating the circumstances of name-calling, defamation, and sexual/moral transgression. Despite their differing legal procedures and processes, the church court records of both cities show individuals arguing about the nature of “morality” as well as revealing the official regulation of fornication and other deviant behaviours.

Edinburgh

Unfortunately the session records of St Giles, the principal and wealthiest Edinburgh parish, have only survived in part, providing an intermittent and incomplete record of session business.¹⁹ I have therefore examined the session records of St Cuthbert’s parish, the suburb of Edinburgh that clung to the walls and housed the middling and lower status population of the city. In the course of their day-to-day activities and interactions these men and women asserted and defined their own roles and places in their physically close environment, just as their counterparts in English cities did.²⁰ Slander cases at the session shed a narrow but instructive light on some of the tensions that arose within the city and on the means by which

¹⁸ Gowing, ‘Gender and the Language of Insult’, 1-21.

¹⁹ NAS, Edinburgh, CH2/136/83 (Minutes of St Giles Session, November 1608 to March 1622) is a minute book of official parish business, such as the election of elders and the petitions to the Presbytery rather than a comprehensive account of session proceedings and presentments. See also: NAS, Edinburgh, CH2/450/1 (Edinburgh Kirk Session Register, April 1574 to November 1575), a more thorough, if incomplete, account of the session’s disciplinary activities.

²⁰ Gowing, *Domestic Dangers*, 20.

those tensions were expressed. Much of the actionable name calling in Edinburgh focused sexual behaviour and interaction.

Within the Foul Discipline Book of the session of St Cuthbert's, slander accounts for only five percent of recorded presentments (twenty-six presentments). By contrast forty-six percent of presentments were for fornication and a further nine percent for multiple acts of fornication (see Table One).²¹ The experience of the church courts in England leads one to expect a higher percentage of defamation cases, but the session was a very different legal forum. This is not to suggest that the Scots were not verbally contentious. Ewan has demonstrated that the use of 'injurious words', particularly those of a sexual nature, was characteristic of defamation cases presented before the late medieval burgh courts.²² The slender records of slanderous language and behaviour within the St Cuthbert's session reveal patterns of insult and of terminology in Edinburgh that resembled those in defamation cases in York. The disparity between English and Scottish records can be read as indicative of the Kirk's emphasis on the informal resolution of disputes through arbitration,²³ but it is also indicative of the different kinds of records in each city and nation.

As discussed in Chapter One English studies have been largely based on the instance cases, or suits between individuals, that proliferated in the consistory court rather than on the sorts of office presentments, or cases brought by the court, that characterised the Scottish session. To allow for a more accurate comparison this study also draws on the records of the Archdeacon's Visitation in York in which defamation was treated as an offence against the authority of the church with presentments made for scolding and disorder on the Sabbath, in the churchyard or against a churchwarden. Yet even within the Visitation records there appears to have been a greater concern for contentious language than is evident within the St Cuthbert's session (see Table Two). The St Cuthbert's session was more concerned with regulating the sexual, bodily, interactions of men and women within the burgh than with policing verbal contestations. By briefly examining the general activity of the session we can better understand how these twenty six cases of 'slander' fitted into the moral programme of

²¹ NAS, Edinburgh, CH2/718/52, St Cuthbert's Kirk Session: Foul Discipline Book (1595-1612). These numbers account for twenty six slander presentments in contrast to two hundred and thirty four fornication presentments and a further forty three presentments for multiple incidents of fornication.

²² Ewan, "Many Injurious Words", 166-72. See also, Judith Pollman, 'Off the Record: Problems in the Quantification of Calvinist Church Discipline', *Sixteenth Century Journal*, 33: 2 (2002), 423-38.

²³ Todd, *Culture of Protestantism*, 234-44.

the Kirk, and how they can be compared to the more numerous and detailed records of slander and defamation left by the consistory court in York.

Fornication was the most common of the transgressions recorded within the Foul Discipline Book. The next most frequent were cases concerning the formalisation and finalisation of the marriage process. Table One lists the numbers of presentments recorded in the book from a sample taken at five yearly intervals. Within the discipline book individuals were recorded as having been presented and disciplined for resaving [or housing] pregnant women and 'evil persons', for not complying with the programme of the Kirk, and for acts of violence. Breach of the Sabbath, one of the greatest concerns of the Kirk authorities, only accounts for five percent of presentments recorded within the Foul Discipline Book. This should alert us to the limitations of this source as a gauge of overall session activity. The discipline book must be examined alongside the general minutes of the session in order to build up a fuller account of the transgressions committed and to elaborate the context within which the punishment of sexual transgression occurred. Figure One was compiled from the forty distinct cases of verbal slander and flyting before the session,²⁴ whilst in Figure Two, compiled from a survey of the sexual activity recorded within the St Cuthbert's Minute Books,²⁵ fornication accounts for fifty-one percent of presentments, or two hundred and thirty incidents, and slanderous behaviour accounts for seven percent of presentments, a further thirty-two incidents.²⁶ Thus whilst there is some crossover in the detail of both records, the discipline book was clearly used to maintain a fuller account of the numbers of men and women presented and disciplined by the session, without necessarily recording the detail of those transgressions. The Minute Books contain a more detailed, perhaps problematic, account of session business. Thus the Foul Discipline Book reveals that the session was an even busier legal forum than the Minute Books indicate. The Kirk was a forum in which men and women were called to account for their relationships with each other, for their physical and emotional contacts.

²⁴ NAS, Edinburgh, CH2/718/1-4. This number represents those cases that contain enough information to at least determine the participants in the case, if not the precise language used. There may be other cases in these minute books, but they have too little information to ascertain their precise nature.

The rather small number of cases in which the cause at issue is fully expressed or explained is reflected in the Discipline Book of the parish. From a sample of the book, taken at 5 year intervals from 1596 to 1611, only 26 cases of explicit slander were found 7 of which concern slanderous behaviour and not words: NAS, Edinburgh, CH2/718/52, St Cuthbert's Kirk Session: Foul Discipline Book (1595-1612). But it must be borne in mind that this was a sample survey.

²⁵ NAS, Edinburgh, CH2/718/1-4, St Cuthbert's Minute Book, Vol. 1-4 (1586 to 1629).

²⁶ Curiously, multiple acts of fornication account for a similar percentage of activity in both records, with forty three cases with the Foul Discipline book constituting nine percent of activity, whilst relapse in fornication accounted for seven percent, thirty-two presentments, and trilapse accounted for two percent, nine presentments, of my minute book survey.

Certain types of language, echoing the moral strictures of the reformed Kirk and evoking illicit sexuality and social disorder, carried as much cultural weight and symbolic meaning on a Scottish street as they did on a Yorkshire one. Words like 'witche', 'beche' and 'hure' peppered the Minute Books. Accusations of adulterous and licentious living were the tools of the slanderer's trade, as Sharpe and Gowing have demonstrated.²⁷ Men chastised women's 'evill tounes' and women reported those men who spoke 'irreverently' to them. The largest group of cases - forty-three percent - were initiated by women against the defamatory words of other women (see Figure One). However, women did on occasion engage in verbal conflicts with men, both calling them before the session (thirteen percent), and being called forth themselves (thirteen percent). Men also made their presence felt in the records of the parish, either alongside their wives in disputes that questioned the validity and veracity of their relationship (eight percent), or as individuals, as likely to harm verbally or physically another man (twelve percent), as to slander a woman's good name through allegations of sexual debauchery or public chastisement. These numbers resemble the percentages of women and men initiating slander and defamation cases before the York church courts, and, to a lesser degree, reflect Gowing's findings for the London consistory court.²⁸

The slander cases for which records are extant suggest a burgh concern for slanderous, or scandalous, behaviour in a cultural system that accounted both men and women's reputed actions to be as significant as their words in the construction of honour and identity. The St Cuthbert's session was chiefly concerned with the regulation of inappropriate behaviour. Consequently, in regulating incidents of slander, the elders also monitored behaviour that had not yet become adulterous, or was not technically fornication, but which endangered the reputations (and godliness) of the parties. The case of Christiane Crystie 'spous to archibald wardlaw' is revealing here. Crystie appeared for repentance in sackcloth on April 17 1591, having been accused of 'sclandering hir self with patrick spence'.²⁹ Late the following year - the precise date was not recorded - Archibald Wardlaw, Crystie's husband, was asked by the same session 'gif he bad his wyfe say that pattrik spence lay with hir'.³⁰ His witnesses were

²⁷ Laura Gowing, 'Gender and the Language of Insult', 1-21; Sharpe, *Defamation and Sexual Slander*, 9-11.

²⁸ Gowing, *Domestic Dangers*, 60; Sharpe, *Defamation and Sexual Slander*.

²⁹ NAS, Edinburgh, CH2/718/1, f. 134, 17 April 1591.

³⁰ NAS, Edinburgh, CH2/718/1, f. 167, no precise date recorded.

then recalled for further questioning on the matter,³¹ which appears to have been resolved once Crystie had made a substantial public repentance.

However, in between these two appearances, on June 1 1591, the minutes record that the same Archibald Wardlaw 'confessit that he had committed adulterie with Jonet motman', and that both parties were held over for repentance.³² This appears at first glance to be a simple case of sexual misconduct punished, as any other case of this nature would have been, by the session. Wardlaw himself had no previous conviction for adulterous behaviour in St Cuthbert's parish, and Jonet Motman's name only appears in relation to this specific case. But this case seems to have aroused suspicion with regard to Wardlaw's wife who had denied any slanderous behaviour with Patrick Spence. The session then considered whether Crystie's husband, now shown to be morally dubious himself, had been complicit in the reporting of her slanderous behaviour the previous April. This case raises questions explored in chapters three and five about the ways in which accusations such as these laid the ground for divorce proceedings and the nature of witness accounts. To the session of St Cuthbert's such an apparently simple case of sexual impropriety raised numerous questions about the marital and social impact of behaviour, rumour and punishment.

The policy of the Kirk was for such disputes to be settled peaceably between the parties involved only resorting to legal proceedings in cases which could not be resolved through arbitration.³³ Therefore, the cases in the Minute Books and discipline register were only those disputes in which the protagonists could not reach a mutually acceptable resolution, cases of continued animosity, or in which slanderous words led on to further prosecutions for immoral behaviour. These disputes, both those that made it into the record and those that did not, would have fed the Kirk's much larger concern for sexual behaviours, for fornication in particular. However, these cases do provide a glimpse of the linguistic, social and sexual world of the men and women presented before the session

York

In York accusations of slander or defamation were much more common than in Edinburgh. Unlike in Edinburgh the remit of each case was to deal only with the damage caused by

³¹ NAS, Edinburgh, CH2/718/1, f. 167, no precise date recorded.

³² NAS, Edinburgh, CH2/718/1, f. 141, 1 June 1591.

³³ James K. Cameron (ed), *The First Book of Discipline* (Glasgow, 2005), 167-68.

defamatory and slanderous language and to assess the impact of that accusation on the social and working life of the plaintiff.³⁴ The records of the consistory court do not indicate the extremes of extrovert or bawdy behaviour that have been found in other English ecclesiastical courts.³⁵ This is not to say that the men and women of the city did not talk openly and frankly about sex and sexual relationships, or use overtly sexual imagery in insult. On the contrary such language formed the basis of most disputes before the church courts. In York the concern for moral and godly behaviour manifested itself in a concern for slanderous and defamatory language rather than the prosecution of specific sexualised actions. The nature of the English legal system meant that litigation for such language often did move far beyond the simple arbitration encouraged further to the north.³⁶

As is shown in Figure Three, in York over the period 1560 to 1625 slander and defamation made up seventy-one percent (one hundred and fourteen cases) of the surviving consistory causes concerned with sexual relations. Whilst the rather large peaks and troughs in the graph will lead some to question the use of the term 'consistent', there is evidence to show that the surviving cases were merely the tip of an iceberg,³⁷ much as I suspect of the extant cases in the Edinburgh session. Some peaks in Figure Three were the result of multiple suits were brought by the various parties in a single dispute, as in the 1610 cases of Helen Topham, Anne Johnson, and Alice Robinson.³⁸ Table Two shows the gap between the extant cases I have used from the courts of the consistory, Dean and Chapter and the Archdeacon's Visitation books for city parishes in the years 1598 and 1613. This shows that while there were not necessarily many more cases in any given year than have survived in the cause papers, there could be a substantial increase from surviving to possible cases, as in the 1613 example where only three defamation cases survived despite fourteen counts of disorder being presented before the Visitation. There is good evidence to suggest that more cases were presented to the court than are preserved in the surviving records, particularly as a number of

³⁴ I am not saying that this was not the case in Edinburgh, but that the ecclesiastical legal systems in each city structured and prioritised these types of case in a different manner. The session looked to mediation as the primary and main means of resolving disputes between parties, whereas the York consistory established an effective forum for litigious reprisal and reparations.

³⁵ See in particular Laura Gowing's *Common Bodies and Domestic Dangers*. She creates an image of a particularly bawdy south and southwest.

³⁶ The vast majority of cases before the consistory were party prosecutions in which one person would prosecute another each paying their own way through the court system. Only in a few cases of immorality and matrimony that we will encounter in the coming chapter did the court itself launch an *office* case against a particular individual or couple. See Figure Three, which shows no Office presentments for slander.

³⁷ Sharpe, *Defamation and Sexual Slander*, 7.

³⁸ These four cases, Borthwick, York, CP.H 589-92, constitute half of the surviving records for that year.

records refer to previous or consequent cases for which the records are no longer extant. According to Sharpe the Act Books of York indicate a one in ten survival rate for cases in the sixteenth and seventeenth centuries.³⁹

In Figures Three and Four, defamation means just that, cases where men and women slandered and defamed each other repeatedly and in public. These cases arose when spontaneous outbursts got out of hand, or when long running animosities and disputes escalated. Defamation was often brought about by rumour and gossip which could spread rapidly through the parishes and small communities of York. Table Three provides a breakdown of the terms used in the York cases.⁴⁰ The prevalence of scolding and verbal forms of disorder within York is undermined by the evidence of the Archdeacon's Visitation returns for the city in 1598, but confirmed by the returns for 1613 (Table Two). In the earlier of the two years only two individuals were presented before the Visitation for verbal outbursts, but in 1613 nine men and women were presented for chastising officers of the church and abusing both parishioners and churchwardens within the church yards of the city. These presentments demonstrate not only a concern with abusive language but also an interest in other forms of disorder, in particular drunkenness. The Visitation only presented those scolds and brawlers whose conflicts affected either church property or personnel and thus these presentments can also be read in terms of the relationship not only between the men and women of the city but also between the parishes and their congregation.

It is clear from Figure Four that women brought the bulk of defamation cases to the church courts of York, with thirty-nine percent (forty-five cases) initiated by women against other women, while women's suits against men constitute a further twenty one percent, or twenty four cases. Overall, women initiated sixty percent of surviving defamation cases within the city. This pattern reflects studies of other English cities as well as my Edinburgh sample (Figure One).⁴¹ Women's suits, however, make up a smaller percentage than Gowing has traced in the London courts during a similar time period, 1574 to 1640, where the church courts regularly saw in excess of seventy percent of cases brought by women.⁴² In terms of

³⁹ Sharpe, *Defamation and Sexual Slander*, 7. This echoes the problem with the St Cuthbert's records in Edinburgh, though the minute books and Discipline books are slightly more consistent in the Scottish example.

⁴⁰ Such a table is not possible for the Edinburgh record, as too small a number of cases state the actual words used in the insult.

⁴¹ See previously. But also Graham, *Uses of Reform*, 280-85.

⁴² Gowing, *Domestic Dangers*, 35.

the overall activity of the London consistory court Gowing found that fifty percent of cases saw women suing other women, whilst a further twenty seven percent of cases saw women suing men.⁴³ In Wiltshire, Ingram found that twice as many women launched slander suits than men in the 1580s with forty-seven suits launched by women and only twenty by men. In the early seventeenth century the numbers of both men and women utilising the Wiltshire church courts increased with eighty-seven women initiating suits and fifty-five men.⁴⁴

The numbers of women and men contesting defamation suits within York also increased within the period.⁴⁵ Marchant has found that defamation litigation in Yorkshire reached its peak in the late sixteenth and early seventeenth centuries with between one hundred and sixty and one hundred and seventy cases brought before the courts in a given year, though Marchant has not analysed the gendered nature of this activity.⁴⁶ However, Sharpe's study of defamation and sexual slander in the York church courts demonstrates that in the 1590s women initiated twelve more defamation suits than men, fifty four suits for the former, forty-two for the latter.⁴⁷ Sharpe also found that sexual defamation formed the basis of ninety percent of female cases and only 'three quarters' of those initiated by men.⁴⁸ Perhaps due to their lack of authority in other legal forums the women of York, and other English dioceses, became heavily involved in contesting local and social forms of authority through the church courts.⁴⁹ Women had fewer avenues than men by which to clear a tarnished name, heightening the significance of the consistory court in the preservation of female reputation. Yet this is not to say that English men were not active in the courts or in verbal disputes. Like their Scottish counterparts the men of York did actively engage with the social and legal cultures of insult in the city. Sixty-one percent of all cases involved some form of male participation, as compared to seventy-nine percent for women. In forty-three percent of cases men were the subjects of the suit and in a further thirty eight percent of cases men initiated

⁴³ Gowing, *Domestic Dangers*, 60. Gowing's study of the Act and Deposition books found one thousand two hundred and fifty eight defamation cases within the London Consistory during the sixty-six years of her study.

⁴⁴ Ingram, *Church Courts, Sex and Marriage*, 300-01.

⁴⁵ Sharpe, *Defamation and Sexual Slander*, 3; Marchant, *Church Under the Law*, 63.

⁴⁶ Marchant, *Church Under the Law*, 61-63. Marchant sampled the activity of the courts at ten yearly intervals between 1561-1 and 1638-9, the most active years being 1591-2, 1601-2 and 1611-12.

⁴⁷ Sharpe, *Defamation and Sexual Slander*, 10.

⁴⁸ Sharpe, *Defamation and Sexual Slander*, 15-16.

⁴⁹ Amy Erickson, *Women and Property in Early Modern England* (London, 1993); Mary Prior, 'Women and the Urban Economy', in Mary Prior (ed), *Women in English Society 1500-1800* (London, 1991), 93-117; Gowing, *Domestic Dangers*, 12; Sharpe *Defamation and Sexual Slander*, 27-28; Ingram, *Church Courts, Sex and Marriage*, 302; Tim Stretton, *Women Waging Law in Elizabethan England* (Cambridge, 1998), ch. 2, esp 29-30.

the suit. The men of York, just like those in Edinburgh were conscious both of the power of words and of the damage they could inflict.

It is apparent that in certain social and cultural respects the York church courts did not operate all that differently from those in Edinburgh. Where possible, mediation was ordered for warring parties. However it is also apparent that such mediation did not always work. The population of the city was not only familiar with the processes of the courts, but also used them to seek public and financial recompense for their tarnished reputations. Cases like these contain important information about the nature of, and damage done by, gossip in the parishes of York and Edinburgh and the accessibility of the courts to the women and men involved.

The Problem of the Male 'Whore'

Insults of women were overwhelmingly personal and sexual, using the word whore and its synonyms. ... Insults of men, in contrast, were much less likely to attack their own sexuality. Instead men were called cuckolds or bawds, with the implication that their wives were whores, or they were insulted with non-sexual words like knave and rogue. ... There was no way of calling a man a whore, or condemning his sexual promiscuity...⁵⁰

Gowing's compelling argument has come to dominate discussions of gender and the language of slander in the early modern period.⁵¹ It is clear that there were differing definitions of male and female sexual transgression, and these were the basis of most of the cases contested in the ecclesiastical courts. Susan Amussen has similarly explored not only how words like 'knave', 'rogue', and 'cuckold' damaged male reputations, but also how they were 'imaginatively combined' to greatest effect.⁵² Like Gowing, Amussen has argued that female insults 'had more concrete sexual implications than the equivalent insults – 'whoremaster', 'rogue' and 'knave - for men.'⁵³ In contrast, Ingram has suggested that 'it is clear that already

⁵⁰ Gowing, *Domestic Dangers*, 62-3. This is a somewhat toned down version of her argument which first appeared in 'Gender and the Language of Insult', 3-4.

⁵¹ Gowing has some important antecedents whose work also indicates, 'a crisis in gender relations seen in efforts to control female sexuality and / or speech', McIntosh, *Controlling Misbehaviour*, 14. She cites the work of Lyndal Roper, *The Holy Household: Women and Morals in Reformation Augsburg* (Oxford, 1989) and, *Oedipus and the Devil: Witchcraft, sexuality and religion in early modern Europe* (London, 1994); Underdown, 'Taming of the Scold'; Anthony Fletcher, *Gender, Sex and Subordination in England 1500-1800* (New Haven, 1995).

⁵² Susan Dwyer Amussen, 'The Part of a Christian Man': The cultural politics of manhood in early modern England', in Susan Dwyer Amussen and Mark A. Kishlansky (eds), *Political Culture and Cultural Politics in Early Modern England: Essays Presented to David Underdown* (Manchester, 1995), 225.

⁵³ Amussen, *An Ordered Society*, 102.

in Elizabethan and early Stuart times 'knave' and 'rogue' had emerged as words that could serve as functional equivalents of 'whore',⁵⁴ and Capp has asserted that 'men's anxiety over sexual reputation was more important than historians have generally assumed, and might provide women with a valuable means of redress or effective leverage in a variety of circumstances.'⁵⁵ This assertion is somewhat supported by cases before the York church courts which show that men, like women, could be judged on their sexual behaviour and that men were not only held accountable for their own sexual encounters but also for the sexual conduct of members of their households. Male and female sexual identities in this period were fundamentally intertwined and tied to non-sexual concerns, such as domestic and economic respectability.

The early modern culture of insult understood the word whore and its synonyms in distinctly female terms. As Gowing has observed, the language of insult 'differentiated persistently and profoundly between the sexual morals and sexual honour of women and men, ... gendered insults marked off the outlines of gender roles in sexual, marital, and social relations.'⁵⁶ The term whore focused attention on illicit female sexual activity and was unquestionably actionable in the courts.⁵⁷ This potent term undermined a woman's honour by attacking the most fundamental of female virtues, chastity.⁵⁸ Insults which used the term whore attacked women by making their reputations subject to communal understandings of moral and immoral sexual conduct. Dabhoiwala has spelled out the multifaceted nature of the word whore, illustrating how its meaning was determined and refined by the context in which it was used, as well as its target. In his account "common" whores 'were cut off from respectable society. Unlike other whores such women were held to be necessarily poor and sexually indiscriminate.'⁵⁹ Dabhoiwala distinguishes between the word as a term of abuse, an insult that could be used to attack women of all social and marital status, and the whore as a particular type of women who possessed a specifically commercial sexual identity and was of impoverished social and economic status. In insult the word "whore" drew on the recognition of this type of woman, this "common whore", to attack women who were socially removed from this type. The sexualisation of the female body exemplified by the insult whore became

⁵⁴ Ingram, 'Law, Litigants and the Construction of 'Honor'', 157.

⁵⁵ Bernard Capp, 'The Double Standard Revisited: Plebeian women and male sexual reputation in early modern England', *Past and Present*, 162 (1999), 71.

⁵⁶ Gowing, *Domestic Dangers*, 60.

⁵⁷ Helmholz, *Oxford Laws of England*, 595-96.

⁵⁸ Elizabeth Foyster, *Manhood in Early Modern England: Honour, sex and marriage* (London, 1999), 46.

⁵⁹ Dabhoiwala, 'The Pattern of Sexual Immorality', 92.

a gendered marker which carried the implication of, and association with, moral and social degradation.

In York, as in the London described by Gowing and Dabhoiwala, women used the language of sex and whoredom to attack each other, perpetuating the connection between female sexuality and immorality. As Table Three demonstrates, 'whore' was the most commonly used term of abuse between women and by men against women.⁶⁰ In one of two interconnected suits brought against Helen Topham in 1610 a witness, Joanna Gyule, a servant in an adjoining house on Micklegate, deposed that she heard 'Hellen Topham call the said Alice Robinson proud Curtale filthy Curtall and queane, and proude queane, and said that she would prove her a queane and a Curtall'.⁶¹ By adopting related words such as 'Curtail'⁶² and 'Queane',⁶³ Topham was able to denigrate the victims of her sharp tongue in distinctly female and deeply damaging ways, ways reminiscent of the whore. In the second of the cases Topham verbally attacked Ann Johnson as she worked in her master's, John Robinson's (husband to Alice) shop. According to witnesses Topham called Johnson a 'scurvie Queane and Arrand Curtall'.⁶⁴ In both cases the insults emphasised not only sexual availability and the disruption of social order, but also sexual ill health. The words 'filthie' and 'scurvie' conjured the impression of infection and debauchery as well as social inferiority.⁶⁵

Topham counter-sued, claiming that Anne Johnson had spread the initial rumour of Robinson's slander to sow dissension between the two women. The court found that

Anna Johnson, did report and saie (licet falso) that ... Hellen Topham, did saie that John Robinson and Alice his wife, (being Mr and Mrs to the said

⁶⁰ However, women prosecuted men for using this term significantly less than they prosecuted other women, with fifteen cases against men and twenty five against women (Table Three).

⁶¹ Borthwick, York, CP.H. 589.

⁶² DSL, '<http://www.dsl.ac.uk/dsl/>', (04 November 2006), 'Curtill, *a.* [e.m.E. *curtaile* (1597), also *curtall* n. (1611).] Sluttish, drab-like.'

⁶³ OED, 'http://dictionary.oed.com/cgi/entry/50194630/50194630spg1?single=1&query_type=misspelling&queryword=Queane+&first=1&max_to_show=10&hilite=50194630spg1', (04 November 2006), Quean, '1. A woman, a female; from early ME. a term of disparagement or abuse, hence: A bold, impudent, or ill-behaved woman; a jade, hussy; and *spec.* a harlot, strumpet (esp. in 16-17th c.).'

⁶⁴ Borthwick, York, CP.H. 590.

⁶⁵ OED, '<http://dictionary.oed.com/cgi/entry/50084821>', (02 October 2006), lists sixteenth century ideas of 'filthy' as '1.a. ... besmeared or defiled with filth; dirty, foul, nasty, unclean.... *the filthy parts*: the private parts', following this with, '3. Morally foul or polluted; obscene', and '4. a. Disgraceful, contemptible, low, mean, scurvy, disgusting.'

For 'scurvie' the OED not only records a thorough understanding of the physical nature of the disease, but also '2. ... Sorry, worthless, contemptible. Said both of persons and things. ... Shabby, discourteous.' OED, 'http://dictionary.oed.com/cgi/entry/50217334?query_type=misspelling&queryword=scurvie&first=1&max_to_show=10&sort_type=alpha&search_id=qSUU-UfqpUx-621&control_no=null&result_place=1', (02 October 2006).

Anne) that one, was a knave & the M[ist]res a Queane. Therbie sowinge discention & disagreement between the said parties⁶⁶

Alice Robinson had responded to that apparently false rumor by calling Topham 'Queane, Jaide Curtall filthe'⁶⁷, throwing back both the form and content of the original reported insult. In this case the 'licet falso' indicates that the original rumour was indeed attributed to Johnson. It also shows that in the long term it was her own reputation that was brought into question, as she was found to have maliciously caused dissent between the other two women. Unfortunately there is no indication of what drove her to stir up ill feeling between her mistress and Helen Topham. Significantly, however, Topham had a history of conflict within her parish, having been ordered into arbitration by the mayor eight years previously as a result of an ongoing feud with one Frances Martin.⁶⁸ Within the arbitration process the disorder of these two women became the responsibility of their husbands, who as household heads were to regulate the domestic and social interactions of those under their charge.⁶⁹

However, the sexualisation of the body through insult was not confined to female disputes and verbal exchanges, even if the language used did imagine the sexual body in feminine terms. In the opening pages of *Common Bodies* Gowing presents us with the case of one man who attacked another in a Devon alehouse by throwing him upon a bed, jerking him about and saying 'she is my whore and will do it'. Following this John Pulford, the attacker, 'took out [Robert] Lyle's privities, and rolled them upon the table saying, look what a fine thing (and filthy words) my whore hath.'⁷⁰ In constructing this verbal and physical attack Pulford subjugated Lyle in two ways; by making him socially, sexually and morally inferior, and by making him into a woman, a lesser being. This incident is a reminder of the creativity of early modern insult, and of the malleability of gendered language within the period. In this episode a man was called whore, an insult which humiliated him and represented him as a sexually available and compliant type of woman.

In York too men were attacked in gendered terms, though with less overt sexual violence. In 1589 George Turner slandered Walter Simpson, calling him

⁶⁶ Borthwick, York, CP.H. 591.

⁶⁷ Borthwick, York, CP.H 592.

⁶⁸ Borthwick, York, CP.H 57.

⁶⁹ Arbitration was a favourite mode of quelling trouble by burgh councils, particularly between couples and groups who persistently caused disorder and disruption in the city.

⁷⁰ Gowing, *Common Bodies*, 1.

knave cossonyng knave, cuckoldlye knave, *hore*, horemasterly knave and
droncken knave.⁷¹

In this insult several male terms of abuse are used: the knave, the cuckold and the whoremaster. But there is also one distinctly female term, the whore.⁷² Before unpacking the ways in which Walter Simpson was feminised with this culturally charged word it is first important to understand the male insults at work in this case, as it is indicative of a specifically masculine type of slander before the York court. In this suit the insult, 'knave', evoked the menial and dishonourable, and was compounded and complicated by the other sexual references at work; 'cuckold' attacked Simpson's authority within his house, humiliating and emasculating him by making his reputation contingent upon a sexually available wife.⁷³ 'Horemasterly' not only made Simpson complicit in the sexual promiscuity of his wife, who consequently became the whore, but also gave an element of lechery to his persona; and 'cossonyng' made Walter Simpson a deceiver and a cheat. Finally George Turner asserted that Simpson was 'droncken', questioning his sobriety, that vital attribute of a good householder, and insinuating a lack of control, disorderly behaviour and social danger.⁷⁴ These insults used distinctly gendered ideas about sexual involvement and social engagement, yet they all speak of a morally and socially inferior man.

In addition to these male insults one term conceptualised Simpson as female: he was called 'whore'. The potency of the insult derived from its association with women and further underlined Simpson's deviation from accepted norms of masculine conduct.⁷⁵ George Turner would have known the impact that his words would have on Walter Simpson, and he knew how those words would be understood in the minds of his fellow parishioners. Using words like whore, cuckold, and whoremaster conjured up images and behaviours in the mind that were visceral and palpable. This was why Walter Simpson took Turner to the consistory court, to retrieve his good name. He was none of the things Turner had called him and he needed the court to affirm that.

⁷¹ Borthwick, York, CP.G 2415, 1589. Italics mine.

⁷² On the interconnectedness of the cuckold and the whore see, Gowing, *Domestic Dangers*, 94-6.

⁷³ David M. Turner, *Fashioning Adultery: Gender, Sex and Civility in England, 1660-1740* (Cambridge, 2002), 85-94; Gowing, *Domestic Dangers*, 94-95.

⁷⁴ Steve Hindle, *On the Parish? The Micro-Politics of Poor Relief in Rural England c. 1550-1750* (Oxford, 2004), 386-87; Amussen, 'The Part of a Christian Man', 225; Sharpe, *Defamation and Sexual Slander*, 12-13.

⁷⁵ Alexandra Shepard, *Meanings of Manhood in Early Modern England*, (Oxford, 2003), 29.

This case was not unique and other men too found themselves the victims of emasculating slanders. In 1581 Thomas Atkinson sued Isobel William for calling him ‘knave very knave noughtie knave false knave harlotte and noughtie harlotte’.⁷⁶ Like Walter Simpson, Atkinson needed to retrieve his reputation from this imputation of a feminised sexuality. Yet, ‘harlotte’ could also indicate a distinctly male persona, the knave and the rogue.⁷⁷ Apparently Atkinson had previously insulted Isobel William, drawing on a distinctly sexualised, female type of disorder when he called ‘the said Isobell drab; queane, whore and arrand whoore’. Yet, significantly, the court found that in constructing this particular insult Atkinson had been somewhat self-aware. He had followed these inflammatory words by saying ‘[that] she had plaid the noughtie pack & whore with them that weare worse then he himself was’.⁷⁸ Atkinson knew that his own behaviour could be interpreted as socially and sexually deviant. Indeed he used this as ammunition for his attack on Isobel William in a public argument. It appears that both parties in this case were found to be at fault, that each of their insults had been borne out by incidents of sexually deplorable behaviour.

Conversely, when men slandered female sexual honour we need to question their motives more fully, examining how the social pressure on men to protect and manage their households manifested itself in the language of slander. In 1619, when Thomas Whitney slandered Katherine Thornborow by calling her a ‘night walking Queane, & scurvy Queane’, he was attempting to reassert his own authority as a man, a father and a husband.⁷⁹ Whitney claimed that Thornborow had frequently caused trouble for his family, ‘abusing’ both his wife and himself, and manipulating his child through bribery. In this case the act of slander was presented as an act of defence. Whitney wanted to break free from Thornborow’s apparent disruption of his household. This insult and the ensuing case encapsulate Whitney’s attempt to reassert his maleness. Thornborow was represented as a disordered bawd who had conducted her life in a ‘dishonest and incontinent manner’ because she had usurped Whitney’s authority by undermining his domestic order and thereby threatened an important

⁷⁶ Borthwick, York, D&C 1581/1.

⁷⁷ OED, ‘http://dictionary.oed.com/cgi/entry/50102684?query_type=word&queryword=harlot&first=1&max_to_show=10&sort_type=alpha&result_place=1&search_id=f9di-pNeazt-14683&hilite=50102684’ (15 November 2006). For Harlot see: ‘1. A vagabond, beggar, rogue, rascal, villain, low fellow, knave. In later use (16-17th c.), sometimes a man of loose life, a fornicator; also, often, a mere term of opprobrium or insult.’

⁷⁸ Borthwick, York, D&C 1581/1.

⁷⁹ Borthwick, York, CP.H 1362. Defamation: Katherine Thornborow c. Thomas Whitney 1619.

aspect of his male identity. She presented a moral and sexual danger to his family, his child in particular.⁸⁰

The St Cuthbert's session held men and women equally accountable for acts of fornication. This further indicates the extent to which men were made responsible for their sexual conduct.⁸¹ Unfortunately the lack of depositional evidence in the minutes makes the use of the material in this regard problematic. However, the case of Adam Purves suggests that men were held to account for behaviour that was considered inappropriate or sexually promiscuous. On 6 June 1611 the discipline book recorded that Purves appeared before the session to answer for his 'sclanderous behaviour in lyand in Marg Lyntons house and with drawing him fra his awin wyf, & gret sclander arrysing yair upon'.⁸² The following week Margaret Lynton was called to the session was asked to 'remove ye said adame fra hir service.'⁸³ This case raises three important points with regard to male sexual reputations. First, men were held to account for perceived sexual misconduct in much the same ways that women were; second, the marriage partnership was of fundamental importance to male reputation and honesty; and third, status and work could determine the limits and terms of appropriate interaction and behaviour between the sexes, as will be discussed in more depth in the following chapter.

One thing that is important to remember in this period, and in the construction of these cases, is that men like Walter Simpson, Adame Purves, Thomas Atkinson, and William Marshall whom we shall encounter later, were judged by their sexual interactions, just like the women with whom they associated. As Ingram has asserted, for men the words 'rogue' and 'knave' were used in a manner which is highly reminiscent of the female terms 'drabb' and 'queane'.⁸⁴ Words such as these imbued the subject of the insult with a dangerous sexuality and a disregard for conventionally constructed morality, as well as notions of misplaced pride and status. Yet there was also scope for men to be thought of in terms that were more than reminiscent of female behaviour. When words such as whore were used against men they made them into figurative women as they became associated with distinctly female behaviours and stereotypes. Conversely, there were terms such as rogue and whoremaster that

⁸⁰ Shepard, *Meanings of Manhood*, 79; Foyster, *Manhood in England*, 151.

⁸¹ Todd, *Culture of Protestantism*, 179; Graham, *Uses of Reform*, 286-89.

⁸² NAS, Edinburgh, CH2/718/52, 168. Otherwise to be read as 'sclanderous behaviour in lying in Margaret Lynton's house and with drawing him from his own wife, and great slander arising thereupon'

⁸³ NAS, Edinburgh, CH2/718/52, 169.

⁸⁴ Ingram, 'Law, Litigants and the Construction of 'Honor'', 157.

were entirely masculine in their associations and yet were used to insult certain types of women (see Table Three). Even in Edinburgh, where the deponitional evidence is scarce, men were still judged by their Kirk, court and community for behaviour that appeared sexually promiscuous. Men thus employed insult and the device of slander in comparable ways to women to defend their own status and to undermine the status of others; they formulated words and accusations in a similar manner, compounding words with ideas of sexual, social and moral degradation. As Gowing and Walker have both demonstrated, these insults and interactions were often about more than simply sex, they were about respectability and order.⁸⁵ The language of insult was a means of control. Sexually charged insults attacked the core of both male and female reputations by reflecting and manipulating power relationships which were based upon both gender and status.⁸⁶

Animal Insults

The language of insult spoke of the body in sexual and gendered ways and drew on the natural world to contrast ordered human behaviours with the baser attributes of the animal world. Insults using dog references such as 'bitch', 'fox' and 'mongrel' were almost entirely aimed at women.⁸⁷ Animal insults, the dog in particular, evoked notions of disorder and articulated sexual and social contempt, and were often used in conjunction with ideas about sexual infection and decay.⁸⁸ To call a man a dog spoke of a violent disorder that, like many distinctly male forms of insult, was not primarily sexual but centred on trust and social credit.⁸⁹ These animal insults drew not only on a vast symbolic repertoire but also on an aural culture in which the combination of words and the rhyme and alliteration of the insult played an important role in the social impact and remembrance of the words spoken, as we shall see in a subsequent section. Yet the use of animal terms in insult was not simply figurative. The symbolism of animals in the verbal cultures of both Edinburgh and York also drew on the connections between animals, witchcraft and work.

⁸⁵ Gowing, *Domestic Dangers*, 66-67, 85; Walker, *Crime, Gender and Social Order*, 97.

⁸⁶ Edmund Leach, 'Anthropological Aspects of Language: Animal Categories and Verbal Abuse', in Eric H. Lenneberg (ed), *New Directions in the Study of Language* (Cambridge Mass., 1964), 47-50.

⁸⁷ Gowing, *Domestic Dangers*, 67.

⁸⁸ Erica Fudge, *Perceiving Animals: Humans and beasts in early modern English culture* (Chicago, 2002), 22; Mark S. R. Jenner, 'The Great Dog Massacre', in William G. Naphy and Penny Roberts (eds), *Fear in Early Modern Society* (Manchester, 1997), 54-55.

⁸⁹ There is one case of a man calling a woman 'bitch'; Borthwick, York, D&C 1596/2, in reference to the treatment of that woman's mother in his house. Failing this, in the courts it seems to be women who use this language in malice, even against men, see Borthwick, York, CP.H 478, 1609-10, to which I refer later which sees two women chiding over the insult of a man as 'black dogg'. Though one man, Jason Jackson, did refer to one George Jackson as being '...as ill beloved of thy neyborns as a dogg.' Borthwick, York, CP.G 1955, 1579.

The word bitch carried particularly aggressive sexual overtones. In 1596 Anne Tattersall claimed that Judith Thorne had said and reported to others in the Bedern, their York parish,

[that] William Tattersall husbände of the said Anne founde her ... juglinge & playinge the harlotte in a chimney corner with a tayler. And [Judith] called her witche & bittle browed witche, biche, scurvye biche, saltie biche, barren biche, filthie biche, scome of the channell & worse then the scome of the channell, and saide that the said Anne was not worthy to licke her shoes soles.⁹⁰

The reiteration of 'bitch', prefaced by 'scurvye', 'saltie', 'barren', and 'filthie', connected the animal to excessive, polluted and infectious sexuality. Moreover, the word 'barren' excluded Tattersall from legitimate, procreative, sexual encounters. This case was part of an ongoing dispute between the two households, in which Judith Thorne accused Anne Tattersall of adultery, Tattersall took Thorne to court, and both Thorne and her husband John brought counter suits against Tattersall.⁹¹

However, this insult also referred to another incident. Several months earlier outside York Minster a dog had leapt on Tattersall, prompting Thorne to comment 'you maye se where a salte bitch is by the dogge followinge & leapinge upon her.'⁹² Anne Tattersall's status as a 'bitch' was reinforced by this encounter. By calling Tattersall the 'salte bitch' to the 'dog' Thorne was evoking the natural sexual partnership of the male and female canine, alluding to a wilful, bestial sexuality on Tattersall's part. This insult was not only socially but also morally outrageous.⁹³ Yet this was not an allegation of bestiality as Sharpe has pointed out,⁹⁴ which was a felony punishable under the 1533 statute.⁹⁵ Within this case the implication of bestiality was deployed to exacerbate a long running dispute, and generate a particularly nasty form of notoriety.⁹⁶

⁹⁰ Borthwick, York, D&C 1596/7. N.B. there is a possibility that 'John Bell wyfe' is involved in this case.

⁹¹ Borthwick, York, D&C 1596/8. In this case John Thorne sought to defend his wife and in the process was called a 'dissembling hippocrite'. Gowing, *Domestic Dangers*, 133.

⁹² Borthwick, York, D&C 1596/7. Judith had also been reported to have said many times 'the plague of god lighte upon the, & the pocks take the, filthye bitle browed witche, thou goest with a crabb in the tayle, or wordes to that effecte.'

⁹³ Erica Fudge, 'Monstrous Acts: Bestiality in early modern England', *History Today*, 50:8 (2000), 22.

⁹⁴ Sharpe, *Defamation and Sexual Slander*, 14-15. As he outlines, an accusation of bestiality would actually be a civil offence, and should not have been prosecuted at the church courts. Yet, as he also points out, this did not always prevent such cases from being heard at the consistory.

⁹⁵ Fudge, 'Monstrous Acts', 21.

⁹⁶ Erica Fudge, 'How a Man Differs from a Dog', *History Today*, 53:6 (2003), 43; idem, *Perceiving Animals*, 68, 134; Leach, 'Anthropological Aspects of Language', 23-64.

Thorne also presented Tattersall as sexually promiscuous and infected, having ‘oftentymes’ said to her ‘the pocks take the, filthye bite browed witch, thou goest with a crabb in the taylor’.⁹⁷ This insult not only drew on the idea of sexual disease, explicitly referring to Tattersall as a woman with genital lice, but also conjured the image of the shuffling, spread-legged gait of the crab to evoke the physical impact of both too much sex and the pain of sexual infection and infestation.⁹⁸ Compounding this insult, ‘crabb’ also related to a person’s more general behaviour and persona as irritable and angry.⁹⁹ Judith Thorne was constructing Tattersall as a social and moral animal, like the dog that had leapt upon her. Anne Tattersall was ideologically positioned as disruptive of good order, sexually voracious, and highly infectious, not to mention physically deformed.

Yet, animal insults did sometimes have a more direct and less imaginative foundation. In the tenements of the Water Lanes of York in 1578 Jane Barker took Isabel Bell, wife of John Bell, to the consistory court for calling her

bytche / stynking bytche hoore / stynking bytch / Cowe great coter / And having a dead dogge in hir hands said further ... slanderfulle and dispitefully ... that hir dogge might aswell have beyne buried in xxians [Christians] buriall as a child that the said Jane Barker did beare was buryed in.¹⁰⁰

Bell verbally attacked Barker from her garden after finding her small pet dog dead by the riverside, shouting to another neighbour ‘what yonder bycherlie whore [meaning Jane Barker] hath hanged my dogg and drowned him.’ Barker had responded from her own garden with the words ‘if I [could] get to thee I woulde dyng the skynne of thy face stinking cove that thow arte, great dowe, thow arte no woman but a great stynkinge dowe’.¹⁰¹

Subsequent depositions and his own confession revealed that Richard Lambe, a servant in Bell’s house, had killed the dog and made it appear to be the fault of their neighbour. This case highlights several aspects of life in an early modern city. These three people lived in close proximity to each other and their physical, mental and social boundaries clearly

⁹⁷ Borthwick, York, D&C 1596/7.

⁹⁸ Louis F. Qualtiere and William W. E. Slights, ‘Contagion and Blame in Early Modern England: The Case of the French Pox’, *Literature and Medicine*, 22:1 (2003), 5. For the ‘taylor’ in sexual talk see, Gowing, *Domestic Dangers*, 80-81.

⁹⁹ OED, ‘http://dictionary.oed.com/cgi/entry/50052926?query_type=misspelling&queryword=crabb&first=1&max_to_show=10&single=1&sort_type=alpha&control_no=null’ (04 October 2006).

¹⁰⁰ Borthwick, York, CP.G 1897, 1578. The Water Lanes were a notorious red light district in the city.

¹⁰¹ I suspect that this means dog for ‘dowe’, but it could also be a compounding of the word ‘cove’. There are no OED references to ‘dowe’ as any form of insult, rather its connotations appear generally positive. I have kept the transcript as it read in the original document.

overlapped. In killing the dog and sowing disharmony between the two women Lambe had dishonoured his mistress in a manner similar to the rebellious apprentices cited in Robert Darnton's cat massacre.¹⁰² This case echoes the form of insult in Darnton, with a small household pet being seized upon as a symbol of power and authority and used as an object of mischief.¹⁰³ This was not the first time that he had dishonoured his master and mistress with such games, having apparently confessed that on their wedding night he had hung horns above their bed shaming the couple by implying her whoredom and the cuckolding of her husband John. Such an act undermined John Bell's authority as head of the household.¹⁰⁴

Thus Isabel Bell's words to Jane Barker may have been a response to her own apparently troubled household. She used the insult 'bitch' to emphasise the violation of her household that had occurred with the killing of the dog. The word here communicated notions of sexual depravity and disorder, 'stynking bytche hoore / stynking bytch' underlining the unclean, olfactory and bodily implications of the word 'whore'. Barker's response asserted her own moral and physical boundaries and repeated the original insult to express her contempt for Bell. By emphasising her distance and the material impediments – her garden must have been enclosed - that prevented her from assaulting Bell, '...if I [*could*] get to thee...' Barker indicated her anger at Bell's words and restrained herself from any actual violence. By declaring her desire to 'dyngge the skynne of thy face' Barker evoked the whore's mark, verbally if not physically designating Bell to be a disordered woman, a whore.¹⁰⁵ The dispute between these two women used language to mark out spatial and psychological territory, drawing on animal and sexual insult to express domestic and social tensions.

Did the women of Edinburgh use animal insult to express social contempt and disharmony in the same ways as the boisterous and imaginative women of York did? The lack of detail in the St Cuthbert's record limits the kind of analysis possible, but it is clear that the use of animal insult was not confined to England. The simple but effective phrase 'beche huir' crops up throughout the minute and discipline books in those cases where the words of insult were

¹⁰² Robert Darnton, *The Great Cat Massacre and Other Episodes in French Cultural History* (London, 2001) 75-106.

¹⁰³ Darnton, *The Great Cat Massacre*, 101. Darnton highlights that this was a form of joking, that while risky allowed for the symbolic expression of 'repressed passions'.

¹⁰⁴ Borthwick, York, CP.G 1897, 1578. Gowing, *Domestic Dangers*, 94-96; Amussen, *Ordered Society*, 131; Foyster, *Manhood in England*, 107-8.

¹⁰⁵ Gowing, *Domestic Dangers*, 103-4; Bernard Capp, *When Gossips Meet: Women, family, and neighbourhood in early modern England* (Oxford, 2003), 97.

specified.¹⁰⁶ As we shall see, these cases used animal insult in conjunction another early modern female trope, the witch, for emphasis.

One burgh case in particular stands out for the way animal imagery and witchcraft was used in slander. In 1591 Agnes Skadwine made a complaint against Margaret Steill for having called her 'hure and said scho held bordell foure year affor scho was married'.¹⁰⁷ Steill then went on to associate Skadwine with witchcraft by using the symbolic resonance of the cat, as a familiar, as proof of her neighbour's guilt. It was reported to the session that Skadwine 'bad the devill dug her moder out of the eirth ... and spettit in hir [Steill's] face and cast caitis efter hir'. In this case the death and apparent exhumation of Steill's mother was the catalyst for insult, but it was the 'cast[ing]' of the 'caitis' that confirm Steill's accusation of witchcraft against Skadwine,¹⁰⁸ a topical issue given the North Berwick scandal the previous year.¹⁰⁹ In the ensuing dispute Agnes was also described as a 'hure' and the mistress of a 'bordell', establishing her as a woman of loose morality. Yet this case was not taken seriously as an accusation of witchcraft. It was Margaret Steill, herself no stranger to the elders of the session,¹¹⁰ who was required both to prove her accusations and rally the support of her absentee husband, John Dickson. This was not an animal insult in the same mode as we have seen previously. It instead demonstrates the diverse employment of animals in the insults of the early modern city.

Men too could be denounced as beasts, albeit different, distinctly male beasts. In 1608 in York Jane Leige had come

¹⁰⁶ NAS, Edinburgh, CH2/718/1, f. 152, 1 October 1591; CH2/718/2, f. 328, 1 September 1608 are the most thoroughly recorded cases.

¹⁰⁷ NAS, Edinburgh, CH2/718/1, f. 153, 8 October 1591.

¹⁰⁸ Fudge, *Perceiving Animals*, 134. Leach, 'Animal Categories and Verbal Abuse', 53.

¹⁰⁹ Mitchison, *A History of Scotland*, 150-51. In 1590 the Earl of Bothwell was found to have been at the centre of a witchcraft ring that was to have a profound impact on James VI, as it appeared to target the King and Court. See: Lawrence Normand and Gareth Roberts (eds), *Witchcraft in early modern Scotland: James VI's Demonology and the North Berwick witches* (Exeter, 2000); P. G. Maxwell-Stuart, 'The Fear of the King is Death: James VI and the Witches of East Lothian', in William G. Naphy and Penny Roberts, *Fear in Early Modern Society* (Manchester, 1997), 209-225; Jenny Wormald, 'The Witches, the Devil and the King', in David Ditchburn and Terry Brotherstone (eds), *Freedom and authority: Scotland c.1050-c.1650: Historical and historiographical essays presented to Grant G. Simpson* (East Linton, 2000), 165-82.

¹¹⁰ NAS, Edinburgh, CH2/718/1, f. 147, 14 August 1591. Breach of the Sabbath and the resetting [housing] and entertaining of common harlots. 5 years later on 16 September 1596, Steill confessed to brewing in time of Preaching, CH2/718/52.

ralinge and bitter manner to the shopp dore or house dore of Jason [E]ashton husbände of the side Jane Eashton and asked ... [for] the blacke moulyed scauld.... Where of that black devill ... black dog thie husband ¹¹¹

Jane Leige utilised two key tropes in her description of Jason Eshton, the dog and the colour 'black' to make him into an intrusive, disruptive and dangerous presence in the city. By calling him 'blacke moulyed scauld' she was equating him with a disorderly female scold,¹¹² while the colour 'black' evoked filth and the base foreigner,¹¹³ and 'moulyed' possibly the feather/fur-less animal, though primarily speaking of mould, filth and possible decay.¹¹⁴ Leige compounded her insult by reiterating the use of 'black', calling Jason Eshton both 'black devill' and 'black dog', before declaring that 'there is an ill turne in his hande'. Elizabeth Howitson revealed in her deposition that Jason Eshton had assaulted Leige's sister several weeks earlier, publicly beating her on Fossgate. Having visited the Alderman with her sister, Jane had come to the Eshton house to settle the matter once and for all.

This 'black dog' was distinct from its female counterpart. It was employed by Leige to embody the male attributes of violence and roguery. This animal was full of menace, the type of dog that would not necessarily obey a master, or which, perhaps a in reference to the assault on Leige's sister, was trained to attack. Leige reinforced this inherent violence when she referred to the 'ill turne in his hande', indicating his willingness and readiness to strike out. Jason Eshton thus became a particularly male form of dog, embodying fears about unruly men and the danger they presented to the weaker members of society, in this case women like Leige's sister.

Yet it was not Jason Eshton who defended his personal and household honour, but his wife.¹¹⁵ Jane Eshton, responded by shouting at Jane Leige from her door,

¹¹¹ Borthwick, York, CP.H 478, 1609-10.

¹¹² This could also relate to scurvy and meanness. *OED*, 'http://dictionary.oed.com/cgi/entry/50214511/50214511spg1?query_type=misspelling&queryword=scauld&first=1&max_to_show=10&sort_type=alpha&result_place=1&search_id=nE7W-J6ifxH-8856&hilite=50214511spg1' (04 October 2006).

¹¹³ *OED*, 'http://dictionary.oed.com/cgi/entry/50022922?query_type=word&queryword=black&first=1&max_to_show=10&sort_type=alpha&result_place=3&search_id=nE7W-F9c8WU-8550&hilite=50022922' (04 October 2006), possibly referring to black dark or possibly Spanish origin/allegiances, but also relating to filth and uncleanness.

¹¹⁴ *OED*, 'http://dictionary.oed.com/cgi/entry/00316919?query_type=word&queryword=moulted&first=1&max_to_show=10&single=1&sort_type=alpha' (04 October 2006); idem, '<http://dictionary.oed.com/cgi/entry/00316930?>' (25 November 2006), mouldy, '1597 *Pilgr. Parnass.* v. 573 Everye one of them a fustie, moulie worde in his mouthe that's able to breede a plague in a pure aire.'

¹¹⁵ Foyster, *Manhood in England*, 150.

Bittle browed Jayde. Bittle Browed witche. Bawde, scold, whore and saide,
Away ye whoore, get the emongst the bawde, and stawes, on Fosse Bridge, a
carte for a whoore, A carte for a whoore, go your way, yow whore.

By employing the traditional terms of 'female' insult, the whore, the scold, and the bawd, and remaining physically close to her doorstep, Eshton claimed a moral and symbolic higher ground over Leige as she defended her household.¹¹⁶ Jane Leige was called 'witch' to emphasise her ill will toward the Eshton household as well as her disruption of social and communal order. The word 'witch' was also a rhyming partner to the female dog, the bitch. In calling for a cart Eshton was invoking the possible civic and social humiliation and banishment of her foe. Yet Eshton limited the distance of carting to the bridge next to which both she and Leige lived. Foss Bridge was a designated space for bawds and whores to inhabit.¹¹⁷ This was a physically small world, but Eshton also wanted all the people in that world to share her view of Jane Leige. By bringing this dispute before the church courts Jane Eshton sought to assert her own respectability and status after both her husband and household had been defamed, whilst Jane Leige sought justice at either the communal or official level following the Eshton's physical and verbal assaults. In both cases these women were defending their families and households and this case illustrates the interdependence of male and female identity and reputation with regard to those households. Like Bell and Barker these two women used both insult and the courts to mark out their territory. Their dispute employed the language of the whore, witch and dog to settle disputes that centred on domestic and social tensions between their two households.

In the 1579 case of George versus Jason Jackson¹¹⁸ the tension in St Margaret's parish in Walmgate led Jason to declare George was a 'knave and said vnto him Thowe arte a verie knave And thowe art as evill loued as a dogge within the parishe where thowe dwellethe.'¹¹⁹ This case adds to our understanding of the insult value of the dog. This was not the pleasant cheerful friend of man, rather it connoted a pest, unreliable and annoying, a vagrant animal that roamed the streets of the early modern city, an animal that was as delinquent and unwanted as its human equivalent.¹²⁰ George was also referred to as a 'false dissembler' in

¹¹⁶ Gowing, *Domestic Dangers*, 98.

¹¹⁷ This echoes a London case cited in Gowing, *Domestic Dangers*, 102, in which the cart was invoked in a verbal dispute between two women.

¹¹⁸ The two men were not related.

¹¹⁹ Borthwick, York, CP.G 1955, 1579.

¹²⁰ This may link to the male 'knave' used against Walter Simpson, Borthwick, York, CP.G 2415, 1589, and the illicit, 'pack' like sexuality of Thomas Atkinson, Borthwick, York, D&C 1581/1. This can also go some way to further colouring and informing the insult as used against women. See also Jenner, 'The Great Dog Massacre',

the slander, adding an element of deception to his depiction of George. However George had secured three witnesses, Robert Veres, John Sharle and Thomas Fawcett, to attest that he was, 'taken for an honest man of good like & conversacon' within his community. This was a personal dispute played out, in every sense, in the public arena. Jason turned his personal animus against George into a more widely felt complaint when he used the phrase 'within the parishe where thowe dwellethe'. He tried to make George a communal figure of loathing but instead seems to have turned some of that loathing back onto himself through the act of slander. By figuring George as 'evill loued as a dogge' Jason, like the women of the city, was voicing personal, local and domestic tensions.¹²¹ Thus animal insult was also inflected by gender, with the word bitch evoking distinctly female tropes and behaviours and male dogs encapsulating some of the fears regarding vagrant or potentially violent men.

