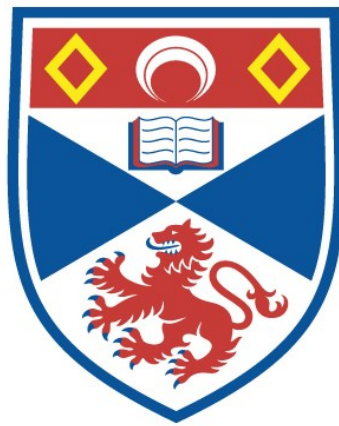


TAMING DEBAUCHERY : CHURCH DISCIPLINE IN
THE PRESBYTERY OF ST ANDREWS AND THE
AMERICAN COLONIES OF NEW JERSEY AND NEW
YORK, 1750-1800

Heather Maurine Huntley

A Thesis Submitted for the Degree of PhD
at the
University of St Andrews



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**Church Discipline in the Presbytery of St Andrews and
the American Colonies of New Jersey and New York,
1750-1800**

Heather Maurine Huntley

Doctor of Philosophy
University of St Andrews
November 2003



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ABSTRACT

Creating moralistic societies was a concern of the churches and the governments of Scotland and the American colonies of New York and New Jersey in the eighteenth century. However, church and state relations in Scotland and the American colonies were dissimilar and the differences manifested themselves in the various approaches taken by each body to suppress the immoral behaviour that existed in both countries. By examining the disciplinary procedures and cases in the parishes of the Presbytery of St Andrews and the Presbyterian churches in the colonies of New York and New Jersey, these divergences emerge and illuminate the relationship between church and state.

The Church of Scotland was recognized as the established church by the state and was allowed to implement its own Presbyterian system of government and discipline according to its ecclesiastical doctrines and theological beliefs. The state utilized its legal systems to punish and correct immoral behaviour. In Scotland, the two systems had defined boundaries and complemented one another in their efforts to suppress immorality.

However, not only did the American colonies lack a centralized state until 1776, but the colonies also lacked an established church. Alternatively, each colony had its own governing bodies, judicial systems, and a variety of church denominations. The Presbyterian Church, one of the many churches in the colonies of New York and New Jersey, utilised a Presbyterian system of ecclesiastical discipline in order to supplement the judicial systems' attempts to suppress immorality within the colonies.

DECLARATION

- (i) I, Heather M. Huntley, hereby certify that this thesis, which is approximately 100,000 words in length, has been written by me, that it is the record of work carried out by me and that it has not been submitted in any previous application for a higher degree.

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- (ii) I was admitted as a research student in September 1999 and as a candidate for the degree of PhD in September 2000; the higher study for which this is a record was carried out in the University of St Andrews between 1999 and 2003.

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- (iii) I hereby certify that the candidate has fulfilled the conditions of the Resolution and Regulations appropriate for the degree of PhD in the University of St Andrews and that the candidate is qualified to submit this thesis in application for that degree.

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During the course of my research I have been fortunate to have access to many collections, archives, and libraries. In Scotland, I am particularly appreciative for the assistance I received from the staff of the University of St Andrews Special Collections Department, the Law Library of the University of Edinburgh, the National Archives and the National Library. In the United States, I also received invaluable assistance from the staff of the Presbyterian Historical Society, Philadelphia, PA. If they had not shared their knowledge of the existing records from the colonial period, I would have not found the sources needed to complete this project. The lively conversations I enjoyed with them during my stays in Philadelphia fuelled many of the ideas within this thesis. Furthermore, in New Jersey and New York, I received tremendous hospitality and insight into local histories from the following: Rev. Bill Forbes of the First Presbyterian Church, Morristown, NJ, Rev. Lynda Clements of Cutchogue Presbyterian Church, NY, and Rev. Aaron Hicks of Mattituck Presbyterian Church, NY. I also wish to acknowledge the assistance I received at the libraries of Princeton University, Rutgers University, and the New York Public Library. The Family History Library, Salt Lake City, UT, also provided priceless help by making a multitude of copies from their microfilms, which contained colonial records. Their understanding and attention to detail was incredibly helpful in gathering the surviving colonial records. I also wish to express my gratitude to Erik and Kate Wiebe, who allowed me to stay in their home while I conducted research in Princeton, NJ.

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have been completed. Dr. Pamela Ritchie and Dr. Roland Tanner have also offered insights from their experience and constantly cheered me on. I am especially grateful to Michael S. Springer for the many ways he has assisted me over the last three years. He listened to my ramblings on many subjects, offered tremendous amounts of support, and above all else, has given me strength and encouragement with his unconditional friendship.

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Heather M. Huntley
Irvine, CA
October 2003

EDITORIAL CONVENTIONS

In this thesis, any quotations from primary sources will reflect the exact spelling and punctuation of the original. Similarly, quotations taken from secondary sources will be used exactly as written, regardless of whether the author employs American or British spelling. I have used British spelling.

The period of study (1750-1800) stretched across the American colonial period to the period of statehood. For ease of the reader, I use the terms “New York” and “New Jersey” to refer to them either as a colony or a state. However, New York and New Jersey both became states on December 18, 1787.

As is usual, all titles of published works will be *italicised*. Quotations will be placed within double “inverted commas,” with longer quotations separated from the main text and indented.

All Biblical quotes are taken from the *New King James Version*.

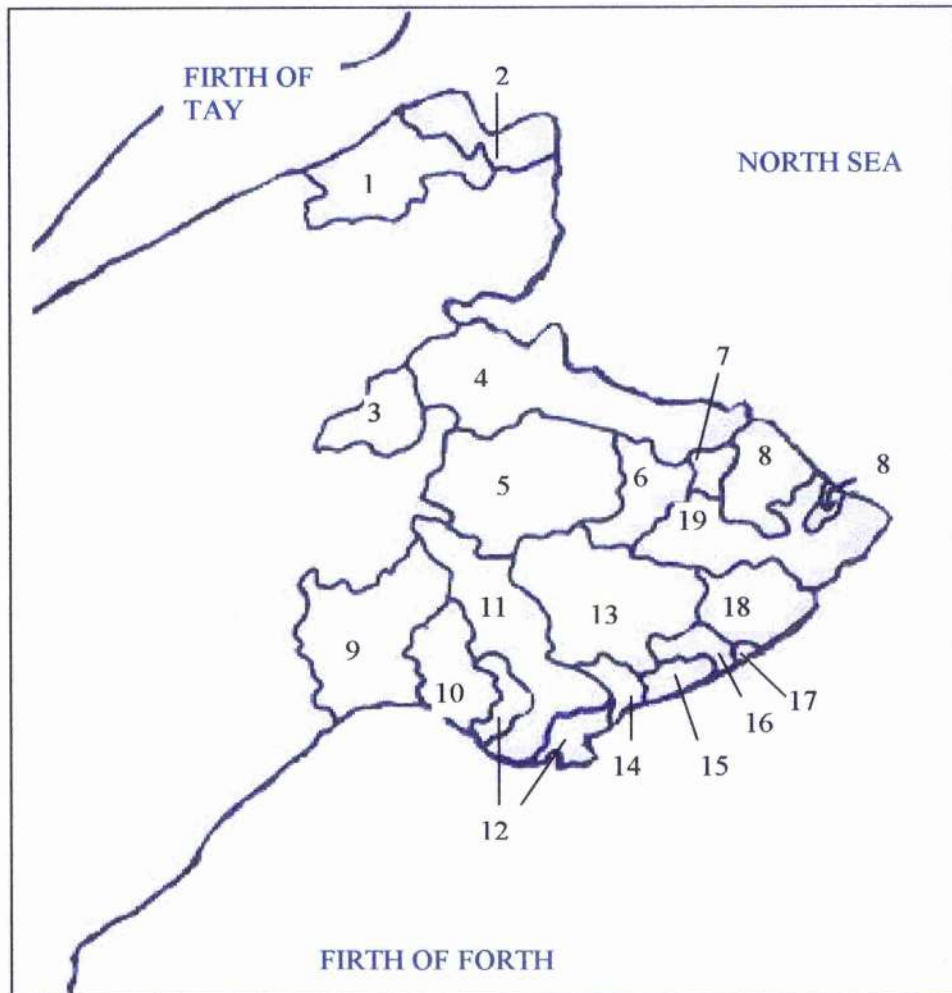
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PRESBYTERY OF ST ANDREWS



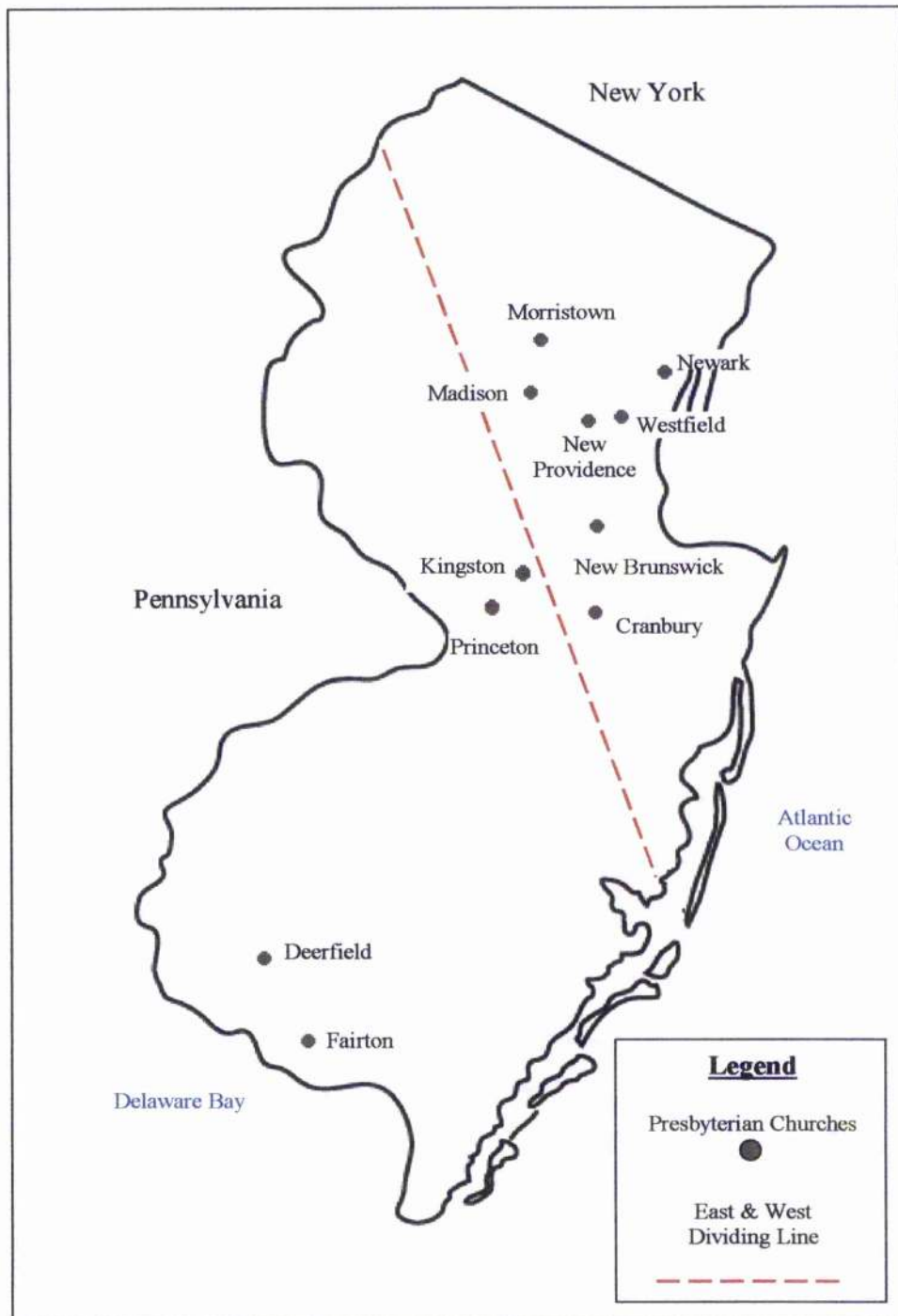
Key to Parishes

- | | | |
|-----------------------|-----------------|-----------------------|
| 1. Forgan | 8. Kingsbarns | 15. Pittenweem |
| 2. Ferryport-on-Craig | 9. Largo | 16. Anstruther Wester |
| 3. Kemback | 10. Newburn | 17. Anstruther Easter |
| 4. St Andrews | 11. Kilconquhar | 18. Kilrenny |
| 5. Cameron* | 12. Elie* | 19. Crail |
| 6. Dunino | 13. Carnbee* | |
| 7. St. Leonard's* | 14. St Monance | |

* Parishes without surviving session minutes between 1750-1800

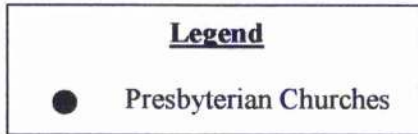
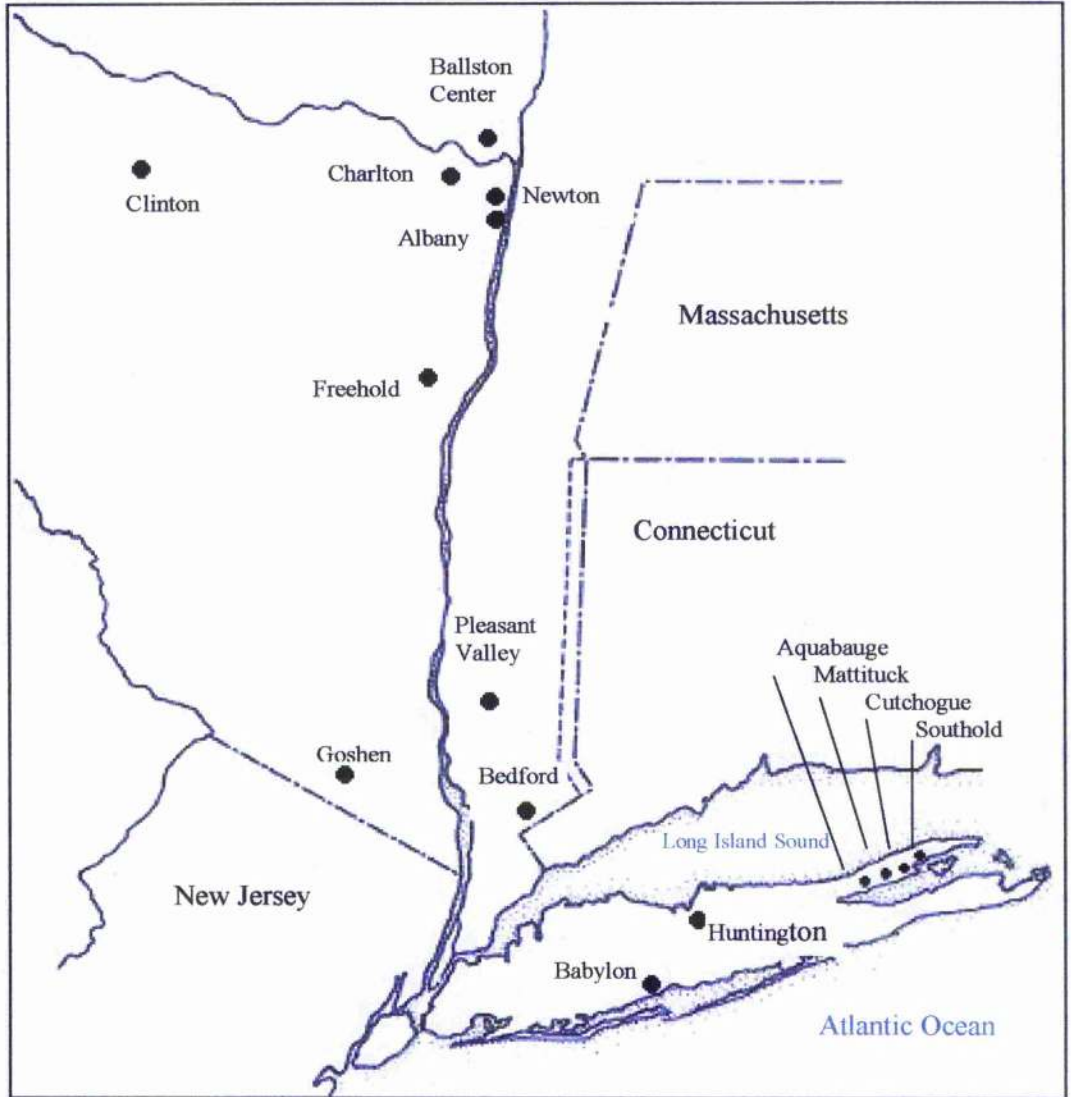
Map 1: Map of parishes included in this study

COLONIAL NEW JERSEY



Map 2: Presbyterian Churches included in this study

COLONIAL NEW YORK



Map 3: Presbyterian Churches included in this study

INTRODUCTION

Morality and law intertwine one another at many levels, as both address the nature of what is believed to be right and wrong. Both have played vital roles in society by establishing parameters of appropriate social behaviour. However, the manifestation of their similar natures has led to tensions in society, as the ideal relationship between the two has not always been clearly determined. The two entities could have been easily distinguished from one another, if morality could be exclusively governed by the church, while the state governed the law. However, history has proven that this separation is not the case, as both the church and the state have equally addressed issues of morality.

The relationship between morality and law has sparked and fuelled debates among philosophers and legal historians throughout history. Most notably, during the 1960s a debate was initiated between H.L.A. Hart, author of *The Concept of Law* and Professor of Jurisprudence at Oxford University, and Lon. L. Fuller, author of *The Morality of Law* and Professor of Jurisprudence at the Harvard Law School.¹ Professor Hart argued that there are two types of rules which make up the law – the primary and the secondary. The primary rules were governed by the idea that “human beings are required to do or abstain from certain actions, whether they wish or not.”² Secondary rules occur as a reflection of the primary rule, providing that by doing certain actions human

¹ Hart, H.L.A. *The Concept of Law*. Oxford: Clarendon Press, 1961. Fuller, Lon L. *The Morality of Law*. New Haven: Yale University Press, 1964.

² Hart, p. 78-9.

beings “introduce new rules of the primary type, extinguish or modify old ones, or in various ways determine their incidence or control their operations.”³

However, Professor Fuller, who believed that the inner morality of human beings would always dictate the functional and practical aspects of the law, contested Hart’s functional definition of the law making process.⁴ The details of the debate are not directly relevant to this study; however, the focus of the debate illuminates the difficulty of separating morality and law, which subsequently causes tensions between church and state relations.

Further research into the subject was offered by Lord Devlin, who authored *The Enforcement of Morals* in 1965.⁵ His work examined the legal, philosophical, and logical implications behind the law of England and posed the question, “what is the connection between crime and sin and to what extent, if at all, should the criminal law of England concern itself with the enforcements of morals and punish sin or immorality as such?”⁶ In his article, “Law and the Enforcement of Morals in Early America,” David Flaherty pointed out that while the philosophical relationship between laws and morality has been thoroughly examined, the historical dimension of the research has been overlooked.⁷ In order to demonstrate the historical relationship of laws and morality, he examined the sexual code of seventeenth and eighteenth century colonial America. He proved that during this period there was a gradual recognition that the laws should not hold jurisdiction over private morality and that the two

³ Hart, p. 79.

⁴ Fuller, pp. 42-3.

⁵ Devlin, Patrick Lord. *The Enforcement of Morals*. London: Oxford University Press, 1965.

⁶ Devlin, p. 2.

⁷ Flaherty, David. “Law and the Enforcement of Morals in Early America,” *Perspectives in American History*. Vol. V, 1971. pp. 203-253.

should be separate. However, the fact remained that the two continued to have an intimate relationship, regardless of the degree of separation.

Following the model of Flaherty's research, this study aims to illuminate one important aspect of church and state relations – the suppression of immorality. Both church and state have implemented systems to encourage their citizens to live according to a moral standard set by each. The state utilised its judicial system, while the church imposed a system of discipline. However, because both of these systems shared the common goal of suppressing immorality, they overlapped one another. This can be illustrated by drawing a comparison between the church and the state of Scotland and the American colonies in the eighteenth century.

A study of the differences between church and state both in Scotland and the colonies is useful in that while they both share a Presbyterian form of ecclesiastical discipline, Scotland had an established church, while the colonies had a pluralistic religious nature during the eighteenth century. The Church of Scotland and the American Presbyterian Church both utilised discipline to suppress immorality. Furthermore, the secular judicial authorities in each region addressed issues of immorality as well, thereby creating an overlapping tension between the two entities. Therefore, this study will focus on the intersecting boundaries between church and state in their efforts to control the morality of its members and citizens. By probing this point of intersection, it becomes clear that the two entities complemented one another in Scotland, while they supplemented each other in the colonies.

This study hopes to contribute to the historical analysis of the interaction between law and morality for which Flaherty called. Additionally, the

comparative study will add to the continued research into the transatlantic relationship between Scotland and the American colonies. Ned Landsman, in his book, *Scotland and Its First American Colony, 1683-1765*, examined Scotland's influence upon the settlement roots of New Jersey.⁸ Focusing on East Jersey, Landsman illuminated the colony as an extension and continuation of the Scottish social attitude by highlighting the Scottish background of the migrants that settled in Jersey, the reflective settlement patterns, religious experiences, and social expectations that also prevailed in Scotland, and the comparative social identities that emerged as result. Similarly, in *The People With No Name: Ireland's Ulster Scots, America's Irish, and the Creation of a British Atlantic World, 1689-1764*, Patrick Griffen studied the Scottish and Irish groups in the colonies and concluded that these ethnic groups left lasting impressions upon the identity of colonial Americans.⁹

Works on the comparative religious history of Scotland and America have been abundant throughout the literature that has focused on the Presbyterian Church in America. Leonard Trinterud, author of *The Forming of an American Tradition: a Re-examination of Colonial Presbyterianism*, suggested the American Presbyterian Church evolved from both the Scottish Presbyterian tradition and the English Puritan tradition.¹⁰ However, the governmental structure of the denomination adopted the Scottish model, including the session, presbytery, synod, and General Assembly. Trinterud also

⁸ Landsman, Ned C. *Scotland and Its First American Colony, 1683-1765*. Princeton: Princeton University Press, 1985.

⁹ Griffen, Patrick. *The People with No Name: Ireland's Ulster Scots, America's Irish, and the Creation of a British Atlantic World, 1689-1764*. Princeton: Princeton University Press, 2001.

¹⁰ Trinterud, Leonard. *The Forming of an American Tradition: a Re-examination of Colonial Presbyterianism*. Philadelphia: Westminster Press, 1949.

highlights other features that the two Churches had in common, such as the basic theology, doctrines, and worship practice.

Common practices of the Presbyterian Churches on both sides of the Atlantic have also been the source of other comparative works, including those of Leigh Eric Schmidt and Marilyn Westerkamp. Leigh Eric Schmidt has offered the field of religious history an extensive and well-researched study on revivals and revivalism in Scotland and America. In his book titled, *Holy Fairs: Scottish Communion and American Revivals in the Early Modern Period*, Schmidt carefully unpacks the ritual of celebrating the Eucharist in Scotland and America, illustrates the connection between the two and convincingly demonstrates that the American revivals were indeed extensions from Scotland and not individual and unrelated events.¹¹ The study of early modern Presbyterian history in Scotland and America has also been greatly enhanced upon by Marilyn Westerkamp's *The Triumph of the Laity: Scots-Irish Piety and the Great Awakening, 1625-1760*.¹² Marilyn Westerkamp took on an ambitious project to investigate further the revivals that were a part of the Great Awakening and attempted to discover the British background in the piety of the colonists.

Following the example of the comparative works of Schmidt and Westerkamp, this thesis will conduct a comparison of Presbyterian church discipline, which was found on both sides of the Atlantic. The historical background of ecclesiastical discipline has been well documented by Ivo Macnaughton Clark, in his book titled *A History of Church Discipline in*

¹¹ Schmidt, Leigh Eric. *Scottish Communion and American Revivals in the Early Modern Period*. Princeton: Princeton University Press, 1989.

¹² Westerkamp, Marilyn. *Triumph of the Laity: Scots-Irish Piety and the Great Awakening, 1625-1760*. Oxford: Oxford University Press, 1988.

Scotland.¹³ He categorises discipline as a defining characteristic of the Presbyterian Church in Scotland and offers a chronology of its history from its origins in the Apostolic Church to the present day, paying particular attention to the period after the Reformation. This thesis will also follow other case studies within Scotland, by adding an eighteenth century study.¹⁴ Additionally, this study will shed light on how the Presbyterian form of discipline translated into another environment and will also add to the other studies of church discipline in the colonies.¹⁵

Through an examination of the ecclesiastical disciplinary proceedings for immoral behaviour, such as breaking the Sabbath, drinking, fornication, and adultery, the commonality between the systems in Scotland and America will emerge. Furthermore, a comparison of the methods for suppressing immorality in these two regions will demonstrate a contrasting view of church and state relations. It will become clear that during the eighteenth century law and morality were especially close and reliant upon one another.

It would be impossible for a study of this size to research comprehensively the entire country of Scotland and all thirteen colonies during the whole of the eighteenth century. Therefore, the research area has been tailored to examine the Presbytery of St Andrews and the colonies of New York

¹³ Clark, Ivo Macnaughton. *A History of Church Discipline in Scotland*. Aberdeen: W&W Lindsay, 1929.

¹⁴ See Graham, Michael. *The Uses of Reform: Godly Discipline and Popular Behavior in Scotland and Beyond, 1560-1610*. Leiden: E.J. Brill, 1996; Todd, Margo. *The Culture of Protestantism in Early Modern Scotland*. New Haven: Yale University Press, 2002.; and Muir, Alison. "The Covenanters in Fife, c. 1610 – 1689: religious dissent in the local community." PhD thesis. University of St Andrews, 2002.

¹⁵ The Puritan and Congregational forms of discipline have been studied for the early colonial period. See Oberholzer, Emil. *Delinquent Saints: Disciplinary Action in the Early Congregational Churches of Massachusetts*. New York: Columbia University Press, 1956.

and New Jersey during the second half of the eighteenth century (1750-1800). The Presbytery of St Andrews was chosen, as it was predominantly a rural area and in that sense superficially similar to the young colonies. Furthermore, the urban centre of New York City, although its Presbyterian church records exist, is not included to maintain a focus on rural areas in the period. During the preliminary stages of research and the pursuit for surviving church records in the colonies, it became evident that the focus of this study needed to be on the Middle Colonies, as the largest concentration of Presbyterian churches was in New Jersey, New York, Pennsylvania, Delaware, and Maryland. As the New England and Southern colonies have both been extensively studied from all angles, this thesis hopes to add to the studies of the Middle Colonies.¹⁶ Wayne Bodle, in his review article on the historiography of the Middle Colonies, reflected that during the 1970s as the “center of scholarly gravity in American colonial history shifted from New England towns to Chesapeake plantations, historians of the Middle Atlantic colonies complained that their colleagues were leaping over a region more important than either.”¹⁷ Bodle’s overall analysis of the research post-1970s, suggested that studies were being conducted on the Middle Colonies, but still not to the same frequency of the New England and Southern colonies.¹⁸ However, in the absence of extensive secondary sources

¹⁶ For discussions on the historiography of New England colonies see Dunn, Richard. “The Social History of Early New England,” *American Quarterly*, XXIV, 1972. pp. 661-79 and Hall, David D. “On Common Ground: The Coherence of American Puritan Studies,” *William and Mary Quarterly*. XLIV, 1987. pp. 193-229. For the Southern colonies see Rutman, Anita. “Still Planting the Seeds of Hope: The Recent Literature of the Early Chesapeake Region.” *Virginia Magazine of History and Biography*. XCV, 1987. pp. 3-24 and Tate, Thad W. “The Seventeenth Century Chesapeake and Its Modern Historians” in Thad W. Tate and David Ammerman (eds). *The Chesapeake in the Seventeenth Century: Essays on Anglo-American Society*. Chapel Hill: University of North Carolina Press, 1979.

¹⁷ Bodle, Wayne. “Themes and Directions in Middle Colonies Historiography, 1980-1994.” *William and Mary Quarterly*, 3rd series, Vol LI, No. 3, July 1994, pp. 355-388 (p. 355).

¹⁸ Bodle, p. 357.

focusing on the Middle Colonies, the primary sources were crucial for conducting this study.

This study covers the Presbytery of St Andrews and those colonies of New York and New Jersey during the period between 1750-1800, which had adequate records to conduct the study.¹⁹ The primary source material for a study on church discipline is derived from the session minutes of the individual churches and parishes, as the session was the main agent of discipline and recorded the business of the session, including disciplinary cases. Many session clerks carefully recorded the details of the trials, including testimonies of witnesses, confessions of the guilty, exhortations by the ministers, and the disciplinary repercussions for the various offences. It is through these words that the historian may attempt to piece together the past processes of discipline.

The greatest quantity and quality of records were found in the colonies of New York and New Jersey post-1750. There were 15 churches in New York with a substantive amount of records and 11 churches in New Jersey.²⁰ The Presbytery of St Andrews included 19 parishes, 15 of which have surviving records from the second half of the eighteenth century.²¹ It is also important to note that the session minutes varied in quality and thoroughness. The selection of passages to quote in this piece of work was based on the completeness of the

¹⁹ See the next paragraph for clarification regarding the churches with surviving church records in the Presbytery of St Andrews and in the colonies of New York and New Jersey. The colonies of New York and New Jersey did have organised presbyteries, which the churches were divided into. While the Presbytery of St Andrews has sufficient surviving records, the presbyteries in the colonies of New York and New Jersey did not. Therefore, the churches in the respective colonies will be grouped together to form this study.

²⁰ See maps of New Jersey and New York on pages xii and xiii to see the churches included in the study.

²¹ See map of Presbytery of St Andrews on page xi to see the churches included in the study.

details recorded by the session clerk. Therefore, certain churches are quoted more than others.

Historical Context

Before discussion of the eighteenth century church disciplinary proceedings, a brief background is offered to place the churches in their historical and social contexts. The Presbyterian denomination operated in two different regions, the Presbytery of St Andrews and the colonies of New York and New Jersey. The areas differed in history, religious culture, and ethnic groupings. By illuminating these differences, two separate views of church and state relations emerged.

England and Scotland were united under one Parliament in 1707. During the previous century, Scotland witnessed political turmoil internally and in its relationship with England. By the turn of the century, Scottish politicians realised that the union was crucial for the survival of the nation. However, this realisation by the centralised government had little effect at the local level. While the central government was in Westminster, it was the responsibility of the county and local magistrates to maintain order in the communities.²² The judicial system, which operated at the local, county, and national levels, was centralised under the House of Lords by the Treaty of Union. However, the majority of law enforcement took place at the local or county level. The court structures will be discussed at length in chapter two, but it is worthy to note that the criminal and civil courts were centralised, which granted authority and promoted further efficiency. Although the central government and judicial

²² Murdoch, Alexander. *The People Above: Politics and Administration in Mid-Eighteenth-Century Scotland*. Edinburgh: John Donald Publishers, Ltd, 1980. p. 22.

courts were affected by the Union, the position and influence of the Church was safeguarded by the Union.²³

Prior to the Union, Scotland witnessed a century of political crisis and turmoil. However, in 1690 the Church of Scotland was released from the tension and established as the national church. The Treaty of the Union further safeguarded its position in 1707, which made few direct alterations to the church. The Union allowed the Church to govern itself with its four-tier hierarchy – General Assembly, Synod, Presbytery, and Session. During the first few decades of the century, the Church of Scotland created the pattern of social life. “Not least, the clergy of the established church responded in a way that is psychologically characteristic of successful revolutionaries who have been granted sudden and decisive triumph: they indulged in a bout of doctrinal introspection and mutual recrimination...”²⁴ This manifested itself into a spiritual enthusiasm, triggering revivals throughout Scotland. However, by mid-century, the enthusiasm was stifled by the effects of Enlightenment thinking.

The Enlightenment brought about a great challenge to the Christian faith, as it introduced reason and caused speculation with regards to the fundamental tenets of Scripture. The General Assembly, the governing body of the Church of Scotland, was controlled by the Moderate Party for the second half of the eighteenth century and into the nineteenth. This party subscribed to a rational view of religion, directly in conflict with the Evangelical Party, or Popular Party, which believed that Christian faith was to be experienced first-hand and lived out through charity and godly living. During the period of Moderate control,

²³ Mitchison, Rosalind and Leah Leneman. *Sexuality and Social Control, Scotland 1660-1780*. Oxford: Basil Blackwell, 1989. p. 28.

²⁴ Allan, David. *Scotland in the Eighteenth Century*. London: Pearson Education Limited, 2002. p. 45.

groups such as the Relief Church seceded from the Church of Scotland.

However, the Moderates were not alarmed as this further illustrated their tight grip on the Church.²⁵ At the local level, this meant that the churches were losing vitality and spiritual growth, which had a profound and stifling effect upon disciplinary procedures.²⁶

The relationship between church and state in Scotland was relatively calm by the eighteenth century, after several centuries of struggle. This will be discussed in chapter one, but it is important to illustrate the difference between the situation in Scotland and that in the colonies. The American colonies experienced a very different relationship between church and state, as each colony had a unique history and having several churches in a colony was not uncommon.

The Presbyterian Church was one of many churches in the American colonies. With origins in both English Puritanism and Scottish Presbyterianism, which had evolved over time in their home countries, American Presbyterianism was indelibly influenced by the heritage of each of these churches. Although the colonial church then evolved and transformed itself into a unique American institution, the theological principles and ecclesiastical government of the church remained firmly grounded in its original sources. During the seventeenth century, the churches that formally became Presbyterian did not necessarily begin that way. The early congregations often started as Puritan or Congregational gatherings and only later subscribed to the tenets of the

²⁵ For further reading on the eighteenth century church, see Drummond, Andrew L. and James Bulloch. *The Scottish Church 1688-1843: The Age of the Moderates*. Edinburgh: St Andrew Press, 1973.

²⁶ Lenman, Bruce. "From Union of 1707 to the Franchise Reform of 1832," in Houston, R.A. and W.W.J. Knox. *The New Penguin History of Scotland: From the Earliest Times to the Present Day*. London: Penguin Books, 2001. pp. 305-308.

Presbyterian Church.²⁷ However, this was a slow process, as there was no central governing system. In her article about religion in the British Atlantic World, Carla Gardina Pestana commented that “the relative dearth of institutional forms tended to favour those faiths that functioned well in an institutionally simplified environment.”²⁸ This was true of the American Presbyterian Church.

Presbyterian Churches that were founded prior to 1706 existed as independent congregations. Recognising the growing number of these churches and the need for a centralised administration, Francis Makemie, a Presbyterian minister from Ireland, organised a group of seven ministers to meet for prayer, discipline, fellowship, and edification. This has been considered the first meeting of a presbytery and took place sometime in March of 1706 in Philadelphia.²⁹ The first page of the minute book has been lost; therefore the attenders and the purpose of the meeting have been interpolated from later events. Additionally, there was no formal constitution adopted and the control this body had over the Presbyterian congregations was unclear.³⁰

The first decade of the Presbyterian Church witnessed a steady growth in new church settlements. By 1716 there were too many churches for the one

²⁷ Trinterud, pp. 15-21.

²⁸ Pestana, Carla Gardina. “Religion,” in Armitage, David and Michael Braddick (eds). *The British Atlantic World, 1500-1800*. Basingstoke: Palgrave MacMillan, 2002. p. 74.

²⁹ At the time of the presbytery’s conception, they delegates did not identify the name of the presbytery. It was not until the first meeting of the synod in 1717, that this presbytery was referred to as the Presbytery of Philadelphia. Klett, Guy. *Minutes of the Presbyterian Church in America, 1706-1788*. Philadelphia: Presbyterian Historical Society, 1976. p. viii.

³⁰ Klett, p. vii, 1.

presbytery to handle effectively.³¹ Therefore, the third level of the Presbyterian hierarchy – the synod – was formed.

It having pleased divine Providence so to increase our Number, as that, after much Deliberation, we judge it may be more serviceable to the Interest of Religion to divide ourselves into subordinate Meetings or Presbrys constituting one annually as the Synod to meet at Philadelphia or elsewhere to consist of all the Members of each Subordinate Presbry or Meeting for this Year at least.³²

As the discussion continued, four presbyteries were named – Philadelphia, New Castle, Long Island, and Snow Hill – though the last was never created.

Although the Presbyterian Church was multiplying it still had not formulated a denominational constitution and the synod was not yet granted specific powers. However, the synod did serve as a higher court of authority to the presbyteries, which became regional courts.³³ The final court of the hierarchy – the General Assembly – was not created until 1788. It was then that the Church approved the official plan of government. Therefore, there was no standard form of discipline or set of rules by which to govern the church. The evolution of the American Presbyterian Church also was affected by each colony's history.

Each American colony had its own unique history, as different groups of settlers inhabited the vast geographical regions. The colony of New York,

³¹ The number of Presbyterian churches founded by 1717 is difficult to determine. Edwin Gaustad offers an estimate of 50 churches by this time. Gaustad, Edwin. *Historical Atlas of Religion in America*. New York: Harper & Row, Publishers, 1962. p. 21. However, the Works Progress Administration implemented a survey to discover the surviving colonial church records. The survey, conducted in the 1930s and 1940s, was sent to all churches at that time. However, the WPA made it clear that not all churches sent back their reply. Based on their volumes for New York and New Jersey, New York had ten Presbyterian churches by 1717, while New Jersey had 13. (*Inventory of the church archives of New York state exclusive of New York city*. Prepared by the Historical Records Survey, Division of Professional and Service Projects, Works Progress Administration. Protestant Episcopal Church. Diocese of Western New York. Albany, NY, The Historical Records Survey, 1939. And *Inventory of the church archives of New Jersey*. Prepared by the New Jersey Historical Records Survey Project, Division of Professional and Service Projects, Work Projects Administration. Newark, NJ: Historical Records Survey, 1940.)

³² *Minutes of the Presbyterian Church in America*, p. 29.

³³ Trinterud, p. 34.

originally known as New Netherland, was sought after by the Dutch and the English. The Dutch first settled in the region, as early as 1609. In 1613, Fort Nassau was the first English settlement, which was created as a trading outpost for New Netherland. After 1621, the colony was organised by the Dutch East India Company, which founded New Amsterdam on May 4, 1626. The East India Company was granted sovereignty over the land and their laws normally conformed to the government and jurisprudence of Holland.³⁴ While the colony was under the control of the Dutch East India Company, the director of the company held the governmental authority and was to seek advice from a council that was made up of the inhabitants.

However, for the next six decades the colony was fought over by the Dutch and English. Charles II gave his brother James, Duke of York, title to the Proprietary Colony of New York on March 12, 1664, thereby beginning the English occupation of the land. The Duke of York proclaimed his laws, known as the "Duke's Laws," in 1665, defining his government based on the other English colonies in America and left the English stamp on the colony. However, further struggles with the Dutch ensued when the Netherlands re-conquered the colony in the third Anglo-Dutch War in 1673, but in 1674 the colony was returned to England.³⁵ The colony finally became a royal colony, meaning its governor was directly appointed by the Crown, in 1685, when the Duke of York

³⁴ Middleton, Richard. *Colonial America: A History, 1585-1776*. Oxford: Blackwell Publishers, 1992. p. 114-15.

³⁵ Middleton, pp. 127-131.

became James II.³⁶ It remained a royal colony until it became the third state of the United States on December 18, 1787, when it ratified the Constitution.³⁷

Religious backgrounds also added to the history of the colony. The Dutch East Company also brought with them their Dutch Reformed Church and began establishing churches in New Netherland.³⁸ The Dutch governors tolerated the New England Puritans that migrated to the colony, but were critical of the Quakers, Lutherans, and Jewish inhabitants. The pluralistic nature of New York did not stop with the Dutch. In 1642, Issac Jogues, a Jesuit missionary came across eighteen different languages.³⁹ New York attracted a variety of people from its earliest days. The Dutch East India Company that first created settlements in New York quickly lost its monopoly over the colony. The trickle of settlers that arrived after 1638 came from a plethora of backgrounds. Puritans from New England, French Protestants, and a few Jews all found their way to New Netherland.⁴⁰ The ethnic groups that made New York their home also established their own churches, which created the religious pluralistic colony.

Many historians of New York have noted that the colony was unique among the 13 original colonies, primarily because its development was not dictated by religious experiences. The colony had two urban centres, New York City and Albany, unlike any other colony. The history of New York was plagued by political turmoil and major shifts in the government. Commenting on the heterogeneity of the colony's population, Douglas Greenberg notes that

³⁶ Middleton, p. 132.

³⁷ Purvis, Thomas. "New Jersey." *A Dictionary of American History*. Oxford: Blackwell Publisher, 1997. p. 285.

³⁸ *The Colonial Laws of New York*, p. x.

³⁹ Curry, p. 62.

⁴⁰ Middleton, p. 116.

"in none of the other colonies, save Pennsylvania, was ethnic and religious diversity so characteristic of the texture of provincial life."⁴¹ Population statistics from the early years of the colony are hard to come by. However, estimates were given in various writings from the time. It is estimated that in 1685 there were 15,000 inhabitants in the colony and most were either Dutch or English.⁴² The Reverend Andrew Burnaby travelled through Pennsylvania and New York in the years 1759 and 1760 and commented about New Yorkers, saying, "being however of different nations, different languages, and different religions, it is almost impossible to give them any precise or determinate character."⁴³

By 1790, the total population of the state of New York was 219,996 whites and 18,889 blacks.⁴⁴ As illustrated in chart one, 51% of the total white population were English, 7.0% were Scottish, 5% came from Ulster, 3% were from Ireland, 8% were German, 18% were Dutch, 4% were French, 1% were Swedish, and 3% were unassigned.⁴⁵ Compared to the colony of Massachusetts, where 82.0% were English and not one other nationality totalled over 5.0% of the colony's population, New York was considerably diverse.⁴⁶

⁴¹ Greenberg, Douglas. *Crime and Law Enforcement in the Colony of New York, 1691-1776*. Ithaca, NY: Cornell University Press, 1974, p. 25.

⁴² Middleton, Richard. *Colonial America*. Oxford: Blackwell Publisher, 1992.

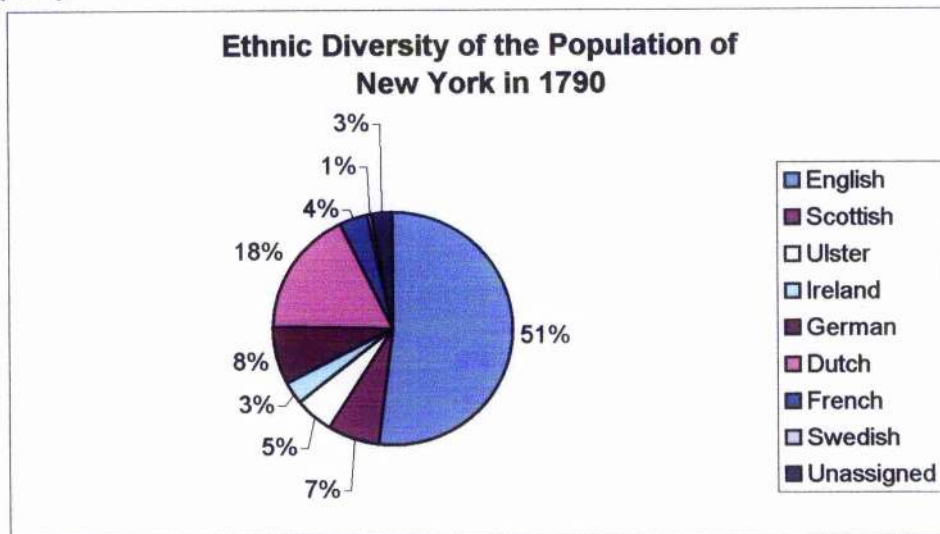
⁴³ Burnaby, Rev. Andrew. *Travels through the Middle Settlements in North-America in the Years 1759 and 1760: With Observations upon the State of the Colonies*. Reprinted Ithaca: Cornell University Press, 1960, p. 80.

⁴⁴ U.S. Bureau of the Census. *Historical Statistics of the United States. Colonial Times to 1970*. Washington, D.C.: Government Printing Office, 1975, Z-9.

⁴⁵ U.S. Bureau of the Census, Z-20.

⁴⁶ U. S. Bureau of the Census, Z-20.

Chart 1: Ethnic Groupings in New York (1790)



New York's diverse population was also complicated by the number of British convicts that made New York their home. There was not a problem with the idea that convicts were settling in New York, but their moral character was tainted and in the long run could cause further problems.⁴⁷ The heterogeneous society furthermore included religious pluralism, which was not greeted with total acceptance during the early stages of the colony, as pluralism did not have a positive connotation among most of the first colonial leaders. The diversity among the inhabitants, the religious pluralism and the influx of convicts were three factors that contributed to the unique situation in the colony of New York.

The history of New Jersey did not start as early as that of New York and the colony began as two separate colonies. The current boundaries of New Jersey were divided between the East Jersey colony and the West Jersey colony. Each colony had its own history and plan for development. The first settlement in New Jersey was made in 1643 at Fort Nye Elfborg. It was originally an outpost for New Sweden. New Jersey was acquired by England along with New

⁴⁷ Greenberg, *Crime and Law Enforcement in the Colony of New York, 1691-1776*. p. 30.

Netherland on September 7, 1664. In anticipation of this, Charles II granted East Jersey to John Lord Berkeley and Sir George Carteret, making it a proprietary colony.⁴⁸ In 1674, Berkeley sold his proprietary rights to Carteret. However, Carteret's heirs grew frustrated with the proprietors and sold them the title to the land. This only caused strife and confusion among the leaders of the colony who finally surrendered the colony of East Jersey to the Crown on April 15, 1702.⁴⁹

The colony of West Jersey was also given to John Lord Berkeley and Sir George Carteret. In 1674, Lord Berkeley sold his title to the Proprietors of West Jersey, who formed the colony along the Delaware River. The first English settlement took place in 1675 at Salem, which stimulated immigration by the Quakers. Similar to East Jersey, there was growing tension between the inhabitants and the proprietors. As a result West Jersey was also surrendered to the Crown.⁵⁰

"There were sharp contrasts between East and West Jersey, ... sources of settlement of the two provinces were quite distinct; each had its own government, its own proprietary land system. The fact that each had a separate existence for some three decades was not going to be erased instantly when the provinces were united in 1702."⁵¹ East and West Jersey merged on April 26, 1702, to make the Royal Colony of New Jersey, each bringing its own system of government and law, which allowed them to prevail.⁵² As a Royal Colony it was

⁴⁸ Proprietary colonies held charters that allowed the proprietors full rights to establish a government and possess absolute title to the land itself (Purvis, p. 327.).

⁴⁹ Purvis, Thomas. "East Jersey." *A Dictionary of American History*. Oxford: Blackwell Publisher, 1997. p. 187.

⁵⁰ Purvis, "West Jersey," p. 437.

⁵¹ McCormick, Richard P. *New Jersey from the Colony to State, 1609-1789*. Princeton: D. Van Nostrand Company, 1964. p. 56.

⁵² Purvis, "New Jersey," pp. 282-283.

under the rule of the English Crown with administrators appointed from Westminster. "The English system of colonial administration was bewilderingly complex and unwieldy, with the result that inefficiency, indecision, and procrastination prevailed."⁵³ The Crown attempted to put an end to the self-governing systems, which were employed by the proprietary leaders, but the colonists were persistent and continued to govern themselves at the local level. The mix of English legislature and self-government continued until statehood. On December 18, 1787, New Jersey became the third state to ratify the Federal Constitution and willingly accepted a federal government.⁵⁴

The colony of New Jersey offered religious tolerance. The heterogeneous population that was attracted to New Jersey's "liberal political and religious provisions" communed in a tension-free society. In the Concessions and Agreement of 1665, it was stated that all inhabitants were guaranteed full freedom of conscience in religious matters.⁵⁵ Each group that found its way to the Jersey shore held to its own peculiar methods and beliefs, but did not produce dissension.⁵⁶

Religion was important to the new colony. In the seventeenth century, most dwellers of New Jersey were Puritans, which organised churches using the Congregational model. In 1662, the Dutch Reformed established a congregation in Bergen, but did not actually build a church until 1680. Baptists first arrived in New Jersey in 1688, establishing congregations in Middletown and Piscataway. The first Anglican minister arrived in the colony in 1692. Quakers date from

⁵³ McCormick, p. 59.

⁵⁴ Purvis, p. 282.

⁵⁵ McCormick, pp. 24-5.

⁵⁶ McCormick, p. 56.

1670 in the colony, but settled primarily in West Jersey. Religious zeal was most likely lacking in the seventeenth century, but there was also no growing intolerance that plagued the religious establishments in New England.⁵⁷

The various denominations struggled to establish their religious institutions firmly. The new environment of the frontier proved to be a difficult one in which to establish churches and secure ministers. General religious interest dwindled in the early days of the colony. Pastors often served multiple churches. Outside of the main towns in New Jersey, there was rarely more than one church in the scattered settlements, which often meant that people could not attend the church of their preferred denomination. In the more remote areas, pastors visited the rural communities once a year to solemnize marriages and perform baptisms.⁵⁸

In 1670, New Jersey's first census declared that there were 1000 residents. At the turn of the century, 14, 010 inhabitants made their home in New Jersey. That number grew to over 71,000 in 1750. By 1780, the population of New Jersey rose to 139,627.⁵⁹ In 1784, there were 149,435 residents in the colony.⁶⁰ The estimated ethnic grouping of the inhabitants is depicted in chart two. The diversity of the colony added to the attractiveness of New Jersey.

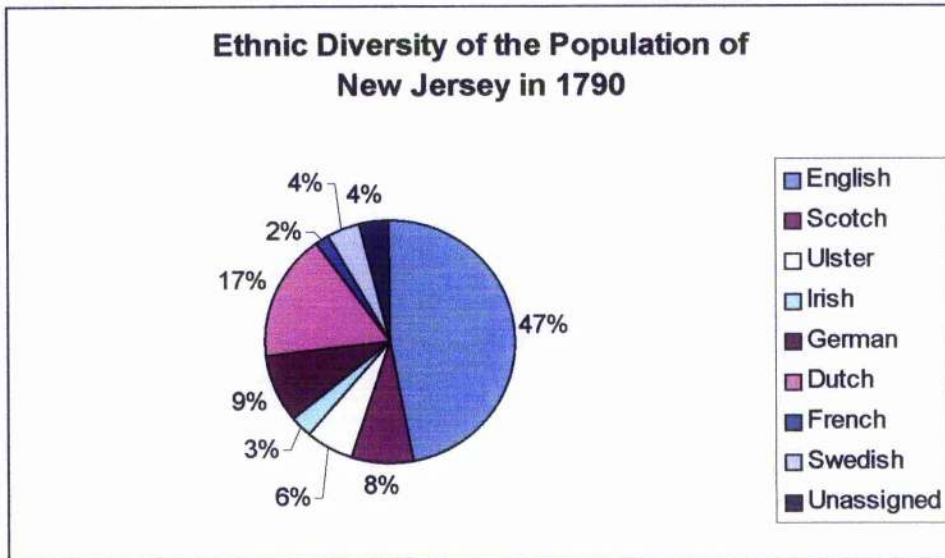
⁵⁷McCormick, p. 30.

⁵⁸McCormick, p. 93.

⁵⁹U.S. Bureau of the Census, Z 10.

⁶⁰U.S. Bureau of the Census, Z 91.

Chart 2: Ethnic Groupings in New Jersey (1790)



It is difficult to project a figure for the number of Presbyterians in both of the colonies of New York and New Jersey. As seen above, New York and New Jersey had large English populations, some of which could have been Presbyterian. Additionally, the Scotch and Irish populations may have consisted largely of Presbyterians, as well. The only way to gauge the growth of the denomination was by the number of churches founded within the eighteenth century. Gaustad illustrated a sharp increase in churches between 1720, when there were approximately 55 churches, and 1770, when there were nearly 500 churches.⁶¹ The populations of individual churches also were difficult to determine, as a surviving register roll did not always accompany the session minutes. However, in Fairton, NJ, the Fairfield Church recorded that in 1759 their church membership totalled 73 persons.⁶² The following year six more were received into full communion of the church.⁶³ This was only one partial

⁶¹ Gasutad, p. 21.

⁶² Fairfield Church, Fairton, NJ, October 1759.

⁶³ Fairfield Church, Fairton, NJ, March 1760.

example, but it can be assumed that the members of the colonial Presbyterian Churches were far fewer than that in Scotland.

However, with the steady growth of Presbyterian Churches the hierarchy was also added to as the need arose. By the late colonial period, New York had three Presbyteries – Dutchess, Suffolk, and New York, which included the northern portion of New Jersey. An additional two presbyteries of Philadelphia and New Brunswick covered the remaining area of New Jersey.⁶⁴ However, as these presbyteries grew, the boundaries were adjusted according to the practicalities of distance and numbers.

Because of established record-keeping practices, the total number of Presbyterian churches and their populations in Scotland is easy to determine accurately. By the beginning of the eighteenth century, there were over 900 parishes and 62 Presbyteries in Scotland. Parish areas had 600 to 3,000 inhabitants and covered a large geographical area, averaging 80 square miles. The inhabitants were normally scattered over the area in farm settlements or over a stretch of good farming land, as opposed to a concentrated nucleus in villages.⁶⁵ The Presbytery of St Andrews had 18 parishes.⁶⁶ The following table (chart three) illustrates the population of the parishes within the presbytery.

Chart 3: Populations of the Parishes within the Presbytery of St Andrews

⁶⁴ Trinterud, p. 198.

⁶⁵ Mitchison and Leneman. *Sexuality & Social Control*, p. 21.

⁶⁶ Additionally, St Leonards was a chapel of ease and not included in this study.

Parish	1755 ⁶⁷	1790s ⁶⁸
Anstruther Easter	1100	1000
Anstruther Wester	385	370
Cameron	1295	1165
Carnbee	1293	1041
Craik	2173	1710
Dunino	598	383
Ely	642	Unknown
Ferryport On Craig	621	875
Forgan	751	875
Kemback	420	588
Kilconquhar	2131	2013
Kilrenny	1348	1086
Kingsbarns	871	807
Largo	1396	1913
Newburn	438	456
Pittenweem	939	1157
St Andrews	4590	3950
St Monans	780	832
TOTALS	21771	20221

In the absence of a better understanding of the populations of the colonial Presbyterian churches and their boundaries, the churches will be examined collectively for the purpose of this study. If specific differences between the churches disciplinary proceedings are identified, then those issues will be addressed in subsequent chapters. However, on the whole the conclusions that will be drawn are based on the general impressions of the three regions. The Presbytery of St Andrews will serve as an example of the Scottish situation, while New York and New Jersey will collectively offer a picture of colonial church discipline.

⁶⁷ Figures taken from Kyd, James Gray. *Scottish Population Statistics including Webster's Analysis of Population 1755*. Edinburgh: Scottish Academic Press, 1975. pp. 38-41.

⁶⁸ All figures taken from Sinclair, Sir John. *The Statistical Account of Scotland 1791-1799*. Volume 10. Wakefield: EP Publishing, 1976.

The Argument

The Presbyterian Church on both sides of the Atlantic utilised a system of discipline which was intended to correct the immoral behaviour of the parishioners. As the system evolved over the centuries since the Reformation, the system changed with the influences of the societies. Chapter one will illustrate that the suppression of immorality was a concern for both the church and the state in Scotland and the American colonies. With the coinciding concerns, the ecclesiastical and secular judicial systems had overlapping jurisdictions. By the eighteenth century, the boundaries between church and state were more definitive in Scotland than in the colonies. Therefore, chapter two will further discuss the overlap and prove that the colonial Presbyterians expanded their judicial system to encompass the secular disputes, including infractions of civil and criminal law.

Enforcing discipline for immoral behaviour upon the members of the congregations in Scotland and the American colonies was only possible by imposing a strict code of membership acceptance and adherence, which is discussed in chapter three. Discipline for breaches of the Sabbath were contingent upon the churches' membership requirements. The colonial churches attempted to enforce worship attendance strictly, as this was their way to strengthen their influence in a pluralistic society. Furthermore, chapter three will demonstrate that during the eighteenth century, while the Moderate party was in control of the Scottish General Assembly, the disciplinary system relaxed its comprehensiveness, as Sabbath breaking cases rarely appeared in the Presbytery of St Andrews. Additionally, the system in Scotland was utilised primarily for practical purposes, which overshadowed the spiritual care of its

members. Chapter four will exhibit this principle in examining the familial relations and sexual misconduct cases. The Presbytery of St Andrews was unyielding with its enforcement of regularising marriage and its ruthless suppression towards fornication. As these cases were examined, the spiritual tone was lost from the trials, as they were driven by the burden of poor relief. The colonial churches did not have the same burden, and subsequently were able to devote their attention to the spiritual well being of members. And finally, all the elements of the comparison will be drawn together in chapter five, which examines a variety of cases, such as drinking, violence, and unchristian conduct. Again, the colonial church overlapped the judicial system and imposed discipline upon breaches of the criminal codes in New York and New Jersey. The Presbytery of St Andrews did not discipline for many cases other than those of a sexual nature, as the cases that had a practical influence upon the church occupied the sessions' time, thereby directing the attention away from the spiritual well-being of the parishioners.

A few additional remarks of clarification need to be made. First, this thesis will not address the change in disciplinary cases over the course of the second half of the century, as there were not obvious shifts in discipline. If this work covered the entire eighteenth century, then patterns in the discipline may have appeared, but without a substantial amount of surviving colonial records in New Jersey and New York an analysis such as this is not possible. Furthermore, if the study continued into the nineteenth century, then shifts in the approach to discipline in Scotland would no doubt appear.⁶⁹ Therefore, the topics covered in

⁶⁹ This would be due to the changes that take place in the nineteenth century. The Church of Scotland goes through a period of disruption, which resulted in a split in the church. The colonial churches experienced another period of awakening at the end of the eighteenth century, which gathered momentum in strength during the nineteenth century.

this piece of research are discussed based on the identified period. Second, the Presbytery of St Andrews was heavily influenced by the Moderate Party, thereby impacting the disciplinary proceedings within the presbytery. If an evangelical presbytery was used in this study, then the patterns may have differed.

However, the overall comparison is still feasible as there were several consistent differences documented between the Presbytery of St Andrews and the colonial Presbyterian churches in New Jersey and New York.

CHAPTER ONE

The Suppression of Immorality

“The relationship of Church and State offers a problem about which one must be careful not to generalise hastily, for neither the word ‘Church’ nor the word ‘State’ has preserved its connotation unaltered from century to century and from country to country. How much perplexity and disorder in history has been due to words!”¹ Scholars around the world have examined the tension between church and state and yet there is still great debate over the legal jurisdictions between the two throughout history. The problem lies within the use of the words, as G.D. Henderson, a Scottish church historian, noted. It is therefore essential to define the terms and jurisdictions of church and state within their respective contexts by placing them in the broader social and cultural frameworks of the period and country being examined, in this case Scotland and the American colonies of New York and New Jersey in the eighteenth century. The history of these countries is steeped in the tension between church and state, and is best illustrated through the examination of one facet of that tension – the suppression of immorality – an area of great interest to both the church and the state. This chapter will articulate the respective jurisdictions of church and state within Scotland and the colonies of New York and New Jersey in the eighteenth century, in order to identify the overlapping methods of suppressing immoral behaviour. Subsequent chapters will address the four main categories of

¹ Henderson, G.D. *The Claims of the Church of Scotland*. Warwick: Hodder and Stoughton, 1951. p. 140.

immoral behaviour, including legal and business affairs, improper familial relations and sexual impurity, breaches of church ordinances, and unchristian conduct, in order to illustrate how the church dealt with the issue of immorality.

Morality has always been a concern for both church and state throughout history. The *Oxford Dictionary* defines morality as the “principles concerning the distinction between right and wrong or good and bad behaviour.”² The definition of these principles, good and bad or right and wrong, stems from the ethical beliefs and traditions of an individual society. According to Fuller, morality can further be divided into two main categories: the morality of duty and the morality of aspiration. The first declension, morality of duty, stems from the rules of the Old Testament, including the “thou shalt” and “thou shalt not.” These rules were created to maintain an ordered society.³ The morality of aspiration, the second declension, can be best understood as the Greek philosophy regarding the “Good life” and addresses shortcomings rather than wrongdoings.⁴ The Christian Church obviously deals with rules from the Old Testament, therefore focusing on the morality of duty. However, more than just defining the Christian duties, Scripture also illustrates how a Christian should aspire to live according to the example set by Jesus Christ. Similarly, the state addresses both declensions of morality. The body of laws, legislation, and statutes define the right and wrongs of an ordered society, thereby dealing with the morality of duty. And yet, the state’s laws also implied an element of the morality of aspiration. The state establishes laws with the intention of establishing a framework by which members of society are able to pursue a life

² *The Concise Oxford Dictionary*, www.oxfordreference.com.

³ Fuller, Lon L. *The Morality of Law*. New Haven: Yale University Press, 1964. pp. 5-6.

⁴ Fuller, p. 5.

of excellence or the 'good life.'⁵ Regardless of morality, the church and the state both address the principles of right and wrong.

Generally speaking, both church and state employ systematic methods of enforcing morality, although the purpose behind each system varies. The state utilises its legal system, while the church uses a disciplinary system to punish the bad and encourage the good. The foundations of each system may differ from one another, but both are crucial for preserving social order and stability. And it is in their common usefulness that the two systems overlap one another. However, concern over which governing body, the church or the state, held the authority with regards to how a person should live his or her life has contributed to the tension that exists even now between the two entities. These theories and philosophies of morality and the law are better understood in an individual context. Therefore, what follows is a discussion of the church and state relations that existed in the eighteenth century in Scotland and then in the American colonies, specifically the colonies of New York and New Jersey.

Church and State Relations in Scotland

The Church of Scotland believed that immoral offences were sins and therefore were under its jurisdiction. However, sins were also crimes, according to the state's judicial codes. Therefore, in order to understand the church and state relations in the later half of the eighteenth century, a discussion of the preceding two centuries is necessary, as the relationship was influenced by two key factors: the Reformation Parliament of 1560, and the religious affiliation of the monarchs through the seventeenth century. Briefly stated, the Reformation Parliament

⁵ For further discussion of the moral philosophy of law see Fuller, Lon *The Morality of Law*, pp. 3-32 and Hart, H.L.A. *The Concept of Law*, Oxford: Clarendon Press, 1961. pp. 151-180.

established the framework for the Presbyterian Church government system, – General Assembly, Synod, Presbytery, and Session – which was necessary for the disciplinary system. However, given the Episcopalian sympathies of James VI, Charles I, and Charles II, the Presbyterians found themselves in conflict with the crown. The changing political position of the Presbyterian Church in the sixteenth and seventeenth centuries led to an even stronger ecclesiastical institution at the time of the Revolution Settlement in 1690, when the Presbyterian Church flourished in Scotland. Furthermore, in the Union of 1707, the Church of Scotland, a Reformed Protestant church, was legally established within Scotland and was granted legal rights over baptism, marriage, and burials.⁶ However, the Presbyterian Church had endured two centuries of political turmoil and tension with the crown before it was able to implement its system of government and discipline freely.

The history of Scotland, and subsequently the history of the Church of Scotland, came to a major turning point in 1560. Before the Reformation of 1560, in Scotland, the civil and ecclesiastical courts recognised and held to their respective roles. The nation, recognising that church and state worked together under God, was a united community. Politically, the country was under the regency of Mary of Guise, while the Catholic Queen, Mary, Queen of Scots was in France with her husband François, the King of France.⁷ As Mary of Guise's regency ended in October 1559, a group of Lords decided to transfer the

⁶ With regards to marriage, the church held the legal jurisdiction over marriage. However, in practice this was not enforced, as many marriages were irregular or clandestine. Further discussion of marriage practices and jurisdictions follows in chapter 3. Walker, David M. *A Legal History of Scotland: Volume V The Eighteenth Century*. Edinburgh: T&T Clark, Ltd., 1998. p. 258.

⁷ For further scholarly discussion of Mary of Guise's influence in Scotland, see Ritchie, Pamela. *Mary of Guise in Scotland, 1548-1560: a political career*. East Linton: Tuckwell Press, 2002.

authority to a “great council of the realm.”⁸ On August 1, 1560, the Reformation Parliament met for the first time.⁹ Over the following weeks, the Parliament abolished papal authority, disallowed the celebration of mass, and overruled any previously passed acts that were incompatible with the new Confession of Faith.¹⁰ However, these actions did not in themselves establish the structure of the Protestant Church, nor were they well received by François and Mary.¹¹ It was not until 1567, when Mary was forced to abdicate, that a new parliament passed the Church Act, which “placed the Protestant religion on a more sure foundation.”¹²

Although the Protestant Church may have held recognition by the political authorities, tension continued to build with the theology regarding Calvin’s idea of two kingdoms. Following Calvin’s lead, John Knox, a leading reformer in Scotland, believed that the two entities, church and state, were individual aspects of the Christian commonwealth.¹³ John Calvin offered a good definition and an analogy to illustrate how the two aspects were separate, but worked together.

Let us realise that God rules the governments of the world, so that he means that there should be kings, princes, magistrates, and men pre-eminent by their dignity who preside over others and bear the sword, and serve as God has ordained. And on the other hand let us recognize that God has constituted the Church a spiritual government, that of the

⁸ Donaldson, Gordon. *The Scottish Reformation*. Cambridge: Cambridge University Press, 1960. p. 53.

⁹ Wormald, Jenny. *Court, Kirk, and Community: Scotland 1470-1625*. Edinburgh: Edward Arnold, 1981. p. 117.

¹⁰ For a general account of the Reformation Parliament, see Donaldson, Gordon. *Scotland: James V-James VII*. Edinburgh: Mercat Press, 1998, Ch. 6; Wormald, Ch. 7.

¹¹ For a discussion on the political pressures surrounding the Reformation Parliament, see Brown, Keith. “The Reformation Parliament,” 2003, forthcoming.

¹² Brown, Keith. “The Reformation Parliament,” p. 286.

¹³ Shaw, Duncan. *The General Assemblies of the Church of Scotland : 1560-1610*. Edinburgh: Saint Andrew Press, 1964. p. 22.

preaching of the Word, to which all ought to be submissive, and against which no rebellion ought to be tolerated... These two orders,... are matters conjoined, so that the one taken away, the other suffers much; as if we damage an eye in anyone, the other eye suffers seriously, and cannot alone suffice for the work of the two.¹⁴

Calvin's ideology of two separate entities working together under the rules of God did not translate to the social, political, and geographical systems in Scotland.¹⁵ Therefore, the tension between the Presbyterian Church and the state was further affected by the religious affiliation of each monarch.

There were two periods in Scotland when Episcopacy trumped Presbyterianism. The 'First Episcopacy' took place between 1610 and 1638, when James VI restored the ecclesiastical and civil powers of the bishop, which conflicted with the Presbyterian system of church government.¹⁶ Similar to his father, Charles I also attempted to align the Church of Scotland with the Church of England.¹⁷ However, his efforts met great resistance when he introduced the Book of Canons (1636), which placed the King at the head of the Church of Scotland and prohibited presbyteries and kirk sessions, two main governing bodies of discipline, from meeting.¹⁸ In August 1638, Charles I allowed the General Assembly to reconvene, for the first time since 1617, an act which once again abolished the office of the bishop and dismantled all that James VI imposed upon the Church of Scotland.¹⁹

¹⁴ 'Homiliae ... Samuel is' in *Opera*, vol. xxix, pp. 659-60, as quoted in Shaw. p. 23.

¹⁵ Wormald, p. 130.

¹⁶ Brown, Keith. "Reformation to Union, 1560-1707," in Houston, R.A. and Knox, W.W.J. (editors). *The New Penguin History of Scotland: From the Earliest Times to the Present Day*. London: Penguin Books Ltd, 2001. p. 239.

¹⁷ Brown, "Reformation to Union, 1560-1707," p. 243.

¹⁸ *Dictionary of Scottish Church History & Theology*. Downers Grove, IL.: InterVarsity Press, 1993. p. 135.

¹⁹ Brown, "Reformation to Union, 1560-1707," p. 247.

In between the two dominant Episcopacy eras, conflicts continued between the Monarch and Parliament with the adoption of the Westminster Confession by the Westminster Assembly in 1646²⁰ and the acceptance of the Scots Confession and Catechisms in 1649.²¹ However, these documents did not safeguard the Church in Scotland from further political pressure. In 1661, Charles II, aware of the political power of the Presbyterians, forced Episcopacy upon Scotland, which led to relentless military struggles. From around 1653 to 1690, partly during the second period of Episcopalian government, the General Assembly did not meet. Consequently, during that later period there were no alterations made to church discipline. The disciplinary standards continued to be administered by the kirk session and presbyteries according to the *First Book of Discipline* and the *Order of Excommunication and Public Repentance*. Nevertheless, the Church still feared a return to full Episcopal government, as the Presbyterian government was not secure while an Episcopalian was on the throne. However, the great age of Presbyterianism was about to begin.²²

The real triumph for the Church of Scotland came in 1689 with the "Claim of Right," which allowed William of Orange and Mary, his wife, to take the Scottish crown. The Confession of Faith Ratification of 1690 officially abolished Episcopacy, declared the Westminster Confession as the public confession of the church, and confirmed the Presbyterian system of government

²⁰ For further discussion of the Westminster Assembly and Presbyterian church government, see Campbell, William M. *The Triumph of Presbyterianism*. Edinburgh: Saint Andrews Press, 1958., especially chapter 10.

²¹ Lyall, F. "Church and State (Legal Questions)" in Cameron, Nigel (ed). *Dictionary of Scottish Church History and Theology*. Edinburgh: T & T Clark, 1993. p. 179.

²² Clark, Ivo MacNaughton. *A History of Church Discipline in Scotland*. Aberdeen: W & W Lindsay, 1929. pp. 136-8.

and discipline.²³ During the Restoration Parliament in 1691, the following declaration was made, "His Majesty doth allow the present administration by sessions, presbyteries, and synods (they keeping themselves within bounds and behaving themselves)."²⁴ The Church no longer struggled with Episcopacy and "was now free to attend to its own internal affairs, of which one of the most important is its discipline."²⁵

In 1706, the church was protected by the Protestant Religion and Presbyterian Church Act, which allowed the unaltered continuation of the church's worship, discipline, and government.²⁶ Furthermore, the Act "ordained that succeeding sovereigns should in all time coming at his or her accession swear and subscribe that they would inviolably maintain and preserve the settlement with the government, worship, discipline, right and privileges of the Church as established by the laws of this kingdom."²⁷ When Scotland joined in Great Britain in 1707, the Articles of the Union did not specifically address the Church, therefore allowing the Presbyterian Church to be the only legally established church in Scotland.²⁸

The total ecclesiastical authority that the Church of Scotland experienced was short lived. Within a few years of the Union the monolithic position of the Church of Scotland was altered by the Toleration Act of 1712, which recognised two Churches in Scotland, the Presbyterian and Episcopal.²⁹ The Episcopalians

²³ *Acts of the Parliament of Scotland, (A.P.S.)* IX, 133, c. 7.

²⁴ *A.P.S.*, VII, 87-8.

²⁵ Clark, p. 138.

²⁶ *A.P.S.*, IX, 402, c. 38.

²⁷ Walker, *A Legal History of Scotland*, Vol, V, p. 258.

²⁸ Walker, *A Legal History of Scotland*, Vol, V, p. 258.

²⁹ Acts Gen. Assy., pp. 467-70.

were granted permission to worship freely in accordance with the Prayer Book.³⁰ Additionally, the Act called for both Churches to incorporate prayers for the Royal Family into the worship services and a clause allowed for nonconformists to evade the jurisdiction and discipline of the Established Church.³¹ More detrimental to the disciplinary system was the fact that the Act made it no longer possible for the church to require a sheriff to enforce its discipline. Without this support from the sheriff, the Church of Scotland no longer had the ability to enforce total conformity. Discipline was still carried out, but without the sheriff the Church was left to its own devices to enforce its jurisdiction and impose its discipline upon its members. Ultimately, the Toleration Act of 1712 altered the authority of the Church of Scotland, a total authority it never regained.³² Although the Toleration Act did not interfere with the Church of Scotland's form of government and discipline, it did limit the church's jurisdiction over the parish. Thus the Church found itself with limited authority over the populace, but with its procedures still intact. This was where the Church of Scotland remained during the second half of the eighteenth century, the focus period of this study.

Ecclesiastical Methods of Suppressing Immorality

With official recognition from the monarch, the Church of Scotland and its leaders believed that the church should have jurisdiction over immoral offences committed by its parishioners, a position which was supported by the adopted

³⁰ Drummond, Andrew L. and Bulloch, James. *The Scottish Church, 1688-1843: The Age of the Moderates*. Edinburgh: The Saint Andrew Press, 1973. p. 18.

³¹ Walker, *A Legal History of Scotland*, Vol, V, pp. 267-8.

³² *Dictionary of Scottish Church History and Theology*, p. 823.

ecclesiastical texts. Moral offences were seen as sin and the church was responsible for the cleansing of sins. Scotland's secular government granted jurisdiction over the suppression of morality to the Church of Scotland, which acted through a highly evolved system of discipline.

The church thus became the main agent of suppressing immorality in the eighteenth century. Church doctrine highlighted the need for efficient discipline and offered instructions on how to enforce and implement discipline. From the beginning of the Christian Church, discipline was a considerable part of the life of the church especially in connection with the purity and effectiveness of the sacraments. The Church called for its members to live lives holy and pleasing to God, which included correcting those forms of behaviour that hindered their growth as Christians. As this study deals with the Presbyterian form of church discipline in Scotland and America, a brief discussion of the elements of the Reformation most influential upon the eighteenth century church and its disciplinary proceedings is necessary.

The church in Scotland was greatly affected by the Reformation occurring on the continent, which began with Martin Luther in 1517. Luther's reformed ideologies of the church were planted in Scotland through Patrick Hamilton, a Scottish student studying abroad at the University of Paris in the 1520s, who encountered Luther's writings. Attempting to teach reformed theology, he became a martyr after being charged with heresy and subsequently was burnt at the stake in St Andrews on February 29, 1528.³³ However, the early impetus towards reform stemming from the Lutheran areas of Germany was not in the long term as significant as that of John Calvin's Geneva,

³³ Torrance, I.R. "Patrick Hamilton" in *Dictionary of Scottish Church History and Theology*. Edinburgh: T&T Clark, 1993. pp. 390-1.

especially with regards to church discipline. Luther's theology did not heavily focus on discipline, but concentrated upon the importance of preaching and catechising as the primary means of influencing moral behaviour within the church.³⁴ This sentiment fell in line with Luther's belief that there were only two marks of the church: teaching of the Gospel and administration of the sacraments. John Calvin added a third mark by declaring that discipline was also a mark of the true church.³⁵ His belief that discipline was necessary to maintain moralistic church communities,³⁶ resonated with the church in Scotland.³⁷

John Calvin's system of ecclesiastical government and discipline became very influential in the Church of Scotland. Calvin's church in Geneva was established as a "self-regulating, visible community of believers whose ministers were appointed by laymen to scrutinise and admonish their clergy and whose clergy exhorted and led their flock."³⁸ The church was separate from the state, although interrelated, as both entities originated from God's sovereignty and

³⁴ Luther himself was not concerned with the practical elements of his theology, such as discipline. He allowed laymen to deal with the organisational subjects of the church. One of the most notable followers of Luther, Martin Bucer, assumed the responsibility of establishing the new ecclesiastical discipline. For further discussion, see Burnett, Amy Nelson. *The yoke of Christ: Martin Bucer and Christian Discipline*. Kirksville, MO: Northeast Missouri State University, 1994. However, ecclesiastical discipline failed in most Lutheran lands, as the control over morality continued to remain the responsibility of the secular authorities. See Kingdon, Robert M, "Calvin and the establishment of consistory discipline in Geneva: the institution and the men who directed it." *Nederlands Archief voor Kerkgeschiedenis*, Vol. 70, 1990. pp. 159-160.

³⁵ Calvin did not explicitly declare discipline as a mark of the church (See *Institutes*, IV:1:9), but he did establish an institution, the Consistory of Geneva, for the maintenance of church discipline. His *Ecclesiastical Ordinance* (1541) articulated his intentions for the Consistory, which included church discipline. For a detailed discussion of the Consistory in Geneva, see Monter, E. William. "The consistory of Geneva, 1559-1569." *Bibliothèque d'humanisme et renaissance : travaux et documents*, Vol. 38, 1976. pp. 467-484.

³⁶ Kingdon, pp. 161-2.

³⁷ Clark, p. 59.

³⁸ Potter, G.R. and M. Greengrass. *John Calvin*. London: Edward Arnold Ltd., 1983. p. 70.

members of the church were also members of the state.³⁹ With the intention of defining the roles of the church and separating it from the state, Calvin drafted a system of ecclesiastical government, which was outlined in his *Ecclesiastical Ordinances* in 1541. When the civil magistrates in Geneva approved the *Ordinances*, they recognised the distinct authority and responsibilities of the church, thereby accepting a system in which the Church could stand independent and care for its flock. One of the main ways that the orders could care for the flock was through discipline.

For Calvin, discipline was essential to the fruition of the Church.

Because some people, in their hatred of discipline, recoil even from the word's use, let them understand this: if no society, indeed no house which has even a small family, can be kept in proper, condition without discipline, it is much more necessary in the Church, whose condition should be as ordered as possible. Accordingly, as the saving doctrine of Christ is the soul of the Church, so does discipline serve as its sinews, through which the members of the body hold together, each in its own place.⁴⁰

The Church should remain pure and discipline was the means to make that possible. Calvin was also anxious about the profanation of the Lord's Supper by unfit members. Therefore, discipline was also essential for that purpose.⁴¹

Discipline is like a bridle to restrain and tame those who rage against the doctrine of Christ; or like a spur to arouse those who are of little inclination; and also sometimes like a father's rod to chastise mildly and with the gentleness of Christ's Spirit those who have more seriously lapsed.⁴²

The idea of the spur can be defined as the gentle pushing of one's own reproach or the gentle guiding of the church. Discipline served to "provide a place for

³⁹ Raath, Andries. "Covenant and the Christian Community: Bullinger and the Relationship between Church and Magistracy in Early Cape Settlement (1652-1708)." *Sixteenth Century Journal*, Vol. XXXIII No. 4, 2002. pp. 1005-7.

⁴⁰ Calvin, John. *The Institutes of the Christian Religion*. John McNeill (ed.) Philadelphia: The Westminster Press, 1960. IV. xii.1.

⁴¹ Calvin, IV. xii. 5.

⁴² Calvin, IV. xii. 1.

private admonition; that is, if anyone does not perform his duty willingly, or behaves insolently, or does not live honourably, or has committed any act deserving blame—he should allow himself to be admonished; and when the situation demands it, every man should endeavour to admonish his brother.”⁴³

Inspired by reformed theology, there were several texts that contributed to the sophisticated system of church discipline which existed in the eighteenth century. Each doctrine further defined and supported the church’s role in being a spur. The *Form of Process* of 1707 was the formal ecclesiastical text for the practices and procedures of discipline in the Church of Scotland. The General Assembly passed the final version in 1707, but there were several doctrines that contributed to this act.⁴⁴ In 1696, the *Overtures concerning the Discipline and method of Proceeding in Ecclesiastical Judicatories in the Church of Scotland* (1696), an earlier version of the *Form of Process*, included a note to the reader, which highlighted the work of the Reformation and the key doctrines that resulted from the period – the *Scots Confession of Faith* (1560), the *First Book of Discipline* (1561), and the *Second Book of Discipline* (1578).⁴⁵ Each text contributed to the mature system of Presbyterian discipline that functioned in Scotland and that eventually crossed the Atlantic into the American colonies.

On August 17, 1560, Parliament accepted the *Scots Confession of Faith*, which portrayed the spirit of the Scottish Reformers. In a simple and straightforward manner, it became the *regula fide* of the Church of Scotland. At the request of the Scottish Parliament, the Reformers recorded their beliefs into a

⁴³ Calvin, IV. xii. 2. For a thorough discussion of Genevan consistories, see Benedict, Philip. *Christ’s Churches Purely Reformed: A Social History of Calvinism*. New Haven: Yale University Press, 2002. pp. 77-115.

⁴⁴ Clark, p. 139.

⁴⁵ Clark, pp. 139-40.

written doctrine. Significant to the history of church discipline, the *Scots Confession* defined discipline as a mark of the church, adding it to the other two, Word and Sacrament.⁴⁶ The authors of the text clarified that ecclesiastical discipline, properly administered as Scripture prescribed, should be a system “whereby vice is repressed, and vertew nourished.”⁴⁷ The *Scots Confession of Faith* established the framework for the system and the later books filled in the details.

The *First Book of Discipline* (1561), a product of the Scottish Reformation, proclaimed the importance of ecclesiastical discipline. The Reformers recognised that the civil magistrates should punish for crimes such as blasphemy, adultery, murder, and perjury, and that the church should discipline for offences prescribed by Scripture, such as fornication or drunkenness. However, the Church felt obligated to discipline for both types of offences.

But because the accursed Papistrie hath brought in such confusion into the world, that neither was virtue rightly praised neither yet vice severely punished, the kirk of God is compelled to draw the sword which of God she hath received, against such open and manifest contemners, cursing and excommunicating all such, as well as those whom the civill sword ought to punish, as the other, from all participation with her in prayers and Sacraments, till open repentance appeare manifestly in them.⁴⁸

The Church did not desire to overrule the civil sword, nor did it attempt to offer a substitute punishment for those that were in breach of a civil law.

Furthermore, the Church believed that crimes, such as adultery and murder, were subject to death. However, if the civil authorities allowed an offender to live, then the offender was still accountable to church censure or more importantly, to

⁴⁶ Kirk, *Patterns of Reform*, p. 270.

⁴⁷ Henderson, G.D. *Scots Confession, 1560*. Edinburgh: Church of Scotland Committee of Publications, 1937. Art. XVIII.

⁴⁸ Cameron, James. *The First Book of Discipline*. Edinburgh: The Saint Andrew Press, 1972. p. 167.

be restored to full membership in the church.⁴⁹ The *First Book of Discipline* clearly defined the purpose and standard procedures of discipline, but it was the *Second Book of Discipline* that created the uniquely Presbyterian system of discipline.

The *Second Book of Discipline* was contracted by the General Assembly in 1578, officially passed in 1581, and recognised as legal by the state in 1592 and 1690.⁵⁰ The greatest significance of the *SBD* was its implementation of the four-tier Presbyterian system of government, encompassing the kirk session, presbytery,⁵¹ synod, and general assembly. Briefly stated, the kirk session was composed of elders with a minister as the moderator and was responsible for the business affairs of the parish, including discipline. Above the session, the presbytery represented a corporate episcopacy and served as a court of appeal from the sessions. The third tier or the synod was the court of the superintendent or bishop and held the role of overseer. The general assembly was the central institution in Scotland, uniting all the local parishes and courts, and was the tool that the Kirk used to execute their agenda at the national level.

The foundation of the church's government allowed for an efficient ecclesiastical disciplinary system. The *Second Book of Discipline* distinguished between the Kirk's roles in the suppression of immorality from the authority of civil powers. The church did not question the jurisdiction of the civil courts,

⁴⁹ Cameron, p. 33.

⁵⁰ Clark, p. 109.

⁵¹ The office of the presbytery has caused historians great confusion because their contemporary framework contained all four offices. When looking back to the *Second Book of Discipline*, there was not a distinct separation between the elders of the session and those in an intermediate office. However, in July 1579, the General Assembly recognised the need for the two offices and resolved to create the office of presbytery properly. (Clark, pp. 102-6).

but did not allow civil judgements to substitute for ecclesiastical censuring.⁵²

This was due to the Kirk's belief that a 'godly' prince ruled the state and that the church received its authority from Christ the Mediator.⁵³ The *Second Book of Discipline* was emphatic about this point, stating

It is proper to kingis, princes and magistrates to be callit lordis and dominatouris over thair subjectis quhom thay governe civilie, bot it is proper to Chryst onlie to be callit Lord and Maister in the spirituall government of the kirk, and all utheris that beris office thairin aucht not to usurp dominion thairin, be callit lordis, bot onlie ministeris, disciplis, and servandis, for it is Chrystis proper office to command, and reull his kirk universall, and evertie particular kirk, throw his Spirit and word, be the ministrie of mene.⁵⁴

Regardless of the established four tier system, there was still a great deal of tension between the Kirk and the Crown regarding the various boundaries between the two jurisdictions. The Kirk expected the Crown to uphold the true religion, and yet the church believed in there being two kingdoms. Therefore, in the area of discipline, the church dealt with religious issues and the civil courts dealt with secular affairs.

Church discipline became the main topic of business for the kirk sessions. The *Second Book of Discipline* established the system of government and generally defined the terms of ecclesiastical discipline. However, it was the *Form of Process* which further articulated the methods and procedures of discipline with the Church of Scotland. After the Revolution Settlement, the General Assembly was preoccupied with the issue of church discipline and as a result drafted a few treatises. In 1696, the General Assembly constructed the *Overtures concerning the Discipline and Method of Proceeding in Ecclesiastical*

⁵² Mair, p. 378.

⁵³ Clark, p. 59.

⁵⁴ Kirk, James. *The Second Book of Discipline*. Edinburgh: The Saint Andrew Press, 1980. I.13.

Judicatories in the Church of Scotland. At the meeting of 1705, chapters were added regarding the Synod and the General Assembly. It was this document that became the *Form of Process* in 1707, which was approved as the authoritative text over all issues concerning discipline.⁵⁵ The *Form of Process* standardised the practice and methods of discipline within the church's jurisdiction, which were varied at the time of its conception.⁵⁶ Unlike the *Second Book of Discipline*, the *Form of Process* did not address the jurisdiction of the Civil Magistrate, other than to identify the sins that were also punishable by civil law. For example, slander was punishable by civil law and the *Form* stated that the session was to make a formal application to the Civil Magistrate in this case.⁵⁷ Although the realm of the Civil Magistrate was identified, the *Form of Process* was written to address ecclesiastical discipline only. The text was penned in a straightforward manner and detailed how each type of offence was to be disciplined. These procedures will be depicted in the following discussion and subsequent chapters.

The ecclesiastical texts each contributed to the process and agents of church discipline. There were several elements that were needed to have an effective disciplinary system. First, the Presbyterian hierarchy of church government needed to be in place. Second, the elders of session needed to be keen on discipline and meet regularly. Third, the minister also must be in favour of discipline. The effectiveness of church discipline was dependent on both the agents and the procedures, for unwilling ministers and elders would have resulted in a lack of discipline. Both were developed in order to carry out the

⁵⁵ Clark, pp. 138-140.

⁵⁶ Clark, pp. 140-2.

⁵⁷ *Form of Process*, IV, 13.

intention of discipline, which was not to humiliate the offender publicly or receive monies from penalties, but to reform and restore the individual or to win back the souls that had strayed. Discipline was to ensure that the congregation would be clean and holy, in order to partake in the sacraments as a unified body.

The *Second Book of Discipline* instituted the ministry of discipline, which was the kirk session. Discipline of all members within a parish was the responsibility of the kirk session, a group of elders who were laymen working with the minister to take care of the business of the church. During the eighteenth and nineteenth century a large part of the business of the kirk session was discipline, as the minutes show. Other affairs, such as questions of matrimony, the care of the poor, the supervision of the church ordinances, and supervision of the schools were discussed on a much smaller scale.

The minister served as the Moderator of the kirk session.⁵⁸ “[His] work [was] to proclaim the Word of God, to teach, admonish, exhort, and reprove publicly and privately, to administer the sacraments and, with the elders or their deputies, to issue fraternal warnings.”⁵⁹ As the Moderator of the kirk session, the minister pronounced the decisions of the session regarding the discipline of an offender. In some disciplinary cases when the offender was slow to confess, the Moderator would rebuke the sinner and remind him or her about the gravity of the sin. In Ferryport On Craig on May 13, 1760, Helen Jack was rumoured to be with child. Five days later, Helen Jack confessed her guilt of fornication with John Robertson. John Robertson was called before the session the following

⁵⁸ In burgh parishes where more than one minister was in residence, the incumbents would take turns officiating. All of the Kirk sessions within the Presbytery of St Andrews had one minister, with the exception of the parish in St Andrews, which had two in 1755. Kyd, James Gray. *Scottish Population Statistics including Webster's Analysis of Population 1755*. Edinburgh: Scottish Academic Press, 1975.

⁵⁹ Calvin, *Ecclesiastical Ordinances*, as quoted in Potter and Greengrass, p. 71.

three meetings and persistently denied his guilt. Seeking a confession from Robertson, the Moderator of the session “informed him that he was involved in a crime of very deep dye, a crime which was of such a nature as required sincere penitence of the heart and humbleness of mind, in order to make up peace with his Creator.”⁶⁰ Because the minister had several other administrative duties of the church, the elders became the workhorses of the disciplinary procedures. However, only the minister was able to pronounce a sentence of excommunication to a convicted offender.⁶¹ In general the minister was the overseer of the congregation, but he was not given sole authority over it.

The kirk session, composed of the minister and elders of the church, worked as a unit and complemented one another’s roles in disciplinary proceedings. Collectively, they carried out the duties of the session and administered discipline. “The eldarschip [was] ane functioun spirituall, as [was] the ministrie.”⁶² The office of the eldership became one of the principal changes in the Reformation. It symbolised the new focus on the laity’s participation within the government of the church, particularly that with discipline. The elder was to serve as the lay representative of the congregation. They were men of the congregation that had the people’s consent.⁶³ According to the *Second Book of Discipline*, “[t]hiar office [was], als weill severallie as conjunctlie, to watche

⁶⁰ CH2/150/3. Ferryport On Craig, May 13, 1760. Ferryport On Craig was the town in the area that is now Tayport.

⁶¹ *Form of Process*, VIII, 8, 12, 14, 15.

⁶² *Second Book of Discipline*, VI.5

⁶³ There has been debate over whether or not the elder was a divinely ordained institution. Calvin, Knox, and the delegates of the Westminster Assembly all affirmed that the elder was a scripturally appointed office. There has also been debate over whether or not the elder is truly representative of the congregation. A.C. Cheyne points out that the word and the idea are not contained within the *Form of Church Government*, the *First Book of Discipline*, or the *Second Book of Discipline*. For the purposes of this paper, the term elder will simply mean the person who was elected to represent the congregation and serve on the Kirk session. For a discussion of the debate, refer to the first chapter in Cheyne’s *Studies in Scottish Church History*.

diligentlie upone the flok committit unto thair charge, bayth publicklie and privatlie, that no corruption of religioun or maneris enter thairin.”⁶⁴ This position arose from the necessity to order the lives and morals of the people effectively within the congregation.⁶⁵ The elder was to “watch over the flock of Christ, correcting abuses, and reforming manners and attending to those consistorial causes which knit society into an ordered whole.”⁶⁶ More specifically, the elder “not only summoned any open sinner before the Session ... but he kept his ears open for secret sins. He was ever observing and listening, putting two and two together, and following up the trail; he was more than a policeman, he was a detective, and a considerable part of his duty was called ‘delating,’ which really meant giving information and accusing.”⁶⁷

However, the session desired people to come to them and confess their sins freely. The confession was not like the Roman Catholic method of confession made privately before a priest, but a confession to the entire session or the congregation.⁶⁸ However, in many cases, the offenders did not voluntarily confess. Therefore, the scandal or *fama* was to be delated to the session if one did not confess voluntarily. The scandal could be delated by an observer of an act of sin or by the elders or minister who may have heard something. The session would decide whether or not the case could be tried at all. Ideally, if the case was minor, the session would privately admonish the offender, so as not to create an unnecessary spectacle that could have occurred from a public

⁶⁴ Calvin, VI.11.

⁶⁵ Clark, p. 56.

⁶⁶ Clark, p. 57.

⁶⁷ Watson, John. *The Scot of the Eighteenth Century: His Religion and his Life*. London: Hoder and Stoughton, 1907. pp. 42-3.

⁶⁸ Clark, p. 86.

repentance. Most cases would go much further through the procedure, attempting to arrive at an absolution of the offender.

Collectively the minister and elders made up the session, which followed the well-developed disciplinary procedures of the *Form of Process*. This process can be categorised into ten steps. Cases varied due to the type of offence committed and did not necessarily progress through all ten steps, unless the final resolution involved excommunication. However, the early steps resolved many cases. Ivo MacNaughton Clark originally delineated these ten steps and based them upon the earliest Reformed procedures. The standard procedures did not change greatly over time, but as Clark discovered, “the *Form of Process* shows Church Discipline become more legalistic, outward and external, and the offender a ‘case’ rather than a soul to be won back, if possible, to the fold of Christ.”⁶⁹ In order to understand the changing tone and emphasis of church discipline, what follows is a comparison of the standard ten steps. The text will narrate the steps according to the *Form of Process*, while the Reformation standards will be illustrated in the footnotes. The first two steps were not usually recorded in the minutes of the session, as ideally the case would be dealt with immediately in the first step. However, if the matter were not resolved then it would go through the following steps until the offender was absolved and restored to church privileges:

1. One or two members of session admonished the offender.⁷⁰
2. The offender was approached by two or three witnesses.⁷¹

⁶⁹ Clark, p. 147.

⁷⁰ *Form of Process*, II, 1, 4. The earlier sixteenth century reformed procedures included the first three steps, which were prescribed in Matthew 18:15 (Clark, p. 76).

3. The offender was brought before the minister and elders. (All the above were done in private.)⁷²
4. If the session determined that the case warranted a trial, then the guilty person or persons were “duly [cited] before them by a legal and timeous citation in writ.”⁷³ If the offender appeared as cited and confessed their wrongdoing, then the session would assign the correlating discipline to the sin committed. On completion of the sentence, the offender would be absolved.⁷⁴
5. However, if the offender did not obey the first citation, then an additional two citations could be issued. The offender, should he or she appear before the session, would undergo the disciplinary proceedings.⁷⁵
6. If the accused did not appear after three citations, then the case would be referred to a higher court and often resulted in excommunication.⁷⁶
7. When the accused person confessed the wrongdoing, the session ordered public repentance. The number of required public appearances was determined by the gravity of the sin.⁷⁷

⁷¹ Clark, p. 76.

⁷² Clark, p. 76

⁷³ *Form of Process*, II, 3.

⁷⁴ *Form of Process*, II, 3. In the sixteenth century, the crime was declared to the church without the name of the offender, in which the offender was hoped to confess publicly. If the offender confessed by the next Sabbath, then the ministry could have taken that as satisfaction for the sin (Clark, p. 76). The earlier form withheld the name of the offender allowing him or her to come forward because they realised their sin, rather than the session proclaiming the sin.

⁷⁵ *Form of Process*, II, 3. The crime was again declared to the congregation, this time with the name of the accused and their exact crime. At this point, the offender could only be absolved after going through public satisfaction, which was to be humbly asked for as if it was a privilege. The third public admonition had excommunication as the result if the offender neglected to confess and was disobedient to the proceedings (Clark, p. 76). When the offender was still anonymous, the person had the choice to come forward. However, when the offender remained silent, it was only then that the session declared the name of the person.

⁷⁶ *Form of Process*, II, 6. The eighteenth century procedure was virtually the same on this point because the earlier form gave three public admonitions, with excommunication as the result if the offender neglected to confess and was disobedient to the proceedings (Clark, p. 76).

8. After public repentance was complete, the Minister declared the offender's absolution. The congregation was then presented with the newly absolved person and welcomed him or her back into the community of the church. However, if the offender did not satisfy the congregation in his or her repentance, then the person was to be suspended from the communion and the church was free from the scandal.⁷⁸
9. The suspended person, who was not adhering to the process of discipline, would be referred to the presbytery for his or her hearing. The kirk session would then be instructed by the presbytery on how to proceed with the offender. If the offender continued to be obstinate, then the session excommunicated the unrepentant offender and he or she was no longer a part of the Christian community. The Minister proclaimed to the congregation, "Here I in thy name and at the command of this thy present congregation cut off, seclude, and excommunicate from thy body and from our society, (Name of the person), as a person slanderous, proud,

⁷⁷ *Form of Process*, III, 1 and IV, 1,2. Public Repentance, in which the Session was to instruct the offender about the seriousness of the sin, the fear of God, and the meaning of repentance and grace, all of which was done wearing a sack cloth and sitting on the stool of repentance (Clark, p. 76.) Although the sixteenth century required objects of discipline, they were used to illustrate the point – that when man sinned he was separate from God. While the person was "separate," the session would gently offer hope to the congregation that the sinner would in fact reform the wrongful character.

⁷⁸ *Form of Process*, III, 1 and IV, 1,2. In the reformed tradition, the offender was presented to the congregation on the following Sabbath after the sermon. The entire congregation was meant to identify with the sinner and all were to pray that by God's mercy the offence would be lifted from the offender and the congregation. The Minister addressed the congregation and the sinner with an admonishment and asked the sinner to repent their crime. The offender asked for forgiveness and confessed the guilt of the sin. If the congregation felt satisfied with the sinner's repentance, then the Minister again warned the sinner and the congregation. The time ended in a prayer of thanksgiving for the restored brother or sister. At this point, the Minister absolved the offender with a declaratory speech made to the entire congregation. However, if the offender did not suitably confess or if the congregation was not satisfied then the case moved on. The church was purged of the evildoer and the case was delayed for hope of the sinner confessing. If the offender did confess, then public repentance followed. If not, the church moved towards the possibility of excommunication (Clark, pp. 76-7). The later version did not mention the prayers of thanksgiving or the declaratory speech to the congregation.

contemnor and a member for this present, altogether corrupted and pernicious to the body.”⁷⁹

10. When an excommunicated member of the church illustrated repentance through his or her awareness of the gravity of their sin and the intention to reform the immoral behaviour, then the repentant sinner was accepted back into the congregation. The Minister then pronounced the sentence of absolution, “Whereas thou, N., hast for they sin been shut out from the communion of the faithful, and hast now manifested thy repentance wherein the Church resteth satisfied, I in the name of the Lord Jesus, before this congregation pronounce and declare thee absolved from the sentence of excommunication formerly denounced against thee, and do receive thee to the communion of the Church, and the free use of all the ordinances of Christ, that thou mayest be partaker of all His benefits to thy eternal salvation.”⁸⁰

This was the basic procedure taken by kirk sessions. Not all cases ended in excommunication. Again, the type of case and the behaviour of the offender dictated how many steps were carried out. Certain cases were judged more severely, but the process either ended or continued depending upon when and how the offender confessed and offered satisfaction of his or her guilt to the

⁷⁹ *Form of Process*, VIII. Quote from *Dictionary of Scottish Church History and Theology*, under ‘Discipline,’ taken from the *Form and Order of Excommunication and Public Repentance*. In the sixteenth century, the ninth step was the hopeful conversion of the sinner. The Minister offered more prayers asking the offender to submit to the guilt of his or her sin. If the offender was still obstinate, then the offender was announced as an excommunicate and was cut off from the Christian society (Clark, p. 77). The step towards excommunication in the eighteenth century lost the “hopeful” attitude of converting the sinner.

⁸⁰ *Form of Process*, IX. In the earlier period, the excommunicate person was to come back to the Minister and elders and show his or her repentance. Those present sought to discover if the offender was truly repentant by examining their request for forgiveness and their behaviour during his period of excommunication. If the congregation was satisfied with the excommunicate, then the Minister proceeded to a form of absolution, at which point the offender was embraced by the congregation (Clark, p. 79).

congregation. If the session was unable to reach the stage of absolution with an offender, then the session referred the case to the higher court, the presbytery.

The soul of the offender and the edification of the congregation were the priorities of the reformed system of discipline. A study of sixteenth century discipline in Scotland suggests a rigid and exacting system. However, the severity of the disciplinary proceedings was carried out with a hopeful and forgiving attitude. The intentions behind the eighteenth century system may not be observed from the recorded minutes of the sessions, but the manner and language of the *Form of Process* portrays an ordered system based in legality and carefully thought out procedures. This tone was also prevalent in the higher courts.

The presbytery was the second tier of the church government hierarchy. The presbytery would supervise the parishes within a local area. A minister and two elders represented each parish in the presbytery. The presbytery was bound "to judge presentations to vacant parishes in its area, ordain and induct new ministers to fill vacancies and act as a court of first instance in matters affecting church buildings, manses, glebes⁸¹, and courtyards."⁸² The presbytery served as the court appeal for the kirk session. If the kirk session was unable to come to a suitable conclusion, they would refer the case onto the presbytery. In the kirk session of Kilconquhar on May 19, 1751, the elders reported that Christian Archibald was with child. The following week, the elders visited her father's home to interrogate her about the report, to which she confessed her guilt of fornication with Spencer, but denied that she was with child. Called to the

⁸¹ An area of land, usually between five and ten Scots acres, set aside as church property for the use of the parish minister. The minister could farm it himself or rent it out just as he wished.

⁸² Briand, Kenneth C. "The Presbyteries of Cupar, Dundee, and St Andrews During the Ten Years Conflict and Disruption." University of St Andrews, Ph.D. Thesis, April, 1992. p. 7.

session a fortnight later, she continued to deny her being pregnant. The elders, determined to prove her pregnancy, further questioned her and asked "if there was Milk in Breast at that time." She answered "there was, but that she brought forth nothing."⁸³ The session, unclear as to the truth of the situation, referred the case to the presbytery, which advised the session to call a midwife for a proper inspection.⁸⁴

The presbytery was more than a court of appeal. The *Form of Process* of 1707 made an allowance for cases that were unpleasant, and allowed the session to refer cases to the presbytery. Such cases included "scandals of incest, adultery, trilapse in fornication, murder, atheism, idolatry, witchcraft, charming, and heresy and error, vented and made public by any in the Congregation, schism and separation from the public ordinances, processes in order to the highest censures of the Church, and continued contumacy."⁸⁵ The session of Anstruther Wester did that when they sent Margaret Mores to the presbytery on May 22, 1750, for trilapse fornication. She sat before the Presbytery of St Andrews, where she was rebuked and ordered to make public confession for her sin.⁸⁶ On June 24, 1751, the session called in several midwives and potential witnesses to the pregnancy of Margaret Mores. Christian Slark, a midwife from Ceres, said "the Tuesday after the committee of the session met at her house, she found no child in Christian Archibald's belly, but that Christian Archibald had good breast milk" and that she "found a hardness in her lower belly which she

⁸³ CH2/210/10. Kilconquhar, June 9, 1751.

⁸⁴ CH2/210/10. Kilconquhar, June 20, 1751.

⁸⁵ Clark, p. 120.

⁸⁶ CH2/625/3. Anstruther Easter, May 22, 1750.

took to be an after birth."⁸⁷ Another woman, Christian Duncan, was sent with the elders to investigate Christian Archibald. She

said that she was sent with the elders about 7 weeks ago and saw Christian Archibald fighting in the floor, and all that night she fought up and down, she and her Sister Maren holding her and a lad was sent for the Doctor on Sabbath morning; and I was mending the fire when he came in about 12th of a clock, and he desired me to go out the house and bolt the door behind me, and Christian Archibald and her mother even then sitting in the house, and I came then & Christian Archibald was let blood in one of the cools & ordered to bath her legs in a tub of warm water a blanket cast about her & sitting on a stool within the tub; and she came again thursday after & let blood in the arm and gave her a clister and her belly was as hard as a board and her legs were swollen the veins appearing like ones finger and she never got clotted to do any thing during the whole week she was there and a lump came up into her breast and made her eyes to stand but the deponant did not know what it was, but she was cast round every way on her henges and in her belly and she saw no evidences of Christian Archibald delivery.⁸⁸

The session referred the case to the presbytery, who once again called for further testimonies in order to have more light shed on the matter and to dispel the conflicting stories.⁸⁹ This case was particularly complex and very involved. Similar types of cases that caused great confusion to the session and the presbytery were sent to the Synod.

The presbytery also served as a court of first instance when the offender was a minister, for they were not outside the bounds of discipline.⁹⁰ Their superiors, the presbytery would visit the sessions and ask them to leave the room, in order to question the elders on conduct, lifestyle, and ministry within the parish. If any misconduct was delated, then the minister would face a

⁸⁷ CH2/210/10. Kilconquhar, June 24, 1751.

⁸⁸ CH2/210/10. Kilconquhar, June 24, 1751.

⁸⁹ This case gets lost in the session minutes of Kilconquhar. There is mention of the case in the minutes of the presbytery, but no result is recorded.

⁹⁰ For further discussion on the discipline of ministers, see *Form of Process*, VII and Clark, chapter 6.

rigorous process of discipline, conducted by the presbytery.⁹¹ Appeals regarding a case involving a minister or a complicated case tried before the presbytery would be referred upwards to the Synod; however, because the Synod only met twice a year in April and October, the presbyteries utilised their best means to solve the case to add no further time to a trial.⁹²

It was rare for disciplinary cases to reach the third tier – the Synod. It served as court of appeal to the presbytery and dealt with spiritual matters of the church at large. Disciplinary cases that did appear before the Synod either dealt with a member of a session or came as an appeal from the presbytery. The Synod of St Andrews tried a disciplinary case involving Thomas Ogilvie, an incumbent of Glentraithen. On December 8, 1698, he went before the Presbytery of Dundee because he was accused of “adultery within his first marriage with the woman that he is currently married to, guilty of fornication with his present wife, drunkenness, other charges against his ministry, and incest with his bastard daughter.”⁹³ In the case of Thomas Ogilvie, the Synod of St Andrews heard his case and reported back to the presbytery on January 4, 1699, clearing him of all charges brought against him.⁹⁴ In addition to any disciplinary case that may have climbed through the appeal process, the Synod also handled things that went amiss and served as a filter for business being presented to the General Assembly.⁹⁵

The fourth tier, the General Assembly, stood as the highest church court. The General Assembly consisted of ministers and elders representing each

⁹¹ Watson, p. 51.

⁹² Briand, p. 7.

⁹³ CH2/103/2. Presbytery of Dundee, December 8, 1698.

⁹⁴ CH2/103/2. Presbytery of Dundee, January 4, 1699.

⁹⁵ “Synod,” in *Dictionary of Scottish Church History*, p. 809.

presbytery and one elder from the universities and the royal burghs.⁹⁶ It met in Edinburgh for two weeks during the month of May. It had judicial, legislative, and administrative duties. A disciplinary case normally would not reach the General Assembly unless it dealt with a minister or an elder. However, the General Assembly was concerned about the moral conduct of the nation, evident from the doctrines that they wrote and adopted, such as the *Overtures concerning Church Discipline and Method of Proceeding* and the *Form of Process*.

The General Assembly's desire to suppress immoral behaviour is manifest in its support and governing of the lower judicial bodies. The strength of the four-tier system becomes explicitly clear with a careful examination of the existing minutes from the sessions, presbyteries, synods, and the General Assembly. It is possible to follow many cases step by step and from court to court. The system of ecclesiastical government was intended to work as a unit. The enforcement of moral behaviour was only possible when the system operated as it was prescribed in the *Form of Process*. Therefore, what follows are examples from the Presbytery of St Andrews to illustrate the strength and efficiency of the system.

The upper reach of this hierarchy of church government was essential for the severest of disciplinary cases to be tried. However, the majority of disciplinary cases could be and were resolved within the individual parish. In Scotland, cases such as antenuptial fornication, fornication, drinking, breaking the Sabbath, and swearing, could be dealt with by the kirk session. A

⁹⁶ "The 66 Royal Burghs could each choose any elder of the Church of Scotland for this purpose. Before the burgh councils were reformed in 1833, an Edinburgh lawyer was a usual choice. Later more local elders were commissioned" (Briand, p. 7).

straightforward case of fornication, where both people involved confessed their guilt, was normally dealt with in one session meeting. The individuals confessed, the session rebuked the guilty persons, and the two people were ordered to public repentance for three Sabbaths. For example, in Dunino on August 3, 1760, Isabell Anderson was delated to be with child and was summoned to the next meeting of the session. On August 6, Isabell appeared before the session and confessed that she was with the child of David Fulton, servant to John Simson a tenant in Grangemuir. She explained that the two were guilty "together in his brothers house in Pittenweem Janry last."⁹⁷ The matter was delayed until after the celebration of the Sacrament. On September 7, 1760, David Fulton was summoned to the session. He confessed his guilt and added that "he had been guilty twice with Isabell Anderson in his brother's house in Pittenweem Viz. in Decbr 1759 & in Janry 1760 about the middle of the month."⁹⁸ Isabell Anderson and David Fulton were told to sit public repentance, the woman first and the man second. Isabell sat her repentance on September 14, 21, and 28. Each time she was rebuked and on September 28 she was absolved by the minister. David made his repentance to the congregation on October 5, 12, and 19, being absolved on the third Sabbath.⁹⁹

Even easier were the cases of antenuptial fornication that warranted just one public repentance before the congregation. In most antenuptial fornication cases, the couple confessed their guilt after their child was born. They desired their child to be baptised and knew that the church would realise that the baby was conceived prior to the couple's wedding date. The session of Crail received

⁹⁷ CH2/405/3. Dunino, August 6 1760.

⁹⁸ CH2/405/3. Dunino, September 7, 1760.

⁹⁹ CH2/405/3. Dunino, September 14, 21, 28, October 5, 12, and 19, 1760.

a confession of antenuptial fornication from Helen Mitchel and James Wilson on November 6, 1796. The couple confessed their sin at the meeting, were rebuked in the forenoon, and had their child baptised in the afternoon.¹⁰⁰ This case also illustrated the legalism of the repentance, rather than a genuine reformation of character.

The more severe cases, such as adultery, were referred to the presbytery, as the *Form of Process* allowed. Such cases included "scandals of incest, adultery, trilapse in fornication, murder, atheism, idolatry, witchcraft, charming, and heresy and error, vented and made public by any in the Congregation, schism and separation from the public ordinances, processes in order to the highest censures of the Church, and continued contumacy."¹⁰¹ For example, in the parish of Anstruther Wester, there were 31 disciplinary cases between the year 1750 and 1800. There was one case of adultery, which was referred to the Presbytery of St Andrews. In Dunino, between the same years, there were 32 cases, four of which were referred to the same presbytery as they too were cases of adultery. The presbytery was used for such severe cases, or cases where a person's guilt was unclear or contested. In Anstruther Easter, during the same period, there were 115 cases of discipline and 13 of those went to the presbytery.¹⁰² However, a few of those cases sent to the presbytery were conflicting cases of fornication.

An adulterer always found him or herself standing before the presbytery during his or her disciplinary trial, as the presbytery's verdict was mandatory for

¹⁰⁰ CH2/Crail/2. Crail, November 6, 1796.

¹⁰¹ Clark, p. 76.

¹⁰² This figure may seem high; however, the population of Anstruther Easter is much higher than in Dunino or Anstruther Wester. Anstruther Easter in 1790 had over 1000 inhabitants. Anstruther Wester in 1790 had 370 inhabitants. Dunino in 1793 had 230, with an additional 153 inhabitants in Kings Muir (Sinclair, *The Statistical Account of Scotland 1790-1799*, vol 10).

the session to continue the process of discipline. In cases when the involved persons openly confessed their guilt, the presbytery was simply presented with the facts of the case, but did not call upon witnesses or request further evidence. However, if the case involved conflicting stories, then the session presented all evidences and witnesses to the presbytery. In the adultery case of Margaret Stairs and William Allan of Anstruther Easter, William Allan repeatedly denied his guilt with Margaret Stairs. On March 5, 1752, the case began when Margaret Stairs was delated to be pregnant with the child of her former master, William Allan, who was a married man.¹⁰³ Margaret was repeatedly summoned to the session, but did not compear until August 24.¹⁰⁴ On this date, having already given birth, she claimed that the father of her child was William Allan, who was subsequently called before the session. The denial from William Allan caused the session to seek advice and assistance from the presbytery.¹⁰⁵ The presbytery did not add any insight and returned the case to the session in order to call in witnesses.¹⁰⁶ Over the next three and a half months, the session heard testimonies from six witnesses, two of whom declared that William Allan told them that he had been “guilty with Margaret Stairs forty times,” but if he confessed then the church “would give him the Sack gown, which he [would] rather be hangd than submit to.”¹⁰⁷ Based on the evidences heard, the session judged that William Allan had been guilty of adultery and that he was the father of Margaret Stairs’ child.¹⁰⁸ Even with the session’s verdict, William Allan still

¹⁰³ CH2/625/3. Anstruther Easter, March 5, 1752.

¹⁰⁴ CH2/625/3. Anstruther Easter, March 5, 10, April 21, and August 24, 1752.

¹⁰⁵ CH2/625/3. Anstruther Easter, August 24, 1752.

¹⁰⁶ CH2/625/3. Anstruther Easter, October 17, 1752.

¹⁰⁷ CH2/625/3. Anstruther Easter, October 31, 1752.

¹⁰⁸ CH2/625/3. Anstruther Easter, October 31, 1752.

denied the charge against him. The case remained open and both parties continued to appear before the session, but to no avail as each party continued to adhere to the same story.¹⁰⁹ In March of the following year, William Allan was sent to the presbytery once more.¹¹⁰ However, he continued to deny his guilt and refused to submit himself to church censure. No resolution to the case was recorded, but interestingly William Allan reappeared in the minutes on October 16, 1753, when Helen Dorret accused him of adultery. A similar trial ensued until June 11, 1754, and again, no resolution was recorded.¹¹¹

These cases represent the many trials that were carried out between the three lower offices of the hierarchy. In the eighteenth century, the Church of Scotland utilised the components of the system when necessary. Stemming from the sixteenth century the system had evolved over two centuries. The emphasis on care of souls and the correction of morals of the congregation may have been diluted, but the system continued to function as prescribed by the influential ecclesiastical texts. The strength of the process in Scotland can further be attested to by its transference to the American colonies.

Church and State Relations within the Colonies of New York and New Jersey

As depicted above, the Church of Scotland implemented a highly involved system of church discipline, which was upheld by the Articles of the Union in

¹⁰⁹ CH2/625/3. Anstruther Easter, November 14, 28, December 12, January 9 and 23.

¹¹⁰ CH2/625/3. Anstruther Easter, March 23, 1753.

¹¹¹ CH2/625/3. Anstruther Easter, June 11, 1754. It was possible that William Allan absconded from discipline and moved out of the parish. His name does not appear in any other existing parish records in the Presbytery of St Andrews. This case illustrates that it was possible for people to escape church discipline. However, most members of the church would submit themselves to discipline to remain in good standing of the church and community. More on the influence of the parish community follows below.

1707. The Church of Scotland had endured several centuries of tension with the state, but by the eighteenth century it was relatively free from further hindrances. However, the young colonies in the eighteenth century were only beginning to grapple with the tension between church and state. In their infancy, the colonies were attempting to establish themselves as a New World and independent of the Old.

The New World experienced a different tension between the church and state, as there were several churches as well as states. Attempting to establish clearly defined boundaries proved to be a great challenge to the immature colonies, especially since each colony was founded with different purposes and was inhabited by several religious denominations. As these variants could occupy additional studies, it is significant for this study on the Presbyterian Church to emphasise that there was no established state church in New York or New Jersey. Therefore, when the Presbyterian Church in America strove to implement its system of government and discipline in the New World, in order to correct immoral behaviour among its members, it had to compete with neighbouring churches. Although the Presbyterian Church was one of the many denominations in the colonies, it shared the concern over morality with the state, which led to overlapping jurisdictions.

Moral issues were a concern for the civil authorities within the individual colonies, regardless of their denominational affiliation, for they held the common desire to have a peaceful and moral colony. All denominations served society by teaching moral reform, primarily through the practice of discipline,

which attempted to correct private and public morality.¹¹² The intermingling of morality and law made the relationship between church and state very significant. Protestant religions were widely accepted in the colonies. This universal acceptance combined with a harmonious relationship of church and state meant that an official link between church and state was unnecessary. In eighteenth-century society, the moral and secular were intertwined with one another. A sin was a crime, and a crime was a sin. Divine law correlated with secular law and moral law was linked with criminal law. Colonists used the moral law of the church as a guideline for civil law. A.L. Goodhart stated that "morality has played a particularly important part in the development of the common law," and "English law and the moral law are rarely in conflict."¹¹³ The connection between morality and the law is best illustrated by the Puritan colonies, primarily that of New Haven and Plymouth. An understanding of the Puritan colonies' law is necessary, as many inhabitants of the Middle Colonies migrated from the colonies of Massachusetts and Connecticut.

As the colonists formed and adjusted the civil law, they did not vacillate over using the moral law as the guide for the civil realm. Much of the civil law in the colonies was based upon English common law, which the Puritans in Massachusetts believed was firmly grounded on Biblical law.¹¹⁴ Therefore, sinners, those that broke the law, "could expect to be lectured from the civil

¹¹² For a discussion on the Congregational churches see Oberholzer, Emil. *Delinquent Saints: Disciplinary Action in the Early Congregational Churches of Massachusetts*. New York: Columbia University Press, 1956. For the Puritans in Connecticut, see Mann, Bruce. *Neighbors and Strangers: Law and Community in Early Connecticut*. Chapel Hill: The University of North Carolina Press, 1987. In Massachusetts see Nelson, William E. *Dispute and Conflict Resolution in Plymouth County, Massachusetts, 1725-1825*. Chapel Hill: The University of North Carolina Press, 1981.

¹¹³ Goodhart, A.L. *English Law and the Moral Law*. London: Stevens & Sons Limited, 1953. p. 37.

¹¹⁴ Flaherty, David H. "Law and the Enforcement of Morals in Early America." *Perspectives in American History*. Vol. V, 1971. p. 206-7.

bench to follow 'the rule' of neighborly kindness, to refrain from 'wicked uncleanness,' or to emulate such familiar biblical figures as 'Micaell the Archangel.'¹¹⁵ Calvin made an important distinction regarding the use of Biblical precepts versus those of the Mosaic Law. He suggested using the Mosaic Law as the framework for the moral law, but not for its entirety.¹¹⁶

John Calvin, who took his licentiate in law,¹¹⁷ believed that "man is under a twofold government,"¹¹⁸ the first being the spiritual government and civil government being the second. Calvin writes in the *Institutes* that the necessary and divine functions of the civil government are to ensure

that men breathe, eat, drink, and be kept warm" and "also prevents idolatry, sacrilege against God's name, blasphemies against his truth, and other public offenses against religion arising and spreading among people; it prevents the public peace from being disturbed; it provides that each man may keep his property safe and sound; that men may carry on blameless intercourse among themselves; that honesty and modesty may be preserved among men. In short, it provides that a public manifestation of religion may exist among Christians, and that humanity be maintained among men.¹¹⁹

Calvin understood the necessity for civil government, while clearly stating that the two types of government are distinct from one another and he cautioned his reader to not "mingle these two, which have completely different natures."¹²⁰ He plainly defined the civil magistrate's duties, views that should be taken by Christians regarding civil litigation, and how Christians may use the court

¹¹⁵ Dayton, Cornelia. *Women Before the Bar: Gender, Law, & Society in Connecticut, 1639-1789*. Chapel Hill: University of North Carolina Press, 1995. p. 31.

¹¹⁶ Calvin, IV:XX:15.

¹¹⁷ John Calvin, encouraged by his father Gérard Cauvin, attended the University of Orléans to study law in 1527. Walker, Willston, Richard A. Norris, David W. Lotz, and Robert T. Handy. *A History of the Christian Church*, fourth edition. Scribner, 1985. p. 472.

¹¹⁸ Calvin, IV: XX. 1.

¹¹⁹ Calvin, IV:XX.3.

¹²⁰ Calvin, IV:XX:1.

system, all while recognising the importance of secular government.¹²¹

Ultimately the civil government, for Calvin, “has its appointed end ... to cherish and protect outward worship of God, to defend sound doctrine of piety and position of the church, and to adjust our life to the society of men, to form our social behaviour to civil righteousness, to reconcile us with one another, and to promote general peace and tranquillity.”¹²²

Calvin realised how the two forms of government were intertwined in order to allow society to live in peace and tranquillity. He believed that laws were based on Scriptural truths. The Decalogue was the quintessence of moral law. In Book Two of the *Institutes* Calvin writes, “that inward law, which we have above described as written, even engraved, upon the hearts of all, in a sense asserts the very same things that are to be learned from the two Tablets.”¹²³ Late in Book Four, he again summarises his view of moral law saying, “that the law of God which we call the moral law is nothing else than a testimony of natural law and of that conscience which God has engraved upon the minds of men.”¹²⁴

Calvin’s warning regarding Mosaic Law was not always adhered to, as Cornelia Dayton highlights in her discussion regarding the treatment of adulterers in the colony of New Haven. The lawmakers in the colony defined an adulterer according to Leviticus 20:10, believing that adultery was committed with a married woman.¹²⁵ However, a married man that had sexual relations

¹²¹ Calvin, IV: XX.

¹²² Calvin, IV:XX: 2.

¹²³ Calvin, II:VIII:1.

¹²⁴ Calvin, IV:XX: 16.

¹²⁵ “The man who commits adultery with another’s man wife, he who commits adultery with his neighbor’s wife, the adulterer and the adulteress, shall surely be put to death.” (Leviticus 20:10)

with a single woman was excused from the severe punishment.¹²⁶ David Flaherty uses an example from Massachusetts law of 1665 about fornication to make the point that conditions of the moral law dictated the initial reason for punishments of immoral crimes, which led to the creation of various statutes.¹²⁷ "If God had branded certain actions as seriously immoral and sinful, these normally became crimes by statute in every American colony, for the authorities were bound to inhibit such behavior."¹²⁸

Two factors influenced the law in New England and subsequently, the laws in New York and New Jersey: the English common law and the Puritan beliefs. However, the desire to create a utopian religious community was the drive behind a legal system.¹²⁹ Throughout New England there were radical Puritan colonies. These colonies serve as an interesting comparison with the Presbyterian communities for several reasons. First, the Puritan colonies, especially Bay Colony, New Haven, and Plymouth, are well documented and thoroughly studied. Second, both the Puritans and the Presbyterians attempted to create disciplinary systems that controlled the social climate of the new frontier. Third, both religious sects shared fundamental church doctrines, such as the Westminster Confession, which stems from Calvin's *Institutes*.

The Bay Colony and New Haven were different from the colonies of New York and New Jersey. Their histories begin very differently, as the founding colonists of each colony had different objectives to one another.

¹²⁶ Dayton, p. 32.

¹²⁷ Flaherty quotes from *The Colonial Laws of Massachusetts...*, "a particular Crime, a shameful Sin, much increasing amongst us, to the dishonour of God, and our Profession of his Holy Name" (p. 209).

¹²⁸ Flaherty, p. 209.

¹²⁹ Greenberg, Douglas. "Crime, Law Enforcement, and Social Control In Colonial America." *American Journal of Legal History*, Vol 26, 1982. p. 293-325. (p. 297)

However, an understanding of the Puritan colonies is essential to understanding the legal history of New York and New Jersey, for many of the inhabitants of the Middle Colonies moved from Connecticut and Massachusetts.

The Puritan colonies were established with the hopes of re-creating the marks of the “true” English Reformation in another land. They held high ideals of how the church should act within society and the Puritans themselves were very involved within the government and politics of their colonies. However, a tension emerged because of their desire for the perfect moral society, on the one hand, and the separation between church and state. Boundaries between the two were not always clear and the Puritans struggled to find the balance of obtaining the holy nation while also seeking prosperity and riches in a new land.

In the seventeenth century, the main crimes prosecuted in the Bay Colony were moral offences. Drunkenness and sexual immorality are two examples of these moral offences. The early court system of the Bay Colony convicted people on two levels. Offenders were criminally penalised in civil courts and underwent “spiritual sanctions” in the churches.¹³⁰ “The result was a system which, within its own moral universe, worked rather well and in which convicted offenders were rather easily reabsorbed into the community.”¹³¹

The same was true for the Puritan colony of New Haven. However, the Puritans in New Haven were more successful in their criminal system. According to Douglas Greenberg, a criminal law historian for New York, not one case of murder was tried in the secular courts in the history of the colony. Moral crimes fill the pages of the civil court records, especially “fornication,

¹³⁰ Greenberg, “Crime, Law Enforcement, and Social Control In Colonial America.” p. 297.

¹³¹ Greenberg, “Crime, Law Enforcement, and Social Control In Colonial America.” p. 298.

adultery, sodomy, buggery, and for good measure, public masturbation.”¹³² In New Haven, a sinner was a sinner and therefore was subject to the law of God. Unlike the Bay Colony, there was no merciful clemency granted.¹³³

The moral offences disciplined by the Church were also a cause of concern for the colonies’ secular governments. The early law books of the colonies of New Jersey and New York illustrate that there were several acts and laws that dealt with the moral offences that the Presbyterian Church disciplined. From September 1 to 24 in 1704, the First General Assembly of New Jersey met in Burlington. The Assembly created and passed the “Act for Suppressing of Immorality within this Province of New-Jersey.”¹³⁴ The mere creation of the act illustrated the Assembly’s awareness of the need to control vice and immorality in the colony. The act began with a harsh statement against the moral climate within the colony, saying, “[w]hereas Prophaneness and Immorality have too much abounded within this Province, to the shame of Christianity, and the great grief of all good and sober Men, for the suppressing whereof for the future.”¹³⁵

The act was very specific about what constituted immorality and how each vice should be treated. “All and every Person and Persons whatsoever within this Province, who shall be Convicted of Drunkenness, Cursing, Swearing, or Breaking the Lords Day, by doing any ordinary Work or Labour, thereon (Excepting works of Necessity or Mercy) by the Information of every Constable within their respective Precincts, ... shall be fined.”¹³⁶ The Justice of

¹³² Greenberg, “Crime, Law Enforcement, and Social Control In Colonial America.” p. 299.

¹³³ Greenberg, “Crime, Law Enforcement, and Social Control In Colonial America.” p. 299.

¹³⁴ Bush, Bernard. *Laws of the Royal Colony of New Jersey, 1703-1745*. Vol. I. Trenton, NJ: New Jersey State Library Archives and History Bureau, 1977. p. 21. See Appendix I

¹³⁵ Bush, Vol. I. p. 21.

¹³⁶ Bush, Vol. I. p. 21.

the Peace had the authority to collect fines from the various offenders and heard cases regarding drunkenness, cursing, swearing, and breaking the Lords Day. Drunkenness or breaking the Lord's Day would cost the offender six shillings and cursing or swearing cost three shillings, "all such fines to be by the Constables aforesaid immediately paid to the Overseers for the Poor of the Town."¹³⁷ If the offender was unable to pay the fine, then drunkenness or breaking the Lord's Day warranted four hours in the stocks and two hours would be spent in the stocks for cursing or swearing.¹³⁸ The act also addressed the serving of alcohol. "[N]o publick House Keeper within this Province, shall suffer any Person or Persons to Tipple and Drink in his House on the Lord's Day."¹³⁹ The penalty for such improper action was the payment of six shillings for every offence.

Fornication and adultery were to be tried in the Supreme Court or the Court of General Quarter Sessions of the Peace of the county. A woman found guilty of fornication would be fined five pounds, plus the cost of the trial. If the guilty woman were unable to pay the fine, then she would also be fined five pounds and would have to "give security to save the Town or Precinct harmless from the Charge of such Bastard Child."¹⁴⁰ A man or woman convicted of adultery would be "Whip't at three several Courts and each time shall receive Thirty Lashes or Strips on the bare back or pay the Sum of Thirty Pounds Money

¹³⁷ Bush, Vol. I. p. 22.

¹³⁸ Bush, Vol. I. p. 22

¹³⁹ Bush, Vol. I. p. 22.

¹⁴⁰ Bush, Vol. I. p. 22.

aforesaid.”¹⁴¹ All monies collected in the payment of fines would be used for the care of the poor.

New York also had “An Act for Suppressing Immorality.”¹⁴² During the administration of Lord Cornbury in 1708, the General Assembly passed the act, as the Assemblymen were “seriously concerned with the character of the populace and set upon a vigorous course of encouraging virtuous behavior.”¹⁴³ Profanity and immorality abounded in the colony and the upstanding citizens of New York were concerned with the image of the colony. A contributing factor to the colony’s concern for the maintaining a moral society was the fact that the colony served as home for many English convicts. The act defined very stiff penalties for drunkenness and profanity.¹⁴⁴ New York continued to be the home to many convicts and this too added to the motivating force behind this act. The transportation of convicts to penal colonies served as an alternative to a sentence of execution and was intended to alleviate the country’s crime problems. However, it simply moved the problem to another region.¹⁴⁵ Whether or not the convicts reformed their behaviour whilst on new soil, the government was concerned with the morality of the entire colony.

Greenberg suggests that, generally speaking, there was little emphasis on moral offences within the legal systems of the Middle Colonies in the eighteenth

¹⁴¹ Bush, Vol. I. p. 22.

¹⁴² See Appendix II.

¹⁴³ Greenberg, Douglas. *Crime and Law Enforcement in the Colony of New York, 1691-1776*. Ithaca: Cornell University Press, 1974. p. 31.

¹⁴⁴ Greenberg, *Crime and Law Enforcement in the Colony of New York, 1691-1776*, p. 31. The act is published in *Colonial Laws of New York, Volume 1*. pp. 617-618.

¹⁴⁵ Ekirch, A Roger. *Bound for America: The Transportation of British Convicts to the Colonies, 1718-1775*. Oxford: Clarendon Press, 1987. pp. 14-16.

century.¹⁴⁶ This was due in part to the pluralistic nature of the society. With several churches in the colony of New York, all having disciplinary systems, the judicial system did not have to focus its attention upon the moral crimes. Compared with the Puritan Colonies, which were more homogeneous, the Middle Colonies may have appeared to deal less with moral offences. However, a shift in the criminal law patterns in the Puritan Colonies occurs in the turn of the eighteenth century, as the colonies grow and expand. The Bay Colony and Plymouth Colony both become counties in Massachusetts by this time.¹⁴⁷ Although Massachusetts continued to be concerned over moral crimes, on the whole, the number of moral offence cases declined. The area of the Bay Colony remained homogeneous and stable, thereby allowing crime to be addressed more effectively. Plymouth Colony, which had an ever-growing rate of crime, prosecuted more crimes, but did so inefficiently. The former Colony of New Haven,¹⁴⁸ which had the greatest percentage of moral crimes in the seventeenth century, witnessed the largest decline in crimes of immorality in the eighteenth.¹⁴⁹

In New York secular courts did not pay much attention to moral offences and greater time was spent on prosecutions of malfeasance in office. There was greater recidivism in New York, than in Massachusetts. This was the general pattern of the majority of the colony, except for the County of Suffolk. Like Massachusetts, Suffolk County had a high number of cases effectively treated.

¹⁴⁶ Greenberg, "Crime, Law Enforcement, and Social Control In Colonial America." p. 316.

¹⁴⁷ In 1691, the Colony of Massachusetts was given a new charter, which incorporated Plymouth Colony. Middleton, p. 178.

¹⁴⁸ New Haven was absorbed into Connecticut, a corporate colony. Middleton, p. 179.

¹⁴⁹ Greenberg, "Crime, Law Enforcement, and Social Control In Colonial America." pp. 304-306.

Inhabitants of Suffolk County tended to be resettled New Englanders, which suggests that there was still a close connection between the Puritan ideology and crime in Suffolk County.¹⁵⁰ From the middle of the eighteenth century into the nineteenth century, the number of cases involving immorality issues declines. Greenberg makes some key generalisations about crimes of immorality in the eighteenth century. Based on the lack of immorality cases, he believes that they simply lost significance.¹⁵¹ David Flaherty agrees and adds “the experience of enforcement in America as well as intellectual influences combined to suggest practical limits to what law could accomplish in the enforcement of morals.”¹⁵² By the late eighteenth century, Utilitarian philosophers were making their points known and they believed in the virtuous life. However, they also believed that man could not be coerced in that direction by the law, for in each man existed the ability to follow rationally a path to moral goodness.¹⁵³ The topic of how far the law could punish for private immorality was constantly debated.

Ecclesiastical Methods of Suppressing Immorality

The Presbyterian Church shared the concern for the suppression of immorality with the colonial governments of New York and New Jersey and implemented a system of discipline. The two entities were not in direct conflict with one another, though the Presbyterian form of discipline overlapped the jurisdiction of the secular authorities, as it served as a supplement to the civil courts. This

¹⁵⁰ Greenberg, “Crime, Law Enforcement, and Social Control In Colonial America.” p. 307. The Puritans believed that man, by his very nature, was sinful and did not have the ability to follow a path of moral goodness on his own.

¹⁵¹ Greenberg, “Crime, Law Enforcement, and Social Control in Colonial America.” p. 315.

¹⁵² Flaherty, p. 250.

¹⁵³ Flaherty, p. 250.

occurred as the colonial church adapted and transformed itself to the needs of the New World. Before these changes, which will be dealt with in further chapters, can be understood, an account of the disciplinary system used by the American Presbyterian Church must be discussed.

The colonial Presbyterian Church utilised a disciplinary system similar to the system employed by the Church of Scotland. In Scotland, this system was in place long before 1690 and was further supported by the Act of Union in 1707, as discussed above. However, across the Atlantic in a new territory, the system was not officially established until the General Synod passed the "Form of Government" in 1788. Prior to 1788, the churches that were already established did employ a system of discipline, which resembled the Scottish model. The first Presbyterian Church in the Colonies was founded in Jamaica, Long Island, in 1672. A town settlement was formed in 1656, and in 1662 an unordained man offered his preaching services. The surviving records of the church indicate that by 1672, the church was indeed Presbyterian and had a session to deal with the business of the church.¹⁵⁴ It was not until 1706, however, that the first presbytery was founded, with the first Synod established in 1717. Even though all components of the structure of church government were not fully in place until then, the Church still worked within the Presbyterian model used in Scotland. However, without a superior judicial body to regulate church procedures, tension emerged within the denomination and it struggled for cohesion. There were several factors that hindered its growth and development, including primarily the religious pluralism within the Colonies, the vast

¹⁵⁴ MacDonald, James. *Two Centuries in the history of the Presbyterian Church, Jamaica, L.I.; the oldest existing church, of the Presbyterian name, in America*. New York: R. Carter & brothers, 1862. p. 65f.

geographical area, the limited number of Presbyterian congregations and the differences of opinion among its leaders. However, in the first three quarters of the eighteenth century, the churches did work together and attempted to unite as one denominational body.

Even though the government system was not in place until 1788, church discipline was still a significant part of the business of the church in the colonies. On the May 28, 1763, the Presbytery of Dutchess County in the colony of New York was established.¹⁵⁵ The first item of business that the three members of the presbytery addressed was the issue of discipline. "Whereas the Church is under our Watch and Care are not in subjection to any Ecclesiastical Judicatory and finding it necessary to come into some proper method for Church Discipline, the better to maintain that Beauty, Harmony and Regularity, the Lord Jesus Christ, the Great Head and King of his Church, has been graciously pleased to establish."¹⁵⁶ The members of the presbytery proceeded to pray for God's guidance on the matter and "resolved to accept the Plan of Church Government used in North Brittain..."¹⁵⁷ As the Church was growing in numbers, it became necessary to combine four presbyteries to make one synod.¹⁵⁸ At its conception, the Synod was not granted constitutional power, or rather its jurisdiction and purpose were not defined clearly. Subsequently, its duties and purpose resembled those of the Synod and General Assembly of Scotland. Once again, the Presbyterians outgrew the synods and eventually needed a General

¹⁵⁵ The Presbytery of Dutchess County was first erected on the October 27, 1762. However, the Synod of New York and Philadelphia officially recognised the presbytery on May 28, 1763.

¹⁵⁶ Presbytery of Dutchess County, May 28, 1763.

¹⁵⁷ Presbytery of Dutchess County, May 28, 1763.

¹⁵⁸ The Presbytery of Philadelphia, New Castle, Long Island, and Snow Hill were the four Presbyteries to be combined. However, Snow Hill was never erected. For further discussion see, Trinterud, Leonard. *The Forming of an American Tradition: A Re-examination of Colonial Presbyterianism*. Philadelphia: Westminster Press, 1949. p. 34.

Assembly. However, controversy over its authority over church government arose from the lack of a clearly defined scheme from the Synod.¹⁵⁹ As the General Assembly was being created, beginning in 1786, the issue of church discipline and government was thoroughly debated. The debate lasted for two years, by which time the Synod, “having fully considered the draught of the Form of Government & Discipline did, on a review of the whole, & hereby do ratify, & adopt the same, as no altered, & amended, as the Constitution of the Presbyterian Church in America & order the same to be considered, & strictly observed, as the Rule of their proceedings, by all the inferior Judicatories belonging to the Body.”¹⁶⁰

Without a higher governing body imposing standards of procedures and practices, the churches in the colonies varied from one another. During the first quarter of the eighteenth century there was no uniformity among the congregations with respect to the officers of the church. Some churches had a formalised session, consisting of the minister and elders, while other churches only had a committee that was made up of deacons.¹⁶¹ Regardless of the variations, the records of the sessions or committees illustrated that in each congregation there was a collective body of leaders that dealt with the business of the church, including discipline, and “by 1770 almost every congregation in the colonial Presbyterian Church had a session of elders.”¹⁶²

Generally speaking, elders were elected by the congregations based upon nominations made by the minister and elders already in office. The nominees

¹⁵⁹ Trinterud, p. 34.

¹⁶⁰ Minutes of Synod, May 28, 1788.

¹⁶¹ Trinterud, p. 205.

¹⁶² Trinterud, p. 205.

were examined by the serving elders or minister to determine suitability for the position. The congregation then had the final word by voting to accept the nominated candidates. Once elected, the approved men would be ordained by the minister, which set them apart for the ministry of the church. The length of their service varied as well. Depending upon the individual church, the elders either served a one-year term or served for life.¹⁶³ For example, elders in the church in Cranbury, NJ, were elected for life or until unable to perform the duties, for on March 7, 1791, the session “resolved, that as four of the Elders of the church are rendered incapable by disease & old age, of meeting with the Session & performing active duties in the Church – it becomes highly necessary that more officers be ordained.”¹⁶⁴

The number of elders which made up the session depended upon the individual needs of the church, which were difficult to determine. However, the minutes of a few churches record the process of electing elders. For instance, the session of the Deerfield Presbyterian Church felt that four more elders were needed and on March 10, 1779, the current elders nominated eight candidates, four of which were elected based upon their “visible profession of religion.”¹⁶⁵ The following Sabbath, the congregation approved the four nominated elders and the minister ordained the men to the office of elder.¹⁶⁶

As a body of elders, the session had control over business matters relating to the church. The session of the First Presbyterian Church in Newark,

¹⁶³ Trinterud, p. 17.

¹⁶⁴ Presbyterian Church, Cranbury, NJ, March 7, 1791.

¹⁶⁵ Deerfield Presbyterian Church, Deerfield, NJ, March 10, 1779.

¹⁶⁶ Deerfield Presbyterian Church, Deerfield, NJ, March 17, 1779.

New Jersey, offered the following orders regarding the session's control over the affairs of the congregation. The session made eight points:

1. Session should have eleven members;
2. New members must be admitted to full church ordinances by the session;
3. All attending the Lord's Supper must believe in the Christian religion and be free from immoralities or absolved from immoralities;
4. Any one presenting a child for baptism must be cleared from immoralities;
5. Children are members of the church and the parents will be held accountable for their behaviour;
6. Members debarred from sealing ordinances are to have their names recorded in the session books.
7. All baptized members of the congregation should have their immoralities dealt with immediately by the session and be brought to repentance; and
8. Known cases of immorality should be brought to the session first.¹⁶⁷

Newark's minutes were unique in recording their eight points of the session's control. However, the majority of these eight points can be observed within the minutes of the other Presbyterian churches. The first, that the session should have eleven members, was not always adhered to by each church. The number fluctuated due to the number of active church members or because of the death of an elder. Reasons for the number of elders were not recorded in the session minutes, unless a death occurred. The names of the elders can be gathered from the list of elders present and absent at each meeting. For example, the Presbyterian Church of Hopewell, NY, kept seven active elders.¹⁶⁸ The First Presbyterian Church of Pleasant Valley, NY, had only three elders in 1793, but elected two more on February 3, 1794.¹⁶⁹ And in Deerfield, NJ, the number of elders ranged from six to eleven, depending upon the year.¹⁷⁰

¹⁶⁷ The First Presbyterian Church, Newark, NJ, March 28, 1794.

¹⁶⁸ Presbyterian Church, Hopewell, NY, October 31, 1793.

¹⁶⁹ First Presbyterian Church, Pleasant Valley, November 26, 1793, February 3, 1794.

¹⁷⁰ Deerfield Presbyterian Church, NJ, "Records of the Presbyterian Church in Deerfield, New Jersey, 1746-1828," written on inside cover. There were six elders until December 9, 1796, when elder William Fuller died. On October 15, 1797, three more elders were elected. An

The second duty of the session was to admit new members to the church. Presbyterians believed that only God's elect were members of the Universal Church and they were only known to God. As for membership to the local church, the Presbyterians believed that the church was able to accept persons after an examination of their faith and life with the hope that the person was part of the elect. If the person was credible, then the newly accepted member was able to participate in the sealing ordinances and was considered a member of the parish community.¹⁷¹ This was done regularly and fills the pages of many of the session minute books. The Presbyterian Church in Fairton, NJ, was careful in recording the new members received into the communion of the church. In October of 1759, the church had 73 members.¹⁷² By November 20, 1778, there were 93 members,¹⁷³ six more were added in 1780,¹⁷⁴ and 48 were added in 1781.¹⁷⁵ The total church membership in 1781 was 147 communicants,¹⁷⁶ which dropped to 102 in 1795.¹⁷⁷ An additional five members joined the church by October 20, 1799.¹⁷⁸

Maintaining a 'clean' church community was essential in the Presbyterian Church, as only members of the congregation free from any immoralities were able to participate in the sealing ordinances. Immorality was taken seriously and members invited to the Lord's Supper must be free from all

additional three elders were elected on August 18, 1801. It appears that in the Presbyterian Church of Deerfield the elders were elected for life.

¹⁷¹ Trinterud, p. 17.

¹⁷² Fairfield Church, Fairton, NJ, October 23, 1759.

¹⁷³ Fairfield Church, Fairton, NJ, November 20, 1778.

¹⁷⁴ Fairfield Church, Fairton, NJ, December 17, 1780.

¹⁷⁵ Fairfield Church, Fairton, NJ, December 2, 1781.

¹⁷⁶ Fairfield Church, Fairton, NJ, December 2, 1781.

¹⁷⁷ Fairfield Church, Fairton, NJ, April 26, 1795.

¹⁷⁸ Fairfield Church, Fairton, NJ, October 20, 1799.

stains, which was highlighted in the third duty of the elders. The session of Newark excluded Jedediah Crane, Johnson [Herd], and Robert Hayes from the Sealing Ordinances. The elders had

taken paine with them and have repeatidly endeavoured to get them to meet the session, but all has produced no effect to reclaim them or bring them to their duty, wherefore the Session with great reluctance and distress are obliged to inflict censure upon the said persons, and for their not attending to the citations of the Session, and for their disorderly walking they are excluded from the Sealing Ordinances of the church and to be considered as no longer members of it until they shall manifest their repentance.¹⁷⁹

Baptism was considered one of the two sacraments within Reformed Protestantism, the Lord's Supper being the other. Baptism, which had the form of ceremonial washing, was a sign from God that signified inward cleansing and remission of sins, new life, and abiding presence of the Holy Spirit. Infants were considered part of God's covenantal family and were pure. However, the parents that brought forth the child to be baptised had to be in good standing with the church. Therefore, if a child was conceived through antenuptial fornication, fornication, or adultery, the guilty parents would first have to be 'cleansed,' in order to bring their pure child forward for baptism. Most cases of antenuptial fornication were voluntarily confessed by the offenders because they desired their child to be baptised, which was also true in Scotland. In Fairton, NJ, Amariah and Mary Harris made a public confession to the congregation regarding their antenuptial fornication on January 7, 1781. They both were absolved and brought their child for baptism the following week.¹⁸⁰ The fifth point made by the session in Newark specified that the parents of immoral children would be held accountable. This did not imply that the sin of the

¹⁷⁹ First Presbyterian Church, Newark, NJ, February 26, 1795.

¹⁸⁰ Fairfield Church, Fairton, NJ, January 7 and 14, 1781.

parents applied to the children brought forward for baptism, as the child was still considered clean and pure.

Session minutes were to be kept by the clerk, in order to have the proper documentation of the church's business. The minutes also served as a record of the standing order of church members. The Presbyterian Church in Newark accounted for this by declaring that all members debarred from the sealing ordinances were to be cited in the minutes, which they listed as the sixth responsibility of the session. Newark may have been one of the few churches that recorded a separate list of suspended members, as most session clerks did not maintain such a list. However, in Morristown, NJ, the Reverend Timothy Johnes kept his own records, which included a list of all public confessions made by sinful members of the congregation. From 1747 to 1790, the period of Johnes' pastorate, there were 170 disciplinary cases, of which 77 had the details documented in the session's minute book; the remainder consisted of a one-line mention in the pastor's book, which could have been dealt with privately by him. Furthermore, other pastors may have kept their own diary of cases, which would underestimate the total number of cases recorded by the session. This further illustrated that the session minutes were often incomplete and only stated a brief description of the disciplinary proceedings before the session, which did not include the outcome of the trial. More will be discussed on record keeping habits in light of a comparison with Scotland further on in this chapter.

The last two priorities of the session regarding the enforcement of morality are the two main catalysts for effective church discipline. The Presbyterian purpose in church discipline was to bring fellow sinful brethren to repentance, so that they might be restored to full church privileges. And finally,

the session was the first point of entry for cases of immorality. The Presbytery of Suffolk on June 6, 1754, summed up the role and duty of the elder as a part of the session, by stating

Moreover, in as much as there is an ecclesiastical officer, called, by most of the Protestant reformed Churches, as ruling elder, countenanced (as we conceive) in the Word of God, which is wanting, in various of our Churches. We judge it expedient that two, or three, or more of the best qualified brethren be chosen to that office, where they are wanting, not only to represent the Church, but to assist their Pastors in Matters of Discipline and Government, and that not only in more private Church Sessions, but in Presbyterial and Synodical Judicatories; as there shall be occasion; being perswaded that as such an officer is pointed out in the Word of God, and agreeable to the Constitution of Presbyterian Government so officers of this Character joyn'd with Gospel Pastors, will best answer the Ends of Government, and subserve the Peace, good [Or..] prosperity of the Church, in Subserviency to the Glory of God. This, so far as we know our own Hearts, is what we aim at in Recommending these things to the churches, therefore hope for, and expect their ready companies with our sentiments and advice.¹⁸¹

This passage highlighted the emphasis placed on the need for discipline at all levels of the Presbyterian hierarchy. Cases began at the lowest level, in the session, and travelled through the ranks according to the severity or complexity of the case. As in Scotland, disciplinary cases were first heard and mostly resolved at the local level. Discipline was generally left in the hands of the sessions of the individual parishes, with guidance from the presbyteries when necessary. There was no formal text, like that of the *Form of Process*, approved by the Presbyterian Church in the colonies, until 1788. However, although the *Form of Process* was not officially approved, the standards and procedures set forth in the text were applied in the colonial Presbyterian churches.¹⁸²

¹⁸¹ Suffolk Presbytery, June 6, 1754.

¹⁸² Further research into the minister's backgrounds may illustrate a greater dependence upon the *Form of Process*, as there were many ministers educated in Scotland or Ireland. However, apart from the head leaders of the denomination, such as John Witherspoon, Gilbert Tennent, William Tennent, and Charles Beatty, very little is known about the ministers that filled the pulpits during the colonial era. Having such historical documentation might have illuminated more influences of the Scottish Kirk upon the colonial Presbyterian Church.

A disciplinary case entered the church session by four means. First, a member of session, specifically the minister or elder, was required to watch over the flock. This often entailed delating immoral members of the congregation. Second, the members of the individual churches had a responsibility for caring for one another; therefore 'lay' delations were also possible. Third, sessions heard common reports, often referred to as *fama* or rumour, circulating through the town and would follow up on these reports. And finally, a guilty person might confess to the session voluntarily.

The members of the respective sessions in New Jersey were responsible for 41% (139 of 339) of the cases recorded in the minute books. Reports or *fama* made up 28% (95 of 339) of the cases delated to the sessions. 16% (54 of 339) of the cases came from accusations made by other members of the congregation. And 8% (27 of 339) of the offenders voluntarily gave their confessions. In New York, the most frequent type of delation came from the members of session, which totalled 30% (45 of 151). Members of the congregation delated 26% (39 of 151). 22% (33 of 151) of the cases came from free and voluntary confessions, while reports created 13% (20 of 151) of the cases.

Upon hearing a charge against a member of the congregation, the members of session were to consider the case before making it public, as the affair might be dealt with by private admonition.¹⁸³ In total, 36% (178 of 490) of all of the disciplinary cases in New York and New Jersey attempted to resolve the cases among a committee. The session then nominated one or two of its members to consult with the accused individual. The intention of a private

¹⁸³ *Form of Process*, II.1.

meeting between the accused and the committee from the session was to obtain additional information about the accusation and to seek a sincere confession, if appropriate.

A few of the session members created a committee to consult with an offender before the trial went officially before the session. Various combinations of the members of the session formed the committee. One combination consisted of two elders, which was seen in a case in Ballston Center, NY. The session of the First Church of Christ heard a report about Abraham Northrup, stating that he made "very indecent language at or after the raising of Condey's Barn, as also some evil reports concerning him unbecoming a Brother of the Church."¹⁸⁴ Upon hearing the report, the session sent two elders to discuss the report with him. A committee could also be made up by an elder and the minister. For example, Mary Hamilton received a visit from the minister and an elder after she was reported to be exhibiting immoral behaviour.¹⁸⁵ The function of the committee could also be performed by the minister of the congregation, who could confront the offender on his own, without another member of session. Likewise, one elder could be sent alone to deal with an individual offender.

Ideally, if a committee was sent to an offender, the committee would hear a humble confession and resolve the case right then and there. However, this was not always possible. Out of the 21% of cases using a committee in New York, the committee had a success rate of 27%. Similarly, in New Jersey 30% of the cases involving a committee resolved the case during the private

¹⁸⁴ First Church of Christ, Ballston Center, NY, August 26, 1787.

¹⁸⁵ First Presbyterian Church, Madison, NJ, August 28, 1797.

visitation. However, if a committee did not receive a confession, then the case was presented to the session.

According to chapter two, section two of the *Form of Process*, provided that when a case was presented to the session, the members were wisely to consider the evidence surrounding the case to ensure it was suitable to go to trial.¹⁸⁶ On June 2, 1795, Timothy Mills delivered a charge against Jonathan Stiles, Esq. of Morristown, NJ. Mills charged Stiles with unchristian like conduct, “in not giving him that information with respect to a note which was in the power of said Stiles to give, and whh might have prevented much lost time & trouble.” He also reported that Stiles gave “a wrong testimony with regard to the same note before the civil Magistrate.”¹⁸⁷ Mills could not support either claim; therefore, the session resolved to not enter into the case and Stiles was excused.

When a trial was considered necessary, then the case was sent to the session. A large percentage of all cases conducted in New York and New Jersey went straight to the session. New York’s church sessions had 109 out of 151 offenders appear before them, which was 72% of all cases recorded. New Jersey was slightly lower at 60%, 203 out of 339 cases – hardly surprising as it had a higher success rate with the use of a committee. The remaining percentage were cases of contumacy, as the offenders may have absconded or even died.

Trials began when citations were delivered to the involved parties. “In proceeding in all causes, where there [was] any person or parties concerned, the judicatory [was] to see that, before they proceed, these persons or parties be duly [cited] before them by a legal and timeous citation in writ, bearing its cause, either at the instance of a party complaining, or at least by order of the

¹⁸⁶ *Form of Process*, II.2.

¹⁸⁷ First Presbyterian Church, Morristown, NJ, June 2, 1795.

judicatory.”¹⁸⁸ Written citations were often recorded in the minutes of sessions in New York and New Jersey. John Roberts was cited to appear before the session of the First Presbyterian Church in Huntington, NY, for disorderly conversation. The clerk recorded the following citation.

To John Roberts one of their Brethren send Greeting.
Whereas many of this Chh are grieved at your disorderly Conversation, Religion thereby wounded, and Occasion given to the Enemies of God to reproach the Christian Name and Profession: and Whereas Methods taken to redress those Grievances have hitherto fail'd of desir'd Success: these, therefore, are not only to desire but cite and require you, to attend our next Session, ...then and there to answer such Things as shall be alledged against you, and to give suitable Christian Satisfaction, or abide by the Direction, and submit to the Censures of the Chh.¹⁸⁹

Citations were the official request of one's presence at the next session meeting and obedience was expected. Session clerks noted when citations were made and if they were accepted and then followed.

Citations were also given to the witnesses that would testify for or against the offender. Any person involved in the case would be cited to attend a meeting of session. Nicholson, the wife of Jonathan Nicholson, accused her husband of telling “falsehoods and likewise [that he had] sworn falsly to the injury of his & her Children's Property.”¹⁹⁰ The Moderator cited all the individuals involved to the meeting of session on August 15. The twenty-one witnesses cited gave their testimonies on the 15th and an additional seven witnesses were cited and called on August 16. This trial was seen to completion because the witnesses attended when called and were heard by the session. However, in some cases a trial never progressed past an accusation because the accused never appeared before the session and all reference to the person ceases.

¹⁸⁸ *Form of Process*, II.3.

¹⁸⁹ First Presbyterian Church, Huntington, NY, April 26, 1759.

¹⁹⁰ First Presbyterian Church, Madison, NJ, July 30, 1799.

Also as depicted in section four of chapter two, according to the *Form of Process*, when the accused did not attend the session meeting he or she was cited to attend, then an additional citation would be delivered. If the party did not attend after three written citations, then the party was considered contumacious.¹⁹¹ If the party was contumacious, then the session could call witnesses and review documents without the attendance of the accused.¹⁹²

Procedures for addressing false accusations were also defined in the *Form of Process*, and similarities to these were found in the colonial churches. The person who declared a false accusation would be charged for imprudence.¹⁹³ Abigail Pettit, a member of the congregation of Newton, brought the session a charge against Mary Hamilton. Upon hearing the charge, the session sent a committee to Mary Hamilton in order to gain more information about the charge. At that meeting, Mary denied her guilt. The case returned to session five months later with a written charge by Abigail Pettit.

I Albigail Pettit a Member of the Presbyterian Chh in Newton being grieved with the conduct of Mary Hamilton a Member of Pr. Chh & having taken the steps prescribed in Matthew 15 Chapter of conversing with her alone & not receiving satisfaction, have taken one or two more [more or men] with me & finding the attempt for conversation fruitless, do now hereby tell the Chh that on the 29th day of December 1790, the sd Mary Hamilton was intoxicated with Spirituous Liquors; wch allegation I shall endeavour to support & prove by the Evidence of Mr Pettit, John Hamilton and Elizabeth Pettit also the Evidence of Elizabeth [?] of my conversation with her.¹⁹⁴

When open cases were before the session, then the offenders technically should have been suspended from the sealing ordinances. It was normal for cases to stretch over a few weeks, even months. In that time the offender was

¹⁹¹ *Form of Process*, II.4.

¹⁹² *Form of Process*, II.6.

¹⁹³ *Form of Process*, II.8.

¹⁹⁴ First Church of Newton, Newton, NY, June 8, 1791.

suspended from the Lord's Table, as he or she was under a cloud of suspicion and could not go to the table free from scandal. In New York, the sessions suspended 60 out of the 109 (55%) offenders that appeared before them. Slightly less frequently, New Jersey sessions placed 79 out of the 203 (39%) offenders on suspension while he or she was on trial.

If a member of the congregation was judged guilty, either by his or her own confession, or by the testimonies of witnesses, then the guilty person would have to make amends and show his or her repentance. This could have been done privately before the session or in front of the congregation, depending upon the case. The congregations in New Jersey heard 44 public confessions, 32% of the guilty persons. New York witnessed a slightly smaller number and percentage of confessions. 27 of the 90 (30%) guilty offenders offered a confession to the congregation.

The gravest punishment the offender would receive was excommunication. This was reserved for the most serious types of offences or for repeat offenders. 7.5% (11 of 151) of the cases in New York ended in excommunication, while New Jersey witnessed 10% (34 of 339) of its guilty members become excommunicated. Reflected in those percentages, one can see that excommunication was not the typical outcome. In New York, 49% (74 of 151) of all guilty offenders were restored to church privileges. New Jersey had a restoration rate of 28.3% (95 of 339).¹⁹⁵ Not every offender that appeared before the church session was found guilty. For instance, in the First Presbyterian Church of Newark, N.J, the session received a letter from the session of the church in Elizabeth Town on January 26, 1796. The letter declared that David

¹⁹⁵ This figure can be misleading, as there is not always a recorded ending to the trials.