The Pox and Sexual Infection

Slander cases used the words 'pox' or 'scurvy'¹²² to represent both sexual and moral infection and illness. Women were more frequently referred to as pox-ridden or sexually infected than their male partners despite awareness at the time of the male role in transmitting sexual disease. It was women's bodies that were imagined as decaying and rotting, falling apart and smelling.¹²³ The language of female infection is illustrated in the dispute between Lady Anne Wilstrop and Jervaise Cressie. In 1581 while walking down a lane in the City of York Jervaise Cressie was called 'knave noughtye knave Cockwold and knave Cockwold' by Lady Anne Wilstrop.¹²⁴ Depositional evidence revealed that he had responded by calling her, 'old rotten stinken pockey hoore & grene arsce hoore & said but for shame that she was a woman he wold have beaten her.'¹²⁵ This retort apparently failed to appease his anger at being called cuckold and knave in a public arena and he proceeded to sue Wilstrop for defamation of

48, 51-52, 56. Jenner demonstrates that in times of plague dogs and some other "domesticated" animals were targeted as the spreaders of disease, and not the rat. The article not only paints a picture of the early modern dog as a common urban creature, but as a working animal and as something of a scavenger.

¹²¹ Gowing, *Domestic Dangers*, 98-9.

¹²² This related specifically to the scabs and visible bodily and facial scarring caused through the pox. *OED*, http://dictionary.oed.com/cgi/entry/50217334?query_type=word&queryword=scurvy&first=1&max_to_show=10&sort_type=alpha&search_id=JoSE-VJe5el-2867&result_place=1 (12 October 2006). '1. Covered with scurf; suffering from, or of the nature of, skin disease; scurfy, scabby.' Though this term is also an expression of social worth, '2. *fig.* Sorry, worthless, contemptible. Said both of persons and things. Cf. SCABBED *a.* 2. Also of treatment, etc.: Shabby, discourteous.'

¹²³ Capp, *When Gossips Meet*, 191-92; Sharpe, *Defamation and Sexual Slander*, 11.

¹²⁴ No information appears to have survived as to who Lady Anne Wilstrop actually was. Neither she nor any husband she might have had appear in the Dictionary of National Biography and they do not appear to have been mentioned in the records of the Minster.

¹²⁵ Borthwick, York, CP.G 2039, 1581.

character in the consistory court. But what weight did Cressie's own words, 'old rotten stinken pockey hoore', hold for the early modern audience? There is a latent aggression in Cressie's words to Wilstrop, particularly in the phrase 'but for shame that she was a woman he wold have beaten her'. As we have seen in chapter one and shall see in chapter five this was a period in which excessive male violence was perceived to be a social problem, particularly when used against women.¹²⁶ Yet Cressie seems to have been aware of attitudes to male violence against women, and instead of using his fists he used the language of insult to attack Wilstrop. With these words Cressie was both defending and reasserting his masculinity, undermined by Wilstrop's words 'noughtye knave cockwold'.

The insult 'pockey', particularly in Cressie's latter phrase 'grene arsce hoore', constructed a particularly virulent picture of sexual infection. The sexual infectiousness he attributes to Wilstrop draws upon early modern ideas about women as "leaky" and incontinent in both body and spirit.¹²⁷ In other accounts of this episode the words 'jade' and 'drabb' were also employed alongside the repetition of the word 'rotten', all of which compounded the accusation of sexual and social debauchery with the infectiousness of pox or syphilis.

The suspicion of sexual infection, whether true or not, had a pronounced impact on male and female identities within their communities. In 1609 the York consistory court launched a rare *ex officio* suit against John Davies, songman of the Minster, who was charged with

Adultery or fornication with the said Jane Sprout ... [and] did burne her bodie and did give her the dangerous decease called the frensh decease, or pockes, And that alsoe hee did committ the crime of Adultery with the said Isabell Chase wife of Gilbert Chase and was found in the verie act therof¹²⁸

Despite Jane Sprout and Isabell Chase being identified as 'incontinent' women, Davies was portrayed as the sexual predator, wilfully infecting Sprout, who was so ill with 'that loathsome disease ...that withoute present helpe her health and liefie if greatlie indangered', and then pursuing Isabell Chase. Davies offered reasons for having been found alone in the house with Chase and for assaulting Sprout which I explore in the following chapters. Yet he also needed to reconstruct himself as a man of sexual health and honour to retrieve any part

¹²⁶ Foyster, *Manhood in England*, 181-95; Capp, *When Gossips Meet*, 103-16.

¹²⁷ Gowing, *Domestic Dangers*, 81; idem, *Common Bodies*, 23-26; On the connection between the whore, female sexuality and urine see Gail Kern Paster, *The Body Embarrassed: Drama and the disciplines of shame in early modern England* (Ithaca, N. Y, 1993), 37-39, 149-51.

¹²⁸ Borthwick, York, D&C 1609/15.

of his former reputation.¹²⁹ However, his association with the pox, in addition to his transmission of the disease, left an indelible stain on his reputation.

Women experienced particular difficulty in reconstructing their social identities in the face of accusations of sexual infection. Frances Hall made sure that the authorities literally pursued John Wrightman after he said '[she] was a hoore a Balde hoore and [that] she was so rotten with the pocks that he cold take [hir] by the hele and shake hir in peces.'¹³⁰ Unlike others Wrightman did not willingly submit himself to the court. Rather, he persistently evaded the churchwardens who sought to serve him the citation, at one point interrupting the service in his parish church of Holy Trinity to escape the pursuing warden. Wrightman's accusation/insult was eventually found to be false. However, Frances Hall had been called whore. Even worse, she had been portrayed as so decayed with sexual infection that he could 'take [hir] by the hele and shake hir in peces'. She was not simply conceptualised as a 'Balde hoore,'¹³¹ but 'so rotten with the pocks' that her body was literally falling apart, evoking not only the disfiguration caused by the later stages of syphilis but also drawing upon the associations between the pox and leprosy through the "rotting" of the body and genitals and the loss of hair that was associated with both diseases.¹³²

The use of sexual infection in insult was particularly targeted at women and it made their bodies not only leaky vessels but also decaying and disintegrating ones. These words invoked fears of moral and physical contagion to compound the already powerful sexual insult at work. As Gowing has observed, 'leaky women, those mainstays of early modern physiology, were a powerful image in sex talk'.¹³³ Gowing has discussed the various kinds of leakiness that early modern women suffered, often urinary, but also vaginal, as their bodies were intimately marked by sex and infection. The 'green arse' or infected genitalia of the whore and the syphilitic were a strong image to employ in the regulation of a good moral community by marking out the morally and physically healthy from the base and unhealthy. Infection, in these slanders, symbolized an ideological corruption which was also produced or

¹²⁹ Capp, 'Double Standard Revisited', 92-92 on rape, and 78-79 on men and sexual disease.

¹³⁰ Borthwick, York, CP.G 1648, 1573.

¹³¹ This is possible a reference to scaldhead, a disease generally related to women and with probable connections to venereal disease. Margaret Pelling, *The Common Lot: Sickness, Medical Occupations and the Urban Poor in Early Modern England* (New York, 1998), 73, 82, 93.

¹³² Margaret Pelling, 'Appearance and Reality: Barber-surgeons, the body and disease', in A. L. Beier and Roger Finlay (eds), *London 1500-1700: The making of the metropolis* (London, 1986), 101-2.

¹³³ Gowing, *Domestic Dangers*, 81.

verbalized through associations with the animal world and the conflation of these insults with sexual and moral decay.

The Plague and Sexual Infection

In Edinburgh this language of infection and contagion had close links to the language of plague. Within the Scottish city there was a judicial preoccupation with the plague, and the moral and social pestilence that it represented, or of which it was a result.¹³⁴ Edinburgh and the neighbouring port burgh of Leith suffered greatly throughout a decade of plague in the 1580s,¹³⁵ leaving lasting fears of the disease. A potent cultural fear was used to reinforce a reciprocal relationship between Kirk and household authority, drawing together fears of disorder, social disruption, and disease.¹³⁶ In both England and Scotland, commentators on the plague insisted that illicit, improper and immoral sexual behaviour brought about the displeasure of God and thus pestilence.¹³⁷ In September 1574 the Edinburgh session proclaimed that

... understanding the fylthie vice of fornicatioun and adulterie daylie mair and mair to in cress within this burgh And yat be resaving of sic persons in Service within our houssis qlk is ane parte of ye caus yt ye ar gevin ye angerie face ...of god is mowit all redie to plague wes; for avoiding of the qlk plague and yat ye said vise be punisit to ye regeour according to ye act of parliament hes thot guid to admonish and warne the haille faytfull brethir maister and mistreses of houssis that yi come to ye eldaris and deaconis and gif up ye Namis of al fornicatoris als weill men and women remaining wt theme in Service¹³⁸

Those who failed to comply and were found with such offenders under their roofs 'salbe debarit frome all partiscepation of ye sacramentis of ye said Kirk ay and qll yai satisfie ye samin publictie'.

¹³⁴ Pelling, *The Common Lot*, 65. There was some cultural connection between the pox and plague in both Scotland and England, as both were a constant threat to urban populations throughout the sixteenth and early seventeenth centuries. Patrick Wallis, 'Plagues, Morality and the Place of Medicine in Early Modern England', *English Historical Review*, 121: 490 (2006), 1-24; Keith Thomas, 'Health and Morality in Early Modern England', in Allan M Brandt and Pail Rozin (eds), *Morality and Health* (London, 1997), 15-35; Paul Slack, *The Impact of Plague in Tudor and Stuart England* (London, 1985).

¹³⁵ Graham, *Uses of Reform*, 29. Lynch, *Edinburgh*, 3, 11.

¹³⁶ On communal and magisterial fear see: David Gentilcore, 'The Fear of Disease and the Disease of Fear', in William G. Naphy and Penny Roberts (eds), *Fear in Early Modern Society* (Manchester, 1997), 190-91.

¹³⁷ Keith Thomas, 'Health and Morality', 17-18, 25

¹³⁸ NAS, Edinburgh, CH2/450/1, 18. This is transcribed in the "Extracts of the Buik of the General Kirk of Edinburgh in the years 1574 and 1575", *Miscellany of the Maitland Club*, Vol. I (Edinburgh, 1833-1840), 105-6. Having surveyed quality of the transcriptions from original document to the nineteenth century printed editions there was a strikingly faithful transfer of cases and language from the one to the other. Thus I have in this thesis made use of the faithfully printed editions.

This was a common early modern attitude.¹³⁹ In his *History of the Kirk of Scotland* Calderwood linked the reformer's rhetoric regarding plague to the fall of the Roman Church when the seventeenth General Assembly, held in Edinburgh in July 1568, declared that it was through the 'suppressing of vice, whereby the plague of God may be withdrawn from the realme'.¹⁴⁰ To this end the 'superintendents and commissioners of [the] touns' needed to be more 'careful to see diligent executioun of justice upon committers of such odious crimes'. This moral rhetoric tied the behaviour of the individual to the spiritual and physical wellbeing of the city as a whole. As Kevin Siena has observed in his article on the pox, 'virtually all cultures employ beliefs about dirt and contagion to uphold moral beliefs and enforce social rules' and this is precisely what the Kirk was doing.¹⁴¹

The session made it clear that the fornication committed by two people could have serious consequences for their entire community. Men and women brought to order for sexual offences could be further stigmatised by the association with contagion and mass infection. In June 1606 when Edinburgh was clear of the plague, though the north of England was only just recovering from a serious outbreak,¹⁴² the session ordered 'the baillies of the west port & potteraw to tak order wt Jon manuell and Jonet hiltson gif they wald have god stayant the contagious pestilence be ressoun of ye hurdem comitit be yam'.¹⁴³ In this instance the session directly connected the sexual activity of Mannuell and Hiltson to the health of the city. The session used their punishment to reinforce ordinances concerning the plague and sex, and to send a warning to all those who committed moral and sexual outrages that they were to blame for any illness the burgh might face.

It is therefore unsurprising that those accused of harbouring the plague were recorded in terms reminiscent of those who harboured sexual misconduct. In June 1605 James Thomsone and Jonet Cochran appeared in front of the session to make a complaint of slander against Thomas Cunningham and his wife for 'saying yt my wife [Thomsone's] had the wyte of ye s[ai]d thomas wyfis seiknes'.¹⁴⁴ In saying that Thomsone's wife had the 'wyte' of, or was to blame for, the sickness, Cunningham was making her responsible for the infection of others,

¹³⁹ Slack, *Impact of Plague*, 29.

¹⁴⁰ David Calderwood, *Calderwood's History of the Kirk of Scotland*, Volume II (Edinburgh, 1845), 425.

¹⁴¹ Kevin P. Siena, 'Pollution, Promiscuity and the Pox: English Venerology and the Early Modern Medical Discourse on Social and Sexual Danger', *Journal of the History of Sexuality*, 8:41 (1998), 553-74, 555.

¹⁴² Galley, *Demography of York*, 77.

¹⁴³ NAS, Edinburgh, CH2/718/52, 93.

¹⁴⁴ NAS, Edinburgh, CH2/718/2, f. 197, 27 June 1605.

in this instance his wife.¹⁴⁵ Whilst this does not immediately suggest sexual activity the moral infection being referred to was intrinsically wrapped up in female sexuality, honesty and morality. The narrative of concealment and contagion was compounded by a gendered understanding of the transmission of sexual diseases such as syphilis or the pox.¹⁴⁶ As we shall see in subsequent chapters there was a close connection between those who were perceived to conceal their behaviour and the suspicion of deception and corruption, heightening the need for one's actions and interactions to be both transparent and verifiable.

Thus is it unsurprising that when those women who took on the unpleasant task of nursing and cleansing victims of the plague became infected they were suspected of playing a deliberate role in the concealment and spread of contagion. In 1597 Meg Leng, a 'woman clenger in Leyth', became a victim of both the pestilence and her status as she was ordered to be hung for 'conceilling of the pest and beand the caus of infectioun of sundry persouns'.¹⁴⁷ Meg's job as a 'clenger', or cleaner, made her a member of that class of women who, through their work, were most likely to come into contact with the disease,¹⁴⁸ and like those women who were known, or thought, to engage in immoral sexual activity she was therefore thought of as unclean and a primary carrier of infection within the burgh.¹⁴⁹

These Scottish attitudes to sexual/social infection also drew upon the rhetoric of sexual disease that abounded in the English popular consciousness. In English towns those who sought to reform and heal those infected with syphilis and other sexual diseases also advocated the types of moral reform called for in Scotland.¹⁵⁰ As we have seen in chapter one, Thomas Pullein's 1604 sermon *Jeremiah's Teares* made a connection between sexual sin, an immoral life and the communal dangers caused by plague. Pullein called on the population of York to

lay away your swearing, your drunkennesse, your Whoredom, your falsehood,
... insomuch as the Lord havng laid his heavy hand vpon many places of this

¹⁴⁵ DSL, 'http://www.dsl.ac.uk/dsl/', (04 November 2006), 'WYTE, v., n. Also wyt(t), wite, wight. [wəit] I. v. 1. (1) To blame, to impute blame or guilt to (a person or thing), to accuse (someone) of responsibility Also in n.Eng. dial. Hence witer, one who blames, an accuser (Lnk. 1825 Jam.), wytin, the blame or guilt.' 'n. 1. Blame, reproach, responsibility for some error or mischief, blameworthiness.'

¹⁴⁶ Siena, 'Pollution, Promiscuity and the Pox', 567.

¹⁴⁷ *Ed. Recs. II*, 200.

¹⁴⁸ William G. Naphy, 'Plague Spreading and Magisterially Controlled Fear', in William G. Naphy and Penny Roberts (eds), *Fear in Early Modern Society* (Manchester, 1997), 28-43; Slack, *Impact of Plague*.

¹⁴⁹ Margaret Pelling, 'Appearance and Reality', 96. On the connection between the spiritual and sexual causes of the pox, much like the causes related to plague in Edinburgh.

¹⁵⁰ Pelling, 'Appearance and Reality', 100.

land, to the destruction of many thousands hath begunne also to stretch it out
vppon this Citty¹⁵¹

The concluding lines of the sermon suggest 'if you presently repent, and that unfainedly, I doubt not, but God in mercy will remove the plague, if not, yet I will not cease to weepe for you.'¹⁵² Pullein, like the ministers of Scotland drew a clear link between sexual, social and moral corruption and physical, non-sexual disease. This imagery of sex and contagion frequently returns to the household as a locus of infection and contagion, as the primary institution through which male and female reputations were linked and attacked.

Familial and Household Order

These different modes of insult continually return to the central institution of the early modern period the household and family, primary loci of social and sexual disorder.¹⁵³ This is colourfully demonstrated in the words of Sybil Wormall who in 1593 was in court for having told Thomas Cornay, a clerk of the church court,

my childron shall florishe like Olive branches when thowe and thyne shall
rott like dead and stinking Carrion in your graves And further said ... thy
fleshe dothe fall from thy face for verie envye ... what art thowe but a stage
player for thou played the Madd foole upon a stage¹⁵⁴

There is no more evidence as to the cause of such a creative slander or where the words were said, though both parties were parishioners of St Michael le Belfry. Neither do we know who Sybil Wormall was, but she was undoubtedly a culturally aware woman, using both biblical references and the stage to shape her insult. In saying these words Sybil made the otherwise respected Cornay a comic foil to her almost biblical matriarch. She portrayed him as jealous and his family as rotting. She went on to say that Cornay had the 'stinck of an Adulterer' about him, not explicitly saying that he was an adulterer but suggesting that he could potentially be one. We do know more about Thomas Cornay, a long-term resident of the

¹⁵¹ Pullein, *Ieremiah's Teares*, c.

¹⁵² Pullein, *Ieremiah's Teares*, f. 2.

¹⁵³ Amussen, *An Ordered Society*, 1-2; Lyndal Roper, *The Holy Household*, 54, 252; Gowing, *Common Bodies*, 7-10; Margo Todd, 'Humanists, Puritans and the Spiritualized Household', *Church History*, 49:1 (1980), 18-19, and *Culture of Protestantism*, 165-7; Joanne Bailey, *Unquiet Lives: Marriage and Marriage Breakdown in England, 1660-1800* (Cambridge, 2003), 2, 194-95; Ingram, *Church Courts, Sex and Marriage*, 125-28; Fletcher, *Gender, Sex and Subordination*, ch11, 204-210. Fletcher's gentry household structure is entirely understood as a mechanism of Patriarchy. However the numbers of female headed households, and the dominance of women in both challenging and defending household honour leads me to suspect that patriarchy works most effectively as an idea rather than a reality, and that it becomes more significant to the gendered household the further up the social hierarchy one is looking. Rather, Patricia Crawford, *Blood, Bodies and Families in Early Modern England* (Harlow, 2004), 6, has challenged the use of the household 'as the basic social unit' instead choosing to examine the family as the household 'prioritises the husband and master as head, obscures women's experiences, and falsely assumes common economic interests.'

¹⁵⁴ Borthwick, York, D&C 1593/6. Defamation: Thomas Cornay c. Sybil wife of John Wormall.

Bedern, who was a legal clerk in the consistory court and recorded witness statements in numerous cases. He also went on to become a member of the Vicars Choral, a group of men attached to the Minster and active within the ecclesiastical courts as advocates.¹⁵⁵ It would seem that from time to time his position generated animosity, such as we see from Sybil Wormall. This was not the first time he needed the courts to affirm his domestic respectability and status.¹⁵⁶

If we return to the case of Thomas Whitney and Katherine Thornborow we can see that, like Sybil Wormall, Whitney perceived his own honour to lie in his authority over his family and children, a role that was undermined by Thornborow's bribes. In defending his family and household he was asserting his manhood by establishing himself as a man in control of his household. Through this case he made Thornborow into a force of disorder and corruption to be disciplined and dismissed. These men needed to defend both themselves and their households in order to maintain their reputations, making them vulnerable to words or deeds that attacked or undermined their domestic authority.

In Edinburgh too a concern for the moral and social authority of the family or household came to the fore. Margaret Wylie was put in ward, made to pay a small fine, and threatened with public parading with 'ane paper on hir haid' if she were ever again to slander Marioun Abernathie, either as a 'witche' or if she were to imply 'yt hir [Marioun's] bairne was not hir gudemans bot Daniell young[s]'.¹⁵⁷ By undermining the legitimacy of Abernathie's offspring Wylie impugned both her sexual and marital respectability. In a similar case Bessie Wardlaw said that Miriam Purdie had 'bure ane bairne to ye said rychart now hir spouse in hir first husband lifyme'.¹⁵⁸ The session found that Wardlaw and her spouse John Smart had propagated the rumour. They were ordained to 'ask and craif the said marioun and Rychart hir spouse forgevenes on ane sonday before none[noon]'. Wardlaw was to 'by hir awin mouth remove the sclander affe the said Myriam and rychart' in front of the entire congregation of St Cuthbert's. With their words both Wardlaw and Wylie not only implied the licentious living of the whore, a way of life that the Kirk was determined to crack down on, but they were behaving like Katherine Thornborow in York, undermining the familial

¹⁵⁵ *Index of Wills etc., From the Dean and Chapters Court at York, 1321-1636* (York, 1907), 16; Marchant, *Church Under the Law*, 52.

¹⁵⁶ See also Borthwick, York, D&C 1612/1 (Defamation: Henry Brickwell, vicar Choral c. Thomas Corney) and D&C 1612/2 (Defamation: Thomas Corney c. Henry Brickwell).

¹⁵⁷ NAS, Edinburgh, CH2/718/4, f. 89, 15 November 1621.

¹⁵⁸ NAS, Edinburgh, CH2/718/1, f. 169, 29 January 1592.

honour of these households and couples. These slanders were not simply understood to attack female identities but they also disrupted the households and attacked the husbands of these allegedly promiscuous women.

The case of Edward Clint versus William Boonas of Malton provides another perspective on the disrupted household and its significance to the legal and domestic cultures of early modern York. In 1599 Edward Clint took William Boonas to court because Boonas was reported to have called Clint a ‘Dronkard, comon dronkerd, dronken beaste dronken knave, dronken fellowe & scurvie dronken rogue’.¹⁵⁹ Edward had been told this by two men, George Hobson, a local troublemaker, and William Marshall, a servant who had been expelled from William’s household. Edward Clint believed these two men because, in his own words, ‘bothe his [Boonas’] wife and maide had suits at that tyme against this r[esp]ondente [Clint], solicited and mainteyned bothe by the labor & chardge of the said William Bownas.’¹⁶⁰ The primary insult depicted Edward Clint as a disorderly sexual and social predator. Clint was described as a drunkard, a characterisation that undermined his reputation for reliability.¹⁶¹ However, Clint’s respectability was to some degree restored. The witnesses in the case, Marshall and Hobson, were examined and found wanting, and Boonas’ lifestyle was also taken into account. It transpired that Boonas and Clint were the victims of local animosity. The depositions reveal that Marshal and Hobson sought to exact revenge on Boonas by making him appear to have been the source of a false slander against Clint. William Marshall had been expelled from Boonas’s household for theft and committing fornication with Boonas’s sister who also served in the house. In removing Marshall from his service and reporting him to the authorities, Boonas had fulfilled his role as a good householder. It appears that the slander was a means to enact revenge.

Edward Clint proved effective in the court, not only asserting his good name but also exposing the deceit of his tormentors, Marshall and Hobson.¹⁶² But what of William Boonas?

¹⁵⁹ Borthwick, York, D&C 1599/2.

¹⁶⁰ Borthwick, York, D&C 1599/2; Sharpe, *Defamation and Sexual Slander*, 21-22.

¹⁶¹ Shepard, *Meanings of Manhood*, 104-6; Foyster, *Manhood in England*, 40-41.

¹⁶² It is interesting to note that even prior to this case George Hobson was not a stranger to the courts. One year before he had been called before the mayor for calling one John Harper ‘false lienge Scotte, & dronken lienge Scotte.’ At that time he had played on locality and nationality to further alienate Harper, a barley grower seeking payment for twenty quarters purchased by Hobson. Harper claimed that Hobson had defaulted on the payment, money for which had been given to him by the city council. But in a dispute over word of mouth at that time the word of an Englishman was worth more than that of a Scot. We can only question how different would the case have been one year later after Hobson’s honour had been so openly taken away. Borthwick, York, D&C 1598/3.

His respectability and honour had been brought into question and he was shown to be a figure of malicious rumour within his parish, and more importantly within his own household. The fact that he had disciplined Marshall for his offences, even taking him to court for the abuse of his sister's body,¹⁶³ seems to have compounded his problems. Yet, he had done the right thing according to the church and court. He had run an orderly household and was demonstrably in charge of what occurred therein. But like Isabell Bell, he still fell victim to malicious disruption. It seems that women were not the only householders who found it difficult to assert their authority in the face of defiant servants who could engineer a slander by which to attack someone who's social and domestic behaviour was otherwise beyond reproach.

In this world even joviality and humour among friends could have a lasting impact on reputations. The 1611 case of Beatrice Browne versus Edward Fell highlights the problems men and women faced when banter became insult as alcohol mixed with a fertile imagination.¹⁶⁴ At the wedding dinner of a mutual friend Fell spread the rumour that

the said Matthew [Bachelor] went upp into the chamber, to kisse the said Beatrice Browne being then in naked bedd, and that he drewe the Curtaines and kissed her meaning therby that the said Matthew either did or would have attempted the said Beatrice Browne to commit the detestable crime of adultery

As a result

the wife of the said Matthew did ... raile upon the said Beatricx supposing and understanding by the said Fells words ...[that] the said Matthew her husband eyther did commit or attempted to commit the detestable crime of adultery with her¹⁶⁵

Browne was vindicated in this case, but she had been slandered as an adulteress and assaulted as a result of Fell's rumour. Mathew Bachelor's deposition trod a fine line, asserting Browne's innocence and further inflaming his wife's anger, maintaining that 'Beatrice hath bene and is an honest woman of good life and conversacon and so commonly accompted and taken... and is now a married woman', but confessing that

Edward Fell tooke a Cupp ... and druncke to this exte and said here matthew /I will drinke to the, and thy love Beatrice (meaning the ar[ticula]te Beatrice Browne) and to the greene Curtaines, that wer drawne, to the sweet kisse that thou gave her and to the two potts of Ale that thou did give me to drinke in the meane tyme

¹⁶³ This is recorded in the case.

¹⁶⁴ A. Lynn Martin, *Alcohol, Sex and Gender in Late Medieval and Early Modern Europe* (Houndmills, 2001), 126-17, on the popular connection between drinking and adultery.

¹⁶⁵ Borthwick, York, CP. H 0542, 1611.

Matthew Bachelor needed to retrieve his own reputation by reinforcing that of Beatrice. But he was also obliged to report the words and form of Fell's insult thereby implicating himself in a debauched seduction. Edward Fell's drunken revelry had a painful and lasting impact on the lives of his one-time friends and potentially cost the Bachelor household dearly. Even words that were spoken in good humour could damage reputations and relationships.

Marriage, the family, and household were central to understandings of gendered relations in early modern popular culture and it is unsurprising that these were the categories through which slander was so frequently played out. The centrality of domestic respectability, which was bound up in most aspects of life and work, should not be underestimated. The use of sexual imagery and ideas in these cases represented the most immediate threat to familial and household stability. Notions of respect and authority for these middling and lower status men and women were based around the households and communities in which they lived and worked. For the church in York and Kirk in Edinburgh disruptive neighbours, unruly servants and disobedient children presented an unwelcome and morally dangerous challenge to household authority and the godly social order.

Language and the Structure of Insult

The culture of insult in these cities drew on a particular aural repertoire. As we shall see, the imagery used in insult is self-referential, employing its own verbal logic that does not always refer to particular social institutions. There was a legal and cultural formula at work. Laura Gowing has shown that women constructed and suffered '[l]ong sequences of insult, often focussing on images of dirt and disease', but in her account men only suffered 'insults that [were] briefer and indifferent'.¹⁶⁶ Yet, as we have seen the men too were subjected to strings of insulting words. It would certainly be difficult to argue that when George Turner called Walter Simpson 'knave cossonyng knave, cuckwoldlye knave, hore, horemasterly knave and droncken knave'¹⁶⁷ that the language was indifferent or brief. In insults assonance and repetition compounded and conflated already powerful cultural tropes.

Other cases echoed Agnes Skadwine's use of witch, using popular understandings of witchcraft and social deviance to add legal and cultural weight to mundane slanders. These

¹⁶⁶ Gowing, 'Gender and the Language of Insult', 4.

¹⁶⁷ Borthwick, York, CP.G 2415, 1589.

insults varied in their effectiveness as is shown by Beatrice Filliskirk's use of the phrase 'Bittle brewed witch' when she slandered Magdalen Skadwell in York in 1594.¹⁶⁸ Amongst various permutations of the story told by witnesses, Edmond Ladson testified that he heard Beatrice claim to have seen Skadwell '[make] William North man and his hoorse almost breake there neckes bycause he would not gyve her a litle bune'. Yet this story of harm, of the social and emotional threat of the witch,¹⁶⁹ is entirely missing from other witness accounts of the same incident. They considered the other insults at work, 'queane, noughtie queane, drabbe, noughtie drabbe' to be of equal if not greater significance.

If we return to the case of Anne Tattersall and Judith Thorne, one particularly striking element of these insults becomes apparent: the consistent use of the particularly female and distinctly threatening insult 'witch'.¹⁷⁰ In Judith's counter suit she not only claimed that Anne had called her a witch, telling her, 'I will never call the other name but witch so long as I live', but also that she had called her a 'fox headed witch'.¹⁷¹ Like Jane Barker, Anne returned the form and content of the original insult when she described Judith as 'witche & bittle browed witche, bitche, scurvye bitche...'.¹⁷² In this case the word witch is used in two ways. Firstly, it echoes the sound of the word bitch. Secondly, it is used to denote an unruly, scolding woman.¹⁷³ There is little or no sense of actual witchcraft being involved or even invoked as it had been in the case of Skadwine against Steill.¹⁷⁴ With the image of the fox Anne was not only evoking a red-haired woman, but also a canine animalism and the associated female human behaviour.¹⁷⁵ The depositions within this suit recount two women who echoed each other's use and form of language, repeating words and sounds. This phenomenon has been apparent in most of the name calling discussed so far.

This repetition and compounding of words and sounds is similarly apparent in those Edinburgh cases where the words and form of insult were recorded. In the 1591 case of Catherine Harbourne against Elspeth Pedeme it was the insult 'theif witche and beche Hure'

¹⁶⁸ Borthwick, York, D&C 1594/3.

¹⁶⁹ Roper, *Oedipus and the Devil*, 21; Gowing, *Common Bodies*, 73-75; Sharpe, *Defamation and Sexual Slander*, 13-14.

¹⁷⁰ Borthwick, York, D&C 1596/7-9. On "witch" as insult see; Gowing, *Domestic Dangers*, 64, 104; Capp, *When Gossips Meet*, 196; Ingram, *Church Courts, Sex and Marriage*, 298, 300; Sharpe, *Defamation and Sexual Slander*, 13-14.

¹⁷¹ Borthwick, York, D&C 1596/9.

¹⁷² Borthwick, York, D&C 1596/7.

¹⁷³ Walker, *Crime, Gender and Social Order*, 101.

¹⁷⁴ NAS, Edinburgh, CH2/718/1, f. 153, 1591. See p. 84.

¹⁷⁵ Borthwick, York, D&C 1596/9.

that was at the heart of the session's enquiry.¹⁷⁶ In the case of Margaret Wilson, who 'confest yat scho callit agnes weycht common huir boirdell huir bitch huir',¹⁷⁷ a similar pattern of words appeared. Again, this insult echoes itself continually repeating and framing the key word 'huir' with the adjectives 'common', 'boirdell', and 'bitch'. The way these words and phrases trip off the tongue and echo each other on the page was no coincidence: these rhymes and repetitions were both a method of remembering words spoken and a reconstruction of an oral performance. In the recollection and recording of these insults sound was an important means by which to categorise and recount the types of insult heard on the street for both witness and clerk. Certain phrases occur on numerous occasions, suggesting their ready familiarity. This was an oral culture in which women and men used a particular oral and aural vocabulary of sin and bad behaviour.¹⁷⁸

Within these cases different witnesses could produce vastly different narratives of events depending on their relationship to the defendant or plaintiff, and their perception of events. In a similar witchcraft accusation Elizabeth Gamble was heard to call Jane Fawcett an 'ill favored black witche saynge I thinke thow hai the bewitched our horse and our Kowe.'¹⁷⁹ In this case two witnesses, Richard Smonghton and William Stiles, deposed remarkably similar stories of the insult. William's account, however, contained the extra detail that the animals 'did never thryve sence thay eate these weeds', which Fawcett had given to Gamble. Gamble took this to be a malicious bewitchment, a serious case of harm. Yet, the case was prosecuted as a slander, as an incident that caused verbal not physical damage to Fawcett. The witnesses in these cases were produced to present specific evidence or narratives. Their depositions were reflective of both their own personal interests and those of either plaintiff or defendant, whoever was paying for their cooperation.

These cases resonated in the 1624 Edinburgh case of Catherine Heroun, who was found innocent of the accusation made by Margaret Tasker that she was 'ane witche & yt scho socht hir kewis helthe'.¹⁸⁰ In this case the session ordered Tasker to make public repentance and completely absolved Heroun of any implication of witchcraft or wrongdoing. But what is interesting about all these cases, what drives home their social and cultural significance is

¹⁷⁶ NAS, Edinburgh, CH2/718/1, f. 152, 1 October 1591.

¹⁷⁷ NAS, Edinburgh, CH2/718/2, f. 328, 1 September 1608.

¹⁷⁸ Gowing, *Domestic Dangers*, 233.

¹⁷⁹ Borthwick, York, CP.G 3129. 1586, All Saints North Street.

¹⁸⁰ NAS, Edinburgh, CH2/718/4, f. 168, 27 May 1624.

that they all centred on domestically important animals, horses and cows. The insult 'witch' and accusations of witchcraft were a means of enacting a slander, of airing social and domestic concerns, and local disputes.¹⁸¹ Words like witch and bitch, whilst carrying their own culturally specific meanings were also used for their aural impact in the creative formulation of name-calling.

In unpacking these insults several important questions must be asked that go beyond a simple understanding of the words used. How were those words used, compounded, alliterated, reiterated, and made significant? The form of these insults can reveal meanings that might otherwise be hidden. It is by unpacking the construction and importance of insult on multiple social and cultural levels that Anne Wilstrop can be transformed into a 'pockey whore' and William Boonas into a 'dronken beaste'. But we should also be wary of forgetting the people that lie behind these words. The insulting of Anne Wilstrop is given additional significance by her status as a Lady and Jervaise Cressie's apparent inferiority, which he was subverting through his words. Slander drew on a complex language of symbolism, status, and sexuality to attack and undermine individual and collective identities in these two early modern cities. The interrelatedness of male and female reputation was used as a means to attack both men and women in distinctly gendered ways. Yet, the words used in slander or insult were structured to make use of both their meaning and sound, creating not only imaginatively symbolic insults but also oral performances.

Conclusion

If we return, briefly, to the case of Ewphame Lowder and John Broun we can see that slander subverted contemporary notions of sexual and social behaviour. The falsity of Lowder's accusation challenged the moral structures of the Kirk and community. In so doing she stepped outside of the regulated world of the reformed burgh, and made John Broun also step outside of that world momentarily. She drew attention to the threat he could pose to her household by threatening his reputation. This was a case that played on the fears, desires and violence that were prevalent in early seventeenth-century Edinburgh.

These fears also present themselves in the subtext of status and order raised within the above cases. The issue of dissent between master and servant point to tensions that would have been

¹⁸¹ Todd, *Culture of Protestantism*, 247.

ever present in a period when the household was an amalgam of people of different experiences and status under the guidance of a master and mistress not always prepared for that job. We can assume that the process of ordering and disciplining the household was often fraught with tension, particularly for women like Isabell Bell. Her authority within her own household was undermined in a very public way by the actions of Richard Lambe. He was shown to be beyond the control of his mistress, in much the same way as Alice Thompson, and this would have led to the questioning of both Lambe and Thompson's master's/mistress's godliness and ability to keep good.¹⁸² Incidents of rebellious and dissenting servants challenged concepts of order, honesty and reliability, as well as authority.

One thing that is apparent in all the exchanges between these men and women is their frankness in expressing their opinions and talking about sexual encounters. There is not the explicit detail in either York or Edinburgh that has been seen in studies of southern England.¹⁸³ Yet these men and women still played an important role in the process of defining and policing the limits of appropriate sexual and social conduct. The men and women of both cities were vocal in attesting to behaviours they considered to be both acceptable and unacceptable. Beneath the insults ran local tensions and disputes over authority and status, tales of illicit affairs, illegitimate pregnancies and long-term lovers. Yet, the men and women of these cities were also flexible in what they chose to discipline and in how they perceived sex; they frequently used the idea of sex to mark out those they perceived to behave in decadent and 'ungodly' ways, almost with a sense of revelry.

In both cities men and women engaged in an open and at times unruly discourse with each other about the nature of acceptable and unacceptable behaviour, occasionally using the sexualised language of insult to express social, economic and spatial tensions. These people sought to protect and defend their authority, respectability and families as they came under verbal and legal attack. Therefore it should not be surprising that when men and women contested such cases against each other similar issues were worked out in both Edinburgh and York, using similarly colourful language. Disputes between men and women not only focused issues of authority onto the question of gender – what women and men could each do or get away with – but these disputes also illustrate that women found ways of empowering

¹⁸² Concepts of authority seem tied to notions of morality in these cases.

¹⁸³ Quaife, *Wanton Wenches*; Gowing, *Domestic Dangers*.

themselves against men, just as men asserted themselves in the face of dominant female identities.¹⁸⁴

The men of the early modern city constructed and demonstrated their authority and responsibility through their social personae, working lives and household management. The pressures exerted on men to 'take charge', like those on women to be morally incorruptible, created tensions that frequently expressed themselves, occasionally in violence, occasionally in verbal outbursts and occasionally through mischief. These cases highlight the distance that existed, for men as well as women, between expected behaviour and social practice. These were the cases that determined the limits of gender norms within these societies. By contesting these boundaries men and women could challenge and reinforce cultural norms and values. Yet there remains a need to further examine the interplay of male and female identity within this period, to examine more thoroughly how the gendering of insult worked between understandings of male and female.

The language of insult in both Edinburgh and York rooted gendered identity in the body, in the physical exchanges and encounters of sex. In the use of both animal imagery and the imagery of infection it was the body that was re-imagined through verbal and legal exchanges. Within this understanding of the early modern body there was a distinct gendering of behaviour. Women were more thoroughly and persistently defined by their sexuality. It was through women's actions that the household could be made the object of abuse. Yet male bodies too could be attacked on the basis of their sexual properties, as corrupt, as diseased and as immoral. Male identities were tied to their status as householders, to their responsibilities as patriarch and to their relations with women. In the representation of the household as a locus of authority, sex and status the language of insult drew together male and female identities, shaping and regulating the relationships between men and women.

¹⁸⁴ Capp, 'Double Standard Revisited'.

Courtship, Fornication and Pre-marital Sex: The formation and legitimisation of relationships

The minute book of St Cuthbert's parish in Edinburgh recorded in February 1590 that Margaret Adamson,

gaif in ane supplicatioun ...[that] robert kenneburgh quha is twyse proclamit in yis Kirk wt margaret boyll ... alledgand hir [margaret adamson] to be thryse proclaimed with him in ye Kirk of halidrudhous and he held hous with hir And bad ye use of hir badie the speace of half ane yeir.¹

Kenneburgh's response the following week claimed that Adamson was 'an unlauchfull persone to be haldin in ane congregatioun because scho is ane thief' and 'ane harlate of hir bodie'. However, he followed this allegation with a confession that 'he was proclamit and had carnall daill with hir.' Kenneburgh used Adamson's reputation as a thief and a whore to try to extricate himself from a promise of marriage to her. In so doing he did not deny he had slept with her. Rather, he used the carnality of their relationship to claim that she was a slanderous woman of dangerous morality, thereby discrediting both her and the relationship.

This case began as one woman's attempt to assert her spousal relationship with a man whom *she* considered to be behaving in a scandalous and sinful manner, promising and proclaiming marriage with a second woman, Margaret Boyll. It illustrates how sexual and spousal relationships could be disputed and represented in diverse ways in the narratives presented before the session and church courts. The basis upon which Adamson asserted a spousal relationship with Kenneburgh undermined her social position and legal case. Kenneburgh's claim that she was a 'thief' and 'ane harlate of hir bodie', particularly in the light of her confession that he had 'ye use of hir badie the speace of half ane yeir', resulted in Adamson being put in jugs and banished from the Inverleith Barony. The Kirk nullified Kenneburgh's alleged marriage promise to Adamson and allowed him to proceed with the formalisation of his relationship with Margaret Boyll.

Disputes about the status of a relationship complicated early modern courtship and marriage. Participants in a relationship could interpret it in differing ways, drawing on

¹ NAS, Edinburgh, CH2/718/1, f. 121-27, 6 February 1590 to 13 March 1590.

the observations and opinions of witnesses and kin to situate their behaviour both within and outside legitimate courtship practices. The protracted negotiations that preceded marriage during this period as often as not failed to produce a final marital contract.² Rather, men and women during this time in their lives made and extricated themselves from a number of informal and semi-formal relationships.³ During their late teens and twenties men and women would have begun to show an active interest in sex, for this was the stage at which they could legitimately begin to express an overt [hetero]sexuality.⁴ The need to find an appropriate marital partner and the desire to explore their sexuality led some men and women to assert or deny marital unions both in attempts to form lasting relationships and in the interests of mitigating the sin of fornication.

² Diane O'Hara, *Courtship and Constraint: Rethinking the Making of Marriage in Tudor England* (Manchester, 2000), 10; idem, 'The Language of Tokens and the Making of Marriage', *Rural History*, 3 (1992), 1-40; Richard Adair, *Courtship, Illegitimacy and Marriage in Early Modern England* (Manchester, 1996), esp. ch. 5; Martin Ingram, *Church Courts, Sex and Marriage in England, 1570-1640* (Cambridge, 1990), esp. chs. 6 and 7; Alan Macfarlane, *Marriage and Love in England: Modes of Reproduction 1300-1840* (Oxford, 1986), esp. ch.13; Paul Griffiths, *Youth and Authority: Formative experiences in England 1560-1640* (Oxford, 1996), esp. ch. 5; Elizabeth Foyster, *Manhood in Early Modern England: honour sex and marriage* (London, 1999), esp. ch. 3; John R. Gillis, *For Better, For Worse: British marriages, 1600 to the present* (New York, 1985); Peter Rushton, 'Property, Power and Family Networks: The Problem of Disputed Marriage in Early Modern England', *Journal of Family History*, 11:3 (1986), 205-219; idem, 'The Testament of Gifts: Marriage Tokens and Disputed Contracts in North-East England, 1560-1630', *Folklife*, 24 (1985), 25-31; Catherine Bates, *The Rhetoric of Courtship in Elizabethan Language and Literature* (Cambridge, 1992), 8-9; Linda Pollock, 'An Action like a Stratagem: Courtship and Marriage from the Middle Ages to the Twentieth Century', *The Historical Journal*, 30:2 (1987), 483-94; W. D. H. Sellar, 'Marriage by Cohabitation with Habit and Repute: Review and Requiem?' in D. L. Carey Miller and D. W. Myers (eds), *Comparative and Historical Essays in Scots Law* (Edinburgh, 1992), 117-36; Laura Gowing, *Domestic Dangers: Women, words and sex in early modern London* (Oxford, 1996), 139-41. Amongst the extensive literature on clandestine marriage see: Alison Wall, 'For Love, Money, or Politics?: a clandestine marriage and the Elizabethan court of Arches', *Historical Journal*, 38:3 (1995), 511-33; R. B. Outhwaite, *Clandestine Marriage in England, 1500-1850* (London, 1995); Martin Ingram, 'Spousals Litigation in the English Ecclesiastical Courts c.1350-1640', in R. B. Outhwaite (ed), *Marriage and society: Studies in the social history of marriage* (London: Europe Publications, 1981), 35-57; John R. Gillis, 'Conjugal Settlements: Resort to clandestine and common law marriage in England and Wales, 1650-1850', in John Bossy (ed) *Disputes and Settlements: Law and Human Relations in the West* (Cambridge, 1983), 261-86.

³ Macfarlane, *Marriage and Love*, 124, 296.

⁴ Gowing, *Domestic Dangers*, 7; Foyster, *Manhood in England*, 4-5; Michael F. Graham, *The Uses of Reform: "Godly discipline" and popular behavior in Scotland and beyond, 1560-1610* (Leiden, 1996), 287; Katherine Crawford, 'Sexuality in Early Modern England: The perils of representation, gender, and (hetero)sexuality', *Journal of British Studies*, 42: 2 (2003), 258-262. Judith Butler, *Gender Trouble: Feminism and the subversion of identity* (New York, 1990), 151; Thomas Laqueur, *Making Sex: Body and gender from the Greeks to Freud* (Cambridge, Ma., 1990), 52-53. On the prevalence and 'massive and incredible scale' of male homosexual encounters see: Alexandra Shepard, *Meanings of Manhood in Early Modern England*, (Oxford, 2003), 116; Alan Bray, *Homosexuality in Renaissance England* (London, 1982), 74, 79.

This chapter examines how men and women negotiated their ways into and out of marital relationships and investigates the legal and social responses to unauthorised sexual behaviour. It explores how and why women and men such as Adamson and Kenneburgh engaged in pre-marital sex at a time when such behaviour was prohibited and punished by religious and civic authorities alike. It examines not only how courtship was conducted, but also the variety of religious and social responses to fornication.

This chapter first establishes the social and cultural context of courtship in York and Edinburgh. It then goes on to examine the concern about secret and unauthorised sex, focusing initially on the apparent obsession with fornication that pervaded the moral discourses and the activities of the reformed Kirk in Scotland, particularly in the first decades of reform. This concern was also reflected in English Visitation returns and in English sermons and homilies.⁵ By examining the religious enforcement and regulation of marriage this section reveals not only how men and women in both cities deployed the ambiguous timeline of a marriage promise to defend themselves against accusations of fornication but also how a significantly higher number of men and women in Edinburgh simply accepted that they had committed fornication, transgressing the moral and sexual dicta of the church. The population of the burgh adapted and employed the verbal and physical modes of repentance demanded by the Kirk in order to excuse and to redeem illicit behaviour.

The third section of this chapter unpacks the practices of early modern courtship. It engages with the work of Diane O'Hara, examining the ways women responded to the material tokens that men gave them as signifiers of their relationships.⁶ This section demonstrates how men and women were manipulated both into and out of relationships, it reveals the power women could wield in the negotiation of those relationships, and the limits placed on the individual choices of men and women in two cities by communal and kin networks. This chapter will conclude with the 1596 Edinburgh case study of Bessie Ramald and Thomas Thomsone to examine in depth how communal perceptions of intimacy, space and status contributed to assumptions about sexual relations within the context of a master/servant relationship.

⁵ York, Borthwick, YV/CB 1, Archdeacon's Visitation 1598.

⁶ O'Hara, 'The Language of Tokens'.

Courtship and Sex in England and Scotland

Beliefs about the body normalised sexual activity within marriage. Jane Sharp's *Midwives Book* contains observations and reflections on sex and sexual attraction that inextricably linked sexual performance, emotional capacity, temperament and marriageability.⁷ Didactic texts such as the *Midwives Book* provide evidence of a discursive female engagement with and understanding of, not only their own but also the male body.⁸ Courtship manuals and medical texts were informed by the morality that governed the languages and practices of sexuality.⁹ Sharp situated male sexual "success" within a moral narrative of marriage and procreation when she wrote that 'some there are that plow up other mens ground, when they can find such lascivious women that will pay them well for their pains, but commonly they pay dear for it in the end, if timely they repent not.'¹⁰ The text intrinsically linked marriage and procreation, with books two and three discussing in detail the means by which to conceive children and the potential problems that couples could encounter.¹¹

There is little doubt that by late adolescence young men and women would have been familiar with religious and moral ideas concerning sexual conduct.¹² Furthermore, from a relatively young age boys and girls were made aware of the personal, familial and financial advantages of a good marital union. It was a fundamental duty of parents to ensure that their offspring understood the full social ramifications of their sexual behaviour. Any child who heard their minister preaching on the subject of sin and sexual debauchery would have been left in little doubt as to the prevalence of

⁷ Jane Sharp, *The Midwives Book, or, The whole art of midwifry discovered*, Elaine Hobby (ed), (New York, 1999), 23-31; Thomas A. Foster, 'Deficient Husbands: Manhood, Sexual Incapacity, and Male Marital Sexuality in Seventeenth-Century New England', *The William and Mary Quarterly*, 3rd Series, 56:4 (1999), 724-29.

⁸ Gowing, *Common Bodies*, 41-43.

⁹ Henrie Smith, *A Preparative to Marriage* (London, 1591); William Whately, *A Bride-Bush, or A Wedding Sermon: Compendiously describing the duties of Married Persons: By performing whereof, Marriage shall be to them a great Helpe, which now find it a little Hell* (London, 1617); William Whately, *A Care Cloth: or a treatise of the cumbers and troubles of marriage intended to aduise them that may, to shun them; that may not, well and patiently to beare them.* (London, 1624); Henry Swinburn, *A Treatise of Spouals or Matrimonial Contracts* (London, 1686).

¹⁰ Sharp, *The Midwives Book*, 23.

¹¹ Sharp, 'What things are required for the procreation of children', *The Midwives Book*, 67ff; and 'What is it that hinders conception and may be the causes that some women are barren', 127ff..

¹² Gowing, *Common Bodies*, 40-51; Patricia Crawford, *Blood, Bodies and Families in Early Modern England* (Harlow, 2004), 63-72.

‘unnatural’ and ‘dangerous’ sexual corruption.¹³ However, no youth could have been unaware of the potentially bawdy sexuality that existed in Edinburgh and York.¹⁴ During this period there was a plethora of mixed messages from the parlour, pulpit and pavement.

The initiation of courtship marked a stage of maturation in the early modern lifecycle across Europe.¹⁵ At this point in the lifecycle that parents, friends and kin began to pressure individuals to make the most socially and financially advantageous marital match.¹⁶ The consequent negotiations and flirtations were a means for men and women to construct a potential future household.¹⁷ Yet, marriage was not simply established between two individuals. Early modern society put a great deal of pressure on men and women to respond to not only their own needs and desires, but also the wishes and requirements of a broader community of family, kin and associates.¹⁸

Macfarlane has argued that the concern for the individuals’ consent to marriage made the man and woman at the heart of the relationship the foci of that relationship and rendered friends and family into supporting players to the main action.¹⁹ Yet, as O’Hara has observed, ‘[a]ny argument for individualism needs to confront the manifest evidence for constraint and pressure, even if it is only psychological.’²⁰ The concern for consent that was evident in both cities couched courtship not only within a context of personal consent but also familial and kin assent.²¹ Yet, the study of

¹³ ‘Against Whoredome and Uncleanness’, ‘An Exhortation to Obedience’, *Certaine Sermons or Homilies Appointed to be read in Churches. In the time of the Late Queene Elizabeth of Famous Memory* (London, 1635); ‘Of the State of Matrimony’, ‘Of Repentance, and True Reconciliation unto God’, *Certaine Sermons or Homilies Appointed to be read in Churches. Book 2* (London, 1563); Thomas Pulein, *Ieremiah’s Teares, or, A Sermon Preached at York-Minster Trinity Sunday 1604, when the sickness was begunne in the Citie* (London, 1608).

¹⁴ See previous chapter; Gowing, *Domestic Dangers*, 96-97.

¹⁵ Macfarlane, *Marriage and Love*, 303-4; Eric Carlson, ‘Courtship in Tudor England’, *History Today*, 43:8 (1993), 23; O’Hara, *Courtship and Constraint*, 145; Shepard, *Meanings of Manhood*, 23-24, 26; Griffiths, *Youth and Authority*, 249.

¹⁶ O’Hara, *Courtship and Constraint*, 159-60. Though marriage ages varied markedly throughout the period

¹⁷ Gowing, *Domestic Dangers*, 141.

¹⁸ O’Hara, *Courtship and Constraint*, 41-42; Ingram, *Church Courts, Sex and Marriage*, 138-42; Adair, *Courtship, Illegitimacy, and Marriage*, 133-42.

¹⁹ Macfarlane, *Marriage and Love*, 122-29.

²⁰ O’Hara, *Courtship and Constraint*, 33.

²¹ James K. Cameron (ed), *The First Book of Discipline* (Glasgow, 2005), 191-99; Sellar, ‘Marriage by Cohabitation’, 134-35; Margo Todd, *The Culture of Protestantism in Early Modern Scotland* (London, 2002), 267-71; R. A. Houston, ‘Women in the Economy and Society of Scotland, 1500-1800’, in R. A. Houston and I. D. Whyte (eds), *Scottish Society 1500-1800* (Cambridge, 1989), 130-31; O’Hara,

courtship can also cast light on a number of distinctly female concerns within the negotiation of relationships with men, within families and within the construction of future households. Within these cases it was predominantly female voices that were used to accept or reject a marriage suit, in so doing these women acknowledged their own and their family's interests. Marriage was the primary legally binding contract in which women were required to have a say.²²

However, the negotiation and formalisation of a marriage contract could be a vague and legally uncertain process, as we have seen. The sexual liaison of Adamson and Kenneburgh that opened this chapter appears to have followed the pattern of courtship described by Richard Adair in his study of northern England. His assertion that the medieval practice of spousals (otherwise known as banns or handfasting) was still popular in the north of England seems in some respects be supported by the Scottish experience, particularly in the practice of marriage by cohabitation and repute.²³ This system allowed an informal marriage contract to be brokered, by which a couple simply proclaimed a promise of matrimony and exchanged tokens, usually including a ring.²⁴ No witnesses were necessary for the promise to be considered binding and legal/ecclesiastical solemnisation could follow months or years later, if at all. Evidence of spousals and the regional pattern of higher illegitimacy rates led Adair to argue that this promise and exchange was the point at which couples began sexual activity.²⁵ Due to the lack of witnesses, the assertion and ratification of such a contract in the consistory court or Kirk session could be a difficult process involving

Courtship and Constraint, 10-13; Houlbrooke, 'The Making of Marriage', 349; Cf. Peter Rushton, 'Property, Power and Family Networks: The Problem of Disputed Marriage in Early Modern England', *Journal of Family History*, 11:3 (1986), 208.

²² Tim Stretton, *Women Waging Law in Elizabethan England* (Cambridge, 1998), 120.

²³ Adair, *Courtship, Illegitimacy, and Marriage*, 142 ff.; Sellar, 'Marriage by Cohabitation'; Todd, *Culture of Protestantism*, 267-71, 272-4, 274 fn.; Graham, *Uses of Reform*. Leah Leneman and Rosalind Mitchison conducted studies after the introduction of the 1661 Marriage Act, under the terms of which Scottish couples not only faced the usual religious censures for irregular marriage, but also faced three months imprisonment and a fine ranging from one hundred merks to one thousand Scots pounds, hence indicating a decline in irregular marriage. However these studies do indicate the prevalence of irregular marriage prior to the introduction of the Act: Leah Leneman and Rosalind Mitchison, *Sin in the City: Sexuality and Social Control in Urban Scotland 1660-1780* (Edinburgh, 1998), ch 8; idem, *Girls in Trouble: Sexuality and Social Control in Rural Scotland 1660-1780* (Edinburgh, 1998); idem, 'Clandestine Marriage in Scottish Cities, 1660-1780', *Journal of Social History*, 26: 4 (1993), 846-87.

²⁴ O'Hara, 'The Language of Tokens', 4. Peter Rushton, 'The Testament of Gifts'.