Crane, a member of the church in Newark, had used profane language at an election meeting in Elizabeth Town and that two people could testify in the case. David Crane denied the accusation; therefore the session of Newark called in two witnesses. One did not appear, but the other witness, Ezekiel Wade, informed the session that he heard Crane proclaim that “he would be damned if he would come down.”¹⁹⁶ However, the witness also informed that session “he could not be positively certain that these words did come from the mouth of the accused, as he was not looking at him when he heard the words.”¹⁹⁷ Two members of the congregation in Newark then told the session that they were standing near Crane and heard no such words. After some deliberation, “The Session upon hearing the evidence of Ezekial Wade and others [clearly] and decidedly conclude the accusation does not [offer] to be supported and seriously think it their duty to acquit David Crane from the present charge.”¹⁹⁸ The session’s role in church discipline was to weigh the evidence and determine guilt or innocence. Some offenders were falsely accused. 15% (34 of 339) of the accused in New Jersey were acquitted. In New York, the sessions acquitted 11.3% (11 of 151) of the accused because they had been falsely accused.

A standardised process of discipline may not have been employed in the colonial churches, but general patterns did emerge. To aid in determining the process, many churches recorded the motions they passed regarding the purpose of discipline. The First Presbyterian Church of Madison, NJ, resolved, “we will individually and unitedly use our indeavour to Suppress Vice & Immorality of

¹⁹⁶ First Presbyterian Church, Newark, NJ, January 26, 1796.

¹⁹⁷ First Presbyterian Church, Newark, NJ, January 26, 1796.

¹⁹⁸ First Presbyterian Church, Newark, NJ, January 26, 1796.

every kind and to promote Christian discipline in the Church.”¹⁹⁹ Further defining the process, the session members of the First Church of Christ in Ballston Center, NY, passed the following motion:

That all persons complained of; for Disorderly Conduct and Breaches of Divine Rules; that the accuser; or complainer shall give him or them in writing the Particular Crime or Crimes of which he or they are charged: twelve days at least before his or their tryal, and also names of the witnesses shall be given under Each Article of Grievance which is to prove the same.²⁰⁰

As seen above, the discovered patterns and motions passed created the clues to piece together the process that was generally followed by the colonial Presbyterian churches in New York and New Jersey, which resembled the Scottish Presbyterian system, as defined by the *Form of Process*.

Disciplinary proceedings were able to function without a formal doctrine or the four-tier hierarchy. Further adaptations to the situations of the denomination caused the churches to depend upon one another. During the early years of the Presbyterian Church in the colonies, the sessions had to depend on neighbouring churches to help resolve some disciplinary cases. The colonial churches had to adapt and utilise what was available around them and formed networks amongst themselves. For example, at a congregational meeting of the First Church of Christ in Ballston Center, NY, the members present passed a general motion regarding discipline. “The church declares ... all power of trying offenders belong to and is in its Self of hearing and determining of all matters of Discipline & Controversy in and among ourselves. But in extraordinary & difficult cases; for the Preserving of Love & peace among us; it is; or may be expedient and right to call in the assistance of the Neighbouring ministers &

¹⁹⁹ First Presbyterian Church, Madison, NJ, August 24, 1795.

²⁰⁰ First Church of Christ, Ballston Center, NY, October 3, 1783.

churches.”²⁰¹ The practice of referring to neighbouring churches may have solved logistical problems in the early years, but ultimately the four-tier court system was essential for the more elaborate or lewd cases, as seen in Scotland.

Cases that were questionable were referred to the presbytery. On October 25, 1752, the Presbytery of New Brunswick was given the case regarding John Craig of Bedminster. All parties were given the opportunity to address the presbytery regarding the affair. The presbytery deliberated over the matter and decided that

Although we do not apprehend it to be our Business to judge concerning the Right and Titles of Land; nor do we think John's Craig action, in taking Elizabeth Town Right, is in it self sinful; yet in as much as he was previously warned, and might have known its tendency to break the Peace and Harmony of the Congregation; we do judge it a Sufficient Reason why he should not sustain the Character of an Elder:- but in as much as he solemnly declares that he did not suspect such ill consequences of his taking the Town Right; and the contrary not appearing; the Presby do judge, that he may & ought to be restored to communion as a private member.²⁰²

The case of John Craig not only concerned a grey area of church jurisdiction, but it also dealt with an elder, therefore requiring the attention of the presbytery²⁰³

The Synod also dealt with serious cases that were too delicate to be dealt with before the body of elders. On September 19, 1717, the Synod in the colonies heard a case regarding incest. The Presbytery of New Brunswick referred the affair of Andrew Van-Dyke to the Synod for their consideration and guidance. The Synod discussed the case and decided that Andrew Van-Dyke's “marriage with his brother's wife or widow was incestuous and unlawful; and their living together as the Consequence of that Marriage, is incestuous and

²⁰¹ First Church of Christ, Ballston Center, NY, October 3, 1783.

²⁰² Presbytery of New Brunswick, October 25, 1752.

²⁰³ The boundaries between church and state often overlapped. This will be discussed in the following chapter.

unlawful, and that so long as they live together, they be debarred from all Ordinances.”²⁰⁴ Therefore, the most serious cases did enter the minute books of the Synod. Cases might have been given to the General Assembly for their consideration; however, the Assembly was not established until 1788. However, in the first decade of the history of the General Assembly, no disciplinary case was presented before the highest body.²⁰⁵

The General Assembly may not have received disciplinary cases for their ruling, but the Assembly was aware of the immorality of the nation and addressed the issue. The Presbyterian Church in the Colonies did not have a standardised process of ecclesiastical discipline, like that of the Scottish *Form of Process*, which the General Assembly ratified. As the Synod of New York and Philadelphia met over several days in May of 1788, the issue of the Church’s government and discipline was discussed at length. Great debate over several years firmly solidified the final draft, which was approved by the Synod of New York and Philadelphia on May 28, 1788. The issue over disciplinary proceedings fuelled the debate as there was a strong constituency desiring the adoption of the Scottish *Form of Process*. Stronger still were the voices that desired a uniquely American system. In the end, the Assembly passed the “Form of Government and Discipline,” which was “essentially an American document.”²⁰⁶ The “Form of Government” was not nearly as elaborate as the *Form of Process*, with respect to the procedures and standards of discipline. However, the “Form of Government” strongly declared that church discipline

²⁰⁴ Klett, Guy. *The Minutes of the Presbyterian Church in America, 1706-1788*. Philadelphia: Presbyterian Historical Society, 1976. p. 32.

²⁰⁵ *Extracts from The Minutes of the General Assembly of the Presbyterian Church in the United States of America, 1789-1802*.

²⁰⁶ Trinterud, p. 298.

“will contribute to the glory and happiness of any church. Since ecclesiastical discipline must be purely moral or spiritual in its object.”²⁰⁷ Although the *Form of Process* was not officially adopted by the General Assembly of the Presbyterian Church of the United States, its tenets continued to be enacted in colonial discipline.

Ecclesiastical Methods Compared

Some obvious differences emerged from a quick overview of surviving session minutes from both sides of the Atlantic. As seen above, the colonial Presbyterian Church generally followed the system exercised in Scotland. Differences are witnessed in the tone, language, and use of the Presbyterian form of government and discipline.

To reiterate, Clark stated that the tone of the eighteenth century system of discipline in Scotland was more legalistic and rigid, rather than the caring and supportive tone of the reformed predecessor.²⁰⁸ This can further be supported by the fact that the broad majority of cases were driven by practical motivations. For instance, sexual misconduct cases fill the pages of the session minutes in the kirks of the Presbytery of St Andrews. The financial provision for children born outside of wedlock fell onto the kirk if the mother was unable to support the child or the father, who would be liable, was not found. Practically speaking, the church could not afford to support financially all the bastard children that were present in the parish; therefore, these cases were dealt with fervently. When there was confusion in the case, which ensued from a mother or father denying the sexual relations, the kirk leaders used all available means to uncover the truth

²⁰⁷ Form of Government, VIII, as quoted in Trinterud, p. 298.

²⁰⁸ Clark, p. 147.

behind the case. The conclusion of these cases often resulted from the father or other person accepting financial responsibility for the child. What was lost in these cases was the genuine concern for the spiritual and moral state of the offender and parish community. This point will be further enforced in chapter three's discussion of sexual misconduct cases.

The colonial Presbyterian Church was not in charge of poor relief, as this responsibility fell to the secular authorities. Therefore, when dealing with sexual misconduct cases the emphasis was placed on the spiritual reform of the offenders. Great care was taken with the sexually impure and the cases usually concluded with a heart felt confession, which was recorded by many session clerks.

By the eighteenth century, the overwhelming majority of cases in Scotland dealt with sexual immorality, as this was practical for the Scottish situation. Across the Atlantic, the Presbyterian churches were disciplining for any immoral behaviour. Like the sixteenth century churches, it was essential to purify the congregation and its members of all unchristian conduct. Drinking, breaking the Sabbath, spreading rumours about neighbours, or not regularly engaging in family prayers in the home were all censurable by the colonial church. These cases rarely appeared in the eighteenth century records in Scotland. However, it can be assumed that the parishioners were not living pure and sin-free lives. Therefore, it would appear that the session leaders simply chose to not spend their time on such cases and focus on the cases that held practical implications for the church. Again, the colonial church was driven by the spiritual and moral motivations. These types of unchristian conduct cases will be further discussed in chapters four and five.

The types of communities in each country also dictated the spiritual and practical motivations behind discipline. Scotland's parish communities were already established with clearly defined borders. Anyone living within the parish boundary was a member of the parish community, regardless of their denominational alliance. The town government structure was enforced by the state. Therefore, when an offence was punishable by the state, the church did not need to act. However, in the colonies, the communities were self-governing and were founded around the church. This meant that a Presbyterian community usually included only Presbyterians, who were accountable to the church. Consequently, the colonial church was able to discipline for anything it considered unbiblical, even if it was considered a secular affair. These cases occupy the focus of chapter two and lead to another difference in the disciplinary proceedings on either side of the Atlantic.

Curiously, because the Presbyterian Church in the colonies was able to discipline for secular type affairs, the language of the civil courts was adopted. For example, the case regarding Abraham [Nau...thri.], junior, brought before the session of Freehold, NY, on August 26, 1787, uses the terms plaintiff and defendant. In fact the whole use of language in the records of the session of Freehold is very legal. On September 29, 1787, the session of Freehold

proceeded to hear the plaintiffs & defendant with their various evidence; and after much conversation and deliberation the session are unanimously of opinion, that with regard to the accusation by Mr Boyd, Mr Abraham [Nau...thri.] Junior has been guilty on sd occasion of speaking in a most indecent manner highly dishonorable to God and very unbecoming the Christian name of character. With regard to the accusations by Mr Clark as to sd [Nau...thri.] charging him of having been with Burgein, his furnishing provisions for the [] the session after much deliberation and weighing every evidence and circumstance, are unanimously of the opinion that sd [Nau...thri.] has been guilty of

treating sd Clark with most aggravating language as it appeared by 3 evidences...²⁰⁹

The key legal words are 'plaintiff,' 'defendant,' 'evidence,' 'deliberation,' and 'accusations.' Also, the word 'judge' appears throughout the records of Ballston Center and Freehold. These legal terms do not appear in the records in Scotland, as the kirk sessions usually refer to the person by name. The sessions in Scotland do not refer to the offenders as plaintiffs or defendants. This could have reflected the way that cases are brought to the kirk sessions. In Scotland, the elder was to delate the immoral offences of the congregation. However, in the colonies accusations seemed to be written and made by another member of the congregation. That may show that the colonial elder played a different role, primarily one of arbitration. Perhaps the disciplinary cases came to the session, rather than the session having to delate the offenders.

Continuing with legality, the colonial session also dealt with cases regarding the civil and criminal law.²¹⁰ Kellogg and White went before the session of Ballston Center, NY, in July of 1791, over a sworn oath. Kellogg entered a complaint against White, who broke his oath. The record was not coherent in regards to the beginning of this case, but it does share the session's judgement.

With regard to Mr White furnishing Mr Kellogg with a copy of sd affidavit it does not appear to the session from any evidence that he was guilty of breach of promise as no time was specified when it was produced and Mr Kellogg has finally seen it. And as to their affidavit being contrary the one to the other, the session have no full proof of the matter and therfor they must leave it to their own consciences, and to God before whose [ba..] the secrets of all hearts still to be decided.²¹¹

²⁰⁹ Presbyterian Church, Freehold, NY, September 29, 1787. Minutes are kept with records of Ballston Center, NY, as there was one clerk serving both churches.

²¹⁰ This is discussed thoroughly in chapter two.

²¹¹ Ballston Center, NY, December 7, 1791.

Although this case could have also fallen into the civil jurisdiction, the colonial church addressed it because breaking a sworn oath was also unbiblical, therefore censurable by the church. Furthermore, a case like this could have disrupted the ecclesiastical community, thereby making it a spiritual concern for the church. As noted above, secular affairs disciplined by the church will be considered in the following chapter.

Conclusion

Regardless of the differences between the Presbyterian form of church discipline on either side of the Atlantic, the churches both regarded church discipline as a necessary agent to suppress immorality. The church's desire for a peaceful and moral society was echoed by the civil authorities in Scotland and in the American Colonies. Crimes of immorality may have lost significance within the court system, but immorality was still being disciplined within the Presbyterian churches. Church discipline continued through the eighteenth century and well into the nineteenth in America, as will be discussed at further length in the subsequent chapters. The church and state did both deal with the enforcement of morality, but each had separate goals and roles. Alongside the churches in the colonies and in Scotland, the secular authorities played a significant role in the suppression of immorality. The governments of the colonies and Scotland dealt with issues of morality. A moral state was sought after by the state's officials. On both sides of the Atlantic, the governments utilised the respective legal systems to enforce morality, as seen in the various acts passed for the suppression of immorality in Scotland, New Jersey, and New York. Offences of immorality were not only punished by the church, but also by the state. The

disciplinary system in Scotland complemented the state penal system, whereas the American system supplemented the secular courts. Therefore, a careful examination of the judicial systems in the colonies and Scotland is essential to understand further the relationship between church and state.

CHAPTER TWO

The Enforcement of Secular Laws

In a review article calling for further legal studies of early colonial America, "The Legal Part of Early New England: Notes for the Study of Law, Legal Culture, and Intellectual History," Richard J. Ross borrows a working definition of a legal system from Lawrence Friedman, who wrote *A History of American Law*. According to both Ross and Friedman, a legal system has three parts: "institutions and their processes; rules; and a legal culture, the values and attitudes which bind the system together, and which determine the place of the legal system in the culture of the society as a whole."¹ The Presbyterian disciplinary system on both sides of the Atlantic could fit this definition, as discussed in chapter one.

The boundaries between church and state once again overlapped one another when dealing with secular issues. The Presbyterian church served multiple purposes in the colonies, as it did in Scotland. In addition to policing its members for breaches of Biblical precepts of how a Christian should behave and conduct themselves, the session acted as a secular court to hear and reconcile the disputes of its members. The Presbyterian church government system lent itself naturally to this end. The elders of the session were readily available, the church did have the power to call witnesses, the moderator served

¹ Ross, Richard J. "The Legal Part of Early New England: Notes for the Study of Law, Legal Culture, and Intellectual History." *William and Mary Quarterly*, Third Series, Vol 50, Issue 1, January 1993. pp. 28-41. (p. 32). See Lawrence Friedman's article "Legal Culture and Social Development." *Legal Studies Review*, Volume 4, 1969. pp. 29-44.

as the judge and the elders served as a jury. In a new world where a stable legal system was lacking, the church stepped in to fill in the gaps. "Diversities existed among the colonies in structure and in their emphasis on certain issues, but the fact remains that common-law principles and procedures provided a unifying thread which encouraged the colonies to develop within the outline of a single system."² As the legal system found stability and strength due to the colonies uniting to be one nation, the Presbyterian Church was most likely not used as a secular court. However, the fact remains that the church court system aided the colonies by providing an alternative to solving matters of a legal nature.

Conventional legal history, which is taught as a part of a law degree, examines the civil and criminal system of law. It is often assumed that the law is "the sum of the rules administered by courts in the settling of justiciable controversies."³ However, this view of the law has obscured "the fact that law is a social product, reflecting not only social organisation but the incidence of political and economic pressures at particular times and in particular places."⁴ Applying this concept to the eighteenth century societies in America, the ecclesiastical pressures should also be added to the equation, as the church was the centre of the local communities and left its imprint on the foundations of the legal systems in the colonies. Therefore, the legal scholar should also examine the eighteenth century Presbyterian church session meetings to add further insight to the legal culture in a Presbyterian community. In addition to serving as the centre of the community, the Presbyterian church also offered a rigid

² Conley, John A. "Doing it by the Book: Justice of the Peace Manuals and English Law in Eighteenth Century America." *The Journal of Legal History*, Volume 6, Number 3, December 1985. p. 284.

³ Haskins, George L. "Law and Colonial Society," in *Essays in the History of Early American Law*. David H. Flaherty (ed). Chapel Hill: The University of North Carolina Press, 1969. p. 43.

⁴ Haskins, p. 43.

system of discipline as seen in the previous chapter, that was meant to result in a strong moral climate, a similar aim of the secular judicial system. George Haskins believes that the definition of law “should take into account not only its nature but the fact that it is a social product and also an agency of social control.”⁵ Using this definition, the idea of a legal system can be applied to the disciplinary procedures that took place in Presbyterian Churches in the American Colonies and Scotland. However, did the inhabitants of eighteenth century America turn to the ecclesiastical system to solve secular disputes? Could Christians turn to the civil government to solve disputes? And, could believers bring their fellow brethren before the civil court authorities?

This chapter attempts to answer these questions by turning to Scripture and church doctrine to understand the attitude of Presbyterians in the New World towards the secular court system. Then, by examining the “secular” disputes and offences found in the church records, the discussion will focus on the practice of the Presbyterians in their own court system in New York and New Jersey. And finally, this chapter will illustrate how the church courts worked alongside the secular courts, in order to define the relationship between the two and also to illuminate whether or not both systems were effective in colonial New York and New Jersey.

Applying Ross and Friedman’s definition of a legal system, the institution with a legal system was the Presbyterian Church. The Church in America and Scotland had a coherent process of discipline. The Presbyterian system of government certainly had rules. Clearly the disciplinary system had a legal culture, as it had strong values and attitudes that held the system together.

⁵ Haskins, p. 43.

A defining characteristic of the eighteenth century Presbyterian Church was discipline. Therefore, one can conclude emphatically that the Presbyterian form of discipline was a legal system. However, even though the church on both sides of the Atlantic utilised a very similar form of discipline, the legal culture differentiated the two. Ross pointed out that "the concept of legal cultures has proved especially useful in work comparing the legal systems of different peoples, times, or regions."⁶ Therefore, it is crucial to examine the legal systems of Scotland, England, and the colonies to understand further the culture that surrounds each one, for law "contains elements which can be understood only in terms of its history."⁷ By examining the budding court structures of the American colonies in contrast to Scotland's firmly rooted legal system, it will become clear why the colonists in America turned to the Presbyterian court system to solve secular disputes.

Ecclesiastical View of Secular Government

As seen in the previous chapter, John Calvin was paramount in the development of the Presbyterian form of discipline.⁸ In his discussion of church government, he reiterated the importance of a civil government and the need to obey both governments, for "no responsible Christian can be without concern for civil government."⁹ According to Calvin, the civil magistrate was designed for the security of the good and the control of the wicked, therefore allowing mankind

⁶ Ross, p. 32.

⁷ Haskins, p. 45.

⁸ John Calvin was not the only source of this idea, as seen in chapter one.

⁹ McNeill, John. "John Calvin on Civil Government." *Journal of Presbyterian History*. Vol. 42, No. 2, June 1964, p. 71.

the opportunity to enjoy peace.¹⁰ The obligation for obedience was mutual, for the magistrates are to obey God because God ordained their office. Calvin differentiated between the two types of government, but saw them working together. He especially stressed that the church could not abolish civil government.

Its function among men is no less than that of bread, water, sun, and air, but more honourable in that it prevents idolatry and blasphemy and provides that each man may keep his property safe and sound, that men may carry on blameless intercourse among themselves; that honesty and modesty may be preserved... in short that a public manifestation of religion may exist among Christians and humanity may be maintained among men.¹¹

The state benefits the church by creating a peaceful world where Presbyterians can “enjoy and glorify God forever,” the chief aim of Christians.¹² According to Calvin, the two government systems were to have an intimate relationship as partners in service to the people’s needs. Calvin “assumed that a united church and a unitary state would jointly serve the religious and temporal needs of all people.”¹³ Richard Hooker, an English theologian, echoed Calvin’s sentiments a generation later saying “there is not any man of the Church of England but the

¹⁰ See Calvin, IV, xx, 2.

¹¹ Calvin, IV, xx, 3.

¹² *The Westminster Shorter Catechism*, 1647, question one.

¹³ McNeill, p. 88.

same man is also a member of the commonwealth; nor any member of the commonwealth which is not also of the Church of England.”¹⁴

At the time of the Union in 1707, the Church of Scotland was the national religious institution in Scotland, as the Church of England was in England. However, at this time not all citizens of Scotland were members of the Church of Scotland, and subsequently Calvin’s sentiments regarding the two government systems lost significance. Additionally, in the two centuries post-Reformation, Scotland’s legal system further developed.

The jurisdiction of the church overlapped that of the civil government when it came to areas of morality, as seen in the previous chapter. Scotland’s legal system was comprehensive, as it developed over many centuries, and left little need for secular disputes, handled by the civil legal systems, to be decided upon by the kirk sessions. Criminal cases, such as theft and physical abuse, were handled by the comprehensive criminal court structure in Scotland. However, the colonies did not enjoy a well-developed and all-inclusive legal system in the eighteenth century. To draw out this comparison, a discussion of the legal systems of the two regions follows.

¹⁴ Hooker states prior to this that “we say that the care of religion being common unto all societies politic, such societies as do embrace the true religion have the name of the Church given unto every [one] of them for distinction whereby a church is distinguished from other politic societies of men.... With us therefore the name of a church importeth only a society of men, first united into some public form of regiment, and secondly distinguished from other societies by the exercise of Christian religion.” Hooker, Richard. *Of the laws of ecclesiastical polity*. (ed) Georges Edelen et al. Cambridge: Belknap Press of Harvard University Press, 1977-1982. VIII, i, 2. Richard Hooker believed that man would unite under a common purpose, whether that was for religion or not. However, man under the same state would naturally have concerns for one another. And thus, the government would be concerned with man’s temporal and spiritual state. For further information on Richard Hooker’s views on church and state relations in England, see Arthur S. McGrade’s “The Coherence of Hooker’s Polity: The Books on Power.” *Journal of the History of Ideas*, Vol. 24, No 2, Apr-Jun 1963, p 163-182.

Scotland's Legal Systems in the Eighteenth Century

Compared with other legal systems, Scotland's was renowned for two main features: "the great antiquity of the Scottish legal system and the corresponding measure of continuity which can be traced from the earliest times of which there is any record right down to the present day."¹⁵ There are two main schools of law: Roman law and common law. Richard Keith and George Clark suggest that Scotland's legal system is found in between the two, as the system developed through historical accident, but has also been shaped by several factors: feudal law, native customs, canon law, continental influence, and the law of nature and the Bible.¹⁶ Each contributing element added to the evolutionary process of the court structure, procedures, and legal codes. The system that was functioning in the eighteenth century was consolidated by Stair's *Institutions of the Law of Scotland*, published in 1681.¹⁷ Following the example set on the continent with institutional writings similar to Emperor Justinian's *Institutes*, James Dalrymple, Viscount Stair (1619-95), compiled Scotland's first "systematic exposition of a national legal system."¹⁸ Stair's achievement was best praised by Lord Cooper, who said "(t)he publication of his *Institutions* in 1681 marked the creation of Scots law as we have since known it – an original amalgam of Roman Law,

¹⁵ Meston, Michael C., W. David H. Sellar and The Rt. Hon. Lord Cooper. *The Scottish Legal Tradition*. Edinburgh: The Saltire Society and The Stair Society, 1991. p. 29. These authors point out that Scotland is similar to England in this respect, but also different from the legal traditions in England and Germany, as both countries had their systems broken by revolutions.

¹⁶ Richard, Keith and George Clark. *A Guide to Scots Law*. London: Johnston and Bacon, 1978, p. 3.

¹⁷ Stair, James Dalrymple, Viscount. *The Institutions of the Law of Scotland*. Edited by J.S. More. Edinburgh: Bell and Bradfute, 1681.

¹⁸ W. David H. Sellar in "A Historical Perspective" in *The Scottish Legal Tradition* (p. 48) specified the continental examples: Coquille, Guy. *Institution au Droit des Francois*. Paris: Chez A. L'Angelier, 1609; Selchow, Heinrich Christian. *Institutiones Jurisprudentiae Germanicae*. Hannoverae, 1757; and Asso y del Río, Ignacio Jordán. *Instituciones del Derecho Civil de Castilla*. Madrid: Impr. De A. de Sotos, 1786.

Feudal Law, and native customary law, systematised by resort to the law of nature and the Bible, and illuminated by many flashes of ideal metaphysic.”¹⁹

The criminal law system was reconstructed and ordered by Sir George Mackenzie’s *Laws and Customs of Scotland in Matters Criminal, Wherein it is to be seen how the Civil Law, and the Laws and Customs of Other Nations do agree with and Supply Ours* in 1678.²⁰ Additionally, criminal laws were arranged and published by David Hume in 1797, in the *Commentaries on the Law of Scotland respecting Crimes*.²¹

With the systematised legal codes, cases were tried more consistently within the court structure already in place in Scotland. Prior to the Union of 1707, Scotland had two hierarchies of courts that had been useful and developed in previous centuries. However, as the centralised court system gathered strength many of these courts lost significance. During Scotland’s independence many courts held civil and criminal jurisdictions. The Court of Session, the highest civil court, was superior to the sheriff, burgh and franchise courts.²² The criminal system was governed by the High Court of Justiciary, which was superior to the sheriff, burgh, barony, and justice of the peace courts. The Union of 1707 did not greatly affect the court system, other than allowing the House of Lords to serve as a court of appeal from the Court of Session and the High Court

¹⁹ *The Scottish Legal Tradition*, p. 69.

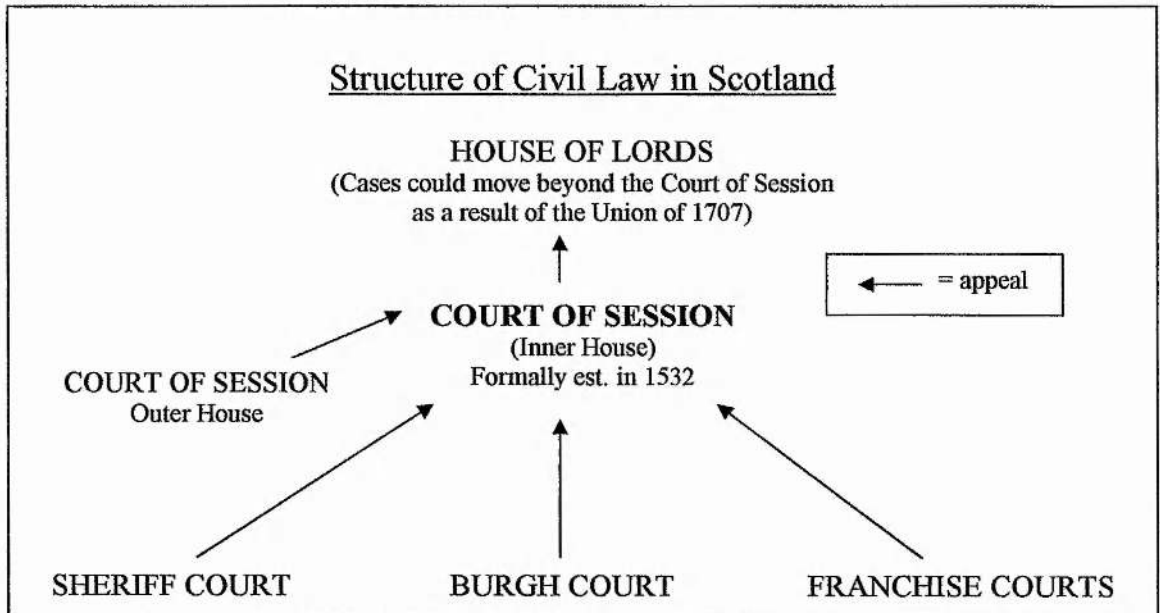
²⁰ Mackenzie, Sir George. *Laws and Customs of Scotland in Matters Criminal, Wherein it is to be seen how the Civil Law, and the Laws and Customs of Other Nations do agree with and Supply Ours*. Edinburgh: Jas. Glen, 1678.

²¹ Walker, David M. *The Oxford Companion to Law*. Oxford: Clarendon Press, 1980. p. 1111. Hume’s *Commentaries* are still regarded as the supreme authority on criminal law in Scotland. Hume, David. *Commentaries on the Law of Scotland Respecting the Description and Punishments of Crimes*. 2 volumes. Edinburgh: Bell and Bradfute, 1797.

²² The justices of the peace became a fixed element of the legal landscape in Scotland after the Union. However, they held only a small civil jurisdiction and only dealt with wages and price controls. Whetstone, Ann E. *Scottish County Government in the Eighteenth and Nineteenth Centuries*. Edinburgh: John Donald Publishers, 1981. p. 28.

of Justiciary. However, the greatest changes to the legal system in the eighteenth century occurred with the Abolition of Heritable Jurisdictions of 1747. What follows is a discussion of the jurisdictions of the respective courts, followed by the procedures of the civil and criminal court systems.

Figure 1: Eighteenth Century Civil Court Structure in Scotland



The Court of Session, founded in 1532, remained unchanged until the nineteenth century.²³ It served as a unitary court and after 1664 comprised 15 judges, all of whom were laymen.²⁴ However, at times, three of the judges, not including the Lord President, sat in the Outer House to supervise the preliminary stages of cases.²⁵ The Court of Session was the appeal court for all civil cases and had no jurisdiction over criminal cases as a court.²⁶

²³ Stair Society. *An Introduction to Scottish Legal History*. Volume 20. Edinburgh: Robert Cunningham & Sons, 1958. p. 341.

²⁴ The original Court of Session also included ecclesiastical members. The first two centuries of the Court contained Extraordinary Lords, who were nominated by the king. However, George I ended this in 1723, claiming that no further vacancies would be filled by Extraordinary Lords. *An Introduction of Scottish Legal History*, p. 342.

²⁵ Walker, *The Oxford Companion to Law*, p. 308.

²⁶ Walker, *The Oxford Companion to Law*, p. 308.

Local level disputes were tried in the Sheriff Court. King David I first appointed sheriffs to protect royal castles and they served as a part of the central government. They were agents of the king, ordered to collect taxes and to maintain order in their appointed areas through the implementation of certain laws.²⁷ Prior to the Act of 1747, all sheriffs were heritable and usually appointed by the king. However, the Heritable Jurisdictions Act of 1747 abolished the heredity of the office. Nonetheless, the sheriff maintained his civil jurisdiction, which included cases of “spuilzies, cognitions, obligations, contracts, debts, removings, loosing of arrestments, and the seven brieves of inquest, terce, tutory, etc.”²⁸ Civil case appeals from the Sheriff Court moved up to the Court of Session.²⁹

The burgh courts date back to David I and held civil and criminal jurisdictions. The magistrates and their ballies held the authority in the courts. Its jurisdiction covered breaches of the peace within the municipal boundaries. As a civil court it heard cases of “brieves of inquest, tutory and idiotry, the admission of burgesses, permission to alienate lands, the settlement of questions of ownership and boundaries; and again, the keeping of assizes of bread and ale,

²⁷ Willock, Ian Douglas. *The Origins and Development of the Jury in Scotland*. Edinburgh: Stair Society, 1966. p. 42.

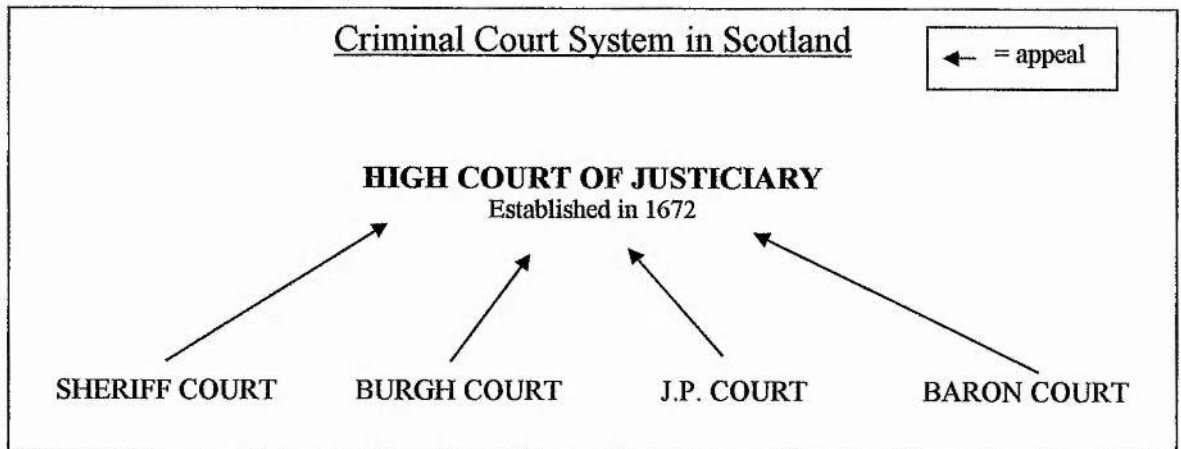
²⁸ *An Introduction to Scottish Legal History*, p. 360.

²⁹ Walker, quoting from Erskine (John Erskine. *Institutes of the law of Scotland*. Edinburgh: Bell & Bradfute, 1871) and Lord Bankton (McDonall, Andrew, Lord Bankton. *An institute of the laws of Scotland in civil rights*. Edinburgh: Stair Society, 1993), sums up the appellate procedures: “the inhabitants of Scotland are all the year over under the benign influence of justice at home, by the proper Courts of Commissaries, Admiralty, Sheriffs, Stewards, Bailies of Royalty, Regality, and Barony, and Justices of Peace; most of which subordinate judges having a cumulative jurisdiction in their respective capacities, are a check upon one another. And as in matters to which they are competent, parties may sue before either, where they expect to be best served; so in case of intricacy, presumptive suspicion of partiality in these judges, or incompetency where they go beyond their line, or when they commit iniquity, the cause may be called up to the Session by advocacion (which answers to both the English law terms *certiorari* and *prohibition*) before, or suspension and reduction after sentence, in order to get it reviewed, or a stop put to the execution of it.” pp. 589-590.

the suppression of the 'unfree' trade, the enforcement of the use of standard weights and measures, the observance of market rules, the punishment of regraters and forestallers."³⁰ The Treaty of the Union upheld the "rights and privileges" of the burgh court, while the Act of 1747 reinforced its power.³¹

The king held all rights of jurisdiction over his lands. However, he could grant portions of his lands with its rights to lower courts, which formed a franchise. The four franchise courts were the barony, regality, stewarty, and bailery.³² By the eighteenth century only the baron courts were active. The jurisdiction of the baron court was determined by the geographical area of the lands granted to the baron. The baron, serving as the judge, was able to call his court into session when he desired or as the need arose. His legal jurisdiction encompassed civil and criminal actions. Civil trial before the baron court included "petty debt, possessory actions, and lawburrows."³³

Figure 2: Eighteenth Century Criminal Court Structure in Scotland



³⁰ *An Introduction to Scottish Legal History*, p. 387.

³¹ *An Introduction to Scottish Legal History*, p. 389.

³² *An Introduction to Scottish Legal History*, p. 374.

³³ *An Introduction to Scottish Legal History*, pp. 375-6.

The criminal law system in Scotland also underwent changes after the Union. The High Court of Judiciary governed the criminal court system in Scotland. Judges from the Court of Session sat on this court as Lords Commissioners of Justiciary. This court, created in 1672, encompassed five judges from the Court of Session, one Justice-General and one Justice-Clerk. Pairs of judges were to go on circuit once a year until 1747, when they went on circuit twice a year.³⁴ Appeals from the High Court technically could move up to the House of Lords after the Union, though this was not the intention of the Union Parliament. The criminal jurisdiction of the House of Lords was not clearly defined. The system prior to 1747 consisted of overlapping feudal courts. Cases were appealed to the High Court from four inferior courts: sheriff's court, burgh courts, justice of the peace courts, and baron courts.³⁵ The Act of 1747 made one major change to the High Court by endorsing that the circuit court should be held twice a year.³⁶

The sheriff court held jurisdiction over all criminal offences, except the four pleas of the Crown and generally crimes the sentence for which was transportation. After 1735, the prerequisite of a thief being caught "red-handed" ceased as a stipulation for the trial to take place in the sheriff court. Similarly, in Hume's time, murder trials could be tried in the court without the offender being caught red-handed.³⁷ In relation to the other criminal courts, the sheriff court generally had a greater jurisdiction.³⁸

³⁴ Willock, p. 45.

³⁵ Farmer, Lindsay. *Criminal Law, Tradition and Legal Order: Crime and the Genius of Scots Law 1747 to the Present*. Cambridge: Cambridge University Press, 1997. p. 67.

³⁶ *An Introduction to the Legal History of Scotland*, p. 421.

³⁷ *An Introduction to the Legal History of Scotland*, p. 360.

³⁸ Walker, *A Legal History of Scotland*, p. 419.

The burgh courts dealt with minor offences and breaches of the peace. Their jurisdiction often overlapped with the sheriff court, as burghs had been made sheriffdoms.³⁹ Its criminal jurisdiction included slaughter, murder, and theft, all with the stipulation that the criminal was caught red-handed.⁴⁰ The court also included quasi-criminal cases, which fell under the category of disturbances of the “gude nyctburheid,” such as “flyting, drunkenness, disobedience, opprobrious language, insulting a bailie, blocking public passages, encroaching on a neighbour’s land, permitting cattle or swine to roam freely, and Sabbath breaking.”⁴¹ All rights and powers were reinforced by the Act of 1747. Similar to the burgh courts, the baron courts were able to try cases of slander and theft, also with the red-handed provision.⁴² By the eighteenth century, the baron court’s jurisdiction shifted and usually only included cases of assaults, batteries, and petty crimes.⁴³

The Justice of the Peace was introduced to Scotland by James VI in 1609. The JPs held the Quarter Sessions, which played an important role in criminal justice in England and Wales. In Scotland, however, the JPs had a very limited jurisdiction and in many counties, the Quarter Sessions never met.⁴⁴ Within baronies, the baron had the prerogative to hold court sessions to deal with criminal infractions. However, the baron’s jurisdiction steadily declined through the sixteenth century.⁴⁵ The Justice of the Peace was to enforce excise laws,

³⁹ Walker, *A Legal History of Scotland*, pp. 420-1.

⁴⁰ *An Introduction to the Legal History of Scotland*, p. 386.

⁴¹ *An Introduction to the Legal History of Scotland*, p. 387.

⁴² *An Introduction to the Legal History of Scotland*, p. 376.

⁴³ Farmer, pp. 60-2.

⁴⁴ Walker, *The Oxford Companion of Law*, pp. 938-40.

⁴⁵ Walker, *A Legal History of Scotland*, p. 420.

laws against gaming, punish rioters and to discourage disorderly conduct, but in fact, had very little authority over criminal justice.⁴⁶

As described above, the criminal legal system, consisting of several feudal jurisdictions, underwent a major shift in 1747 with the Abolition of Heritable Jurisdictions Act. The Act abolished some of the feudal courts and centralised the criminal court system, gradually leading towards a hierarchy of criminal courts. The Crown granted authority to a centralised legal system, taking the authority away from the influential families of the time. The feudal courts were modified, some abolished. During the later half of the eighteenth century, "different courts might, and did, exist within the same geographical area, and their powers depended more on the particular statute or charter that had brought it into being than on any rules of general application."⁴⁷ The defined jurisdictions overlapped one another; however, the historical practice of the courts continued to prevail. Regardless of the overlap, the Scottish legal system was an effective and comprehensive structure in the eighteenth century. The American colonies did not enjoy the same luxury of formally defined courts and jurisdictions.

Colonial Court Structures

Much of what made Scotland's system strong was its resistance against adopting the English legal system. However, England's legal institutions and laws did have a strong influence on the American Colonies. The court system in America had a nebulous beginning. There was no one statute that authorised a judicial system. Under English law, the king granted his subjects certain powers,

⁴⁶ Farmer, p. 68.

⁴⁷ Farmer, p. 67.

including the right to create courts. This rule was applied to the colonies in America. However, the creation of a court system was not the first priority of the colonist. "Conditions between the time of settlement and independence were worlds apart; the legal needs of a small settlement, run by clergymen, clinging precariously to the coast of an unknown continent, were fundamentally different from the needs of a bustling commercial state."⁴⁸ As the colonies were establishing themselves, a judicial system was not necessarily a top priority, nor was it a unified colonial agenda.

Three main steps were taken in all of the original colonies to establish a legal system in the American colonies. First, the governor of the royal colonies or the executive of the proprietary colonies held the "power to act in a judicial capacity."⁴⁹ The governor or the leader of the settlement settled disputes on an *ad hoc* basis. For example, in West Jersey, Deputy Governor Thomas Olive bestowed judicial decisions from a tree stump in his meadow.⁵⁰ The governors had general legal jurisdiction and also had the prerogative to establish a judicial body, the second step in establishing a legal system. The executives of all of the colonies adopted the office of the Justice of the Peace, but the New England colonies granted that the justice of the peace held courts of limited jurisdiction and they also served as magistrates.⁵¹ Finally, the governor and his council transferred the right to perform trial jurisdiction to a court with a chief justice

⁴⁸ Friedman, Lawrence. *A History of American Law*. New York: Simon and Schuster, Inc, 1985, p. 33.

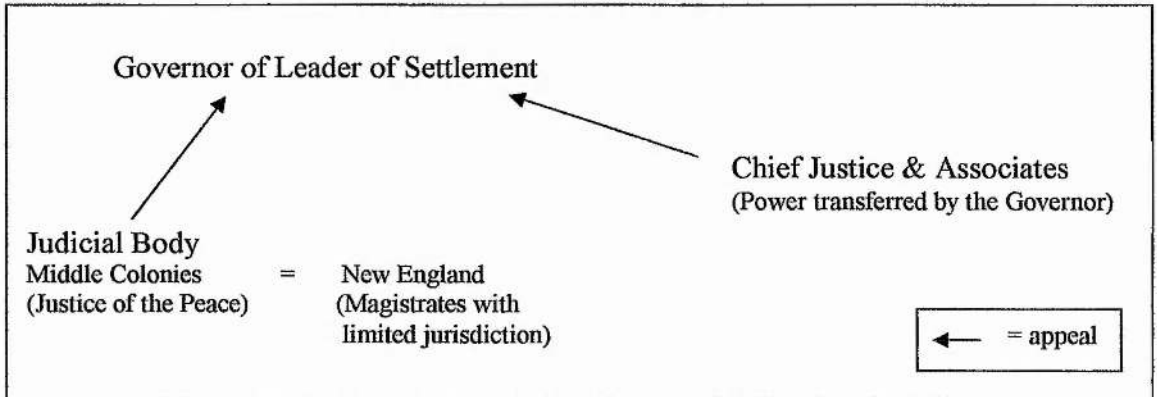
⁴⁹ Surrency, Erwin C. "The Courts in the American Colonies." *The American Journal of Legal History*. Vol. 11, 1967, 253-346. p. 258.

⁵⁰ Surrency, 258. Surrency does not include a date, but Thomas Olive was Deputy Governor from 1684-1685. See Tanner, Edwin. *The Province of New Jersey, 1664-1738*. New York: Columbia University Press, 1908. p.104.

⁵¹ Surrency, p. 258.

and two associates.⁵² These were the three main courts that served in the colonies up until the Revolution and for some colonies this structure remained in place after statehood. Beyond these three main elements, the King gave little thought to the judicial system and left each colony to establish its own court system, as necessary.⁵³

Figure 3: Basic Judicial Structure in the infancy of the colonies



Generally speaking, the colonists expected their courts to deliver justice and to handle any problems arising in the rapidly changing colonial conditions. Trained judges or lawyers from England attempted to recreate the English judicial system in the colonies, but they instead had to mould their aims to the reality of the colonial situation.⁵⁴ The English system did serve as a model for the colonies, but was highly compartmentalised, whereas the colonial judicial system was a hierarchy of general courts that overlapped one another. The general pattern included three levels of courts. The justice of the peace held petty sessions that made up the lowest level courts. Their jurisdiction was granted by the county court, the second highest court. Above the county courts was the Supreme Court, which was often made up of judges from the county

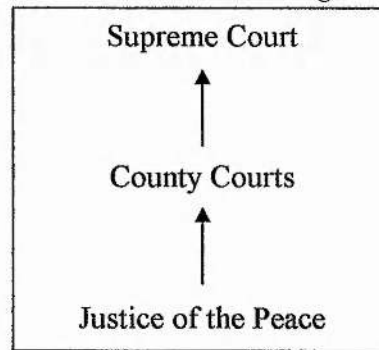
⁵² Surrency, p. 259.

⁵³ Surrency, p. 253.

⁵⁴ Surrency, p. 256.

courts. The Supreme Court served as a court of first instance in capital cases and served as an appellate court for the lower courts. In actuality, appeal cases were not tried on only a few points, but the entire case was retried. In that sense, the "first courts were as horizontal as they were hierarchical."⁵⁵ Echoing this sentiment and applying it to the growth of the system, Friedman explained that the main driving force of the law was necessity. In the early period, judicial business was mixed with public business. Furthermore, a lack of personnel meant that laws were created, enforced, and cases were tried by all of the same individuals, which meant that without a strong work force the legal system remained stagnant and its growth was slow.⁵⁶

Figure 4: Hierarchy of general courts in seventeenth and eighteenth century



The county court was the most active of the three main courts and was at the heart of the colonial government. It performed various functions depending on the needs of the community, but included judicial, administrative, and quasi-legislative functions.⁵⁷ Adopting the English model, it was a court of "common pleas" when it heard civil suits and as the "general sessions of the peace" it served to execute tasks similar to the English quarter sessions and dealt with serious misdemeanours such as adultery, trespass, or fraud. The court's

⁵⁵ Hoffer, Peter Charles. *Law and People in Colonial America*. Baltimore: The Johns Hopkins University Press, 1998. p. 28.

⁵⁶ Friedman, pp. 37-38.

⁵⁷ Friedman, p. 43.

jurisdiction did not include felonies or cases of “life and limb.”⁵⁸ “Long the bulwark of the English system,” the justice of the peace was also the centre of local judicial and administrative authority in the colonies.⁵⁹ Unlike the English Justice of the Peace, the American justice of the peace also held a wide civil jurisdiction in the colonies.⁶⁰ Each county had its own J.P., who was usually a powerful layman with no formal legal training. The J.P.s from the various counties formed session courts that met semiannually and tried serious criminal trials; singly they were able to try minor criminal cases without a jury.⁶¹

Although the J.P.s were usually laymen, they utilised law manuals to aid them in hearing cases. There were several editions of these law books in England.⁶² The first authoritative justice manual was written by Sir Anthony Fitzherbert entitled *The Boke of Justices of Peas*; it was first published in 1506 in French and was translated into English in 1532.⁶³ William Lambard wrote *Eirenarcha* in 1581.⁶⁴ The most popular and widely used manual was Michael Dalton’s *Countrey Justice*, published in 1618.⁶⁵ Dalton’s work was unique and effective due to its layout. He did not simply write a lengthy discussion on the

⁵⁸ Hoffer, p. 29.

⁵⁹ Surrency, p. 267.

⁶⁰ Surrency, p. 267.

⁶¹ Greenberg, *Crime and Law Enforcement in the Colony of New York, 1691-1776*, p. 34.

⁶² Conley, p. 261.

⁶³ Conley, p. 261. Fitzherbert, Sir Anthony. *The New Boke of Justice of Peas*. 1532.

⁶⁴ Lambard, William. *Eirenarcha: or of the Office of the Justices of Peace, in Two Books: Gathered 1579 and Now Revised and Firste Published, in the 24 Years of the Peaceable Reign of our Gracious Queene Elizabeth*. London: 1581.

⁶⁵ Dalton, Michael. *The Countrey Justice: Containing the Practice of the Justices of the Peace out of their Sessions. Gathered for the Better Help of Such Justices of Peace, as Have Not Been Much Conversant in the Study of the Law of this Realm*. London: Various Publications, 1618-1746.

overall authority of justices, but used legal headings to define the individual powers and cases of the J.P.⁶⁶

These judicial manuals were highly sought after in the colonies, as they served as a substitute for legal training for many J.P.s. Law books were in high demand. The English colonists turned to England to order these books. In later years, the colonists realised their need for their own judicial manual. In 1711, a publishing company in New York produced its first manual, *Conductor Generalis or a Guide for Justices of the Peace*, which was published anonymously.⁶⁷ The first edition of *Conductor Generalis* adopted the English law and it did not include any laws or acts that had been formed and passed in America. The 1722 edition was created to address American needs and the subsequent editions added further changes and adapted its previous editions to fit the American situation.⁶⁸ By 1800, the manual had gone through eleven editions and had been published in six cities in three colonies.⁶⁹ The *Conductor Generalis* was the main justice manual used in New York and New Jersey.⁷⁰ Both colonies used editions credited to James Parker, who worked as an apprentice under William Bradford (1727), had a silent partnership with

⁶⁶ Conley, p. 261.

⁶⁷ John Conley cites this as the first American publication. It was written by "P.B." as the Preface to the Book, *Conductor Generalis: a Guide for Justices of the Peace, and Coroners, Constables, Jury-Men, Over-seers of the Poor, Surveyors of Highways, Governors of Fairs, Gaolers, & c.* Conley found no evidence to explain who "P.B." might have been. Three other studies claimed that the 1722 edition printed in Philadelphia was the first to appear in the American colonies. See Conley's footnote 59. (P.B.?). *Conductor Generalis; or a Guide for Justices of the Peace, and Coroners, Constables, Jury-Men, Over-Seers of the Poor, Surveyors of High-ways, Governors of Fairs, Gaolers, &c.* New York: P.B., 1711.

⁶⁸ Conley, p. 265. (?). *Conductor Generalis; or the Office, Duty, and Authority of Justices of the Peace, High-Sheriffs, Under-Sheriffs, Gaolers, Coroners, Constables, Jury Men, Over Seers of the Poor, and also the Office of Clerks of Assizes and of the Peace, &c.* Philadelphia: Andrew Bradford, Printer, 1722.

⁶⁹ Conley, p. 263.

⁷⁰ Conley, p. 272.

Benjamin Franklin (1754), and served New Jersey as a judge in the court of common pleas (1746).⁷¹ New York's editions of the *Conductor Generalis* (1711, 1749, 1788, 1790, 1792) have been credited to Parker.⁷² Parker also established a printing shop in New Jersey and published the two editions (1764 and 1767) of the manual for the colony.⁷³ Regardless of the edition, these manuals were widely used and allowed the Justice of the Peace to have a "standardized guide which allowed him to operate his office in an orderly if not systematic manner."⁷⁴ With a uniform system, offenders of crimes addressed by the manuals and within the jurisdiction of the J.Ps would most likely be aware of the inflicted punishments, if found guilty. These could have included fines or time in the stocks, depending upon the crime. If the offender was also a member of the local church, he or she would similarly be aware of the ecclesiastical censures warranted by the offence. Therefore, it seems more than likely that the guilty offenders would choose between the church and the state based upon the severity of the punishment or discipline.

The Session Court's jurisdiction was broad, at best. It normally heard cases because of a grand jury indictment; the law did, however, make allowances for cases to come before the session by a personal complaint or by reports made

⁷¹ Ashton, Jean. "James Parker," in *Dictionary of American Biography*. (ed) Allen Johnson et al. London: Oxford University Press, 1928-80. pp. 27-8.

⁷² Conley, p. 264. There is no sound proof of Parker's authorship on all five editions in New York, for his dates of birth (1714-1770) conflict with the publication dates. Conley does conclude that Parker potentially edited some of the editions and that his workshop published all of the editions. Parker, James. *Conductor Generalis; or the Office, Duty, and Authority of Justices of the Peace, High-Sheriffs, Under-Sheriffs, Gaolers, Coroners, Constables, Jury Men, Over Seers of the Poor, and also the Office of Clerks of Assizes and of the Peace, &c.* New York: James Parker, 1711, 1749, 1788, 1790 and 1792.

⁷³ Conley, p. 264. James Parker was claimed as the author of the 1764 edition.

⁷⁴ Conley, p. 272.

to one of the Justices of the Peace.⁷⁵ The J.P. had the power to try cases regarding infractions of the penal and religious laws. He could try a plethora of cases, including trespassing, illegal gaming, profane swearers, and Sabbath breaking. Rioters, vagrants, and unlicensed alehouse keepers were also punished by the J.P.⁷⁶ All of these cases could and were tried by the Presbyterian church courts as well.

The highest court was the Supreme Court, called by various names depending upon the colony.⁷⁷ In most colonies, the governor and his council had general trial jurisdiction over the colony. This power was given up to a separate body that became the General Court. It consisted of a chief justice and two or more associates. The lower courts were able to appeal cases before the General Court.⁷⁸ Capital offences were always heard by the Supreme Court in the capital, while on circuit the court heard appeals and other cases under their jurisdiction. However, not all of the colonies had the circuit courts.⁷⁹ What is now known as the Supreme Court, the highest court for the United States of America, was created by the Judiciary Act in 1789. This court had one chief justice and five associate justices, all nominated by the President and confirmed by the Senate.⁸⁰

⁷⁵ Greenberg, *Crime and Law Enforcement in the Colony of New York, 1691-1776*, p. 34.

⁷⁶ Conley, p. 266.

⁷⁷ The colonies of New York and New Jersey called their highest court the Supreme Court. In North Carolina the highest court was known as the General Court. See Spindel, Donna. *Crime and Society in North Carolina, 1663-1776*. Baton Rouge: Louisiana State University Press, 1989, chapter two. Massachusetts' highest court during the provincial period was called the Superior Court and the constitution of the state in 1780 renamed it to the Supreme Judicial Court. See Nelson, William. *Dispute and Conflict Resolution in Plymouth County, Massachusetts, 1725-1825*. Chapel Hill: The University of North Carolina Press, 1981. p. 11.

⁷⁸ Surrency, p. 259.

⁷⁹ Surrency, p. 261.

⁸⁰ Purvis, Thomas L. *A Dictionary of American History*. Oxford: Blackwells Publishers, 1995. p. 391.

A variety of other specialised courts functioned within the colonies, each with its own particular history and legal interests. Prior to 1700, the Middle Colonies, primarily New Jersey, New York, and Pennsylvania, had the most distinct court systems in comparison with England and the other colonies due to the individual colonies' history of settlement. These differences did begin to fade away during the eighteenth century, but remnants were visible until the nineteenth century.⁸¹ Differences between the colonies emerged from the degree to which the English models, terms and traditions were followed. The colonial court systems and procedures ranged from the simple to the complex, and the boundaries were not clearly drawn between the legislative, judicial, and executive branches.⁸² David Flaherty has pointed out that "while the colonists could not escape their legal heritage, they also were given unique opportunities for innovation and deviation from the old patterns of law and law enforcement."⁸³ By illuminating the differences and holes in the legal system, it will become clear how the Presbyterian court structure was useful and efficient in supplementing the legal needs within New Jersey and New York.

The Colony of New York's Judicial System in the Seventeenth and Eighteenth Centuries

New York was a unique colony, as discussed in the introduction, and had a correspondingly unique legal system. The colony was a melting pot for a population that was ethnically, socially, and religiously diverse, which created "a society at odds with its own self-image, a society, facing problems which, ...

⁸¹ Hoffer, p. 31.

⁸² Friedman, p. 46. See also Surrency, p. 260.

⁸³ Flaherty, David H. (ed). *Essays in the History of the Early American Law*. Chapel Hill: University of North Carolina Press, 1969. p. 3.

were insoluble almost by definition."⁸⁴ However, perhaps because of the complexity and confusion within that society, by the eighteenth century, the colonists had implemented the legal system of England. With a variety of influences upon the judicial structure in the colony of New York, adjustments were made accordingly, but for the most part they borrowed and adapted the English legal system, which remained in effect until the Revolution.⁸⁵ Similarly, English common law was also accepted in the colony.⁸⁶ However, the transition from local law, dominant in the seventeenth century, to the eighteenth century system based upon English common law was "abrupt, calculated, and dictated by the legal development which had occurred during the proprietary period from 1664-1685."⁸⁷ A discussion of other contributing factors follows.

The English system did become the dominant influence on the legal system in New York, but there were two other factors that shaped legal practice, mainly the Dutch legal system brought to New York by its original settlers and the influence of the neighbouring Puritan colonies. The first and dominant factor in the conception of the legal system was that people imitated the institutions and practices with which they were familiar. Of course, these were the English or Dutch systems of law, as they reflected the two dominant ethnic groups in New York.⁸⁸

⁸⁴ Greenberg, *Crime and Law Enforcement in the Colony of New York, 1691-1776*, p. 33.

⁸⁵ Greenberg, *Crime and Law Enforcement in the Colony of New York, 1691-1776*, p. 33.

⁸⁶ Flaherty, p. 12.

⁸⁷ Johnson, Herbert. *Essays on New York Colonial Legal History*. Westport, CT: Greenwood Press, 1981, p. 37. Herbert Johnson notes that the years between 1685-1691 were riddled with political turmoil that disallowed any growth within the legal system.

⁸⁸ Goebel, Julius, Jr. "The Courts and the Law in Colonial New York" in David Flaherty's *Essays in the History of early American Law*. pp. 250-251.

The Dutch, who had a different court system from the English system, originally founded New Netherland. Similar to the Puritans in the neighbouring colonies, the Dutch also adhered to Calvinistic religious principles, which included an awareness of the necessity for the enforcement of morality. The Dutch attempted to establish their own legal system, but their position of authority was not strong enough to contend with the heterogeneous population. In 1664, the English conquered the colony, which altered the legal system. "The result was a legal system whose legitimacy many New Yorkers either suspected or denied entirely."⁸⁹ Tensions mounted and the Dutch inhabitants did not follow the English system, as they believed it held no authority. All of these issues led to a weak and unstable legal system in New York during the seventeenth century.

However, the Dutch were the first to establish a legal institution in New Netherland. Early in the seventeenth century when the Dutch first settled in New Netherland, which became part of the colony of New York, they brought with them their system of government and legal practices. Peter Minuit (1580-1638), governor of New Netherland, created the first judicial tribunal five months after his arrival in 1626,⁹⁰ comprising himself, "a Council of five, and the schout fiscal, an officer who combined the duties of prosecutor and sheriff."⁹¹ Governor Kieft (1597-1647) added to the system that Minuit implemented, by having a regular session of the Council; however, the court found itself attacked by the colonist for discrepancies in its practices. Therefore,

⁸⁹ Greenberg, "Crime, Law Enforcement, and Social Control In Colonial America." p. 300.

⁹⁰ Kammen, Michael. *The History of the Province of New-York by William Smith, Jr.* Cambridge, MA: The Belknap Press of Harvard University Press, 1972. p. 277.

⁹¹ Goebel, p. 246.

in 1647, Stuyvesant (1592-1672) succeeded Kieft and established a court of general jurisdiction, referred to as "the Nine Men," who were chosen from a panel of eighteen men and held judicial powers in civil cases. This was significant because Governor Stuyvesant conceded partial popular participation in the government. Smaller courts were then established a few years later in New Amsterdam, which became New York City.⁹²

The Dutch created sophisticated courts in New Amsterdam. "The records of the New Amsterdam court disclose a state of legal development in many respects remarkable."⁹³ The Dutch officers had extensive legal training, which allowed the laws of the Dutch to avoid being stifled by the ignorance or incompetence of the lay citizens. Similar courts were established in the Dutch settlements on Long Island, but not nearly with the same sophistication. In fact, the less 'remarkable' courts actually resembled the town courts of the English settlements on Long Island. Unfortunate for the Dutch settlers, their legal structures in New Netherland were only as strong as their claim to the land, which was never undisputed or official. The English, who occupied the land north and south of New Netherland, saw the potential of the adjoining land and imposed the right of the Crown over the land, thereby granting it to the Duke of York on March 12, 1664. The Dutch surrendered to the English with the promise of several rights over their property and religion. This ended further influences on the legal system by the Dutch, as their systems and laws were then null and void.⁹⁴

⁹² Goebel, pp. 247-8.

⁹³ Kammen, pp. ix-x.

⁹⁴ Kammen, pp. x-xi.

The Dutch were not the only ethnic group to influence the judicial system in the colony of New York. The English Puritans also left their imprint on the legal system. The Puritan influence was strong on Long Island. Many of the inhabitants that found their way to the Island were indeed Puritans that crossed the Long Island Sound from Connecticut in the 1640s. As discussed above, the Puritans believed that items of legislation were divine precepts, especially as they appeared in the Old Testament. "Judicials" of Moses were binding upon men and they should be incorporated within the law of the land.⁹⁵ Biblical principles governed the Puritans and they transferred this mentality into their views of justice and the law. The Puritans believed that a sinner should be held accountable by the secular and ecclesiastical government. In a sense they imposed a double jeopardy, as a sin not only went against the Biblical code, but also against the secular code. Therefore, the church disciplined for a crime against God and the state punished for an infraction of the law.⁹⁶

Aware of the influences of the Dutch and the Puritans, Governor Richard Nicholls (1624-1672), the first governor after English rule, issued the "Duke's Laws" in 1665, to create a unified system of jurisprudence.⁹⁷ The Duke's Laws, drawn largely from the various New England codes, restated the Puritan laws extracted from Scripture.⁹⁸ This appeased the Puritans and the Dutch were not under its authority, as agreed in the charter. However, on a functional level, the Duke's Laws met resistance as the structures of a judicial system did not translate to the local or town level. Prior to 1664, towns were self-governing and

⁹⁵ Goebel, p. 250.

⁹⁶ Oberholzer, pp. 12-13.

⁹⁷ Kammen, p. 278.

⁹⁸ Goebel, pp. 251-2.

these laws took that away by stating that only the governor could approve an election.⁹⁹ Over the last decades of the seventeenth century, the inhabitants and their judicial leaders struggled to create a centralised legal system. It was not until 1691 that a system was firmly established.¹⁰⁰

On May 6, 1691, the “Act for Establishing Courts of Judicature” was passed by the assembly of the colony of New York and was further added to and re-approved on November 11, 1692.¹⁰¹ This act defined the responsibilities and powers of the courts and the individuals that instituted them. In every city or county, a court of session of the peace was to meet at set intervals throughout the year. Civil jurisdiction was granted to the court of common pleas, which was held just after the Court of Session met. The highest court was the Supreme Court of Judicature. It was held solely in New York City and comprised at least five judges, two of whom together with the chief justice formed a quorum. The Supreme Court could try any type of case and it was to be kept informed of cases in the lower courts.¹⁰²

Compared to the New England colonies, New York’s judicial system was developed much later. The same was true for the colony of New Jersey. This was due to many factors. The middle colonies at the end of the seventeenth century were much less heavily populated than their neighbouring colonies and the motivation in founding New York and New Jersey did not require a well-tuned legal system at the onset of the colony. However, “when the middle colonies’ courts diverged from patterns already established to the north and

⁹⁹ Johnson, p. 39.

¹⁰⁰ Goebel, pp. 259-60.

¹⁰¹ *The Colonial Laws of New York*, Vol I, pp. 226 & 303.

¹⁰² Goebel, p. 258.

south, they almost always moved in the direction of even greater openness and receptivity to simple justice.”¹⁰³

The Colony of New Jersey's Judicial System in the Seventeenth and Eighteenth Centuries

By examining the legal system of the colony of New Jersey, the above statement about the middle colonies' "openness and receptivity" can be further illustrated. Its legal system was similar to the rural areas of New York, as it derived primarily from the courts of England. However, the judicial system of the united colony of New Jersey had two different systems developed by varying Old World countries. The Dutch, Swedes, and Finns all played their part in the early development of the court system. The Dutch that settled in East Jersey were left to administer their own affairs, but their settlements were small and scattered. With greater staying power, the English Quakers remained influential in West Jersey.¹⁰⁴

Two main factors led to the formation of a legal system in the colony of East Jersey. First, "the courts established by the government of the United Netherlands in New Jersey were merely local and temporary. They were followed and superseded by courts of English origin, administering English law."¹⁰⁵ However, the Dutch persisted in their settlements and many Dutch family names were later found in the lists of judges and lawyers in the colony. The second factor in the formation of the legal system in New Jersey springs from the aims and goals of the proprietors that founded the colonies. When the

¹⁰³ Hoffer, p. 35.

¹⁰⁴ Keasbey, Edward Quinton. *The Courts and Lawyers of New Jersey: 1661-1912*. New York: Lewis Historical Publishing Company, 1912. pp. 9-12.

¹⁰⁵ Keasbey, p. 12.

Duke of York granted New Jersey to Berkeley and Carteret it was assumed that the government would be instituted by the proprietor authorities. However, the Duke of York intended that New York would assert control over East Jersey. The proprietors fought back and won back the right to govern their proprietary colony.¹⁰⁶

East Jersey created a court system by an act passed by the assembly in 1675. The lowest level court was the town council, which was made up of two or three elected men and were able to settle disputes under 40 shillings.¹⁰⁷ Above the town council sat the county court or court of session. It convened twice a year, held unlimited jurisdiction and was comprised elected judges. Appeals from the court of session could be made to the Court of Assize, renamed the Court of Common Right, which met only once a year. This court had jurisdiction over equity and the common law. Appeals moved up to the governor and his council. This process represented the basic judicial system of East Jersey until the union in 1703.¹⁰⁸

The Quaker colony of West Jersey had yet another legal system altogether. Like that of Puritan New England, there was a strong ideological basis. However, the Quakers held different theological views, which altered the regulations on moral behaviour. Similar to New York, the Quaker colony had a large diversity among the people. "The result was a system of law enforcement whose operation was frequently haphazard and sometimes contradictory."¹⁰⁹

¹⁰⁶ Keasbey, p. 65.

¹⁰⁷ Tanner, p. 458.

¹⁰⁸ Tanner, pp. 458-9.

¹⁰⁹ Greenberg, "Crime, Law Enforcement, and Social Control In Colonial America," p. 301.

With a strong Puritan and Quaker influence on the laws, moral offences occupy a large portion of the early law books of New Jersey.

The Governor and his council were to nominate the judges and to ensure that courts were established to execute the laws of the colony. At the lowest level, a single justice sat at a court of small causes, which heard cases under 40 shillings and petty offences. These courts were made up by the people in the town to serve the people in the town.¹¹⁰ Appeals could be made upward to the county court, which was the main arena for judiciary proceedings. The General Assembly did not assert its executive power until 1675. The legislature that was conceived at the Assembly in 1675 created the county courts, known as the Court of Session. This court was capable of trying civil and criminal cases, but could not try capital offences. The grand jurymen were to report to the county court "all such persons as shall at any time transgress the law provided to suppress disorders."¹¹¹ In 1688, the Assembly first dictated the punishments for resisting authority, defined the offences, and imposed the penalty for death, burglary, arson, stealing, and murder. However, they still did not create a court to have these cases tried and convicted.¹¹² The Supreme Court of Appeals was established by the assembly in 1693. One or more county justice and one or more justice from the governor's council sat on the bench and heard only appeals. However, in 1699, the name changed to the Provincial Court and was able to hear original cases that dealt with a sum larger than £20. Its three judges

¹¹⁰ Tanner, p. 460.

¹¹¹ *Colonial Laws of New York*, p. 101.

¹¹² Surrency, p. 262.

met twice a year and submitted appeals to the General Assembly of the colony.¹¹³

When East and West Jersey were united in 1703, a few changes were made to the judicial system. In 1704, the united assembly passed "An Ordinance for Establishing Courts of Judicature." The ordinance "while retaining essentially the existing courts, reorganized and recombined them in an excellent manner."¹¹⁴ At the town level, a J.P. was able to try cases of trespass and debt up to forty shillings. All cases above twenty shillings could be appealed up to the county court, or the court of session. Each county also had a Court of Common Pleas, which tried cases of common law. Cases of appeal from the county courts could be made to the Supreme Court, which held unlimited jurisdiction over civil and criminal law. Justices of the Supreme Court were instructed to go on circuit, as necessary.¹¹⁵ This basic structure endured throughout the colonial period.

New York and New Jersey did have court structures firmly in place by the beginning of the eighteenth century. Many factors and influences within the respective colonies moulded the judicial systems. As the colonies approached the turn of the nineteenth century, the legal system had endured the challenge of growing, pluralistic societies, the Revolution, and the early years of statehood. However, during the colonial period the system was not as efficient as it became in the nineteenth century. The churches gained further influence in the eighteenth century as they utilised their own judicial systems to supplement the law enforcement agencies of the state, as will be demonstrated below.

¹¹³ Tanner, pp. 460-1.

¹¹⁴ Tanner, p. 462.

¹¹⁵ Tanner, pp. 462-3.

Church as a Court of Law

“Legal control is ... primarily, though not exclusively, control by directions....”¹¹⁶ Laws were created as general orders that were backed by threats in order to ensure their obedience. The organisation of these laws, and their consequences if broken, was intended to teach a lesson to the offender and the community at large.¹¹⁷ The church and state intercepted one another at this point, as both held the intention of imposing a moral code. The boundaries between the church and the state’s courts were not always clear in both of the colonies of New York and New Jersey, as they both held the same objective of maintaining a moral society. This aim was realised by the church dealing with secular cases, just as the civil courts dealt with moral offences. In both New York and New Jersey the church session heard a variety of cases. Its main objective in disciplining members who broke the laws of the church was to edify the congregation and to remove the disruptive tensions within the parish. Offenders were brought before the church to be rebuked and to serve as an example of how not to conduct oneself. The punishments were designed to help offenders be repentant and to teach them how to correct their unchristian behaviour. The church’s concern to maintain moral societies also manifested itself in the secular judicial realm. Consequently, the church used its court system to resolve secular issues that technically would be handled by a civil or criminal court, such as theft, forgery, and stealing, to name a few.

The church courts were used to supplement the civil and criminal courts for several reasons. First, the need for the church session meeting to serve as a

¹¹⁶ Hart, H.L.A. *The Concept of Law*. Oxford: Oxford University Press, 1992. p. 21.

¹¹⁷ Hart, pp. 20-25.

supplementary secular court was due in part to the underdeveloped legal system that was ineffective at solving such disputes. As seen above the judicial court structure was in place by the eighteenth century; however, it was not a stable system at first and lacked educated lawyers and judges to handle the growing legal needs of the colonies.

Second, the types of cases that the Presbyterian courts heard, generally fell within the jurisdiction of the justice of the peace, who served as “the foundation stones of the whole scheme of law enforcement.”¹¹⁸ However, with a strong reliance on the office of the J.P. to administer justice, inconsistencies and problems emerged within the secular system. The system of criminal justice was decentralised, and it granted extensive powers to the Justices of the Peace. The J.P.s were able to function without constant supervision and were not directly accountable to anyone. It must also be remembered that these justices were most often layman with very little education and training, if any at all.¹¹⁹ Throughout the colonial period a Justice of the Peace without an education would have used the *Conductor Generalis* as an alternative to a proper legal education.¹²⁰ This book was changing constantly, as described above, and it was not necessarily used fully in the court rooms of the Justices of the Peace. Also, these men were chosen from the elite of the society and were handed enormous powers. Not that these men were incapable of being fair and honest judges, but perhaps the devout churchgoers were more inclined to trust the pastor and elders of the church.

Furthermore, the Justices of the Peace were also in high demand. The session courts were held semi-annually in most areas of the colony. Albany held

¹¹⁸ Conley, p. 282.

¹¹⁹ Greenberg, *Crime and Law Enforcement in the Colony of New York 1691-1776*. p. 34.

¹²⁰ Conley, p. 280.

a session court three times a year and New York City held a session court four times a year. This infrequency of the court created a need for an alternative method to solve minor and major disputes. The session of the church met at least once a month and most met weekly. However, in some instances the church session could meet as a need arose. With the frequency of the meetings and a stable system, the church served to supplement an overworked J.P.

Third, criminal cases that went to trial often were lengthy procedures and did not always result in a resolution. Borrowing from Greenberg's study of criminal cases in New York, only 47.9% of the total 5,297 cases ended in a guilty sentence.¹²¹ However, only 15% were acquitted.¹²² The remaining 37% never witnessed a resolution of their case.¹²³ According to Greenberg, the records indicated that it was very difficult to bring an accusation to trial and to achieve a verdict. In the church records, most of the secular type cases were resolved. The people would be aware of that and may have opted to utilise the services of the church rather than engaging in a lengthy and often-unsuccessful criminal justice system.¹²⁴

The fourth reason why the Presbyterian court system was utilised to solve disputes between the inhabitants of the colonies was the fact that they were simply able to choose who resolved their disputes. In her study of law and society in Connecticut, Cornelia Dayton found that "New Englanders with legal standing could choose, after all, whether to submit their disputes to the magistrates and courts or resort instead to other forms of mediation, such as the

¹²¹ Greenberg, *Crime and Law Enforcement in the Colony of New York 1691-1776*. p. 71.

¹²² Greenberg, *Crime and Law Enforcement in the Colony of New York 1691-1776*. p. 71.

¹²³ Greenberg, *Crime and Law Enforcement in the Colony of New York 1691-1776*. p. 71.

¹²⁴ Greenberg, *Crime and Law Enforcement in the Colony of New York 1691-1776*. p. 71.

parish or neighborhood arbitration.”¹²⁵ Similarly, the court system was only capable of trying cases that were brought to them. Without a modern day police scheme, the courts relied upon the public bringing the cases to the courts. The church utilised the office of the elder to serve as quasi-policemen and report back to the church session with the names and instances of any potential offenders.¹²⁶ The offender could then decide to obey the church court or take the matter to a civil court.

Finally, the Presbyterian church court system was readily available and accessible to its parishioners. Dayton suggested that potential courtroom participants were burdened with the need to master the legal procedures and incur the hefty court fees.¹²⁷ Additionally, the courtroom became the stage for “sparring matches controlled by technical rules in which lawyers were the actors, the nominal litigants were mute spectators.”¹²⁸ These proceedings would have intimidated the local farmer who needed arbitration because a neighbour might have wrongfully cut down a tree on his property. In this hypothetical scenario, the farmer most likely felt more at ease with presenting his case to the church and seeking their guidance and mediation. As argued above, it was essential for the church courts to broaden their disciplinary proceedings to encompass the growing needs of the judicial systems in the colonies.

With the reasons discussed above, the Presbyterian system of church government naturally lent itself to solving the secular affairs of its members. From holding the churches’ members accountable to Christian-like business

¹²⁵ Dayton, p. 4.

¹²⁶ Dayton, pp. 4-5.

¹²⁷ Dayton, p. 49.

¹²⁸ Mann, p. 165.

ethics, to property disputes among neighbours, to cases of fraud, session meetings often turned into court trials. Although the decisions made by the sessions did not hold any civil jurisdiction, it appears that the members did accept the rulings of the elders, perhaps because the members of the congregation were adhering to Biblical premises or because the elders were well-respected men, who had been elected by the congregations. The church invested in the moral climate of its community, and therefore, would not object to handling such cases.

The Presbyterian churches in New Jersey and New York both tried cases of a secular nature. However, New York's Presbyterian churches did not hear these cases with the same frequency that their neighbours to the south did. Peter Hoffer suggested that New Jersey heard more of these cases because of its Quaker roots. "Well into the eighteenth century, Quaker church courts heard cases that would today be classified as civil wrongs (torts), violations of regulatory statutes, breaches of contract, and charges of immorality."¹²⁹ For colonists to avoid lawsuits, feuding men and women brought their cases to the church courts. In Pennsylvania and New Jersey, the Quakers heard cases regarding civil wrongs (torts), breaches of contract, and violations of statutes. In New England, the Puritan leaders acted as arbitrators to avoid the use of the civil courtroom.¹³⁰ Due to the steady increase of litigation, Hoffer states that "the litigiousness of ordinary colonists had become a fixture of the colonial legal landscape."¹³¹ Perhaps to alleviate the cost of court trials or avoid the waiting periods for the feuding colonists, the churches in the colonies offered a valuable

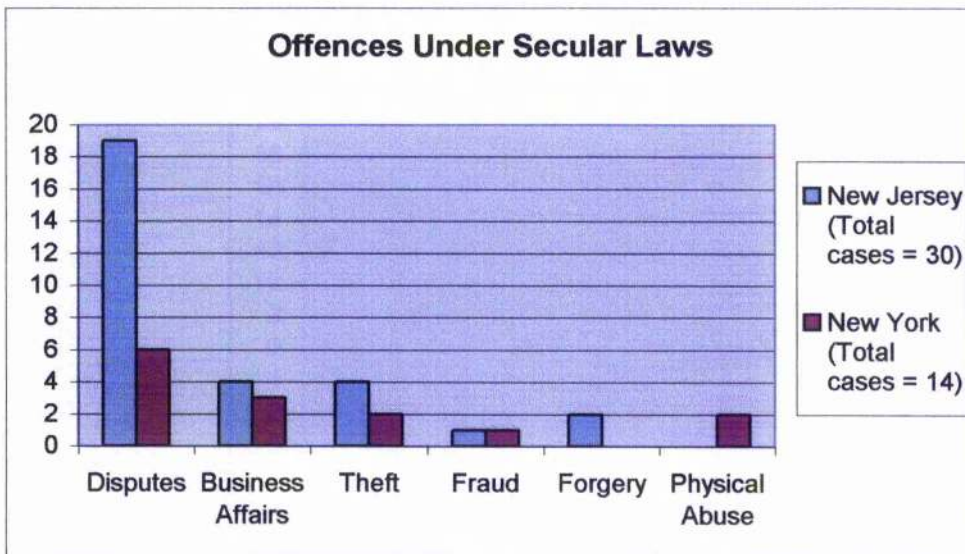
¹²⁹ Hoffer, p. 77.