²⁵ Adair, *Courtship, Illegitimacy, and Marriage*, 146-48; Jona Schellekens, 'Courtship, the Clandestine Marriage Act, and Illegitimate Fertility in England', *Journal of Interdisciplinary History*, 25 (1995), 436; Laura Gowing, *Common Bodies: Women, Touch and Power in seventeenth-century England* (London, 2003), 32.

subjective judgements about the nature and duration of a given relationship.²⁶ This appears to be precisely what was happening in the case of Margaret Adamson and Robert Kenneburgh.²⁷

However, Ingram has questioned the prevalence of spousals after the reformation, arguing that in Wiltshire the increased readiness of the ecclesiastical courts to prosecute ante-nuptial fornication and the increasingly inflexible attitudes of judges to marriage contracts led to a decline in the number of disputes concerning alleged marriages in the later sixteenth and early seventeenth centuries.²⁸ Gowing has supported this, highlighting a number of cultural factors that militated against the utility of initiating a suit for breach of marriage contract, in particular 'the [London] court's decreasing willingness to confirm unsolemnised contracts'.²⁹ Gowing also observed that court-ordered marriages 'seem an unlikely basis for satisfactory conjugal relations'.³⁰ Yet, she conceded that there were other motivations for such legal actions, especially as so few cases progressed even to the point of depositions: the enforcement of maintenance from an unwilling partner and other forms of financial gain, the retrieval of reputation and dignity in the face of a rejected suit.³¹

The session in Edinburgh and the church courts in York were the primary fora to which men and women appealed when courtships encountered difficulty. Yet in Edinburgh marital disputes were far fewer in number than cases concerning fornication, while in York they were fewer in number than defamation cases. In York only thirty-seven matrimonial cases appear to have been contested by city's the inhabitants over these sixty-five years, these suits occurring most frequently prior to 1600 (see Figure Three). Of these cases seventeen percent (seven suits) concerned the legality of a marriage, while a further twenty-two percent (nine suits) raised the issue

²⁶ Macfarlane, *Marriage and Love*, 127-28, 298-300; O'Hara, *Courtship and Constraint*, 10-11, 38-41; Ralph Anthony Houlbrooke, 'The Making of Marriage in Mid-Tudor England: Evidence from the Records of Matrimonial Contract Litigation', *Journal of Family History*, 10: 2 (1985), 342.

²⁷ Despite their proclamation in the Kirk of Holyrood there remained a question mark over the actual solemnisation and finalisation of the marriage ceremony, which gave Kenneburgh the means to remove himself from the relationship when supported by Adamson's slanderous behaviour.

²⁸ Ingram, *Church Courts, Sex and Marriage*, 193.

²⁹ Gowing, *Domestic Dangers*, 178; Ingram, *Church Courts, Sex and Marriage*, 203; Christine Peters, 'Gender, Sacrament and Ritual: the making and meaning of marriage in late medieval and early modern England', *Past & Present*, 169 (2000), 65.

³⁰ Gowing, *Domestic Dangers*, 178.

³¹ Gowing, *Domestic Dangers*, 178-79; Ingram, *Church Courts, Sex and Marriage*, 50.

of consent. Another twelve percent concerned breach of marital promise, with nineteen percent concerning pre-marital pregnancies (see Figure Six).³² Within the Archdeacon's Visitation returns for 1598 and 1613 there was an evident concern for illicit, informal, relationships within the city with eight and nine presentments respectively (see Table Two). These numbers grow when the numbers of illicit pregnancies, six in 1598 and five in 1613, are included.

In Edinburgh a sample of the St Cuthbert's Foul Discipline Book conducted at five-year intervals so as to gauge the general disciplinary activities of the session, reveals one hundred and seventy-eight presentments for marriage related issues.³³ Of these twenty-one percent (thirty-seven presentments) concerned pre-marital fornication and a further seventeen percent (thirty-one presentments) related to either the enforcement of banns or a marital promise, with fifteen percent (twenty-six presentments) concerning pregnancy. The other major categories recorded included slanderous behaviour, adultery, household disorder and the receiving of inappropriate persons into the household (see Figure Seven). Figure Four, showing the sexual activity recorded in the Minute Books, demonstrates that whilst fornication made up fifty-eight percent of cases (including relapse appearances), premarital fornication constituted a further eight percent of session sex cases and the enforcement of a marital promise a further seven percent.

Illicit Sex and Fornication

The first months of the reformers' regime in Edinburgh set the tone for the coming decades with regard to illicit and/or wanton sexual activity. On 10 June 1560 the 'Act Anent and Punishment for Whoredom' declared that,

[t]he provest, baillies... having consideratioun of the grit number of idolataris quhoremaisteris and harlottis daylie resortand within this burgh, and provokand [the] indignatioun of God upoun the samyn oftentymes furtheschawin be the prehouris, ordains ane proclamatioun... that all sic personis cum in presens of the minister or elderis to gif testimonie of thair... saidis abuses..., or fayling thairof...

³² Ingram, *Church Courts, Sex and Marriage*, 189, has noted the dominance of cases concerning marriage formation, with regard to the broader category of matrimonial business with the church courts. See also, O'Hara, *Courtship and Constraint*, 10.

³³ NAS, Edinburgh, CH2/718/52, Foul Discipline Book, 1595 to 1612. This book contains only a brief summary of each presentment and was cross-referenced with the corresponding minute books of the session; NAS, Edinburgh, CH2/718/2-3.

carrying of the saidis bordelaris houremaisteris and harlottis throw the toun in ane cart for thair first fault, biring... on the cheik for the second fault, and banishing of the toun, and for the third fault to be punischit to the deid.³⁴

This concern was reiterated in the literature and minutes of the Kirk, from the session to the General Assembly. Questions and articles at Assembly meetings frequently sought clarification as to methods of dealing with apparently rampant pre- and extra-marital sex in the first decades following reform, appearing as early as December 1560.³⁵

A concern with pre- or extra-marital sex was by no means new. The civil and religious preoccupation with, and regulation of, the sexual conduct of parishioners was already well established.³⁶ However, with the shift in religious regime came an increased awareness of the sexual proclivities and activities of the city. Reformers focused on sexual behaviour as a root cause of various forms of social unrest within the city.³⁷ A lack of control over sexual desire was equated, in the reformers' rhetoric, with a lack of control over other moral and emotional aspects of social behaviour. This was perceived to lead to forms of rebelliousness at odds with the maintenance of good and orderly communities.³⁸ This is not to suggest that patterns of sexual behaviour had actually shifted during this period. Rather, ways of talking about sex and sexuality were influenced by this increased focus and the perceived need for control that accompanied it. The language of reform in Edinburgh would have seemed to those who listened to sermons and engaged with political and religious debates to have been a language of sex and punishment. However, this emphasis on a public disciplinary system also functioned as a means by which to mark out the new religious and moral order from the more privately penitential, confessional, system that had preceded it.

³⁴ *Ed. Recs*, I, iii, 65.

³⁵ *BUK*, 5, December 1560. See also: *BUK*, 19, November 1562, 76, December 1565, 98, June 1567, 171, March 1569.

³⁶ Todd, *Culture of Protestantism*, 265-66.

³⁷ Graham, *Uses of Reform*, 57.

³⁸ Todd, *Culture of Protestantism*, 173, 213-14 on the troubles, and perceived disorder and riotousness, caused by marriage feasts and 'drunkenness at bridals'.

In the records of the burgh council concern for the ‘filthie lusts of the flesche’ was reiterated in ordinances such as the ‘Statuta Harlottis’ of 1578.³⁹ This restated the city’s concern about the ‘greitt multide of harlottis’ committing the ‘horrible vice of fornicatioun’, a vice which was thought to ‘dailie increse’ due to a ‘laik of schairpe punisment’.⁴⁰ The statute called for the regular apprehending of harlots, whoremasters, and fornicators, who were to be ‘hurlyt in ane cart through the toune and banist the boundis theirow induring the provest, baillies, and counsallis willis’. The carting of female and male sexual offenders was an established spectacle on the streets of the burgh and in the neighbouring suburbs of the Canongate and Leith, which became increasingly regular as civic and ecclesiastical groups worked together to demonise illicit sexual activity.⁴¹ Notably, the session called almost equal numbers of male and female offenders to answer for their moral and sexual transgressions.⁴²

The ‘Act Anent Burgess Douchters who are not Virgins’ of July 1583 used the threat of social and economic deprivation to influence the sexual behaviour of the young women and men of the burgh. This statute declared

[all] burges dochters quha ar commoun or notorious huiris... or quha sall anes defile hir body with fornicatioun, and is nocht at the tyme of the solemnizatioun of hir marriage ane clene virgine swa repute and haldin, sall in... tyme cuming bruik the priuelege ... to mak hir husband burges or gild brother...⁴³

This statute, though expressly aimed at ‘Burgess Douchters’, also targeted men who used sex to force a socially advantageous marriage. In attempting to influence male behaviour this statute focussed attention on female sexuality across the burgh. By removing a woman’s ‘privilege’ to make her husband a Burgess or Guild Brother if she was not a virgin at the time of her marriage, this statute bound together female economic and sexual status.⁴⁴ Furthermore, sexual status was made subject to social

³⁹ *Ed. Recs. I*, iv, 72.

⁴⁰ *Ed. Recs. I*, iii, 217 and 223, September and October 1566. See also; *Ed. Recs. I*, iv, 214 August 1581; idem, iii, 65 June 1610, Against Whoredom; idem, iii, 135, May 1562, need for a new Ducking Stool for fornicators; idem, iii, 152, November 1562, the need to seek out the ‘abhonimabill viceis of adulterie and fornicatioun [which] daylie increseit within this burgh for lack of punishment’.

⁴¹ E.g. Alma B. Calderwood (ed), *Buik of the Kirk of the Canagait, 1564-1567* (Edinburgh, 1961), 11, 74-5.

⁴² Graham, *Uses of Reform*, 286-88.

⁴³ *Ed. Recs. I*, iv, 284.

⁴⁴ Gowing, *Common Bodies*, 43-44, on the whore/virgin dichotomy 32; Cf. Alexandra Shepard, “Manhood, Credit and Patriarchy in Early Modern England, c. 1580-1640”, *Past and Present*, 167 (2000), 75-106; Keith Thomas, ‘The Double Standard’, *Journal of the History of Ideas*, 20 (1959), 195-216.

interpretations: the community judged who were 'commoun or notorious huiris ... swa repute and haldin'.⁴⁵ In making women the focus of this Act the burgh recognised and affirmed that the perceived behaviour and reputation of women determined the status of a family. This statute confirmed the prejudice against sexually active young women by reiterating the need for a woman - not a man - to be 'ane clene virgine' at the commencement of her marriage.⁴⁶ Such statutes reflected a social ideal that was at odds with many elements of the courtship culture of both Scotland and England.⁴⁷

The attitudes to sex within the legal and social institutions of the burgh generated an environment that at one and the same time embraced and rejected overt sexuality. The language that was used to condemn was also the means by which to seek absolution.⁴⁸ By submitting themselves to the discipline of the Kirk and burgh, men and women became complicit in the regulation of "disorderly" and sexually deviant behaviour.⁴⁹ The minutes of the Kirk and burgh record men and women who confessed fornication, who had 'given themselves up' to the discipline of the Kirk.⁵⁰ These individuals were ridding themselves of 'apparently overwhelming guilt'⁵¹ through religious and penitential participation.⁵² The session minutes record individuals who 'desyrit' to 'conforme', whose indiscretions were incorporated into a larger narrative of "proper"

⁴⁵ Faramerz Dabhoiwala, 'The Pattern of Sexual Immorality in Seventeenth- and Eighteenth-Century London', in Paul Griffiths and Mark S. R. Jenner (eds), *Londinopolis: essays in the cultural and social history of early modern London* (Manchester, 2000), 92-93.

⁴⁶ Griffiths, *Youth and Authority*, 29-30; Foyster, *Manhood in England*, 46-48.

⁴⁷ Adair, *Courtship, Illegitimacy, and Marriage*, 146-48.

⁴⁸ Todd, *Culture of Protestantism*, 166-67.

⁴⁹ Todd, *Culture of Protestantism*, 164-65, 189; Michael F. Graham, 'Women and the Church Courts in Reformation Era Scotland,' in Elizabeth Ewan and Maureen M. Meikle (eds), *Women in Scotland, c. 1100 - c. 1750* (East Linton, 1999), 189.

⁵⁰ As a small sample of typical 'confessions': NAS, Edinburgh, CH2/718/1, f. 122, 13 February 1590/1, 'Jonet cunninghame and James gilbert broun allegiand to haif carnall daill wt hir under promeis of marriage the said gilbert *confessit*... carnall daill, bot na promeis of marriage'; NAS, Edinburgh, CH2/718/1, f. 151, 29 September 1591, Margaret Gadas '*confest* that scho had carnall dall' with Williame Rodman; NAS, Edinburgh, CH2/718/2, f. 51, 16 Jun 1597, 'alexander weir and *confessit* he had committit fornicatioun wt agnes braidie ... for ye qlk *he offere him self willinglie* till obey quhat ye Kirk wald lay unto his charge'; NAS, Edinburgh, CH2/718/2, f. 98, 9 July 1599, 'catherin welsch ... *confess scho hes offendit god* and his Kirk [by] resetting hooris .. within hir hous'; NAS, Edinburgh, CH2/718/2, f. 223, f. 177, 31 January 1605, 'george Knox ... *confes fornicatioun* with marioun ogilvie having committit adulterie before wt agnes cunnynghame quhen his wyfe was upone lyfe'; NAS, Edinburgh, CH2/718/2, f. 223, 13 February 1606, 'masie daling and *confest relapse in fornicatioun* first wt piter Durie and last wt Johne Campbell clenger'; NAS, Edinburgh, CH2/718/2, f. 224, 20 February 1606, f. 234, 'clement kincaid ... *confesd fornicatioun* wt margaret robesone quha wes his awin servand', yet on 22 May, 'margaret robesone and *confes fornicatioun* wt clement kincaid ... [but] denyit obstinattlie yt scho had any carnall copulatioun wt him'. [italics my own]

⁵¹ Todd, *Culture of Protestantism*, 170-71.

⁵² Todd, *Culture of Protestantism*, 170-71. Cf. Steven Ozment, *The Age of Reform, 1250-1550: An Intellectual and Religious History of Late Medieval and Reformation Europe* (New Haven, 1980), 216.

interaction between the sexes. By seeking absolution and submitting to the authority of the burgh and Kirk, these men and women were buying into a Reformed notion of good and bad behaviour.⁵³ Yet they were also creating a behavioural and linguistic back door, through which they could engage in but be forgiven for 'immoral' behaviour.⁵⁴ Certain men and women claimed to have performed sexual acts 'under promise of marriage'.⁵⁵ These men and women constructed their transgressions as social, as well as sexual, slippages, the revelation or even negotiation of the marital promise quite probably occurring after the initial presentment for fornication.

These oral submissions were accompanied by physical repentance that reinforced the moral code of reformed regime. These rituals informed the language of sex, sin and morality reflected in responses to the 'notorious' men and women of the previous chapter: the carted woman and the sexually permissive man was an intrinsic element of the sound-scape of the early modern city, employed frequently in insult and rumour.⁵⁶ The appearance of sinners clad in sackcloth, shaven-headed, standing at the Kirk door, kneeling before the congregation, and parading along the High Street to the tollbooth was a visually striking spectacle,⁵⁷ notwithstanding the personal humiliation and hardship such a punishment would precipitate.⁵⁸ The participation of onlookers was a vital element of this ritual, with a congregational audience invited to witness, chastise and condemn the guilty. This was emotional, as well as physical and verbal discipline. The ducking of women in the North Loch would have left an additional, olfactory, reminder of the place of sinners within the moral hierarchy. For the

⁵³ Todd, *Culture of Protestantism*, 168-72; Philip Benedict, *Christ's Churches Purely Reformed: A social history of Calvinism* (New Haven, 2002), 161.

⁵⁴ Whilst recidivism rates were not particularly high during this period there were a number of presentments for multiple acts of fornication and even bastard bearing in the wake of sexual misconduct. See Figure Four, which shows that relapse or trilapse in fornication made up nine percent of sex related cases before the session, a similar percentage to those who claimed ante-nuptial fornication.

⁵⁵ For example: NAS, Edinburgh, CH2/718/3, f. 3, 29 March 1610, 'bessie paterone being in quierit quether scho had ever carnall copulating wt thomas lorimer or not scho constantlie denyit the samyn and forder affirmit that scho suld be banischit the parochin gif it war provin heirefter'. Yet one week later she returned to the session and 'confest fornicating wt thomas lorimar under promeis of mariag'.

⁵⁶ Laura Gowing, 'Gender and the Language of Insult in Early Modern London' *History Workshop Journal*, 35 (1993), 1-21; Todd, *Culture of Protestantism*, 166-79. O'Hara, *Courtship and Constraint*, 43-44.

⁵⁷ Knox, *Works*, 6: 468-69, 'The order of excommunication and public repentance, 1569'; Todd, *Culture of Protestantism*, 143-55. This is a part of a chapter 'Performing Repentance' that discusses many of these themes.

⁵⁸ John G. Harrison, "Women and the Branks in Stirling, c. 1600 to c. 1730", *Scottish Economic and Social History*, 18: 2 (1999), 118, 127.

individual who admitted his or her guilt and who labelled himself or herself a ‘fornicator’, submission to the Kirk subjected their bodies to the moralising gaze of the parish and to the enactment of a ritual of guilt and repentance that was performed during divine service and which was designed to heighten the communal observation and surveillance of behaviour both good and bad. Weeks spent sitting and kneeling amongst the whores and adulterers on the stool of repentance embodied ideas concerning sin that were reinforced by language, physical marking, public display and social shame.⁵⁹

Within this endeavour to discipline sexual activity the burgh population was called upon to report and to accept responsibility for such activity. It was those men and women who confessed to sexual encounters, thus appearing to have internalised the reformers’ notion of sin and responsibility, who, by submitting to punishment, both gave the impression that the Kirk’s efforts were successful and made it appear that there was such a ‘greitt multtude of harlottis’ within the burgh.⁶⁰ By employing lay elders and by calling upon the congregation to enact moral reform the Kirk established distinctly local and familiar disciplinary institutions. Yet, as we shall see, those who transgressed were not so far removed, socially or physically, from those who punished.⁶¹

In particular the session and burgh called upon masters and mistresses to report those within their household who were guilty of fornication.⁶² It was the duty of the household head, man or woman, to educate and provide strong moral guidance to all those under their roof: family, kin and employee. Statutes such as the ‘Statuta Harlottis’ made “private” sexual conduct subject to the legal and civic domains. By making householders accountable for the behaviour of those under their roof, a legal

⁵⁹ For the enactment of similar processes in England and Europe see: Edward Muir, *Ritual in Early Modern Europe* (Cambridge, 2005), 116-21; Ulinka Rublack, *The Crimes of Women in Early Modern Germany* (Oxford, 1999), 78-83; Natalie Zemon Davis, ‘The Sacred and the Body Social in Sixteenth-Century Lyon’, *Past and Present*, 90 (1981), 65-66. On the use of Public Penance in England see: Dave Postles, ‘Penance and the Market Place: A Reformation dialogue with the medieval church (c.1250-c.1600)’, *Journal of Ecclesiastical History*, 54:3 (2003); Gowing, *Domestic Dangers*, 102.

⁶⁰ Graham, *Uses of Reform*, 186-90

⁶¹ Cynthia Herrup, ‘Law and morality in seventeenth-century England’, *Past & Present*, 106 (1985), 110-11.

⁶² *Ed. Recs. II*, 196-97. Such statutes were intended to make householders more thoroughly monitor all moneys exchanged within their household, in addition to the more sociable comings and goings of those under their care. This preserved the social distinctions of the Burgh, in addition to providing a thorough and effective surveillance network.

and moral imperative to monitor and report any wayward or unacceptable behaviour was generated. For his crime of allowing ‘ane seruand woman beand with child’ to reside under his roof Patrik Durie in 1584 ‘submitted himself’ to the city’s ‘will’, was publicly proclaimed a keeper of fornicators and was fined the sum of forty shillings, well short of the potential twenty pound fine, but still a significant sum.⁶³ In households like Durie’s, that could not afford a twenty pound fine, the threat of twenty days in the tollbooth followed by punishment ‘at the will of the magistret’ loomed large.

An ordinance of August 1597 further urged householders to monitor the comings and goings of those within their household, in particular to ‘contene in thair houssis thair bayrnis and servands and nocht suffer thame to vaig in the streitt’.⁶⁴ Not only did the statute seek to preserve the social distinctions of the burgh and keep out interlopers, but it also reinforced a surveillance network within the burgh by linking the role of the householder to the duties of the city’s ‘watche’.⁶⁵ This and previous statutes worked to normalise the intrusion of religious and legal institutions into the daily lives of men and women. This system of surveillance enforced attendance at church and before the session and acted to regulate, enforce and encourage a distinctively Protestant moral code.⁶⁶

Nevertheless, sexual activity does not appear to have abated in the burgh. For ‘resetting hooris ... within hir hous’ Catherine Welch was presented before the St Cuthbert’s session and threatened with banishment in July 1599.⁶⁷ In March 1601 Marioun Forrester was warned that if ‘scho sall never at any tyme heirefter ressave in hur hous any hures or harlotts to eate drink or committ huredome togidder’ she would face ‘banishing hur furth of ye P[arish] for evir’.⁶⁸ In 1611 Alexander Steill was ‘ordanit to pay five pund of ye penaltie of 10 li In ressaving ane man into his service

⁶³ *Ed. Recs. I*, iv, 332.

⁶⁴ *Ed. Recs. II*, 196-97.

⁶⁵ Todd, *Culture of Protestantism*, 313. The role of the household in Discipline was reinforced by its role in the communication and education of reformed doctrine.

⁶⁶ For the contradictions and distinctions of the reformation in Scotland see Todd, *Culture of Protestantism*, 402-8, which configures Scotland as a puritan nation, especially from the perspective of those English puritans who had not yet achieved anything like the Scots level of religious, political and cultural adherence.

⁶⁷ NAS, Edinburgh, CH2/718/2, f. 98, 9 July 1599.

⁶⁸ NAS, Edinburgh, CH2/718/52, f. 50, 31 March 1601.

yat had fallin relaps in fornicatioun and not satisfiet the Kirk as yit'.⁶⁹ In this case Alexander Steill, as householder and employer, was made responsible for enforcing the repentance of this fornication. It seems that the key issue for the Kirk was the repentance of sin and the ability to 'resave' the penitent back into the religious, not just the social and economic, community of the burgh. Householders and employers were an integral part of this process. The Foul Discipline Book reveals a further seventeen cases in which householders were presented and disciplined for allowing those of scandalous life into their houses.⁷⁰

Such presentments reinforced the responsibility of householders, male and female, to maintain the physical and moral well being of all those under their roof. As we shall see in the final section of this chapter, sexual relations between master and servant were thus often construed to be abusive, or at least deeply iniquitous, though were by no means uncommon.⁷¹ Yet not all perceived abuses of power within the household were understood in terms of the enactment of male, patriarchal, dominance over women, though this was most often the case. Some women were seen to exert undue sexual influence over the men in their employ. In these cases the abuse of power could be more ambiguous, complicating the hierarchies of gender and status within early modern society. If we return to the case of Adam Purves and Margaret Lyntoun, first seen in chapter two, we can see that cessation of legitimate sexual activity between husband and wife, in combination with an apparently intimate relationship with a woman of superior status, and nights spent away from the marital bed painted a picture of illicit and sinful activity between Purves and his employer Lyntoun.⁷²

Adam Purves, like a female servant thought to be sharing her master's bed, was interrogated as to his relationship with his mistress, Lyntoun. Suspicion was further aroused in the session by the concerns of Purves's wife who claimed that there had been a cessation of sexual contact within their marriage. Purves was ordered out of Lyntoun's service and to resume his legitimate position within his own household. Any further contact between he and Lyntoun was to be understood as adulterous,

⁶⁹ NAS, Edinburgh, CH2/718/3, f. 27, 16 May 1611.

⁷⁰ See Table One and Figure Four. This is categorised under household disorder on the graph.

⁷¹ Tim Meldrum, *Domestic Service and Gender 1660-1750: Life and Work in the London Household* (Harlow, 2000), 100ff.

⁷² NAS, Edinburgh, CH2/718/52, 168-9.

irrespective of proof. With this assertion the Kirk reinstated order in two households that had been disrupted by illicit sexual behaviours, or rather by the suspicion of illicit activity between Purves and Lyntoun, and by the ending of sex between Purves and his wife. In this context sex was understood to be both a vital and a dangerous element of hetero-social relationships.

These connections between communal surveillance, familial responsibility, and civil and ecclesiastical authority did not stop at the identification and apprehension of sin. They permeated the redemption and reintegration of the sinful into the congregation and community. In 1581 Christine Falaw was 'deteinit in warde for fornicatioun and [was] nocht putt to an oppin shame' after her daughters, Margaret and Agnes Ingliss, themselves shamed by their mother's moral lapse and subsequent imprisonment, presented a supplication to the burgh asking that Falaw's public punishment be reconsidered.⁷³ Though they were aware of their mother's incontinent lifestyle, having testified that 'sche hes bein licht this viij yeir', these women sought to avoid the further notoriety that a period of penance would have brought.⁷⁴ In describing their mother as 'licht', a byword for wanton and unchaste behaviour, Falaw's daughters were accepting the finding of the session and situating their mother's behaviour within the language of sexual misconduct. The burgh ordered Falaw to be 'putt in Dyngwall induring the townis will [where] the compleineris [her daughters] sustenand hir, and Archibald Someruell, buttermen, become guid for hir sustenatioun in the said place'.

Such a simple episode in the record of the burgh can illustrate the competing interests at work in the presentment and punishment of fornication. In this case the burgh declared Falaw's lack of 'oppin' or public shame to have 'dishonour[ed]... the saidis compleneris hir bairnis' in spite of their desire to avoid such a public punishment. And in spite of her daughter's concession that their mother had an eight-year history of misconduct there was no talk of banishment. Rather, the session wanted to allow Christine Falaw to repent and to rejoin the spiritual community. Yet, at the request of her daughters she had been prevented from making her amends to the congregation

⁷³ *Ed. Recs*, I, iv, 219.

⁷⁴ DSL, '<http://www.dsl.ac.uk/dsl/>' (18 October 2006). Licht, 'b. Wanton, unchaste. (Especially of women.) attrib. 'Thadee, that licht woman wes & richt brukil of hyre flesche''

and could not redeem her reputation in the face of her community. Those same daughters who sought to improve their mother's situation, asking that 'sum uther punisement wer imputt to hir', tempered their mother's punishment but hindered her moral redemption. It is also significant that it was not Christine's daughters but a man, Archibald Somerville, who was to 'become guid for hir sustenatioun'. With this final caveat the city was reiterating its apparent need to see appropriate, male, authority in the lives of disorderly women.

In York these languages of sex and sin are present in the church court depositions and in the presentments of the Visitation. However, the emphasis on sin and repentance that was so dominant in the Scottish session was more a sub-text in the English church courts. In York the cause papers that make up the consistory court records were constructed within a particular legal framework of interrogatories, or question and response. This legal framework, rather than religious or social narratives, had the most fundamental impact upon the shape of the depositional text.⁷⁵ Nonetheless these texts do deal with the social impact of, and reaction to, certain sexualised behaviours through the stories constructed by witnesses and recorded by the clerk, as men and women responded to questions about sexual behaviours and practices, 'common fame', and social identity.⁷⁶

The understanding of the behaviours, both positive and negative, that constituted one's social identity and 'common fame', was constructed not only through engagements on the street and in the markets,⁷⁷ but also from the pulpit through the sermons and homilies that transmitted the moral order demanded by church and crown. The homily *Against Whoredome and Uncleanesse* warned of

great swarmes of vices worthy to be rebuked (unto such decay is true Godliness, and vertuous living now come:) ... the outrageous Seas of adultery (or breaking of wedlocke) whoredome, fornication, and uncleanesse, have not only burst in, but also overflowed almost the whole world unto the great dishonour of God⁷⁸

⁷⁵ J. A. Sharpe, *Crime in Early Modern England 1550-1750*, 2nd Ed. (London, 1999), 54.

⁷⁶ Natalie Zemon Davis, *Fiction in the Archives* (Stanford, 1987).

⁷⁷ Gowing, *Domestic Dangers*, 112-19, 270; Ingram, *Church Courts, Sex and Marriage*, 165-66, 242-44; J. A. Sharpe, *Defamation and Sexual Slander in Early Modern England: the church courts at York*, Borthwick Papers no. 58 (York, 1980), 25.

⁷⁸ 'Against Whoredome and Uncleanesse', 78.

Texts such as this drummed home the language of sin and redemption, reiterating the distinction between legitimate and illegitimate modes of sexuality,

neyther is there any neerer way to damnation, then to be a fornicator and a whoremonger. Now where are those people which so lightly esteeme breaking of wedlocke, whoredome, fornication and adultery? ... If it be necessary unto salvation, then woe be to them, which neglecting their salvation, give their minds to so filthy and stinking sinne, to so wicked vice, and to such detestable abomination.⁷⁹

These attitudes to fornication and its corrupting and pervasive nature are most clearly reflected in the Archdeacon's Visitation records. As in Edinburgh, suspicion and common fame occasioned presentments. For example, Margaret Harrison and Anthony Webster, 'her workeman', both of St Martin's in Micklegate were presented in 1613 for 'remaininge or within this moneth haith remained in house ... suspecte of fornicatioun'.⁸⁰ At the same Visitation Peter Cotton and Anne Lenge were presented for 'suspicion of adulterie it ... [having been] commonlie reported that they were founde in bed together'.⁸¹ In 1598 Edward Burton and Elizabeth Farthing were presented as members of their parish, St John's, 'suspectyd and reported [them] to have committyd fornicatioun together and lyves as man and wife.'⁸² In this case Burton and Farthing were found to have been conducting an illicit relationship and to be living together 'as man and wife', flouting the matrimonial imperative championed by the church and city. Like their Scottish counterparts, the Visitation of 1613 exacted the full rigour of public penance from those men and women presented for ante-nuptial sex, calling them before all the offended parishes for at least two successive Sundays.⁸³

Active surveillance seems less immediately apparent in York. In a population which seems to have been continually peering through windows, keyholes, and crevices there was little perceived need to direct the gaze of the population. Yet, there were ordinances in York that called for the observation and regulation of the household via its male head.⁸⁴ These ordinances were less explicitly concerned with sexual

⁷⁹ 'Against Whoredome and Uncleanesse', 81.

⁸⁰ Borthwick, York, YV/CB/2, 1613.

⁸¹ Borthwick, York, YV/CB/2, 1613.

⁸² Borthwick, York, YV/CB/1, 1598.

⁸³ Marchant, *Church Under the Law*, 137-39.

⁸⁴ Ingram, *Church Courts, Sex and Marriage*, 282-291.

corruption, and more focused on public order and the maintenance of sober behaviour than in Edinburgh.⁸⁵ They were supported in the pulpit by sermons such as *An Exhortation to Obedience and Of Repentance, and True Reconciliation unto God*, which advised the congregations of the city to be mindful of communal order and their role within the Godly community.⁸⁶ The concern with social interactions within the English city remained diffuse, encompassing sex, gambling, vagrancy, alcohol and violence as separate if interconnected categories of transgression.⁸⁷ As we shall see in Chapter Five, a household in disorder could be represented in a number of ways.

The moral discourses of sex, corruption, and disorder were present in both cities. In Edinburgh there was a greater institutional drive to reform sexual behaviours from both Kirk and burgh, with the population of the burgh increasingly participating in the processes and languages of reform, sin and repentance, confessing transgressions and redeeming 'sinful' activity. The population of York would certainly have encountered similar narratives of sin and corruption, with sermons like *Jeremiah's Tears* and homilies on adultery, drunkenness and obedience echoing the messages that were so dominant in Edinburgh. However in York the church did not primarily target sexual conduct as a means to enforce a code of moral behaviour,⁸⁸ instead applying a broader agenda in the regulation of social behaviours and in the maintenance of good order throughout this period.⁸⁹

The Negotiations and Manipulations of Marital/Sexual Encounters

In 1617 Hesther Bently als Brearcliffe took Edmond Brearcliffe to the court of the Dean and Chapter of York to contest the status of their marriage. Hesther deposed that

⁸⁵ Raine, *YCR*, Vol. 6: 12 & 20 (1560), 63 (1563), 92 (1564), and Vol. 7: 5 (1570), 35 (1571), 172/4 (1572).

⁸⁶ 'An Exhortation to Obedience', *Certaine Sermons or Homilies Appointed to be read in Churches. In the time of the Late Queene Elizabeth of Famous Memory*, (London, 1635); 'Of Repentance, and True Reconciliation unto God', *Certaine Sermons or Homilies Appointed to be read in Churches. Book 2* (London, 1563).

⁸⁷ Ingram, *Church Courts, Sex and Marriage*, 271.

⁸⁸ Graham argues that the Kirk focused predominantly on cases of sexual misconduct in the first 50 to 60 years of reform as this was a means by which to not only establish firm authority within the communities of Scotland, but also because it was a "popular" and visible means of reforming popular behaviour. Graham, *Uses of Reform*, 286; idem, 'Social Discipline in Scotland, 1560-1610', in Raymond A. Mentzer (ed), *Sin and the Calvinists: Morals control and the consistory in the reformed tradition* (Kirkville, 1994), 129-58.

⁸⁹ This is echoed in the more general study of misbehaviour in England by Marjorie Keniston McIntosh, *Controlling Misbehaviour in England 1370-1600* (Cambridge, 1998), 69-74.

Edmond had, 'bene a suiter for marrage to this r[esp]ondent [Hesther] for the space of 6 yeares', and that they

after much speech and communicacon ... and being free frome all former contractes of matrimonie did conclude to marrie together, ... by virtue of a licence in that behalf lawfull obtained, ... [and] so married have confirmed the same by carnall copulation, [and] cohabitation as man and wife in one & the same house.⁹⁰

In her deposition Hesther, like Margaret Adamson, conceived of marriage as more than a contract. It was a process that was born out of social, financial and legal negotiation, which was 'confirmed' by the sexual and domestic interactions of the couple. Marriage was fundamentally made by sexual interactions, or rather by 'carnall copulation' and 'cohabitation as man and wife in one & the same house', as Heather attested and the law confirmed.⁹¹

In Edinburgh Jonet Cunninghame also drew on the existence of a sexual relationship to claim a marriage promise had been made by James Gilbert. The minute book of St Cuthbert's recorded that she 'allegiand [he did] haif carnall daill wt hir under promeis of marriage'.⁹² However, Gilbert 'being accusit yairof confessit carnall dail, bot na promeis of marriage.' As we have already seen the distinction between the promise of marriage and the initiation of sexual activity could be blurred in the narratives presented before the church courts of Edinburgh and York.⁹³ These marriage cases, and some fornication presentments before the Edinburgh session, reveal occasions where the dispute between a couple was less about whether sex had occurred than whether or not a marriage, or promise, had taken place. These cases provide glimpses of a world in which courtship incorporated the giving of sexual access. Within the tales presented to the courts sex could represent the needs, intentions and manipulations of a couple. The idea of sex was a tool that could be used in the negotiations of power and status between men and women.

⁹⁰ York, Borthwick, D&C 1617/7

⁹¹ Swinburn, *A Treatise of Spousals*, 224-25. Swinburn also makes it clear that had the spousal been dissolved prior to sexual intercourse no marriage would ensue, 225. He also warns that lust, even in the wake of a spousal, does not make a marriage in the eyes of God, though it may do in the eyes of the law, 226. Adair, *Courtship, Illegitimacy, and Marriage*, 168-70, 178-79; Macfarlane, *Marriage and Love*, 305; Griffiths, *Youth and Authority*, 251-52.

⁹² NAS, Edinburgh, CH2/718/1, f. 122, 13 February 1590/1.

⁹³ In York breach of promise cases constituted only twelve percent of matrimonial cases, five suits, before the consistory. See Figure Six.

The weight of social pressure to maintain good moral order and form lasting relationships meant that ideas about marriage and sex were interconnected in legal narratives concerning illicit sexual activity. Marriage, and the promise of marriage, could be used as a suitable guise for sexual activity, whether sex was a part of the process of procuring a marriage, or the intent to marry was used as an explanation for illicit sexual activity made public.⁹⁴ Women could use sex as a weapon to ensnare a husband, or to attack those men who cast them aside, as Capp has shown.⁹⁵ However, as Gowing has demonstrated, sex was also the primary weapon in the manipulation of female honour, a significant factor in the shaming of women that evoked the distinctly female dangers associated with whoredom and illegitimate pregnancies.⁹⁶ However, as Tim Hitchcock has argued of the later seventeenth and eighteenth centuries, people presented before the courts could distinguish between penetrative and non-penetrative sex. These alternative sexual activities could avoid both an unwanted pregnancy and the technical aspects of sin.⁹⁷ The court records of York indicate the potential frequency with which otherwise respectable young men and women engaged in pre-marital sexual activity. Sex, as both a physical act, or range of acts, and an idea was used to by both men and women in the negotiation and manipulation of courtship.⁹⁸

In both Edinburgh and York courtships were complex negotiations involving families and communities as well as individuals. The points at which interaction or socialising became courtship, and when a courtship became a licit sexual partnership were never entirely clear. The status of the bond between couples could be, and often was, contested as men and women made and extricated themselves from relationships.⁹⁹ Thus, young men and women were to some degree able to engage in all sorts of

⁹⁴ Ingram, *Church Courts, Sex and Marriage*, 227-30; Bernard Capp, 'The Double Standard Revisited: Plebeian women and male sexual reputation in early modern England', *Past and Present*, 162 (1999), 75.

⁹⁵ Capp, 'Double Standard Revisited', 74-79.

⁹⁶ Gowing, *Domestic Dangers*, 79-87.

⁹⁷ Tim Hitchcock, *English Sexualities, 1700-1800* (Basingstoke, 1997), 29.

⁹⁸ Griffiths, *Youth and Authority*, 255.

⁹⁹ Carlson, 'Courtship in Tudor England', 25.

sexual activities as long as their observed behaviour did not breach communal understandings of appropriate and legitimate interaction.¹⁰⁰

The need for relationships to be observed and verified was of great importance to young men and women beginning courtships.¹⁰¹ This public gaze ensured that reputations were maintained, and that the material cost of courtship was recognised. Thus locations such as the alehouse became locations not only for the undoing of reputations, but also for the preservation and witnessing of courtships.¹⁰² The tokens that signified attachments, feelings and intentions were of great value both emotionally and financially.¹⁰³ As O'Hara has demonstrated, it was the role of women in a traditionally structured courtship to respond to the advances of the man, accepting or rejecting his advances as she chose.¹⁰⁴ Women could gain power and authority through this process. A woman's response to a suitor could determine the nature and duration of the courtship and marriage, if not her married life. However, O'Hara argues that this female role was in practice frequently passive and suggests that the giving of certain gifts could have been interpreted as male sexual dominance.¹⁰⁵ She goes on to demonstrate that few women, or even men, were in direct control of their own marital negotiations. Often fathers, brothers, or a male guardian conducted the bulk of the contractual negotiations. Just as the process of negotiating a marriage could potentially empower women, men could feel increased pressures to prove and demonstrate their future economic and social stability.¹⁰⁶ The symbolic meaning of

¹⁰⁰ Ingram, *Church Courts, Sex and Marriage*, 242-45; Griffiths, *Youth and Authority*, 262-63; O'Hara, *Courtship and Constraint*, 106-7; Bernard Capp, *When Gossips Meet: Women, family, and neighbourhood in early modern England* (Oxford, 2003), 127-30.

¹⁰¹ O'Hara, *Courtship and Constraint*, 38-41; Ingram, *Church Courts, Sex and Marriage*, 196-97, 203-4; Gowing, *Domestic Dangers*, 131, 189-90, 239-43.

¹⁰² O'Hara, *Courtship and Constraint*, 143-45; R. H. Helmholz, *The Oxford History of the Laws of England: Vol. 1, the canon law and ecclesiastical jurisdiction from 597 to the 1640s* (Oxford, 2004) 529; David Cressy, *Birth, Marriage and Death: ritual, religion, and the lifecycle in Tudor and Stuart England* (Oxford, 1998), 322-24; A. Lynn Martin, *Alcohol, Sex and Gender in Late Medieval and Early Modern Europe* (Houndmills, 2001), 80-81 and ch. 5, 'Sexual Encounters'; Adair, *Courtship, Illegitimacy, and Marriage*, 135, 153, 166; Griffiths, *Youth and Authority*, 201-2, 212-259; Keith Wrightson, 'Alehouses, Order and Reformation in Rural England, 1590-1660', in Eileen Yeo and Stephen Yeo (eds), *Popular Culture and Class Conflict, 1590-1914* (Brighton, 1981), 8; Muir, *Ritual in Early Modern Europe*, 133; Gowing, *Domestic Dangers*, 147, 212.

¹⁰³ O'Hara, *Courtship and Constraint*; idem, 'The Language of Tokens'; Peter Rushton, 'Property, Power and Family Networks'; idem, 'The Testament of Gifts'.

¹⁰⁴ On the impact of a rejected court see: Foyster, *Manhood in England*, 44-45.

¹⁰⁵ O'Hara, 'The Language of Tokens', 11-12.

¹⁰⁶ This pressure on men in this period to establish both themselves and their households, to have gained financial security and independence is outlined in Alexandra Shepard, 'Manhood, Credit and Patriarchy in Early Modern England c. 1580-1640' *Past and Present*, 167 (2000), 75-106; David M.

the gifts that men offered to women could be disputed as those women claimed that they represented friendships, not courtships.

One man who fell victim to the ambiguities of courtship, not once but twice, was advised by his second prospective wife 'to be circumspecte in all his doying[s] and to beware of surertyshippe in any weyse, which had beand the undoyinge of many [a] man.'¹⁰⁷ In this 1572 York case Robert Paycock (or Peacock), son of a former Mayor and High Commissioner,¹⁰⁸ asserted that the woman in question, Elizabeth Cayllome, had agreed to marry him freely and without coercion. Paycock attested that Cayllome had made a promise at the house of a mutual friend, Frances Fothergill, 'never to have other husband but him, so longe as he lyveth' and that she had later

divers and syndry tymes ... confessed aswell to hir father and mother as to ... the cyttie of Yorke Alderman, and others, that she had mayd ... Robte paycocke a promyse never to have any other man to hir husband but him And he ... had mayd the lyke promyse to hir, and that he gave hir the sayd Ringe

Paycock deposed that he intended to marry her not out of any financial motive or greed but out a genuine affection. He declared that '[a]lthough hir Father gave hir never a grote to hir maryadge ... he founde hym selfe able to fynd [fund] them both, yf it pleasyd hir to match with him'. Thus the ring that was exchanged between the two was a symbol of this promise to marry, a symbol of Paycock's financial as well as emotional intentions toward Cayllome.

Cayllome's counter argument was that the alleged betrothal had been engineered as a means to repay her father's debt to Paycock, and so was not binding. The sentence indicates that Cayllome had argued that Paycock's willingness to take on the financial burden of a wife without the usual transmission of material goods from one family to the other was a part of a sexual bargain. In Cayllome's account the ring was a symbol

Turner, "Secret and Immodest Curiosities?" Sex, Marriage and Conscience in Early Modern England', in Harold E. Braun and Edward Vallance (eds), *Contexts of Conscience in Early Modern Europe, 1500-1700* (Basingstoke, 2004), 139.

¹⁰⁷ Borthwick, York, D&C 1572/2

¹⁰⁸ J. C. H. Aveling, *Catholic Recusancy in the City of York, 1558-1791* (St Albans, 1970), Appendix III, 'Catholicism and Corporation Officials, 1558- 1791', 332-33. Paycock the younger went on to become Mayor himself in 1601, having married the daughter of William Cowpland, Tailor and another former Mayor in 1553 and 1568. According to Wilson Paycock, or Peacock, was married twice, both times to the daughters of city Aldermen, though he resigned his position as an Alderman of the City in 1611 on the grounds of poverty; Barbara M. Wilson, *The Corporation of York, 1580-1660* (University of York MPhil, 1967), 75, 48.

of her subjection to Paycock not so much as his wife but as a financial commodity.¹⁰⁹ Whilst this may seem consistent with marriage practice in this period, calling to mind the practices of coverture,¹¹⁰ it ran counter to the Church's doctrine that marriage be made through mutual consent and without coercion.¹¹¹ Elizabeth Cayllome thus used the religious ideal of marriage to construct a strong argument denying her promise to Paycock.

Robert Paycock had first fallen victim to the ambiguities of courtship seven years earlier, in 1565, when he asserted a legitimate betrothal to Katherine Hall.¹¹² In this first courtship Paycock had again offered a ring as proof of his emotional and financial intent. However, Hall had refused to accept it and other tokens offered her until her parents had agreed to Paycock's suit. Hall deposed that when Paycock persuaded her to accept his gifts during a meeting in the buttery at the back of her father's house, her father had become 'angry with hir for taiking the same bideinge hir kepe it untall he the said Robt paycocke came [back] frome beyonde the se and then he shoude have it againe'. At this point in her deposition Katherine asserted that, 'ther was no talke concernynge matrimony betwix hime [Paycocke] and hir at that time and place'. Hall argued that the lack of parental consent to the union demonstrated her own lack of consent.¹¹³ As a good daughter her duty to her parents outweighed her ambiguous obligations to a prospective suitor.¹¹⁴

Within the language of early modern courtship there was much room for such misunderstandings, not least when rings, symbolic of various kinds of relationship, were exchanged in ambiguous circumstances.¹¹⁵ However, this ambiguity also provided a possible means for young women such as Katherine Hall to disentangle

¹⁰⁹ O'Hara, 'The Language of Tokens', 1-40; Rushton, 'Property, Power and Family Networks'; idem, 'The Testament of Gifts', 25-31.

¹¹⁰ Amy Louise Erickson, 'Coverture and Capitalism', *History Workshop Journal*, 59:1 (2005), 3-4.

¹¹¹ O'Hara, *Courtship and Constraint*, 10-13; Stretton, *Women Waging Law*, 119-21; Joanne Bailey, *Unquiet Lives: Marriage and marriage breakdown in England, 1660-1800* (Cambridge, 2003), 170.

¹¹² Borthwick, York, CP.G. 1246. 1565, Matrimony: Robert Paycock c. Katherine Hall.

¹¹³ O'Hara, *Courtship and Constraint*, 30-42; Adair, *Courtship, Illegitimacy, and Marriage*, 136-38; Catherine Francis, 'Making Marriages in Early Modern England: Re-thinking the role of family and friends', in Maria Ågren and Amy Louise Erickson (eds), *The Marital Economy in Scandinavia and Britain, 1400-1900* (Aldershot, 2005), 39-65.

¹¹⁴ Adair, *Courtship, Illegitimacy, and Marriage*, 134-36.

¹¹⁵ Amussen, *An Ordered Society*, 104; Macfarlane, *Marriage and Love*, 300-3; Gowing, *Domestic Dangers*, 140-41.

themselves from relationships. Hall claimed that 'the gemers of gold Joyned to gether the whiche ... Rob[er]t paycock ... did sente hir frome beyond the sea ... [were] a token the which she Perceyved frendely but not as frome hir lovinge husbände'. Paycock's mother delivered such gifts as 'a Ringe of golde with a reade stone in yt' and 'half a frenche Crowne' in the name of her son. Hall claimed that his parents had engineered the prospective union, declaring that she 'beleveth ... Robt paycocke the younger beinge beyonde the sea did not heare of any agrement that was maid Betwix the said Robte paycocke alderman and this r[esp]ondent father and mother because she beleveth ther was no suche agreement.' Yet Katherine remained loyal to her promise to Robert to allow his suit as long as her parents consented, and did on a later occasion see him on his return from the sea. The two

beinge a lone to gether in a parlor in the same house the said Robt paycocke dyd give this r[esp]ondent two handerky cheifes of flanders work a payre of gloves wroughte with golde and a viijth yeardes of pareled worke for ruffes sayenge kepe these but other wordes they did not talke to gether at that time and so she receyved the said hande kyrcheiffes gloves and Ruffes

Katherine Hall was at pains to distinguish between the gifts of a friend and those of a husband or serious marital suitor when she deposed that Paycock sent tokens that she 'Perceyved frendely but not as frome hir lovinge husbände'.¹¹⁶ In her narrative, her continual reiteration of the lack of discussion concerning a marriage settlement overrode the symbolic significance of such gifts as rings, gloves and lace, all objects Paycock could legitimately have given as part of a marital settlement. By making it clear that she never discussed marriage but only allowed Paycocke to attempt to court her and her parents, Hall argued that no marriage had been promised or contracted.

Another case in which the exchange of material objects was central to varying interpretations of a relationship was that of John Thompson who pursued Katherine Warde for breach of marital contract in 1572. One witness, Margaret Bovill recounted a tale of lust, love and courtship, deposing

that John Thompson ar[ticula]te beinge a bourder at ...[her] husband house at his pleasure the saide Katherine Warde ar[ticula]te and an other wenche ... came to fetche good ale at wich tyme the said John

¹¹⁶ On friendships between men and women and their potential ambiguity see: Helen Berry, 'Lawful Kisses? Sexual Ambiguity and Platonic Friendship in England c. 1660-1720', in Karen Harvey (ed), *The Kiss in History* (Manchester, 2005), 62-79.

Thmpson ... asked this ex[aminee] what sober wench it was that came in meaninge Katherine Ward ... quoth this ex[aminee] John I wold you had her to your wife / quoth he wold god that were so And aboute a weke or a forth night after ... this ex[aminee] founde the said John Thompson and Katherine Warde ... at the table ende by the fier syde in the said hallhouse and ... the said Katherine Ward said nay John I will take no suche brible brables for I am past a lasse tale meaninge as this ex thinketh by a broad grote and a litle gymmer lyeng on the table before them ¹¹⁷

Margaret then took these 'brible brables' left lying on the table by Thompson and Warde and locked them away, where they remained until the time of her deposition. Another witness, Alice Uckerby, maid to Margaret and her husband, further deposed to the existence of these objects and to their abandonment, yet made clear that 'she hard no talke betwixt them' of marriage'.

In this case the testimony of neither Thompson nor Warde has survived, yet as Thompson initiated the case we may presume that he took the absence of the tokens as a form of acceptance on the part of Warde. He may also have asserted that at this hallway meeting Warde had consented to marry him. However, these two witnesses, one his landlady, conformed not only Warde's verbal refusal of Thompson but also to her symbolic rejection of his suit, manifested in her refusal to accept his tokens which she clearly felt to have been beneath her. Katherine Warde's construction as a 'wench' in this narrative is particularly interesting, perhaps speaking of Thompson's sexual desire, or of Warde's reputation as a sexually available woman, though the word was also a term of endearment.¹¹⁸

In another case three years later Jane Wylde deposed that

John Maude ... being from home at hull ... did at everye tyme sende this r[esp]ondent to a tolken a pece of goulde and so thre peces in the whole but what the said peces were in name and value she this r[esp]ondent knoweth not but she hathe the said thre peces of gould still ... further this r[esp]ondent saythe that one tyume he gave her a yerd of linnen clothe pryce as she thinkethe v s but not in sign & token or corroboration of anye matrimonye and further she saythe that the said thre peces of goulde and everye of them she did offer to the said

¹¹⁷ Borthwick, York, GP. G. 1565, 1572.

¹¹⁸ OED, 'http://dictionary.oed.com/cgi/entry/50283470?query_type=word&queryword=wench&first=1&max_to_show=10&sort_type=alpha&result_place=1&search_id=AkGk-xwlk2g-7054&hilite=50283470' (20 October 2006) '1. c. As a familiar or endearing form of address; used chiefly in addressing a daughter, wife, or sweetheart ... 2. A wanton woman; a mistress'

John maude at his returne home at severall tymes and she did not receyve the said thre peces of gould nor any of them in signe token or corroboration of any matrimony¹¹⁹

Jane Wylde, like Elizabeth Cayllome, Katherine Hall and Katherine Warde, knew the symbolic value of marriage tokens and knew that the legal narrative she constructed around her possession of those objects said a great deal about the nature of her relationship with Maude. Wylde emphasised not only that 'everye of them she did offer to the said John maude ... severall tymes', but also that she understood those gifts to have been given, 'not in sign & token or corroboration of anye matrimonye'.¹²⁰

For other women it was not the refusal but the assertion of a marital relationship that brought them into the church courts. Anne Scarr used the connection between marriage and sex to establish the validity of her relationship with John Whitwell. In February 1603 Scarr took Whitwell to the consistory court to compel the final, legal, completion of their marriage, and to ensure that she be admitted to his household as his wife. The court affirmed that

in the dwellinge house of John Broughton of the parishe of all Saints upon the Pavemente of the Cittie and dioces of Yorke ... John Whitwell and the said Anne Scarr, lykewise contracte true pure and lawfull matrimony together ... John sayinge to the said Anne, ... I pray the leave of the sorrowinge and the enymies shall not reiyne over of the, And here I promisse the as god shall save my soule / I will marry the and make the my wife some daye this weyke comminge, and then the said Anne said to the said John, here I promisse youe to marry youe and to forsake all others and tayke youe to my husband, and so drewe hands and kissed, And that immediately after ... John Whitwell said to Anne Broughton wife of the said John Broughton in the house aforesaid , mres Broughton I have made Annes harte a pound lighter then it was for I have made her a promisse of marriage and we are contracted together, my conscience moveth me to it, therefore here lykewise before you I say and promisse to her the said Anne that I will marry her¹²¹

This lengthy passage is not only exemplifies the form of words used to contract marriage in cities such as York, but is also a demonstration of the types of promises

¹¹⁹ Borthwick, York, CP.G. 1768, Martimony: Jane Wylde c. John Mawde, 1575.

¹²⁰ Gowing, *Domestic Dangers*, 161-62.

¹²¹ Borthwick, York, CP.H. 284, Martimony: Anne Scarr c. John Whittwell, 1603. Taken from the findings of the court.

men and women made to each other in the process of courtship.¹²² Later that day Whitwell and Scarr ate at the Broughton household and agreed to marry the following Wednesday. At which point 'John Whitwell intreated the said John Broughton to helpe him to obteyne a licence for their marryage the said daye'. Having received the aid of John Broughton as a witness to the marriage contract and as surety in the gaining of a marriage licence Scarr and Whitwell departed for Anne's house, at which point

John desired her... to go with him to his house over ouse sayinge nowe we are man and wife together before god thou may nowe go with me, whereupon the said Anne wente with him to his house in Micklegate, where and when the said John in coroborracion and confirmacion of the said contracte of matrimony had divers and sundrye tymes or at the least once [had] carnall knowledge of the body of the said Anne Scarr

Anne Scarr then found that Whitwell, having had the use of her body, was not so ready to obtain the marriage licence he had promised. The court recorded that

upon Monday morninge next after the said John Broughton came with the said John Whitwell to the office of this Courte for the obteyninge of the said licence which was then spoken for but upon some occasion was not then obteyned, howbeit upon Fryday after the said John Whitwell did send for the said Anne Broughton to come to his said house, the which she dyd upon whose comminge the said John Whitwell said unto her, mres Broughton I have bene so busye I could not proforme promisse

At this point Whitwell requested that Anne Broughton ask her husband to obtain the licence that he no longer had the time to get, again reiterating his promise to finalise the marriage to Scarr, assuring Mistress Broughton that he would cover the costs of obtaining the licence. In the meantime 'the said John willed her the said Anne [Scarr] to carry some of her household stuffe to his house the which she did accordingly and the which he yet haith and posessethe'.

It seems that on their one night of passion Scarr had fallen pregnant. Meanwhile Whitwell failed to procure the licence the couple required to finalise their marriage and avoid prosecution for either fornication or bastardy.¹²³ However, Whitwell did seem to genuinely want Scarr to become a part of his household, inviting her into the

¹²² Macfarlane, *Marriage and Love*, 303; Ingram, *Church Courts, Sex and Marriage*, 190-95; O'Hara, *Courtship and Constraint*, 37-43; Gowing, *Domestic Dangers*, 144-46, 152-54.