¹³⁰ Hoffer, p. 77.

¹³¹ Hoffer, p. 79.

service. Proper business ethics and practices, appropriate dispute resolution, and the obedience of secular statutes were all encouraged by the Presbyterians in New Jersey and New York.

Chart 4: Total Number of Secular Cases Tried by the Church Courts



The Presbyterian Church disciplined upon Biblical principles. Scripture defined unchristian behaviour and the appropriate discipline. This not only included the well-defined sins, such as adultery, incest, and murder, but also civil suits of improper business relations or property disputes and criminal suits, such as fraud, forgery, or stealing. Serving as a civil court, the Presbyterian Church heard cases of improper business practices and breaches of contracts and promises. As mediators the church officials heard disputes over property rights and arbitrated between feuding neighbours.

With regards to business ethics, the growth of the colonies also produced a growth in the market economy and trade. Populations were rising, the geographical area was expanding, and the societies were taking on a variety of

personalities. Commerce and trade were also expanding. Fiscal growth led to the opportunity for wealth, both for towns and for individuals. The desire for success was a motivator as many travelled in overcrowded boats across the Atlantic. In a new territory without trade commissioners and rules to govern business practices, the church stepped in to enforce ethical business practices.

Commercial society was developing in the colonies. The business practices of Britain crossed the Atlantic making the marketplace the common method for trade of goods in the major towns of the colonies, like Boston, Philadelphia, and New York. Fairs, farmers markets, and public markets were utilised in the rural areas of the colonies. The regulation of goods was carried out by guilds and local courts in Britain, whereas the trading practices in the colonies were controlled by peer pressure above anything else. The crowd of viewers, the searchers, and the local wardens became the forces for the enforcement of fair trade practices.¹³² Social relations were expanding and being affected by the growth of the commercial state. Credit arrangements were based on trust. However,

as market competition and disputes became common, 'society' came to be defined, not just as the positive expression of social unity through Christian love and ritual as had been the case in medieval England, but increasingly as the cumulative unity of the millions of interpersonal obligations which were continually being exchanged and renegotiated.¹³³

With new social relations, the church was no longer the central binding factor of society. People in business relations could no longer trust the goodness in each other. The competitive marketplace fuelled individual's passions and desires for

¹³² Vickers, Daniel. "Competency and Competition: Economic Culture in Early America." *William and Mary Quarterly*, Third Series, Volume 47, Issue 1, Jan., 1990, p. 17.

¹³³ Muldrew, Craig. *The Economy of Obligation*. London: Macmillan Press, 1998. p. 123.

financial success; however, it also increased the frequency of dishonest business relations.¹³⁴

The church demonstrated concern with poor business practices among its members. The church desired that Christians behave appropriately and honour their business arrangements, believing that sharing the same faith included being able to trust neighbours. Robert Low, in the town of Fairton in the colony of New Jersey, was accused by the Widow Sayer of not fulfilling a bargain that she had made with him on behalf of her sons. On April 21, 1762, the session met to settle the dispute regarding Low's business ethics. After deliberating on the matter, the elders concluded that Low had done nothing wrong.¹³⁵ The church also heard cases where the hired worker accused the person that had hired him. In the spring of 1747, in Morristown, New Jersey, Shipman made four accusations against Timothy Peck and Nutman.¹³⁶ Shipman had been hired by Peck and Nutman to winter their cattle. The first accusation, not clear in the record, was dismissed by the session, as "it appears by Evidence that the Charge against him was groundless."¹³⁷ The remaining three accusations depict the arrangements made between the parties to take care of some cattle and household goods. Timothy Peck and Nutman were to pick up a steer from Shipman, who wintered the animal. The session "cant but think sd Peck & Nutman to blaime in going at such a time when as appear they were apprehensive for Shipman was not at home."¹³⁸ It appears that Nutman and Peck

¹³⁴ For further discussion on the moral world of credit, see Muldrew's *The Economy of Obligation*, chapter five.

¹³⁵ Fairfield Church, Fairton, NJ, April 21, 1762.

¹³⁶ 'Nutman' is the only name given for this person.

¹³⁷ First Presbyterian Church, Morristown, NJ, March 1747.

¹³⁸ First Presbyterian Church, Morristown, NJ, March 1747.

did nothing specifically wrong. However, they did go about their business in an inefficient manner that caused this dispute. The Church could not take any legal action against Nutman and Timothy Peck, but they did listen to both parties to help facilitate the proper business relations.¹³⁹

Similar types of cases were found in the colony of New York. Albany was one of the two established cities in the colony of New York, New York City being the other. Business ethics were very much the concern for the growing city, which is reflected in the case of Mrs. Andrews in the church at Albany. Andrews was brought before the session of the Presbyterian Church of Albany on April 5, 1791, for "certain irregularities." She was charged by public *fama* and two elders were sent to her to discuss these irregularities. After admonition from the elders, she was cited to appear before the session again on April 12, 1791. Andrews was accused and questioned about her business, which was "contrary to the laws of the State & the rules of Christian candor."¹⁴⁰ The session minutes do not record the details of her irregular business practices. However, she did confess to a few of the charges against her and palliates over the remaining charges, which according to the session, illustrated her lack of complete repentance. The session suspended Andrews from the Lord's Table until January 1, 1793, when she finally made a sincere confession before the session.¹⁴¹

Proper business ethics meant that one would keep the promises and contracts established through the business affairs of an individual. The session of the Presbyterian Church in Ballston Center was presented with a case

¹³⁹ First Presbyterian Church, Morristown, NJ, March 1747

¹⁴⁰ Presbyterian Church, Albany, NY, April 12, 1791.

¹⁴¹ Presbyterian Church, Albany, NY, January 1, 1793.

regarding a business promise or a contractual obligation made between two of its members. In July of 1791, Elijah Kellogg, a deacon in the church, entered a written complaint against Mr. White saying that he did not fulfil the contractual obligation that had been established between them. The two gentlemen entered into a business relationship, which was confirmed with an oath sworn by White. The arrangements of their business were documented in an affidavit, which was unfortunately not recorded into the minutes. The case occupied the business of the session for six months before it was determined that there was not enough evidence to support Kellogg's accusation.¹⁴² After six months of deliberations, the session concluded that

with regard to Mr White furnishing Mr Kellogg with a copy of sd affidavit it does not appear to the session from any evidence that he was guilty of breach of promise as no time was specified when it was produced and Mr Kellogg has finally seen it. And as to their affidavit being contrary the one to the other, the session have no full proof of the matter and therfor they must leave it to their own consciences, and to God before whose [ba.] the secrets of all hearts still to be decided.¹⁴³

Similar to business practices, a contract or promise that was agreed upon between two individuals was intended to be honoured. When that promise was broken, the parties involved could take the matter to a civil court or, in the following case, take the issue to the church leaders. In 1771, the case of [Aber] Canfield illustrated how the church helped mediate between the parties involved in cases of *assumpsit*.¹⁴⁴ [Aber] Canfield bargained for a mine, which Alexander Carmichael owned. The two entered into negotiations and achieved an agreement over the payment for it. Canfield agreed to pay Carmichael twenty

¹⁴² First Church of Christ, Ballston Center, NY, July 1791, August 1791, August 20, 1791, November 14, 1791, November 20, 1791, and December 7, 1791.

¹⁴³ First Church of Christ, Ballston Center, NY, December 7, 1791.

¹⁴⁴ *Black's Law Dictionary* defines *assumpsit* as "an express or implied promise, not under seal, by which one person undertakes to do some act or pay something to another" (p. 49).

pounds for the mine. Before the church session of Morristown Presbyterian Church, Carmichael then accused Canfield of not paying what was owed to him in a timely fashion. Alexander Carmichael brought Canfield to the church and accused him of a falsehood in their bargain. The church heard both parties on December 13, 1771, and concluded that Canfield did not intend any falsehood regarding the payment arrangement.

But as to subsequent Bargain in wh sd Canfield agreed to pay ye 20 pounds Stipulated for the Mine we judge yt although it does not appear that sd Canfield meant or intended to deceive sd Carmichael at yt Time, & as his not paying it finally was owing to ye failing of certain conditions upon wh sd Canfield came to that agreement, yet it is our opinion yt sd Canfield was much to Blame in expressing him Selfe so Enigmatically, or not fully expressing those conditions on which he came into that agreement, especially at his not fulfilling of it, was of so much importance & attended with such bad consequences to Carmichael.¹⁴⁵

The elders in Morristown agreed that although Canfield did not intentionally tell a falsehood when making the bargain with Carmichael, Canfield did not conduct his business in a Christian-like manner and therefore was rebuked by the session for poor business practices.

Breaches of promise did not necessarily occur in business relations, as the following example illustrates. In the Presbyterian Church of New Scotland, Mr. Judd, the church's pastor, was accused of a breach of promise.

Unfortunately, the earliest session minutes for the church in New Scotland have been lost, but the case does appear in the minutes of the Presbytery of Albany due to the involvement of a minister. On September 14, 1796, several members of the church in New Scotland accused Judd of falsehoods, abusive language, and the breach of promises.¹⁴⁶ At the same meeting of the presbytery, Judd in turn accused one of the elders and three of the trustees of the church with

¹⁴⁵ First Presbyterian Church, Morristown, NJ, Dec 12, 1771.

¹⁴⁶ Presbytery of Albany, September 14, 1796.

"improper and insolent language" towards him and "for irregularly and unpresbyterically desiring him immediately to remove from the Congregation, and for daringly shutting the Church door against him to the dishonor of the Society and injury of the interest of religion."¹⁴⁷ After great deliberation the following day, the members of the presbytery resolved that Judd was guilty in breaking his promises, along with the other offences, and was dissolved of his ministerial duties at the Presbyterian Church in New Scotland. The presbytery also found his accusations against the officers of the church to be supported and admonished the men for the imprudence.¹⁴⁸

In addition to promoting proper business ethics, the church sessions also served as arbitrators and mediators. In most cases, the session resembled the neutral third party to aid in resolving disputes among the church members. The churches heard a variety of cases and found varying degrees of success. In business matters and contractual obligations, the session heard the initial premise of the business contract, the stipulations of the agreement, and how the contract was not met. The church arbitrated to help the parishioners settle their disputes. As mediators the session also helped members of the congregation find forgiveness among their brothers and sisters. The towns were small communities and most of the church members dealt with one another in their daily lives. Scripture was clear about how differences between brethren should be dealt with, and as problems occurred from these business relations, the church stepped in to act as a mediator. The elders of the church volunteered to settle some disputes and others were brought by one of the feuding members. In the case of Shipman, Timothy Peck, and Nutman, discussed above, the elders of the

¹⁴⁷ Presbytery of Albany, September 14, 1796.

¹⁴⁸ Presbytery of Albany, September 15, 1796.

Presbyterian Church of Morristown, NJ, told the men involved that "if a friendly argument Cant be obtained among your selves it be Left to Referrees."¹⁴⁹ The men took the advice of the session and utilised the elders to act as referees in their dispute over a division of cattle and household goods.

The leadership of the church encouraged dispute resolution. Forgiveness was a strongly taught doctrine of the church. When conflict surfaced among members of the congregation, the church would encourage forgiveness for any wrong doings performed against one another. At the First Presbyterian Church in Morristown, on December 22, 1783, Silas Condict, Esq. gave the session a letter, which he received from Dan Tichenor, which contained charges against himself and his wife. The charges against Condict alleged that he "wrongfully [asserted] that Tichenor had sent his wife's children away & could not let them live with her," that he refused to "get his wife a cupboard, a pair of Buckles & some Tea Spoons" and that he "wrongfully [asserted] that his wife suffered in sickness & had nothing for her comfort because he was so cross yt he would not let her have it."¹⁵⁰ Each of the three charges was dealt with in succession by the elders. After deliberating on the entirety of the case, they concluded that there was not sufficient support or evidence for any of the three charges. In dealing then with Tichenor, the session concluded that he was "very culpable in giving him self & others so much trouble & disturbance about matter in them selves of no great importance - however they are disposed to attribute it to his unexperience & unhappy prejudices rather to ye vitiousness of his heart."¹⁵¹ The

¹⁴⁹ First Presbyterian Church, Morristown, NJ, March 1747

¹⁵⁰ First Presbyterian Church, Morristown, NJ, December 22, 1783.

¹⁵¹ First Presbyterian Church, Morristown, NJ, December 22, 1783.

elders encouraged Condict to forgive the unchristian behaviour of Tichenor and like wise for Tichenor not to continue with his spiteful accusations.

Another reason why the sessions were so willing and eager to resolve disputes among the parishioners was because in the small church communities, rumours spread, and the members of the congregations took sides. In Westfield, precisely this happened and almost split the church. On February 12, 1761, Aron Miller Jr. sought baptism for his child. However, Henry Clark accused Miller of unbecoming conduct and did not support the baptism. Both sides offered testimonies, but the session did not feel that there was enough evidence on either side to draw a conclusion.¹⁵² In the subsequent weeks, the case continued to occupy the session's business, but without resolution. By April 3, 1761, the case had not only consumed the members of session, but also the congregation, which began to divide and take sides. Therefore the Moderator of the session decided that "as the difference run high and a considerable number of the Parish seemed engaged on one side and the other, I thought it most prudent and advisable upon the whole to withdraw and call a neighbouring minister to sit as Moderator in the Session."¹⁵³ Fortunately, the Reverend Kirkpatrick was visiting Westfield that day and he was called to serve as the neutral Moderator. After the case was re-examined and all evidences were presented, the Rev. Kirkpatrick decided that Clark did not have sufficient grounds to make accusations against Miller.¹⁵⁴

¹⁵² First Presbyterian Church, Morristown, NJ February 12, 1761. Further records of the case appear on February 23, 26, and April 3, 1761.

¹⁵³ First Presbyterian Church, Morristown, N.J, April 3 1761.

¹⁵⁴ First Presbyterian Church, Morristown, NJ, April 3, 1761.

The above dispute resolutions dealt with difference of opinion or misconduct towards fellow brethren. The elders served as mediators to navigate through disagreements and achieve unbiased resolutions. In addition to differences of opinions, the elders also dealt with legally binding matters. Again, in Morristown, the elders heard a dispute over a land title between Doctor Elijah Gilbert and Benjamin Coe over a vacant piece of land. Coe was supposed to compose a deed for the land on behalf of his son-in-law Edward Bryan, but had neglected to complete the task for various reasons. The two men brought that case before the session "in order for peace of the Two families."¹⁵⁵ The session found Coe's reasons for neglecting to furnish Gilbert with the deed to the land insufficient and therefore ordered Coe to rectify the situation by the following Sabbath.¹⁵⁶

Similarly, on June 10, 1773, another dispute over the title of a tract of land was brought before the session of Morristown. The land was located in Hanover, a neighbouring town. Colonel Ford claimed a proprietary right on the land that he believed was vacant. However, in 1715, the land had been surveyed and was therefore not vacant. Joseph Ketchel, Esq. appeared before the session on behalf of Joseph Baldwin and Alexander Carmichael, who believed that they had rights on the land. The session heard the evidences and delayed the case until the following week.¹⁵⁷ On June 17th, the session reconvened and encouraged the parties to "retire by them selves, with mutual benevolence and condescension, to make proposals for accommodation."¹⁵⁸ The men met

¹⁵⁵ First Presbyterian Church, Morristown, NJ, August 29, 1764.

¹⁵⁶ First Presbyterian Church, Morristown, NJ August 29, 1764.

¹⁵⁷ First Presbyterian Church, Morristown, NJ June 10, 1773.

¹⁵⁸ First Presbyterian Church, Morristown, NJ June 17, 1773.

privately as directed by the session and then to the session's "great satisfaction, appeared in a friendly manner, & declared to the Session, that they had come to an intire agreement in the disputed matter."¹⁵⁹ The case was resolved and all parties involved were satisfied.

Realty cases were also tried before the ecclesiastical sessions. During the session meeting on February 24, 1775, Joshua Winget, a member of the Presbyterian Church of Morristown, was questioned regarding the appropriateness of selling his personal estate and offering a mortgage on a piece of land to two different men. The elders considered the allegations and concluded that his giving a "Bill of Sale of all his personnel estate to Abr Talonage to secure a part of his estate to his Family" was an attempt to defraud his creditor.¹⁶⁰ Winget was also found guilty of the second charge in which he gave "a mortgage upon Lands which were before mortgaged & taking advantage of their not being recorded."¹⁶¹ For these charges and others,¹⁶² Joshua Winget was admonished and ordered to make a public confession of all of his wrongs.

The church in the colony of New York also dealt with property disputes among its members. In Goshen Mr. Wallhill brought James Caldwell, his neighbour, before the church. The pair had a dispute over their respective properties and went to the church to seek a resolution. The session clerk did not record the details of the dispute, only the outcome of the case. In the end, the session concluded that the dispute had not been handled in a Christian manner

¹⁵⁹ First Presbyterian Church, Morristown, NJ June 17, 1773.

¹⁶⁰ First Presbyterian Church, Morristown, NJ, February 25, 1775.

¹⁶¹ First Presbyterian Church, Morristown, NJ, February 25, 1775.

¹⁶² He was also charged for borrowing money without the intention of making payment on them and for "making too free with Spiritous Liquors & not attending his proper business as became his station in life & Christian profession."

and both parties were rebuked accordingly. Furthermore, the Moderator admonished Caldwell for the "undue manner" in which he "inlisted the feelings & passions of many of their connections & neighbours in there respective interests."¹⁶³ James Caldwell was suspended from communion with the church and was later restored on the recommendation of the Presbytery of Hudson on April 17, 1797.¹⁶⁴

Damage to a neighbour's property was also brought before the church court. In Fairton on May 6, 1781, Mr. & Mrs. Elmer charged Mr. & Mrs. Nixon with unchristian action. The session minute book seems to have had pages torn out of the book and the beginning of this case has been lost. However, there is reference to the fact that Mr. Nixon's hogs became loose and caused damage to Mr. Elmer's property. Mr. Elmer brought to the attention of the session that Mr. Nixon had offered to pay for the damages, but had not done so yet. The session commanded that the promise of the payment should be honoured.¹⁶⁵

The church also mediated between feuding parishioners, regardless of the subject matter in contention. Disputes over baptism or membership rights of the communicants were heard by the elders of session. However, most of the cases of arbitration dealt with accusations of unchristian behaviour. Mr. Palmer in the church at Ballston Center brought forth a complaint against General James Gordon on March 8, 1791. Attempting to follow the procedures of church discipline stated in the book of Matthew, Palmer claimed to have made several attempts to discuss the matter with the General, who did not respond. Therefore, Palmer turned to the church for assistance. The church was able to call both

¹⁶³ First Presbyterian Church, Goshen, NY, September 4, 1796.

¹⁶⁴ First Presbyterian Church, Goshen, NY, April 17, 1797.

¹⁶⁵ Fairfield Church, Fairton, N. J., May 6, 1781.

parties together to allow each man to present his case. Neither party was satisfied after the first meeting with the session, so the elders formed committees to visit with each man individually.¹⁶⁶ A committee dealt with each man and still there was no resolution.¹⁶⁷ The case then disappears from the records, but emerges again on May 25, 1797, with Palmer telling the session that "he could not Sit Down with Mr. Gordon at the Communion because he Did Not Show him that Treatment that he thought a Brother Aught."¹⁶⁸ Palmer and General Gordon were called before the session monthly until May 7, 1798, when the last entry about the two men was recorded. In this case, the session tried to facilitate a resolution between the two men, but neither seemed willing to comply with the requests of the church.¹⁶⁹

The session of the Presbyterian Church of Goshen was more successful than their counterparts in Ballston Center. Sarah Arnot was accused of unchristian imprudence on October 6, 1795 by a common report. Allegedly, she had hired Samuel Ward, a young man, to "make a man in the neighbourhood jealous of his wife." Sarah denied the allegation. Ward was called before the session and told them that Arnot asked him if he "will take a Dollar or a bottle of Rum to make the man before aluded to Jealous of his wife and that if he took the rum he could take the man away, make him grogy & then go with his wife." He cleared his name with the testimony of John Carpenter, who was with him at the time this meeting took place. The session continued to mediate as the two

¹⁶⁶ First Church of Christ, Ballston Center, NY, March 8, 1791, March 9, 1791, March 14, 1791, and March 21, 1791.

¹⁶⁷ First Church of Christ, Ballston Center, NY, April 18, 1791.

¹⁶⁸ First Church of Christ, Ballston Center, NY, May 25, 1797.

¹⁶⁹ First Church of Christ, Ballston Center, NY, May 7, 1798. Consulting the minutes up to 1801, neither party appears before the church session again.

persons involved put forth their rebuttal. Upon deliberation, the session found Sarah Arnot "guilty of unchristian imprudence in Countenancing such Vain & highly improper conversation especially on the Lords Day." She was further reproved and was suspended from church privileges.¹⁷⁰ There was no further mention of Samuel Ward, but Sarah was restored to the church on June 4, 1796.¹⁷¹

Similarly, the elders of Mattituck Presbyterian Church attempted and succeeded in mediating an argument between Hezekiah Reeve and Gersham Terry. On January 22, 1765, the elders of the church met specifically to "settle ye Difficulty between two of ye Brethren."¹⁷² Terry charged Reeve with unchristian behaviour, first confronting Reeve in private and then bringing two of the brethren with him. Reeve did not respond to his attempts and the "Breech appeared to be wider than before." The session heard from both sides of the issue and believed that Reeve's side appeared to be "more and more dark," despite his attempts to justify his behaviour. The other brethren which Terry called upon to confront Reeve also shared their belief that Reeve had contradicted himself. In his defence, Hezekiah Reeve professed that the men misunderstood him.

After much Discourse with him relating over ye Circumstances & some particular Expression, that passed between them, he say, he did it to try them & hear what they could say upon it, & that he had reasons for his conduct in this Affair that he had not yet made known, nor would not make them known till he came before the Presbytery or before a Counsel & then he would tell ye whole.¹⁷³

¹⁷⁰ First Presbyterian Church, Goshen, NY, October 6, 1795.

¹⁷¹ First Presbyterian Church, Goshen, NY, June 4, 1796.

¹⁷² Presbyterian Church, Mattituck, NY, January 22, 1765.

¹⁷³ Presbyterian Church, Mattituck, NY, January 22, 1765.

The session continued to listen to both sides and after their reflection unanimously agreed that Hezekiah Reeve was in the wrong, as he "had no ways cleared his case but had greatly aggravated it in making his own Defence."¹⁷⁴

Criminal code violations were also dealt with by the Presbyterian churches in the colonies. In addition to the civil types of cases depicted above, the church also heard cases of forgery, fraud, and stealing. The church believed that man should follow the laws of the land. God gave the "power of the sword" to the civil authorities and the lawful use of force to administer just laws. By breaking those laws, the offender also violated the biblical principle.

Honesty was a trait expected of Christians. Scripture was clear about telling the truth and behaving in a truthful manner. Fraud of any kind was strongly discouraged by the church and punished by the criminal courts. Fraud, "a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment,"¹⁷⁵ was also viewed as an action of unchristian like behaviour and was therefore disciplined by the church. The session at Princeton Presbyterian Church heard the confession of Michael Waddel and the writings of witnesses to his fraudulent practices and misdemeanours. The session minutes did not offer details of his behaviour, however, the minutes do specify that he was suspended from the communion of the church. Due to incomplete records, it is unclear whether Michael Waddel was restored to full communion of the church.¹⁷⁶ In Fairton, NJ, the elders at the

¹⁷⁴ Presbyterian Church, Mattituck, NY, January 22, 1765. Mr. Reeve was debarred from the Lords Table. The session minutes end here and do not begin again until 1772; therefore there is no record of the end result of this case.

¹⁷⁵ *Black's Law Dictionary*, p. 292.

¹⁷⁶ First Presbyterian Church, Princeton, NJ, October 11, 1792.

Presbyterian Church, likewise heard the confession of Jonathan Garton stating that "he sold a certain bond against John Bateman ... knowing at the same time that orders had been given upon it to the amount of a considerable part of sd bond & concealed or not made known that circumstance."¹⁷⁷ Garton was judged guilty of a fraudulent deed and was ordered to make a private acknowledgement of his guilt after the moderator of session reprimanded him.¹⁷⁸

A further example of the church dealing with a fraud case was found in a case in Clinton, NY, which provides a very detailed example of how the session served as a secular court. The Religious Society of Clinton had been granted twenty-five acres of land by Dr. John Piedman of Philadelphia. In October of 1797, a complaint was filed by Zadock Loomis and Elisha Lamphere against Moses Foot, Esq. for fraudulent conduct and misrepresentation with concern to the promised land.¹⁷⁹ A "legal meeting" was held on October 10th, the complaint was read, and the "defendant plead to the Legality of it."¹⁸⁰ Zadock Loomis and Elisha Lamphere acted on behalf of the members of the society by placing their complaint and then testified against Moses Foot, Esq. However, the case was dismissed by the session because Moses Foot, Esq. successfully argued that the "complaints" did not follow the "direction of our Lord & Master Jesus Christ" for neither of them had "taken one or more Brethren and conversed with previous to telling it to the Chh..." which is the "second step pointed out in the

¹⁷⁷ Fairfield Church, Fairton, NJ March 19, 1798.

¹⁷⁸ Fairfield Church, Fairton, NJ, March 19, 1798.

¹⁷⁹ The record does not offer specifics regarding Moses Foot's involvement with the land, but does allude to the fact that he served as the agent for Dr. Piedman.

¹⁸⁰ Stone Presbyterian Church, Clinton, NY, November 10, 1797.

Gospel."¹⁸¹ Therefore, "after hearing the evidence the Chh. voted that the Complaint was illegal & dismissed it accordingly."¹⁸²

Moses Foot, Esq. was acquitted of the accusations brought against him, but he was not exonerated by the public. Therefore, on May 25, 1798, Foot submitted a request to the session for an opportunity to clear his name in hope of alleviating "the uneasiness that had arisen in the Minds of some of the Brethren of this Chh. by stating the reasons of his conduct & hopes that it will be satisfactory to the Chh."¹⁸³ The session agreed and listened to the case brought before them. Foot began by using the "Complaints exhibited by Zadock Loomis & Elisha Lamphere...to exhibit the Premise of the first."¹⁸⁴ He then offered his propositions and reasons for his actions and asked the session that they "judge upon them according to that wisdom which shall be given them."¹⁸⁵ The session accepted his propositions and re-opened the trial. Foot presented his case and then the "complaintant" was offered the same opportunity. However, neither Zadock nor Lamphere was present that day. The elders believed it necessary to delay the case, but Foot pled "that there was an impropriety in Adjourning the Meeting to give an opportunity for these persons to appear before the Chh. when the Chh. had no evidence present that their testimony should have any Tendency to substantiate the Charges alledged against him in the Complaints."¹⁸⁶ The elders voted not to delay the case and concluded that one final question should be put to the entire congregation. The Moderator asked the congregation "is it

¹⁸¹ Stone Presbyterian Church, Clinton, NY, November 10, 1797. The decision of the session was based on Matthew 18:15-17.

¹⁸² Stone Presbyterian Church, Clinton, NY, November 10, 1797.

¹⁸³ Stone Presbyterian Church, Clinton, NY, May 25, 1798.

¹⁸⁴ Stone Presbyterian Church, Clinton, NY, May 25, 1798

¹⁸⁵ Stone Presbyterian Church, Clinton, NY, May 25, 1798.

¹⁸⁶ Stone Presbyterian Church, Clinton, NY, May 25, 1798.

the judgement of the Members of this Chh. that Moses Foot is, from the Evidence exhibited to the Chh., guilty of the charges alledged against him in the Complaints presented by Zaddock Loomis and Elisha Lamphere" and the congregation voted in the negative.¹⁸⁷ Apparently, this was the end of the case, as none of the persons involved or the matter of the case appeared before the session again.¹⁸⁸

Forgery cases, punishable by a criminal court, also found their way into church session records of the eighteenth century. Months after Jonathan Garton appeared before the session at Fairton, David Fithian was placed on trial for forgery. Two witnesses testified against David Fithian and the session concluded that he was guilty and told to make a public confession. However, Fithian refused "to make the aforesd required acknowledgment, the session judge & declare that he ou't to be suspended & that he is suspended."¹⁸⁹ A similar case took place in Westfield, NJ, on December 30, 1765, but with a very different outcome. Mr. Woodruff was called before the session after several witnesses made their testimonies regarding the charge that Mr. Cory made against him for lying and forgery. After great deliberation the session "judge that Cory has without reason charged Woodruff with lying and forgery, and that he has in a very unchristian manner reported these things to Woodruff's disadvantage in several respects."¹⁹⁰ In a reversal of guilt, Cory was ordered to

¹⁸⁷ Stone Presbyterian Church, Clinton, NY, May 25, 1798.

¹⁸⁸ This is true up until 1810, where I stopped searching for any continuation to this case.

¹⁸⁹ Fairfield Church, Fairton, NJ, September 22, 1798.

¹⁹⁰ First Presbyterian Church, Westfield, NJ, December 30, 1765.

make an acknowledgement and confession of his guilt of bringing disadvantage to Wood's character before the session.¹⁹¹

The case with the greatest potential legal repercussions was stealing. The eighth commandment of Mosaic Law was not only tried in the civil courts, but also in the churches. It was difficult to discover whether a thief would be tried in the criminal court system and the church disciplinary system, as the likelihood of finding comprehensive court and church records was slim. However, from the session minutes it was clear that the church also disciplined for the breach of the eighth commandment.

"Thou shalt not steal," the eighth commandment, was broadly interpreted and strongly enforced by the church and the state. In the *Moral and Sentimental Magazine*, published for the "encouragement and support to those who are convinced that all true happiness, even in this life, must have its foundation on the immutable basis of *Virtue and Religion*,"¹⁹² a "Curious Anecdote of a Thief" was printed on Monday, July 17, 1797. The story described a servant who took the opportunity to steal from his master while serving him. Once caught by the master, the servant justified his behaviour by repeating what he had just heard from his master, saying that "after death there was no reward for virtue, nor punishment for vice, that I was tempted to commit the robbery." The servant continued by saying that he committed the crime without fear of the "laws of the country" because the master had just "removed [his] greatest fear."¹⁹³ The magazine editorialised and remarked on the "general corruption of faith and

¹⁹¹ First Presbyterian Church, Westfield, NJ, December 30, 1765.

¹⁹² *The American Moral & Sentimental Magazine, Consisting of a Collection of Select Pieces, in prose and verse, from the Best Authors, on Religious, Moral, and Sentimental Subjects, Calculated to for the Understanding, and Improve the Heart*. Vol. 1, New York: Printed by the Editor, 112, Chatham Street, next door to the Tea-Water Pump, 1797. p. 3.

¹⁹³ *The American Moral and Sentimental Magazine*, Monday, July 17, 1797, p. 79.

morals [that] had descended, and infected the world” and called out for greater discipline and education on morals.¹⁹⁴ The session in Morristown, NJ, attempted just that when Mr. Holloway made accusations of stealing against Mrs. Freeman and Mr. Tichener. Freeman was accused of stealing beer and the accusation was proved. Holloway then brought Tichener forward because he had falsely accused Holloway of stealing corn and meat on two separate occasions. On both occasions, it was believed that Tichener had not only falsely accused Holloway, but also acted inappropriately in his dealing with his suspicions. The session felt that Tichener “should have privately mentioned his suspicion to her yet his speaking of it to others, especially, so many years after was very rong, tho it seems to have been unhappily drawn out of him.”¹⁹⁵ This case came before the session due to allegations of stealing. However, both parties were obstinate in dealing with the session and the case continued to fill the pages of the session minutes for two years until the two men were excommunicated from the communion of the church.¹⁹⁶

Similarly, in the First Presbyterian Church in Huntington, James Kelcey was accused of stealing from Dr. Z. Platt on January 29, 1755. He claimed his innocence repeatedly until March 3rd of the same year. Several witnesses came forward and testified against Kelcey. Upon deliberation, the session

concluded that there was great Reason to suspect and fear that he had in a clandestine Way taken from the Doctr's Mills, Flour and Grain belonging to the Dr... had stolen a considerable Quantity of Corn out of the Field of Abraham Chichester last Fall, and sundry other things appearing which gave just Ground to suspect he, sd Kelcey has frequently without Leave cut Wood on and carried it off from other Men's Land.¹⁹⁷

¹⁹⁴ *The American Moral and Sentimental Magazine*, Monday, July 17, 1797, p. 79.

¹⁹⁵ First Presbyterian Church, Morristown, NJ, April 17, 1770.

¹⁹⁶ First Presbyterian Church, Morristown, NJ, April 17, 1770, November 6, 1771, December 13, 1771, and January 1, 1772.

¹⁹⁷ First Presbyterian Church, Huntington, NY, March 3, 1755.

James Kelcey was suspended and ordered to confess his guilt before the congregation for his "very dark" conduct. He was cited to appear two years later on January 17, 1757, but he did not. On January 31, 1757, he did appear and denied all the charges made against him.¹⁹⁸ The session minutes, unfortunately, end in 1761, and his name was never mentioned in any of the subsequent records.

The sessions of the Presbyterian churches in the colonies of New York and New Jersey heard a variety of civil and criminal cases. As the colonial legal system developed and adapted to the expanding colonial situation, the church courts were adapted to serve as quasi-secular courts. Members of the church were encouraged to solve their disputes. Presbyterians believed that civil litigation was justifiable, as long it was not done in bitterness or vengeance.

When minds are filled with malevolence, corrupted by envy, burning with anger, breathing revenge, or, in fine, so inflamed by the heat of the contest, that they, in some measure, lay aside charity, the whole pleading, even of the justest cause, cannot but be impious. For it ought to be an axiom among all Christians, that no plea, however equitable, can be rightly conducted by any one who does not feel as kindly towards his opponent as if the matter in dispute were amicably transacted and arranged.¹⁹⁹

The Presbyterians in theory had the option to take their dispute to a civil judge or to the church session. However, due to the growing judicial needs of the colonies, the state's legal system was inadequate to handle the influx of cases. Furthermore, the church officials were approachable and had a court system that could resolve secular cases. Similarly, any broken secular law was also a violation of Biblical law, and therefore subject to church discipline.

¹⁹⁸ First Presbyterian Church, Huntington, NY, January 31, 1757.

¹⁹⁹ Calvin, IV.xx.18

Conclusion

Scotland had a well developed and functional judicial system in the eighteenth century, as depicted at the start of this chapter. It had an effective hierarchy of courts at the local, county, and national levels. The courts themselves overlapped, but they remained separate from the church. Rather than supplementing the legal system, the Church of Scotland's discipline complemented the judicial organisations. The secular courts in Scotland dealt with the infractions of the civil and criminal codes, therefore, allowing the church to attend to its own business and the matters that most significantly affected the church. This will be further illustrated in the next chapter, as the issue of sexual misconduct is discussed.

The colonial Presbyterian Church did not share the same luxury of dealing solely with ecclesiastical matters, as illustrated above. However, it appeared that the church did not have a problem with dealing with such issues, as any violation of the secular laws was also an infringement of Biblical law. Briefly stated, the theological beliefs of the Presbyterian Church would naturally desire that there was peace among the members of the congregation. Disciplinary cases were broad and varied. Any quarrel among two members of the congregation, whether it be over business affairs or property, would need to be resolved somehow. The church recognised this need and served its congregation by standing as a quasi-secular courtroom to listen and mediate between the quarrelling parishioners, just as the sessions dealt with issues of immorality. As the church supplemented the state's legal enforcement of secular laws, the jurisdictional boundaries between church and state overlapped

one another. The boundaries were further convoluted by the colonial marriage practices and the enforcement of sexual purity.

Chapter three discusses the disciplinary proceedings for domestic issues and sexual misconduct in Scotland and the colonial Presbyterian Church in the eighteenth century. As one will discover, these cases were heard before the Scottish church with great frequency, and, in comparison, appeared far less often in the colonial churches.

CHAPTER THREE

Violations of the Christian Community

The Presbyterian form of church discipline was adapted in the colonial situation to administer judicial proceedings for its members. It was created with the notion that the state's judicial structure would comprehensively handle the secular crimes, in order for the ecclesiastical system to direct its attention to the moral concerns of the citizens. As illustrated in chapter one, morality was a concern of both the church and the state. By the eighteenth century, Scotland had generally reconciled the boundaries between church and state jurisdiction, while the colonies were only beginning the struggle. Nonetheless, the Presbyterian disciplinary system did cross the Atlantic and then was expanded to suit the needs of the colonial situation, thereby supplementing the judicial system, as seen in chapter two. This chapter and the two subsequent chapters will address the disciplinary proceedings for some of the immoral acts it was created to deal with – breaking the Sabbath, sexual misconduct, and unchristian behaviour.

The disciplinary system was only able to function when members of the church subscribed voluntarily to its tenets. Therefore, the Presbyterian Church imposed standards of membership based upon its theological convictions. Presbyterians held the conviction that the Universal Church consisted of God's elect, which He alone knew. The local church, unaware of the status of the applicant's election, accepted members, after a careful examination, with the

hope that the applicant was indeed one of God's elect. The examination served as a means for the applicant to profess his or her faith and beliefs. Therefore, the Presbyterians were open to all people that professed belief in God and exhibited a real faith, according to their doctrinal convictions.

In Scotland and the colonies, the inhabitants of the communities had to make applications to the church leaders to be accepted into full church membership. The minister and elders examined the hopeful member's life and faith by asking what the person understood about the Christian faith and his or her obligations as a member.¹ Church membership was granted by means of subscription to the church doctrines and form of government and discipline, which included attendance at public worship on Sundays and participation in the sealing ordinances. The First Presbyterian Church of Mattituck, NY, voted on July 14, 1752, "That Ordinarily Every One, who offer themselves to full Communion with this Church, Shall be propounded three Sabaths before the Sacrament And on the [Lecture] preparatory to the Sacrament shall offer themselves to the Churches Acceptance."²

Scotland's session minutes did not often include the names of the new members or the trials of the applicants. Separate membership rolls were kept by the session clerk. Some of the colonial churches held separate books, but a few recorded the membership trials within the session minutes, a circumstance which has offered a glimpse into the process of accepting new members. Additionally, there were a few colonial churches that began their record books with the church's statement of faith, which the new member was expected to

¹ Blanks, W.D. "Corrective Church Discipline in the Presbyterian Churches of the Nineteenth Century South." *Journal of Presbyterian History*. Vol 44, no 2, 1966. p. 90.

² First Presbyterian Church, Mattituck, NY, July 14, 1752.

adhere to. The Cutchogue Presbyterian Church on Long Island began their record book of 1786 by declaring the obligation of its members to adhere to the church's doctrine. The book began by stating,

We the Inhabitants of Cutchogue in Southold (so called) in the County of Suffolk & State of New York—Having thought it our Duty to unite together and enter into Covenant with one another as a Society of Christians for our Mutual Edification and Observance of Gods Holy Ordinances: and being willing all should know our Sentimentals respecting the great Doctrines of Religion and supporting it necessary that we should be agreed among ourselves in certain points of Doctrine, and Discipline, in Order to our walking together. Unitedly in Christian Fellowship: do now agree to adopt the following articles, as expressing our sentiments concerning the most important and Fundamental doctrines of the Christian Faith and concerning the Nature and Order of the Visible Church.³

The book continued by recording the "Articles of the Church at Cutchogue concerning Matters of Faith and Discipline," which included the "Confession of Faith" and the "Covenant." The "Covenant" was an abridged version of the "Confession of Faith" and all church members had to subscribe to it. It included the obligation of the members to obey the church's government and discipline and to participate in the sealing ordinances.⁴

³ "Records of the Church," Cutchogue Presbyterian Church, 1786, p. 1.

⁴ "Records of the Church," Cutchogue Presbyterian Church, 1786, pp. 6-14. The Covenant stated, "We do this day in the Presence of the Great Eternal and Holy God, who knows the Secrets of all hearts, and before Angels and Men, solemnly take and acknowledge the Lord Jehovah, Father, Son, and Holy Ghost, to be our God; and devote and give up ourselves Soul and Body and all we have are to be for him and no other, submitting and yielding ourselves to his disposal and service as willing and obedient subjects. And as we are by Nature Children of Wrath and have greatly dishonoured God by our Transgressions both in Heart and Life; so we do now openly declare our detestation and abhorrence of all our former offences both public and private and desire forgiveness of God and Man. And we do take and confess the Lord Jesus Christ for our Saviour and Redeemer, depending upon his Merits and Righteousness alone for acceptance with God. — We do also take the Holy Ghost for our Sanctifier and solemnly promise by the assistance of Divine Grace (without which we can do nothing) to forsake our sins, Renounce the World the Flesh and the Devil, and serve the Lord in newness of Life, and live in the Conscientious discharge of the Duties we owe to God, to our Neighbours and our own Souls, according to the directions of God's Holy Word.—And we do also give up ourselves to one another in the Lord promising by the help of Divine Grace to Act towards one another as becometh Brethren in Christ and watch over one another in the Love of the Lord seeking each others good, holding communion with each other in the worship of God and careful and diligent use of his Ordinances and yielding ourselves and ours to the discipline of the Church according to the Rules of Christ; so long as we continue together in this Relation by the Grace of God."

Examination of a new member's character and life was standard in the colonial churches. When persons moved to another town and made application to join the congregation of the local church they needed to exhibit their membership standing in their former church. Therefore, to ease the transfer of membership, the former church would offer a written recommendation, which would then be presented to the new church's session. For example, Abigail Park moved from a church in Charlestown to the church in Mattituck, NY. The pastor wrote the following letter, which Park gave to session of the church in Mattituck:

October ye 15th 1752... Brethren, Whereas Mrs Abigail Park with Two of her Children Thomas Park and Anne Park, being about to remove from us to reside with you, have desired a Recommendation to your Communion at the Table of the Lord. These may certifie you that they are in regular Standing of the Church of Christ, free from all Scandal or Censure and by a good Conversation have approved themselves worthy the Fellowship of the Saints, and we do heartily recommend them to your Communion in the speciall Ordinances of the Gospel. Christopher Sugar Clark of sd Society.⁵

The members of the church session heard the letter, voted in the affirmative, and received Park and her children into full membership of the church.⁶ The colonial session records are full of membership trials and acceptances of its members, which also proved that not every applicant received full membership.

Park was in good standing at her former church, which made her acceptance into the flock straightforward. However, not all applicants were readily accepted due to past scandals. One of the few membership trials recorded by a clerk in the Presbytery of St Andrews illustrated that not all applicants were accepted as full members of the church. On March 1, 1773, in the parish church of Largo, James Ritchie applied for membership. The session

⁵ First Presbyterian Church, Mattituck, NY, November 12, 1752.

⁶ First Presbyterian Church, Mattituck, NY, November 12, 1752.

considering that he had never been a Member of the Church of Scotland, nor of any Church till about two years ago, when he chose to enter among the Relief, where he got himself baptized; & that having fallen under Scandal (in the little Time succeeding) while in the Society; in which while he came to receive a Rebuke before their meeting, he had thought proper to altercate with their Minister in the Face of the Congregation, & came off unpurged of Scandal; considering these things, that he was not of this Church & was under Scandal likewise & in regard the whole Corner side of the Parish had unfavourable Impressions of him, as of a very passionate, proud & opinionative Character, they unanimously agreed that they would not admit him under his present Character to satisfy for his Scandal & to get Baptism to his Child whatever afterwards they might do, if his attendance upon Ordinances & his ordinary Life Tended to recommend him.⁷

James Ritchie was called into the meeting and the above was intimated to him.

There was no further record of Ritchie.

The men, women, and children who were accepted as members of the churches were required to adhere to church doctrines and practices, which included attendance at all worship services and participation in the sealing ordinances, such as communion. When the requirements of church attendance and observance were broken, the church disciplined the offender. Reiterated, discipline was to edify not only the broken soul, but also the congregation. This was only possible in a public forum, which was a worship service. When offenders were ordered to make a public confession before the congregation, he or she was to serve the parish as an example of what not to do, but the confession and absolution also served to illustrate the forgiveness and restorative elements of discipline. Therefore, the church desired that all members of the church participated in this ritual and disciplined those that did not attend. The Presbyterian Church on both sides of the Atlantic did discipline for breaking the Sabbath, but there were differences between Scotland and the

⁷ CH2/960/5. Largo Kirk, March 1, 1773.

colonies, which can be explained by examining the respective church relations in the eighteenth century.

Breaches of the Fourth Commandment

Members of the church were expected to observe the Sabbath and participate in the sealing ordinances, which were Biblical mandates. Church discipline was imposed when the tenets of Scripture were broken, including the commandments. The Ten Commandments have always been central to all Judeo-Christian traditions. However, the arrangement of the laws into two tables was not standardised. The Roman Catholic Church included the first three in the first table and the remaining seven made up the second table of the law. Martin Luther, unlike the majority of Protestants, followed this division. On the other hand, Calvin adhered to the Jewish tradition of making the first four commandments the first table of the law, which dealt with man's obedience and reverence towards God. The second table of the law for Calvin and most Protestants included the latter six commandments, which described appropriate Christian behaviour. Following Calvinistic theology, the Presbyterians on both sides of the Atlantic utilised the four and six split of the Decalogue. The Westminster Confession of 1647 stated, "This law, after his Fall, continued to be a perfect rule of righteousness; and, as such, was delivered by God upon mount Sinai in ten commandments, and written in two tables; the first four commandments containing our duty toward God, and the other six our duty to man."⁸

⁸ *Westminster Confession*, 19:2.

The first four commandments, or the first table of the law, dealt with reverence for God. The First Commandment prohibited idol worship, whereas the Second banned the creation of particular images. The Third prohibited taking the Lord's name in vain. The Fourth Commandment instructed the people to observe the Sabbath, the seventh day of the week. Observance of the Sabbath meant that Christians were to attend the divine worship services and rest for the remaining of the day.

Sunday morning worship was the heart of the Presbyterian community. The Sabbath was a day of rest and to be used to honour God. In addition to providing a medium of offering reverence to God, the time of public worship was also used as the platform to discipline guilty members of the community. Discipline was intended to restore the offender and exhort the sinful communicant. Public confessions were required in some types of cases, not only for the restoration of the offender, but also for the edification of the church. By allowing the congregation to witness the public confession, the church members were exhorted to be obedient to the Christian faith in order to cleanse the entire congregation. Therefore, it was essential for all members of the church to be present at the Sunday worship service. If members absented themselves from worship, they broke the covenant of the church, and in turn needed to be disciplined.

Members of the Presbyterian churches in Scotland and America were exhorted to attend worship on the Sabbath and participate in the Lord's Supper. When members did not uphold the commands of Scripture, then discipline ensued. The session of the Cutchogue Presbyterian Church further defined the expectations of its members by declaring

1. That all Such Persons as absent or Separate themselves from the publick Worship of God in this place, are irregular Walkers and without Repentance manifested not to be allowed the Enjoyment of Special Ordinances. 2. That Persons not praying in their Families & that after due Pains taken with them to reclaim them from ye Snare of the Devil & bring them to the Practice of ye Duty, Still, persisting in ye wicked omission, shall be debared the Enjoyment of Special Ordinances in the Church.⁹

Similarly, the church officials of the First Presbyterian Church in Madison, NJ, resolved

That one or two of the Session shall every Sabath watch over the unruly in the time of public worship - And also so far as in their power they shall take notice of disorderly conduct in the intermission of Divine service. ... That we will individually and unitedly so far as shall be in our power strive to prevent all breaks of the Sabath - And will at anytime be ready to give all assistance in our power to the Civil Magistrate when justly exercising his authority for the suppression of Vice and immorality.¹⁰

Presbyterian Church doctrine, enforced on both sides of the Atlantic, instructed the members of the session to keep a watchful eye upon the attendance habits of the communicants, as illustrated above. Doctrine also instructed the church officials to discipline accordingly when a member was absenting him or herself from public worship. Elders were required to take notice of the attendance habits of the parishioners. It seems unlikely that every member of the church attended every weekly public worship service and observed the Sabbath appropriately. Therefore, it only seems logical that Sabbath breaking cases were among the disciplinary proceedings on both sides of the Atlantic. However, while there were several recorded cases within the colonial church records, only a few were recorded by the sessions of the Presbytery of St Andrews, which is illustrated in the chart below. Perhaps Scottish churchgoers were more consistent in their attendance on Sunday

⁹ Cutchogue Presbyterian Church, Cutchogue, NY, December 20, 1758.

¹⁰ First Presbyterian Church, Madison, NJ, August 24, 1795.

morning or perhaps there was another explanation for the lack of Sabbath breaking cases. Without carefully recorded attendance records of the churches, it is impossible to determine if all members of the individual churches attended regularly. Therefore, any conclusions drawn must be based on the assumption that there were members of the churches on both sides of the Atlantic not attending public worship who did not face church censure.

As the chart below demonstrates, only nine cases were found during a fifty-year period in the Presbytery of St Andrews, while there were 16 and 35 in the colonies of New York and New Jersey, respectively. The low case volume in the Presbytery of St Andrews during the second half of the eighteenth century also contrasts with the statistics from the previous century. In her PhD thesis titled "The Covenanters in Fife, 1610-1689," Alison Muir conducted a case study of the kirk of St Andrews, one of 14 parishes. Between the years of 1638-1685, she found a total of 2494 disciplinary cases in the session minutes of one parish, 890 of which were cases of Sabbath breaking and absenting from public worship.¹¹ What led to the staggering numerical difference in the statistics between the centuries? Did Scottish church members attend regularly or did the church sessions overlook absenting individuals? Assuming that not all communicants attended regularly and observed the Sabbath properly, then why did Scotland's elders ignore these cases? Without previous studies of the colonial records it is difficult to ascertain if such a disparity occurred in the colonial churches. However, by comparing the two colonies included in this

¹¹ Muir, Alison. "The Covenanters in Fife, c. 1610 – 1689: religious dissent in the local community." PhD thesis. University of St Andrews, 2002. Table 7:1, between pp. 272 & 273. She found 736 cases of Sabbath breaking and 154 cases of absenting from worship and communion. For the purpose of this study, I have added those sums together.

study, a variation emerges between the colonies. This comparison may help explain why there were so many cases prosecuted in New Jersey.

Chart 5: Total Number of Sabbath Breaking Cases¹²

PRESBYTERY OF ST ANDREWS		#	NEW YORK		#	NEW JERSEY		#
Anstruther Easter	1	Albany	1	Blackwood	0			
Anstruther Wester	1	Aquabauge	0	Cranbury	2			
Craill	1	Babylon	0	Deerfield	4			
Dunino	0	Ballston Center	2	Fairton	8			
Ferryport On Craig	5	Bedford	0	Freehold	0			
Forgan	0	Charlton	2	Kingston	0			
Kemback	0	Clinton	0	Laurenceville	0			
Kilconquhar	0	Cutchogue	1	Madison	5			
Kingsbarns	0	Freehold	0	Mendham	0			
Largo	0	Goshen	1	Morristown	9			
Newburn	0	Huntington	1	New Brunswick	3			
Pittenweem	0	Mattituck	0	New Providence	2			
St Andrews	1	Newton	0	Newark	1			
St Monans	0	Pleasant Valley	3	Princeton	0			
		Southold	5	Westfield	1			
				Woodbridge	0			
TOTALS	9		16		35			

Sabbath Breaking Cases in the Presbytery of St Andrews

There were three main reasons why there was a lack of Sabbath breaking cases in the Presbytery of St Andrews – the instructions of the *Form of Process*, the ethos of the Moderate Party, and the small church buildings. The first potential explanation for the lack cases in the Presbytery of St Andrews was found in the *Form of Process*. Chapter three of the *Form of Process*, titled “Concerning Swearers, Cursers, Profaners of the Lord’s Day, Drunkards, and other Scandals of that Nature,” placed the discretion to require a public trial in the hands of the kirk session. The *Form* stated that the offences listed in the title could warrant

¹² The table includes the total number of Sabbath breaking cases, which included absenting from the worship service and not observing the Sabbath.

suspension and public confessions, however “the weight of this is duly to be pondered, and Church judicatories and members thereof are to consider whether the private admonition of the persons alleged and found guilty of the above scandals, if not clothed with such circumstances, or bringing them to public, will tend most to edification, and proceed accordingly.”¹³ Furthermore, the *Form* allowed for private admonition by the minister for all first time offenders, thereby resolving the case with a sincere confession from the offender. If this procedure was followed, then most cases of breaking the Sabbath would have been handled by the minister, thus explaining why these cases did not appear in the session minutes, as it did not enter the business of the session.

The second reason was due to the physical size of the church buildings. Drummond and Bulloch pointed out that “the disparity between the size of the parish and the accommodation of the church disposes of the legend that all were regularly at worship on Sundays.”¹⁴ Many of the churches still used in the eighteenth century were built in the Middle Ages, when the church populations were much smaller. Most of the kirks in the Presbytery of St Andrews, with the exception of St Andrews, would have been average rural churches, stretching 20 to 24 feet wide and 40 to 90 feet long.¹⁵ A great deal of space would have been lost by the clumsy layout of pews and lofts. The difference between the numbers of seats and members of the church would have too large a sum of people for the church to discipline for not attending the public worship.

¹³ *Form of Process*, III, 1.

¹⁴ Drummond, Andrew L. and James Bulloch. *The Scottish Church 1688-1843: The Age of the Moderates*. Edinburgh: St Andrew Press, 1973. p. 73.

¹⁵ Drummond and Bulloch, p. 73.

The above reason was further complicated by the fact that the Presbytery of St Andrews was strongly influenced by the Moderate Party. The party has been notably remembered for its cultural contributions in history, philosophy, and literature. Conversely, the party has also been remembered for their contribution to the “erosion of the more austere features of the Scottish Calvinist ethos.”¹⁶ The ‘Calvinist ethos’ entailed active participation in the life of the church in order to produce the fruits of the Christian faith, which included church discipline.

The Moderate view of discipline had relaxed greatly from the Calvinist view of the sixteenth century and one that was practiced in Scotland until the Moderates came to power in the General Assembly. Calvin believed that discipline was to restore members of the congregation and purify the community. This restorative trait of discipline seems to have been lost during the second half of the eighteenth century, as the overwhelming majority of cases were addressed for practical concerns and not the care of the soul. During the period of Moderate control discipline was used only for practical reasons and not for the care of the offender.¹⁷ As will become evident in the following chapter, the main offence disciplined by the church was for sexual misconduct, as these cases held practical repercussions for the kirk. Although very few cases of breaking the Sabbath appeared among the session minutes of the churches within the Presbytery of St Andrews, the cases that were recorded offer further insight into the disciplinary proceedings for breaking the Sabbath during this

¹⁶ Clark, Ian D.L. “From Protest to Reaction: The Moderate Regime in the Church of Scotland, 1752-1805.” in Phillipson, N.T. and Rosalind Mitchinson. *Scotland in the Age of Improvement*. Edinburgh: University Press, 1970. p. 200.

¹⁷ Drummond and Bulloch, pp. 75-6.

period of relaxed discipline and for means of comparison to the colonial churches.

Breach of the fourth commandment included not attending the worship service and warranted discipline. By examining the session minutes of the parishes within the Presbytery of St Andrews, it appeared that the members of the session held the discretion to determine whether an absenting member would have to make a public confession or not. In Ferryport On Craig, five men who were seen sailing a boat on the Lord's Day during the public worship service were cited to appear before the church session on February 25, 1753. William Smart, William Muir, John Ross, James Gregory, and Andrew Mitchel appeared before the session and were "sharply rebuked by the Minister who pointed out the Evil of such practices."¹⁸ The men "promised not to do the like for the future" and the case was resolved.¹⁹ In this case, the session judged that a private rebuke by its members was the sufficient course of action, which resulted in a confession from the offenders.

However, not all absent members of the church were rebuked in private. Such was the case in Anstruther Wester, on December 30, 1768, when it was delated to the session that Margaret Morrice had not been attending worship. Upon appearing to the session, Margaret was "exhorted by the minister to be ingenuous and tell the truth."²⁰ She explained to the session that "she did attend upon Divine Services in the Church of Pittenweem upon Sabbath the 23 of October last being their communion Sabbath and did herself communicate and during the service she left the church and went toward the farm of Fallside and

¹⁸ CH2/150/2. Ferryport on Craig, February 25, 1753.

¹⁹ CH2/150/2. Ferryport on Craig, February 25, 1753.

²⁰ CH2/624/4. Anstruther Wester, December 30, 1768

met with one Robert Matheson belonging to His Majesty's Train Artillary who was in this country on furlong according to an appointment she had made with him some days before." She further declared that her meeting during the service with Robert Matheson was "to prevent a greater evill and said she had no undecent behaviour with him neare to the farm."²¹ The session deliberated over her confession and decided "she should be publickly rebuked for the sin of Sabbath Breaking being aggravated by being a communion Sabbath and she a communicant."²² She was told her sentence and was dismissed from the session meeting. Margaret Morrice made one public confession, the standard disciplinary sentence for breaking the Sabbath, on February 27, 1769, and was restored to full church membership.

Observance of the Sabbath through attending the worship service was also a requirement of the leaders of the church and when not obeyed the church held the discretion to discipline accordingly. Ordained leaders of the church were expected to attend the Sabbath and the sealing ordinances, as they were members of the community set apart to serve the members in a leadership capacity. When an elder or deacon did not attend the Sabbath they jeopardised their position within the church. William, a deacon in Crail, frequently absented himself from public worship and was called to the meeting of the session on July 4, 1795, to attest to his absences. William objected to attending the session meeting and chose to be dismissed from the office of deacon.²³

Observance of the Sabbath meant more than simply attending the worship service. To illustrate reverence to God, the entire day of the Sabbath

²¹ CH2/624/4. Anstruther Wester, December 30, 1768

²² CH2/624/4. Anstruther Wester, December 30, 1768

²³ CH2/Crail/2. Crail, July 4, 1795.

was to be spent resting. The definition of resting varied and again only few cases were found in the Presbytery of St Andrews. However the few cases do offer examples of what the Kirk believed to be inappropriate behaviour on the Sabbath. Participating in recreation and leisure activities on the Lord's Day was considered a breach of the Sabbath in some parishes. In Anstruther Easter, an elder of the church informed the session "after publick worship began he perambulated the Town & found several boys sailing in boats in the harbour."²⁴ The boys were cited to appear before the session on April 24, 1759, to make amends for their wrong. They were rebuked by the minister and were dismissed.

Working on the Sabbath was also considered a breach of the fourth commandment. After God created the heavens and the earth in six days, He rested. Work in all forms was prohibited on the Sabbath. For some communicants they believed that the duties of work necessitated breaking the Sabbath. However, the church officials did not always agree with that. In the St Andrews Kirk, William Haig, an employee of the Distillery at Kincaple, was brought before the church court to account for his working on the Sabbath. On June 23, 1793, the Moderator reported to the session about his visit to Haig, who confessed that he was unable to attend the Sabbath due to his work at the Distillery. The Moderator then requested that he write a letter to the session explaining his reasons for not attending worship on Sunday, which follows.²⁵

21 June 1793

Sir,

Agreeable to what passed betwixt us on Tuesday I now use the freedom to state to you the reasons which oblige me to run my stills on Sunday.

²⁴ CH2/625/3. Anstruther Easter, April 24, 1759.

²⁵ CH2/316/13. St Andrews, June 23, 1793.

The duty which the Legislature has thought proper now to lay upon our stills is so very high, that there is an absolute necessity for the whole trade being on a footing otherwise those who do not get all the advantage of their neighbours must absolutely give it over.

The duty that is now laid on being upon all stills whatever with their Heads and pipes is calculated to be equal to £13 10 shillings per Gallon when formerly it was only thirty shillings & then three pounds.

A number of the Distilleries in Scotland now run their Wells on the whole of Sunday without stopping – particularly the large Distilleries in the neighbourhood of Edinburgh which make them pay a seventh part of less duty than those who stop on that day – this advantage is now so very considerable that it is impossible any Distilleries can work six days of the week and not the seventh without losing by his trade & I understand that the Edinburgh Distilleries will not stop on that day as they say, the Law allows them to work without stopping if they please.

In all Distilleries there is an absolute Necessity for one man staying at home for boiling the Worts on the Copper, another for waiting on the fermenting tuns & for washing & cleaning the Wooden Utensils which would otherwise become acid before the Monday Morning & spoil the whole work...

The Situation in which I am placed will I hope plead my excuse with you for running my stills on Sunday. I am burdened with a Distillery for which I pay a very heavy rent & also with very large farms which would not be near worth the rent I pay for them were it not for the Distillery – this absolutely obliges me to work or be ruined -- & if I run my stills but six days in the week & not the seventh I pay near 3^d per Gallon on my Spirits of more duty than those distilleries that work the whole week. This is absolutely excluding me from the Market as it would be in vain for me to urge that my Spirits were better then theirs as I did not work on Sunday. These very Distilleries at this moment supply the St Andrews Market with Spirits by underselling this work. Thus Sir you see that which ever way I go except I run my stills on Sunday ... & as there is not a single man kept at home on account of the running of the stills, that would otherwise get to Church the harm of it, I hope will not appear so great.

I therefore hope that when you see the absolute Necessity I am under of working my Stills on the Sundays, that you will not take any harsh steps to prevent me alone but if the subject engages your attention at all that it would be directed to stop the whole Scotch Distilleries at once & this keep us all on a footing as the stopping of me alone would inevitably be attended with my ruin.

I shall with pleasure wait on you & give every assistance in my power to see if any scheme can be thought of to prevent all the Scotch Distilleries from running on Sunday as it is a practice that I by no means approve of ...

I am with very great respect

Sir, your most humble servant, William Haig²⁶

²⁶ CH2/316/13. St Andrews, June 23 1793.

The session decided that this practice was not favourable and “was hurtful to the interests of Religion & Morality.” The elders believed from the letter that Haig would continue working on the Sabbath “unless the other Distilleries in Scotland shall lay it aside and that he considered the late Distillery act as authorising this practice.”²⁷ Therefore, the session agreed to place the entire matter into the hands of the presbytery

that they may consider what measures should be adopted for checking & preventing a practice which seems so adverse to the Sanctification of the Sabbath... In the mean time the Session instruct their Moderator to signify to Mr. Haig their entire disapprobation of his working his stills on Sabbath and to warn him against the continuance of this practice, which they are determined to discountenance.²⁸

The Presbytery of St Andrews met on Wednesday, July 31, when the moderator of the presbytery read aloud a letter he received from Haig the day before, which said “that he had resolved to discontinue from henceforth the running his Stills on the Lord’s Day.” The presbytery approved of the steps which were taken by the session in dealing with Haig and “instructed the Minister of this parish to consult the Procurator for the Church anent the further measures proper to be persued for checking the alledged general practice of the Distilleries on the Lords Day.”²⁹ Haig did not appear again in the minutes of the session; therefore, it can be assumed that he stopped working on the Sabbath.

The above-depicted cases were the only ones found in the Presbytery of St Andrews. The fact that there were only nine recorded cases in the minutes of the presbytery indicated that the church sessions did not focus their attention on absenting members of the parish. Perhaps the minister dealt privately with these

²⁷ CH2/316/13. St. Andrews, June 23 1793.

²⁸ CH2/316/13. St Andrews, June 23 1793.

²⁹ CH2/316/13. St Andrews, August 4, 1793.

cases and never recorded them in the records. Or the limited space in the church building created too many cases for the elders and ministers to follow up. But the likeliest explanation of the low numbers of breaches of the Sabbath was the Moderate Party's influence over the disciplinary proceedings within the Presbytery of St Andrews. Discipline during the eighteenth century became a vessel for dealing with the practical concerns of the church, rather than the spiritual welfare of the parish community, which will be further emphasised in subsequent chapters.

Breaches of the Sabbath in the Colonial Presbyterian Church

Unlike the Church of Scotland, a dominant party did not directly affect the colonial Presbyterian Church's practice of discipline. Furthermore, the colonial church did focus its attention on the spiritual well-being of the life of the church. This resulted from the pluralistic environment of the colonies. The Presbyterian Church was one of many churches in the colonies and therefore adhered to strict membership requirements in order to establish the denomination further and create defined church communities. Therefore, attending the Sabbath and participating in the sealing ordinances was of great importance to the identification of the church, and when these were not observed discipline followed, which resulted in a greater number of Sabbath breaking cases. However, the number of cases in New Jersey doubled the total in New York. What factors contributed to the differences? And what was happening in New Jersey for there to be so many breaches of the fourth commandment?

Reasons why the church would not discipline for a breach of the fourth commandment involved church and state relations, the historical and political

history of the colonies, and the religious influences. It should be mentioned that the inconsistent record keeping could also explain the lower number of cases. Many church's session minutes have been lost since the eighteenth century and could have included a plethora of Sabbath breaking cases. However, by using the churches included in this study as representatives of all of the colonial churches in New York and New Jersey, a marked difference between the two colonies in their dealings with breaches of the fourth commandment becomes apparent.

In previous chapters the relationship between church and state has been discussed. Examining breaches of the fourth commandment illuminates the tangled relationship between church and state in the American colonies of New York and New Jersey. The two colonies were different in their views towards an established religion, views that had an effect upon how the civil magistrate supported the churches in enforcing discipline, especially for breaking the Sabbath.

The lack of disciplinary cases of breaking the Sabbath in New York can be attributed to the struggle the Presbyterians faced in the pluralistic colony. In addition to the many denominations, the Anglicans, who held executive power in the colony, attempted to create their church as the established church. In the seventeenth century, the civil authorities helped enforce observance of the Sabbath by passing related acts and bills. The creation of such acts had ceased, however, in the beginning of the eighteenth century, when the Presbyterians were struggling to establish their own form of church government and discipline.

The colony of New York was home to the most varied array of people and religions.³⁰ Aware of the religious diversity that existed within the population, the Duke of York declared religious freedom to all Christians in his laws passed in 1665. The Duke's Laws stated,

Whereas the publique Worship of God is much discredited for want of painful & able Ministers to Instruct the people in the true Religion and for want of Convenient places Capable to receive any Number or Assembly of people in a decent manner for Celebrating Gods holy Ordinances These ensuing Lawes are to be observed in every parish (Viz.) ...

5. That the Minister of every Parish shall preach constantly every Sunday, ... And every person affronting or disturbing any Congregation on the Lords Day and on such publique days of fast and Thanksgiving as are appointed to be observed. After the presentments thereof by the Church-wardens to the Sessions and due Conviction thereof shall be punished by fine or Imprisonment according to the merit and Nature of the Offence,...

9. Sundays are not to be prophaned by Travellers Labourers or vicious Persons.

10. That no Congregation shall be disturbed in their private meetings in the time of prayer preaching or other divine Service.³¹

The Duke of York did not claim one church as the established, but granted that religious organisations should be allowed to worship without disruption. He also highlighted the Sabbath as a day of rest and worship for all churches in the province.

Tension was growing in Manhattan, where the Duke's Laws did not apply yet, due to the lack of ministerial support among the parishioners.

Recognising the pressure to act upon the situation, the Duke of York called the first meeting of the General Assembly of the province of New York, which was

³⁰ Curry, Thomas J. *The First Freedoms. Church and State in America to the Passage of the First Amendment*. New York: Oxford University Press, 1986. p. 62.

³¹ *The Colonial Laws of New York from the Year 1664 to the Revolution, including the Charters to the Duke of York, the Commissions and instructions to Colonial Governors, the Duke's Laws, the Laws of the Dongan and Leisler Assemblies, the Charters of Albany and New York and the Acts of the Colonial Legislatures from 1691 to 1775 inclusive*. Vol 1-5. Albany: James B. Lyon, State Printer, 1896. pp. 24-26.

held at Fort James in the City of New York on October 17, 1683. The Assembly produced the Charter of Liberties, which declared

That Noe person or persons which profess ffaith in God by Jesus Christ Shall at any time be any wayes molested punished disquieted or called in Question for any Difference in opinion or Matter of Religious Concernment, who do not actually disturb the Civill peace of the province, But that all and Every such person or persons may from time to time and all times freely have and fully enjoy his or their Judgments or Consciencyes in matters of Religion throughout all the province, they behaving themselves peaceably and quietly and not using this Liberty to Lycentiousnesse not to the civill Injury or outward disturbance of others...³²

The Charter was imposed throughout the province, including Manhattan, and also enacted the system of ministerial support for the individual towns. At the second meeting of the General Assembly, convened on October 20, 1685, the assembly passed "A Bill against Sabbath breaking." The bill recognised that worship was an essential part of the religious practices "in many places of this province" and specified that neglecting the Sabbath by travelling, horse hunting, horse racing, "tipling in Alehouses," and unnecessary business labour was unlawful and warranted a fine of six shillings and eight pence.³³

This freedom of religion, including the enforcement of observing the Sabbath, continued until the Duke of York's accession to the English throne in 1685. However, the Glorious Revolution brought about a change and sparked anti-Catholic sentiment, which caused hostility in New York. Political tension grew and resulted in strife among the Protestants. Although the Protestant denominations all stemmed from the Reformation heritage, each one believed that they were the superior religion.³⁴ The General Assembly of New York

³² *The Colonial Laws of New York*, p. 115.

³³ *The Colonial Laws of New York*, p. 173.

³⁴ Pointer, Richard. *Protestant Pluralism and the New York Experience*. Indianapolis: Indiana University Press, 1985. pp. 33-35.

passed the Ministry Act of 1693, which was intended to place the Anglican Church as the established church in four counties (New York, Westchester, Kings and Queens). However, the act did not specify one religion as the true religion of the colony. What followed was a war of words in determining the influence of religious denominations in the individual towns, which resulted in church officials asserting governance at the local level. Historians have debated the impact the act had upon the religious tension in the colony, but regardless of the tension, the Sabbath was still to be observed by the inhabitants of the colony. The dissenters of the colony, the non-Anglicans, used the Ministry Act of 1693, to further their hold on the towns where they held the majority.

The General Assembly of the colony of New York was obviously aware of the denominational tensions and grew concerned with the lack of observance of the Sabbath. They passed another act to enforce worship attendance on October 22, 1695, which began with the lines:

Whereas the true and sincere service and Worship of God According to his holy Will and Commandments, is often Prophaned and neglected by many of the Inhabitants and sojourners Within this province who do not keep holy the Lords day but in a disorderly manner accustom themselves to travel Labouring working shooting fishing Sporting playing horse racing frequenting of Tipling houses and the using many other unlawful exercises and pastimes upon the Lords day to the Great Scandal of the holy Christian Faith...³⁵

The act was similar to the previous Bill, but further defined breaches of the Sabbath and the incurred fines. The governing body of New York consisted of many Anglicans that did try to make the Church of England the established church of New York. By passing bills regarding the state of religion in the colony, they aided the various denominations in enforcing attendance of public worship. The Presbyterians, one of the many religious sects in the colony,

³⁵ *The Colonial Laws of New York*, pp. 356-357.

benefited by using the state passed acts to enforce the requirement that their members attend services according to the divine ordinances.

However, as the Presbyterians in New York struggled to establish themselves, they came under controversy. In the beginning of the eighteenth century, the Anglicans disapproved of the Presbyterian methods of ordination for ministers and congregational incorporation. The Anglican Church established the Society for the Propagation of the Gospel (SPG) in order to bring all Dissenters into communion with their church. The SPG received its charter in 1701 and were able to influence the General Assembly to make allegiance to the Anglican Church a prerequisite for certain offices.³⁶ The Presbyterians lacked a united front to deal with the opposition from the Anglicans, until the founding of the first presbytery in 1706.³⁷ Even with the founding of the first presbytery, the Presbyterians in New York always had great opposition. Therefore, it was difficult for them to make communicants pledge their allegiance to the denomination, thereby enforcing church attendance. The church was aided by the state that passed the bills and acts to prohibit the breaking of the Sabbath. New Jersey's religious history began much differently from that of New York. Before the colony united as one in 1702, West Jersey was predominantly Quaker and East Jersey was inhabited by Scottish Presbyterians and New England Congregationalists. From the start of the colony, Presbyterians had established their influence in the colony. Despite having greater influence, the Congregationalists were very similar to the Presbyterians in theology and had no dispute with the church. Furthermore, the

³⁶ Pointer, pp. 33-34.

³⁷ Trinterud, Leonard. *The Forming of an American Tradition: A Re-examination of Colonial Presbyterianism*. Philadelphia: Westminster Press, 1949. p. 32.

Quakers strongly believed and taught religious tolerance. Therefore, the Presbyterians in New Jersey did not meet resistance when enforcing their church government and discipline.

The civil authorities of East and West Jersey also encouraged attendance of public worship on the Sabbath. Observance of the Sabbath was addressed in 1677, when the constables were required,

if upon their own knowledge they shall be privy to any such disorders on Sunday by sight or information thereof, to repair to the said place, and, finding any person or persons misbehaving themselves, namely, staggering, reeling, drinking, cursing, swearing, quarreling, or singing any vain songs, or tunes of the same, shall cause the said person or persons so offending to be set in the stocks for two whole hours without relief.³⁸

Later, in 1698, the civil officials in England imposed a limited liberty of conscience, which excluded Catholics. It stated

That no person or persons that profess faith in God, by Jesus Christ his only a Son, shall not (?) at any time be any way molested, punished, disturbed, or be called in question for any difference in opinion in matters of religious concernment, who do not under that pretense disturb the civil peace of this province, or use this liberty to licentiousness: Provided, this shall not extend to any of the Romish religion, to exercise their manner or worship contrary to the laws and statutes of his majesty's realm of England: Provided always, that this act, or anything therein contained, shall not infringe the liberty or privilege of any grant or charter already granted.³⁹

After the colonies of East and West Jersey united in 1702, the assembly passed "An Act for Suppressing of Immorality within this Province of New-Jersey."

The act declared that persons breaking the Sabbath would be fined six

³⁸ Dillon, John B. *Oddities of Colonial Legislation in America, as applied to the public lands, primitive education, religion, morals, Indians, etc., etc., with authentic records of the origin and growth of pioneer settlements embracing also a condensed history of the states and territories, with a summary of the territorial expansion, civil progress and development of the nation.* Indianapolis: Robert Douglas Publisher, 1879. p. 49.

³⁹ *Oddities of Colonial Legislation in America*, p. 47.

shillings.⁴⁰ After statehood this act was upheld by the state legislature on October 1, 1782.⁴¹

The colonies of New York and New Jersey did exhibit a unique relationship between church and state relations in the thirteen colonies, as no established church was enforced. Consequently, conflict continued in New York between the denominations and the political organisations. On the other hand, New Jersey's government allowed the churches to exercise a greater influence and were able to prosper. The New Jersey model demonstrated the workability of religious freedom, under which the Presbyterian Church was able to flourish and impose their system of church government and discipline. In New York, the Presbyterians did not have the same freedom and struggled throughout the eighteenth century firmly to establish its doctrines and systems.

The statistics of the cases of Sabbath breaking illustrated the above point. The cases in New Jersey were more numerous than that in New York due to the freedom that the Presbyterian Church held in the colony. Another advantage that the Presbyterian Church held in New Jersey was their relationship with the New England Congregationalists. Like the Presbyterians, the Congregationalist also disciplined for the breach of the fourth commandment. In Emil Oberholzer's study of discipline within the Congregational Churches in Massachusetts, he found 395 cases of Sabbath breaking in the years between 1680 to 1830. Granted his study covered three times as many years and his total number of churches was greater. However, his study did illustrate that there was a strong history of encouraging attendance at

⁴⁰ Bush, Bernard. *Laws of the Royal Colony of New Jersey, 1703-1745*. Vol. I. Trenton, NJ: New Jersey State Library Archives and History Bureau, 1977. p. 21.

⁴¹ *The First Laws of the State of New Jersey*. Wilmington, DE: Michael Glazier, Inc., 1981. p. 304.

public worship.⁴² If the same type of influence was found in the Congregational Churches in New Jersey, then it can be assumed that the Presbyterian Church was not alone in their disciplinary proceedings. Having another denomination enforce discipline could only have helped the Presbyterian disciplinary system. Inhabitants of the colony could not easily escape to another church that had a weaker disciplinary system. Furthermore, the Presbyterian Church would not have been seen as an overtly oppressive institution, if other denominations were doing the same. Pluralism worked in favour of the Presbyterians in New Jersey, but worked against those in New York.

Another insight into the disciplinary cases of breaking the Sabbath can be seen by examining the years in which the bulk of the cases appeared. Most of the cases appeared in the 1790s in New York and New Jersey; however, this statistic was slanted due to the fact that there were fewer session minutes in existence in the earlier decades of the eighteenth century. If one looks at one church as a representative church, then the date made sense. Using the First Presbyterian Church of Morristown, NJ, which had the most complete records, a trend can be discovered. There were nine cases of Sabbath breaches in the church, six of which occurred in the 1790s. The remaining three took place in 1756, 1778, and 1782.

During the final decade of the eighteenth century, two major events took place. First, the General Assembly of the Presbyterian Church of America was established in 1788 and found its footing by 1790. Second, the First Congress of the United States of America ratified the Bill of Rights in 1791. These two

⁴² Oberholzer, Emil. *Delinquent Saints: Disciplinary Action in the Early Congregational Churches of Massachusetts*. New York: Columbia University Press, 1956. pp. 43-77.

occurrences strengthened the Presbyterian Church and allowed it strictly to impose its system of government and discipline.

After the Revolutionary War the Presbyterian Church needed to make radical changes in order to keep pace with the rapid growth of its churches. The Synod of New York and Philadelphia was overworked and created commissions to attend to the churches' needs in between the Synod's meetings. These commissions met with resistance as their power and duties were never clearly defined. Additionally, attendance at the Synod meetings was poor due to the required travel distance. The yearly Synod meetings were held in New York, Philadelphia, or Elizabethtown. Members of the Synod would have to travel from as far away as Tennessee or South Carolina. When the Synod met in 1785, to discuss the weak attendance, the Synod made a motion that resulted in the founding of the General Assembly three years later. The motion concerned the form of government and discipline in the Presbyterian Church. Over the course of the three years, several drafts were written and the key ministers involved exchanged ideas through correspondence. Adopting the Scottish form of church government and discipline was discussed and was strongly favoured. However, the supporters were not in the majority and eventually became discouraged. The American Presbyterians desired their own system built from the ground up, rather than from the top down, which was the way it occurred in Scotland. Nonetheless, the Synod recognised the need for a General Assembly and finally established it as the highest governing body of the church in 1788.⁴³

The new plan of church government and discipline was handed down the line through the Synod, then through the presbyteries, and eventually to the

⁴³ Trinterud, pp. 279-306.

church sessions. This ignited a resurgence of church discipline. In Madison, NJ, the church session met to discuss the new plan and made its own resolutions. On August 24, 1795, the session clerk recorded the following declarations.

Resolved 1st That we will individually and unitedly use our endeavours to suppress Vice & Immorality of every kind and to promote Christian discipline in the Church.

2nd - that lord's supper and baptism are to be viewed as equally sacred and that the Qualifications for each are the same - And that we can consistently admit none to either of these Ordinances who do not give Scriptural evidences of their being the Subjects of divine grace.

3rd - any one wanting to join the communion of the church must give relation of their experimental acquaintance with religion and that each will be propounded one week before admittance.

4th - That the Session will individually and unitedly use their indeavours to heal all differences between the Brethren & when scandalous reports are circulating to the disadvantage of any Member the Session will as soon as they come to their knowledge search into them and if true and well founded they will as soon as possible deal with the disorderly as Gospel directs but if the reports are not well founded the Session will use their indeavours to surpress them and to have justice done to the character of these who may have been injured by sd reports.

5th - That members of the Session are to visit the sick.

6th - That one or two of the Session shall every Sabath watch over the unruly in the time of public worship - And also sp far as in their power they shall take notice of disorderly conduct in the intermission of Divine service

7th - That we will individually and unitedly so far as shall be in our power strive to prevent all breaks of the Sabath - And will at anytime be ready to give all assistance in our power to the Civil Magistrate when justly exercising his authority for the surpression of Vice and immorality

8th - That all members of session will be punctual in their attendance of the meetings

9th - That the members of session will carry all the above into effect with the help of divine grace and if not then they will be the subject of reproof.⁴⁴

Similarly, churches also paid more attention to absenting members. In Fairton, NJ, on March 24, 1791, the session made a point to converse with the members who were not regularly attending the sacraments.

⁴⁴ First Presbyterian Church, Madison, NJ, August 24, 1795.

After constituting with prayer & examining into the present state of the Church, the Session is of opinion & accordingly concluded that it is a duty incumbent on them to converse with certain members of this church, concerning their repeatedly absenting themselves from or not attending the administration of the Lords Supper.⁴⁵

The development of the General Assembly further strengthened the Presbyterian Church in America. Its development allowed the leaders of the church to reconsider and fine-tune its structures and proceedings. Church discipline was further reinforced by the General Assembly. The sessions were encouraged to be more regimented in their administration and proceedings.

The political situation also gave support to all denominations by passing the Bill of Rights. The first bill declared that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."⁴⁶ This right resolved uneasy attitudes towards church and state relations in the colonial era. For inhabitants of New York it meant that the Anglican Church could not be the established church, thereby allowing all denominations equal freedom. This freedom allowed the denominations to exercise their discipline, which included breaches of the fourth commandment.

The Presbyterians in the colonies of New York and New Jersey were also required to attend public worship for the same reasons discussed above. Therefore, when members absented themselves from Sunday morning services, the sessions disciplined accordingly. As described in chapter one, the colonial church did not have a set doctrine, such as the *Form of Process*, to serve as a disciplinary manual. The colonial churches varied in their treatments of Sabbath breakers, as there was no standard format. Therefore, what follows is a

⁴⁵ Fairfield Church, Fairton, NJ, March 24, 1791.

⁴⁶ Curry, p. 193.

discussion of the basic form of discipline as compiled by the session minutes of the churches.

Cases involving a breach of the fourth commandment were brought to the attention of the session by delation of an elder or deacon. The members of the sessions were enjoined to be aware of members' attendance on Sunday mornings and at the sealing ordinances. The clerk of the session of the Fairfield Church recorded

after constituting with prayer & examining into the present state of the Church, the Session [was] of opinion & accordingly concluded that it [was] a duty incumbent on them to converse with certain members of this church, concerning their repeatedly absenting themselves from or not attending the administration of the Lords Supper.⁴⁷

Unlike other types of disciplined offences, Sabbath breaking cases did not appear before the session by a voluntary confession made by the offender. Perhaps this was true because members who did not attend one Sunday could slip back into the pews the following Sunday without notice. Therefore, the responsibility of keeping track of attendance fell to the elders and deacons of the church.

When it was noted by an elder that a member of the church was not attending worship on the Sabbath, the session might send a committee to converse with the absenting member with the intention of resolving the matter privately. In the Fairfield Church of Fairton, NJ, committees were utilised to deal with absenting members of the parish. On May 1, 1797, a committee was sent to confront Patience Thomson and Daniel Bateman about their not observing the Sabbath.⁴⁸ The record did not indicate any disciplinary action taken against the two members of the church; therefore it can be inferred that the

⁴⁷ Fairfield Church, Fairton, NJ, March 24, 1791.

⁴⁸ Fairfield Church, Fairton, NJ, May 1, 1797.

elders resolved the issue within the meeting of the committee, thereby not necessitating the offender to appear before the congregation. Similarly, in Pleasant Valley, NY, on August 17, 1796, Mary Price and Elizabeth Searls were visited by a committee of elders to discuss the reasons why they were absenting themselves from public worship.⁴⁹ It was noted by the session clerk that Mary Price received the committee “very kindly, gave her excuses, and promised to attend in the future.”⁵⁰ The case was resolved by the committee and the matter went no further.

Concern for members not attending worship on the Lord’s Day was raised by the elders of the First Presbyterian Church in Madison, NJ, on August 21, 1797. A committee was appointed to speak to “certain members” of the congregation who were not attending worship. The committees sent to consult with the abstaining communicants reported that most offenders gave satisfactory reasons for their absence. Committees were especially useful when members were not attending for private or personal reasons. The elders in Madison, NJ, discovered that a few of the members were not attending worship because they lacked the appropriate clothing.⁵¹ To improve the situation of these members the session “agreed to recommend A Contribution to be taken the next time the Lord’s Supper is administered for the purpose of procuring such Clothes as should be deemed necessary for the Members above alluded to.”⁵²

⁴⁹ First Presbyterian Church, Pleasant Valley, NY, August 17, 1796.

⁵⁰ First Presbyterian Church, Pleasant Valley, August 29, 1796.

⁵¹ The session minutes did not describe what clothing was deemed appropriate; however, it can be assumed that inappropriate clothing consisted of work clothes. Colonists tended to have at least two sets of clothing, one for work and one for Sunday. Work clothes were made from the native cloth made from flax and wool. Dress clothes were usually made of fabrics imported from England. Weiss, Harry B. *Life in Early New Jersey*. Princeton: D. Van Nostrand Company, Inc., 1964. p. 31.

⁵² First Presbyterian Church, Madison, NJ, September 15, 1797.

Not all committees were successful in dealing with the absenting members of the congregation. In Westfield, NJ, on June 15, 1796, it was recorded that the session met in order to discuss the attendance habits of Stephen Corwin, Jr. After the committee took great pains to confront him "in a Christian and private way to convince him of his sin and danger with continuing in the neglect of such great grave duties," he was called before the session because it had "proven ineffectual to reclaim."⁵³ The session deliberated over the matter and judged "that Stephen Corwin be excluded from Church priviledges till he gives satisfactory evidence of repentance and he [was] hereby excluded from the communion of the Church."⁵⁴

When absentees from worship were called before the session, the elders inquired into the reasons for not being present on Sundays. In September 1795, an elder and deacon were sent to the home of Mrs. Cherry to ask her why she had not been fulfilling her duties as a member of the congregation by attending worship at the First Presbyterian Church of Morristown, NJ.⁵⁵ Two months later a committee was again sent to deal with Mrs. Cherry's absence and to "examine the truth of certain reports circulated to the prejudice of her Christian character."⁵⁶ The committee reported to the session that Mrs. Cherry's excuses were not satisfactory; therefore, she was summoned to appear before the elders.⁵⁷ Mrs. Cherry appeared to the session and offered her excuses for not attending worship, which the session clerk did not record. However, the elders

⁵³ First Presbyterian Church, Westfield, NJ, June 15, 1796.

⁵⁴ First Presbyterian Church, Westfield, NJ, June 15, 1796.

⁵⁵ First Presbyterian Church, Morristown, NJ, September 1795.

⁵⁶ First Presbyterian Church, Morristown, NJ, November 30, 1795.

⁵⁷ First Presbyterian Church, Morristown, NJ, December 18, 1795.

found her reasons to be insufficient. The Moderator admonished Mrs. Cherry for not attending worship.⁵⁸

In addition to these methods of breaking the Sabbath, brethren also absented from the sacraments because they did not support the minister of the parish or because they had a disagreement with another member of the church. In the Cutchogue Presbyterian Church, Joseph Reeve, a member of the church, took issue with the Pastor, the Rev. Thomas Paine, and made public charges against him. On May 4, 1758, he apologised to the session and the Rev. Paine.

Whereas the Chh of which I am a Member are dissatisfied with Some of my late Conduct particularly in charging the Revd Mr Thomas Paine with being worse than his word and of not being a friend to my Soul & Body. The first of which Expulsions I have no particular Remembrance of: But am free to bear my Testimony against as contrary to the Gospel particularly 1 Timothy 5:19. As to ye other time of saying that I did not look on Mr Paine as a Friend to either my Soul or Body, I confess was an unwarranted Expression Spoken in an undue Temper & ask Forgiveness of God and this Church. Joseph Reeve.⁵⁹

It appeared that Joseph Reeve's concerns with the Rev. Paine continued, and as a result did not attend public worship on the Sabbath. On December 20, 1758, he was examined by the session.

Enquired of our Brother Joseph Reeve who had absented himself for some Time from our Communion/ the Reason of his doing so. Mr Reeve alledged as the Reason be a Rumar respecting the Conduct of the Revd Mr Paine. This Chh after having enquired into the affair Resolved/ Nemone contradicente/ that the Thing Rumouring against Mr Paine allowing it to be as Mr Reeve represented it; was no Crime in Mr Paine and therefore Mr Reeve has no just Reason of absenting from our Communion.⁶⁰

⁵⁸ First Presbyterian Church, Morristown, NJ, January 1, 1796.

⁵⁹ Cutchogue Presbyterian Church, Cutchogue, NY, May 4, 1758.

⁶⁰ Cutchogue Presbyterian Church, Cutchogue, NY, December 20, 1758.

There was no further record of Joseph Reeve. However, this case illustrated that the Minister was not always well received by the congregation, nor was the session at all times.

In Goshen, NY, on June 5, 1795, it was reported to the elders of the First Presbyterian Church that William Thompson had been absenting himself from public worship.⁶¹ On June 10, 1795, he appeared before the session and explained, "he was dissatisfied with the resolve that the session had passed, for he believed that they were discouraging rather than encouraging to new brethren."

Church members absented themselves from worship when they disagreed with the minister or the session. Additionally, brethren with disputes with another member of the congregation also withdrew from worship. Sunday mornings were a time to worship alongside fellow brothers and sisters in Christ as one body to glorify God. Disputing members caused disharmony and occasionally one of the feuding parties absented themselves from the communion of the church. On May 25, 1797, in the First Presbyterian Church of Balston Center, NY, Beriah Palmer absented himself from worship because he "could not Sit Down with Gordon at the Communion because he Did Not Show him that Treatment that he thought a Brother Aught."⁶² Due to Palmer not attending the Sabbath, the session attempted to deal with the dispute between him and Gordon. The case continued for several years and no verdict was

⁶¹ First Presbyterian Church, Goshen, NY, June 5, 1795.

⁶² First Presbyterian Church, Balston Center, May 25, 1797.

recorded in the session minutes. However, the minutes did imply that Palmer persisted in his absence at Sunday morning worship.⁶³

There also seemed to be members who did not attend worship on the Sabbath when they were having difficulties in the home. Perhaps the members felt unworthy of participating in the sealing ordinances. Or, when it involved a feuding couple, perhaps one of the spouses was not comfortable worshipping alongside his or her partner. In Morristown, NJ, at the First Presbyterian Church, Zachariah Fairchild absented himself from the Lord's Table. The session first noticed his absence on April 12, 1756. The elders heard his reasons and judged that they were ungrounded and exhorted him to return to the table.⁶⁴ Two years later, Zachariah Fairchild once more was brought before the session to explain why he continued to absent himself. The session believed that they should "deal tenderly with him" for he "continued to debate his private judgments."⁶⁵ Several years later, the session cited him to appear for breaking the Sabbath by not attending public worship. He appeared before them on May 3, 1765, and confessed that he had not been attending worship because he and his wife had separated.⁶⁶ The session judged that until he and his wife resolved their marital difficulties he should refrain from participating in the sealing ordinances, but that he should attend worship. He was rebuked and exhorted to deal with his wife. Apparently the separation from his wife continued until July

⁶³ First Presbyterian Church, Balston Center, NY, May 25, 1797, August 7, 1797, October 2, 1797, November 6, 1797, December 4, 1797, and May 7, 1798.

⁶⁴ First Presbyterian Church, Morristown, NJ, April 12, 1756.

⁶⁵ First Presbyterian Church, Morristown, NJ, January 18, 1758.

⁶⁶ First Presbyterian Church, Morristown, NJ, May 3, 1765.

2, 1767, when he was admonished for arguing with his wife and promised to act in more Christian like manner in the future.⁶⁷

In addition to having a greater number of cases, the procedures for trials regarding breaking the Sabbath were much more involved than those found in the Presbytery of St Andrews. On both sides of the Atlantic, members of the church who were found guilty of absenting from worship without permissible grounds were placed under disciplinary proceedings. If there were more cases in the Presbytery of St Andrews, then it seemed plausible that the cases were handled directly by the minister and therefore, not recorded in the session minutes. However, in the colonies many cases did go to trial and resulted in suspension of the offender. The colonial churches' rigidity in addressing the absenting members of the congregations can further be explained by the lack of church adherence in the middle colonies. Patricia Bonomi and Peter Eisenstadt wrote a compelling article titled, "Church Adherence in the Eighteenth Century British American Colonies."⁶⁸ In the article they indicated that adherence to one church declined as the eighteenth century progressed.⁶⁹ This decline in voluntary adherence to the churches may have caused the colonial churches to react by enforcing their membership rituals more rigidly. Additionally, the church populations consisted of members with various religious backgrounds. Bonomi and Eisenstadt stated that "the great diversity of religion in the middle region... meant that some inhabitants attended the nearest churches regardless

⁶⁷ First Presbyterian Church, Morristown, NJ, July 2, 1767.

⁶⁸ Bonomi, Patricia and Peter Eisenstadt. "Church Adherence in the Eighteenth Century British American Colonies," *William and Mary Quarterly*, Third Series, Vol. 39, Issue 2, April 1982. pp. 245-286.

⁶⁹ Bonomi and Eisenstadt, p. 274. They found that in 1700, 80% of the total white population of 223,071 were members of one of the eight main denominations: Anglican, Baptist, Congregational, Lutheran, Presbyterian, Dutch Reformed, German Reformed, and Roman Catholic. By 1780, the percentage decreased to 59% of the total white population of 2,204,949.

of denomination, preferring their worship to none.”⁷⁰ It can be argued that when the Presbyterian churches received members that may have held Quaker, Baptist, or Anglican inclinations, the church felt it was their duty to educate the new members on the doctrine and standards of the Presbyterian Church. Sunday morning worship was the vessel in which this education took place through the preaching and teaching of the minister and leaders. Therefore, as church adherence declined and the membership represented various backgrounds, the church reacted and enforced attendance at worship services more strictly.

The colonial church imposed a strict form of discipline for not attending the church’s worship services and when a case was not resolved by a committee, as seen above, then the offender was called before the church session for further discipline. The elders listened to the reason why the member of the congregation did not attend worship and sentenced the guilty party accordingly. In some churches, the elders suspended the absenting communicant until he or she exhibited repentance and reform of his or her ways. The elders of Fairfield Church in Fairton, NJ, noticed that a member of the congregation, Stephen Clark, had not been attending the public worship. He was called before the session on November 3, 1778, but the elders found the excuses he offered to be insufficient. The session judged that Stephen Clark should be suspended from church privileges until May of the following year.⁷¹ On July 8, 1779, Stephen once again was called to the meeting of session to re-examine his suspension. Stephen did not attend that meeting, but did finally appear on November 30, 1781, when he voluntarily appeared to ask the elders to lift his suspension.⁷²

⁷⁰ Bonomi and Eisenstadt, p. 261.

⁷¹ Fairfield Church, Fairton, NJ, November 3, 1778.

⁷² Fairfield Church, Fairton, NJ, July 8, 1779, and November 30, 1781

The session deliberated over the matter and concluded that Stephen Clark was sincere in his repentance and absolved him from further discipline.⁷³

Public suspension was used by the Presbyterian Church to discipline members for not attending worship on the Sabbath or the sealing ordinances. The First Presbyterian Church in Morristown, NJ, heard a public declaration that Samuel Oliver had absented himself for several years and was now placed on suspension.⁷⁴ If suspension from the community of the church was not enough, the elders could excommunicate an obstinate member. The elders of Morristown, NJ, first dealt with non-attendant, Samuel Morrison, on May 22, 1795. A deacon and elder were sent to deal with him for his repeated neglect of the Lord's Supper.⁷⁵ His name did not appear in the session's minutes until March 3, 1797, when the session cited him to appear at their next meeting. Apparently Samuel Morrison did not attend when he was called; therefore, the session "found it necessary to send him a written admonition as he repeatedly declined to attend."⁷⁶ On September 21, 1797, Samuel Morrison appeared before the session and "offered his reasons at full length for absenting himself from divine ordinances and particularly the Lords Supper... his objections against communing with this [church] were removed and that he intended to join with them again in the ordinances of Gods house, if nothing further should rise in his own mind to prevent it."⁷⁷ However, Samuel continued not to attend the sealing ordinances and was once visited by an elder in August 1798.⁷⁸ The

⁷³ Fairfield Church, Fairton, NJ, November 30, 1781.

⁷⁴ First Presbyterian Church, Morristown, NJ, July 1, 1782.

⁷⁵ First Presbyterian Church, Morristown, NJ, May 22, 1795.

⁷⁶ First Presbyterian Church, Morristown, NJ, August 18, 1797.

⁷⁷ First Presbyterian Church, Morristown, NJ, September 21, 1797.

⁷⁸ First Presbyterian Church, Morristown, NJ, August 1798.

elder reported back to the session on September 17, 1798, that Samuel Morrison “offered no excuse for his absence and declined all attention from the session.”⁷⁹ He was continually cited to appear, but did not appear until February 5, 1799, at which point he “claimed that he was ready for trial.”⁸⁰ Samuel Morrison “gave his reason for absenting to which the session found unsatisfactory. He [was] to be admonished by the Moderator and [was] to acknowledge his fault.”⁸¹ The session heard his confession and subsequently he remained in communion with the church.⁸² And yet again, Samuel Morrison did not improve his attendance and was once more cited to appear before the church session repeatedly throughout the remainder of the year.⁸³ The elders of the First Presbyterian Church were occupied with the absenting habits of Samuel Morrison for over five years and consequently excommunicated him on February 25, 1800, for absenting himself from the ordinances of the church.⁸⁴

The case of Samuel Morrison was extreme in the length of the case and for the outcome. Most parishioners appearing before the church session for avoiding public worship confessed, were rebuked by the Moderator and were then absolved. Samuel Morrison worsened his case by not appearing before the session when he was called. Similarly, Mrs. Guinness, a member in the First Presbyterian Church of Madison, NJ, compounded her case before the session by behaving with “some imprudence before the Session.”⁸⁵

⁷⁹ First Presbyterian Church, Morristown, NJ, September 17, 1798.

⁸⁰ First Presbyterian Church, Morristown, NJ, September 17, 1798, December 17, 1798, January 15, 1799, and February 4, 1799.

⁸¹ First Presbyterian Church, Morristown, NJ, February 5, 1799.

⁸² First Presbyterian Church, Morristown, NJ, February 5, 1799.

⁸³ First Presbyterian Church, Morristown, NJ, August 5, August 19, and September 9, 1799.

⁸⁴ First Presbyterian Church, Morristown, NJ, February 25, 1800.

⁸⁵ First Presbyterian Church, Madison, NJ, September 14, 1795.

It was not unusual for a case of breaking the Sabbath to be complicated by further offences. In New Providence, NJ, the elders of the Presbyterian Church suspended Naomi French not only because of her non-attendance on the Sabbath, but also because she had “been guilty of Scandalous Conduct and behaviour in Other Respects.”⁸⁶ Naomi French made a sincere confession of her sorrow and was restored to full church membership on August 12, 1770.⁸⁷ Likewise, on March 28, 1769, Jesse Osborne was accused of unchristian conversation in addition to not attending public worship. He was suspended from the church privileges and there was no record of his restoration.⁸⁸

Abraham Morris, a member of the First Presbyterian Church of Newark, NJ, was excommunicated for an assortment of offences. The session minutes indicated that the elders had attempted to reform Mr. Morris, but to no avail. Abraham Morris continued in “the evil courses of excessive drinking, profaning the Sabbath, and neglecting public worship.”⁸⁹ A sentence of excommunication was rendered against Abraham Morris until he “shall manifest repentance and amendment of life.”⁹⁰

Repeat offenders were not overlooked either. It would seem that after a member of the church was disciplined for breaking the Sabbath, especially when done by not attending worship, that the elders of the church would take notice if that same member missed worship again. Such was the case with Jacob Robbison in the Fairfield Church in Fairton, NJ. On October 23, 1759, he made

⁸⁶ Presbyterian Church, New Providence, NJ, March 28, 1769.

⁸⁷ Presbyterian Church, New Providence, NJ, August 12, 1770.

⁸⁸ Presbyterian Church, New Providence, NJ, March 28, 1770.

⁸⁹ First Presbyterian Church, Newark, NJ, April 23, 1794.

⁹⁰ First Presbyterian Church, Newark, NJ, April 23, 1794.

a public confession for his "Repeated Criminal neglect of the Publick Worship and ordinances of God's House."⁹¹

The colonial Presbyterian Church did govern the attendance of its members with thorough discipline. However, the church did recognise valid excuses for neglecting the morning worship service. Acquittals were granted by the sessions for valid reasons of missing worship on the Sabbath.

Communicants offered their excuses, but only a few were sustained by the elders. One example was found in the First Presbyterian Church of New Brunswick, NJ. On May 4, 1799, it was reported to the session that the Moderator had visited with Mrs. Hance, who had not been attending the church ordinances. The Moderator informed the elders that he found Hance "to be in a state of mental derangement and unfit for the ordinances."⁹²

Mrs. Guinness, a member in the church in Madison, NJ, took more convincing to be acquitted from her accusation of not attending worship. On August 17, 1795, a committee was first sent to the home of Guinness in order to converse with her about her lack of attendance on Sunday mornings.⁹³ The committee was unable to meet with her due to inconvenience, and thus decided to meet as a session in her neighbourhood, in order to make the meeting more convenient for everyone involved.⁹⁴ At the meeting of session on September 14, 1795, Guinness informed the elders "there were some Evidences on her side which it had not been in her power to procure."⁹⁵ Therefore, she asked the session to delay the matter until all witnesses could be present, which the

⁹¹ Fairfield Church, Fairton, NJ, October 23, 1759.

⁹² First Presbyterian Church, New Brunswick, NJ, May 4, 1799.

⁹³ First Presbyterian Church, Madison, NJ, August 17, 1795.

⁹⁴ First Presbyterian Church, Madison, NJ, August 24 and September 3, 1795.

⁹⁵ First Presbyterian Church, Madison, NJ, September 14, 1795.

session agreed to do. It was not until December 23, 1795,⁹⁶ that the case was decided and it was determined that “there [was] no just ground of trial in her case.”⁹⁷ The session clerk did not record the reason why Guinness was acquitted, but this case proves that the church did allow its members to miss worship for justified reasons.

Acquittal cases, however, were few and far between. Most excuses that the offenders presented for absenting themselves from public worship were not honoured by the leaders of the church. Sunday was a day of rest and was to be observed by attending worship. Not attending the Lord’s Supper also warranted church censure. Zephaniah Hustead had “kept himself away from the Lord’s Table” and was rebuked and exhorted to celebrate the Eucharist with the rest of the community.⁹⁸ Not attending the worship or participating in communion were both considered a breach of the fourth commandment. Members of the Presbyterian Church were benefited by the sealing ordinances. Furthermore, the church was only able to survive and impose its unique denominational doctrines when members voluntarily adhered to its requirements.

The fourth commandment ordered that the Sabbath be observed, which included more than just the Sunday morning worship service. Observing the Sabbath meant resting and not engaging in a variety of activities during the day. According to Christian doctrine, God created the world in six days and rested on the seventh. The Sabbath was a day set apart for worship and rest. The practice

⁹⁶ Mr. Guinness appeared before the session on September 28, 1795, on behalf of his wife to explain that she was unable to attend due to “indisposition of body.” On November 20, 1795, Mrs. Guinness was still unable to attend and a committee was sent to her once again. The committee made their report to the session on December 23, 1795.

⁹⁷ First Presbyterian Church, Madison, NJ, December 23, 1795.

⁹⁸ Fairfield Church, Fairton, NJ, October 18, 1775, and July 8, 1776.

of observing the Sabbath was firmly rooted by the acceptance of the *Westminster Confession* in 1647. The *Confession* stated that

As it is the law of nature, that, in general, a due proportion of time be set apart for the worship of God; so, in His Word, by a positive, moral, and perpetual commandment, binding all men, in all ages, He hath particularly appointed one day in seven, for a Sabbath, to be kept holy unto Him: which, from the beginning of the world to the resurrection of Christ, was the last day of the week; and, from the resurrection of Christ, was changed into the first day of the week, which, in Scripture, is called the Lord's Day, and is to be continued to the end of the world, as the Christian Sabbath.⁹⁹

The *Westminster Confession of Faith* further defined how the Sabbath should be observed.

This Sabbath is then kept holy unto the Lord, when men, after a due preparing of their hearts, and ordering of their common affairs beforehand, do not only observe an holy rest, all the day, from their own works, words, and thoughts about their worldly employments, and recreations, but also are taken up the whole time in the public and private exercises of His worship, and in the duties of necessity and mercy.¹⁰⁰

As described by the *Confession*, the Sabbath was to be observed by resting. The Presbyterian Church on both sides of the Atlantic adopted the *Confession*; therefore, the church expected its members to observe the Sabbath accordingly. What constituted inappropriate behaviour was left to the discretion of the individual church. From the cases that included the details of Sabbath breaking, it can be determined that the church did not allow its communicants to play, work, and travel on the Sabbath.

Similarly, the colonial churches disciplined for unnecessary work carried out on the day of rest. Unnamed members of the congregation of the Fairfield

⁹⁹ *Westminster Confession of Faith*, Chapter 21, VII. The chapter is based on the following Scripture: Exodus 20:8, 10, 11; Isaiah: 56: 2, 4, 6, 7; Genesis 2: 2, 3; 1 Corinthians 16: 1, 2; Acts xx. 7; Revelation 1: 10; Exodus 20: 8, 10 with Matthew 5: 17, 18.

¹⁰⁰ *The Westminster Confession of Faith*, Chapter 21, VIII. The Westminster divines based this section on the following Scripture: Exodus 20: 8; Exodus 16: 23, 25, 26, 29, 30; Exodus 31: 15, 16, 17; Isaiah 53: 13; Nehemiah 13: 15, 16, 17, 18, 19, 21, 22; Isaiah 58: 13; Matthew 12: 1-13.

Church in Fairton, NJ, on March 11, 1771, charged Jeremiah Nixon, Jr, with driving cattle on the Sabbath. The session enquired into the matter and was “sorry to find him so culpable – 1st in leaving Cape May the place where he purchased the cattle at a time when he must know he must either drive upon the Sabbath, or be exposed to great inconvenience—2ly, That he continued to drive them ... upon the Sabbath without any apparent necessity.”¹⁰¹ The elders judged his conduct as “a flagrant breach of Sabbath.”¹⁰² Jeremiah Nixon, Jr. was exhorted to make a public acknowledgement of his sin, in order to “vindicate the honor of Religion.”¹⁰³ He was suspended from all church privileges until he made satisfaction for his sin. The session minutes did not record when Jeremiah Nixon, Jr. was absolved and restored to full membership. However, ten years prior to this record, he and his father Jeremiah Nixon, Sr., were both rebuked for breaking the Sabbath.

The church believed that members should make arrangements in order not to conduct work on the Sabbath as illustrated with William Haig of St Andrews and Jeremiah Nixon of Fairton, NJ. The leaders of the colonial churches also encouraged members not to travel on the Sabbath, as it would not allow them proper time to rest and honour God. Once again, Jeremiah Nixon appeared before the session of the Fairfield Church for not observing the Sabbath properly. On January 28, 1761, both the Senior and Junior Jeremiah Nixon appeared before the church session of Fairton, NJ, when a complaint against them was made to the elders. It was discovered that the father and son

¹⁰¹ Fairfield Church, Fairton, NJ, March 11, 1771.

¹⁰² Fairfield Church, Fairton, NJ, March 11, 1771.

¹⁰³ Fairfield Church, Fairton, NJ, March 11, 1771.

had travelled on the Lord's Day, to which both confessed. The elders of the session exhorted them to "take more caution on the Lord's Day."¹⁰⁴

On August 20, 1798, in the First Presbyterian Church of Madison, NJ, it was recorded that a committee was sent to visit with Daniel Burnet because he was delated to have been travelling on the Lord's Day.¹⁰⁵ Four days later on August 24th, Daniel Burnet voluntarily appeared to the session to confess his guilt. He made his confession and "Christian Satisfaction."¹⁰⁶

Although there was a difference in the number of cases brought before the sessions of New York and New Jersey, the Presbyterian Church in both colonies disciplined in a similar fashion to one another. These cases included not attending worship on Sunday morning and not observing the Sabbath properly. Members of the colonial church committed a breach of the fourth commandment by conducting their business, by travelling, or by engaging in recreational activities. The procedure was essentially the same in both countries. Elders delated to the session the names of members who had absented themselves from communion with the church on Sundays and from the sealing ordinances. The accused people had the opportunity to offer their excuses, which the session deliberated over to determine one's guilt. A few of the church sessions determined that a public confession was necessary, but most were dealt with privately. The Church of Scotland and the American Presbyterian Church both adhered to the same church doctrines, which required the observance of the Sabbath. However, as illustrated above, differences between the two churches emerged in comparing the statistics of these cases.

¹⁰⁴ Fairfield Church, Fairton, NJ, January 28, 1761.

¹⁰⁵ First Presbyterian Church, Madison, NJ, August 20, 1798.

¹⁰⁶ First Presbyterian Church, Madison, NJ, August 24, 1798.

Conclusion

The life of the community was enhanced by the church during the eighteenth century. Church practices maintained such a community. Therefore, the Presbyterian Church on both sides of the Atlantic Ocean enforced its requirements, which included attendance at worship and observance of the Sabbath. When these expectations were not fulfilled, then the church disciplined accordingly. However, the Presbytery of St Andrews did not discipline for the breach of the fourth commandment nearly as often as its counterpart across the Atlantic. There was no official change to doctrinal proceedings or practice in the Church of Scotland, but this period was dominated by the Moderate party. The sheer lack of Sabbath cases illustrated that the Moderates grew less and less concerned with discipline for the purpose of edification of the congregation and in turn utilised the system for its practical purposes, which will be demonstrated in the next chapter.

However, across the Atlantic, the colonial Presbyterian Church did devote its attention to the absenting members of the congregations. Breaking the Sabbath was against the doctrines of the church and it was strongly discouraged. The colonial church reacted to the pluralistic society by encouraging its members to adhere to the requirements of membership, as these distinguished the Presbyterian Church from the other denominations. As a result, the colonial churches seemed to grant greater attention to the attendance habits of the parishioners than did the Church of Scotland.

As for the church and state relations within the countries, the discipline for violations of the sacraments and worship attendance was strictly the responsibility of the church in the eighteenth century, although such action by

the church was supported by the state. However, the grey area between the boundaries once again emerges with the marriage practices and the enforcement of sexual purity. Therefore, chapter four discusses the disciplinary proceedings for domestic issues and sexual misconduct in Scotland and the colonial Presbyterian Church in the eighteenth century. As will be revealed, these cases were before the Scottish church with great frequency, while in comparison they appeared far less in the colonial churches.

CHAPTER FOUR

Marriage Relations and Sexual Misconduct

Maintaining moralistic societies and edifying Presbyterian congregations were the chief aims of church discipline. The system was created to admonish and correct any behaviour contrary to the teachings of the Church and Scripture, which included inappropriate familial relations and sexual impurity. Based on their respective theological beliefs, the Church of Scotland and the colonial Presbyterian Church imposed ecclesiastical discipline upon its members when the standards were violated. The Scottish reformed ideology of discipline concentrated on the care and protection of the soul. However, by the eighteenth century, the disciplinary system appeared routine and used for practical purposes. Additionally, the *Form of Process* “rendered church courts all but powerless to deal any longer with the inward motions of the heart, with sins of pride, avarice, and the like.”¹ Across the Atlantic, the Presbyterian churches continued to follow in the sentiments of the reformed ideas and discipline was used largely for the gentle care of souls and continued to discipline for inward sins. Although the Presbyterian courts heard cases of a secular nature, the focus was placed on maintaining harmonious communities and maintaining moralistic societies. This chapter will further illustrate this point by examining the disciplinary cases regarding domestic relations and sexual misconduct.

¹ Blaikie, Andrew. *Illegitimacy, Sex, and Society: Northeast Scotland, 1750-1900*. Oxford: Clarendon Press, 1993. p. 187.

Additionally, further overlaps of the boundaries between church and state will also be highlighted.

The family unit, which began with marriage, was central to social stability in the eighteenth century, or so it was believed. Joining in marriage with another person was regulated to ensure a solid union. Problems such as domestic abuse arising within the family unit were frowned upon and dealt with by the elders. Sexual promiscuity was discouraged in order to keep unmarried persons clean and pure, and in order to safeguard their future marriage. Furthermore, infidelity was strongly condemned, as its repercussions could ultimately disrupt the family unit. Both the church and the state had a vested interest in protecting the family, therefore addressing the issues through discipline and punishment. This chapter will deal with the various forms of behaviour that could be potentially harmful to the family unit, including: the regular and irregular practices of marriage, divorce, domestic abuse, improper relations between family members and sexual misconduct, including scandalous carriage, antenuptial fornication, fornication, and adultery. Discussion of each of these categories will illustrate the church's aim in disciplining these cases, identifying instances of overlapping church and state jurisdiction. Additionally, by depicting the process of discipline for each type of offence, the differences in the procedures employed will emerge. This comparison will also serve as a general guide to how discipline differed in Scotland and the American colonies of New York and New Jersey during the later half of the eighteenth century.

Marriage

The practice of marriage differed slightly on either side of the Atlantic, but the constant factor was that the church and the state protected the union between a man and a woman. The Presbyterian Church in Scotland and America adhered to the *Westminster Confession*, which stated that "marriage was ordained for the mutual help of husband and wife, for the increase of mankind with a legitimate issue, and of the church with an holy seed; and for preventing uncleanness."² According to this definition, marriage created families and served the mutual benefit of the community; therefore, the church should protect the union between husband and wife and discipline any irregularities.

Marriage Practices in Scotland

In Scotland, there were two types of marriage, regular and irregular.³ Generally speaking, regular marriages were instituted by the Established Church, while irregular marriages were not. In 1563, Queen Elizabeth I established the Commissary Court and granted it jurisdiction over marriage, divorce, and bastardy.⁴ The court mainly dealt with the ministers or officials that performed irregular marriages. During the seventeenth century, the legislature passed several acts which imposing penalties upon the non-established ministers of the time. As the authoritative pendulum swung between the Presbyterian and Episcopalian churches, the penalties were imposed upon the dissenting ministers. When the Presbyterians were back in power, under the Act of 1698, the

² *Westminster Confession*, XXIV.2.

³ For a discussion of regular and irregular marriages see Mitchison, Rosalind and Leah Leneman. *Sexuality and Social Control: Scotland 1660-1780*. Oxford: Basil Blackwell, 1989. Chapter three and four. pp. 79-133.

⁴ Stair Society. *An Introduction to the Scottish Legal History*. Volume 20. Edinburgh: Robert Cunningham & Sons, 1958. p. 82.

dissenting officiant could face imprisonment by the magistrates, witnesses could be fined, and the participants could also face imprisonment and fines.⁵

However, since severe penalties did not deter couples from seeking secretive marriages the Church of Scotland enforced discipline upon irregularly married persons.

From the time of the Reformation until 1834, there were two requirements for a regular marriage: the proclamation of the intended marriage before the church and the marriage ceremony performed by a minister of the established church.⁶ Scotland did recognise irregular marriages as valid.⁷ According to the law of Scotland, there were four recognised forms of marriage: 1. a minister could perform the marriage rites; 2. consent of two individuals *de praesenti*; 3. promise of marriage followed by *copula*; and 4. cohabitation as man and wife.⁸ The state, against the will of the church, accepted marriages that were performed by a dissenting minister and took no further issue. However, the Established Church considered the marriage irregular and pursued the couple in order that they should endure church discipline.

In Scotland, marriages that were not solemnised by the church were considered clandestine, as touched on above. If newlyweds were married outside the church, the couple came under the censure of the church and were disciplined accordingly. In order to regularise the marriage union within the church, couples that married irregularly were required to confess their

⁵ *An Introduction to the Scottish Legal History*, p. 85.

⁶ *An Introduction to Scottish Legal History*, p. 84. In 1712, the Episcopalian clergy were granted the right to perform marriages, which were subsequently deemed regular.

⁷ Smout, T.C. "Scottish Marriage, Regular and Irregular 1500-1940" in Outhwaite, R.B. (ed). *Marriage and Society: Studies in the Social History of Marriage*. London: Europa Publications, 1981. p. 205.

⁸ Nelson, William. *New Jersey Marriage Records 1665-1800*. Baltimore: Genealogical Publishing, 1982, p. lvi.

wrongdoing, produce a certificate of marriage and pay the normal fee for the proclamation of banns. The Moderator of the church session then rebuked the couple and admonished them to “live as becometh man and wife.”

Discipline for irregular marriages was routine in the eighteenth century. The church did not seem to conduct the cases with the soul of the offenders in mind, but simply to correct the irregular marriage. Therefore, the newlyweds really did not have to fear the subsequent discipline. The church session heard cases of irregular marriage by means of a voluntary confession, a delation by an elder, or by a raised suspicion about two people living together. The fact that couples did not fear the discipline is demonstrated by the fact that most of the cases of irregular marriage appeared before the session by means of a voluntary confession. For example, James Hamilton, mate in the King’s Yacht commanded by Captain Reid, and his new bride, Margaret Liddel, voluntarily confessed to the session of Ferryport on Craig on April 29, 1754. They produced a certificate of marriage and were rebuked by the Moderator accordingly.⁹ Similarly, John Grove and Isabell Frazer were clandestinely married. They voluntarily produced their certificate of marriage to the session of Kilconquhar on September 9, 1750, and subsequently were rebuked and then dismissed by the Moderator.¹⁰

Even when a couple did not appear voluntarily, they still did not resist the discipline and appeared before the session willingly. Elders of the church were required to be aware of the misbehaviour of the parishioners and inform the session of any misconduct. Anne Millar, recently married to Alex Brown, a native of Earls Ferrie and servant to Lord McDuff, was cited to appear before

⁹ CH2/150/2. Ferryport On Craig, April 29, 1754.

¹⁰ CH2/210/10. Kilconquhar, September 9, 1750.

the church in Anstruther Easter on May 20, 1760, by means of an elder's delation.¹¹ She did appear before the session and was admonished "to live as becometh."¹² Again in Anstruther Easter a couple was delated to appear before the session. On October 6, 1754, the minister told the elders that John Smith, a mariner, and Isabel St Clare had been irregularly married. The couple was cited, compeared and acknowledged their guilt. They produced the marriage liens and were then "rebuked and exhorted to live as becometh."¹³

The members of the congregation also had a duty to inform the elders of such misconduct. Members of the Church of Scotland, who either lived in the same parish or another parish, also made reports to the session about clandestine marriages. However, even when reported by a member of the church, the couple willingly approached the session meeting. James Hannay of Kingsmuir, grandfather of Mary Herroun, sent a letter to the minister of Dunino on the subject of her irregular marriage to Nathaniel Murray, the clerk of the custom house in Anstruther. James Hannay desired that the minister "give Mr. Murray such direction as he thought proper."¹⁴ The letter was read to the session and the clerk then wrote to Mr. Hannay to summon the said couple to appear before the session at their next convening. On November 2, 1758, in response to the summons, Mary Herroun and Nathaniel Murray willingly produced their marriage certificate, were rebuked, and told "to adhere to one another as married persons."¹⁵ They were also "enjoynd by the session to give in something to

¹¹ CH2/625/3. Anstruther Easter, May 6, 1760.

¹² CH2/625/3. Anstruther Easter, May 20, 1760.

¹³ CH2/625/3. Anstruther Easter, October 6, 1754.

¹⁴ CH2/405/3. Dunino, October 29, 1758.

¹⁵ CH2/405/3. Dunino, November 2, 1758.

the poor box for their irregularity and to pay their marriage dues to the Session Clerk.”¹⁶

Elders were also informed about couples living together suspiciously. The elders were then to bring their information to the session to be dealt with. Two reports were made to the session of Ferryport on Craig on November 25, 1773, regarding two couples living within the parish who were cohabiting as husband and wife. The session cited both suspect couples to appear before them.¹⁷ William Hughes and Susan Kay compeared to the session in the afternoon of that day and produced a certificate of marriage and were accordingly “exhorted to live as man and wife.”¹⁸ The second couple, John Gregorie & Isabel Kay, also presented their marriage certificate and were exhorted in the same fashion.¹⁹

Most cases of clandestine marriages appearing before the session were resolved quickly, as the majority of the couples produced their certificates of marriage. 74% (165 out of 222) of all of the cases of irregular marriages that appeared in the Presbytery of St Andrews between the years of 1750 and 1800 were resolved with the couple presenting a certificate of their marriage. The remaining percentage of cases did not actually record whether the couple had a certificate or not. In one parish, Anstruther Easter, there were thirty-nine cases recorded and twenty-four of the couples produced a certificate of marriage, which was 62% of the total cases.

¹⁶ CH2/405/3. Dunino, November 2, 1758.

¹⁷ CH2/150/3. Ferryport On Craig, November 25, 1773.

¹⁸ CH2/150/3. Ferryport On Craig, November 25, 1773.

¹⁹ CH2/150/3. Ferryport On Craig, November 25, 1773.

Couples who did not possess a marriage licence may have not attended the meeting of session when they were first called. However, without extensive records of why offenders did not appear, that would be impossible to determine. Furthermore, there were cases that involved irregularly married couples who did not possess a certificate of marriage. These couples could have been deemed married by making a declaration of their consent to marry to a civil magistrate. These marriages were irregular to the church, but valid to the state. Additionally, if couples made their consent known to one another and then had sex, the sexual act proved commitment and promise to one another. This was known as "marriage by promise *subsequente copula*."²⁰ These methods of irregular marriage were not recorded by the sessions, but it can be assumed that these were methods that warranted disciplinary action and could explain the remaining percentage.

Usually cases were settled in one meeting of the session. However, there were always exceptions to the norm. Apparently, not all couples appeared when they first were called. In order to rectify this situation, the session of Anstruther Wester declared that

a great many persons are proclaimed in order for maridge twice or three times in one Sabath they therefore think this also not very consistant with the Rules of the Church enact that none for the future that the Parties shall pay Double Dues to the Poor also the Session Clerk & Bedale if they shall be twice proclaimed in one day & triple dues if they be three times proclaimed in one Day -- and for all Irregular maridge they shall pay ten shillings sterling to the poor of the parish.²¹

Offenders cited to appear to the session were called to the church by the Beddal, who stood at the door and called out the names of the accused. Not all of the couples who were accused of irregular marriages appeared after the first call,

²⁰ Smout, "Scottish Marriage," p. 207.

²¹ CH2/624/4. Anstruther Wester, December 27, 1770.

resulting in multiple calls in one day. In order to rectify the situation, the session of Anstruther Wester increased the fee payments. However, this was the only parish in the Presbytery of St Andrews to raise the incurred fees, which further indicates that most couples willingly accepted their discipline.

Also worthy of mentioning were the unique cases when a couple did not willingly appear before the session, usually because the case of irregular marriage had been complicated by further immoral behaviour. The session did not simply dissolve such cases, but often utilised the higher court of the presbytery to enforce its discipline. The session members of Crail were first notified about the irregular marriage between Margaret Gilles and Andrew Gray on June 13, 1790. The

Minster acquainted them, That he had been repeatedly informed last week that Margaret Gilles, one of his parishioners was lately married clandestinely to a young man of the name Andrew Gray from a neighbouring parish, and that she was now waiting with him in the town of Crail, as his wife: Tho' the said Margaret Gilles had for several years past given hereafter to be a married woman: had occasionally cohabitated with the person who passed for her husband, who as far as is known, is still alive, and by whom she has a child.²²

The session after mature deliberation unanimously agreed to summon Margaret Gilles to the next meeting to be held in the Schoolhouse on Thursday, June 17th. Margaret Gilles appeared at the stated meeting and was interrogated about the alleged irregular marriage. She produced a certificate of her marriage to Andrew Gray. With regards to the charge about cohabiting and being pregnant with another man's child, Margaret answered that she "was married to him because she was with child but that she never cohabitated with him."²³ The session decided that they could not honour her current marriage to Andrew Gray,

²² CH2/Crail/ 2. Crail, June 13, 1790.

²³ CH2/Crail/ 2. Crail, June 17, 1790.

hence they exhorted her to not cohabit with him at the present time. She was also placed under suspension from church privileges.²⁴

The case reopened on October 10, 1790, when the session received the following letter regarding the affair:

Revd Sir: Being from home when yours of the 14th arrived, I could not make an earlier return, nor is it in my power to give any satisfying information with regard to the intricate point to which it refers. The man is gone abroad, in what direction nobody knows nor is any solicitor to enquire. His conduct in the end so different from the opinion of once entertained, has made me often regret that the daughter of a very worthy man was so unhappily disposed off – I do recollect; that before his marriage, a woman of the name of Gilles came here, and passed some days at his father's. He assigned his acquaintance with her in Fife, as the cause of this visit but denied that he was under any engagement to her, nor that her banns were publishing at that very time, did she urge any claim to him as her husband. A report indeed circulated, that he had promised to make her his wife, and that in the prospect of this, she had advanced him some money to carry on business. This report, at first made, such an impression on the bride's friends that they would not consent to the Union, but as he persisted in the denial, and the young woman herself was absolutely bent on the match their at length agreed, and their hands were joined by me, about the close of Summer 1786. As I heard it afterwards alledged, that Margaret Gilles had brought forth a child to Alexander Miller, and some condescended on the place, and many other circumstances relating thereto, the Session thought themselves bound to enquire in the matter. Miller, by a confession of guilt, saved them further trouble, and was accordingly rebuked for fornication. Being involved in debt he soon after went abroad. From your accts of this matter it is very complicated nor do I see how any further light can be thrown on it. I am & c, Signed James Dobie.²⁵

Upon deliberation over the letter, the session decided to summon Margaret Gilles, Andrew Gray, and his father Philip, who offered some objections to the foretold marriages. On October 16, 1790, at the meeting of the session Andrew Gray and Margaret Gilles appeared, but Philip Gray did not. Therefore, as not all parties involved in the case were present the session deemed it more

²⁴ CH2/Crail/ 2. Crail, June 17, 1790.

²⁵ CH2/Crail/ 2. Crail, October 10, 1790.

appropriate to delay the case.²⁶ Unable to attend the next meeting of session on the twenty-first of October, Phillip Gray sent a letter to the elders explaining his absence and his thoughts with regard to his son's marriage. His letter stated that Margaret Gilles

was already married to another husband, from whom she had received letters since she went to America that she ought to give some kind of proof that he was dead before the session could recognize her marriage with his Son-- that he had paid the dues for her former marriage with Alexander Miller -- and that she had declared often in Anstruther, that she was married to Miller, which he (Gray) could prove, if required -- that he thereby required the Minister and the Session to stop further proceeding -- threatening that if they did not, he would commence a prosecution against them in the Civil Court and appeal to the Presbytery of St Andrews at their next meeting.²⁷

It was with this "threat" from Phillip Gray that the session referred the case to the presbytery. The minister presented the case to the Presbytery of St Andrews and reported to the elders that upon the direction of the presbytery he was to "draw up a short state of the case and send it to the Procurator of the Church, craving his advice and to act according to his direction."²⁸

On June 5, 1791,

the Minister reported that he had conversed with the Procurator of the Church upon the Subject of memorial formerly transmitted to him, concerning the alledged marriage of Margaret Gilles with A. Gray; and that he had authorized him to state to the session 'That after considering the circumstances of the case, he was of opinion they might proceed to recognize the marriage in the usual manner.'²⁹

The case was concluded on June 19, 1791, by informing all parties involved, that the marriage between Andrew Gray and Margaret Gilles was "judicially

²⁶ CH2/Crail/ 2. Crail, October 16, 1790.

²⁷ CH2/Crail/ 2. Crail, October 21, 1790.

²⁸ CH2/Crail/ 2. Crail, January 2, 1790.

²⁹ CH2/Crail/2. Crail, June 5, 1791.

acknowledged” by the session.³⁰ Andrew Gray and Margaret Gilles were rebuked and exhorted to “live becometh as man and wife” two weeks later before the congregation of Crail.³¹ This case was an exception to the majority of cases that were easily dealt with during one meeting of the session.

The above case does not discredit the effectiveness of the Established Church in its attempts to regularise marriages. In fact, this case further illustrated the church’s success rate in dealing with irregular marriages. In the 222 cases in the Presbytery of St Andrews, all of the cases were resolved. The case between Margaret Gilles and Andrew Gray may have been a lengthy case, but in the end the session prevailed and regularised the marriage. Additionally, this proves the Established Church’s strict control on the marriages of its parishioners. The state did recognise the four main types of irregular marriage, but in this presbytery, every single irregularly married couple had to make their appearance to the session and pay the marriage fees. Interestingly, the Church of Scotland’s control over marriage practices continued until 1834, when the Marriage Act was passed, which allowed any dissenting minister to perform the ceremony. In 1878, Registrars were able to proclaim banns and in 1939 they were allowed to perform the ceremony.³²

³⁰ CH2/Crail/ 2. Crail, June 19, 1791.

³¹ CH2/Crail/ 2. Crail, June 19, 1791.

³² *An Introduction to Scottish Legal History*, p. 86.

Marriage Practices in the Colonies

The Presbyterian Church across the Atlantic did not share the same control over marriages, due the various ethnic groups and religions in the colonies. There were several influences on the marriage laws within the colony of New Jersey. The Dutch, the Swedes, the English, and the Scottish all played a role. Further influences came from within the colonies, including the Puritan New Englanders, the Quakers, and settlers from New York and Pennsylvania.³³ For the purpose of this discussion, the influence of England, Scotland, and the New Englanders had the greatest effects. When New Jersey was granted to Carteret and Berkeley in 1664, the authority of the clergy with respect to marriage was reinstated by the act passed in 1660, declaring that all marriages that had taken place since 1642 would be deemed as valid as long as “such marriages had and solemnised according to the rites and ceremonies established, or used in the church or kingdom of England.”³⁴ Prior to the Marriage Act of 1753, a couple could enter into marriage by cohabitation or mutual consent. However, the act declared that any marriage celebrated outside the church or granted by special licence was invalid.³⁵ However, the influence of this act upon the subsequent marriage practices within the colonies of New York and New Jersey was difficult to determine. In general, colonial marriages were more open to the needs of “a mobile, heterogeneous, opportunistic, fluid society than was English marriage and divorce law.”³⁶

³³ For a fuller explanation see Nelson, William. *New Jersey Marriage Records 1665-1800*. Baltimore: Genealogical Publishing, 1982, pp. ix-xxxiv.

³⁴ Nelson, pp. xlvii.

³⁵ *The Wordsworth Dictionary of British History*. Wordsworth Editions Ltd, 1994. p. 233.

³⁶ Hoffer, Peter Charles. *Law and People in Colonial America*. Baltimore: The Johns Hopkins University Press, 1998. p. 108.

The Scottish marriage practices also influenced the practices in the colonies. By order of the Church of Scotland, public proclamations of banns were required. Banns were formal declarations of the intention of two people to marry. They were intended to alert the community of the upcoming marriage and to create a forum for any objections to the union. With the completion of banns a certificate of proclamation was granted, which was essential for a religious ceremony.³⁷

New Englanders also had an influence on the marriage rites in New Jersey, as so many of the inhabitants of the colony migrated from Connecticut and Massachusetts. The Puritans that left England were eager to assert their independence from the authority of the Church of England. Instead, the Puritans enforced their own notions of how church and state interacted with one another. With regards to marriage, the Puritans believed that marriage was a civil contract sanctioned as a divine ordinance, not a sacrament. Marriage was to be performed by the civil magistrates solely.³⁸

With these influences in mind, marriage in New Jersey was viewed as a civil contract. Marriage licences, which were ultimately approved by the Governor, were granted by the civil authorities. However, the religious institutions in the colony could enact the ceremony itself. On March 27, 1719, the assembly of New Jersey passed "An Act to prevent Clandestine Marriage." At the conclusion of the act it decreed

That it shall and may be Lawful for all or any Religious Societies in this Province, to joyn together in the Holy Bands of Matrimony, such Persons as are of the said Society, according to the Rules and Customs of the Society they appertain to, provided they have the Consent of Parents,

³⁷ *Dictionary of Scottish Church History and Theology*, Downers Grove, IL.: InterVarsity Press, 1993, p. 56.

³⁸ Nelson, p. lxi.

Guardians or of such Person under whose Care and Tuition they are, signified in Writing, under the Hand or Hands of such Parent or Parents, Guardian or Guardians, or such Persons under whose Care and Tuition the said Persons so to be Married are, any things in this Act to the contrary, in any wise notwithstanding.³⁹

This act recognised the authority of the church to solemnise marriages according to their regulations placed on marriage. A marriage licence was required in cases where banns were not proclaimed. "Marrying by licence" became the norm after the above act was passed in 1719. This may have resulted from "the growing reluctance of amorous swains and maidens to have their intentions proclaimed from the pulpit, or published on the church door."⁴⁰

Curiously, disciplinary proceedings for irregular marriages did not cross the Atlantic into the colonies of New York and New Jersey. In the churches that were included in this study, there was not one case that dealt with a clandestine marriage. This was due to the fact that the church did not consider marriage by a civil authority or by a minister from another church irregular. The act above suggested that all religious ceremonies would be considered lawful. While the Church of Scotland had the authority to regularise the clandestine marriages of its parishioners, the colonial Presbyterian Church did not enjoy the same authority. Adapting to its religious landscape, which included a variety of denominations, each with their own marriage customs and rites, the Presbyterians resolved to accept the ruling of the state, and therefore did not take issue with marriages solemnised by an alternative religious institution.

However, the colonial secular authorities did place regulations upon marriage and made attempts to prevent clandestine marriages. The "Act to

³⁹ Bush, Bernard. *Laws of the Royal Colony of New Jersey, 1703-1745*. Vol. II. Trenton, NJ: New Jersey State Library Archives and History Bureau, 1977. p. 256.

⁴⁰ Nelson, p. cv.

prevent Clandestine Marriages” (1719) defined what the civil authorities considered irregular. The act stated that

No Lisence shall be given to Marry any Person under the age of One and Twenty years, until such Persons have had the Consent of his or her Parent or Parents, Guardians or Guardians, or Person or Persons under whose Care and Government he or she shall be, signified by a Certificate in Writing under the Hand of the Parent or Parents ... of him and her intended to be Married: ... which Certificate shall be filed in the Secretary’s Office of this Province, and Registered in a Book to be kept for that purpose, for doing of which it shall be lawful for the Secretary of this Province, or his lawful Deputy, to receive the Sum of three Shillings as Fee or Reward.⁴¹

The act also warned Ministers, who had the authority to solemnise marriages, not to marry any person who was under the age of twenty-one without the consent of the parent or legal guardian as specified above. If a minister was found guilty of performing an illegal marriage, he was fined two hundred pounds.⁴² Therefore, it would make sense that the Presbyterian Church followed the requirements of marriage, as two hundred pounds was a hefty fine, which most pastors would be unable to pay.

Although, the colonial Presbyterian Church did not discipline for irregular marriage, the church did address questions regarding the appropriateness of marriage in certain cases. The Church was concerned with the spiritual well-being of its members and believed that Scripture established safeguards to the marriage union. For instance, questions regarding divorcees being allowed to remarry were based in Scripture passages like Matthew 5:32, which states, “whoever divorces his wife for any reason except sexual immorality causes her to commit adultery, and whoever married a woman who

⁴¹ Bush, Vol II, p. 256.

⁴² Bush, Vol II, p. 257.

is divorced commits adultery.”⁴³ For example, the First Presbyterian Church in Morristown, NJ, dealt with the issue of whether or not a person could remarry if their first spouse was still alive. Lydia Parker, a member of the First Presbyterian Church in Morristown, NJ, was brought before the church session on March 17, 1783, for her questionable marriage. Although there was no record of her discipline, it was stated that she married another man while she knew that her previous husband was still alive.⁴⁴

The Presbyterian Church in the colonies was cautious in allowing divorcees to remarry. For example, the church would not marry another person without certificate of a divorce. John Brant sought advice from the session of Morristown, NJ, on September 17, 1798, regarding “the propriety of his being married to Polly Ayres a member of this chh, while he was not legally divorced from his former wife.”⁴⁵ The elders advised Brant to “desist until he should obtain a divorce from his former wife according to the laws of the state.”⁴⁶

Additionally, the colonial churches were watchful towards widows and widowers marrying too soon after the death of their spouses. The session of Morristown, NJ, was confronted with the widower Daniel Bishop, who married his dead wife’s sister. The beginning of the case was not recorded in the minute book, but on December 27, 1785, the clerk recorded that the case had been referred to the Synod, who ruled that the couple had been premature in their marriage. Appearing before the session again, it was noted that “they had clearness in them selves to act yet are grieved & hartily sorry that they have

⁴³ Matthew 5:32.

⁴⁴ First Presbyterian Church, Morristown, NJ, March 3, 1783.

⁴⁵ First Presbyterian Church, Morristown, NJ, September 17, 1798.

⁴⁶ First Presbyterian Church, Morristown, NJ, September 17, 1798.

been the occasion of grief & offence to the Ch. & .. beg their prayers that their resolutions may be strengthened to love & act more inoffensively for the future."⁴⁷ They were ordered to confess their guilt publicly, which they did on June 30, 1786.⁴⁸

Divorce

The Church of Scotland and the Presbyterian Church in the colonies believed that God hated divorce.⁴⁹ It was also believed that adultery destroyed the marriage covenant and a divorce was warranted.⁵⁰ Following Scripture, the *Westminster Confession* stated,

In the case of adultery after marriage, it is lawful for the innocent party to sue out a divorce; and, after the divorce, to marry another, as if the offending party were dead. Although the corruption of man be such as is apt to study arguments unduly to put asunder those whom God hath joined together in marriage: yet nothing but adultery, or such wilful desertion as can no way be remedied by the church, or civil magistrate, is cause sufficient of dissolving the bond of marriage: wherein, a public and orderly course of proceeding is to be observed; and the persons concerned in it not left to their own wills, and discretion, in their own case.⁵¹

Divorce did not appear in the church records as a case warranting disciplinary action, as it was strictly a matter for the civil magistrates. Obviously, adultery was severely punished by the Presbyterian Church in Scotland and America. The church had an interest in the preservation of marriage unions. Marriage served as the base of the family unit, which was vital to the promotion of religion and it was believed to be the key to the stability of society. Therefore,

⁴⁷ First Presbyterian Church, Morristown, NJ, December 27, 1785.

⁴⁸ First Presbyterian Church, Morristown, NJ, June 30, 1786.

⁴⁹ Malachi 2:16.

⁵⁰ Matthew 5:31, 32 and 19:8, 9.

⁵¹ *Westminster Confession*, XXIV.5,6.

the church took action to guard marriage from a potential divorce and protected the family unit through the means of discipline.

In Scotland, divorce was allowed on the grounds of adultery. In 1563, the Commissary Court was established in Edinburgh and it dealt with all questions of marriage and divorce.⁵² A person desiring a divorce from his or her spouse on the grounds of adultery had to use a lawyer to make a plea to the Commissary Court. Facts and evidence of adultery were drawn up to prove the necessary grounds for divorce. The pursuer was to swear an oath stating that the spouse in question did commit adultery. The evidence of the committed act of adultery was presented and if it was sufficient, then the court granted the divorce.⁵³ Divorce could also be warranted on the grounds of desertion by a spouse, which was allowed by the Act of 1573.⁵⁴

Divorces in the colonies of New York and New Jersey were granted by the governor or lieutenant governors well into the 1770's. Divorce was to be given only on the grounds of adultery, incest, bigamy, or homosexuality.⁵⁵ At New Jersey's twenty-second Assembly meeting in 1772,⁵⁶ the constituents passed "an Act to dissolve the Marriage of David Baxter, with Margaret his Wife, late Margaret Mac Murtry." The act specified that the divorce be granted because of Margaret's infidelity. The proof to her adulterous act was that "the said David Baxter and Margaret Mac Murtry are both White Persons, and that

⁵² *Dictionary of Scottish Church History & Theology*, p. 546.

⁵³ Leneman, Leah. *Alienated Affections: The Scottish Experience of Divorce and Separation, 1684-1830*. Edinburgh: Edinburgh University Press, 1998. pp. 7-8.

⁵⁴ *An Introduction to Scottish Legal History*, pp. 95-6. For further discussion on grounds for divorce see Leneman, Leah. *Alienated Affections: The Scottish Experience of Divorce and Separation, 1684-1830*. Edinburgh: Edinburgh University Press, 1998.

⁵⁵ Friedman, Lawrence M. *A History of American Law*. New York: Simon & Schuster, 1973. p. 204.

⁵⁶ Assembly was held at Perth Amboy from August 16 to September 26, 1772.

the said Mulatto Child could not have been begot by the said David on the Body of the said Margaret, as charged.” By the authority of the “Governor, Council, and General Assembly... the said Marriage and Bond of Matrimony be, and are hereby declared to be from henceforth wholly dissolved, annulled and made void to all Intents, Purposes, and Constructions whatsoever.”⁵⁷ This act was disallowed by the crown, as were other acts denied by the Privy Council in the 1770s. However, the Privy Council lost their authority after the Revolution⁵⁸ and consequently, New York passed a divorce law in 1787 that permitted divorce on the sole grounds of adultery.⁵⁹ The courts, rather than the legislature, handled divorces after the Revolution.

Marriage was sacred and was for life. However, couples in the church did not always stay together “until death do us part.” The church, grieved by separations and divorces, disciplined couples who were unfaithful to their marriage vows, as illustrated in the following example. Zachariah Fairchild was first cited to appear before the church session of Morristown, NJ, on April 24, 1765, for not attending the church ordinances. He told the session that his reasons were personal. However, the elders were aware of his separation from his wife and officially suspended him from communion with the church and cited him to appear before the session the following week.⁶⁰ Fairchild did appear before the session three weeks later when the session “judged that the separation [was] unscriptural & a violation of the holy bonds of the marriage” and that the couple should “Labour for accommodation in that Holy relation of

⁵⁷ Bush, Vol V, p. 168.

⁵⁸ Friedman, p. 205.

⁵⁹ Friedman, p. 205.

⁶⁰ First Presbyterian Church, Morristown, NJ, May 3, 1765.

Marriage & apply to the Throne of grace for such a temper of mind as may enable them to come & live together as heirs of the grace of Life.”⁶¹ It appeared that the couple were able to stay together for the moment, but two years later, Fairchild was called before the church session for arguing with his wife to separate once again. According to the minutes of the session, he was rebuked.⁶² Perhaps the elders were effective in dealing with Mr. & Mrs. Fairchild, for the couple did not appear before the session again.

Similarly, Abraham Clark “[absconded] from his true and proper wife to whom he was bound by the law of God and marriage for some considerable time, and in that time kept company, bedded, and boarded with another woman ... and whereas he again returned home to his wife, forsook the other woman and conducted towards her as becomes a husband.”⁶³ The elders of the church in Westfield, NJ, considered the matter presented before them and ordered Abraham Clark to make a public confession for his “breach of covenant, vows and obligations.”⁶⁴ Clark did confess publicly and was restored to his former standing in the church.

The spiritual protection of marriage shielded the union between a husband and a wife. The Church of Scotland disciplined for irregular marriages, which did not technically have spiritual repercussions. Their purpose in calling clandestinely married couples before them served a practical function only. In cases of divorce, the jurisdiction belonged to the secular authorities. However, there was no attempt at restoring the couple. In the colonies, the Presbyterian

⁶¹ First Presbyterian Church, Morristown, NJ, May 27, 1765.

⁶² First Presbyterian Church, Morristown, NJ, July 2, 1767.

⁶³ First Presbyterian Church, Westfield, NJ, September 16, 1759.

⁶⁴ First Presbyterian Church, Westfield, NJ, September 16, 1759.

Church was not capable of enforcing the regular practices of marriage, like those in Scotland. What does become evident is that the colonial church attempted to protect against harmful marriages, thereby signifying its concern for the spiritual well being of its members. Similarly, the colonial church also witnessed disciplinary cases for abuses within the domestic sphere.

Domestic Affairs

The Presbyterian Church governed the marriage practices of its members and also kept a watchful eye upon domestic relations. The church protected the family unit by disciplining for abusive conduct among family members. In the colonies, there were a few cases of domestic abuse recorded by the session clerks. Zopher Gildersleeve repeatedly appeared before the session of Morristown, NJ, for the many complaints brought against him for drunkenness. On June 18, 1766, he not only confessed his excessive drinking, but also confessed that he had abused his family. The elders suspended him from the church until he could satisfy the church through public confessions.⁶⁵

John Roberts, a member of the First Presbyterian Church of Huntington, NY, was cited to appear before the session on April 26, 1759. The letter was recorded in the minutes and stated,

Whereas many of this Chh are grieved at your disorderly Conversation, Religion thereby wounded, and Occasion given to the Enemies of God to reproach the Christian Name and Profession: and Whereas Methods taken to redress those Grievances have hitherto fail'd of desir'd Success: these, therefore, are not only to desire but cite and require you, to attend the Session, at the House of Ebenezer Prime Pastor of sd Chh, on Tuesday next, at three o'clock in the Afternoon, on the first Day of May next, then and there to answer such things as shall be alledged against you, and to give suitable Christian Satisfaction, or abide by the Direction, and submit to the Censures of the Chh. Hereof fail not, as you will

⁶⁵ First Presbyterian Church, Morristown, NJ, June 18, 1766.

answer your Contempt of the Authority of Jesus Christ, the Supreme Head and King of the Chh in the great Day of Account. Sign'd by Order of the Session EBNZR. PRIME, Modr.⁶⁶

John Roberts did not appear and was cited to appear again. He had been cited to appear on May 11, 1759, and still did not. The session, therefore, heard the evidence which proved that he had "many scandalous Disorders in his Family" and concluded "he be proceeded against in a publick Way as a scandalous and contumacious Offender, and unless he complies with proper Methods of Satisfaction, that he be cut off from the Fellowship and Communion of the Church."⁶⁷ John Roberts was excommunicated from the fellowship of the church on June 10th. July 23rd was a day of Fasting and Prayer in preparation for the celebration of the Lord's Supper, and John Roberts made a voluntary confession of his guilt and

subscrib'd a very humble confession of the Sins for which he was excommunicated, professing his hearty Repentance and Resolutions of Holiness which being read in the publick Assembly, and own'd by him as his Confession, he was thereupon restor'd, own'd as a Brother, and being exhorted to preserve in his Resolutions, was assur'd of being admitted to the Lords Table upon good Evidences of the Sincerity of his Repentance, by a good Life and Conversation, during the Term of a proper period of Time, for Probation.⁶⁸

In addition to domestic abuse and family disorders, the church also heard cases of conflicts between parents and children. In the First Presbyterian Church of Morristown, NJ, Kezia Cole, the daughter of the Widow Cole, accused her mother of encouraging her to join the army "in a sinful & immodest

⁶⁶ First Presbyterian Church, Huntington, NY, April 26, 1759.

⁶⁷ First Presbyterian Church, Huntington, NY, May 11, 1759.

⁶⁸ First Presbyterian Church, Huntington, NY, July 23, 1759.

manner” on March 22, 1756. The session deliberated over the case and were unable to “find that she was guilty of the Crime alledged against her.”⁶⁹

The church held the role of promoting Christian values in society, as well as in the home. Family members were encouraged to live and exhibit Christian behaviour. Keeping unruly company in the home compromised Christian values and was subsequently censured on both sides of the Atlantic. On February 24, 1761, the Anderson family of Anstruther Easter was brought under censure of the church for entertaining disorderly company in their home. They were rebuked by the Moderator and absolved of their disapproved behaviour.⁷⁰

A similar case was recorded in America. Mrs. Cameron of Albany, NY, was suspended from the Presbyterian Church “for admitting a woman of ill fame into her family.”⁷¹ It appeared from the session minutes that the Mrs. Cameron was keeping the woman to the “expense of religion & her own name.” She was rebuked and exhorted to be wiser in the company that she kept.⁷²

The church not only disciplined families with improper values, but also educated the members of the church on how a Christian family was to act. Family prayer was essential to a Christian home and was endorsed by the session. The elders of the First Presbyterian Church in Morristown, NJ, were appointed to discuss with the Cherry Family about the subject on January 1, 1796.⁷³ Likewise, the elders conversed with Mr. Muker on the same subject.⁷⁴

⁶⁹ First Presbyterian Church, Morristown, NJ, March 22, 1756.

⁷⁰ CH2/625/3. Anstruther Easter, January 27, 1761 and February 24, 1761.

⁷¹ Presbyterian Church, Albany, NY, September 1, 1790.

⁷² Presbyterian Church, Albany, NY, September 1, 1790.

⁷³ First Presbyterian Church, Morristown, NJ, January 1, 1796.

⁷⁴ First Presbyterian Church, Morristown, NJ, January 1, 1796.

There were differences between the church in Scotland and the American colonies with regards to their discipline of marital and domestic matters. Both churches encouraged the Biblical precepts of marriage and divorce. The difference was greatest in the churches' role in marriage. Irregular marriages in the colonies were not easily disciplined because there were a variety of accepted methods of solemnising a marriage. Without an established church, the colonies were unable to regulate the practices of marriage. Therefore, the Presbyterian Church was not really able to take offence with a couple who was married by a civil authority or in another church. However, the church did have concerns with the spiritual well being of its members and used teachings and discipline as a gentle guide to protecting the sacred union of marriage and the family.

The Presbyterian Church in the colonies served as a "marital consultant, child psychologist, and domestic relations court."⁷⁵ Once again, the function of the session was stretched and adapted to fit the needs of its members. Some of the cases that appeared before the church, primarily those of domestic affairs, did not have any disciplinary action attached to them. In these cases, it appeared that the church desired to resolve disputes, rather than to discipline the offenders. The church also protected the wellbeing of its members by disciplining abusive people. Abused parties could turn to church for protection. In handling cases within the family, the church was cautious to serve within a ministerial capacity rather than as a court that censured guilt offenders. The family unit, including father, mother, and children, was important to the life of the church and its

⁷⁵ Oberholzer, Emil. *Delinquent Saints: Disciplinary Action in the Early Congregational Churches of Massachusetts*. New York: Columbia University Press, 1956. p. 125.

survival. "Through the family, order was maintained, values instilled, and property transferred. And disturbance of family stability posed a threat to the society."⁷⁶ Therefore, the family was further protected by taking action against the sexual misconduct of the parishioners, which could lead to a disturbance of the defined family unit.

Sexual Misconduct

Sexual purity was strongly enforced in the Presbyterian churches on both sides of the Atlantic. In Scotland, the minute books of the sessions were filled with sexual misconduct cases, such as scandalous carriage, antenuptial fornication, fornication, and adultery. Across the ocean, the American colonial Presbyterian Churches were also striving to promote moralistic societies; therefore, discipline for improper sexual misbehaviour was also recorded in the churches in New York and New Jersey, but not with the same frequency and regularity as their counterparts in Scotland. The most significant difference that led to the lack of sexual cases again can be explained by the practical versus spiritual purposes of discipline. The Church of Scotland had the burden of poor relief, which placed enormous pressure on the church to deter the production of illegitimate children. In the colonies the county authorities held this jurisdiction, thereby allowing the Presbyterian Church to concentrate on the spiritual element of discipline for sexual misconduct.

This becomes clearer with an examination of the statistical evidence gathered from the session minutes. The statistics regarding the sexual misconduct cases that appeared in the colonies are better understood in a

⁷⁶ Smith, Merrill D. (ed). *Sex and Sexuality in Early America*. New York, New York University Press, 1998. p. 87.

comparison with Scotland. The numbers in New York and New Jersey were generally similar to one another, but setting them next to the numbers in Scotland can be staggering. The quantity of the disciplinary cases in Scotland, far outnumbered the cases recorded in New Jersey or New York combined. This may have been due simply to the lack of records existing. Perhaps the lost records contained a plethora of disciplinary cases. The truth of that will never be known. However, the records that survive warrant research and study, in order to establish a comparison of the disciplinary proceedings that existed on both sides of the Atlantic.

The civil authorities also recognised the need to control the sexual promiscuities of its citizens. Scotland, New York, and New Jersey each passed acts for the suppression of immorality. The acts were not identical to one another, but each illustrated the secular authorities' awareness and desire to establish moralistic societies.⁷⁷ In New Jersey, the civil authorities did not overlook sexual misconduct and were the most explicit in their act. The "Act for the Suppression of Immorality" specifically addressed immoral acts of fornication and adultery. Fines or punishments, such as whipping, were levied upon those convicted of adultery and incest.⁷⁸ Nonetheless, inhabitants of Scotland, New York, and New Jersey fell under church censure for all sexual misconduct.

⁷⁷ See Appendix I and II for the acts.

⁷⁸ Bush, Vol. II, pp. 21-2.

Scandalous Carriage

Any questionable conduct between a man and a woman was disciplined by the Church of Scotland and the Presbyterian churches in New York and New Jersey. Sexual purity was taught by the church and appropriate behaviour between a male and a female was stressed. Any behaviour that was questionable or could potentially lead to sexual intercourse was strongly discouraged and therefore disciplined. The New Testament warned Christians to “flee sexual immorality. Every sin that a man does is outside the body, but he who commits sexual immorality sins against his own body.”⁷⁹ Further stressing the warning against sexual impurity, the author of Jude proclaimed, “as Sodom and Gomorrah, and the cities around them in a similar manner to thee, having given themselves over to sexual immorality and gone after strange flesh, are set forth as an example, suffering the vengeance of eternal fire.”⁸⁰ The Presbyterian Church in Scotland and the colonies took these warnings seriously and called before themselves any members of the congregations who were in violation of these warnings. Cases that fell under the label of scandalous carriage varied, but the session investigated any behaviour that was immoral between members of the opposite sex.

The procedures and discipline for scandalous carriage cases were similar in both countries. The Church of Scotland was concerned with the sexual behaviour between two unmarried persons of the opposite sex. Inappropriate conduct was subject to discipline of the church. What defined indecent demeanour seemed to be left to the discretion of the elders in the parishes. Any suspicious interactions were investigated and disciplined when suitable.

⁷⁹ I Corinthians 6:17.

⁸⁰ Jude 7, 8.

Depending upon the severity of the case, the convicted offenders were usually admonished by the session and were then restored to full communion of the church.

For example, the elders of Kilconquhar questioned the behaviour of Helen Young and John Smith. It was brought to the elders' attention that Helen Young had been keeping company with John Smith, a soldier. On April 9, 1750, both were called to appear "upon account of their being in Company a whole night in Kilconquhar."⁸¹ Both confessed their guilt. Helen Young explained that she was to stay with Mrs. Gray, who had fallen ill that evening, but that she did not have "carnal dealings" with John Smith. They were admonished by the Minister for their inappropriate behaviour and were dismissed.⁸²

There were not nearly as many cases of scandalous carriages in the colonies, primarily because they were difficult to prove and easy to conceal. In towns without clearly defined parish boundaries, indecent sexual behaviour could have easily taken place outside the watchful eye of the church officials. However, there were cases of scandalous carriage brought before the church sessions in the colonies of New York and New Jersey. These cases were usually dealt with in one meeting of the session. In cases that reached a guilty verdict, the offender was required to make one public confession before being restored to full church membership. Such was the case of Naomi French in New Providence, NJ. She was placed on suspension when she confessed to scandalous carriage on March 28, 1769. Naomi French finally made her public

⁸¹ CH2/210/10. Kilconquhar, April 9, 1750.

⁸² CH2/210/10. Kilconquhar, April 9, 1750.

confession on August 12, 1770, and was restored to good standing within the church.⁸³

In Scotland, when people were charged with scandalous carriage they were called before the session to explain the behaviour in question. This often included an allusion to potential physical relations outside of marriage. Of course, this was speculative on the part of the church, but nonetheless, they called the offender before them. There were several cases involving women keeping improper companionship with soldiers. If one of these women was to become pregnant with the child of a soldier, chances were that the soldier would have moved away on from the area, subsequently leaving the church to care for the bastard child. For instance, several women residing in parishes that were frequented by soldiers appeared before the sessions due to accusations of scandalous carriage. Agnes Ritchie was cited to appear before the elders of Anstruther Easter on January 12, 1762, for keeping company with soldiers. Agnes denied the charge and explained to the elders that when she was doing an errand for George Westwaters that “one of the soldiers follow’d her down stairs & fell and struggling with her & forced her off the street up the little Wynd that goes up to the Place, that upon his throwing her down she cried out, and some people coming toward them the soldier ran off.”⁸⁴ Although her testimony intimated that she was the victim in this situation, the elders did rebuke her for scandalous carriage and exhorted her to “avoid such company for the future.”⁸⁵

Members of the Presbyterian churches in the colonies of New York and New Jersey were also expected to interact with the opposite sex in a proper

⁸³ First Presbyterian Church, New Providence, NJ, March 28, 1769 and August 12, 1770.

⁸⁴ CH2/625/3. Anstruther Easter, January 12, 1762.