¹²³ Adair, *Courtship, Illegitimacy, and Marriage*, 48-99, esp. 78-91; Ingram, *Church Courts, Sex and Marriage*, 160-63, 261-63.

space, conceding that it was his responsibility to obtain the licence and continually reiterating his commitment to her. Thus Anne Scarr seems to have used the court to legitimise the marriage that John was too 'busye' to complete, and to gain her own legal security and recognition of her marital relationship in view of the forthcoming child.¹²⁴

Yet, as we have already seen in the case of Robert Paycock, women were not the only ones to use the ecclesiastical courts to prosecute their interests in the marriage market, though it was often onto women that the responsibility for a failed courtship could fall. In 1597 Thomas Farthing pursued Joan Darragon als Langwith for breach of matrimonial contract. Joan, however,

confessed that the sayd Thomas and [she]... were contracted together in maryage ... And Requyred the sayd Thomas that the same maryage mighte be solenmysed in the church betwene him and her, who made her answeare att divers tymes when she so moved him, that he never mente to Marry her and the same he spoke at dyvers tymes before wytnesses'¹²⁵

In this case, although it appeared that Farthing had pursued Darragon, she perceived it to have been his decision not to formalise the suit of marriage when she deposed that

when the art Thomas Farthinge dyvers and sundry tymes utterly Refused and denied to Marry this R[esp]ondent to his wyfe, she was contented (beinge fatharles and motherles and voyde of all [succumbed]) to assente into the suyte of Robert Langwith who moved her for maryage

In spite of Farthing's refusal to finalise his marriage to Darragon, her subsequent decision to accept the more promising suit of Robert Langwith left her legally culpable, not only for breaching the marital contract but also for fornication and adultery with her subsequent husband, Langwith. In this case, the Dean and Chapter of York upheld the first marriage, recognising the promise made between Farthing and Darragon and decreeing that that promise had been made in the present tense, legitimising if not formalising marriage.

In her deposition Darragon conceded that she had promised to marry Farthing. However, she argued that he had breached that promise by failing to finalise the

¹²⁴ Adair, *Courtship, Illegitimacy, and Marriage*, Chapter 3; Ingram, *Church Courts, Sex and Marriage*, 219-37. On paternity cases and the impact of illegitimate and illicit pregnancy see the following chapter.

¹²⁵ Borthwick, York, D&C 1597/2, Matrimony: Thomas Farthing c. Joan Darragon als Langwith, 1597.

marriage either through the official proclamation of banns, the church ceremony, or co-habitation as man and wife.¹²⁶ Farthing had refused to take on his responsibility as a prospective husband to Darragon. Consequently, she 'beinge fatharles and motherles and voyde of all' needed to find a new husband to support her: one who was willing to take on a wife without the benefits of socially advantageous family.¹²⁷ Such a man appears to have been found in Robert Langwith 'who moved her for maryage' following Farthing's apparent refusal to complete the courtship - no doubt it was Langwith who financed his wife's defence of this case. Yet Joan was at pains in this deposition to situate her remarriage, not in a narrative of love as we might expect, but rather in a narrative of need: her need to find a husband who could support her in the absence of a natal family.¹²⁸ In this case, Joan paints a portrait of two husbands, one solid and reliable, and one, Farthing, who could not be relied upon to be there for his family, either by Joan or the parish.¹²⁹

The Edinburgh session contains similar tales in which men and women describe how they not only entered but also extricated themselves from ambiguous courtships. The St Cuthbert's Minute Books record the interactions between these couples and the institutions of discipline: the session and occasionally the civil courts. Men and women were recorded as having participated in their own disciplining in numerous ways, chiefly, as we have seen, by submitting themselves to the Kirk for punishment and by adopting of the language of the Kirk in their personal submissions.¹³⁰ Both men and women used the courts and Kirk to account for and seek forgiveness for 'immoral' behaviours, initiating a process by which to repair their reputations whilst affirming the social and cultural significance of the reformed moral programme. The majority of men and women presented before the session capitulated to but also actively engaged with, the disciplinary project of the Kirk. By participating in the discipline process these people exercised a small amount of control over the construction of their social identities. They adopted the language of the courts to

¹²⁶ Ingram, *Church Courts, Sex and Marriage*, 132-34, 189-96; Swinburn, *A Treatise of Spousals*.

¹²⁷ Steve Hindle, 'The Problem of Pauper Marriage in Seventeenth-Century England', *TRHS*, 6th ser., 8 (1998), 71-89; Ingram, *Church Courts, Sex and Marriage*, 129-31.

¹²⁸ Adair, *Courtship, Illegitimacy, and Marriage*, 18-19.

¹²⁹ Shepard, *Meanings of Manhood*, 203-05; Hindle, *On the Parish*; idem, 'The Problem of Pauper Marriage', 71-89.

¹³⁰ Todd, *Culture of Protestantism*, 156-59, on the 'script' of repentance.

describe their behaviour, situating their own behaviour in relation to the Kirk's model of acceptable and unacceptable conduct.

When presented for fornication in February 1591 Jonet Cunningham and James Gilbert contested the nature of their relationship. Cunningham claimed that the couple had initiated a sexual relationship after a promise of marriage. They thus attempted to legitimise their sexual contact even though the couple would still have been subject to repentance.¹³¹ However, 'gilbert being accusset yairof confessit carnall daill, bot na promeis of marriage'. In so doing he not only denied entering into a contract of marriage to Cunningham, but also subjected them both to the greater censure of the Kirk.¹³² In the wake of his denial the Kirk ordered Cunningham 'to pass before ye commsser[y] of edinburgh and report hir anser agane to ye sessioun ... [in] twentie dayes'. The Kirk was calling on Jonet to prosecute the case and compel Gilbert to substantiate his claim that there had been no marital promise made. Meanwhile Gilbert was ordered 'to make his repentance and produce ane testimoneill derect frome the Kirk of edr' proving that he had made his satisfaction to the community and to God, if not to Jonet Cunningham.¹³³

One's social status and place within the moral order also determined how the session and elders would treat an accusation of sexual transgression. On January 11 1596 John Broun, clerk of the session, was resaved for having committed fornication with Jonet Graham 'under promeis of mariag'.¹³⁴ Four months later John Broun was 'removit to be sensuret in his persone office and maneris.' The 'hail sessioun' was surveyed and 'testiefyit yat yai had nothing to say agains him bot onlie yat yai wald haue had him compleiting his marriage wt Jonet grahame.'¹³⁵ When John was asked why it was that in four months he had failed to complete the marriage in spite of their sexual conduct John responded that

¹³¹ NAS, Edinburgh, CH2/728/1, f. 122, 13 February, 1591. Adair, *Courtship, Illegitimacy, and Marriage*, 148.

¹³² Todd, *Culture of Protestantism*, 267-74; Graham, *Uses of Reform*, 110-12.

¹³³ See also, NAS, Edinburgh, CH2/718/52, f. 167, 25 April 1611. James Broun confessed fornication with Jean Arthur, but denied any promise of marriage, like Jonet Cunningham, the session ordained Jean to pursue Broun through the commissary and to report their findings.

¹³⁴ NAS, Edinburgh, CH2/718/2, f. 11, 11 January 1596.

¹³⁵ NAS, Edinburgh, CH2/718/2, f. 22, 13 May 1596.

he wuld nevit haue ease ... wt hir be reasone scho was so evill tounget and offeret ony farder satesfectioun it wald pleis yame to adjoyne him to provyding he wyt be fred fra the said woman.

As a clerk of the session John's behaviour was to be beyond reproach. However, his apparent fornication and refusal to complete the marriage to Jonet not only breached his duty as a man but also as a clerk of the session.¹³⁶ John Broun was fully aware of his obligations to both Jonet Graham and to his Kirk. However, he was equally aware of his personal need to make a marriage that could be sustained by mutual affection, not to be bound to someone he considered 'evill tounget'.¹³⁷ In attempting to retrieve his reputation, his position within the Kirk and his social standing Broun submitted to the discipline of the Kirk when he 'offeret ony farder satesfectioun it wald pleis yame [the session] to adjoyne', on the condition that 'he wyt be fred fra the said woman'. Broun was willing to put his honour at risk to extricate himself from the marriage to Graham.¹³⁸

On 3 June the '[s]peciall gentilman of the parochin' decided to 'tak ordour wt Johne Brown yair clark anent his remaying[sic]'. Three weeks later Graham reappeared before the session and

gave in ane supplicatioun to be receaved in the bosome of ye Kirk and geive in ane contract or obligatioun of mariag the qlk ye said John refusit to stand to Thairefoir ye sessioun ordanis the said Jonet to cal and persew ye said Johne befoir ye comissary of ed[inbu]r and to report yair anser quhidder ye promeis be effectuell or not And in the meane tyme to amend hir bill seing hir fault was relaps

Within days David Laing replaced John Broun as clerk of the West Kirk. This case records the personal and social devastation that followed a courtship gone wrong. John Broun had entered into a sexual relationship with Graham prior to finalising their marriage, but during this period chose not to complete his courtship. This not only made him subject to the discipline of the Kirk, but also allowed Graham to

¹³⁶ Todd, *Culture of Protestantism*, 146, 177, 373..

¹³⁷ See previous chapter on words and slander. On the associations between women and 'loose' or damaging speech see: John G. Harrison, "Women and the Branks in Stirling, c. 1600 to c. 1730" in *Scottish Economic and Social History*, 18: 2 (1999), 114-31; Steve Hindle, "The Shaming of Margaret Knowsley: gossip, gender and the experience of authority in early modern England", *Continuity and Change*, 9: 3 (1994), 391-419; Gowing, 'Gender and the Language of Insult', 1-21; Martin Ingram, "Law, Litigants and the Construction of 'Honour': Slander suits in early modern England", in P. Coss (ed), *The Moral World of the Law* (Cambridge, 2000), 134-60.

¹³⁸ Cf. Gowing, *Domestic Dangers*, 105-15

pursue him through the session and, on the session's recommendation, in the commissary court of the burgh.

By situating her sexual misconduct within a legitimising marital narrative Jonet Graham, like Jonet Cunningham, was able to retrieve some of her lost honour. Indeed, it appears that the session encouraged Jonet to use the civil and ecclesiastical courts to enforce a union with a reluctant John Broun in spite of, or perhaps because of, their apparent 'relapse'. Gowing advises that within cases such as this we should question women's motives in pursuing legal action against men who had clearly rejected a marital union. Was Jonet trying to enforce a marriage contract, or was she using the session to repair her own respectability and status which had been damaged by both the reputed fornication and by Broun's words, calling her 'evill tounget', by highlighting his moral neglect?¹³⁹

It was not always men who retreated from a prospective marriage. Women too could find themselves brought before the session for retreating from relationships they no longer desired. In February 1597 John Walker was encouraged to pursue Christine Law through the commissary after eleven months of negotiations and presentments concerning their failed courtship.¹⁴⁰ The previous March the couple had been presented for their 'unconstancie[,] yair bands being proclomit thre seuerall sondayis and yai not myndit to compleit ye same'.¹⁴¹ The couple were to explain their situation and 'schaw in quhome ye default is', under the guidance of two cautioners, John Bell and John Ramsay. One week later Christine Law insisted that 'scho remaynit constant and wald compleit ye bands of mariag wt Johne Walker provyding he wald keip his cunditioun' and satisfy the financial agreement they had made. One month later the marriage had still not been settled and Law was fined ten pounds and ordered to reappear. Neither she nor Walker appeared before the session for nine months until February 1597 when he lodged a complaint against Law 'that scho had bound mariage wt an vyer [other] man'. Walker further asserted their betrothal and the subsequent ending of their relationship, by indicating the exchange of goods that had taken place, claiming that she 'had ressaut ... ten poundis of his geir', to which Law replied 'that

¹³⁹ Gowing, *Domestic Dangers*, 178.

¹⁴⁰ NAS, Edinburgh, CH2/718/2, f. 41, 28 February, 1597.

¹⁴¹ NAS, Edinburgh, CH2/718/2, f. 17-20, 25 March 1596 to 22 April 1596.

scho compleittit ye said John all his geir awing except for [one] pound qlk scho held for horse ... mannis meil for tene dayis he was in hir hous'. The session encouraged Walker to pursue Law and settle the question of the lawful marriage contract, whether it lay with his suit or with the new, unnamed, man. The session gave credence to Walker's narrative of events, regarding his use of the session's legal facility as a sign of his seriousness with regard to the failed relationship. Cases such as this illustrate how the ending of a courtship could be marked by the return of tokens and by a re-separation of goods that might have contributed to future marital property. Walker was thus using the session to negotiate the dissolution rather than the formation of a relationship.

Others were called before the session to resolve familial tensions aroused by the making of a marriage. On 2 November 1592 John Boyle was called before the session 'acust for not fulfilling his promeis of mariage maid to Janet pattersoune [at] the tyme of his carnall copolatioun wt hir [when] he promiseit to performe the sayme gif his fader be content'.¹⁴² It transpired that Boyle's father was not 'content' to accept the marriage and the question was posed before the presbytery 'gif ane younge man in his fader hous ... may marie ane women contrair ye consent of is fader albeit the tua parteis agrie'.¹⁴³ Boyle and Pattersone had made a legally binding contract by promising to marry and by following that promise with 'copolatioun'. However the absence of parental consent challenged both Boyle's autonomy within the marriage market and the Kirk's assertion that marriage could only be made by the consent of the couple.¹⁴⁴ The session thus became the forum in which John negotiated with his father which woman he should marry, Boyle the elder informing the session that although

his sonne performme the banns of mariage wt Jonet pattersonne he had maid promeis wt Jonet Davie ... [and] that he wald on na wayis agre that his sone married ony persone bot onlie Jonet davie ... and gif he wald ... marie Jonet Pattersonne ... he sald haif his in alne¹⁴⁵

Boyle's father thus made it clear that his son had contracted to marry two women and that it was the former relationship that the family endorsed: that with Jonet Davie. Boyle's father then threatened to withdraw financial support if John 'wald ... marie

¹⁴² NAS, Edinburgh, CH2/718/1, f. 197, 2 November 1592.

¹⁴³ NAS, Edinburgh, CH2/718/1, f. 197, 9 November 1592.

¹⁴⁴ Cameron (ed), *The First Book of Discipline* 192-93; Todd, *Culture of Protestantism*, 267-68.

¹⁴⁵ NAS, Edinburgh, CH2/718/1, f. 201, 1592/3.

Jonet Pattersonne'. Several weeks later John Boyle appeared to have heeded his father's advice and appeared before the session 'to performe ye bandes of mariage with the said Jonet [Davie] conforme to ye contract maid wt ye q[on]sent of his fayther and moyther'. Boyle supported the legitimacy of this new betrothal by emphasising the initiation of sexual activity, as he had done with Janet Patterson. Yet this time it was the prospective wife, Davie, who appears to have objected to the marriage, as she 'fled frome ye said mariage and ... denyis carnall copulatione wt him.'¹⁴⁶ Davie was demonstrating a moral, emotional and sexual distance from Boyle, denying his account of their relationship as sexual and attempting to avoid marrying him. Boyle was ordered to appear before the presbytery the following Tuesday and was to 'make his repentence conforme to his awne confessioun' of 'copulatione' with both Pattersonne and Davie. In attempting to reconcile the demands of Kirk and family Boyle found that not one but two relationships were dissolved in a matter of months, each of which he had represented in both sexual and marital terms.

A surprising number of the men and women presented before the session provided inconsistent tales of their relationships. This allowed them time not only to consider the implications of their behaviour but also to negotiate the status of those relationships. For instance Bessie Patterson was presented before the session on March 29 1610 and was 'inquiyr it quether scho had ever carnall copulating wt thomas lorimer or not scho constantlie denyit the symn and forder affirmit that scho suld be banischit the parochin gif it war provin'.¹⁴⁷ However, one week later on April 5 Patterson contradicted this statement, the minutes recording that she 'confest fornicating wt thomas lorimar under promeis of mariag.' In her confession Patterson presented her behaviour within the context of a legitimising relationship. In spite of her former affirmation that 'scho suld be banischit the parochin gif it [fornication] war provin' the session only appears to have required the usual weeks of repentance before the congregation. Bessie Patterson demonstrated both compliance with and a superficial endorsement of the Kirk's moral programme whilst engaging in the very activity that programme sought to reform.

¹⁴⁶ NAS, Edinburgh, CH2/718/1, f. 204, 1592/3.

¹⁴⁷ NAS, Edinburgh, CH2/718/3, f. 3, 29 March 1610.

In a similar adoption of the Kirk's moral language Alexander Weir in June 1597 'confessit he had committit fornicatioun wt agnes braidie' and submitted 'willinglie till obey quhat ye Kirk wald lay unto his charge.' By displaying this willingness to participate in the disciplinary process Weir was effectively asking the elders to show compassion and forgiveness and to reconsider the imposition of a ten pound fine and multiple weeks of repentance in favour of a more lenient 'fourtie shillings [pledge] to ye poore and mak his repentance upon ye pillar nixt saturday And yair to confesse his fault befor ye congregatiun and to be ressaut. Sauing it was committit under promeis of mariage'.¹⁴⁸ This punishment clearly articulated the connection between fornication and marriage, affirming that any leniency was due to the 'promeis of mariage'. The Kirk not only called upon Weir to enact the public modes of display and apology indicative of reformed penance but also situated Weir's transgression as a transgression against the community and his punishment to be to the benefit of that community. The moral code endorsed by the Kirk was to be reaffirmed by the couple, Weir and Agnes Braidie, as they were to have their 'bandes ... proclamit ye said day', ensuring that the 'promeis' was genuine. Braidie and Weir reconstructed their encounter to fit into the Kirk's acceptable model for sexual interaction. They 'willinglie' participated in the moral and redemptive processes of the Kirk limiting the cost of their indiscretion personally and financially.

Despite the rhetoric of moral and sexual order spelled out at the beginning of this chapter the practical experience of the session does not appear to have seen the act or association with fornication as a lasting stain on one's reputation or membership of the religious community. There was a process of repentance by which these men and women could comply with moral and behavioural dictates. And despite instances where men and women appear to have flagrantly rejected or deferred their role within that community, they were usually 'resaved' and reintegrated by the Kirk when they finally demonstrated the correct penitential comportment. As Todd has demonstrated, following penance '[t]hey were no longer 'liminal people'; they had passed through the final stage of their rite of passage and in that transformative process had been reincorporated into the larger community.'¹⁴⁹ Those men and women presented before the Visitation in England would have participated in a similar process of spiritual and

¹⁴⁸ NAS, Edinburgh, CH2/718/2, f. 51, 16 June 1597.

¹⁴⁹ Todd, *Culture of Protestantism*, 155.

cultural penance. In these cases men and women actively negotiated and disputed the meanings attached to sex and the formation of marriages.

However, a significantly larger number of men and women presented before the session confessed fornication and repented, yet chose not excuse their sexual encounters by defining them as ante-nuptial (see Figure Four). These men and women, who were presented for fornication and for relapse in fornication, appear to have either been resistant to the idea of official Kirk sanctioned marriage, or were simply engaging in sexual, not marital, relationships. On 31 December 1618 George Wilkie ‘confest trelaps in fornicatioun’ and made his admonition before the session and Presbytery.¹⁵⁰ The following week he was ‘ordanit to stand nyne sabbat dayis upoun the ... piller for ... his trelaps in fornicatioun’ with George Crawford as his cautioner. With these nine days of ritualised humiliation and penance Wilkie was able to purge himself of guilt and become once again a member of his community.¹⁵¹ Having earnestly ‘confessed’ and repented his behaviour the moral code of the Kirk demanded he be re-saved into the parish.

In 1606 Clement Kincaid’s participation in the process of confession and repentance saw him similarly re-included in the godly community, though he demonstrated some reluctance to appear before the session, taking three months to appear when called. Kincaid had been cautioned for housing a woman ‘under slander’, his servant Margaret Robson, and in late December 1605 suspicion against him grew to the point that the session enquired if he was ‘ye fayther of hir bairne or not’.¹⁵² Kincaid appeared before the session with Margaret on 6 March and ‘confesd fornicatioun wt margaret robiesone quha wes his awin servand’. Two weeks later the ‘sessioun of ye west Kirk all in ane vece agrees yt clement kincaid sall satisfie as ane fornicator in standing thre Dayis upone ye piller for his fornication’.¹⁵³ When Margaret was called before the session on 22 May she ‘confes fornicatioun wt clement kincaid [but]... denyit obstinattlie yt scho had any carnall copulatioun wt him’.¹⁵⁴ With this confession Robson seems to be distinguishing between penetrative and non

¹⁵⁰ NAS, Edinburgh, CH2/718/4, f. 9-10, 31 December 1618 to 7 January 1619.

¹⁵¹ Todd, *Culture of Protestantism*, 170-71.

¹⁵² NAS, Edinburgh, CH2/718/2, f. 219-25, 19 Dec 1605 to 6 March 1606.

¹⁵³ NAS, Edinburgh, CH2/718/2, f. 227, 27 March 1606.

¹⁵⁴ NAS, Edinburgh, CH2/718/2, f. 234, 22 May 1606.

penetrative sexual activities, as observed by Hitchcock in the later part of the early modern period.¹⁵⁵ Robson may have been using this distinction to ensure that her employer, Kincaid, was not suspected of fathering her child by removing him from the narrative of procreative, penetrative, sex. Yet there appears to have been a communal suspicion of a relationship, not only between Kincaid and Robson, but also between Kincaid and Robson's child. His role as Margaret's employer bound these three people, Kincaid, Robson, and the child, through established kin and household ties, wherein he became responsible for their moral and physical well-being as members of his domestic network. The following week the couple began their repentance on the stool before the congregation, and completed it on 7 June.¹⁵⁶ It is notable that Kincaid had a common seat named for him in the West Kirk on his death in May 1621, indicating his restored position within the community in the decades following this episode.¹⁵⁷

Yet, for some there remained a pronounced reluctance to participate in the process of repentance. On 29 October 1601 David Ochiltree was presented before the session and

being accused be his awin confessioun not onlie is convict for prophaning the Sabbath in fisching yairon, bot lykwayes hes confest himself to haue fallin in fornicatioun with tua divers women The ane called Margaret hutchesoune, the nother Margaret Colban¹⁵⁸

By confessing such behaviour Ochiltree not only generated the acrimony of the session, his breach of the Sabbath was a serious offence itself,¹⁵⁹ but he also implicated two women Margaret Hutcheson and Margaret Colban in his sinful sexual behaviour. Margaret Hutcheson made her appearance before the elders and congregation and does not appear to have troubled the session further. Colban does not appear at all in the St Cuthbert's Minute Books. Ochiltree on the other hand failed to satisfy either the civil magistrate or the session and was called before the session again nearly ten months later on 5 August and 'confessed that he had ne ressoune quhy he went not to the magistrat to satisfie for his dowbill fornicatioun'.¹⁶⁰ By not

¹⁵⁵ Hitchcock, *English Sexualities*, 29; Gowing, *Common Bodies*, 89.

¹⁵⁶ NAS, Edinburgh, CH2/718/2, f. 235, 31 May to 7 June 1606.

¹⁵⁷ NAS, Edinburgh, CH2/718/234, f. 76.

¹⁵⁸ NAS, Edinburgh, CH2/718/2, f. 142, 29 October 1601.

¹⁵⁹ Todd, *Culture of Protestantism*, 31-39, 144; Leah Leneman, "'Prophaning" the Lord's Day: Sabbath breach in early modern Scotland', *History*, 74: 241 (1989).

¹⁶⁰ NAS, Edinburgh, CH2/718/2, f. 154, 5 August 1602.

submitting to discipline Ochiltree compounded the severity of his crimes. On 23 October 1602 he began his penance before the congregation completing it five weeks later on 20 November to be resaved by his community more than a year after his original 'confession' to the session.¹⁶¹ Throughout he would have been monitored by the baileys and threatened with both civil punishment and banishment. However, despite numerous instances where Ochiltree appears to have rejected the authority of the session and elders he was re-included in the community of the Kirk. By eventually capitulating to discipline he demonstrated his desire to remain within the reformed, moral, community.

Others were either unwilling or unable to capitulate to the Kirk's moral order. In January 1605 George Knox of the Pleasance was banished following his confession of fornication with Marioun Ogilvie, 'having commitit adulterie before wt agnes cunnynghame quhen his wyfe was upone lyfe'. The session could discern 'ne ye pentance or sence of sin in him neyther for ye adulterie nor ye lait huredome [and] desyres ye magistrat of ye bounds qr he dwellis ... to put him out ... for yis effect'.¹⁶² Knox was banished from the southeast quarter of Edinburgh and was made a sexual and social pariah. His removal from the burgh would have been both ritualized and public. Yet there remains a question as to whether his rejection from the godly community translated into an exclusion from the social community. The act of fornication in itself was unlikely to have generated social rejection. However, the act of adultery during his wife's lifetime would have cut to the heart of religious and cultural narratives of moral and marital deportment.¹⁶³ In displaying 'ne ye pentance or sence of sin' Knox's behaviour ran contrary to the cultural narratives of honourable conduct.

William Cairns's continued inability to satisfy the Kirk for his 'trelaps in fornicatioun and layt wt Joane bennett vnder promeis of mariage' in November 1620 initiated a two year struggle with the session as they attempted to compel him to marry Bennett

¹⁶¹ NAS, Edinburgh, CH2/718/2, f. 158-9, 23 October to 20 November 1602.

¹⁶² NAS, Edinburgh, CH2/718/2, f. 177, 31 January 1605.

¹⁶³ Todd, *Culture of Protestantism*, 138-39, 266-80. Todd clearly demonstrates the involvement of the Kirk in the formation, regulation and arbitration of marriages. In particular she highlights the role of the session in the mediation of marital disputes, recognising the roles of each partner, family and friends in the breakdown of marital relations.

and repent the fornication.¹⁶⁴ On 7 December he promised to pay a four-pound fine for his transgression and agreed to respond to the question of the marriage. The Minute Books do not record him again until 2 May 1622, at which presentment he was chastised for his ‘trelaps in fornicatioun and for his manifeste contempt and storming of ye Kirk and Sessioiun’.¹⁶⁵ For his inability to participate in the processes of the session, for ‘storming’ the Kirk, and for failing to repent three counts of fornication Cairns was to be imprisoned, probably in the tollbooth, for twenty-four hours, fined two Scots pounds and was ordered to begin the process of penance at the pillar ‘of new agane’. The session chose not to banish Cairns, nor did the elders compound his punishment before the congregation when after a space of two years he finally satisfied the Kirk of his repentance for the original ‘trelaps’. This suggests that the marriage was formed with Bennett in the wake of the original presentment and that the elders felt that Cairns wanted to participate in the Kirk’s moral community. Cairns, unlike George Knox, must have demonstrated a ‘sence of sin’ and repentance.

In April 1609 Isabel Brown was also *not* banished despite numerous counts of sexual and social disorder. Brown ‘confessit yat scho had borne ane barne ... fyve yeir syne to allexander Levingstoun and ... confessit that scho bure ane barne to capetane balfoure and hes standin thre sondayis in ye pillar.’¹⁶⁶ It was decided that ‘mr James Johnestoun bailye [was]... to put [her] ... out of margaret gardiners hous in the cougait and that because scho is ane commone harlet and blesphames our elders and deacones quhen thay reprove hir of hir harlatrie’. Brown’s continued disruption of her neighbourhood and the disrespect shown to the elders and Deacons who had attempted to discipline her compelled the session to remove her from the house in which she lived. Brown resided in the Cowgate, the district of the city for women of notorious reputation, yet she was removed from Margaret Gardiner’s because of her ‘harlatrie’ and disorder, particularly for fathering her two children on separate fathers. With this order the session was not only exhorting Brown to reconsider her behaviour and its impact on the community in which she lived but also the impact of the Cowgate community on her behaviour. In this case Isabel Brown’s ‘harlatrie’ was symptomatic of her social rebellion. Nonetheless, the elders who had tried to ‘reprove

¹⁶⁴ NAS, Edinburgh, CH2/718/4, f. 64, 16 November to 7 December 1620.

¹⁶⁵ NAS, Edinburgh, CH2/718/4, f. 103, 2 May 1622.

¹⁶⁶ NAS, Edinburgh, CH2/718/1, f. 132, 10 April 1591.

hir of hir harlatrie' used the session to attempt to bring her behaviour in line with their model of the reformed community.

Men and women who committed multiple counts of fornication were given time to demonstrate their penance and to regain a sense of place within the godly community. Although Dorothy Dingtrie was found to have committed 'quadrelapse' she, like Isabel Brown, was not expelled from the burgh, but was instead removed from the house of Jessie Meyne.¹⁶⁷ Whilst this expulsion would have contributed to her reputation as a fornicatrix, it also cast a shadow over the reputation of Jessie Meyne for having harboured and probably fornicated with Dingtrie. Sexual transgressions within the burgh were ultimately treated on a case-by-case basis, with the session applying a range of financial and penitential punishments to a variety of men and women.

The ways that these women and men constructed narratives of sex and courtship demonstrates that they were more than players in the social machinations of their parents, though parental and kin consent was a vital element in the making of a marriage.¹⁶⁸ These cases clearly show women to have been making active choices about the men they married and engaged in sexual contact with. Yet, these cases also demonstrate how the ambiguities of early modern marriage at all stages from courtship to contract allowed some a means of escape from a suit that was no longer desired, whilst for others it opened the door to prosecutions for subsidiary sins committed under the guise of a legitimate intent to marry. In each city some chose to participate in this dialogue, linking sex to the marital ideal. Yet in Edinburgh a surprising number of men and women did not use the idea of marriage to 'legitimate' sexual encounters. For women like Dorothy Dingtrie and Margaret Robson, and men like David Ochiltree, sex could be part of a relationship that was not necessarily marital. Female honour was largely constructed on the basis of sexual reputation but other factors, such as parenthood, work and marriage also made pronounced contributions to these women's social identities. The male narrative of sexual honour has been dislocated from the story of female experiences, making sex into a different

¹⁶⁷ NAS, Edinburgh, CH2/718/2, f. 350, 30 March 1609.

¹⁶⁸ Griffiths, *Youth and Authority*, 261.

act for men and women.¹⁶⁹ While men and women certainly experienced some elements of sex differently, there was a fundamental understanding of the relatedness not only of the sexes but also of their sexual interactions which linked into domestic, working and social identities.

Service, Sex and Space: Bed-hopping Bessie? A Case Study.

Most middling and lower status men and women spent some time in service.¹⁷⁰ It was often the case that this stage of the life cycle coincided with the first experiences of both sex and courtship.¹⁷¹ However, service was also a period of transition from the familial to the marital household, and could be both liberating and dangerous. Ideas concerning status, responsibility and space were all shaped by the politics that dominated the household. Within this environment relationships between men and women were shaped by the opinions of others, by the use of spaces and by the gendered understanding of how male/female interaction could and should function.

On 20 March 1596 Bessie Ramald, a house maid, probably aged between twenty and thirty, was declared to be 'suspect of fornicatioun' with her master, Thomas Thomsone, a smith and probable widower, likely to have been in his forties, by the St Cuthbert's session.¹⁷² They were told to appear seven days later to answer this accusation. Their accusers, four other members of Thomsone's household, Johne Kennedie, Andro Smyth, Johne Ornestoun, and Patrick Knox, were also ordered to appear, so that 'yai may heir thomas thomsone and bessie ramald purg yame selvis of ye slander yat is allegit to be betwix yame'. This case invites one to consider not only some of the tensions that could exist within early modern households but also how domestic spaces were used and understood by the members of those households and by the Kirk. Within this case both Ramald and Thomsone were subjected to the gaze of the parish for a perceived transgression that was constructed as a breach of both the sexual and domestic order.

¹⁶⁹ Gowing, *Domestic Dangers*, 3. Cf. her conclusion, 263-76.

¹⁷⁰ Griffiths, *Youth and Authority*, 5-8; Meldrum, *Domestic Service and Gender*, 4; Ann Kussmaul, *Servants in Husbandry in Early Modern England* (Cambridge, 1981), 3; Gowing, *Common Bodies*, 59-65, 209.

¹⁷¹ Griffiths, *Youth and Authority*, 272; O'Hara, *Courtship and Constraint*, 146-47; Gowing, *Domestic Dangers*, 167.

¹⁷² This case is recorded in NAS, Edinburgh, CH2/718/2, f 23-27, 20 May 1596 to 17 June 1596. See also, NAS, Edinburgh, CH2/718/52.

On 27 March Thomas Thomsone appeared before the session and ‘denyit yt euer he had ony carnall daill wt Bessie ramald his seruand’, he then ‘offerit to purg him selff in presens of ye persons yt delaittit [accused] him’. Thomsone needed to clear himself of this accusation and reassert his moral authority within his household. As household head it was his duty not only to maintain order and harmony, but also to ensure the moral rectitude of all those under his care, safeguarding the sexual probity of female members of his household, in particular Bessie Ramald.¹⁷³ However, Ramald’s social identity can be interpreted in contradictory ways: as a female servant she was to be treated like a vulnerable child, to be watched over and protected from the advances of amorous men. Yet, she could also have been perceived as a sexually dangerous being, a woman who could both tempt and succumb to the desires of men.¹⁷⁴

It was not until 3 June, more than two months after the initial presentment, that the accusers now numbering seven - Bartie Johnestoun, John Andersone, William Weir, Johne Kennedie, John Ormestoun, Robert Kincaid, and Patrick Knox - appeared before the session and were, ‘inquirit qt yai had to say agains ye said thomas and bessie’. The combined testimony of these men,

schew[ed] yat yair was *bot tua bedis* in the said thomas his hous and ane of his awin lay him allane in an of ye saids bedis And ye said Thomas in ane uther The qlk was ye caus yat yai tuik suspicoun of slander [*italics my own*]

These men did not report direct sexual interaction between Thomsone and Ramald. Rather, it was the spatial arrangement of Thomsone’s household, the amount and type of furniture, which led these men to suspect that Thomsone and his house maid were engaged in a sexual relationship. Their account places ‘ane of his awin’, one of Thomsone’s children perhaps, in one bed, whilst in the other slept their master. Within their understanding of Thomsone’s sleeping space these witnesses understood the existence of two beds to mean that Bessie Ramald shared her master’s bed, and understood the sharing of the bed to have led to a sexual relationship.

¹⁷³ Amussen, *An Ordered Society*, 40-41. Servants were understood in relation to children, to be watched over and protected.

¹⁷⁴ Gowing, *Common Bodies*, 101-10

It is virtually impossible to ascertain the motivations of Thomsone and Ramald's accusers, all described as his 'Manserwands' or man-servants; were these men jealous of Ramald's position within the household? Did they want to undermine her position with regard to their master and the wider community by impugning her sexual conduct? Was she a tool in some sort of power-struggle between Thomsone his workers? Yet there is also a third possibility: these men may have been onlookers to a relationship between Thomas and Bessie. Their allegation may have been an attempt to compel a formalisation of that relationship. These men may have been looking out for the social and sexual interests of their co-worker. On the basis of their evidence the session ordered all parties to reappear the following week and ordered 'bessie ... be removit furth of ye said Thomas his hous and companie till furder tryall war takin in ye said matter'. The accusation was enough to warrant further investigation and to separate the suspect man and woman.

The following week Ramald was 'demandet quhidder or nocht scho come in bed wt thomas thomsone ... hur maister at ony tyme and lay wt him... [she] constantlie denyit ye same wt grit attestatiouns.' In this account Ramald refused to capitulate to the pressures of either the session or her accusers. Her denial echoed that of her master, reiterating their working relationship. Interestingly, her 'grit attestatiouns' were not focused on the implied carnality of the relationship; she did not explicitly deny sexual contact with her master. Instead Ramald too concentrated on the locality and ratio of beds to people within the house. She denied sharing her master's bed and the implicit assumption of sexual activity. She denied lying with him.

[Bessie Ramald] affirmit constantlie yt ye said thomas hir maister lay contenuallie his allane ... sen dauid thomesone his sone was maryit and past fra him And yt scho lay hir allane in the said thomas his hall'.

This testimony reveals that there was an additional, as yet unmentioned, space within the house in which the maid may have slept, 'his hall'.¹⁷⁵

The questioning of the session also sought to ascertain whether the relationship had stepped outside of the domestic, contractual confines of the household, whether it had

¹⁷⁵ Meldrum, *Domestic Service and Gender*, 77; Griffiths, *Youth and Authority*, 269-71. On the malleable and changeable nature of domestic spaces in the early modern period see: Frank E. Brown, 'Continuity and change in the urban house: developments in domestic space organisation in 17th-century London', *Comparative Studies in Society and History*, 28 (1986), 586-87.

stepped outside of the spatial limits of the proper relationship between householder and maid. Ramald was asked 'gif scho offerit to flit wt hir said maister quhen he was purpossat to flit'. The phrase 'purpossat to flit' can be read to mean several things at the same time. It could have questioned her willingness to move house with Thomssone when the occasion arose or could refer to some form of elopement.¹⁷⁶ By denying 'yt euer scho rememberit ... [such] thing' Ramald affirmed both her behaviour and that of Thomssone to have been entirely proper, and contractual, and contained it within the domestic sphere of his household.

Following this presentment Thomssone was ordered to 'to seperat him self fra the cumpanie of bessie ramald' for a further week, awaiting the next meeting of the session. On 17 June, three months after this case was initiated, the session called on Thomssone to question his accusers as to their motivations in propagating the slander of fornication. Thomssone 'aledgit yat yai had accusit him for invy and not for ... ye sin', suggesting that there was some form of power struggle between master and 'manservants'; possibly motivated by personal issues generated within the domestic life of the household, jealousy of their master's attachment to the maid; possibly motivated by the financial concerns of the workshop and working aspects of the household economy.

The men did not explicitly deny this accusation. Rather, they spoke of a more social and culturally driven motive for the slander. '[P]atrick knox and barthilmo Johnestoun ... anserit yat yai accusit him [Thomas] vpon suspitioun seing it was moved be ye haill nytbouris in the gait and ... commoun ... amangis thame'. These men were repeating the opinion of the local community, giving voice to the notoriety of Thomssone and Ramald's relationship. They sought to abrogate their responsibility for propagating the rumour of fornication by talking of a popular perception of sexual irregularity. These men drew on a communal authority to make their accusations, accusations that shifted a question of domestic authority and integrity to the ecclesiastical, legal and communal space of the Kirk session.

¹⁷⁶ DSL, '<http://www.dsl.ac.uk/dsl/>' (22 October 2006). '2. *tr.* and *refl.* To remove (persons and possessions) from a place of occupancy or residence... 3 b. *spec.* To leave one's place of residence or occupancy. Freq. with *remove.*'

In this case there is no more information offered by Ramald, Thomsone or their accusers. Instead we are left with the decision of the session that ordained

thomas thomesone and bessie ramald to remain seperat ... till
setterday nixtocum And *gif it still pleis thame to gif vp yair namis to
be proclamit wt uyeris vpone ye said day* It salbe ... [left] to ye said
Bessie to be in the said thomas his hous vpone ye day tyme and nytlie
to be ane vyer place till ye compleitting of *yair mariag*. [*Italics my
own*]

Thomsone and Ramald, despite their denials of having engaged in any form of sexual relationship had apparently agreed to marry. The Kirk was not forcing a spousal relationship onto these two people, it was urging them in that direction 'gif it still pleis thame.' For Thomsone and Ramald marriage was a remedy to their suspected transgression. It allowed them to conform to social expectation by enacting a relationship that would still place Ramald under the dominion of Thomsone, simply in a more appropriately sexual guise. Significantly, Bessie Ramald was to continue as Thomsone's housemaid, visiting his house daily, and 'nytlie to be ane vyer place till ye compleitting of yair mariag'.

Within the evolving narrative of this case Thomsone and Ramald fluctuated between the relational categories of master/servant, man/woman and husband/wife. Within each of these categories the limits and meanings of their interactions, social, domestic and sexual, shifted. They were perceived by those around them to be engaging in an illicit sexual relationship, possibly a courtship. Thus the question that the session sought to resolve was centred on the nature of that relationship and the issue of consent. Was Thomsone taking advantage of Ramald, manipulating her into a sexual relationship? Neither Thomsone or Ramald accepted the accusation of fornication, thus the session was reliant on the perceptions and observations of those men that surrounded them, Thomas's 'manserwands'.

The understanding that a sexual relationship could exist between a master and servant, such as Thomsone and Ramald, was not uncommon in either Edinburgh or York. A number of women in York claimed to have been seduced and impregnated by their masters.¹⁷⁷ Indeed Henry Sprooke confessed that he 'accepted the said Marie [Wilson] into his house as his servante with whome he hath had carnallye to do and as he

¹⁷⁷ Adair, *Courtship, Illegitimacy, and Marriage*, 83-88.

thinketh gett hir with childe' when she pursued him through the Dean and Chapter court in 1589.¹⁷⁸ Sprooke did not deny sexual contact with his maid, rather he attempted to ensure he did not end up married to her. However, two other women within the city found it much more difficult to make their masters account for their sexual misadventures.¹⁷⁹ Both Isabell Wilson and Mawd Bedell became somewhat notorious following sexual encounters with their masters. Isabell Wilson fell pregnant to Nicholas Bovell as she tended him through his illness.¹⁸⁰ Bedell's master, William Eldon, was known to be an 'adulterer & fornicatr [who] one hadeth childe with one mawd Bedell sometime his Servante whyche childe he toke for his sonne and did bringe it uppe as son child And so is the common voyce opinion and fame within the parishe'.¹⁸¹

In Edinburgh fornication cases often came to light through an ensuing pregnancy.¹⁸² As we have seen Clement Kincaid was suspected to be the father of his servant Marioun Robson's child. For John Ridd his brother Samuel's relationship with Katherine Davidson in 1601 not only resulted in pregnancy but also in the loss of a servant as the session ordered him to discharge her from his house.¹⁸³ Ridd 'confest him self to haue brokin the act maid anent katherene dauidson and yt [she] ... hes bene twa or thrie nyts into his hous efter he was dischargit hir cumpanie be ye Sessiun'. Yet, for Davidson this 'discharge' was compensated by Samuel's acceptance of a marital promise and confession that 'ye Bairne gottin vpoun ye said Katherene [was]... his awin'.¹⁸⁴ At this meeting John Ridd made a promise that 'he sall never haue vse in his hous or keipe in service katherene dauidson at any tyme heirefter and also never to have anie kynd of familiaritie wt hir'.

¹⁷⁸ Borthwick, York, D&C 1589/6

¹⁷⁹ Adair, *Courtship, Illegitimacy, and Marriage*, 85-85; Amussen, *An Ordered Society*, 169.

¹⁸⁰ Borthwick, York, D&C 1609/14. Immorality case brought by the office of the dean and chapter against both Bovell and Wilson.

¹⁸¹ Listed as Borthwick York, CP.G. 1301. 1566 defamation case between (?) Thompson and (?) Thompson, though it can be questioned if this makes up a separate case.

¹⁸² Todd, *Culture of Protestantism*, 179, 269.

¹⁸³ NAS, Edinburgh, CH2/718/52, f. 50, 26 June 1601.

¹⁸⁴ NAS, Edinburgh, CH2/718/52, f. 53, 7 July 1601.

For other women in service sex was a more directly violent encounter.¹⁸⁵ If we return to the 1609 York case of John Davyes, Jane Sprout was not only burnt and sexually assaulted, very probably raped, but was also infected with the French Pox whilst working in the house of Ralph Headly outside Bootham Bar in York. Her role within Headley's household made her vulnerable to the violent and infectious lusts of John Davies, an acquaintance of Headly and songman of the Minster.¹⁸⁶ The Dean and Chapter of the Minster chose to prosecute Davies for his lewd and disruptive lifestyle, having also committed adultery with Isabel Chase.¹⁸⁷ For Chase the matter seems to have been resolved between her husband, Gilbert Chase, and herself, as no further mention of her infidelity occurs in the surviving court records. However, in the apparent assault of Jane Spout, who also appears to have been married but was of lower status, there appears to have been particular concern because of her ensuing infection. In this case Davies was treated as a sexual predator with regard to both women, having singled them out and physically imposed himself on them, the court's sentence reading

Davies by his foresaid sinfull and Lewd course of incontinent companie with the said Jane Sproute als Wilson haith infected her with that loathsome disease wherwith shee is soe dangerouslie at this time troubled that withoute present helpe her health and liefie if greatlie indangered and haith in such open and shameles manner haunted the companie of the said Isabell Chase within this two moneth last,

Yet, this record retains a distinction between the sexual culpability of women of different social status. Sprout, despite having been raped and burnt about her body by Davies was still found to have kept 'incontinent companie' with him. Women in service were understood within a cultural narrative of sexual availability, in ways that Isabel Chase, in spite of her adultery, was not.

¹⁸⁵ Amussen, *An Ordered Society*, 167; Susan Dwyer Amussen, 'The Part of a Christian Man': The cultural politics of manhood in early modern England', in Susan Dwyer Amussen and Mark A. Kishlansky (eds), *Political Culture and Cultural Politics in Early Modern England: Essays Presented to David Underdown* (Manchester, 1995), 217-18; Griffiths, *Youth and Authority*, 269, 322-23; Gowing, *Common Bodies*, 90-101; Capp, *When Gossips Meet*, 158-64.

¹⁸⁶ Borthwick, York, D&C 1609/15. Office c. John Davyes

¹⁸⁷ Two witnesses, Jane Marley and Arima Cooke, caught the adulterous couple in the act, Cooke deposed that, 'she called upon him & fie fie mr Davies, fie is this your mornings worke, & therupon he cast downe his head into the bosome of the said Isabell Chase, & answered nothings, till aboute a quarter of an houre after that he rose up & looked out at the said windowe to see what was become of this ex[amina]te, & esp[ying] her said, why how nowe good wife Cooke what do you see, whereupon she answered & said well mr davies that I am lothe to see'.

Women in service were often reluctant to accuse their masters and social superiors of indecent conduct for fear of violent reprisal.¹⁸⁸ As Meldrum has observed of London in the following centuries, sexual interaction between master and servant, whether forced or consensual, was not rare even if legal prosecutions were.¹⁸⁹ His illustration of the cautionary advice that was given to young women like Sprout, Wilson and Beddell upon entering the service of an unmarried or even simply lusty master bears echoes in this earlier period.¹⁹⁰ The awareness of the connection between penetrative sex and increased rates of illegitimacy hypothesised by Hitchcock and Wilson and endorsed by Meldrum appears to be consistent with sexual knowledge during this earlier period: knowledge that was not so much spread by ‘fashion’ as by experience.¹⁹¹ Within this context carnal encounters between master and servant tended to form narratives of either vulnerability and abuse or mutual desire.¹⁹²

Within the physical and psychological confines of the household sexual encounters were both normalised and gendered. The apparent breach of social and patriarchal duty that encounters between master and servant embodied was made problematic by the regular experiences of women who found that their masters did expect, even demand, sexual favours. This culture of sexual availability and the perception of some masters as sexually abusive would have informed the suspicion and recognition of Thomsons and Ramald’s relationship. Yet, unlike the other cases within this section this relationship was never constructed as abusive and there was no mention of either violence or pregnancy. This was a case in which the communal suspicion of sexual contact informed the moral and legal reception of that relationship within the session. Their Kirk and community deemed Thomas Thomsons and Bessie Ramald to have engaged in a sexual and marital relationship irrespective of the actual nature of their interaction.

¹⁸⁸ Adair, *Courtship, Illegitimacy, and Marriage*, 85; Fletcher, *Gender, Sex and Subordination*, 219; Hindle, “The Shaming of Margaret Knowsley”, 391-419. The consequences of illicit sex within service were numerous, from the loss of honour and reputation, to the removal from the household, and the potential of further abuse from the master in question.

¹⁸⁹ Meldrum, *Domestic Service and Gender*, 100ff; Fletcher, *Gender, Sex and Subordination*, 219.

¹⁹⁰ Meldrum, *Domestic Service and Gender*, 105-06.

¹⁹¹ Meldrum, *Domestic Service and Gender*, 103-4; Hitchcock, *English Sexualities*, 39-40; A. Wilson, ‘Illegitimacy and its implications in mid-eighteenth century London: the evidence of the Foundling Hospital’, *Continuity and Change*, 4:1 (1989), 103-64

¹⁹² Amussen, *An Ordered Society*, 159-61.

Conclusion: The Consequences of Sex

Ultimately what becomes clear is that pre-marital sexual contact could be redeemable, or at the least presented within a mitigating context, in the ecclesiastical courts of York and Edinburgh. Yet, there were both social and physical consequences that came with illicit sexual activity during this era in both cities. Legal and cultural responses to fornication ranged from the enforcement of a promised marriage, to social ostracization or banishment and in some cases physical marking. Sexuality and sexual identities were categories by which both to alienate and intimidate individuals who were undoubtedly conversant with the religious, legal and social strictures against illicit and wanton activity.

The creation of sexual identity was a collective project in which individuals and observers, neighbours, servants and peers, ascribed, delineated and enforced moral categories according to perceived behaviour. Thus the readiness of fornicators in Edinburgh, both male and female, to submit themselves to the authority and discipline of the Kirk can be read as not just a religious compulsion to 'truth', but as a process of redemption through which immoral and transgressive behaviour could be absolved. The men and women who confessed their sins found that their repentance was shorter and less severe than those who railed against the Kirk's moral programme. By confessing 'guilt' and enacting their repentance the men and women of the burgh were able to use the moral ideals of reform to excuse immoral activities and reintegrate themselves into the religious culture of the burgh. A suitable show of culpability and repentance in the correct forum could generate more compassion and significantly less condemnation from both the Kirk and community.

Yet, there was a striking contradiction between the moral ideas and dictates of the Scottish Kirk and the actual day-to-day practices and punishments of the session. The elders of the session were fully aware of the economics of sex, the cost of separations, divorces and weddings, and showed leniency, compassion and pragmatism in response to the incidents presented before them. These considerations may not have prevented elders from imposing marriage settlements on young amorous couples, but this was a Kirk as desperate for income as the parish communities they served. Moreover, the session was reliant on the participation of a community that was

coming to play a significant role in the management of parish affairs. From the 1580s lay elders, local ministers, and the Godly community itself was shaping the interpretation and application of moral and legal judgements within the religious, if not civic, sphere.

In the York Visitation the reporting of sexual and pseudo marital relationships follows the pattern established in the Edinburgh records, whereby relationships were suspected, reported, presented and made to perform penance. Yet, the confessional narrative that is so strong within the Edinburgh session minutes is absent from both the York church courts and Visitation. This is possibly due to the nature of the records, and possibly due to a different penitential culture in each city. Nonetheless, couples who were suspected of 'lyving as man and wife' or even simply engaging in fornication were, like their counterparts in the Scottish burgh, simply living out behaviours and responding to social practices that existed alongside and in conflict with the moral ideals of their church.

For all the rhetoric concerning the dangers of sex, as a morally, socially, and physically dangerous contagion that could corrupt the unwary and ungodly, there was a popular preoccupation with sex and language of sex that revelled in the bodily experience of sexual contact. The bawdy atmosphere of the alehouse, and the jestings of neighbours in the streets would have made it hard for any young man or woman, boy or girl, to avoid the topic of a man's 'yard' or woman's 'tail'. This familiarity with sex as a form of social interaction and the religious imperative to procreation would have left many curious, if not eager, to engage in sexual activity. The concern for reputations and marriageability that ran parallel to this curiosity would have been tempered by a pragmatism that accepted a need to test the social and sexual compatibility of a marriage partner. This 'back door' so to speak gave some means by which to accommodate heterosexual experimentation by the men and women of these two cities.

This system by which sexual activity was silently sanctioned relied on a certain level of discretion on the part of the couple in question. Yet, all too often that discretion would be lost by the inopportune passing of a neighbour or by poor or non-existent forms of contraception. The onus that was so often placed on sex, as a root cause of

moral disintegration, meant that ministers, elders and deacons needed to be seen to punish the wilful fornicator. As the common appearance of 'relapse' and 'trilapse', and the one case of 'quadrelapse',¹⁹³ in the minutes of St Cuthbert's attest, there were those who could not restrain their desire and need for sexual contact. In these cases the punishments of the Kirk and church, the days in front of the congregation, the shaven head and the apparent humiliation in front of their parish, was simply not enough of a deterrent. Many of the women involved in these cases were quite probably financially dependent or reliant on their sexual partner, having formed informal relationships, handfastings and de-facto marriages without the religious seal of approval.

For others their sexual encounters were simply that, encounters. Both men and women used the interconnectedness of marriage and sex to their own ends. Men coaxed women into sexual relationships with and ever present but ultimately hollow promise of marriage, whilst women could use the promise of a sexual or marital partnership to their material gain, taking advantage of naive and lonely men with few avenues to find a long-term sexual partner. In these manipulative encounters men could suffer both emotional and material losses, forgoing numerous tokens of an affection that was not reciprocated or was simply of a short and contractually ambiguous duration. But it was women who could suffer the longer-term ignominy and damage of a good reputation lost. It was a woman whose body displayed her sin to the world in the form of a pregnant belly.

¹⁹³ NAS, Edinburgh, CH2/718/2, f. 350, 30 March 1609. 'The sessioun ordayns Jeshie meyne to speik ye majestrats of ed[inbu]r to put dorrathie dingtrie furthe of ye Inrospect yat scho hes fallin quadrelapse in fornicatioun'

The Name of the Father: Conceiving Parenthood

In February or March 1587 Janet Pearson 'was delyvered of a mans child att the house of one George Halliland within Bowthome barr in the Cittie of Yorke.'¹ It was not, by all accounts, an easy birth. Witnesses described Pearson as having been in the 'greatest danger of travaill' and 'in great payne and in suche paine as ... [the] women ... present thought that the said Janet pearson wuld have dyed and also her child.' On the brink of death, Janet Pearson did 'take it vpon her soule and conscience that ... Mathew Ray was the father of her said child, and dyd begett the same, and no other man.' After this reluctant but definitive affirmation Janet asked two women, Jane Thompson and Anna Nelson, to leave the birthing chamber in which she was struggling for life to go and find Mathew Ray whom she understood to be walking in the Minster. Ray and Halliland, owner of the house in which Pearson was giving birth, were indeed walking in the Minster. There Thompson and Nelson approached Mathew Ray and

desyered ... that he would come to Janet Pearson with whome he had gott the child [,] who utterly denyed that ever he had any thinge to do with her and asked this ex[amina]te [Anna] and her procontest [Jane] if they were able to prove that he was the father of the same child [,] who answered him and said that they were not come to him to prove any suche matter but she the said Janet Pearson had before them and other women ther present declaimed and affirmed that you are the father of it and no man but you

During this exchange Nelson claimed Pearson was 'ill gevin and of lowd lyfe and ... that she was hyered to father the child of him...by some other man who gott the child.' This allegation became a matter for the consistory courts. It had become not only a defamation case, but also a paternity dispute in which not only inheritance rights but also parental roles were negotiated.²

This chapter explores parental and spousal relationships through cases like that between Ray and Pearson. Additionally, it explores the relations between these

¹ Borthwick, York, CP.G.2308, 1587, Defamation: Janet Pearson c. Mathew Ray.

² Henry Swinburn, *A Brief Treatise of Testaments and Last Willes* (London, 1590); William Clerke, *The Triall of Bastardie: That part of the seconde part of Policie, or maner of Gouvernement of the Realme of England: so termed, Spirituall, or Ecclesiasticall*, (London, 1594); Patricia Crawford, *Blood, Bodies and Families in Early Modern England* (Harlow, 2004), 123.

morally questionable parents and the women who witnessed the birth, the child, and the local community and authorities. The cases I study do not exemplify common or everyday responses to parenthood. Rather they shed light on those men and women who contested and challenged their definitions as “parents”. However, through an examination of such instances of irregular parenthood we can see how some of the middling and lower orders of early modern cities negotiated and delineated their roles and identities as parents and spouses in the face of reputed immorality.

There is a growing body of work investigating the family, childhood, orphans and stepparents in early modern England.³ Adair’s study of “regions” as opposed to specific localities, of a generalised “highland” north and urbanised lowland invites more specific comparison between marital and parental practices and narratives in England and Scotland.⁴ As we have seen in the previous chapter, Adair’s work has shown that the definition of “marriage” was blurred and consequently it is difficult to assess the actual incidence of illegitimate births or pre-marital conceptions in cities such as Edinburgh and York, as young men and women initiated sexual activity during a protracted marriage negotiation.⁵

³ Linda Pollock, *Forgotten Children: Parent-child relations from 1500-1900* (Cambridge, 1983); Ilana Krausman Ben-Amos, ‘Reciprocal Bonding: Parents and their offspring in early modern England’, *Journal of Family History*, 25:3 (2000), 291-312; Susan Dwyer Amussen, ‘Gender, Family and the Social Order, 1560-1725’, in Anthony Fletcher and John Stevenson (eds), *Order and Disorder in Early Modern England* (Cambridge, 1985), 196-215; Patricia Crawford, *Blood, Bodies and Families in Early Modern England* (Harlow, 2004); Elizabeth Foyster, ‘Parenting was for Life, not Just for Childhood: The role of parents in the married lives of their children in early modern England’, *History*, 86:283 (2001), 313-27; Kathryn Sather, ‘Sixteenth- and Seventeenth-Century Child-Rearing: A matter of discipline’, *Journal of Social History*, 22:4 (1989), 735-43; Ralph Houlbrooke, *English Family Life, 1576-1716: An anthology from diaries* (New York, 1989); idem, *The English Family 1450-1700* (London, 1984); Rosemary O’Day, *The Family and Family Relationships, 1500-1900: England, France and the United States of America* (Basingstoke, 1994); Steven Ozment, *When Fathers Ruled: Family Life in Reformation Europe* (Cambridge (Mass.), 1983); Lawrence Stone, *The Family, Sex and Marriage in England 1500-1800*, Abridged ed., (London, 1990); A. N. Williams, ‘Child Adoption in the Seventeenth Century: Vignettes from Defoe and Pepys’, *Journal of the Royal Society of Medicine*, 97:1 (2004), 37-38; Steve Hindle, ‘“Waste” Children? Pauper apprenticeship under the Elizabethan poor laws, c. 1598-1697’, in Penelope Lane, Neil Raven and K. D. M. Snell (eds), *Women, Work and Wages in England, 1600-1850* (Woodbridge, 2004), 15-46; Claire M. Busse ‘Profitable Children: Children as commodities in early modern England’, in Kari Boyd McBride (ed), *Domestic Arrangements in Early Modern England* (Pittsburgh, 2002), 209-43; Will Coster, ‘“To Bring them up in the Fear of God”: Guardianship in the diocese of York, 1500-1668’, *Continuity and Change*, 10:1 (1995), 9-32.

⁴ Richard Adair, *Courtship, Illegitimacy and Marriage in Early Modern England* (Manchester, 1996); Leah Leneman and Rosalind Mitchison, ‘Scottish Illegitimacy Ratios in the Early Modern Period’, *Economic History Review*, 2nd ser., 40 (1987), 41-63.

⁵ Adair, *Courtship, Illegitimacy and Marriage*, 9.

Houlbrooke has demonstrated that early modern men and women did make choices about their futures and families that were not necessarily overridden by the burdens of duty, economics and religion.⁶ He depicts men and women of upper middling to elite status as active participants within the marital relationship, as both spouses and parents. Houlbrooke has shown that the three categories of duty, economics, and religion were part of the decision making process of the early modern couple, but crucially, were not the sole determinants of marital and family life. Yet beyond his work there remains a tendency to analyse the roles of parents only within the categories of economics and social status, or rather by the limits historians interpret these categories to have.⁷ Too often the role of father has been portrayed as being passive and/or disengaged from young offspring, or has not been investigated at all. This seems to fall in line with a type of parenthood that has been distilled from prescriptive literature such as conduct books and sermons, a type which can be said to reflect neither common practice, nor common ideals. Elizabeth Foyster's work has occasionally presented fathers in this way, as habitually uncaring and abusive.⁸ She has highlighted the father's role as the uncaring though legally dominant parent in those cases where paternity was not in question, and absent or uninterested in those cases when paternity was uncertain. Even Ozment's study of the reformed European household, *When Fathers Ruled*, does not connect fathers to the birth of their children, or the early years of that child.⁹

Thus there is a need to consider the roles of men as parents, how fathers enacted their social, economic and moral obligations, and the experiences of middling and lower status families. Studies that focus on material such as elite diaries and conduct books can tend to normalise very particular types of idealised parenthood.¹⁰ Instead this

⁶ Ralph Anthony Houlbrooke, *The English Family 1450-1700* (London, 1984).

⁷ Crawford, 'Blood and Paternity'. Cf. Lisa Wilson, "'Ye Heart of a Father": Male Parenting in Colonial New England', *Journal of Family History*, 24:3 (1999), 255-74.

⁸ Elizabeth Foyster, 'Silent Witnesses? Children and the breakdown of domestic and social order in early modern England', in Anthony Fletcher and Stephen Hussey (eds), *Childhood in Question: Children, parents and the state* (Manchester, 1999), 60-61 & 68; See also, Elizabeth Foyster, *Manhood in Early Modern England: Honour, Sex and Marriage* (London, 1999), 91-94 & 121-25; Crawford, *Blood, Bodies and Families*, esp. ch. 4; Blood and Paternity.

⁹ Ozment, *When Fathers Ruled*, Chapter Three 'The Bearing of Children'. Ozment discusses the roles duties of mothers and 'parents', but does not specifically address either the duties or experiences of men as they became fathers.

¹⁰ Houlbrooke, *English Family Life*; Ralph Josselin, *The Diary of Ralph Josselin, 1616-1683*, Alan MacFarlane (ed) (London, 1976); Patricia Crawford, 'Katharine and Philip Henry and their Children: A case study in family ideology', in *Blood, Bodies and Families in Early Modern England* (Harlow,

thesis turns to court cases, which while equally exceptional in their own way, provide a different perspective on the early modern family at times of crisis and tension. The evidence of the burgh and church courts informs our understanding of plebeian, as well as middling and gentry, fears and concerns about the process of becoming, or being recognised as, parents.

This chapter focuses on four aspects of these cases before drawing out the similarities and differences between the cities of Edinburgh and York. First it considers the extent to which the narratives of these cases were constructed around the intertwined understandings of travail and truth, highlighting the narrative significance of maternal effort and pain during birth as stressed by witnesses within contested paternity cases. This chapter then unpacks the means by which individuals chose to represent or stand up for themselves as a parent. It looks at how women constructed their identities by becoming motherly actors within the record, by self consciously drawing attention to proper maternal and spousal behaviour within their legal narratives. This section also draws on the ideas raised in Chapter Two to assess how the language of defamation was used to evoke irregular parenthood.

The third section of this chapter looks at the legal and social significance of baptism in each city, in particular examining how baptism was indicative of parental roles in the early lives of children, looking at the distinctive customs and practices by which the Scots and English employed the sacrament of baptism to link the family – mother, father and child – and community through religion. In Scotland baptism was a fundamental means of indicating parental responsibility, while in the English sacrament “spiritual surrogates” in the form of kin were central to the sacrament.¹¹ However, this chapter will not address the important religious and political role of baptism in both England and Scotland as a means of regulating, monitoring, and

2004), 175-208; Cynthia Herrup, *A House in Gross Disorder: Sex, law, and the 2nd earl of Castlehaven* (Oxford, 1999); Linda Pollock, ‘Embarking on a Rough Passage: The experience of pregnancy in early-modern society’, Valerie Fildes (ed), *Women as Mothers in Pre-industrial England: Essays in memory of Dorothy McLaren* (London, 1990), 39-67; David Cressy, *Birth, Marriage and Death: Ritual, religion, and the lifecycle in Tudor and Stuart England* (Oxford, 1999), especially chs. 1-4.

¹¹ Will Coster, “From Fire and Water”: The responsibilities of godparents in Early Modern England’, Dianne Wood (ed), *The Church and Childhood* (Oxford, 1994), 305.

enforcing religious conformity.¹² Instead this chapter focuses on baptism's relation to the status and significance of parents, especially fathers. In the fourth and final section I draw out the tension that existed for some parents, male and female, between becoming a parent and becoming a spouse. These cases were often as much an effort to enforce, enact, or reject spousal relationships as parental ones. Through the contestation of these parental/spousal relationships the cultural and moral, if not religious and institutional, similarities between York and Edinburgh can be put into sharper focus.

This chapter develops thinking about the family by focussing on two central ideas. First, that parenthood was socially constructed and negotiated between father and mother, and amongst parishioners, neighbours, and the community. Witnesses such as midwives, neighbours and the courts all assigned parenthood and its responsibilities to those people, men in particular, deemed to be the most likely and appropriate parents. Second, these cases demonstrate parenthood in the late sixteenth and early seventeenth centuries to have been a type of cultural performance, rather than a straightforward or essential state of being. Gowing has shown how 'the assumption that the father was for the mother to name' meant that 'paternity was a real and significant question, and it was defined in several ways. Children could have multiple fathers.' Gowing goes on to state that 'the idea of multiple fathering is more a social than a biological concept: it represents paternity as negotiable and dependent on women's words.'¹³ Thus, within these disputes men and women self-consciously portrayed their behaviour in particular ways to demonstrate their compliance with, or understanding of, the social process and recognition of parenthood. The distinction between biological and social fatherhood, between the "blood" father and the primary male participant in the child's life, is reflected within the narratives presented before the courts.¹⁴ Parenthood can thus be seen as a social and cultural role to be enacted,

¹² John Bossy, 'Blood and Baptism: Kinship, Community and Christianity in Western Europe from the 14th to the 17th Centuries', in D. Baker (ed), *Sanctity and Secularity: The Church and the World*, Studies in Church History, 10 (Oxford, 1973), 129-44.

¹³ Laura Gowing, *Common Bodies: Women, Touch and Power in Seventeenth-Century England* (London, 2003), 181.

¹⁴ Gowing, *Common Bodies*, 181-83; idem, 'Ordering the Body: Illegitimacy and female authority in seventeenth-century England', in Michael J. Braddick and John Walter (eds), *Negotiating Power in Early Modern Society: Order, hierarchy, and subordination in Britain and Ireland* (Cambridge, 2001), 82-83; Crawford, 'Blood and Paternity', 114. Crawford draws a line between early modern notions of

much like respectability, or masculinity and femininity.¹⁵ Judith Butler has demonstrated how gender can be understood as performative, 'that is, constituting the identity it is purported to be'.¹⁶ Parenthood can be understood in the same way.

It could be said that all behaviour is some form of social performance, and that these men and women were merely acting in their own particular ways. However, there was an intent and purpose to the ways that the men and women who contested these cases presented themselves to the church courts. The selection of witnesses, the phrasing of interrogatories, as well as the bringing of cases and the assertion of rights, were part of a self-conscious construction and performance of parental identities for the purpose of the case at hand. This process of conscious self-representation saw the men and women who brought these cases deploy and construct sophisticated social tropes. Ultimately this chapter will address the question: Were attitudes to sexual responsibility and parenthood understood differently within English and Scottish cultures?

Travail, Truth and the Naming of the Father

The court cases I examine often hinge upon the birth as a means for explaining and verifying parental and spousal - or would-be spousal - relationships. Some historians have interpreted male exclusion from the birth-chamber as indicative of male exclusion from the entire birth process.¹⁷ Adrian Wilson in particular argues that men were distanced from the social and physical processes of birth, through the lying-in and up to the point of baptism and the mother's churching, and that male engagement was limited to what 'advice [husbands] could aspire [to]' and any disapproval they

"blood" and legitimate offspring, linking the idea of a "biological" child to inheritance rights and dynastic needs within middling, gentry and elite families.

¹⁵ Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York, 1990); R. W. Connell, *Masculinities* (Cambridge, 1995), 52.

¹⁶ Butler, *Gender Trouble*, 24-5.

¹⁷ Foyster, *Manhood in Early Modern England*, 28-29; Wilson, 'The Ceremony of Childbirth and its Interpretation', 82; Crawford, 'The Construction and Experience of Maternity', 21-23; Bernard Capp, *When Gossips Meet: Women, family, and neighbourhood in early modern England* (Oxford, 2003), 50-51; Adrian Wilson, 'Participant or Patient? Seventeenth century childbirth from the mother's point of view', in Roy Porter (ed), *Patients and Practitioner: Lay perceptions of medicine in pre-industrial society* (Cambridge, 1985), 129-44; Cressy, *Birth, Marriage and Death*, 31-34. Within this text fathers are all but absent, though the account of Isaac Archer's diary does demonstrate a prospective fathers' own fears and anxieties for both wife and child.

might have expressed.¹⁸ Laura Gowing's study of poor women's experiences of illicit birth demonstrates how birth could become a manifestation of social fears regarding illegitimacy, poverty, and social displacement, challenging any assumption about the universality of Wilson's positive and female-centred birth chamber.¹⁹ According to Gowing, men's 'inability to describe the event of childbirth' can be read as a possible starting point for their disengagement from the process of becoming fathers.²⁰ In this account men frequently denied responsibility for illegitimate births as a means to try and retain their respectability and honour.²¹ Patricia Crawford too has shown how paternity and fatherhood were important vehicles for male honour, credit and identity. However, Crawford, whose work does show men to have been involved in the lives of their children, does not situate them in relation to the social and cultural processes of becoming a father; rather she constructs fathers as important cultural symbols in the lives of their children.²² This chapter extends these ideas about fathers by considering the process by which the fathers of bastard children were recognised and made to contribute to the lives of those children. It looks to the legal, social, and cultural dialogue between women, men, and the community that constructed and assigned parental roles and identities.

The affirmation of a child's paternity was central to the narrative reconstruction of illicit births in both Edinburgh and York.²³ Legal, religious and social pressures demanded a paternal presence, in name at least, in the often violently confrontational world of the birth chamber.²⁴ This need to name fathers determined the behaviour of the attendant women, the gossips, the midwife, and the mother. The process of naming and verifying a prospective father during the birth endowed these men with

¹⁸ Wilson, 'The Ceremony of Childbirth and its Interpretation', 73-76, 82. Wilson does note that there was some puritan hostility to this ritual. See also; David Cressy, 'Purification, Thanksgiving and the Churching of Women in Post-Reformation England', *Past & Present*, 141 (1993), esp. 110-11; William Coster, 'Purity, Profanity, and Puritanism: The churching of women, 1500-1700', in William J. Sheils and Diana Wood (eds), *Women in the Church: Papers read at the 1989 Summer Meeting and the 1990 Winter Meeting of the Ecclesiastical History Society* (Oxford, 1990), 377-87.

¹⁹ Gowing, *Common Bodies*, 149-50.

²⁰ Gowing, *Common Bodies*, 171-72.

²¹ Gowing, *Common Bodies*, 182-84.

²² Crawford, *Blood, Bodies and Families*, 116-17.

²³ Patricia Crawford, 'The Construction and Experience of Maternity', 21; Gowing, *Common Bodies*, 159-63.

²⁴ Gowing, *Common Bodies*, 159, 162-63. As Linda Pollock has pointed out some women were very keen to see fathers/husbands in the house if not in the birthing room. 'Childbearing and Female Bonding in Early Modern England' *Social History*, 22:3 (1997), 295.

social, if not always legal, paternity.²⁵ Therefore, it is unsurprising that men are very much present in the church court records that recount births, though not within the birth-chamber. Men like Mathew Ray waited for news of the birth and of the mother, whilst others like John Green visited the mother, Elizabeth Fawkener, 'within a week or a fortnight next after the birth' even while denying their paternity.²⁶ These men may not have been able to describe the event of childbirth, or offer advice to the mother, but they were becoming fathers. John Green provided a nurse, the deponent Dorothy Lost, for his son at a cost of one shilling a week 'and after those 30 weeks endid the said John Greene came...for the same child & toke it from this ex[amina]te & carried it away him self'.²⁷

Pregnancy and paternity disputes were somewhat rare in the consistory court of York, constituting only nineteen percent of matrimonial cases, eleven suits in total (see Figures Three and Six). However, the Archdeacon's Visitation recorded six presentments for bastardy in 1598 and five in 1613 (Table Two), suggesting that some mothers chose not to pursue their child's father in court, perhaps indicating that these couples reached informal agreements either to fund the child, or to marry. Perhaps those fathers were already married or promised, and perhaps they were already being pursued through other courts, such as the quarter sessions. The Foul Discipline Book records twenty-six presentments concerning the paternity of a child constituting three to four percent of activity before the St Cuthbert's session but fifteen percent of matrimonial presentments (Table One and Figure Seven). The birth process presented in these cases was about legitimacy both with regard to parenthood and marital status. These births were recounted and constructed as a part of matrimonial cases in which women attempted to ensure a marital or financial settlement. These were cases in which informal negotiations of parental and spousal responsibility had broken down; they come out of consistory court and Kirk session proceedings in which, for whatever reasons, one or both parties were attempting to enforce a formalisation of parental and/or spousal roles.²⁸ These rare cases are exceptional to the extent that the people involved may not have entered into or employed the legal system under any

²⁵ Crawford, *Blood, Bodies and Families*, 117.

²⁶ Borthwick, York, CP. G. 3246, 1593. John Green visited Elizabeth Fawkener 'within a week or a fortnight next after the birth'.

²⁷ Borthwick, York, CP. G. 3246, 1593.

²⁸ Bernard Capp, 'The Double Standard Revisited: Plebeian women and male sexual reputation in early modern England', *Past and Present*, 162 (1999), 75, 79, 83.

other circumstances. They show men and women of middling and lower status making important choices and decisions regarding the repercussions of their sexual interactions.

Having said this, we should not suppose that Mathew Ray was not anxious about the health of Janet Pearson or her child, and that other men in similar cases were not similarly concerned. But men like Ray were also no doubt aware of their precarious position should they be named as fathers, particularly since that naming could lead to a matrimonial prosecution, as both Gowing and Foyster have observed.²⁹ Capp articulates this connection, stating that a man would 'agree to marry if his partner found herself with child, and this mutual understanding lay behind the willingness of many young women to commence a full sexual relationship before the marriage ceremony.'³⁰ Thus Ray would have been anxious that witnesses would describe him as both the father of Janet Pearson's child and her contracted husband, as was implied in the deposition of Margaret Smith when she stated that he 'dyd resorte and come almost dayly to her fathers house as a sowter to her for marriage for foure yeares'.³¹ Indeed it could be considered telling that Mathew was pacing in the Minster with Halliland, and that Janet was aware of his whereabouts, despite her 'great payne'.

Women relied on the processes of naming and verifying fathers to affirm or recapture their respectability, to situate their sexual encounters within existing, spousal, relationships. However, some women were unable to use this process to reaffirm their status. These women could not name fathers for numerous reasons, most prominent of which were the fear of violent reprisal and the fact that the encounters were non-marital.³² In Edinburgh Margaret Gresone in March 1609 felt the full weight of social and religious pressures when she was 'baneisch[ed]... furth of the paroschen be Ressoune yat [she] hes fallin relapse in fornication and culd never get ane sayer to ye bairnis nayer ye first tyme nor ye last'.³³ This reflects the Kirk's preoccupation with

²⁹ Gowing, *Common Bodies*, 185; Foyster, *Manhood in England*, 121-24. See also Crawford, *Blood, Bodies and Families*, 124-30. All but two of the York paternity cases discussed within this chapter were prosecuted as marital disputes.

³⁰ Capp, 'Double Standard Revisited', 75.

³¹ Borthwick, York, CP.G.2308, 1587, Defamation: Janet Pearson c. Mathew Ray.

³² Capp, 'Double Standard Revisited', 79-83. Though, as Capp also observes, a number of women also used the threat of a paternity allegation to extort money from men, both fathers and innocents.

³³ NAS, Edinburgh, CH2/718/2, f. 349a, 22 March 1609.

the need for a male authority figure in the lives of women and children. Three years later in April 1612 Margaret Dalyell also felt the weight of social censure for her ‘sclanderous behaueiour ... fathering hir bairne upon thrie sundrie men’.³⁴ Dalyell was sexually connected to three men who she could have viably named as father to her child. She was put in the joggis – or stocks – with a paper on her head proclaiming her fault. In addition to this, her ‘sclanderous behaueiour’ was cried throughout the west port of the city. While Margaret Gresone was held culpable because she ‘culd never get ane sayer to ye bairnis’, Margaret Dalyell was held culpable because she could name too many possible fathers, ‘thrie sundrie men’. It turned out the third and most commonly reputed father of the child, Alexander Symson, was ‘absent and fugitive’.³⁵ Her account could neither be confirmed nor denied. Her child still lacked the necessary connection to male authority and economic stability.

In all of the York paternity cases, the narratives of the birth and the naming of the father focused on the mother’s pain, travail, labour, and in many cases near death. The deponents in these cases invoked the ideas of torture, truth, and redemption to substantiate the paternity claims made by unmarried mothers. In the church courts the narrative of pain could become a narrative of penitence and redemption. This idea is present in the diaries of elite women who consciously constructed these types of redemptive narratives for themselves, as in the case of Alice Thornton.³⁶ The imaginative links between pain and truth in such texts help us think about the birthing imagery within the cause papers.³⁷ This is exemplified in the 1593 case of Elizabeth Fawkener who proclaimed John Greene to be the father of her child only after she had, according to her midwife

travill[ed] of child bearing... from Thursday in shroving week ... until Wednesday then next... [when] the said Elizabeth was delivered of a man child, during all which time of hir aforesaid travill this ex[amina]te saith that the same Elizabeth was in great & extreame payne & in great danger of hir life, ... & at the verie time when the said Eliz was in all ther opinions in greatest paine & more like to have died presentlie then to have lived longer she the said Eliz, did in the hearing of this ex[amina]te & many others ...affirme upon hir salvacion , &... at gods hands that John Greene the hatter of Yorke

³⁴ NAS, Edinburgh, CH2/718/3, f. 47, 23 April 1612.

³⁵ NAS, Edinburgh, CH2/718/3, f. 47, 23 April 1612.

³⁶ Sharon Howard, ‘Imagining the Pain and Peril of Seventeenth-Century Childbirth’ *Social History of Medicine*, Vol. 16 (2003, 3), 373.

³⁷ Gowing, *Common Bodies*, 159-61.

was the father & begetter of thar child where so she then travilid , &
no other person in the world...³⁸

In 1598 Isabella Newt similarly drew upon the imagery of pain, exertion and suffering when she deposed that Mary Jackson, was 'in extremities of her travell & childsbirth [when she] charged ... John Lunde to be the father of her child'.³⁹

The pain and travail of the mother in these depositions endowed her with credibility: who in such pain and at the brink of death could lie or make a false accusation of paternity? Numerous witnesses, themselves women who had suffered the pain of childbirth, vouched for the truth of these women's declarations.⁴⁰ Midwives, gossips and neighbours who attended the labouring mother, played a crucial social and legal role in watching and witnessing the birth. These women then became a part of the social record of a birth, acting as living proof of the occasion. Within the Pearson/Ray case this connection between truth and pain was demonstrated in the lines

... neyther as the said witnesses and others then and ther present dyd
then or yet thinke... the said Janet [could] or would make a lye or
speake slanderously in such tyme of her danger, but spoke truly, and
justly in that behalf⁴¹

In the narratives of these births, shaped perhaps by the Protestant emphasis on a good death, the closeness of the struggling mother to divine judgement made her falsity all the more unlikely.⁴² The process of witnessing, bearing out truth, was vitally important to the veracity of these women as mothers naming and verifying the fathers of their children.⁴³

In addition to describing the behaviour of the mothers, the women present spoke of the demeanour of a prospective father. For example Dorothy Lost deposed that John Greene 'showed him self as kind to her [Elizabeth Fawkener] as if he had bene hir husband' when he had visited her.⁴⁴ Depositions such as this gave weight to the

³⁸ Borthwick, York, CP.G. 3246, 1593

³⁹ Borthwick, York, CP.G. 3052, 1598

⁴⁰ Gowing, *Common Bodies*, 160-61; Capp, 'Double Standard Revisited', 76.

⁴¹ Borthwick, York, CP.G. 2308. 1587.

⁴² Sarah Mendelson and Patricia Crawford, *Women in Early Modern England, 1550-1720* (Oxford, 1998), 196-97; Lucinda McCray Beier, 'The Good Death in Seventeenth-Century England', in Ralph Houlbrooke (ed), *Death, Ritual and Bereavement* (London, 1989), 46. See Lucinda M. Becker, *Death and the Early Modern English Woman* (Aldershot, 2003).

⁴³ Gowing, *Common Bodies*, 166-70.

⁴⁴ Borthwick, York, CP.G. 3246, 1593. Dorothy Lost was the mistress of the house in which Elizabeth was staying and gave birth.

testimony of women who asserted relationships, and often some form of marriage, with the men they named. They established men's spousal presence in women's and their children's lives. Such testimony situated men within relationships as suitors, lovers, fathers and spouses.⁴⁵ The witnesses brought forward by these women could exploit the possibility that some form of matrimonial settlement had taken place, thereby vouching for the legal status of the child's paternity.⁴⁶

It was through a woman's behaviour in childbirth, through her suffering and exertion within labour that she, through her witnesses, could claim truth and honesty in her narrative.⁴⁷ In contrast the Edinburgh session records do not contain this narrative of pain and truth. The session was more concerned with a verbal process of accountability, with the midwives' ascription of parental responsibility. The narrative of birth and the naming of the father within the Edinburgh session minutes was a much less bodily narrative.

The minutes of St Cuthbert's session shed light on the tensions that arose for those women who did not want others, the session in particular, to know of their situation. Within this source there is a far greater tension between the need for verification and the need for anonymity than is evident in the York church courts, where women chose to pursue the fathers of their children. Within the session midwives and the men and women connected to the births that resaved or lodged a pregnant woman, were made the primary focus of enquiry rather than the words or efforts of the mother herself. Thus in 1589 and 1591 midwives Jonet Fleact⁴⁸ and Catherine Moriesoune⁴⁹ were made to undergo public punishments for allowing women to give birth under their supervision without notifying the Kirk. Instead of becoming advocates of the mother's cause, these Scottish midwives needed to present themselves as the eyes and ears of the session. Their continued practice within the city was dependant on their

⁴⁵ Gowing, *Common Bodies*, 115-6; Adair, *Courtship, Illegitimacy, and Marriage*, 72-76, 79-80

⁴⁶ Crawford, *Blood Bodies and Families*, 118; Foyster, *Manhood in England*, 158-61, on the power of female gossip and the impact this could have had on men.

⁴⁷ OED, 'http://dictionary.oed.com/cgi/entry/50256781?query_type=word&queryword=travail&first=1&max_t o_show=10&sort_type=alpha&result_place=1&search_id=VwJa-9oPhIT-11769&hilite=50256781' (27 October 2006). 'I. 1. Bodily or mental labour or toil, especially of a painful or oppressive nature; exertion; trouble; hardship; suffering.', '4. The labour and pain of child-birth. Phr. *in travail*'

⁴⁸ NAS, Edinburgh, CH2/718/1, f. 114, 12 December 1589.

⁴⁹ NAS, Edinburgh, CH2/718/1, f. 158, 3 December 1591.

compliance with the moral code of the Kirk.⁵⁰ This is similar to the practice in England whereby midwives were licensed by the church, and were expected to report bastard children and ascertain the fathers thereof⁵¹

In late 1589 Jonet Fleact had taken in Margaret Hakkie after Robert Walker and his wife had brought her

... out of robert burralis hous on ane barrow and brocht hir to Jonet flechtis hous under the Wall in this parochin scho being with barne and it nocht being knawin quha is the fader yairof

Fleact was careful to report that her own behaviour had conformed to the expectations of the Kirk, presenting her involvement in the episode as having been entirely proper. She had taken 'petie' on Margaret Hakkie,⁵² but still claimed to have 'demandit quha susteinit hir ... damandit quha was ye father of hir barine And in quhat bounds hir barne was gittin and quhome scho was in service with for ye tyme.' Jonet Fleact duly reported all those who had been involved with Margaret Hakkie, and the Kirk went on to pursue and chastise Margaret as well as Robert Walker, Jonet Stewart and Robert Burrall.

Two years later Catherine Morisone was more reticent about naming the men and women present at the birth of Marioun Piers's child. Yet she too made it clear that she had asked all the questions a good midwife should.

[S]cho denyet that scho knew ony of thur names bot andro davidsonne feichit hir on horse bak in the nycht to ye said women quha was deliverit sone efter hir coming and scho askit hir name and the name of the man and qr fra scho cam [which] sch wald nocht tell hir bot scho understandis the bairne was taine to Leyth to ... ane baxteris hous⁵³

Andro Davidsonne eventually confessed that David Chirmsyd was the child's father. Both parents were revealed to have been in the service of elite families of the burgh, Marioun Piers for Lady Swontoun, and David Chirmsyd for an unspecified 'duik'.⁵⁴

⁵⁰ Leneman and Mitchison, *Sin in the City*, 51; Margo Todd, *The Culture of Protestantism in Early Modern Scotland* (London, 2002).

⁵¹ Gowing, *Common Bodies*, 157-63; Mendelson and Crawford, *Women*, 314-18; Cressy, *Birth, Marriage, and Death*, 63-70. Notably midwives should have been presented before the Visitation in cases of illicit birth, and whilst many do appear in the church court records as witnesses in paternity suits, none were presented before the Archdeacon's Visitation in either 1598 or 1618.

⁵² Ingram, *Church Courts, Sex and Marriage*, 288-89. This pity was also common in English narratives of a concealed or illicit birth, as seen in Ingram.

⁵³ NAS, Edinburgh, CH2/718/1, f. 158, 3 December 1591.

⁵⁴ I have found neither of these employers in the records of the burgh.

Both Morisone and Fleact were warned to be more careful in their midwifely duties in future, and both were expected to comply more readily with the disciplinary structures of the session.

Similarly in York the Archdeacon's Visitation sought out and punished those men and women who were known to harbour women with suspicious and potentially illegitimate pregnancies.⁵⁵ In 1613 Henry Haybourn of Holy Trinity parish in Micklegate was brought before the Visitation for harbouring Isabel Palmer als Elizabeth Raper and allowing her to give birth in his house without knowing, or apparently asking, who the father of the child was. Also that year Tristram Fletcher and William Mayson of St Crux parish were disciplined 'for omittinge to present a woman who bore a child in fornication.'⁵⁶ Some of these men may have been acting out of Christian charity, taking pity on women who were often ostracised from their homes and parishes. However, Dave Postles has demonstrated how certain men presented before the Middlesex Visitation may instead have been acting in their own economic interests, operating a black market of sorts in young, pregnant women and their babies. These men may have facilitated the forced migration of young women whose pregnant state was too shaming to allow them to remain within their own communities, forced out by masters and families.⁵⁷ The Visitation in this respect could act in much the same way as the session, by monitoring the wilful transgression of church morality. Both institutions sought out reported and reputed behaviours and disciplined those suspected of lewd and incontinent living, and those who promoted such behaviour.⁵⁸ Those men and women who took pity on, or advantage of the young, impressionable, and pregnant in both cities were made to, outwardly at least, conform to the moral standard. Yet, the persistent reoccurrence of these episodes in

⁵⁵ Borthwick, York, YV/CB 1, Archdeacon Visitations, 1598; YV/CB 2, Archdeacon Visitations, 1613. See also Kenneth Fincham (ed), *Visitation Articles and Injunctions of the Early Stuart Church*, Volume 1 (Woodbridge, 1994), 55-69.

⁵⁶ Borthwick, York, YV/CB 2, Archdeacon Visitations, 1613.

⁵⁷ Dave Postles, 'Surviving Lone Motherhood in Early-Modern England', *The Seventeenth Century*, 21:1 (2006), 160- 83.

⁵⁸ Fincham (ed), *Visitation Articles and Injunctions*, 60-61. The fifty-first Article of Archbishop Tobie Matthew's 1607 Visitation asked, 'Whether the said archdeacon or others as aforesaid have ... censured or absolved any person or person which have by law incurred the sentence of excommunication ... *either for solemnising or being present at any marriages the banes not asked, nor any lawful licence obtained, or for fighting, quarrelling or brawling, or drawing any weapon with purpose to strike in any church or church-yard*' [italics my own]. Richard H. Helmholz, 'Harboring Sexual Offenders: Ecclesiastical courts and controlling misbehaviour', *Journal of British Studies*, 37 (1998), 258-68.

the records of both York and Edinburgh indicated that there were those men and women who put their own standards of neighbourly behaviour before those of the church, or who had something to gain from assisting these poor women, perhaps financial reward.

The men and women at the centre of the illicit births in the Edinburgh minutes, like Marioun Piers and David Chirmsyd, were often in no position to marry, because they were still in service and without the means to establish their own households. For these men and women raising the children themselves was not a viable option. Therefore they sought out intermediaries, midwives and householders operating below the visibility of the Kirk and Visitation, to accommodate them during the birth and lying-in.⁵⁹ The session in Edinburgh was much more pro-active about seeking out couples with illegitimate children than the intermittent York Visitation or consistory court.⁶⁰ Yet, in both Edinburgh and York midwives were held accountable for the regulation of the birth chamber, for eliciting the name of the father in cases where paternity was in question, and for testing the truth and honesty of the mother when she did produce a name.⁶¹ Those midwives who failed to enact this role sufficiently faced the loss of their livelihoods. The attendant women and male householders who facilitated illicit births were also held to account for their complicity, acting as witnesses, providing both the chronology and context of the birth. However, the legal context of these births was strikingly different in Edinburgh and York. Within the York church courts these few women actively pursued the fathers of their children. To do so they needed to present their version of the truth and substantiate their claims legally. Within the Edinburgh it was not mothers pursuing fathers, but the Kirk seeking out sin that brought these men and women before the session. Within these cases the mother almost vanishes as the elders sought to regulate the broader community, the community that facilitated the pregnant mother and the absent father.

⁵⁹ Cressy, *Birth, Marriage, and Death*, 77-79.

⁶⁰ Only a very small handful of cases (three) were Office suits, initiated by the courts as opposed to Instance cases, which were initiated by individuals. None concerned illegitimate pregnancies. Borthwick, York, CP. G. 985, 1563, Matrimony: office c. Edward Burrell; D&C 1608/8, Immorality: Office c. Christofer Metcalfe; D&C 1609/15, Immorality: Office c. John Davyes songman of York Minster.

⁶¹ The licensing of midwives and their need to ensure the correct father had been named. Repercussions for this including loss of licence, as well as fines. See: Crawford, 'The Construction and Experience of Maternity', 21; Gowing, 'Ordering the Body', 53-55; Cressy, *Birth, Marriage and Death*, 63-9; Bernard Capp, *When Gossips Meet: Women, Family, and Neighbourhood in Early Modern England* (Oxford, 2003), 300-06.

Playing the Good Parent

The engagement of the community, the role of neighbours and midwives as witnesses, went beyond the birth process, and spoke for more than the paternity and legitimacy of a child. The surveillance of the community monitored men and women as parents and families, and produced a social recognition and record of their behaviours, good and bad.⁶² The behaviour of the good parent was thus open to neighbourly, ecclesiastical and civic enquiry.⁶³ The conduct of the bad parent was linked to the idea of secrecy.⁶⁴ This is most evident in the early modern construction of infanticide, which linked the concealment of birth to the mother who intended to harm her offspring.⁶⁵ Witnesses made events that could be perceived as illicit or dangerous transparent, and the populations of both cities were aware of this connection. Thus some parents seem to have gone out of their way to demonstrate, to perform to an audience of neighbours, the proper forms of parental concern and the most appropriate parental behaviour.

In Edinburgh in 1591 Bessie Lumisdail, an apparently unmarried mother, ensured that numerous witnesses, 'thomas burnesydis wyf ... allesone messie thomas hillis wyf and bessie fairssiead ... and ane John Lyle maltman understud [her] bairne to be seik and saw it die'.⁶⁶ Following the morning service Bessie and these four witnesses,

desyrit ... to gang to the Kirk yaird wt ye deid bairne ye qlk desyre thay did and gaid to ye gray freirus ... bot returnitt bak agane and brocht ye bairne to thamas burnesydis hous ... [whose] wyf wald not Let yame in ye hous agane bot ya war constranit to lay ye said deid bairne down at ye dure [of Grey Friars] because it wes Laitt and thay could not come to yis Kirk wt it yt nyt

⁶² Amussen, *An Ordered Society*, 100-1.

⁶³ Todd, *Culture of Protestantism*, 312-13.

⁶⁴ Gowing, *Common Bodies*, 151ff.

⁶⁵ Laura Gowing, 'Secret Births and Infanticide in Seventeenth-Century England'. *Past & Present*, 156 (1997), 87-115; J. R. Dickinson and James Anthony Sharpe, 'Infanticide in Early Modern England: The Court of Great Sessions at Chester, 1650-1800', in Mark Jackson (ed), *Infanticide: historical perspectives on child murder and concealment, 1550-2000* (Aldershot, 2002), 35-51; Deborah A. Symonds, *Weep Not for Me: Women, ballads, and infanticide in early modern Scotland* (University Park, Pa., 1997); Anne-Marie Kilday, 'Maternal Monsters: Murdering mothers in south-west Scotland', in Yvonne Galloway Brown and Rona Ferguson (eds), *Twisted Sisters: Women, crime and deviance in Scotland since 1400* (East Linton, 2002), 156-189; Garthine Walker, 'Just Stories: Telling Tales of Infant Death in Early Modern England', in Margaret Mikesell and Adele F. Seeff (eds), *Culture and Change: Attending to early modern women*, (Newark (DE), 2003), 98-115.

⁶⁶ NAS, Edinburgh, CH2/718/1, f. 158, 3 December 1591.

This parade not only became a communal ritual enacting the appropriate motherly concern for a dead baby, but also a communal practice of mourning.⁶⁷ Lumisdail was protecting her reputation as a mother and ensuring that when her case, an enquiry into the circumstances of the infant's death, went before the session there was support and sympathy for her cause. She could emphatically assert that she had not committed infanticide. Not only was Lumisdail playing the role of a good and proper mother, but she was also making the death of her young child a socially accountable event.⁶⁸

Even legitimate mothers needed witnesses to their births. A married woman like Isobel Girne, in 1591 needed to call on her midwife and local women to attest to the premature birth of her child in a bid to prevent her child being labeled a bastard, her husband a cuckold, and herself a 'huir'.⁶⁹ She claimed to have conceived soon after her marriage and to have given birth prematurely. She preempted the involvement of the session and the possibility of public penance for pre-marital sex by going to the session herself

to try the treuth anent hir mariage wt george cunninghame the baptissing of hir bairne, and tyme that the same wes borne qlk scho alledgeit and affermit ... to be borne befoir ye deiu tyme.⁷⁰

Indeed Girne's efforts did ensure that her

meidwyfe deponit ... be hir axperience ... yat ye said bairne wes borne befoir dewtyme and forder ye haill witnesses depones be relatioun of ye moder of ye bairne and vyers yat scho gat ane hurt be lifting of an cattell qlk maid hir to prevent ye diwtyme of hir birth⁷¹

Thus the midwife was not only able to corroborate Girne's narrative, but was also able to offer a cause for the premature birth, her 'hurt be lifting of an cattell'. In both cities for women to be perceived as good mothers they had to be seen to be enacting the roles expected of them, to perform their maternal concern in such ways that they not only safeguarded their own reputations, but also those of their children, spouses, households, and parishes.

⁶⁷ Todd, *Culture of Protestantism*, 332-33. Bringing the child to the sacred space of the Kirk yard was an important signifier of parental grief.

⁶⁸ Cressie, *Birth, Marriage, and Death*, 76.

⁶⁹ NAS, Edinburgh, CH2/718/1, f. 157, 4 December 1591.

⁷⁰ NAS, Edinburgh, CH2/718/1, f. 157, 4 December 1591.

⁷¹ NAS, Edinburgh, CH2/718/1, f. 157, 4 December 1591.

In Edinburgh anyone found to have engaged in pre-marital sex, no matter how long ago or whether they had subsequently married, was required to perform some form of penance.⁷² This practice is less clearly traceable in the York sources I have examined, though the presentments before the Archidiaconal Visitation indicate that there was a concern about women who bore bastard children. These women, like their Scottish counterparts, would have been made to answer for their sexual incontinence. They would have performed penance for their sin, appearing bare-headed, bare-legged, in a white sheet before the congregation, acknowledging and repenting their sin.⁷³

Through her actions, Issobel Girne preserved her household from the charges of bastard bearing, cuckoldry and whoredom. For others these three categories were invoked in the heat of verbal skirmishes.⁷⁴ As Chapter Two has shown, the family and household was a prime focus for defamatory language. Defamation was a means by which individuals could participate in the regulation and policing of social relationships.⁷⁵ This becomes evident in the 1615 York defamation case of Alice Dixon versus Anne Tippin, both of St Margaret's parish, Walmgate, in which

... she the said Alice Dixon told [Anne Tippin] that she was as honest a woman as she was, nay quothe ...[Anne] that yow are not, for yow , (speakinge to Alice) was with barne before yow were married, and so was not I, then quothe the said Alice Dixon Then, ... have it a bastard, then said this r[esp]ondent[Anne] Chuse thee whether thou will have it a bastard or a mangrell ...⁷⁶

This argument was about more than Alice Dixon's choice to have a 'bastard or a mangrell' for a child. It was about motherhood, marriage, and honesty. The accusation of bastardy, or particularly of bearing a 'mangrell', evoking the animality discussed in Chapter Two, questioned the aura of legitimacy that surrounded Alice's family. Alice Dixon's status and authority as a married mother and her husband's status as a respectable patriarch within his own household were brought into question. By making her child a 'mangrell' Anne Tippin turned Alice Dixon into a figurative 'bitch', with all the relevant sexual associations.⁷⁷ As Gowing and Walker have demonstrated, cases such as this encompassed not simply sexual but also domestic

⁷² Todd, *Culture of Protestantism*, 160-61

⁷³ Ronald A. Marchant, *Church Under the Law* (Cambridge, 1969), 137-39, 141-45

⁷⁴ Gowing, *Domestic Dangers*, 85-87.

⁷⁵ See Chapter Two, 'Familial and Household Order'.

⁷⁶ Borthwick, York, CP.H. 1152, 1615 St Margaret's Parish, City of York.

⁷⁷ See Chapter Two, 'Animal Insult'.

concerns and reputations, as women contested their relative 'honesty'.⁷⁸ Cases contesting paternity, and asserting relationships between parents could also concern the good name of families, in potentially precarious social positions.⁷⁹ Defamation cases such as this highlight the awareness that existed in early modern cities of the need for social accountability. They emphasise the degree to which the status of parents was dependent on how they were perceived by others within their locale or parish.

The connection between social, sexual, and domestic status is exemplified in a 1621 case from the Edinburgh session involving Margaret Wilie and Marioun Abernathie. At the market cross Wilie had called Abernathie a 'witche and yt hir Bairne was not hir gudemans bot ... Daniell young[s]'.⁸⁰ This insult went beyond the accusation of pre-marital fornication by Anne Tippin. This slander spoke of the much more serious crime of adultery, punishable by death under the 1563 Act though this punishment was rarely, if ever, implemented.⁸¹ This was a demeaning and hurtful slander, impugning not only Abernathie, but also her 'gudeman', and her child. This slander struck at the foundations of the family, and could have led to divorce.⁸² Its cultural significance is emphasised by the punishment Wilie received for spreading false rumours. In late November 1621 she was to,

mak satisfioun to ... [Marioun] vpoun ye kingis hie striet befor manie elderis and deaconis ... and ask ... [Marioun] forgivenes [and] gif ever ye lyk be said agane yair sall be ane paper upun hir haid or severall at ye Kirk dure vpoun ye lord his sabboth⁸³

Wilie's punishment was akin to that of others who had impugned the good name of a family: the public apology.⁸⁴ The act of begging forgiveness upon the 'kingis hie striet

⁷⁸ Gowing, *Domestic Dangers*, 85; Walker, *Crime, Gender and Social Order*, 97.

⁷⁹ Foyster, *Manhood in England*, 153-55; As Gowing points out litigation was a very important weapon in cases of slander and in those cases where reputations were at stake, *Domestic Dangers*, 133-36.

⁸⁰ NAS, Edinburgh, CH2/718/4, f. 89, 15 November 1621.

⁸¹ Leah Leneman, *Alienated Affections: the Scottish experience of divorce and separation, 1684-1830* (Edinburgh, 1998), 6-9; W. D. H. Sellar, 'Marriage, Divorce and the Forbidden Degrees: Canon law and Scots law', in W. N. Osborough (ed), *Explorations in Law and History: Irish Legal History Society Discourses, 1988-1994* (Dublin, 1995), 60-62, 71-4. See also the following Chapter on separation and divorce.

⁸² It was very much the intention of the Kirk to settle any problems and reconcile couples where possible. However in those extreme cases of violence, long-term abandonment, and otherwise irreconcilable differences, for example persistent adultery, the Kirk was willing to allow divorce. This will be dealt with in more detail in Chapter Five. Todd, *Culture of Protestantism*, 180-9; Leneman and Mitchison, *Sin in the City*, 133-35.

⁸³ NAS, Edinburgh, CH2/718/4, f. 89, 15 November 1621.

⁸⁴ Todd, *Culture of Protestantism*, 149-55; Graham, *Uses of Reform*, 293

before manie elderis and deaconis' made Margaret Wilie an object of public scorn. Further infractions would have compounded her notoriety with additional parading, the wearing of 'ane paper upun hir haid', and posters proclaiming her behaviour to the entire parish and burgh.

Of course, it was not just women who instigated defamation cases. Men named as fathers sued women for defaming their good name and for depicting them as the type of man who would neglect their social and financial duties. These tensions are emphasised in the 1587 York case of Walter Jones against Alice Hill, in which

[t]he said Alice Hill beinge with childe... named diverse persons to have begotten the same in adulterie at the last before [diverse] honest and credible persons she affirmed that the said Walter Johnes parson of St Michaels had begotten the said child of her bodie⁸⁵

Jones sued Hill for defamation in an effort to both retrieve his own reputation from the association with Hill's sexual permissiveness, and to avoid the weighty financial pressures that the city could impose on fathers to support both mother and child. The social pressures on Walter Jones were especially pronounced because he was parson of St Michael le Belfry, in the heart of the city.⁸⁶ For a man of his standing the association with an illegitimate or illicit child was particularly damaging.⁸⁷ Unfortunately for Jones, Hill's claim was upheld by the court and rather than retrieving his good name he was indeed found to have fathered her child, giving her the legal basis to pursue him for the associated costs, both financial and social. Alice Hill could have pursued him for maintenance, not only through the parish, but through the Justices of the Peace in the wake of a 1579 adultery act.⁸⁸

Here we see another difference between Edinburgh and York. In York the emphasis was on individuals to pursue their own cause and seek an appropriate resolution or restitution through the consistory courts. Whilst there were presentments before the Visitation, these were administrative courts acting in the interests of the ecclesiastical

⁸⁵ Borthwick, York, CP.G. 2309. 1587, Defamation: Walter Jones c. Alice Hill

⁸⁶ This is unlikely to be the same Walter Jones that featured prominently amongst the Vicars Choral, as he died in 1577, according to Marchant, *Church Under the Law* 151-52, 155-56.

⁸⁷ On the clergy as focus of slander, Steve Hindle, 'The Shaming of Margaret Knowsley: Gossip, gender and the experience of authority in early modern England', *Continuity and Change*, 9: 3 (1994), 391-419; Gowing, *Domestic Dangers*, 114; Ingram, *Church Courts, Sex and Marriage*, 110-11; Foyster, *Manhood in England*, 61-61; Capp, *When Gossips Meet*, 195; idem, 'Double Standard Revisited', 89.

⁸⁸ Thomas, 'The Act of 1650 Reconsidered', 267.

hierarchy, monitoring the efficacy of the clerical infrastructure in addition to the behaviour of the community. In Edinburgh the Kirk took direct responsibility for enforcing and policing social and financial obligations within the parishes and communities of the burgh through the session and its council of lay elders. Men and women could report suspect behaviour and individuals to the session without necessarily incurring the costs they would under the York system. The permanence of the session, as opposed to the annual round of Visitations in York, saw it establish a more central role in the popular legal culture of the city. In all these cases men and women used these legal forums to shape and define the roles of parents according to both religious and communal expectations.

Baptism and the Duties of Parents

Social concern about illegitimacy and the responses those concerns generated throughout this period should not be underestimated or diminished. In both York and Edinburgh the proliferation of unwed mothers and bastard bairns was seen as a sign of the decay and corruption of morality.⁸⁹ In December 1594 the Edinburgh Burgh Council passed a statute concerning the

greitt number of bastard bayrnis cassin upoun the tounis handis, that ...the parents... of the saidis bastards borne within this toun sall ather be citat before the Sessioun of the Kirk or ... magistrat for their offence... [and shall] immediatly fynd an responsibill burgess of this toun caution... that thair said bastard bairne or baynes sall nocht be burdenabill... to the guid toun in ony way.⁹⁰

In England sentiment such as this, concerned with the social and communal impact of illegitimate children, was expressed in tracts such as William Clarke's *Triall of Bastardy* (1594).⁹¹ However, the House Books record the generosity of the York authorities in providing for those parents and children who did struggle.⁹² Illegitimate

⁸⁹ Gowing, *Common Bodies*, 171 ff, and 'Ordering the body', 52-53.

⁹⁰ *Extracts from the records of the burgh of Edinburgh: AD 1589 to 1603*, (Edinburgh, 1927), 125. [Hereafter, *Ed. Recs. II*]

⁹¹ William Clerke, *The Triall of Bastardie: That part of the seconde part of Policie, or maner of Gouvernement of the Realme of England: so termed, Spirituall, or Ecclesiasticall* (London, 1594), 47-51.

⁹² For example: Angelo Raine (ed), *YCR*, Vol. 6-9 (York, 1946), Vol. 8, 93, 14th February 1589/90, 'William Inglis of St Cuthbertes parishe in respect of his three poore children shall have vj d. weekelie by the collector of Monkward'; 94, 4 March 1590, 'Jane Haiton, laite wife of William Haiton, which William was laitelie robbed and murdered by thevees shall have xij d. weelkie for the releiving of six poore children in Belfrayes parishe'; 100-1, 4 May 1590, 'Robert Thruscroft, cobler of Alhallos parishe

parents, mothers in particular, generated fears about their inability to cope, mentally and physically, but most significantly financially.⁹³ When both work and food were scarce - as was often the case in both Edinburgh and York during these sixty-five years – tensions inevitably arose when the ‘unworthy’ or even ‘sinful’ were seen to benefit from their own folly.⁹⁴

Within Scotland baptism was a means by which to draw in children and parents to the moral and spiritual practises of the Reformed Church, making a type of “Protestant” parenthood.⁹⁵ Within both Edinburgh and York baptism was an important means by which to shape and confirm the religious practice of the population. It was a key element in the fight against recusancy and religious dissent. Yet, baptism was also an occasion at which parishes could monitor more marginal members of their community, in particular the young and the impoverished.⁹⁶ Attitudes to illegitimate pregnancies shaped the conduct of men and women for a distinct period during courtship, pregnancy, and in the early life of the child. However, whilst the rhetoric of illegitimacy became less of a threat to the lives and status of these women as their children grew, the suspicion or knowledge of bastardy could feed into modes of insult in social interactions.⁹⁷

In the eyes of both the English and Scottish churches the most recognised social cause and effect of illegitimacy, aside from sin and sex, was poverty.⁹⁸ Baptism was one

on the payement shall have vj s. viij d. of the common chamber towards placing of his iij children at London in service and not to troble this cittie anymore’.

⁹³ Gowing, *Common Bodies*, 117; Adair, *Courtship, Illegitimacy and Marriage*, 227; Paul Griffiths, *Youth and Authority: Formative Experiences in England* (Oxford, 1996), 263; Ingram, *Church Courts, Sex and Marriage*, 234-37.

⁹⁴ Gowing, *Common Bodies*, 117.

⁹⁵ On baptism in Scotland see: Karen Cullen, ‘Baptism to Marriage Ratios and the Reliability of Late-Seventeenth Century Scottish Parish Registers’, *Local Population Studies*, 76 (2006), 15-30; Jane E. A. Dawson, ‘“There is Nothing Like a Good Gossip”: Baptism, kinship and alliance in early modern Scotland’, in Christian J. Kay and Margaret A. MacKay (eds), *Perspectives on the Older Scottish Tongue: A celebration of DOST* (Edinburgh, 2005), 38-47; A. Ian Dunlop, ‘Baptism in Scotland after the Reformation’, in D. Shaw (ed) *Reformation and Revolution: Essays presented to the Very Reverend... Hugh Watt*, (Edinburgh, 1967), 98; Richard Kyle, ‘The Major Concepts in John Knox's Baptismal Thought’, *Fides et Historia*, 21:1 (1989), 20-31.

⁹⁶ Todd, *Culture of Protestantism*, 266-67.

⁹⁷ Adair, *Courtship, Illegitimacy and Marriage*, 89-90. J. A. Sharpe, *Defamation and Sexual Slander in Early Modern England: The church courts at York*, Borthwick Papers no. 58 (York, 1980). 25-28; Laura Gowing, ‘Gender and the Language of Insult in Early Modern London’ *History Workshop Journal*, 35 (1993), 1-21.

⁹⁸ Steve Hindle, *On the Parish? The Micro-Politics of Poor Relief in Rural England c. 1550-1750* (Oxford, 2004), 194-95; William Coster, *Baptism and Spiritual Kinship in Early Modern England*

means by which to attach economically precarious mothers and children to stable moral and financial networks, to fathers.⁹⁹ However, the surveillance of the churches was not limited to single and illegitimate parents. The minutes of the session reveal a concern and interest in the behaviour of legitimate, but morally questionable, and perhaps abusive, parents.¹⁰⁰

Thus men and women needed not only to *be* good parents, but also to publicly perform the roles of good parents to an audience that comprised their neighbours, parishes, and elders. The Scottish Kirk placed the role of the family and parents at the forefront of the baptismal ceremony and the future spiritual life of the family with the minister reading the lines

ye that be fathers and mothers may take hereby most singular comfort to see your children thus received into...Christ's Congregation, whereby ye are daily admonished, that ye nourish and bring up the children of God's favour and mercy... so ought it make you diligent and careful to nurture and instruct them in the true knowledge and fear of God, wherein if ye be negligent, ye do not only injury to your own children, ... but also heap damnation upon yourselves, in suffering His children, ... for lack of knowledge, to turn back from him.¹⁰¹

Soon after these lines were read the focus of the ceremony turned onto the father, requiring that that he provided moral surety for the child and 'declare here before [God, and in] the face of His Congregation, the sum of that Faith wherein ye believe, and will instruct this child'.¹⁰² The father then read, or recited from memory, a lengthy passage that demonstrated his understanding of his relationship with God and with the Church, so as to demonstrate that he was well equipped for his role as a moral and spiritual, as well as social, head of house. In those cases where a father could not be found or could not be named a godfather could take on this role,¹⁰³ becoming in the eyes of the Kirk the moral, spiritual, and social, if not biological, father of the child in question.¹⁰⁴ Coster notes that in the Scottish sacrament there was

(Aldershot, 2002), 41; Todd, *Culture of Protestantism*, 266-67, 291; Ingram, *Church Courts, Sex and Marriage*, 286-87; Sharpe, *Defamation and Sexual Slander*, 24-25.

⁹⁹ Coster, *Baptism and Spiritual Kinship*, 41; Todd, *Culture of Protestantism*, 266-67, 291.

¹⁰⁰ Todd, *Culture of Protestantism*, 266-67 and 302-10.

¹⁰¹ G. W. Sprott and T. Leisham (eds), *Book of Common Order and the Directory of the Church of Scotland* (Edinburgh, 1868), 139.

¹⁰² Sprott and Leisham (eds), *Book of Common Order*, 139.

¹⁰³ Dunlop, 'Baptism in Scotland', 98; William Coster, *Baptism and Spiritual Kinship in Early Modern England* (Aldershot, 2002), 85.

¹⁰⁴ Gowing, *Common Bodies*, 181-4.

no place for the godmother.¹⁰⁵ This is no doubt influenced by the injunction against women either preaching or administering the sacraments.¹⁰⁶

In Edinburgh participation in the act of baptism was not only one of the fundamental ways in which parents, especially fathers, could show themselves to be good parents,¹⁰⁷ but was also significant to both married and unmarried parents as it affirmed that children were under the protection of God and the parish and were purged of the original sin inherent in the human condition.¹⁰⁸ The Scots Kirk considered it to be the primary duty of parents to instruct their children in the faith, by so doing preserving that child from evil through a relationship with the word of Christ.¹⁰⁹ In an era of such high childhood mortality this was the very first act of good parenting that a mother and father could enact.¹¹⁰ Indeed the Kirk even insisted that baptisms generally be performed within a week of child's birth, preferably at the following Sunday service,¹¹¹ though there was some flexibility allowed for poorly bairns, concern for whom out-weighted even the Kirk's concern for protocol.¹¹² For parents the rite of baptism vouched safe the child's immortal soul,¹¹³ and for the Kirk it maintained good order.¹¹⁴

Yet, many of the men and women who presented children to be baptised were considered by the Kirk to be woefully ignorant of the meaning and value of the sacrament.¹¹⁵ Time and time again the Edinburgh session ordered fathers who were too illiterate or ignorant to enact the ritual to learn 'what is baptism',¹¹⁶ instruction

¹⁰⁵ Coster, *Baptism and Spiritual Kinship*, 85

¹⁰⁶ J. D. C. Fisher, *Christian Initiation: The Reformation Period* (London, 1970), 119-20. This injunction was initiated, in part, to prevent midwives hastily baptising desperately ill new borns, see Dunlop, 'Baptism in Scotland', 98.