⁸⁵ CH2/625/3. Anstruther Easter, January 12, 1762.

fashion. The church did not have the same financial concern that the Church of Scotland did, but the colonial church was preoccupied with the spiritual well being of the congregation and therefore, attempted to repress any potential improper sexual activity. Pastors were to serve as models to the congregation, but did not always do so. The Rev. George Ogilvie, pastor to the First Presbyterian Church of New Brunswick, NJ, was suspected of criminal conversation with a lady. "A malicious report ... had been circulated, which might prove injurious to his private character, as well as detrimental to the cause of Religion."⁸⁶ The session investigated the matter, found that the "report [was] without foundation," and offered the Rev. Ogilvie the following certificate:

To Whom It May Concern –

We the Subscribers, Members of the Session of the Presbyterian Church in this City of New Brunswick, and State of New Jersey, having heard a report of the Revd George Ogilvie having had criminal converse with a young woman of this City, We do declare that the said report has been strictly examined into and that there does not appear the least foundation for it. – We verily believe it to be false, scandalous, & malicious. – We have thought it our duty to give this certificate to Mr Ogilvie (tho' unasked) both as fellow citizens and Christians. – And as we further declare that since his residence in this City, His conduct and deportment has been irreproachable and exemplary both as a Citizen and Minister of the Gospel.⁸⁷

Session members were concerned with any scandalous behaviour, even when it involved a man of the cloth. Although the Rev. Ogilvie was cleared of his criminal conversation, his case still proved that the session was thorough in its dealings with scandalous carriage and also that even what may have been a simple conversation between two people could be considered inappropriate.

Similarly, the church elders were concerned with the living situations of its members, as seen in the example of Abraham Canfield in Morristown, NJ.

⁸⁶ First Presbyterian Church, New Brunswick, NJ, March 22, 1790.

⁸⁷ First Presbyterian Church, New Brunswick, NJ, March 22, 1790.

He was made to make a public confession for raising suspicions about his involvement with a young girl with whom he was lodging. He explained his situation saying that he was living with the girl because of "his own sickness." He confessed that his living with the girl "proved of sad reflections upon the Cause of Christ" and agreed to make a public confession.⁸⁸ Abraham Canfield may not have had immoral intentions of lodging with the young girl, but he willingly confessed for his behaviour that would be viewed as damaging to Christian faith.

The well being and reputation of the congregation were considered when cases of scandalous carriage came before the church. The elders were obliged to pursue the cases that were causing a stir within the community. Scandalous carriage cases were submitted to the sessions within Scotland by delation or by rumours that were circulating within the parishes. Nathaniel Murrow and Janet Sayate were delated to have had "undecent behaviour at a lonely place at eleven at night upon Thursday the 17th."⁸⁹ They were cited, called and compeared on June 21, 1754, before the session at which point Janet denied that she was in the place mentioned after ten that evening and declared that she did not have carnal dealings with Nathaniel. John Sinox, called as a witness, testified that he saw the two together and that Nathaniel had "his hand over her, laying on the grass & kissing her."⁹⁰ Four days later the couple in question and the witness were called to appear before the session once again. Nathaniel and Janet both

⁸⁸ First Presbyterian Church, Morristown, NJ, April 29, 1768.

⁸⁹ CH2/624/4. Anstruther Wester, June 20, 1756.

⁹⁰ CH2/624/4. Anstruther Wester, June 21, 1756.

confessed being out with one another “at an untimely hour.” The couple were rebuked and dismissed.⁹¹

“Upon a report that Margaret Edmiston and William Martin a soldier had been in company at unseasonable hours they were both cited” to appear before the session of Anstruther Easter on March 25, 1752.⁹² Being interrogated about the incident, she replied that she met William Martin at Robert and Margaret Black’s house. To prove her innocence she said that Margaret Black was “in the room the whole time, except so as she went to the corner of the house & immediately returned.”⁹³ William Martin declared the same. The session found them to be innocent, but did exhort them to “avoid unnecessary conversation to the prejudice of their characters.”⁹⁴

Similarly, in the colony of New York and New Jersey, sessions investigated any rumours or reports that were circulating within the congregation. Scandalous carriage cases were brought before the colonial sessions by means of a delation from an elder or by a rumour. Scotland was not alone in having to deal with rumours of scandalous carriage. Rumours spread in the colonies just as easily. Susanna Bowlen was reproached by the elders of the church in Morristown, NJ, on August 26, 1785. She was found guilty of spreading a report through the town regarding Nathan Howell, saying that he had tried to touch her in an inappropriate manner to defile her chastity. The session examined the “filthy Story she threw out ye public Ear by inuendos &

⁹¹ CH2/624/4. Anstruther Wester, June 25, 1756.

⁹² CH2/625/3. Anstruther Easter, March 25, 1752.

⁹³ CH2/625/3. Anstruther Easter, March 25, 1752.

⁹⁴ CH2/625/3. Anstruther Easter, March 25, 1752.

hints.”⁹⁵ They concluded that there were no grounds to convict Howell of the allegations made by Susanna. “Therefore it [was] ye opinion of the Elders that she [was] highly to blame for publishing suspicion & especially publishing them in such a way as hath occasioned the reproach of Religion & the Profession of it.” Susanna was suspended from church privileges until she could make satisfaction for her wrongdoing.⁹⁶

Rumours about scandalous carriage were also not only spread by the person making the accusation, as seen with Susanna Bowlen in the example above, but also by anonymous reports. A public *fama* circulated through Morristown, NJ, accusing Ichabod Cooper of making an attempt upon the chastity of a young female who lived in his family. On February 28, 1798, Mr Cooper was present and acknowledged that there was some ground for the reports which had circulated concerning him, although they were not true in all the circumstances of them -- that he had talked in an improper manner with a young woman in his house in the absences of his family, which might have given her reason to suppose that he had something dishonorable in view. He desired forgiveness of the Session and of all bretheren who had been grieved with his unchristian like conduct.⁹⁷ The session found him to be sincere and allowed him to make a confession, which restored his church membership. Reports circulating around the congregations were unhealthy to the reputation of the congregations. Elders actively scrutinised the reports, in order to find the truth and discourage the immoral behaviour.

⁹⁵ First Presbyterian Church, Morristown, NJ, August 26, 1785.

⁹⁶ First Presbyterian Church, Morristown, NJ, August 26, 1785.

⁹⁷ First Presbyterian Church, Morristown, NJ, February 27, 1798.

The session also dealt with cases of scandalous carriage, in order to protect women from any sexual violations. Women who felt violated by a man also brought cases of scandalous carriage forward. The elders of Morristown, NJ, were confronted with an accusation by Mrs. Lovejoy against John Allen on January 18, 1758. She alleged that he made an immodest attempt towards her sometime in August of 1757. When called to appear before the church on January 31, 1758, Mrs. Lovejoy did not appear, although she had been seen in the town. John Allen, present before the session, denied the accusation. Doctor Gilbert then testified on behalf of Allen's innocence. He told the elders that "Lovejoy a few weeks ago told him that she reported the story to make a little Sport."⁹⁸ The session concluded that John Allen had been "unrighteously & unjustly accused." They restored him to his former standing in the church and ordered that the conclusion of this case be read to the congregation. As for Mrs. Lovejoy, the elders declared that she was wicked in her accusations and was placed upon suspension.⁹⁹

The elders in Scotland and America dealt with scandalous carriage cases with ease. However, there were several recorded cases that were aggravated by denials or by additional circumstances, such as drinking. The nature of an accusation was often speculative and difficult to prove. Cases were further complicated by denials from the accused or by conflicting reports offered by witnesses. This was clearly the circumstance of the case brought against Margaret Frazer and Thomas Mitchel in Dunino. This case occupied the business of the session for almost a year; however, the church leaders continued to pursue the truth about the report relentlessly. On May 20, 1759, the minister

⁹⁸ First Presbyterian Church, Morristown, NJ, January 31, 1758.

⁹⁹ First Presbyterian Church, Morristown, NJ, January 31, 1758.

of Dunino informed the session that “there was a *fama clamosa* Spread through the parish & in the neighbourhood” regarding “some indecent carriage and unscenly behaviour betwixt Thomas Mitchel tenant in Deninno Miln, a married man, and Margaret Frazer, his servantmaid.”¹⁰⁰ The minister enlightened the session that Elder David Wilson had made initial enquiries into the affair and discovered that several members of the community observed “Criminal familiarity or at least some indecent carriage betwixt” Thomas and Margaret.¹⁰¹ The session then summoned Thomas Mitchel and Margaret Frazer to attend the next meeting of session.

The elders interrogated Margaret Frazer on May 22, 1759. Through a series of questions, she denied that she had “carnal dealings with her Master Thomas Mitchel” and “the practice of going out with him to outhouses at night,” but admitted to “a certain night this bygone winter as she was standing in the door her Master as he past gave her a kiss.”¹⁰² Thomas Mitchel explained to the elders that “he sometimes went out with any other of his servant maids to Supper his beasts at night when the Men Servants were absent but no indecency had past betwixt them at these times.” With regards to the kiss, he stated that “he once kissed Margaret Frazer Standing in the door but that it was in mistake it being dark and thought (when he did so) that she had been his own wife, and that he told his wife that same night his mistake in doing so.”¹⁰³ With the two statements made by the accused persons, the session ended their meeting and cited the witnesses to attend the next meeting of session.

¹⁰⁰ CH2/405/3. Dunino, May 20, 1759.

¹⁰¹ CH2/405/3. Dunino, May 20, 1759.

¹⁰² CH2/405/3. Dunino, May 22, 1759.

¹⁰³ CH2/405/3. Dunino, May 22, 1759

Throughout the month of June, several witnesses were called to explain the interactions that they had observed between Thomas Mitchel and Margaret Frazer. James Robertson said

that on a Certain night about bed time, when the said Thomas Mitchel's wife was in bed and the other Servant maid was absent, he Saw the said Margaret Frazer leave the washing of her dishes and go out to the door and the said Thomas Mitchel quickly follow her out, and that they stayed out about a quarter of an hour, but that he Could not tell whether they went or what they were doing out.¹⁰⁴

Ann Farmer said "Margaret Frazer herself told her that her Master had kissed her oftener than once, and that She had known them to go out sometime at night together, but that they did not stay out long, nor did she know any business they had together nor whether they went out and that her Master never called Maid Servants at this bygone winter or Spring to Supper the beasts."¹⁰⁵ Patrick Herd told the session "he never saw any indecent behaviour betwixt them at any time or place only that his neighbour servants told him that his Master used to kiss Margaret Frazer."¹⁰⁶

Further witnesses were called in and explained to the session what Patrick Herd told them about the interactions between Margaret Frazer and her Master Thomas Mitchel. Christian Couper said

that she heard Patrick Herd say that, that very night when his good wife was at the [B--] in February or March last, That they were as Common together as ever she the sd Christian & David Hutchson her husband were, And that the said Patrick Herd told her when he was in a Rage after a discend with his Master, that he would shame his Master & that he would go to Mr Tod about it & acquaint him of it, yea that he would Go to death with it & likeways the said Patrick Herd told her that Thomas Mitchel his Master came to him on the day after the first session & enquired at him what Margaret Frazer had confessed to the Session &

¹⁰⁴ CH2/405/3. Dunino, June 7, 1759.

¹⁰⁵ CH2/405/3. Dunino, June 7, 1759.

¹⁰⁶ CH2/405/3. Dunino, June 7, 1759.

desired him for the love of God to tell him for surely she had confessed guilt & that his Said Master begged him to Say little.¹⁰⁷

As further witnesses were called the truth of the rumour emerged. David Hutcheson and Margaret Jack testified that they knew only of what Patrick Herd had told them about the alleged scandalous interaction between Margaret Frazer and Thomas Mitchel. David Hutchson, Christian Couper's husband, told the session "that Patrick Herd said to Him That he saw them go into the West House under Cloud of night together, and that they stayed some there & that he saw the said Thomas Mitchel come out & Margaret Frazer followed him out & that he knew no more of the affair."¹⁰⁸ The session then called in Patrick Herd to interrogate him about all of the witnesses' testimonies. He denied that he told anyone about Margaret Frazer and Thomas Mitchel, at which point the session delayed the matter until the following Sabbath.

On June 24, 1759, Thomas Mitchel and Margaret Frazer were once again called before the elders. Margaret Frazer adhered to her original declaration, mainly that they exchanged one kiss, when Thomas Mitchel mistook Margaret to be his own wife. Thomas Mitchel denied all of the charges raised by the witnesses and requested that Patrick Herd be interrogated as he was "the raiser and publisher of such scandalous reports spread through the parish & neighbourhood."¹⁰⁹ The session once again delayed the matter "for sometime till they see what light Providence may be pleased to give them in it."¹¹⁰

The case of scandalous carriage brought before the elders of Dunino on May 20, 1759, was finally resolved on March 21, 1760. Thomas Mitchel and

¹⁰⁷ CH2/405/3. Dunino, June 13, 1759.

¹⁰⁸ CH2/405/3. Dunino, June 13, 1759.

¹⁰⁹ CH2/405/3. Dunino, June 29, 1759.

¹¹⁰ CH2/405/3. Dunino, June 29, 1759.

Margaret Frazer were called to the meeting and both were consistent with their past testimonies. The session deliberated over the entire case and resolved that there was enough proof to find Thomas Mitchel and Margaret Frazer guilty of “indecent & unseemly behaviour & carriage betwixt them and therefore they appoint them both to be rebuked sharply for their said scandal & offence by the Minister in face of the session & admonish to behave themselves better for the time to come and to take heed that they do not give offence by such indecent practices.”¹¹¹ The Minister did rebuke them and they both were absolved from the scandal.¹¹²

This case was lengthy and exceptional for a minor sexual offence. However, the church utilised its resources by calling in witnesses. The members of the parish community had an obligation to be accountable to one another and offer information to the session, when necessary. Not only was it the responsibility of the elders and minister to delate suspicious behaviour, but also the responsibility fell to the community at large, as all members of the parish were brothers and sisters in the Christian faith.¹¹³

In the colonies, cases regarding scandalous carriage were further aggravated by the intemperance of the offenders. James Millar was accused of making “an unbecoming attempt” upon the modesty of Sarah Beige in Morristown, NJ, on October 19, 1770. Sarah also informed the session that James Millar had improper conduct with Joseph Winget’s wife while he was drinking. James Millar appeared before the session and did confess that “thro ye pallacies of Satan & corruption of a deprieved past he was led to an unchaste

¹¹¹ CH2/405/3. Dunino, March 21, 1760.

¹¹² CH2/405/3. Dunino, March 21, 1760.

¹¹³ First Presbyterian Church, Morristown, NJ, October 19, 1770.

attempt" upon Mrs. Winget while under the influence of alcohol. However, the session concluded that the accusation by Sarah Beige regarding herself was ungrounded. James Millar was ordered to make satisfaction for his improper behaviour.

In Scotland and the American colonies, the Presbyterian churches were rigid in their dealing with members of the churches who committed an act of scandalous carriage. The disciplinary cases of scandalous carriage illustrated the session's proactive attempts to encourage sexual purity and to conduct oneself sexually as Scripture dictated. By taking notice and subsequently disciplining, those members of the church that were not conducting themselves in the appropriate ways, the church hoped to curtail further sexual misconduct that could have greater repercussions, such as an illegitimate child. Scotland's sessions were motivated by the practical concerns for the kirk. The Church of Scotland had the obligation of caring for the poor and unwed mothers whose newborns often fell under their care. Therefore, the church attempted to hinder any sexual relations with the strong enforcement of discipline for scandalous carriage. The colonial church did not have the burden of poor relief and therefore could concentrate on the spiritual well being of the community and its members. This point will become clearer with the examination of the cases that did involve sexual intercourse.

Antenuptial Fornication

Members of the churches were expected to uphold sexual purity. Sexual relations among non-married members were strongly discouraged. This included couples that had sexual intercourse prior to their marriage; therefore, the church disciplined antenuptial fornication. In the colonies, antenuptial fornication was also punishable by the state authorities.

Before East and West Jersey merged to form the Royal Province of New Jersey in 1702, antenuptial cases appeared in the civil court records. According to Weiss and Weiss, prenuptial fornication was tried before justices without a jury. Committed offenders were fined and could have been whipped. However, after 1702, antenuptial cases no longer appeared before the civil authorities.¹¹⁴ Therefore, the responsibility to curtail antenuptial fornication was left in the hands of the church.

Discipline of antenuptial fornication was another commonality between the churches in Scotland and the American colonies. There were more cases recorded in the surviving minutes by sessions of the Church of Scotland than their counterparts in the Presbyterian churches in New York and New Jersey, but it was discouraged in both countries. The difference in numbers could be attributed to three main factors. First, the session minutes only recorded antenuptial fornicators who were caught. And second, the record keeping of the colonial churches was not as extensive as that in Scotland. Antenuptial fornicators may have gone unnoticed without detailed records of marriages and births. In Scotland, cases of antenuptial fornication appeared to be the easiest sexual case to render, as the guilty party often voluntarily confessed to the

¹¹⁴ Weiss, Harry B. and Grace E. Weiss. *An Introduction to Crime and Punishment in Colonial New Jersey*. Trenton, NJ: The Past Times Press, 1960. p. 84.

session. It was difficult to conceal an illegitimate child and with carefully kept marriage records; determining that a child was conceived before a marriage became fairly routine.

The standard procedure for antenuptial fornication in Scotland began with an accused couple appearing before the kirk session to confess their guilt or proclaim their innocence. Once found guilty, the church would order the couple to confess their guilt in order to be absolved from their sin. Within the Church of Scotland antenuptial fornication was punished by ordering the guilty couple to make one public confession. Isabel Simson and Andrew Nickels, from the parish of Ferryport On Craig, were married in November of 1771. Five months later, on April 10, 1772, it was reported to the session that Isabel was with child. Both were cited to appear and make one public confession before the congregation, which they did.¹¹⁵ This case exhibits the basic process of an antenuptial fornication case.

The process of discipline for the sin of antenuptial fornication was virtually the same on the other side of the Atlantic. Similar to Scotland, offenders were brought forward to proclaim guilt and then make one public confession to the congregation. A tidy example of this process from a colonial church was the case of Mary Corbin in the First Church of Christ in Ballston Center, NY. On May 2, 1788, "Mary Corbin applied for an opportunity of making confession of the sin of fornication before marriage and also to be admitted to the Lord's Supper & to have her children baptised and have given competent satisfaction as to her motive, knowledge of religious experience, she

¹¹⁵ CH2/150/3. Ferryport On Craig, April 10, April 11, April 12, May 25, June 20, and June 21, 1772.

[was] propounded.”¹¹⁶ In October of 1788, Mary Corbin and her husband were received into full communion with the church and their children were baptised.¹¹⁷

Antenuptial fornication warranted one public confession in front of both a Scottish and a colonial church. The church simply desired an acknowledgement of the couple’s guilt, but further punishment was not required because the couple was married. The family unit was to include a father, a mother, and any children. Couples that procreated before the marriage fitted this model, and therefore the church was lenient with discipline. The relative laxity of this disciplinary procedure will become evident as the issues of fornication and adultery are addressed.

Most cases of antenuptial fornication were handled easily by the session. However, there were always exceptions to the rules. In the colonies, there were a few cases that were referred to a higher church court, unlike in Scotland where all the cases were handled by the session. In colonial cases involving a minister or a licentiate of the church, the elders would refer the case to a higher church court. Mr. Collins, a licentiate serving in the First Presbyterian Church of Morristown, NJ,¹¹⁸ was rumoured to have committed antenuptial fornication, while he was still serving in a church in Connecticut. Apparently, the session of Morristown referred the case to the Presbytery of New York, which subsequently sent it to the Synod of New York and New Jersey, which met once a year, normally in October. At the October 1790 meeting of the Synod, which

¹¹⁶ First Church of Christ, Ballston Center, NY, May 2, 1788.

¹¹⁷ First Church of Christ, Ballston Center, NY, October 1788.

¹¹⁸ From the Synod minutes it can be determined that this case began in Morristown, NJ. However, there is a gap in the minutes of this church between November of 1790 and May of 1795.

took place in New York City, a report was received from the Presbytery of New York regarding the offence of Mr. Collins, a licentiate from Connecticut. The presbytery's report informed the Synod that Mr. Collins was undergoing his examinations for ordination, when it was discovered that he was under church censure for the offence of antenuptial fornication.¹¹⁹ Desiring the background of Mr. Collins, the Synod sent a letter to the Association of Litchfield County to enquire into the matter at the next meeting of the Synod.¹²⁰ The following year the Synod once again met in New York City. On October 6, 1791, the case of Mr. Collins was revisited. The Synod did receive a letter from the Association of Litchfield County, which indicated further evidence of Mr. Collins' guilt. However, in the mean time the Presbytery of New York had ordained Mr. Collins.¹²¹ This case occupied the Synod for several years. There was no indication of whether or not Mr. Collins was ever disciplined, but it appeared that he was not able to carry on serving the church in a ministerial capacity.¹²²

¹¹⁹ The Synod of New York and New Jersey, October 8, 1790.

¹²⁰ The Synod of New York and New Jersey, October 8, 1790.

¹²¹ The Synod of New York and New Jersey, October 6, 1791.

¹²² Twenty-four members of the church in Morristown sent a petition to the Presbytery requesting the absolution of Mr. Collins, which would allow him to serve their congregation. The Presbytery denied their petition, so the members appealed to the Synod. The Synod received this petition on October 18, 1792, and decided to retry the case. "The Synod judged that from what appeared there were sufficient grounds for taking up the cause before their own body and instituting an enquiry into the charge made by common fame against the character of Mr Collins. On the question, In what manner shall this cause be taken up and issued? It was agreed that it should be done by a commission of the Synod consisting of twelve ministers and twelve elders; and that a number not less than fifteen members, seven of whom shall be ministers, shall be competent to the trial of this cause. Mr Silas Condict appeared as a commissioner from the cong of Morristown. Mr Collins appeared while all this was taking place in the Synod and appeared at the bar, and after several desultory observations and criminations against the Presbytery of New York, and against some members of the Synod, for their conduct towards him did declare that he would neither submit to a trial by the presbytery of New York, nor by the Synod, nor by a commission of the Synod, neither would be answer to any citation from either of those bodies, to answer to the cause in question. ... Mr Collins requested leave to explain himself, and declares that by what he had said, he meant nothing further than an appeal from the judicatories to the General Assembly, and asked pardon for any warmth of temper, or in discretions of impression, discovered in the declaration he made." On October 19, 1792, "Mr Collins requested that a letter should be read, written by Doctor Goodrich, Mr Taylor, Mr Wells, and Mr Foot, members of the joint committee of the association

This case was an extreme example of how antenuptial fornication cases were appealed to higher courts. Mr. Collins had a greater investment in clearing his name, as he desired to serve the church as a pastor. Although his motivation for being absolved propelled him to appeal to higher courts, most antenuptial fornicators had a simpler motivation. There were various reasons that served as catalysts to undergo censure of the church, which led to the sessions in the colonies and Scotland having success in dealing with these cases within their own means.

Couples who fornicated prior to their marriage were motivated to confess their guilt to the session for various reasons. In order for a child to be baptised, the child's parents were required to be clean of all scandals. Therefore, couples who conceived children prior to their marriage, voluntarily confessed their guilt. On May 31, 1756, the minister of Ferryport on Craig refused to baptise the child of Mr. & Mrs. James Webster because it was determined that they were guilty of antenuptial fornication. The minister told that couple that they needed a sponsor, which Mr. Webster attained. The child was baptised on June 8, 1756, and the couple made public confessions on June 20th.¹²³

On the other side of the Atlantic, the majority of the session clerks in the colonies did not record details of antenuptial fornication cases. However, by examining the baptism records, it can be concluded that the overwhelming

of Litchfield County, and of the certain district of the County of New Haven, in Connecticut, which had formerly tried and acquitted Mr Collins.— This letter having relations to certain depositions taken by the appellants from the congregations of Morris Town, in the case of Mr Collins and on which their appeal to Synod had been founded; the depositions and the letter were ordered to be read; Whereupon it was moved, that the resolutions of yesterday in the cause of Mr Collins in which it was agreed that the cause should be tried by a commission of Synod, be rescinded - and the question being put, and the note taken, it was resolved that these resolutions be rescinded. The commissioners from Morristown on the part of the appellants, gave notice that they should appeal from the judgment of the Synod on the subject of their appeal brought up from the Presbytery of New York and they accordingly appealed.”

¹²³ CH2/150/2. Ferryport On Craig, June 8 and June 20, 1756.

majority of confessions were driven by the desire to have a child baptised. A child could be baptised only if the parent was clean from all immorality. The parent needed to confess and be absolved, in order for his or her child to be baptised. The case of John and Ann Boyd illustrates this. On January 1, 1787, the couple voluntarily appeared to the session of Ballston Center to have their child baptised. The couple confessed their guilt and “after receiveding their renewal of covenant Baptized their Children Viz. Nancy, Polly, John Logan & Anne.”¹²⁴

As noted above, the motivation of having a child baptised could be identified, if not recorded by the session clerk, by examining baptism records. The session minutes from the Presbyterian Church of Fairton, NJ, illustrate this point. Sam Wescote and his wife appeared before the session on August 15, 1762, to confess their sin of fornication prior to marriage. On August 20th, their child was baptised.¹²⁵ On January 7, 1781, Amariah and Mary Harris voluntarily confessed their sin of fornication. Their child was baptised the following Sabbath.¹²⁶ Similarly, the child of Mr. and Mrs. James Shaw was baptised on August 5, 1781, the week after the couple made a full confession of their sin.¹²⁷

In Scotland, there was no other recorded motivation for voluntarily confessing the sin of antenuptial fornication. However, in the colonies baptism was not the only motivating factor for guilty people to confess their sin of fornication before marriage. The desire to be in full communion with a church

¹²⁴ First Church of Christ, Ballston Center, NY, January 1, 1787.

¹²⁵ Presbyterian Church, Fairton, NJ, August 15, 1762 and August 20, 1762.

¹²⁶ Presbyterian Church, Fairton, NJ, January 7, 1781 and January 14, 1781.

¹²⁷ Presbyterian Church, Fairton, NJ, July 29, 1781 and August 5, 1781.

was also a strong catalyst for open confessions, as seen in the previous chapter. On October 7, 1797, Elizabeth Bale of Goshen, NY, appeared before the session of the Presbyterian Church to confess her sin of antenuptial fornication in order that she might be able to join the fellowship of the church. The session accepted her confession and admitted her to full communion within the church.¹²⁸

In the Presbyterian Church of Aquabauge, NY, the confessions of guilt were not always recorded within the minutes of the session, for it was the register of members that contained all of the antenuptial fornication confessions. Henry and Katury Morejune, Mr & Mrs Richard Howell, and Jonathan and Elizabeth Demonison all had notes besides their names for making public confessions on the days of their acceptance into the communion of the church.¹²⁹

Similarly, pastors often kept their own records of the affairs of the church. Unfortunately, these journals or books were not always kept in the possession of the church and subsequently have been lost or become unidentified. However, the Rev. Benjamin Woodruff, pastor of the First Presbyterian Church of Westfield, NJ, kept his own account of the church which has been preserved by the church. At some point in the history of the church in Westfield, a member transcribed his journal and named it "An Account of the Affairs of the Church at Westfield, New Jersey." The Rev. Woodruff divided the affairs into sections, one of which was titled "Number of Persons who have made a Confession." He did not record many details of the individual cases, but he did record when offenders made their confessions and were restored or

¹²⁸ Presbyterian Church, Goshen, NY, October 7, 1797.

¹²⁹ Presbyterian Church, Aquabauge, NY, August 8, 1779, August 3, 1784, and March 5, 1785 respectively.

accepted to full church privileges. By comparing his records to the church membership roll, it can be determined that 14 of the 16 couples that confessed to antenuptial fornication between the years 1759 to 1798, did so the day they were received in full communion of the church.¹³⁰

In addition to baptism and being accepted into full membership of the church, colonists also desired to be declared clear of their sin if he or she were moving to another parish and wanted a referral. On August 21, 1797, Enos Bonnel, a member of the Presbyterian Church of Madison, NJ, voluntarily confessed his act of antenuptial fornication with the motivation of wanting a "Dismission from this Church and a Recommendation the Church of New Providence." The session heard his sincere confession and "recommended him as a member of good standing to the Christian Communion and Fellowship of the Church at New Providence."¹³¹

If offenders did not voluntarily confess their guilt, the sessions had the means of determining antenuptial fornication. Record keeping was consistent in Scotland; therefore, it was easily determined if a child was conceived prior to marriage. When Alexander Tennet and his wife applied to have their child baptised in the parish of Anstruther Easter on December 7, 1777, the minister ordered them both to be publicly rebuked for antenuptial fornication, as he knew that they had the child four months after their wedding.¹³² The couple made their confession and the child was baptised that afternoon.

The same was true in the colonies. John Guest made an application to the session of New Brunswick, NJ, to baptise his child on January 3, 1792. It

¹³⁰ First Presbyterian Church, Westfield, NJ.

¹³¹ Presbyterian Church, Madison, NJ, August 21, 1797.

¹³² CH2/625/3. Anstruther Easter, December 7, 1777.

came to the knowledge of the elders that the child was born too soon after his marriage; therefore, ordered him to make a public confession of antenuptial fornication. Mr. Guest “appeared before the Session, acknowledged his guilt, declared the contrition on the occasion, and voluntarily submitted himself to the censure usual on such occasions.” John made his confession, was restored to full communion, and his child was baptised that afternoon.¹³³

Antenuptial fornication was considered a sin as it involved two unmarried people engaging in sexual relations. As it was a direct violation of Scripture, Presbyterians on both sides of the Atlantic disciplined the offenders. Civil authorities may have at one time been concerned with this immoral behaviour, but during the eighteenth century the issue was left solely to the jurisdiction of the church. This was an easy offence for the church to handle and it had little practical implications for the church. The child who was produced out of wedlock was legitimate as soon as the couple married and its care fell to the parents. However, not all couples who bore a child outside of wedlock actually married, as the examples discussed above did. Therefore, cases of fornication were generally more involved for the church sessions.

¹³³ First Presbyterian Church, New Brunswick, NJ, January 3, 1792.

Fornication

Fornication cases made up a large percentage of all disciplinary cases in Scotland. Out of a total of 939 disciplinary cases, 369 (40%) cases dealt with fornication. However, in the colonies of New York and New Jersey combined, only 54 fornication cases, out of 490 cases (11%) appeared in the existing records. However, these statistics do not imply that the Scottish were more promiscuous than the American colonists, for that statistic would be impossible to determine. What the statistic does clearly illuminate is that the Church of Scotland must have had a vested interest, other than the spiritual well-being of its parishioners, in prosecuting fornication cases, while there was not as great a need for their American counterparts to do the same or they had different priorities or the surviving records were skewed.

Cases of fornication were prosecuted more frequently in the Church of Scotland during the second half of the eighteenth century. Two reasons can explain this statistic. First, the *Form of Process* (1707), the standard text regarding the process of discipline, cautioned the sessions to pursue cases that had evidence. Spiritual sins, such as greed and pride, had no obvious outward proof; however, an unmarried pregnant woman was all the evidence the church needed to begin a disciplinary trial.¹³⁴ Second, the church was responsible for the relief of the poor within its parish boundaries. Unwed mothers often needed financial care, and therefore, the church went to great lengths to find the father to place the financial burden upon him.

Most often, fornication resulted in a bastard child. Bastardy was a serious problem for the Church of Scotland, as it held the responsibility for

¹³⁴ Clark, Ivo Macnaughton. *A History of Church Discipline in Scotland*. Aberdeen: W&W Lindsay, 1929. p. 179.

poor relief, which unwed mothers often needed. During the sixteenth century, poor relief became a greater part of the parish's duties. This was partly due to the idea of Christian charity. The *First Book of Discipline* declared that "every several Kirk must provide for the poore within itself... for the widow and fatherless, the aged, impotent or lamed... also for persons of honestie fallen into decay and poverty."¹³⁵ In 1574, Parliament passed the act that granted the responsibility of poor relief to the Church. This act endorsed that poor relief should be conducted at the local level and defined the worthy recipients of such relief. The 1574 act was further supported by the Act of 1592, which formally instituted the kirk session as the agency to administer poor relief. However, inadequacies arose as the statutes laid out a system which the parishes were not prepared to handle. The theory behind the statute was that the kirk would establish the needs of the poor and institute a scheme to raise the needed money from the able parishioners. The kirk, however, worked in an opposite fashion. The sessions collected the monies and had the ability to use the funds for the operating needs of the parish and whatever money remained could then be disbursed to the poor. This practice of spending the funds caused tension between the church sessions and the heritors.

The session's authority to administer the poor funds caused quarrels among the church officials and the heritors. This was due in part to the fact that the session elders did not separate the operating funds from the poor relief funds. As the ecclesiastical parish was not a unit of civil government, the session's decisions were often unchallenged due to the lack of an influential justice of the

¹³⁵ *First Book of Discipline*, p. 112-3.

peace.¹³⁶ The session continued to have the discretion to determine how to disperse poor relief appropriately, often times after the operating needs of the parish were met. If church funds were low and not ample to cover the costs of poor relief, then the heritors had the responsibility to make the appropriate assessments. Therefore, they demanded greater involvement in the administration of the kirk funds. Their concern arose from their fear of mishandled voluntary contributions by the church officers, which could cause the heritors to make up the needed monies. Furthermore, “they were also concerned to remove power from the non-landed and control religious fervour, which they feared as a threat to social order.”¹³⁷

A case between the session of Cambuslang and the heritor served as an example of the tension. More significantly, its outcome had profound effects on the future administration of poor relief. This case began in the 1740's and eventually resulted in an appeal to the Inner House of the Court of Session in November of 1752.¹³⁸ The court ruled that the church officials no longer had the power to utilise poor funds as an all purpose parish account. Furthermore, the responsibility of poor relief fell to the heritors, but the kirk session continued to have the administrative duties to disburse accordingly.¹³⁹ This system obviously left gaps in the poor relief, as the heritors did not always wilfully offer up enough money. Therefore, the sessions had to attempt to make up the difference on their own. The majority of the funds for the operating budget of

¹³⁶ Daunton, M.J. *Progress and Poverty: An Economic and Social History of Britain, 1700-1850*. Oxford: Oxford University Press, 1995. p. 465.

¹³⁷ Daunton, p. 466.

¹³⁸ Mitchison, Rosalind. *The Old Poor Law in Scotland: The Experience of Poverty, 1574-1845*. Edinburgh: Edinburgh University Press, 2000. p. 64.

¹³⁹ Mitchison, p. 64.

the parish and poor relief came by voluntary contributions from members of the parish.¹⁴⁰ Additional funds were raised through pew rents, the mortcloth revenue, and 'consignation money' or fees for proclaiming marriage banns.¹⁴¹ The session was also able to raise money by the fines levied for the misbehaviour of the parishioners. If a church was in need of funds, then the session may have more actively pursued any disciplinary cases that included a fine for the guilty behaviour, such as fornication and adultery. The tension between the heritors and the church officials remained an issue well into the nineteenth century, until the Old Poor Law of Scotland was finally abolished in 1845.¹⁴² However, until the change took place, the law placed a burden upon the church, which resulted in the church's ruthless methods in disciplining fornicators, especially when a bastard was produced, which will be illustrated below.

The American counterparts did not incur this burden, for poor relief was the responsibility of the county officials. Therefore, the colonies passed acts that specified severe punishments to deter people from fornicating. In 1668, a law against fornication was passed in East Jersey, stating "that if any man commit fornication with any single woman, they shall be punished by enjoining marriage, fine, corporal punishment, either of which according to the discretion of the court: and the parties so offending shall put in good security for the discharging of the town or parish from any charge by such unlawful birth."¹⁴³ Weiss and Weiss pointed out that the punishments changed at the end of the

¹⁴⁰ Mitchison, p. 70.

¹⁴¹ See Mitchison pp. 76-77 for further discussion on pew rentals; pp. 74-76 for additional reading on mortcloth revenue; and p. 78 regarding marriage banns fees.

¹⁴² Mitchison, pp. 1-12.

¹⁴³ As quoted by Weiss and Weiss, p. 83.

seventeenth century, changing the punishment from imprisonment to not more than 10 lashes.¹⁴⁴ The punishment for fornication was not specified in the acts of West Jersey.

In New York, fornication was classified as an “abominable Sin,” along with “Swearing, prophaness, Sabbath breaking, Drunkenness, fornication, Adultery.”¹⁴⁵ The distinction between the moral treatments versus the civil treatments of fornicators was not clear. However, the colony of New York followed the Elizabethan Poor Law, which placed the civil offence of bastardy in the hands of the justices of the peace.¹⁴⁶ It was not until 1774, that “An act for the Relief of Parishes and other places from such Charges as may arise from Bastard Children born within the same” was passed. This act officially declared bastardy a financial problem, rather than a moral issue.¹⁴⁷ Although the state dealt with the secular issue of bastardy, the Presbyterian Church still found a moral issue with fornication and disciplined accordingly.

The disciplinary procedures for fornication cases were virtually the same as those taken with antenuptial fornicators. Offenders were to appear before the session, confess their guilt and then were ordered to make public confessions. This was the same in Scotland and America. The greatest difference between the countries was found in the number of required appearances. In Scotland, the majority of fornicators were told to make three appearances of public repentance. The colonial churches required only one confession before the congregation.

¹⁴⁴ Weiss and Weiss, p. 83.

¹⁴⁵ *Laws of the Colony of New York*, Vol 1, p. 26.

¹⁴⁶ Wells, Robert. “Illegitimacy and bridal pregnancy in colonial America,” in Laslett, Peter, Oosterveen, Karla, and Smith, Richard. *Bastardy and its Comparative History*. London: Edward Arnold, 1980. p. 356.

¹⁴⁷ *Laws of the Colony of New York*, Vol 5, pp. 689-692.

For example, Christian Cliphins and Charles Rigblin were accused of fornication in the parish of Anstruther Easter. The minister informed the elders that he heard that Christian Cliphins had spent some nights with Charles Rigblin, a Dragoon, and pretended that they were married. The couple appeared before the session, confessed their guilt, and were exhorted to make public confessions before the congregation.¹⁴⁸ The entry in the session's minutes on October 29, 1751, noted that the couple had appeared before the congregation the previous three Sabbaths and were absolved.¹⁴⁹

The Presbyterian churches in the American colonies did not appear to require multiple public confessions for the sin of fornication. All of the cases recorded in the session minutes of the churches within this study document offenders making only one public declaration of repentance. The Church of Scotland had a greater interest in discouraging fornication and therefore required multiple public confessions. The Presbyterian Church in the colonies was concerned with the moral welfare of the offender and apparently did not see the need to make an offender go through the humiliating process of public confession more than once. The session minutes from Morristown, NJ, thoroughly documented twenty-one cases of fornication. In all twenty-one cases a public confession was made by the offenders before each one was restored to a good standing within the congregation.¹⁵⁰ Similarly, the records from the First Presbyterian Church of Westfield, NJ, also recorded one public confession for each one of the ten cases of fornication.¹⁵¹

¹⁴⁸ CH2/625/3. Anstruther Easter, October 2, 1751.

¹⁴⁹ CH2/625/3. Anstruther Easter, October 29, 1751.

¹⁵⁰ First Presbyterian Church, Morristown, NJ, 1752-1782.

¹⁵¹ First Presbyterian Church, Westfield, NJ, 1761-1793.

The Church of Scotland and the American Presbyterian Church placed the accused fornicator on suspensions until the sinner was cleansed from the sin. As the majority of the guilty persons made their confessions willingly, the suspension did not last long. Suspension was also placed upon members of the congregation that were accused of fornication and then did not appear before the session. In Fairton, NJ, the widow Phoebe Summons was called to appear before the church session repeatedly. On July 7, 1779, the elders placed her on suspension for not following the orders of the session.¹⁵²

The disciplinary procedures of trying fornicators were virtually the same in Scotland and America. Equally, the methods by which a case appeared before the session were also the same. Fornication cases in Scotland were presented to the sessions by voluntary confessions, delations, rumours, and by the discovery of foundlings. Most cases of fornication that appeared in the minute books of the kirks in the Presbytery of St Andrews arrived at the session by a voluntary confession made by the mother. The mother was asked to name the father, who would then be called for interrogations. In the case of Cathrin Pierson and John Carmichele of Anstruther Wester, Cathrin confessed to the session that she “was delivered of 2 Children a Boy and a Girl on Thursday the 10 of February.”¹⁵³ She informed that she had been guilty with John Carmichele, who was present to confess his guilt as well. They both were “exhorted to a serious repentance and ordered to appear before the congregation Sabbath next in the Forenoon.”¹⁵⁴ There was no record of the following

¹⁵² Fairfield Church, Fairton, NJ, July 8, 1779.

¹⁵³ CH2/624/4. Anstruther Wester, February 13, 1780.

¹⁵⁴ CH2/624/4. Anstruther Wester, February 13, 1780.

Sabbath, but the record of May 2, 1780, indicated that Catherin and John appeared before the congregation and were absolved by the elders.¹⁵⁵

Fornicators were also delated by the elders. On August 3, 1760, "it was delated by an elder that there was a *fama clamosa* circulating about Isabell Anderson to be with child." She was summoned to appear before the kirk session of Dunino.¹⁵⁶ Isabell appeared three days later and confessed "that she was with the child of David Fulton, servant to John Simson Tennant in Grangemuir, guilty together in his brothers house in Pittenweem in January last."¹⁵⁷ Considering that the elders had to prepare for the sacrament on August 25, 1760, the matter was delayed.¹⁵⁸ On August 31, the elders wrote to the minister of Anstruther Wester to call him to appear before the session in Dunino.¹⁵⁹ Both accused persons appeared on September 7th. Isabell adhered to her former confession and David confessed "that he had been guilty twice with Isabell Anderson in his brother's house in Pittenweem Viz. in December 1759 & in January last 1760 about the middle of that month."¹⁶⁰ Both were sentenced to make a public repentance of their wrongful act of fornication.¹⁶¹ Isabell Anderson made three public appearances and David Fulton made his once she was absolved.¹⁶²

Upon a reported rumour, Jean Hook was summoned to the session of Kilconquhar to answer to the charge of fornication. She confessed her "guilt of

¹⁵⁵ CH2/624/4. Anstruther Wester, May 13, 1780.

¹⁵⁶ CH2/405/3. Dunino, August 3, 1760.

¹⁵⁷ CH2/405/3. Dunino, August 6, 1760.

¹⁵⁸ CH2/405/3. Dunino, August 6 and August 25, 1760.

¹⁵⁹ CH2/405/3. Dunino, August 31, 1760.

¹⁶⁰ CH2/405/3. Dunino, September 7, 1760.

¹⁶¹ CH2/405/3. Dunino, September 7, 1760.

¹⁶² CH2/405/3. Dunino, September 14, 21, and 28, and October 5, 12, and 19, 1760.

fornication with John Goodale, servant to the Earle of Balcarras, four weeks after Martinmass ... and that she knew no other man and yt it was under promise of marriage to her, that she had consented to this Act of Wickedness.”¹⁶³ John Goodale also confessed his guilt and the couple were ordered to make public confessions, which they did.¹⁶⁴

The sessions were faced with finding guilty parents when unwanted illegitimate children were abandoned by their mothers. A newborn baby was found in the “Dovekit yard” in Anstruther Easter and brought to the kirk session on November 5, 1781. The session suspected the child belonged to Katherine Taylor. When four elders went to interrogate her she did not claim the baby. Due to rumours about her recently birthing a child, the elders did not accept her denial and returned a second time with a midwife. Katherine Taylor did confess and said that the child was four or five months old. These meetings with Katherine Taylor were reported to the elders of Anstruther Easter on November 5, 1781, at which point it was also declared that she had absconded.¹⁶⁵ This minute of the session was the only recorded dealings with Katherine Taylor.

The same methods of bringing fornication cases to the sessions were also present in the colonial Presbyterian Church. However, there were no recorded cases of foundlings. It should also be noted that while some mothers simply abandoned their unwanted babies, others killed their babies. There were no recorded cases of infanticide in the surviving minutes included in this study. This could be explained by the fact that infanticide was considered murder and

¹⁶³ CH2/210/10. Kilconquhar, March 24, 1751.

¹⁶⁴ CH2/210/10. Kilconquhar, March 24, 31, April 14, and May 12, 1751.

¹⁶⁵ CH2/625/4. Anstruther Easter, November 5, 1781.

subsequently would be tried in the highest criminal courts.¹⁶⁶ “The Act to prevent the Destroying and Murdering of Bastard Children,” which was passed by the Assembly of New Jersey in 1742, stated

Whereas several leud Women that have been delivered of Bastard Children to avoid their Shame, and to escape punishment, do secretly bury or conceal the Death of their Children; and after, if the Child be found dead, the said women do allege, that the said Child was born dead; whereas it falleth out sometimes (altho’ hardly is it to be proved) that the said Child or Children were murdered by the said Women their leud Mothers, or by their Assent or Procurement; ... That if any white or other Woman, not being a Slave, ... be delivered of any Issue of her Body, Male or Female, which being born alive, should be a Bastard, and that she endeavour privately, wither by drowning or secret burying thereof, or any other way, either by herself or the procuring of others, so to conceal the Death thereof, as that it may not come to light, whether it were born alive or not, but be concealed; in every such case the Mother so offending, shall suffer Death as in Case of Murder, except such Mother can make Proof, by one Witness at the least, that the Child (whose Death was by her so intended to be concealed) was born dead.¹⁶⁷

The act continued by ensuring its public awareness stating,

That the same shall be publickly read Yearly, on some Sunday in May, in all Parish Churches, Chappels and Meeting-Houses, immediately after Divine Service, under the Penalty of Twenty Shillings for every Omission and Neglect therein.¹⁶⁸

The state recognised the need to protect bastard children and threatened the killing of any unwanted child with the punishment of death. This may have been enough to stop infanticide within the colonial churches. However, the colonial inhabitants lived in a vast land and could easily hide immoral behaviour

¹⁶⁶ For a discussion of infanticide in England see Jackson, Mark. *New-born Child Murder: Women, illegitimacy and the courts in eighteenth-century England*. Manchester: Manchester University Press, 1996.

¹⁶⁷ Bush, Vol II, pp. 548-9.

¹⁶⁸ Bush, Vol II, p. 549.

from the church and state. Therefore, bastard children could have been murdered without the church or state being aware of the act committed.¹⁶⁹

Fornication cases appeared before the session by means of voluntary confession, delation, or by rumours. In Balston Center, NY, Amos Larkin, came before the session on July 1, 1797, to confess his sin of fornication. He then made a public confession of his guilt and was restored to full membership of the church.¹⁷⁰ A report made to the session accused Seely Dare, Sarah Rove, and Abigail Bateman of fornication. All three women were subsequently cited to appear before the session on April 7, 1791.¹⁷¹ Sarah Rove and Abigail Bateman did appear and confessed their sin of fornication. The ladies were ordered to make a public confession of faith to cleanse themselves of their sin. Seely Dare did not appear and was suspended from the Lord's Supper.¹⁷²

The sessions on both sides of the Atlantic were fairly successful with dealing with fornication cases, as most were dealt with by the sessions. However, when the session was unable to resolve the case within its own means it did not simply allow the offender to evade discipline, but utilised the higher court of the presbytery to enforce the discipline. Like other cases of sexual misconduct, there were extraordinary cases that were handed to the presbytery. The kirk session of Ferryport on Craig was informed that Helen Jack, an unmarried woman, was with child.¹⁷³ On May 18, 1760, she appeared before the elders, confessed her guilt, named John Robertson as the father and declared

¹⁶⁹ For a detailed account of infanticide in New England see Hoffer, Peter C. and N.E.H. Hull. *Murdering Mothers: Infanticide in England and New England 1558-1803*. New York: New York University Press, 1981.

¹⁷⁰ Presbyterian Church, Balston Center, NY, July 1, 1797.

¹⁷¹ Fairfield Church, Fairton, NJ, March 24, 1791.

¹⁷² Fairfield Church, Fairton, NJ, April 7, 1791.

¹⁷³ CH2/150/3. Ferryport On Craig, May 13, 1760.

they were guilty with one another in her own home in the middle of last January.¹⁷⁴ John Robertson was repeatedly called to appear before the session, but did not attend the meeting of session until June 1, 1760, when he denied any guilt.¹⁷⁵ Attempting to find the truth in the matter, the minister dealt with Helen privately. In his meeting with Helen Jack he asked her if “he had given her any presumptions of his guilt” and she replied

that he saw her on the first Wednesday of April last and said to her what is this you are saying, she answered, I am saying nothing but the Truth upon which he returned answer that she should neither wait upon the session upon which she said you ought not to speak so for the sin is as great as it will be and we must bear the shame for we cannot expect Sin to pass without being challenged. He said if she would not give it to some man she knew nothing as he would list on board the Navy—She replied she never did nor would give it to any others.¹⁷⁶

The case continued to occupy the meetings of the session, as the minutes indicated. Both parties remained steadfast in their declarations. The truth of the matter was not found until Helen and John appeared before the presbytery on the orders of the session.¹⁷⁷ Helen and John both confessed their guilt before the session and were instructed to make confessions of their sin. On September 21, 1760, Helen Jack and John Robertson “Declared they were sorry for their Sin and had a sense of the Evil thereof.”¹⁷⁸ The session then “Declared themselves Satisfied therewith and hereby Received them again within the Communion of the Church and Declared the Scandal to be purged.”¹⁷⁹

¹⁷⁴ CH2/150/3. Ferryport On Craig, May 18, 1760.

¹⁷⁵ CH2/150/3. Ferryport On Craig, June 1, 1760.

¹⁷⁶ CH2/150/3. Ferryport On Craig, June 15, 1760.

¹⁷⁷ CH2/150/3. Ferryport On Craig, September 4, 1760.

¹⁷⁸ CH2/150/3. Ferryport On Craig, September 21, 1760.

¹⁷⁹ CH2/150/3. Ferryport On Craig, September 21, 1760.

The colonial presbyteries also dealt with cases of fornication. Sessions could refer cases to the presbytery, which often happened when the guilty offender was a minister or elder of the church. However, the presbytery also could be a court of first instance for fornication cases. Ministerial candidates went through examinations by the presbytery, which included enquiries into the candidate's private life. Such was the case with Mr. Scott, a minister. The Presbytery of Albany first examined Scott on November 13, 1798, at which point he declared his uneasiness over a circulating report about his "criminal conversation with a young woman."¹⁸⁰ The presbytery resolved to appoint a committee to deal with the report. The committee informed the presbytery that by common *fama* Scott was charged "with being the father of an illegitimate child of Nancy McCage."¹⁸¹ Witnesses to his offences were cited to appear before the presbytery on April 16, 1799.

The presbytery reconvened on April 16, 1799, to hear the witnesses called to testify in the case against Scott. Several women, who had dealings with Nancy McCage, testified. The written account of the case was lengthy, but served as a good example of a detailed case and how cases from the presbytery were appealed up to the Synod. After great deliberation over the testimonies, the presbytery decided that the charge was ungrounded, as several of the witnesses testified that Nancy McCage knew the father of her child was not Mr. Scott, but felt that she could use Scott to gain financial support for her child. However, Nancy McCage was not satisfied with the verdict of the presbytery and appeared on August 20, 1799. The presbytery reviewed the minutes from

¹⁸⁰ Presbytery of Albany, November 13, 1798.

¹⁸¹ Presbytery of Albany, February 19, 1799. Mr. Scott was also charged with profanity and indecent behaviour on separate occasions, both of which were unsupported by the evidence brought forward on April 16, 1799.

their previous meeting and heard Nancy McCage's testimony. The session concluded for the morning and reconvened in the afternoon, at which point Scott was given the opportunity to defend himself against Nancy's testimony. After great deliberation, the presbytery decided that "Mr Scott does not profess such a character as Scriptures require in a gospel Minister and therefore they could not proceed on his trials for ordination and will suspend him from preaching."¹⁸² Scott, unhappy with the decision of the presbytery, appealed his case to the Synod of New York and New Jersey. The Synod supported the decision of the presbytery and further suspended Scott from ministerial duties. The presbytery once again dealt with Scott on February 20, 1800, when he applied to the presbytery to have his suspension removed. However, the presbytery remained steadfast in their original verdict.¹⁸³

This was a complicated case that utilised the authority and wisdom of the presbytery. The session did prove that they were also able to handle complicated cases that dealt with repeated denials or obstinate members of the congregations. In fact, some fornication cases were the most involved cases that filled the session's minute books on both sides of the Atlantic Ocean. Guilty fornicators did not always readily confess their sin, as already illustrated above in a few of the cases depicted. From comparing the churches in the colonies to those in Scotland, it can be concluded that Scotland had a more ruthless system of discovering guilt, most likely due to the economic repercussions of bastardy placed on the church. Therefore, the elders and ministers in the Church of Scotland ruthlessly utilised the service of midwives to examine the accused females. There were no recorded cases in the colonial churches included in this

¹⁸² Presbytery of Albany, August 20, 1799.

¹⁸³ Presbytery of Albany, February 12, 1800.

study that involved the investigation by a midwife. However, in Scotland there were several recorded testimonies from midwives, who were sent to examine the suspected pregnant women.

In Anstruther Easter, Helen Duncan, a servant to Mr. John Reid, denied that she was pregnant when she first appeared before the session on May 20, 1788. However, she did inform the elders about a conversation she had with her cousin, Elizabeth Strang. Her cousin told the session that Helen “came to her house sometime ago and was complaining of her health and said something came from her Breasts like milk mixed with water.”¹⁸⁴ Elizabeth examined her breasts and “to her great surprise found it to be the case, and her shirt stained there with.”¹⁸⁵ She then told Mrs. Bridges, a midwife, who visited Helen “when lately in distress who at that time complained much of her breasts on which she examined them & found milk in them both.”¹⁸⁶ Upon hearing this testimony from Elizabeth Strang, called Mrs. Bridges, who intimated the same story to the session on May 21, 1788.¹⁸⁷ The three women were summoned to a meeting the following day, but Helen did not appear. Therefore, the elders sent another midwife, Janet Brown, to examine Helen Duncan.¹⁸⁸ On May 27th, Janet Brown told the session that she did find milk in Helen’s breasts and that Helen “confessed her being with Child about eight months gone.”¹⁸⁹ Helen was also present at this meeting and named her Master John Reid as the father.¹⁹⁰

¹⁸⁴ CH2/625/4. Anstruther Easter, May 20, 1788.

¹⁸⁵ CH2/625/4. Anstruther Easter, May 20, 1788.

¹⁸⁶ CH2/625/4. Anstruther Easter, May 20, 1788.

¹⁸⁷ CH2/625/4. Anstruther Easter, May 21, 1788.

¹⁸⁸ CH2/625/4. Anstruther Easter, May 22, 1788.

¹⁸⁹ CH2/625/4. Anstruther Easter, May 27, 1788.

¹⁹⁰ CH2/625/4. Anstruther Easter, May 27, 1788.

John Reid and Helen Duncan appeared again before the session on May 31, 1788, and both confessed their guilt. The minister told John Reid that “according to the rules of the church his appearance was necessary to be rebuked before the congregation for the sin of fornication which he agreed to.”¹⁹¹

The colonial churches did not record many details of the fornication cases. The potentially embarrassing details of the sexual relations were not included in the recorded trials of fornication. The detailed cases in Scotland usually involved a denial by one of the parties. Desiring to establish the father who would be required to care for the child financially was the driving factor behind the sleuth of intimate questions and examinations. The colonial Presbyterians were not under the same financial pressure to receive a confession from the father; therefore, the sessions spared the offender the humiliation of such examinations and questions.

The only case that had a remote complication in the colonies appeared in the records of Princeton, NJ, which involved a suspected inter-racial relationship. “Although there is little evidence that miscegenation was ever widely practised, the laws designed to control inter-racial sex were much harsher than the laws dealing with bastardy and fornication among whites.”¹⁹² The colonies of Virginia, Massachusetts, Maryland, Pennsylvania, and North Carolina passed laws to keep whites and blacks apart sexually.¹⁹³ However, such laws did not exist in New York and New Jersey. The realm of inter-racial relations must

¹⁹¹ CH2/625/4. Anstruther Easter, May 31, 1788.

¹⁹² Wells, p. 358.

¹⁹³ Wells, p. 358. These laws were passed between the years of 1691 and 1741, in the order listed above.

have been a grey area for New Jersey's churches, as the case of a mulatto child was presented to the session of the Presbyterian Church in Princeton, NJ. John McGregor, a single man in Princeton, was accused of being the father of a child. "The black woman having borne a mollatto child, laid it to him as the father, and public *fame* charged him strongly with the fact."¹⁹⁴ The session did not believe they had "sufficient ground to proceed to absolute condemnation" as "the woman appeared not to be a proper person to whom to administer an oath."¹⁹⁵ Just to prove that public opinion was highly regarded among the members of the community, John McGregor was suspended from the sealing ordinances due to the strong sentiment against him. Unfortunately, the clerk of the session in Princeton did not document further details, as no discipline of the woman was recorded.

The motivating factors for persons to confess their sexual relations outside of marriage were similar to those that motivated antenuptial fornicators to confess before the session. Motivations of the offenders were not recorded on either side of the Atlantic. However, the colonial records indicated that baptism was the motivator, as the ceremony was often conducted as soon as the offender was absolved from the sin. Baptism of a child was a strong motivator for people found guilty of committing fornication. Rhoda Parvin sought forgiveness from the church of Fairton, NJ, on March 11, 1781, in order to have her child baptised. Accordingly, she made a public confession of guilt of fornication on the same day. On April 1, 1781, Rhoda Parvin's child was admitted to baptism.¹⁹⁶ Similarly, in the Presbyterian Church of Mattituck, NY,

¹⁹⁴ First Presbyterian Church, Princeton, NJ, November 9, 1795.

¹⁹⁵ First Presbyterian Church, Princeton, NJ, November 9, 1795.

¹⁹⁶ Fairfield Church, Fairton, NJ, March 11, 1781 and April 1, 1781.

Mary Goldsmith confessed her sin of fornication in April of 1771. On May 12, 1771, she renewed the church "covenant with Respect of herself & her offspring had it baptized whose name was Clement Reeve."¹⁹⁷ Two years later in Mattituck, Hannah Haliock made a confession for the sin of fornication in December 1773. The session minutes indicated that the her child was then baptised based on the "grandparents account they Ingaged for its Christian Education performed by Rev Benjamin Goldsmith at their own houses."¹⁹⁸

Acceptance into the community of the church was also a motivating factor for people to confess their sexual misconduct. The membership records from the Presbyterian Church of Aquabauge, NY, indicated that confessing guilt of fornication was necessary to be received into the communion of the church. Jonathan Halliock, Joanah Brown, and Phebe Jinnings all professed their guilt of fornication prior to being accepted by the church.¹⁹⁹

Fornication was further complicated by a relapse. The disciplinary action taken with one-time fornicators was not always successful in the sense that it stopped convicted fornicators from repeating the behaviour. Relapse cases of fornication were not common, but did occur on both sides of the Atlantic. The procedure was identical to that enacted with cases of fornication in Scotland and America. The difference between the countries was seen in the discipline imposed upon the offenders.

As clearly depicted above, the number of public confessions varied between Scotland and America. In Scotland, fornicators made three confessions on the average, where colonial fornicators consistently made only one public

¹⁹⁷ Presbyterian Church, Mattituck, NY, April 1771 and May 12, 1771.

¹⁹⁸ Presbyterian Church, Mattituck, NY, December 1773.

¹⁹⁹ Presbyterian Church, Aquabauge, NY, March 3, 1776, August 10, 1783, and March 23, 1784.

confession. A relapse case of fornication in Scotland warranted more than three confessions before the congregation and also involved a higher court. Jeanna Kingo and George Westwater had separately been found guilty of fornication before the parish of Anstruther Easter. However, on December 5, 1749, the two were accused of fornicating with one another. They both confessed their guilt and were ordered to make public confessions until the session was satisfied.²⁰⁰ By January 16, 1750, they had repented before the congregation four times and were absolved.²⁰¹

The session of Anstruther Easter also dealt with a trilapse of fornication. Margaret Mores was delated to be with child on May 8, 1750. She appeared before the church and named David Wilson as the father.²⁰² During her appearance before the session on May 22, 1750, Margaret declared that she was "with David Wilson in her own house August last."²⁰³ David Wilson confessed his guilt and was ordered to appear before the congregation three times, as this was his first offence of fornication. However, Margaret Mores was ordered to attend the meeting of the Presbytery of St Andrews.²⁰⁴ On June 19, 1750, the minister informed the session that the presbytery advised them "to proceed as they see most for edification."²⁰⁵ Subsequently, Margaret Mores repented publicly for four Sabbaths and was absolved on July 17, 1750.²⁰⁶

²⁰⁰ CH2/625/3. Anstruther Easter, December 5, 1749.

²⁰¹ CH2/625/3. Anstruther Easter, December 19, 1749, Jan 2, 1750, and January 16, 1750. In the minute taken on January 2, 1750, the clerk noted that the couple had appeared the previous two Sabbaths.

²⁰² CH2/625/3. Anstruther Easter, May 8, 1750.

²⁰³ CH2/625/3. Anstruther Easter, May 22, 1750.

²⁰⁴ CH2/625/3. Anstruther Easter, May 22, 1750.

²⁰⁵ CH2/625/3. Anstruther Easter, June 19, 1750.

²⁰⁶ CH2/625/3. Anstruther Easter, July 17, 1750.

There were only two documented cases in America of a relapse of fornication and both were found in the First Presbyterian Church of Morristown, NJ. On August 8, 1755, Mary Shipman appeared before the congregation to confess her guilt. Sarah Burroughs publicly repented for her relapse of fornication on November 12, 1768. Both women were restored to full communion after making only one public confession, as it clearly demonstrated their sorrow and repentance for the sin.²⁰⁷ Their discipline was much more relaxed than a relapsed fornicator in Scotland. Again, this illustrated the shift in the focus of discipline. The colonial Presbyterians sought sincere confessions of a repentant sinner. The emphasis was placed on the soul of the sinner. Furthermore, unlike in Scotland, the church did not have the responsibility to care for a child conceived out of wedlock.

Fornication was the most frequent type of case appearing before the sessions in the Church of Scotland. Due to the economic implications placed on the parishes for bastard children without fathers, the kirk sessions ruthlessly prosecuted guilty fornicators. They utilised the resources of midwives to help implicate the accused offender. The colonial church was not burdened with financial responsibility for bastards, and therefore, were able to be more lenient to the guilty fornicators and place a greater emphasis on the spiritual well-being of the individual. However, in the colonies multiple confessions were required of adultery, which morally speaking, was a greater offence.

²⁰⁷ First Presbyterian Church, Morristown, NJ, August 3, 1755 and November 12, 1768.

Adultery

Adultery carried secular and moral implications and subsequently was addressed by both the state and the church. The secular authorities within the colonies punished adultery. Prior to the union of the two proprietary colonies, adulterers in East Jersey “were to be divorced, punished corporally or banished, as the court decided.”²⁰⁸ According to law passed in 1682, adulterers were fined five to fifty pounds and received 39 lashes.²⁰⁹ In 1694, West Jersey passed an act that further defined the punishments for adulterers:

that what person soever, man or woman, shall be convicted thereof before any court of record, either by confession of the party, or other evident proofs, such persons or persons so convicted (if both parties are unmarried) shall be fined in the sum five pounds, and if either party is married, in the sum of ten pounds, together with costs of court; and in case of non-payment of the fine to be imposed as aforesaid, to receive at the most public place where the crime shall be adjudged, thirty-nine stripes on the bare back, if either party is married persons, and if both married, then twenty stripes on the bare back, ... and that the said person so convicted, as above, shall be bound in a recognizance to our sovereign lord and lady, the king and queen’s majesty, in the sum of fifty pounds for the good behaviour for the space of a year and a day thereafter.²¹⁰

Under the united colony of New Jersey, adulterers were to follow the punishments laid out by the “Act for Suppressing Immorality” (1704), which stated that

every Man convicted of adultery as aforesaid shall be Whip’t at three several Courts and each time receive Thirty Lashes on the bare back or pay the Sum of Thirty Pounds Money aforesaid (and every Woman so Convicted of Adultery as aforesaid shall be Whip’t at three several Courts and each time shall receive Thirty Lashes or Stripes on the bare back, or pay the Sum of Thirty Pounds Money aforesaid), the said Sums

²⁰⁸ Weiss and Weiss, p. 82.

²⁰⁹ Weiss and Weiss, p. 82.

²¹⁰ Dillon, John B. *Oddities of Colonial Legislation in America, as applied to the public lands, primitive education, religion, morals, Indians, etc., etc., with authentic records of the origin and growth of pioneer settlements embracing also a condensed history of the states and territories, with a summary of the territorial expansion, civil progress and development of the nation.* Indianapolis” Robert Douglas Publisher, 1879.

and Penaltys to be Disposed of in the like manner as is directed, for the other Penaltys herein before mentioned.²¹¹

In his thesis, "Chapters in a History of Crime and Punishment in New Jersey" Henry Clay Reed consulted the colonial court records and discovered that 85 people were accused of adultery between the years of 1703 and 1776. He found during the 1710s there were three or four cases presented to the court each year, which comprised a large portion of the total. This could be explained by the recent acts passed against adultery and the fact that the legal system was still able to handle the crime of a smaller population. During 1720 to 1750, there was only one case of adultery per year on average, even though the population was growing rapidly during this period. He also noted that in 64 of the 85 cases conviction was escaped.²¹²

To the modern mind, the idea of an adultery case before the church session probably reflects the image of a scarlet letter. Nathaniel Hawthorne's famous heroine Hester Prynne in the *Scarlet Letter* was forced to wear the scarlet letter "A" on her bosom for her crime of adultery. Although Hawthorne's portrayal of the treatment towards an adulteress was representative of Puritan discipline in the seventeenth century, it does not serve as a true example of Presbyterian discipline in the eighteenth century. First of all, there was no recorded case that such a marking was placed so that "on the breast of her gown, in fine red cloth, surrounded with an elaborate embroidery and fantastic flourishes of gold thread, appeared the letter A."²¹³ Second, this mark separated Hester Prynne from the Puritan society and created a mockery of her.

²¹¹ Bush, pp. 21-2.

²¹² As noted by Weiss and Weiss, pp. 82-83. Reed, Henry Clay. "Chapters in a History of Crime and punishment in New Jersey." Princeton University thesis, 1939.

²¹³ Hawthorne, Nathaniel. *The Scarlet Letter*. London: Gawthorn, 1949. p. 56.

However, the Presbyterian form of suspension did not hold the same force in ostracising a scandalous individual. The offender was unable to take part in the sacraments, but he or she was still able to commune with the congregation. What the *Scarlet Letter* does illustrate is that adultery was a severe crime in the eyes of the church and therefore warranted discipline accordingly.

Adultery cases were handled in the basic manner of fornication cases and the procedures were virtually the same on both sides of the Atlantic. The session called the accused parties to determine guilt or innocence. If one of the accused denied guilt, the elders would make use of witnesses or midwives in order to discover the truth about the allegations. However, there were two differences that separated the trial of an adultery case from that of fornication. First, almost all adultery cases were deferred to the presbytery for final sentencing and absolution. Second, the discipline imposed was greater for an adulterer. This was certainly true in Scotland, but the colonies varied in their dealings with adulterers.

This process was illustrated by Margaret Patrick, an unmarried servant and member of the kirk in Ferryport On Craig, who was delated to be with child on November 7, 1753.²¹⁴ The session struggled to locate Margaret, as it appeared that she had moved from Garpit to Leuchars to reside with her mother.²¹⁵ The bedal made inquiries in Leuchars and passed her the summons to appear before the session, which she did on November 18, 1753. She confessed that she was with the child of Robert Keith, who was married and had a family in Forgan. Robert Keith was repeatedly summoned to appear before the session, but never did. The session then sought the advice of the presbytery,

²¹⁴ CH2/150/2. Ferryport on Craig, November 7, 1753.

²¹⁵ CH2/150/2. Ferryport on Craig, November 11, 1753.

who made an allowance for Margaret Patrick to sit public repentance. Margaret made a public declaration of her guilt seven times before she was absolved. Robert Keith made eight public confessions before being absolved.²¹⁶

The number of required public confessions varied from parish to parish. And as the eighteenth century progressed, it seemed the number of public confessions decreased. There were seven adultery cases in Dunino between the years of 1750 and 1800. James Taylor and Katherine Loudoun were found guilty of adultery in 1750, and they both made seven public confessions.²¹⁷ Agnes Clerk & George Lessels, convicted in 1781, each made four declarations of their guilt before the congregation.²¹⁸ By 1791, Ally Peebles and Charles Wallace only made two.²¹⁹ And in 1795 Anne Rintoul and Robert Gray only made one.²²⁰

In America, the greatest example and one of the few detailed cases of adultery among the colonial records was found in the First Presbyterian Church of Morristown, NJ. Phineas Chidester was accused by common report that he had "improper intercourse with the wife of [Mr] Day."²²¹ An elder was sent to converse with Mr Chidester about the rumour. On December 17, 1798, the session heard what the elder had learnt from Phineas about the accusation. Based on the conversation, the elders agreed that there was "some evidence of the truth" and consequently cited Phineas Chidester to appear before them.²²²

²¹⁶ CH2/150/3. Ferryport on Craig, January 7, 1759.

²¹⁷ CH2/405/3. Dunino, February 4, 11, 25, March 4, 11, 18, April 1, 29, May 6, 13, 27, June 3, 10, and 17, 1750.

²¹⁸ CH2/405/3. Dunino, December 23, 1781, January 6 and 20, 1782, and March 24, 1782.

²¹⁹ CH2/405/3. Dunino, May 15 and 22, 1791.

²²⁰ CH2/405/3. Dunino, February 15, 1795.

²²¹ First Presbyterian Church, Morristown, NJ, August 1798.

²²² First Presbyterian Church, Morristown, NJ, December 17, 1798.

He did attend the meeting of the session on January 15, 1799, and was asked if he was “ready to go to trial.” The session found that the charge was not supported, but that he “was not altogether unworthy of censure, in that he had visited the house of Mr Day under circumstances [which] were calculated to invite suspicion in the mind of observers.”²²³ Nothing further was recorded regarding Phineas Chidester, but it can be assumed that the common report was cleared up.

The seventh commandment was broadly interpreted in the eighteenth century. The laws defined it as a sexual act committed by a married person. For some of the churches it was interpreted as any sexual act outside of marriage. Therefore, a case of fornication was technically adultery by this definition. The session minutes of the colonial churches did not always document the details of sexual offence cases, making it difficult to determine each church’s definition of adultery. For example, in the Presbyterian Church of Aquabauge there were ten cases recorded as “a breach of the seventh commandment.” Four of the cases involved married couples.²²⁴ The records of the remaining six cases mentioned the individual names of the offenders. Unfortunately, the public confession of the guilty people was the only element of the cases recorded. The proper definition of adultery did not really matter to the disciplinary sentences given to adulterers. In all the colonial churches that recorded cases of adultery, the offenders only made one public confession before being restored to full church privileges. All ten cases recorded in Aquabauge indicated only one public

²²³ First Presbyterian Church, Morristown, NJ, January 15, 1799.

²²⁴ Presbyterian Church, Aquabauge, NY, 1785-1798. Sylvanus & Elizabeth Brown, John Reeve & wife, Henry Conkling & wife, and John Howel & wife each made one confession of their breach of the seventh commandment on May 14, 1786, July 18, 1790, September 21, 1794, and January 4, 1798 respectively.

confession offered by each offender to the congregation. In Morristown, NJ, Anne Bennoy, the wife of Joseph, made her public confession on November 2, 1770.²²⁵ Shadrack Hathaway's wife, Martha, also made one appearance before the congregation to confess her sin of adultery.²²⁶

Once again the colonial records offered an explanation for why adulterers would voluntarily confess their guilt. Baptism was a driving force, as well the need for a referral of good standing to another church. Phebe Brown of the Presbyterian congregation in Aquabauge voluntarily confessed her sin of adultery in order to have her child baptised. She made her confession and the child was baptised on October 16, 1785.²²⁷ The session of Huntington, NY, heard Mary Russel give "a free, full and humble confession of the Sin of Adultery, with Capt. J.P."²²⁸ Her confession was considered sincere and "was thereupon recd into Charity upon her good Behaviour."²²⁹ Upon her confession the session then recommended her "to the Communion of the Chhs in the Jerseys, where she resides, or in any other Place where she may take up her abode."²³⁰

As mentioned above, most adultery cases in Scotland were required to be reviewed by the presbytery. In the case of adultery committed by Margaret Patrick and Robert Keith in Ferryport On Craig, both persons were ordered to appear before the session before they could be absolved. Margaret Patrick appeared to the Presbytery of St Andrews in December 1753 and was ordered

²²⁵ First Presbyterian Church, Morristown, NJ, November 2, 1770.

²²⁶ First Presbyterian Church, Morristown, NJ, September 3, 1771.

²²⁷ Presbyterian Church, Aquabauge, NY, October 16, 1785.

²²⁸ First Presbyterian Church, Huntington, NY, Jun 14, 1761.

²²⁹ First Presbyterian Church, Huntington, NY, Jun 14, 1761.

²³⁰ First Presbyterian Church, Huntington, NY, Jun 14, 1761.

by them to sit public repentance.²³¹ Robert Keith was cited to appear before the session on December 30, 1753, but did not appear and was declared a “fugitive from Discipline.”²³² He eventually made his appearance before the presbytery on June 21, 1758, and was ordered to make confession of his guilt publicly.²³³

The colonial churches did not always send adulterers to the presbytery to be dealt with. Again, this illustrated that although adultery was a serious crime, the sessions were satisfied when the adulterer made a sincere confession of his or her guilt. Cases sent to the higher court were referred to the presbytery, not out of command, but because the cases involved a minister or an obstinate offender. There were two recorded cases that did go to the presbytery. Mary Davis of the Presbyterian Church in Pleasant Valley, NY, was cited to appear before the church session for the crime of adultery on February 23, 1795. She did not attend the following four meetings of the session, which she was cited to attend. During the session’s meeting on April 30, 1795, the elders agreed to refer the case to the presbytery and placed Mary Davis on suspension. The presbytery advised the session of Pleasant Valley to excommunicate Mary Davis, which they did on September 10, 1795. There was no further mention of the case or Mary Davis herself.²³⁴

Adultery cases were considered a severe scandal on both sides of the Atlantic. In Scotland, the seriousness of the sin was reflected in the required appearance before the higher court of the presbytery and the number of public confessions required. The colonial church only utilised the presbytery out of

²³¹ CH2/150/2. Ferryport On Craig, December 30, 1753.

²³² CH2/150/2. Ferryport On Craig, June 9, 1754.

²³³ CH2/150/3. Ferryport On Craig, August 20, 1758.

²³⁴ Presbyterian Church, Pleasant Valley, NY, February 23, March 9, April 30, and September 20, 1795

necessity and did not require a set number of appearances before the congregation. However, in both places, the public ridicule and alienation imposed upon Hester Prynne was not witnessed during the eighteenth century.

Conclusion

Some general conclusions can be drawn by comparing the cases of sexual misconduct in the colonies with those in Scotland. First, Scotland's system of church discipline was more comprehensive than that in the American colonies. The sheer volume of the cases relating to marriage and sexual misconduct indicated that the Church of Scotland was able to keep abreast of the happenings within the parish boundaries. Ministers and elders were fully aware of the inhabitants within their parish, as confined geographical areas made delating cases to the session much easier. The colonial towns were open and vast. Boundaries were not always clear and the church did not have established areas to govern. Additionally, towns could have multiple denominational institutions neighbouring one another. The Presbyterian Church was in competition with other denominations for membership and control over the inhabitants of the towns, while the Church of Scotland was able to enforce its discipline and customs upon those members that needed something from the kirk session, as demonstrated with its constant concern with regularising marriage.

Second, Scotland disciplined with greater rigidity than its counterparts in the colonies. Scotland had a system that had been firmly established by the fact that the Church of Scotland was the national church. It had great authority over the people because their authority was granted from Parliament. New York and

New Jersey did not have an established church. Both of those colonies became home to many Presbyterians, but several other denominations were present.

Regarding sexual misconduct, the Scottish church recorded great details of the cases. They were more active in determining the fathers of unwanted children. This was due in part to the fact that the church was in charge of the care of the poor. Any bastard child that appeared in the parish became the responsibility of the church. In the colonies, the secular authorities governed poor laws. Therefore, the Presbyterian Church in the colonies rarely actively sought the name of the father of the illegitimate child. The Scottish records were meticulous in recording the time and place of sexual acts, where the colonial churches did not record such details as they were not deemed pertinent to the trial. Furthermore, the colonial church did not use the resources of the midwives to aide in their investigations into the sexual activities of its members.

However, the greatest difference of handling sexual misconduct cases between the Church of Scotland and the American Presbyterian church had to do with the church and state relations. In Scotland, jurisdictions were clearly defined. The church was responsible for the discipline of sexual affairs and subsequent children born out of wedlock. However, it could depend upon the civil magistrates to enforce its discipline.²³⁵ In the colonies, there were acts calling for the suppression of sexual immorality; however, in reality, the civil magistrates did not enforce the acts. In a sense, the church was left to deal with the offenders based on Biblical premises. The church, without legal jurisdiction to punish sexual offenders, could only be concerned with the moral wellbeing of

²³⁵ Clark, p. 139.

the sinners. In contrast, the Church of Scotland actively pursued the guilty sex offenders out of practical necessity and in turn the caring for the morality of the souls was lost.

Regardless of the differences, both Scotland and the American Colonies of New York and New Jersey utilised a Presbyterian form of discipline to suppress immorality among the inhabitants of the regions. Through a standardised process, offenders were tried for several types of sexual immorality. Discipline was then enforced according to the type of sin committed. This point and the previous points made are further illustrated in the next chapter, which deals with a plethora of immoral behaviour.