¹⁰⁷ Todd, *Culture of Protestantism*, 119-25. It was generally fathers, not godparents, who were to hold their children up for baptism in Scotland. Adair notes that in England 'the great majority of bastard children were baptised reasonably soon after birth'. Adair, *Courtship, Illegitimacy and Marriage*, 215.

¹⁰⁸ Sprott and Leisham (eds), *Book of Common Order*, 137; Dunlop, 'Baptism in Scotland', 87; John Jr. Witte and Robert M. Kingdon, *Sex, Marriage, and Family in John Calvin's Geneva*, Vol. 1, 'Courtship, Engagement, and Marriage' (Grand Rapids, 2005), 31.

¹⁰⁹ Dunlop, 'Baptism in Scotland', 88, 90. See also Todd, *Culture of Protestantism*, 120-21.

¹¹⁰ Todd, *Culture of Protestantism*, 119 and 122. For York see, D. M. Palliser, *Tudor York* (Oxford, 1979), 115-121.

¹¹¹ Dunlop, 'Baptism in Scotland', 95.

¹¹² Todd, *Culture of Protestantism*, 121-22.

¹¹³ Todd, *Culture of Protestantism*, 119.

¹¹⁴ Dunlop, 'Baptism in Scotland', 95.

¹¹⁵ Todd, *Culture of Protestantism*, 120-21.

¹¹⁶ NAS, Edinburgh, CH2/718/2, f. 56, 1 September 1597.

that was also urged upon the mother. For example, Thomas Duncan in 1597 gave a forty-shilling pledge that he would do as commanded and learn the meaning of the sacrament,¹¹⁷ as did Thomas Shaw in 1590¹¹⁸ and Jon Dick in 1611.¹¹⁹ All these men were called upon to enact their roles as fathers and learn the meaning of baptism as well as the words that they would have to perform at the service. They were to fully comprehend the significance of their future secular and spiritual roles as parents. In so doing these men, and often women, affirmed their commitment to their child and Kirk. Most of these parents, men especially, capitulated to examination, first in front of the minister, and then in front of the congregation.¹²⁰ Such parents were also allowed to elect a master or person of 'good life' to enact the sacrament on their behalf, vouching for them as parents, and becoming overseer to the raising of their child.¹²¹ Thus parenthood in the reformed Scottish model, and as enforced in the St Cuthbert's session, was a didactic process in which men, and occasionally women, were instructed as to their spiritual and cultural duties.

The Edinburgh authorities, in their somewhat zealous efforts to see both children and their mothers looked after, exerted pressure on reluctant men to become fathers to children considered to be theirs, and even to marry the mothers of those children. This, for instance, was the case for George Taddoche and his servant Millie Cok in early 1591.¹²² The Kirk insisted that they marry, fining the couple and instructing them to perform public penance for their sins. Robert Glen, who confessed he had 'carnalie daile wt marioun symmervell bot confesses the bairne is not his', was ordered in March 1596 'to get a fayther to ye bairne or ells ye bairne be his'.¹²³ Within this case ideas about fornication, parenthood, and discipline intersected. It demonstrates the insistence of the Kirk that social not biological fathers be involved in the lives of their children that they participate spiritually and financially in the upbringing of their offspring.

¹¹⁷ NAS, Edinburgh, CH2/718/2, f. 56, 1 September 1597.

¹¹⁸ NAS, Edinburgh, CH2/718/1, f. 151, 29 September 1591.

¹¹⁹ NAS, Edinburgh, CH2/718/52, f. 165.

¹²⁰ Todd, *Culture of Protestantism*, 121.

¹²¹ *Ed. Recs. II*, 125.

¹²² NAS, Edinburgh, CH2/718/1, f. 125, 27 February 1591.

¹²³ NAS, Edinburgh, CH2/718/2, f. 42, 10 March 1596.

In a similar case in 1605 John Loche ended up becoming father to Katherine Newbigging's child after six months of denials and negotiation. Having claimed John, and no other man, to be the father of her child, Katherine pursued him through the St Cuthbert's session. After two and a half months of denying paternity John conceded on 6 June 1605 that, 'gif scho cannot get ane vyer fayther to ye bairne qn it is borne he sall be ye fayther of it and beptize ye bairne.'¹²⁴ Yet it was not until 5 September that,

in ye presens of all ye sessioun y foirsaid katherene wt ye bairne in hir armes offerit it to ye foirsaid Johne as ye fayther ... upoun ye qlk ye foirsaid John ressavit ye bairne and promisis to hald upe ye bairne to be baptisit and traine upe ye bairne not burdenying ye foirsaid katherene yairwith

Loche was pressured to take on the spiritual and financial obligation of a child that was deemed to be his, to 'traine upe ye bairne not burdenying ye foirsaid katherene yairwith', alleviating Katherine Newbigging of the economic and social burden of lone parenthood. It is, however, an interesting coda that throughout this case both parties were being pursued for fornication with other people, and two weeks after Loche accepted the child, for 'relapse' in fornication with each other.

Coster argues that whilst late medieval baptism in England 'acknowledged bonds of natural kinship, the legal affinity and sexual consubstantiality between parents and the 'blood' tie of consanguinity to the child.... The effect of religious reform, between 1549 and the 1650s, was to erode this symbolism' of "natural" and "spiritual" parenthood.'¹²⁵ Throughout his study Coster endows parents with this 'blood' tie to the child. Within these cases the Kirk was not concerned with finding 'natural' or 'biological' fathers, but in finding male authority figures to participate in and account for the raising of a child, that participation often being financial. Arrangements were made that allowed mothers some assistance in the social and financial burdens of parenthood. In all these cases the Kirk was vigilant in their surveillance ensuring that any future infringement of their ordinances made would be noticed and acted upon. The presbytery network, a network that could efficiently chase a debt of money or penance over vast distances, sought lax fathers out. Todd cites one Aberdeen case in which a pregnant woman sought the assistance of her local presbytery in obtaining

¹²⁴ NAS, Edinburgh, CH2/718/2, f. 194, 6 June 1605.

¹²⁵ Coster, *Baptism and Spiritual Kinship*, 51.

financial support from her husband. They successfully prevented him joining his ship until he had returned her dowry and ensured her future financial security¹²⁶

Following the establishment of this connection of children to fathers through baptism, the burgh authorities supported the Kirk's efforts to encourage good parental practice, reinforcing the role of fathers as providers for, and protectors of, their children and families. Indeed fathers such as Alexander Uwesteane in May 1597 were exempted them from their 'monethlie contributioun to the pair swa lang as he sall susteyne... [his] bayrnis' when they could not financially cope with their obligations to both family and community.¹²⁷ At the opposite end of this spectrum Hew Westoun, merchant, was committed to ward in the west tollbooth in February 1596 for having 'done wrang in putting his lawful bayrnes furth of his hous under nicht and refusing thame thair necessar sustenance'. The burgh authorities highlighted his parental neglect when they ordered him to 'tak thame hame and susteyne thame as he aucht to do.'¹²⁸ In these cases the burgh supported the Kirk in its moral, familial and financial aims, enforcing and relieving payments to the poor, and punishing those men and women who did not properly care for, nurture and sustain their children as they 'auch to do.'¹²⁹

The 1563 Canongate case of John Roger, whose wife had 'afoir in drunkennes smoirit twa former bernis', shows that mothers too were monitored for dangerous and abusive behaviour.¹³⁰ In this case the burden of parental as well as husbandly duty was reinforced with John Roger being told in no uncertain terms that 'gif he be negligent in keeping of this [third]... bairn, that they [the elders] will persew him as ane common motherar [murderer] of children'. In this case the mother was ordered to stay away from her last surviving child because she was perceived by the session to be a danger to it. It then became the responsibility of her husband, John Roger, not only to enforce this order of exclusion, but also to protect his child from its mother.

¹²⁶ Todd, *Culture of Protestantism*, 306.

¹²⁷ *Ed. Recs. II*, 188.

¹²⁸ *Ed. Recs. II*, 151.

¹²⁹ Todd, *Culture of Protestantism*, 304-6, 309-10. For the Scottish poor laws after this period see, Rosalind Mitchison, *The Old Poor Law in Scotland: The experience of poverty, 1574-1845*, (Edinburgh, 2000).

¹³⁰ Alma B. Calderwood (ed), *The Buik of the Kirk of the Canagait* (Edinburgh, 1961) 78. December 2 1564.

Through baptism the culture of the Reformed Kirk was indelibly linked to the family. Baptism was the medium through which children were made a part of the Kirk and the occasion at which the faith of parents could be examined and affirmed.¹³¹ Yet good parenting in Edinburgh did not just entail having the child baptised. It also required the parent's continuing role as an educator, teaching the significance of God and the Church of God in the life of that child.¹³² Particularly in the middle of this period baptism was a means by which the Kirk could initiate a lasting relationship, not only with children, but also with their parents, because baptism legitimised the relationship between mother and father, and father and child, connecting the familial unit through the medium of religion.¹³³ Baptism was a social linking of parents to child, a display of care.

It is also in the sacrament of baptism that we can see a major disparity in the reformed practice of England and Scotland.¹³⁴ In the Scottish sacrament of baptism the direct, or 'natural', family of the child was made the focus of the event, the service reiterating the familial structure of the relationship with God, Christ, and the Kirk. As Coster has observed, Calvin and Knox found godparents to be 'superfluous' and 'offensive'. Both men focussed the ceremony on the 'natal' family. The imagery of God the Father that was central to the language of the service also acted to reinforce the relationship between the parental father and his child, a connection that was echoed in the relationship between God and his congregation.¹³⁵ The preface to the *First Book of Discipline* opened with the admonition that the 'humble servitors and

¹³¹ Todd, *Culture of Protestantism*, 119-20.

¹³² Sprott and Leisham (eds), *Book of Common Order*, 139.

¹³³ The relationship between parents was ideally one based on marriage, however it does seem that the Kirk could accept irregular arrangements so long as the interests of all parties were served and any appropriate penance had been served and performed. See Calderwood (ed), *The Buik of the Canagait*, 38-9 and 76-101. See especially pages 38-39, and the case of Duncane Menzeis, who had three children with Jonet Barron over an eight year period and made it clear that 'I mad nocht the said Jonet promis, nour will, nour marie hir'. The child was resaved on the condition that both Menzeis and Barron complete their penance and that they get a 'faythfull manis hand' to hold up the child.

¹³⁴ William Coster, 'From Fire and Water': The Responsibilities of Godparents in Early Modern England', in Diana Wood (ed), *The Church and Childhood*, Studies in Church History, Vol. 31 (Oxford, 1994), 304. Coster who observes that Calvin and Knox found godparents to be 'superfluous' and 'offensive' points out this difference in Baptismal practise. On the connection between Calvin and Knox see: Bryan D. Spinks, *Reformation and Modern Rituals and Theologies of Baptism: From Luther to Contemporary Practices* (Aldershot, 2006).

¹³⁵ Coster, *Baptism and Spiritual Kinship*, 84-5. Calvin's use of the rhetoric of God the father in Baptism, and Knox's use of godfathers though godmothers were absent.

ministers of Christ Jesus..., wish grace, mercy, and peace from God the Father of our Lord Jesus Christ...'.¹³⁶ In John Knox's advice to families he advised wives 'as the church is subject to Christ, even so be thou subject to thy husband in all lawfull things'.¹³⁷ This service did employ godparents, but their role was to witness to the ceremony rather than to form any lasting duty or tie to the child.¹³⁸ Occasionally Scots godparents were expected to observe and ensure the proper behaviour of parents, but this was only in the most extreme cases.

Within the English baptismal service there was a very different impetus and focus. As William Coster has observed, the role of the godparent was, in theory at least, hugely significant with the 'spiritual facet of parenthood... assigned outside of the natural family.'¹³⁹ Within English baptism a socially recognised mode of *pro-parenthood* was established that drew on kin and extended family networks to contribute to the spiritual upbringing of children.¹⁴⁰ The process of baptism in the English context provides a much less concrete gauge of the expectations of fatherhood *per se*, but it does open up an understanding of parental roles. In the Scottish sacrament the father provided surety before God; in the English sacrament the godparents, of both sexes, fulfilled this function.¹⁴¹

In the English sacrament neither parent could have attended the baptism prior to 1564. Coster has stated, 'fathers were extraneous to the major part of the late medieval baptismal ceremony, as they did not enter the church with the rest of the family. Mothers should not have been present at all.'¹⁴² Even in the services of the Reformed English church, when after 1564 fathers were allowed to attend and when they were at least mentioned in the liturgy, '[the father's] role in the ceremony was unclear.'¹⁴³ This ambiguity of the father's role is reflected in the records of the York consistory

¹³⁶ James K. Cameron (ed), *The First Book of Discipline* (Glasgow, 2005), 85.

¹³⁷ Knox, *Works*, 3: 536. 'The Confession of faith, conteining how the troubled man should seeke refuge at his God... Compiled by M. Henry Balnaues of Halhill, ...,' 1584.

¹³⁸ Calderwood (ed), *The Buik of the Canagait*, 76-101.

¹³⁹ Coster, "From Fire and Water", 301.

¹⁴⁰ Coster, "From Fire and Water", 301; E. N. Goody, 'Forms of Pro-Parenthood: The sharing and substitution of parental roles', in J. Goody (ed) *Kinship, Selected Readings* (London, 1971), 331-45.

¹⁴¹ Coster, "From Fire and Water", 302-3.

¹⁴² Coster, *Baptism and Spiritual Kinship*, 65. The absence of the mother is for the most part explained by the process of lying in. This accounts for the absence of mothers in most of the English Baptismal material, and in a significant but lesser number of Scottish records.

¹⁴³ Coster, *Baptism and Spiritual Kinship*, 67; Cressy, *Birth, Marriage and Death*, 149-50.

court in which cases of contested paternity rarely, if ever, mentioned baptism. However, as Coster has also demonstrated, the ceremony did set out the natural parent's 'primary duty to protect the child 'from fire and water and all other dangers''.¹⁴⁴

As seen earlier in this chapter, the instance cases initiated within the York church courts were concerned with proof of paternity and the subsequent financial provision for the child and mother. Of less concern was the familial incorporation in the godly community that accompanied the Scottish sacrament. Within the English Church the religious and moral education of the infant child was considered to have been the primary responsibility of the godparents,¹⁴⁵ the minister concluding the service by reading

As much as these children have promised by you [the godparents] to forsake the deuil and all his works ... you must remember that it is your partes and duties to see that these infants be taught, so soone as they shall be able to learne, what a solemne vowe, promise and profession they haue made by you. And that they shall knowe these things the better, you shall call upon them to heare sermons, and chiefly you shall prouide that they may learne the Creede, the Lords prayer, and the ten commandments in the English tongue...¹⁴⁶

However, Coster has shown this spiritual parenthood was something of an inconvenience and failure.¹⁴⁷ In practice mothers and fathers, the primary carers for children, would have seen to all aspects of their child's education, and it was only in the rarest cases, as in Edinburgh, that godparents would have been called to perform any actual form of 'parental' duty. Coster has even in called into question their active and voluntary involvement in extreme cases of parental neglect or absence.¹⁴⁸ It appears that the cultural significance of godparents lay in their status as signifiers of social networks, kin ties and patronage. As Cressy has argued 'godparentage

¹⁴⁴ Coster, "From Fire and Water", 302.

¹⁴⁵ Coster, "From Fire and Water", 302; idem, *Baptism and Spiritual Kinship*, 76, for the theological origins of this; Cressy, *Birth, Marriage and Death*, 150.

¹⁴⁶ Church of England, *The Booke of Common Prayer, and administration of the sacraments, and other rites and ceremonies in the Church of England*, (London, 1596), 'Publique Baptism'.

¹⁴⁷ Coster, "From Fire and Water", 310.

¹⁴⁸ Coster, "From Fire and Water", 302 and 306-7.

established, or re-established links of fictive kinship and social and spiritual interest among parties of several generations.’¹⁴⁹

Many of the words and ideas that constituted the baptismal ceremony in York and Edinburgh were the same: both rituals called on those present to instruct the child in question in the spiritual and communal practices of the religion and church. Yet, the ceremonial symbolism, the cultural enactment of the sacrament differed. Whilst the English ceremony retained the language of the Church as family and ‘God the father’, this rhetoric was not employed in the same way as the Scottish Kirk. Rather than reflecting natal family relationships, and bearing out a model for familial relations, the English ceremony was more directly focused on the child and its distinctive relationship with the godly, religious, community. This relationship was formed without the mediation of the ‘natural’ parents. These were replaced with spiritual surrogates in line with more established, medieval, baptismal practice.¹⁵⁰ This relationship, which called on spiritual kin as well as the natal family to perform certain ‘parental’ duties, is one other way of reading and understanding the socialisation of parental roles in early modern society. Within the religious context English parenting contained an important element that could be entirely devoid of biological association to the child.¹⁵¹ However, the ideals of the Church did not sit easily with the practicalities of early modern life, or the intent and needs of parents, and by the early seventeenth century there was increasing concern for parents acting as godparents to their own children.¹⁵²

There is so little evidence of parenthood being actively invoked through the medium of baptism in the York consistory court in the ways that it clearly was in the Edinburgh session, that it is extremely difficult to use baptism to illuminate the roles of men as fathers in England. However, there are some very important observations to

¹⁴⁹ Cressy, *Birth, Marriage and Death*, 156, 155-60. Cressy also argues that gentry diaries do demonstrated this to have ‘formed part of a matrix of Kinship and clientage’, arguing that there was a somewhat larger role played by these godparents than Coster credits.

¹⁵⁰ Coster, “From Fire and Water”, 305.

¹⁵¹ Coster, “From Fire and Water”, 301.

¹⁵² Coster, *Baptism and Spiritual Kinship*, 90-1. This pressure to abandon godparents altogether became increasingly more pronounced after 1640, with numerous pamphlets produced on the issue in the second half of the seventeenth century, see pages 91 ff. Coster, “From Fire and Water”, 310, concludes with a problematisation of the role of the godparent, observing that ‘the distinction between natural and the spiritual kinship, meant that godparents were not so much a part of the natural kinship system, as in opposition to it’

be made when comparing baptism in Edinburgh and York. By no means should parental exclusion from the sacrament of baptism be taken to read a lack of fatherly or motherly involvement in the spiritual lives of their infant offspring. Indeed, Cressy has demonstrated the role baptism played in affirming social and spiritual networks between parent and godparent.¹⁵³ Yet, as Coster reminds us, it was first and foremost the parents, especially in families of low social status, who saw to the basic education of their children. The apparent fatherly involvement in the spiritual lives of their infant children in Edinburgh, and the increasing trend in England over this period to act as godparent to one's own child, in addition to puritan and Calvinist debates concerning the relevance of godparents at all, suggest that some, perhaps many, parents in England followed the example of their northern neighbours and actively and willingly bore the burden of their child's moral and spiritual development themselves. Coster describes the relationship between parent and child as a 'natural, biological connection' that godparenting was increasingly unable to compete with. This chapter argues that parenting itself can be understood without this connection to the biological, that it was the social recognition and performance of the parental relationship that attributed the title of parent to men and women. Those men who could not be certain of their biological paternity, or who were reluctant to accept the legal implications of that biological connection, could be recognised as fathers through the enactment of social and cultural relations with their children.¹⁵⁴

The Tension Between Becoming a Parent and a Spouse

In York and Edinburgh the associations between sex and marriage generated a tension for some men concerning their social or legal recognition as a parent and/or spouse to the mother of their child. This tension highlighted the gap between ecclesiastical and legal intent and social practice. These men may not have chosen to become parents, and may have hesitated to accept that theirs was the name called in the extremities of a woman's labour. They may also have been dislocated from their social standing through the process of being named as fathers.¹⁵⁵ But sometimes that did not prevent

¹⁵³ Cressy, *Birth, Marriage and Death*, 155-60; Louis Haas, 'Social Connections Between Parents and Godparents in Late Medieval Yorkshire', *Medieval Prosopography*, 10:1 (1989), 1-21.

¹⁵⁴ Coster, "From Fire and Water", 310.

¹⁵⁵ Shepard, *Meanings of Manhood*, 169-71; Foyster, *Manhood in England*, 121-25; Anthony Fletcher, 'Manhood, the Male Body, Courtship and the Household in Early Modern England', *History [GB]*, 84: 275 (1999), 419-436. See also, Connell, *Masculinity*, 108.

them from taking on the financial and social facets of that role. What some of these men were unwilling to take on was a wife.

The most striking of these cases is the 1609 York Dean and Chapter case between Nicholas Bovell and Isabell Wilson. In his deposition Bovell stated that Wilson had been

delivered of child man to this r[esp]ondent... and did report him to be the father thereof in the presence and hearing of Ric Wells and Wm Mosey in whose presence this r[esp]ondent then as now he doth denieth himselfe to be the father therof¹⁵⁶

And yet Bovell readily conceded that he had offered

if she would give him ... the said child he would use meanes for the bringing upp therof in respect of her paines [but] because the said Isabell was most fitting & willing to bring upp the said child, he gave her the child againe and was content before the witnesses aforesaid to pay to her viijd weekly

Nicholas Bovell, a carpenter and freeman of the city,¹⁵⁷ was unwilling to accept his biological paternity. Yet he was willing to enact the social and financial roles of father to the child. Bovell was not retreating from his duty as a father, but was removing himself from any spousal association with the 'man' child's mother, Isabell Wilson. He asserted that any monies, gifts or kindness shown Isabel Wilson had been 'in consideracon of the paines she [Isabell] had with ... this r[esp]ondent in the tyme of his sicknes being visted with the plague and not for anie other porpose or consideracon'. This case demonstrates the tension in the minds of men who did not want to become spouses to the mothers of their children, men who denied biological fatherhood but were willing to concede modes of social fatherhood by accepting a financial connection or obligation to the child.¹⁵⁸ Interestingly, the apparently legitimate son of Nicholas Bovell went on to become a carpenter and freeman of the city like his father, though this may have been another child.¹⁵⁹

¹⁵⁶ Borthwick, York, D&C 1609/14

¹⁵⁷ Francis Collins (ed), *Register of the Freemen of the City of York*, 'http://www.british-history.ac.uk/report.asp?compid=48282' (27 October 2006). Nicholas Bovell is recorded as having become a freeman of the city in 1586.

¹⁵⁸ Crawford, *Blood, Bodies and Families*, 127. Gowing, *Common Bodies*, 160, 181-83.

¹⁵⁹ Collins (ed), *Register of the Freemen of the City of York*, 'http://www.british-history.ac.uk/report.asp?compid=48282' (27 October 2006). Only legitimate offspring could be admitted as freemen, thus this may be another male child of Bovell. Palliser, *Tudor York*, 147.

This situation has echoes in the 1597 matrimonial case brought by Margaret Slater against Thomas Pashbie, in which Thomas admitted sexual interaction with Slater, his former servant,¹⁶⁰ and even acknowledged his biological paternity, conceding '[he] had carnall knowledge of the bodie of the said margarete Slater and begot her with childe which was and is publike true manifeste and famous.'¹⁶¹ Thomas chose to enact his financial and social roles as a father by taking on and bringing up Margaret Slater's child, deposing that he 'haith adopted and bringeth upp [the child] at his chargies.' In this case Thomas Pashbie was in no way retreating from his fatherly responsibilities, rather he was retreating from any spousal connection to Slater, his former servant, whom he asserted to be 'in love with an other at suerbie'. Despite the potential marriageability of servants in middling to lower status households, as illustrated in the previous chapter, these two cases demonstrate the other side of the social and sexual story, whereby female servants became sexual but not marital objects.¹⁶²

Some men simply would neither accept biological or social fatherhood. In the 1568 York case of Jane Harland versus Jacob Rowntree it was determined that as

Jane is a very powr woman and haithe but a powr man to her father
And the said James is a Riche man and haithe a Riche father ...[he
was] moore able to fynd the said childe then ... Jane¹⁶³

Rowntree had turned his back on both Harland and 'the said childe beinge a boye', so she needed to initiate a case within the consistory court to compel him to either take her child or marry her, in either case alleviating the financial burden that was bankrupting her family, and would eventually have fallen on the parish. In cases such as this one the question needs to be asked, how 'powr' was Jane Harland? Bringing a case such as was not a cheap enterprise, and Harland's narrative does not account for her provision of that cost. Was she funded by the parish, by her 'powr' father, or by some other means? Was Harland's narrative of poverty constructed as a means to extricate her from an unwanted motherhood, a means to relinquish her child, or to establish a valid and acceptable narrative of financial, charitable, need?

¹⁶⁰ Adair, *Courtship, Illegitimacy and Marriage*, 83; Amussen, *An Ordered Society*, 159-60.

¹⁶¹ Borthwick, York, CP.G. 2982, 1597.

¹⁶² Meldrum, *Domestic Service and Gender*, 100ff; Fletcher, *Gender, Sex and Subordination*, 219; Amussen, *An Ordered Society*, 159-61.

¹⁶³ Borthwick, York, CP.G. 1422, 1568.

In all these cases the practice of paternal, maternal and spousal, relationships were social performances in which men and women displayed particular behaviours and constructed narratives of interaction. These cases highlight the spectrum of parental and spousal involvement that men and women were willing to engage in. Like those men in Edinburgh who participated in the baptism of their child, but refused to engage in anything other than a sexual relationship with the mother of that child, we should not assume that these York fathers did not wish to interact with their children. Rather, these men faced moral, financial and social pressures that made it necessary for them to show caution and to be discrete in the face of a paternity accusation, as Shepard reminds us '[p]aternity suits were a particular source of anxiety' for early modern men.¹⁶⁴ These cases push us to consider the sexual and cultural contexts of parenthood, the meanings of the sexual interactions discussed in the previous chapter, and the physical and material legacy of sexual encounters.

Conclusion

The different judicial concerns of York and Edinburgh were at times, and in some of these cases, pronounced. Two of the most extreme cases, those of Margaret Dalyell in Edinburgh, and Walter Jones versus Alice Hill in York, highlight the different cultural and institutional responses to the problems of illegitimacy and verification in each city. It is striking that the Edinburgh response to Margaret Dalyell was both extremely public and enacted on behalf of the 'community' via the medium of the Kirk and civic authorities working in tandem. In York, Walter Jones needed to pursue his own case against Alice Hill thereby generating her infamy and a possible penitential sentence before the community and congregation. These cases illuminate the contrast between the different institutional and ecclesiastical structures adopted within each city to monitor and regulate social and sexual transgression.

In both cities there was a judicial and cultural understanding of the pressures related to becoming, or being named as, a parent. There was certainly a degree of pragmatism in some responses to illicit and illegitimate birth. In Edinburgh the extreme punishments of banishment and excommunication were only taken after persistent and

¹⁶⁴ Shepard *Meanings of Manhood*, 169. See also, Gowing, *Common Bodies*, 184-86; Ingram, *Church Courts, Sex and Marriage*, 302.

wilful failure to conform to reformed ideals. In contrast, for women such as Margaret Gresone and Isobell Girne the Kirk provided a forum in which they could perform their good behaviour and make a lasting and legitimate account of their moral and cultural compliance. In York women used the courts in an effort to compel the legal and social recognition of male parental responsibility. The admission of sexual activity and social fatherhood that features in these cases illustrates how the courts were used as a forum through which informal arrangements for the financial care of children were made formal, as we saw in the case of Nicholas Bovell and Isabell Wilson. The courts were a forum through which mothers could press passive or reluctant fathers to become active, as was the case for both Jacob Rowntree and Walter Jones.

The most striking difference in the enactment of parenthood in each city is illustrated through the uses of and reaction to baptism. This was a central spiritual and social ritual in both cities, but it was only in Edinburgh at this time that it was so closely linked to the duties of parents, fathers in particular. This ceremony illuminates the social and religious tensions surrounding parenthood. It served as a means of uniting the religious community, and could form the basis for either preserving or attacking individual and household honour. Responses to baptism also illuminate some very important and personal reactions from individuals as they became parents. This ceremony highlights the ways that relationships in the burgh were constructed and understood, both by the participants in those relationships – father, mother and child – and by the Kirk. But it also shows how fraught those relationships could be in a society so dominated by its Kirk. The lack of this sort of symbolic and functional ceremony in England, specifically linking parents, fathers, to children is a gap that cannot sufficiently be filled, even by the outstanding work that has been done on spiritual kinship. Yet by comparing and linking the Scottish and English experiences of baptism one can begin to reassess how the natal family was constructed and understood in early modern England and Scotland, and how roles such as parenthood can be reinterpreted and re-evaluated.

Despite these differences there were distinct similarities in attitudes to parenthood in each city. Illegitimacy was condemned and allegations of fornication and adultery were defamatory and damaging to both Alice Dixon in York and Marioun Abernathie

in Edinburgh. Yet these two women both sought to regain their social capital in particular legal and culturally specific ways. Alice Dixon pursued Anne Tippin through the courts, whilst Marioun Abernathie relied on the pressure of the Kirk to gain a public apology from Margaret Willie. In both cities notions of paternity and maternity were assigned to men and women through other people's perceptions. Elders, midwives, and neighbours assigned certain types of parenthood to men and women on the basis of perceived and reported behaviours. The understanding of what made a 'good' parent thus impacted on the social process of being a parent.

The social and economic consequences of acknowledging the paternity of a child led some men to refuse the position of either biological or social father. Other men, however, admitted a biological connection but refused a social one, or accepted a social or financial connection but denied a biological one. The behaviour of these men forces us to re-examine our naturalised understandings of fatherhood. These men may have felt trapped or obliged to take on their parental roles, but this does not detract from their social and cultural significance. As Gowing has observed 'Men might go a long way in the public acknowledgement of their paternity as long as they were not bound by formal or legal commitments.'¹⁶⁵ The apparent willingness of some men to become fathers should remind us that not all women wished to become mothers and that women too experienced an uneasy tension between the biological evidence of parenthood, and the social, economic, and religious performance of the family.¹⁶⁶ These cases serve to enrich our understandings of certain types of early modern parenthood. They shed light on the modes of representation employed by institutions and people to encourage conformity and integrate difference. The fear of illegitimacy was ingrained in early modern understandings of motherhood, because illegitimacy evoked transgressive sexual activity and the disruption of household and social order. Yet the association with illegitimacy struck at the heart of both male and female reputations inextricably linking the two, as all illegitimate children were connected to both a mother and father in some way. Both sexual and parental reputations were fundamentally subject to the judgment of onlookers.

¹⁶⁵ Gowing, *Common Bodies*, 184.

¹⁶⁶ Stephen Wilson, 'The Myth of Motherhood a Myth: the historical view of European child-rearing', *Social History [London]*, 9:2 (1984), 181-98.

Marriage 'Family' and Social Control: Breakdown, Dissolution and Interruption of Relationships

In July 1574 the General Kirk of Edinburgh recorded the case of Jonet Lambe and Johnne Johnsoune. One Adam Moscrop made a complaint against the couple to prevent them from completing the banns of matrimony, banns apparently initiated some time previously, declaring 'yat ye said Jonet was marit upone ane Johne Kar xx yeir synne or yairby quha Remanit to gidder ye space of ten yeiris and yit he being of lyfe.'¹ Lambe professed that she was 'of veritue', but confessed that she had been in contact with John Karr 'ane yeir synne and mair and persewit him for devoursment befoir ye Comissaris of ye beschope of Duryame, and culd get na end theirof'. Lambe's desire to form a lasting legally recognised partnership with a new husband, Johnne Johnsoune, brought her informal separation from her former husband into the open and necessitated a divorce. It is telling in this case that Jonet insisted that she had 'persewit him for deuorsement' in Durham, under the substantially more costly English legal system, though only doing so some years after the apparent dissolution of the marital household. Yet, Lambe also conceded that whilst her first marriage had been solemnised some twenty years previously she and Karr had only 'remanit togidder ye space of ten yeiris'. Lambe and her second husband, Johnsoune were remitted to the magistrate of the burgh and ordered to give up their 'pretendit mareige'.

This case not only breaches the physical border of England and Scotland, Jonet Lambe being presented in Edinburgh but having petitioned for divorce in Durham, but also reveals the contrasting social, religious, and cultural operation and breakdown of marriage in England and Scotland. This case allows us to consider the different processes of legal separation and divorce in England and Scotland, which was for many couples of middling to lower economic and social status prohibitively expensive. Interestingly it was under Scottish law that a woman could remarry after a divorce, so long as she had not committed adultery. In England divorce often entailed

¹ NAS, Edinburgh, CH2/450/1, f. 13, July 1574; 'Extracts from the Buik of the General Kirk of Edinburgh in the years 1574 and 1575', *Miscellany of the Maitland Club*, Vol. 1 (Edinburgh, 1833), 103-4.

a legal separation or annulment rather than a marital dissolution, and did not facilitate remarriage in the same way as its northern neighbour. Yet, this case demonstrates that divorce was by no means the first option for those marriages that could no longer be sustained in either country. The legal dissolution of a marriage, either through separation from bed and board (*a mensa et thoro*) or divorce (*a vinculo*), required the participation of both parties in both England and Scotland providing proof that the marital union was irretrievably lost. Divorce, in particular, was virtually impossible to obtain under English law, which required proof that the marriage had been void from the outset.² Whilst from 1563 Scottish law did facilitate divorce in cases of adultery on the part of either husband or wife and as of 1573 the law was extended to cover desertion and irreconcilable abandonment,³ it was still costly and rare in the sorts of middling and plebeian households that form the basis of this study.⁴ Yet, cases such as *Lambe v. Johnsone* provide a means by which to begin to see how marriage breakdown and reconciliation worked in law and in practice.

As we have seen, each city conceived of the household as a central unit of social and political order. In both Edinburgh and York a variety of civic and ecclesiastical institutions were employed to reconcile warring couples and prevent court action; family members, kin and the elders and ministers of the Kirk and church sought to reconcile broken relationships through arbitration and negotiation.⁵ In both countries cases such as *Jonet Lambe's* that appeared to pursue legally sanctioned divorce were the exception. Men and women instead made informal separations, separations that

² Tim Stretton, *Women Waging Law in Elizabethan England* (Cambridge, 1998), 29; Joanne Bailey, *Unquiet Lives: Marriage and marriage breakdown in England, 1660-1800* (Cambridge, 2003), 31; Lawrence Stone, *Broken Lives: Separation and Divorce in England 1660-1857* (Oxford, 1991); idem, *Road to Divorce: England 1530-1987* (Oxford, 1990).

³ J. Irvine Smith, 'The Transition to the Modern Law', *An Introduction to Scottish Legal History*, *Stair Society* 20 (1958), 36; T. C. Smout, 'Scottish Marriage; regular and irregular 1500-1940', in R. B. Outhwaite (ed), *Marriage and Society: Studies in the social history of marriage* (London, 1981), 212; Margo Todd, *The Culture of Protestantism in Early Modern Scotland* (London, 2002), 281-82;

⁴ Leneman, *Alienated Affections*; W. D. H. Sellar, 'Marriage, Divorce and the Forbidden Degrees Canon Law and Scots Law', in W. N. Osborough (ed), *Explorations in Law and History: Irish Legal History Society Discourses, 1988-1994* (Dublin, 1995), 59-82; Elizabeth Ewan, 'To the Longer Liver': Provisions for the dissolution of the marital economy in Scotland, 1470-1550', in Maria Ågren and Amy Louise Erickson (eds), *The Marital Economy in Scandinavia and Britain, 1400-1900* (Aldershot, 2005), 197.

⁵ Martin Ingram, *Church Courts, Sex and Marriage in England, 1570-1640* (Cambridge, 1987), 317-18; Todd, *Culture of Protestantism*, 234-44; Bailey, *Unquiet Lives*, 30-35. On the Kirk as peacemaker see, Michael F. Graham, *The Uses of Reform: 'Godly Discipline' and Popular Behaviour in Scotland and Beyond, 1560-1610* (Leiden, 1996), 290-98.

could come to light in fornication cases, slander, and marital disputes.⁶ Other women sought separation 'from bed and board' in those cases where the need for financial maintenance, or the legal recognition of an abusive marriage became necessary.⁷ Throughout, the breakdown of the marital partnership was intrinsically linked to the breakdown of household authority and order.

There have been numerous and extensive studies of marriage during this period, many examining the respective roles of men and women within the household, and in the rearing of children.⁸ Others, like this thesis, have examined the progression from courtship, to sexual activity, to marriage.⁹ Many of these studies also discuss marital disharmony, disintegration, and divorce.¹⁰ Indeed, a growing body of English historiography has begun to examine more fully the breakdown of the loving marriage in and of itself. In particular Bailey and Foyster have produced studies that situate early modern domestic violence and marriage breakdown within the cultural and

⁶ Roderick Phillips, *Untying the Knot: A short history of divorce* (Cambridge, 1991), 82-92.

⁷ Phillips, *Untying the Knot*, 81; Bailey, *Unquiet Lives*, 51; Elizabeth Foyster, *Marital Violence: An English family history, 1660-1875* (Cambridge, 2005), 19-20; Ingram, *Church Courts, Sex and Marriage*, 146-46, 181-85.

⁸ Lawrence Stone, *The Family, Sex and Marriage in England 1500-1800* (London, 1977); Alan MacFarlane, *Marriage and Love in England 1300-1840: Modes of reproduction 1300-1840* (Oxford, 1986); Ralph Houlbrooke, *The English Family 1450-1700* (London, 1984); Anthony Fletcher, 'Prescription and Practice: Protestantism and the upbringing of children, 1560-1700', *Studies in Church History*, 31 (1994); Elizabeth Foyster, 'Parenting was for Life, not Just for Childhood: The role of parents in the married lives of their children in early modern England', *History*, 86:283 (2001), 313-27; idem, 'Silent Witnesses? Children and the breakdown of domestic and social order in early modern England', in Anthony Fletcher and Stephen Hussey (eds), *Childhood in Question: Children, parents and the state* (Manchester, 1999), 57-73. See previous chapters.

⁹ Ingram, *Church Courts, Sex and Marriage*; Richard Adair, *Courtship, Illegitimacy and Marriage in Early Modern England* (Manchester, 1996); Diane O'Hara, *Courtship and Constraint: Rethinking the Making of Marriage in Tudor England* (Manchester, 2000); David M. Turner, 'Secret and Immodest Curiosities?' Sex, Marriage and Conscience in Early Modern England', in Harold E. Braun and Edward Vallance (eds), *Contexts of Conscience in Early Modern Europe, 1500-1700* (Basingstoke, 2004), 132-50; John R. Gillis, *For Better, For Worse: British marriages, 1600 to the present* (New York, 1985); R. B. Outhwaite (ed), *Marriage and Society: Studies in the social history of marriage* (London, 1981).

¹⁰ Bailey, *Unquiet Lives*; David M. Turner, *Fashioning Adultery: Gender, Sex and Civility in England, 1660-1740* (Cambridge, 2002); D. A. Kent, 'Gone for a Soldier: Family breakdown and the demography of desertion in a London parish, 1750-1791', *Local Population Studies*, 45 (1990), 27-42; Phillips, *Untying the Knot*; Lawrence Stone, *Broken Lives: Separation and Divorce in England 1660-1857* (Oxford, 1991); idem, *Road to Divorce*; Samuel Pyeatt Menefee, *Wives for Sale: An ethnographic study of British popular divorce* (Oxford, 1981) et al. The fullest examination of Scotland is Leah Leneman, *Alienated Affections: The Scottish Experience of Divorce and Separation, 1684-1830* (Edinburgh, 1998). Though Leneman's study does not address the period under consideration in this thesis it does nonetheless provide a useful and insightful background. Other Scottish studies include: Ewan, 'To the Longer Liver', 191-206; W. D. H. Sellar, 'Marriage, Divorce and the Forbidden Degrees', 59-82; idem, 'Marriage by Cohabitation with Habit and Repute: Review and Requiem?' in D. L. Carey Miller and D. W. Myers (eds), *Comparative and Historical Essays in Scots Law* (Edinburgh, 1992), 117-36.

sexual mindscape of the period.¹¹ In these studies there is an imperative to show both attitudes to and instances of marital disintegration in the seventeenth and eighteenth centuries. Bailey, in particular, has examined not only violence and domestic abuse, but also the role of adultery and abandonment within legal narratives of marriage breakdown. Her study highlights the 'co-dependency between wives and husbands, which could be intensified by their emotional needs.'¹² She situates cases of marriage breakdown within narratives of the good marriage and 'proper' reasons for marriage decline and within the context of reconciliation and arbitration. Similarly Foyster's examination of marital violence stresses that extremes of violent and abusive behaviour within marriage were neither common nor acceptable.¹³

In separation cases women employed narratives of extreme violence, describing both emotional and physical cruelty in their accounts of domestic life, so as to obtain the separations they sought and often required.¹⁴ As Foyster has argued, this violence was part of a verbal and sexual as well as physical culture of abuse.¹⁵ For husband and wife harmony in the marital home and bed was not simply maintained through an absence of physical violence but through a solid emotional, physical, and financial relationship.¹⁶ Thus the interventions of friends and families into marriages that were disrupted or under pressure could alleviate tensions and animosities through mediation and negotiation.¹⁷ Conversely, when adultery was raised within the courts it was often through the language of insult, and the spread of rumour and gossip that marital reputations were undone and households disrupted. Thus the intervention of the community, of family, and neighbours, could be instrumental in both the maintenance of a good marriage and its disintegration.

Leah Leneman's observation that '[t]hose who were unhappily married were exhorted to resign themselves to their fate and make the best of things'¹⁸ both holds true and

¹¹ Bailey, *Unquiet Lives*; Foyster, *Marital Violence*.

¹² Bailey, *Unquiet Lives*, 194.

¹³ Foyster, *Marital Violence*, 12ff.

¹⁴ Bound, 'An 'Uncivil' Culture', 51-53; Foyster, *Marital Violence*, 39-46, esp. 41.

¹⁵ Foyster, *Marital Violence*, 32-39, esp. 38.

¹⁶ Henrie Smith, *A Preparative to Marriage*, (London, 1591); William Whately, *A Bride-Bush, or A Wedding Sermon: Compendiously describing the duties of Married Persons: By performing whereof, Marriage shall be to them a great Helpe, which now find it a little Hell* (London, 1617), Chapter 6;

¹⁷ Bailey, *Unquiet Lives*, 32, 60.

¹⁸ Leneman, *Alienated Affections*, 1.

raises a number of problems for this period. Leneman's study contributes to a historiography which portrays early modern marriage as either happy or horrible, one which is, as Bailey has framed it, 'optimistic and pessimistic'.¹⁹ Bailey argues that '[o]ptimists and pessimists alike tend to take it for granted that husbands either implemented their power to its full extent, or benevolently lessened it at their own whim.'²⁰ She argues that this 'fails to take account of recent findings about manhood, reputation, patriarchy, and the experience of the common law doctrine of coverture. ... Equally it ignores evidence that women's reputations rested on a broader foundation than just chastity, drawing on their position as housewives, as well as their occupational status and charitable works.'²¹ Thus it is necessary to look not only at the expectations that surrounded early modern marriage but also to consider how men and women negotiated marital problems, how they used ideas about the household and marital union to describe and to situate their behaviours as marriages were dissolved, abandoned, or simply as they encountered difficulty.

This chapter initially considers the foundations of a good, ordered household, bringing together some of the concerns for domestic order and responsibility that have been raised throughout this thesis. I begin by looking at legislation that was enacted to enforce and accommodate this domestic ideal, before moving on to examine those households that did not meet that ideal, illuminating some of the communal pressures upon married couples to maintain hierarchical and moral models that could be at odds with plebeian experience.²² This chapter then examines those couples that formed separate lives beyond marriage, abandonment, and divorce. Marriages became separations as couples lived apart, establishing separate lives in disparate locations for various reasons, financial and personal.²³ However, when the courts heard of such arrangements there were often harsh penalties to face and a marriage to be reconciled.

¹⁹ Bailey, *Unquiet Lives*, 10; Linda A. Pollock, 'Rethinking Patriarchy and the Family in Seventeenth-Century England', *Journal of Family History*, 23 (1998), 3-27.

²⁰ Bailey, *Unquiet Lives*, 10.

²¹ Bailey, *Unquiet Lives*, 10.

²² Anthony Fletcher, 'Men's Dilemma: The Future of Patriarchy in England 1560-1600', *Transactions of the Royal Historical Society*, 6th ser, 4 (1994); Thomas A. Foster, 'Deficient Husbands: Manhood, Sexual Incapacity, and Male Marital Sexuality in Seventeenth-Century New England', *William and Mary Quarterly*, 3rd series, 56: 4 (1999); Alexandra Shepard, *Meanings of Manhood in Early Modern England* (Oxford, 2003), 3-6.

²³ Faramerz Dabhoiwala, 'The Pattern of Sexual Immorality in Seventeenth- and Eighteenth-Century London', in Paul Griffiths and Mark S. R. Jenner (eds), *Londinopolis: Essays in the cultural and social history of early modern London* (Manchester, 2000), 90-92.

In the eyes of both the Scottish Kirk and English Church the failure to live together as man and wife constituted a failure of marriage. In Edinburgh and York throughout this period there was a pronounced concern about spousal abandonment and the social and financial repercussions of such neglect. However, in a period in which men often travelled for work there was both the means for men to escape an unwanted marriage, and a legitimate concern for wives who may have become widows without their knowledge; long absences left many spouses unsure of their exact status.²⁴

The third section of this chapter examines cases of adultery to assess the role of sex within marriage by looking at those who sought physical satisfaction outside the marital bed. Yet, this section will not simply assess adultery as a marriage-ending phenomenon, nor only as one of the most heinous sins reviled by the religious bodies of each city. Rather, it will look at the ways in which rumours of a husband or wife's infidelity might be overcome and marriages maintained. Within this context, adultery can be a means of assessing marital dissatisfaction. The threat that adultery posed both to good reputations and to good marriages reveals a great deal about the role of sex in forming one's social identity in this period. Thus the ways in which men and women deployed the accusation of adultery in divorce cases and in defamatory attacks reflect not only the social stigma of adultery, but also its use as a means by which to attack individuals.

Finally, this chapter examines instances of domestic discord, abuse and violence, tying marital dissolution firmly into a narrative of familial and household disorder. Whilst many marriages no doubt suffered their periods of discontent, this section will look at those rare cases in which that discontent manifested itself in cruelty and violence. Violence in this period was not understood to be a wholly physical phenomenon, and the combinations of beatings, harsh words and social humiliation were features not only of domestic violence, but also of the modes of discipline employed to correct that violence. This section will assess the connection between violence and alcohol, and the impact that any violence within the domestic sphere was perceived to have on household order, and its relation to notions of appropriate gendered conduct.

²⁴ Bailey, *Unquiet Lives*, 95-96.

The Good Household?

Strong marriages were at the core of the reformed ideal of the community in both cities. As such, there was an imperative in each city to monitor, correct and aid the running of orderly households. Yet there were also numerous reasons why marriages encountered difficulty and breakdown. Figures Six and Seven in the appendix outline the causes and complaints cited in marital disputes brought before the consistory court in York and also those recorded in the St Cuthbert's Foul Discipline Book. Within both cities the most common questions that brought marriages into the view of the courts concerned pregnancy, the legality of the marriage and adultery. Domestic violence only formed a small percentage of business in either city, matched by the concern for bigamous remarriage. Each constituted two to five percent of cases in both cities. Whilst these graphs give only an impression of the major complaints presented before the ecclesiastical courts, they do reflect the range of difficulties couples faced in each city. Such transgressions in York would have been monitored by the churchwardens and presented before the annual Archdeacon's Visitation and the four-yearly Archbishop's Visitation:²⁵ see Table Two for the numbers of presentments for sexual and social disorder made during the 1598 and 1613 Archidiaconal circuits. Interestingly, however, these statistics do reveal some similarities in the functions of the ecclesiastical courts of Edinburgh and York. In both cities cases of contested marriage, in which couples disputed the exact nature of the marital promises made to each other, constituted approximately seventeen percent of court business with regard to marriage and household, thirty-one presentments in Edinburgh and seven cases in the York cause papers, with a further five cases in York concerning Breach of Promise. Adultery made up twelve percent of marital cases in the Foul Discipline Book, twenty-two presentments.

Interestingly, fifty-six percent of marital business (twenty-three cases) before the York consistory court was initiated by women against men as they sought not only to clarify marital contracts and assert the paternity of their children, but also to find new

²⁵ Ronald A. Marchant, *Church Under the Law* (Cambridge, 1969); Brian Levack, *Civil Lawyers in England, 1603-1641* (Oxford, 1973), 115-18 for the Archbishop's Visitation which I have not surveyed, and 122-23 for the Archdeaconry which I did survey.

husbands and extricate themselves from marriages that no longer functioned (see Figure Five). Figure Six shows how this small number of cases can be distinguished by type, with only two cases for divorce launched within the city during this period, one in 1587 and the other in 1601 both initiated by women.²⁶ A total of six cases were prosecuted on the grounds of adultery, four of which were initiated by men.²⁷

In Edinburgh concern about marital misbehaviour was outweighed by the overwhelming concern over fornication. This is shown in Figure Four, which adds presentments for fornication recorded in the St Cuthbert's minute book to the statistics for marriage in Figure Seven. In Figure Four we can clearly see that instances of fornication, relapse and tri-lapse in fornication made up sixty percent of session business related to sexual interactions, or two hundred and seventy presentments,²⁸ and this is without the inclusion of adultery, ante-nuptial fornication and illegitimate pregnancies. It would be interesting to see if a more thorough examination of the Archbishop's Visitations in York would yield a similar pattern. The surviving Archdeacon's Visitations for 1598 and 1613 record greater numbers of men and women presented and disciplined for sexual offences than those that chose to prosecute suits within the consistory court – see Table Three.

Householders, neighbours and senior members of the community were those to whom the religious hierarchies of both cities turned for the most basic ordering of the household. The keepers of good order were primarily the men and women who formed married partnerships, produced children, and took on servants and kin as part of their extended familial organisation and operation. Dingwall has demonstrated that in later seventeenth-century Edinburgh roughly ten percent of households had female heads, whilst within the parish of St Cuthbert's women headed one hundred and

²⁶ Borthwick, York, CP. G. 2302, 1587: Grace Harper als Kayforde c. Francis Harper. This case sought to establish the legal validity of their earlier divorce. Borthwick, York, CP. H. 814, 1601: Julia Robinson c. Edwin Catterall. Julia Robinson launched this suit in the wake of her abandonment by Catterall.

²⁷ Many of these adultery accusations and questions arose within defamation cases. Borthwick, York, CP. G. 1570, 1572, Adultery: Henry Dobson c. John Laken; Borthwick, York, CP. G.; Borthwick, York, CP. G. 2689, 1593, Matrimonial: John Hodgson c. Jane Harrison; Borthwick, York, CP. G. 3070, 1598, Matrimony: Thomas Mawde c. William Cockson; Borthwick, York, CP. H. 0179, 1605, Defamation: Thomas Philipson c. Jane Metcalfe; Borthwick, York, ; Borthwick, York, CP. H. 0687, 1611, Defamation: Thomas Turner c. William Eyton; Borthwick, York, CP. H. 0781A, 1612, Defamation: Ellen wife of Ric. Best c. Iasbell Nicholson; Borthwick, York, CP. H. 1085, 1615/6, Defamation: Alice Wife of Tho. Davie c. Jane wife of Wm. Newbie.

²⁸ Taken from a survey at five yearly intervals.

twenty-eight of one thousand and forty households.²⁹ Unfortunately, there is as yet no sex-specific breakdown of York households with which these figures could be compared. The women and men who did head households were required by city ordinances to properly order their households, to keep their servants and children off the streets in the evening and to ensure that they were aware of the moral and social rules that governed their conduct, in church, on the street, and within the household. As the burgh authorities of Edinburgh proclaimed in 1597, '...all nichtouris [were] to contene in thair houssis thair bayrnis and servands and nocht to suffer thame to vaig in the streitt ... under payne of xls'.³⁰

As Table Three shows, the York Visitation also cautioned and punished householders for disorderly behaviour. The chief concern, particularly in 1613 was about those who allowed drinking and the playing of games on the Sabbath, for which Elizabeth Allanson and Margaret Archer were presented, in addition to one Edward Hither, who all had, 'people drinkinge in theire houses upon a Saboth daye both mourninge and eveninge prayer time'. In Edward's case the sin was compounded by 'two strangers drinkinge at his doore but not in his house.'³¹ Chapter One has shown the civic anxiety through the 1560s and 1570s about 'vagabonds' and unruly persons who could influence the young and impressionable population of the city.³² Drawing on these anxieties, men and women could use the image of the disorderly household to attack both gendered and household respectability. This is most apparent in the 1619 case brought by Anne Jennitt against Elizabeth Simpson, in which a witness, John Kaper, deposed that

being in the house of Thomas Symson husband of the ar[ticula]te Elizabeth Simpson .. in davie gate... Anne Jennitt ... came into the sayd house ... (whoe in loving manner did) require William Jennitt her husband to go with her to his owne house saying (merrilie unto him) it was fitting that good husbandes should be in ther owne house att that tyme of the night, it being then aboute ten of the clock in the night, att which wordes the fore sayd Elizabeth Simpson being then presente in the sayd house replied & sayd that she the sayd Elizabeth Sympson kept an honeste howse than the sayd Anne Jennitt, & called the sayd

²⁹ Helen Dingwall, *Late Seventeenth-Century Edinburgh: A Demographic Study* (Aldershot, 1994), 27, 30-40.

³⁰ *Extracts from the Records of the Burgh of Edinburgh, AD 1589 to 1603* (Edinburgh, 1927), 196. [hereafter *Ed. Recs. II*]

³¹ Borthwick, York, YV/CB 2, Archdeacon's Visitations, 1613.

³² Raine, *YCR*, Vol. 6: 12 & 20 (1560), 63 (1563), 92 (1564), and Vol. 7: 5 (1570), 35 (1571), 172/4 (1572).

Anne Jennitt whore, scurvy whore, & arrand whore saying unto her the sayd Anne thou art a whore a scurvy whore and an Arrand whore³³

This case echoes both the languages of insult examined in Chapter Two, and reiterates the importance of both marriage and the household in the negotiation of reputations. For Elizabeth Simpson the merest suggestion that her household was not honest caused her to launch a vicious attack on the apparently well-intentioned Anne Jennitt, declaring that she 'kept an honest howse' than her rival. By prosecuting Simpson for the slanderous words Jennitt too sought to assert the honesty of her household.³⁴

Householders were not only expected to maintain good order, but to set the standard of good behaviour to those under them. Breaches in good order from the household head were conceived to be more egregious than the infringements of those in their ward. For example, in November 1577 Thomas Allynson was ordered by the civic authorities to appear 'in St Johns church at ousbrig end on Sunday next... in service tyme' for having 'latly spoken certayne slanderous and filthie words of Jane Walker, his servant'.³⁵ For this breach of order and for his abuse of his position within the household Allynson was ordered

to contynewe until service be done; and he to have a papir written with words to this effecte – that the woordes that he spake of the said Jane were untrewre and that he is vere sorry therefore... and the said Jane to be warned to be there and he to ask her forgyvenes there openly'

Through this punishment Thomas Allynson was made aware that his role as leader and head of the household required him to show respect for the other members of that household, just as they were to demonstrate their respect for him. It is particularly interesting that the civic authorities of York, who were more detached from the ecclesiastical infrastructure than their Edinburgh counterparts, insisted that punishment be performed not at the market cross but in front of the congregation 'until service be done'.

In 1575 Margaret Fewlar was discharged by the Sessions of the Peace of her obligation to serve Henry Cutts because it was found that 'upon her oath that she

³³ Borthwick, York, CP. H. 1363. Defamation: Anne Jennitt c. Elizabeth Simpson, 1619

³⁴ See also: Borthwick, York, CP.H 1362, Defamation: Katherine Thornborow c. Thomas Whitney, 1619; Borthwick, York, D&C 1593/6, Defamation: Thomas Cornay c. Sybil wife of John Wormall.

³⁵ Raine, YCR, Vol. 7, 164.

neyther had syufficient meat and drynke wth her said maister as a servant ought to have had. nor besyds she sayth that she dare not serve her sayd maister any longer for feare of unreasonable Stroks and betyngs.³⁶ Because of Cutts's neglect of his responsibility to Margaret, she was given 'lycens to depart from her former maister and forth of the Paroch wher she last dwelt Therefore she [is] to be at lybitye to take a newe maister without any let or trouble of the said mr Cutts.' As we shall see with spousal abuse, excessive violence within the household could constitute grounds upon which to break an otherwise unbreakable contract.

In Edinburgh the burgh issued a number of statutes and ordinances warning householders to examine thoroughly all those who entered their service or who undertook an apprenticeship.³⁷ Householders, man and wife, were made responsible for the sexual behaviours of those under their roof, the burgh ordaining in 1566 that

na manner of man nor woman, indueller within this said burgh, hurd hald or resave ony sic as committis the forsaid filthie crymes [of adultery and fornication] within thair houssis in tymes cumyng, of thair knowlege, bot thai incontinent thairefter cum ... and declair to thame the ... committar of the samyn that thai may be puniest ... under pane of x li for the first fault, twenty pund for the second, to be upliftit of the maister of the hous quhair the foirsaid filthiness is committit or sic personis ressaut ... and gis maister or mistres of the saidis houssis be nocht abill to pay the said unlaw, to be imprisonat xx dayis within the tolbuith³⁸

Thus it was unsurprising to find that the burgh, in August 1598, found that Andrew Auchmowtie had 'done wrang in feying of Margaret Jhonestoun, dochter to David Jhonestoun, nocht lying in his hous or eitting thairin, contrer the statutes of this burgh, and thairfore ordanis him to discharge hir of his service.'³⁹ It was Auchmowtie's responsibility to not only clothe and feed Jhonestoun, but also to ensure that she was in his house and not wandering the streets of the city.

³⁶ York, City Archives, F-2-Quarter Sessions, Volume 3: 86.

³⁷ *Ed. Recs. I*, iii, 148 (1562); 231-32 (1567). Throughout this period the Guilds of the burgh were anxious to ensure that no one but burgesses and guild members carried out their trade within the city, and that those who did participate were correctly registered and monitored, ideally by those who took in apprentices. For example, *Ed. Recs. I*, iii, 187 (Lystaris, or Dyers, 1564); *Ed. Recs. II*, 12 (cake bakers, 1589). [Hereafter: *Ed. Recs. II*]

³⁸ For example, *Ed. Recs. I*, iii, 223. For the corresponding Acts of Parliament: *APS*, 2: 486 (adultery), and 3:25 (fornication).

³⁹ *Ed. Recs. II*, 226-27; Alma B. Calderwood (ed), *Buik of the Kirk of the Canagait 1564-1567* (Edinburgh, 1961), 56-7, for lists of householders found to have resaved those guilty of sexual transgressions.

The responsibilities of householders like Andrew Auchmowtie were clearly articulated in the 1592 proclamation that

it becumis everie Cristiane to dedicate him selff, his household and famelie to the service and worschip of God ... instructing thair families and otherwayis in the exercise of prayer; ... [that] na inhabitants ... thair childrein, servands or fameleis be sene at ony pastymes or gammis ... and that thai northair saidis servands occupy ony kynd of handie lawbour or wark upoun the said day, and als that thair dochters and wemen servands be nocht fund playing at the ball nor singing of profayne sangs⁴⁰

Proclamations such as this set the tone of expected household conduct in the reformed burgh. It clearly situated men at the top of a familial and household hierarchy, making them responsible for the ordering of the household. Whilst this was clearly an ideal that was rarely fully realised, there are elements of this proclamation that many men and women of the burgh could aspire to: the dedication to 'household and famelie', and the need to preserve household honour through demonstrably 'good' behaviour. However, as we have seen, the Kirk found this moral philosophy difficult to apply to a population of men and women whose needs and interests were constantly in flux.

This statute echoed the words of John Knox's treatise *On Justification By Faith*, that 'if a man make no thought of his owne, and specially of his household or familie, hee hath denyed the faith, and is worse than an infidele'.⁴¹ Thus parents were chastised by the session for neglecting the proper maintenance of their children.⁴² In February 1596 Hew Westoun, merchant, was found to 'haif done wrang in putting his lawful bayrnes furth of his hous under nicht and refusing thame thair necessar sustenance'.⁴³ He was subsequently placed in ward and then ordered to 'tak thame hame and susteyne thame as he aucht to do.' Hew, like Andrew, was being forced by the session to undertake his responsibility to provide for those who depended on him.

In both cities private admonishment and arbitration was initially used as a means to resolve social and domestic disorder 'if the offence be secret or known to few men'.⁴⁴

⁴⁰ *Ed. Recs. II*, 63. 19 April 1592.

⁴¹ Knox, *Works*, 3: 536, *On Justification By Faith*, Chapter Seventeen, '1. The office of fathers to the sonnes; householders to their families; and of husbands to their wives.'

⁴² Todd, *Culture of Protestantism*, 304-8.

⁴³ *Ed. Recs. II*, 51. February 1595/6.

⁴⁴ James K. Cameron (ed), *The First Book of Discipline* (Glasgow, 2005), 167-68; Todd, *Culture of Protestantism*, 243.

In many cases family members and neighbours were the first to intervene in these disrupted households, though both the Church and Kirk readily offered their services to couples and households in disorder and distress. The Kirk, however, insisted that if arbitration was unsuccessful, or, '[i]f the crime be publick, and such as is heinous, as fornication, drunkenesse, fighting, common swearing or execration, ... ought the offender to be called...'⁴⁵ to perform public acts of punishment and repentance.⁴⁶ These public displays of disciplinary power tied together the judicial structures and methods of the ecclesiastical and civic authorities in Edinburgh, both systems using officers of the city, and applying the same means of restraining, parading, labelling, and humiliating those undergoing punishment.⁴⁷ These displays also made the congregation part of the process of discipline in both cities through participation in punishments, through prayers for God's 'mercy' and by receiving the penitent back into the community.⁴⁸ Crucially, within Scottish rhetoric it was never the intention of discipline to ostracise or isolate offenders, but rather to '[b]ring the rude and ignorant to knowledge, [and] inflame the learned to greater fervency',⁴⁹ and for the penitent to know in 'his conscience ... how farre he hath offended God and what slander he hath raised in the Kirk'.⁵⁰ In England, meanwhile, discipline and repentance allowed 'the faythfull ... to acknowledge the offences, whereby some hatred, rancor, grudge or malice, haue risen or growen among them ... that a brotherly reconciliation may be had, without the which, nothing that we do can be acceptable unto god'.⁵¹

Living Separate Lives: Abandonment, Separation, and Divorce

The cost of a divorce, or even of a separation from bed and board, would have been prohibitive in all but the most extreme circumstances, though many men and women appear to have opted for the lesser expense of initiating but not completing a suit.⁵² However, for those men and women who simply could not live together there does

⁴⁵ Cameron, (ed), *The First Book of Discipline*, 168.

⁴⁶ Cameron, (ed), *The First Book of Discipline*, 62-67, 165-67; Knox, *Works*, 4: 107-19.

⁴⁷ John G. Harrison, 'Women and the Branks in Stirling, c. 1600 to c. 1730', *Scottish Economic and Social History*, 18: 2 (1998), 114-31 at 116-17.

⁴⁸ Cameron, (ed), *The First Book of Discipline*, 168; Harrison, 'Women and the Branks in Stirling', 127-28.

⁴⁹ Knox, *History*, 404.

⁵⁰ Cameron, (ed.), *The First Book of Discipline*, 168.

⁵¹ 'A Homilie of Repentance and True Reconciliation unto God', in *Certaine Sermons or Homilies Appointed to be read in Churches. Book 2* (London, 1563), f. 284.

⁵² Bailey, *Unquiet Lives*, 51; Foyster, *Marital Violence*, 19-20.

appear to have been an alternative.⁵³ There can be little doubt, given the numerous women whose husbands needed to travel some distance for employment, either as merchants, travelling labourers or at sea, that there were means by which to come to an informal separation agreement.⁵⁴ As Roderick Phillips has observed, 'there must have been a 'dark figure' of marriage dissolution behind the formal divorce'.⁵⁵ Phillips's short section briefly addressing this 'dark figure' demonstrates both the potential frequency of informal separation and the difficulties this presents for the historian. These marriages needed to maintain some appearance of conviviality so as not to arouse suspicion, whilst allowing men and women to live somewhat autonomously. Phillips has shown that of all sexual suits brought before the courts in Yorkshire over this period such separations accounted for only two percent of prosecutions.⁵⁶ My own assessment of the York consistory depositions for the years 1560 to 1625 show spousal abandonment to have constituted seven percent of matrimonial cases before the courts, only three cases in total (see Figure Six).⁵⁷ This seven percent would decrease markedly when examined alongside other consistory cases, Visitation and civic prosecutions for fornication and adultery. However both the civic and church records of both cities do occasionally record men who lived apart from wives, and women who had been out of contact with husbands for years at a time. The Kirk's concern for abandoned wives manifested itself in the introduction in 1573 of an ecclesiastical statute accommodating legal separation after a seven-year absence.⁵⁸ English law made no such concessions.⁵⁹ Those men and women who absented themselves from the matrimonial bed in both York and Edinburgh were treading a fine line between their own needs and the moral demands of the law.⁶⁰

⁵³ On formal and informal separations see Amussen, *An Ordered Society*, 124-29; Macfarlane, *Marriage and Love*, 227-30

⁵⁴ Phillips, *Untying the Knot*, 81-92; Margaret R. Hunt, 'Wives and Marital 'Rights' in the Court of Exchequer in the Early Eighteenth Century', in Paul Griffiths and Mark S. R. Jenner (eds), *Londinopolis: Essays in the cultural and social history of early modern London* (Manchester, 2000), 109-10.

⁵⁵ Phillips, *Untying the Knot*, 81.

⁵⁶ Phillips, *Untying the Knot*, 83.

⁵⁷ Borthwick, York, CP. G. 1095, 1563, Matrimony: Margaret Butler/ Walker/Wrightman c. Robert Pennyman; Borthwick, York, CP. H. 0814, 1601, Divorce: Julia Robinson al. Caterall c. Edwin Catterall. See also CP.G. 1102, very little remaining.

⁵⁸ *BUK*, 1: 267. On desertion and separation in Scotland see also: Leneman, *Alienated Affections*, 21-27; Ewan, 'To the Longer Liver', 197.

⁵⁹ Though as Bailey has noted, 'absconding husbands were punishable under the Vagrancy Acts, subject to be whipped, [and] committed to hard labour', *Unquiet Lives*, 184.

⁶⁰ Bailey, *Unquiet Lives*, 58, 178-87; Stretton, *Women Waging Law*, 133, 134; Foyster, *Marital Violence*, 20-21, on separation by private deed. Sellar, 'Marriage, Divorce and the Forbidden Degrees', 71-72.

In November 1590 Thomas Massone confessed to the St Cuthbert's session 'yt he was married the space of saytene yeir syne upone beatrix edine and begat thre barines with hir and is maryed the space of thre yeir syne upone Janet taillfeir'.⁶¹ As it transpired the session had discovered from another regional Kirk that 'ye said beatrix edie his first wyfe is yit on lyfe' and Massone was ordered to reappear the following week. At the following session Massone was ordered to 'put away Jonet tailfeir ... his pretendit wyfe according to ye derectioun of ye presbetrie because his first wyfe is yit on lyfe the qlk he promisses to do'. However, it was by no means Thomas Massone's intention to 'put away' the woman he considered his genuine wife. On 5 December he was cautioned as an adulterer, and ordered either to appear with sufficiently good behaviour or be ordered out of the parish.

More than a month later on 23 January one Johne Mathesone appeared on Massone's behalf, declaring 'yat Thomas massone desyrit him to excuse him to ye sessioun be caus he is to pass oure the watter to get ane testimoniall to ye sessioun gif his wyfe be on lyfe or not'. One month later Massone had not returned from this journey and it was not until 10 April that he stood before that session again and 'promest to find sufficent caution ... that margarit [Jonet] tailyefeir his pretendit wyfe salbe awutterlie desevert fra him and yat because [beatrix] adie his first wyfe is yit on lyfe and gif he felye the Kirk will proceid against him to excommunicatioun'. Two weeks later Massone and Taillfeir 'his pretendit wyf and held up yair handis as thay suld anser to god that thay suld nocht haut not use togidder'. This time Massone was ordered to produce his employer, one mistress Warstoun, to provide a surety that they would indeed sever their relationship. However, in early May the session found it necessary to embark on the process of excommunication, having found Massone and Taillfeir to have 'bene Joyint togidder efter ye proces wes dependand agains thaim hes haldin companie as maryit folkis or rather adultereris'. Thus on 8 May Mistress Warstoun was ordered 'to put ye said thomas out of hir service because he is dissobedient to the Kirk ... and gif he be excommunicat and scho inter teine him in hir service the Kirk will threttin hir wt ye same poynt of excommunicatioun.' Massone and Taillfeir were persistent in maintaining their relationship. Over a period

⁶¹ NAS, Edinburgh, CH2/718/1, f. 112, 21-27 November 1590.

of seven months they continued to negotiate with the Kirk and flout its ordinances. In this case it was not Beatrix Adie who was angered by her husband's new marriage, but the Kirk. Indeed it appears that Adie and Massone had been living separate lives for some period prior to the session's proceedings, especially in the light of Massone's three-year marriage to Jonet Taillfeir.

The 1601 divorce of York resident Julia Robinson als Catterall and Edwin Catterall is another demonstration of the types of new relationships that could be, and possibly were, interpreted as both adulterous and bigamous. Indeed Edwin Catterall's adulterous remarriage to Jane Poole seems to have been the primary ground cited for the divorce. Edwin readily deposed that 'about xvij yeares [ago]... [he] dyd goe oute of the contrie & was awaie iij yeares or therabouts', on his return he 'dyd ... dwell by the spaice of manie yeares with the said Jaine & had ... bye the said Jaine three children.'⁶² This can also be read as a case of abandonment, in which Edwin Catterall simply absconded from his wife Julia Robinson als Catterall, whom he had married in York in 1584. On leaving the country he effectively abandoned his family. This divorce suit, brought seventeen years later, was a means by which Robinson could settle the financial burden of Catterall's absence, provide for any legitimate children produced within this first marriage,⁶³ and relieve herself of the burden of a marriage that existed only in law. In launching this suit for divorce Robinson sought to dissolve the material and financial remnants of her marriage, having long since dissolved the physical union.

If we turn to the 1597 case of Thomas Farthing and Joan Darragon als Langwith already discussed in the courtship section of Chapter Three we can see that the very definition and existence of a marriage contract could become grounds for a matrimonial prosecution.⁶⁴ In this case, whilst Darragon 'confessed that the sayd Thomas and [she]... were contracted together in maryage',⁶⁵ she also deposed that

when the art Thomas Farthinge dyvers and sundry tymes utterly
Refused and denyed to Marry this R[esp]ondent to his wyfe, she was

⁶² Borthwick, York, C.P.H. 814. Divorce: Julia Robinson al. Caterall c. Edwin Catterall, 1601.

⁶³ William Clerke, *The Triall of Bastardie: That part of the seconde part of Policie, or maner of Gouvernement of the Realme of England: so termed, Spirituall, or Ecclesiasticall* (London, 1594), 21 and Chapter 5, 39-51.

⁶⁴ Borthwick, York, D&C 1597/2, Matrimony: Thomas Farthing c. Joan Darragon als Langwith, 1597.

⁶⁵ Borthwick, York, D&C 1597/2.

contented (beinge fatharles and motherles and voyde of all [succumbed]) to assente into the suyte of Robert Langwith who moved her for maryage

This was how Darragon presented Farthing's withdrawal from the marriage, his refusal to finalise the contracted marriage prompting her to agree to the marital suit of Robert Langwith. Yet, the Dean and Chapter of York upheld the first marriage, recognising that a present tense promise had been made between Farthing and Darragon creating a legally binding if not socially enacted marriage. Thomas Farthing would have been severely chastised by the Archdeacon's Visitation for failing to live with Darragon as man and wife. But, in this instance, both Farthing and the consistory held Darragon accountable for breaking the marriage contract, because it was she who had contracted a second marriage with Robert Langwith. Some marriages effectively dissolved before they had even begun.

In other cases spouses were found to simply be living apart from each other. Such men and women were brought before the session in Edinburgh and the Visitation in York. In 1613 Moses Wilde was cautioned because he 'doth absent him selfe from his (reputed) wife and doth not live with her as he ought'.⁶⁶ At the same Visitation Henry Jepson, servant of John Halton, was also presented for, 'livinge from his wife be dwelling here and she in another Cuntry.'⁶⁷ Fifteen years earlier, in 1598, the Visitation had presented John Horner for 'lyving from his wife'.⁶⁸ All these men were held to account for their absence from the marital household. As men it was their responsibility to provide for their wives and to participate in, if not lead, the ordering of that household. These men instead absconded from their social responsibilities when they abandoned their wives.

Neighbours inferred the status of marital and extra-marital relationships, leading to gossip and rumour. Men and women therefore needed to be mindful of how their interactions outside of marriage could be interpreted; withdrawal from the marital bed could also be a matter of perception. If we return to the 1611 case of Adam Purves, first encountered in Chapter Two we can see that Adam's withdrawal from the marital

⁶⁶ Borthwick, York, YV/CB 2, Archdeacon's Visitations, 1613.

⁶⁷ Borthwick, York, YV/CB 2, Archdeacon's Visitations, 1613.

⁶⁸ Borthwick, York, YV/CB 1, Archdeacon's Visitations, 1598.

bed was perceived to be indicative of potential adultery with his female employer.⁶⁹ In this case Purves's wife reported her husband to the session, seeking a resolution to their marital difficulties before their separation became permanent. Though adultery was not actually found to have occurred between Purves and his employer Margaret Lyntoun, the session did see fit to warn the couple, order Lyntoun to remove Purves from her employ, and insist upon his return to the marital household and bed.

The physical associations that were made between men and women went a long way toward constructing the social perception of good and bad behaviour. The community around him and his wife took Purves's removal from his proper marital space to be indicative of his removal from the marriage itself. In both cities during this period marriage was, in effect, indissoluble, particularly for those men and women who lacked the finances to initiate a divorce, provide witnesses and withstand the potential loss of funds and reputation that an undesirable outcome would bring. The potential damage, to both reputation and finances, of a suit for separation or divorce led some couples to make more informal separation agreements, as has been mentioned above.⁷⁰ In this case whatever understanding existed between Adam Purves and his wife, it was almost certainly she who reported his absence from the household, and who would have directed the attention of the session to Margaret Lyntoun, Purves's employer. Whether through petty jealousy, a genuine desire to have her husband return to the marriage bed, a misunderstanding, or petty spat, Purves' wife felt that she needed the session to publicly reaffirm her role as wife and to reinstate her husband in the household and marriage bed. She did not perceive either actual or rumoured infidelity to be a marriage-ending phenomenon, but a social dislocation which could be remedied with the help of the session, which quite probably offered the couple mediation on Purves's return to his legitimate household.⁷¹

These cases demonstrate the problems and dangers that the formation and regulation of marital relationships held for both men and women in cities such as Edinburgh and York. Spousal abandonment was a genuine problem and concerned the church courts of both Edinburgh and York who did not wish to see wives and children left

⁶⁹ NAS, Edinburgh, CH2/718/52, 168.

⁷⁰ Roderick Phillips, *Putting Asunder: A history of divorce in Western Society* (Cambridge, 1988), 283-85.

⁷¹ Graham, *The Uses of Reform*, 260-79, on peacemaking.

dependant on already strained parochial resources. Yet informal separations were an important means by which many couples who could not live together could form new lives, new relationships, outside of marriage. The legal cultures of Edinburgh and York conceived of marriage as a partnership and a contract. When one or other party to that contract absconded there was a deep concern for the economic, physical and emotional consequences, both individual and communal. Thus the men and women of Edinburgh and York constructed their withdrawal from relationships within narratives of need: the need for work and the need for economic stability.

Extra-Marital Relationships: Adultery

Adultery fundamentally upset the meaning of marriage as an institution of honesty, respect, and love. In both Edinburgh and York it was a heinous sin. Within Scottish law adultery was punishable by death, and was grounds on which to sue for divorce, the aggrieved party being allowed to retain the largest share of the marital property and to subsequently remarry. The sinful party was barred from formalising marriage with any party named within the divorce and was considered to be 'civilly dead'.⁷² This was an adaptation of the Old Testament Mosaic prescription of death for adultery, a penalty adopted in law by the Scottish parliament in 1563, under the punishment of 'notour', or notorious, adultery.⁷³ In England divorce was all but unobtainable, requiring an Act of Parliament, though adultery and cruelty were grounds upon which men and women sued for separation from bed and board, which nullified the marriage but prohibited future remarriage.⁷⁴ Throughout the later sixteenth and early seventeenth centuries in England the Puritan-led debate about morality, law, and sexual practice called for the adoption of Mosaic Law, particularly with regard to adultery.⁷⁵ Pronouncements and attitudes such as this culminated in the introduction of the 1650 Adultery act which, for a limited period, brought English legal practice more in line with its northern neighbours, secularising the legal and

⁷² APS, 4: 233, c. 29, 1600; Sellar, 'Marriage, Divorce and the Forbidden Degrees', 71-72; Divorce in Scotland, See also: C. J. Guthrie, 'The History of Divorce in Scotland', *Scottish Historical Review*, 8 (1911) 39; D. B. Smith, 'The Reformers and Divorce: A study in consistorial jurisdiction', *Scottish Historical Review*, 9 (1912), 10; Leneman, *Alienated Affections*, 6-9.

⁷³ APS, 2: 539, c. 10; Sellar, 'Marriage, Divorce and the Forbidden Degrees', 72.

⁷⁴ Stretton, *Women Waging Law*, 29, 224; Phillips, *Putting Asunder*, 77-84, 203.

⁷⁵ Keith Thomas, 'Puritans and Adultery: The Act of 1650 Reconsidered', in D. H. Pennington and K. V. Thomas (eds), *Puritans and Revolutionaries: Essays in seventeenth-century history presented to Christopher Hill* (Oxford, 1978), 269; Phillips, *Putting Asunder*, 99-100..

disciplinary penalties for adultery, facilitating divorce and the separation of marital property.⁷⁶

In the second part of the *Sermon Against Whoredome and Uncleanness* adultery was described as 'that most filthy lake, foule puddle, and stinking sinke, whereunto all kinds of sinnes and evils flow.'⁷⁷ Within the religious and moral rhetoric of the English and Scottish churches adultery was understood to be a social and spiritual corruption. Ministers such as Henry Smith wrote that '[t]he disease of marriage is adultery, and the medicine heereof is Divorcement.'⁷⁸ Whilst Gouge was of the opinion that

The vice contrarie to matrimoniall chastitie is *Adulterie*, one of the most capitall vices in that estate: a vice whereby way is made for *Diuorce*: as is cleare and euident by the determination of Christ himselfe, ... repeated in his conference with the Pharisies, where condemning vniust diuorces, he excepteth the diuorce made for adulterie.⁷⁹

Yet, the disclosure of adultery was a part of the language of slander, instances of adulterous couples appearing more frequently in cases of defamation than in matrimonial cases. Accusations of adultery featured in twelve defamation suits before the York church courts, yet, adultery was cited in only six matrimonial suits, with no apparent connection between those defamation and matrimonial cases.⁸⁰ As we have seen in Chapter Two, illicit behaviour was fodder to the gossip mills of both Edinburgh and York, becoming a weapon in interpersonal disputes. Then as now, relationships were affected by adulterous liaisons. Yet adultery did not irreparably dissolve marriages, and neither the English nor Scottish church intended that it should. Adultery was a criminal/sinful indiscretion that fractured the reputations by

⁷⁶ Phillips, *Putting Asunder*, 203; Stephen Roberts, 'Fornication and Bastardy in Mid-Seventeenth Century Devon: How was the Act of 1650 enforced?' in John Rule (ed), *Outside the Law: Studies in Crime and Order 1650-1850* (Exeter, 1982), 1-21; Thomas, 'Puritans and Adultery', 271.

⁷⁷ 'Against Whoredome and Uncleanness', *Certaine Sermons or Homilies Appointed to be read in Churches. In the time of the Late Queene Elizabeth of Famous Memory* (London, 1635), 83.

⁷⁸ Henry Smith, *A Preparative to Marriage* (London, 1591), 90. Gary W. Jenkins, 'Smith, Henry (c.1560-1591)', *DNB*, Oxford University Press, 2004 '<http://www.oxforddnb.com/view/article/25811>' (1 November 2006). Smith was minister of St Clement Danes in Temple Bar from 1589 and was particularly famed for his preaching becoming known locally as 'the Silver-Tongued Preacher or Silver-Tongued Smith'.

⁷⁹ William Gouge, *Of Domesticall Duties, eight treatises, etc.* (London, 1622), 219; Brett Usher, 'Gouge, William (1575-1653)', *DNB*, Oxford University Press, 2004, '<http://www.oxforddnb.com/view/article/11133>' (17 December 2006)

⁸⁰ See Table Three and Figure Six.

which both husband and wife, guilty and innocent, were judged within their communities.

In September 1574 the general Kirk of Edinburgh, understanding 'the fylthe vice of fornication and adultery daylie mair and mair to incress within this burgh', ordained those 'that be resaving of sic persons in within our houssis' to be vigilant for such transgressions.⁸¹ The Parliament of Scotland reiterated at regular intervals the punishments awaiting those who 'ar maryit and ar oppin manifest commoun and incorrigibill adulteraris'.⁸² In 1581 the parliament asserted that those found to have committed

notoure and manifest adulterie, ... quhair thair is bairn is ane or ma procreat ... or quhen thai keip companie and bed togidder notoriouslie knawin... quhairupon being dewlie admonisshit, to abstene and satisfie the Kirk... and yit contempnandlie Refusand and ar excommunicat for thair obstinacie... sall incur and suffer the said pane of deith⁸³

The 1592 statute singled out those 'wemen heretrices quha ar lauchfully divorcit frome thair housbands for thair awin fault and offence' for their interruption of the 'lauchfull succession begottin in ... lauchfull marriage.'⁸⁴ These statutes on adultery not only demonstrated the parliament's concern for inheritance rights, but also their co-operation with the religious authorities. Adultery was seen in these acts and statutes to be fundamentally disruptive of the running of good, moral marriages. The language of these statutes drew explicitly on the Old Testament in its invocation of 'notoure and manifest adulterie', a language and sentiment that was to have an impact on English legislation in 1650.

The blurring of the line demarking courtship, the initiation of sexual activity and the formalisation of marriage added further confusion to the definitions of fornication and adultery. In February 1606 Masie Daling appeared before the St Cuthbert's session and 'confest relapse in fornicatioun first wt piter Durie and last wt Johne Campbell clenger.'⁸⁵ Two months later she reappeared before the session charged with sexual

⁸¹ 'Extracts from the Buik of the General Kirk of Edinburgh in the years 1574 and 1575', *Miscellany of the Maitland Club*, Vol. 1 (Edinburgh, 1833), 105-6.

⁸² *APS*, 2: 468, 1551.

⁸³ *APS*, 3: 213

⁸⁴ *APS*, 3: 543.

⁸⁵ *NAS*, Edinburgh, CH2/718/2, f. 223.

liaisons with the same two men. However, at this appearance, Masie's response to the charge had shifted; she now 'confes yt scho has committit adulterie wt John campbell and first wt peter Durie in fornicatioun.'⁸⁶ It is unclear whether Durie was considered to have been Daling's husband and the fornication was ostensibly ante-nuptial, or whether Daling had committed fornication with Durie and subsequently married a third party. Another possibility was that John Campbell was the married party, as he too appeared before the session and admitted fornication, enacting his penance in a timely manner. For Daling, however, contact with the session was a more enduring matter and it was not until May 1606 that she was ordered to begin a lengthy twenty-five weeks of penance for her sins.

For women in uncertain marriages, with absent husbands, there was both a utility in forming relationships with other men, and a distinct danger in doing so. In June 1601 Susana Younger 'adultarix wt mark dallyaill ...gave in hure sute to have hir bairne baptizit'.⁸⁷ For Younger, her growing reputation for 'Inurious words' and her status as an 'adultarix' compelled the session to seek assurance that she was not to raise her child in a sinful household, forcing Younger to

promisit to get ane testificat of hir husbands deceass wt in ye space of half ane yeir ... vnder ye pane of ane thowsand merks yt gif hir husband be fand upoun lyf presentlie or was on lyfye tyme scho committit the fault scho sall ayer satisfie ye Kirk as ane adulterix or ells pay the said sowme

Susana Younger's relationship with Mark Dallyaill endangered her social and spiritual reputation. However, like many of the mothers encountered in the previous chapter, she needed to attach her child to a figure of male authority and financial stability. We can ask whether the need to provide a 'testificat of hir husbands deceass' was a means of seeking out an absent spouse, or a way to legitimise a deviant, adulterous, relationship with Dallyall. In either case, Younger may have endeavored to legitimize her illegitimate child. Her child's status was tied directly to her own as the presbytery ordered 'vpoun ye back of hur said bill ... yt hir bairne be baptizit vpoun conditioun scho satisfie ye west Kirk.' Yet the Kirk ordained that it would not be the man with whom Susanna committed adultery, Mark Dallyaill, who was to take on the role of father to her child. Rather the Kirk insisted 'hir bairne to be offerit vp

⁸⁶ NAS, Edinburgh, CH2/718/2, f. 231, 23 April 1606.

⁸⁷ NAS, Edinburgh, CH2/718/52, 52, 16 June 1601.

be ane faythfull man qa will obliss him self to bring vp ye said bairne in ye feir of god' and to this end 'Jon mcutishe hes obleist him self to releif ye said caus.'

Others within the burgh tried simply to deny their adulterous behaviour. In early 1612 Agnes Adesoune 'confest adulterie wt Johne wilson in plesance having ane wyf of his awin.' She deposed that 'scho fell wt John wilson in ... hir motheris hous, in the malt barne, ... [at] canonmylnes.'⁸⁸ However Wilson countered Adesoune's confession with his own 'stiff denyell'. Wilson's denial of Adesoune's 'confession' somewhat flummoxed the session who sought the advise of the Presbytery. Two weeks later Wilson and Adesoune reappeared before the session. This time Wilson 'confest adulterie wt agnes adisone; Qhuairfoir he askit god and the sessioun forgiveness and hopes in his mercie never to do the lyk agane.' It appears that John Wilson, like many brought before the session, came to understand that by confessing his sin, by participating in the religious system he could avoid the harsher justice enforced by the secular courts. In the session he would merely be subjected to penance in front of the congregation.⁸⁹

In York in 1598, Thomas Mawde launched a matrimonial suit against William Cockson, suspecting that the latter had committed adultery citing an indiscretion with one Joan Watson three years previously.⁹⁰ Mawde pursued Cockson on the basis of a suspicion aroused by 'a reporte that this r[esp]ondent [Cockson] was seene come late furthe of the said house, & gave some money to have it kepte secrettly'. Mawde pursued Cockson without the aid of Joan's husband, John Watson, a close friend of Cockson, Cockson stating in his defence that he 'did never committee the cryme of adulterye or fornycation with Joan Watson ... howbeit he confessth the he haith dyverse tymes resorted to the dwellinge house of the husbände of the saide Joan ... he being this r[esp]ondents friend & acquaintance'. In response to the accusation that he had given 'money to have it kepte secrettly', Cockson deposed that

one nighte this r[esp]ondente cominge from the sayde house aboute eighte of the clocke, certayne evill disposed persons came to this r[esp]ondente & used him with harde termes, sayinge they woulde complene of him for being there at that tyme. & urged hin to geve them a peece of money, demanndinge of him C li / And he beinge

⁸⁸ NAS, Edinburgh, CH2/718/3, f. 45-7, 14 May 1612 to 23 April 1612.

⁸⁹ Todd, *Culture of Protestantism*, 138-47, 281-83.

⁹⁰ Borthwick, York, CP.G. 3070. Matrimony: Thomas Mawde c. William Cockson, 1598.

lothe to have his name called in question, did, for avoydinge of the scandall & not in respecte of any cryme committed) geve them vi li in money

It transpired that the churchwardens of St Crux parish had also seen Cockson leaving the Wilson house at an unsocial hour and so called him before the Archbishop to account for his actions. At this presentment Cockson acknowledged 'that there was a common fame in the parishes ar[ticula]te that he demeaned himselfe suspiciously with the said Joan Watson'. This suspicion and 'common fame' had obliged the Archbishop to order Cockson to perform penance, following which Cockson was 'punished & suspended, But shortly after was againe released, & ...was lawfully restored againe'. The suspicion of a sexual transgression with a married woman undoubtedly impacted on Cockson's working life and reputation within the community. With his matrimonial suit, possibly launched on behalf of a sister (the record is unclear about this), Mawde compelled Cockson to relive the circumstances that led to his notoriety. This case emphasises the lasting shame that came with the suspicion of adultery. The handing over of six pounds, a significant sum of money, acted to confirm Thomas Cockson's guilt in this episode, it magnified suspicion. Within his own account of events the money was given 'for avoydinge of the scandall & not in respecte of any cryme committed',⁹¹ though this narrative conceded that a 'scandall' could be interpreted from Cockson's behaviour irrespective of any financial exchange. Men thus sought not only to prosecute, but also to protect themselves from accusations of adultery, understanding that their reputations, like those of women, were shaped by the social understanding or perception of illicit sexual activity.

Yet adultery was not only a matter for the ecclesiastical courts. The men and women disciplined for adulterous affairs by the sessions and Visitation of each city could find themselves presented before the more public civic courts, which reserved the right to inflict their own brand of humiliating and painful punishments, a favourite for this offence being carting.⁹² In July 1572 it was recorded that 'William Ropar, marynar,

⁹¹ Bernard Capp, 'The Double Standard Revisited: Plebeian women and male sexual reputation in early modern England', *Past and Present*, 162 (1999), 79-92. Capp details cases in which women elicited money from men in return for the promise not to sully their sexual reputation. Capp found that 'Clergymen, the archetypical figures of parochial respectability, were especially vulnerable to slurs on their moral probity, a fact reflected in the disproportionate number of defamation cases they brought', Capp, 'Double Standard Revisited', 89.

⁹² Gowing, *Domestic Dangers*, 101-5; idem, 'Language, Power and the Law: Women's slander litigation in early-modern London', in Jennifer I. Kermode and Garthine Walker (eds), *Women, Crime*

having a wif of his own, and Agnes Jeffreyson, wif of William Jeffreyson, cordyner, for their synne of advowtry [adultery] by them latly commiitted' were to be 'carted all together abowte this Cittie on Saturday next being market day'.⁹³ The couple were to become a part of a parade of sin, a parade in which they were objectified for their transgression, a transgression that made William Roper and Agnes Jeffreyson into figures to be reviled, a social entertainment, and a means of moral education. Their own households became somewhat notorious through their indiscretion, though the blame for that indiscretion was laid squarely at their own feet.

Interestingly, however, Roper and Jeffreyson were not the only ones standing in the cart that day, Katheryne Thompson, widow, was also made a part of this spectacle for her part in the affair, 'for procuryng and suffryng ... William and Agnes to commytte the said cryme in her howse as a bawde'. The court went on to rule that it was not the adulterers but the 'bawde', Katherine Thompson, who was to 'have a paper written in great letters declaring hir said offens, and to be sett upon hir head in example of others'. The York court clearly abhorred the sin of adultery, yet this case demonstrates that there was an equal, if not more pronounced abhorrence for those who were seen to promote such sinful activity. This punishment can be interpreted as an acknowledgement that whilst some may commit adultery, those who allowed or condoned such behaviour were not only more common within the city, but also more easily influenced by such a humiliating display of discipline.

and the Courts in Early Modern England (London, 1994), 33; idem, "'The Freedom of the Streets': Women and social space, 1560-1640", in Paul Griffiths and Mark S. R. Jenner (eds), *Londinopolis: Essays in the cultural and social history of early modern London* (Manchester, 2000), 140-41; Martin Ingram, "Scolding Women Cucked or Washed": A crisis in gender relations in early modern England?', in Jennifer I. Kermode and Garthine Walker (eds), *Women, Crime and the Courts in Early Modern England* (London, 1994), 63; idem, 'The Reformation of Manners in Early Modern England', in Griffiths, Fox, and Hindle (eds), *Experience of Authority in Early Modern England* (Houndmills, 1996), 66-67; Dave Postles, 'Penance and the Market Place: a Reformation dialogue with the medieval church (c.1250-c.1600)', *Journal of Ecclesiastical History*, 54:3 (2003), 458, 463; Clara Anne Bowler, 'Carted Whores and White Shrouded Apologies: Slander in the County Courts of Seventeenth Century Virginia', *Virginia Magazine of History and Biography*, 8 (1977). For Scotland see also: Harrison, 'Women and the Branks in Stirling', 118, 127-19; Michael F. Graham, 'Women and the Church Courts in Reformation Era Scotland,' in Elizabeth Ewan and Maureen M. Meikle (eds), *Women in Scotland, c. 1100 - c. 1750* (East Linton, 1999), 195. Graham cites the other public punishments, the stocks and jugs, the whipping and parading ordered in Scotland.

⁹³ Raine, *YCR*, Vol. 7, 152.

In 1561, John Jackson, tailor, was carted through York for 'kepyng a drabbe besyds his honest wife, who were latly taken in adultery.'⁹⁴ They were declared to be an 'evell example to lyke disposed persons' and were

sett also both together in one cart and carried frome the Trinytie gaites through the streetes over Ousebrig through Conystrete, Stanegate to Bothame barre and from thence backwards agane through Petregate, Collyergate to the Pavement and from thence over Fosse brig to Walmgate barre

Following this tour through the major streets of York, possibly accompanied by the sorts of 'rough music' characteristic of such ritualised public humiliations,⁹⁵ the 'drabbe' was 'deliveryd to the constables and so conveyed forth of this Citie'. Jackson was to remain in the custody of the city 'unto suche tyme my Lord Mayor take further order with hym.' Episodes such as this were used in, and were reflective of, the moral and social rhetoric espoused in sermons such as that *Against Whoredome and Uncleanesse*, which asked

How many maidens be deflowered, how many wives corrupted, how many widowes defiled through whoredome... For when this most detestable sinne is once crept into the breast of the adulterer...his true and lawfull wife is despiled, her presence is abhorred, her company stinketh, and is loathsome, whatsoever shee doth, is dispraised: there is no quietnesse in the house, so long as shee is in sight: therefore to make short worke shee must away, for her husband can brooke her no longer. Thus through whoredome is the honest and harmless wife put away, and an harlot received in her stead⁹⁶

Jackson's case demonstrates the concern that the civic and ecclesiastical authorities alike held for the 'evell example' set by the behaviours of such adulterous individuals. Adulterers tarnished the good names of their own households, displacing legitimate wives and children, and posed a moral threat to the broader society of the city. Those who could be removed from the city, such as the anonymous 'drabbe', were given the paperwork required, and warned never to return. In the 1569 case of Thomas Rowse and Johan Belgrave, 'wife of one William Belgrave of London', the couple were, again, carted through the city on the market day before Joan had 'a passeport made agenest tomorrow to passe directly frome this Citie to London to her said husband.'⁹⁷

⁹⁴ Raine, *YCR*, Vol. 6, 12.

⁹⁵ Martin Ingram, 'Ridings, Rough Music and the 'Reform of Popular Culture' in Early Modern England'. *Past & Present*, 105 (1984), 79-113.

⁹⁶ 'Against Whoredome and Uncleanesse', 83-84.

⁹⁷ Raine, *YCR*, Vol. 6, 157.

Belgrave was possibly engaging in commercial sexual activity, she was an undesirable; a bad influence in the city and so was expelled. She was forced to return to her husband and to face the social and financial consequences that awaited her in London. In the meantime Thomas Rowse was not let off lightly for his part in their indiscretion. He, like the other men of York who were carted for adultery, was held at the will of the Lord Mayor and Aldermen.

The Visitation records also recount a more incidental and even gentle narrative of adultery, in which the churchwardens presented men and women, as in Edinburgh, who were then to enact their penance and were possibly referred to the city courts. Yet, many couples like Peter Cotton and Anne Lenge do not feature in either the consistorial or civic proceedings.⁹⁸ One may, and perhaps should, consider if the records have simply been lost, particularly in the light of Sharpe's estimate that the surviving cause papers constitute 'only about one tenth of the causes initiated',⁹⁹ or whether the punishments of Cotton and Lenge led either to a breakdown of their respective marriages, or to subsequent reconciliation, an outcome not recounted either within the cause papers or Visitation returns.

In Edinburgh adultery, whilst in theory the most heinous of crimes, was yet another sin that could be repented. The session frequently allowed men and women to serve their time on the pillar, and so resume their lives within the burgh having been resaved, or received, by the congregation. There is a sense that the York authorities, at least periodically, cracked down with brute force on such transgressive and deplorable behaviour. Yet, in Edinburgh too, men and women were carted for illicit sexual activity. The *Buik of the Canagait*, not only contains the lists of 'fornicatouris, adu[l]teraris or filthy lufferis' banished from the parish in November 1564, but also records the branking and mass carting of those fornicators and adulterers.¹⁰⁰ As we have seen, the Scottish Parliament reserved the right to impose the death penalty for adultery.¹⁰¹ Therefore both Edinburgh and York adopted a severe attitude to the adulterous neglect of marital duty. Yet, these harsh penalties were accompanied by a

⁹⁸ Borthwick, York, YV/CB 2, Archdeacon's Visitations, 1613.

⁹⁹ J. A. Sharpe *Defamation and Sexual Slander in Early Modern England: The Church Courts at York*, Borthwick Papers no. 58 (York, 1980), 7.

¹⁰⁰ Calderwood (ed), *Buik of the Kirk of the Canagait*, 11.

¹⁰¹ *BUK*, 1: 378, 1: 536. *APS*, 3: 5-6.

leniency and pragmatism from the session, chastising adulterers, but ultimately aiming to retrieve what vestiges of a marriage remained.¹⁰² For the men and women involved this allowed both remorse and redemption in addition to reconciliation.

Cases such as these further demonstrate the interconnectedness of the ideas of marriage and sex. As Henry Smith declared in his *Preparative to Marriage* (1591)

So nothing may dissolve marriage but fornication, which is the breach of marriage: for marriage is ordained to avoid fornication, and therefore if the condition be broken, the obligation is void.¹⁰³

Sex and marriage were thus constitutive of each other in the rhetoric of the period in both cities, and yet they were also opposite ends of a spectrum of acceptable behaviour. The 'growing idealization of married love and domestic life' in the rhetoric of Tudor and Stuart moralists led to a condemnation of those sexual and social practices that undermined this cultural institution.¹⁰⁴ Marriage constituted a partnership of man and woman in which there was an economic, emotional, and sexual binding of the couple. Within marriage, sex could be a glorious union of man and woman, in particular when enacted for the purpose of procreation. On the other hand, the moral rhetoric of the day turned sexual encounters into dangerous, sinful, and even criminal activities that were at one and the same time necessary and transgressive. As Stretton has observed, 'adultery was never sufficient to justify a woman separating from her husband or to ground an order for maintenance'.¹⁰⁵ There was a gendered tension within attitudes to adultery, a tension that was acknowledged by William Gouge in his treatise *On Domesticall Duties* when he wrote that

the ancient Romans and Canonists haue aggrauated the womans fault in this kinde farre aboue the mans, ... yet I see not how that difference in the sinne can stand with the tenour of Gods word. I denie not but that more inconueniences may follow vpon the womans default then vpon the mans: as, greater infamy before men, worse disturbance of the family, more mistaking of legitimate, or illegitimate children, ... Yet in regard of the breach of wedlocke, and transgression against God, the sinne of either partie is alike. Gods word maketh no disparity betwixt them.¹⁰⁶

¹⁰² Sellar, 'Marriage and Divorce', 72-73; Thomas, 'Puritans and Adultery', 260-61, 264.

¹⁰³ Smith, *A Preparative to Marriage*, 91.

¹⁰⁴ Thomas, 'Puritans and Adultery', 259.

¹⁰⁵ Stretton, *Women Waging Law*, 195.

¹⁰⁶ Gouge, *Domesticall Duties*, 220.

For women, in particular, an adultery suit against her husband needed to 'emphasise not only sexual betrayal, but other kinds of betrayal as well'.¹⁰⁷ Thus, while men represented female sexual transgression as a form of domestic rebellion and disorder, women tended to stress male economic and physical abuse of their place within the domestic hierarchy.¹⁰⁸ Yet there was a moral and sexual standard that held men accountable for sexual activity outside of the marital bed. In the Scottish system both men and women were punished, and it was the person who committed adultery, male or female, who was penalised in any subsequent legal settlement of marital property. In England too, women could pursue their husbands for adulterous acts, but it was in the language of defamation, in the social reporting of indiscretions that male and female reputations came undone.

Domestic Discord, Violence, and Abuse

Henry Smith, in his *Preparative to Marriage*, stated of violence between husband and wife, that

As we doe not handle glasses like pottes because they are weaker vessels, but touch them nicely and softly for feare of cracks; so muste a man intreate his wife with gentlenesse and softnesse ... If he cannot reforme his wife without beating, hee is worthy to be beaten for choosing no better: when he hath used all meanes that hee may, ... he must take her for his crosse, and say *Jeremie, This is my crosse and I will beare it*. But if he strike her, he takes away his hand from her, which was the first part he gave her to joyne them together. ... Her Cheeks are made for thy lippes and not for thy fistes.¹⁰⁹

However, William Whateley in *A Bride Bush* (1619) wrote that a husband

...must know, that for correcting or actuall punishing of his wife, he must come exceedingly slowly to it, and bee very seldom in it, never proceeding vnto it, till some palpable wickednesse haue compelled him, because other meanes haue been frustrated. ... But for blowes, for strokes with hand or fist, nothing shuld drive a husband to them, except the utmost extremities of unwifelike carriage...¹¹⁰

¹⁰⁷ Stretton, *Women Waging Law*, 195.

¹⁰⁸ Stretton, *Women Waging Law*, 195-96.

¹⁰⁹ Smith, *A Preparative to Marriage*, 57-59.

¹¹⁰ William Whately, *A Bride-Bush: or, A direction for married persons Plainely describing the duties common to both, and peculiar to each of them. By performing of which, marriage shall prooue a great helpe to such, as now for want of performing them, doe find it a little hell. Compiled and published by William Whately, minister and preacher of Gods Word in Banburie in Oxfordshiere*, London: Imprinted by Felix Kyngston for Thomas Man, 1619), 123. Whately printed this 1619 text to repudiate the unauthorised publication of the sermon two years earlier, notably changing his stance on violence; William Whately, *A Bride-Bush, or A Wedding Sermon: Compendiously describing the duties of Married Persons: By performing whereof, Marriage shall be to them a great Helpe, which now find it a*

Smith's and Whateley's treatises contributed to a debate in early modern England concerning domestic authority and the householders right to castigate and discipline those in his household, spouse, child, and servant.¹¹¹ These debates were a part of the discourse of patriarchy, which asserted male authority through all social strata and institutions and the right to enact discipline, through violence if necessary. This was an ideology, a social fantasy, which generated distinct tensions in its enactment and that could run counter to male as well as female interests.¹¹² Violence within the domestic sphere was neither universally accepted nor condemned. Within popular literature and legal practice there was a tension between the enactment of domestic violence and the assertion of household authority and order.

The historiography of domestic violence in England has developed slowly but steadily in the past twenty or so years, with studies looking at various aspects of abuse in the early modern domestic space, from those that culminated in homicide to the more insidious and difficult to trace instance of everyday wife beating and neglect.¹¹³ Again, studies that look at the impact of violence in Scottish households have been slow in coming forth,¹¹⁴ though there has been something of a torrent of both

little Hell (London, 1617), 22: 'Let his wisdome rather appeare in abstayning from blowes, & preuenting the breaking forth of such enormities as may challenge them, than in giuing them moderately, and (as he thinkes) in due manner.' Jacqueline Eales, 'Whately, William (1583-1639)', *DNB*, Oxford University Press, 2004 '<http://www.oxforddnb.com/view/article/29178>' (1 November 2006).

¹¹¹ Susan Dwyer Amussen, 'Being Stirred to Much Unquietness': Violence and Domestic Violence in Early Modern England', *Journal of Women's History*, 6:2 (1994), 70-71; idem, 'Punishment, Discipline and Power: The Social Meanings of Violence in Early Modern England', *Journal of British Studies*, 34:1 (1995), 14; Elizabeth Foyster, 'Male Honour, Social Control and Wife Beating in late Stuart England', *TRHS*, ser. 6, 6 (1996), 215-24; Shepard, *Meanings of Manhood*, 136-38.

¹¹² Fletcher, 'Men's Dilemma', 61-81; Foyster, 'Male Honour', 215-24; Susan Dwyer Amussen, 'Gender, Family and the Social Order, 1560-1725', in Anthony Fletcher and John Stevenson (eds), *Order and Disorder in Early Modern England* (Cambridge, 1985), 196-215.

¹¹³ J. A. Sharpe, 'Domestic Homicide in Early Modern England', *Historical Journal*, 24:1 (1981); J. S. Cockburn, 'Patterns of Violence in English Society: Homicide in Kent, 1500-1985'. *Past & Present*, 130 (1991), 29-48; Susan Dwyer Amussen, 'Being Stirred to Much Unquietness', 70-89 at 71-72; Fay Bound, 'An 'Uncivil' Culture'; Frances Elizabeth Dolan, *Dangerous Familiars: Representations of domestic crime in England, 1550-1700* (Ithaca (NY), 1994); Martin J Wiener, 'Alice Arden to Bill Sikes: Changing nightmares of intimate violence in England, 1558-1869', *Journal of British Studies*, 40:2 (2001); Bailey, *Unquiet Lives*, esp. ch. 6; Foyster, *Marital Violence*; idem, 'Male Honour'; Anthony Fletcher, *Gender Sex and Subordination in England 1500-1800* (New Haven, 1995), esp, ch 10; Stretton, *Women Waging Law*, 197-201.

¹¹⁴ A good start has however been made with Yvonne Galloway Brown and Rona Ferguson (eds), *Twisted Sisters: Women, crime and deviance in Scotland since 1400* (East Linton, 2002); Deborah A. Symonds, *Weep Not For Me: Women, ballads, and infanticide in early modern Scotland* (University Park, P.A.: 1997), is a compelling study of infanticide.

academic and more popular work on "masculine" violence and bloodfeud in Scotland during this period.¹¹⁵

In York the civic courts and justices of the peace monitored and cautioned excessively violent behaviour both within the household and on the street. Cases of domestic violence only appeared in the ecclesiastical jurisdiction when a marital separation was being sought, or in the most extreme and public cases of violence.¹¹⁶ This not only impacted on the content of the records, the church courts inviting deponents to construct brutal narratives of physical and bodily torment, but has also had a profound impact on their interpretation and use by historians.¹¹⁷ The Scottish sources provide not only a different legal and cultural context for communal discipline, but also required different narratives of personal interaction, different narratives of domestic violence. Yet, like the York courts, the Kirk sessions drew on attitudes to disobedience, brawling, and in many cases drunkenness in their responses to domestic violence, citing these as the apparent causes and manifestations of marital difficulties and tensions.

The session was concerned with not only spousal abuse, but also the abuse of parents, servants and children. Six detailed presentments for domestic violence came before the St Cuthbert's session encompassing the disorder of both parents and spouses, though other cases addressed the problem of brawling and 'flyting' in the street.¹¹⁸ The records of South Leith, another Edinburgh parish, during this period reveal four more instances of what would today be considered domestic violence.¹¹⁹ Such cases periodically refocused session and civic attention on the potential brutality of domestic life. Yet the understanding and acceptance of that brutality was complicated by ideas about life cycle, status and order. These were all cases in which violent

¹¹⁵ Keith M. Brown, *Bloodfeud in Scotland 1573-1625: Violence, justice and politics in an early modern society* (Edinburgh, 1986); Harry Potter, *Bloodfeud: The Stewarts & Gordons at war in the age of Mary Queen of Scots* (Stroud, 2002); Anthony Goodman, 'Border Ways and Border Warfare'. *History Today*, 38:9 (1988); Oliver Thomson, *The Great Feud: The Campbells & the MacDonalds* (Stroud, 2000); Edward J. Cowan (ed), *The Ballad in Scottish History* (East Linton, 2000); Jenny Wormald, 'Bloodfeud, Kindred and Government in Early Modern Scotland', *Past & Present*, 87 (1980), 54-97.

¹¹⁶ Bound, 'An 'Uncivil' Culture', 52; Foyster, 'Male Honour', 215-24 at 216-17.

¹¹⁷ Sharpe, 'Domestic Homicide in Early Modern England', 31.

¹¹⁸ NAS, Edinburgh, CH2/718/1-4, 2: f. 146, 11 February 1602; 2: f. 328, 1 September 1608; 3: f. 60, 10 December 1612; 4: f. 165, 31 January 1611; 4: f. 170, 8 August 1611.

¹¹⁹ D. Robertson (ed), *South Leith Records: Compiled from the parish Registers for the years 1588 to 1700; and from other original sources* (Edinburgh, 1911), 3, 9, 10, and 11.

actions breached both the confines of the household and the definitions of appropriate chastisement. Husbands, wives and parents were figures of authority and power within the early modern household, with the right to impose their own corrective punishments on disorderly or idle wives, children, and servants.¹²⁰ As Knox asserted, '[i]f thou be a subject, sonne, or daughter, be obedient to thy superior'.¹²¹

In 1596 William Forester of Leith was 'put to liberty furth of waird quhair he wes detenit for misusing his wyfe'.¹²² It turned out that Forester had a history of disrupting the peace of the burgh. Three years previously he had been ordered to pay thirty pounds to the Kirk for the poor, twenty pounds to the wife of George Maw 'whom he injured for the surgeons fee', and a further fifty pound surety that he would maintain his 'peaceable behaviour in the future'.¹²³ Clearly Forester was a man with a tendency to violent behaviour against women. In this instance the South Leith session was imposing an almost civil punishment by imprisoning Forester, detaining him and preventing him from inflicting further harm.

The *Book of Discipline* tacitly recognised a relationship between excess, particularly in the consumption of alcohol, and violent or disruptive behaviour,¹²⁴ and this was made explicit in the Kirk minutes and burgh records. In November 1595 the burgh announced that

Forswamekill as the vyce of drukkynnes abounds within this burgh for laik of punisment, ... thai haif [made a] ... statute that na manner of persouns be fand drukkinsum within this burgh at na tyme heirafter, publictlie or privatlie under the payne of ane unlaw of ten merks... and imprisonment of thair persouns within ... the stepill for aucht dayes upoun breid and watter onelie, and sic as hes nocht the unlaw to pay to

¹²⁰ Smith, *A Preparative to Marriage*, 68-75; William Gouge, *Of Domesticall Duties, eight treatises, etc.* (London, 1622)

¹²¹ Knox, *Works*, 3: 539.

¹²² *Ed. Recs. II*, 160.

¹²³ *Ed. Recs. II*, 88.