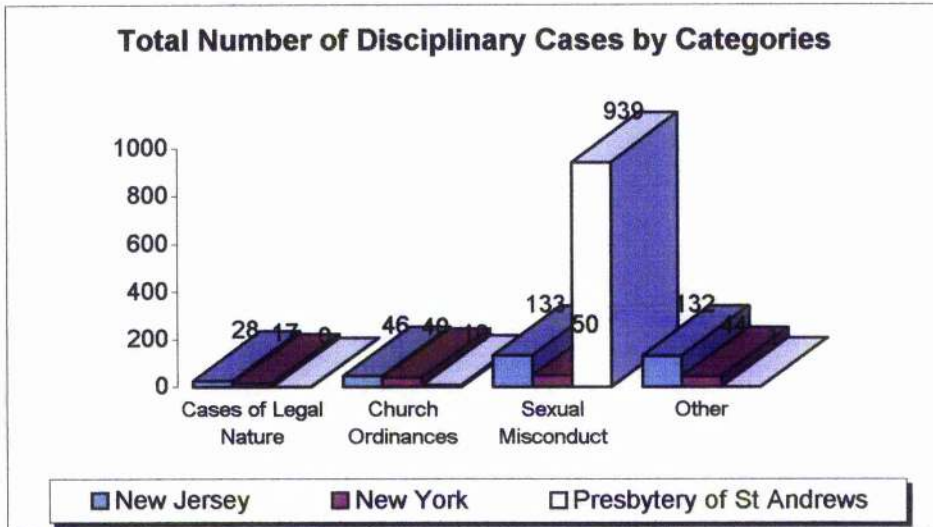
CHAPTER FIVE

The Adaptations of Ecclesiastical Discipline

Ecclesiastical discipline, as prescribed by its sixteenth century creators, was to be used for the restoration of sinners and for the edification of the congregation. As the centuries unfolded, the Presbyterian Church in both countries adapted the system to meet its individual needs. The Church of Scotland used virtually the same procedures over time, but by the eighteenth century, the ethos behind the system had completely changed. In the colonies, the system was broadened to incorporate secular affairs, as well as its own ecclesiastical business. In the latter half of the eighteenth century, the Presbyterian form of discipline had evolved into a system which fitted the needs and character of the regions it occupied.

Beyond cases of Sabbath breaking and sexual misconduct, the disciplinary system was designed to handle any breach of Biblical precepts, which might include drunkenness, violence, gaming, and unchristian conduct. Generally speaking, drunkenness and gaming were offences that the colonial church frequently disciplined and the Presbytery of St Andrews did not during this period in question. Similarly, cases of violence appeared in colonial records, while only one case was tried by the Presbytery of St Andrews. Furthermore, unchristian conduct trials occupied the sessions in the colonies and none entered the business of the sessions in the Presbytery of St Andrews. Why was there such a difference? Why did the Presbytery of St Andrews not discipline for

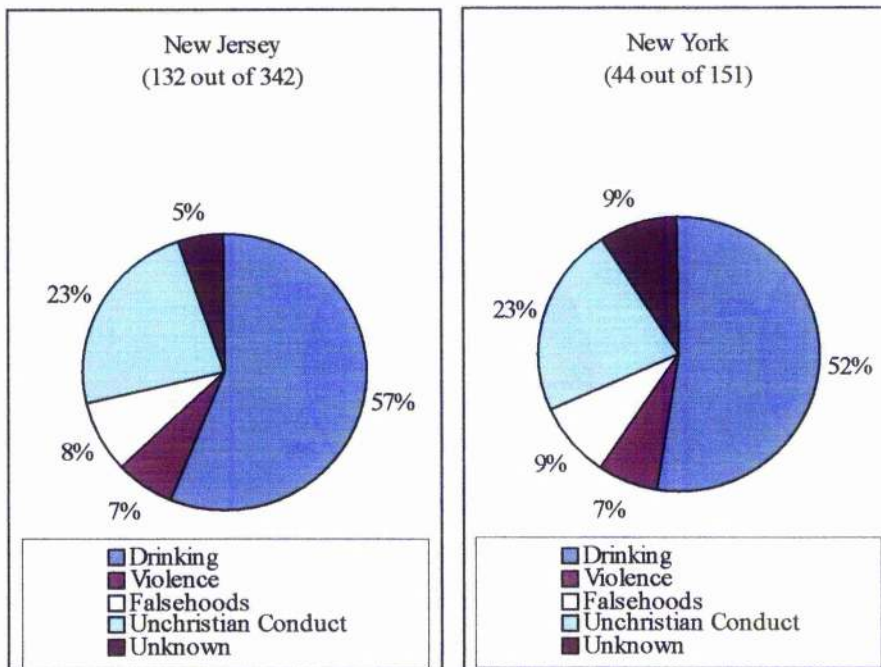
these offences? How did the secular judicial authorities treat these cases? And did that treatment affect the quantity or lack of cases? These will be the questions that will be answered by examining the remaining types of disciplinary cases found in the latter half of the eighteenth century in the Presbytery of St Andrews and the colonies of New York and New Jersey. Each of these categories will further illustrate the points made in previous chapters. The Presbyterian Church on both sides of the Atlantic disciplined for not observing the church ordinances and for sexual misconduct, as seen in previous chapters. In the Presbytery of St Andrews, the previously discussed types of offences, such as irregular marriages, sexual misconduct, and breaking the Sabbath, made up the vast majority of total number of disciplinary cases. Only a few isolated instances of other offences completed the numbers. However, across the Atlantic Ocean the Presbyterian churches in New Jersey and New York were hearing cases concerning drinking, violence, falsehoods, and unchristian conduct, as seen in the table below under the "Other" category. It is these types of cases that appear in great numbers in the surviving records of the Presbyterian churches in these colonies.

Chart 6: Total number of cases calculated from church session minutes

By examining the variety of cases that were tried by the colonial church it becomes apparent that the disciplinary trends within the Presbyterian Church in America greatly differed from those in the Church of Scotland. This was due to two main influences placed upon the colonial church. The first altering influence was the lack of a stable legal system, as discussed in the previous chapters. Issues of violence, drunkenness, and public disorders should have also been addressed by the civil authorities, according to the many acts passed by the Assemblies of the respective colonies. However, in the adolescent years of the colonies the church once again played a role in supplementing the enforcement of these matters alongside the immature legal systems. The pluralistic nature of the colonies was the second factor upon the colonial churches' efforts to create moralistic societies. It is important to realise once again that the Presbyterian Church in the colonies was not a direct offshoot from the Church of Scotland. When Presbyterianism crossed the Atlantic, the denomination was faced with a plethora of differences from its countries of origin, primarily Scotland. The Presbyterian Church in New Jersey and New York coexisted with a variety of

strong denominations, but the greatest influence came from the Congregational Church. This denomination had similar disciplinary proceedings, which were strictly enforced. The Presbyterian system ran parallel to the Congregational system in style and in types of cases tried. These two influential factors upon the disciplinary trends in the colonies, the lack of a strong legal system and the Congregational churches, will be discussed at length below, as they explain the variety of cases found in the colonies, illustrated in the charts below.

Chart 7: Percentages of Cases in "Other" Category



Drunkennes

Cases of drunkenness did not appear in the any of the fifteen parishes with existing records within the Presbytery of St Andrews within the latter half of the eighteenth century. Alison Muir found 2494 cases between 1638 and 1685 in the parish of St Andrews, including 776 cases of sexual misconduct, 427 cases

of profane speech, and 890 cases of Sabbath breaking.¹ Among the remaining 401 cases, 175 were drink related. During the middle decades of the seventeenth century, the parish did discipline for drunkenness, although not to the same extent that Sabbath breaking or sexual misconduct cases were pursued. However, with 175 cases in one parish, drunkenness did appear as a cause for concern, in comparison to the total absence of this type of case in an entire presbytery. The contrasting numbers indicated that by the eighteenth century, a change had taken place in the types of cases tried before the kirk session. There were three potential reasons that intemperate drinkers did not appear before the sessions – the instructions of the *Form of Process*, the influence of the Moderate Party, and the jurisdiction of the secular courts in Scotland. First, like Sabbath breaking cases, the *Form of Process* declared that the ecclesiastical judiciary held the prerogative to decide if a matter was dealt with in private or before the judicial body.² Perhaps the ministers or elders successfully dealt with drunkards in private, which kept the cases out of the session meetings and thus, out of the record.

The second explanation could be attributed to the ethos of the Moderate Party, which controlled the General Assembly during the second half of the eighteenth century. The Moderates ascribed to natural philosophy and believed that faith was based on reason. At times they were accused of not adhering to Calvinistic dogma, which included discipline. As illustrated with Sabbath breaking cases, the Moderates held relaxed views on discipline. Sexual

¹ Muir, Alison, "The Covenanters in Fife, c. 1610 – 1689: religious dissent in the local community." PhD thesis. University of St Andrews, 2002. Table 7:1, between pp. 272 & 273. For the purpose of her analysis, she separated Sabbath breaking cases and absenting cases. For my study I combined the categories, therefore have added Muir's figures together as well.

² *Form of Process*, III, 1.

misconduct cases proved that the sessions resorted to discipline when practical repercussions were placed upon the church and the restoration of the offender was minimised. The same mentality of the controlling party was applied to cases of drunkenness, as the church sessions had no practical reason to discipline for drunkenness.

Finally, the Scottish judicial system provided an efficient means to deal with drunkards. As illustrated in chapter two, the burgh courts held the jurisdiction to punish drunkards, especially ones that breached the peace of the community.³ Additionally, the Justices of the Peace also had the responsibility of discouraging disorderly misconduct.⁴ Scotland's judicial system was firmly in place to handle cases of drunkenness, thereby alleviating the church sessions from this burden. All these reasons could explain the absence of drunkenness cases in the records of the church sessions in the Presbytery of St Andrews.

These conditions did not transfer to the colonies; therefore cases of drunkenness did appear in the church records of the colonies of New York and New Jersey. In the colony of New Jersey, 74 of the total 339 (22%) disciplinary cases found in this study were trials of drunkenness. In New York, 23 drink related cases were included in the total 151 cases (15%). These statistics not only show the colonial churches' concern for drunkenness, but also that the church could have been used in a quasi-judicial manner to punish drunkards or that church was persistent in its attempts to nurture the Christian community by restoring sinful members.

³ Stair Society. *An Introduction to Scottish Legal History*. Volume 20. Edinburgh: Robert Cunningham & Sons, 1958. p. 387.

⁴ Farmer, Lindsay. *Criminal Law, Tradition and Legal Order: Crime and the Genius of Scots Law 1747 to the Present*. Cambridge: Cambridge University Press, 1997. p. 68.

The church's concern for drunkenness once again overlapped that of the secular judicial courts in the colonies, as its civil leaders were also concerned with drunkenness. Both Assemblies representing the colonies of New Jersey and New York passed laws specifically addressing issues of immorality. The civil authorities had a vested interest in maintaining moral societies, free from public disturbances. The beginning of the "Act for Suppressing Immorality within this Province of New Jersey" stated the concern that the civil governing body had with regards to the social climate of the colony. "Whereas Prophaness and Immorality have too much abounded within this Province, to ye Shame of Christianity, and the great grief of all good and sober Men, for the suppressing whereof for the future."⁵ The Presbyterian Church held the same concern and imposed its disciplinary system to reform the immoral offenders. As suggested in the act, the secular government utilised its court procedures to suppress the improper conduct within the colony. One can wonder if both systems were necessary or whether the secular and ecclesiastical authorities supplemented one another in the early years of the colonies. Once again, by examining the church records from the colonial period, it can be determined that the church did overlap the secular jurisdiction, illustrated by the number of drinking cases brought before the Presbyterian Church.

It is surprising that drunkenness was a concern of the church and the state, as alcohol consumption was a major part of daily life during the infancy of the colonies. Similar to the Old World, "water was meant for washing, not

⁵ Bush, Bernard. *Laws of the Royal Colony of New Jersey, 1703-1745*. Vol I. Trenton: New Jersey State Library Archives and History Bureau, 1977. pp. 21-2.

drinking.”⁶ The new settlers were accustomed to drinking beer and ale in their homelands and the thirst continued in the New World. Early records of the colony of Virginia highlighted the desire for beer, as the Governor advertised two positions of brewers available in the colony and encouraged new migrants to bring a supply of malt.⁷ However, by the end of the seventeenth century, the most popular drink was rum. With the abundance of wood and sugar from the West Indies, rum was easily made and drunk more often than beer by the turn of the eighteenth century.⁸ In addition to the convenience of making rum, the position of the tavern as a central meeting place for town life aided the increasing level of consumption.

Taverns, inns, or houses, as they were called in the eighteenth century, were the central meeting places for neighbours. Travellers made taverns their resting places. Town councils often met at the tavern, or at least adjourned to taverns after their meetings. The taverns served as a post office and tavern owners were required to maintain roads. Being the central location of a variety of daily functions, drinking within the taverns increased.⁹ Therefore, the colonial leaders enforced stern fines on excessive drinking.

Aware of abusive drinking with the colony of New Jersey, the civil authorities punished drunkenness by enforcing the payment of a fine. In 1668,

that beastly vice drunkenness, it is hereby enacted, that if any person be found to be drunk he shall pay one shilling fine for the first time, two shillings for the second, and for the third time and fore very time after, two shillings and six pence, and such as have noting to pay shall suffer

⁶ Kimball, Marie. “Some Genial Old Drinking Customs,” *The William and Mary Quarterly*, Third Series, Vol 2, Issue 4, October 1945, pp 349-358. (p. 349)

⁷ Kimball, p. 349.

⁸ Kimball, p. 350.

⁹ Benedict, William H. “Early Taverns in New Brunswick,” *The Proceedings of the New Jersey Historical Society*, Vol 3, Number 3, 1918. pp. 9-10.

corporal punishment; and for those that are unruly and disturbers of the peace they shall be put in the stocks until they are sober, or during the pleasure of the officer in chief of the place where he is drunk.¹⁰

Closely after the two colonies of East Jersey and West Jersey were united into the colony of New Jersey, the Assembly passed the "Act for the Suppression of Immorality" in 1704. Drunkenness was further attended to in the act, stating that those persons

Convicted of Drunkenness, ... where such fact is Committed, by the Confession of the Offender, or the Oath or Attestation of one Witness (which every Justice of the Peace is hereby Authorized to Administer) every Person so convicted shall be fined by the said Justice of the Peace for Drunkenness, ... in the Sum of six Shillings Money of the said Province for each offence besides costs, ... all which fines to be Immediately levyed upon the Offenders Goods and Chattels by the Constables aforesaid, by Warrant from the said Justice of the Peace, and for want of Effects to make such distress the said Constable by Warrant from the said Justice of the Peace, shall commit the Offender to the Stocks for the space of four hours, for Drunkenness, ... And be it further Enacted by the Authority aforesaid, That no publick House Keeper within this Province, shall suffer any Person or Persons to Tipple and Drink in his House on the Lords day, Especially in the time of Divine Worship (Excepting for necessary refreshement) under the Penalty of six Shillings Money aforesaid for every such Offence to be Prosecuted, Sued, Recovered, Levyed, and Disposed of, as aforesaid, Provided, That all or any the above said Offences be sued and prosecuted, within one Month after the same were Committed.¹¹

Even with the stiff penalties of the above acts, excessive drinking must have continued, because the civil authorities declared even greater penalties upon tavern keepers. Aware of the increases in the abuse of spirituous liquors, subsequent Assemblies recognised the need to place fines and punishments upon the tavern keepers in order to establish limits on the volume of alcohol

¹⁰ Dillon, *Oddities of Colonial Legislation in America*, p. 251. According to Weiss and Weiss, cases of drunkenness reached the civil courts. John Newman was accused of drunkenness and disorderly behaviour towards John Griffith in 1684. John Newman was fined nine shillings for being drunk three times and was ordered to pay John Griffith thirty shillings (Weiss, Harry B. and Grace E. Weiss. *An Introduction to Crime and Punishment in Colonial New Jersey*. Trenton, NJ: The Past Times Press, 1960. p. 78).

¹¹ Bush, Vol. I, pp. 21-2.

consumed by an individual. On March 28, 1719, the seventh Assembly, which met at Perth Amboy, passed the "An Act to Restrain Tavern-keepers and Retailers of strong Liquors from Crediting any Person more than Ten Shillings." The act placed a cap of ten shillings on the amount of credit that the tavern keeper could accept from one individual.

Whereas it is evident that many Persons in this Province do spend their Time and waste their Substance by frequenting Taverns and Tippeling houses, to the great detriment of themselves and Families, ... Be it therefore Enacted by the Governor, ... That after the Publication of this Act, if any Tavern keepers or Publick-house-keepers shall trust any person above ten Shillings before payment be made, ...¹²

A further regulation was passed during the 11th Assembly of New Jersey, which met in Perth Amboy. The delegates passed "An Act for regulating Taverns, Ordinaries, Inn-Keepers and Retailers of strong Liquors" on March 15, 1738.

The Act clarified the intended use of Taverns and how the use had changed:

the true and original Design of Taverns, Inns and Ordinaries, was for the accommodating Strangers, Travellers and other Persons, for the Benefit of Men's Meeting together for the dispatch of Business, and for the Encouragement of Gaming, Tipling, Drunkenness, and other Vices so much of late practiced at such Places, to the great Scandal of Religion, the Dishonour of God, and impoverishing the Commonwealth:...¹³

The act defined the appropriate volumes in which alcohol was to be sold by retail.¹⁴ The lengthy act also explains how a licence to sell liquor was to be obtained and the governing of such licences. To regulate the prices of "all the several Liquors, Meat, and Entertainment for Man, and ... Stabling of Horses," the Clerk of the Court of Session will distribute "a fair List containing the Prices

¹² Bush, Bernard. *Laws of the Royal Colony of New Jersey, 1746-1760*. Vol. II. Trenton, NJ: New Jersey State Library Archives and History Bureau, 1977. p. 264.

¹³ Bush, Vol. II, p. 493.

¹⁴ "No person or persons in this Province shall by retail Rum, Brandy, Wine, or Spirits of any kind, under the Quantity of one Quart, nor any Cyder, Strong Beer, Metheglin, or any such strong Liquors, or any mixed Liquors, directly or indirectly, under the Quantity of five Gallons..." (Bush, Vol. II, pp. 493-4).

of all such Things.”¹⁵ The assembly was greatly concerned that “many of the Inhabitants of this Province, of mean and low Fortunes, do make it their constant Practice to frequent Taverns, and there spend much of their Time and Substance in Gaming, Tipling, and often Drinking to excess, to the great Damage, Affliction and Distress of their poor Families, and Destruction of themselves.” This also indicated the state’s concern for the moral well being of the inhabitants of the colony. Therefore, to protect the citizens’ morality the act imposed fines to be paid by the tavern-keeper for allowing “any Person to spend much of his, her or their Time, in an idle Manner, at his, her, or their House or Houses, or shall supply any Person with strong Liquors, simple or mix’d, more than [was] absolutely necessary for his or her Refreshment.”¹⁶ If the tavern-keeper was found guilty of this he or she would pay twenty shillings for the first offence, forty shillings for the second, and five pounds for any further offence.¹⁷ The act was also motivated by the belief that such criminal offences were to the “great Scandal of Religion, the Dishonour of God, and impoverishing the Commonwealth.” This act indicated that the state was also concerned about the moral climate of the colonies. Therefore, because the church and the state shared the same concern, both bodies punished for drinking related offences, which further eliminated any interference upon the church’s disciplinary proceedings.

The same was true in the colony of New York, as similar acts were also passed. Under the subtitle of “Innkeeper & Ordinayres” in the Duke’s Laws, excessive drinking was forbidden. “No licensed Person shall suffer any to Drink

¹⁵ Bush, Vol. II, p. 496.

¹⁶ Bush, Vol. II, p. 497.

¹⁷ Bush, Vol. II, p. 497.

excessively or at unseasonable hours after Nine of the Clock at night in or about their houses upon penalty of two shillings six pence for every Offence if Complaint and prooffe be made thereof.”¹⁸ The act continued by establishing punishments for inappropriate drunken behaviour.

If any quarrel or disorder doth arise from Intemperate persons within their house, the Person so licensed for not immediately Signifying the same to the Constable, ... shall for every such neglect forfeit Tenne Shillings and every person found Drunk in or about any of their houses shall forfeit two shillings Six pence, And for being the Author or accessory of the breach of the Peace and disorder or for Tipling at unseasonable hours shall forfeit ten Shillings and for want of payment... They shall be sent to the Stocks one hour at the least, ...¹⁹

In 1685, “A Bill against Drunkenesse” was passed as a result of the “Loathsome and Odious Sinne of Drunkenesse grown into Comon use with this province being the root and foundation of many other Enormous Sinnes as bloodshed stabbing murther swearing fornication Adultery and such like to the Great Dishonour of God.”²⁰ All guilty persons were fined five shillings to be paid within one week of the crime.²¹ Again, this act was protecting the religious reputation of the colony by punishing such “loathsome and odious sins.”

To reinforce the above act the New York Assembly several years later passed the “Act for Suppression of Immorality” in 1708. The act further defined the punishments for drinking excessively.

Be it Enacted by the Governor Council and Assembly now met and assembled, and by the Authority of the Same, that all Christians

¹⁸ Duke’s Laws, *The Colonial Laws of New York from the Year 1664 to the Revolution, including the Charters to the Duke of York, the Commissions and instructions to Colonial Governors, the Duke’s Laws, the Laws of the Dongan and Leisler Assemblies, the Charters of Albany and New York and the Acts of the Colonial Legislatures from 1691 to 1775 inclusive.* Vol 1-5. Albany: James B. Lyon, State Printer, 1896. Vol. I, p. 39.

¹⁹ Duke’s Laws, *The Colonial Laws of New York*, Vol. I, pp. 39-40.

²⁰ *The Colonial Laws of New York*, Vol. I, pp. 174-5.

²¹ *The Colonial Laws of New York*, Vol. I, p. 175.

whatsoever within this Province, who shall be convicted of Drunkenness, ... Shall be fined by the said Justice of the Peace for Drunkenness... in the Sum of three Shillings money of the Province of New York for each offense, all which fines to be Immediately Levied upon the offenders Goods and Chattles by the Constables aforesaid by warrant from the said Justice of the Peace, and for want of Effects to make such Distress the said Constable by Warrant from the said Justice of the Peace, shall Commit the offender to the Stocks for the Space of four hours, for Drunkenness.²²

As in the colony of New Jersey, the civil authorities of New York levied strict punishments on any guilty drunkards. The state created a means to deal with excessive drinking cases; however, was the state the sole authority over the suppression of such cases?

In both colonies there were acts and laws in place for the punishment of drunken behaviour. Whether or not these were enforced is difficult to determine. However, again by examining the church session minutes, it is clear that the church also disciplined for drinking excessively. Perhaps the church was the sole authority in these cases or the church and the state both rebuked the offender. Or, perhaps the church believed that the punishments imposed by the civil authorities were too rigid. The exact answer to those questions is difficult to determine; one can, however, attempt to offer an answer by examining the church session minutes. Emil Oberholzer, in his study of the colonial churches in Connecticut, suggested that "the churches, free from statutory definitions, followed their own judgment rather than rely on the legal definitions, which were perhaps a bit too rigid."²³ This also seems to have applied to the Presbyterian Church in New Jersey and New York, as their church sessions tried a multitude of drink related cases. With cases of drunkenness, the church may

²² *The Colonial Laws of New York*, Vol. I, pp. 617-8.

²³ Oberholzer, Emil. *Delinquent Saints: Disciplinary Action in the Early Congregational Churches of Massachusetts*. New York: Columbia University Press, 1956. p. 163.

have supplemented the civil courts in dealing with drunkards, but without complete court and church records that is difficult to determine. However, given the fact that both the church and the state were concerned with the morality of the inhabitants, it can be assumed that they supplemented one another in this respect. The trial and subsequent punishments may have differed from one another, but the desire to maintain a moral society was held by each body.

Presbyterians did not object to drinking entirely, as long as it was done in moderation. However, the church was against the abuse of liquor. Drinking cases were much more subjective than a fornication offence that resulted in a child, as an unmarried woman who was pregnant or gave birth to a child served as conclusive proof of fornication. Drinking cases were not as clear-cut. Therefore, it appeared that the church sessions handled each case on an individual basis, which resulted in a lack of well-defined and practical disciplinary proceedings, but each case exhibited the church's desire to reform the character of the sinner. Additionally, the subjectivity of the process also illustrated that the church's main concern was indeed for the reformation of the offender and not necessarily against the act itself.

By comparing the procedures used in the cases, general patterns emerge and the restorative intentions of the sessions become evident. On the whole, accused persons appeared before the church as a result of a voluntary confession, a delation by an elder, or by common report. The elders held the discretion either to send a committee to confer with the accused person or cite him or her to appear before them. On December 23, 1795, a committee was sent to converse with William Cosgrove, a member of the First Presbyterian Church of

Madison, for his intemperate drinking.²⁴ The committee reported back to the session on December 30, 1795, that they “did converse with him but not so fully as they could wish.” Therefore, the session “requested them to take an other opportunity to converse with said Cosgrove.”²⁵ On February 19, 1796, the committee declared that Cosgrove “had given them Christian Satisfaction,” which concluded the case.²⁶

The session of the First Presbyterian Church of Huntington, NY, decided to cite James Smith to appear before them for his intemperate drinking in order to exhort him to reform his behaviour. On May 11, 1759, Smith did appear, owned his faults, and said he was ready to make a public confession. After hearing his declaration the session agreed that his confession should be accepted if he showed sincerity and reformation. However, if he returned to his previous ways then he would be cut off from the community of the church.²⁷ James Smith did not make a public appearance because he “was hindered by sickness in his family.”²⁸ Being sympathetic to his situation, the Minister then visited him in his home and accepted a written confession, which he read on June 10, 1759, to the congregation. Accordingly, James Smith was restored to full communion of the church.²⁹

Cases of drunkenness and intemperate drinking were often brought to the attention of the ruling elders by a voluntary confession, as the members of the congregation sincerely desired to remain accepted in the community.

²⁴ First Presbyterian Church, Madison, NJ, December 23, 1795.

²⁵ First Presbyterian Church, Madison, NJ, December 30, 1795.

²⁶ First Church of Southold, Southold, NY, February 19, 1796.

²⁷ First Presbyterian Church, Huntington, NY, May 11, 1759.

²⁸ First Presbyterian Church, Huntington, NY, June 10, 1759.

²⁹ First Presbyterian Church, Huntington, NY, June 10, 1759.

Acceptance within the church was important to the communicants, and in turn motivated members, who behaved in unbecoming manners, to confess their improper conduct to the session voluntarily. Gilbert Heartt, a member of the First Presbyterian Church in Babylon, NY, voluntarily confessed his intemperate drinking to the session on March 16, 1799. The session told him that he should abstain from the sealing ordinances until he gave evidence of his repentance.³⁰ Unfortunately, Heartt did not make his confession and was suspended from the communion of the church on July 20, 1799.³¹ Several months later, Gilbert Heartt attended the meeting of session held on October 20, 1799, to request that his suspension be lifted. The session witnessed his sincere sorrow and restored him to full communion.³²

Similarly, in the First Church of Southold, John Peck made his public confession to the congregation after the worship service for his use of spirituous liquors. On October 7, 1753, he made the following confession:

I John Peck, having some time since together with some others, agreed & contrived to ask Samuel Landon, Esqr. one of the Members of this Church to drink some spirituous liquor, at the House of Mr. Israel Moore, designing afterwards to complain to Robert Hempstead, Esqr. of said Landan as a Tipler – Acknowledge that this my said conduct was not agreeable to that circumspection & Brotherly love which the Gospel required, & as such ask the forgiveness of God & this Church, & engage by the Help of Gods Grace to walk more circumspectly for the time to come.³³

Peck's confession was "unanimously accepted by the Church" and was cleared from his scandal of drinking.³⁴ The language of his confession illustrated the

³⁰ First Presbyterian Church, Babylon, NY, March 16, 1799.

³¹ First Presbyterian Church, Babylon, NY, July 20, 1799.

³² First Presbyterian Church, Babylon, NY, October 20, 1799.

³³ First Church of Southold, Southold, NY, October 7, 1753.

³⁴ First Church of Southold, Southold, NY, October 7, 1753.

sincere confession which led the session to believe that he was capable of reforming his character.

Not all persons guilty of intemperate drinking voluntarily appeared before the session because he or she realised their error. Very often excessive drinking was done in public, which may have led to rumours within the community. Therefore, intemperate drinkers were called before the session as a result of a common report circulating through the church. Nehemiah Bateman was observed to be drunk by other members of the congregation of Fairfield Church and was reported to the session on October 18, 1775. It was conveyed to the session that Bateman had frequently been seen in "public companies much disguised with strong drink."³⁵ The session found it expedient and ordered that the said Bateman be called upon to vindicate his character. Bateman denied the charge of intemperate drinking to the session; therefore, the session desired to hear the evidence from those that witnessed Bateman's drinking.³⁶

Witnesses were called before the session and offered incriminating evidence of Nehemiah Bateman's drunkenness. James Harris, the first witness, declared

he was with Nehemiah Bateman & some others about a year ago at a place called Rattle snake Run, Where the said Bateman discovered evident taken of drunkenness-- That he appeared the worse for drink in the morning at ten o' clock at which time he first saw him & that afterwards the above Bateman was unable to do any work with them as they were making hay, but lay down under a rock & slept an hour or more & when they were coming away he did not seem fully recovered but fell down as they were about to lift at some burden, which not only said Harris but the rest of their company attributed to drunkenness.³⁷

³⁵ Fairfield Church, Fairton, NJ, October 18, 1775.

³⁶ Fairfield Church, Fairton, NJ, October 18, 1775.

³⁷ Fairfield Church, Fairton, NJ, October 18, 1775.

Abial Shaw then testified “he saw Nehemiah Bateman at Bridgeton last fall court -- That Bateman came into a house where he was & sat down by a fire seeming very sick -- that he asked him what was the matter, He answered he did not know without he was groggy - upon which he got up & went out of doors & vomitted like a person intoxicated with drink.”³⁸ Joseph Daten added further incriminating evidence by stating,

he was at work last harvest in a field of Amos Westcots with a number of hands among whom was Nehemiah Bateman -- That Bateman appeared to be very drunk. That he differed & wrangled with the company, was obliged to leave his work to discharge his Stomach that at Supper the same evening he challenged any of the company to any exercise as wrestling Boxing & behaved in every respect like a man in drink.³⁹

After the third testimony implicated Nehemiah Bateman’s guilty conduct, he finally acknowledged “the circumstances of all the above evidences but denied that he was intoxicated with drink.”⁴⁰ The session deliberated over the matter and unanimously agreed that Bateman was guilty of drunkenness and that he should be debarred from the privileges of the sealing ordinances of the church “until such time as he shall manifest signs of a sincere repentance.”⁴¹

Nehemiah Bateman did not appear in subsequent records; therefore it cannot be known whether or not he was restored. However, the session’s desire to receive a sincere confession from Bateman in order to restore him to full church privileges was evident from the trial.

Disciplinary actions taken by the session were performed out of care for the sinful person. They desired proof of sorrow and a reformed character;

³⁸ Fairfield Church, Fairton, NJ, October 18, 1775.

³⁹ Fairfield Church, Fairton, NJ, October 18, 1775.

⁴⁰ Fairfield Church, Fairton, NJ, October 18, 1775.

⁴¹ Fairfield Church, Fairton, NJ, October 18, 1775.

therefore the session tailored its discipline to the nature of the offender and case. In some churches, drunkenness warranted a simple exhortation by the Minister to refrain from excessive drinking. In other churches, the guilty drinker was required to make a public confession before the session or the congregation. By examining the cases that resulted in more severe punishments, such as suspension or excommunication, the way that the church dealt with repeat drunkards emerged.

Temperate drinking was tolerated in the Presbyterian Church; however, anyone found guilty of excessive drinking was subject to discipline. The church's aim was to reconcile the guilty person and to deter further drinking. When the session believed that they had succeeded, the case was dismissed with an admonition by the minister. For instance, in the First Presbyterian Church in Goshen, NY, Joseph Doolittle demonstrated his repentance and intentions not to drink excessively in the future.⁴² On June 15, 1799, he was admonished by the moderator of the session and was dismissed from further church censure.⁴³

In some cases, the elders deemed that a public confession was necessary for the restoration of an offender. On February 2, 1755, the session of the First Presbyterian Church in Huntington, NY, ordered Azariah Wickes to make a confession to the congregation, which was the condition for him to be re-admitted to the church privileges.⁴⁴ However, it was not until February 24, 1759, that Azariah Wickes made his confession, which illustrated the "evidence of the truth of his repentance by a reformation."⁴⁵

⁴² First Presbyterian Church, Goshen, NY, June 2, 1799.

⁴³ First Presbyterian Church, Goshen, NY, June 15, 1799.

⁴⁴ First Presbyterian Church, Huntington, NY, February 2, 1755.

⁴⁵ First Presbyterian Church, Huntington, NY, February 24, 1759.

When the church session had a greater concern with an offender they placed him or her on suspension, with the hopes that the person would soon recognise the error of his or her ways and return to the church to make a sincere confession. In New Brunswick, NJ, John Smith first appeared before the church session on April 24, 1791, when it was reported to the session that he had been under the influence of alcohol. He acknowledged his guilt and expressed his sorrow. The session suspended him from the communion of the church until he could make a public confession.⁴⁶ On October 15, 1791, John Smith applied to the session to be released from “the suspension he was under with respect to his attending at the holy ordinance of the Supper.”⁴⁷ The session enquired into his recent behaviour and decided to keep him suspended, as they felt he had not proven his sorrow and reformation of character.⁴⁸ John Smith made two further applications to the church session on May 11, 1792 and October 6, 1792, but was not fully restored until his second appearance in October, when the church was convinced that he was regretful and had changed his behaviour.⁴⁹

When suspension was ineffective in the reformation of intemperate drinking, the elders of the church excommunicated the offending drinker. This was the case with Cornelius Smith, a member of the Church of Christ in Bedford, NY. The session took great pains with him in attempting to reform his behaviour of intemperate drinking. He first appeared before the elders on November 2, 1787. The session found him guilty and ordered that he appear

⁴⁶ First Presbyterian Church, New Brunswick, NJ, April 24, 1791.

⁴⁷ First Presbyterian Church, New Brunswick, NJ, October 15, 1791.

⁴⁸ First Presbyterian Church, New Brunswick, NJ, October 15, 1791.

⁴⁹ First Presbyterian Church, New Brunswick, NJ, May 11, 1792 and October 6, 1792.

before the church when called.⁵⁰ The following citation, written by the Moderator, was delivered to him on February 29, 1788,

The Minister & Elders of the Presbyterian Church of Christ in Bedford to Cornelius Smith one of their Brethren send greeting – You having publickly and solemnly engaged to submit to the watch and inspection of this church, and engaged yourself by the most sacred ties to walk in Christian fellowship, and a conscientious attendance upon the ordinances of Christ to be enjoyed in his church in this place – and having in our view grossly violated these solemn engagements and walked exceedingly unbecoming your profession, whereby religion has been wounded and its friends greatly grieved and whereas repeated & painful endeavours have been taken to bring you to repentance, but without the desired success. These therefore are not only to desire but cite and require you to attend the next Lord's day at the Presbyterian meeting house in Bedford then and there to receive a publick admonition.⁵¹

Smith did not appear when he was called and the session sent him a second admonition, which was intended to be more persuasive.

Cornelius Smith a Brother in this church having by his own confession... from time to time indulged himself in a too free use of spirituous liquors, by which neglects & misconduct, the rules of the gospel have been grossly violated his solemn covenant vows & engagements broken a holy God dishonoured the priest of Zion grieved – religion wounded and occasion given to the enemies of Jesus to reproach the Christian name & profession... thus to crucify the Son of God, and put him to open shame to behave so evidently inconsistent with his profession and repugnant to the rules of charity and which gives the adversary singular advantage against us. ... We would now solemnly rebuke you for your sin - and in the name of the most glorious God our Saviour, would exhort you to examine yourself – to reflect – seriously reflect that the wrath of God is revealed from heaven against all unrighteousness; and that you shall have his wrath poured upon you to the uttermost, unless you repent – that out of Christ, there is no safety for our God is a consuming fire. Whilst faithfulness to your soul obliges us to warn you of your danger, we call upon you to humble yourself before God and man, and in this way heal the breach you have made in the body of Christ we admonish you to repent of the sins with which we are grieved, ... to apply anew to Christ Jesus the Lord: for he is able to save them to the uttermost that come unto God by him, seeing he ever liveth to make intercession for them. ... But we now signify to you, that if marks of gospel sorrow are not exhibited and you continue impenitent, we might proceed unto a further declaration of that censure, which will

⁵⁰ Church of Christ, Bedford, NY, November 2, 1787.

⁵¹ Church of Christ, Bedford, NY, February 29, 1788.

be a terrible representation of your banishment from the kingdom of God. God forbid that it should come to this! – That it may not come to this we will now pour out our most affectionate supplication for you.⁵²

The session's "hell, fire, and brimstone" citation did not convince Cornelius Smith to appear before the elders, and he was therefore cited again on June 18, 1788.⁵³ On July 6th, the appointed day for Smith to appear before the session, the elders ordered a third citation to be delivered to him.⁵⁴ Cornelius Smith did not adhere to the order of the church and was publicly suspended from the communion of the church on November 25, 1788. Additionally, the elders delivered the fourth citation to him to appear in order that the sentence of excommunication could be read to him.⁵⁵ On January 4, 1789, Cornelius Smith was excommunicated from the church and the following public sentence was read to the congregation:

Whereas Cornelius Smith hath by his own confessions neglected to and after much admonition and prayer obstinately refuseth to hear the church, and hath manifested no evidence of repentance therefore in the name, and by the authority of the Lord Jesus Christ, I pronounce him shut out from the church of God, cut off from the priviledges and expectations of such as are in covenant with the churches of God – I declare him to belong visibly to the kingdom of the ruler of the darkness of this world, that his spirit may be faced in the day of the Lord Jesus – I declare him to be a person from whom the followers of our holy Lord are to withdraw, ... And this just sentence is now passed upon him in representation of a sentence [which is] dreadful to be passed upon him in the day, when the Lord Jesus Christ shall come to judge the world...⁵⁶

The pastor further exhorted the congregation to "avoid all unnecessary intercourse with those who were cast out and to let them be unto them as

⁵² Church of Christ, Bedford, NY, March 27, 1788.

⁵³ Church of Christ, Bedford, NY, June 18, 1788.

⁵⁴ Church of Christ, Bedford, NY, July 6, 1788.

⁵⁵ Church of Christ, Bedford, NY, November 25, 1788.

⁵⁶ Church of Christ, Bedford, NY, January 4, 1789.

heathenmen.”⁵⁷ A Psalm was then sung to close “the mournful scene.”⁵⁸ This case further illustrated the Calvinistic ethos of discipline – to purify the church from uncleanness. Although Cornelius Smith did not conform to the church’s desire, the session still had the obligation to keep the Christian community clean, which was done in this case by removing the “dirty” member of the church.

In the above case, Cornelius Smith was excommunicated from the communion of the church because he was disobedient to the orders of the church. Clearly this was a sorrowful day for the church, as the “mournful scene” was closed by the singing of a psalm. The church did not want to remove members of the flock from the church; therefore they made great efforts to restore and reform first time offenders. However, recidivists did appear before the church sessions in the colonies. It appears that the churches did not have a standard disciplinary procedure for repeat offenders. In some instances, the recidivist was rebuked by the Moderator or was required to make one public confession. And in a few other cases the church dealt with the repeat offender with more severity, in order to emphasise the seriousness of the sin and need for reformation. In the First Presbyterian Church of Morristown, NJ, Zopher Gildersleeve made a public confession on July 5, 1765, for drunkenness.⁵⁹ On June 18, 1766, a report was made to the session regarding the intemperate drinking of Gildersleeve. He acknowledged his guilt and was suspended from the communion of the church until he made satisfaction for his sin.⁶⁰ Zopher Gildersleeve remained on suspension for several years until he finally made his

⁵⁷ Church of Christ, Bedford, NY, January 4, 1788. Gilbert Reynolds was also excommunicated this day for the intemperate drinking.

⁵⁸ Church of Christ, Bedford, NY, January 4, 1788.

⁵⁹ First Presbyterian Church, Morristown, NJ, July 5, 1765.

⁶⁰ First Presbyterian Church, Morristown, NJ, June 18, 1766.

confession on August 30, 1770, promising “to abstain from all spirituous liquors & desired all as friends to not offer it to him.”⁶¹ However, his reformed character did not last long, as he once again appeared before the session for drunkenness on December 13, 1771. He denied his drinking, but three witnesses proved the contrary. Again, he was placed on suspension.⁶² The records, which continue past 1800, never recorded his restoration.

The church may have encouraged temperate drinking, but that did not include habitual drinking. When this practice was violated, the session utilised its disciplinary proceedings, which could result in the use of the higher court. In Pleasant Valley, NY, the session of the First Presbyterian Church heard an accusation spread by a common report against Sylvester Bloom for “living in habitual drunkenness.”⁶³ He was cited to appear before the church session, but did not attend. His second citation ordered him to be present at the meeting of session on March 28, 1798. Once again, he did not attend and was issued a third citation.⁶⁴ On April 5th, Sylvester Bloom did appear before the church session and confessed his guilt, but did not exhibit any signs of reformation. Therefore, the session decided to seek the advice of the presbytery.⁶⁵ With the approval of the presbytery, the church session excommunicated Sylvester Bloom for “habitual drinking” on May 30, 1798.⁶⁶

When the church dealt with repeated drunkenness, the session further stressed the need for reformation of the habitual drinker, illustrating the

⁶¹ First Presbyterian Church, Morristown, NJ, August 30, 1770.

⁶² First Presbyterian Church, Morristown, NJ, December 13, 1771.

⁶³ First Presbyterian Church, Pleasant Valley, NY, March 15, 1798.

⁶⁴ First Presbyterian Church, Pleasant Valley, NY, March 28, 1798.

⁶⁵ First Presbyterian Church, Pleasant Valley, NY, April 5, 1798.

⁶⁶ First Presbyterian Church, Pleasant Valley, NY, May 30, 1798.

nurturing function of the disciplinary system. In the First Presbyterian Church of Morristown, NJ, Silas Ayres first appeared before the session on May 22, 1795. He confessed his guilt and subsequently the Moderator drafted the admonition,⁶⁷ which was read publicly on June 2, 1795. The session placed Ayres on suspension until he showed further proof of his reform.⁶⁸ On November 30, 1795, a second citation was sent to Silas Ayres in order for him to illustrate his repentance and reform.⁶⁹ He did not appear when called, but did obey the second citation that was sent to him.⁷⁰ On March 2, 1796, Silas appeared before the session, they conversed with him, and he acknowledged his guilt. He was asked to make public confessions of "his penitence until he had given further proof of his reformation."⁷¹

The session continued in this pattern of citing Silas Ayres to appear, to investigate his behaviour, and to determine if he had reformed his drinking habits. On December 30, 1796, the session still had "some doubts whether he had actually refrained from the sin of intemperance."⁷² Therefore, the session "judged it expedient for him to delay the confession of his sin and of his penitence, until they should have made further enquiry into his circumstances and gained more evidence of his reformation."⁷³ The following year, Silas Ayres was "cited to attend to answer to a late charge of the sin of intemperance laid in against him, by one of the members of this body and also by common

⁶⁷ First Presbyterian Church, Morristown, NJ, May 22, 1795.

⁶⁸ First Presbyterian Church, Morristown, NJ, June 2, 1795.

⁶⁹ First Presbyterian Church, Morristown, NJ, November 30, 1795.

⁷⁰ First Presbyterian Church, Morristown, NJ, December 18, 1795.

⁷¹ First Presbyterian Church, Morristown, NJ, March 2, 1796.

⁷² First Presbyterian Church, Morristown, NJ, December 30, 1796.

⁷³ First Presbyterian Church, Morristown, NJ, December 30, 1796.

fame."⁷⁴ On February 22, 1797, he "expressed a wish to make a public confession of his sin and of his penitence," but "the session judged it not expedient to receive his confession for the present, as they had no reason to believe that he had reformed."⁷⁵ By the advice of the session "Mr Ayres promised wholly to renounce the use of spirituous liquors; until he should gain the victory over his appetite."⁷⁶ However, Ayres did not keep his promise and on August 18, 1797, acknowledged that he had "been intoxicated with spirituous liquors since he was last before the session."⁷⁷ After several years of this repetition, the session finally resolved that Silas Ayres should be excommunicated from the church, as he continued to indulge in the use of spirituous liquors.⁷⁸ The session of Morristown spent two years attempting to restore Silas Ayres, but to no avail. However, their dedication to his case proved that Silas was more than a fallen sinner, for he was a member of the Christian community. The session desperately attempted to help him see the error of his ways and live a life becoming a Christian. Again, this illustrated that the colonial Presbyterian Church maintained the Calvinistic ethos of caring for souls through the disciplinary proceedings, something curtailed in the Presbytery of St Andrews.

Another example of the extraordinary efforts of a colonial session to help a sinner see the errors of his or her ways was found again in the First Presbyterian Church of Morristown, NJ. Stephen Turner, a member of church, was dealt with cautiously but sternly by the church session for his habitual

⁷⁴ First Presbyterian Church, Morristown, NJ, February 6, 1797.

⁷⁵ First Presbyterian Church, Morristown, NJ, February 22, 1797.

⁷⁶ First Presbyterian Church, Morristown, NJ, February 22, 1797.

⁷⁷ First Presbyterian Church, Morristown, NJ, August 18, 1797.

⁷⁸ First Presbyterian Church, Morristown, NJ, October 3, 1797.

drinking. He was first accused on May 22, 1795, and cited to appear before the session on June 2, 1795. Turner was sent several citations before he finally attended the meeting of the session on March 5, 1796.⁷⁹ He “promised to refrain wholly from all spirituous liquors for the term of two months.”⁸⁰ The session concluded to not wait upon him until their next meeting on May 15, 1796, “provided they were not previously convinced that he had broken through his engagement.”⁸¹ However, at that meeting in May, the session found that Mr. Turner had “persisted in the sin of intemperance” and therefore, “they agreed that he should be solemnly excommunicated from the church next Lords day.”⁸² On May 22, 1796, Stephen Turner was “publicly excommunicated from the church and separated from all the privileges of the same.”⁸³

The colonial sessions did not simply declare all accused persons guilty of intemperate drinking, as that would have been detrimental to the accused person. Why would a person who was innocent, yet pronounced guilty, feel comfortable in the community? Therefore, the session carefully deliberated over the evidence and passed their best judgement on the case, which did result in some acquittals. On January 15, 1791, in Newton, NY, the church session heard an accusation from Abigail Petit against Mary Hamilton for being intoxicated. Petit had attempted to resolve the matter on her own, but found it was in vain. Therefore, she sought the assistance of the church session, which

⁷⁹ First Presbyterian Church, Morristown, NJ, June 2, 1795, November 30, 1795, and December 18, 1795.

⁸⁰ First Presbyterian Church, Morristown, NJ, March 5, 1796.

⁸¹ First Presbyterian Church, Morristown, NJ, March 5, 1796.

⁸² First Presbyterian Church, Morristown, NJ, May 15, 1796.

⁸³ First Presbyterian Church, Morristown, NJ, May 22, 1796.

sent a committee to converse with Mary Hamilton.⁸⁴ On June 8, 1791, the seemingly impatient Abigail Pettit submitted the following written accusation:

I Abigail Pettit a Member of the Presbyterian [Church] in Newton being grieved with the conduct of Mary Hamilton a Member of [Presbyterian Church] & having taken the steps prescribed in Matthew 15 Chapter of conversing with her alone & not receiving satisfaction, have taken one or two more with me & finding the attempt for conversation fruitless, do now hereby tell the [Church] that on the 29th day of December 1790, the [said] Mary Hamilton was intoxicated with Spiritous Liquors; [which] allegation I shall endeavour to support & prove by the Evidence of Mr Pettit, John Hamilton and Elizabeth Pettit...⁸⁵

The evidences were heard and the session deliberated over the testimonies on June 22, 1793. The session judged that “the charge was not so clearly supported as to authorize the session to declare the accused guilty.”⁸⁶ However, the session “advised that an Admonition & exhortation to both parties to Live like [followeres] of Jesus be given by the Moderator.”⁸⁷ The session also never missed an opportunity to exhort the case participants and congregation to live as is becoming to a Christian, all with the intention of curtailing any infractions of Scripture.

Furthermore, the inappropriate use of spirituous liquors led to further problems among the parishioners. Drinking often led to profanity, quarrelling, and violence, which were against Biblical teachings of how to live a pure life. Therefore, these sinful acts further complicated the disciplinary case and all were subject to censure from the church. It was not clear where drinking as a cause of delation ceased and when the other acts which resulted from drinking began as a cause for discipline. However, the order of importance did not

⁸⁴ First Presbyterian Church, Newton, NY, January 15, 1791.

⁸⁵ First Presbyterian Church, Newton, NY, June 8, 1791.

⁸⁶ First Presbyterian Church, Newton, NY, June 22, 1793.

⁸⁷ First Presbyterian Church, Newton, NY, June 22, 1793.

matter, as all infractions of Biblical precepts were a cause for discipline. For example, a special meeting of the session was called on January 23, 1765, in the Church of Christ of Southold, NY, in order to “consult & determine upon Sundry things.”⁸⁸ After prayer, the members of session considered the case of Samuel Both, who applied to the church to have his children baptised. The elders were made aware of a common report that had been circulating around the church declaring that Both had been “Neglecting Family Worship, drinking & Swearing.”⁸⁹ As a result, the session believed that the children should not be baptised until their father makes Christian satisfaction for his sins.⁹⁰ At the next meeting of session held on February 11, the matter was further discussed and evidences were heard against Both. The session concluded to call him to their next meeting for further questioning.⁹¹ On February 22, 1765, Samuel Both confessed that all the evidence was true and that he was guilty of all charges against him. He then “received ye Admonition of the [Church] & promised [amendment.]”⁹²

Drinking also could lead to quarrelling. On May 19, 1754, in the First Church of Southold, Abner Reeve made a confession to the session for intemperate drinking. After making the following declaration before the congregation, he was “universally accepted:”

Whereas I, Abner Reeve, have for many years past lived in ye foul sin of excessive drinking of strong Drink & have been frequently guilty of the beastly Sin of Drunkenness, to the great Dishonour of God, the Scandal of Religion & offence of all sober men; & being now affected with a sense of the evil nature of Sin in [general], & of this brutal Sin of Drunkenness

⁸⁸ First Church of Southold, Southold, NY, January 23, 1765.

⁸⁹ First Church of Southold, Southold, NY, January 23, 1765.

⁹⁰ First Church of Southold, Southold, NY, January 23, 1765.

⁹¹ First Church of Southold, Southold, NY, February 11, 1765.

⁹² First Church of Southold, Southold, NY, February 22, 1765.

in particular, lament this Sin especially as having so often ... caused me to contend & quarrel so often with my fellow men, a crime so scandalous among mankind; desire hereby to take shame to myself by this open, free & public confession of my Sin...⁹³

Abner Reeve's confession indicated he was aware of how drinking led him to "contend & quarrel." However, quarrelling was not the only consequence of excessive drinking.

Drunkenness cases were often compounded by violent behaviour. On February 23, 1795, Zackious Marshal, a member of the First Presbyterian Church of Pleasant Valley, NY, was accused of "being intoxicated on the 15th of February, fighting & abusing Jon Vanvoras at the store of George Everson on the 13th & his denying there being anything Real in Religion."⁹⁴ The session found it necessary to send him a written citation to appear before them to answer to this accusation.⁹⁵ Marshal did not appear before the church until after the third citation was sent.⁹⁶ However, he did not give the church proper satisfaction and was suspended until they received advice from the presbytery.⁹⁷ Following the suggestion of the presbytery, the session of Pleasant Valley excommunicated Zackious Marshal on September 10, 1795.⁹⁸

As seen above, the cases of drunkenness varied with each individual case. It appeared that the church did use great sensitivity with each guilty offender and accordingly dealt with the offence by means of the church's procedures,

⁹³ First Church of Southold, Southold, NY, May 19, 1754.

⁹⁴ First Presbyterian Church, Pleasant Valley, NY, February 23, 1795.

⁹⁵ First Presbyterian Church, Pleasant Valley, NY, February 23, 1795.

⁹⁶ First Presbyterian Church, Pleasant Valley, NY, March 9, March 23, and April 30, 1795.

⁹⁷ First Presbyterian Church, Pleasant Valley, NY, April 30, 1795.

⁹⁸ First Presbyterian Church, Pleasant Valley, NY, September 10, 1795.

rather than the rigid punishments enforced by the civil authorities.⁹⁹ Again, whether or not the offenders were punished by both church and state is difficult to determine. Nonetheless, the church and civil authorities both dealt with excessive drinking cases in their own manner, as both desired to maintain moralistic societies. The Presbyterian churches in the colonies could only discipline its members, those that belonged to its community. A drunkard that belonged to the neighbouring Baptist church would not appear before a Presbyterian tribunal. Perhaps the civil magistrates would punish the Baptist drunkard. However, the point was that the church enforced discipline to cleanse and maintain its own community. If Presbyterian drunkards exhibited sinful behaviour, regardless of what the civil punishment might have been, the church session would still attempt to cleanse the sinner, as that was the church's focus. A civil magistrate could punish the act, but the church wanted to witness the reformed character of the offender. The same was true for cases of violence and abuse.

Violence and Abuse

Another area that was punishable by a civil magistrate both in Scotland and the American colonies was violence. The sixth commandment, "thou shall not murder," clearly forbade murder.¹⁰⁰ However, as with other commandments, like "thou shall not commit adultery," it too was broadly construed.¹⁰¹ The life of humans was sacred and not to be threatened. Therefore, this commandment

⁹⁹ As depicted in the acts passed by the Assemblies, drunkards caught by a civil magistrate after 1704 in New Jersey could face a fine of six shillings or four hours in the stocks. In New York, caught offenders could be fined three shillings or be sent to the stocks for four hours. See Appendix I for New Jersey's act and Appendix II for New York's.

¹⁰⁰ Exodus 20:13.

¹⁰¹ Exodus 20:14.

was stretched to include any harmful act that endangered another person.¹⁰²

Murder clearly was an offence subject to capital punishment and was tried in the highest criminal courts on both sides of the Atlantic. The church did not punish for cases of murder and surely murderers would have been handed directly to the civil magistrates. However, the church did discipline for cases of violence. Violence was considered inappropriate behaviour for Christians and was subject to discipline by the church. Cases of violence or abuse accounted for 7% of the “other” type of cases in both New Jersey and New York. There were nine cases found in New Jersey and three found in New York. One case of violence was recorded in Ferryport-On-Craig in the Presbytery of St Andrews. This was the only case within the “other” category found in the Presbytery of St Andrews. In Ferryport-On-Craig, Andrew Key and his wife, Isobel Ferrier, had “upon the twenty sixth of January under a Cloud of Night, scandalously beat and abused William Latta and ... his wife.”¹⁰³ The couple were ordered to appear before the session on February 4, 1750, to be questioned about the alleged report made to the session. On the appointed day, Andrew Key did not appear, but his wife, who did appear, was rebuked for her scandalous behaviour and was “exhorted to guard against anger and passion” in the future.¹⁰⁴ The following week, Andrew Key did appear and was rebuked in the same manner as his wife.¹⁰⁵ This was the only case of a violent nature that appeared within the Presbytery of St Andrews. This case was brought to the attention of the session by a report and obviously felt obligated to follow up the allegation. Perhaps the church tried

¹⁰² Oberholzer, p. 166.

¹⁰³ CH2/150/2. Ferryport-On-Craig, January 30, 1750.

¹⁰⁴ CH2/150/2. Ferryport-On-Craig, February 4, 1750.

¹⁰⁵ CH2/150/2. Ferryport-On-Craig, February 11, 1750.

this case because it involved a married couple and the church endeavoured to protect the family unit, as seen in the previous chapter. As this case was the only one, it is difficult to project the reason why the session of Ferryport-On-Craig disciplined a case of violence or why there were not more such cases. However, one can assume that issues of domestic abuse would have gone unnoticed unless a report was made to the session, which could explain the lack of violence cases in the Presbytery of St Andrews.

The colonial Presbyterian Church did discipline for cases of violence and abuse. For example, in Ballston Center, NY, Mr. Bethes and Mr. Wilkinson were summoned to appear before the church session on March 21, 1791, for quarrelling and striking one another. Bethes acknowledged his fault and professed his sincere sorrow for his conduct, which “greatly injured the course of religion and wounded his own Brethren’s feelings.”¹⁰⁶ The session were satisfied with his sorrow and ordered that his confession be read to the church “on lecture day before the Lord’s Supper.”¹⁰⁷ There was no further record of Wilkinson, which could imply that he was not at fault in the incident or that he somehow escaped the attention of the session.

Excessive physical abuse towards a child was also strongly discouraged through church action. Again, in Ballston Center, Benjamin Corbin “in a passion whipped a boy in an unreasonable manner,” which resulted in an appearance before the session on April 18, 1791. He acknowledged his guilt and sorrow before the session, and was ordered to make a public confession before the congregation.¹⁰⁸ Schoolmasters were not exempt from being

¹⁰⁶ First Church of Christ, Ballston Center, NY, March 21, 1791.

¹⁰⁷ First Church of Christ, Ballston Center, NY, March 21, 1791.

¹⁰⁸ First Church of Christ, Ballston Center, NY, April 18, 1791.

disciplined for inappropriate whipping of children in the classroom and were questioned when there was any suspicious treatment of children. William Harlet, a communicant of the First Presbyterian Church and the schoolmaster in Cranbury, NJ, was accused of beating a child too severely. The following complaint was lodged by Mr. William Covenhoven on October 24, 1791: "That on Friday the 30th Sept. last, he Harlet did, for a doubtful cause, whip a child of nine or ten years of age."¹⁰⁹ The session investigated into the matter and found that Harlet did not act improperly with the child in the classroom. Subsequently, the session acquitted Harlet, and no further action was taken against him.¹¹⁰

An interesting case involving the excessive beating of a servant girl illustrated how the churches supplemented the criminal courts of the colonies. Douglas Greenberg pointed out that the most common grounds for prosecution in the criminal courts were acts of personal violence, including "servants who besought the courts to relieve them of the severe treatment they received from their masters."¹¹¹ According to Greenberg, servants would receive the attention of the courts; however the penalties usually involved no more than an admonition directed to the master to behave in a more humane manner. Perhaps servants felt that if they turned to the church courts that they would receive greater sympathy. Or, if a servant was aware that the criminal courts would only admonish the master, then perhaps it was not worth the extra cost to turn to the criminal courts when the church sessions would hear a case for free.

¹⁰⁹ First Presbyterian Church, Cranbury, NJ, October 24, 1791.

¹¹⁰ First Presbyterian Church, Cranbury, NJ, October 24, 1791.

¹¹¹ Greenberg, *Crime and Law Enforcement in the Colony of New York, 1691-1776*. Ithaca: Cornell University Press, 1974. p. 108.

Nonetheless, the Presbyterian Church also disciplined inappropriate abuse of slaves and servants. Kezia Clark, a servant in the household of John Lyon and his wife, believed that she had been wrongfully whipped by her masters and lodged a complaint with the church on July 2, 1767. However, it was not until seven months later that the session of the First Presbyterian Church of Morristown, NJ, made any progress on the case, as John Lyon's wife was sick and not able to attend the meeting of the session to answer to the charge placed against her.¹¹² On April 29, 1768, John Lyon made his plea and "admitted to whipping her for nothing but the Childs Reformation."¹¹³ Desiring to discover the truth behind the allegation, the session called witnesses and then determined that he had "beaten her beyond her sake."¹¹⁴ He then confessed to the session and was ordered to make a public confession. John's wife, Esther, was then called to appear before the session, but declined by sending a written note stating that she refused to "subject her Selfe to the Judicature."¹¹⁵ She was therefore suspended "from our Communion till she shall see & retract her Error."¹¹⁶ To some degree, the church's discipline was worse than what John Lyon and his wife would have received by a criminal court, for the confession was made in public. Furthermore, John Lyon's wife was suspended from the community of the church, which could have carried greater repercussions than a private admonition by a judge. Again, this proved that the church courts supplemented the criminal courts because the victims of crimes turned to the church, rather than a secular court of law.

¹¹² First Presbyterian Church, Morristown, NJ, July 2, 1767.

¹¹³ First Presbyterian Church, Morristown, NJ, April 29, 1768.

¹¹⁴ First Presbyterian Church, Morristown, NJ, April 29, 1768.

¹¹⁵ First Presbyterian Church, Morristown, NJ, April 29, 1768.

¹¹⁶ First Presbyterian Church, Morristown, NJ, April 29, 1768.

Gaming and Lotteries

Another area of immoral behaviour that was shared by the civil magistrates and the church in the colonies involved gaming and lotteries. While the state passed acts prohibiting such illegal activities and prescribing punishments accordingly, the church also took issue with such practices and disciplined members involved in gaming and lotteries. Both were not as concerned with the act itself, but with the vice that ensued from the inhabitants' involvement in such activities.

In both of the colonies of New Jersey and New York, the respective Assemblies passed acts to prohibit gaming within the provinces. "An Act for the more effectual preventing of Lotteries, playing of Cards and Dice, and other Gaming for lucre of Gain, and to restrain the abuse of Horse Raceing within this Colony for the future" was passed at the Sixteenth Assembly of New Jersey, which sat in Perth Amboy, on December 16, 1748. The Assembly established and passed the act out of their concern for immoral gaming behaviour.

Lotteries, playing of Cards and Dice, and other Gaming for lucre of gain, are become of late frequent and common within this Colony, whereby many Persons have unjustly gained to themselves great Sums of Money from unwary Persons, as well as Children and Servants, tending to the manifest Corruption of Youth, and the ruin and impoverishment of many poor Families. And whereas such pernicious Practices and desire of unlawful Gain, ... may in Time ruin the Credit thereof, and be a hindrance to Trade and Industry, and a great Temptation to Vice, Idleness and Immorality, and consequently against the common Good, Welfare and Peace of his Majesty's Government.¹¹⁷

In order to prevent such behaviour, the Assembly placed hefty fines on the various forms of conduct. For the establishment of an inappropriate lottery, the offender was fined £500; and any participant in the lottery was fined £100.

¹¹⁷ Bush, Bernard. *Laws of the Royal Colony of New Jersey, 1761-1769*. Vol. III. Trenton, NJ: New Jersey State Library Archives and History Bureau, 1977. p. 128.

Cock fights, card and dice playing, raffles, and ballots were all considered to be a “publick Nuisance.” And the Authors, Parties, Contrivers and Abettors thereof and every of them, shall be adjudged common disturbers of the publick Peace, and as such shall and may be prosecuted and proceeded against.”¹¹⁸ The twenty-second meeting of the Assembly of the colony of New Jersey, which met at Perth Amboy in 1772, passed an addition to the above law because the previous act “had been evaded, and the good Ends proposed there-from not been answered.”¹¹⁹ The act further imposed the prohibition of lotteries by imposing a fine of five pounds for any person involved.¹²⁰

In the colony of New York, on July 22, 1721, the Assembly passed “An Act to prevent Lotteries within the Province of New York,” which prohibited lotteries, raffles, and balloting.¹²¹ The bill specified that guilty offenders were ordered to “pay Double the value of Such Goods So put up.”¹²² Gaming houses were made unlawful by the “Act to Restrain disorderly & Unlawfull Gameing Houses in the Colony of New York,” which was passed on November 27, 1741.¹²³ The Assembly established a twenty-pound fine for any Tavern-keeper with a “Common Billiard Table, Truck Table, or Shuffle board Table” in their possession.¹²⁴ Additionally, a fine of three pounds was to be paid by

¹¹⁸ Bush, Bernard. *Laws of the Royal Colony of New Jersey, 1770-1775*. Vol. IV. Trenton, NJ: New Jersey State Library Archives and History Bureau, 1977. Vol. III, p. 129.

¹¹⁹ Bush, Vol. IV, p. 50.

¹²⁰ Bush, Vol. IV, p. 50.

¹²¹ *The Colonial Laws of New York*, Vol. II, p. 61.

¹²² *The Colonial Laws of New York*, Vol. II, p. 61.

¹²³ *The Colonial Laws of New York*, Vol. III, p. 194.

¹²⁴ *The Colonial Laws of New York*, Vol. III, p. 194.

Tavern-keepers that allowed “Youth under the age of Twenty one years” to drink or play cards.¹²⁵

These acts further illustrated that the civil authorities were also motivated by Biblical principles. Games and lotteries, as it was believed, led to the corruption of youth, the destruction of poor families, and general idleness. The desire for luxury and instant wealth was against Scriptural teaching, for the Christian should limit his or her material pleasures as they can hinder the believer. Luke 18:25 stated that “for it is easier for a camel to go through the eye of a needle than for a rich man to enter the kingdom of God.”¹²⁶ This has often been interpreted to mean that when a man is wealthy he tends to rely only on his material goods, rather than relying on the mercies of God. Therefore, lotteries that enabled a person to gain instant wealth could create this temptation. Additionally, if persons depended on gambling to maintain a lifestyle or try to get out of poverty, this reliance could lead to further destruction as the games were based on chance. Subsequently, the church and state both created rules against these activities to protect the inhabitants.

When the rules were broken, the church disciplined. For example, in the First Presbyterian Church of Pleasant Valley, NY, Daniel A. Ward was disciplined for frolicking and gaming. He was first cited to appear before the session on January 2, 1792, but did not appear.¹²⁷ On July 30, 1792, he was once again visited and cited. He did not appear; therefore, two members of the session were appointed to visit with him as directed in 15th chapter of

¹²⁵ *The Colonial Laws of New York*, Vol. III, p. 195.

¹²⁶ Luke 18:25. The same statement made by Jesus was recorded in Mark 10:25.

¹²⁷ First Presbyterian Church, Pleasant Valley, NY, January 2, 1792.

Matthew.¹²⁸ The elders did visit Ward, and subsequently charged him with “immoral conduct: holding a raffle in his house, being intoxicated, and conkling about.”¹²⁹ Two members of the session were once again sent to visit with him and reported back to the session on February 3, 1794. The committee was unsuccessful in hearing a confession from Ward, resulting in another committee visiting him.¹³⁰ Finally, on April 5, 1794, the committee reported that “he acknowledged himself guilty of one of the crimes - him holding a raffle in his house - he denied the drinking charge.”¹³¹ Upon his confession, the session cited him to make a public confession.¹³² He was called to appear on February 23, 1795, but he was sick and unable to appear. However, in the meantime, further reports were made against him for “fighting and abusing Mr. Charter.”¹³³ On March 9, 1795, Daniel Ward finally appeared before the session, acknowledged his guilt and made his confession with sincerity. He was therefore restored to full communion with the church and absolved of all charges.¹³⁴

Not all cases of gaming were as straightforward as the example above. Severe cases that involved gaming, usually were complicated by a variety of “unchristian behaviours,” and could have resulted in the excommunication of the offender. In the First Presbyterian Church in Newark, NJ, the session resigned itself to the fact that Elias Baldwin was beyond restoration and chose to

¹²⁸ First Presbyterian Church, Pleasant Valley, NY, July 30, 1792.

¹²⁹ First Presbyterian Church, Pleasant Valley, NY, December 3, 1793.

¹³⁰ First Presbyterian Church, Pleasant Valley, NY, February 3, 1794.

¹³¹ First Presbyterian Church, Pleasant Valley, NY, April 5, 1794.

¹³² First Presbyterian Church, Pleasant Valley, NY, April 5, 1794.

¹³³ First Presbyterian Church, Pleasant Valley, NY, February 23, 1795.

¹³⁴ First Presbyterian Church, Pleasant Valley, NY, March 9, 1795.

excommunicate him after a lengthy trial. The case was first presented to the session on September 1, 1797, when the session conversed with Elias Baldwin regarding a "variety of reports that bore hard upon his moral and christian character."¹³⁵ In his own defence, he desired that the session commit to writing all the charges that were placed against him. At this point the session placed him under suspension until his case could be fully reviewed.¹³⁶

On September 18, 1797, the session recorded the following written testament of the charges laid against Elias Baldwin.

Charges were read as follows: 1. Frequenting a gaming house and playing bilyards for money. 2. He was conversed about it with some brethren and said he would not return, yet broke his promise and returned. 3. Had an argument with someone at the gaming house and threatened to fight the person in a duel. 4. Excessive drinking. 5. Declared intention to have another wife when he is legally loosed from your present wife. 6 He misused a member of the session to whome he said what fully involved, that his character was, "that he was not a man of truth and that his word could not be depended upon."¹³⁷

The charges were dealt with one by one by the session. Elias Baldwin freely acknowledged the first charge of playing billiards and visiting gaming houses. The second charge he denied; however, Jonathan Baldwin, Zebas Baldwin, and David Crane proved otherwise. After hearing the testimony of the three men, Elias Baldwin confessed that he had made the promise, but believed that he was free from any further commitment to the men. The third charge of fighting with another person at a gaming house and threatening a duel was not supported and was dismissed. The charge of excessive drinking was denied by Elias Baldwin, but was supported by the testimony of Jonathan Baldwin, who declared that "sometime in May last one evening he thought Captain Baldwin to be

¹³⁵ First Presbyterian Church, Newark, NJ, September 1, 1797.

¹³⁶ First Presbyterian Church, Newark, NJ, September 1, 1797.

¹³⁷ First Presbyterian Church, Newark, NJ, September 18, 1797.

intoxicated and much disordered with liquor and that his wife had the same idea of him.”¹³⁸ The fifth charge of declaring that he wanted to take another a wife was “in some measure substantiated.”¹³⁹ There was no further mention of the sixth charge alleged against Elias Baldwin. The session deliberated over the charges and ensuing testimonies and arrived at the following conclusion:

They highly disapprove of any of the members of this church frequenting places of gaming, drinking to excess, and disregarding promises; and they consider such conduct as [undesirable] and therefore Elias Baldwin [was] suspended from the communion of the church for nine months that he may have space to evidence his repentance and reformation and then he shall profess his repentance and make acknowledgment of these faults before the communicants of the church.¹⁴⁰

The session revisited the case against Elias Baldwin on August, 17 1798, when they conversed with him over his previous unchristian behaviour. The ruling officers of the First Presbyterian Church in Newark, NJ, determined that he was “still continuous in unreform and walks disorderly, whereby much reproach has been brought upon church.”¹⁴¹ Elias Baldwin did not demonstrate his reformation therefore he was “excluded from sealing ordinances” and he was “to be considered no longer a part of the church until he repent.”¹⁴² As a result of his repeated unchristian conduct, Elias Baldwin was excommunicated from the community of the church.

The above case was one of many complications. Elias Baldwin engaged in what the church considered inappropriate behaviour and was disciplined accordingly. In a similar light, Baldwin’s offences were also against the laws of

¹³⁸ First Presbyterian Church, Newark, NJ, September 18, 1797.

¹³⁹ First Presbyterian Church, Newark, NJ, September 18, 1797.

¹⁴⁰ First Presbyterian Church, Newark, NJ, September 18, 1797.

¹⁴¹ First Presbyterian Church, Newark, NJ, August 17, 1798.

¹⁴² First Presbyterian Church, Newark, NJ, August 17, 1798.

the colony of New Jersey. "The Act for Suppressing Immorality in the Colony of New Jersey," originally passed in 1704, was revived by an act passed by the state legislature on October 1, 1782.¹⁴³ Clearly, Baldwin, if tried in a civil court, would have been fined for his drinking and for his gaming, and he would have been treated as a "publick nuisance."¹⁴⁴ From the example of this case and the previous cases, one could speculate that inhabitants of the town could have their cases tried in front of civil authorities or ecclesiastical authorities. The motivations behind choosing one or the other cannot be determined, but the choice could have been motivated by avoiding a fine granted by a civil court. Additionally, the members of the towns may have had no other option, if a Justice of the Peace was absent or the wait for a jury trial was too lengthy. Or, as with the case of the servant girl, perhaps the inhabitants of the towns were aware of the likely outcomes of criminal trials, and preferred the treatments of the church. However, what seems more plausible was the fact the inhabitants of colonial towns were more concerned with their standing in the church community, than their reputation in the town generally. As for the church's motivation in trying cases that could have been presented to secular authorities, it can be assumed that discipline cases were motivated by a desire to keep the peace within the parish and for the reformation of the offenders. Regardless of the reason, the church did discipline for offences that broke the civil laws of the respective colonies, as well as being a breach of appropriate Christian behaviour.

Once again, the church courts served the colonial communities by supplementing the secular courts. The parishes of the Presbytery of St Andrews did not need to function in this capacity as Scotland's judicial system was stable

¹⁴³ *First Laws of the State of New Jersey*. Wilmington, DE: Michael Glazier, Inc., 1981. p. 304.

¹⁴⁴ See acts mentioned above.

and efficient in handling cases that fell under civil and criminal jurisdictions. Furthermore, the Presbytery of St Andrews also differed from the colonial Presbyterian Church in the spiritual motivations behind discipline. As stated previously, the Scottish Kirk, once a staunch Calvinistic institution, had loosened its grip on its members during the latter half of the eighteenth century, which directly affected the disciplinary system. During this period, the church tended to discipline solely for cases of sexual misconduct, which had practical ramifications on the church. In addition to these differences, the pluralistic society also left its mark on the colonial disciplinary system, which can be seen in the influence of the Congregational denomination on the Presbyterian Church's system of church discipline.

Influence of the Puritans

The Presbyterian Church in the American colonies was influenced by the Scottish Presbyterians and English Puritans, who split into Congregationalists and Presbyterians. As the colonial church developed over the generations, it adapted practices and systems from each denomination. As depicted throughout this work, the American church modelled itself on the church government system of the Church of Scotland, believing that the Universal Church was made up of the entire body of believers and that churches could not stand independent from one another. The Congregationalists believed that the Universal Church manifested itself in the local congregation, and that therefore churches could stand independent to one another. Structurally, the two denominations were different, but they both used the teachings and doctrines of

John Calvin.¹⁴⁵ How each denomination applied Calvin's teachings also differentiated the two, which affected the practices of discipline. The Congregational churches adhered to the Cambridge Platform of 1648, which established their rigid system of discipline. The Platform outlined the basic elements and beliefs of the Congregational Church. It granted the church sole authority over questions of doctrine, but allowed civil magistrates to maintain religious order. Furthermore, it clearly defined church membership and the requirements thereof. The Platform found its way into churches with Presbyterian tendencies, as well. The Presbyterian Church of Cutchogue, NY, voted to govern the church according to the methods and procedures outlined in the Cambridge Platform on December 7, 1750.¹⁴⁶ This would not have been unusual or controversial, as the Platform embodied many Presbyterian ideas, such as the office and duties of the elder, a crucial component of an efficient disciplinary system. The colonial Presbyterians' system of discipline resembled that of the Church of Scotland in style and structure, but the idea behind the system was closer to that of the Congregationalists' in the eighteenth century. The Congregational churches continued to discipline a plethora of offences, most of which also appeared within the minutes of the Presbyterian churches in the colonies of New Jersey and New York. However, by the eighteenth century, these cases had disappeared from the kirks of the Presbytery of St Andrews.

The influence of the Congregational churches infiltrated the Presbyterian churches in several ways. First, the members of the Presbyterian churches in

¹⁴⁵ Trinterud, Leonard. *The Forming of an American Tradition: A Re-examination of Colonial Presbyterianism*. Philadelphia: Westminster Press, 1949. pp. 15-21.

¹⁴⁶ Presbyterian Church, Cutchogue, NY, December 7, 1750.

New Jersey and New York often migrated there via the Puritan colonies of Massachusetts and Connecticut, bringing with them a sense of their staunch Calvinistic views. It was these people with Congregationalist backgrounds who filled the pews of the Presbyterian congregations. Furthermore, many of these communicants were elected as elders in their new churches, placing them in positions of leadership.

Second, the Presbyterians struggled to fill their pulpits in all churches. As the eighteenth century progressed, the number of vacant posts increased. Reacting to the many vacancies, the General Synod of the Presbyterian Church ordained many ministers who had previously been ordained as Congregational ministers. Many of these pastors were educated at Harvard or Yale, two schools strongly influenced by the Puritan and Congregational denominations. For example, the Reverend Joseph Smith, the founding pastor of the Fairfield Church in Fairton, NJ, was educated at Harvard University. After graduating in 1695, Smith taught at grammar schools in Hadley and Springfield, Massachusetts. For a short time after teaching, he preached at the Congregational Church in Brookfield, and then moved to Fairton, NJ, in 1708. On May 10, 1709, the Presbytery of Philadelphia ordained Smith and he took the pulpit of the Fairfield Church. It would seem likely, although ordained by the Presbyterian Church, that the Rev. Smith would have implemented the Congregational system as he was educated in that denomination.¹⁴⁷

These Congregational influences were manifested within the disciplinary proceedings in the Presbyterian Church. Emil Oberholzer's, *Delinquent Saints*, examined discipline within the Congregational churches in Massachusetts from

¹⁴⁷ Fairfield Church, Fairton, NJ, inside cover of Session Minutes, vol 1, 1759-1879.

the earliest years to 1830.¹⁴⁸ By comparing his study of Congregational churches with this study of Presbyterian churches, similarities in the types of cases still disciplined during the eighteenth century emerge. His extensive research based on all surviving church records in Massachusetts illustrated a plethora of disciplinary cases, including even minute infractions of Biblical law. By the eighteenth century, the Presbytery of St Andrews disciplined very few cases that were not of a sexual nature. However, the Presbyterian Church continued to discipline for a variety of cases, just as its Congregationalist neighbours did. Discussion of these additional cases, such as falsehoods, frolicking, dancing, and unchristian conduct, will demonstrate this point.

Falsehoods were disciplined by both denominations in the colonies. The Ninth Commandment, “You shall not bear false witness against your neighbour,” was broadly interpreted, as the other commandments were. Truth, especially between Christians, was divinely commanded. Furthermore, it was believed that being honest and telling the truth was an integral part of godliness. The *Westminster Larger Catechism* expounded on the definition of the ninth commandment by stating “the preserving and promoting of truth between man and man, and the good name of our neighbour, as well as our own; appearing and standing for the truth; and from the heart, sincerely, freely, clearly, and fully, speaking the truth, and only the truth, in matters of judgement and justice, and in all other things whatsoever.”¹⁴⁹ The *Westminster Confession* was also used by

¹⁴⁸ Oberholzer, p. 3.

¹⁴⁹ Taken from www.reformed.org. See Church of Scotland. *The confession of faith : the Larger and Shorter catechisms, with the scripture-proofs at large : together with the sum of saving knowledge, (contained in the Holy Scriptures, and held forth in the said Confessions and Catechisms) and practical use thereof; Covenants, National and Solemn league; Acknowledgement of sins and engagement to duties; Directories for publick and family worship; Form of church-government, &c. of publick authority in the Church of Scotland; with Acts of*

the Church of Scotland, but once again the spiritual applications of church discipline had been minimised in the Presbytery of St Andrews.