¹²⁴ Cameron, (ed), *The First Book of Discipline*, 168. On the history of drink and drinking see: Adam Smyth (ed), *A Pleasing Sinne: Drink and conviviality in seventeenth-century England* (Cambridge, 2004); Judith M. Bennett, *Ale, Beer and Brewsters in England: Women's Work in a changing World, 1300-1600* (Oxford, 1996), 131-33; A. Lynn Martin, *Alcohol, Sex and Gender in Late Medieval and Early Modern Europe* (Houndmills, 2001), 111-18, 128-33; Peter Clark, *The English Alehouse: A Social History 1200-1830*, (Longman, 1983); idem, 'The Alehouse and Alternative Society', 47-72; Alan Everitt, 'The English Urban Inn, 1560-1720', in Alan Everitt (ed), *Perspectives in English Urban History* (London, 1973), 91-137; Susanna Barrows and Robin Room, *Drinking Behaviour and Belief in Modern History* (Los Angeles, 1991).

be imprysonet as said is and had to the croce thair with ane paper about thair heid upoun ane merket day for the spaice of twa houris¹²⁵

In the light of such ordinances men like Luke Lennox in February 1611 were warned 'under ye pane of making his publick repentance before ye congregatioun yt he sall never be fand strykand his wyf nor prophaning the sabboth nor be drunken in tymis cummyng'.¹²⁶ In 1602 David Wilson 'confest that upon the Sabboth day afternone in tyme of preiching he was drunken and struik his wyfe publiclie in the streit'.¹²⁷ For this first offence the St Cuthbert's session ordered that Wilson 'sit doune wpon his kneis and confes the secunde fault, and that he sall stand wpon the Piller on the Sabboth nixtocum and thair in the presens of the peopill to confes his vyces'. In both cases wife beating was not the sole matter at issue: both men had profaned the Sabbath with their disorderly behaviour. Yet the connection between drunkenness, irreverence to the Kirk, and domestic violence was made clear. David Wilson's 'secunde fault' of striking his wife in public precipitated a public punishment, apology and repentance. Both men were disciplined for their failings as respectable householders, for, as Knox wrote, 'if a man make no thought of his owne, and specially of his household or familie, hee hath denyed the faith, and is worse than an infidele'.¹²⁸

Few cases in which women initiated domestic violence have survived in the records of the Edinburgh Presbytery during this period, for, as Foyster has observed, '[s]uch was the importance of husbandly authority that normally no self-respecting man would admit that his wife had been violent to him unless he could show that he had regained control in the struggle that followed'.¹²⁹ Yet, in December 1612 Jonet Proveane, spouse to John McDull, 'confest yt scho struik him with ane knyfe in ye thrut'.¹³⁰ For this Proveane was made to 'stand thrie sabboth dayis in saccloth vpon the piller and lykwyis to stand at the Kirk Dur qll the preitching begin'. Proveane confessed her sin, offering herself to the discipline of the session. Remarkably, she was not threatened with banishment, as Lennox and Wilson had been. Given contemporary anxieties about cuckoldry and female rebellion one would expect

¹²⁵ *Ed. Recs. II*, 145. November 1595

¹²⁶ NAS, Edinburgh, CH2/718/52, 165.

¹²⁷ NAS, Edinburgh, CH2/718/2, f. 146, 11 February 1602.

¹²⁸ Knox, *Works*, 3: 536.

¹²⁹ Foyster, *Marital Violence*, 103.

¹³⁰ NAS, Edinburgh, CH2/718/3, f. 60, 10 December 1612.

Proveane to have received a more severe punishment.¹³¹ Yet this is one of the very few cases in which a public apology was not made explicit in the session minutes,¹³² and this might indicate that the session was being relatively lenient, perhaps taking into account but not recording the context of the violence. Though Jonet Proveane's time 'in saccloth vpon the piller', and 'at the Kirk Dur', still subjected her to the humiliating and public rituals of display characteristic of Kirk discipline.

However, wives, like husbands, could find multiple ways to abuse and neglect their spouses. The session of the Canongate recorded in February 1565 the case of Jonet Murdo whose husband George Stene, baker, complained that he 'can nocht duell with hir in hous be resone of wicketnes of toung and casting at him, with hir handis, stannis and dirt.'¹³³ Murdo's response was to claim that Stene was the violent party and that she 'dred bodelye harm of him'. Both were found to have been culpable for domestic disorder and for abusing each other. However, the session singled out Stene's abuses and ordered that she 'ask the said George forgivnes ordannis the said George to resave hir, with ane admonitioun – gif ony of thame commit sic crymes in tyme cuming, that thay salbe put out of the kirk as wicket doers.' Murdo and Stene's status within the parish became dependant on their future peaceful cohabitation. Though Murdo's admission of his wife's violent behaviour toward him did open him to the ridicule of his peers, in this case his desire to remove his wife's violence and disorder overrode his concern for his "manhood".¹³⁴ Murdo was required by the session to readmit Stene to his household, thereby conforming to the model of the good patriarch, though Stene was required to confess her fault before the congregation and capitulate to his domestic authority. Yet ultimately it was both Murdo and Stene, as a couple, who were to ensure their future marital behaviour conformed to the expectations of their Kirk or be 'put out of the kirk as wicket doers.'

In England too there was a longstanding relationship between social disorder or violence and the excessive consumption of alcohol.¹³⁵ Foyster interprets this as a

¹³¹ Amussen, *An Ordered Society*, 118; Foyster, 'Male Honour', 216.

¹³² In cases of violence initiated by women in other presbyteries, parading and processions were used to punish, as with men. See, Todd, *Culture of Protestantism*, 153

¹³³ Calderwood, *Buik of the Kirk of the Canagait*, 38.

¹³⁴ Foyster, *Manhood in England*, 104-7; Shepard, *Meanings of Manhood*, 136-37.

¹³⁵ Bailey, *Unquiet Lives*, 68-9.

concern of the later seventeenth and eighteenth centuries,¹³⁶ and identifies alcohol as not simply a fuel to male violence, but also as a means by which women escaped their violent environment, citing the increase in female alcohol consumption during this period.¹³⁷ Yet, as we have seen in Chapters One and Two, the associations between alcohol, drunkenness, and social and domestic disorder was firmly in place in the mid sixteenth century, though the figures for the female consumption of beer and ale are unclear. Lower frequency of violence in York can be explained by the nature of the sources I have examined.

In York the ecclesiastical authorities simply did not encounter domestic violence as a matter of course. Cases of excessive domestic conflict or public disorder would have been presented before the Session of the Peace or civil magistrates. These cases, like their counterparts in Edinburgh, appear to be constructed as a part of a narrative of social as well as domestic disorder. A good example of this being the 1590 case of Anthony Sandwith who was 'committed to warde [and who] shall before his departure be bound to good abearing with good sewertyes against his owne wife and against Mr Alderman Trewe'.¹³⁸ It was found and recorded that Sandwith 'did beat and very evill abuse his wife to her great hurte and to the great disquiet and greife of his good neighbours and to the evill example of other'. Furthermore, he 'did very evell abuse by lewd, undecent and unreverent speaches, Mr Alderman Trewe.' Interestingly, however, the record makes special mention of the fact that Sandwith was reported by the Alderman and constables, 'concerning the abusinge of his sayd wife.' Thus, whilst the civil courts of York did not prosecute instances of domestic violence frequently, there does appear to have been a concern regarding violence and disorder within the marital partnership.

In 1598 Isabel Markham petitioned the Archbishop of York.¹³⁹ Isabel was attempting to persuade the Archbishop to enforce an order previously made allowing Markham and her husband to separate 'from bed and board', and ordering that she be paid a weekly allowance of two shillings. In the opening lines of the petition Markham

¹³⁶ Foyster, *Marital Violence*, 3-4.

¹³⁷ Foyster, *Marital Violence*, 101, 210-11.

¹³⁸ Raine, *YCR*, Vol. 9, 117.

¹³⁹ Borthwick, York, CP.G. 3055, 1598. This is the only petition of this kind that I have come across In York.

acknowledged that the suit had only hardened her husband's feelings against her, stating that 'sence [the] begynyng of the said siette she hathe bene verie evell ussed, dyvers wayes by her howsbande'. In particular he had withheld the allowance awarded her, and 'she never receyved one grotte' of the award which had been made 'almost a yere a goie'. In the mean time the wayward husband's employer, one Master Troughton, had offered Markham a one off payment of £30 followed by a yearly allowance of £5 as a substitute for the courts two-shilling award.¹⁴⁰ At this point in the negotiations Markham's husband

cam to omearnalles Wyffe house a oneste women a frende of hers & there ...toike away a gowne & a cloke of your said oratryxe by force and dyd shamfullie myscall your oratryxe whore & ch[ar]gaynge yt if she wore then he wolde strype her naked And where as your said oratryxe did knelle before hym with ij honeste women with ... Requeryng of hym som succer, he wolde grante her none

Isabel Markham knelt before her husband and was publicly humiliated as her friends 'standyng by wolde not for womanhed speake one worde'. She recounted the forms of public humiliation and degradation, the withholding of money and the taking away of clothing that would not be unfamiliar to a modern study of domestic abuse and that is consistent with patterns of violence observed in other studies of domestic discord in this period.¹⁴¹ Markham then sought succour from the Archbishop as no one else could either enforce her husband's submission to the court order, or grant her the financial aid she clearly required, having 'borrowed of her said frendes at tymes twentie nottis, so yt sh can have no longer succer of them'.

Isabel Markham's case is unusual in two respects. Firstly, she had already secured a separation from her husband on the grounds of cruelty.¹⁴² Moreover, whereas most women either claimed or implied a long history of physical abuse, Markham's claim is focused almost solely on his financial neglect and this one moment of malice rather than a detailed account of ongoing menace or violence.¹⁴³ Her petition recounted her husband's use of the term 'whore' as a means to impugn her reputation and to imply

¹⁴⁰ Stretton, *Women Waging Law*, 187-89. Stretton details a case in which the withholding of a financial award precipitated a much more detailed account of the marital conduct of Katherine Willoughby and her two former husbands, Keneln Willoughby and Henry Fenner. Each participant constructed narratives of their own 'good' marital conduct and the poor conduct of the other.

¹⁴¹ Foyster, *Marital Violence*, 50-51; Bailey, *Unquiet Lives*, 66-68; Bound, 'An 'Uncivil' Culture', 52.

¹⁴² Foyster, *Marital Violence*, 17-20; Bailey, *Unquiet Lives*, 26, 49-50, 114; Stretton, *Women Waging Law*, 29.

¹⁴³ Bound, 'An 'Uncivil' Culture', 50-58; Foyster, *Marital Violence*, 38, 47-8; Bailey, *Unquiet Lives*, 64-7.

that she was to blame for her misfortune, promising to 'strype her nakid' for any social or sexual misconduct. Isabel Markham's husband is startlingly absent from the record, though the surname was connected to the administration of the Dean and Chapter of York Minster,¹⁴⁴ perhaps explaining her decision to take the exceptional step of petitioning the Archbishop, Matthew Hutton,¹⁴⁵ though the petition was lodged in the standard jurisdiction, and not within the peculiar of the Dean and Chapter. If Markham did respond to his wife's petition, or if he was brought before the Archbishop for non-payment, the record has not survived, and neither have the cause papers of their original separation.

Yet we should not presume that the general absence of violence in the York records indicate either a lack of domestic violence within the City or for a lack of institutional concern about violence between couples. In the light of the frequent references within the House Books of the city, recording the help given to those couples and families that encountered financial difficulties,¹⁴⁶ it would be naïve to assert that the same council was unconcerned with the abuses of power that could be encountered in the household. Indeed the earlier case of Margaret Fewlar and her abusive master Henry Cutts¹⁴⁷ demonstrates that the aldermen of the city were concerned about household order and violence. So too does Anthony Sandwith's imprisonment at the hands of the Sheriff's Court. We can but presume that parishes of York implored families to intervene in such cases of disorder, and that the church attempted to maintain a degree of discretion in those cases where 'the offence be secret or known to few men', as the Scottish Kirk did.¹⁴⁸

The institutional and moral concern for domestic disorder and violence drew on narratives of commonwealth and good order in both Edinburgh and York. The Edinburgh session presented couples whose violence breached the domestic space,

¹⁴⁴ *Index of Wills etc., From the Dean and Chapters Court at York, 1321-1636*, (York, 1907), 40 and 85. The will of Elias Markham Esq., was recorded on the 28th of October 1578, and Christopher Markham's in 1608. *Index of the Administrations Entered in the Registers of the Archbishops at York being Consistory Wills, &c., A.D. 1316 to A.D. 1822*, 2 Vols, (York, 1937), 2: 30, John Markeham, Vicar of Orston, was connected to the Dean and Chapter, having died 7th May 1568.

¹⁴⁵ Claire Cross, 'Hutton, Matthew (1529?-1606)', *DNB*, Oxford University Press, 2004, '<http://www.oxforddnb.com/view/article/14308>' (18 December 2006)

¹⁴⁶ Raine, *YCR*, Vols 6 to 9.

¹⁴⁷ York, City Archives, F-2-Quarter Sessions, Volume 3: 86.

¹⁴⁸ Cameron, (ed), *The First Book of Discipline*, 167-68. Todd, *Culture of Protestantism*, 243.

men and women who publicly brawled and struck each other. They disciplined both husband and wife in an effort to bring the household and marital unit in line with their moral code. Methods of domestic and communal violence in both Edinburgh and York were enacted within and alongside the discourses of domestic order and authority that questioned and at times endorsed some degree of violence within the household. Yet the men and women who suffered at the hands of a violent spouse were also able to draw on and employ narratives that condemned such violence, narratives, like Henry Smith's that expressed a tension in their attitudes to the gendering of the household and sex.

Conclusion

Whilst in the making of relationships there seems to have been some degree of flexibility and autonomy, in the breaking of the ensuing marriages men and women were somewhat disempowered as the moral rhetoric of marital unity and chastity was enforced by both city and church. Many of the couples whose relationships came under the stresses of adultery and violence were cautioned not only to desist from such behaviour but also to resolve the problems that led to sinful behaviour. The pressures on households to appear to be both ordered and loving, to educate and correct, added to the financial and sexual expectations of marriage and no doubt placed a strain on numerous marriages which never came under the scrutiny of the disciplinary forums of these cities. The cases within this chapter were exceptions to the marital norm. These were cases of extreme behaviour that had been brought into the communal, legal, sphere. Yet this exceptionality does not mean that their analysis cannot inform our understanding of more general marital practice. There was a continual pressure within both cities to construct the household and family as a cohesive unit with the married couple at the centre. The dictates of social and sexual decorum stigmatised numerous interactions between the sexes that the practical experience of courtship, marriage and sociability clearly necessitated, as alehouses, those hotbeds of latent sexual desire, and the church yard provided spaces of social and sexual interaction for both married and unmarried alike.

For those men and women who could no longer 'resign themselves to their fate and make the best of things',¹⁴⁹ adulterous affairs and informal separations, though 'socially frowned upon and often socially disadvantageous',¹⁵⁰ were a means of escape. The nature of the penitential system established in Edinburgh, and the culture of litigation that existed in York, forced those men and women who were found to have behaved outside of the bounds of appropriate marital sexuality and order to participate in a complex system of repentance, apology and penance. These men and women were not only made the subjects of scorn through the courts, but were imprisoned and prosecuted through the civil legal system, and made the subjects of communal gossip and ignominy.

¹⁴⁹ Leneman, *Alienated Affections*, 1.

¹⁵⁰ Elizabeth Foyster, 'A Laughing Matter: Marital discord and gender control in seventeenth-century England'. *Rural History*, 4 (1993), 5.

Conclusion

In both Edinburgh and York 'the politics of sex and reproduction were at the juncture of household and state' linking the need for social and domestic order to the most fundamental of human interactions, the formation of sexual relationships.¹ The negotiation of sexual identity was a social enterprise in which communities and the church participated, assigning sexual responsibility and culpability to men and women. This understanding, of the interrelatedness of sex and social identity, inherently linked the behaviours and cultural narratives of men and women. Men and women were equally complicit in and, in theory, equally culpable for sexual transgression. However, women did find that theirs were the reputations that were most easily damaged by extra-marital sexual encounters, that it was their chastity that formed the basis of household honour and was thus most precarious. In social practice and in the language of sex the double standard appears to have been alive and well in both Edinburgh and York, although as Bailey argues of the eighteenth century, it may not have been 'rigidly applied' within domestic relationships.² There were means by which to fight against this double standard. Women employed the language of insult to attack not only each other's sexual honesty, but also that of the men in their communities. As Capp has shown, women could employ distinctly male narratives of sexual and social responsibility to undermine male reputations, in particular by using the threat of paternity to manipulate men emotionally, legally and financially.³ Yet, the pressure on women to name the correct fathers of their illegitimate children in both Edinburgh and York militated against the prevalence of these forms of attack. Rather, men and women negotiated sexual and social identities, using the courts to form and dissolve relationships, and to negotiate and contest responsibility for the reputational, disciplinary and parental consequences of sexual encounters.

¹ Laura Gowing, *Common Bodies: Women, Touch and Power in Seventeenth-Century England* (London, 2003), 208.

² Keith Thomas, 'The Double Standard', *Journal of the History of Ideas*, 20 (1959), 195-216; Bernard Capp, 'The Double Standard Revisited: Plebeian women and male sexual reputation in early modern England', *Past and Present*, 162 (1999), 70-100; Joanne Bailey, *Unquiet Lives: Marriage and marriage breakdown in England, 1660-1800* (Cambridge, 2003), 195.

³ Capp, 'Double Standard Revisited'.

The language of sex that abounded in the early modern cities provided both a legal vocabulary for transgression, and a social and cultural vocabulary that intrinsically tied the body and household to notions of disorder and moral corruption. The language of sex within both cities was used to manipulate ideas about the body by using animal imagery and the language of sexual infection as a means of attack. Yet, this culture of insult was often founded upon social and domestic, rather than inherently sexual, disputes with words such as whore and cuckold used to attack a household's status and respectability via its individual members. These insults were distinctly gendered. Yet these gendered words, whore, drab, rogue and knave, were flexible and could be used across gender, for example, men were frequently called whore. This insult worked in a two-fold way by evoking not only the sexual transgression of whoredom but also the cultural and gendered inferiority of the female whore. By using the language of insult in this way women could not only attack other women's marital and maternal legitimacy but they could also attack male patriarchal and paternal values.

Men and women thus contested relationships and identities as they engaged with the moral, social, and sexual cultures of each city. Within Edinburgh men and women submitted themselves to the session and to their congregation, not only to be absolved of sexual sin and social transgression but also, as Gowing has illustrated within southern England, to negotiate their interactions with each other and with their communities.⁴ In doing this they employed the language and morality of the church, and the Kirk in Scotland, to their own ends. However, women did not negotiate these relationships in isolation. Female identities were tied to male ones in the narratives of religion. The word whore intrinsically linked female sexuality to male sexual conduct. Similarly, men engaged with women to negotiate their sexual and social identities, situating themselves as disputants, lovers, masters, and husbands at various points in their narratives.

The formation and dissolution of sexual relationships was a part of the process of courting and part of the currency of social interaction between the sexes. Men and women exchanged tokens and gifts as symbols of their affections and emotions, yet

⁴ Laura Gowing, *Domestic Dangers: Women, Words and Sex in Early Modern London* (Oxford, 1996).

these objects carried malleable meanings and, as Robert Paycock found in both of his failed courtships, the significance of objects could be manipulated and denied. Within this process of social and material exchange men and women needed to negotiate with each other, with friends, and with relatives, as they sought to form households and test the sustainability of the match. Yet marriage was a relationship formed as much on physical, as emotional or economic, compatibility. Thus the men and women of York and Edinburgh also engaged in an exchange of sexual favours as they negotiated social relations and courtships. These sexual encounters could form the circumstances under which men and women were brought into the view of the courts, as women in service found themselves in their master's beds, as marital promises were made and broken, and as pregnancies ensued.

Paternity disputes in the York church courts demonstrate how women employed the law to compel the alleged fathers of their children to participate in the social and financial practices of parenthood. In so doing they used the established connections between sex and marriage to negotiate the biological and marital claims they made. These women were not necessarily seeking marriages; they were trying to gain financial settlements that accounted for the cost of parenthood. In response men often situated their encounters with these women in sexual rather than marital terms. They denied the spousal claims that these women made, thus denying their paternity of the children that ensued, however, they could make social and financial concessions to fatherhood. Some men, like Thomas Pashbie even conceded to sex and paternity, whilst still denying his spousal connection to Margaret Slater. Indeed Pashbie appears to have embraced his role as a father when he 'adopted and bringeth upp [the child] at his chargies.'⁵ In Edinburgh a similar pattern appeared in the negotiation of fatherhood through baptism, as fathers took on the responsibility of children recognised to be theirs but denied any association with the mothers of those children. In both cities men and women accepted that parenthood was a category that shifted within social and economic circumstances. It was contested through these distinctly different legal forums, yet in both cities the pressures on women to demonstrate good motherhood, and the pressures on men to bear the costs of fatherhood, both social and financial, are evident.

⁵ Borthwick, York, CP.G. 2982, 1597.

Men and women were insulted, prosecuted, and praised on the basis of the relationships they formed and maintained with the opposite sex. In slander disputes wives defended their husbands each time they defended their own honour, for, as Sharpe has observed, 'the maintenance of sexual honour was more important after than before marriage.'⁶ This observation was borne out by the experiences of women like Jane Eshton, defended both her own and her husband's honour in her defamation dispute with Jane Leige, or Isobel Girne who sought the aid of her midwife in attesting to the legitimacy of her premature baby. For men and women sexual relationships, both legitimate and illicit, constituted economic, emotional and religious encounters between the sexes; they were inferred and suspected by neighbours and parishes and were enforced within the courts.

Bailey has demonstrated how marriages were fundamentally founded, in theory and in practice, on the co-operation of man and wife, yet she has also demonstrated that 'marital disputes were accepted as part of married life.'⁷ Co-operation was key to the success and the reputation of the marriage and household. Within courtship therefore both men and women sought to make matches that could be sustained through affection and friendship, and not necessarily, as O'Hara may claim, through economic utility.⁸ However, these two studies work across the early modern period, Bailey's work focussing on the eighteenth century, and this difference in chronology can account for their different perspectives. This thesis argues for a middle ground in which couples needed to consider both the economics of a marriage and the need for mutual affection. This desire to sustain the integrity of marriage as a union of man and woman was shared by the ecclesiastical authorities, particularly in Edinburgh, who sought wherever possible to reconcile those marriages that encountered difficulties. Those marriages that could not be reconciled, that descended into violence, adultery and abandonment, entered into the disciplinary mechanisms of the courts. It was at this point that marriages once made became virtually impossible to unmake, that men and women's ability to negotiate with the courts was diminished.

⁶ J. A. Sharpe *Defamation and Sexual Slander in Early Modern England: The Church Courts at York* (York, 1980).

⁷ Bailey, *Unquiet Lives*, 199.

⁸ Diana O'Hara, *Courtship and Constraint: Rethinking the making of marriage in Tudor England* (Manchester, 2000).

The church courts operated differently in each city. In York men and women had a more direct impact on the observance of the law as they brought suits to the courts, whilst in Edinburgh the session initiated any legal action, resulting in a less flexible but sometimes more pragmatic system. Within York the men and women who used the courts were aware of the social construction of identity, aware of the participation of neighbours, families and parishes in the formation of reputations. The men and women who initiated and defended suits within the church courts thus participated in the communal negotiation and construction of their own identity. The men and women presented before the session in Edinburgh did not participate in the construction of social identity in the same way as their English counterparts. Within Edinburgh men and women participated directly in the moral programme of the Kirk as they confessed sinful behaviours, performed penance and disciplined the sinful. The different institutions of ecclesiastical law, the disciplinary Scottish Kirk and the church courts in England, called on men and women to construct and to enact their interactions in distinct ways, yet the primary causes that brought men and women before the courts of each nation remained remarkably similar; the negotiation and defence of reputation; the formation and clarification of courtship and sex; parental and marital legitimacy; and the breakdown of marriages and households.

Todd's observation that Scottish historiography of the reformation has 'been so intent on the works of divines and official pronouncements from the national or at best presbytery level that we have failed to recognise that religious change happens (and not) in the pew' is something of a rallying cry for the further social and cultural unpacking of Scottish reform as a fundamentally social and parochially based movement. As Todd has said, 'One must go to the parishes to see how prescription played out in the lives of the people.'⁹ Todd situates the local success of the reformation in cities such as Edinburgh firmly within the institution of the Kirk session, emphasising the role of neighbours and communities, elders and the congregation, in the monitoring and disciplining of child and wife beaters, fornicators, adulterers, and slanderers. The lay elders were 'men who knew their circumstances, shared many of their inclinations, and knew when to look the other way or to slap

⁹ Margo Todd, *The Culture of Protestantism in Early Modern Scotland* (London, 2002), 403-04.

offenders on the wrist rather than come down hard on them.’¹⁰ This local mechanism of moral authority, the session, became a particularly Scottish institution that implemented reform within communities and neighbourhoods, and participated in those communities with the provision of welfare and in the arbitration of disputes. It was this institution that distinguished the regulation of sexual morality and relationships in Scotland. English reform lacked an institution such as the session, which drew directly on the participation of the community in the regulation of behaviour and to implement social, religious, and moral reform on a local scale. The parishes of the English church, whilst engaging in some modes of moral discipline, were not conceived of as participating in lay society in the same way as the session; the English parish lacked elders.

Yet Scotland lacked the popular church courts that have become so characteristic of personal disputes in England. The Scottish capital did not possess the culture of litigation that existed in the England. The consistory court provided a forum in which men and women negotiated and contested with each other, through a legal medium, the exact nature of their sexual and marital interactions, the meanings of words used in insult, and the boundaries of communal and personal identity. Within English communities the population adopted the legal and moral rhetoric of reform to contest the limits of godly, moral, and sexual conduct. The Protestantization of Scotland was firmly rooted in the parish and in the congregation, in the local mechanisms of social control and order that allowed men and women to interact directly socially and legally with the men who imposed discipline. In England, whilst men and women enacted their own mechanisms of social control, in particular using the language of insult to castigate those who did not conform to the moral or sexual order, there was not the same direct engagement with the official mechanisms and institutions of discipline. The church courts remained apart from the population, even though they were very much a part of the currency of social regulation.

This study could therefore be pushed further by a more systematic examination of the secular courts of Edinburgh and York during this period. This would not only further situate the moral reforms of England and Scotland within a stronger and broader

¹⁰ Todd, *Culture of Protestantism*, 403.

social context, but would also situate reform and the culture of Protestantism within a more considered local and political context. This material could also benefit from being placed more firmly within its British and continental context. Further comparisons with early modern Wales, Ireland and London in particular would draw out the national and regional peculiarities of sexual interaction and the institutions of moral and social reform. But these are projects for the future.

This is the first study to engage in a comparison of English and Scottish social, gender and legal cultures in the early modern period. This thesis thus draws on the distinctiveness of the Scottish session and English church courts as institutions through which men and women contested social identities and reputations. Within both English and Scottish institutions and communities male and female identities were constructed and understood in relation to each other. Men and women not only chose to defend their relationships in the ecclesiastical courts of each nation, but also to negotiate and contest their relationships. For the men and women of early modern Edinburgh and York a tension existed between the moral rhetoric of sexual interaction and the practical experience of sex. Sex was a means by which male and female identities were understood in relation to each other; sex was an important, if potentially dangerous mode of interaction between the sexes.

APPENDIX

Table One: Disciplined offences in the Edinburgh St Cuthbert's *Foul Discipline Book* 1596-1611¹

	1596	1601	1606	1611	Total Incidence
Fornication	51%	49%	56%	29%	46% (234)
Multiple fornication	6%	16%	9%	5%	8.5% (43)
Marriage	20 %	14.5%	10.5%	12%	13% (66)
Adultery	5%	2.5%	4%	1.5%	3% (16)
Bairn	2%	6.5%	2.5%	4%	3.5% (18)
Incest	1%	-	2%	-	1% (5)
Slander (speech & behaviour)	1%	2.5%	6%	8%	5% (26)
Ressaving – Evil persons	-	5%	2.5%	5.5%	3% (17)
Ressaving – Pregnant woman	1%	-	-	2%	1% (4)
Violence (misc.)	3.5%	3%	1%	7.5%	3.5% (18)
Sabbath	8%	-	3%	7%	4.5% (23)
Testimonial	1%	-	2.5%	1%	1.5% (8)
Ale	-	-	-	4%	1% (6)
Magic	-	-	0.5%	-	>.5% (1)
Excommunication	-	1%	-	-	>.5% (1)
Other/Contract (misc.)	-	-	-	13.5%	4% (20)
Total Cases	86	76	194	150	506

¹ NAS, Edinburgh, CH2/718/52, St Cuthbert's Discipline Book 1595-1612. These statistics were gathered from sampling the Discipline book at five-yearly intervals. The high level of Session activity made it difficult, given the length of this project, to survey the entire seventeen years of the book. This gives a strong indication of disciplinary activity and shifts over the period.

Table Two: Moral offences within the Archdeacon's Visitation of York City and the comparable cases before the Consistory Court, 1598 and 1613.

	1598	1613
<i>Visitation</i>		
Fornication / Adultery	8	10
Matrimony	2	2
Scolding	2	9
Brawling	x	1
Drinking	1	4
Gaming	1	x
Usury	1	x
Child begotten in Fornication	6	5
 <i>CP. G/H/D&C</i>		
Defamation	3	3
Matrimony	2	x
Paternity	1	x

Table Three: Showing the use of insult in the Church Courts at York 1560-1625.²

	<i>Fem – Fem</i>	<i>Fem – Male</i>	<i>Male – Fem</i>	<i>Male – Male</i>	<i>Total Instances</i>
Whore/Harlot	25	15	2	1	43
Curtail/Burnt Arse	5	-	-	-	5
Quean	11	4	-	-	15
Drabb	3	1	-	-	4
Witch	5	-	-	-	5
Nought[ie]	2	3	2	-	7
Priest Whore	4	-	-	-	4
Scold/Chide	3	2	-	-	5
Jade	2	-	-	-	2
Bitch (dog imagery)	6	1	-	-	7
Thief	1	1	-	-	2
Adulterer	3	2	3	4	12
Bastardy/Paternity	3	5	2	1	11
Sexual infection	5	4	-	-	9
Drunkard	2	1	-	2	5
Night-walker	-	1	-	-	1
Scottish Whore	-	1	-	-	1
Knave	-	-	6	7	13
Raskall	-	-	-	2	2
Cuckold	-	-	2	2	4
Whoremaster	-	-	4	4	8
Assault	-	-	-	1	1
Usurer	-	-	-	1	1
False Dissembler	-	-	1	1	2
Family –insult based on	-	-	1	3	4
Horned	-	-	1	1	2
Lying Scott	-	-	-	1	1
Villain/Evil	-	-	2	-	2
Unspecified	-	-	3	1	4

² Borthwick, York, CP. G, CP.H and D&C CP. In the table the headings are constructed plaintiff – defendant. For example Fem – Male shows insults used by men (defendant) against women (plaintiff). I have also not restricted the list to one insult per case but tried to represent the diversity of insults that can occur within each case. Therefore the number of insults will not correspond to the number of cases.

Figure One: Gendered Breakdown of Slander at the Edinburgh St Cuthbert's Session, 1586 to 1625

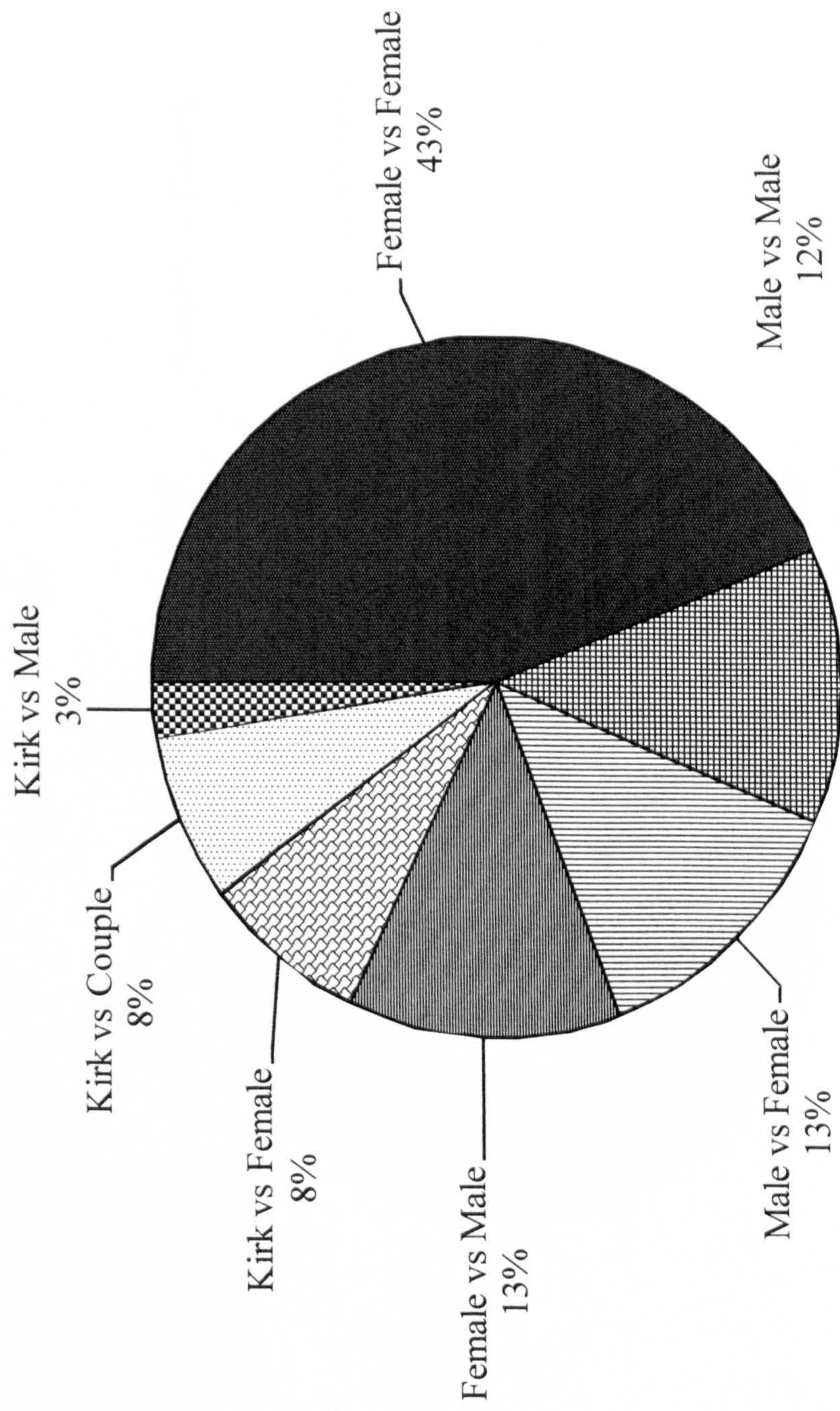


Figure Two: Sex Related Cases in the St Cuthbert's Session

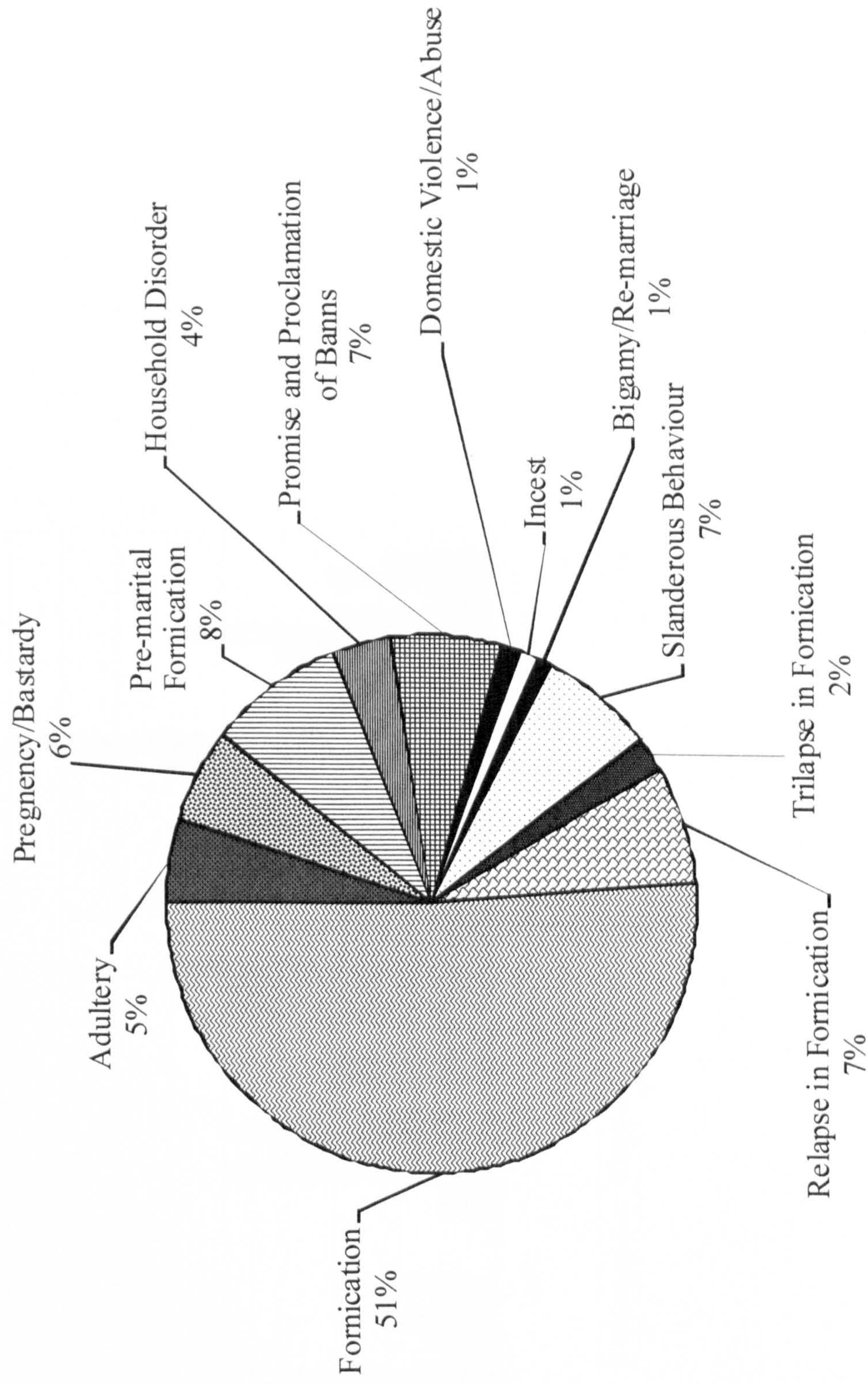


Figure Three: Church Court Cases in York, 1560 to 1625.

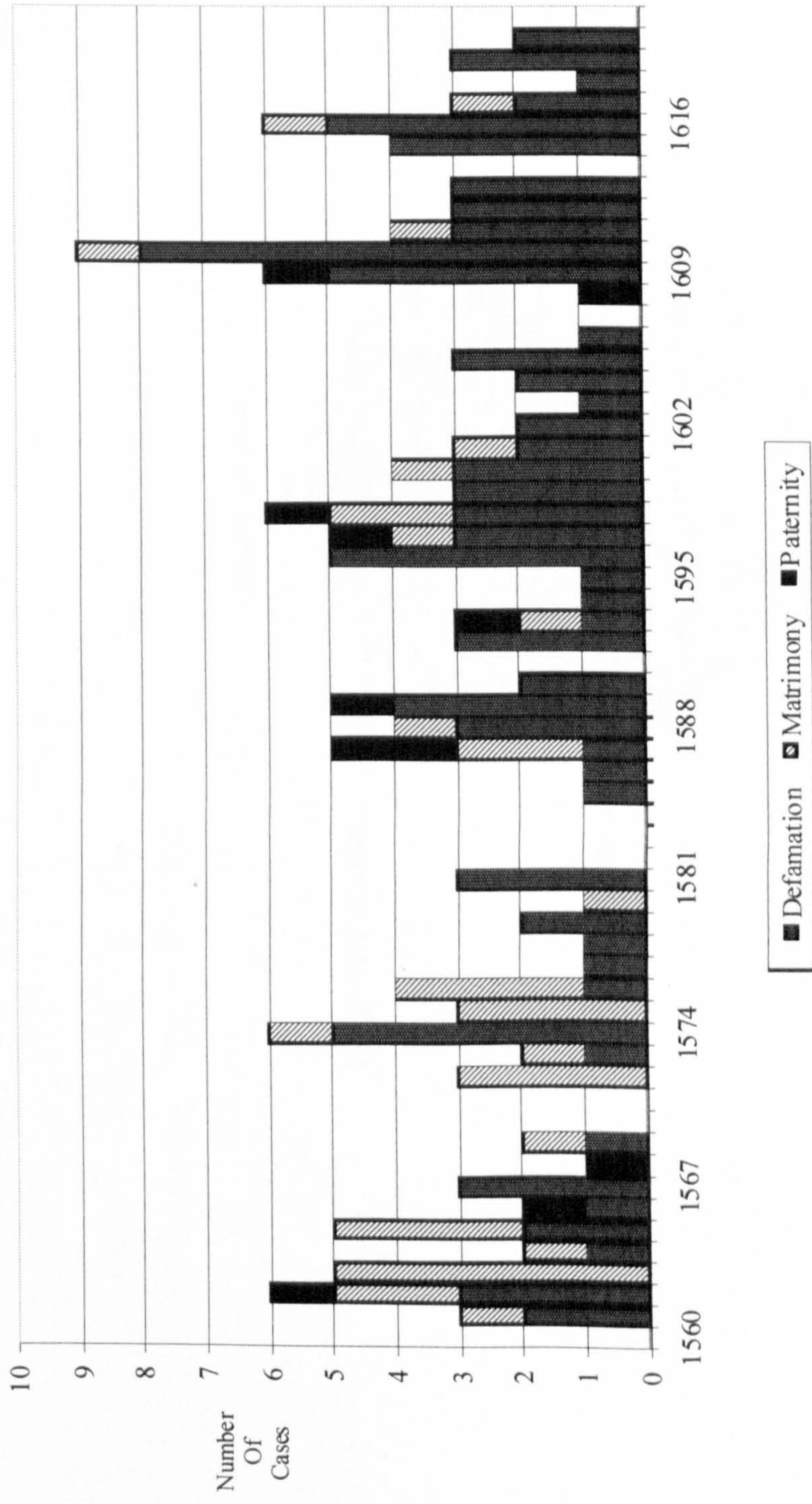


Figure Four: Gendered Breakdown of Defamation Cases in York Consistory Court, 1560 to 1625

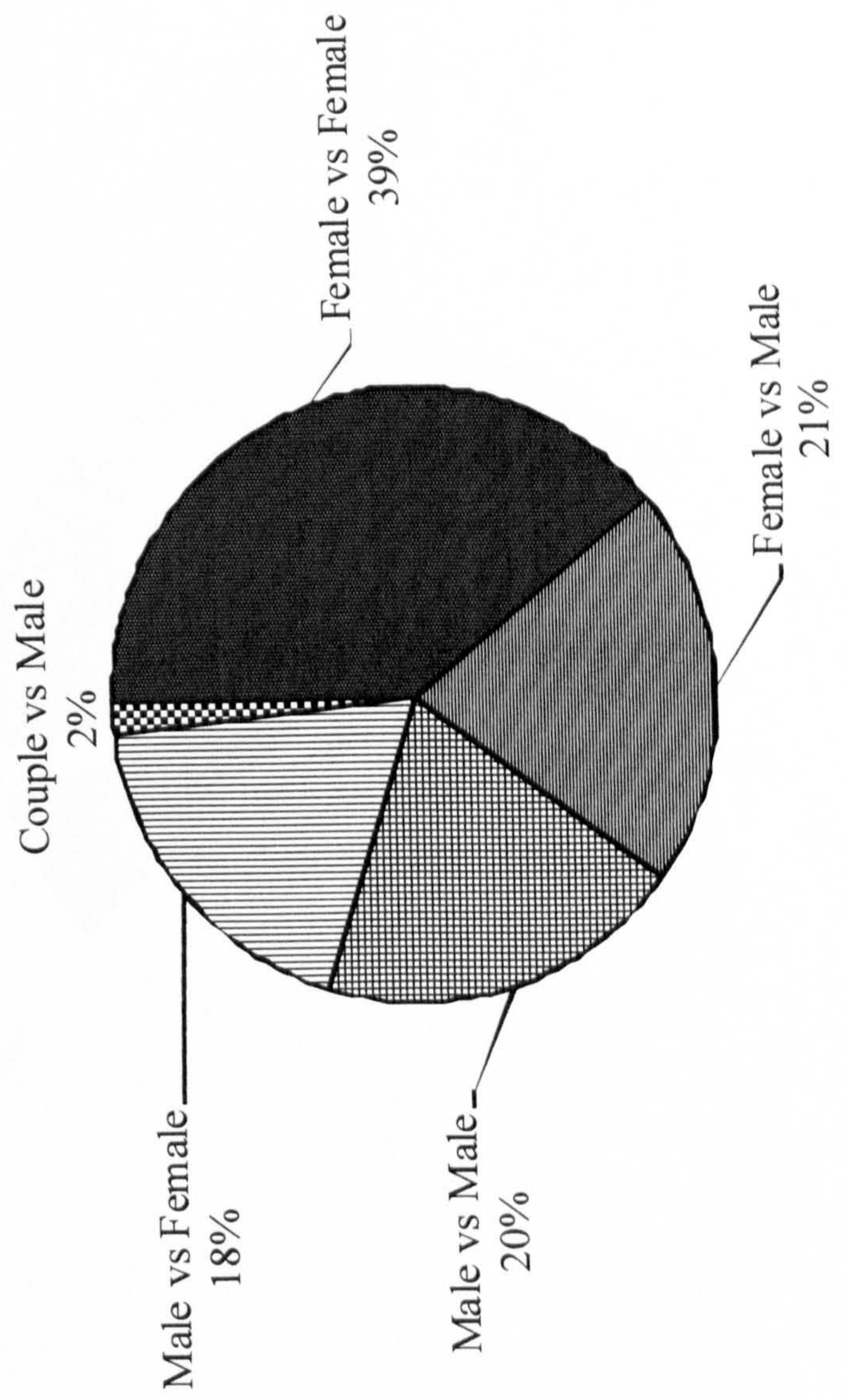


Figure Five: York Matrimonial Cases by Gender

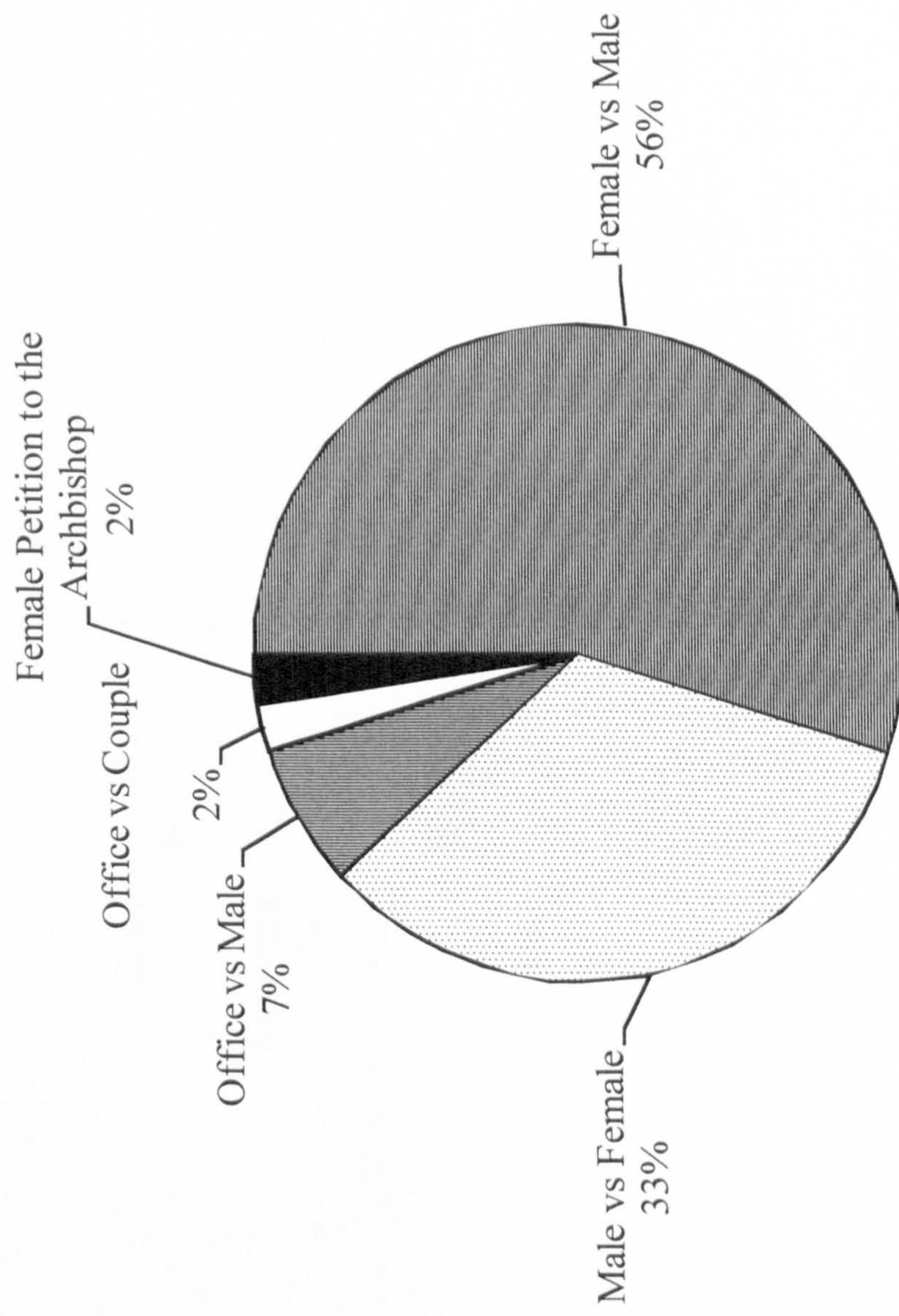


Figure Six: York Matrimonial Cases by Type

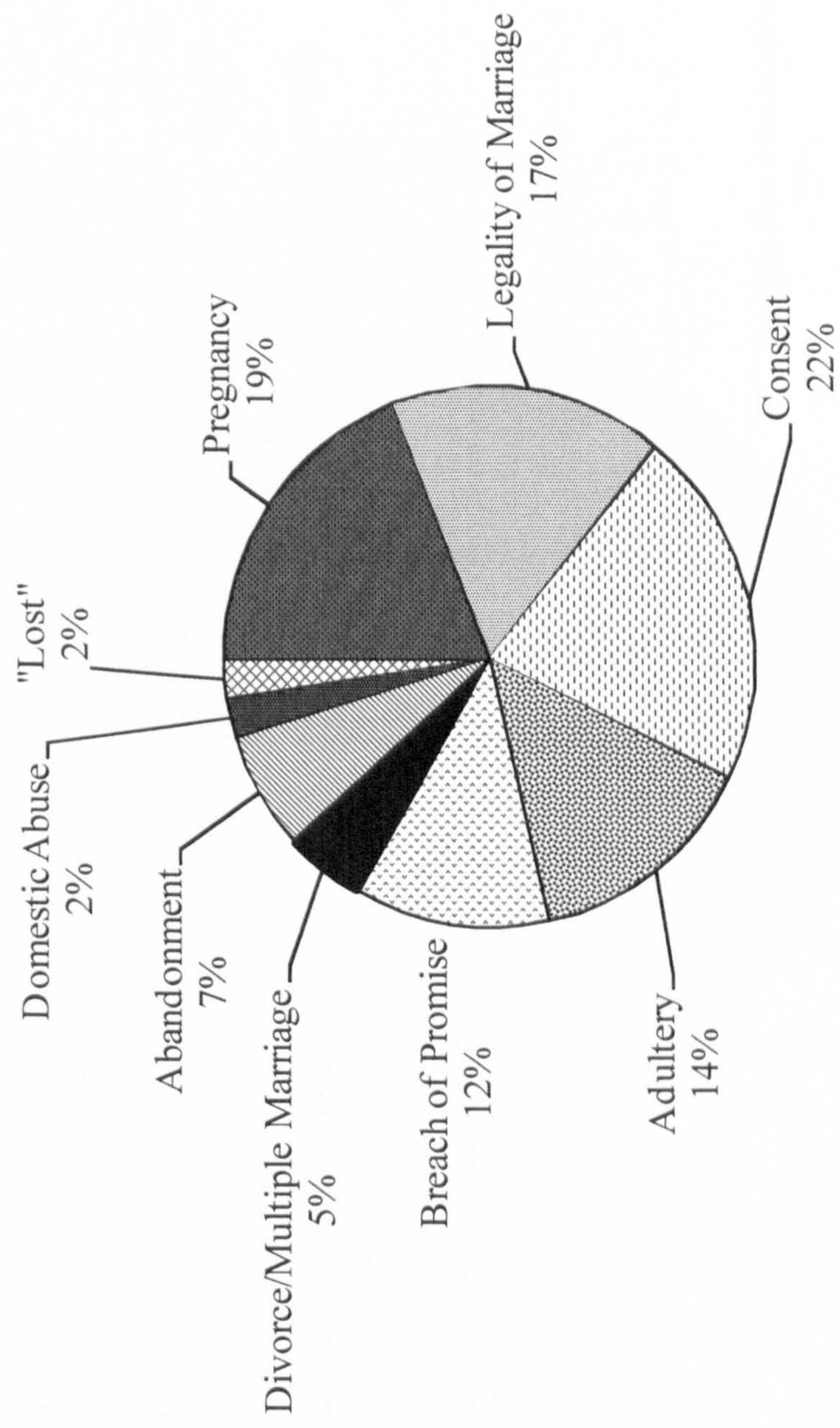
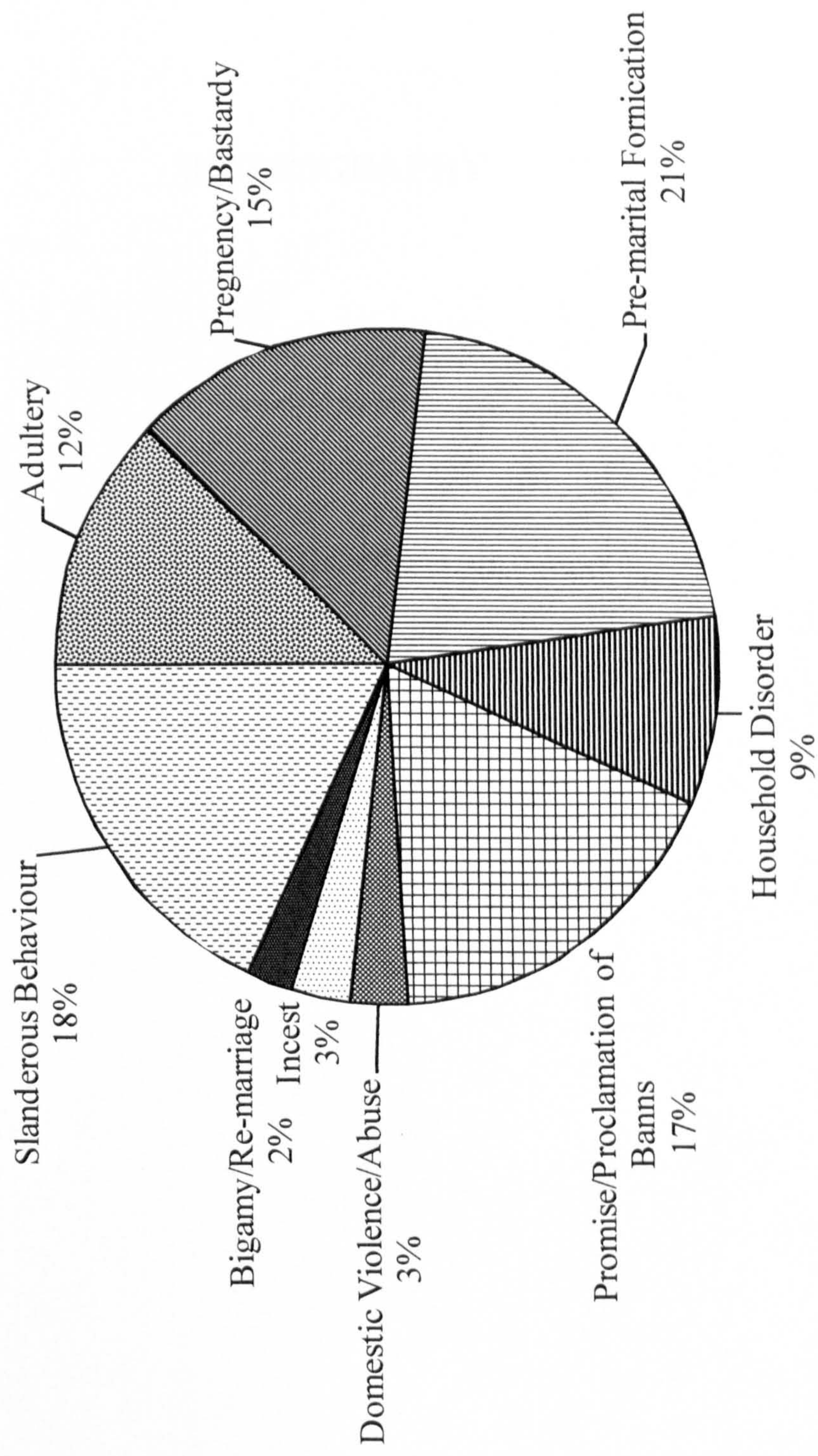


Figure Seven: Marital cases in St Cuthbert's Session by Type



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