However, the colonial Presbyterian Church disciplined its members for telling falsehoods, as Christians were exhorted to be truthful and honest. In the Fairfield Church in Fairton, NJ, Nathan Lorange was accused of lying on several occasions. On March 6, 1765, evidence against Lorange was presented by the church session and Nathan confessed to only one count. Not all witnesses were present and able to be heard; therefore, the church ordered that the other charges be investigated. However, based on the testimonies already heard, the session judged that “the above mentioned charge has been undeniably Proven in two Instances, & acknowledged by himself in one Instance.”¹⁵⁰ The session further declared that “the sin of lying [was] that [which] he habitually lives in, -- a crime of so atrocious a nature ... It [was] therefore the unanimous opinion of the Session that we ... debarr him from all Church Privileges - And he [was] timely debarred till he Evidences Repentance & makes a Public Acknowledgement.”¹⁵¹

Falsehoods which tarnished one’s character were also punished. In the First Presbyterian Church of Morristown, NJ, John Prudden’s wife was accused of spreading a report about Mrs Freeman having “bastard” children, which was found to be unsupported. However, the session did find Prudden “criminally to Blame for starting & propagating such infamous stories...” and “being very Passionate & indulging her Passion & of too ingovernable a Tongue.”¹⁵²

Assembly and Parliament, relative to, and approbative of, the same. Edinburgh : printed by Sir D. H. Blair, and J. Bruce, 1803.

¹⁵⁰ Fairfield Church, Fairton, NJ, March 6, 1765.

¹⁵¹ Fairfield Church, Fairton, NJ, March 6, 1765.

¹⁵² First Presbyterian Church, Morristown, NJ, July 2, 1789.

Additional charges were made against Prudden, but were not proved. The session ordered to Prudden to make a public confession for the items that were proved before them in order to exhibit her repentance for spreading falsehoods,¹⁵³ which she made on April 30, 1790.¹⁵⁴

Doctors were expected to be truthful in their diagnoses and treatments of patients. In the First Presbyterian Church of New Brunswick, NJ, Doctor Lewis Dunham “exhibited charges against the practices of Doctor Moses Scott, a member and elder of the church.”¹⁵⁵ Both doctors were to be cited to appear before the session on June 11, 1792.¹⁵⁶ At that meeting of the session, Doctor Lewis Dunham gave his own testimony against Doctor Scott and also offered the testimony of four other people, who testified that he “lied about a pew, an operation that he said he performed, cured the wounds of someone who fell from the steeple but that the injured had not been totally healed, and that he denied the statements he made about the man that fell off the steeple.”¹⁵⁷ In addition to offering these testimonies, Doctor Dunham also attempted to “convince the session that he has more piety and therefore should be believed over Doctor Scott.”¹⁵⁸ The session then heard testimonies from Henry Guest, his sister, and John Nielson regarding the controversy over the pew.¹⁵⁹ Doctor Dunham and Doctor Scott both added their rebuttal after each testimony was offered by the witnesses. The session deliberated over the testimonies and

¹⁵³ First Presbyterian Church, Morristown, NJ, July 2, 1789. Mrs. Prudden was accused of drunkenness and an inappropriate familiarity with “Nailers.”

¹⁵⁴ First Presbyterian Church, Morristown, NJ, April 30, 1790.

¹⁵⁵ First Presbyterian Church, New Brunswick, NJ, June 5, 1792.

¹⁵⁶ First Presbyterian Church, New Brunswick, NJ, June 5, 1792.

¹⁵⁷ First Presbyterian Church, New Brunswick, NJ, June 5, 1792.

¹⁵⁸ First Presbyterian Church, New Brunswick, NJ, June 5, 1792.

¹⁵⁹ First Presbyterian Church, New Brunswick, NJ, June 5, 1792.

found that the last three accusations were admissible. However, at this juncture the session postponed their decision regarding the fourth charge placed against Doctor Scott.¹⁶⁰ A fortnight later, the session reconvened to deal with the falsehoods allegedly told by Doctor Scott. After deliberation over all of the evidences presented to the members of session, the elders judged that Doctor Scott should be acquitted because one of the witnesses, Henry Guest, was hard of hearing and therefore his testimony was invalid. The session believed the remaining evidence was not sufficient to prove Doctor Scott's guilt. He was, therefore, able to resume his seat in the session. The session also resolved that if Doctor Dunham meant to appeal to a superior judiciary regarding the judgement of the session that he declare his intentions before the "first Tuesday in August."¹⁶¹

The above case offered an example of an acquittal based on insufficient testimony. The falsehoods allegedly told by Doctor Scott were proved to be untrue and he was therefore acquitted. Similarly, in the First Presbyterian Church of Huntington, NY, on September 13, 1754, Benjamin Brotherton used the testimony of a 'justice' to acquit him from the charge of telling falsehoods to Ruben Johnson. Brotherton had been denied church privileges for some time and desired to be removed from suspension. The case opened and Mr. Johnson was called in, but he did not appear "to make good as Charge."¹⁶² The session, "upon examining the Testimony of Justice Elnathan Wickes sent in, and a variety of Circumstances in Favour of [said] Brotherton, ... judged that the Charge was not well grounded, and therefore that the [said] Brotherton ought

¹⁶⁰ First Presbyterian Church, New Brunswick, NJ, June 5, 1792.

¹⁶¹ First Presbyterian Church, New Brunswick, NJ, June 19, 1792.

¹⁶² Fairfield Church, Fairton, NJ, September 13, 1754.

not any longer to be denied Privileges.”¹⁶³ Brotherton was then restored to full communion with the church.

Acquittal cases proved the session did not simply discipline for discipline’s sake. Rather, the session deliberated over the cases to resolve any tensions existing between members. Another acquittal case appeared in Morristown, NJ, when a complaint was made against Rebecca Allen for “false speaking” on January 5, 1769. Apparently, Rebecca Allen “had taken some meat from Bill Fuller in a Secret & clandestine manner” and then lied about what she had done.¹⁶⁴ The session, considering “her pregnant state & the known infirmity of the Same in that condition judged that there was nothing criminal in her case.”¹⁶⁵ Rebecca Allen was dismissed from any stealing and falsehood charges and the case was dismissed.

In addition to falsehood cases, the Congregationalists and Presbyterians also disciplined for questionable leisure activities. Both denominations followed Calvin’s teaching that the pleasures of the world were gifts from God and were to be enjoyed with restraint.¹⁶⁶ Recreation and leisure activities, such as physical sports, music, chess, and card games that were not based on chance, were not forbidden as long as they were carried out in moderation and not on the Sabbath. It was difficult to determine the colonial Presbyterian’s position on participating in worldly pleasures, but there were a few churches that disciplined members for activities such as frolicking and dancing.

¹⁶³ Fairfield Church, Fairton, NJ, September 13, 1754.

¹⁶⁴ First Presbyterian Church, Morristown, NJ, January 5, 1769.

¹⁶⁵ First Presbyterian Church, Morristown, NJ, January 5, 1769.

¹⁶⁶ See Calvin, III.x.1-6.

Frolicking was a difficult offence to define. However, it generally referred to playful activity, which the church deemed as inappropriate use of time, and subsequently was disciplined in the Congregational and Presbyterian denominations. John Eglesham, a member of the First Presbyterian Church of Albany, NY, was sent a message regarding his questionable behaviour. On April 13, 1790, the session recorded the following message, which had been sent to John Eglesham, "Do you approve of frolicking and consider this custom as innocent as you lately insinuated to your minister when employed on his ministerial visit to your family? If you do not, do you promise to discharge and discountenance this practice as far as your influence extends?"¹⁶⁷ John Eglesham, not able to attend a meeting of the session for reasons not recorded in the minutes, responded by asking a question back to the session, "If the Session abide by the Confession of Faith, I will try to abide by it as nearly as I can."¹⁶⁸ The session unanimously considered this answer not only as unsatisfactory, but as a practical denial of their authority and "striking at the foundation of that discipline & government which in his admission he solemnly engaged to obey & support."¹⁶⁹ Desiring to deal with Mr. Eglesham tenderly, the session appointed Mr. Henry, an elder in the church, to convey the following message to him:

The Session with sorrow received your answer by Mr. Newlands. They consider it as so far from satisfying their doubts, that it implies an insult & disrespect to that court where decisions you as a professing Christian have solemnly bound yourself to observe. Do you on more mature consideration acknowledge you conduct as undutiful in the Answer and will you now return an explicit answer to the former question?¹⁷⁰

¹⁶⁷ First Presbyterian Church, Albany, NY, April 13, 1790.

¹⁶⁸ First Presbyterian Church, Albany, NY, April 13, 1790.

¹⁶⁹ First Presbyterian Church, Albany, NY, April 13, 1790.

¹⁷⁰ First Presbyterian Church, Albany, NY, April 13, 1790.

The session suspended him from the sealing ordinances until he “gave evidence of his repentance & renewed his submission to the rules of the Church.”¹⁷¹ A few days later, Mr. Henry reported back to the session and explained “that after much conversation with him he still persisted in his disobedience.”¹⁷² John Eglesham was brought to the church session in Albany, NY, for frolicking and was officially suspended from the communion of the church on April 16, 1790, for not showing the proper satisfaction.¹⁷³

Similar to frolicking, dancing was also considered an inappropriate leisure activity as it was believed by some church officials to lead to sexual misconduct.¹⁷⁴ In the Fairfield Church in Fairton, NJ, on December 11, 1760, a complaint was made against Captain Stephen Clark, stating “that he allowed as countenanced frolicking and dancing in his house & that he himself joined in said exercises.”¹⁷⁵ The session were

deeply sensible of the unhappy Instances which such Practises have upon ... Christs Kingdom in general, and among us in particular, cannot but Testify That God dislikes there to: -- But as they would desire to act with the greatest tenderness, do therefore judge Expedient for the session to overlook what has been Past in said Clarks conduct as to that matter, upon his engaging in the future, and to allow as or countenance such practises in his house.¹⁷⁶

However, Captain Clark did not agree with the session and refused to comply with the desire of the session. Therefore, Captain Clark was suspended from all privileges of the church.¹⁷⁷ On February 11, 1761 Captain Clark resolved to

¹⁷¹ First Presbyterian Church, Albany, NY, April 13, 1790.

¹⁷² First Presbyterian Church, Albany, NY, April 16, 1790.

¹⁷³ First Presbyterian Church, Albany, NY, April 16, 1790.

¹⁷⁴ Oberholzer, p. 231.

¹⁷⁵ Fairfield Church, Fairton, NJ, December 11, 1760.

¹⁷⁶ Fairfield Church, Fairton, NJ, December 11, 1760.

¹⁷⁷ Fairfield Church, Fairton, NJ, December 11, 1760.

obey the wish of the session and he was admitted to full membership again.¹⁷⁸

The acceptance into the church community was a compelling reason for offenders to admit their guilt and reform their behaviour.

While there were only a few falsehood, dancing, and frolicking cases, included under the general category of “other,” it was the cases of unchristian conduct which made up the remaining numbers. Like the Congregationalists, the Presbyterian Church desired to maintain harmonious and moralistic societies, which was done through the constant refining of the member’s conduct.

Therefore, any breach of Biblical laws, regardless of how minor, was disciplined by the church. Cases of unchristian conduct or immoral behaviour, not always defined, filled the pages of the surviving colonial records in the Presbyterian churches in New York and New Jersey. Unchristian conduct cases made up 23% of the “other” cases¹⁷⁹ (31 out of 132) in New Jersey and 23% of the other cases (10 out of 44) in New York. The concern for maintaining moral and pious congregations was evident by the general proclamations made by the sessions.

For example, on September 17, 1788, in the First Presbyterian Church in Albany, NY, the church session composed and delivered “messages” to several members of the congregation that had been suspected of “walking untenderly.”¹⁸⁰

Likewise, in the First Presbyterian Church in Huntington, NY, on September 13, 1754, the session took into consideration the “Cases of Sundry disorderly [Brethren]” and “concluded that some Pains should be taken with them privately before they were called to an [Account] by the Session.”¹⁸¹ The above quotes

¹⁷⁸ Fairfield Church, Fairton, NJ, February 11, 1761.

¹⁷⁹ Other, meaning non-sexual and non-Sabbath related cases.

¹⁸⁰ First Presbyterian Church, Albany, NY, September 17, 1788.

¹⁸¹ First Presbyterian Church, Huntington, NY, September 13, 1754.

provide a sampling of the concern of the ruling officers of the church for the morality and proper conduct of the communicants. Any inappropriate or questionable forms of behaviour were brought to the attention of the session and were dealt with accordingly.

Cases of unchristian conduct were handled like all other cases. The accused offender's case was played out in front of the session. If necessary, witnesses were called before the session, which would deliberate over the case before assigning discipline, if found guilty. This procedure was clear in the case brought before the session of the First Presbyterian Church in Goshen, NY, on October 6, 1795. By common report, Sarah Arnot was charged with unchristian behaviour. Allegedly, she "had offered to hire a certain young man of the name of Samuel Ward to use means to make a man in the neighbourhood jealous of his wife."¹⁸² She was called before the session, at which point she denied the charge, and said

she had heard Samual Ward say that he was going to do the above. She thought Mr Ward was joking & now supposes that it was vain foolish conversation... That Sammuel Ward had said in her hearing that he intended to get that woman from her husband that she told Mr Ward she did not believe the woman a wickedly disposed person & that if he designed to purchase her she would give him a Dollar to help him make the purchase.¹⁸³

Samuel Ward was called in to offer his defence and "informed the Session that upon a certain Lords Day afternoon he was in Company with John Carpenter son of widow Carpenter. That Mrs Arnot said to him... will you take a Dollar or a bottle or Rum to make the man before aluded to Jealous of his wife and that if he took the rum he could take the man away, make him grogy & then

¹⁸² First Presbyterian Church, Goshen, NY, October 6, 1795.

¹⁸³ First Presbyterian Church, Goshen, NY, October 6, 1795.

go with his wife.”¹⁸⁴ He also declared that he believed Arnot was “jesting when she spoke this to him.”¹⁸⁵ Several witnesses were called in to offer what they knew of this bargain made between Sarah Arnot and Samual Ward. After hearing all of the evidence, the session “were of the opinion that Mrs Arnot had been guilty of unchristian imprudence in Countenancing such Vain & highly improper conversation and especially on the Lords Day. ... Adjudge that she ought to be solmny & publicly Reproved & Admonished to be more Careful for the future.”¹⁸⁶ Sarah Arnot obeyed the session and was rebuked on June 4, 1796.¹⁸⁷

Another example of “unchristian conduct” was found in the First Presbyterian Church of Cranbury, NJ, when Mrs. Cole, a woman that had been placed on suspension for unchristian conduct, applied to the session to be removed from suspension. The surviving session minutes begin in March 1791, and the first mention of Mrs. Cole was on October 24, 1791, when she made her application to the session. On this day, the session heard her plea, in which she tried to prove that her suspension was groundless. However, the session “were obliged to leave her in the same prohibited state; and gave her an exhortation to use more gentle and decent language and to keep from intermeddling with and speaking of her neighbors affairs improperly.”¹⁸⁸ Because there is no further mention of Mrs. Cole, it is impossible to determine if she was restored to full church privileges.

¹⁸⁴ First Presbyterian Church, Goshen, NY, October 6, 1795.

¹⁸⁵ First Presbyterian Church, Goshen, NY, October 6, 1795.

¹⁸⁶ First Presbyterian Church, Goshen, NY, October 6, 1795.

¹⁸⁷ First Presbyterian Church, Goshen, NY, June 4, 1796.

¹⁸⁸ First Presbyterian Church, Cranbury, NJ, October 24, 1791.

Conclusion

The cases that have been included in this chapter have further illustrated that although the American Presbyterian Church adopted the structure and procedures of the Church of Scotland's form of discipline, the two systems varied due to the situations of countries. By the second half of the eighteenth century, the General Assembly was controlled by the Moderate Party, which held a relaxed view of discipline. Although the bulk of the disciplinary proceedings were handled by the local kirk sessions, accountability to the system was still needed from the higher courts. If these superior courts did not enforce discipline, then it would have been difficult for the local courts to implement the system. Additionally, the ethos of the Moderate Party also trickled into the local parishes and created the more lenient form of discipline. The emphasis placed on the care of souls had virtually been lost, as the system was used out of practicality.

The colonial form of discipline also was moulded by its surrounding environment in the eighteenth century. Once again, the system was expanded to include cases that fell into the jurisdiction of the civil and criminal courts. Whether this was done out of necessity or because the parishioners chose to turn to the church to handle breaches of the secular legal codes is difficult to determine decisively. However, what is clear is that the colonial church embraced such trials as any breach of the secular law would also be an infraction of Biblical law, thereby placing the cases into the jurisdiction of the church. Furthermore, the neighbouring Congregational churches continued to discipline for all cases of unchristian or inappropriate behaviour.

Regardless of the reasons for the Presbytery of St Andrews not having cases of unchristian conduct, the reasons seem irrelevant compared to the positive effects of the colonial legal system and the Congregational churches upon the Presbyterian Church in New Jersey and New York. The colonial Presbyterian Church was forced to adapt to its new environment, thereby creating a marked difference in their disciplinary proceedings from their counterparts in the Presbytery of St Andrews.

CONCLUSION

Immoral behaviour was a concern of the church and the state. Both entities placed emphasis on the need for moralistic societies. The state imposed a judicial system to punish immoral offenders, while the church used ecclesiastical discipline. The state's purpose was to punish and correct, while the church intended to discipline and restore. These patterns of the suppression of immorality existed in both Scotland and the American Colonies during the eighteenth century and contributed to the relationship between church and state.

During the eighteenth century, Scotland had clearly defined boundaries between church and state. The Church of Scotland was the established church and implemented a system of ecclesiastical discipline, which found its root in the Reformation period. The disciplinary proceedings were used to hold its members accountable to Scriptural teachings on the Christian life and behaviour. When those tenets were broken, or when a person sinned, the church acknowledged the guilt and sought a sincere confession from the offender. As proven in chapter one, this was done through a process of discipline, which varied to suit the various offences.

The state enforced morality through the legal institutions in Scotland. By the eighteenth century, Scotland's judicial structure was firmly in place and worked efficiently. Its courts brought persons before them that were guilty of breaking the civil or criminal laws, many of which addressed moral concerns. Scotland had two systems, ecclesiastical and judicial, that were effectively

operating in the eighteenth century. As they both shared the same concern for moralistic societies, the two systems complemented one another, as illustrated in chapter two.

The American colonies of New York and New Jersey witnessed a different relationship between church and state, which manifested itself in the suppression of immorality. The Presbyterian Church in the colonies adapted a system of ecclesiastical discipline which resembled that of the Church of Scotland. It was further moulded by the influences of the other colonial denominations, namely the Puritans and Congregationalists, described in chapter one. Furthermore, it was tailored to accommodate the needs of the secular law. Chapter two depicted the immature judicial systems in New York and New Jersey. Without clearly defined boundaries and the needed workforce to meet the needs of the colonists, the Presbyterian churches supplemented the judicial systems by utilising its session meetings to serve as quasi-secular courts and try cases that would have been heard in a civil or criminal court in the old world. Many cases of a secular nature dealt with disputes between neighbours. Therefore, as the church desired to maintain harmonious communities, they vested their time and resources to solve such disputes.

The church community was vital to the existence of the religious bodies and was therefore protected by the church, as demonstrated in chapter three. Membership was a vital function of the churches on both sides of the Atlantic and was granted based upon an examination of a person's life and his or her understanding of church doctrines. The leaders of the church passed their judgement based on these two things. Once accepted, the new member was expected to attend the church ordinances of public worship and the celebration

of the Lord's Supper. When a member was absent from these occasions, then he or she was censurable by church discipline. However, examining these types of cases reveals a strong difference between the Presbytery of St Andrews and the colonial churches in New York and New Jersey.

By the middle of the eighteenth century, there were very few cases of Sabbath breaking in the Presbytery of St Andrews. This was directly due to the controlling party in the General Assembly. The Moderates held authority in the Assembly and in turn transposed their sentiments towards discipline down into the sessions. As a party, they were greatly affected by the Enlightenment and granted more attention to a rational faith, rather than an enthusiastic one.

Additionally, as the party grew more concerned with reason and philosophy, the enforcement of discipline weakened. Cases such as Sabbath breaking may have easily gone unnoticed by those ministers persuaded by the Moderates.

Across the Atlantic, the colonial Presbyterian churches were disciplining for breaches of the Sabbath with greater frequency. This was partly due to the pluralistic nature of the colonies. The denominations stood apart from one another with their standards of membership and practices. As the Presbyterian Church in the colonies grew and developed, they strictly enforced their practices to distinguish themselves from the neighbouring churches. Additionally, discipline was intended for the restoration of the offender and for the edification of the congregation. The public arena for discipline was at the Sunday morning worship service; therefore the church desired its members to attend in order to take part in the edification process.

Sabbath breaking cases were strictly a concern of the church; however there were several additional types of cases that again could have entered the

secular sphere. The boundary between church and state further manifested itself through the practice of marriage. Chapter four illustrated that in Scotland, there were several forms of irregular marriages, which were accepted by the state, but needed to be regularised, according to the Church. Therefore, clandestinely married couples were disciplined. This practice did not transfer to the colonies, as regulating marriage practices was too great a task for the colonial churches. However, both the Church of Scotland and the American Presbyterian Church protected the family unit by disciplining for abuse amongst family members. Again, this was a grey area of church and state, as physical violence would have been punishable in a court of criminal law. The church served in this manner as it believed that the spiritual well being of its members was its responsibility. Domestic issues would have caused a strain on the family unit, and subsequently the congregation. Therefore, the church officials disciplined accordingly.

Chapter four proved that the largest area of discipline in the Church of Scotland involved cases of sexual misconduct, while very few such cases surfaced in the colonies. By the second half of the eighteenth century, disciplinary proceedings were used for practical purposes. This became obvious as the cases of sexual misconduct were studied. The church had a vested interest in suppressing sexual misconduct, as the ramification of such behaviour could have caused a direct burden to the church. As the parishes were responsible for the care of the poor, which included bastard children, the church went to great lengths to determine the paternity of the child in order to place the financial burden upon the father, thus alleviating the church from the incurred fees. A great many cases with explicit details documented the church's stern discipline

for cases of sexual misconduct, as each one could have had a practical repercussion upon the church.

Compared to the American colonies, which continued to use discipline for spiritual purposes, the Church of Scotland did appear ruthless with these cases. The cases of sexual misconduct that appeared in New York and New Jersey did not have the same strictness of those in the Presbytery of St Andrews. The county had the responsibility to care for the poor; therefore it freed up the church to focus its attention on the spiritual welfare of its members. Sexual misconduct cases were one of the many immoral forms of behaviour disciplined by the church in the colonies.

The disciplinary proceedings of the reformers included any sinful act. However, by the eighteenth century, any case, other than sexual misconduct, ceased to appear in the records of the Presbytery of St Andrews. The Moderates had a firm grip on the religious attitudes in Scotland during this period. Their attention to education, philosophy, and reason distracted them from focusing on the moral state of the country. Discipline was used solely for practical purposes and any reformed ideology of discipline had been lost. The colonial churches were adapting to a new environment and moulded its disciplinary system to accommodate the needs of its members, but always upheld the purpose of discipline – to restore the offender and edify the congregation.

Ecclesiastical discipline in the Church of Scotland and the American colonies of New York and New Jersey both utilised a system that stemmed from the reformed tradition. As the church evolved over the centuries after the Reformation, so too did the disciplinary system. The system in the Church of Scotland weakened, while the American system gained strength, or at least for

its voluntary adherents. This major difference was caused by the relationship between the church and the state in each region. Out of necessity, the colonial church expanded the uses of the disciplinary system as it supplemented the secular judicial system. The Church of Scotland contracted the system, while it complemented the legal structures in Scotland. However, the greatest difference in the two systems was that the colonial church continued the reformed ethos of discipline – to care for souls – while the Church of Scotland ignored the spiritual element and used the system to meet the practical needs of the institution, and not the individual.

APPENDIX I

An Act for Suppressing Immorality within this Province of New Jersey (Passed 1704)

Whereas Prophaniness and Immorality have too much abounded within this Province, to ye Shame of Christianity, and the great grief of all good and sober Men, for the suppressing whereof for the future. *Be it Enacted by the Governor Council and Assembly now met and Assembled, and by the Authority of the same*, That all and every Person and Persons whatsoever within this Province, who shall be Convicted of Drunkenness, Cursing, Swearing, or Breaking the Lords Day, by doing any ordinary Work or Labour, thereon (Excepting works of Necessity or Mercy) by the Information of every Constable within their respective Precincts, or of any other Person whatsoever before any one of her Majesties Justices of the Peace of the County where such fact is Committed, by the Confession of the Offender, or the Oath or Attestation of one Witness (which every Justice of the Peace is hereby Authorized to Administer) every Person so convicted shall be fined by the said Justice of the Peace for Drunkenness, or breaking the Lords Day, in the Sum of six Shillings Money of the said Province for each offence besides costs, And for the Cursing or Swearing, in the Sum of three Shillings Money aforesaid, besides costs for each Offence, all which fines to be Immediately levyed upon the Offenders Goods and Chattels by the Constables aforesaid, by Warrant from the said Justice of the Peace, and for want of Effects to make such distress the said Constable by Warrant from the said Justice of the Peace, shall commit the Offender to the Stocks for the space of four hours, for Drunkenness, or for breaking of the Lords day, and two hours for Cursing or Swearing; And each Distress so made as abovesaid to be by the said Constables sold at a Publick Outcry (unless redeemed by paying the said Fine and Costs within three days) and after full payment of said Fine and Costs, the overplus (if any be) shall be returned to the owner; And all such fines to be by the Constables aforesaid immediately paid to the Overseers for the Poor of the Town, where such Fact is Committed for the use of the Poor of that Town, for all which fines the overseers of the Poore shall be accountable yearly to the Justices in their General Quarter Sessions of the Peace.

And be it further Enacted by the Authority aforesaid, That no publick House Keeper within this Province, shall suffer any Person or Persons to Tipple and Drink in his House on the Lords day, Especially in the time of Divine Worship (Expecting for necessary refreshment) under the Penalty of six Shillings Money aforesaid for every such Offence to be Prosecuted, Sued, Recovered, Levyed, and Disposed of, as aforesaid, *Provided*, That all or any the above said Offences be sued and prosecuted, within one Month after the same were Committed.

And it be further Enacted by the Authority aforesaid, That all and every Person and Persons within this Province who shall be Lawfully Convicted of Fornication or Adultery, upon presentment indictment or information in the Supream Court, of the Court of General Quarter Sessions of the peace of the County where such Fact shall be Committed, every such Offense shall be by the said Court punished in manner following *viz.* Every Woman Convict of

Fornication as aforesaid, shall be fined by the said Court for every such Fact in the Sum of five Pounds Money aforesaid besides Costs, and if unable or unwilling to pay the same shall receive Thirty Lashes or Stripes on the bare back, and Every Man that shall by the said Court be adjudged the Reputed Father of every such Bastard, shall be also fined in the Sum of five Pounds Money aforesaid, and give security to save the Town or Precinct harmless from the Charge of such Bastard Child, and every Man convicted of adultery as aforesaid shall be Whip't at three several Courts and each time receive Thirty Lashes on the bare back or pay the Sum of Thirty Pound Money aforesaid (and every Woman so Convicted of Adultery as aforesaid shall be Whip't at three several Courts and each time shall receive Thirty Lashes or Stripes on the bare back, or pay the Sum of Thirty Pounds Money aforesaid), the said Sums and Penaltys to be Disposed of in the like manner as is directed, for the other Penaltys herein before mentioned.¹

¹ Bush, Bernard. *Laws of the Royal Colony of New Jersey, 1703-1745*. Vol. I. Trenton: New Jersey State Library Archives and History Bureau, 1977. pp. 21-2.

APPENDIX II

An Act for Suppressing of Immorality New York (Passed, September 18, 1708)

Whereas Prophaneness and Immorality have too much abounded within this Colony to ye Shame of Christianity, and the great grief of all good and Sober men, for the Suppressing whereof for the future. Be it Enacted by the Governor Council and Assembly now met and assembled, and by the Authority of the Same, that all Christians whatsoever within this Province, who shall be convicted of Drunkenness, Cursing or Swearing by the Information of Every Constable within their Respective precincts, or of any other person whatsoever before any one of her Majesties Justices of the Peace of the City or County where such fact is Committed, by the Confession of the Offender, or the Oath or Attestation of one Credible Witness (which every Justice of the Peace is hereby Authorized to Administer) every person so Convicted Shall be fined by the said Justice of the Peace for Drunkenness Cursing or Swearing, in the Sum of three Shillings money of the Province of New York for each offense, all which fines to be Immediately Levyed upon the offenders Goods and Chattles by the Constables aforesd by warrant from the said Justice of the Peace, and for want of Effects to make such Distress the said Constable by Warrant from the said Justice of the Peace, shall Commit the offender to the Stocks for the Space of four hours, for Drunkenness, and two hours for Cursing or Swearing. And each Distress so made as above said to be by the said Constable Sold at a public Out Cry (unless Redeemed by paying the fine within three days) and after full payment of Said fine the Overplus if any be) shall be returned to the owner; and all such fines to be by the Constables aforesaid Immediately paid to the Overseers for the Poor of the s'd City or County where such fact is Committed for the use of the Poor of that City or County for all which fines the Overseers of the poor Shall be Accountable Yearly to the Justices in their Generall Quarter Sessions of the Peace And every Negro, Indian or other Slaves: That shall be found gillyty of any of the above said facts or talke Impudently to any Christian Shall Suffer So many Stripes at some publick place as the Justice of the Peace in such place where such offence is Committed Shall think fit: not exceeding forty Any Law Custome or usage to the Contrary hereof in any ways not withstanding.¹

¹ *The Colonial Laws of New York from the Year 1664 to the Revolution*, Vol I. Albany: James B. Lyon, State Printer, 1896. pp. 617-8.

BIBLIOGRAPHY

Primary Manuscripts

Special Collections, University of St Andrews

CH2-prefixed manuscripts (kirk session minute books unless otherwise noted)

1132/6-8	Anstruther Easter	1751-1800
625/3-4	Anstruther Wester	1717-1779
Crail/2	Crail	1790-1855
405/3	Dunino	1746-1805
150/2-3	Ferryport on Craig	1710-1853
160/3	Forgan	1767-1852
204/3-5	Kemback	1732-1835
210/10-12	Kilconquhar	1736-1802
215/2-4	Kilrenny	1739-1872
819/6-7	Kingsbarns	1741-1840
960/4-5	Largo	1735-1844
278/3	Newburn	1724-1764
833/6-7	Pittenweem	1747-1816
316/8-13	St Andrews	1758-1801
1132/5-8	Presbytery of St Andrews	1740-1810

Presbyterian Historical Society, Philadelphia, PA

Church Session Minutes

Recent accession, no number	First Presbyterian Church, Albany, NY	1786-present
VM.146.C614ss	Stone Presbyterian Church, Clinton, NY	1788-1846
VMI.46.F168s	Fairfield Church, Fairton, NJ	1759-1879
MF.598	First Presbyterian Church, Goshen NY	1764-1925
V.H2.J619p	Pastoral book of Rev. Timothy Johnes, Morristown, NJ	1747-1790

Presbytery and Synod Minutes

MF.POS.1034	Presbytery of Albany, NY	1790-1797
MF.838	Dutchess County Presbytery	1762-1795
MF.108	Long Island Presbytery	1790-1959
MF.840	New Brunswick Presbytery	1738-1798
MF.3 D715r	New York Presbytery	1775-1809

MF163	Suffolk Presbytery	1747-1789
MF.POS.359	Synod of New York and New Jersey	1788-1822

Family History Library, Salt Lake City, UT
(FHL US/CAN prefix, all church session minutes)

17537	First Presbyterian Church, Babylon, NY	1783-1858
1311245	First Church of Christ, Ballston Center, NY	1775-1792
501942	Presbyterian Church, Charlton, NY	1786-1857
1509910, item 5-8	Presbyterian Church, Deerfield, NJ	1779-1855
1311245	Presbyterian Church, Freehold, NY	1786-1787
1036338, item 3	First Presbyterian Church, Huntington, NY	1723-1779
16561	Presbyterian Church, Kingston, NY	1791-1875
1011095	First Presbyterian Church, Madison, NJ	1795-1900
1312379, item 6	First Presbyterian Church, Morristown, NJ	1795-1925
888763	First Presbyterian Church, New Brunswick, NJ	1787-1840
912975, item 4	First Presbyterian Church, Newark, NJ	1781-1837
497549, item 2	First of Newton, Newton, NY	1790-1812
930228	First Presbyterian Church, Pleasant Valley, NY	1792-1926
1863535	First Presbyterian Church, Princeton, NJ	1792-1836
17962, item 2	Presbyterian Church, Southold, NY	1749-1756, 1763-1832

Archibald S. Alexander Library, Rutgers University, New Brunswick, NJ
(church session minutes)

First Presbyterian Church, Cranbury, NJ (1785-1899)

New York Public Library
(church session minutes)

Church of Christ, Bedford, NY (1743-1817)

First Presbyterian Church, Westfield, NJ

Session Minutes, 1759-1796

Pastor's Book: *An Account of the Affairs of the Church* at Westfield,
New Jersey book written by Rev Benjamin Woodruff (1759-
1798)

First Presbyterian Church, Mattituck, NY
(church session minutes)

First Presbyterian Church, Mattituck, NY (1751-1774)

First Presbyterian Church, Aquabauge, NY (1764-1798)

Presbyterian Church, Cutchogue, NY

Session Minutes, 1786-1800

Primary Printed Materials

- (P.B.?). *Conductor Generalis; or a Guide for Justices of the Peace, and Coroners, Constables, Jury-Men, Over-Seers of the Poor, Surveyors of High-ways, Governors of Fairs, Gaolers, &c.* New York: P.B., 1711.
- (?). *Conductor Generalis; or the Office, Duty, and Authority of Justices of the Peace, High-Sheriffs, Under-Sheriffs, Gaolers, Coroners, Constables, Jury Men, Over Seers of the Poor, and also the Office of Clerks of Assizes and of the Peace, &c.* Philadelphia: Andrew Bradford, Printer, 1722.
- Acts and Proceedings of the General Assemblies of the Kirk of Scotland, 1560-1592.* ed. T. Thomson, 2 vols. Edinburgh: Bannatyne Club, 1839- 1840.
- Acts of the Parliament of Scotland.* London : H.M.S.O, 1966.
- American Moral & Sentimental Magazine, Consisting of a Collection of Select Pieces, in prose and verse, from the Best Authors, on Religious, Moral, and Sentimental Subjects, Calculated to for the Understanding, and Improve the Heart.* Vol. 1, New York: Printed by the Editor, 112, Chatham Street, next door to the Tea-Water Pump, 1797.
- Bush, Bernard. *Laws of the Royal Colony of New Jersey, 1703-1745.* Vol. I. Trenton, NJ: New Jersey State Library Archives and History Bureau, 1977.
- Bush, Bernard. *Laws of the Royal Colony of New Jersey, 1746-1760.* Vol. II. Trenton, NJ: New Jersey State Library Archives and History Bureau, 1977.
- Bush, Bernard. *Laws of the Royal Colony of New Jersey, 1761-1769.* Vol. III. Trenton, NJ: New Jersey State Library Archives and History Bureau, 1977.
- Bush, Bernard. *Laws of the Royal Colony of New Jersey, 1770-1775.* Vol. IV. Trenton, NJ: New Jersey State Library Archives and History Bureau, 1977.
- The Christian History, Containing Accounts of the Revival and Propagation of Religion in Great Britain & America for the Year 1743.* Boston: S. Kneeland and T. Green for T. Prince, Jr., 1744.
- Church of Scotland. *The confession of faith : the Larger and Shorter catechisms, with the scripture-proofs at large : together with the sum of saving knowledge, (contained in the Holy Scriptures, and held forth in the said Confessions and Catechisms) and practical use thereof; Covenants, National and Solemn league; Acknowledgement of sins and*

engagement to duties; Directories for publick and family worship; Form of church-government, &c. of publick authority in the Church of Scotland; with Acts of Assembly and Parliament, relative to, and approbative of, the same. Edinburgh : printed by Sir D. H. Blair, and J. Bruce, 1803.

The Colonial Laws of New York from the Year 1664 to the Revolution, including the Charters to the Duke of York, the Commissions and instructions to Colonial Governors, the Duke's Laws, the Laws of the Dongan and Leisler Assemblies, the Charters of Albany and New York and the Acts of the Colonial Legislatures from 1691 to 1775 inclusive. Vol 1-5. Albany: James B. Lyon, State Printer, 1896.

Coquille, Guy. *Institution au Droit des Francois.* Paris: Chez A. L'Angelier, 1609.

Dalton, Michael. *The Countrey Justice: Containing the Practice of the Justices of the Peace out of their Sessions. Gathered for the Better Help of Such Justices of Peace, as Have Not Been Much Conversant in the Study of the Law of this Realm.* London: Various Publications, 1618-1746.

Dillon, John B. *Oddities of Colonial Legislation in America, as applied to the public lands, primitive education, religion, morals, Indians, etc., etc., with authentic records of the origin and growth of pioneer settlements embracing also a condensed history of the states and territories, with a summary of the territorial expansion, civil progress and development of the nation.* Indianapolis: Robert Douglas Publisher, 1879.

Erskine, John. *Institutes of the law of Scotland.* Edinburgh: Bell & Bradfute, 1871.

Extracts from the General Assembly of the Presbyterian Church in the United States of America, 1789-1802. Philadelphia: Jane Aitken, 1803.

The First Book of Discipline. Cameron, James K. (ed). Edinburgh: The Saint Andrew Press, 1972.

The First Laws of the State of New Jersey. Wilmington, DE: Michael Glazier, Inc., 1981.

Fitzherbert, Sir Anthony. *The New Boke of Justice of Peas.* 1532.

Hume, David. *Commentaries on the Law of Scotland Respecting the Description and Punishments of Crimes.* 2 volumes. Edinburgh: Bell and Bradfute, 1797.

The Justiciary Records of Argyll and the Isles, 1664-1742. John Imrie (ed.). Edinburgh: Stair Society, 1969.

- Lambard, William. *Eirenarcha: or of the Office of the Justices of Peace, in Two Books: Gathered 1579 and Now Revised and Firste Published, in the 24 Years of the Peaceable Reign of our Gracious Queene Elizabeth*. London: 1581.
- Livingston, William. *The Independent Reflector of Weekly Essays on Sundry Important Subjects, More Particularly adapted to the Province of New York, 1753*. Edited by Milton M. Klein. Cambridge, MA: The Belknap Press of Harvard University Press, 1963.
- Mackenzie, Sir George. *Laws and Customs of Scotland in Matters Criminal, Wherein it is to be seen how the Civil Law, and the Laws and Customs of Other Nations do agree with and Supply Ours*. Edinburgh: Jas. Glen, 1678.
- The Minutes of the Justices of the Peace for Lanarkshire, 1707-1723*. Charles A. Malcolm (ed.). Edinburgh: Scottish History Society, 1931.
- Minutes of the Presbyterian Church in America, 1706-1788*. Klett, Guy S. (ed). Philadelphia: Presbyterian Historical Society, 1976.
- Parker, James. *Conductor Generalis; or the Office, Duty, and Authority of Justices of the Peace, High-Sheriffs, Under-Sheriffs, Gaolers, Coroners, Constables Jury Men, Over Seers of the Poor, and also the Office of Clerks of Assizes and of the Peace, &c.*
 New York: James Parker, 1749.
 Philadelphia: B. Franklin and D. Hall, 1749.
 Woodbridge, New Jersey: James Parker, 1764.
 New York: Hugh Gainé, 1788.
 New York: John Patterson for Robert Hodge, 1788
 Philadelphia: Printed for Robert Campell, 1792.
- Records of the Baron Court of Stitchill 1655-1807*. George Gunn (translator) and Clement B. Gunn (ed.). Edinburgh: Scottish History Society, 1905.
- Reed, H. Clay and Miller, George (eds). *The Burlington Court Book: A Record of Quaker Jurisprudence in West New Jersey, 1680-1709*. Baltimore: Genealogical Publishing Co, 1998.
- The Second Book of Discipline*. Kirk, James (ed). Edinburgh: The Saint Andrew Press, 1980.
- Selchow, Heinrich Christian. *Institutiones Jurisprudentiae Germanicae*. Hannoverae, 1757.
- Westminster Confession of Faith*. Kelly, Douglas, McClure, Hugh, and Rollinson, Phillip (eds). Signal Mountain, TN: Faith Printing Company, 1972.

Secondary Printed Materials

- Adair, Richard. *Courtship, illegitimacy and marriage in early modern England*. Manchester: Manchester University Press, 1996.
- Adams, Ian and Meredyth Somerville. *Cargoes of Despair and Hope: Scottish Emigration to North America 1603-1803*. Edinburgh: John Donald Publishers LTD, 1993.
- Ahlstrom, Sydney E. *A Religious History of the American People*. New Haven: Yale University Press, 1972.
- Allan, David. *Scotland in the Eighteenth Century*. London: Pearson Education Limited, 2002.
- Armitage, David and Michael Braddick (eds). *The British Atlantic World, 1500-1800*. Basingstoke: Palgrave MacMillan, 2002.
- Atack, Jeremy and Peter Passell. *A New Economic View of American History*. New York: W.W. Norton & Company, 1994.
- Balmer, Randall. *A Perfect Babel of Confusion: Dutch Religion and English Culture in the Middle Colonies*. New York: Oxford University Press, 1989.
- Balmer, Randall and John Fitzmier. *The Presbyterians*. Westport, CT: Greenwood Press, 1993.
- Bebbington, D.W. *Evangelicalism in Modern Britain: A history from the 1730s to the 1980s*. London: Routledge, 1989.
- Benedict, Philip. *Christ's Churches Purely Reformed: A Social History of Calvinism*. New Haven: Yale University Press, 2002.
- Benedict, William H. "Early Taverns in New Brunswick," *The Proceedings of the New Jersey Historical Society*. Vol 3, No. 3, 1918. pp. 129-146.
- Black's Law Dictionary*. Garner, Bryan A. (ed). St Paul, MN: West Group, 2001.
- Blaikie, Andrew. *Illegitimacy, Sex, and Society: Northeast Scotland, 1750-1900*. Oxford: Clarendon Press, 1993.
- Blanks, W.D. "Corrective Church Discipline in the Presbyterian Churches of the Nineteenth Century South." *Journal of Presbyterian History*. Vol 44, No 2, 1966. pp. 89-105.

- Bodle, Wayne. "Themes and Directions in Middle Colonies Historiography, 1980-1994." *William and Mary Quarterly*, 3rd series, Vol LI, No. 3, July 1994, pp. 355-388.
- Bonomi, Patricia U. *A Factious People: Politics and Society in Colonial New York*. New York: Columbia University Press, 1971.
- Bonomi, Patricia U. *Under the Cope of Heaven: Religion, Society, and Politics in Colonial America*. Oxford: Oxford University Press, 1986.
- Bonomi, Patricia and Peter Eisenstadt. "Church Adherence in the Eighteenth-Century British American Colonies," *William and Mary Quarterly*, 3rd Series, Issue 2, April, 1982. pp. 245-286.
- Bouce, Paul-Gabriel. *Sexuality in eighteenth-century Britain*. Manchester: Manchester University Press, 1982.
- Boyd, Julian P. *Fundamental Laws and Constitutions of New Jersey, 1664-1964*. Princeton: V. Dan Nostrand Company, 1964.
- Brown, Callum G. *The People in the Pews: Religion and Society in Scotland since 1780*. Glasgow: Economic and Social History Society of Scotland, 1993.
- Brown, Callum. *Religion and Society in Scotland since 1707*. Edinburgh: Edinburgh University Press, 1997.
- Brown, Callum. *The Social History of Religion in Scotland since 1730*. London: Methuen, 1987.
- Brown, S.J. and M. Fry. *Scotland in the Age of the Disruption*. Edinburgh: Edinburgh University Press, 1993.
- Bruce, Steve and Chris Wright. "Law, Social Change, and Religious Toleration," *Journal of Church and State*, Vol 37, No. 1, 1995. pp. 103-120.
- Burnett, Amy Nelson. *The Yoke of Christ: Martin Bucer and Christian Discipline*. Kirksville, MO: Northeast Missouri State University, 1994.
- Butler, Jon. "The Future of American Religious History: Prospectus, Agenda, Transatlantic *Problématique*," *William and Mary Quarterly*, 3rd Series, Vol 42, Issue 2, April 1985. pp. 167-183.
- Cage, R.A. *The Scottish Poor Law, 1745-1845*. Edinburgh: Scottish Academic Press, 1981.
- Calvin, Jean. *The Institutes of the Christian Religion*. John McNeill (ed.). Philadelphia: The Westminster Press, 1960.

- Campbell, A.J. *Two Centuries of the Church of Scotland, 1707-1929*. Paisley: Alexander Gardner, Ltd., 1930.
- Campbell, William M. *The Triumph of Presbyterianism*. Edinburgh: The Saint Andrews Press, 1958.
- Cheyne, A.C. *Studies in Scottish Church History*. Edinburgh: T & T Clark, 1999.
- Cheyne, A.C. *The Ten Years' Conflict and the Disruption*. Edinburgh: Scottish Academic Press, 1993.
- Clark, Ivo Macnaughton. *A History of Church Discipline in Scotland*. Aberdeen: W&W Lindsay, 1929.
- Conley, John A. "Doing it by the Book: Justice of the Peace Manuals and English Law in Eighteenth Century America." *The Journal of Legal History*, Vol 6, No. 3, December 1985. pp. 257-298.
- Cormack, A.A. *Poor Relief in Scotland*. Aberdeen: D. Wyllie & son, 1923.
- Cott, Nancy F. *Public Vows: A History of Marriage and the Nation*. Cambridge, MA: Harvard University Press, 2000.
- Curry, Thomas J. *The First Freedoms. Church and State in America to the Passage of the First Amendment*. New York: Oxford University Press, 1986.
- Daunton, M.J. *Progress and Poverty: An Economic and Social History of Britain, 1700-1850*. Oxford: Oxford University Press, 1995.
- Davie, G.E. *The Scottish Enlightenment*. London: The Historical Association, 1981.
- Dayton, Cornelia. *Women Before the Bar: Gender, Law, & Society in Connecticut, 1639-1789*. Chapel Hill: University of North Carolina Press, 1995.
- Denning, Alfred. *The Changing Law*. London: Stevens & Stevens, 1953.
- Devine, T.M. and David Dickson. *Ireland and Scotland 1600-1850*. Edinburgh: John Donald, 1983.
- Devine, T.M. and J.R. Young. *Eighteenth Century Scotland: New Perspectives*. East Linton: Tuckwell Press, 1999.
- Devine, T.M. and Rosalind Mitchison. *People and Society in Scotland, Volume 1, 1760-1830*. Edinburgh: John Donald Publishers, 1988.

- Devlin, Patrick Lord. *The Enforcement of Morals*. London: Oxford University Press, 1965.
- Dictionary of American Biography*. London: Oxford University Press, 1928-80.
- Dictionary of National Biography*. Calcutta: Institute of Historical Studies, 1972-74.
- Dictionary of Scottish Church History & Theology*. Downers Grove, IL.: InterVarsity Press, 1993.
- Dictionary of Scottish History*. Edinburgh: John Donald Publishers, 1977.
- Donaldson, Gordon. *Scotland: James V-James VII*. "The Edinburgh History of Scotland," vol. 3. Edinburgh: Mercat Press, 1998.
- Donaldson, Gordon. *The Scottish Reformation*. Cambridge: Cambridge University Press, 1960
- Drummond, Andrew L. and James Bulloch. *The Scottish Church 1688-1843: The Age of the Moderates*. Edinburgh: St Andrew Press, 1973.
- Dunn, Richard. "The Social History of Early New England," *American Quarterly*, Vol. XXIV, 1972. pp. 661-79.
- Egnal, Marc. "The Economic Development of the Thirteen Colonies, 1720 to 1775." *William and Mary Quarterly*, 3rd Series, Vol 32, issue 2, April 1975. p. 191-222.
- Ekirch, A. Roger. *Bound for America: The Transportation of British Convicts to the Colonies, 1718-1775*. Oxford: Clarendon Press, 1990.
- Farmer, Lindsay. *Criminal Law, Tradition and Legal Order: Crime and the Genius of Scots Law 1747 to the Present*. Cambridge: Cambridge University Press, 1997.
- Ferguson, Robert A. *The American Enlightenment, 1750-1820*. Cambridge, MA: Harvard University Press, 1997.
- Ferguson, William. *Scotland: 1689 to the Present*. "The Edinburgh History of Scotland," vol. 4. Edinburgh: Mercat Press, 1994.
- Fisk, William Lyons. *The Scottish High Church Tradition in America: An Essay in Scotch-Irish Ethnoreligious History*. Lanham: University Press of America, 1995.
- Fitzgerald, Patrick. "The Scotch-Irish & the Eighteenth-Century Irish Diaspora," *History Ireland*. Vol. 7, No 3, Autumn 1999. pp. 37-43.

- Flaherty, David H (ed). *Essays in the History of the Early American Law*. Chapel Hill: University of North Carolina Press, 1969.
- Flaherty, David H. "Law and the Enforcement of Morals in Early America." *Perspectives in American History*. Vol. V, 1971. pp. 203-253.
- Foster, David R. "Land-use (1730-1990) and Vegetation Dynamics in central New England, USA." *Journal of Ecology*, Vol. 80, Issue 4, December, 1992. pp. 753-772.
- Friedman, Lawrence M. *A History of American Law*. New York: Simon & Schuster, 1973.
- Friedman, Lawrence M. "Legal Culture and Social Development," *Legal Studies Review*, Volume 4, 1969. pp. 29-44.
- Fuller, Lon L. *The Morality of Law*. New Haven: Yale University Press, 1964.
- Gatrell, V.A.C., Bruce Lenman and Geoffrey Parker. *Crime and the Law: The Social History of Crime in Western Europe since 1500*. London: Europa Publications, 1980.
- Gaustad, Edwin Scott. *Historical Atlas of Religion in America*. New York: Harper & Row, Publishers, 1962.
- Gilfoyle, Timothy J. *City of Eros: New York City, Prostitution, and the Commercialization of Sex, 1790-1920*. New York: W.W. Norton & Company, 1992.
- Goodhart, A.L. *English Law and the Moral Law*. London: Stevens & Sons Limited, 1953.
- Gould, Eliga H. *The Persistence of Empire: British Political Culture in the Age of the American Revolution*. Chapel Hill, NC: The University of North Carolina Press, 2000.
- Graham, Ian Charles Cargill. *Colonists from Scotland Emigration to North America*. Ithaca: Cornell University Press, 1956.
- Graham, Michael. "Equality before the Kirk? Church Discipline and the Elite in Reformation-Era Scotland," *Archive for Reformation Scotland*, Vol 84, 1993. pp. 289-307.
- Graham, Michael. *The Uses of Reform: Godly Discipline and Popular Behavior in Scotland and Beyond, 1560-1610*. Leiden: E.J. Brill, 1996.
- Greenberg, Douglas. *Crime and Law Enforcement in the Colony of New York 1691-1776*. Ithaca: Cornell University Press, 1974.

- Greenberg, Douglas. "Crime, Law Enforcement, and Social Control In Colonial America." *American Journal of Legal History*, Vol 26, 1982. pp. 293-325.
- Greenberg, Douglas. "The Effectiveness of Law Enforcement in Eighteenth Century New York," *The American Journal of Legal History*. Vol. 19, 1975. pp. 173-207.
- Greene, Jack P. *The intellectual construction of America : exceptionalism and identity from 1492 to 1800*. Chapel Hill: University of North Carolina Press, 1993.
- Greene, Jack P. *Pursuits of Happiness: The Social Development of Early Modern British Colonies and the Formation of American Culture*. Chapel Hill: University of North Carolina Press, 1988.
- Greene, Jack P. and J.R. Pole. *Colonial British America: Essays in the New History of the early Modern Era*. Baltimore: The John Hopkins University Press, 1984.
- Greeven, Philip. *The Protestant Temperament: Patterns of Child-Rearing, Religious Experience, and the Self in Early America*. New York: Times Mirror, 1977.
- Gregory, Austin. *Alcohol in Western Society From Antiquity to 1800: A Chronological History*. Santa Barbara: ABC-Clio Information Services, 1985.
- Griffen, Patrick. *The People with No Name: Ireland's Ulster Scots, America's Irish, and the Creation of a British Atlantic World, 1689-1764*. Princeton: Princeton University Press, 2001.
- Hackett, David G. *Religion and American Culture: A Reader*. New York: Routledge, 1995.
- Hackett, David G. *The Rude Hand of Innovation: Religion and Social Order in Albany, New York 1652-1836*. New York: Oxford University Press, 1991.
- Hall, David D. "On Common Ground: The Coherence of American Puritan Studies," *William and Mary Quarterly*. Vol. XLIV, 1987. pp. 193-229.
- Hall, David D., John M. Murrin and Thad W. Tate. *Saints and Revolutionaries*. New York: W.W. Norton & Company, 1984.
- Hall, Peter Dobkin. *The Organization of American Culture, 1700-1900: Private Institutions, Elites, and the Origins of American Nationality*. New York: New York University Press, 1984.

- Hamburger, Phillip. *Separation of Church and State*. Cambridge, MA: Harvard University Press, 2002.
- Hart, H.L.A. *The Concept of Law*. Oxford: Oxford University Press, 1961.
- Hart, H.L.A. *The Morality of the Criminal Law: Two Lectures*. London: Oxford University Press, 1965.
- Haskins, George L. "Law and Colonial Society," in *Essays in the History of Early American Law*. Edited by David H. Flaherty. Chapel Hill: The University of North Carolina Press, 1969.
- Hawke, David Freeman. *Everyday Life in Early America*. New York: Harper & Row, 1988.
- Hawthorne, Nathaniel. *The Scarlet Letter*. London: Gawthorn, 1947.
- Hempton, David. *Religion and political culture in Britain and Ireland: From the Glorious Revolution to the decline of empire*. Cambridge: Cambridge University Press, 1996.
- Henderson, G.D. *The Claims of the Church of Scotland*. Warwick: Hodder and Stoughton, 1951.
- Henderson, G.D. *Scots Confession, 1560*. Edinburgh: Church of Scotland Committee of Publications, 1937.
- Hill, George. *A View of the Constitution of the Church of Scotland*. Edinburgh: Peter Hill and Co., 1817.
- Hilton, Boyd. *The Age of Atonement: The Influence of Evangelicalism on Social and Economic Thought, 1785-1865*. Oxford: Clarendon Press, 1988.
- Hoffer, Peter Charles. *Law and People in Colonial America*. Baltimore: The Johns Hopkins University Press, 1998.
- Hoffer, Peter Charles and N.E.H. Hull. *Murdering Mothers: Infanticide in England and New England 1558-1803*. New York: New York University Press, 1981.
- Hooker, Richard. *Of the laws of ecclesiastical polity*. (ed) Georges Edelen et al. Cambridge: Belknap Press of Harvard University Press, 1977-1982.
- Houston, R.A. "Eighteenth-Century Scottish Studies: Out of the Laager?" *The Scottish Historical Review*, Vol. 72, No. 195, April 1994. pp. 64-81.
- Houston, R.A. *Social Change in the Age of Enlightenment: Edinburgh 1660-1760*. Oxford: Clarendon Press, 1994.

- Houston, R.A. and W.W.J. Knox (eds). *The New Penguin History of Scotland: From the Earliest Times to the Present Day*. London: Penguin Books Ltd, 2001.
- Hughes, J.R.T. "American Economic Growth: Imported or Indigenous? What Difference Did the Beginning Make?" *The American Economic Review*, Vol 67, Issue 1, February 1977. pp. 15-20.
- Innes, A. Taylor. *The Law of Creeds in Scotland*. Edinburgh: William Blackwood and Sons, 1902.
- Inventory of the church archives of New Jersey*. Prepared by the New Jersey Historical Records Survey Project, Division of Professional and Service Projects, Work Projects Administration. Newark, NJ: Historical Records Survey, 1940.
- Inventory of the church archives of New York state exclusive of New York city*. Prepared by the Historical Records Survey, Division of Professional and Service Projects, Works Progress Administration. Protestant Episcopal Church. Diocese of Western New York. Albany, N.Y., The Historical Records Survey, 1939.
- Ireland, Owen S. *Religion, Ethnicity, and Politics: Ratifying the Constitution in Pennsylvania*. University Park, PA: The Pennsylvania State University Press, 1995.
- Jackson, Mark. *New-born Child Murder: Women, illegitimacy and the courts in eighteenth-century England*. Manchester: Manchester University Press, 1996.
- Johnson, Herbert. *Essays on New York Colonial Legal History*. Westport, CT: Greenwood Press, 1981.
- Kammen, Michael. *The History of the Province of New-York by William Smith, Jr.* Vol. 1 & 2. Cambridge, MA: The Belknap Press of Harvard University Press, 1972.
- Kammen, Michael. *In the Past Lane: Historical Perspectives on American Culture*. New York: Oxford University Press, 1997.
- Keasbey, Edward Quinton. *The Courts and Lawyers of New Jersey: 1661-1912*. New York: Lewis Historical Publishing Company, 1912.
- Keith, Richard and George Clark. *A Guide to Scots Law*. London: Johnston and Bacon, 1978.
- Kimball, Marie. "Some Genial Old Drinking Customs," *The William and Mary Quarterly*. Third Series, Vol, Issue 4, October 1945. pp. 349-358.

- Kingdon, Robert M. "Calvin and the establishment of consistory discipline in Geneva: the institution and the men who directed it," *Nederlands Archief voor Kerkgeschiedenis*, Vol. 70, 1990. pp. 158-172.
- Kingdon, Robert M. "The Geneva Consistory as Established by John Calvin," *On the Way*. Vol. 7, Number 2, Autumn 1990, pp. 30-44.
- Kirk, James. *Patterns of Reform: Continuity and Change in the Reformation Kirk*. Edinburgh: T & T Clark, 1989.
- Klett, Guy. *Journals of Charles Beatty, 1762-1769*. University Park, PA: The Pennsylvania State University Press, 1962.
- Koedel, Craig. *God's Vine in this Wilderness, Religion in South Jersey to 1800*. Woodbury, NJ: Gloucester Historical Society, 1980.
- Kupperman, Karen Ordahl. "The Puzzle of the American Climate in the Early Colonial Period." *The American Historical Review*, Vol. 87, Issue 5, December 1982. pp. 1262-1289.
- Kyd, James Gray. *Scottish Population Statistics including Webster's Analysis of Population 1755*. Edinburgh: Scottish Academic Press, 1975.
- Landsman, Ned C. "Revivalism and Nativism in the Middle Colonies: The Great Awakening and the Scots Community in East New Jersey," *American Quarterly*, Vol. 34, Issue 2, Summer, 1982. pp. 149-164.
- Landsman, Ned C. *Scotland and Its First American Colony, 1683-1765*. Princeton: Princeton University Press, 1985.
- Laslett, Peter, Karla Oosterveen and Richard Smith. *Bastardy and its Comparative History*. London: Edward Arnold, 1980.
- The Laws of Scotland: Stair Memorial Encyclopaedia*. Edinburgh: The Law Society of Scotland, 1994.
- Leith, John. *John Calvin's Doctrine of the Christian Life*. Louisville, KY: Westminster/John Knox Press, 1989.
- Lemon, James. *The Best Poor Man's Country: A Geographical Study of Early Southeastern Pennsylvania*. Baltimore: The Johns Hopkins Press, 1972.
- Leneman, Leah. *Alienated Afflictions: The Scottish Experience of Divorce and Separation, 1684-1830*. Edinburgh: Edinburgh University Press, 1998.
- Leneman, Leah. *Perspectives in Scottish Social History: essays in honour of Rosalind Mitchison*. Aberdeen: Aberdeen University Press, 1988.

- Leneman, Leah. "The Study of Illegitimacy from the Kirk Session Records: Two eighteenth-century Perthshire parishes." *Local Population Studies*, Vol 31, 1983. pp. 29-33.
- Lenman, Bruce. *Integration, Enlightenment, and Industrialization: Scotland 1746-1832*. London: Edward Arnold LTD, 1981.
- Lovejoy, David S. *Religious Enthusiasm in the New World, Heresy to Revolution*. Cambridge, MA: Harvard University Press, 1985.
- Lynch, Michael. *Scotland: A New History*. London: Pimlico, 1998.
- MacDonald, Alan R. *The Jacobean Kirk, 1567-1625*. Aldershot: Ashgate, 1998.
- MacDonald, James. *Two Centuries in the history of the Presbyterian church, Jamaica, L.I; the oldest existing church, of the Presbyterian name, in America*. New York: R. Carter & brothers, 1862.
- MacLean, A.J. "The 1707 Union: Scots Law and the House of Lords." *The Journal of Legal History*, 1983, Vol 4, No. 3, December 1983. pp. 50-75.
- Mair, W. *Digest of Church Laws and Decisions Ecclesiastical and Civil Relating to the Constitution, Practice, and Affairs of the Church of Scotland*. Edinburgh: William Blackwood and Sons, 1923.
- Mann, Bruce. *Neighbors and Strangers: Law and Community in Early Connecticut*. Chapel Hill: The University of North Carolina Press, 1987.
- Marshall, Enid A. *General Principles of Scots Law*. Edinburgh: W. Green & Son, 1982.
- McCaffrey, John F. *Scotland in the Nineteenth Century*. London: MacMillan Press, 1998.
- McCormick, Richard P. *New Jersey from Colony to State, 1609-1789*. Princeton: D. Van Nostrand Company, 1964.
- McCusker, John J. "New Guides to Primary Sources on the History of Early British America," *William and Mary Quarterly*. Third Series, Vol 41, Issue 2, April 1984. pp. 277-295.
- McDonnell, Kilian. *John Calvin, the Church, and the Eucharist*. Princeton: Princeton University Press, 1967.
- McDouall, Andrews, Lord Bankton. *An institute of the laws of Scotland in civil right*. Edinburgh: Stair Society, 1993.

- McGrade, Arthur "The Coherence of Hooker's Polity: The Books on Power." *Journal of the History of Ideas*, Vol. 24, No 2, April-June 1963.
- McIntosh, John R. *Church and Theology in Enlightenment Scotland: The Popular Party, 1740-1800*. East Linton: Tuckwell Press, 1998.
- McNeill, John. "John Calvin on Civil Government." *Journal of Presbyterian History*. Vol. 42, No. 2, June 1964. pp. 71-91.
- Mechie, Stewart. *The Church and Scottish Social Development 1780-1870*. London: Oxford University Press, 1960.
- Meikle, James. *An Old Session Book: Being Studies in Aliph's Second Session Book*. Paisley: Alexander Gardner, 1918.
- Meston, Michael C., W. David H. Sellar and The Rt. Hom. Lord Cooper. *The Scottish Legal Tradition*. Edinburgh: The Saltire Society and The Stair Society, 1991.
- Middleton, Richard. *Colonial America*. Oxford: Blackwell Publisher, 1992.
- Mitchison, Rosalind. *The Old Poor Law in Scotland: The Experience of Poverty, 1574-1845*. Edinburgh: Edinburgh University Press, 2000.
- Mitchison, Rosalind and Leah Leneman. *Girls in Trouble: Sexuality and Social Control in Rural Scotland 1660-1780*. Edinburgh: Scottish Cultural Press, 1998.
- Mitchison, Rosalind and Leah Leneman. *Sexuality and Social Control: Scotland 1660-1780*. Oxford: Basil Blackwell, 1989.
- Mitchison, Rosalind and Leah Leneman. *Sin in the City: Sexuality and Social Control in Urban Scotland, 1660-1780*. Edinburgh: Scottish Cultural Press, 1998.
- Monter, E. William, "The consistory of Geneva, 1559-1569" *Bibliothèque d'humanisme et renaissance : travaux et documents*, Vol. 38, 1976. pp. 467-484.
- Monter, E. William. *Studies in Genevan government: 1536-1605*. Genève: Librairie Droz, 1964.
- Muldrew, Craig. *The Economy of Obligation*. London: Macmillan Press, 1998.
- Murdoch, Alexander. *The People Above: Politics and Administration in Mid-Eighteenth-Century Scotland*. Edinburgh: John Donald Publishers, Ltd, 1980.
- Murin, Mary R. *Religion in New Jersey Life Before the Civil War*. Trenton: New Jersey Historical Commission, Department of State, 1982.

- Nelson, William. *Dispute and Conflict Resolution in Plymouth County, Massachusetts, 1725-1825*. Chapel Hill: The University of North Carolina Press, 1981.
- Nelson, William. *New Jersey Marriage Records 1665-1800*. Baltimore: Genealogical Publishing, 1982.
- New Geneva Study Bible*. New King James Version. Nashville: Thomas Nelson Publishers, 1995.
- Niebuhr, Richard and Daniel Williams (eds). *The Ministry in Historical Perspectives*. New York: Harper & Row, Publishers, 1956.
- Noll, Mark A. *A History of Christianity in the United States and Canada*. Grand Rapids: William B. Eerdmans Publishing Company, 1992.
- Oberholzer, Emil. *Delinquent Saints: Disciplinary Action in the Early Congregational Churches of Massachusetts*. New York: Columbia University Press, 1956.
- Offutt, William M, Jr. *Of "Good Laws" and "Good Men" Law and Society in the Delaware Valley, 1680-1710*. Urbana: University of Illinois Press, 1995.
- Olson, Alison G. "Eighteenth Century Colonial Legislatures and Their Constituents," *The Journal of American History*, Vol 79, Issue 2, September, 1992. pp. 543-567.
- Omand, Donald (ed). *The Fife Book*. Edinburgh: Birlinn Limited, 2000.
- Outhwaite, R.B., *Studies in the Social History of Marriage*. London: Europa Publications Limited, 1981.
- Pearson, Samuel C. "Presbyterianism in America," *The Journal of Presbyterian History*. Vol. 46, 1968. pp. 139-144.
- Phillips, Roberick. *Untying the Knot: A Short History of Divorce*. Cambridge: Cambridge University Press, 1991.
- Phillipson, N.T. and Rosalind Mitchinson. *Scotland in the Age of Improvement*. Edinburgh: University Press, 1970.
- Plucknett, Theodore F.T. *A Concise History of the Common Law*. 4th ed. London: Butterworth & Co. Ltd., 1948.
- Pointer, Richard. *Protestant Pluralism and the New York Experience*. Indianapolis: Indiana University Press, 1985.

- Pomfret, John. *The New Jersey Proprietors and Their Lands, 1664-1776*. Princeton: D. Van Nostrand Company, Inc, 1964.
- Potter, G.R., and M. Greengrass. *John Calvin*. London: Edward Arnold Ltd., 1983.
- Purvis, Thomas L. *A Dictionary of American History*. Oxford: Blackwells Publishers, 1995.
- Raath, Andries. "Covenant and the Christian Community: Bullinger and the Relationship between Church and Magistracy in Early Cape Settlement (1652-1708)," *Sixteenth Century Journal*, Vol. XXXIII, No. 4, 2002.
- Rankin, John L. "Newark Town Government from 1666-1833," *Proceedings of the New Jersey Historical Society*, Vol X, No 1, 1915. pp. 1-12, 49-61, 116-127.
- Reis, Elizabeth. *American Sexual Histories*. Oxford: Blackwell Publishers, 2001.
- Ritchie, Pamela. *Mary of Guise in Scotland, 1548-1560: a political career*. East Linton: Tuckwell Press, 2002.
- Rosen, Deborah A. "Courts and Commerce in Colonial New York," *The American Journal of Legal History*, Vol. 36, No 2, April, 1992. pp. 139-163.
- Ross, Richard J. "The Legal Part of Early New England: Notes for the Study of Law, Legal Culture, and Intellectual History." *William and Mary Quarterly*, Third Series, Vol 50, Issue 1, Law and Society in Early America, January 1993. pp. 28-41.
- Roxburgh, K.B.E. "The Scottish Evangelical Awakening of 1742 and the Religious Societies." *The Journal of the United Reformed Church History Society*. Vol 5, No. 2, November 1994. pp. 266-273.
- Rutman, Anita. "Still Planting the Seeds of Hope: The Recent Literature of the Early Chesapeake Region." *Virginia Magazine of History and Biography*. Vol. XCV, 1987. pp. 3-24.
- Schmidt, Leigh Eric. *Scottish Communion and American Revivals in the Early Modern Period*. Princeton: Princeton University Press, 1989.
- Shaw, Duncan. *The General Assemblies of the Church of Scotland : 1560-1610*. Edinburgh: Saint Andrew Press, 1964.
- Shepperson, George. "Writings in Scottish-American History: A Brief Survey," *William and Mary Quarterly*, Third series, Vol 11, Issue 2, April 1954. pp. 163-178.

- Sher, Richard B. and Jeffrey R. Smitten. *Scotland & America in the age of the enlightenment*. Edinburgh: Edinburgh University Press, 1990.
- Simmons, R.C. *The American Colonies: From Settlement to Independence*. London: Longman Group, 1976.
- Sinclair, Sir John. *The Statistical Account of Scotland 1791-1799*. Volumes 11 and 13. Wakefield: EP Publishing, 1976.
- Smith, Elwyn. "The Forming of a Modern American Denomination," *Church History*, Vol 31, 1962. pp. 74-99.
- Smith, Merrill D. (ed). *Sex and Sexuality in Early America*. New York, New York University Press, 1998.
- Smout, T.C. "Scottish Marriage, Regular and Irregular, 1500-1940" in Outhwaite, R.B., *Studies in the Social History of Marriage*. London: Europa Publications Limited, 1981.
- Smylie, James H. "American Presbyterians: a Pictorial History," *Journal of Presbyterian History*. Vol. 63, No 1 & 2, 1985.
- Speck, W.A. *British America, 1607-1776*. East Sussex: University of Sussex Printing Unit, 1985.
- Spindel, Donna. *Crime and Society in North Carolina, 1663-1776*. Baton Rouge: Louisiana State University Press, 1989.
- Stair Society. *An Introduction to Scottish Legal History*. Volume 20. Edinburgh: Robert Cunningham & Sons, 1958.
- Steven, Maisie. *Parish Life in Eighteenth-Century Scotland: A Review of the Old Statistical Account*. Aberdeen: Scottish Cultural Press, 1995.
- Stumph, Samuel Enoch. *Morality and the Law*. Nashville: Vanderbilt University Press, 1966.
- Surrency, Erwin C. "The Courts in the American Colonies." *The American Journal of Legal History*. Vol. 11, 1967, pp. 253-346.
- Tanner, Edwin. *The Province of New Jersey, 1664-1738*. New York: Columbia University Press, 1908.
- Tate, Thad W. and David Ammerman (eds). *The Chesapeake in the Seventeenth Century: Essays on Anglo-American Society*. Chapel Hill: University of North Carolina Press, 1979.
- Taylor, Alan. *American Colonies: The Settlement of North America to 1800*. London: The Penguin History of the United States, 2001.

- Taylor, George Rogers. "American Economic Growth Before 1840: An Exploratory Essay." *Journal of Economic History*, Vol. 24, Issue 4, December 1964. pp. 427-444.
- Todd, Margo. *The Culture of Protestantism in Early Modern Scotland*. New Haven: Yale University Press, 2002.
- Trinterud, Leonard. *The Forming of an American Tradition: A Re-examination of Colonial Presbyterianism*. Philadelphia: Westminster Press, 1949.
- U.S. Bureau of the Census. *Historical Statistics of the United States. Colonial Times to 1970*. Washington, D.C.: Government Printing Office, 1975, Z-9.
- Ver Steeg, Clarence L. *The Formative Years 1607-1763*. London: Macmillan & Co., 1965.
- von Greyerz, Kasper. *Religion and Society in Early Modern Europe, 1500-1800*. London: George Allen and Unwin, 1984.
- Vickers, Daniel. "Competency and Competition: Economic Culture in Early America." *William and Mary Quarterly*, Third Series, Vol 47, Issue 1, January 1990. pp. 3-29.
- Walker, David M. (ed). *The Institutions of the Law of Scotland*. By James, Viscount of Stair. Edinburgh & Glasgow: The University Presses, 1981.
- Walker, David M. *A Legal History of Scotland: Volume III The Sixteenth Century*. Edinburgh: T&T Clark, Ltd., 1995.
- Walker, David M. *A Legal History of Scotland: Volume V The Eighteenth Century*. Edinburgh: T&T Clark, Ltd., 1998.
- Walker, David M. *The Oxford Companion to Law*. Oxford: Clarendon Press, 1980.
- Warner, Kenneth A. "The Concept of Legal Obligation and the Separation of Law and Morality in H.L.A. Hart," *The Judicial Review*, 1985. pp. 23-44.
- Watson, John. *The Scot of the Eighteenth Century: His Religion and his Life*. London: Hoder and Stoughton, 1907.
- Watt, Hugh. *Thomas Chalmers and the Disruption*. Edinburgh: Thomas Nelson, 1943.
- Weiss, Harry B. *Life in Early New Jersey*. Princeton: D. Van Nostrand Company, Inc., 1964.

- Weiss, Harry B. and Grace E. Weiss. *An Introduction to Crime and Punishment in Colonial New Jersey*. Trenton, NJ: The Past Times Press, 1960.
- Westerkamp, Marilyn. *Triumph of the Laity: Scottish-Irish Piety and the Great Awakening, 1625-1760*. Oxford: Oxford University Press, 1988.
- Whatley, Christopher. *Scottish Society, 1707-1830: Beyond Jacobitism, towards industrialisation*. Manchester: Manchester University Press, 2000.
- Whetstone, Ann E. *Scottish County Government in the Eighteenth and Nineteenth Centuries*. Edinburgh: John Donald Publishers, 1981.
- Whyte, Ian D. *Scotland's Society and Economy in Transition, c1500-c.1760*. London: MacMillan Press, 1997.
- Willock, Ian Douglas. *The Origins and Development of the Jury in Scotland*. Edinburgh: Stair Society, 1966.
- Wilson, John F. (ed). *Church and State in America, A Bibliographical Guide: The Colonial and Early National Periods*. New York: Greenwood Press, 1987.
- Wilson, John F. (eds). *Church and State in American History: The Burden of Religious Pluralism*. Boston: Beacon Press, 1965.
- Wormald, Jenny. *Court, Kirk, and Community: Scotland 1470-1625*. Edinburgh: Edward Arnold, 1981.
- Worthen, Samuel Copp. "The Influence of Puritan and Other New England Elements in New Jersey," *The Genealogical Magazine of New Jersey*. Vol 3, No. 3, January 1928. pp. 89-95.

Unpublished secondary sources

- Birnie, J., "Banning and shunning: a study of the nature and history of church discipline within early Anabaptism." M.Phil., Queens's University Belfast, 1996.
- Blaikie, Andrew. "Illegitimacy in nineteenth-century Northeast Scotland." Ph.D., Queen Mary and Westfield College, London, 1987.
- Blair, Anthony Lane. "Fire across the water: Transatlantic dimensions of the Great Awakening among middle-colony Presbyterians." Ph.D., Temple University, 2000.
- Briand, K.C. "The Presbyteries of Cupar, Dundee and St Andrews during the Ten Years Conflict and Disruption." Ph.D., St Andrews, 1992.
- Brown, Keith. "The Reformation Parliament," 2004 forthcoming.
- Browne, R.M. "Kirk and community: Ulster Presbyterian society 1640-1740." M.Phil., Queen's University Belfast, 1999.
- Campey, L.H. "The regional characteristics of Scottish emigration to British North America, 1784 to 1854." Ph.D., Aberdeen, 1997.
- Conway, H.F. "The Presbyterian Ministry of Ulster in the eighteenth and nineteenth-centuries: a prosopographical study." Ph.D., Queen's University Belfast, 1997.
- Davies, Stephen. "Law and order in Stirlingshire, 1637-1747." Ph.D., St Andrews, 1984.
- Durden, D.S. "Transatlantic communications and literature in the religious revivals, 1735-1745." Ph.D. Hull, 1978.
- Hardy, John R. "The attitude of the church and State in Scotland to sex and marriage, 1560-1707." Ph.D., Edinburgh, 1978.
- Laird, J. "Religion and life, 1793-1865: a study in the social and religious history within the bounds of the Presbytery of Cupar." Ph.D., St Andrews, 1977.
- Lindsay, J. "The Operation of the Poor Law in the North-East of Scotland, 1745-1845." Ph.D. Aberdeen, 1962.
- Lockington, J.W. "An analysis of the practice and procedure in Irish Presbyterianism." Ph.D., Queen's University Belfast, 1980.
- Macdonald, F.A.J. "Law and Doctrine in the Church of Scotland, with particular reference to the confessions of faith." Ph.D., St Andrews, 1983.

- McBride, I.R. "‘Scripture politics’: the religious foundations of Presbyterian radicalism in late eighteenth-century Ireland." Ph.D., London, University College, 1994.
- McIntosh, J.R. "The Popular Party in the Church of Scotland, 1740-1800." Ph.D., Glasgow, 1989.
- McKay, W.D.J. "The nature of church government in the writings of George Gillespie (1613-1648)." Ph.D., Queen's University Belfast, 1992.
- Mitchell, W. "Jonathan Edwards's Scottish connection and the eighteenth century Scottish evangelical revival, 1735-1750." Ph.D., St Andrews, 1998.
- Muir, Alison. "The Covenanters in Fife, c. 1610 – 1689: religious dissent in the local community." Ph.D., St Andrews, 2002.
- Parker, A. W. "Scottish Highlanders in colonial Georgia: the recruitment, emigration and settlement at Darien, 1735-1748." Ph.D., St Andrews, 1996.
- Smith, D. "George Whitefield as inter-confessional evangelist, 1714-1770." D.Phil, Oxford, 1992.
- Whitly, L.A.B. "The operation of lay patronage in the Church of Scotland from Act of 1712 until 1746, with particular reference to the Presbyteries of Duns, Edinburgh and Bechin." Ph.D., St Andrews, 1994.
- Yates, C.B., "A sociological and demographic analysis of patterns of church membership in the Church of Scotland in the urban city (Dundee)." Ph.D., St Andrews, 1985.